

# Working with Children Checks

Not happy with a decision?



## Did you get a letter saying you didn't get a Working with Children Check (WWCC) clearance?

The Office of the Children's Guardian (OCG) decides if you get a WWCC clearance. The OCG letter will tell you:

- why you didn't get a clearance, and
- if you can challenge it. This means ask the NSW Civil and Administrative Tribunal (NCAT) to look at the OCG's decision.

### What is the time limit to challenge the decision?

You have 28 days after you get the OCG letter to challenge it by applying to NCAT. If you miss this time limit you may still be able to challenge it speak to a lawyer.

### Speak to a lawyer

A lawyer can help you decide if you should challenge a decision.

If you challenge a decision, the OCG will have a lawyer. You can have a lawyer too. Call LawAccess NSW on 1300 888 529 to find out where you can speak to a lawyer.

### Sometimes you can't challenge the decision

You can challenge most decisions. You may not be able to challenge it if:

- a court says you are guilty of a very serious offence—like sexual assault or violence against children, or
- police have charged you with a very serious offence and the court hasn't decided the case yet.

If the court decides you are not guilty then you can apply again to the OCG.

### There are 2 ways to challenge a decision

If the OCG letter says you didn't get a WWCC because of a:

- 'risk assessment'—you should apply for a 'review'. See the fact sheet called **Working with Children Checks—What do I need to know?** to learn more about risk assessments.
- 'disqualifying offence' you should ask for an 'enabling order'.

### What does it cost to challenge the decision?

You can see the fees here [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)  
Or call NCAT on **1300 006 228**.

### How do I challenge the decision?

#### Step 1

You can print the form at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

If you don't have access to the internet you can call LawAccess NSW for help.

#### Apply for a review

Look under Administrative & Equal Opportunity > Forms.

Fill out the Administrative Review Application form and pay the filing fee.

#### Apply for an enabling order

Look under Administrative & Equal Opportunity > Forms.

Fill out the General Application form and pay the filing fee.





## Step 2

When you apply:

- attach a copy of the OCG's letter
- say why you think the decision is wrong (this only needs to be short, you will get a chance to explain later)

## Step 3

You must:

- post the completed form (original plus 2 copies) to PO Box K1026, Haymarket NSW 1240 (if you do this, allow time for it to get there within the 28 day time limit), or
- take it to an NCAT registry or Service NSW Centre. Call NCAT on 1300 006 228 or go to their website if you need help.

You can't apply to NCAT online, by email or fax.

## What will happen after I challenge the decision?

NCAT will send a copy of your application to the OCG and send you and the OCG a listing notice telling you when the matter is listed for directions. This is to let you and the OCG know when you have to give each other and NCAT your evidence.

The OCG will have some evidence already. However, it may get more evidence (for example, it may ask the NSW Police for your criminal history or Family and Community Services for any child protection concerns).

You can give your evidence to NCAT too. For example, you could give NCAT a report from a psychologist or psychiatrist about whether you are a risk to children.

This is also called a risk assessment. A risk assessment is expensive. You should ask a lawyer if a risk assessment will help your case.

After the OCG and you have given NCAT your evidence, NCAT will hold a formal hearing.

NCAT will look at things like:

- how serious your offences were
- when your last offence was
- how old you were
- how old the victim was
- what you've done since then (for example, did you do a course or see a psychologist to help you not to offend again)
- how likely you are to offend again

NCAT can look at the OCG's decision and any other information you or the OCG give them.

NCAT will only give you a WWCC if it agrees that you are not a risk to children.

## Can I work or volunteer while I challenge the decision?

No unless NCAT gives you a 'stay'. A 'stay' is when NCAT decides that you can keep working or volunteering with children until they make a final decision.

You can ask NCAT for a stay by completing the Application for stay or interim order file. You can find this form on the NCAT website.

## Can I appeal NCAT's decision?

You can only appeal a decision of NCAT if it makes a legal mistake in your case.

You can't appeal an NCAT decision just because you disagree with the decision.

You must appeal to the Supreme Court of NSW no later than 28 days after NCAT decides not to give you a WWCC clearance.

Speak to a lawyer as soon as possible. If you appeal to the Supreme Court and lose you will usually have to pay the legal costs of the OCG, which could be thousands of dollars.

## Where can I get more help?

### LawAccess NSW

You can get free legal information over the phone. In some cases you can get legal advice. They can also refer you to other services that can help.

**1300 888 529**

**[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)**



### Do you need an interpreter?

If you need help to talk to us in your language, call the **Translating and Interpreting Service (TIS)** on **131 450** (9am – 5pm).



### Do you find it hard to hear or speak?

If you find it hard to hear or speak, call us through the **National Relay Service** on **133 677** or **[www.relayservice.gov.au](http://www.relayservice.gov.au)**

*This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.*

*The information is correct at the time of printing. However it may change.*

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