

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *CAE v Director-General, Department of Justice and Attorney-General* [2019] QCAT 361

PARTIES: **CAE**
(applicant)

v

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

APPLICATION NO/S: CML358-18

MATTER TYPE: Childrens matters

DELIVERED ON: 27 November 2019

HEARING DATE: 16 August 2019

HEARD AT: Brisbane

DECISION OF: Member McDonnell

ORDERS:

- 1. The decision of the Director-General, Department of Justice and Attorney-General that the applicant's case is 'exceptional' within the meaning of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is set aside and replaced with the Tribunal's decision that there is no exceptional case;**
- 2. Pursuant to s 66 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* the Tribunal prohibits the publication of the names of the applicant, any complainants, any witnesses appearing for the applicant and any relevant child;**
- 3. Accordingly these reasons have been de-identified.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of decision by respondent to issue a negative notice

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – where issue of negative notice – application for review – where applicant has conviction for grievous bodily harm – where applicant has

convictions for drug offences – where not categorised as serious offences under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) – whether an ‘exceptional case’ warranting departure from the general rule that a positive notice must be issued – application of factors in s 226 of the *Working With Children (Risk Management and Screening) Act 2000* (Qld)

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20, s 24

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 5, s 6, s 221, s 226, s 353, s 354, s 360

Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291

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

Commissioner for Children and Young People and Child Guardian v Storrs [2011] QCATA 28

FMA v Chief Executive Officer, Public Safety Business Agency [2016] QCAT 210

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Ms Benjamin

REASONS FOR DECISION

Introduction

- [1] The applicant is a 46 year old male. He applied for a positive notice and a blue card under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (‘WWC Act’).
- [2] As a result of the applicant’s criminal history the respondent proposed to issue a negative notice so invited the applicant to make submissions about whether or not there was an exceptional case for the applicant. The applicant provided material in response.
- [3] Where a person has been convicted of an offence other than a serious offence, the chief executive must issue a positive notice, unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.¹ The chief executive was satisfied the case was exceptional within the meaning of the WWC Act.
- [4] The respondent issued a negative notice on 12 November 2018 and CAE seeks a review of the decision that this is an exceptional case within the meaning of s 221(2) of the WWC Act.

¹ WWC Act, s 221(2).

- [5] Section 354(1) of the WWC Act provides that a person who is not a ‘disqualified person’² is entitled to apply for a review of a ‘chapter 8 reviewable decision’³ within the prescribed 28 day period.⁴ This includes a decision as to whether or not there is an exceptional case if, because of the decision, the respondent issued a negative notice.⁵
- [6] CAE is not a disqualified person and sought review of the decision within the prescribed period.

The legislative framework

- [7] The Tribunal is required to decide the review in accordance with the QCAT Act and the WWC Act.⁶ The purpose of the Tribunal’s review is to produce the correct and preferable decision,⁷ on the evidence before it and according to law. For the review, the Tribunal stands in the shoes of the decision maker and makes the decision following a fresh hearing on the merits.⁸ The review is to be undertaken under the principle that the welfare and the best interests of a child are paramount.⁹ On review, the Tribunal may confirm or amend the decision; set the decision aside and substitute its own decision; or set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with or without directions.¹⁰
- [8] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland.¹¹ The principles under which the WWC Act is to be administered are:
- (a) the welfare and best interests of a child are paramount;
 - (b) every child is entitled to be cared for in a way that protects the child from harm and promotes the child’s wellbeing.¹²
- [9] It is not the intention of the WWC Act to impose additional punishment on a person who has police or disciplinary information, but rather is intended to put gates around employment to protect children from harm.¹³
- [10] Section 221 of the WWC Act provides:
- (1) Subject to subsection (2), the chief executive must issue a positive notice to the person if—
 - (a) the chief executive is not aware of any police information or disciplinary information about the person; or

² WWC Act, s 169 definition.

³ WWC Act, s 353 definition.

⁴ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’), s 33(3).

⁵ WWC Act, s 353(a).

⁶ QCAT Act, s 19(a).

⁷ QCAT Act, s 20.

⁸ QCAT Act, s 20.

⁹ WWC Act, s 360.

¹⁰ QCAT Act, s 24(1).

¹¹ WWC Act, s 5.

¹² WWC Act, s 6.

¹³ *Commission for Children and Young People Bill*, Second Reading Speech, Queensland Parliament Hansard, 14 November 2000, p 4391.

- (b) the chief executive is not aware of a conviction of the person for any offence but is aware that there is 1 or more of the following about the person—
 - (i) investigative information;
 - (ii) disciplinary information;
 - (iii) a charge for an offence other than a disqualifying offence;
 - (iv) a charge for a disqualifying offence that has been dealt with other than by a conviction; or

Note for subparagraph (iv) — For charges for disqualifying offences that have not been dealt with, see sections 208, 217 and 240 (in relation to prescribed notices), and sections 269, 279 and 298 (in relation to exemption notices).

- (c) the chief executive is aware of a conviction of the person for an offence other than a serious offence.
- (2) If subsection (1)(b) or (c) applies to the person and the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a positive notice, the chief executive must issue a negative notice to the person.

[11] For the present purposes, a positive notice must be issued unless the Tribunal is satisfied it is an exceptional case, in which it would not be in the best interests of children for a positive notice to be issued.

[12] The term ‘exceptional case’ is not defined in the WWC Act. Thus, what might be an exceptional case is a question of fact and degree, to be decided in each case on its own facts having regard to:

...the context of the legislation which contains them, the intent and purpose of that legislation, and the interests of the persons whom it is here, quite obviously, designed to protect: children.¹⁴

[13] In determining whether there is an exceptional case when a person has been convicted of, or charged with, an offence, the Tribunal must have regard to the matters set out in s 226(2) of the WWC Act, as follows:

- (a) in relation to the commission, or alleged commission, of an offence by the person—
 - (i) whether it is a conviction or a charge; and
 - (ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and
 - (iii) when the offence was committed or is alleged to have been committed; and

¹⁴ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [31].

- (iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and
 - (v) in the case of a conviction—the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order under section 357, the court’s reasons for its decision;
- (b) any information about the person given to the chief executive under section 318 or 319;
 - (c) any report about the person’s mental health given to the chief executive under section 335;
 - (d) any information about the person given to the chief executive under section 337 or 338;
 - (e) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the person.
- [14] The matters listed in s 226 are not exhaustive. Rather, s 226 ‘merely specifies certain particular matters which the [Tribunal] is obliged to consider in deciding the application.’¹⁵
- [15] ‘Conviction’ is defined in Schedule 7 of the WWC Act to mean ‘a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded’.
- [16] In determining whether there is an exceptional case the Tribunal must be satisfied on the balance of probabilities, bearing in mind the gravity of the consequences involved.¹⁶ The Tribunal has a broad discretion¹⁶ to exercise when considering the merits in each case. Neither party bears an onus in determining whether an exceptional case exists.¹⁷

The Material and Evidence

- [17] The applicant provided the Tribunal with his life story, a report from a clinical psychologist, called two witnesses who were cross examined, gave oral evidence himself and made oral submissions.
- [18] The respondent provided the Tribunal with its Reasons for Decision and attachments comprising pages BCS 1-84. The respondent had the opportunity to cross examine CAE and his two witnesses and made final oral submissions as well as handing up written submissions.
- [19] The applicant’s offending occurred between 2006 and 2012 when he was aged 33 to 38. His criminal history is as follows:

¹⁵ *Commissioner for Children and Young People and Child Guardian v Maher and Anor* [2004] QCA 492, [42].

¹⁶ *Commissioner for Children and Young People and Child Guardian v Maher and Anor* [2004] QCA 492, [30].

¹⁷ *Commissioner for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28.

- (a) In January 2008, following a trial, the applicant was found guilty of grievous bodily harm, was convicted and sentenced to three years imprisonment with parole fixed at 24 April 2009. This was the second time the matter had proceeded to a hearing; the first time culminated in a hung jury.
 - (b) In July 2008 the applicant was convicted of a breach of order and was sentenced to 12 months imprisonment with a parole release date of 24 April 2009.
 - (c) The applicant was convicted of wilful damage in September 2008 in respect of events which occurred in 1998. A conviction was recorded with no further punishment.
 - (d) 2009 charges against the applicant for possessing anything used in the commission of a crime defined in part 2 were dismissed.
 - (e) CAE was convicted of possession of dangerous drugs and possession of utensils or pipes etc. that had been used in 2012. A conviction was recorded and the applicant was fined.
- [20] The police brief in relation to the 2008 conviction reflected that on 14 May 2006, the applicant and his then de-facto were at their caravan on a property. They were consuming alcohol and during the course of the evening they argued. It goes on to say that the applicant smashed a beer glass into the jaw of the complainant causing four or five lacerations on her face, the longest being about 5 centimetres. As some were quite deep there was concern that she may have suffered nerve damage. She underwent surgery receiving a number of internal sutures and 20 staples to her face. The applicant left the property after the assault, returning the next day when he was arrested. When interviewed by police CAE admitted he had been consuming alcohol the afternoon of the incident assault but could not remember the incident.
- [21] In sentencing, Her Honour Justice Ryrie observed that the facts upon which the jury found the applicant guilty were that CAE chased after his de facto partner and swung her around and then deliberately struck her in the face with his hand while he was holding a glass and that the jury rejected the defence that it was an accident. Her Honour noted the seriousness of the offence reflected by the maximum penalty of 14 years. Factors taken into account in sentencing were the applicant's financial commitments, being financial maintenance for his son, some assistance to his mother and financial support to the three children of the woman with whom he was then in a relationship, that he had been working before the matter came to Court and he had a full-time job to go back to upon release and his unblemished criminal record with no further offending since the incident.¹⁸
- [22] CAE told the Tribunal that while the incident giving rise to the conviction for grievous bodily harm occurred it did not happen in the manner reflected in the charges.
- [23] He told the Tribunal that he had gone to the property to get away from his de facto but that she had turned up there. On the day in question CAE and his partner had a fight and she put her wine glass down and ran up a poorly lit path on the property.

¹⁸ Ex 4, BCS-41-43.

She was calling out to someone and CAE called out to her to come back, that he had her wine. CAE said he started running up the track and she had turned around to come back when they collided. As she was quite short, his hand with the glass connected with her face causing the injuries. In response to the police statement that he drove away from the property, CAE said that after the incident he was assaulted by some other people at the property. In short, CAE said that he ran into his then de facto with a glass but was not, he said, in 'attacking' mode.

- [24] He said that the day before the matter proceeded to its second hearing his barrister advised he was not available to represent CAE at the hearing. Based on the advice of new counsel, CAE did not give evidence at the hearing, although he was uncomfortable with this advice. CAE said that if he had given evidence he would have been found not guilty.
- [25] While incarcerated, CAE lodged an appeal against the conviction but based on legal advice including advice as to prospects and that his sentence could be increased on appeal, CAE did not progress the appeal.
- [26] A domestic violence order was issued in July 2005 naming the applicant as respondent. The order was current for two years. The conviction for breach of the order relates to the same set of facts as the grievous bodily harm conviction.
- [27] There was no police information provided to the Tribunal in relation to the wilful damage conviction. CAE told the Tribunal that a friend asked CAE to keep an eye on his family while the friend was away. Upon returning the friend, who had not slept for some time and had been taking drugs in order to stay awake, thought that CAE and the friend's girlfriend were seeing each other. The friend turned up at CAE's house with a knife and a sledgehammer and smashed a window. CAE said he took matters into his own hands and caused the same damage at his friend's house. A conviction was recorded but there no further punishment.
- [28] The police brief indicates that in 2007, in the course of execution of a warrant CAE's thumbprint was found on a pressure cooker. He initially told police he had no connection with the address or the people involved but later told police that one of the people there was known to him through one of his sisters. No information was available concerning why the charges against the applicant were dismissed.
- [29] The police brief in relation to the drug offences indicates that on 6 January 2012 the police executed a search warrant at an address at which the applicant was a guest. In the course of the search the police found one gram of cannabis in a deodorant can in the bedroom in which the applicant was staying. CAE told police the cannabis was his and that he intended to smoke it. In the main living area of the house a bottle, hose and cone piece with cannabis residue were found. CAE told police these items were his and that he had used them to smoke cannabis. The applicant was convicted on all charges and fined \$600.
- [30] CAE told the Tribunal that he told police that the drugs and utensils were his as the fellow who owned them was already in trouble. He said that he told police that he intended to smoke the drugs to reinforce ownership of them. He said that while he had experimented with drugs as a teenager he does not use them and is totally against them.

- [31] The applicant has a son now 26 years old. He does not have contact with this son's mother but reported having a good relationship with his son and his son's partner. During evidence CAE told the Tribunal that there had been a DVO in place in the relationship with his son's mother but that he could not recall the circumstances leading to its imposition.
- [32] CAE said that after leaving high school he worked in a flour mill and later with a construction company. In 1993 he became a window tinter and that is what he done for most of his life. At the time of completing his life story¹⁹ he was unemployed but he is now working in aged care, which he loves. He said he finds his work rewarding and feels appreciated and needed. He spoke with great pride of the encouragement award he recently received in his new employment. The applicant said he has been studying for a Community Services Certificate III, with the goal of working with people with disabilities.
- [33] CAE said that while he is not presently in a relationship his experiences have not turned him off them, but that at present he is happy on his own and he feels that he is starting to succeed in his life.
- [34] The applicant told the Tribunal that he does not use drugs and has no problems with alcohol, drinking less than a beer a week. Rather he prioritises his work.
- [35] CAE said that he has a good relationship with his parents, brother, one of his sisters and his son, as well as great friends with whom he maintains healthy relationships. He said he does not associate with his other sister as she has a drug problem. He has re-established contact with one of his sister's sons who has been in foster care and endeavours to provide him with support and guidance to prevent him from making the same mistakes as CAE.
- [36] He perceives that his past problems have stemmed from his relationships and has strategies in place now to deal with conflict in relationships, including talking about problems rather than arguing and walking away if issues escalate. If circumstances meant that he was unable to walk away he indicated that his strategies would depend on the circumstances but that they included redirection and distraction which he told the Tribunal he had used effectively in his current workplace. CAE said that his past behaviour was unacceptable and that he would change what had happened if he could, expressing remorse for those affected.
- [37] CAE undertook an anger management course earlier this year which has helped him develop strategies to assist him to remain calm and he acknowledged this course would have been helpful to him earlier in his life.
- [38] The applicant advised that he has sought counselling in relation to two periods of depression. The first was upon his release from prison when he attended about six counselling sessions to deal with his depression and to assist him with having gone to prison as his incarceration was quite a shock to him. In 2016 CAE said he was involved in a motorcycle accident and was on crutches for 17 months following the accident, to assist with his mobility. He was talking to a group of people about the circumstances giving rise to his incarceration when one of them assaulted him with a beer bottle. He said he attended counselling following this.

¹⁹ Ex. 1.

- [39] In relation to his criminal history CAE would like to turn back time, but unable to do that, instead he seeks to focus on the future and his behaviour now. Whilst CAE agreed with the respondent that as his offending occurred when aged 33 to 38, it cannot be considered youthful indiscretion, he believes he has matured significantly since then and has a better attitude to life. He said that he understands why the respondent refused his application but feels he has made significant changes to his life. In relation to his past conduct CAE said that he did not think, but that now he knows better.
- [40] The applicant presented to the Tribunal as an earnest man who is remorseful for his past behaviour, now seeking to put the past behind him.
- [41] CAE's father gave evidence to the Tribunal. He indicated that CAE has astounded him with the way he has turned his life around since his offending and that he is quite proud of his son now. He said CAE is neither a drinker nor a smoker. He observed that CAE helped him after his cancer operation and said that CAE has a good relationship with his family, including his nieces and nephews upon whom he is a good influence. He feels that the applicant goes out of his way to stay out of trouble working in a job he loves. He said he had observed changes in the manner in which CAE manages conflict and considers his son to be more reliable, careful and sensible now. CAE said that he and his son spoke about his offending a few years ago and that CAE had apologised to him and to other members of the family for his past behaviour.
- [42] A friend who has known the applicant for about 30 years gave evidence to the Tribunal. He indicated that they lost touch for a period of about five years, catching up again in about 2009. They see each other almost daily now. He described CAE as someone upon whom he can rely and upon whom his own two adult daughters know they can call upon in times of need. He said that CAE has assisted in the upbringing and care of his four children, babysitting them and helping with after school activities. He has no concerns with the applicant's interactions with children. He considered that except in relation to his offending, CAE has always shown restraint. The friend said he and CAE had talked about the grievous bodily harm incident and the impact it had on the victim. He said that CAE has a good relationship with him and his family, including his extended family.
- [43] The Tribunal accepts the evidence of these two witnesses.
- [44] CAE provided a report from a clinical psychologist in support of his application. The psychologist concluded that CAE presented as 'frank and honest, and appeared genuine in his desire to commence employment in the field of youth social work.' The psychologist was not available for cross examination and it seems did not have access to the respondent's statement of reasons for declining the positive notice, nor the directions of the Tribunal identifying the matters to be considered in the report. The report indicates that the writer was aware of at least some of the applicant's criminal history, in particular the conviction and incarceration for grievous bodily harm and the charges for the possession of cannabis. As a result, the respondent argues that limited to no weight should be afforded this report. The Tribunal agrees.
- [45] The applicant provided 11 additional written character statements when responding to the request for submissions prior to the respondent issuing the negative notice. These witnesses spoke highly of CAE's reliability and his caring, loyal and

trustworthy nature. Many of these people indicated that CAE had cared for them or their children over the many years they had known each other. None of these witnesses indicated they were aware of CAE's criminal history. The Tribunal accepts that CAE has been caring towards and supportive of these witnesses.

- [46] No reports were provided from the counsellors with whom CAE consulted for his periods of depression.
- [47] The respondent expressed concern that the applicant's criminal history containing a violent offence in a domestic violence context, wilful damage and drug related offences occurred while the applicant was a mature adult. Further, the respondent considered that the applicant showed limited remorse, being remorseful for the experience, but tending to blame the victim or justify his actions due to provocation or accident.

Consideration

- [48] In undertaking this review and determining the correct and preferable decision, the welfare and the best interests of a child are paramount.²⁰ A positive notice must be issued to CAE unless the Tribunal is satisfied it is an exceptional case, in which it would not be in the best interests of children for a positive notice to be issued.
- [49] A blue card is transferable, allowing the holder to work in any child-related employment or conduct any child-related business regulated by the WWC Act. Thus, the Tribunal must take into account all possible work situations open to the applicant, not just the purpose for which a blue card is presently sought. Once issued, a blue card is unconditional and fully transferable across all areas of regulated employment and business.
- [50] In undertaking this review the Tribunal is required to consider the matters set out in s 226(2) of the WWC Act. The applicant has convictions and charges as set out above. None of these offences are defined as serious or disqualifying offences under the WWC Act. The offending behaviour occurred in 1998 and then between May 2006 and January 2012. The offences include grievous bodily harm (in which alcohol was a contributing factor), breach of a DVO, wilful damage and drug offences. This behaviour did not occur in the context of employment. Nor is it alleged there were children present. However, such behaviour is inconsistent with the behaviour required of someone entrusted with the care, safety and wellbeing of children. The penalties imposed for the offences are set out above, and include a custodial sentence of 3 years. The applicant was incarcerated for 15 months. There was no information requested or received under s 318, s 319, s 335, s 337, s338 of the WWC Act for consideration. Other matters considered are set out below.
- [51] It is of concern to the Tribunal that the applicant was the subject of a second DVO in an earlier relationship, but acknowledges this predates the events giving rise to the applicant's criminal history.

²⁰ WWC Act, s 360.

- [52] The Court of Appeal has accepted the approach of considering relevant risk and protective matters in deciding whether a particular case is exceptional.²¹
- [53] There are a number of protective factors relevant to the applicant:
- (a) The applicant has engaged in counselling in relation to periods of depression he has experienced, from which he has acknowledged he has benefitted;
 - (b) He has completed an anger management course to develop skills and strategies in relation to communication and managing stress and anger;
 - (c) The last offending occurred approximately seven years ago;
 - (d) The applicant said he has changed since his offending and this is supported by his witnesses;
 - (e) He said he has a strong support network of family and friends upon whom he can rely; and
 - (f) He is well employed and has undertaken a course of study to pursue his goals.
- [54] There are a number of risk factors:
- (a) The applicant's criminal history, including a conviction for grievous bodily harm which resulted in a period of incarceration;
 - (b) The applicant has been the subject of DVO in 2 relationships;
 - (c) That the applicant was of a mature age at the time of offending;
 - (d) Concerns expressed around the applicant's genuine remorse and insight into his offending; and
 - (e) That a blue card, if issued, is fully transferrable across all areas of regulated employment and is unconditional.
- [55] The applicant disputes some of the facts leading to his conviction, maintaining that it was an accident, but it is not for the Tribunal to go behind the fact of the conviction, nor accept a different version of events. While it is some seven years since CAE's most recent offending behaviour, the passage of time is not determinative of whether or not a case is an exceptional case.²² This risk factor must be considered in the context of all the relevant circumstances.
- [56] CAE reflected upon his offending behaviour as demonstrating that he did not think through his behaviour at the time. He acknowledged that his criminal history is nothing to be proud of. The two DVOs in place in CAE's past relationships and the 2008 conviction for grievous bodily harm suggest a concerning pattern of behaviour by CAE when in relationships. He has taken steps to address this, including undertaking an anger management course, to acquire the requisite skills and strategies to enable him to better deal with conflict and said he would handle such

²¹ *Commissioner for Children and Young People and Child Guardian v Maher and Anor* [2004] QCA 492.

²² *FMA v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 210, [8].

situations differently now. He said he drinks less than one drink a week and that this has been the case for some time now. CAE said he loves and takes pride in his work.

- [57] The Tribunal accepts CAE's evidence, supported by his father and his friend, that CAE has developed strategies to deal with conflict and that he has strong healthy relationships with his family and friends which provide CAE with a reliable and extensive support network. The applicant has demonstrated a willingness to seek counselling when he considers it necessary.
- [58] The witnesses spoke positively of CAE's interactions with children and young adults including reconnecting with his own son and seeking to provide guidance and support to his nephew to assist him to avoid the mistakes he made. They considered him a positive influence on his nieces and nephews.
- [59] The Tribunal finds that CAE understands the negative effects of his offending behaviour, has sought to address his past behaviour, and has sought to develop the necessary skills to enable him to respond to similar situations in a mature and responsible manner.
- [60] The Tribunal is of the view that the protective factors outweigh the risk factors.
- [61] On balance, after consideration of all of the evidence, the findings of fact, weighing the risk and protective factors, and the relevant matters in the WWC Act, including s 226(2), in exercising its discretion the Tribunal considers, on the balance of probabilities, that this is not an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.
- [62] The decision of the respondent that the applicant's case is an exceptional one within the meaning of s 221(2) of the WWC Act is set aside, and replaced with the Tribunal's decision that the applicant's case is not an exceptional case.

Non-publication Order

- [63] As much of the information raised in these proceedings involved domestic violence matters and laws, publication of the names of the applicant, any complainants and any witnesses appearing for the applicant is prohibited pursuant to s 66 of the QCAT Act.
- [64] Accordingly, these reasons have been de-identified.