

This Carer Guide provides an overview of the main piece of legislation governing the operation of the Child Protection system in South Australia: The [Children and Young People \(Safety\) Act 2017](#) (CYPS Act) and highlights the key sections that directly relate to Foster and Kinship carers (Carers).

The CYPS Act came into effect in December of 2017 as a response to the recommendations contained within the Final Report of the 2016 Nyland Royal Commission into Child Protection in South Australia, [The Life They Deserve](#).

The findings of the Royal Commission recommended an overhaul of the entire South Australian Child Protection system which resulted in the establishment of a distinct Department for Child Protection and this accompanying new legislation.

Carers and the CYPS Act

Under section 4 of the CYPS Act, the Parliament of South Australia declares the guiding principle of the Act to be the importance to the State of children and young people.

Similarly, under section 7, it is declared that the paramount consideration in the administration, operation and enforcement of the Act must always be that children and young people are protected from harm.

Along with being a child focused legislative framework, one of the additional focuses of the Act is a greater emphasis on Carer involvement in decision-making. Amendments to the Act which came into effect in October 2018 mean that Carers now have rights enshrined in the legislation to formally review decisions of the Department for Child Protection (DCP) both internally and also externally at the South Australian Civil and Administrative Tribunal (SACAT). The decisions that can be reviewed are those of the Chief Executive (CE) of the DCP or their delegate made under Chapter 7 of the Act, but exclude those decisions made under Part 4 of that chapter.

Chapter 7 of the CYPS Act: Children and young people in care

This chapter of the Act encompasses sections 69 to 113 which are of most relevance to Carers. Broadly speaking, where a decision is made by the CE or their delegate under this Chapter (excluding Part 4), a right of review exists under Chapter 12 of the Act.

Examples of decisions made under Chapter 7 are:

- **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**

But not everything that happens under Chapter 7 of the Act amounts to a reviewable "decision". Some sections under this chapter create offences (s 71, s72(6), s75, s87, s88, s98, s101 etc).

Other sections simply set out rights and obligations:

- S82: approved carers have the right to partake in the decision-making process regarding a child placed with them; and
- S81(1) creates an obligation to foster care (placement) agencies to provide certain information to approved carers.

New Rights of Review for Carers

Chapter 12 of the CYPs Act provides Carers, as "persons sufficiently aggrieved by a decision of the Chief Executive of DCP or their delegate", with rights of both internal and external review of decisions made under Chapter 7 of the Act (excluding Part 4 of that Chapter):

[Section 157](#) provides for an Internal Review of a DCP Decision.

- The internal review process requires a Carer to formally lodge an application for review of a decision within 30 days of receiving that decision.
- A review is undertaken on behalf of the Chief Executive by a senior DCP staff member who was not involved in the original decision-making process.
- At the completion of the review, the decision will be either confirmed, varied or reversed.
- For further information about this process you can consult our Carer Guide entitled *Internal Reviews of Decisions of the DCP*.

[Section 158](#) provides for External Review of a DCP decision at the South Australian Civil and Administrative Appeals Tribunal (SACAT):

- If a Carer is dissatisfied with the outcome of an Internal Review, they can lodge an online application for External Review with SACAT within 28 days of receiving notice of the Internal Review decision.
- In a SACAT hearing, a Tribunal Member will hear from both the Carer and the lawyers for the DCP and make a decision which will be binding on all parties.
- For further information, you can consult our Carer Guide entitled *External Review at the SACAT*.

Carer support

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

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