WWCC Application

# Chris Nowlan

Reference APP 123 4567

Applicant's Submissions

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**Background**

1. The Applicant is 39 years old.

2. The Applicant has spent the past ten years working as a chef in various childcare centres in Sydney without any adverse incident.

3. This employment required the Applicant to hold a Working With Children Check Clearance **(Clearance)**.

4. On 5 September 2024, the Applicant was arrested and charged with criminal offences. All seven sequences were subsequently dismissed by the courts.

5. However, the unproven allegations means that the Children's Guardian is required to conduct a risk assessment. [1]

6. On XX August 2025 the Applicant was notified that the Children's Guardian was proposing to refuse his application for a Clearance.

7. By the same notice, the Children's Guardian imposed an interim bar under s17 Child Protection (Working With Children) Act 2012 (The Act) and requested further information under s16. Such further information is to be provided by XX December 2025.

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[1] s14 Child Protection (Working With Children) Act 2012

**Relevant Law & Legal Principles**

8. Section 15(4A) provides that the issues to be determined in this case are whether, having regard to all of the evidence, the Children's Guardian is satisfied on the balance of probabilities that:

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

9. Section 15(4) provides that, in making that assessment, the Children's Guardian may consider the following —

    *(a) the seriousness of any matters that caused the assessment in relation to the person,*
    *(b) the period of time since those matters occurred and the conduct of the person since they occurred,*
    *(c) the age of the person at the time the matters occurred,*
    *(d) the age of each victim of any relevant offence or conduct at the time it occurred and any matters relating to the vulnerability of the victim,*
    *(e) the difference in age between the victim and the person and the relationship (if any) between the victim and the person,*
    *(f) whether the person knew, or could reasonably have known, that the victim was a child,*
    *(g) the person's present age,*
    *(h) the seriousness of the person's criminal history and the conduct of the person since the matters occurred,*
    *(i) the likelihood of any repetition by the person of the offences or conduct or of any other matters that caused the assessment and the impact on children of any such repetition,*
    *(i1) any order of a court or tribunal that is in force in relation to the person,*

*(j) any information given in, or in relation to, the application,*

*(j1) any relevant information in relation to the person that was obtained in accordance with section 36A,*

*(k) any other matters that the Children's Guardian considers necessary.*

**Assessment of Risk**

10. Section 5B of the Act provides that "[a] reference in this Act to a risk to the safety of children is a reference to a real and appreciable risk to the safety of children".

11. An assessment of risk requires the Children's Guardian to determine "whether, in all the circumstances, there is a real and appreciable risk that is greater than the risk of any adult preying on the child" as opposed to a "fanciful or theoretical risk". [2]

**The Reasonable Person Test**

12. In *VQB v The Secretary to the Department of Justice* [2013] VCAT 789 at [36], the reasonable person test was considered and it was there said that the test requires:

> *"…the application of an objective standard based upon the views of the reasonable person. The reasonable person would, in reaching his or her conclusions, acquaint himself or herself with all the matters that have been placed before me, giving an applicant for a positive assessment a right to be heard, as well as considering the material gathered by the Secretary. A reasonable person would not approach the task with a closed mind, thinking that once a person has offended, he or she can never be redeemed. The reasonable person, however, would not put aside all scepticism and reasonable caution in this most difficult area in some over-optimistic attempt to facilitate rehabilitation."*

13. This approach has been endorsed in a number of cases including *CSW v Children's Guardian* [2017] NSWCATAD 326 at [136]-[137]; *CYY v Children's Guardian (No 2)* [2017] NSWCATAD 262; *CRG v Children's Guardian* [2017] NSWCATAD 295 at [85]; and *DAI v Children's Guardian* [2017] NSWCATAD 308 at [90].

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[2] *Commission for Children and Young People v V* (2002) 56 NSWLR 476; [2002] NSWSC 949 at [42]; *BKE v Children's Guardian* [2015] NSWSC 523

**The Public Interest Test**

14. The Victorian Court of Appeal considered the meaning of the term "public interest" in *Secretary, Department of Justice v LMB* [2012] VSCA 143 at [24]-[26] in the context of the equivalent provision in the Victorian Act. The Victorian Court of Appeal said:

"[24] As French CJ, Gummow and Crennan JJ stated in *ICM Agriculture Pty Ltd v The Commonwealth*:

> *'The term "in the public interest" is one of broad import. When used in a statute, the term classically imports a discretionary value judgment to be made by reference to undefined factual matters confined only by the subject matter, scope and purpose of the statute in question.'*

*[25] In the present instance, the Act itself plainly identifies the primary public interest to which it is addressed. The main purpose of the Act is stated to be to assist in 'protecting children from sexual or physical harm'. The Act does this by 'ensuring that people who work with, or care for [children] have their suitability to do so checked by a government body'.*

*[26] The Act grants an administrative discretion to the Tribunal which requires the Tribunal, once the discretion has been enlivened by a finding that there is no unjustifiable risk, to consider for itself whether the giving of a notice will be in the public interest."*

(footnotes omitted)

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**APPLICANT'S CASE**

15. The Applicant relies on a bundle of evidence including:

a. Court Outcomes,
b. A letter from his solicitor detailing the hearing,
c. His National Police Check,
d. His personal statement,
e. A report from psychologist Mr Sigmund Freud,
f. A Statutory Declaration from his wife,

g. His Employment history,
h. Four letters from previous employers / supervisors,
i. Four professional referees,
j. Five general character references,
k. Completion Certificate from Open Path Mental Health Domestic Violence Course, and
l. Various academic qualifications.

**Section 15(4) Considerations**

**(a) Seriousness of the alleged offences**

16. Counsel concedes that the allegations are serious. However, Counsel notes that the charges were all dismissed by the criminal courts and that no Apprehended Violence Order is in place.

17. Furthermore, the complainant in the matter, Mr X's wife, recanted the allegation at court. The prosecutor made an application under s38 Evidence Act that he should be allowed to cross-examine the complainant as she was not coming up to proof and instead giving evidence unfavourable to the prosecution.

**(b) Time Passed & Conduct Since**

18. The offences were alleged to have been committed on XX September 2024, some 14 months ago. There no other allegations before or since.

**(c) The age of the person at the time of the offence**

19. Mr X was 37 years old at the time of the alleged offences.

**(d) The age of the victim and the vulnerability of the victim**

20. The complainant was Mr X's wife who is an adult. It is alleged that the couple's two year old daughter was present at the time.

21. There is no evidence of any extra vulnerability.

**(e) The difference in age between the victim and the person and the relationship (if any) between the victim and the person**

22. The Applicant and the alleged victim are a married couple. They are both adults.

**(f) Whether the person knew that the victim was a child**

23. Not Applicable.

**(g) The person's present age**

24. Mr X is now 39 years old.

**(h) The seriousness of the person's criminal history and the conduct of the person since the matters occurred**

25. Mr X has provided his National Police Check. He has no criminal history.

**(i) The likelihood of any repetition by the person of the offences or conduct and the impact on children of any such repetition**

26. Consultant Psychologist Mr Freud has assessed Mr X and produced a report at page 8 of the Applicant's bundle. Mr Freud concluded in his report:

> *'I have reviewed all relevant references provided, including a statutory declaration from his wife, which attests to his character, stability, and efforts towards self-improvement. Based on my professional evaluation and the comprehensive information*

*available, I am confident in his suitability to work with children and have no concerns regarding his capacity to do so safely and responsibly.*

*In my professional opinion, there are currently no risks or issues that would preclude Mr X from holding a valid Working with Children Check. I fully support his application and believe that he is capable of contributing positively to environments involving children.'*

**(i1) Any order of a court or tribunal that is in force in relation to the person**

27. Not Applicable. There are no current Apprehended Violence Orders.

**(j) Any information given by the applicant in, or in relation to, the application**

28. The Applicant has provided a bundle including his criminal history, his personal statement, a report from his psychologist and support letters from his wife and his former employers.

**(j1) Any relevant information in relation to the person that was obtained in accordance with section 36A**

29. Not Applicable.

**(k) Any other matters that the Children's Guardian considers necessary**

30. Counsel asks the Assessor to have regard to the financial and domestic hardship caused to the Applicant and his family by the interim bar and proposed refusal of his clearance.

## Conclusion

31. It is not the Children's Guardian's role to punish offenders. Its role is limited to determining whether the Applicant presents a risk to the safety of children in the future.

32. The test to be applied is whether a reasonable person would allow their child to have direct unsupervised contact with Mr X while he performs child related work.

33. Counsel submits that Mr X's ten year history of incident free child related work and his clear criminal history mean that this test is satisfied.

34. The evidence before the Children's Guardian, and in particular, the medical evidence, must lead the Assessor to the conclusion that Mr X's risk of reoffending is low and that the granting of a Clearance is in the public interest.

35. The correct and preferable decision is to make these findings and grant a Working With Children Clearance to Mr X.