

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *CHB v Director General, Department of Justice and Attorney-General* [2019] QCAT 368

PARTIES: **CHB**  
(applicant)

v

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

APPLICATION NO/S: CML107-19

MATTER TYPE: Childrens matters

DELIVERED ON: 3 December 2019

HEARING DATE: 11 October 2019

HEARD AT: Toowoomba

DECISION OF: Member Hemingway

ORDERS:

- 1. The decision of Blue Card Services, Department of Justice and Attorney-General that CHB's case is exceptional within the meaning of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is affirmed.**
- 2. Publication of the name or identifying information of CHB or any person associated with him other than to the parties of the proceedings, is prohibited pursuant to s 66 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*. Accordingly, these reasons are published in a de-identified format.**

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 – charge of possession of a dangerous drug – Where history of drug offences over

lengthy period-where Applicant provided no references, witness statements, or psychologist reports – 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)

*Working with Children (Risk Management and Screening) Act 2000* (Qld)

*Queensland Civil and Administrative Tribunal Act 2009* (Qld)

*Briginshaw v Briginshaw & Anor* [1938] HCA 34; (1938) CLR 336

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

*Chief Executive Officer Department of Child Protection v Scott* (2008) WASCA 171 page 109

*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 & Anor* [2004] QCA 492

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

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

*Re TAA* [2006] QCST 11

#### APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Director General, Department of Justice and Attorney-General

#### REASONS FOR DECISION

- [1] This is an application for review of a decision by the Director General, Blue Card Services, Department of Justice and Attorney General (‘the Respondent’) that the case of CHB (‘the Applicant’) was an ‘exceptional case’ within the meaning of s 221(2) of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (‘the WWC Act’).
- [2] The Applicant is a 36-year-old man who was employed as a disability support worker. His employment was terminated in February 2019 as a result of the issue of a negative notice. The Applicant seeks a renewal of his Blue Card to enable him to continue in his chosen field of employment.
- [3] The Applicant applied to the Respondent for a positive notice and Blue Card under the WWC Act. The Respondent considered the Applicant’s application pursuant to ss 221(1) and (2) of the WWC Act on the basis that the Applicant had convictions for offences of possession of dangerous drugs.

[4] The Respondent was satisfied that the Applicant's case was an 'exceptional case' in which it would not be in the best interests of children for a positive notice to be issued. By letter dated 20 December 2018, the Respondent advised the Applicant of its decision to issue a negative notice.

[5] The Applicant has applied to the Tribunal for review of that decision.

**Legislative framework (Blue Card)**

[6] A person who is not a 'disqualified person' may apply, within the prescribed 28-day time period, for a review of a chapter 8 reviewable decision, which includes a decision as to whether or not there is an 'exceptional case' for the person if, because of the decision, the Respondent is issued a negative notice by the Director General.

[7] The Applicant has satisfied the prerequisites to apply to the Tribunal for the review because the Applicant is not a 'disqualified person' and the Applicant applied within the prescribed 28-day time limit.

[8] The Tribunal has jurisdiction to decide the review pursuant to ss 17(1) and 18(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act') and s 354(1) of the WWC Act.

[9] The decision under review is the decision of the Respondent as to whether or not there is an 'exceptional case' in regard to the Applicant in which it would not be in the best interests of children for a positive notice to be issued. The Respondent has decided that this is an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.

[10] The Tribunal is required to decide the review in accordance with the QCAT Act and the WWC Act. The Tribunal has all the functions of the decision-maker for the reviewable decision being reviewed.

[11] The purpose of the review is to produce the correct and preferable decision.

[12] The Tribunal must decide the review by way of a fresh hearing on the merits.

[13] The role of the Respondent is to assist the Tribunal to make its decision and includes providing the Tribunal with relevant information, documents and things.

[14] The WWC Act effectively provides that where a person has been charged or convicted with an offence other than a serious offence, a positive notice must be issued unless the Respondent 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. In that case, a negative notice must be issued. The relevant test is set out in ss 221(1)(b)(iii), 221(1)(c) and 221(2) of the WWC Act.

[15] 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

- (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
  - (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.

[16] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland, including through the screening of persons employed in particular employment or carrying on businesses.

#### **Exceptional case**

[17] The WWC Act does not define ‘exceptional case’. As the Tribunal in its appeal jurisdiction said in *Commissioner for Children and Young People and Child Guardian v FGC*

what is an ‘exceptional case’ is a question of fact and degree to be decided in each individual case, 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”.<sup>1</sup>

#### **Factors to be considered under s 226 of the WWC Act**

[18] The Tribunal must review a decision under the WWC Act under the principle that the welfare and best interests of a child are paramount and is able to consider whether the offence is a conviction or a charge.

[19] Section 226(2) (a) requires that the Tribunal must consider the following matters:

- (a) *Whether the offence is a charge or conviction* – CHB has one conviction for possessing a prohibited drug and two convictions for possession of a dangerous drug in a 23-year period.
- (b) *Whether the Offence is a serious offence and if it is whether it is whether it is a disqualifying offence* – none of the offences are serious or disqualifying offences.

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<sup>1</sup> *Commissioner for Children and Young People v FGC* [2011] QCATA 291.

- (c) *When the offence was committed or is alleged to have been committed* – The offences span a 23 year period but the most recent offence occurred in 2018 and related to a more dangerous drug, being methamphetamine.
- (d) *The nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children* – No offences relate to employment involving children.
- (e) *In the case of a conviction—the penalty imposed by the Court* – There are three convictions. The Court did not record a conviction in respect of any offence. On 24 October 1997, CHB was cautioned in the Children’s court at Murwillumbah for possession of a prohibited drug (cannabis). The 2011 conviction resulted in an order that the Applicant pay \$400 recognisance, attend a drug diversion course and be of good behavior period of 4 months. The 2018 conviction resulted in a fine of \$400.
- (f) *Any report about the person’s mental health given to the chief executive by a mental health practitioner under section 335 of the WWC Act* – The Tribunal has not been supplied with any relevant information regarding this criterion.
- (g) *Any information about the person given to the chief executive by the Mental Health Court under section 337 of the WWC Act or by the Mental Health Review Tribunal under section 338 of the WWC Act* – The Tribunal has not been supplied with any relevant information regarding this criterion.
- (h) *Anything else relating to the commission, or alleged commission of the offence that the chief executive reasonably considers to the assessment of the person.* The Tribunal has not been supplied with any relevant information regarding this criterion.

[20] The Tribunal must first consider the charges or convictions and then consider risk and protective factors when determining the review. The Tribunal must decide the question of whether or not an exceptional case exists on the civil standard of proof i.e. the balance of probabilities, bearing in mind the gravity of the consequences involved.

[21] Neither party bears the onus in determining whether an exceptional case exists.<sup>2</sup>

### **Witness evidence**

[22] No witnesses were called by the Applicant. The Tribunal notes that by letter dated 20 December 2018,<sup>3</sup> CHB was invited to send submissions and references to Blue Card services by 10 January 2019. A template for the references was attached to this letter. The Applicant responded by letter on 2 January 2019 and chose not to supply any references. The Applicant reiterated in his submissions that he did not wish to did not wish to embroil friends and family in this process.<sup>4</sup>

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<sup>2</sup> *Commissioner for Children and Young people and Child Guardian v Storrs* (2011) QCATA 28.

<sup>3</sup> Letter from Blue Card Services to the Applicant, dated 20 December 2018.

<sup>4</sup> Submission dated 18 June 2019, Attachment 11.

- [23] By notice of hearing from the Queensland Civil and Administrative Tribunal ('QCAT') dated 12 August 2019, CHB was notified that he was entitled to have witnesses and to apply to be represented. The process for this is explained in that notice. The Applicant did not elect to either seek representation or to present any references to the Tribunal.
- [24] During the hearing, the Tribunal asked the Applicant if he had noted information on how to obtain advice and assistance for his application on the QCAT website and the Applicant acknowledged that he was aware of this but had chosen not to seek any assistance.

### **Applicant's criminal history**

- [25] The Tribunal notes that there is no offending leading to processes in the superior courts. All matters have been dealt with in the Magistrates Court.

#### *Possession of a Prohibited Drug*

- [26] The applicant was cautioned in the Murwillumbah Children's Court on 24 October 1997 at age 14. The charge was dismissed with a caution.

#### *Possession of a Dangerous Drug*

- [27] The date of the offence was 20 June 2011 when the applicant was 28 years of age. The applicant was being processed in relation to another matter at the Toowoomba Watch House. Police located and seized a small clip bag containing 0.8 g of cannabis. The Applicant refused a formal interview and was bailed to appear in the Toowoomba Magistrates court on 4 July 2011. The Court imposed a fine of \$400, directed that the applicant attend a drug diversion course, and that he be of good behaviour for a period of 4 months. No conviction was recorded.

#### *Possession of a Dangerous Drug*

- [28] The date of the offence was 2 November 2018 when the applicant was 35 years of age. The Applicant was detained by police at midnight for a random breath check and license check. In the course of the search a bag containing methyl amphetamine was located in a small compartment on the driver's side of the car. The applicant denied knowledge of the drug when questioned. He was subsequently convicted in the Toowoomba Magistrates Court on 28 November 2018 and fined \$400. No conviction was recorded.
- [29] In addition to the criminal history the Applicant has four drink driving offences in the period 2005 to 2017. These matters were not raised in the hearing by way of cross examination, nor are they addressed in the submissions of the Respondent except to simply to refer to them.

### **Applicant's submissions**

- [30] The applicant states that he does not work with children, but with adults with a disability. He states that the requirement for a Blue Card is an employer nominated requirement which he states he considers to be irrelevant to his job.
- [31] In his submission dated 20 April 2019, the Applicant provided his life story. He makes the comment that he questions, 'why further information is being requested

which is outside the scope of the incident which resulted in the rejection of my application to renew my Blue Card.’

- [32] Regarding his criminal history, the Applicant submits that the offences were committed over a long period of time and do not signify that he is a habitual user of drugs or that he resorts to drug use in times of stress.
- [33] The 1997 offence was committed at a time when he was a the Applicant was aged 14 and still at high school and he submits, ‘this was in reality a common practice amongst teenagers whether it was marijuana, alcohol or something similar and does not signify the start of an ongoing pattern.’
- [34] In oral evidence to the Tribunal, concerning the convictions for drug offences CHB submitted that he ‘did not see what relevance this had to the Blue Card.’
- [35] Regarding the 2011 offence, the Applicant submits that the amount of the dangerous drug was ‘a small amount and was for private use’.
- [36] In oral evidence in regarding the 2011 offence, the Applicant stated that he thought the court-ordered the drug diversion course purpose was to prevent further use of drugs and to examine why the use of drugs had occurred. He stated that he attended five counselling sessions which addressed topics such as why the use of drugs occurred. He further submitted that this was not relevant to current proceedings and that he was not on trial for this.
- [37] In oral evidence regarding the 2018 offence, the Applicant submitted that the possession of the drug was a, ‘one off reaction to an event which was extraordinarily difficult at that time’ and that it does not indicate ‘on-going or habitual use’.
- [38] The Applicant stated in oral evidence regarding the 2018 offence that his father was diagnosed with a terminal illness at this time. He stated that his father passed away ten weeks after his terminal diagnosis. The Applicant stated and that he did cope well with the final visit to say goodbye to his father.
- [39] The Applicant further stated that he does not have a history of using drugs and does not understand the reason the Department is concerned about this. He stated that the Tribunal will, ‘just have to take his word for it’.
- [40] The Applicant stated that in the hearing of the 2018 charge in the Magistrates Court at Toowoomba, the Magistrate indicated that no conviction would be recorded and that her opinion was that workers in Disability field were required. He acknowledged that even though the drug was a more serious drug, that no conviction was recorded and that it was his belief that the intention of the Magistrate in those proceedings was to protect his employment by not recording a conviction.
- [41] The Applicant acknowledge the existence of a child protection notification history. In relation to the allegations made in the notifications to the Department of Child Safety, the Applicant stated that the notifications were made against a background of a family separation and conflict over parenting arrangements for his children.
- [42] The Applicant stated that the notifications were not substantiated by the Department of Child Safety and that a police officer check of his property when the children were in his care did not substantiate the allegations. He stated that the notifications occurred where the custody battle got, ‘quite nasty’.

- [43] The Applicant stated that that a Family report was prepared for these proceedings and he was given equal care of the children by the Court.
- [44] The Applicant stated that there were no protection orders made despite allegations of domestic violence.
- [45] The Applicant stated that the claim by the notifier that he showed his children, 'brown liquid in a bottle' was found to be false. He stated that it was his belief that the children seeing brown liquid in a bottle would have no impact upon them. He stated that the children were 8 and 12 years of age at the time.
- [46] The Applicant stated that no parental agreements were reached with his former partner despite 3-4 sessions of mediation.
- [47] In response to questions from the Tribunal concerning his qualifications, the Applicant stated that he holds Certificate 3 in Personal Care and is in the process of completing a Certificate 4. He stated that these courses teach behavioural management support for person with disabilities, medication administration, safety techniques and strategies for calming persons, incident reporting. They also teach an understanding of the wide variety of needs of persons with physical and intellectual impairments.
- [48] The Applicant stated that he has had experience in assisting with the formulation and implementation of positive behaviour support plans for persons with impaired capacity. He also stated that he was trained in strategies to ensure the safety of persons with challenging behaviours. He described these behaviours as including punching, biting, throwing objects, self-harming behaviours, harm to others. The Applicant stated that he has had no specific training with children. He further stated that he had never had a complaint of breach of duty of care in his disability work. He stated that he has worked in disability since 2015.
- [49] The Applicant restated his wish not to involve others in the Blue Card review process and that this was the reason he offered no references in support of his submissions. He also stated in his submissions that he could not afford legal or medical services. He stated that the cost to attend hearings in Brisbane was prohibitive.
- [50] The Applicant did not address any of the matters in the traffic history. These were not raised directly with him in the hearing but he was provided with this material prior to the hearing.
- [51] The Applicant stated that he discontinued drug use of his own choice and did not seek assistance for this. He stated that he was, 'not proud of his behaviour regarding drug use'. The Applicant stated that he has not sought professional assistance to deal with stressful situations due to costs.

### **Respondent's submissions**

- [52] The Respondent states that the criminal history indicates 'a repeated nature in the applicant's drug offending and that the underlying triggers for drug use have not been addressed.'
- [53] The Respondent submits that the Department of Child Safety notifications indicate that the instances leading to the criminal offences were not isolated.



- [54] The Respondent submits that the fact of an offence occurring in 2018 with a more serious drug than cannabis indicates ‘...he may be unable to refrain from drug use and offending behaviour on a long-term basis.’
- [55] The Respondent submits that the use of methamphetamine in the Applicant’s private time and in unrelated circumstances to his then current employment is outweighed by the dangerous nature of this drug and its addictive qualities. In addition, the 2018 offence is in the respondent’s submission, a recent offence. The respondent submits that previous deterrent drug education has not been effective and the respondent is not satisfied that the Applicant will not use drugs again.
- [56] The Respondent submits the Applicant, ‘has not provided any submissions on alternative coping strategies that he may be able to use to help him with future life stressors. Therefore, there remains a risk that the Applicant may turn to drugs to help him navigate difficult times.’
- [57] The Respondent submits that the Applicant minimises the use of drugs and his offending and, ‘this raises concerns about his true level of insight into the impact of his behaviours on others, including children in his care... he does not give his view on the impact of drug use on children or greater society.’
- [58] The Respondent submits that the Applicant expresses his personal dissatisfaction at being issued with a negative notice and outlines the personal detriment this has resulted for him.
- [59] The Respondent submits that the Department of Child Safety Material indicates that the notifications suggest, ‘that the applicant’s children have been exposed to the applicant’s drug use.’
- [60] The Respondent submits that the ‘issue of a Blue Card for employment with Endeavour would allow the Applicant to work in any child-related employment or to conduct any child –related business regulated by the Act. So that once issued a Blue Card is fully transferable and is unconditional.’
- [61] The Respondent submits that based upon the information and analysis that this is a case where the exceptional case exists and a negative notice should be issued to the applicant.

### **Consideration of the law and facts relevant to this case**

- [62] Each case is determined on its merits as to whether it represents an exceptional case.
- [63] In order to address this question in the context of determining whether it is in the best interest of children to find this case exceptional, the Tribunal should consider and weigh many factors. Of great importance are the protective factors that exist, relevant to the applicant. The Tribunal must identify and balance protective factors against risk factors.<sup>5</sup>

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<sup>5</sup> See *Commission for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

*The Protective factors*

- (a) The Applicant has been employed from 2015 to 2018 as a disability support worker. His consumers are amongst the most vulnerable in the community. He has successfully completed training regarding providing support for vulnerable adults. He holds a qualification in this area and is undergoing more training to obtain a superior qualification.
- (b) His employment was stable and uneventful. He states that there were no breaches of duty of care issues for him.
- (c) The Applicant has undergone a drug diversion course in 2011. He appears from his evidence in the hearing to have understood the purpose and content of this training.
- (d) As the Applicant's father sadly has now deceased, this stressor is removed from his life.
- (e) The Applicant shows some limited insight into his actions.

*The Risk factors*

- (a) The Applicant may continue to offend as his behavior shows a pattern of the use of illicit drugs and the abuse of alcohol. The Applicant has numerous convictions regarding drug and alcohol misuse whilst driving.
- (b) The Applicant may move to more dangerous and increased consumption of drugs based on past conduct. As the 2018 conviction relates to a more dangerous class of drug with well- documented deleterious side effects.
- (c) The Applicant may succumb to triggers which lead to alcohol or drug abuse and increased likelihood of offending.
- (d) The Applicant does not provide any evidence that he has taken any advice or assistance by way of any therapeutic interventions to assist him in developing with coping strategies for life stressors. Any assertions made by the applicant are unsupported by an independent opinion which could be weighed by the Tribunal.
- (e) The Applicant does not describe any existing or supportive networks which are protective in nature, having given a bare minimum description of his family, friends and connections and inviting the Tribunal to "take his word".
- (f) The Applicant's remorse and insight are limited to the effects of his offending upon himself. This expression of remorse and insight unfortunately does not appear to extend to others particularly, vulnerable others.
- (g) The Applicant has consistently minimized his pattern of offending and its significance describing it to be a private matter and unconnected to the subject matter of the review.

- (h) There are numerous notifications to the Department of Child Safety which allege drug and alcohol abuse, harm to a child, neglect of a child and which resulted in a police check of the applicant's home by a Police officer in 2013.

*Discussion of protective and risk factors for the Applicant*

[64] I have considered the material from the Department of Child Safety but give limited weight to these notifications for the following reasons:

- (a) The notifications remain at the status of a Child Concern report. The notifications are not fact but allegation which remain substantiated though consistently repeated.
- (b) Despite numerous notifications of similar allegations, the Child Safety material consistently finds that the information does not satisfy the threshold for the Department, that the father posed a significant risk to the children, despite allegations of use of illegal drugs and alcohol abuse. The Tribunal notes that the Department of Child safety found that, 'there is insufficient information to indicate that the children are at significant risk of harm, abuse of neglect due to the actions or inactions of a parent or household member.'
- (c) The notifications were made in the context of an apparently acrimonious child custody dispute which resulted in 3-4 failed mediations, a Family Report and a Court Order for equal time for the children with each parent.
- (d) The Tribunal accepts the independent report of a Queensland Police Service (QPS) officer who visited the home of the applicant on 7 February 2013 and states that, 'there was no evidence of drug use' and further that the claims by the notified, 'appear to be exaggerated and inaccurate.'<sup>6</sup>
- (e) If it is based solely upon the Child Safety notifications, the submission by the Respondent that the, 'notifications suggest that the applicant's children have been exposed to the applicant's drug use,' then this submission is rejected.

[65] I have considered the Traffic history of the Applicant which is referred to in the submissions of the Respondent.<sup>7</sup> I note that the Respondent's submissions do not draw any inferences in regard to the Traffic History of the Applicant. The Traffic history was not raised with the Applicant in the hearing. It is significant in that it occurs in a wide time frame; 2005-2017 which would seem to suggest a problem which is unresolved. Further the use of a motor vehicle on multiple occasions whilst inebriated suggests a basic disregard for the safety of others. Further, the imposition of fines and disqualification, does not appear to have deterred the Applicant.

[66] I do not accept the Applicant's submission that the drug convictions should not be of concern to the Tribunal because of the length of time that elapsed between the offences. The offences occur within a 23 year period. As stated, the passage of time does not necessarily reduce the significance of the offending.

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<sup>6</sup> *Pre-Notification Check Record* conversation with Police officer concerning examination of applicant's home following complaint, page 16.

<sup>7</sup> Traffic History of Applicant 2 June 2019, Applicants Submission page 42.

- [67] The 2018 offence is for the possession of a dangerous drug of which the lasting addictive and harmful effects are well documented. Page three of the reasons of the Respondent dated 12 February 2019 make extensive reference to research on the Methamphetamine market in Australia.<sup>8</sup>
- [68] The Applicant states that he could not remain with his terminally –ill father at this time due to work commitment and this was the cause of distress to him. The Applicant does not explain why he resorted to a more powerful drug on this occasion.
- [69] By way of explanation, the Applicant states that, ‘I am not proud of my response in seeking momentary relief form this distress through the use of a drug but this does not indicate on-going or habitual use.’ The Tribunal is however, without any information on which to base a finding on this issue except for what is put forward by the applicant.
- [70] This submission is therefore given less weight by the Tribunal because of the attitude of the Applicant to the offending. The 2018 offence, though not a *disqualifying* offence, (which the respondent points out it is entitled to consider) remains a more serious matter due to the dangerous nature of this class of drug. But the Applicant consistently minimizes his offending behavior.
- [71] The Tribunal must determine the question on the balance of probabilities. The relevant standard of proof is the civil standard referred in *Briginshaw*.<sup>9</sup>
- [72] The Tribunal is required to consider the paramount principle i.e. the best interests and welfare of children and the submissions of the respondent in this regard; against the unsupported submissions of the Applicant.
- [73] The Applicant has chosen not to provide any independent advice to the Tribunal of the effects upon him of this stressor. In the absence of any independent assessment of the applicant’s ability to manage stressors without resorting to drug abuse, the Tribunal cannot reasonably conclude that the onus of proof in this regard is discharged. When the traffic history is considered with the drug convictions, it appears that the Applicant is not coping well with life’s stresses.
- [74] The Respondent contends that it is reasonable to assume from this event that the applicant may resort to the use of drugs when confronted with life stressors. The Tribunal agrees that this is a reasonable conclusion on the balance of probabilities. The Applicant has not discharged the onus of proof by providing any contrary evidence which the Tribunal could reasonably consider in his favour.
- [75] The absence of significant insight by the Applicant into his offending, is a risk factor. In the decision in TAA the Tribunal found that:

A person aware of the consequences of his action is less likely to re-offend than a person who has no insight into the effect of his actions on others.<sup>10</sup>

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<sup>8</sup> *Reasons for Decision*, page 4, footnote 6; Australian Crime Commission, *The Australian Methamphetamine Market – The National Picture* (Report, 25 March 2015).

<sup>9</sup> *Briginshaw v Briginshaw & Anor* [1938] HCA 34.

<sup>10</sup> TAA, Re QCST [2006] para 97.

- [76] The possession of insight into is regarded as a protective factor for preventing harm to children. This consideration is of significant weight with the Tribunal in this review.
- [77] The Applicant's approach to drug-use is consistently one of the minimisation of his offending behaviours and ignorance of its impact on others.
- [78] The Applicant demonstrates a consistent lack of insight into the effects on his conduct on others. He states that his own children's exposure to possible drug-related behavior was not, 'proved to have occurred.' This lack of insight and the tendency to minimise his actions places the risk to children as significant. The Tribunal cannot ignore this obvious conclusion.
- [79] The Applicant does not demonstrate any appreciation of the wider implications of his attitude and conduct. The Applicant states that the drugs were for *private use*.
- [80] The Applicant refers to the use of *marijuana amongst teenagers... as a common practice*<sup>11</sup> referring back to the use of cannabis as a young person. This trivialization of drug- use shows a continuing and long-standing failure to respect legal boundaries. The Tribunal could reasonably conclude that the Applicant thinks the Law does not apply to him.
- [81] The Tribunal has considered the relevance of the offence to the type of employment in which the Applicant is engaged and the wider implications as well as the submissions of the Applicant in this regard. The Tribunal is mindful of the vulnerability of the consumers with whom the Applicant is in contact.
- [82] The Tribunal also is aware of the legal effect of the issue of a Blue Card in that it is fully transferable and so the holder of a Blue Card could be employed in any child related employment, irrespective of whether this is their intention when they obtain the Blue Card. See *JA v Chief Executive Officer, Public Safety Business Agency*<sup>12</sup>.
- [83] The Respondent correctly points out that the applicant is self-focused on the hardship he will suffer if denied a Blue Card. The Applicant's insight and remorse are related only to the effect of the process upon him and the hardship he will experience without the issue of a Blue Card.
- [84] Prejudice or hardship which the Applicant may experience if he is not issued with a positive notice is not relevant to the Tribunal's determination of whether the Applicant's case is 'exceptional'. Scott's case states that :
- the adverse impact upon the Applicant is not a factor which the CEO is obliged or entitled to take into account<sup>13</sup>
- [85] Despite opportunity to do so, the Applicant has not sought assistance to bring relevant matters to the Tribunal. No character, employment references or witness evidence have been provided to the Tribunal which the Tribunal might weigh in support of the opposing case to that raised by the Respondent. The Applicant, in failing to assist the Tribunal to consider his position, has made it impossible to conclude favorably for the Applicant.

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<sup>11</sup> Applicant's life story page 2.

<sup>12</sup> *JA v Chief Executive Officer, Public Safety Business Agency* [2015] QCAT 251.

<sup>13</sup> *Chief Executive Officer Department of Child Protection v Scott* (2008) WASCA 171, page 109.

**Conclusion**

- [86] The welfare and best interests of a child is the paramount principle that the Tribunal must apply in this review. It takes precedence over the personal interests of the applicant. I come to my conclusion noting that neither party bears the onus in determining whether an ‘exceptional case’ exists.
- [87] The Tribunals’ decision is based upon the balance of probabilities standard of proof found in *Briginshaw*<sup>14</sup> which is that the Tribunal must be satisfied on the balance of probabilities that an exceptional case exists. I base my reasons entirely on factors that relate to the best interests of children, on the balance of probabilities, bearing in mind the gravity of the consequences involved to children.
- [88] Having regard to the evidence and the various matters set out above, I am satisfied, on the balance of probabilities, that the risk factors outweigh the protective factors. I cannot be satisfied at this stage that CHB has demonstrated an ongoing ability to promote and protect the best interests of children.
- [89] I am satisfied that this is an exceptional case within the meaning of s 221(2) of the WWC Act in which it would not be in the best interests of children to issue a Blue Card to the Applicant.

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<sup>14</sup> *Briginshaw v Briginshaw & Anor* [1938] HCA 34.