

Queensland Civil and Administrative
Tribunal Appeal 19/04/2018

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

Blue Card System – Information Sheet

A

How to make a submission

When are applicants asked to provide a submission?

Blue Card Services will ask a person to make a submission about whether they should receive a blue card if information is received which raises concern about an applicant's background or criminal history.

This gives people a chance to respond to information held about them by police, courts or professional bodies by outlining their version of events.

Applicants asked to provide a submission can also provide additional information or references to support their application, and to explain why they think they should be eligible for a blue card.

Blue Card Services can also take other information into account which may be relevant to the application, and may ask you to authorise access to information from sources like doctors, psychologists, psychiatrists or government departments.

What can I do to respond to the submissions letter?

When deciding whether or not to respond to the letter from Blue Card Services, consider the following options:

1. Provide a submission by the due date

Any information received by the due date will be taken into consideration when assessing the application.

Written responses are preferred and may be handwritten or typed.

2. Withdraw your application

Applicants who withdraw their applications will be prohibited from working in child-related employment or carrying on child-related businesses. A letter confirming your withdrawal will be sent to you and your employer (if applicable).

If you have a blue card and you are no longer in regulated employment, you may ask for it to be cancelled by completing a *Request to cancel card* form.

3. Not provide a submission

If you do not provide a submission by the due date, your application may be withdrawn (unless you hold a current blue card), or you may be issued with a negative notice if Blue Card Services continues to assess it.

If you are issued with a negative notice or your application is withdrawn you will be prohibited from working in child-related employment or carrying on a child-related business.

What should I include in my submission?

You should address all the information forwarded to you, including any offences or alleged offences listed on your police history and any other information provided.

You may include:

- whether you agree with the details contained in the information received by the Blue Card Services
- any background on any offence or alleged offence on your criminal history
- your personal circumstances and any other relevant events at the time the offence or alleged offence/s were committed
- what steps you've taken to address your offending behaviour since committing the offences on your criminal history (please include details of any courses or programs you have completed, the organisations providing them, dates attended and a copy of the certificate of completion if available)
- your previous experiences or interactions with children, and
- anything else which may be relevant.

For more information, see *How will my application be assessed?* (which is attached to your letter inviting submissions).

What other information will help my case?

You can include any other information or material you think is relevant to the assessment process, including written references (phone numbers only will not be accepted).

Written references should contain the referee's:

- full name and address
- telephone number (as Blue Card Services may contact them), and
- signature.

Other information should include:

- the date the reference was made (recent references are given greater weight)
- details of the referee's occupation or position within a club or organisation
- how the referee knows you and for how long
- if the referee is aware of your police or disciplinary information and the extent of their knowledge
- details of instances where the referee has seen you interact with children or young people, and
- anything else the referee thinks may support your application for a blue card.

What happens if I provide a submission?

All the information, including the submission you provide, will be considered before making a decision.

If your application is approved, you will be issued with a blue card.

If your application is refused, you will be issued with a negative notice and will be prohibited from working in any area of child-related employment or business listed under the *Working with Children (Risk Management and Screening) Act 2000*.

In most cases, the decision to issue a negative notice can be reviewed by the Queensland Civil and Administrative Tribunal.

However, a person cannot apply for a review of the decision if they:

- have been convicted of a disqualifying offence (including a child-related sex or pornography offence, or the murder of a child), or
- are a reportable offender with current reporting obligations, or
- are subject to a child protection offender prohibition order, or
- are subject to a disqualification order from a court prohibiting them from applying for or holding a blue card, or
- are subject to a sexual offender order.

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How will your application be assessed?

Your application is being assessed under the *Working with Children (Risk Management and Screening) Act 2000* (the Act).

The most important consideration in deciding your application is a child's entitlement to be cared for in a way which protects them from harm and promotes their wellbeing. Before I approve your application, I must be satisfied that it is in the best interests of children for you to hold a positive notice and blue card.

The Working with Children Check disclosed that you have police information (Attachment C).

In addition to your police information please find enclosed a copy of the notifications received from the Queensland Police Service which outlines an additional charge/s (Attachment C).

The assessment process allows me to consider convictions for any offence, including where no conviction was recorded. I am also able to take into account any current or finalised charges which did not result in a conviction.

Your criminal history shows that you have a conviction for an offence other than a *serious offence* (as defined in the Act). On the basis of the above information, I must issue you with a positive notice and blue card unless I am satisfied that it is an exceptional case in which it would not be in the best interests of children to do so.

When making my decision, I must consider the following in relation to the commission or alleged commission of an offence:

- whether it is a conviction or a charge; and
- whether the offence is a *serious offence*, and if it is, whether it is a *disqualifying offence* (these terms are defined in the Act); and
- when the offence was committed or alleged to have been committed; and
- the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and
- in the case of a conviction – the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under the Act, the court's reasons for its decision; and
- any information provided to me by the Director of Public Prosecutions; and
- any information provided to me regarding your mental health; and
- any information given to me by the Department of Community Safety (Corrective Services); and
- anything else relating to the commission or alleged commission of the offence that I reasonably consider to be relevant to your application.

You may wish to consider these factors when making your submission. Please also refer to the *How to make a submission* information sheet to assist you in understanding the process.

Blue Card Services has also received complaint information (detailed at Attachment D). You should be aware that, in order to respect the confidentiality of people who make complaints to me, I am not at liberty to provide you with any further details in relation to the complaints or the informants.





Consent to discuss information

Working with Children (Risk Management and Screening) Act 2000

This form is to be completed by a blue/exemption card applicant/cardholder to allow Blue Card Services to discuss information about your card/application with an approved person.

Note: To preserve the confidentiality of your personal information, it is suggested that you authorise someone other than your employer/organisation.

Part A – Applicant/cardholder's details

1 Family name

2 First name

3 Middle name

4 Date of birth

D D M M Y Y Y Y

5 Current postal address

Postcode

6 Telephone

7 Mobile

8 Email

9 Reference number/card number (*if known*)

Part B – Approved person's details

1 Family name

2 First name

3 Middle name

4 Relationship to applicant

5 Date of birth

D	D

M	M	

Y	Y	Y	Y

6 Current postal address

 Postcode

7 Telephone

--	--

--	--	--	--	--	--	--	--

8 Signature

9 Date of signature

D	D

M	M	

Y	Y	Y	Y

Part C – Consent to discuss information

I consent to Blue Card Services discussing the following information with the approved person in Part B of this form including:

- the current status of any application or the progress to date of the application
- any request for additional information
- any police information including any change in police information and investigative information
- any disciplinary information
- the assessment process including the request for submissions, references and other supporting material
- any medical information
- the outcome of the application including whether a positive/positive exemption or negative/negative exemption notice is issued, and
- any relevant personal information such as name, address or employer details.

If there is any aspect named above that you do not wish to be discussed with the person you have approved, please outline this below.

[illegible]

Part D – Cardholder/applicant's declaration

I declare that:

- the details provided in this form are true and correct;
- I consent to Blue Card Services discussing the information in Part C relating to my card/application with the approved person nominated in Part B, and
- I understand that it is an offence to provide a false or misleading statement or document.

Signature of applicant/cardholder

D	D	M	M	Y	Y

Date of signature

Privacy notice

The *Working with Children (Risk Management and Screening) Act 2000* allows the collection of personal information to assess your eligibility to be issued with a blue/exemption card. Information will be provided to Queensland Police, and may be provided to police, courts, prosecuting authorities or other authorised agencies as part of the screening process. Information may also be given to:

- certain disciplinary bodies to obtain relevant disciplinary information; and/or
- your employer, any supervisory body, or other person you have authorised to discuss your application on your behalf.

Personal information will only be provided to other persons or agencies with your permission or where required by law.

For more information about the blue card system and your obligations go to www.bluecard.qld.gov.au.

Blue Card Services, Department of Justice and Attorney-General

📄 Scan and upload at www.bluecard.qld.gov.au/uploadform

📬 PO Box 12671, Brisbane George Street QLD 4003

🏠 53 Albert Street, Brisbane QLD 4000

☎ 07 3211 6999 or 1800 113 611

📠 07 3035 5910

🌐 www.bluecard.qld.gov.au

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Queensland Civil and Administrative Tribunal

Applicants refused a blue card (if not automatically excluded due to child sex or child pornography-related offences) may apply to the Queensland Civil and Administrative Tribunal for a review of a decision made by Blue Card Services.

What is the Queensland Civil and Administrative Tribunal?

The Tribunal is an independent body which reviews decisions made about blue cards, including the issuing of a negative notice, or the refusal to cancel a negative notice previously issued.

If you are not satisfied with a decision by Blue Card Services, you can apply to the Tribunal to have the decision reviewed.

How do you apply for a review of the decision?

You must lodge an **application to review a decision form** with the Tribunal (see contact details on the cover page of the application to review a decision form).

When you complete the form, list all the grounds for a review, including why you think the decision is wrong, and send it to the Tribunal.

Time limits on review applications

You must file an application with the Tribunal **within 28 days of receiving the letter** from Blue Card Services advising you of the decision.

Extensions are granted only if the President of the Tribunal is satisfied there is a reasonable excuse for the delay.

If the delay is not reasonable, the Tribunal will not accept your application.

How does the Tribunal work?

The Tribunal is not like a court. It is designed to be relaxed and informal and an application may be heard by up to three members. It can decide both questions of law and questions of fact and is not bound by rules of evidence.

Applicants generally represent themselves, but if you want a lawyer to represent you, you must apply to the Tribunal to be legally represented.

If you represent yourself, the Tribunal will help you understand its procedures.

What powers does the Tribunal have?

The Tribunal has the power to:

- confirm, set aside, or vary the blue card decision
- set aside the decision and substitute its own decision, or
- set aside the decision and return it to Blue Card Services to be reconsidered.

The Tribunal can also dismiss your application if:

- the Tribunal considers your application frivolous or vexatious
- you have received reasonable notice of the time and place of a proceeding and you do not appear, or
- if proceedings are delayed because of unreasonable actions by you.

Does the blue card decision stand until a review application is heard by the Tribunal?

Yes. The Tribunal cannot stay (ie. suspend) the decision. While the review is in process, the earlier decision remains in force.

The decision will only change if the Tribunal sets aside the negative notice and orders that a positive notice be issued.

Can you call witnesses or have support people with you at Tribunal hearings?

Yes. You can call witnesses to support your application. You, the Tribunal and a representative from Blue Card Services are allowed to ask the witnesses questions.

You can also ask the Tribunal for a support person to be present with you during the proceedings. This person is not allowed to address the Tribunal.

Is the Tribunal independent?

Yes. The Tribunal is completely independent of Blue Card Services.

What is a compulsory conference?

The Tribunal may call a directions hearing or compulsory conference before hearing an application. These are informal conferences where your application is discussed.

You can ask questions about the process, how the Tribunal works and how to prepare your case.

Be prepared to discuss your application, why you think the blue card decision is wrong, the material you intend to rely on and which witnesses you will call to support your case.

What happens at the hearing?

At the hearing, the Tribunal will ask you to present your case. The Tribunal or the Blue Card Services representative may ask questions of you or your witnesses.

Are the proceedings held in private?

Yes, the proceedings are always held in private, so members of the public cannot be present.

Witnesses stay outside the hearing room until called, and leave directly after they have given their evidence.

When will the Tribunal make its decision?

The Tribunal makes its decision after considering all issues relevant to your application.

The Tribunal may prepare written reasons for its decision and provide them to you and Blue Card Services after the hearing.

What are the contact details for the Tribunal?

The Tribunal contact details are as follows:

Postal Address	GPO Box 1639 Brisbane QLD 4001
Street Address	Level 9, BOQ Centre 259 Queen Street Brisbane QLD 4000
Phone	1300 753 228 between 8.30am and 5.00pm on weekdays.
Fax	07 3221 9156
Email	enquiries@qcat.qld.gov.au
Website	www.qcat.qld.gov.au

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Attachment C

Categories of regulated employment and business under the *Working with Children (Risk Management and Screening) Act 2000*

Employment

- Residential facilities
- School boarding facilities
- Schools
- Education and care services
- Child care services
- Churches, clubs and associations involving children
- Health, counselling and support services
- Private teaching, coaching or tutoring
- Education programs conducted outside of school
- Child accommodation services including home stays
- Religious representatives
- Sport and active recreation
- Emergency services cadet programs
- School crossing supervisors
- Care of children under the *Child Protection Act 1999*

Business

- Health, counselling and support services
- Private teaching, coaching or tutoring
- Education and care services
- Child care services
- Education programs conducted outside of school
- Religious representatives
- Child accommodation services including home stays
- Sport and active recreation
- Hostels for children other than residential facility
- Businesses relating to licensed care services under the *Child Protection Act 1999*
- Non-State Schools – directors of governing bodies and authorised persons

Exemptions from employment screening apply to some categories. Please go to the Blue Card Services website at www.bluecard.qld.gov.au or contact us on **1800 113 611** or **3211 6999** for clarification on the categories and exemptions.

AN OVERVIEW OF COMPULSORY CONFERENCES

WHAT IS A COMPULSORY CONFERENCE?

1. A compulsory conference is a meeting chaired by a member or adjudicator of the Tribunal. The purpose of a compulsory conference is to:
 - a) Identify and clarify the issues in dispute;
 - b) Promote a settlement of the dispute;
 - c) Identify the questions of fact and law to be decided by the Tribunal;
 - d) If the dispute cannot be settled, to make orders and give directions about the conduct of the proceedings;
 - e) To make orders and give directions that the member or adjudicator considers appropriate to resolve the dispute.
2. Even though the compulsory conference is conducted by the Tribunal, and the issues in dispute will be shadowed by the legal framework within which the dispute fits, a compulsory conference is not primarily a legal process.

PREPARING FOR A COMPULSORY CONFERENCE

3. The Tribunal may have discussions with the parties ahead of the compulsory conference to ensure that various formalities and other issues are addressed so that time is not wasted at the compulsory conference.
4. The parties themselves must attend the compulsory conference. In the case of a party which is a company or association, its representative will need to have authority to reach a binding settlement at the compulsory conference.
5. Think carefully about whether there are other people who should attend the compulsory conference.
 - a) It may be a good idea to bring your experts who can help you make decisions. Sometimes, parties are given new information in compulsory conferences which affect the way an expert thinks about an issue. If experts are able to talk to each other before the proceedings, they can often agree about the issues or agree about the way that their disagreement will be represented to the Tribunal at the hearing.
 - b) Do you have authority to negotiate the dispute to a conclusion and sign a document that records the agreement? If not, there is a risk that an agreement reached will be overturned by a party who, not being present through the negotiations, does not properly appreciate the background to the agreement, the effort that was required to reach it, and the significant concessions that may have been made by the parties at the time.
 - c) Do you want to bring a lawyer? If so, you will need to apply to the Tribunal for leave to be represented by a lawyer.

6. Conduct a risk analysis of your case before attending the compulsory conference. Ask yourself these questions (and answer them honestly):
- a) What are the strengths of my case?
 - b) What are the weaknesses of my case?
 - c) What will be the consequences for me if this is not resolved at compulsory conference?
 - d) What costs (legal fees and payments to experts or other advisors) have I incurred to date? What non-legal costs (e.g. time taken off work) have I incurred to date?
 - e) If I do not reach agreement at compulsory conference, what costs will I incur in future? What non-legal costs will I also incur?
 - f) What are my needs? What do I want? (This may not be the same thing as set out in the material you have filed with the Tribunal.) What do I need to achieve?
 - g) In light of my needs, reflecting on the weaknesses in my case and the cost implications, what would be an outcome at compulsory conference, with which I could live?
7. Prepare an opening statement. This is not an address to a Judge. It is not necessary to tell the meeting what the law is, or what the evidence will be. The purpose of an opening statement is to tell the parties what the real issues are. The following questions might assist you to prepare the opening presentation at the compulsory conference:
- a) What do you really need to achieve from today?
 - b) What do you need to **do** today to achieve this?
 - c) What do you need to **say** to the other party to help to achieve this?
 - d) What do you need to hear from the other party which would help you achieve this?
 - e) What are your main concerns?
 - f) What do you think are the other party's main concerns?
 - g) What do you think that each other party really needs out of this?
 - h) What do you think the other party needs to hear from you which will help to move you on to a realistic outcome for all concerned?
8. Don't plan other engagements for the time allocated for compulsory conference. Successful compulsory conferences depend upon the parties having enough time to consider a range of issues and alternatives. Even with the member or adjudicator's best efforts, parties are often reluctant to get to the reality of a negotiated result until quite late in the process. If a party has made prior commitments elsewhere, it may be that negotiations will conclude artificially and when the parties are on the cusp of an agreement. It is sometimes difficult to recreate that atmosphere in a reconvened compulsory conference.

AT THE CONFERENCE

9. The member or adjudicator will greet the parties on arrival and normally open the compulsory conference with a joint session, attended by all parties. The member or adjudicator will provide an overview of the process, the role of the member or adjudicator and what is likely to happen for the balance of the conference.

10. All discussions at a compulsory conference are treated as confidential and “without prejudice”. What is said or written at a conference cannot be used in later proceedings if the dispute does not settle unless the parties otherwise agree.
11. During the compulsory conference, the member or adjudicator may meet privately with each party to discuss the problem confidentially. Parties should not be alarmed by this. Whatever occurs in the private meeting is subject to the same rules of confidentiality as the full compulsory conference. It gives parties the opportunity to tell the member or adjudicator something about the dispute that they may not want communicated to the other side but will have an effect on the resolution of the dispute. If the member or adjudicator understands why a party holds a certain position, it may make resolution of the dispute easier. It also allows a party to have a realistic look at their case in private, without fear that any weaknesses discussed will be communicated to other parties.
12. Sometimes, the member or adjudicator will spend more time with one party than another. Again, parties should not be alarmed. It is not an indication of preference, or bias, on the part of the member or adjudicator. It is an indication that the member or adjudicator thinks that a particular party may need more assistance in negotiating, formulating an alternative, understanding a point about the dispute, or (on a more positive note) that a particular party might be in a position to generate more ideas for consideration by the others, or is more flexible in its approach.
13. If you are left on your own, use that time effectively. Take the time to reflect:
 - a) What has been achieved so far?
 - b) What are the areas of common ground which have emerged?
 - c) What have you learned that has surprised you?
 - d) What new areas for discussion have emerged?
 - e) What do you not understand?
 - f) What areas need further exploration at this stage?
 - g) What are the options which are emerging?
 - h) What do you really want to achieve now? What is your main priority?
 - i) What can you do now, in this process, to help to reach a solution?
14. The member or adjudicator is not an advisor to any of the parties. The member or adjudicator remains impartial throughout the process. The member or adjudicator's neutrality provides credibility in the process. It is not the member or adjudicator's role to tell the parties what their rights are or how they should resolve the dispute but a member or adjudicator might tell the parties, in private session what that member or adjudicator would decide if the dispute went to a hearing. You can object to the member or adjudicator chairing the compulsory conference being involved in the hearing of the dispute.
15. If the compulsory conference results in an agreement between the parties, whether that is an agreement to resolve the dispute or an agreement about the way the dispute will proceed, the member or adjudicator will produce a written record of that agreement. All parties to the agreement, and the member or adjudicator, will sign the agreement and it will be placed on the Tribunal file.

16. If the compulsory conference does not result in an agreement, the member or adjudicator will make directions or orders aimed at reducing the issues to be determined at the hearing. For example, the parties may be directed to:
- a) File further material within a short time frame.
 - b) Provide a list of disputed issues.
 - c) Obtain a joint expert's report.
 - d) Provide written submissions prior to the hearing.

The member or adjudicator may also order a joint experts' conference that other parties attend a conference, that the conference be reconvened at a later date, or that the proceedings are listed for a review by the President or Deputy President. Although you may have input into these directions, the member or adjudicator can make these directions without the parties' consent.

BENEFITS OF A COMPULSORY CONFERENCE

17. Compulsory conferences provide a private forum, in which the parties can gain a better understanding of each other's positions, and work together to explore options for resolution. You can gain a thorough understanding of the other party's points of view, and have an enhanced opportunity to be heard and understood during the process. Compulsory conference allows misconceptions to be eliminated. In particular, as it is sometimes difficult for parties to be objective about the strengths and weaknesses of their case, the member or adjudicator can test each party's understanding of those strengths and weaknesses, as well as the potential for loss, expense, time, distraction and uncertain court outcomes.
18. Compulsory conferences provide a much greater scope of creativity with possible options, than does a Tribunal hearing. Although settlements reached in compulsory conference cannot be illegal, the scope of settlement is otherwise limited only by the parties' creativity.
19. The parties have control over the outcome. Self-determination is a fundamental principle of a compulsory conference. The process relies on the ability of the parties to reach a voluntary and un-coerced agreement.
20. Since over 90% of cases are settled before hearing, much of the time, energy and cost in bringing or defending proceedings is wasted. Compulsory conferences occur before a dispute escalates too far through the hearing process.
21. Compulsory conferences can address all parties' interests and can preserve a working relationship between them. Compulsory conferences can also make the termination of a relationship more amicable.

18 MAY 2018

14 May 2018

Director-General, Department of Justice and Attorney-General
Attn: Michelle Miller
Blue Card Services
PO Box 12671
GEORGE STREET QLD 4003

Notice enclosed



Catherine Van
Administrative Officer
Blue Card Services, Justice Services
Department of Justice and Attorney-General
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P: (07) 3211 6166 E: catherine.van@bluecard.qld.gov.au

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28 JUN 2018

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Attn: Michelle Miller
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PO Box 12671
GEORGE STREET QLD 4003

Please turn over for notice

Director-General, Department of Justice and Attorney-General
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Please turn over for notice

Many thanks,



Catherine Van
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23 OCT 2018

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Notice and attendance advice enclosed

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03 DEC 2018

29 November 2018

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