

Reviewable decisions following an application to adopt

Adoption Act 2000 Adoption Regulation 2015

A person or couple must formally apply to adopt¹ prior to commencing an assessment and prior to a decision being made regarding their suitability to adopt².

An application (form) to adopt may be lodged with either the:

- delegate of the Secretary of the NSW Department of Family and Community Services (FACS)
- Principal Officer of an accredited adoption service provider.

Either is the 'relevant decision maker' in relation to an application to adopt.

This fact sheet explains the rights of a prospective adoptive applicant if they do not agree with a decision made in relation to their application to adopt.

Decisions regarding an application to adopt

If you are not satisfied with a decision received about your application to adopt, and the decision is a 'reviewable decision', you are able to request an 'internal review' of that decision³.

Decisions made in relation to an application to adopt are *not* reviewable by the NSW Civil and Administrative Tribunal⁴.

What is a 'reviewable decision'?

Not all decisions are 'reviewable decisions'. In relation to an application to adopt, the following are reviewable decisions⁵:

- decline to assess the applicant(s) as suitable to adopt
- decline to approve the applicant(s) as suitable to adopt
- revoke the approval of the applicant(s) as suitable to adopt
- approve the applicant(s) as suitable to adopt subject to conditions.

What is an internal review?

An internal review is undertaken by an officer of FACS or the accredited adoption service provider who has experience and knowledge of out-of-home care and adoption legislation and practice in NSW. This officer should be independent of the unit who made the reviewable decision.

The person undertaking the review is called the 'internal reviewer'.

How will you be advised of a decision that is reviewable?

A reviewable decision about your adoption application should first be provided to you in person. This gives you an opportunity to understand the reasons for the decision and to ask questions.

¹ Section 44 & 45E, *Adoption Act 2000*

² Section 45(1)(a) & 45F, *Adoption Act 2000*

³ Section 189 & 192, *Adoption Act 2000*

⁴ Section 193, *Adoption Act 2000*

⁵ Clause 125(1), *Adoption Regulation 2015*

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You are entitled to be provided, in writing, with a notice of the decision⁶, a copy of the assessment report and any other information that informed the decision⁷ and be advised of your rights to have the decision reviewed internally⁸.

Personal information about other people may be redacted (blacked out) from these documents where it breaches people's rights to privacy.

Where you do not agree with information written about you, you may provide additional information in writing that details your views. Reports and documents will not necessarily be changed because you disagree with the content, however your views will be placed together with the evidence used to inform the decision.

You may make a written request to the decision maker for the reasons of the decision⁹. Within 28 days you are to be provided with a written statement of reasons for the decision¹⁰.

Who can request an internal review?

You, as the prospective adoptive applicant, may decide at this point to request an internal review if you are dissatisfied with the decision¹¹.

Where English is not your first language and where there is no other person or organisation supporting you to make an application, you may ask your caseworker for help to write the application. A professional interpreter may be offered to assist, if necessary.

How do you request an internal review?

An application for an internal review must¹²:

- be in writing
- be addressed to the decision maker
- specify an address in Australia to which notice of the outcome of the review may be sent
- be lodged at the office of the decision maker within 28 days (where you are not requesting to be provided with a written statement of reasons for the decision under section 190 of the Adoption Act), or a later date agreed on by the decision maker.

What information is provided to the internal reviewer?

The internal reviewer is to be provided with and consider the following¹³:

- all of the evidence and information reviewed by the decision maker
- any additional relevant information submitted by the applicant(s).

⁶ Clause 47(1) & 61(1), *Adoption Regulation 2015*

⁷ Clause 47(2) & 61(2), *Adoption Regulation 2015*; NOTE: except for any criminal record check, accredited adoption service provider check, community services check, designated agency check, or confidential referee report: see clause 47(2)(a) and 61(2)(a)

⁸ Clause 47(2) & 61(2), *Adoption Regulation 2015*

⁹ Section 190(1), *Adoption Act 2000*

¹⁰ Section 190(2), *Adoption Act 2000*

¹¹ Section 192(1), *Adoption Act 2000*

¹² Section 192(2), *Adoption Act 2000*

¹³ Section 192(4), *Adoption Act 2000*

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What decisions can an internal reviewer make?

Following an internal review, the internal reviewer may¹⁴:

- affirm the decision made by the decision maker
- vary the decision made by the decision maker
- set aside the decision made by the decision maker and make an alternate decision.

What is the status of the decision made on the internal review?

The decision made by the internal reviewer overrides any previous decision, and is the final decision. The date the decision is made is the date you are notified of the decision.¹⁵

There can only be *one* internal review of a reviewable decision¹⁶.

Who is notified of the internal reviewer's decision?

An internal reviewer must notify the relevant decision maker of the result of, and the reasons for their decision as soon as is practicable after making the decision¹⁷. Following this, the relevant decision maker is to notify you in writing as soon as practicable (or within 21 days) after the completion of an internal review of:

- the outcome of the internal review, and
- the reasons for the decision in the internal review.

A statement of reasons must be provided, in writing, explaining the¹⁸:

- findings based on the facts, referring to the evidence or other information on which those findings were based
- understanding of the internal reviewer of the applicable law
- reasoning processes that led the internal reviewer to the conclusions the reviewer made.

Written information should be provided in a language that you understand.

When is an internal review finalised?

An internal review is considered to be finalised when you are notified of the outcome of the review¹⁹.

Who can I contact for more information?

To discuss your individual circumstances please contact your caseworker or their manager.

¹⁴ Section 192(5), *Adoption Act 2000*

¹⁵ Section 192(10), *Adoption Act 2000*

¹⁶ Section 192(12), *Adoption Act 2000*

¹⁷ Section 192(7), *Adoption Act 2000*

¹⁸ Section 192(9), *Adoption Act 2000*

¹⁹ Section 192(11), *Adoption Act 2000*