

# Child protection: Reviewing NGO & FaCS decisions through NCAT



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Kirsty Irving, Indigenous Women's Legal Program Solicitor, Womens Legal Services NSW on 3 December 2015. This webinar can be viewed for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

This factsheet looks at:

- Which decisions made by NGOs and Family and Community Services (FaCS) can be reviewed by NCAT?
- What is the process?
- How can your clients access this review process?

## What is NCAT?

- NCAT is a specialist tribunal with a range of powers and authorities
- NCAT has four divisions - administrative and equal opportunity, consumer and commercial, occupational and guardianship
- NCAT has four types of jurisdictions – General, Administrative Review, Appeal and Enforcement

## What is an administrative review?

- A review of an administrative (i.e. government) decision
- This is a principle of Administrative Law that ensures (or tries to ensure) that Governments are accountable for their decision making
- Includes decisions about Freedom of Information, Victim's Support, etc
- For a decision to be reviewable by NCAT there **must** be a specific section conferring jurisdiction

## Reviewable decisions made by FaCS and NGOs

- Section 245 of the *Children and Young Persons (Care and Protection) Act 1998* lists the decisions that are reviewable by NCAT
- They are all decisions made by "the relevant decision-maker" who is either FaCS or the service provider (i.e. NGO) in circumstances where FaCS have delegated/contracted out their powers to that NGO
- The following decisions **are** reviewable:

To suspend a person's authorisation as a carer (or to impose conditions)

To cancel a person's authorisation as a carer (unless it's been granted on a provisional basis)

To place or remove children from a carer

A decision as to the suitability of a carer as a guardian

### Case study

Jacqui has been authorised as a carer by the NGO Happy Kids. Jacqui has had the care of her niece Tanya since she was placed with her after Children's Court proceedings. Happy Kids receives a report from the children's GP that Tanya has a broken wrist and the GP is worried that Jacqui wasn't properly looking after Tanya when she broke it. Happy Kids removed the children from Jacqui and placed them with other carers. This is a reviewable decision.

## Who can apply to NCAT for a review?

- An application can be made by any person who demonstrates to the tribunal that he or she has a genuine concern in the subject-matter of the decision concerned
- A person found by the tribunal to be unjustifiably interfering in a matter is not entitled to apply



### How can your clients access the process? Do they need a lawyer?

- Your client can either present their own case to NCAT or have a lawyer or a non-lawyer agent represent them
- The lawyer or agent fills out a notice of representation and submits it to NCAT
- They will also need to send a copy of this to the decision maker
- Your client may be able to get help from either Legal Aid or a Community Legal Centre

### What is the process for applying to NCAT?

- Before lodging an application at NCAT seek an internal review of the decision within 28 days of receiving notice
- If your client is unhappy with the internal review decision then you may apply to NCAT - applications must be within 28 days
- If internal review is sought out of time or an NCAT application is filed late, reasons must be provided so that NCAT can decide whether or not to accept the application

#### Case study

Jacqui is distraught about what's happened. Tanya hurt her wrist at school when she fell off the monkey bars. Jacqui applies for a temporary suspension of the original decision...

### Applying for a temporary suspension of an original decision

- Your client can ask for the agency's decision to be stayed or suspended while you are waiting for the NCAT review
- Your client must file this application in person at NCAT setting out the reasons for asking for the NGO's decision to be suspended

### Wait for a letter from NCAT and a bundle of documents

- Next your client will receive a letter from NCAT advising when to attend the Tribunal
- Your client will also receive "section 52 documents" from FaCS or the NGO. This is all the material that FaCS or the NGO used and relied on to make the decision that they did

### Attend the directions hearing

- Your client will then attend the directions hearing
- The Tribunal member will make directions for when your client needs to file evidence and submissions by
- Usually your client will be asked to file an Affidavit as well as other evidence they seek to rely on

### Prepare for the hearing

- Review the documents provided to you in the section 52 bundle
- Assess what other material might be useful for the Tribunal
- Prepare affidavits by your and your witnesses
- Serve the documents and your evidence on FaCS or the NGO

#### Case study

Jacqui starts preparing for the hearing. She obtains letters and Affidavits from schoolteachers who were present when Tanya hurt her wrist. She also writes her own Affidavit explaining what happened.



## Attend the hearing

- NCAT hearings are less formal than other courts
- The NGO or FaCS will usually give their evidence first
- After that, you will give your evidence
- Generally the NCAT member will take their time to make a decision

## What decisions can NCAT make?

NCAT can make the following decisions:

- Affirm FaCS or the NGOs decision
- Reverse the decision completely or in part
- Substitute a new decision for the original decision
- Order FaCS or the NGO to reconsider the decision

### Case study

After reviewing Happy Kids decision to remove Tanya NCAT form the view that the injury happened at school. NCAT decided to reverse Happy Kids decision and place Tanya back in Jacqui's care.

## Referrals

- For legal advice, refer clients to the Women's Legal Services Care and Protection Legal Advice Line on **(02) 8745 6908**
- For more information on NCAT, call NCAT information line on **1300 00 NCAT** or 1300 006 228