



Chief Executive power to require a report from a State authority Procedure

1. Purpose

This procedure sets out the circumstances in which the Chief Executive may use the powers provided in section 151 of the *Children and Young People (Safety) Act 2017* (the CYPS Act) to require a State authority to prepare and provide a report to the Chief Executive. It also sets out the process for requiring a report.

DCP is committed to collaborative working with partner agencies. This process must only be used in exceptional circumstances where all other reasonable avenues to gather the required information have been exhausted.

2. Scope

This procedure applies to all DCP staff involved in gathering information from State authorities that is necessary or would otherwise assist in the performance of functions under the CYPS Act.

3. Authority

3.1 Legislative context

- Section 16 of the *Children and Young People (Safety) Act 2017* and Regulation 5 of the *Children and Young People (Safety) Regulations 2017*: Definition of a State authority
- Sections 150-152 of the *Children and Young People (Safety) Act 2017*: Outlines powers available to State authorities to share information with DCP and powers available to DCP to require information or request a report from a State authority.

3.2 Whole of Government requirements

Not applicable.

3.3 DCP requirements

[Information gathering and sharing chapter](#) of the Manual of Practice

3.4 Principles

- The safety of infants, children and young people is the paramount consideration.
- A collaborative approach to information gathering should be adopted wherever possible.
- Powers to compel disclosure of information must only be exercised in exceptional circumstances and as a last resort, where other methods to gather essential information do not exist or have been exhausted.



4. Procedure requirements

Section 151 of the CYPS Act empowers the Chief Executive to require a State authority to prepare and provide a report in relation to any matter/s specified in writing by the Chief Executive to the State authority. This power may only be used if the Chief Executive is of the opinion that it is:

- necessary, and/or
- would assist in the performance of functions under the CYPS Act.

A state authority is defined in section 16(1) of the CYPS Act and regulation 5 of the *Children and Young People (Safety) Regulations 2017* and includes:

- South Australian government departments
- local councils and
- non-government organisations contracted to provide services to children and young people and their families for, or on behalf of the Government of South Australia or local councils.

4.1 Ensure all other reasonable avenues to gather information from the State authority have been pursued

The powers under section 151 of the CYPS Act must only be used in exceptional circumstances. Wherever possible, the DCP worker should work collaboratively with State authorities in relation to the protection of infants, children and young people. Before considering the use of section 151, the DCP worker must ensure that all other reasonable avenues to gather the required information have been exhausted. Avenues to gather information from a State authority include:

- the information being shared according to section 152 of the CYPS Act
- the information being required under section 150 of the CYPS Act. Noting that section 150 must only be used where other means of gathering information are not available or have been exhausted and in accordance with the [Information gathering and sharing](#) chapter of the Manual of Practice.
- the request being escalated in each agency to a more senior staff member, including the Chief Executive, or the Minister, depending on the matter
- a data sharing agreement being established under the [Public Sector \(Data Sharing\) Act 2016](#)
- the information being shared under legislation administered by the state authority.
- the information being shared under the [Information Sharing Guidelines for promoting safety and wellbeing](#) (ISG).

For more information about gathering information from State authorities, refer to the [Information gathering and sharing](#) chapter of the Manual of Practice.

4.2 Consult to determine whether it is appropriate to require the information under section 151

If a DCP worker identifies a need to obtain information from a State authority and all other reasonable avenues to obtain the information have been exhausted, they must consult with their supervisor or line manager about whether it is appropriate to require the information using section 151 powers.

Section 151 should only be considered in exceptional circumstances. In order to recommend use of section 151 powers, the supervisor or line manager must be satisfied that:

- all other avenues to obtain the information have been exhausted



- the State authority has refused or failed to provide the information under other information sharing avenues (as outlined in section 4.1) without reasonable explanation and appropriate escalation pathways have been followed without success OR
- no other avenues exist to seek the information. Advice from DCP Legal Services should be sought if there is doubt about whether an alternative legislative provision or pathway could be utilised to obtain the required information.
- the information is necessary or would assist DCP with the performing functions under the CYPS Act.
Examples of when a report may be required under section 151 include where:
 - information is required to respond to a systemic issue with a significant impact
 - significant inter-departmental issues have been identified involving children or young people in care which cannot be resolved through other avenues

Consideration should also be given to the following:

- **Aboriginal and Torres Strait Islander infants, children or young people.** Consultation with a Principal Aboriginal Consultant is recommended. It is essential that where the information relates to an Aboriginal or Torres Strait Islander infant, child or young person in care, the DCP worker has regard to the sensitivity of the information and the cultural safety of the infant, child or young person.
- **Children and young people from culturally and linguistically diverse backgrounds.** Consultation with [DCP Multicultural Services](#) is recommended.
- **Children and young people with disabilities.** Consultation with [Disability and Development Services](#) is recommended.

If the consultation relates to a specific child or young person the consultation must be recorded in C3MS consistent with the requirements of the [Consult or Decision Record Procedure](#).

4.3 Seek Chief Executive approval

The powers and functions under section 151 have not been delegated to any other DCP staff. Only the Chief Executive may approve a decision to require a State authority to prepare and provide a report using this power.

If the supervisor or line manager supports the recommendation to use the powers under section 151, the DCP worker must prepare a briefing to the Chief Executive. Refer to the [Executive briefing templates](#) intranet page for further information about the process for raising a briefing to the Chief Executive. The briefing must be endorsed by a manager, regional director and the Executive Director Service Delivery and Practice. The briefing must include:

- the matter or matters in respect of which the report is sought and why the report is required
- the rationale for seeking the information under section 151, including why it is considered necessary or would assist in the performance of functions under the CYPS Act
- what previous attempts have been made to seek the information
- what consultations have taken place
- the proposed scope and terms of the notice including any specific requirements
- draft correspondence from the Chief Executive to the State authority outlining the report required, timeframe, the terms of the notice and specifically communicating that the notice is made pursuant to the power and authority under section 151.

In determining whether the report is necessary or will otherwise assist in the performance of functions under the CYPS Act, the Chief Executive will consider the guiding principles in Chapter 2 of the CYPS Act and whether there is a more appropriate legislative provision or non-legislative mechanism that may be used to obtain the report.

If the proposed use of section 151 is approved, the Chief Executive will forward the notice requiring the report to the State authority.



4.4 Respond to non-compliance

There are significant consequences for non-compliance with a notice made under section 151 of the CYPS Act. If a State authority has refused or failed to comply with a notice or requirement under section 151 without reasonable excuse, the supervisor or line manager should contact DCP Legal Services to discuss what action (if any) may be taken.

The Chief Executive may require the State authority to provide a report of reasons for non-compliance (section 151(2)). This report may, at the Chief Executive's discretion, be provided to the Minister for Child Protection (section 151(3)). Upon receiving a report of this kind, the Minister must prepare a report to Parliament on the matter (section 151(4) and (5)).

5. Compliance, monitoring and evaluation

This document will be reviewed every three years, or earlier if required.

6. Related documents

Related documents, forms and templates
Consult or Decision Record Procedure
Information gathering and sharing chapter of the Manual of Practice
Information Sharing Guidelines for promoting safety and wellbeing

Document control

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