

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *LT v Director-General, Department of Justice and Attorney-General* [2020] QCAT 150

PARTIES: **LT**  
(applicant)

**v**

**DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL**  
(respondent)

APPLICATION NO/S: CML177-18

MATTER TYPE: Childrens matters

DELIVERED ON: 14 April 2020

HEARING DATE: 25 September 2019

HEARD AT: Hervey Bay

DECISION OF: Member Milburn

ORDERS:

- 1. The decision of the Respondent that the Applicant's case is an exceptional case in which it would not be in the best interests of children for a positive notice to issue is confirmed.**
- 2. Pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), the Tribunal prohibits the publication of the names of the Applicant and any witnesses appearing at the application.**
- 3. The decision of the Tribunal is to be delivered to the parties by email.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – review of negative notice – review of a decision to issue a negative notice and cancel a blue card – where Applicant has a criminal history without any serious or disqualifying offences – where the Applicant is alleged to have committed an assault against children – where Applicant has a history of illicit drug use – whether exceptional circumstances exist – whether it is in the best interests of children to issue a positive notice

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20, s 66, s 354

*Working with Children (Risk Management and Screening) Act 2000* (Qld), s 5, s 6, s 167, s 221, s 226

*Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492

*JA v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 251

*Re Imperial Chemical Industries Ltd's Patent Extension Petitions* [1983] 1 VR 1

*Re TAA* [2006] QCST 11

*RPG v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 331

*WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190

#### APPEARANCES & REPRESENTATION:

Applicant: K Elder, Solicitor of the Aboriginal and Torres Strait Islander Legal Service

Respondent: A Bryant, In-house Government Legal Officer of the Director-General, Department of Justice and Attorney-General

#### REASONS FOR DECISION

- [1] LT ('the Applicant') is a proud indigenous woman who had a very difficult childhood. She was the victim of sexual abuse as a child and significant domestic violence as an adult. Her mother provided her with cannabis at the age of five years, by infusing it into camomile tea. She started smoking marijuana at the age of 13 years, when her mother continued supplying the drug to her. In part, she grew up in Nimbin, New South Wales and cannabis was prevalent. She has stopped using the drug. She has been charged with many offences over a lengthy period but many of the charges were withdrawn and in relation to those charges, she was discharged. One of those charges related to assaulting children. She does have some convictions for offending behaviour.

#### **Application for blue card**

- [2] The Applicant applied for a positive notice and blue card under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ('the WWC Act'). The Director-General, Department of Justice and Attorney-General ('the Respondent'), through Blue Card Services ('BCS'), issued a negative notice under the WWC Act. That is, on 19 May 2019, the Respondent denied the Applicant her request for a blue card. BCS provided the Applicant with written notice of the decision, the reasons for the decision ('the Reasons Document') and the relevant review information. The Applicant applied for a review of this reviewable decision under the WWC Act.

### **QCAT review process**

- [3] The Queensland Civil and Administrative Tribunal ('the Tribunal') reviews the decision of the Respondent in these proceedings.<sup>1</sup> The Tribunal does so in accordance with the WWC Act and the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).<sup>2</sup> The purpose of the review is to produce the correct and preferable decision.<sup>3</sup>

### **Object of the WWC Act**

- [4] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland and BCS does that through a scheme requiring the screening of persons employed in particular employment or carrying on particular businesses.<sup>4</sup> That object has been extended to '... screen persons who work, or wish to work with children, to ensure that they are suitable persons to do so'.<sup>5</sup>

### **Reason for applying for a blue card**

- [5] The Applicant requested a blue card because she wants to continue to work in child-related employment with indigenous children.<sup>6</sup>

### **Reasons for rejecting the application**

- [6] The Respondent refused to issue a blue card because of the Applicant's criminal convictions, and charges.
- [7] Some of the charges that did not result in convictions involved drug related matters, some related to contravention of domestic violence orders, one related to aggravated assault but the most significant, in the context of this application, is a charge of assaulting children. The Tribunal does consider those allegations that were made against the Applicant which did not result in convictions.
- [8] The convictions involved drug related matters, possession of weapons, contravention of domestic violence orders, wilful damage, public nuisance and obstructing police.
- [9] The Respondent conceded that, by reference to the WWC Act, the offending for which the Applicant was convicted does not constitute a 'serious offence', as defined in the WWC Act,<sup>7</sup> and therefore the presumption is to find that the application is not exceptional.<sup>8</sup> Unless satisfied that an exceptional case exists in which it would not be in the best interests of children to do so, the decision-maker must issue a positive notice.<sup>9</sup>

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 354.

<sup>2</sup> *Ibid*, s 20(1).

<sup>3</sup> *Ibid*, s 20(2).

<sup>4</sup> *Working with Children (Risk Management and Screening Act) 2000* (Qld), s 5 ('WWC Act').

<sup>5</sup> *WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190, [17].

<sup>6</sup> Oral evidence of the Applicant at the Tribunal hearing.

<sup>7</sup> WWC Act, s 167.

<sup>8</sup> *Ibid*, s 221(1)(c).

<sup>9</sup> *Ibid*, s 221(2).

### **The role of the Tribunal**

- [10] It was common ground that the Tribunal must find the case is exceptional to deny the Applicant a blue card. BCS determined that the Applicant's case was exceptional, and this position was maintained by the Respondent at the Tribunal hearing. Of course, the Applicant urged the Tribunal to find that the case was not exceptional.
- [11] Where a person has been charged with, or convicted of, an offence, the Tribunal must have regard to considerations prescribed by section 226 of the WWC Act in determining whether an exceptional case exists. This section is not an exhaustive list of considerations, but it does prescribe certain matters that the Tribunal must consider in deciding an application.<sup>10</sup> The Tribunal must consider identified risk factors and identified protective factors in determining whether an exceptional case exists. The welfare and best interests of a child are paramount, and every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing.<sup>11</sup>
- [12] The Respondent argued that although the Applicant was a victim of domestic violence, she has engaged in antisocial behaviour over an extended period and that such behaviours go beyond the period when she was directly victimised as the victim of abuse. The Respondent raised concerns about the Applicant's substance abuse involving both cannabis and alcohol, and the Applicant's mental health issues. The Respondent raised concerns as to whether the substance abuse and mental health issues are effectively managed, and the Respondent has concerns about whether the Applicant has expressed genuine remorse, and whether she has gained appropriate insight. The Respondent conceded that this is not a matter of punishing the Applicant.
- [13] A blue card is fully transferable. The impact of failing to obtain a blue card upon the Applicant are irrelevant for the Tribunal's considerations.

### **Notices to Produce**

- [14] At the request of the Applicant, the Tribunal issued certified Notices to Produce to the Department of Health in the Northern Territory and the Chief Operating Officer of Role Models and Leaders Australia. The Tribunal has had the benefit of considering the produced documents.
- [15] The Applicant relied upon the material produced by Role Models and Leaders Australia.<sup>12</sup>
- [16] In addition, the Tribunal had the benefit of considering documents that were produced by the Northern Territory Police Service.

### **Exceptional Case**

- [17] The Tribunal has a wide discretion to determine whether this is an exceptional case. In *Re Imperial Chemical Industries Ltd's Patent Extension Petitions*, Fullagar J

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<sup>10</sup> *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

<sup>11</sup> WWC Act, s 6.

<sup>12</sup> Applicant's submissions dated 16 October 2019, 1.

stated that, 'it would be most unwise to lay down any general rule with regard to what is an exceptional case ... All these matters are matters of discretion'.<sup>13</sup>

[18] Each case is to be considered on its own facts.

### **Charges and court history**

[19] The Respondent provided written submissions<sup>14</sup> and identified the Applicant's offending and alleged offending as relevant to the Tribunal's determination. The relevant sections of the submissions are as follows (adopting the numbering from the original document):

#### **The circumstances of charges and/or convictions identified in the police information**

5. The circumstances of the Applicant's offending and alleged offending is disclosed in the various documents filed in these proceedings, in particular the relevant police reports.<sup>15</sup>
6. Without re-stating the relevant documents, the following factors are of particular concern:

#### *Applicant's criminal history*

- a) a) the Applicant's criminal history contains:
  - i. eight (8) convictions and one (1) charge for drug related offences between 1993 and 2003, including convictions for *producing dangerous drugs* and *possessing instructions for producing dangerous drugs*;<sup>16</sup>
  - ii. two (2) convictions relating to the unlicensed and unsecure possession of weapons in 2003;<sup>17</sup>
  - iii. five (5) convictions and eight (8) charges for engage in conduct that contravenes a domestic violence protection order between 2011 and 2015;<sup>18</sup>
  - iv. four (4) charges for offences of a violent nature, including one for assault a person under 16 years by adult;<sup>19</sup>
  - v. seven (7) convictions for offences relating to anti-social behaviour, including obstruct police, commit public

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<sup>13</sup> [1983] 1 VR 1, [10].

<sup>14</sup> Respondent's written submission, dated 6 November 2019.

<sup>15</sup> Police briefs of facts – various assault and domestic violence related offences (on 10/02/2014, 23/02/2012, 24/09/2010 & 25/09/2010), at BCS-19 to BCS-23; police briefs of facts – various drug and weapon related offending (on 11/01/1993, 04/05/2000, 10/10/2003), at BCS-46 to BCS-58; and police briefs of facts – various offences (on 31/12/2018), at BCS-62 to BCS-68).

<sup>16</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various drug related offending (on 11/01/1993, 04/05/2000, 10/10/2003), at BCS-46 to BCS-55.

<sup>17</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – weapons related offending (on 10/10/2003), at BCS-56 to BCS-58.

<sup>18</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various assault and domestic violence related offences (on 10/02/2014, 23/02/2012, 24/09/2010 & 25/09/2010), at BCS-19 to BCS-23.

<sup>19</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various offences (on 31/12/2018), at BCS-62 to BCS-68.

nuisance and breach of bail between 1995 and December 2018.<sup>20</sup>

*Domestic violence*

- b) The police material indicates the Applicant has a history of engaging in, and/or allegedly engaging in, domestic violence. The material indicates the Applicant has repeatedly verbally and physically abused her ex-partner and, on several occasions, children have been exposed to that abuse.<sup>21</sup>

*Assault of children*

- c) Of particular concern is the alleged incident from 10 February 2014. The Applicant allegedly attended the residence of her ex-partner [RM], verbally abused him and left their five (5) year old daughter in his care. The Applicant also made crude, sexual gestures and yelled abuse at [RM] in the presence of a number of children. The Applicant later returned to the residence whilst intoxicated and allegedly assaulted her ex-partner's new partner and physically assaulted two (2) children, aged thirteen (13) and eleven (11) years of age.<sup>22</sup>

*Drug offending*

- d) Between 1993 and 2003, the Applicant was found (or allegedly found) in possession of cannabis and/or related utensils on four (4) separate occasions<sup>23</sup> and admitted to police in 2000 and 2003 that she smoked cannabis.<sup>24</sup> In 2003, the Applicant was also convicted of producing dangerous drugs after police found a hydroponic set-up for growing cannabis within a concealed room at her residence.<sup>25</sup>

*Anti-social behaviour*

- e) The Applicant also engaged in anti-social behaviour on 31 December 2018, following which she was convicted of three (3) offences. The Applicant consumed alcohol and unlawfully started a fire on a local beach. When asked by police to extinguish the fire, the Applicant became verbally abusive, obstructed police and urinated on herself. After being taken to the watchhouse, the Applicant also deliberately damaged police

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<sup>20</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various assault and domestic violence related offences (on 10/02/2014, 23/02/2012, 24/09/2010 & 25/09/2010), at BCS-19 to BCS-23 and police briefs of facts – assault police officer (on 31/12/2018), at BCS-62 to BCS-68.

<sup>21</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various assault and domestic violence related offences (on 10/02/2014, 23/02/2012, 24/09/2010 & 25/09/2010), at BCS-19 to BCS-23.

<sup>22</sup> Police briefs of facts – engage in conduct that contravenes DVO (two counts) and assault a person under 16 years by adult (on 10/02/2014), at BCS-19 to BCS-21.

<sup>23</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various drug related offending (on 11/01/1993, 04/05/2000, 10/10/2003), at BCS-46 to BCS-55.

<sup>24</sup> Police briefs of facts – various drug related offending (on 04/05/2000 and 10/10/2003), at BCS-49 to BCS-55.

<sup>25</sup> Ibid, at BCS-51 to BCS-55.

property by tearing up a cushion and forcing pieces of it into a toilet.<sup>26</sup>

7. The circumstances of the Applicant's offending and alleged offending, as detailed in the police information, raises significant concerns about the Applicant's ability to provide children in her care with a safe and protective environment. Further, given the Applicant's offending and alleged offending has occurred over a period of approximately twenty-five (25) years (and until as recently as December 2018), the ongoing nature of the Applicant's offending suggests she has not effectively addressed the underlying triggers to her offending. This raises further concerns about the Applicant's risk of reoffending in the future.

[20] The Applicant also addressed her offending, and alleged offending, in written submissions.<sup>27</sup> In the course of doing so, the Applicant presented arguments as to why the Tribunal should not find that the circumstances of the Applicant are sufficient to warrant a finding that this is an exceptional case. The relevant sections of the submissions are as follows (adopting the numbering from the original document):

46. Having regards to the Applicant's drug charges pursuant to ss226(2)(a), it is the Applicant's submission that two charges in 1993, one charge in 1995, two charges in 2000 and five contemporaneous charges in 2003 do not indicate an ongoing use of illicit drug use, but rather an occasional recreational use of cannabis. It is for this reason that the Applicant does not have ongoing offences recorded on an annual basis and has no charges at all since 2003; some sixteen years. Which, the Applicant further submits; is a period of time that far exceeds the period of time in which she would occasionally use cannabis recreationally on her own time and never during the course of her employment or business.
47. The Applicant gave evidence that whilst she appreciates the illicit drug use is illegal and that she would only again use cannabis if prescribed it by a doctor; it is her submission that weight must be given to the fact that all of her illicit drug use is restricted to cannabis and needs to be considered in light of her upbringing where her mother gave her camomile tea mixed with cannabis from the age of five to calm her diagnosed hyperactivity. The Applicant further submits that she is not seeking to minimise her drug use and takes responsibility for breaking the law; but also submits that it is of equal importance that of her ten drug charges; one was dismissed and of the remaining nine, three resulted in no convictions being recorded and all resulted in the penalty of fines only.
48. Most importantly with regards to her drug offences, the Applicant submits that none of them are serious or disqualifying offences under the Act.
49. As to the Applicant's domestic violence charges pursuant to ss226(2)(a); the Applicant continues to submit that these were situational and environmental as a result of her relationship with [RM] and being unable to leave Darwin for medical and financial reasons.

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<sup>26</sup> Police briefs of facts – various offences (on 31/12/2018), at BCS-62 to BCS-68.

<sup>27</sup> Applicant's written submissions dated 16 October 2019.

50. The Applicant has no history of any kind of domestic violence offence prior to relocating to the Northern Territory to reside with [RM]; nor has she been named as a Respondent in an Application for a Protection Order in Queensland (or the relevant state/territory equivalent) or charged with breaching a domestic violence order (or the relevant state/territory equivalent) since she relocated to Queensland and escaped the horrific domestic violence that [RM] continued to perpetrate against her.
51. The Applicant was very frank both in her written and oral evidence that on occasion she did act in self defence against [RM], which resulted in her acting out in a verbal and physical manner against him. However, she denies the extent to which this took place in front of her children and [RM]'s older children, as alleged by the Respondent. The Applicant submits that whilst any act of domestic violence is inappropriate, that weight must be given to her evidence that she was acting in self-defence on all occasions and that she never instigated the violence.
52. The Applicant submits that whilst this may appear that she is seeking to minimise her involvement in committing domestic violence; this could not be further from the truth. She took a number of protective measures to protect both herself and her biological children from [RM], including living separately from him and minimising her interaction with him until she could flee Darwin and working with the Department of Communities and Families. Similarly, she participated in Federal Circuit Court proceedings for (the youngest child), which resulted in a finding that [RM] had fabricated much of the domestic violence that he alleged that the Applicant perpetrated against him and that the bests [sic] interest of (the youngest child) was for the Applicant to have sole parental responsibility for her; rather than the usual presumption of equal shared parental responsibility by the parties for the child.
53. The Applicant submits that the Respondent should be concerned that between 2010 and 2015, she was charged with fourteen domestic violence offences. However, she further submits that the Respondent has failed to give sufficient consideration to her helpless situation at the time; that eight of the fourteen charges were withdrawn and that of the six remaining, all resulted in fines; that none of them occurred in the Applicant's place of employment or business; and that, but for her being stuck in Darwin in the first place, it can be reasonably argued that the Applicant would never have been charged with any domestic violence offences throughout her life.
54. It is the Applicant's submission that this is not a long bow to draw given the absence of domestic violence charges both prior and since she resided in the Darwin suburbs and the evidence of both the Applicant, JS and GG<sup>28</sup> about the Applicant's house always being known as a safe place where children could go for a feed, a bed, a yarn and general safety when bad things were going on for them personally and/or in their home life.

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JS and GG both provided evidence for the Applicant, as outlined below.

55. Finally, and most importantly with regards to the domestic violence offences, the Applicant submits that none of them are serious or disqualifying offences under the Act.
56. The Applicant was charged with assault a person and aggravated assault on 23 February 2012 and assault a person under sixteen years by adult on 10 February 2014. Again, the Applicant submits that these are serious charges which the Respondent should rightly take notice of. However, she also again submits that whilst the Respondent is not restricted to only looking at convictions when deciding whether an exceptional circumstance exists under s 226(2)(a)(i); the fact remains that all three of the charges made against her by [RM] were vexatious and malicious behaviour in his ongoing desire to control her, prevent her from leaving the Darwin area and perpetrating domestic violence against her generally.
57. The Applicant gave very frank evidence about the occasions when she did act in self-defence against [RM]; that she abhors violence; and would definitely cop to something if she had done it; however, in this instance; she never did anything wrong. Accordingly, she submits that she is not seeking to minimise the three assault charges; but rather denies them because they never happened. Instead she submits, for the Respondent to give them the weight they have is not only subjecting her to further trauma as a result of this very dark period of her life; but is also prejudicial against her given her circumstances at the time, the fact that all three charges were withdrawn, that they did not occur in her place of employment or business and most importantly, are neither serious or disqualifying offences.
58. Moving onto the four charges of 31 December 2018; the Applicant submits that whilst these had not yet occurred at the time of a negative notice being issued against her; the Tribunal has a right to consider them in totality when determining whether or not the negative notice should be overturned.
59. When considered in accordance with s226(2)(a), the Applicant submits that she pleaded guilty to obstructing a police officer, committing public nuisance and wilful damage of police property as she did commit these offences. Having committed the offences, the Applicant does not seek to excuse her behaviour, despite the blatant racism that she gave evidence about that lead to the charges. She acknowledges that she did not conduct herself in a manner that was inappropriate; hence no conviction being recorded against her and all three charges resulting in one \$600.00 fine.
60. As to the assault police officer charge, the Applicant submits that the Respondent, during cross examination, placed too much emphasis on the charge itself and insufficient weight on that fact that the charge was withdrawn due to their [sic] being no evidence to offer. The Applicant gave evidence of how Queensland Police provided body-cam footage that had no sound, but that upon being provided with undoctored footage that evidenced the words of the attending officers, Police Prosecutions agreed to withdraw the charge.
61. It is the submission of the Applicant, that the Respondent has again placed too much weight on the fact that none of the four charges occurred in the Applicant's place of employment or business; that the outcome of the four charges resulted in the assault charge being

withdrawn, whilst the other three did not have convictions recorded, only a \$600 fine being issued; and that none of the four offences are serious or disqualifying offences under the Act.

62. Having regards to s226(2)(e) the Act, the Applicant repeats her submissions that none of the offences recorded on her criminal history are defined as serious or disqualifying offences under the Act either at the time the negative notice was issued or under the recent amendments to the Act that came into force on 5 August 2019. Further, it is submitted that the results of the charges are a mixture of outcomes of conviction and no conviction recorded and were all dealt with by way of fines. At no time was the Applicant on remand awaiting hearing of the charges, nor did she receive a period of imprisonment for her sentence.
63. The Applicant concedes that whilst the earliest entry on her criminal history was a charge on 11 January 1993 and the most recent on 31 December 2018, it is her submission that she does not have a consistent and ongoing criminal history with annual entries. Putting aside the charges from her time in the Northern Territory, which she continues to submit are situational/environmental only and would not have occurred but for being subjected to horrific domestic violence that she simply could not get up and walk away from; the Applicant's criminal history is limited to charges in 1993, 1995, 2000, 2003 and 2018. Put into context, it is the submission of the Applicant that her criminal history is infrequent rather than ongoing and that the seriousness of the offences are nominal, as reflected in the number of withdrawal of charges, lack of convictions being recorded and the penalty of the offences never resulting in more than a fine. In other words, it is the submission of the Applicant that they are not sufficient to be deemed an exceptional case.

### **The Applicant's mental health**

[21] The Respondent submitted that the Tribunal must consider the stability of the applicant's mental health in determining whether this is an exceptional case. The Respondent provided written submissions<sup>29</sup> and identified offending and alleged offending as relevant to the Tribunal's determination. The relevant sections of the submissions are as follows (adopting the numbering from the original document):

10. This material highlights concerns about the Applicant's history of engaging in domestic violence and of exposing children in her care to that behaviour. It further indicates the Applicant continued to engage in such behaviour, despite the imposition of orders prohibiting her from doing so. The material also suggests the Applicant may suffer mental health issues. The material raises additional concerns about the Applicant's eligibility to engage with children and young people in an appropriate and protective manner.

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21. (n) The written and oral evidence suggests the Applicant may have mental health issues, which have manifested in suicide attempts in both her childhood<sup>30</sup> and as an adult.<sup>31</sup> The Applicant has not provided

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<sup>29</sup> Dated 6 November 2019.

<sup>30</sup> Personal history of Applicant dated 17 August 2018, paragraphs 6 and 7.

a health report for the purpose of these proceedings addressing issues relating to her mental health. In the absence of medical evidence, given the Applicant's history of mental health problems (manifesting in suicide attempts), it is of concern whether the Applicant's mental health is effectively managed on an ongoing basis, such that it is not likely to adversely impact her ability to adequately care provide for children and young people.

- [22] The Applicant strongly opposed the suggestion of the Respondent that the Applicant may have mental health issues. In supplementary written submissions, dated 19 November 2019, the Applicant raised the following concern:

Referring to paragraphs 10 and 21(n) of the Respondent's submissions, the Applicant has not been diagnosed with any mental health issues and there is no evidence before the Tribunal to confirm the same. It is the Applicant's submission that these submissions by Respondent are inflammatory at best and that no weight should be given to them. This is especially given the Respondent's failure to refer to and acknowledge the traditional Aboriginal medical treatments that the Applicant prefers to rely upon for her health over the more mainstream Western medical treatments, which will be further detailed below.<sup>32</sup>

#### **Risk factors and protective factors**

- [23] The Tribunal must balance relevant risk and protective factors in each case and, where there are multiple factors in a case, the Tribunal must apply weight to the relevant factors.<sup>33</sup> That requires the Tribunal to undertake a careful analysis of the circumstances in the case, which involves the application of a discretion.
- [24] The Tribunal must consider the actions of the Applicant, but seek to determine the extent to which the Applicant has modified her behaviour and to what extent her past should be regarded a risk to children at this time. These are key issues for the determination of the Tribunal.

#### **Matters to which the Tribunal must have regard**

- [25] The Tribunal must consider whether the circumstances identify a risk sufficient to warrant being satisfied that it is an exceptional case in which it is not in the best interests of children for a positive notice to be issued. Each case must be dealt with on its own facts. The issue for the Tribunal is one that must be considered within the context of the individual circumstances of the Applicant and the circumstances of the offending behaviour, and is ultimately one that requires the Tribunal to exercise a discretion, bearing in mind the requirement to determine whether there is a real and appreciable risk to the safety of children as a result of its decision.
- [26] The Respondent urges the Tribunal to find that the charges, and the convictions, are serious matters, even though the Applicant's history does not disclose a 'serious offence'. The Respondent also acknowledged a degree of remorse by the Applicant but suggested that she lacked insight into her offending behaviour.

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<sup>31</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-196 and NTP-700.

<sup>32</sup> Paragraph 1.

<sup>33</sup> *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

- [27] The Applicant produced statements in support. While the Respondent conceded that the referees provide evidence of protective factors, they are not such as to mitigate the risk factors. The Respondent urged the Tribunal to find that the Applicant has not yet developed appropriate insight, has not addressed triggers that may cause her to re-engage in offending behaviours and that ultimately allowing the Applicant to have a blue card would have a negative impact on children.
- [28] The Applicant urged the Tribunal to find that she does have insight, that she has made substantial changes to his lifestyle and that her personal circumstances have changed.

### **The life story of the Applicant**

- [29] The Applicant provided a version of her life story ('the Applicant's Personal History'), dated 17 August 2018, to the Tribunal. In it, the Applicant said:
- (a) She had a fairly traumatic childhood.
  - (b) She had no early contact with her father [MB].
  - (c) She was diagnosed as hyperactive during infancy.
  - (d) Her stepfather sexually abused her from an extremely early age.
  - (e) She attended a good school and received a good education.
  - (f) She has been racially vilified throughout most of her life.
  - (g) Her mother left her stepfather when she was eight years old and they moved between Canberra and Nimbin.
  - (h) At a very young age, she attempted suicide as a result of the sexual abuse she had suffered, and she was hospitalised.
  - (i) She disclosed the sexual abuse to her mother.
  - (j) Her mother could not cope with this information and she sent her (the Applicant) to a boarding school.
  - (k) Growing up in Nimbin, she was surrounded by drugs. Her mother smoked cannabis, as did all her friends, and her stepfather took heavier drugs.
  - (l) When she was about five years old, her mother commenced infusing marijuana into tea to be consumed by the Applicant as 'medication for hyperactivity'.<sup>34</sup>
  - (m) She smoked marijuana from the age of 13 and smoked heavily throughout her teens.
  - (n) She was a representative sportsperson, regularly playing in the New South Wales State titles and played soccer in the under 18s side for the state.
  - (o) She continues to play soccer in the Masters Games most years and it has kept her fit and healthy for many years.
  - (p) She stopped smoking marijuana at the age of 19 years, when she fell pregnant with her eldest daughter.

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<sup>34</sup> Applicant's Personal History, paragraph 10.

- (q) The father of her child did not stay in the relationship.
- (r) Later she met [GW] and they moved to Byron Bay.
- (s) She established a relationship with her father in her late teens.
- (t) Her father is a highly respected senior Butchulla elder and over a period of years her father and others provided education about her indigenous heritage.
- (u) She learned about traditional music (both song and dance) and indigenous languages and linguistics.
- (v) She and [GW] moved to Hervey Bay, which is Butchulla country so she could better know her father's family.
- (w) [GW]'s family asked him to work with his people on Mornington Island.
- (x) She was pregnant at the time and the family arranged for work for [GW], so that their child could be born in Townsville.
- (y) She and [GW] had a child together and when the baby was just 12 weeks old, they lost [GW] in a plane crash.
- (z) The plane crashed at sea and it took three years to locate the wreckage.
- (aa) Her daughter was devastated and had difficulty in coming to terms with her grief.
- (bb) She stayed on Mornington Island for over a year after the loss of [GW], where she worked at the local school teaching song and dance and developing and implementing a cultural program in the school. She taught preparatory school for Townsville TAFE and she was a Drug & Alcohol support officer.
- (cc) She left Mornington Island to live at Ravenshoe where she worked with a local elder on the local Jidabul language, helping develop lessons to maintain the language.
- (dd) By now, the plane had been discovered and a committee voted not to attempt to retrieve the bodies. That was devastating for the Applicant who started to smoke cannabis once again.
- (ee) In 2003, she was apprehended by police and convicted of the production and possession of cannabis.
- (ff) She has not had an association with drugs since that time.
- (gg) In 2006, she returned to Hervey Bay and immediately started working on the Butchulla language once again. She commenced distance education and graduated with an Advanced Diploma of Cultural Knowledges through Charles Darwin University.
- (hh) After the first year of study at the University, she was offered a relocation scholarship to move to Darwin and study full-time.
- (ii) She met a man [RM] while studying and she decided to live with him and they, and her children, moved to Darwin in 2008.
- (jj) At the age of 37 years, she fell pregnant. During the pregnancy, [RM] was violent and controlling towards her. He was jealous and physically abusive

towards her. He would remove her from the house through physically assaulting her.

- (kk) She gave birth to a child at 28 weeks in the pregnancy. She sent her other three children back to Hervey Bay to be cared for by her family.
- (ll) She felt completely isolated but cared for the youngest child. Against her wishes, [RM] moved back to live with her. She was too weak to say no.
- (mm) She was able to leave, and she moved into emergency housing.
- (nn) She felt that she could not access local services for assistance as [RM] 'had someone from his family working in it, particularly DV Connect, a domestic violence organisation his sister worked there. I felt like there was no help that I could access'.<sup>35</sup>
- (oo) On occasions, she did fight back against [RM].
- (pp) She had no resources and no support as she was 'not on country'.<sup>36</sup>
- (qq) [RM] bashed her. She had been physically abused by him many times but on this occasion 'he really laid into me'.<sup>37</sup> She stated, 'I contacted the police and Child Services, but no one would help me'.<sup>38</sup> She said that she had to take her child from [RM]'s niece and several people accused her of assault, but the allegations were untruthful.
- (rr) Although the allegations were untruthful, police did charge her with assault and with a breach of a domestic violence order. Through her legal representative, police offered no evidence on the assault charges and she did enter a plea of guilty to breaching a domestic violence order.
- (ss) The assault charges related to allegations that she had assaulted [RM]'s children.
- (tt) She moved back to Hervey Bay and although she advised [RM] as to her location, he successfully applied for a Recovery Order. In the application he 'lied about everything, said that he had never committed domestic violence against me, that I only ever committed against him, that he was bub's primary carer and that I had hit his kids on the night when I was bashed and fled with (the youngest child) and my other three children'.<sup>39</sup>
- (uu) After two years of family law proceedings, the family law Judge made a final order that the youngest child was to live with her.
- (vv) She now lives on her traditional homelands with her youngest child. She sits on three boards where she is a director of an aged care facility, on the community advisory committee and a family trust. She is also an applicant for a Native Title claim. She says that she has a good reputation in her community, and she teaches local Butchulla children songs and dance.

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<sup>35</sup> Applicant's Personal History, paragraph 51.

<sup>36</sup> Ibid, paragraph 53.

<sup>37</sup> Ibid, paragraph 54.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, paragraph 55.

- (ww) Obtaining a job with the [Name withheld] Academy was ‘like a dream come true’.<sup>40</sup> She loves what she does and during the time there she has raised the attendance of students to 98%, which is the highest in all of Queensland.
- (xx) She worked closely with children and when a child was at risk, the school recommended that she be placed with her for a short period until a foster carer could be found.
- (yy) She is now surrounded by family and is determined to ensure the longevity of her Butchulla culture.

**The evidence of the Applicant, by affidavit and at the Tribunal hearing**

- [30] The Applicant gave evidence by affidavit and orally at the Tribunal hearing.
- [31] The Applicant stated that in her view she was denied a blue card because of a one-off situational event. In her affidavit, the Applicant explained using these terms:<sup>41</sup>
- It devastates me to think that because of the criminal charges that occurred as a one off situational event during a very dark and hopeless period in my life that I will not be able to continue with my work at the [Name withheld] Academy and with the current and future generations of Butchulla children.
- [32] However, she had previously described her multiple breaches of domestic violence, in the following terms:<sup>42</sup>
- I agree that I did breach the domestic violence order that was made against me for [RW’s] protection a number of times and regardless of his provocation, I was verbally and physically abusive to him on a number of occasions.
- [33] In her affidavit, the applicant did comment upon changes to improve her situation.
- [34] The Applicant was cross-examined at the Tribunal hearing, and during her evidence the Applicant said:
- (a) She was working for Role Models and Leaders (RML) when she received the negative notice from Blue Card Services.
  - (b) RML is part of the [Name withheld] High School teaching program.
  - (c) The program is available to all Aboriginal and Torres Strait Islander girls enrolled in the school. She had an enrolment of 45 girls which represented an increase in attendance rates from 52% to 98%, for overall attendance.
  - (d) She conducted classes of girls in two groups.
  - (e) Teenage girls can be particularly difficult and on one occasion there was a physical altercation between the girls where she and a co-worker (GG) intervened.
  - (f) She was careful not to place her hands on either of the girls and dealt with the problem by putting her body between the two fighting children.
  - (g) The work was particularly rewarding, and she undertook intensive work with the girls who attended the classes.

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<sup>40</sup> Ibid, paragraph 68.

<sup>41</sup> Affidavit of the Applicant dated 30 November 2018, at paragraph 44.

<sup>42</sup> Ibid, paragraph 29.

- (h) As a result of the denial of the blue card, she no longer works at RML. But when she was there, she received no complaints. Her advice was valued, and the principal of the school still asks for her advice. RML did not want her to leave and her termination was only as a result of her failure to hold a blue card. The regional manager at RML requested that she train others.
- (i) She has diverse skills in music, art, culture and linguistic issues and has been engaged as a reconciliation expert. She never received any complaints from children or parents or staff.
- (j) She has worked in many locations throughout Australia including in a kindergarten. She has never encountered any issues about her ability to interact with children. On the Fraser Coast, she worked for free for the special school on NAIDOC Days as a volunteer.
- (k) She is comfortable with singing Butchulla songs and is recognised as a 'song woman'. This is not just a form of entertainment; it is a form of storytelling and it deals with the history of her people.
- (l) She was the victim of racism as a child and she discovered storytelling, which is an opportunity to advance her culture and combat racism.
- (m) She has been labelled as an alcoholic, but she barely drinks.
- (n) She did dance in public gatherings. When Prince Harry visited the area, she led the dance and to do so she had to obtain clearance at high level and was subjected to vigorous checks. It comes as a surprise to her that despite this, blue card services has denied her a blue card.
- (o) She acknowledges that in bringing this application she does not have the support of a psychological or medical report. While she is not opposed to obtaining a medical report, she is of the view that it is difficult for a report writer to define, and grasp, the lifestyle of an indigenous person in a quick interview.
- (p) GW died in a plane crash. During these times people wanted to help. She said that other people in similar circumstances may want help, but she did not feel she needed the help. She does not have a diagnosis of any mental health issues, but she does have hyperactivity and arthritis.
- (q) She tries to eat well and exercise. She undergoes a 'smoking' ceremony, which helps to keep her calm.
- (r) She was subjected to a very abusive relationship. He was a football legend and very much admired in the Northern Territory community. Once she took the children and she travelled 500 kilometres, but his family told her to go back to Darwin and as she was mentally broken, she agreed with the request.
- (s) Her former partner was a master manipulator who made many complaints against her for domestic violence. Police wanted her to charge him with domestic violence offences and when she refused to lay complaint, police responded by starting to charge her instead.
- (t) She does have domestic violence convictions but only in relation to one partner. One conviction relates to an incident on 23 February 2012 where she

was convicted of breaching a domestic violence order because she went to [RM]'s place of work to retrieve her daughter.

- (u) Under cross-examination, the applicant said that because her partner in the Northern Territory was so influential, his family would 'watch' her for him and all services were linked through to him.
- (v) She said that she could not access any support through domestic violence connections and could not use the Aboriginal and Torres Strait Islander Legal Service in the Northern Territory.
- (w) In relation to illicit drugs, she said that cannabis is a plant, and that used medicinally it does have its place, but she does accept that it is illegal.
- (x) The production of cannabis in 2003 involved the installation of a false wall, sheeting and lights. Her children did not know about the production of the dangerous drugs.
- (y) She has attempted suicide on two occasions, once as a child and once as an adult. As an adult, she attempted suicide whilst in a police cell.<sup>43</sup>
- (z) During cross examination at the Tribunal hearing, the Applicant did concede that on 31 December 2018, when she allegedly assaulted the complainant police officer by pushing him with her hand to his chest, she was taken to the watch house and returned a reading of .115%.<sup>44</sup> She did concede that it did indicate that she was intoxicated.
- (aa) She did acknowledge having assaulted [RM], but she never started the physical altercations. She denied ever assaulting his children.
- (bb) She said that she would never allow herself to fall into an abusive relationship again. She does not need validation. She has matured. She will be 50 years old soon and she would never go back to her former lifestyle.
- (cc) During cross examination at the Tribunal hearing, the Applicant was asked about the events of 11 February 2014.<sup>45</sup> Information in a child protection incident report, as disclosed to the Tribunal, described an incident of domestic violence where it is stated that the Applicant went to the residence of [RM] and said that as she had no food or clothing it was his turn to look after 'your f..king kid'. A verbal argument occurred in front of the children. The department had concerns that children be used 'as innocent pawns in this relationship'.<sup>46</sup> It is alleged that the Applicant broke into the house and punched an adult and two children who were sleeping. She was then taken to the police station and locked up overnight. Northern Territory police confirmed that they went to the house twice on that evening and arrested the Applicant as she was extremely intoxicated. In response, the Applicant said that the events did not occur, in that she did not hit the children and she did not say, as alleged, that 'she did not give a damn'.

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<sup>43</sup> Oral evidence presented by the Applicant at the Tribunal hearing.

<sup>44</sup> Refer to NTP 6.

<sup>45</sup> NTP698-702.

<sup>46</sup> NTP – 699.

- (dd) The Applicant was asked about the events that occurred on 31 December 2018. The events involved a fire on the beach where the police stated that the Applicant failed to comply with the direction. The Applicant was taken to the watch house. She does accept that while there she ripped a cushion, which constituted a wilful damage charge. She did state that she did urinate, but she could not contain herself and she was fearful, and her actions were not intentional. She acknowledged that the events did traumatise her daughter, but it also would provide a valuable lesson to a daughter ‘to stand up for her rights and learn of her culture’.<sup>47</sup>
- (ee) The Applicant was asked about material disclosed by the Department of Children and Families (Northern Territory government). The records referred to a child protection investigation on 24 June 2011 where the intake statement noted that there was a:

...domestic violence incident that saw mother verbally and physically abuse father. Father caused injury to the mother whilst defending himself. Mother was arrested for being intoxicated and breaching the peace. Father believes mother leaves child with strangers. Mother’s drinking is escalating, and behaviour is becoming increasingly erratic.<sup>48</sup>

The report went on to note that ‘Mother said she really [sic] drinks and is not a heavy drinker however the strain of her relationship, her full-time studies and her isolation from family had led her to drinking heavily onto recent occasions that resulted in her being arrested and placed in the watch house’.<sup>49</sup> The conclusions were that intervention was needed.

### **The evidence of Aunty JS (an elder)**

- [35] JS provided an affidavit of support for the Applicant dated 29 November 2018. She is a senior elder and is referred to as ‘aunty’ because of her seniority. JS included the following statement, at paragraph 9 of her affidavit:

It may not seem like a big thing to a non-Indigenous person, but the knowledge that [LT] has to teach the current and future Butchulla children dance, song and language has a huge cultural impact on keeping these traditions alive. There are a couple of other people that teach children dance now, but they cannot teach song and language the way [LT] does and are not as good at teaching as she is. [LT] is a proper song woman and her university qualifications in linguistics mean that she is best person for keeping the Butchulla language alive.

- [36] JS went on to state, at paragraph 11 of her affidavit, that:

[LT] needs to be given a Blue Card so that she can keep the Butchulla cultural elements of dance, song and language alive. To not give her a Blue Card would be devastating and destructive for Butchulla culture.

- [37] JS did not give evidence at the Tribunal hearing.

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<sup>47</sup> Oral evidence of the Applicant at the Tribunal hearing.

<sup>48</sup> NTP – 118.

<sup>49</sup> NTP – 119.

### **The evidence of GG (former co-worker)**

- [38] GG provided an affidavit in support for the Applicant dated 28 November 2018, where she spoke of the Applicant in favourable terms. In relation to the Applicant's interaction with children, the witness said that the applicant would not yell and scream at the children. She would act calmly if the children were inattentive. Most parents commented on how amazing she is at her job and she has a very good way with children and a rare ability to command respect while also being inspiring and nurturing. She said that she has never seen the Applicant under the influence of drugs or using drugs. She did see the Applicant drink alcohol on one occasion.

### **The Applicant's submissions**

- [39] The Applicant provided written submissions to the Tribunal dated 16 October 2019. The applicant submitted that there is no exceptional case in the circumstances that would warrant the issuing of the negative notice by the Respondent (or this Tribunal). The relevant sections of the submissions are as follows (adopting the numbering from the original document):

7. The factors in ss226(2) the Act are not exhaustive however. Dealing with the then *Commission for Children and Young People and Child Guardian Act 2000* (Qld), Philippides J held in *Maher*:

"I do not consider that s 102(5) of the Act is to be construed as prescribing the only matters to be considered by the Commissioner in determining an application under s 102(4). Section 102(5) does not expressly or impliedly confine the Commissioner to considering only the matters specified therein and there is no basis for construing the provision in such a restrictive manner. In my view, s 102(5) merely specifies certain particular matters which the Commissioner is obliged to consider in deciding the application."

8. It is submitted that the decision in *Maher* is still relevant law that applies to the current legislation, the Act, and that ss226(2)3 is also a non-exhaustive list, as was the then s102(5)

...

### Discretionary Considerations

66. The Applicant refers to the aforementioned paragraphs seven and eight and submits that in addition to the mandatory considerations under s226 the Act, the Tribunal also has discretionary considerations as a result of the findings in *Maher*.
67. The Applicant is a forty eight year old woman, who identifies as Aboriginal, but not Torres Strait Islander. She is a proud Butchulla woman and the only song woman in Queensland that can teach traditional songs in the Butchulla and Lardil (the traditional language of Mornington Island) languages, among others.
68. In addition to her own four biological children, the Applicant has also cared for a large number of other people's children. Whether it be for a few hours or a few weeks; no matter where she has resided, her house has been known as a safe house where a child can attend to obtain food, shelter and someone to listen to them. She has even been approached in 2018 by the Department of Child Safety Maryborough Child Safety Service Centre to care for a child who needed emergency accommodation as a result of attempting to self-harm.

69. The Applicant has a proven history of working with difficult children. She is viewed as someone who has a very calming effect on children of all ages and is well respected for the manner in which she responds to children who are misbehaving.
70. The Applicant's most recent child focused employment was as the program leader of the [Name withheld] Academy at [Name withheld] High School. She gave evidence, which is corroborated by the material obtained under the Role Models and Leaders Australia Notice to Produce, that the only reason for her termination of this employment was due to the negative notice that was issued.
71. Despite no longer working for Role Models and Leaders Australia at the [Name withheld] High School's [Name withheld] Academy, the Applicant deposed to still being sought after by her regional manager to undertake training for their program managers. Similarly, the Applicant also gave evidence that she continues to be contacted by schools across the Fraser Coast regarding cultural events; but has been very open about her negative notice and why she cannot assist at this time.
72. The Applicant submits that she has not tried to hide her negative notice or continue to work with children in the hope that she does not get caught. Instead, she has very been very frank about her current position relating to employment and volunteering with children. It is her submission that she is taking the matter most seriously.
73. The Applicant gave detailed evidence in both her examination in chief and under cross examination regarding her traditional medical and therapeutic practices. She gave further evidence of how seeing a counsellor, psychologist or psychiatrist on a few occasions to get a report would be of little assistance to the Tribunal; as she has had a tumultuous life with many highs and lows, the entirety of which could not be properly be summed up in the handful of sessions she would have completed between the conciliation conference and the hearing. Instead, the Applicant went on to depose of what she does to regulate and manage her emotions and treat her hyperactivity. It is the Applicant's submission that simply because she practises traditional and cultural medicine rather than Western or Eastern medicine; that the results are [not] any less effective or meaningful, despite how different and/or strange they may seem to non-Indigenous people.
74. Similarly, the Applicant submits that just because she has not undertaken any domestic violence counselling does not mean that she has a high propensity to commit domestic violence offences again in the future. Instead, the Applicant gave oral and written evidence as to her position on domestic violence; why she detests it; how she is a support for children who are subject to both personal and associated domestic violence; how she has remained single and not had another partner (either male or female) since her relationship with [RM] ended; and how attuned she now is to the signs of a violent and controlling relationship.

#### Risk Factors v Protective Factors

75. It is submitted that the protective factors in this matter far outweigh the negative factors. It is further submitted, that such balancing of

protective factors against the risk factors is a recognised approach in this jurisdiction.

76. Risk factors outlined by the Applicant include the following:

- a) the various entries on the Applicant's criminal record, including the withdrawn charges of assault person under 16 years by adult; assault police officer, assault a person and aggravated assault; the eight withdrawn charges of engage in conduct that contravenes DVO and the six convictions of engage in conduct that contravenes DVO.

77. Protective factors outlined by the Applicant include the following:

- a) the Applicant's non-violent and non-aggressive personality prior to and since leaving Darwin;
- b) the Applicant's extensive history of assisting children in their time of need;
- c) the Applicant's insight into her offending and the personal and traditional/cultural steps she has taken to remedy her behaviour and ensure that similar offending never happens again; and
- d) the professional and personal references in support of the Applicant who attest to her ability to deal with difficult people, especially children, in appropriate and non-violent ways.

#### Conclusion

78. Having regards to the aforementioned, it is the submission of the Applicant that the Respondent erred in finding that the Applicant's application is an exceptional case and therefore in issuing a negative notice.

79. It is the further submission of the Applicant, that her case is not an exceptional case and that the totality of her life experiences are not that which would put a child at an unacceptable risk or harm and not be in their best interests.

80. It is the final submission of the Applicant, that the only finding the Tribunal can make in this matter is to set aside the decision of the Respondent of 18 May 2018 that the Applicant's case is exceptional within the meaning of s221(2) the Act and substitute it with the decision that there is no exceptional case.

#### **The Respondent's submissions**

[40] The Respondent provided written submissions to the Tribunal dated 6 November 2019. The relevant sections of the submissions are as follows (adopting the numbering from the original document):

##### **Protective factors**

20. The Respondent submits that the following protective factors are relevant in this matter:

*Positive lifestyle changes*

- e) the Applicant indicates she has made positive changes in her life, including returning to live on her traditional homelands,<sup>50</sup> engaging in community advisory work,<sup>51</sup> undertaking tertiary studies and securing employment in a role that she enjoys.<sup>52</sup> The Applicant further submits she has regained custody of her youngest daughter<sup>53</sup> and maintains a close and supportive relationship with her older children;<sup>54</sup>

*Interactions with children and young people*

- f) the Applicant provided oral evidence at the hearing about her extensive history working with children and young people. The Applicant stated she had worked at a number of schools in the local area and undertaken roles which involved developing programs and teaching students about indigenous culture. The Applicant stated no issues had been raised about her interactions with children and young people;

*Context of some offending*

- g) the Applicant accepts that while in a relationship with her ex-partner, [RM], she breached domestic violence orders on a number of occasions by verbally and physically abusing [RM].<sup>55</sup> However, the Applicant submits that her offending ought to be viewed in light of the circumstances of her relationship with [RM], as he was manipulative, controlling and abusive towards her.<sup>56</sup> This submission is supported, to some extent, by the information produced by NT Police and DCF which suggests the Applicant and [RM]'s relationship was tumultuous and both parties were, at times, perpetrators and victims of the domestic violence which existed in the relationship. The Respondent acknowledges this provides further context to some of the Applicant's offending; and

*Support network*

- h) the oral and written evidence provided by the Applicant indicates she has a support network in place. The Applicant's support network includes (but is not limited to) the two (2) witnesses who provided statements and gave evidence at the hearing.<sup>57</sup>

**Risk Factors**

21. The Respondent further submits that the following risk factors are present:

*Period of offending*

- b) the Applicant has a criminal history spanning a period of over twenty-five (25) years from 1993 until as recently as December

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<sup>50</sup> Applicant's Personal History dated 17 August 2018, paragraph 62.

<sup>51</sup> Ibid, paragraph 62.

<sup>52</sup> Ibid, paragraph 650.

<sup>53</sup> Ibid, paragraph 58.

<sup>54</sup> Ibid, paragraphs 70 to 74.

<sup>55</sup> Ibid, paragraphs 29 and 31.

<sup>56</sup> Ibid.

<sup>57</sup> Affidavit of GG dated 28 November 2018; Affidavit of JS dated 29 November 2018.

2018 with repeated offences involving drug-related, violent and anti-social behavior.<sup>58</sup> The Respondent disagrees with the Applicant's submission that the five (5) convictions and twelve (12) charges recorded on her criminal history whilst she was living in the Northern Territory ought to be '*put aside*'<sup>59</sup> because she was in a relationship which involved domestic violence during that time. The entirety of the Applicant's criminal history is to be considered by the Tribunal. The ongoing and persistent nature of the Applicant's offending (which occurred before, during, and after she lived in the Northern Territory) suggest that regardless of her personal circumstances, the Applicant has a pattern of engaging in offending and anti-social behavior, and suggests she may be at high risk of re-offending in the future;

*Ongoing history of violence*

- c) it is acknowledged by the Respondent that the material indicates during the period the Applicant engaged in domestic violence, she was also a victim of domestic violence. This provides some context to the Applicant's use of violent and abusive behaviour between 2011 and 2014. However, the material also indicates that the Applicant's anti-social behaviour is not confined to the period she was in a relationship with her ex-partner, [RM].<sup>60</sup> As recently as 31 December 2018, the Applicant was verbally abusive towards police, (allegedly) obstructed police by pushing an officer in the chest, resisted arrest and incited the group in which she was in company.<sup>61</sup> Further, when detained in the watchhouse, the Applicant destroyed a cushion and forced pieces of the cushion into the cell toilet.<sup>62</sup> The Applicant's behaviour on 31 December 2018 suggests that her previous relationship with [RM] may not be the only trigger to her offending and anti-social behaviour. The Applicant indicated at hearing that she had no remorse about the way she acted in public and in relation to her behaviour in the police watchhouse, specifically stated she may do the same thing again in the future. The Applicant's recent offending in 2018 and her attitude towards that offending, suggests that although the Applicant has taken some steps to change her life in a positive manner, she has not addressed all of the triggers to her offending and anti-social behaviour. This raises concerns about the Applicant's risk of reoffending in the future;

*Violence and verbal abuse towards and in the presence of children*

- d) the material indicates the Applicant repeatedly exposed her young children and [RM]'s children to domestic violence.<sup>63</sup>

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<sup>58</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61.

<sup>59</sup> Applicant's written submissions dated 16 October 2019, paragraph 63.

<sup>60</sup> Ibid.

<sup>61</sup> Police brief of facts – various offences (on 31/12/2018), at BCS-63.

<sup>62</sup> Ibid.

<sup>63</sup> Police briefs of facts —various assault and domestic violence related offences (on 10/02/2014, 23/02/2012, 24/09/2010 & 25/09/2010), at BCS-19 to BCS-23; Material produced by Northern Territory Police, Fire and Emergency Services pursuant to a Notice to Produce, NTP-13 and NTP-21 to NTP-24; Material produced by the Department of Children and Families pursuant to a Notice to

This is of particular concern given, as the children's mother (or quasi mother-figure to the children), the Applicant held a position of trust and authority and was responsible for providing the children with a safe and protective environment, free from violence, while presenting as an appropriate role model to them.

- e) during oral evidence and in the Applicant's written submissions,<sup>64</sup> it was submitted that concerns raised by DCF may relate to [RM]'s lawful wife, [GM] and not the Applicant. The Applicant is clearly identified by name in most investigations and reports prepared by DCF. The DCF material clearly indicates (regardless of [GM]'s involvement), the Applicant was (at least partially) responsible for causing harm to children on numerous occasions;
- f) in her written submissions and oral evidence, the Applicant demonstrates a concerning tendency to minimise her involvement in exposing her and [RM]'s children to domestic violence. In particular, in her oral and written evidence, the Applicant has failed to accept responsibility for her role in causing harm to [RM]'s children and has indicated it was not of concern to her, as they were not her children. Further, the evidence indicates the Applicant has repeatedly attempted to shift blame to [GM] and [RM] rather than accepting responsibility for her role in the concerns raised by DCF. The Applicant's submission that *"a significant portion of the material in DCF NTP does not in fact relate to the Applicant"* is erroneous and is a further indication of the Applicant's failure to accept responsibility for her actions, and her attempts to minimise her involvement in causing harm to children;
- g) further, it is of significant concern that the material indicates the Applicant perpetrated verbal and physical abuse directly towards the children on occasion. In particular, two (2) children separately recalled numerous occasions when the Applicant called some of the children "fucks", "cunts" and "blacks",<sup>65</sup> and in February 2014, the Applicant was charged by police for (among other offences), assaulting [RM]'s children. The Applicant allegedly entered the children's residence whilst they were sleeping and during an altercation, punched a thirteen (13) year old child in the face and pushed an eleven (11) year old child.<sup>66</sup> Although the Applicant denies this incident occurred and specifically states the children denied the incident when questioned by police,<sup>67</sup> this is contradicted by the material. During an interview with officers from DCF on 24 February 2014, two (2) of the children present recalled the incident as described in the police brief of facts. The children advised the

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Produce, NTP-125 to NTP-126, NTP-576 to NTP-584, NTP-179 to NTP-187 and NTP-689 to NTP-690.

<sup>64</sup> Applicant's written submissions dated 16 October 2019, paragraphs 40 to 43.

<sup>65</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-609 and NTP-611.

<sup>66</sup> Police briefs of facts – various assault and domestic violence related offences (on 10/02/2014), at BCS-19 to BCS-21.

<sup>67</sup> Personal history of Applicant dated 17 August 2018, paragraphs 59, 60 and 75.

Applicant had punched one (1) of them twice in the face and also tried to punch the other child after the children tried to protect their mother from assault by the Applicant;<sup>68</sup>

- h) further, as recently as 31 December 2018, the Applicant engaged in anti-social behaviour in the presence of four (4) children, including her own eleven (11) year old daughter. The Applicant was convicted of two (2) of the offences which involved the Applicant engaging in disorderly and obstructive behaviour, yelling and swearing at police officers and inciting the group of four (4) adults and four (4) children she was with. When asked about the impact to her young daughter of witnessing that incident, the Applicant stated she had done nothing wrong, her behaviour was not a bad influence on her daughter and her daughter was traumatised only by the actions of the police officers;
- i) as a whole, the material indicates the Applicant exposed children in her care to verbal abuse and violent conflict and on occasion, directly perpetrated that abuse against the children. This suggests that the Applicant repeatedly breached her position of trust and authority as a parent (or quasi parent) and failed to act protectively or to role model appropriate behaviour in the presence of the children. Regardless of who else may have been involved or who initiated the conflicts, the material clearly indicates as a result of the Applicant's behaviour, children have suffered harm. On two (2) occasions, DCF substantiated emotional harm and/or neglect as a result of the Applicant and [RM]'s behaviour (primarily because of exposure to domestic violence).<sup>69</sup> It is of further concern that the Applicant continued to expose children to this behaviour, despite being afforded intervention and assistance by DCF (on a number of occasions)<sup>70</sup> and being alerted to the emotional harm she was inflicting on the children. As a whole, the material raises significant concerns that the Applicant fails to understand the significant impact of exposing children to violent and anti-social behaviour and the importance of adults presenting as positive role models to children and young people;

*Drug use*

- j) the material indicates the Applicant has a long-term and significant history of drug use. The Applicant has eight (8) convictions and one (1) charge for offences relating to the possession, production and use of cannabis recorded on her criminal history between 1993 and 2003.<sup>71</sup> In particular, in 2003 police located a hydroponic system which the Applicant had been using to grow cannabis, concealed behind a false wall in

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<sup>68</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-218 and NTP-700.

<sup>69</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-582 to NTP-583 and NTP-688 to NTP-690.

<sup>70</sup> Ibid, NTP-125 to NTP-126, NTP-182.

<sup>71</sup> Applicant's criminal history dated 8 July 2019, at BCS-59 to BCS-61; police briefs of facts - various drug related offending (on 11/01/1993, 04/05/2000, 10/10/2003), at BCS-46 to BCS-55.

the residence she shared with her children.<sup>72</sup> In addition, in July 2011, the Applicant advised officers from DCF she used cannabis and admitted she had "*hit it hard*" recently.<sup>73</sup> At the hearing the Applicant stated she took steps to hide her drug use from her children,<sup>74</sup> however admitted she had, at times, been under the influence of cannabis when she had children in her care;

- k) it is of further concern that the Applicant submitted in her written evidence that she did not use cannabis between 1988<sup>75</sup> and 2003. However, when information which contradicted these submissions<sup>76</sup> was put to the Applicant in the hearing, she admitted to using cannabis between 1988 and 2003. Further, in her written<sup>77</sup> and oral evidence, the Applicant stated she had not used cannabis since 2003. However, DCF material indicates in June 2011, the Applicant admitted to heavy cannabis use and this was corroborated by a third party (who was supportive of the Applicant).<sup>78</sup> When this information was put to the Applicant in the hearing, she referred to the information being "*corrupt*" but otherwise could not explain the inconsistency. The inconsistent nature of the Applicant's submissions raises concerns about the veracity of her statements and whether she, in fact, continues to engage in drug use;
- l) at hearing, the Applicant further stated she does not see cannabis as a 'drug' but rather, as a plant, and "*if used properly, it has its place*". The Applicant admitted her own mother gave her cannabis in her tea when she was five (5) years old and when specifically asked if she believed giving cannabis to a child may cause them harm stated (words to the effect of): "*I am not sure whether giving cannabis to a child would cause harm ... If used medicinally, it would not be harmful but if used recreationally, it could cause big harm*";
- m) as a whole, the Applicant's views about cannabis are highly concerning. The Applicant stated she does not consider cannabis to be "*an illegal drug*", has admitted to having children in her care whilst affected by cannabis and stated giving cannabis to children may not be harmful in some circumstances. There is also information to indicate the Applicant may have been dishonest about the extent of her past drug use and this raises concerns about the veracity of her submissions that she no longer engages in drug use. The Applicant's involvement with drugs and overall views about cannabis indicate she would not present as a positive role model to children and young people;

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<sup>72</sup> Police briefs of facts - various drug related offending (on 10/10/2003), at BCS-51 to BCS-55.

<sup>73</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-122.

<sup>74</sup> Police briefs of facts – various drug related offending (on 10/10/2003), at BCS-51 to BCS-55.

<sup>75</sup> Personal history of Applicant dated 17 August 2018, paragraph 37.

<sup>76</sup> Applicant's criminal history dated 8 July 2019, BCS-59 to BCS-61; police briefs of facts – various drug related offending (on 11/01/1993, 04/05/2000, 10/10/2003), at BCS-46 to BCS-55.

<sup>77</sup> Personal history of Applicant dated 17 August 2018, paragraphs 37 and 76.

<sup>78</sup> NTP-122 and NTP-124.

*Alcohol use*

- n) the material indicates that at the time of some of her offending (in 2011, 2014 and 2018), the Applicant was intoxicated or consuming alcohol.<sup>79</sup> The Applicant has also previously admitted to a history of drinking alcohol to excess and engaging in violent behaviour which necessitated police intervention (but not resulted in entries on her criminal history).<sup>80</sup> This information suggests that alcohol may be a trigger for the Applicant to engage in violent and anti-social behaviour. The Applicant's oral evidence suggested she was complacent about her alcohol intake and about the connection it may have with her engaging in inappropriate behaviour. In particular, the Applicant stated "*who doesn't drink to excess? I'm fine*". The Applicant's risk of recidivism when she consumes alcohol is of particular concern, given she engaged in offending as recently as December 2018 whilst drinking alcohol, has indicated she continues to drink alcohol to excess (on occasion) and sees no issues with such behaviour.<sup>81</sup> Further, there is no independent evidence (particularly in the form of a psychologists' [sic] report) to indicate whether the Applicant has identified skills or strategies to assist her to effectively address her issues with alcohol-fueled violent and anti-social behaviour. As a result, there remains an ongoing risk of the Applicant's alcohol consumption triggering further offending in the future;

*Mental health issues*

- o) the written and oral evidence suggests the Applicant may have mental health issues, which have manifested in suicide attempts in both her childhood<sup>82</sup> and as an adult.<sup>83</sup> The Applicant has not provided a health report for the purpose of these proceedings addressing issues relating to her mental health. In the absence of medical evidence, given the Applicant's history of mental health problems (manifesting in suicide attempts), it is of concern whether the Applicant's mental health is effectively managed on an ongoing basis, such that it is not likely to adversely impact her ability to adequately care provide for children and young people;

*Remorse and insight*

- p) in relation to the Applicant's criminal history and behaviours of concern, the material before the Tribunal as a whole demonstrates the Applicant possesses:

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<sup>79</sup> Material produced by Northern Territory Police, Fire and Emergency Service pursuant to a Notice to Produce, NTP-41; Material produced by Department of Child Safety, Youth and Women pursuant to a Notice to Produce, NTP-6; Police briefs of facts – various offences (on 31/12/2018), at BCS-62 to BCS-68.

<sup>80</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-122.

<sup>81</sup> Personal history of Applicant dated 17 August 2018, paragraph 76; Affidavit of Applicant dated 30 November 2018, paragraph 36.

<sup>82</sup> Personal history of Applicant dated 17 August 2018, paragraphs 6 and 7.

<sup>83</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-196 and NTP-700.

- i. a lack of candor and honesty in her oral and written evidence;
  - ii. limited remorse and genuine insight with respect to the impact her offending and behaviour of concern has had on her children and the children of her ex-partner, [RM];<sup>84</sup>
  - iii. significant inconsistencies in relation to the circumstances of the offending and alleged offending and inconsistencies with respect to substance misuse, giving rise to concerns about the veracity of the applicant's submissions;<sup>85</sup>
  - iv. a tendency to deny and minimise the seriousness of the behaviours;<sup>86</sup>
  - v. limited understanding of the emotional harm suffered by children exposed to domestic violence and other violent and anti-social behaviour;<sup>87</sup>
  - vi. very limited understanding about the harmful effects of drug use and the extent to which drug use may affect someone's ability to care for children and young people in their care;<sup>88</sup>
  - vii. deflection of blame to others, including deflecting blame to children;<sup>89</sup> and
  - viii. limited demonstrated insight into the reasons for her offending and alleged offending.
- q) The importance of an Applicant possessing insight as a protective factor is demonstrated in the published decision of Re TAA,<sup>90</sup> where the former Children's Services Tribunal stated at paragraph 97 of its reasons:

"The issue of insight into the harm caused in these incidents is a critical matter for the Tribunal. 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 upon the adults around them having insight into their actions and the likely effect on children."; and

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<sup>84</sup> Personal history of Applicant dated 17 August 2018, paragraphs 70 to 75, Affidavit of Applicant dated 30 November 2018, paragraphs 30 and 45.

<sup>85</sup> Personal history of Applicant dated 17 August 2018, paragraphs 37, 76, 59, 60, 75; Affidavit of Applicant dated 30 November 2018, paragraphs 25 to 26, 42.

<sup>86</sup> Personal history of Applicant dated 17 August 2018, paragraphs 59 to 61, 70 to 75, Affidavit of Applicant dated 30 November 2018, paragraphs 24 to 25 and 45.

<sup>87</sup> Personal history of Applicant dated 17 August 2018, paragraph 75; Affidavit of Applicant dated 30 November 2018, paragraphs 25, 29, 42 and 45.

<sup>88</sup> Material produced by the Department of Children and Families pursuant to a Notice to Produce, NTP-122.

<sup>89</sup> Ibid, NTP-219.

<sup>90</sup> [2006] QCST 11.

- r) 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 for the purpose for which the Applicant has sought the card (to work as a program manager). For this reason, the Tribunal must take into account all possible work situations open to the Applicant.<sup>91</sup> The Tribunal has no power to issue a conditional blue card<sup>92</sup> and once issued, the blue card is unconditional and fully transferable across all areas of regulated employment and business.

### **Conclusion**

22. The Respondent submits that the object, purpose and nature of the decisions enshrined in the Act support a precautionary approach to decision-making on blue card matters. Apart from the inherent impossibility of predicting future risk with certainty, the WWC Act is premised on past behavior being an indicator of future behavior and allows for precautionary action to be taken even if it is not demonstrated that a person's criminal offending is directly child-related.
23. A positive notice is unconditional and fully transferable. The holder of a blue card is allowed unsupervised and unfettered access to children in a range of regulated activities. The Respondent submits that the Tribunal must consider transferability of notices under the WWC Act when having regard to the best interests of children.
24. The Respondent submits that the risk factors identified in the proceedings render the case 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 positive notice and blue card.

[41] The Respondent submitted that as a protective measure for children, and not as a way of punishing the Applicant, the Tribunal should find that this is an exceptional case, such that it would not be in the best interests of children to issue a positive notice to the Applicant.

[42] The Respondent conceded that there are protective factors but that the risk factors outweigh those protective factors.

### **The Tribunal findings and decision**

[43] In determining the application, the Tribunal maintains its focus on the best interest of children. This is not a case which involves imposing further punishment upon the Applicant nor is it a case where the Tribunal considers any detriment to the applicant as a result of determining that the case is exceptional. The Tribunal is concerned about the effect on children as a result of the Applicant potentially having a blue card. The Tribunal does consider the Applicant's criminal history and the offending behaviour. The Tribunal must consider whether it raises issues of long-term concern and lack of empathy. The Tribunal must consider whether the Applicant has gained insight, particularly into those triggers that may cause a lack of judgement, which may have a potentially adverse effect on children. The Tribunal considers whether the Applicant has addressed the triggers and has gained skills to avoid issues arising

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<sup>91</sup> *JA v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 251, [4].

<sup>92</sup> *RPG v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 331, [27].

in the future. The Tribunal considers the risk factors and the protective factors. The Tribunal considers the Applicant's lifestyle and support network.

- [44] The decision of the Tribunal is not intended to reward the Applicant for her rehabilitation, in the same way that it is not intended to punish the Applicant for her crimes. The decision of the Tribunal is centred on the interests of children. In making its decision, the Tribunal does consider the WWC Act and, in that regard, notes that Parliament has seen fit to legislate that the offences for which the Applicant has been convicted are not serious or disqualifying offences. Therefore the presumption is to find that the application is not exceptional. No party has the onus of proving whether the case is exceptional.
- [45] Having carefully considered the evidence, the Tribunal is of the view that this is an exceptional case.
- [46] In coming to its conclusion, the Tribunal does so by adopting a precautionary approach to decision-making on blue card matters.
- [47] In determining that this is an exceptional case, the Tribunal does take account of the considerations prescribed by section 226 of the WWC Act and other matters as identified in this decision. The Tribunal considers its decision from the perspective that the welfare and best interests of children is paramount. Every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing. In making decisions of this type, the Tribunal does consider the risk to children.
- [48] The Tribunal acknowledges that a blue card is fully transferable.
- [49] The Tribunal has formed the view that the Applicant has not yet developed appropriate insight or adopted sufficient protective mechanisms to ensure the safety of children.
- [50] The Tribunal notes that the penalties imposed for those matters that did result in the conviction were not substantial, but the number and extent of convictions is of concern. The Tribunal does consider those matters where the Applicant was charged but not convicted. The Tribunal is particularly concerned about the allegations in relation to assaulting children. Despite the strong denials of the Applicant in relation to the offending behaviour, coupled with the fact that the charges did not result in a conviction, the Tribunal is nevertheless satisfied that there is enough evidence before it to take these matters into account in assessing the issue of risk to children.
- [51] The offending behaviour has been persistent, long-term and recent. In many instances the offending behaviour appears to the Tribunal to be related to issues around substance abuse, both in relation to illicit drugs and alcohol consumption.
- [52] The Tribunal accepts that the Applicant has not had an association with the ongoing use of illicit drugs, however her evidence is such as to minimise her drug use and to place emphasis on the medicinal effects of cannabis. The Tribunal has formed the view that the Applicant's offending behaviour on New Year's Eve 2018 occurred in the context of the consumption of alcohol and disrespect to police officers and police property. These are not serious offences, as defined, but they are serious matters.
- [53] The Tribunal has concerns about the Applicant's involvement in committing domestic violence offences. The Tribunal is specifically concerned about offending

behaviour between 2010 and 2015 that resulted in the Applicant being charged with 14 domestic violence offences. While the Tribunal does accept that the Applicant was in a disadvantaged situation during that time and that she undertook some protective measures to protect herself and her biological children, the Tribunal is of the view that she did not sufficiently act in a protective manner to be satisfied about her insight and capacity to act appropriately during emotionally charged events and circumstances. The Tribunal does consider these matters as highly relevant.

- [54] The Tribunal notes that the Applicant was charged with assaulting a person and aggravated assault in 2012 and assaulting a person under the age of 16 in 2014. While these are not serious charges by reference to the legislation, the matters are regarded by the Tribunal as serious. The Tribunal is not satisfied that there is sufficient evidence before it to categorise the charges as vexatious and malicious.
- [55] The Tribunal has determined that the Applicant's circumstances are such as to identify a risk sufficient to warrant being satisfied that this is an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.
- [56] The Applicant has made positive changes in her life. Her move to her traditional homelands and engaging in indigenous work are protective factors. The Applicant is surrounded by people who care for her and for whom she cares. That is a protective factor and the Tribunal has carefully considered those aspects of the Application in weighing the protective factors against the risk factors.

### **Publication**

- [57] The Tribunal may make an order prohibiting the publication of the following (other than in the way and to the persons stated in the order):
- (a) the contents of a document or other thing produced to the Tribunal;
  - (b) evidence given before the Tribunal;
  - (c) information that may enable a person who has appeared before the Tribunal, or is affected by a proceeding, to be identified.<sup>93</sup>
- [58] The Tribunal may make such an order only if the Tribunal considers the order is necessary:
- (a) to avoid interfering with the proper administration of justice; or
  - (b) to avoid endangering the physical or mental health or safety of a person; or
  - (c) to avoid offending public decency or morality; or
  - (d) to avoid the publication of confidential information or information whose publication would be contrary to the public interest; or
  - (e) for any other reason in the interests of justice.<sup>94</sup>
- [59] The presumption is that the identity of the Applicant and witnesses is available in the public sphere.
- [60] The Tribunal often makes a non-publication order in circumstances where it would not be in the interests of justice to identify the names of affected children.

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<sup>93</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 66(1).

<sup>94</sup> *Ibid*, s 66(2).

[61] Alleged offending behaviour took place in the presence of children. The Tribunal is satisfied that there is no public interest served by disclosing the Applicant's name in circumstances where disclosure of would identify children.

[62] The Tribunal therefore prohibits the publication of the names of the Applicant and any witnesses appearing at the application.

### **Orders**

[63] The orders are as follows:

1. The decision of the Respondent that the Applicant's case is an exceptional case in which it would not be in the best interests of children for a positive notice to issue is confirmed.
2. Pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), the Tribunal prohibits the publication of the names of the Applicant and any witnesses appearing at the application.
3. The decision of the Tribunal is to be delivered to the parties by email.