

Working With Children Appeals

Child Protection (Working with Children) Act (NSW) 2012

Many jobs require a WWCC clearance even though the role involves little or no contact with children. At the same time, conviction of any offence in Schedule 2 of the Act will disqualify the offender from holding a WWCC. This can lead to loss of employment or opportunity and amounts to extra-curial punishment which can be unjust in some cases.

The NSW Civil & Administrative Tribunal has power to make an enabling order which allows the Children's Guardian to issue a WWCC to disqualified persons in appropriate circumstances. Every defence lawyer should understand the procedure in order to advise and represent their clients effectively. This paper is designed to assist legal practitioners in the state of New South Wales.

Disqualifying Offences

Disqualifying offences are listed in [Schedule 2](#) of the Act. Section 18(1) provides that the Children's Guardian must not grant a WWCC to a disqualified person which is anyone convicted of such an offence or against whom proceedings for such an offence have been commenced. Section 23 requires the Children's Guardian to cancel an existing WWCC if the holder becomes a disqualified person.

Meaning of Conviction

The law gives magistrates discretion to find an offence proved but not to proceed to conviction.¹ Many offenders at the lower end of the scale of seriousness will plead guilty and be discharged without a conviction. They walk out of court believing that their WWCC (and employment) is safe. They quickly find out that this is not the case.

Section 5 defines the word 'conviction' to mean any finding of guilty regardless of whether a conviction is recorded:

conviction includes a finding that the charge for an offence is proven, or that a person is guilty of an offence, even though the court does not proceed to a conviction.

It is then that these people call me and ask what can be done.

¹ s10 Crimes (Sentence Procedure) Act

Enabling Orders

Section 28 allows the NCAT to make an enabling order which means that the Applicant is not to be treated as a disqualified person. Only the Tribunal can make such an order and not the Children's Guardian. My experience is that Children's Guardian, represented by the Crown Solicitor, are very reasonable and will agree to an application in appropriate cases. Such matters are usually determined on the papers and a formal hearing is not required.

Expert Evidence

Such applications turn on expert evidence. The Applicant will need to be assessed by a properly qualified psychiatrist or psychologist. This assessment will include a psychometric test such as the Sexual Violence Risk-20 (SVR-20) instrument designed for assessing the risk of sexual violence. A number of variables attendant to the risk assessment are considered including psychosocial adjustment, sexual offending and future plans.

The Hearing

The Tribunal will consider the facts of the particular offence, the criminal history of the offender and their subjective material. The subjective material should include character references and a letter from the offender explaining the extraordinary circumstances that led to the offence, what efforts he has made to rehabilitate himself and how the loss of the WWCC will affect his employment.

I am available every day if you have any interesting issues.

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