

CITATION: *JVG v Commissioner for Children and Young People and Child Guardian* [2013] QCAT 12

PARTIES: JVG
(Applicant)
v
Commissioner for Children and Young People
and Child Guardian
(Respondent)

APPLICATION NUMBER: CML059-12

MATTER TYPE: Childrens matters

HEARING DATE: 2 November 2012

HEARD AT: Townsville

DECISION OF: **Joanne Browne, Member**

DELIVERED ON: 8 January 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The decision of the Commissioner for Children and Young People and Child Guardian to issue a negative notice be set aside and a positive notice and blue card be issued to Mr JVG.**
- 2. The Tribunal prohibits the publication of the name of the Applicant, Mr JVG and any references to locations where the alleged offences (concerning the Applicant's former step-daughter) occurred (the A hut and at S), the name of the Applicant's former step-daughter (referred to as C), the names of the Applicant's lay witnesses who gave evidence in these proceedings, Ms IKL and the names of her children (the children of Ms IKL), Ms CLI and Mrs JG; and the name of the Applicant's former de facto partner (now deceased), Ms MB also referred to as Ms ME and Ms MG.**

CATCHWORDS: Review jurisdiction – suitability for blue card – where criminal history – where allegations made and charges discontinued – where charges

identified as serious offences – suitability to work with children – whether exceptional circumstances exist

Commission for Children and Young People and Child Guardian Act 2000, ss 226, 360
Queensland Civil and Administrative Tribunal Act 2009, ss 20, 66

Briginshaw v Briginshaw (1938) 60 CLR 336, cited
Commissioner for Children and Young People and Child Guardian v Lister (No 2) [2011] QCATA 87, cited
Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291, cited
Commissioner for Children and Young People and Child Guardian v Maher & Anor [2004] QCA 492, cited
Re TAA [2006] QCST 11, cited

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Mr JVG represented by Mr Justin Greggery of Counsel instructed by McDonald Leong Lawyers

RESPONDENT: Commissioner for Children and Young People and Child Guardian represented by Ms Karyn Alton, Senior Legal Officer

REASONS FOR DECISION

- [1] Mr JVG requires a blue card to enable him to work as a janitor at a school. Mr JVG refers to the opportunity to work as a grounds officer as being a “suitable job” for him stating that he “*really liked it*” and it is where he wants to be for the “*rest of [his] life*”.
- [2] Mr JVG applied for a blue card on 8 April 2012 with the Commission for Children and Young People and Child Guardian. The application was lodged by Education Queensland and a blue card (if one was to be issued) would issue under s 199 of the *Commission for Children and Young People and Child Guardian Act 2000* (the Act) on the basis that Mr JVG would be employed under the category “schools (other than registered teachers)”.¹

¹ *Commission for Children and Young People and Child Guardian Act 2000*, Schedule 1 Part 1 (3).

- [3] The Respondent, the Commissioner for Children and Young People and Child Guardian (the Commissioner) conducted a criminal history check and a number of criminal offences were identified. The criminal convictions (recorded) were not categorised as serious offences for the purposes of the Act. There were (however) other offences identified by the Queensland Police Service (QPS) which are “serious offences” as defined under s 167 and Schedule 2 of the Act and “disqualifying offences” as defined under s 168 and Schedule 4 of the Act.
- [4] The information provided to the Commission by the QPS concerns 3 charges – 2 charges relating to indecent treatment of children (under 16 years) between 12 December 2008 and 28 January 2009 at S, Queensland; and 1 charge of rape between 12 December 2008 and 28 January 2009 at the A, Queensland (the A hut). A nolle prosequi was entered on all charges by the Office of the Director of Public Prosecutions (DPP) on 24 March 2011 in the Townsville District Court following the pre-recording of the complainant child’s evidence. The complainant child stated (during cross-examination) that the defendant (Mr JVG) had not committed the offences against her and that Mr JVG did not touch her, as alleged; and she had fabricated her version of events. The proceedings were discontinued on 24 March 2011 and Mr JVG was discharged without a conviction being recorded.²
- [5] The Commission obtained further documents and information from the DPP including transcripts of interview and Mr JVG was invited to make submissions about why the Commissioner should not issue a negative notice. The Commission also obtained information from the Department of Communities (Child Safety Services) and again Mr JVG was invited to provide a response to the information received.
- [6] On 9 March 2012, following consideration of the information received, the Commission gave notice to Mr JVG that his application for a blue card had been refused having issued a negative notice. He was stood down from his position at the School following the Commissioner’s decision to issue a negative notice. He seeks a review of the Commissioner’s decision to issue a negative notice having filed an application for review in the Queensland Civil and Administrative Tribunal.

Relevant issues concerning the decision (to issue a negative notice)

- [7] The Commissioner is required to issue a positive notice to Mr JVG unless satisfied “*it is an exceptional case in which it would not be in the best interests of children for the commissioner to issue a positive notice*”.³
- [8] The Commissioner’s reasons for issuing a negative notice primarily relate to the charges discontinued by the DPP concerning allegations made by the complainant child (now referred to as C) then aged 11 years who was

² Letter from the Office of the Director of Public Prosecutions (Department of Justice and Attorney-General) to the Commissioner for Children and Young People dated 9 September 2011, section 21 material, p CCYPCG-010.

³ *Commission for Children and Young People and Child Guardian Act 2000*, s 221(2).

under the care of Mr JVG. The child (C) was (at the relevant time) Mr JVG's former de facto partner's (also referred to as Mr JVG's fiancé), Ms MB's (also known as Ms ME and Ms MG) step-daughter. Ms MB passed away (unexpectedly) prior to the hearing of this matter.

- [9] The particulars of the charges, as detailed in the QPS court brief, referring to the defendant (Mr JVG) are as follows:
- a) Charge 1 – C (aged 11 years) stated that in early 2009 (during school holidays), the defendant touched her on the vagina. C stated that the defendant spat on his finger and put his hand inside her shorts and moved his finger around her genitals and made it slippery. There was no penetration to the vagina. C stated that her [step] mother (Ms MB) called her name and the defendant told her to hide under the blankets on his bed. C told her mother what the defendant was doing and C was told (by her mother) that if the defendant did it again to scream out and lean an object up against her bedroom door for protection against the defendant and told C not to tell anyone. C stated that the defendant told her that he had done the wrong thing and deserved to go to jail. C told the defendant she did not want him to go to jail and lose another father (C's biological father was serving time in jail for child sex offences).
 - b) Charge 2 – C (aged 11 years) stated that around Christmas 2008, during school holidays, C, the defendant, C's mother (Ms MB), and other family members were holidaying at the grandparents' (Mr JVG's parents) fishing hut (the A hut) and while at the hut the defendant spat on his finger and then put his hand inside her shorts and moved his finger around (for a few seconds). There was no penetration to the vagina. This occurred at night while everyone was sleeping.
 - c) Charge 3 – C (aged 11 years) stated that around Christmas 2008, during the school holidays, C, the defendant, C's mother (Ms MB) and other family members were holidaying at the grandparents (Mr JVG' parents) fishing hut (the A hut) and following the allegations particularised in charge 2, the defendant asked C to touch his penis. C asked why and the defendant replied to just suck on it, pretend like you are eating an ice-block. The defendant removed his penis from his shorts and C performed oral sex on the defendant for about a minute. He then returned to his bed on the veranda of the dwelling (the A hut).
- [10] The Commissioner, represented by Ms Alton at the hearing, confirmed that convictions relating to Mr JVG's previous criminal history did not impact on the Commissioner's decision to issue a negative notice. The Commissioner determined that Mr JVG's prior charges were serious and that an exceptional case exists in that it would not be in the best interests of children for a positive notice to be issued to Mr JVG.

Relevant law in considering the application for review

- [11] The Tribunal has power to review the Commissioner's decision under the *Queensland Civil and Administrative Tribunal Act 2009*. The Tribunal in conducting a review must arrive at the correct and preferable decision and the hearing is to proceed as a fresh hearing on the merits.⁴ That means that the Tribunal must have regard to all of the relevant material which was before the Commissioner at the time it made its decision and any new material before the Tribunal in conducting the review – the Tribunal may consider relevant material not previously available to the Commissioner.⁵ For example, the Tribunal has an opportunity to consider Mr JVG's sworn evidence including the sworn evidence of his supporting witnesses and expert witness in relation to his character and insight into the charges, the transcript of proceedings, the various witnesses' statements in relation to the charges and the transcript of proceedings concerning the charges being discontinued by the DPP. All of the evidence and more importantly the opportunity to test Mr JVG's and his supporting witnesses' (and expert witness') sworn evidence by way of asking Mr JVG and his respective witnesses' questions at the hearing would not have been available to the Commissioner at the time of considering whether they should issue a positive notice.
- [12] Mr JVG relies on various written statements from his supporting witnesses including his former de facto partner and fiancé (now deceased), Ms MB; and his witnesses gave sworn evidence at the hearing – sworn evidence was also given (by telephone) by Ms IKL (Mr JVG's cousin). Mr JVG also relies on the psychologist's report of Mr Robert Walkley who gave sworn evidence at the hearing. The representative for the Commissioner (Ms Alton) had an opportunity to ask Mr JVG and his supporting witness including his expert witness (Mr Walkley) questions at the hearing and Ms Alton was also given an opportunity to ask Ms IKL questions (by telephone) at the hearing.
- [13] The Tribunal, in exercising its review jurisdiction, has the same powers as the original decision maker (the Commissioner) and must have regard to the objects of the conferring Act – “*to promote and protect the rights, interests and wellbeing of children in Queensland*”.⁶ The Tribunal must in determining the review consider the principles under Chapter 8 of the Act that in making a decision the safety and wellbeing of children is to be its paramount consideration.⁷
- [14] The decision of the Commissioner not to issue a positive notice involves the exercise of a discretion under s 226(2) of the Act in that the Commissioner was required to issue a positive notice unless satisfied that the case is an exceptional case in which it would not be in the best interests of children for a positive notice to be issued (to Mr JVG). The Commissioner in exercising its discretion may consider any matter which

⁴ *Queensland Civil and Administrative Tribunal Act 2009*, s 20.

⁵ *Queensland Civil and Administrative Tribunal Act 2009*, s 28(3).

⁶ *Commission for Children and Young People and Child Guardian Act 2000*, s 5.

⁷ *Commission for Children and Young People and Child Guardian Act 2000*, s 155.

is relevant to the offending behaviour and the application made for a blue card.⁸

Meaning of “exceptional case”

[15] The Act does not define an “exceptional case” and the Commissioner and the Tribunal (in exercising its review power) must consider the circumstances of each case including all of the relevant material, in the context of the principles contained in the Act – (and) that the welfare and best interests of children are paramount.⁹

[16] The Tribunal in reviewing the material including any evidence given by Mr JVG and his supporting witnesses including his expert witness must be satisfied that an exceptional case exists to the appropriate standard that is on the balance of probabilities also known as the *Briginshaw test*.¹⁰ It was determined by the Court of Appeal in *Mahers’ case* that:¹¹

The Tribunal was required to be satisfied on a balance of probabilities, bearing in mind the gravity of the consequences involved, that there was an exceptional case, in which it would not harm the best interests of children for a positive notice to be issued.

[17] It was determined in *Maher’s case* that the Tribunal must balance any potential risk factors against protective factors when considering the circumstances of a particular applicant (such as Mr JVG) which may amount to an exceptional case for the purposes of s 226 of the Act.

[18] In considering the circumstances of the case the Tribunal may consider evidence of remorse and insight into the offending behaviour or nature of the charges (as is the case here).¹² The role or extent to which “insight” into the nature of the charges is relevant to the exercise of a discretion under s 221 of the Act, is that a person “*aware of the consequences of their actions on others is less likely to re-offend than a person who has no insight into the effect of [his or her] actions on others*”.¹³ The Tribunal must (however) consider the evidence of remorse and insight into the nature of the charges in the context of the particular circumstances of this matter – the proceedings (concerning the charges) were discontinued because the complainant child (under oath) stated that the defendant (Mr JVG) did not commit the offences (as alleged by her). There are also various factors identified by the Respondent as being relevant in considering whether this is an exceptional case in which the discretion to issue a negative notice should be exercised.

⁸ *Commission for Children and Young People and Child Guardian Act 2000*, s 226.

⁹ *Commission for Children and Young People and Child Guardian Act 2000*, ss 5, 6, 155, 360.

¹⁰ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹¹ *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 at [30].

¹² *Re TAA* [2006] QCST 11, [97]. See *Commissioner for Children and Young People and Child Guardian v Lister (No 2)* [2011] QCATA 87.

¹³ *Re TAA* [2006] QCST 11, [97]. See *Commissioner for Children and Young People and Child Guardian v Lister (No 2)* [2011] QCATA 87.

- [19] The Tribunal must in conducting a review consider in all of the circumstances whether this is an exceptional case such that it would not be in the best interests of children to issue a positive notice (and blue card).¹⁴ It was previously determined by the Appeal Tribunal that the Tribunal must “*balance the risk factors against the protective factors*”.¹⁵

Relevant factors in considering whether this is an exceptional case

- [20] The Tribunal has summarised the factors identified by the Commissioner as being relevant to the exercise of the discretion to issue a negative notice and that in the circumstances there is an unacceptable risk of harm to children and this is therefore an exceptional case.

a) Whether the allegations (made by C) were in fact true

The supporting witness statements (from the DPP and QPS) in relation to the allegations made by C support the submission that the allegations were made early and with unprompted disclosure. This essentially raises concern that there may have been some truth in the allegations notwithstanding that the charges were (at a later date) discontinued.

b) The nature of the relationship between Mr JVG and C

The statement of Ms MB provided to the QPS (in relation to the allegations) refers to the defendant’s room (at home) being “*out of bounds*” and that C was never left alone with the defendant (Mr JVG). This (as submitted on behalf of the Commissioner) raises a suggestion of concern (by Ms MB) about the behaviour between C and Mr JVG and these concerns should be considered in the context of the allegations made by C and the alleged response of Ms MB (as stated by C) to the allegations – C told police (in the QPS interview) that she told Ms MB about Mr JVG’s offending behaviour and Ms MB told her to put furniture in front of her bedroom door (to stop the defendant’s entry to her room) and not to disclose the allegations to anyone as C would have “two dads” in jail (being the consequences if the offending behaviour was reported).

c) Inconsistencies in the evidence of Ms MB (deceased) about the allegations (made by C)

The statement of Ms MB handed up at the committal hearing (in relation to the discontinued charges) on 31 May 2010 was changed by way of handwritten comments inserted on the statement changing it from stating that that she “*would*” believe C if she disclosed that “*someone had touched her inappropriately*” to stating she would “not” believe C if she made a disclosure and that C would “*make it up*”. The Commission submits that this is important as C was in Ms MB’s care in the year 2000/2001 and that Mr JVG disclosed to Mr Walkley

¹⁴ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [34].

¹⁵ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [41].

(psychologist) that C's biological father (Ms MB's former partner) had been imprisoned for sex offences against young girls in Queensland and in a State outside Queensland in which one of the victims was C's biological sister and it would therefore be expected that Ms MB would have a "heightened awareness and alertness" to any allegation of sexual offending against any child in her care, such as C".¹⁶ Furthermore the statement of Ms MB (provided to the DPP) can be distinguished from a statement provided by Mr JVG in relation to these proceedings dated 10 August 2012 – Ms MB (in her statement) is supportive of Mr JVG application. The Commission submits that Ms MB's statement cannot be tested (she is recently deceased) and the Tribunal should consider (in these proceedings) the statement provided to the Commissioner by the QPS (statement dated 31 May 2010) which was prepared prior to these proceedings.¹⁷

d) Inconsistencies in Mr JVG's evidence – his relationship with C

The transcript of police record of interview with Mr JVG (on 13 November 2009) brings to light some inconsistencies in how Mr JVG described his relationship with C (at the relevant time) when considered in the context of the evidence given by Ms MB as to the living arrangements (at home) between Mr JVG and C. Mr JVG described his relationship with C as being "*like a daughter*" however Ms MB stated that Mr JVG's room (at home) was "*out of bounds*" for C and that Mr JVG did not have "*much to do*" with C; and C was never left alone with Mr JVG.

e) Inconsistencies in Mr JVG's evidence – the duration of his relationship with Ms MB and C

There are further inconsistencies identified by the Commissioner in the QPS interview with Mr JVG – Mr JVG stated that he lived with Ms MB and C for a period of 3 to 4 years (around 2005) yet states (during the QPS interview) that he lived with Ms MB and C in Ipswich in 2000; Mr JVG states that C has been with him the whole time he has been with Ms MB and the statement of Ms MB states that C lived with her biological father for a period of time in 2000 before living with her (Ms MB).

f) Insight into the offences – the reasons why the allegations were made (by C)

Mr JVG stated (in the QPS interview) that C lies "*a little bit*" about things around the home and otherwise provides no explanation as to why C would "make up the allegations" if they were in fact untrue. Mr JVG has (however) told Mr Walkley that the allegations were very close in nature to the offences committed by C's biological father (against C's biological sister) – this explanation was not raised by Mr JVG during the QPS interview.

¹⁶ Respondent's written submissions dated 31 October 2012, [39].
¹⁷ Exhibit "1", section 21 material, p CCYPCG045.

g) Insight and suitability to work with children – the negative impacts or bad outcomes on children (affected)

Mr JVG, when questioned by Mr Walkley (psychologist) during the assessments was unable to engage in a discussion about the negative impacts or bad outcomes on children affected by sexual offending. The Commission submits that given Mr JVG's experience with having a step-daughter who had a biological father who was convicted for sexual offences concerning her (C's) biological sister, he should have insight into the negative impacts or bad outcomes on children affected by offending behaviour.

h) Suitability to work with children – “sexual talk” between Mr JVG and Ms MB

Mr JVG stated (in the QPS interview) that C had heard “*sexual talk*” between himself and his partner (Ms MB) and this was described as being in the context of Mr JVG talking to Ms MB.

i) The Department of Communities (Child Safety Services) information – reasons for not moving out of the home

The Department of Communities (Child Safety Services) information indicates that C was removed from Mr JVG's residence (following the allegations being made) under a Child Protection Care agreement as Mr JVG refused to leave the residence and that his partner (Ms MB) knew about the alleged abuse but continued to allow Mr JVG to remain in the residence.

j) Mr JVG's relationship with Ms MB – inconsistent evidence

There were further inconsistencies identified at the hearing in relation to the evidence given by Mr JVG, the QPS statement of Ms MB and the report of Mr Walkley – Mr JVG described his relationship with Ms MB as being a “*strong relationship*”. Mr Walkley (in his report) described Mr JVG's relationship as being a “*long-term relationship with a loving partner*” and he was engaged to be married for about ten years. Ms MB in her statement (provided by the QPS) refers to Mr JVG as her “*partner*” and that they have been having an “*on-off*” relationship since 2001 and about six months after moving into a house in a suburb of Townsville, the “*relationship with [Mr JVG] ended*”.

k) Mr JVG's relationship with C's biological father (convicted of offending behaviour)

There are concerns about Mr JVG's relationship with C's biological father, in particular that he was aware that C's biological father had been convicted for sexual offences relating to young children and had served a period of imprisonment but Mr JVG continued to be acquainted with him. In particular there was an incident where Mr JVG travelled in a motor vehicle with Ms MB, C and C's biological father.

l) Suitability to work with children – communicating C's biological father's offences to C

Mr JVG also gave evidence (at the hearing) about how he and Ms MB communicated the information about C's biological father having been convicted of sexual offences concerning her biological sister – C (aged 6 years) was told by Mr JVG, C's biological father and Ms MB that her father was going to jail. Ms Alton on behalf of the Commissioner had an opportunity to ask Mr JVG some questions about the incident and in submissions made at the conclusion of the hearing referred to his evidence as being another relevant factor to be considered in determining whether in the circumstances there is an unacceptable risk of harm to children and this is therefore an exceptional case.

Mr JVG's personal profile and circumstances

- [21] Mr JVG (now aged 36 years) provided a written statement (his life story) dated 10 August 2012 and gave sworn evidence supporting his statement at the hearing. He was born in Townsville and grew up with his mother, father, brother and grandmother. He described his school years as being difficult due to being unable to read or write "properly" and he would regularly truant.
- [22] Mr JVG left home (due to a disagreement with his father) in 1991 and spent a period of time living on the streets, borrowing money until he went to live with his aunt. His aunt made him return to school until he turned 15. He left school and "*fell in with the wrong crowd*" smoking drugs and stealing to support his habit until he was charged in 2000 for possessing drugs. He describes this as a "*wake up call*" and that he (then) wanted to "*straighten out [his] life*". He found a job erecting and repairing fences and moved to Ipswich (with his aunt who he was living with, who had decided to move). Prior to moving to Ipswich he met Ms MB who soon after (about one month) also moved to Ipswich. He remained in employment and then he and Ms MB moved back to Townsville.
- [23] Upon moving back to Townsville Mr JVG stated that he reconnected with his father and Ms MB's step-daughter (C) came to live with them firstly with Ms MB's parents and later (after two more moves into different houses) they lived in a 3 bedroom house. Mr JVG remained in various employment – floor sanding (upon returning to Townsville) and then worked with a plumber. Mr JVG refers to further moves – living in Kirwan, then renting a house on the outskirts of Charters Towers (owned by Ms MB's uncle) and working for 12 months in a furniture store until he was retrenched. Mr JVG, his partner Ms MB and C moved back to Townsville and moved into a house at S and Mr JVG found work as a pool cleaner. Mr JVG then found work installing solar systems on roofs (through his father) when the allegations were made by C. Mr JVG refers to the allegations as being "false" and that he was "devastated"; he "*lost interest in life*" and his relationship with Ms MB suffered. He also went through what he describes as "*major depression*" and received treatment from his doctor.
- [24] Mr JVG gave evidence at the hearing that he has known C's biological father since childhood – he met him through his aunt and uncle (his father's

sister) with whom he moved to Ipswich to live in about the year 2000. In relation to travelling with Ms MB, C and C's biological father in a motor vehicle (in 2002), Mr JVG stated that this (the car travel) was arranged by Ms MB. He also stated that C was never left alone with one person and whenever C's biological father were around there were more than 3 people there.

- [25] Mr JVG gave oral evidence about the circumstances surrounding informing C of her biological father's convictions (as told to Mr Walkley, psychologist). He stated that when C was aged 5 or 6 years (in the years 2003 or 2004) Ms MB wanted to let C know about the allegations so C's biological father came back to Townsville and he stated "*we all sat down*" and the three of them (Mr JVG, Ms MB and C's biological father) "*explained it to her ([C]) and she knew her father was charged and stuff like that*". Mr JVG stated that as C got older she asked more questions about the allegations concerning her biological father. When asked (at the hearing) whether any counselling was arranged for C, Mr JVG stated that "*we didn't think it needed to be done she [C] seemed to be ok*". He further stated, when questioned throughout the hearing about C's capacity to understand the nature of the allegations concerning her biological father, that had he "*got help*" back then "*this might not have happened*".
- [26] Mr JVG was questioned at the hearing about the explanation given to Mr Walkley (psychologist) as to why C made the allegations (presuming they were untrue) – Mr JVG told Mr Walkley that the allegations were similar in nature to the charges concerning C's biological father. In particular Mr JVG was questioned about why he did not proffer "this explanation" to the QPS when interviewed after the allegations were made by C (at first instance). Mr JVG stated that Mr Walkley asked him so he gave him a reason; and in relation to the QPS interview he stated that the police "*knew all about it*".
- [27] Mr JVG was also questioned about the "inconsistencies" in his evidence about his relationship with C (provided to the QPS in his interview) that he viewed C as his daughter and the evidence given by Ms MB (to QPS) that Mr JVG did not have much to do with C and C was never left alone with him. Mr JVG stated that his involvement with C in terms of parenting was to ensure C had clothing and enough food "on the table". He stated in response to the questions about Ms MB's evidence concerning C never being left alone with him (in the context of whether a "normal parent" would be "more involved") that he did not want allegations to come out and that is why C was always with Ms MB and that this arrangement was in place from "the start". Mr JVG stated that when at home C slept with Ms MB "most of the time"; he did not understand why the allegations were made and that he classed C as "his daughter". He stated that after the allegations were made he was questioned by police and C was taken from the home and put into care – she "*never came home again*". He also stated that he did not vacate the residence (after the allegations were made) because the lease (of the house) was in his and Ms MB's names which meant that C had to leave the family home. When questioned

about why he did not leave the house on a temporary basis he stated that no one was allowed to see C and that Ms MB was going to live with C and Ms MB's parents but they were informed that "*no, you will never have her again*".

- [28] Mr JVG was questioned at the hearing about the interview with Mr Walkley and the question asked by Mr Walkley to discuss the negative impacts or bad outcomes on children affected by sexual offending. He stated that he "*still did not understand properly*" but when asked to talk about impacts or bad outcomes on a child he stated that it "*upsets [him]*" and that he "*just knows it is wrong with everything that has happened*". He also stated (when questioned) that if he heard or knew someone who was offending he would speak to police – stating he knows it is wrong.
- [29] Mr JVG was also questioned at the hearing about his evidence given to the QPS (police interview) that C overheard "sexual talk" between himself and Ms MB. He stated that he told C to "*go back to bed*" and that C did not have any reaction to what she heard.
- [30] Mr JVG was also questioned at the hearing about his relationship with Ms MB in relation to the evidence before the Tribunal that Ms MB refers to her relationship with him as being an "on/off relationship". He stated that their relationship was "*strong*" and it got him "*through some hard times*" but he stated that they "*did have their problems here and there*". He also confirmed that while living in the house where one of the allegations made by C was alleged to have taken place, he and Ms MB shared separate bedrooms.
- [31] During the period of the court proceedings (concerning the allegations made by C), Mr JVG states that he lost his job and moved into his parent's house as he could not afford to pay rent. He states that when C "*admitted she made everything up*" it was the "*the best day of [his] life*" – it was "*like a weight was lifted off [his] shoulders and [he] could see some sort of future*". He found work a couple of weeks later (through a friend) until he was fired as a result of a negative notice being issued by the Commission.

Mr JVG's evidence about the allegations (made by C)

- [32] Mr JVG gave sworn evidence at the hearing about the allegations (later discontinued) made by C. He was shown various photographs tendered at the hearing by his legal Counsel (Mr Greggery) of the A hut where two of the alleged offences were said to have taken place. For example, photographs were tendered of the sleeping arrangements and the position of Mr JVG's bed at the A hut which was (as stated by him) the same arrangements on the night the alleged offences were said to have taken place. Mr JVG denied during his evidence, that he "touched" C or asked C to touch him as alleged.
- [33] Mr JVG gave oral evidence at the hearing that he was never left alone with C at the fishing hut (at the A hut) and the sleeping arrangements at the hut were such that C was sleeping next to the louvres that were

connected to a bedroom where people (other family members) were also sleeping – stating they were sleeping “*right next to her*”.

Supported evidence of Ms IKL (Mr JVG’s cousin)

- [34] Ms IKL provided a statement dated 17 March 2011 and gave sworn evidence (by telephone). She gave evidence about the sleeping arrangements at the fishing hut (the A hut) over the Christmas holidays of 2008 (during the period of two of the alleged offences). She also gave evidence about her observations of Mr JVG’s relationship with Ms MB and C; and Mr JVG’s interactions with her own children.
- [35] The Tribunal found Ms IKL to be clear and consistent when giving her oral evidence. For example she maintained that she had observed Mr JVG interacting with C and Ms MB without any hesitancy or reluctance (on C’s part) towards Mr JVG and stated that she had only observed Mr JVG with other children who were members of the family (other than C).
- [36] Ms IKL left Townsville to live in Victoria in April 2012. She states that she has known Mr JVG her whole life and was aware of his relationship with Ms MB and C. She has two children and states that Mr JVG and Ms MB babysat her children in late 2008 (prior to Christmas). She also refers to staying at the fishing hut in 2008 and that her children played with C and she would spend time with Ms MB. She states that the hut “*is not large*” and there is “*no privacy for anyone*”. During her stay at the hut (in late 2008 and 2009) Mr JVG, Ms MB and C slept on the veranda and she states she did not observe any “*unusual behaviour between [C] and [Mr JVG]*”.
- [37] Ms IKL’s oral evidence supports Mr JVG’s evidence that the allegations (made by C) were untrue stating that they are “*ludicrous*” and “*flat out untrue*”. She states, in relation to her observations of Mr JVG interacting with other children (members of the family), that his interactions were appropriate and that he is “*great with kids*”. Her evidence also supports Mr JVG’s evidence about the nature of his relationship with Ms MB and C – Ms IKL states that they “*loved each other*”, were engaged to be married; and treated the child (C) like any other child. She also stated that Ms MB sometimes slept in her own room if she could not get comfortable and described Ms MB as being “*quite a big lady*”.
- [38] The Tribunal accepts the evidence of Ms IKL in relation to the nature of the relationship between Mr JVG and his partner Ms MB; and her response to the circumstances of the allegations (made by C).

Supported evidence of Ms CLI (Mr JVG’s aunt)

- [39] Ms CLI provided a statement dated 23 March 2010 and gave evidence about the sleeping arrangements at the A hut relevant to the allegations made by C and her observations of the personal relationship and family dynamics between Mr JVG, Ms MB and C.

- [40] The Tribunal found Ms CLI to be a credible witness who gave her evidence in an honest and forthright manner. For example she conceded that she had not seen Mr JVG for approximately one year prior to the hearing and that she did not know that Mr JVG and Ms MB had lived together (for a period of time) in Ipswich.
- [41] Ms CLI stated at the hearing that she was at the A hut during the 2008 Christmas holidays which is the relevant time two of the alleged offences (by C) took place. She gave oral evidence about the night of the storm on New Year's Eve and that Mr JVG, C and Ms MB moved their bedding into the lounge room because the rain was blowing into the front louvres. She stated that C slept on the lounge chair in the lounge room and Ms MB and Mr JVG slept on the lounge room floor. Ms CLI stated (upon questioning) that she did not remember seeing Ms MB and her mother (Mrs JG) staying up on the night of New Year's Eve (after they had moved to the lounge room) but did remember later that her mother (Mrs JG) had told her that she and Ms MB "*had been up*".
- [42] Ms CLI gave oral evidence about Mr JVG's relationship with Ms MB stating that they had been together for at least 9 or 10 years ("could be longer") and Mr JVG "*idolised [Ms MB]*". Ms CLI visited Mr JVG at his parents' place for family occasions and every time she saw Mr JVG with C they were "*all together*" (C, Ms MB and Mr JVG). She stated that she visited her parents about once per month and "*maybe [Mr JVG, Ms MB and C] were there*"; that Mr JVG and Ms MB treated C as their own child – C would call Mr JVG "Dad" and Ms MB "Mum"; and that Ms MB would never leave C alone with another male person. Ms CLI explained that this (not leaving C alone) was her "*own view*" that Ms MB did not want to leave C with another man after what had happened with C's biological father. She later stated that Ms MB would not leave C alone with anyone.
- [43] Ms CLI answered questions at the hearing about her knowledge of C's biological father. She stated that she knew he had been in prison for child molestation and he was a friend of Mr JVG and her sister. She was not able to indicate whether she knew Mr JVG remained friends with C's biological father (after he was convicted).

Supported evidence of Mrs JG (Mr JVG's mother)

- [44] Mrs JG provided statements dated 25 May 2010 and 15 March 2011 and gave evidence about the allegations made by C and Mr JVG's relationship with Ms MB; and Mr JVG's childhood. The Tribunal found Mrs JG's recollection of events in giving her oral evidence to be limited. Her unreliability (as to recalling events) may be explained by the fact that she was experiencing personal distress at the time of the hearing having recently lost (in tragic circumstances) some close family members.
- [45] Mrs JG provided statements in support of Mr JVG's application in relation to the circumstances surrounding the allegations made by C and the sleeping arrangements at the A hut owned by herself and her husband. Mrs JG's evidence about Mr JVG's relationship with C and Ms MB

corroborates the evidence given by Mr JVG and other family members that C would call him “Dad” and that she did not observe any reluctance (by C) towards Mr JVG while in his presence.

- [46] Mrs JG (in her written statements dated 25 May 2010 and 15 March 2011) corroborates the evidence given by Mr JVG and Ms CLI that on the night of New Year’s Eve 2008 (when two of the offences were alleged to have occurred), there was a storm and Mr JVG, C and Ms MB moved into the lounge room. Mrs JG states that she stayed up all night talking to Ms MB and that she was present at all times C was sleeping on the coach. She also states that she has never stayed at the fishing hut with her husband, Mr JVG, C, Ms MB, Ms IKL and her 2 children – as alleged by C in her interview with police that one of the incidents occurred at the fishing hut when she (C) was staying with Mr JVG, Ms MB, Mrs JG, Mr G (senior), “*my two cousins and their mum and dad*”. Mrs JG states that C would be referring to Ms IKL and her two children who have stayed at the hut but not at the same time as Mrs JG and Mr G (senior).
- [47] Mrs JG corroborates the evidence given by Mr JVG that he was in a long-term relationship with Ms MB (about 10 to 12 years) and that C was always with Ms MB. She stated that C referred to Mr JVG as “Dad” and Mr JVG, C and Ms MB were like a “*real family*”.
- [48] Mrs JG’s evidence supports Mr JVG’s evidence about his childhood years in particular that he went to live with his aunt. She stated that Mr JVG repaired his relationship with his father after he commenced his relationship with Ms MB. Mrs JG also stated that Ms MB would never leave C alone.

Expert Evidence of Mr Robert Walkley (psychologist)

- [49] Mr Walkley is a forensic and clinical psychologist who completed an assessment and prepared a report dated 3 October 2012. He also gave sworn evidence at the hearing about his assessment and findings. The assessment (of Mr JVG) consisted of 3 sessions (approximately 2 1/2 hours long) on 16 August, 18 August and 28 September 2012, respectively. Mr Walkley was given a copy of the material before the Tribunal including the documents received by the Commissioner from the QPS and DPP. He confirmed that during the sessions (with Mr JVG) he took detailed notes and talked to Mr JVG (amongst other things) about the issues before the Tribunal, in particular his previous relationships, sexual orientation and attitude to the allegations – to assess his personality and to evaluate whether Mr JVG poses a sexual risk to young girls.
- [50] Mr Walkley has approximately 3 years experience working with sex offenders and prior to that he prepared reports on behalf of defendants entering a plea of guilty before the courts and prepared reports in support of recommendations made for early release to the Parole Board. He also has experience in preparing pre-sentence reports and assessments for the assistance of the courts in relation to criminal matters. He was questioned at the hearing about his relevant experience and qualifications,

in particular the testing scales and methods used by him to assess Mr JVG.

- [51] The Tribunal is satisfied that Mr Walkley is suitably qualified as a forensic psychologist. The Tribunal observed (at the hearing) that Mr Walkley was able to sufficiently answer the questions put to him about his qualifications and he was able to identify the relevant testing scales and methods used. For example, he stated that in the field of psychology there is psychometric testing that would bring out certain “predilections” and that the testing available would measure any “risk”. However, without a conviction (in the past) the testing does not enlighten in terms of risk. This is relevant to Mr JVG’s assessment in that the criminal proceedings (concerning the allegations made by C) were discontinued so there are no prior convictions (as such) concerning sexual offending behaviour. When questioned about whether Mr Walkley’s opinions were based on self-reporting of the person (in this case Mr JVG), he answered “*to a point*” and explained that he would “*marry that*” with clinical observations in terms of consistency of information/responses provided instead of relying on self-reporting.
- [52] Mr Walkley’s report detailing Mr JVG’s past personal circumstances is consistent with the evidence given by Mr JVG about his childhood and previous relationship with Ms MB. Mr Walkley reports that Mr JVG admitted to using drugs and alcohol during a period (around age 15), experienced difficulty at school and left home (age 15) and lived with his aunt. Mr Walkley reports details of Mr JVG previous relationship with Ms MB in that it was a long-term relationship (approximately 11 years) “*with a loving partner*”. Mr Walkley also reports details of Mr JVG’s relationship with C – she came into the care of Ms MB (and Mr JVG) when the girl was aged approximately 18 months old and that “*he treated her as his daughter and felt she thought of him as her father*”. Mr Walkley reports that C was “*sat down by her mother and father*” and was informed of the offences concerning C’s biological father and that Mr JVG stated the offences “*were very close in nature to the offences as described and alleged by [C]*”.¹⁸ Mr Walkley also reports that Mr JVG was unable to “*offer in terms of illuminating why [C] raised allegations against him*” and that Mr JVG stated that the allegations are “*utterly false and he never did anything of an untoward or sexualised nature towards her*”.¹⁹
- [53] Mr Walkley reports that Mr JVG was able to report why offences which relate to young children are wrong but he was unable “*to elaborate upon the specifics as to why or how it might have such a negative impact*”. Mr Walkley also reports that although no formal evaluation of Mr JVG’s intellect was undertaken he formed an opinion that (in all likelihood) his intelligence would be in the low-average range; probably around an IQ of 90. Mr Walkley reports that he cannot form the opinion that Mr JVG poses a sexual risk to young girls.

¹⁸ Report of Robert Walkley dated 3 October 2012, p 8.

¹⁹ Report of Robert Walkley dated 3 October 2012, p 8.

Evidence of Ms MB (Mr JVG's de facto partner, now deceased)

- [54] The material from the DPP and QPS included a statement prepared by Ms MB dated 13 November 2009. Ms MB refers to Mr JVG as “her partner” but states that “[a]lthough we live together, we’ve been having an on-off relationship since 2001”.²⁰ Ms MB corroborates Mr JVG’s evidence that he slept in a separate room to C and that she never leaves C alone with Mr JVG – she states that C is her child and her responsibility and she does not expect Mr JVG to look after her.²¹

Other evidence obtained from the DPP and QPS

- [55] Mr Gregory on behalf of Mr JVG tendered the transcript of the proceedings in relation to the court proceedings (pre-recording of evidence) at the District Court at Townsville before his Honour Judge Durward SC (on 24 March 2011). The transcript is relevant because C when questioned by the DPP about the allegations which allegedly occurred at her home and at the A hut, states that Mr JVG “*tried to hurt [her]*”²² and again states Mr JVG “*tried to touch [her]*”²³ and when further questioned about whether Mr JVG “*touched*” her she replied “*No*”.²⁴ When asked during cross-examination by Mr JVG’s defence counsel “*so he didn’t touch you on that occasion [at the house] either?*” she replied “*No*”.²⁵ In relation to the allegations taking place at the A hut C stated “*No*” when asked if Mr JVG tried to touch her;²⁶ and C stated that the allegations concerning sucking Mr JVG’s penis (the offence of rape) did not happen. C was asked whether she had made up a story told to police and she answered “*Yes*”.²⁷
- [56] The transcript of interview from the QPS in relation to the allegations made by C, being Mr JVG’s evidence to police is consistent with the evidence given by him in these proceedings and supported by his witnesses that he lived with Ms MB and C together as a family and slept in separate bedrooms. Mr JVG states that he “*occasionally*” would sleep in Ms MBs room.²⁸ Mr JVG also confirms the sleeping arrangements at the A hut – they would always sleep on the verandah.²⁹ Mr JVG when questioned about whether C tells lies stated that “*she lies...a little bit, yes*” about “*taking chocolates*” and “*touching things*” that she should not and

²⁰ Exhibit “1”, section 21 material, Statement of MB dated 13 November 2009, p CCYPCG 045.

²¹ Exhibit “1”, section 21 material, Statement of MB dated 13 November 2009, p CCYPCG 047.

²² Exhibit “2”, p 1-6 line 10.

²³ Exhibit “2”, p 1-8 line 1.

²⁴ Exhibit “2”, p 1-8 lines 10, 40.

²⁵ Exhibit “2”, p 1-8 line 50.

²⁶ Exhibit “2”, p 1-11 line 20 and p 1-2, line 1.

²⁷ Exhibit “2”, p 1-14.

²⁸ Exhibit “1”, section 21 material, Transcript of police record of interview dated 13 November 2009, p CCYPCG 023, line 10.

²⁹ Exhibit “1”, section 21 material, Transcript of police record of interview dated 13 November 2009, p CCYPCG 026.

refers to Ms MB's shampoo and her purse.³⁰ When asked by police about whether there was anything he could tell them (in relation to the allegations), Mr JVG replied, "*No, there is nothing I can – can tell you about*".³¹

- [57] There is a statement included in the QPS and DPP material prepared by the Acting Principal of the school attended by C at the time the allegations were made. The Acting Principal in her statement dated 31 May 2010 corroborates the statement provided by a teacher at the school. The teacher reports that on 11 November 2009, C told her during playground duty that (amongst others) her mother was "angry" with her because she was "*in bed with [her] new dad*".³² C allegedly told the teacher that she told her mother (Ms MB) about what happened and she gave her an object to lean against her bedroom door "as protection" and that her mother said "*you don't want to lose another dad, do you?*" C told a similar version to police during an interview on 13 November 2009 – C told her mother and she (Ms MB) asked C if she wanted her Dad (Mr JVG) to go to jail or stay home, Ms MB told C to get her Barbie chair and to put something heavy against the door so that he could not get inside. C also stated (during the police interview) that Ms MB spoke to Mr JVG (about him touching her) and Mr JVG told her that what he had done was wrong and C told him that she did not want him to go to jail as she already had two dads in jail – Mr JVG told C that he should go to jail because he had done the wrong thing.

Is this in all of the circumstances an exceptional case?

- [58] Mr Greggery submits that the only risk factor is if the allegations are true then there is a risk so you must make the assumption that the allegations are true. He also submits that it is exceptional for a complainant (such as C) in court proceedings to state (under oath) that she made up the allegations. He argues that the Commissioner contends that there are concerns about the reasons why the proceedings were discontinued (following C's sworn evidence) when considering all of the evidence and that some weight should therefore be given to the allegations to justify the issuing of a negative notice.
- [59] Mr Greggery refers the Tribunal to the transcript of the court proceedings in which C (under oath) admits that she made up the allegations. Mr Greggery also refers the Tribunal to the evidence given by Mr JVG and his supporting witnesses as to the sleeping arrangements at the A hut on New Year's Eve being where two of the offences were alleged to have taken place. Mr Greggery submits that Mr JVG's evidence contradicts C's evidence (given to police) as to the sleeping arrangements that night – C states she was sleeping in the lounge room and Ms MB and Mr JVG were

³⁰ Exhibit "1", section 21 material, Transcript of police record of interview dated 13 November 2009, p CCYPCG 029.

³¹ Exhibit "1", section 21 material, Transcript of police record of interview dated 13 November 2009, p CCYPCG 030, line 40.

³² Exhibit "1", section 21 material, Statement of the teacher dated 2 December 2009, p CCYPCG 034.

sleeping on the verandah. The witnesses (for Mr JVG) confirm that the change to the usual sleeping arrangements (Mr JVG, Ms MB and C sleeping on the verandah) was on New Year's Eve when there was a storm at which time Mr JVG, Ms MB and C relocated to the lounge room. Mr Greggery submits that the factual matrix of evidence presented to the Tribunal being the photographs tendered and evidence given by Mr JVG's witnesses excludes the possibility of the allegations ever occurring and it is therefore not surprising that C (under oath) confirmed that Mr JVG did not touch her and the allegations are simply not true. In relation to the allegations which took place in the family home Mr Greggery again refers the Tribunal to the transcript of court proceedings. He also refers the Tribunal to Mr JVG's evidence supported by his witnesses that he did not touch C, C always slept in her own room and C was never left alone with Ms MB.

- [60] Mr Greggery in referring the Tribunal to the QPS record of interview concerning Mr JVG, submits that there was no attempt by Mr JVG to discredit C (when questioned about the allegations by police) – Mr JVG states he cannot explain it (why the allegations were made). Mr Greggery also invites the Tribunal to accept the evidence of Mr Walkley that Mr JVG was consistent with his answers and responses about his attitude towards the allegations (that they are untrue).
- [61] Mr JVG also relies on a statement tendered at the hearing stating that he has been proven innocent in relation to the allegations. Mr Greggery submits that there is sworn evidence before the Tribunal by the complainant child that the allegations did not take place and the proceedings were discontinued; and there is therefore a presumption of innocence.
- [62] Ms Alton argues that there are inconsistencies in the evidence before the Tribunal which gives rise to concerns and (in effect) a possible reason why the child complainant (C) withdrew her complaint – there was a risk that she would lose another father (as told by C to police). There are also other concerns in reviewing Mr JVG's application – the way in which he interacted with C as her carer and father based on how he referred to his relationship with Ms MB and C. Ms Alton refers to Mr JVG's evidence about the conversation he says took place between C, her step-mother (Ms MB) and C's biological father when C was aged 5 or 6 years of age. Mr JVG stated that they told C about her biological father and the allegations that had been made about him concerning her biological sister.
- [63] Ms Alton refers to Mr JVG's inconsistent evidence about his relationship with C's biological father – he stated that he was aware that C's biological father had been convicted of child sexual offences outside Queensland (referred to as the first lot of offences in the hearing) and that he effectively "distanced" himself from C's father after he became aware of the offences. Mr JVG also gave evidence that he met his partner (Ms MB) through C's biological father and travelled in a car from Ingham to Townsville with C's biological father, C and his partner (Ms MB). Mr JVG

did (however) give evidence at the hearing that this (the car travel) was something arranged between Ms MB and C's biological father.

- [64] Ms Alton also refers to Mr JVG's inability to articulate the impact of child sexual offences on a complainant child and in this regard refers to the expert evidence of Mr Walkley. Ms Alton argues that given that Mr JVG had experience with C in relation to her biological father being convicted of child sexual offences and having been involved in communicating this information to C (considered to be his daughter at the relevant time) he should therefore be in a position to articulate the negative impact or effects of such offences on a child.
- [65] Ms Alton also argues that Mr JVG will be working with children in the event that he is given a blue card and there are concerns about his suitability to work with children.
- [66] By reply Mr Greggery submits that the Commissioner "has concerns" and a reference to concerns means that you are making assumptions or findings about the allegations in that there is some truth to them or that they are in fact true. Mr Greggery argues that Mr JVG can never provide reasons why C might make up the allegations when on oath they are stated (by C) to not be true and on the evidence before the Tribunal it is unlikely it happened (that is) the witnesses who gave evidence on behalf of Mr JVG in relation to his character also gave evidence about the circumstances surrounding the allegations.

Tribunal findings

- [67] The Tribunal does not accept the submission made by Mr Greggery that there is a presumption that Mr JVG is innocent in relation to the allegations on the basis that C gave sworn evidence that the allegations did not take place. The presumption of innocence is a rebuttable presumption. The proceedings (and application) before the Tribunal must be considered within the objects of the Act – to promote and protect the rights, interests and well being of children in Queensland. This (the safety and well being of children) is the Tribunal's paramount consideration in exercising its review function under s 20 of the *Queensland Civil and Administrative Tribunal Act 2009*.
- [68] It is not the Commissioner's role as the original decision maker nor is it the role of the Tribunal standing in the Commissioner's shoes (on review) to determine whether the offences (as alleged by C) are true. Similarly it is not the Tribunal's role to make any evidentiary findings about whether C has made the allegations and later during court proceedings has (under oath) stated that the allegations did not occur and that this was also simply not true – therefore making a finding that notwithstanding the offences being discontinued (and C's sworn evidence to the contrary) the allegations were true.
- [69] The Commissioner has referred the Tribunal to several concerns about the circumstances of the offences and Mr JVG's evidence in considering

whether in all of the circumstances this is an exceptional case. The concerns were identified by Ms Alton at the hearing and Mr JVG and his witnesses were given every opportunity to respond (by answering questions). Similarly the issues to be considered by the Tribunal on Mr JVG's behalf were identified during closing oral submissions and Ms Alton was given an opportunity to respond.

- [70] The Tribunal is satisfied that all of the concerns raised on the Commissioner's behalf have been addressed and that in all of the circumstances this is not an exceptional case in which it would not be in the best interests of children to issue a positive notice.
- [71] The Tribunal accepts Mr JVG's evidence supported by his witnesses at the hearing about his childhood, that he had a difficult time at school (as a young man) and after leaving home (aged 15 years) to live with his aunt he got into trouble with the law and this resulted in a change in personal lifestyle choices. He commenced a relationship with Ms MB in about the year 2000 and soon after resumed care of C (as her step-father) together with Ms MB (as C's step-mother). Mr JVG was aware of C's biological father having a history of sexual offending behaviour concerning children (one of which was C's biological sister). Mr JVG met C's biological father through his aunt (with whom he was living) and with whom Ms MB was previously in a relationship.
- [72] The decision to inform C (aged 5 or 6 years) about her biological father's sexual offending behaviour is clearly unsuitable and inappropriate given the age of C at the relevant time and in the absence of any independent professional advice and/or support as to the suitability and appropriateness of communicating this information to a child. Notwithstanding the inappropriateness about the decision to inform C (about her biological father) and the way this information was communicated (to C), the Tribunal accepts Mr JVG's evidence that this (the decision to inform C) was arranged by Ms MB and C's biological father. Mr JVG gave evidence that all three of them (Ms MB, C's biological father and himself) told C about the offending behaviour and this was arranged by Ms MB. Mr JVG's evidence that Ms MB made the decision to communicate the information to C (with her biological father) is consistent with the evidence before the Tribunal that C was Ms MB's responsibility and C was always with Ms MB.
- [73] The evidence about C and Ms MB's relationship is supported by Mr JVG, his supporting witnesses and Ms MB (in her statement to the QPS) – that C was always with Ms MB and was her responsibility (as stated by Ms MB in her statement). The Tribunal is satisfied that this concern (informing C about her biological father) raised by the Commissioner as to Mr JVG's suitability to work with children, having considered all of the evidence and the answers provided by Mr JVG, does not otherwise give rise to circumstances which would make this an exceptional case in which a negative notice should be issued.

- [74] The Tribunal accepts Mr JVG evidence about the “care” arrangements of C and that C was never left alone with him. Mr JVG stated that he was to provide C with food and shelter and although he thought of her as his daughter she was never left alone with him. Mr JVG’s evidence is supported by his witnesses. The Tribunal is not satisfied in relation to the Commissioner’s concerns that Ms MB never leaving C alone with him when viewed in light of the allegations being made (by C) raises concerns about Ms MB having a reluctance (to leave C with him) and otherwise raises concerns as to Mr JVG’s suitability to care for C. All of Mr JVG’s witnesses support his evidence that the arrangement (by Ms MB) to not leave C alone with him (or another male person) was in place from the commencement of their relationship – when C came into his care.
- [75] The Tribunal is not satisfied that Mr JVG was unable to demonstrate insight into the negative impacts on children (concerning sexual offending) and this therefore raises concerns about his suitability to work with children. The Tribunal was satisfied with the answers given by Mr JVG when questioned about offending behaviour (concerning children). Mr JVG stated that such offences (concerning children) were wrong and that he would speak to police if he knew someone was offending.
- [76] The Tribunal does not attach any weight (in considering all of the evidence) to the changes made by Ms MB to her statement provided to police (regarding C’s credibility if she was told by C about the allegations) on the basis that Ms MB’s statement (and her evidence) cannot be tested. The Tribunal has otherwise addressed the issues concerning Ms MB’s evidence and the allegations made (by C) in considering the relevant factors referred to as “concerns” identified on the Commissioner’s behalf, in these proceedings.
- [77] The Tribunal accepts the submission made by Ms Alton (at the hearing) that the Tribunal should consider the statement provided to police and that this evidence is relevant when considering Mr JVG’s evidence and any inconsistencies (in his evidence) about his relationship (with Ms MB and C) and the allegations (generally). The Tribunal is satisfied that Ms MB’s statement in considering any inconsistencies in Mr JVG’s and his witnesses’ evidence as to their attitudes towards the allegations and the relationship between Mr JVG, Ms MB and C have been addressed at the hearing. Mr JVG’s evidence about his relationship with Ms MB and C is supported by his witnesses. The Tribunal has otherwise addressed the concerns raised by the Commissioner about the allegations made by C in these reasons.
- [78] The concerns raised by the Commissioner in relation to Mr JVG’s explanation for C making the allegations, as given to Mr Walkley and not provided to the police (during the QPS interview) have been addressed by Mr JVG to the Tribunal’s satisfaction. Mr JVG gave evidence that the police knew about the matter (in explaining why he did not give the same explanation to police) and he stated that he gave Mr Walkley an answer because he asked (for an explanation). The Tribunal accepts the submission made by Mr Gregory that Mr JVG has consistently denied the

allegations and this is supported by the transcript of police interview and the answers provided by Mr JVG to Mr Walkley and referenced in Mr Walkley's report.

- [79] The Tribunal is not satisfied that Mr JVG's evidence that C heard sex talk between himself and Ms MB raises any concerns that in considering all of the circumstances of this matter would give rise to an exceptional case. Mr JVG says that C was told to go back to bed after hearing "sexual talk" between himself and Ms MB who he has referred to as his partner. Ms MB also refers to Mr JVG as her partner in the statement provided to police although there are some inconsistencies about the nature of the relationship as described by Ms MB (in the QPS statement) which when compared to the evidence given by Mr JVG may raise concern. The Tribunal is satisfied these concerns have been addressed and is satisfied as to the answers provided by Mr JVG at the hearing, also supported by the report of Mr Walkley – when Mr JVG describes his relationship with Ms MB and C. Mr JVG also stated (under oath) that they (he and Ms MB) had their ups and downs and that they slept in separate bedrooms. This was also supported by Mr JVG's witnesses at the hearing – the witnesses confirmed that Mr JVG had been with Ms MB for a long period of time and that they had slept in separate rooms (the evidence about sleeping in separate rooms was also supported by Ms IKL).
- [80] The concerns about the information from Child Safety have been addressed at the hearing to the Tribunal's satisfaction. Mr JVG gave oral evidence that Ms MB was prepared to move out (following the allegations being made) with C but was told C was to be removed from Ms MB's care. There is no evidence before the Tribunal to contradict Mr JVG's evidence that he and Ms MB's names were on the lease of the house so Mr JVG could not leave the house but Ms MB was (however) prepared to move out with C but this (offer) was refused by the Department of Child Safety.
- [81] The Tribunal is satisfied with the answers provided by Mr JVG during his evidence at the hearing about his relationship with C's biological father – he states that the arrangements to travel in a car with C, Ms MB and C's biological father were made by Ms MB. Mr JVG stated that he met C's biological father through his aunt and he (C's biological father) was Ms MB's former partner and he was never left alone with C. This is consistent with the statement provided by Ms MB to police and Mr JVG's witnesses that C was never left alone (with either Mr JVG, another male or anyone); and C was Ms MB's responsibility.
- [82] The Tribunal accepts Mr Walkley's professional opinion as to Mr JVG's intellectual capacity that he has a low-average intelligence. The Tribunal observed at the hearing that Mr JVG (at times) struggled to clearly articulate his answers to questions asked resorting to short answers and only when prompted did he further expand his responses. This was not observed by the Tribunal to be an issue of credit or an inability to communicate verbally but rather a limited vocabulary. The Tribunal's observation is consistent with Mr Walkley's professional opinion that Mr JVG has a low-average intelligence and Mr JVG himself has given

evidence that he experienced difficulty at school (with reading and writing) and did not complete his secondary education (to year 12).

- [83] The Tribunal also accepts Mr Walkley's evidence that Mr JVG was consistent in his responses to questions put to him over three sessions. The Tribunal does not, however, attach any weight to Mr Walkley's opinion as to whether Mr JVG poses a risk to young children. This is on the basis that Mr Walkley's level of experience is, as indicated at the hearing, in dealing with people who have convictions (where they have pleaded guilty or have been convicted by a court of law). This is not the case here – the offences arising from the allegations made by C were discontinued.
- [84] The Tribunal has considered the evidence in the form of photographs as to the sleeping arrangements at the A hut and the evidence of Mr JVG and his witnesses about the sleeping arrangements at the family home (where Mr JVG lived with Ms MB and C); and the A hut. Mr JVG and his witnesses (in evidence given at the hearing) state that on New Year's Eve (at the A hut) in 2008/2009 there was rain and (as a result) a change in the sleeping arrangements for Mr JVG, C and Ms MB – they moved into the lounge room from the verandah. The lounge (where C was allegedly sleeping) on the night that two of the offences took place, was (as depicted in the photographs and supported by witnesses) within close proximity of other family members where Mrs JG and Ms MB were talking. Mrs JG gave evidence that they (her and Ms MB) stayed up all night (talking). Ms CLI also gave evidence about the sleeping arrangements at the hut. Mr Greggerly refers the Tribunal to C's evidence given to police that the offences (at the A hut) took place over the holidays when Ms IKL, her children, Mrs JG and Mr G (senior) were staying together with Mr JVG, Ms MB and C. Ms IKL and Mrs JG gave evidence that they have never stayed at the A hut at the same time (that each of them were there – Ms IKL, Mrs JG and Mr G, (senior). The Tribunal accepts the evidence of Ms CLI, Ms IKL and Mrs JG in relation to the sleeping arrangements at the A hut.
- [85] The Tribunal has also read the transcript of proceedings in relation to the court proceedings (being discontinued) and accepts the submission made by Mr Greggerly that C was taken through her evidence and she has (unprompted) indicated the offences did not occur as alleged. This evidence must also be considered as the Commissioner has raised concerns that notwithstanding the allegations being withdrawn by C the allegations may have been true on the basis that the allegations were made at first instance (unprompted) by C to school staff (a teacher) and C gave evidence about her mother (Ms MB's) response to when she allegedly told her about Mr JVG – C told police that Ms MB said she should put something in front of the door (her Barbie chair) and if she told anyone about the allegations she would have two dads in jail. The Commissioner also raises these concerns (why C has given evidence that the allegations are not true) in the context of Ms MB's evidence that Mr JVG did not have much to do with C; and that there is a plausible reason why the allegations were withdrawn by C (C would have two dads in jail).

- [86] The Tribunal has already addressed the issues concerning Ms MB's evidence and has carefully considered all of the evidence received from the DPP and the QPS and Child Safety and the evidence given by Mr JVG and his witnesses. The Tribunal is satisfied with the responses provided which address the concerns raised by the Commissioner and having made findings about the witnesses' evidence given on behalf of Mr JVG, the Tribunal is satisfied that there is no assumed risk of offending behaviour based on all of the material. The Tribunal cannot be satisfied that the circumstances of this matter give rise to an exceptional case such that it would not be in the best interests of children to issue a positive notice. The appropriate order is that the Commissioner's decision to issue a negative notice be set aside and a positive notice issued accordingly.

Non publication order

- [87] The Tribunal has the power under s 66 of the *Queensland Civil and Administrative Tribunal Act 2009* to make an order prohibiting the publication of the names of the Applicant (Mr JVG), his witnesses who gave evidence on his behalf at the hearing, his former step-daughter and his former de facto partner (Ms MB also known as Ms MG and Ms ME) and any references to the places where the alleged offences were said to have taken place (at the A hut and at S). The Tribunal may make an order under s 66 on its own initiative if it considers the order is necessary on certain grounds set out under s 66(2) – this includes whether to avoid the publication of confidential information or information whose publication would be contrary to the public interest; or for any other reason in the interests of justice.
- [88] The offences (later discontinued) concerning Mr JVG were made by a child (Mr JVG's former step-daughter). The Tribunal is satisfied that in circumstances where identification of the Applicant and his witnesses could easily identify the complainant child (Mr JVG's former step-daughter), it would not be in the public interest to publish the names of the Applicant and his witnesses. Furthermore, in circumstances where the allegations (made by the complainant child) were alleged to have taken place within a small region (the A hut and at S) it would therefore be possible to more readily identify the complainant child if the references to any location or place of residence of Mr JVG were to be identified, the interests of justice otherwise warrant the Tribunal making an order prohibiting the publication of the references to any location of where the alleged offences took place. There was no objection raised at the hearing by Mr Gregory on behalf of the Applicant and Ms Alton on behalf of the Commissioner to the Tribunal making a non-publication order as proposed in these reasons.