GILSHENAN & LUTON
LEGAL PRACTICE



Can I get a blue card with a criminal record?

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A blue card is the colloquial name for a 'positive notice' issued by Blue Card Services, which allows you to work with children. If you have a criminal record, your application for a blue card is not necessarily futile, but may be more complex.

Eligibility to obtain a blue card

Whether or not you are eligible to obtain a blue card depends on the offence that you were charged with, or convicted of. The *Working with Children (Risk Management and Screening) Act* 2000 ('the Act') declares certain offences to be 'serious offences' or 'disqualifying offences'. These make it much harder or indeed, impossible, to obtain a blue card.

The list of serious and disqualifying offences are included as a schedule to the Act and include offences such as sexual offences, offences involving child exploitation material, attempt to murder, torture and trafficking in drugs.

If, however, you weren't charged with a serious or disqualifying offence then there is a presumption that you will be granted a positive notice (a blue card) *unless* it is an 'exceptional case' in which it would not be in the best interests of children for the blue card to be issued.

What is an 'exceptional case' when applying for a blue card?

An exceptional case is not defined in the *Working with Children (Risk Management and Screening) Act* 2000 but the Act does set out some factors that Blue Card Services must have regard to:

- Whether it is a conviction or charge;
- Whether the offence is a serious offence or disqualifying offence;

- When the offence was committed;
- The nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children;
- The penalty imposed by the court (and if the court decided not to impose imprisonment, the reasons why);
- Any material from the DPP or corrective services;
- Any material from the Mental Health Court of Mental Health Review Tribunal;
- Any report about the person's mental health; and
- Anything else relating to the commission of the offence that the chief executive reasonably considers relevant.

While the Act doesn't define 'exceptional case', in reviews of refusals by Blue Card Services it has been considered that what amounts to an exceptional case 'must take it out of and beyond the ordinary circumstances reasonably expected to occur'.

It must be 'of the nature of or forming an exception; out of the ordinary course, unusual, special'.

Determination of what is an exceptional case takes into account all the facts and the degree (or level) of the offending that led to a criminal history. It involves the consideration of the risk and protective factors arising from the circumstances of any particular case.

Examples of risk factors include:

- the charges and the risk of reoffending;
- lack of insight; and
- that blue cards are transferrable across all areas of regulated employment and business.

Examples of protective factors include:

- evidence of steps taken by a person to manage the 'triggers' of their behaviour;
- evidence from a doctor or psychologist about treatment and/or likelihood of reoffending;
- a person's honesty, remorse and insight into the offences; and
- a person's support networks.

Review (appeal) rights

If Blue Card Services refuse to grant you a positive notice and instead issues you with a 'negative notice' on the basis that your case is an 'exceptional case', you can seek a review of the decision in the Queensland Civil and Administrative Tribunal ('QCAT').

Your review will need to be filed within 28 days of receiving the adverse decision from Blue Card Services. If you file after this time limit, you will have to seek the leave of QCAT and show exceptional circumstances for the delay in your review application.

QCAT will then undertake a ‘merits review’ of your application. This is a fresh hearing of your application and the tribunal member will re-assess the facts to determine whether you should be issued with a positive notice. Further information can be provided to QCAT and at a hearing and witnesses are called and cross-examined.

Get help from a criminal lawyer

Blue Card Services takes a very cautious approach to applications for positive notices and QCAT often take a different view to Blue Card Services about whether a matter is exceptional.

If you have been given a blue card negative notice on the basis that yours is an exceptional case, we can review your material and advise you on the prospects of a successful review. We can also seek leave to appear on your behalf in QCAT and assist you through the QCAT process.

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.