



Suitability Panel

Who we are
and what we do

INFORMATION BOOKLET



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This Information Booklet is available on the Suitability Panel website and will be subject to periodic revision.

The Suitability Panel

Overview

The Suitability Panel decides whether or not an out-of-home carer who is alleged to have sexually or physically abused a child in his/her care should be disqualified from being a carer or decides whether or not a carer who has been disqualified should have that disqualification removed.

The Suitability Panel (the Panel) is established under the *Children, Youth and Families Act 2005* (the Act).

The Act sets out procedures and principles for the protection of Children including their best interests.

The names of approved out of home carers of children and young persons (a carer) under the Act are recorded on a register of out of home carers maintained by the Secretary of the Department of Human Services (Secretary DHS).

Before a matter comes to the Suitability Panel

There needs to be a notification by someone of alleged sexual or physical abuse of a child by an out-of-home carer to the Department of Human Services

Before a matter comes to the Suitability Panel there needs to be a notification by someone of alleged sexual or physical abuse of a child by an out-of-home carer to the Secretary Department of Human Services.

The procedure is set out in the Act. The alleged abuse must have occurred on or after 7 December 2002.

The notification is not made to the Suitability Panel.

After receiving a notification, the Secretary DHS decides whether or not there should be an independent investigation by an authorised investigator.

After an investigation and report from the authorised investigator, the Secretary DHS may refer the matter to the Suitability Panel for a hearing.

Who can make a notification of alleged sexual or physical abuse of a child by an out-of-home carer to the Secretary Department of Human Services?

Any person may make a notification.

Any person including a person in charge of an Out of Home Care Service, or any other person may make a notification.

Which matters does the Suitability Panel decide?

The Suitability Panel decides whether or not an out-of-home carer who is alleged to have sexually or physically abused a child in his/her care should be disqualified from being registered as a carer or decides whether or not a carer who has been disqualified should have that disqualification removed.

The Panel decides:

- whether an out-of-home carer should be disqualified from being on the register of out-of-home carers, or
- whether a carer's disqualification should be removed

How does a matter come to the Suitability Panel for hearing?

A matter can be referred to the Suitability Panel by the Secretary DHS, or a person who has been disqualified from being an out-of-home carer may apply to the Suitability Panel to remove the disqualification.

There are two methods by which a matter can come before the Suitability Panel.

1. Referral by the Secretary of an allegation that an out-of-home carer has physically or sexually abused a child in his/her care
- or*
2. An application by a person to remove his/her disqualification as a carer

Who hears cases at the Suitability Panel?

The Chairperson and two other members hear cases.

The members of the Suitability Panel are a Chairperson who is a practising lawyer and other members who have qualifications and experience in law, social work, psychology, the treatment of sex offenders or any other relevant discipline.

The Chairperson and two other members hear cases.

Hearings

The Suitability Panel is not bound by the rules of evidence but is bound by the rules of natural justice. A carer is entitled to be present, make submissions and be legally represented. The hearing is not open to the public and the identity of a child or carer cannot be published or broadcast.

Procedures of the Suitability Panel

- are as informal as natural justice and the proper consideration of the case allow.
- the person against whom an allegation is made is:
 - entitled to be present,
 - make submissions, and
 - be legally represented.
- the hearing is not open to members of the public.
- the identity of a child or a carer must not be published or broadcast.
- the Panel is not bound by the rules of evidence.
- the Panel is bound by the rules of natural justice.

Address for Service

A person must provide an address where he/she can be contacted and to which notices and papers can be sent.

Anyone who makes an application or responds to a referral from the Secretary will need to provide an address where that person can be contacted and official notices served and sent to that person. In the case of an Application to remove a disqualification, this can be the address on the application or a separate document with the new details can be given to the Suitability Panel if the address changes.

Witnesses / Summonses

A summons is a document which makes it compulsory for a person to come to a hearing to give evidence or produce documents at or prior to a hearing. The Panel may summons witnesses including a carer, to give sworn evidence, produce documents or both.

A person may ask the Suitability Panel to issue a summons for a witness to come and give evidence or to bring documents to a hearing or the Panel itself may do so if it needs more evidence.

If a person wants to ask the Suitability Panel to issue a summons that person will need to put in a written request to that effect to the Executive Officer of the Suitability Panel prior to the hearing. The person who is summonsed will be notified of the hearing date.

If a witness is not able to attend the hearing other arrangements may be made for the witness to give his or her evidence.

If a person fails or refuses to answer any question or provide any information to the authorised investigator or to the Suitability Panel, such refusal cannot be used against a person in the final decision reached by the Panel

Child witnesses

If a witness is a child special considerations apply and special arrangements for the giving of evidence can be made.

The Hearing Process

There are two steps to the hearing process.

1. Where an allegation of physical or sexual abuse by a person who is an out-of-home carer is referred by the Secretary DHS to the Suitability Panel, the Suitability Panel must first find that the abuse has occurred.

If the allegation is not proved, there is no misconduct and the matter does not go any further.

If the allegation is proved, the Suitability Panel must find that there has been misconduct by the person.

2. The Suitability Panel must then decide whether the person poses an unacceptable risk of harm to children.

If the Suitability Panel finds that a person does pose an unacceptable risk of harm to children then that person's registration as a carer will be removed. If the Suitability Panel finds that a person does not pose an unacceptable risk of harm to children then that person remains registered as a carer.

Notice of the Suitability Panel's findings will be given to the carer, the Secretary DHS and where the law requires, to the Secretary, Department of Justice.

A matter can be brought before the Suitability Panel for a hearing in two ways:

1. Referral by the Secretary DHS of an allegation of physical or sexual abuse by an out-of-home carer.

(See flowchart p.10)

There are two steps in the Hearings Process:

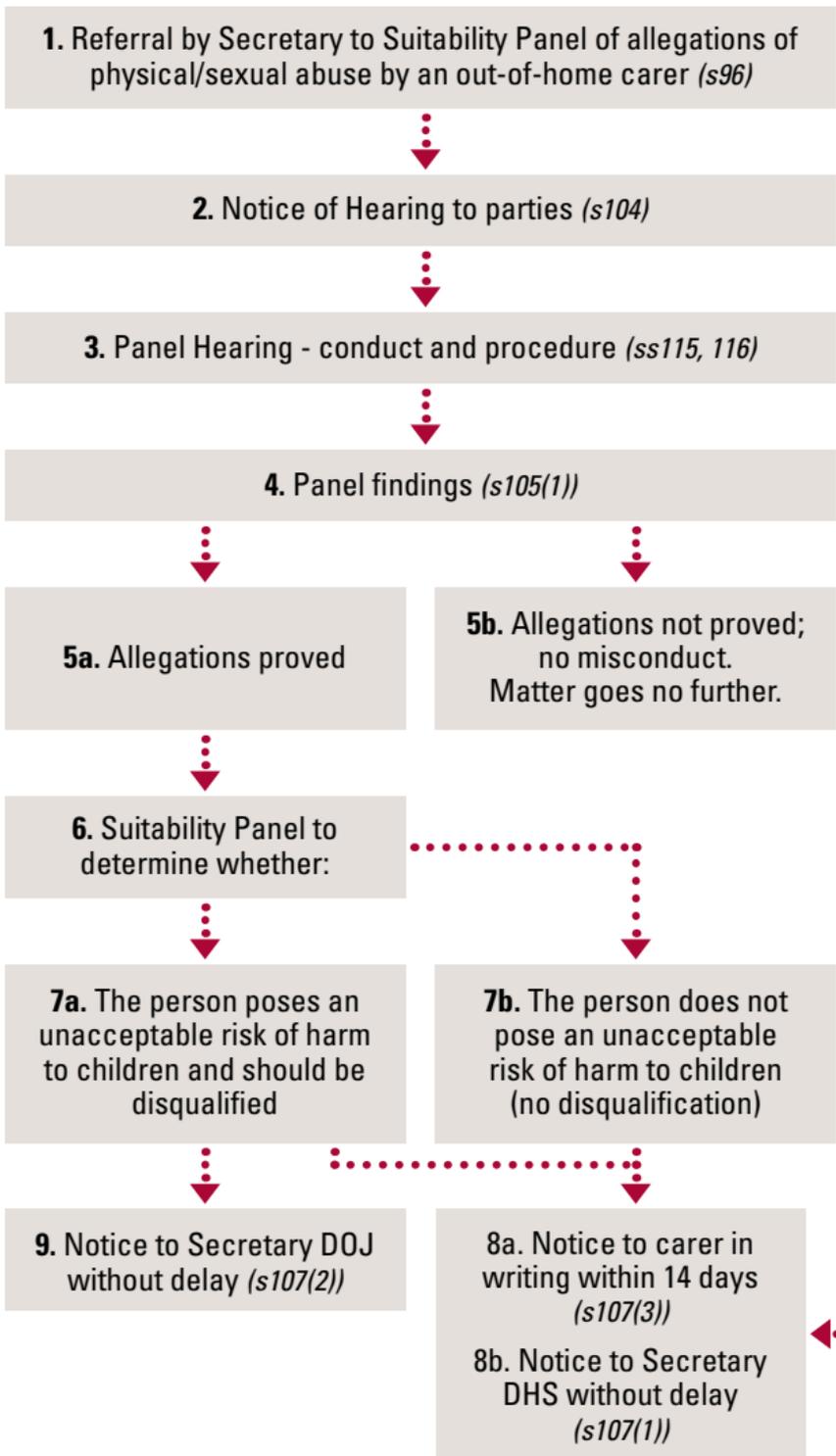
1. The Panel must first decide on the balance of probabilities whether the allegation(s) of physical or sexual abuse against the person (carer) has been proved;
 - Matters which the Suitability Panel must consider in making its decision include the allegation or allegations made, any evidence or other matters presented which the Suitability Panel considers relevant but not including any other allegations or findings of misconduct against the person.
 - If the allegation has not been proved the Suitability Panel must state this and state there is no finding of misconduct; the matter then goes no further.
 - If the allegation has been proved, the Suitability Panel must find misconduct against the person.
2. The Suitability Panel must then decide on the balance of probabilities whether the person poses or does not pose an unacceptable risk of harm to children;
 - If it finds that the person poses an unacceptable risk of harm to children, the person must be disqualified from being a carer;
 - If it finds that a person does not pose an unacceptable risk of harm to children, the matter goes no further.

Notice of the Findings and Determination

Notice must be given to the:

- carer in writing within 14 days, and to the
- Secretary DHS without delay, and
- if the Panel has found that a person should be disqualified, then to the Secretary, Department of Justice without delay.

Referral by Secretary DHS to the Suitability Panel



2. Application by a person (Carer) to the Suitability Panel to Remove a Disqualification. (See flowchart p.13)

Where the Suitability Panel has disqualified a person from being a carer, the person may apply to the Suitability Panel after 12 months (unless there are exceptional circumstances) to have the disqualification removed. The application must be made on a special form.

Notice of the Suitability Panel's findings will be given to the carer, the Secretary DHS and where the law requires, to the Secretary, Department of Justice.

How to make an Application

The application for removal of a disqualification must be made on a special form (*Form 4*) called a **Prescribed Form** which is set out in the *Children Youth and Families Regulations 2007*. The form can be downloaded from the Suitability Panel website www.suitabilitypanel.vic.gov.au or a copy may be sent to a person on request (see contact details at the end of this brochure).

When filling out the form, the person will need to state:

- the reasons why the person believes the disqualification should be removed;
- how the person's circumstances have changed and why the person no longer poses an unacceptable risk of harm to children;
- if the person thinks that there are exceptional circumstances that show why the disqualification should be removed within 12 months of the disqualification taking effect, then to set out those circumstances

Findings and determinations of the Suitability Panel

At a hearing, the Suitability Panel must decide whether or not the person should continue to be disqualified as a carer.

The decision must be made on the balance of probabilities.

In making the decision

- The Panel must consider whether any charges have been laid, the findings and reasons of a court, any sentence given, the person's behaviour since being disqualified and the evidence and submissions presented at the hearing (this is a compulsory consideration).
- The Panel may also consider if the conduct was an offence at the time it took place, whether the offence has been decriminalised since, the period of time since the person was disqualified (this would be considered if it is relevant), any other relevant matter.

The Panel must find and discuss reasons as to whether an applicant should continue to be disqualified or have his/her disqualification removed

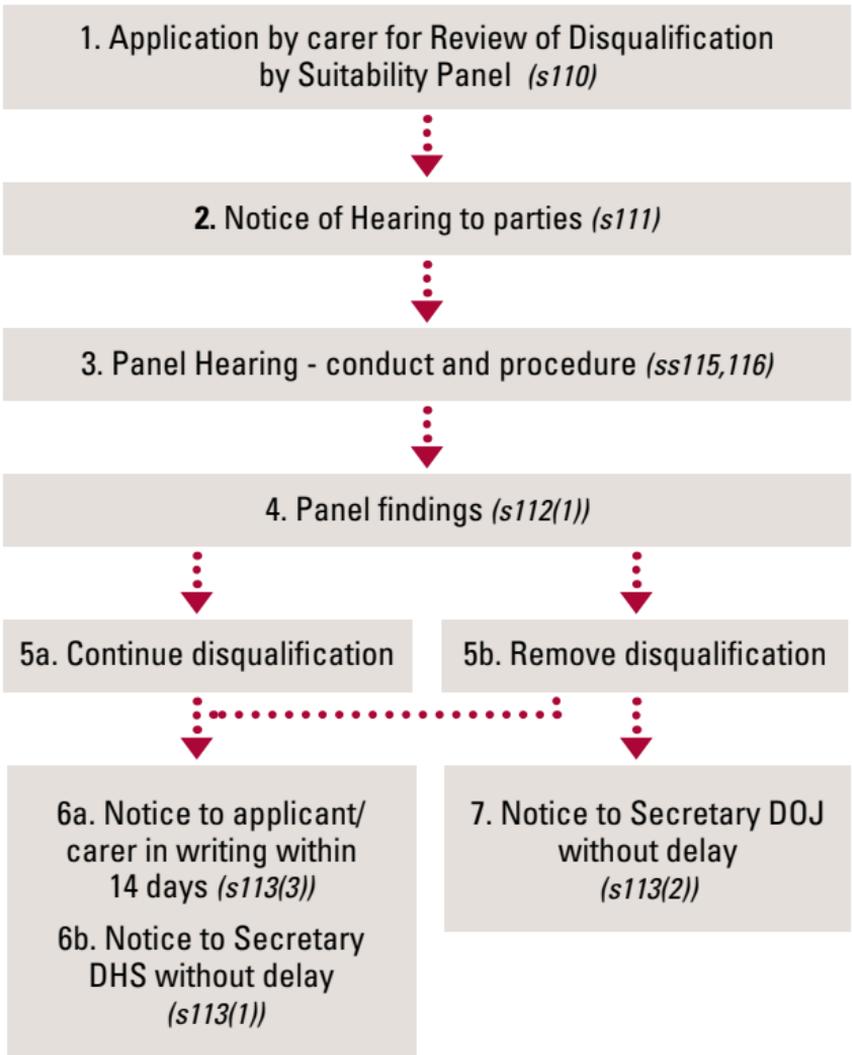
If the disqualification should be removed, the person is no longer disqualified.

Notice of the Findings and Determination

Notice must be given to the:

- carer in writing within 14 days, and to the
- Secretary DHS without delay, and
- if the Panel has found that a person's disqualification should be removed, then to the Secretary, Department of Justice without delay.

Application by Carer to Remove a Disqualification



Application for a Review to the Victorian Civil and Administrative Tribunal (VCAT)

A person may apply to VCAT for a review of the Suitability Panel's findings.

Under the *Children, Youth and Families Act 2005* a person may apply to VCAT for review of a finding or determination of the Suitability Panel.

Who may apply to VCAT for a review?

A person whose interests have been affected by the decision of the Suitability Panel may apply for a review.

Which findings can be reviewed?

The findings under *Sections 105, 106 or 112* of the *Children, Youth and Families Act 2005* which are:

- That the person has or has not physically or sexually abused the child in their care
- That a person does or does not pose an unacceptable risk of harm to children.
- Whether or not a person should continue to be disqualified from being a carer.

What is the time limit for requesting review?

A person must request a review to VCAT within 28 days after:

- having been given notice of the finding or determination
- or**
- having been provided with a statement of reasons under the VCAT Act or having been refused to be given reasons by the Suitability Panel.

The statement of reasons must be supplied to the person within 28 days.

Contact Details

Victorian Civil and Administrative Tribunal (VCAT)

Telephone: 1300 018 228
Website: www.vcat.vic.gov.au
Address: 55 King Street
Melbourne Vic 3000
Email: vcat@vcat.vic.gov.au

Suitability Panel

Telephone: (03) 9032 3256
Website: www.suitabilitypanel.vic.gov.au
Address: Level 30
570 Bourke Street, Melbourne Vic 3000
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