

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *CG v Director-General Department of Justice and Attorney-General* [2024] QCAT 155

PARTIES: **CG**  
(applicant)  
  
**v**  
  
**DIRECTOR-GENERAL  
DEPARTMENT OF JUSTICE AND ATTORNEY  
GENERAL**  
(respondent)

APPLICATION NO/S: CML209-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 20 March 2024

HEARING DATE: 19 July 2023

HEARD AT: Cairns

DECISION OF: Member Pearce

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General that the applicant’s case is “exceptional” within the meaning of section 221 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of decision by respondent to issue a negative notice  
  
FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – application for review of decision to issue negative notice – where applicant has convictions and charges – where the offences were not serious or disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) – whether traffic offences are offences – whether this is an exceptional case in which it would not be in the best interests of children for the applicant to be given a working with children

*Family Law Act 1975 (Cth)*  
*Human Rights Act 2019 (Qld)*  
*Queensland Civil and Administrative Tribunal Act 2009 (Qld)*  
*Working with Children (Risk Management and Screening) Act 2000 (Qld)*  
*Briginshaw v Briginshaw and Anor* (1938) 60 CLR 336  
*Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291  
*Commissioner for Young People and Child Guardian v Maher & Anor* [2004] QCA 592  
*Commissioner for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28  
*DEF v Director General, Department of Justice and Attorney General* [2022] QCAT 127  
*DL v Director-General, Department of Justice of Attorney General* [2021] QCAT 61  
*DM v Director-General, Department of Justice and Attorney-General* [2022] QCAT 199  
*Hinchcliffe v Commissioner of Australian Federal Police* (2001) 118 FCR 308  
*Kent v Wilson* [2000] VSC 98  
*Re TAA* [2006] QCST 11  
*SSJ v Director-General, Department of Justice and Attorney-General* [2020] QCAT (unpublished decision, 17 June 2020)  
*Winters v Winters* [2015] FamCA 195  
*WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190

## APPEARANCES & REPRESENTATION:

Applicant:	CG, Self-Represented
Respondent:	Davis, CA, Blue Card Services, Representing Director-General Department of Justice and Attorney-General

## REASONS FOR DECISION

### Background

- [1] The applicant has applied for a review of a reviewable decision under the Working with Children (Risk Management and Screening Act) 2000 ('the WWC Act'), namely the respondent's decision to issue the applicant a negative notice on 28 May 2021.
- [2] The applicant applied to be issued with a working with children clearance ('blue card'). The applicant was previously issued with a blue card in 2004, 2006, 2008, 2010, 2013, and 2017.

## Legal Framework

- [3] The principal under which the WWC Act must be administered is that every child is entitled to be cared for in a way that protects the child from harm and promotes the child’s wellbeing.<sup>1</sup> A child-related employment decision must be reviewed under the principle that the welfare and best interests of the child are paramount.<sup>2</sup>
- [4] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children in Queensland through a scheme, “...to screen persons who work, or wish to work, with children, to ensure that they are suitable persons to do so”.<sup>3</sup> A review of a reviewable decision must be decided in accordance with both the WWC Act and the Queensland Civil and Administrative Tribunal Act 2009 (Qld) (‘the QCAT Act’).<sup>4</sup>
- [5] The decision under review is whether the applicant’s case is an “exceptional case”.<sup>5</sup> Pursuant to section 221 of the WWC Act, the decision maker must issue a blue card unless satisfied that an exceptional case exists in which it would not be in the best interests of children to do so.<sup>6</sup>
- [6] The nature of the Tribunal’s review of whether the applicant’s case is an exceptional case, is not that of an appeal. Rather, it is a fresh hearing. The QCAT Act provides that the Tribunal has all the functions of the decision maker of the decision being reviewed<sup>7</sup> and must undertake a fresh hearing on the merits.<sup>8</sup>
- [7] A fresh hearing on the merits means the Tribunal can consider not only the evidence that was before the decision maker when the original decision was made, but also additional or more recent evidence to the Tribunal’s review.<sup>9</sup>

## Amendments to the WWC Act

- [8] On 20 May 2022, amendments to the WWC Act, including amendments to section 221 of the WWC Act, came into effect pursuant to the *Child Protection Reform and Other Legislation Amendment Act 2022* (Qld).
- [9] The relevant transitional provisions at section 597 of the WWC Act stipulate that if a review or appeal “was started but not decided or otherwise ended before the commencement of a relevant amendment” then “the entity hearing the review or appeal must apply this Act, as in force from the commencement of the relevant amendment, in relation to the subject matter of the review or appeal.”
- [10] The present application was started, but not yet decided or otherwise ended before the commencement of the relevant amendments. Therefore, the Tribunal is required to apply the relevant amendments to section 221 to the WWC Act in this case.

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<sup>1</sup> WWC Act, s 6.

<sup>2</sup> WWC Act, s 360.

<sup>3</sup> WWC Act, s 5(b); *WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190, [17].

<sup>4</sup> QCAT Act, s 20(1).

<sup>5</sup> WWC Act, s 353.

<sup>6</sup> WWC Act, s 221.

<sup>7</sup> QCAT Act, s 19(c).

<sup>8</sup> QCAT Act, s 20(2).

<sup>9</sup> *DM v Director-General, Department of Justice and Attorney General* [2022] QCAT 199, [10] (citing QCAT Act, s 21(3)).

[11] Section 221 of the WWC Act now reads, and is to be applied as follows:

**221 Deciding application** – no relevant information or conviction etc, for non-serious offence

- (1) The Chief executive must issue a working with children clearance to the person if the chief executive–

Is not aware of any recent information about the person or;

Is not required to issue a negative notice to the person under subsection (2).

- (2) The chief executive must issue a negative notice to the person if the chief executive–

(a) is aware of relevant information about the person and;

(b) is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a working with children clearance to the person.

- (3) For subsections (1) and (2), the following information about the person is relevant information–

(a) information that the person has–

a charge for an offence other than a disqualifying offence; or

a charge for a disqualifying offence that has been dealt with other than by a conviction; or

Note–

for charges for disqualifying offences that have not been dealt with, see chapter 7, Part 4, division 4 and sections 199, 295(1) and 296.

a conviction for an offence other than a serious offence;

(b) investigative information;

(c) domestic violence information

(d) disciplinary information

...

(f)<sup>10</sup> other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.

**Exceptional Case**

[12] The term exceptional case is not defined in the WWC Act. What is an exceptional case is a question of fact, a degree to be decided in each individual case, having regard to *“the content of the legislation which contains them, the intent and purpose of that legislation, and the interest of the persons whom it is here, quite obviously, designed to protect: children”*.<sup>11</sup>

[13] Where a person has been charged with or convicted of an offence the Tribunal must have regard to the consideration prescribed by section 226 of the WWC Act in

<sup>10</sup> The WWC Act does not contain a subsection 3(e).

<sup>11</sup> *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 (citing *Kent v Wilson* [2000] VSC 98 [22]) emphasis added.

determining whether an exceptional case exists. Where a person has other relevant information, the Tribunal must also have regard to the considerations prescribed in section 228 of the WWC Act.

- [14] Section 226 is not an exhaustive list of considerations and does “not expressly or impliedly continue the [Tribunal] to considering only the matters specified therein”, rather they are “merely certain particular matters which the Tribunal is obliged to consider in deciding the application”.<sup>12</sup>
- [15] It is the task of the Tribunal to decide the question of whether an exceptional case exists on the balance of probabilities, bearing in mind the gravity of the consequences involved.<sup>13</sup>
- [16] Neither party bears the onus in determining whether an exceptional case exists.<sup>14</sup>

### **The paramount principle under the WWC Act**

- [17] The WWC Act is to be administered under the principle that “*the welfare and best interests of a child are paramount*”.<sup>15</sup> Any doubt about the direct relevance of the principle to the review of child-related employment decisions is removed by section 360 of the WWC Act which provides that “*child-related employment decision[s are] to be reviewed under the principle that the welfare and best interests of a child are paramount.*”

### **The Human Rights Act**

- [18] The Tribunal has accepted that, when conducting a review of a child-related employment decision, the Tribunal is a “public entity” under the *Human Rights Act 2019* (Qld) (*HRA*) and as such the HRA applies.<sup>16</sup>
- [19] Under section 58 of the HRA it is unlawful for a public entity:
  - (a) To act or make a decisions in a way that is not compatible with human rights; or
  - (b) In making a decision, fail to give proper consideration to a human right relevant to the decision.
- [20] There are likely to be a number of human rights impacted by a child-related employment decision made under the WWC Act including the human rights of the applicant and the human rights of others, particularly the right of every child to the “*protection that is needed by the child, and is in the child’s best interest, because of being a child*”, as provided for in section 26(2) of the HRA.

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<sup>12</sup> Per Phillippedes J. in *Commission for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 applying s 102(5) of the *Commission for Children and Young People and Child Guardian Act 2000* (Qld) (*CCYPCG Act*) (prior to amendments and renumbering of the CCYPCG Act in 2010).

<sup>13</sup> *Commissioner for Children and Young People and Child Guardian v Maher and Anor* [204] QCA 492, citing with authority the test prescribed in *Briginshaw v Briginshaw and Anor* (1938) 60 CLR 336.

<sup>14</sup> *Commissioner for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28.

<sup>15</sup> WWC Act, s 6(a).

<sup>16</sup> *SSJ v Director General, Department of Justice and Attorney General* [2020] QCAT (unpublished decision, 17 June 2020), 109.

- [21] A decision will be compatible with human rights if it does not limit a human right or if it limits a human right in a way which is justified by the HRA.

**The task before the Tribunal – Is this an exceptional case?**

- [22] In making its determination the Tribunal must:
- (a) Have regard to the “paramount principle” under the WWC Act;<sup>17</sup>
  - (b) Consider the mandatory factors under section 226(2) of the WWC Act;
  - (c) Consider the mandatory factors under section 228(2) of the WWC Act;
- [23] Consider other factors relevant to the decision;<sup>18</sup> and
- [24] Give proper consideration to human rights relevant to the decision.<sup>19</sup>

**Traffic History – conviction or charge?**

- [25] The applicant made submissions that he had no criminal history. The applicant refutes that traffic history can be considered a charge. It is noted the applicant had a traffic history at the time of the hearing comprising approximately 13 entries as at September 2018. It was the respondent’s argument that a person’s traffic history constitutes a charge for the purposes of the WWC Act.<sup>20</sup> Schedule 7 of the WWC Act defines a charge as follows:

**Charge**, of an offence means a charge in any form, including for example, the following-

- (a) A charge or an arrest;
  - (b) A notice to appear served under the *Police Powers and Responsibilities Act 2000* (Qld), section 382;
  - (c) A complaint under the Justices Act 1886 (Qld);
  - (d) A charge by a court under the Justices Act 1886 (Qld), section 42(1A), or another provision of an Act;
  - (e) An indictment.
- [26] It is not disputed that the entries on the applicant’s traffic history are offences pursuant to various provisions under the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (‘Road Rules’) including excessive speeding under section 20 of the Road Rules.
- [27] This issue has been canvassed and determined by the Tribunal in the recent published decisions of *DL*<sup>21</sup> and *DEF*.<sup>22</sup>

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<sup>17</sup> WWC Act, ss 6(a), 360.

<sup>18</sup> Per Philippides J. in *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 applying s 102(5) of the CCYPCG Act.

<sup>19</sup> Human Rights Act 2019, s 58(1)(b).

<sup>20</sup> WWC Act, sch 7.

<sup>21</sup> *DL v Director-General, Department of Justice of Attorney General* [2021] QCAT 61.

<sup>22</sup> *DEF v Director General, Department of Justice and Attorney General* [2022] QCAT 127.

- [28] In *DL*, the Tribunal, constituted by Member Garner, explicitly considered whether entries on a person's traffic history constitute charges for the purpose of the WWC Act and held that:

...the applicant's traffic history includes "charges for an offence" and constitutes "criminal history" for the purposes of Chapter 8 of the WWC Act.<sup>23</sup>

- [29] Similarly in *DEF*, the Tribunal, constituted by Member Cranwell, held that:

....to apply the restrictive approach put forward by the applicant appears to be contrary to the definition contained within Schedule 7 to the Working with Children Act. That definition is an inclusive and non-exhaustive definition and provides that a charge means "a charge in any form". I am unable to see why this would not extend to an offence initiated by an infringement notice.<sup>24</sup>

- [30] In an unreported oral decision of *JME v Director General, Department of Justice and Attorney General*, the Tribunal constituted by Member Katter, found:

Whilst a literal interpretation of the word "charge" could lead to some consternation regarding whether or not the traffic history satisfies the definition of a charge, it would lead to an absurd result in this matter if [the respondent] and now the Tribunal were not able to give consideration to whether this issue is an exceptional case.

In accordance with the definition of "charge" being a charge in any form, given broad scope... as to what constitutes a charge, the Tribunal is satisfied, for the purposes of this application, that the traffic history and offences therein enable a Tribunal to consider section 226(2) of the Act. That is, the Tribunal is adopting a purposive approach in its interpretation of how the Act should operate. In support of this approach is section 6 of the Act, that sets out:

The Act is to be administered under the following principles: (a) the welfare and best interests of a child are paramount, and (b) every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing.

To take a technical approach to the definition of the word "charge" or to apply a restrictive definition to that word would not be in accordance with the purpose of the Act, having regard to the circumstances of the present matter before the Tribunal.

- [31] These matters having been addressed previously – the Tribunal concurs with this view and section 226 is involved. It is also noted that The Tribunal also considered that the information could be taken into account as "relevant information" under section 221(d) of the WWC Act.
- [32] The Tribunal acknowledges the applicant does not have any convictions – the applicant has never been found guilty of an offence in a court of law.

### **WWC Act section 226(2) considerations**

- [33] If accepted that the applicant's traffic history amounts to a "charge" the Tribunal must consider the list of factors prescribed by section 226(2) in determining whether an exceptional case exists.

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<sup>23</sup> *DL v Director-General, Department of Justice of Attorney General* [2021] QCAT 61, [49]

<sup>24</sup> *DEF v Director General, Department of Justice and Attorney General* [2022] QCAT 127, [4].

Whether the offence is a conviction or a charge<sup>25</sup>

- [34] The applicant has a traffic history comprising 5 offences which constitute charges under the WWC Act.<sup>26</sup>

Whether the offence is a serious or disqualifying offence<sup>27</sup>

- [35] None of the offences on the traffic history are serious offences<sup>28</sup> or disqualifying offences<sup>29</sup> under the WWC Act.

When the offence was committed or is alleged to have been committed<sup>30</sup>

- [36] The applicant's traffic offences as listed were committed between 2018 and 2022. It is to be noted that the applicant was previously issued blue cards in 2004, 2006, 2008, 2010, 2013, and 2017.

The nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children<sup>31</sup>

- [37] The applicant's traffic history comprises the following offences:

4 x speeding

1 x pedestrian obstruct drive/another pedestrian

- [38] The respondent made submissions that the traffic offences were of note as the applicant was a volunteer in child-related activities.

- [39] The applicant attested that the infringement notices were received in the course of her driving and all fines are paid.

- [40] The respondent has provided submissions that the traffic history is relevant to a person's eligibility to work with children as it raises concerns about the applicant's ability to respect rules and boundaries, and whether she is an appropriate person to be entrusted to care for the wellbeing of children and young people in activities regulated by the WWC Act.

In the case of a conviction – the penalty imposed by the court and if the court decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 357, the court's reason for the decision<sup>32</sup>

- [41] The applicant has not been convicted of any offence as defined by the Act.

Any information about the applicant provided under sections 318, 319, 335, 337, or 338 of the WWC Act<sup>33</sup>

- [42] No information was requested or received pursuant to these sections, given they are not relevant or applicable in this matter.

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<sup>25</sup> WWC Act, s 226(2)(a)(i).

<sup>26</sup> WWC Act, sch 7.

<sup>27</sup> WWC Act, s 226(2)(a)(ii).

<sup>28</sup> WWC Act, sch 2.

<sup>29</sup> WWC Act, sch 4.

<sup>30</sup> WWC Act, s 226(2)(a)(iii).

<sup>31</sup> WWC Act, s 226(2)(a)(iv).

<sup>32</sup> WWC Act, s 226(2)(a)(v).

<sup>33</sup> WWC Act, s 226(2)(b)-(d).



Anything else relating to the commission, or alleged commission, of the offence that is reasonably considered to be relevant<sup>34</sup>

- [43] The Tribunal considered other matters which is dealt with below.

### **Complaint Material**

- [44] On four (4) occasions between 2014 and 2017 the respondent received complaint information relating to the applicant, who was a blue card holder.
- [45] Included in the complaint information were copies of documents pertaining to family court proceedings involving the applicant (*‘the family law documents’*). These included interim orders, a Child Inclusive Conference Memorandum, and a Family Report. These items were considered by the respondent in making their decision and subsequently by the Tribunal.
- [46] Further material was received regarding the applicant and considered by the respondent. This material includes the following complaints:
- (a) The applicant verbally abused, pushed and behaved in an aggressive and threatening manner towards an adult person at her place of work;
  - (b) The applicant’s employment was subsequently terminated;
  - (c) The applicant had physically assaulted a second person;
  - (d) The applicant had verbally abused children.<sup>35</sup>
- [47] Further complaint allegations were raised regarding the applicant which included allegations of erratic, violent behaviour, an arrest for Cannabis (Oehydroepiandrosterone (DHEA) and Novadex were also found), use of steroids in connection with body building, an addiction to prescription medications, and an alleged attack by the applicant on her ex-partner with a knife.
- [48] Information regarding an extremely acrimonious family separation and Family Court proceedings also forms part of the information provided.
- [49] A Domestic Violence Protection Order was issued in the Childrens Magistrates Court on 18 December 2015. The Order was varied in the Bundaberg Magistrates Court on 26 October 2016 to list the applicant’s child on the order and add two additional conditions along with the mandatory conditions. This order expired on 17 December 2017.

### **Consideration whether an exceptional case exists**

- [50] Considered in totality, the police information regarding the Domestic Violence Order, combined with the complaint information and contents of the family court proceedings outline risks for the applicant in obtaining a blue card.
- [51] It is acknowledged the applicant’s submissions that she is the victim of an abusive and narcissistic ex-partner who has made the complaint information available to harm her. She also denies the allegation regarding the attack on her ex-partner with a knife, stating her son also manufactured the event.

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<sup>34</sup> WWC Act, s 226(2)(e).

<sup>35</sup> Complaint information received 15 September 2014.

- [52] In the Family Court proceedings, it is recorded the applicant advised the family report writer that she had a history of drug use including a heroin addiction in her twenties and continued drug use in her marriage. The applicant did not address any treatments she may have undertaken for this use nor deal with any inference of continued use.
- [53] The applicant's submissions display a lack of insight into the concerning nature of the complaint information in her written submissions and the relevance of the complaint information in an assessment of her eligibility to engage in child-related employment.
- [54] In *Re TAA* [2006] QCST 11 (26 June 2006) the former Children's Services Tribunal considered the relevance of insight at paragraph 97:

The Tribunal is of the view that good insight into the harm that has been caused is a protective factor. A person aware of the consequences of his actions on others is less likely to re-offend than a person who has no insight into the effect of his actions on others. This is particularly important with children because they are entirely dependent on the adults around them having insight into their actions and the likely effect on children.

- [55] The applicant has provided references from colleagues who have observed her professional interactions with children in her employment in child-related industries. While these references are favourable and refer to the applicant's compliance with the relevant professional standards, none of the referees indicate any knowledge of the complaint information against the applicant. In those circumstances, it remains unclear whether or not the referees would continue to support the applicant being issued with a blue card if they were aware of the nature of the allegations contained in the complaint information.

### **Transferability**

- [56] The effect of issuing the applicant's blue card is that the applicant is able to work in any child-related employment or conduct any child-related business regulated by the Act, not just the purpose for which the applicant has sought the card. Further, there is *no* power to issue a conditional blue card, for example one requiring the applicant to be supervised. Once issued, the blue card is fully transferable across all areas of regulated employment and business.

### **Considerations of the *Human Rights Act 2019* (Qld)**

- [57] In accordance with section 58(5) of the HRA, I have given proper consideration as to whether issuing a negative notice to the applicant limits a human right<sup>36</sup> as the decision will prohibit the applicant from working in child-related employment or carrying on a child-related business, as well as potentially impact on her plans to study both now and in the future.
- [58] While the right to work is not an express right in the HRA, the right to privacy and reputation<sup>37</sup> may potentially encompass a right to work. I also acknowledge the express right to education.<sup>38</sup> In considering whether a limitation on these rights is

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<sup>36</sup> HRA, s 13.

<sup>37</sup> HRA, s 25.

<sup>38</sup> HRA, s 36.

justified, I have also considered the right of the protection of families and children.<sup>39</sup> I am satisfied that any limitation on the applicant's right to privacy, reputation and the right to education is justifiably limited by the proper consideration of the competing right of every child to the protection that is needed by the child, and is in the child's best interests, because they are a child.<sup>40</sup> Further, in this instance, it is justifiable in a democratic society to limit the rights of one sector of the community in order to protect the human rights of a more vulnerable sector of the community.<sup>41</sup>

- [59] The limitation on the applicant's human rights is consistent with the object and purpose of the WWC Act, that is the welfare and best interests of the child are paramount. I am satisfied that there is no less restrictive way that the purpose can be achieved than the issue of a negative notice, and that the limit on human rights is justified under section 3 of the HRA.
- [60] On the information before the Tribunal, I am satisfied that issuing the applicant's blue card is not in the best interests of children and young people at this time.

### **Family Law Matter**

- [61] On 3 February 2022, a compulsory conference was held, during which the applicant raised concerns regarding the publication of family law material, including a Family Report, to the respondent, which is included in the respondent's Reasons document accompanying the applicant's negative notice.<sup>42</sup>
- [62] The Tribunal is to consider whether, and if so to what extent, section 121 of the *Family Law Act 1975* (Cth) ('FLA'), prevents or limits the publication of the family law material to the respondent, the Tribunal and/or to witnesses in these proceedings.
- [63] The Tribunal specifically considered Section 121(9)(aa) of the FLA together with regulation 19A of the *Family Law Regulations 1984* (Cth) ('FLR');

Whether, if publication is not permitted or is restricted:

- (i) The decision ought to be reconsidered; or
- (ii) The reasons for the decision ought to be amended or redacted; and

Whether, if publication appears to be in breach of section 121 of the FLA, it should be referred to the Registrar of the Family Court and Federal Circuit Court of Australia.

- [64] The FLA imposes a prohibition on the publications of any part of family law proceedings.
- [65] Section 121 relevantly provides:
- (1) A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or

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<sup>39</sup> HRA, s 26.

<sup>40</sup> HRA, s 26(2).

<sup>41</sup> HRA, s 26(1).

<sup>42</sup> Discussions between the parties during a compulsory conference are confidential and without prejudice. However, the concerns raised by the applicant are reflected in Direction One (1) of the Tribunal's Directions of 3 February 2022.

to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies:

- (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c) a witness in the proceedings;

commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

- (2) A person who, except as permitted by the applicable Rules of Court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court), a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by a court commits an offence punishable, upon conviction by imprisonment for a period not exceeding one year.

- (5) An offence against this section is an indictable offence.

...

- (9) The preceding provisions of this section do not apply to or in relation to:

- (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
- (aa) the communication of any pleading, transcript of evidence or other document to authorities of States and Territories that have responsibilities relating to the welfare of children and are prescribed by the regulations for the purposes of this paragraph;
- (b) the communication of any pleading, transcript of evidence or other document to:
  - (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or
  - (ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory; or
- (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or
- (d) the publishing of a notice or report in pursuance of the direction of a court; or
- (da) the publication by the court of lists of proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or
- (e) the publishing of any publication bona fide intended primarily for use by the members of any profession, being:
  - (i) a separate volume or part of a series of law reports; or

- (ii) any other publication of a technical character; or
- (f) the publication or other dissemination of an account of proceedings or of any part of proceedings:
  - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
  - (ia) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
  - (ii) to a person who is a student, in connection with the studies of that person; or
- (g) publication of accounts of proceedings, where those accounts have been approved by the court.

...

(11) In this section:

*court* includes:

- (a) an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the Rules of Court; and
- (b) a tribunal established by or under a law of the Commonwealth, of a State or of a Territory.

[66] Regulation 19A of the FLR provides, seemingly exhaustively, that the Queensland authority exempt from restrictions to publication referred to in section 121(9)(aa) is the Department of Child Safety, Youth and Women (or equivalent as the case may be).

[67] Accordingly, while arguably the respondent is an authority that has responsibilities relating to the welfare of children, the provision of Family Law documents to the respondent is not exempt from restrictions on publication of court proceedings for the purposes of section 121(9)(aa) of the FLA.

[68] However, the Tribunal finds that section 121(9)(f)(i), which allows “the publication or other dissemination of an account of proceedings or of any part of proceedings, to a person who is a member of a profession, in connection with the practice by that person of that profession”, applies in this case.

[69] The Tribunal notes section 121(9)(f)(i) raises the following considerations:

- (a) Disseminates by any means;
- (b) Account of proceedings or of any part of proceedings; and
- (c) A person who is a member of the profession.

[70] These terms were considered in *Winters v Winters*.<sup>43</sup> *Winters* involved a party to a family law proceeding providing their psychologist copies of documents, including a family report and an interim judgement, to assist the psychologist in providing psychological treatment.

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<sup>43</sup> [2015] FamCA 195, [13]-[22] (*‘Winters’*).

- [71] With respect to “*disseminates by any means*”, the Court in *Winters* considered that the party providing the psychologist with relevant documents was dissemination within the meaning of section 121(9)(f)(i), but not to the public or a section of the public.
- [72] In this case, there had been dissemination of the family law documents to the respondent in the first instance and the applicant. However, following the reasoning in *Winters*, the Tribunal finds this did not constitute dissemination to the public or a section of the public.
- [73] With respect to “*account of proceedings or any part of proceedings*”, the Court in *Winters* referred to the decisions in *Hinchcliffe v Commissioner of Australian Federal Police*,<sup>44</sup> which found that before there can be an account of proceedings in the relevant sense, a communication must purport to narrate, describe, retell or recite something that has happened in the proceedings, or something about the proceedings.
- [74] A transcript of proceedings would comprise an account of the proceedings. Following the reasoning in *Hinchcliffe*, the Tribunal finds that the family law documents would not be a narrative or recitation of proceedings and therefore are not an account of the proceedings.
- [75] With response to a “*person who is the member of a profession*”, the Court in *Winters* held that a professionally qualified psychologist, who was treating the party therapeutically, was a person who is a member of a profession within the meaning of section 121(9)(f)(i) of the FLA.
- [76] The Tribunal finds that an employee of the respondent employed for the purpose of assessing blue card applications is a member of a profession for the purposes of section 121(9)(f)(i) of the FLA.
- [77] Accordingly, the Tribunal finds that this case is excluded from the operation of section 121(1) of the FLA and an offence has not been committed by the provision of the family law documents.
- [78] The provision of the relevant information to a government body or investigative body, for the purposes of consideration in other proceedings or applications, is not publication to the public within the meaning of section 102(P) of the FLA.

### **Decision**

- [79] The decision before the Tribunal is whether, having regard to the paramount principle under the WWC Act, the applicant’s case is an exceptional case in which it would not be in the best interests of children for her to be issued with a blue card.
- [80] Overall, the material, including the applicant’s oral testimony at the hearing, indicates either a lack of insight or denial of responsibility regarding her actions and how they may have contributed to harm or the potential of harm.
- [81] The Tribunal finds that this case is an exceptional case such that it would not be in the best interests of children and young people for the applicant to be issued with a blue card.

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<sup>44</sup> (2001) 118 FCR 308, [324]-[325] (*‘Hinchcliffe’*).

**Orders**

- [82] The decision of the Director-General, Department of Justice and Attorney-General that the applicant's case is "exceptional" within the meaning of section 221 of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) is confirmed.