

# Disqualification Reassessment Policy

## Reassessment of disqualifications under the Child Protection (Working with Children) Act 2012

October 25

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## Introduction

A person who has been convicted of offences specified in Schedule 2 of the *Child Protection (Working with Children) Act 2012 (WWC Act)*, or a person against whom proceedings for any such offence have been commenced, if the alleged offences were committed as an adult, is automatically disqualified from holding a working with children check (WWCC) clearance in New South Wales.

In these circumstances, the Children's Guardian does not carry out a risk assessment and has no discretion but to disqualify the person from holding a WWCC. Schedule 2 of the WWC Act lists serious offences that automatically disqualify an applicant from holding a WWCC clearance.

The WWC Act enables some people who are disqualified from holding a WWCC clearance to apply to the Children's Guardian for a reassessment of that disqualification.

This policy sets out who is entitled to apply for a disqualification reassessment, the requirements for an application for reassessment, who conducts the reassessment and the process by which the reassessment takes place.

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## Who can apply for a disqualification reassessment?

### Disqualified persons

An applicant may apply for a disqualification reassessment only if they have already applied for a WWCC clearance and:

- have been refused a WWCC clearance because they are a disqualified person; or
- their WWCC clearance has been cancelled because they are a disqualified person.

Disqualified persons will have received a notice from the OCG explaining that their application for a clearance has been refused or their existing clearance has been cancelled because they are a disqualified person.

### Seeking an Internal Review of a Refusal, Clearance or Interim Bar

If an applicant has been refused a clearance or their existing clearance has been cancelled after a risk assessment (i.e. for a record that is not a Schedule 2 disqualifying offence), they may be entitled to apply for an internal review of that decision – this is a distinct process. See our separate [policy on internal reviews](#).

### Certain persons not entitled to apply for disqualification reassessment

Section 27 of the *Child Protection (Working with Children) Act 2012* states certain persons are not entitled to apply for a disqualification reassessment. The information below outlines the circumstances where a disqualified person is not eligible to apply for a disqualification reassessment.

#### If a person has been convicted of certain offences

A person who has been convicted of certain of the disqualifying offences set out in Section 27 of the WWC Act, and:

- has received a sentence of full-time custody for the offence; or
- is subject to certain sentencing orders which are still in force; or
- is subject to a prohibition order under the *Child Protection (Offenders Prohibition Orders) Act 2004* which is still in force;

is not entitled to apply for reassessment.

The offences which may disentitle a person to apply for disqualification reassessment include the most serious of the disqualifying offences, namely murder, sexual offences committed against children, sexual offences committed against vulnerable people, bestiality and child abuse offences, and a range of other offences.

### **If a person has pending charges**

A person who has been disqualified because of pending charges for a Schedule 2 record is not entitled to apply for a disqualification reassessment before the matter is finalised.

If the charges against do not result in a finding of guilt, then a request can be made for an early application for a WWCC clearance under section 13A(2)(a) of the WWC Act. An early application can be made by emailing [CHECK@ocg.nsw.gov.au](mailto:CHECK@ocg.nsw.gov.au) with details of the outcome of the charge(s).

If the charges result in conviction or a finding of guilt, the person may be eligible for a reassessment of the disqualification depending on the nature of the charge and the penalty/s imposed by the court.

### **Check eligibility for a disqualification reassessment**

Applicants are encouraged to check their eligibility before applying, and can contact the Internal Review team via [review@ocg.nsw.gov.au](mailto:review@ocg.nsw.gov.au) if they are unsure if they are entitled to apply.

For more information about eligibility, they may be able to obtain free legal help from [Law Access](#) (1300 888 529) or [Aboriginal Legal Services NSW/ACT](#) (1800 765 767).

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## **Requirements for an application**

### **Timeframes for an application for disqualification reassessment**

An application for a disqualification reassessment must be made within 28 days after the date of the notice from the OCG advising of the disqualification from holding a WWCC clearance.

The OCG has a discretion to accept applications which are made later than this timeframe. However, the applicant will need to show:

- they had valid reasons for not applying within the 28-day timeframe, such as the delay being due to circumstances outside of their control (for example serious illness or injury, natural disaster, postal delays), or due to other circumstances (such as disability or language barriers);
- that they acted promptly to make their application once the factors causing the delay were no longer relevant.

The reasons for the delay must be explained on the application form for an internal review. The applicant may be asked to provide documentary evidence to confirm the reasons for the delay.

### **What must be included in the application**

To apply for a disqualification reassessment under the WWC Act, an applicant must complete the [application form](#) available on the OCG's website.

All the questions on the application form should be answered. Failure to provide the requested information may result in a delay in processing the application. Applicants are encouraged to submit any supporting documentation with their application.

## How to make an application

Applications can be sent by:

**Email:** [review@ocg.nsw.gov.au](mailto:review@ocg.nsw.gov.au)

**Post:** Disqualification reassessment

Office of the Children's Guardian

Locked Bag 5100

Strawberry Hills NSW 2012

## Application fee

An applicant must also pay the prescribed fee for an application for a disqualification reassessment. The fee is set out on the OCG's website and is currently \$214. Payment must be made by electronic funds transfer and the details for payment are found in the application form. The application for disqualification reassessment will not be accepted until payment of the application fee is received. The application fee is updated yearly and can be found on [www.ocg.nsw.gov.au](http://www.ocg.nsw.gov.au).

Please note there are no refunds available if an application for disqualification reassessment is invalid, terminated or made incorrectly.

## How we will communicate with applicants

We will primarily communicate with applicants in writing, via either email or post, as nominated on the application form, and will make telephone contact with applicants as needed. If an applicant has specific communication needs, for example due to disability, a non-English speaking background or other issues, they can advise us of their needs on the application form.

Applicants also have the option of nominating a legal representative to liaise with the OCG on their behalf. Applicants can also nominate a person – such as a friend, family member, or a support person – to engage with us on their behalf.

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## What happens to an applicant's clearance status during the disqualification reassessment?

The disqualification of the applicant's WWCC clearance still has effect during the disqualification reassessment.

A person seeking disqualification reassessment must not engage in child-related work while the disqualification reassessment decision is pending.

*It is an offence for a person to engage in child-related work whilst they are disqualified from holding a WWCC.*

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## How is a disqualification reassessment conducted?

### Information to be considered

On receipt of an application for disqualification reassessment, we will review any information the applicant provides to us and will consider whether we need more information to assist us in carrying out the reassessment.

## Notice to provide additional information

We may issue an applicant with a notice to provide specified further information. The notice will specify the time by which they are required to provide this information, which cannot be less than 28 days.

If an applicant does not comply with a notice to provide additional information within the timeframe stated in the notice, we may terminate an application for a disqualification reassessment, or we may finalise the reassessment without this information. An applicant cannot seek a review of the decision to terminate their application for a disqualification reassessment. There are no refunds available if an application is closed due to failure to provide further information.

## Information gathering by the OCG

We may obtain further information from other sources, such as the NSW Police, the Department of Communities and Justice, Courts and Tribunals, and any previous employers.

## Matters to be considered

In determining an application for a disqualification reassessment, the Children's Guardian is required to consider:

- Any relevant information provided by the applicant (this can include the applicant's submissions and any information provided in support of their application).; and
- Information about significant changes in any relevant circumstances from the time the disqualifying offence occurred; and
- Other relevant information reasonably available to the Children's Guardian (i.e. information that we obtain through our information gathering powers).

**Under the WWC Act, it is presumed, unless the applicant proves to the contrary, that a disqualified person poses a risk to the safety of children.**

This means that an applicant will need to provide sufficient information to overcome the presumption that they pose a risk to the safety of children. This may involve demonstrating that there has been a significant change in relevant circumstances since the disqualifying offence occurred. An applicant may wish to provide evidence of the following factors, to be considered as part of the reassessment:

- a lengthy crime free period
- efforts at rehabilitation and behaviour change, such as educational programs and therapeutic interventions
- efforts to address any causes of offending behaviour, such as attending programs to address drug and alcohol misuse or anger management
- a consistent and stable employment record.

In addition to overcoming the presumption that the applicant poses a risk to the safety of children, in order to determine that an applicant should not continue to be a disqualified person, the decision maker must also be satisfied that —

- (a) a reasonable person would allow the person's child to have direct contact with the applicant that is not directly supervised by another person while they are engaging in child-related work, and
- (b) it is in the public interest to make the decision.

## Consultation with experts and qualified persons

When conducting a review, the Children's Guardian may share information with and seek advice from:

- a person suitably qualified to deal with the matters the subject of the disqualification reassessment. An example of such a person may be a psychologist, a psychiatrist, a child protection expert, or another industry or professional expert
- a community representative

We may also seek to engage a member of an Expert Advisory Panel to provide advice with respect to an application.

An applicant will be advised if we seek advice from a qualified person or engage a member of an Expert Advisory Panel with respect to their application.

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## Timeframes

Whilst there is no legislative time limit within which disqualification reassessments must be completed, reviews will be conducted as promptly as possible. Delays may be caused by the provision of information from external agencies, or ongoing police and employment investigations that cannot be resolved within these timeframes. The timeliness of a decision on a disqualification reassessment will also be affected by an applicant's promptness in responding to requests for further information.

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## Notice of decision

Following a disqualification reassessment, we will make a decision to either:

- confirm that an applicant continues to be a disqualified person and must not be granted a working with children check clearance; or
- decide that an applicant is no longer a disqualified person and grant the applicant a working with children check clearance.

The OCG will send an applicant a notice of decision of the disqualification reassessment, which will set out:

- the findings on material questions of fact, including the evidence or other material on which the findings were based
- the applicable law
- the reasons for our conclusions and decision.

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## What rights does an applicant have in the disqualification reassessment process?

The OCG will comply with principles of procedural fairness when conducting a disqualification reassessment. This includes:

- giving applicants the opportunity to provide any further information or documents to be considered as part of the disqualification assessment
- ensuring the decision-making on a disqualification assessment is evidence-based and free of bias
- providing applicants with the reasons for the decision in simple and clear terms
- communicating with applicants clearly and in a form that is easy to understand.

The way we collect, store, and use personal information is regulated by law and detailed in the [OCG Privacy Management Plan](#).

For more information about rights, applicants may be able to obtain free legal help from [Law Access](#) (1300 888 529) or [Aboriginal Legal Services NSW/ACT](#) (1800 765 767).

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## If an applicant is not satisfied with the outcome of the disqualification reassessment

There is no avenue or right of further administrative review of a decision on an application for disqualification reassessment.

If the applicant is not satisfied with how their disqualification reassessment was conducted, they may make a complaint to the Children's Guardian by emailing [ocg@ocg.nsw.gov.au](mailto:ocg@ocg.nsw.gov.au).

They may also contact the [NSW Ombudsman](#). They have a right to complain to the NSW Ombudsman if they have concerns about how we conducted the reassessment. However, the NSW Ombudsman cannot review or overturn the decision made by the Children's Guardian. To contact the NSW Ombudsman, an applicant can:

- visit in person at Level 24, 580 George Street Sydney NSW 2000
- call toll free [1800 451 524](#) (Australia wide) or [\(02\) 9286 1000](#)
- [submit a complaint online](#).

If an applicant considers there has been an error of law in the disqualification reassessment decision, they may apply to the Supreme Court of NSW for judicial review. Judicial review looks at whether the decision was made lawfully. Applicants may be able to obtain free legal help from [Law Access](#) (1300 888 529) or [Aboriginal Legal Services NSW/ACT](#) (1800 765 767) about this option.