

This guide is intended to assist Foster and Kinship Carers (Carers) understand the internal and external review processes that are available Carers under the Children and Young People (Safety) Act 2017.

Seeking an Internal Review of a Decision of the DCP

During your time caring for a child or young person, a number of decisions will be made by the Department for Child Protection (DCP) in relation to the child or young person and their care. At times, you may not agree with a decision and therefore decide to seek a review.

The Children and Young People (Safety) Act 2017 (CYPS Act)

The CYPS Act is the main piece of legislation governing the operation of the child protection system in South Australia. It sets out the rights and responsibilities of the Government of South Australia and the DCP towards children and young people in care as well as the rights that should be afforded to Carers. The CYPS Act is easily accessible on the internet and it is worthwhile for Carers to familiarise themselves with its contents.

New Review Rights of Carers

As a result of amendments to the CYPS Act which came into effect in October 2018, Carers in South Australia are now entitled to seek a review of decisions of the Chief Executive of the DCP or a child protection officer.

There are certain steps which must be taken in order for a review to occur and short timeframes to be met. The Carer Advocates from Connecting Foster and Kinship Carers SA (CF&KC-SA) can help Carers to navigate the processes, understand their responsibilities and offer Carer families ongoing support when dealing with issues and seeking a review of decisions.

Chapter 12 of the CYPS Act is entitled 'Reviews of decisions under Act' with the following sections fully in operation from 22 October 2018:

- section 157: Internal Review of decisions of the DCP Chief Executive; and
- section 158: Review of decisions by South Australian Civil and Administrative Tribunal (SACAT)

NB: as this is still a relatively new Act, this information may change from time to time. The Children and Young People (Safety) Regulations 2017 (SA) may make further provision in respect of a review under this section.

What is a "reviewable decision"?

The kinds of decision which may be the subject of a review are referred to in Chapter 7 of the CYPS Act (other than a decision under Part 4 of that Chapter), and relate to:

- **approval of Carers**, including:
 - a condition setting out the kind of out of home care that can be provided; or

- the maximum number of children and young people that an approved Carer is permitted to have in their care.
- **ongoing reviews of approved Carers**, including:
 - regular assessments of the provision of care by the approved carer; and
 - proper assessments of requirements of the approved carer for financial or other assistance.
- **cancellation of Carer approval**
- **provision of certain information by approved Carers**
- **delegation of certain powers to approved Carers**
- **temporary placement of a child or young person with non-approved Carers**
- **provision of information and involvement in decision-making**, including:
 - approved Carers are to be provided with certain information prior to placement of a child or young person into their care,
 - approved Carers are entitled to participate in decision-making as it relates the child or young person in their care and review processes.
- **decisions of the Chief Executive**, including:
 - placement of a child or young person,
 - removal of a child or young person,
 - arrangements for the education of the child or young person.
- **transition to long-term guardianship**
- **an agreement as to the funeral arrangements for a child or young person in care.**

STEP 1: Seeking an Internal Review (section 157 of the CYPs Act)

This is the first step in the review process for any person aggrieved by a decision of the Chief Executive or a child protection officer.

TIP: It is important to have received notice of the decision **in writing** to be able to address each particular decision and to ensure time frames are met.

This will also be important if you later progress to an external review at SACAT.

Where information has been communicated verbally, you should request a written notification of the decision from the DCP via email (preferred) or via registered post.

An 'Application for Internal Review' form must be completed and lodged with the DCP via the [DCP Central Complaints Unit](#), Office of the Chief Executive **within 30 days** of the day on which the notice of the decision was given (or such longer time as the Chief Executive may allow).

TIP: We strongly recommend written communication with the DCP when seeking an internal review (rather than phone calls), and **keeping copies** of all your communications to the DCP.

Upon your internal review form being lodged, the Central Complaints Unit will confirm receipt, advise you of the associated internal review processes and allocate a DCP staff member who was not involved in the original decision to conduct the review.

The review process usually takes approximately 30 days to complete. If the review is not complete within 30 days you will receive an update from the Department advising of the progress of the review. Progress reviews should occur every 30 days from the date the application was submitted. In the instance that your review is not complete within 30 days and you have not received any correspondence regarding the progress of the review, we suggest you contact the Department to request it be escalated to the office manager.

Once the review is complete, the Chief Executive or their delegate will notify you in writing of the outcome of the review. There are three possible outcomes and the reviewer will either:

1. confirm;
2. vary; or
3. reverse the decision under internal review.

STEP 2: Seeking an External Review of DCP decisions in the South Australian Civil and Administrative Tribunal (SACAT) (section 158 of the CYPs Act)

If an internal review has been conducted and you are dissatisfied with outcome, you may make an application to SACAT for a review of a decision of the Chief Executive pursuant to section 158 of the CYPs Act. An application for review by SACAT must be lodged online via SACAT's website **within 28 days** from the date that the internal review notice was issued.

Please note: matters cannot proceed to SACAT unless an internal review has been conducted.

Before applying, you will need:

1. a copy of the *decision; and
2. to cover the application fee (\$73 – or \$54 concession to commence proceedings)

***decision:** We suggest attaching both the original decision and the outcome of the internal review to your SACAT application. Upon lodgement of your application, you will receive a tracking code or file number from SACAT for your matter. You will then later be advised via email of a first directions hearing date.

The SACAT Process

Directions Hearing

Before a full hearing takes place, the matter will be listed by the Tribunal for what is called a “directions hearing”. This is a short preliminary hearing where discussion is had as to the readiness of the parties to proceed to the full hearing. This is also an opportunity for you or the lawyer from the Crown Solicitor's Office (who acts for the DCP) to seek that the Tribunal Member make orders for disclosure of any outstanding documents, production of witness statements and the like. There may be one or more

directions hearings before the hearing itself is listed, depending on the issues involved in the particular case.

Conference

In some instances where it is deemed by the parties that there may be some scope for a resolution to be reached, SACAT will list a matter for a “conference”. This is a more informal setting where the parties meet around a table and a Tribunal Member or Registrar of SACAT presides over the conference. The focus of a conference is on discussion between the parties with a view to reaching an agreement. If, after the conference process, the parties have reached an agreement, this will be recorded by the presiding Tribunal Member or Registrar. If, however, the dispute is not completely resolved via agreement between the parties, it will be referred to a full hearing.

Hearing

A “hearing” is presided over by a Tribunal Member and is intended to resolve the issue in dispute. The Tribunal Member will apply the rules of procedural fairness that require them to conduct an unbiased hearing, look at the evidence or material before the DCP as the original decision maker, consider any new evidence or material (where SACAT decides to admit such evidence), and to give each party a fair opportunity to state their case.

At the conclusion of the hearing, the Tribunal Member will make a decision (i.e. will decide if the decision made by DCP is correct or if there should be changes). That decision is binding on the parties and may be enforced. Depending on the complexity of the issues in the particular matter, the Tribunal Member may “reserve their decision” which means that they will take some time to consider their decision and the parties will be advised via email when the decision has been delivered. All parties will be sent a copy of the decision.

For more detailed information on SACAT and the SACAT hearing process please consult our Carer Guide entitled: External Review at SACAT.

For more information, or to discuss your personal circumstances, please contact us:

Email: support@cfc-sa.org.au

Freecall: 1800 732 272

**The
LAW FOUNDATION
of SA Incorporated**



The Law Foundation of SA Inc
is proudly supported by
Perks.
Integrated business services