

## Internal Review Policy

# Decisions under the Child Protection (Working with Children) Act 2012

January 26

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## Introduction

The *Child Protection (Working with Children) Act 2012 (WWC Act)* enables persons affected by certain decisions made under the WWC Act to apply to the Children's Guardian for an internal review of those decisions.

An internal review is a process whereby a decision made under the WWC Act is reviewed by another officer within the Office of the Children's Guardian (**OCG**), rather than by an external body. The reviewer reconsiders the facts, law and policy related to the original decision, together with any new information, to determine the correct and preferable decision.

This policy describes the types of decisions that can be internally reviewed, who conducts the review and the process by which the review takes place.

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## What decisions can be internally reviewed?

### Reviewable decisions

Not all decisions made under the WWC Act can be internally reviewed. The decisions in the WWC Act that can be the subject of an internal review are:

- A decision to refuse a working with children check clearance after risk assessment, under section 18(2) of the WWC Act
- A decision to cancel a working with children check clearance after risk assessment, under section 23(1) of the WWC Act;
- A decision to impose an interim bar<sup>1</sup> under section 17 of the WWC Act, but only if the interim bar has been in effect for more than 6 months.

An applicant who is subject to one of the above decisions will have received a notice of decision outlining the type of decision that has been made and the section of the WWC Act it has been made under.

### Disqualification reassessments

An applicant who has received a notice from the OCG stating that they have been automatically disqualified from holding a working with children check clearance<sup>2</sup> may be eligible to apply to the Children's Guardian for a disqualification reassessment. This is a distinct process to an internal review. Please see our website for information about [disqualification reassessments](#).

### Non-reviewable decisions

Other decisions under the WWC Act, such as a decision to terminate an application for a working with children check clearance or a decision not to grant a continuing residence approval, are not reviewable.

A decision made during an Internal Review cannot be the subject of further Internal Review.

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<sup>1</sup> An interim bar is a restriction placed on an individual who is applying for or holds a working with children check clearance that prevents them from engaging in child-related work while the OCG assesses their application or conducts a risk assessment. An interim bar can be imposed for a maximum of 12 months.

<sup>2</sup> Persons are disqualified from holding a working with children check clearance because they have been convicted of a disqualifying offence set out in Schedule 2 of the WWC Act, if the offence was committed as an adult, or have had proceedings for any such offence been commenced against them where the offence was committed as an adult, pending determination of the proceedings for the offence.

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## Requirements for an internal review application

### Timeframes for an application for internal review

#### Refusal or cancellation of a clearance

An application for an internal review of a decision to refuse or cancel a clearance must be made within 28 days after the date of the notice of the decision.

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.

#### Interim bar

An application for an internal review of a decision to impose an interim bar cannot be made until 6 months after the interim bar was imposed. As an interim bar only has effect for a maximum of 12 months, an application for an internal review of a decision to impose an interim bar should be made before the interim bar expires.

#### What must be included in the application

To request a review of a reviewable decision under the WWC Act, an applicant must complete and return the Internal Review Application Form which is available on the OCG's website, together with any documents in support of their application.

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 or may result in the application being terminated. Applicants are encouraged to submit any supporting documentation they would like considered with their application.

#### How to make an application

Applications must be made to:

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

**Post:** Internal Review

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 an internal review. 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 internal review 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 an internal review is invalid, terminated or made incorrectly.

## How we will communicate with applicants

We will primarily communicate with internal review 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 at the time of their application.

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 WWCC status during the internal review?

The original decision to refuse or cancel a working with children check clearance or impose an interim bar still stands while the decision is being internally reviewed.

An applicant for internal review **must not** engage in child-related work while the internal review decision is pending, unless they receive specific written advice from our office to the contrary.

It is an offence for a person to engage in child-related work whilst their clearance has been refused, cancelled, or they are subject to an interim bar.

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## Who conducts the review?

The WWC Act requires that an application for internal review of a decision can only be dealt with by a person who:

- did not make the reviewable decision; and
- holds an equal or more senior office than the person who made the reviewable decision.

The OCG Internal Review team conducts internal reviews of reviewable decisions made under the WWC Act. This team is separate from the team that made the original decision in relation to a WWCC clearance.

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## How is an internal review conducted?

### Information to be considered

On receipt of an application for internal review, we will review:

- the information considered in the risk assessment that was undertaken that led to the refusal or cancellation of the working with children check clearance, or the information considered in the decision to impose the interim bar; and
- any new information the applicant provides to us – this can include the applicant's submissions and any information provided in support of their application.

We may also obtain further information from other sources such as NSW Police or the Department of Communities and Justice, to supplement or clarify existing information as required.

Applications for internal review are assessed using the same legal tests as in the original decision.

For Interim Bar decisions, the internal reviewer will review the original decision maker's decision that they were of the opinion that there is a likely risk to the safety of children if the applicant engages in child-related work (as per section 17(2) of the Act). Risk to the safety of children refers to a real and appreciable risk to the safety of children.

For decisions to cancel or refuse a WWCC, the internal reviewer will review the original decision maker's decision that they were satisfied the applicant poses a risk to the safety of children (a real and appreciable risk to the safety of children), as per section 18(2) of the Act.

A determination that the applicant does not pose a risk to the safety of children can only be made if the Internal Reviewer is satisfied that:

- a reasonable person would allow the person's child to have direct contact with the applicant or holder while not directly supervised by another person and while the applicant or holder was engaged in child related work
- the making of the determination is in the public interest.

### **Notice to provide additional information**

If we need more information from an applicant, we may issue them with a notice to provide specific further information. The notice will state the date by which they are required to provide this information, which cannot be less than 28 days from the date of our request.

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

### **Consultation with experts and qualified persons**

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

- an expert who is suitably qualified to advise on matters the subject of the reviewable decision. An example of such a person may be a psychologist, a psychiatrist, a child protection expert, or another industry or professional expert; or
- a community representative.

We may also seek to engage a member of an Expert Advisory Panel to provide advice with respect to an application. We will advise the applicant if we seek advice from a qualified person or engage a member of an Expert Advisory Panel with respect to their application.

### **Matters to be considered**

The Internal Reviewer may consider the same factors as the original decision maker was able to consider during their risk assessment of the application for a WWCC clearance and examine whether the conclusions reached in respect of each of these factors were appropriate. The Internal Reviewer may also consider how the law applies to the applicant's circumstances and examine procedural fairness considerations, including whether the applicant had a fair chance to put their case forward. The Internal Reviewer will then determine the correct and preferable decision in the matter.

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## **Timeframes**

Whilst there is no legislative time limit within which internal reviews 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 internal review will also be affected by an applicant's promptness in responding to requests for further information.

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## Notice of decision

Following the internal review of a decision, the internal review delegate must make a decision to:

- confirm the decision; or
- set aside the decision to impose an interim bar; or
- set aside the decision to refuse or cancel a working with children check clearance and grant a clearance.

The OCG will send the applicant a notice of decision of internal review, which will set out the review process and the reasons why the internal review delegate reached their decision. The original decision maker will also be provided this information.

Internal Review decisions are published on the [Determinations and notices page](#) of our website.

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## What rights does an applicant have in the internal review process?

As with the making of the original decision, the OCG will comply with principles of procedural fairness when conducting an internal review. This includes:

- giving an applicant the opportunity to provide any further information, arguments or documents to be considered as part of the internal review
- ensuring the decision-making on internal review is evidence-based and free of bias
- providing an applicant 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, an applicant 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 an Internal Review

There is no avenue or right of further administrative review of a decision that has been subject to internal review.

If the applicant is not satisfied with how their internal review 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 review. 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 internal review decision, they may commence proceedings in 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.

