

Central Assessment Unit (Working with Children Check) Review Hearing



This information sheet explains how to prepare for a hearing at SACAT when you are seeking a review of the Central Assessment Unit's decision to prohibit you from working with children.

1. What is SACAT?

The South Australian Civil and Administrative Tribunal (SACAT) is a Tribunal that has the power to review certain decisions made by the Central Assessment Unit (CAU) of the Department of Human Services.

2. What cannot be reviewed?

Prescribed Offences

SACAT **does not** have the power to review a decision made to prohibit you from working with children if you:

- have been prohibited from working with children under a law of the Commonwealth or another State or Territory, or
- have been found guilty of a '**prescribed offence**' under the Child Safety (Prohibited Persons) Act 2016 (SA).

Prescribed offences include a range of offences where the victim was a child, such as:

- murder;
- manslaughter;
- kidnapping and unlawful child removal;
- rape and other sexual offences;
- incest;
- various child pornography offences; and
- child exploitation offences.

For more information regarding prescribed offences please refer to the Working with Children Check Guidelines, the Act and Regulations. Links to these documents are provided below under 'Useful Links'.

3. What can be reviewed by SACAT?

If you are unhappy with the CAU's decision to issue you with a '**prohibition notice**' which prohibits you from working with children, you may apply to SACAT to have this decision reviewed.

Presumptive Disqualification Offences

The CAU may have issued you with a prohibition notice stating that you are prohibited from working with children because you have not '*rebutted the presumption*' that you pose an unacceptable risk to children due to being found guilty of a '*presumptive disqualification offence*'.

This means:

- a) it has been assumed that you pose an unacceptable risk to children because you have either been charged with, or found guilty of, a certain criminal offence; and
- b) you have not provided the CAU with information to satisfy them that, despite the conviction, you do not pose an unacceptable risk to children.

Other conduct amounting to an unacceptable risk

The CAU may have issued you with a prohibition notice stating that you are prohibited from working with children **even if** you have not been convicted of a presumptive disqualification offence. This decision may be based on information about:

- a) Your conduct or behaviour (collected from other sources); and/or



- b) Charges or a finding of guilt about a criminal offence that is not a prescribed offence or a presumptive disqualification offence.

For more information regarding presumptive disqualification offences and conduct that may amount to the issuing of a prohibition notice please refer to the Working with Children Check Guidelines, the Act and Regulations.

4. What does SACAT have to decide?

When SACAT is reviewing the CAU's decision to issue you with a prohibition notice, the Tribunal must decide whether the correct and preferable decision is to find that you pose an unacceptable risk to children.

A list of the factors that the Tribunal must consider in deciding whether you pose an unacceptable risk to children is located below under 'Risk Assessment Criteria'.

5. What is the priority consideration of the Tribunal?

In dealing with applications involving working with children checks, the paramount consideration of the Tribunal will be the best interests of children, having regard to their safety and protection.

6. Risk Assessment Criteria

The Tribunal (like the CAU) must have regard to the following factors when making a decision:

- the nature, gravity and circumstances of the information including criminal offences, child protection information or disciplinary or misconduct information and how this is relevant to children or child related work;
- the length of time that has passed since the event occurred;
- the vulnerability of the victim at the time of the event including the age of the victim,

the age of the person at the time of the event, the age difference between the person and the victim and the person's relationship to the victim or position of authority over the victim at the time of the event;

- the person's criminal, child protection, disciplinary or misconduct and/or other relevant history, including whether there is a pattern of concerning conduct;
- the person's conduct since the event; and
- all other relevant circumstances in respect of the information including offending, child protection, disciplinary or misconduct and/or other information or other relevant history, and the impact on the person's eligibility to be engaged in child-related work.

7. What information should you provide to the Tribunal?

The Tribunal will make a decision based on all of the relevant information that has been provided by the CAU. The Tribunal can also consider further evidence on the review provided by you or the CAU.

Setting aside the presumption

In a review of a decision based on a **presumptive disqualification offence** the burden, or obligation, is on you to demonstrate, through the information that you provided to the CAU and any fresh evidence that you provide to the Tribunal, that you do not pose an unacceptable risk to children, despite having been charged with or found guilty of such an offence.

The Tribunal will need to be satisfied that there are **any exceptional or other circumstances about the offence and/or your later conduct** sufficient to enable it to disregard the presumptive disqualification offence, taking into account the objects of the Act.



You should provide independent evidence to the Tribunal which supports your submissions. This should include a statement from you and anyone else who has relevant information about all or some of the following:

- the circumstances of the allegations, charges or offences that may explain it;
- the steps you have taken since that time to address the behaviour which led to the conviction and your becoming prohibited from working with children;
- your conduct since the offending conduct;
- any information that demonstrates you have voluntarily completed a supervised intervention program (i.e. treatment, rehabilitation, behaviour management);
- a report from a psychologist or psychiatrist addressing the question of any risks that you may pose to the safety of children;
- a report or reference from any current or previous employer; and
- any relevant character references.

It is important to remember that you are aiming to persuasively demonstrate that you do not now pose an unacceptable risk to children.

If you intend to get a report from a psychiatrist or psychologist you should make an appointment as soon as possible after you lodge your review application and find out their future availability to give evidence so that you can tell the Tribunal.

A review where there is no presumption

In a review of a prohibition notice **based on other conduct** (not amounting to a presumptive disqualification offence) you do not need to rebut a presumption that you are a risk to children. The Tribunal will reconsider the CAU's decision to determine what the correct or preferable decision should be.

But it would be helpful on the review to provide all relevant evidence (such as that detailed above) in support of your submission that the decision to prohibit you from working with children is not the correct or preferable decision.

8. Participation at Hearings

SACAT will generally deal with these matters by conducting a series of hearings. Firstly, directions (preliminary) hearings and then a full hearing. It is the preference of the Tribunal that all parties attend in person where it is reasonable to do so. Participation is available by telephone or video link if approved by the Tribunal prior to hearing (contact the registry for more information).

9. What will happen at a directions hearing?

A directions hearing is a short preliminary hearing which usually lasts around 30 - 45 minutes. The purpose of the directions hearing is to make all necessary arrangements to ensure the matter is ready to proceed to a full hearing.

Only the parties and/or their solicitors need attend a directions hearing.

Matters considered at a directions hearing can include:

- setting the time, duration and location of the full hearing;
- deciding which witnesses will attend the full hearing;
- how the applicant (you) will arrange for any witnesses to give evidence in person at the full hearing of the matter;
- ensuring that all required documentation is filed with the Tribunal in a certain time frame and given to the other parties (where appropriate); and



- any other matter that needs to be determined by the Tribunal either at a preliminary or full hearing.

10. What will happen at a full hearing?

A hearing will be overseen by an independent legally qualified Tribunal member. The member will ask each party to present their case and will review all of the evidence presented.

The Tribunal will have before it the CAU's decision and a copy of all of the documentation which was taken into consideration by the CAU when making the decision under review.

During the hearing the parties will have an opportunity to speak and present relevant additional documentation. There will also be an opportunity for you and any witnesses to give evidence in person or by a signed statement. Evidence will usually be taken on oath or by affirmation.

The Tribunal is entitled to proceed on the basis of any criminal convictions or findings of guilt and the facts found by the court to form the basis of the convictions or findings. This means that you cannot try to argue in the Tribunal that the court conviction or court findings were wrong.

At the conclusion of the hearing, the member may choose to announce their decision straight away or deliver their decision in writing at a later time.

11. How can SACAT decide a review?

When determining an application SACAT can:

- confirm that the decision is correct;
- vary the decision in some way; or
- find that the decision was incorrect and either:
 - substitute its own decision; or

- send it back to the CAU for further consideration.

12. How do I apply?

The SACAT application form is available from our website; www.sacat.sa.gov.au.

The form is an online form and can be found by using a keyword search '**child safety**'.

If you are unable to complete the form online, you can contact the Tribunal for assistance on 1800 723 767.

Fees can be paid online at the time of lodging your application. Please check the SACAT website for current information on fees and fee waiver options.

You must pay the required fee before your application will be listed for a hearing.

13. How long do I have to seek a review from SACAT?

You must lodge your application for review **within 14 days** of receiving the 'prohibition notice' preventing you from working with children.

SACAT may allow an extension of time if satisfied that special circumstances exist, and another party will not be unreasonably disadvantaged by the delay in commencing the proceedings.

14. Who can help me prepare my case?

Any party to a SACAT application is entitled to appear in person or through a legal representative.



There are numerous organisations who provide free legal advice to eligible people. These are listed below.

If you require assistance in deciding who might be able to assist you please ring SACAT on 1800 723 767 and speak to a community access officer.

Organisations that may be able to assist are:

Administrative Appeals Legal Advice Service (University of Adelaide)

- Appointments available on Thursdays (during university semesters) from 10.00am to 1.00pm and are to be made via online booking service <https://aalasappointment.as.me/>

Legal Services Commission

- **Phone:** (08) 8111 5576 or 1300 366 424
- **Website:** www.lsc.sa.gov.au

Southern Community Justice Centre

- **Phone:** (08) 8384 5222
- **Website:** www.communityjusticesa.org.au

Northern Community Legal Service

- **Phone:** (08) 8226 8570
- **Website:** www.northerncommunitylegalservice.weebly.com

Uniting Communities Law Centre

- **Phone:** (08) 8342 1800 or 1300 886 220
- **Website:** www.unitingcommunities.org

Women's Legal Service South Australia

- **Phone:** 1800 816 349
- **Website:** www.wlssa.org.au

Limestone Coast Community Justice Centre

- **Phone:** (08) 8723 1396
- **Website:** www.communityjusticesa.org.au

Riverland Community Justice Centre

- **Phone:** (08) 8582 4998
- **Website:** www.communityjusticesa.org.au

15. Useful Links

Child Safety (Prohibited Persons) Act 2016

Child Safety (Prohibited Persons) Regulations 2019

Working With Children Guidelines

SACAT does not guarantee the accuracy or completeness of this Information Sheet and does not accept any responsibility if you rely on it.

You should always seek your own legal advice.