

This guide is intended to assist Foster and Kinship carers (Carers) to prepare for a hearing in the South Australian Civil and Administrative Tribunal (SACAT).



What is SACAT?

SACAT is a Tribunal that, amongst other things, has the jurisdiction to review some decisions made by the Department for Child Protection (DCP). SACAT is located at 100 Pirie St, Adelaide 5000.

SACAT has the authority to conduct reviews of child protection decision making under section 158 of the *Children and Young People (Safety) Act 2017* (CYPs Act).

The powers of SACAT to review certain decisions of the DCP as they relate to Carers are relatively new, having only been included into the CYPs Act in October 2018. This is therefore a developing area of law.

How does SACAT operate?

SACAT is a Tribunal and not a Court. Its powers are derived from the *South Australian Civil and Administrative Tribunal Act 2013*.

All reviews pursuant to the CYPs Act are heard in the Administrative and Disciplinary list of SACAT. SACAT is presided over by Tribunal Members who are from a wide range of professional backgrounds. They include lawyers, psychiatrists, people with a social welfare or nursing background, people with a public sector background and accredited mediators. The President and Judicial Member is Justice Judy Hughes. Further information regarding the Tribunal's structure and leadership can be found on [SACAT's website](#).

What child protection decisions are reviewable?

Not every decision made by the DCP regarding your child in care are reviewable.

Pursuant to section 158 of the CYPS Act, decisions of the Chief Executive of the DCP under Chapter 7 of the CYPS Act (other than a decision under part 4 of that Chapter) are reviewable by SACAT.

Any review that proceeds to SACAT must first have been through the internal review process within the DCP pursuant to section 157 of the CYPS Act.

What decisions are not reviewable at SACAT?

Decisions that are not reviewable at SACAT include:

- decisions made by individual child protection officers or other staff of the DCP not acting under the delegated power of the Chief Executive under section 146 of the CYPS Act;
- contact arrangements, these decisions can be reviewed by the Contact Arrangements Review Panel; and
- any decisions made by the Youth Court.

How do I apply to SACAT?

To seek a review of a decision of the DCP you must:

- firstly, apply for an **internal review** of the decision under section 157 of the CYPS Act within 30 days of the decision (please see our separate Carer Guide entitled Reviewable Decisions for further information);
- then, if you are not satisfied with the decision of the internal review, you can apply for an **external review** by SACAT within 28 days of being advised of results of the internal review.

The SACAT review application process is completed entirely online, via the [SACAT website](#).

Considerations when submitting your SACAT application

It is important to receive a written record of the decision (or decisions) from the DCP to consider submitting a SACAT application. This is essential to formally address the internal and external review processes and ensure the required timeframe to seek a review is met. If written records have not been received (regarding either the initial decision of the DCP and/or the internal review decision in writing) please request copies to be provided by the DCP.

If you experience difficulty in receiving copies of required information from the DCP please contact our Advocacy Team.

Do you have a clear understanding of what aspects (whole or part) of the decision you would like to be reviewed and the reasons why you believe that the decision should be reviewed?

You will need to be able to clearly state which decision of the DCP you are seeking to be reviewed and the reasons why you are seeking this review. If your initial application for a SACAT review is well worded and concise, you will be in the best position as the process moves forward. You may also find that there is a lot you don't know so this will be an opportunity to write down your questions. At the first directions hearing for the

matter, you will be able to ask the Tribunal Member to make orders for the disclosure of any missing or additional information or documentation that you have identified.

Have you focused in your application on how the views of the children and young people involved have or have not been taken into consideration?

This is an important factor and Carer families are in a unique position to reflect on the impact of a decision on the children and young people in their care. It is suggested you include in your summary what you have observed about the behavior or views of the child or young person as the subject of the review. You may then reflect on whether or not you believe that these views have been adequately taken into account by the decision maker.

In addition, under section 159 of the CYPS Act, children and young people must be given a reasonable opportunity to personally present their views to SACAT regarding their ongoing care and protection. The Tribunal will arrange to hear the views of the child or young person, if it is determined to be in the child's best interest to do so, and whether they are capable of expressing their views.

Are there any other steps you have previously taken to follow up and address the situation?

If you have taken your complaint to several parties, set out what action has been taken. The DCP would usually have some awareness if a matter has been raised with the Minister for Child Protection, the Ombudsman or another agency. However, it is important to note that in some instances, seeking of a review via another avenue may mean that the SACAT process must be put on hold until the conclusion of that separate review.

For further information regarding drafting a SACAT application please refer to our Carer Guide here.

Can you propose any steps or actions you are willing to take to resolve the issue – again focusing on the needs of the children and young people involved?

Think carefully about any solutions that you could propose; i.e. anything you believe would help or anything you could do differently to prevent the issue recurring. Putting forth such suggestions might assist in negotiations with the DCP.

Would you like some support from a CF&KC-SA Carer Advocate?

The CF&KC-SA Carer Advocacy Service can help Carers to navigate the review process, understand their responsibilities and offer Carer families ongoing support when seeking a review of a decision. A CF&KC-SA Advocate is free from conflict of interest and independent of the DCP decision making process. We can help you to complete the online applications for internal and external reviews, understand the processes involved, review the documents provided by the DCP, and ensure you feel comfortable and prepared to present your views at the directions hearing, conference or hearing. We can also help you apply for an extension of time to lodge your application if necessary, but it is not recommended to rely on an extension of time unless you have extenuating circumstances.

Do I need a lawyer at SACAT?

SACAT is set up so that parties can attend without lawyers. That being said, the DCP will always be represented by lawyers from the Crown Solicitor's Office (the Crown) and so it can be reassuring for Carers to obtain their own independent legal advice and support. If the matter is serious or complex, it is suggested you seek legal representation to ensure that you understand your rights, are aware of any additional obligations which may arise, and can be advised in relation to which approach would be in your best interests legally. Carer Advocates at CK&FC-SA can help you to explore your options and put you in touch with a community legal centre or private lawyer, depending on your personal and financial circumstances.

CF&KC-SA cannot provide legal advice or representation.

What happens when I apply to SACAT?

When you have submitted an application to SACAT for external review you will be:

- contacted via email by SACAT to confirm that they have received your application and allocated a case file number for your matter,
- sent a copy via email by the Crown of all relevant documents which have been collated by the DCP. These are called the "section 35 Documents" as they are provided pursuant to section 35 of the *SACAT Act 2013*. As part of this section, the Crown must provide a copy of the original decision, all documents relied upon to make that decision and, all other documents that they intend to use as evidence during the hearings. All parties should be provided with all documents prior to the hearing, which means that as the applicant, you should also provide in advance all documents to the lawyers for the Crown and the Tribunal that you intend to rely upon and use as evidence during the hearings.
- advised of a date to attend at SACAT for a first directions hearing. (You will need to note this date in your diary and let others know e.g. your lawyer and/or your CF&KC-SA Carer Advocate if necessary).

Note: Directions hearings have traditionally been heard in the SACAT building with all parties present in the hearing room. However, with the advent of COVID-19, these hearings are increasingly being heard over the telephone. You will be advised by SACAT if the hearing is to be via telephone. In addition, if you live outside of the Adelaide metropolitan area and the hearing is not listed to be via telephone, you may wish to seek a telephone hearing by contacting the SACAT registry via email at sacat@sacat.sa.gov.au and explaining your circumstances.

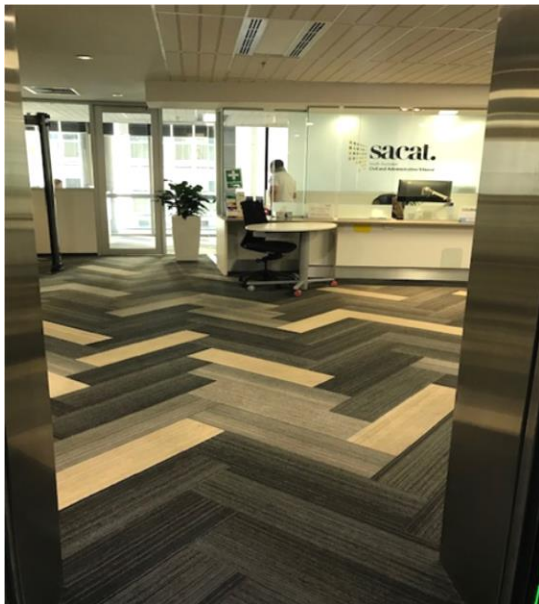
What do I do with the “section 35 Documents”?

The section 35 documents include all of the evidence and material that the DCP took into account when it made the original decision. These documents are usually extensive so you should ideally review them in detail in advance of the first directions hearing and,

- identify any documents that you disagree with and;
- identify any documents that you think are missing.

Your lawyer and/or CF&KC-SA Advocate will want to talk to you about them and any issues that they raise before the first directions hearing.

Attending at SACAT



If your first directions hearing is to be in person, you will need to enter the SACAT building at 100 Pirie Street at least 15 minutes before your scheduled hearing time and go to the Registry desk on Level 4 to sign in. The Registry staff will tell you which floor and room you are in.

If your appearance is to be via telephone, make sure that you are in a quiet location where you won't be disturbed and ready to take a call at least ten minutes before the allocated directions hearing time.

There are many conference and hearing rooms located on levels 4 and 7 of the building and waiting areas located in front of all rooms.

There are computers, toilets and a baby change table for you to utilise on the 4th floor. There is currently no WI-FI access in the building that can be accessed by the public.

All hearings are open to the public unless the member decides that it is appropriate to close the hearing, or a party successfully makes an application to have the hearing closed.

The Tribunal hearing rooms are small and are set up like a mini court room, with the Tribunal Member sitting at the front of the room behind a brown desk, slightly elevated from the rest of the room.

There is a long bench in front of the Tribunal Member where the parties will sit.

The far-right seat is where the person bringing the application (the applicant) will sit, this will generally be the Carer or their lawyer.

The party opposing the application (the respondent), which will be lawyers from the Crown Solicitors Office (representing the DCP) will sit on the far left. There are other seats at the bench for other parties to also be seated if required.



A SACAT Directions Hearing

A directions hearing is a relatively brief appearance and usually lasts between 10 and 30 minutes. When you are sitting in the waiting area, you will be advised when the SACAT Tribunal Member is ready to see you and directed into a hearing room. Your lawyer and/or CF&KC-SA Carer Advocate will also go into the hearing room with you.

The Tribunal Member will be sitting at the front of the room. You (or your lawyer, if you have one) will sit at a table facing the Tribunal Member. The DCP's lawyer from the Crown will also sit at a table facing the Tribunal Member. Everyone else will sit in seats further back in the room.

The directions hearing allows both parties an opportunity to talk about the status of the matter and sort out any preliminary issues. The Tribunal Member will ask their questions and allow both parties to respond.

If you have any concerns about the section 35 documents, this is the time to speak up. You can ask the Tribunal Member to order that you be provided with any missing documents. At the end of the hearing the Tribunal Member may make some 'orders' (usually to do with dates to have outlines of argument or witness statements filed or the like) a copy of these Orders will be provided by email from the registry after the directions hearing. Parties will be advised of a date and time by registry of the next hearing or a further directions hearing. You will need to let everyone (your lawyer, your CF&KC-SA Carer Advocate and any witnesses you may want to call) know the date.

A SACAT Conference

Sometimes, if it is thought that there may be some scope for a resolution to be reached between the parties, a matter may be listed for a conference. A conference is an opportunity for you (and or your lawyer or CF&KC-SA Carer Advocate) to sit around a table with the DCP's lawyers and representatives in a more informal setting in an attempt to negotiate an agreement. A Tribunal Member or Registrar will preside over the Conference and will guide you through the process.

For more details about Conferences see SACAT's [website](#).

If the conference is *successful*: the Tribunal will record your agreement.

If the conference is *not successful*: the matter will proceed to a hearing or further directions hearing. You will be sent confirmation of that date from the registry via email. Again, you will need to let everyone (your lawyer, your CF&KC-SA Carer Advocate and any witnesses you may want to call) know the date.

A SACAT Hearing

A hearing is a bit like a trial, but with less formality. It is likely to take place in a room similar to the room you sat in for the directions hearing. The Tribunal Member will want to hear both the Carer's and the DCP's side of the story. This may include hearing from witnesses. A hearing may take one or two days or even longer, depending on the complexity of the issues involved.

As you did for the directions hearing, aim to arrive 15 minutes before the allocated hearing time and sign into the reception on level 4 of the SACAT building then wait in the waiting area outside the allocated hearing room.

Once all parties have signed in with registry, the Tribunal will call the name of the parties to enter the room.

When everyone is seated, the Tribunal Member will advise the room that the hearing is being recorded and will swear in all parties. The Tribunal Member will ask all parties individually to swear to tell the truth. All parties will reply with "I do".

If you have a lawyer, they will navigate the hearing for you. If you don't have a lawyer, the Tribunal Member presiding over your hearing will make sure you get a good opportunity to 'put your case'.

Preliminary matters

The Tribunal Member will then inform all parties that they have read the application and ask the Carer or their legal representative why they have lodged the application.

This will be the first opportunity for the Carer or their lawyer to speak to the Tribunal Member and the best time to raise any issues before the commencement of the hearing proper.

If there are still documents that are missing or have not been provided by the lawyers for the Crown, the Carer or their lawyer can request that the Tribunal Member make an order for the Crown to provide the documents to them within a set period of time. The Carer or their lawyer should then ask that the matter be adjourned to a later date, so that they have an opportunity to review the documents and provide a further response if needed. If there are no issues to raise, then the hearing can commence.

When addressing the Tribunal Member directly it is appropriate to refer to them as Sir or Madam or Tribunal Member X and not Your Honour as, apart from the President Judge Hughes, the Tribunal Members are not Judicial Officers. You can also stay seated whilst speaking.

The Hearing

At the commencement of the hearing, the Tribunal Member will generally ask the Carer or their lawyer to inform the Tribunal of the following:

- Why they say the decision the subject of their application is wrong; and then
- Provide them with their thoughts, opinions, facts, evidence not already provided; and
- Advise the Member of what they want to change or achieve e.g. to set aside the decision so the child can stay with the Carer or not change the location of the child's school etc.

The Tribunal Member will ask the Carer or their lawyer questions at times and may ask for clarification on certain things. It is important to note that when the Tribunal Member speaks, the Carer or their lawyer should stop talking immediately, even if they are part way through a sentence.

The Tribunal is different to a normal court setting as there are no rules of evidence, so all thoughts, opinions and facts can be presented to the Tribunal as can documents to further support your case, e.g. school reports, photos, medical documents etc.

A SACAT review is a 're-hearing', so the Tribunal can hear new information (i.e. is not limited to the information before the original decision maker). So, if there is further information that you have obtained since the decision was made then you are able to put that before the Tribunal.

The Tribunal Member will then ask the Counsel for the Crown to provide a response to your submissions and ask questions to clarify any issues.

It is important to note that all Tribunal Members and other parties know that Carers are not lawyers, and as such if you do not understand what is being said you should politely ask for it to be explained.

The following people are also able to give evidence at the hearing, even though they are not a party to the proceedings:

- a member of the child or young person's family;
- a person who has at any time had the care of the child or young person; and
- a person who has counselled, advised or aided the child or young person.

The Tribunal Member will swear in those people as witnesses and may also ask questions regarding their evidence. Both parties are then given the opportunity to ask questions about the evidence presented.

Once all the parties and witnesses have given their evidence, the Tribunal Member may inform the parties of their decision at that point. In the alternative, the Tribunal Member may choose to "reserve their decision" which means that they will take some time to consider the matter and deliver their decision in writing to the parties at a later date. This will usually be provided to all parties within a few days.

For more details on the Hearing process see SACAT's [website](#).

How to prepare for a Hearing in SACAT

Preparing for a hearing in SACAT involves a lot of time and commitment. Your lawyer (if you have one) will work with you to prepare for your SACAT hearing but you must also make sure that you are able to put aside the time and energy needed to prepare. You will need to give them:

- **A copy of every relevant document you have**

Records and documents can help provide relevant background and context to the situation both before and after the decision. Gather documents into a folder and include for example, emails between yourself and the DCP, the child or young person's school/teachers and any other relevant parties, in a chronological order to show how things have progressed over time.

- **A factual summary of the circumstances surrounding the decision**

Where possible, link the narrative to relevant legislation, policy, process or practice (i.e. it is not enough to state that you are unhappy with a decision, you need to demonstrate why you say that the decision of the DCP was not the preferable decision in the circumstances). Writing a factual summary can also help to remove any personal opinions about individuals and their actions and keep attention on the situation at hand.

- **The names and contact details of any person who SACAT might want to hear from in support of your application (e.g.: teachers, medical professionals, friends, relatives etc.).**

These people are potential witnesses whom you might wish to call to give evidence at the hearing. It is a good idea to speak to these witnesses in advance to ask whether they would be willing to give evidence in support of you at a hearing. If they will, try to obtain a written statement of what they would say in advance so that you can discuss this with your lawyer.

After the Hearing

It is important to mentally and emotionally prepare yourself for all potential outcomes. The Tribunal may or may not find in your favour and so it is important to have a contingency plan in place for a range of outcomes, even if it is just having a next step in place.

Are you looking after yourself?

Any involvement in a dispute such as this can be distressing and even more so when it directly impacts upon your family. Consider the additional impact of stress and take some measures to monitor and maintain your physical and mental health (e.g. see your GP and make sure you make some time for self-care).

Appealing a SACAT Decision

If either party does not agree with a decision of SACAT they can appeal to the Supreme Court. A Supreme Court appeal is a complex legal process where detailed advice will need to be sought from expert Solicitors and Barristers.

If you wish to seek legal advice after receiving a SACAT decision, a CF&KC-SA Carer Advocate can assist you to contact a lawyer for that purpose.

Carer support

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

Email: support@cfc-sa.org.au

Freecall: 1800 732 272

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