

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Eldridge v Department of Transport and Main Roads*
[2019] QCAT 57

PARTIES: **JAMES EDWARD ELDRIDGE**
(applicant)

v

**DEPARTMENT OF TRANSPORT AND MAIN
ROADS**
(respondent)

APPLICATION NO/S: GAR383-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 11 March 2019

HEARING DATE: 23 January 2019

HEARD AT: Brisbane

DECISION OF: Member McLean Williams

ORDERS: **The Application is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – Meaning of ‘an
appropriate person’ to hold a tow truck driver certificate
– circumstances wherein previously certified tow truck
driver convicted of a third drug driving offence

Tow Truck Act 1973 (Qld), s 4C, s 13, s 14A, s 18
Tow Truck Regulation 2009 (Qld), s10
Transport Operations (Road Use Management) Act 1995
(Qld), s 65

Australian Broadcasting Tribunal v Bond (1990) 94 ALR
11

APPEARANCES &
REPRESENTATION:

Applicant: In person

Respondent: Self-represented, assisted by J Wall

REASONS FOR DECISION

- [1] The Applicant, Mr James Eldridge, seeks a review before the Tribunal of an internal review decision made by the Department of Transport and Main Roads (‘the Respondent’) on 29 October 2018, confirming an earlier decision to refuse him a tow truck driver certificate. The refusal decision was made under section 14A of the *Tow Truck Act 1973* and section 10 of the *Tow Truck Regulation 2009*. Decisions of

this kind are ‘reviewable decisions’¹ by reason of Part 5, Division 2 of the *Transport Planning and Coordination Act 1994*.

- [2] When conducting the review QCAT has all the functions of the original decision-maker, and may decide the review in accordance with the QCAT Act and the legislation under which the reviewable decision was made.² The purpose of the QCAT review is for the Tribunal to seek to produce the ‘correct and preferable’ decision, by way of a fresh hearing, on the merits.³ The Tribunal may hear new evidence as well as bring a fresh perspective to any evidence previously considered during the making of the decision now under review. However, the Tribunal must still determine the matter in accordance with the law applicable to the making of the decision now under review.

Factual Background

- [3] On 14 December 2016 the Applicant had applied for a tow truck driver certificate. This was initially refused, on the basis of the Applicant’s prior criminal history, which had revealed a number of convictions for drug and other offences, including some dishonesty offences. In particular, the Applicant’s criminal history reveals a concentration of convictions in 2014 and 2015.
- [4] On 23 December 2016, the Applicant sought an internal review of the refusal to issue him with a tow truck driver certificate, pursuant to s 65 of the *Transport Operations (Road Use Management) Act 1995*.
- [5] On 3 January 2017 Ms Janine Wall - in her capacity as the delegate of the Chief Executive of the Respondent - wrote to the Applicant, and advised that her decision was to confirm the original decision. Yet, on 6 January 2017 Ms Wall again wrote to the Applicant, this time to inform him that new information had come to her attention. The effect of that new information was enough for Ms Wall to determine to change her mind regarding the Applicant’s suitability to hold a tow truck driver certificate.
- [6] The new information included:
- (a) a medical certificate;
 - (b) personal references and certificates of achievement by the Applicant;
 - (c) further background information given by the Applicant during an interview on 5 January 2017; and
 - (d) information given to Ms Wall by telephone from a Detective Constable at the Browns Plains Police Station.
- [7] The medical certificate indicated that the Applicant had undergone a drug rehabilitation program. The personal references and certificates of achievement demonstrated that the Applicant had gone to considerable effort to improve himself and turn his life away from crime. Meanwhile, the additional information received in interview revealed far more to Ms Wall about the context and circumstances of

¹ QCAT Act, s 17(2).

² QCAT Act, s 19(c).

³ QCAT Act, s 20.

the cluster of offending behaviour in 2014 and 2015 than had been known by her previously. The Applicant had explained to Ms Wall that he had been an eyewitness to a particularly gruesome crime, committed by a known crime figure. In consequence, the Applicant had become a key witness in the Crown prosecution against that crime figure. The Applicant explained that the cluster of drug and other offences in 2014 and 2015 had arisen during the maelstrom and stress of that period. All of these matters were later confirmed for Ms Wall in her telephone conversation with the Detective Constable from Browns Plains. That officer had been on the police taskforce working on the case, and confirmed that the Applicant's testimony had been integral to the success of the investigation.

- [8] On 6 January 2017, Ms Wall determined to amend her original review decision, and now grant the Applicant a tow truck driver certificate, on condition that he maintain a clear criminal offence record during the operative period for the certificate.
- [9] The Applicant has since worked as a tow truck driver. He says that he very much enjoys the work, and likes the fact of his being able to provide for his family financially as well as make a worthwhile contribution to the community, particularly after so many years of prior welfare dependency.
- [10] To the Applicant's credit, no further convictions been added to his criminal history since those last appearing thereon. Despite that, the following further traffic offences and tow truck infringements have been incurred by the Applicant, since 6 January 2017:
- (a) 7 January 2018: 'Tow a vehicle without first obtaining the necessary consent or authorisation';
 - (b) 7 January 2018: 'Convey an uncertificated passenger in a tow truck';
 - (c) 15 January 2018: 'Exceed the speed limit by more than 20km/h but less than 30 km/h';
 - (d) 27 June 2018: 'Exceed the speed limit by less than 13km/h'; and
 - (e) 6 July 2018: 'Drive while a relevant drug is present'.
- [11] The first four matters listed in the paragraph immediately above may be put to one side, for the moment. These do not have immediate consequences for a tow truck driver certificate in the same manner as does the last of the offences, in the list above. This drug driving offence affords the key reason why the Applicant now finds himself before the Tribunal, fighting for his livelihood.
- [12] On 6 July 2018, the Applicant had been stopped by the police, for a random drug test, whilst driving in his tow truck. The Applicant failed the random drug test and was issued with a notice to appear in the Southport Magistrates Court, requiring that he appear on 2 August 2018.
- [13] On 2 August 2018 the Applicant was convicted of driving with a relevant drug (Cannabis) in his system and was fined \$500 and disqualified from driving for a period of two months. The effect of driver licence disqualification is that the person's driver licence is cancelled.

- [14] Unfortunately for the Applicant, the fact of his driver licence cancellation had the consequential effect of also cancelling his tow truck driver certificate. Section 18(2)(b) of the *Tow Truck Act* provides that the ability to hold a tow truck driver certificate is contingent on the person holding a standard driver licence; such that cancellation of the Applicant's driver licence automatically caused the cancellation of his tow truck driver certificate.
- [15] On 10 August 2018, the Department of Transport and Main Roads wrote to the Applicant to inform him that the fact of his driver licence disqualification meant the cancellation of his tow truck driver certificate. The Applicant was told that he would need to re-apply for a tow truck driver certificate, when he again held a standard driver licence.
- [16] On 5 October 2018 the Applicant re-applied for a tow truck driver certificate. On this occasion the authorised delegate of the Chief Executive refused the application, on grounds that s 14A(3) of the *Tow Truck Act* 1973 provides that the Chief Executive must not grant the application 'if the chief executive is not satisfied that the applicant is an appropriate person to hold a driver certificate or an assistant certificate'. On 22 October 2018 and after considering the totality of the Applicant's criminal history and traffic record, the decision maker took the view that the Applicant was not an appropriate person.
- [17] Again, the Applicant sought an internal review⁴ of that adverse decision. As part of the internal review the Applicant made representations in person, on 24 October 2018, and provided written references from the director of Mid-Coast Towing Pty Ltd, as well as from the Officer-in-Charge of the Helensvale Fire Station.
- [18] The internal review decision was again made by Ms Wall, this time on 29 October 2018. After taking into account all of the information now before her, Ms Wall upheld the decision made on 22 October 2018. It is this decision that is now the subject of review before the Tribunal.

Relevant Law

- [19] Section 13 of the *Tow Truck Act* 1973 provides that a person must not be employed on or in connection with the use of a tow truck at or near a 'towing location', or travel in a tow truck to or from a towing location, unless the person is the holder of a tow truck driver certificate.
- [20] Tow truck driver certificates are issued by the Chief Executive of the Department of Transport and Main Roads. Section 10(2)(b) of the *Tow Truck Regulation* 2009 provides that the chief executive may refuse an application for a tow truck driver's certificate if the applicant has had a driver licence suspended, modified or cancelled.
- [21] Of even more importance on this review is section 14A of the *Tow Truck Act*, which provides:

14A Decision on application

- (a) The chief executive must consider an application made under section 14 and do 1 of the following—

⁴ *Transport Operations (Road Use Management) Act* 1995 (Qld), s 65.

- (i) grant the application;
 - (ii) grant the application subject to conditions;
 - (iii) refuse to grant the application.
- (b) However, before deciding an application, the chief executive—
- (i) must consider the matters prescribed under a regulation for this section; and
 - (ii) may consider any other matter the chief executive considers relevant.
- (c) Also, **the chief executive must not grant the application if the chief executive is not satisfied the applicant is an appropriate person to hold a driver’s certificate** or an assistant’s certificate.

[The **emphasis** has been included]

[22] The expression ‘an appropriate person’ for purposes of s 14A(3) of the *Tow Truck Act* appears as an analogue of ‘a fit and proper person’, as used in many other statutory licence contexts. In *Australian Broadcasting Tribunal v Bond*,⁵ Toohey and Gaudron JJ said:

‘The expression “fit and proper person”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of “fit and proper” cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely further conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.’

[23] Also in *Australian Broadcasting in Bond*, Chief Justice Mason said:

‘The question whether a person is fit and proper is one of value judgement. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring a person whose fitness and propriety are under consideration’.⁶

[24] Who may be an appropriate person to hold a tow truck driver certificate is a matter informed by section 4C of the *Tow Truck Act*, which provides:

4C Who is an appropriate person

- (a) Without limiting what the chief executive may take into account when deciding whether a person is an appropriate person to hold or continue

⁵ (1990) 94 ALR 11, 56.

⁶ *Ibid*, 63.

to hold a licence or certificate under this Act, regard must be had to the following—

- (i) the person's criminal history and, if the person is a corporation, the criminal history of each of its executive officers;
 - (ii) the person's traffic history;
 - (iii) the person's conduct while performing activities under a licence or certificate;
 - (iv) whether the person has been charged with or convicted of—
 - A. an offence against this Act; or
 - B. a disqualifying offence;
 - (v) whether the person has held a licence or certificate that has been cancelled and, if so, why it was cancelled;
 - (vi) whether the person holds a licence or certificate that has been or is suspended and, if so, why it was suspended;
 - (vii) whether the person is capable of satisfactorily performing the activities authorised under a licence or certificate, including because of any known medical condition or physical or mental incapacity;
 - (viii) whether the person is subject to a domestic violence order, an interstate order or registered New Zealand order as defined in the *Domestic and Family Violence Protection Act 2012*;
 - (ix) whether the person has been charged with or convicted of having committed an offence in another State or another country that, if committed in Queensland, would be an offence against the *Weapons Act 1990* ;
 - (x) whether the person has been charged with or convicted of having committed an offence in another State or another country that, if committed in Queensland, would be an offence against the *Drugs Misuse Act 1986* ;
 - (xi) whether the person is, or has been, the subject of a control order or registered corresponding control order.
- (b) The chief executive may not take into account criminal intelligence given by the police commissioner to the chief executive under *section 36B* when deciding whether a person is an appropriate person to hold or continue to hold a licence or certificate under this Act.

(c) In this section—

"certificate" means—

- (i) an assistant's certificate; or
- (ii) a driver's certificate.

"traffic history" , of a person, see the *Transport Operations (Road Use Management) Act 1995* , schedule 4.

- [25] By its statement of reasons filed in the Tribunal on 14 December 2018, the Respondent submits that section 4C requires that the entirety of the Applicant's criminal and traffic history, as well as conduct while performing activities under the tow truck driver certificate need to be considered. I accept the correctness of that contention, yet note that the Applicant's traffic and criminal history as at 6 January 2017 were not regarded by the decision maker as forming an impediment to the Applicant then being certified as a tow truck driver. Having had my own regard to the Applicant's traffic and criminal history as at 6 January 2017, I concur that the Applicant's relevant history as at that date was not such as to prevent the issue of a tow truck driver certificate to him. In that context it is only matters arising since 6 January 2017 that need to be considered.
- [26] No further offences have been added to the Applicant's criminal history since 6 January 2017, such that there is now only the fact of those traffic and tow truck offences already identified in paragraph [10] of these reasons that now need to be assessed, to see whether these matters – when assessed against the backdrop of the totality of the Applicant's traffic and criminal history and in the context of s 4C of the *Tow Truck Act* – now result in the Applicant being assessed as no longer appropriate to hold a tow truck driver certificate.
- [27] In relation to the two tow truck offences on 7 January 2018, the Applicant says that he failed a Department of Transport and Main Roads logbook inspection, because his log entries were deemed by the inspector to be insufficiently detailed. I accept this to be a relatively trivial matter that should not bear upon the appropriateness of the Applicant to become the holder of a tow truck driver certificate. As to the speeding offences, on 15 January 2018 and 27 June 2018, the Applicant says that these each arose on the motorway at points where the speed limit changes and the Applicant had not realised the fact of the limit change. These too are matters that should not count significantly in any assessment of the Applicant's appropriateness to hold a tow truck driver certificate.
- [28] As for the drug offence on 6 July 2018, the Applicant explained that a few weeks prior to 6 July 2018 he had been called to a towing job at a high-speed collision. When he arrived at the scene paramedics were in the process of attempting to treat a fatally injured youth passenger who was still trapped in the wreck. The Applicant says that he attempted to render assistance to the paramedics, and that the youth then passed away in his arms. Later, he realised that the deceased boy had attended the same school as did his own son. The Applicant told the Tribunal that he was badly impacted by this experience and it had caused him a great deal of difficulty sleeping. Because of this, he obtained some marijuana from an associate and used this as a sedative on the evening of 5 July 2018. The Applicant says that he was then pulled over by the police mid-morning on 6 July 2018 for a random drug test. He had not been working at the time, but was nonetheless driving in his tow truck. The Applicant says that he was surprised to fail the random drug test because several hours had passed since he had last smoked marijuana.
- [29] The Applicant says that he has now desisted in all use of marijuana and that he now realises that what he was suffering were symptoms of post-traumatic stress disorder

(PTSD). The Applicant says that he has since sought medical and psychological assistance for those symptoms and that he realises that it was the wrong for him to be attempting to treat his symptoms of PTSD by smoking marijuana.

- [30] Although sympathy can be extended to the Applicant for the trauma symptoms he has recently experienced, the fact remains that the law holds tow truck drivers to a particular standard. That standard requires industry participants to hold in high regard all matters going to road safety and one in which suitability for industry participation is assessed with particular regard to a person's traffic offence history. Marijuana use is inimical to road safety, and the Applicant's most recent drug driving offence now marks the third occasion within 38 months in which he has been convicted for driving with a prescribed drug in his system, this showing insufficient regard for road safety. Given the difficulties experienced by the Applicant in initially obtaining approval for the grant of a tow truck driver certificate (in January 2017), the Applicant should have been fastidious regarding his future need to abstain from all drugs, lest any further convictions deprive him of the right to continue as a regulated tow truck driver. Yet the Applicant has not been fastidious, and has let his guard down.
- [31] The Applicant having now failed a random drug test for a third time has the effect that the Applicant is not able to be assessed as an appropriate person to hold a tow truck driver certificate.

Disposition and Orders

- [32] The Application for Review is dismissed.