GILSHENAN & LUTON
LEGAL PRACTICE



Reviewing blue card decisions

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A blue card is the colloquial name for a “positive notice” issued by Blue Card Services which allows someone to work with children. See our previous blog, ’Can I get a blue card with a criminal record?’ about blue card applications if you have a criminal record.

In Queensland, if Blue Card Services refuse to grant someone a positive notice by issuing a negative notice, they can seek to overturn that decision by lodging a review of the decision in the Queensland Civil and Administrative Tribunal (‘QCAT’).

What orders can the tribunal make in relation to my blue card review application?

QCAT undertakes a “merits review” of blue card applications. This means a fresh hearing of the application for review, and the tribunal decision-maker will re-assess the facts to determine whether the applicant should be issued with a positive notice. In reviewing these decisions, the legislation states that the tribunal decision-maker must work on the principle that the welfare and best interests of a child are paramount.

Once QCAT has heard the matter, the decision-maker can:

1. confirm the decision to issue a negative notice; or
2. set aside the decision to issue a negative notice and substitute that decision with a decision to issue a positive notice; or
3. set aside the decision to issue a negative notice and send the matter back to Blue Card Services to reconsider the decision.

What does the tribunal consider when determining blue card review applications?

The QCAT decision-maker will consider various factors in determining whether to confirm or set aside a negative notice. Those factors will commonly include:

1. the extent to which the applicant has insight into any offending behaviour and its impact on others, particularly children;
2. what risk factors, or triggers, are present which could contribute to a risk of any further offending behaviour;
3. what protective factors, if any, are present to reduce the risk of any further offending behaviour; and
4. what preventative strategies does the applicant use to reduce the risk of any further offending behaviour or alleged offending behaviour or child-care related behaviour?

Applying for a review of your negative blue card decision

Review applications in relation to a blue card negative notice generally need to be filed within 28 days of receiving the adverse decision. Applications filed after this time limit will need to show exceptional circumstances for the delay.

A practice direction (No. 5 of 2022) has been issued by QCAT to assist practitioners and self-represented applicants in respect of such applications. The stated purpose of the practice direction is to provide information that will assist parties in understanding the process, and the things that they must do. It sets out practical matters such as:

- how these matters progress;
- what the tribunal expects in how evidence is presented;
- what occurs at the first and subsequent hearings; and
- how to seek an extension of time, etc.

In annexures attached to the practice direction, there are template draft directions for many of the common orders that are sought by the parties.

Get help from a criminal lawyer

Potential applicants should note that strict timeframes apply to the lodgement of applications to review a decision by Blue Card Services. It is crucial that they seek urgent legal advice immediately if they are concerned about a decision that has been made.

Gilshenan &Luton frequently appear in QCAT in respect of blue card applications and can assist you in respect of any such applications.

Contacting Gilshenan &Luton

07 3361 0222 (24/7)

gnl@gnl.com.au

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.