

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *RL v Director-General, Department of Justice and Attorney-General* [2020] QCAT 136

PARTIES: **RL**
(applicant)

v

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

APPLICATION NO/S: CML013-19

MATTER TYPE: Childrens matters

DELIVERED ON: 15 April 2020

HEARING DATE: 8 November 2019

HEARD AT: Bundaberg

DECISION OF: Member Milburn

ORDERS:

- 1. The decision of the Director-General, Department of Justice and Attorney-General that the Applicant's case is not 'exceptional', within the meaning of section 221(2) of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)*, is confirmed.**
- 2. Pursuant to section 66 of the Queensland Civil and Administrative Tribunal Act 2009 (Qld), the Tribunal prohibits the publication of the names of the Applicant and any non-professional witnesses appearing at the application.**
- 3. The decision of the Tribunal is to be delivered to the parties by email.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – review of negative notice – review of a decision to issue a negative notice and cancel a blue card – where Applicant has a criminal history with a serious offence – where Applicant was convicted of attempted armed robbery with actual violence whilst armed and in company – where Applicant had a lengthy history of drug use and ongoing involvement in the methadone program – where Applicant was working as a

school cleaner – where Applicant has a strong support network –whether exceptional circumstances exist – whether it is in the best interests of children to issue a positive notice

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

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 5, s 6, s 167, s 220, s 225

Chief Executive Officer, Department for Child Protection v Scott (No 2) [2008] WASCA 171

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

Commissioner for Children and Young People and Child Guardian v Ram [2014] QCATA 27

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

APPEARANCES & REPRESENTATION:

Applicant:	Self-represented
Respondent:	V Wolfe, In-house Government Legal Officer of the Director-General, Department of Justice and Attorney-General

REASONS FOR DECISION

- [1] RL ('the Applicant') has a criminal history which relates to her long-term use of illicit drugs. For a long while, that included the use of heroin and methamphetamines. After many years of being predominantly unemployed, she secured work as a cleaner, which included cleaning at a local school. That changed her life. It provided her with stability and a feeling of optimistic hope for the future. However, as a result of being denied a blue card, she lost her work at the school. She now applies to this Tribunal, on review, for a blue card, so that she may resume her normal activities.

Denial of a blue card by Blue Card Services

- [2] On 31 July 2017, the Applicant applied for a blue card under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ('the WWC Act'). On 10 December 2018, the Director-General, Department of Justice and Attorney-General ('the Respondent'), through Blue Card Services ('BCS'), issued a negative notice¹ under the WWC Act, denying the Applicant her request. BCS provided the Applicant with written notice of the decision, the reasons for the decision ('the Reasons Document') and review information.

¹ *Working with Children (Risk Management and Screening Act) 2000* (Qld) ('the WWC Act'), s 220 provides that a notice declaring the application is refused is a 'negative notice'.

- [3] On 7 January 2019, the Applicant filed an application with the Queensland Civil and Administrative Tribunal ('the Tribunal') for a review of the decision, which led to these proceedings.

Review of the decision to deny a blue card

- [4] The Tribunal is to make the correct and preferable decision² by considering the evidence as at the date of the Tribunal hearing. The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland and BCS does that through a scheme requiring the screening of persons employed in particular employment or carrying on particular businesses.³ That object has been extended to '... screen persons who work, or wish to work with children, to ensure that they are suitable persons to do so'.⁴ The Tribunal is not confined to consider the work actually undertaken, or intended, by the Applicant.
- [5] The Respondent refused to issue a blue card because the Applicant had been involved in criminal activity and her association with illicit drugs.
- [6] The Applicant's action that caused particular concern to BCS, and to the Tribunal, involved a conviction for attempted robbery with actual violence whilst armed and in company that occurred on 6 February 2000.
- [7] The Applicant conceded that the offending for which the Applicant was convicted does constitute a 'serious offence', as defined in the WWC Act.⁵ Therefore the presumption is that the Application must be refused.⁶ If the Tribunal is satisfied that an exceptional case exists it may issue a positive notice, but only if it would not harm the best interests of children.⁷

What constitutes an exceptional case?

- [8] In *Re Imperial Chemical Industries Ltd's Patent Extension Petitions* [1983] VR 1, 10, Fullagar J stated that, 'it would be most unwise to lay down any general rule with regard to what is an exceptional case ... All these matters are matters of discretion'. Each case is to be considered on its own facts.
- [9] The Tribunal has a wide discretion to determine whether this is an exceptional case.
- [10] Where a person has been charged with, or convicted of, an offence, the Tribunal must have regard to considerations prescribed by section 226 of the WWC Act in determining whether an exceptional case exists. This section is not an exhaustive list of considerations, but it does prescribe certain matters that the Tribunal must consider in deciding an application.⁸ The Tribunal must consider identified risk factors and identified protective factors in determining whether an exceptional case exists. The welfare and best interests of a child are paramount, and every child is

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(2).

³ WWC Act, s 5.

⁴ *WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190, [17].

⁵ WWC Act, s 167.

⁶ *Ibid*, s 225.

⁷ *Ibid*.

⁸ *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing.⁹

- [11] In determining this matter, the concern for the Tribunal is solely related to the welfare and best interests of children. The Respondent says that the conviction for attempted armed robbery, with other convictions for drug related matters in 2013 and 2014, suggests the possibility that the Applicant would not act in a way that is protective of children from harm, and that the Applicant would not act in a way that promotes the well-being of children. The Applicant says that, despite her criminal convictions and long-term association with illicit drugs, she is not a risk to children. The Applicant says she no longer uses illicit drugs. She remains on the methadone program.

Charges and court history

Attempted Robbery

- [12] The Applicant's criminal history contains a conviction for attempted robbery, with actual violence whilst armed and in the company of another person, on 6 February 2000. The Respondent identified the key issues in the following manner:¹⁰

The (victimized business) company was a detached bottle shop business in a shopping complex.

The complainant was employed by the company as a shop assistant.

The complainant stated that at 11:55am she was at the front of the premises when the applicant walked in and stood at the front counter. The complainant walked to the counter and offered assistance.

The complainant stated the applicant then removed a long-bladed knife from her bag and said, "Get the money out of the drawer"

The complainant told the applicant she had activated an alarm and the police were responding.

The applicant then ran from the store.

The complainant did not see the direction the applicant ran.

That same day, police located a further witness who provided a comprehensive description of a person matching the applicants [sic] description. She stated there was another person with that girl.

Police located the applicant to discuss the offence.

When questioned, the applicant denied being the person responsible for committing the offence.

At that time, there was no other evidence implicating the applicant to [sic] the offence.

On 26 September 2001, police received information from a further witness who stated that a female person she knows as the applicant made admissions regarding her involvement in this offence.

⁹ WWC Act, s 6.

¹⁰ The Reasons Document, 2-3 [BCS2-3].

The complainant told police details of the offence that she could have only obtained from the person responsible for committing the offence.

On 3 January 2002, detectives attended the applicants [sic] address and located the applicant. She was escorted to the police station where she took part in an electronic record of interview.

The applicant again denied being the person responsible for the offence.

At the conclusion of the interview, the applicant was arrested and charged with the offence.

Antecedents:

The applicant was a single female person who resided with her daughter.

Court outcome:

The applicant was placed on probation for two years. A conviction was recorded.

- [13] The parties did not produce a transcript of the sentencing proceedings. Given the sentence imposed, the Tribunal has formed the view that there were significant mitigating circumstances.

Drug related offending

- [14] The Applicant was fined for the following drug-related recorded convictions:
- (a) On 4 January 2008, a fine of \$660 for possession of utensils and failing to take reasonable care and precautions in respect of a syringe or needle.
 - (b) On 8 March 2013, fine of \$500 for possession of utensils or pipes.
 - (c) On 29 September 2014, a fine of \$350 for possession of dangerous drugs.
- [15] The Respondent summarised the relevant facts of the convictions from 2013 and 2014 as follows:¹¹

[2013] At about 9:15am on 9 February 2013, police were performing patrols. Police intercepted the applicant in her vehicle. Police observed a handbag on the front passenger seat of the vehicle, within this handbag was a small clip seal bag containing green leafy material. Police estimated there to be 2 grams of cannabis. The applicant told police it was marijuana and it was hers. She used it to ease her chronic liver problem and curvature of her spine.

[2014] At 6:15pm on 10 August 2014, police intercepted the applicant in her vehicle. During initial conversations, police noted the applicant was extremely nervous and her eyes were dilated. Police then asked the applicant if she had taken any drugs or medication throughout the day; the applicant replied stating that she hadn't and that she was just extremely tired. Police then asked the applicant if she had any drugs in her vehicle to which she originally stated that there wasn't, before admitting to police that she had a small amount of cannabis in her bag. Police located a clip seal bag inside a silver tin in the applicant's handbag weighing 2.2 grams. Police then conducted an electronic record of interview, during which time the applicant made admissions to owning the cannabis and that she intended to smoke it later that night.

¹¹ Ibid, 3 [BCS 3].

- [16] In relation to the Applicant's 2013 and 2014 convictions for possessing dangerous drugs the police information indicates the Applicant was intercepted by police while driving and on both occasions the Applicant was located in possession of small amounts of cannabis. In 2013, the Applicant told police she used cannabis to ease her chronic liver problem and curvature of her spine.¹²

The Applicant's statements to Blue Card Services about her convictions

- [17] The Applicant provided oral submissions to an officer of Blue Card Services, as follows:¹³

[On 15 November 2017] In relation to her offending, she stated she has not used drugs since the last offence. She is very remorseful.

[On 20 December 2017] In relation to her offending, she stated it was a silly mistake what happened 20 years ago. She has attended many programs to change her life including ATODs, Triple PPP Parenting and others.

- [18] The Applicant provided written submissions to an officer of Blue Card Services on 9 January 2018, as follows:¹⁴

My name is [RL]. I am writing this in the hope of gaining my blue card. I am not perfect but over the last twenty years I have worked so hard.

I have changed and turned my life around. To me, my job means so much. I've been employed the last 5 years cleaning. My boss has gained cleaning contracts for a school, so I need to gain my blue card to keep my job - it's after hours when school finishes. I realise I have an attempted robbery charge, there's no excuses. I should never have done it, if I can take it all back I would in a second, but I can't. I battled drug addiction for a long time when all this happened, it was 21 years ago. I was in an abusive relationship and drug addicted. I felt that day I had no way out. [Now] I know different... I've gone through a methadone program, parenting programs through ATODS Bundaberg, which is alcohol and other drug services in Bundaberg, and done certificate 1, 2, 3 in hospitality, my first aid certificate, workplace health and safety through TAFE and kept my current job for five years. I don't want to lose my job. I feel if that happens, I may have to go back on unemployment. I feel like that would be steps backwards not forwards. I've been straightening my life out and on the straight path and staying clean which I have been for 10 years. I am achieving things I never thought possible. My past is always there, it will never go away but if you can give me the opportunity I can continue with my job and life... I have a 21 year old daughter. As my child, and growing up, she will tell anyone my mum had problems, but I never suffered. The time the robbery happened was 21 years ago. I have wanted to take steps forward to be a better mum, a better person in society. Please, it means so much to me and it's just another step towards my goal of a better life not just for me but for my daughter and my family.

Thank you for the opportunity to speak. I regret the mistakes I've made in the past. I always say it was a silly mistake, but it was more than that, it was a costly mistake that I hope doesn't cost me my future. Thank you for listening.

¹² Police brief of facts, BCS-24.

¹³ Ibid, 4 [BCS 4].

¹⁴ Ibid.

The life story of the Applicant

- [19] The Applicant provided a version of her life story ('the Applicant's Life Story'), dated 5 February 2019, to the Tribunal. In it, she explained that she worked for her parents in her teenage years and became independent at the age of 17 years. She fell pregnant at the age of 18 years and, as a single mother, she struggled to survive financially. She began stealing and she commenced smoking cannabis and drinking alcohol. She became more deeply involved with drugs and she became the victim of an abusive relationship. When her child was about three years old, she and her accomplice decided to break into a bottle shop, without prior planning. She handled the knife and told the attendant to empty the cash drawer, but she did not physically assault anyone. After their escape, she became scared. A few months later she commenced on the methadone program in an attempt to change her life.
- [20] The Applicant also said that she undertook some parental programs and hospitality courses. In 2013, she commenced self-employment as a cleaner and primarily she works at the school. Apart from cleaning schools, she cleans the homes of elderly people and she said that she has not had a complaint during five years of employment. She said that she has never hurt anyone and never would hurt anyone, let alone a child.
- [21] The Reasons Document includes comments made by the Applicant when speaking with a representative of BCS:¹⁵

When asked who she would call for support if she felt like taking drugs, she stated:

- She would call ATODS, she knows she can call them anytime.
- She would call her daughter. She is 21 now and she can discuss her drug issues with her. But she would mainly call her mother.
- She is also close to her boss. She is honest with her about her past. She doesn't believe in lying because it only comes out in the end. Honesty is the best policy.
- She also has a huge family.

The evidence of the Applicant at the Tribunal hearing

- [22] The Applicant was cross-examined at the Tribunal hearing, and during her evidence the Applicant said:
- (a) even though she does not have a blue card, she continues to work as a cleaner but not at the school;
 - (b) at present, she is only working 11-12 hours per week and needs the blue card to work longer hours;
 - (c) she wants to become a normal member of society;
 - (d) she became a heroin addict soon after her daughter was born and for 10 years was addicted to heroin and methamphetamine;

¹⁵ Reasons Document, page 6 of 12 [BCS-6].

- (e) she went through the methadone program and still regularly attends counselling;
- (f) she was not aware of the addictive nature of the drug she was using at the time;
- (g) she has never used drugs in front of her family;
- (h) her mother mostly cared for her daughter but sometimes she was able to care for her daughter;
- (i) after a lapse of about three years she returned to using methylamphetamine but never did return to using heroin;
- (j) after she stopped using heroin, she used cannabis as a form of self-medication;
- (k) she would smoke cannabis nearly every day;
- (l) she would smoke cannabis when her daughter was at school, but she would never drive under the influence of drugs;
- (m) her strategy for remaining free from drug use is to continue with the methadone program and counselling;
- (n) she did use drugs when her daughter had sleepovers with friends, at her home, but she tried to hide the drugs and act in a normal fashion;
- (o) staying away from illicit drugs has improved her mental state;
- (p) she will continue to seek out and obtain counselling after she completes the methadone program;
- (q) she has seen a psychologist;
- (r) she is now single and does not have any relationship issues;
- (s) under stress, she no longer has the first instinct to return to using drugs;
- (t) her mindset changed in 2013-2014 when she was pulled over by police for drug driving;
- (u) she used to be an angry person but is no longer an angry person and she has increased in her maturity;
- (v) she has improved through self-reflection and is a person of faith and does attend church at times;
- (w) she has always been a good person that has acted badly because of the drugs;
- (x) drugs were her lifestyle;
- (y) she used to act first and then worry about the consequences, but that is not how she is now;
- (z) her rehabilitation is ongoing, but she feels that enough time has passed for her to obtain a blue card;
- (aa) the attempted armed robbery was a silly mistake; and
- (bb) she does not try to minimise her past behaviours.

The evidence of YL (daughter of the Applicant)

- [23] YL provided a letter of support for the Applicant dated 7 January 2018, which included the following statement:

I am writing to you to express a sense of my mother's character and the caring and influential role she played in my life. As you may know my mother is not perfect, nor is any other human, but she was always a wonderful parent, who ensured I felt happy, healthy and loved.

Even though she was a single parent, I never went without anything and always grew up in a positive and encouraging environment. With my mother's support I always performed well in school and went on to study at ... University, where I recently graduated from, with a Bachelor's degree.

I always grew up in a safe environment and my mother frequently hosted sleepovers with my friends, chaperoned school dances and volunteered assistance at my Girl Guide troop. My mother has always loved and supported children and I truly believe that she poses no threat to any child.

- [24] YL gave evidence at the Tribunal hearing:
- (a) she said that she never felt in danger when growing up, and her mother never used intravenous drugs in front of her;
 - (b) she later said that her mother never used any drugs in front of her, but she could smell cannabis in the house and first realised this was illegal when police arrested her mother for possession of drugs;
 - (c) she found out of about her mother's criminal history when her mother lost her licence, and she chastised her mother at that stage;
 - (d) they have a good relationship, full of support and love;
 - (e) her mother is always there when needed;
 - (f) it took her mother many years to 'come clean' from drugs;
 - (g) she did not like her mother's use of drugs, but when her mother lapsed, she would intervene;
 - (h) her mother has not always demonstrated appropriate role modelling behaviour;
 - (i) she has forgiven her mother; and
 - (j) her mother has made her a stronger, smarter and more responsible person.

The evidence of EL (mother of the Applicant)

- [25] EL gave evidence at the Tribunal hearing:
- (a) she said that her daughter has a good heart and is kind to children and animals;
 - (b) she has never seen her daughter be mean or nasty or hurt anyone;
 - (c) she probably saw her daughter under the influence of drugs and her granddaughter may have been at school, or in her room, but her granddaughter was always protected and very much loved by the entire family;
 - (d) she has not had discussions with her daughter about her drug use;

- (e) her daughter has turned her life around by involvement in the drug programs, ATODS and methadone, and it must be at least five years since she has used drugs;
- (f) her daughter is a totally different person when not using drugs; and
- (g) her daughter has come a long way and would never hurt anyone.

The evidence of AL (sister of the Applicant)

- [26] AL provided an undated letter of support for the Applicant, which included the following statement:

I would like to let you know that I have two teenage boys... and have always relied on [the Applicant] as I am a single mum. [My boys] love [the Applicant] and they are very close. If anything was ever to happen to me, she would be more than capable of stepping into my shoes to raise my children but most of all my boys love spending time with her. She is very patient and caring with them.

- [27] AL gave evidence at the Tribunal hearing:

- (a) it has been 10 to 11 years since her sister last used drugs;
- (b) she has never seen her sister use needles;
- (c) her sister does have a good relationship with her sister's daughter;
- (d) her sister has always presented as a fine member of society;
- (e) her sister was not significantly different when she was taking drugs;
- (f) she did not know the extent of her sister's drug use; and
- (g) she is confident that she could tell if her sister returned to using drugs.

The evidence of PL (sister of the Applicant)

- [28] PL provided a letter of support for the Applicant dated 6 January 2018, which included the following statement:

I am writing this letter on behalf of my sister. There is 9 years between us and growing up [the Applicant] has always been there for me. As a child she was always a lot of fun and helped me in many ways.

I myself am now a mum of ... twin girls and couldn't ask for a better aunty for my girls to grow up with. [The Applicant] comes over each week to give me a hand around my house and spend quality time with her nieces. When my girls were about 7 months old, I had to travel 4 hours away from home for one of my girls to [location withheld], as you can imagine this is a big ordeal and can be scary for any mum. [The Applicant] was right by our side the whole time whilst away and was such a big help with looking after my other daughter, feeding her, bathing her, playing with her and keeping her entertained while I was tending to the needs of my other daughter. She was very helpful. My husband and I were so appreciative to have [the Applicant] with us.

As a first time parent we are very particular as to who looks after or babysits our girls and [the Applicant] is one of the very few people that we are happy to leave our daughters in the care of.

[29] PL gave evidence at the Tribunal hearing:

- (a) she said that she is not sure why BCS refused a blue card for her sister;
- (b) she could see no reason why her sister should not have a blue card;
- (c) she remembers her sister having trouble with the law and observing her smoking cannabis, but she has been a good role model and a nice person;
- (d) her sister now has a good relationship with her daughter;
- (e) the family were always protective of her sister's daughter and would never allow anything to happen to her; and
- (f) when her sister was using drugs people did raise concerns about her sister's daughter's well-being, but there was never a suggestion that her sister could have been a danger to any other person, and she was not a violent person.

The evidence of LE (employer of the Applicant)

[30] The Applicant described herself as a self-employed contractor cleaner, but she did call her 'employer', LE, to give evidence to the Tribunal.

[31] LE provided a letter of support for the Applicant dated 6 January 2018, which included the following statement:

My name is LE. I am the owner of a cleaning business named ..., this letter is concerning my employee [the Applicant].

I first met [the Applicant] through a friend and she was an acquaintance and saw her from time to time through mutual friends. A few years later she told me she was looking for work and somewhere new to live, she wanted a fresh start. [The Applicant] was very upfront with me and told me about a charge she had on her record when she was around 20 years of age and some past issues with drug addiction. Even though that part of her life was behind her she felt it made it hard for her to gain employment. I was working for a cleaning company at the time and got her a job with me. I also offered her a room at my home as I have a 4 bedroom home and was living alone.

Straight away I was extremely happy with living with [the Applicant]. She is a clean, quiet and a very respectful person. Her daughter and family often come to visit, and I got to know them really well. [The Applicant] has an amazing daughter and a fantastic relationship with her. She is extremely family orientated and often babysits her sister's children and has them over for family social gatherings. She is well loved in her family and has a very good bond with her nieces and nephews. A year ago my sister and her four children relocated to ... from ... and needed somewhere to stay while they found their own house. I offered them to come and stay at my house while they searched for a new home. I had no problem with my sister or her kids staying in the same house as [the Applicant] as I trust her 100% and knew they would get on really well. They ended up staying for 2 months and my sister and her and children now have a close bond with [the Applicant].

Around 5 years ago after being in the cleaning industry for 15 years I decided to start my own cleaning business and go out on my own. I offered [the Applicant] a job working for me and trusted her to help grow my new business. I honestly can't speak highly enough of [the Applicant] and what she has done for my business and the above and beyond effort [the Applicant] always puts in!

[The Applicant] is my most valuable employee. This has been an extremely stressful time for me, waiting to see if she is able to obtain a Blue Card. She is such a huge and important part of my business. I also believe she deserves to be able to perform her duties and maintain her employment as it could be devastating to her to go back on unemployment. However, I fully understand the importance of this process and that the safety of children is above all else. It is my personal view that [the Applicant] is not a threat to herself, fellow employee's, clients or children. In the 5 years [the Applicant] has worked for me I have never received a complaint from a client about [the Applicant]'s work or any personal issues with her. I believe [the Applicant] has completely turned her life around and is a valuable member of the community. Giving her a chance certainly paid off for me and she has proved herself over and over again.

[32] LE gave evidence at the Tribunal hearing:

- (a) she has not received any complaints from anyone at the school, or any of her customers about the Applicant;
- (b) the Applicant has spoken about the attempted armed robbery and said that she was under duress at the time;
- (c) she has never observed the Applicant using drugs;
- (d) the Applicant will never return to drugs;
- (e) even when placed under stress, the Applicant has not returned to drugs; and
- (f) she is confident that she could identify if the Applicant returned to drugs.

Letter from clinical psychologist, Gavin Hill

[33] The Applicant used an undated letter, in the form of a brief report, from psychologist Gavin Hill, filed with the Tribunal on 31 May 2019. Mr Hill was not made available for cross-examination at the Tribunal hearing. In his report, Mr Hill identified:

- (a) a brief background, noting that the Applicant identified that she required a letter of attendance to support her Blue Card review application;
- (b) that that the Applicant presented 15 minutes late for her appointment and her speech was rapid and pressured, which slowed across the course of the appointment;
- (c) that no thought content, perceptual memory abnormalities were identified;
- (d) the Applicant presented as having insight into her offending behaviours and the impact that this has had on the victims/society;
- (e) the Applicant's tone and emotion were congruent with her personal reporting regarding the remorse and regret she displayed while discussing the history of her substance abuse and criminal activity;
- (f) the Applicant stated that she was apologetic around the financial burden she had placed on the legal system and businesses that were impacted by her theft and attempted robbery;

- (g) that she presented as being especially remorseful in regard to any possible psychological impact that she might have had on the victim of her attempted robbery during 1999 and on her daughter;
- (h) that she reported that she has not reoffended in seven years and that she is in a 'good place';
- (i) risk factors include the Applicant currently experiencing a low financial income and the risk of a drug abuse relapse as the Applicant chooses to remain engaged in the Methadone program; and
- (j) protective factors, as reported by the Applicant, include strong support from family and friends, current employment status and ongoing engagement and access to AODS.

[34] Mr Hill stated that the Applicant understands that access to a Blue Card requires certain requirements. The Applicant did not present or discuss any of the recognisable categories that would meet a 'disqualified person'. Mr Hill concluded in the following terms:

The information presented in this report was gathered in one session with [the Applicant] and has the purpose of [being] the supporting document for [the Applicant] in her Blue Card review application and [was] not obtained for the purpose of a psychological assessment of risk.

The Applicant's submissions

[35] In submissions, the Applicant expressed regret for the mistakes that she has made, stating that, in relation to the attempted armed robbery, she always regarded it as a silly mistake but now it is a costly mistake, because of the effect on her contract employment.¹⁶

[36] The Applicant provided written submissions to the Tribunal.¹⁷ In it, the Applicant stated:

On my closing statement I would like to say this. I believe after the changes I have made in my life and the years I have been drug free, now living a life void of crime or charges that I should be able to hold a Blue Card and work after-hours at the job I loved. I have changed for the better, I've gained employment and not only have I given up drugs and that way of life, I've also given up friends, contacts and anything else necessary in order to change my life and remove all the negative things in it, especially in relation to drugs. I have not been charged with any crime for over 5 years and have taken many measures to stay clean from drugs. I have also passed with a negative drug reading all my drug tests administered at AODS the local drug and alcohol centre, attended counselling there for 5 years and brought in many witnesses to testify to my ongoing sobriety and that I am of no risk to children or any persons.

In my life I never planned or wanted to be an addict or particularly the life style that accompanies it. I never wanted criminal charges or a record or anything at all to do with anything illegal. Unfortunately that is part of my life story and I was that person and no matter how much I regret it and am

¹⁶ Statement of the Applicant addressed to BCS, dated 9 January 2018.

¹⁷ Dated 27 November 2019.

ashamed of it, I can't change the past. But I did realise a long time ago that I'm in control of and can change my present and future and I could be a person that myself, society, my family, my daughter and the good friends in my life could be proud of. 10 years ago I started to make steps to change my life and get off drugs. I've gone to drug counselling consistently for over 5 years. Years ago I removed all contacts and people in my life that have anything to do with drugs ... I refuse to have any person in my life that uses or has anything to do with drugs ... I will take every measure necessary, no matter how big or small to help maintain my clean lifestyle. My family and a couple of people closest to me have been through everything with me, the bad in my past and the good I have experienced in the last 10 years by getting off drugs. I bought [sic] them in as witnesses because they can truly attest to my changing and becoming clean and my good character and that I am not a risk to anyone, especially children. They trust me above all other people in their life with their own children, to mind, to go to [location withheld] and look after my niece alone while the other twin was in hospital and another of my sisters even leaving her two boys with disabilities to me if anything were to happen to her, as they know me well and can say 100% that I am off drugs and trust me. I ask that you please take this into consideration when making the decision.

...

My family and closest friends and Boss that have been through this with me, know me and when I am on or off drugs. They came as witnesses and testified under oath to the court that I am off drugs and they don't believe I will relapse. They would not risk their children, businesses, homes and waste their valuable time on this if they believed I would return to that life, they 100% have faith and trust in me and can physically see the change in my life for the last 5 to 10 years. I have had many trials and tribulations happen in the past few years (this Blue Card situation being one of them) and I have never for 1 second thought of using drugs to help get through it. I can move through life now and have for a long time, coping and functioning like the vast majority of people and all's I'm hoping for is the same rights afforded to everyone else not partaking in illegal activities. I ask that you please give me this opportunity as I believe all my wrong doings of the past have been paid for. While I still carry the shame and regret for hurting people through my actions and always will be and am truly deeply sorry for it, I don't think I should be stopped from working at this job that I already had for a year and a half without fault.

... I can tell you with 100% honesty I will never use drugs again and I'm committed to staying clean for life. My life is full of good people, love and positivity. I'm proud of myself for the changes I've made and the person I now am. When I lost my Blue Card application I felt as though I was being punished for a crime or offense [sic] I've never committed. I have never and would never hurt a child. I've paid for the wrong doings in my past and accepted all responsibility for my actions and whatever punishment the court gave me. I will never return to that life again and I have made massive changes in my life and continued on that good path for many years now. My job gave me purpose, a reason to get up in the morning and was such a positive part of my life. I loved the job I had at the school and I worked there for 1 and a 1/2 years before the Blue Card rejection came through with absolutely no incidents, complaints or issues in the entire time frame. I believe this is proof along with the other measures I have taken of [sic] many years that I can hold employment at the school with no risk to anyone. I ask ...

please give me the chance I believe I've earned, and I can continue on this path of being a trusted member of society and able to work.

The Respondent's submissions

[37] The Respondent provided written submissions to the Tribunal dated 7 November 2019. The relevant sections of the submissions are as follows (adopting the numbering from the original document):

Notice to Produce material — Bundaberg Hospital

29. Material from the Bundaberg Hospital ('the Hospital') relating to the Applicant was produced to the Tribunal pursuant to a Notice to Produce issued on 17 June 2019. The material was made available for copying by the parties. The material produced by the Hospital indicates the following:

- a) an Alcohol and Other Drug clinical assessment was completed on 14 March 2013, after the Applicant self-referred to the Hospital in relation to her personal drug use;¹⁸
- b) she reported having used cannabis for 20 years and stated she was using daily at the time of the assessment.¹⁹ The notes indicated the Applicant abstained from cannabis use for one year while pregnant;²⁰
- c) she reported having used opioids on and off for 12 years and was using almost daily at the time of the assessment.²¹ She reported to have taken four (4) 20mg Endone tablets on that day²² and stated she was generally taking up to 120mg of morphine daily;²³
- d) she reported having previously used heroin and amphetamines, however not for a number of years;²⁴
- e) she was assessed to have a morphine dependence and it was identified she had been engaging in polysubstance abuse on and off for 15 years;²⁵
- f) the Applicant had attended a rehabilitation program when she was 15 years of age;²⁶
- g) she had engaged in risk taking behaviour such as using old blunt needles when injecting dangerous drugs;²⁷ and
- h) she identified as having suffered with depression, however stated this was related to her drug use.²⁸

¹⁸ Bundaberg Hospital material, NTP-2.

¹⁹ Ibid, NTP-3.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid, NTP-14.

²⁴ Ibid, NTP-2.

²⁵ Ibid, NTP-4.

²⁶ Ibid.

²⁷ Ibid, NTP-9.

²⁸ Ibid, NTP-11.

Notice to Produce material — Department of Child Safety, Youth and Women

30. On 17 June 2019, the Tribunal issued a Notice to Produce to the Department of Child Safety, Youth and Women ('the Department') requiring the production of specified documents, On 8 July 2019, the Department provided correspondence to the Tribunal advising they did not hold any information of relevance in relation to the Applicant.

Relevant risk and protective factors arising from the written materials filed in the proceedings

31. The Court of Appeal in Maher accepted the approach of considering relevant risk and protective factors in deciding whether a particular case is exceptional.

Protective factors

32. The Respondent submits that the following protective factors are relevant in this matter:
- a) the Applicant submits that she ceased dangerous drug use in 2014, approximately five (5) years ago and has made significant changes to her life since that time.²⁹ This is somewhat supported by the lack of any further charges or convictions recorded on the Applicant's criminal history since 2014.³⁰ The Applicant's historic use of illicit drugs will be further explored at hearing;
 - b) the Applicant has consistently expressed great remorse for her offending behaviour and the impacts it had on others. She stated "I admit my behaviour was disgusting and that's an understatement. I wronged my daughter, my family and the people my crime affected. I wish with all my heart I could turn back the clock and change it all. Words can't describe how sorry I am".³¹
 - c) the Applicant indicated she has engaged with professional support services to assist in her rehabilitation, including the Methadone program and regular attendance with an Alcohol, Tobacco and Other Drugs Service (ATODS).³² This engagement will be explored further at hearing;
 - d) the Applicant articulated strategies she has in place to ensure she does not return to drug use, including living a more active lifestyle, disassociating from others who have had a negative influence on her, moving in with a trusted friend, proactively managing her mental health and focusing on work.³³ She also stated she has been seeking alternative treatment options to assist in her chronic pain management;³⁴

²⁹ Reasons document, BCS-5.

³⁰ Criminal history, BCS-18-19.

³¹ Applicant's material dated 29 May 2019, 1.

³² Reasons document, BCS-5-6.

³³ Ibid, BCS-6.

³⁴ Ibid.

- e) the Applicant indicated she has a number of persons she can turn to for support if required, including her mother, her boss and ATODS;³⁵ and
- f) the Applicant has provided five (5) references from friends and family members who indicate some knowledge of her offending and attest to the positive changes she has made to her life since her drug abuse and related offending.³⁶

Risk Factors

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

- a) the Applicant has a conviction for a serious offence, namely attempted robbery [with] actual violence whilst armed and in company. In a decision by the Queensland Civil and Administrative Tribunal,³⁷ the Appeals Tribunal confirmed the Act places a barrier to persons with a conviction for a serious offence from working with children, and the proper inference to draw must be that it would harm the best interests of children for persons with convictions for a serious offence to work with children unless it is an exceptional case.³⁸ It also confirmed that changes in a person's circumstances which simply amount to them living in a law abiding manner as society expects and functioning at a level expected of a person at their stage and age in life, are generally considered to be the "ordinary course" and not exceptional;³⁹
- b) the Applicant's offending behaviour occurred over a prolonged period of time, between 1995 and 2014.⁴⁰ The persistent nature of the Applicant's offending despite her maturity and the penalties imposed by the Courts demonstrates a lack of regard for the law and an unwillingness to change her offending behaviour at that time;
- c) the material provided in these proceedings indicates the Applicant's drug abuse and misuse is more extensive than was evident at the time the negative notice was issued. The material indicates the Applicant has not only battled addiction in relation to heroin and cannabis abuse but also struggled with opioid dependency over a prolonged period.⁴¹ While the Applicant has indicated that she no longer engages in drug use and has sought professional support, given the extensive addiction and dependency issues demonstrated in the material, the lack of independent evidence of the Applicant's treatment is a factor of significant concern. This will be explored further at Hearing;
- d) further, it is noted that the Applicant has indicated she became dependent on cannabis and opioids as she was experiencing

³⁵ Ibid.

³⁶ Statement of LE; Statement of YL; Statement of EL; Statement of PL; Statement of AL.

³⁷ *Commissioner for Children and Young People and Child Guardian v Ram* [2014] QCATA 27.

³⁸ Ibid, [46].

³⁹ Ibid, [47].

⁴⁰ Criminal history, BCS-18-19.

⁴¹ Bundaberg Hospital material, NTP-3.

chronic pain resulting from Hepatitis C.⁴² While the Applicant has indicated she is going to look into other legal means of pain management,⁴³ more information is required as to how she is currently managing this on an ongoing basis, particularly as the Applicant has not provided specific evidence in relation to her opioid usage. This will be explored further at Hearing;

- e) it is apparent that throughout the Applicant's drug use and offending behaviour, her daughter was in her care.⁴⁴ While the Applicant submitted her drug use never occurred in the presence of her child, I note the Applicant's daughter provided a reference which stated that she dealt with her mother's issues with substance abuse while she was growing up and recognised the impact it had on her decision making.⁴⁵ This raises serious concerns the Applicant was unable to exercise sound judgment and provide a protective environment for her daughter who was in her care;
- f) notwithstanding a brief letter from clinical psychologist, Gavin Hill, which is undated,⁴⁶ it remains a risk that the Applicant has not submitted any evidence of psychological treatment to identify or address any underlying triggers to her offending behaviour and drug use. It is also noted Mr Hill's letter does not indicate that he has seen the Respondent's Reasons document⁴⁷ (and is therefore not aware of the Respondent's concerns). Nor does the letter address what preventative strategies, if any, the Applicant uses to reduce her risk of further offending behaviours. These issues will be explored further at Hearing; and
- g) overall, the material indicates the Applicant's drug abuse commenced when she was a teenager and that she struggled with addiction for a large part of her life. While she stated she lives a 'normal life' now, she also acknowledges her treatment is still ongoing and that rehabilitation takes years.⁴⁸ While the Applicant appears to have made changes in recent years, when the recency and ongoing nature of her rehabilitation is considered in the context of the seriousness and extent of her drug abuse, concerns remain that insufficient time has passed for the Applicant to be able to show she is able to maintain her rehabilitation and abstain from drug abuse on a long term basis.

Conclusion

- 34. The Applicant's long-term drug abuse and conviction for the serious offence of attempted robbery actual violence whilst armed in company, raise serious concerns about the Applicant's eligibility to work with children and young people in regulated employment. The offence of attempted robbery [with] actual violence whilst armed in

⁴² Reasons document, BCS-6.
⁴³ Reasons document, BCS-5.
⁴⁴ Applicant's life story.
⁴⁵ Statement of YL.
⁴⁶ Report of Gavin Hill, 2.
⁴⁷ Ibid.
⁴⁸ Reasons document, BCS-5.

company is classified as a serious offence under the Act. Accordingly, section 225 of the Act provides that the Tribunal must refuse the application unless satisfied it is an exceptional case in which it would not harm the best interests of children to grant the application.

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

- [38] The Respondent submitted that as a protective measure for children, and not as a way of punishing the Applicant, the Tribunal should find that this is not an exceptional case.
- [39] The Respondent conceded that there are protective factors but submitted that the risk factors outweigh those protective factors.

Risk factors and protective factors

- [40] The Tribunal must balance relevant risk and protective factors in each case and, where there are multiple factors in a case, the Tribunal must apply weight to the relevant factors.⁴⁹ That requires the Tribunal to undertake a careful analysis of the circumstances in the case, which involves the application of a discretion. Each case must be dealt with on its own facts, bearing in mind the requirement to determine whether there is a real and appreciable risk to the safety of children.
- [41] The primary concern for the Tribunal is the attempted robbery conviction, but the Applicant's offending of concern is not confined to that single event. The Applicant's association with dangerous drugs continued until 2014. The Respondent also acknowledged a degree of remorse by the Applicant but suggested that she lacked insight into her offending behaviour. The Respondent submitted that allowing the Applicant to have a blue card would have a negative impact on children.
- [42] The Applicant urged the Tribunal to find that she does have insight, that she has made substantial changes to her lifestyle and that her personal circumstances have changed. The Applicant produced witnesses to provide oral evidence and a brief report from a psychologist. While the Respondent conceded that the support network

⁴⁹ *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

of the Applicant is a protective factor, it is not such as to mitigate the risk factors. The Respondent submitted that the Applicant has not yet developed appropriate insight and she has not appropriately addressed triggers that may cause her to re-engage in offending behaviours.

The Tribunal findings and decision

- [43] The Tribunal considers the best interest of children. It does not seek to impose further punishment upon the Applicant nor does it consider any potential detriment to the Applicant. Prejudice or hardship to an Applicant are not relevant in determining whether a case is exceptional.⁵⁰ The decision of the Tribunal is not intended to reward the Applicant for her rehabilitation. The Tribunal considers the effect on children if the Applicant has a blue card. The Tribunal does consider the Applicant's criminal history and the offending behaviour. The Tribunal must consider whether it raises issues of long-term concern. The Tribunal considers whether the Applicant has gained insight, particularly into those triggers that may cause a lack of judgement, which may have a potentially adverse effect on children. The Tribunal considers whether the Applicant has addressed the triggers and has gained skills to avoid issues arising in the future. The Tribunal considers the risk factors and the protective factors. The Tribunal considers the Applicant's lifestyle and support network.
- [44] The Tribunal does consider the WWC Act and notes that Parliament has seen fit to legislate that attempted robbery is a serious offence. Therefore the presumption is to reject the application, unless it is exceptional. Section 225 of the WWC Act provides that a negative notice must be issued unless it is an exceptional case and it would not harm the best interests of children for the Applicant to be issued with a positive notice. No party has the onus of proving whether the case is exceptional. The Tribunal must decide the question of whether or not an exceptional case exists on the balance of probabilities, bearing in mind the gravity of the consequences involved.⁵¹
- [45] Having carefully considered the evidence, the Tribunal is of the view that this is not an exceptional case, and that it should confirm the decision of BCS to issue a negative notice. The Tribunal adopts a precautionary approach. In determining that this is not an exceptional case, the Tribunal does take account of the considerations prescribed by section 226 of the WWC Act and other matters as identified in this decision. The Tribunal considers its decision from the perspective that the welfare and best interests of children is paramount. Every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing. In making decisions of this type, the Tribunal does consider the risk to children.
- [46] The Tribunal acknowledges that a blue card is fully transferable.
- [47] In 2002, the District Court imposed a penalty of probation for two years upon conviction for one count of attempted robbery with actual violence, whilst armed and in company. The Applicant says that her actions were influenced by her addiction to heroin at the time. If the primary purpose underlying supervision

⁵⁰ *Chief Executive Officer, Department for Child Protection v Scott (No 2)* [2008] WASCA 171.

⁵¹ *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492, citing with authority the test prescribed in *Briginshaw v Briginshaw & Anor* (1938) 60 CLR 336.

through probation was to wean the Applicant off her drug addiction, it was unsuccessful. The Applicant continued to be associated with the use of illicit drugs for many years after the conclusion of the probation order. During the time that the Applicant was involved with the use of illicit drugs she had parental responsibilities. It appears to the Tribunal that her family, and in particular her mother, assumed much of that responsibility.

- [48] The impact of the attempted robbery must have been devastating on the employed shop assistant. The Applicant has severely minimised her behaviours by regarding the attempted robbery as 'a silly mistake'. She was directly involved in the offending behaviour. Just before noon on 6 February 2000 the Applicant walked in and stood at the front counter brandishing a long bladed knife and demanded an employee remove money from the cash drawer. It was only because of fear that an alarm at been activated that she ran from the store. When questioned about the incident the Applicant repeatedly denied her involvement.
- [49] In 2013 and 2014, the Applicant came before courts in relation to drug related matters. In 2013, police intercepted the Applicant in her vehicle and observed a handbag on the front passenger seat of the vehicle within which was a small clip seal bag containing approximately 2 g of cannabis. The Applicant told police that she use the cannabis to ease her chronic liver problem and curvature of the spine. Despite being convicted, the Applicant continued to use the drug and in August 2014 police once again intercepted the Applicant whilst she was driving. She lied to police and denied taking any drugs or medication, explaining that her appearance came about as result of being 'extremely tired'. The drug related charges are of concern to the Tribunal in a number of ways. It demonstrates that despite many opportunities, the Applicant has continued to resort to drugs. She was driving a motor vehicle on both occasions that she was apprehended. The Applicant repeatedly lied to authorities about her drug usage. The Applicant repeatedly demonstrated an inability to take personal responsibility for her actions. When assessing her statements that she has not used drugs since her most recent offence, the Applicant's previous denials do negatively impact upon her credibility. The Applicant has minimised her past behaviours. In her written submissions on 9 January 2018, the Applicant said that 'I've been straightening my life out and on the straight path and staying clean which I have been for 10 years'. That is clearly incorrect as the criminal history discloses that she had association with illicit drugs until 2014.
- [50] The Applicant does have a strong support network and she has taken some positive steps, such as undertaking the methadone program, completing parenting programs through ATODS and engaging with counselling services. These are significant protective factors. She has also avoided contact with those people she described as having a bad influence upon her. But the Applicant's offending behaviour has continued well into adulthood. The Applicant has not been fully honest with her family. Her sister AL gave evidence that it has been 10 to 11 years since her sister last use drugs.
- [51] On one occasion, for the purpose of this application, she also engaged with a psychologist. The psychologist identified that a drug abuse relapse is a risk factor. Mr Hill's report does not indicate that he has seen the Reasons Document. On that basis, he could not have been aware of the Respondent's concerns. Mr Hill does address what preventative strategies, if any, the Applicant uses, or ought to use, to reduce her risk of further offending behaviours.

- [52] The Applicant's past drug use and criminal behaviour do detract from her ability to provide a protective environment for children placed in her care. The Applicant has minimised the effect of her consumption of cannabis on her ability to care for her child or children. The Tribunal is of the view that there has not been sufficient time to establish full rehabilitation by the Applicant or sufficient evidence presented to it to satisfy the Tribunal that the Applicant is not susceptible to further drug use.
- [53] The Applicant has minimised the effect of her use of illicit drugs on the upbringing of her daughter. The Applicant's daughter was a credible witness, but her progression into adulthood in a positive manner appears to be largely as a result of the support of her grandmother. The Applicant appears to have failed to recognise, or at least minimised, the adverse effects of her drug usage on her ability to promote and protect the best interests of children, including her own daughter.
- [54] The Tribunal acknowledges that there are protective factors, but they do not render the case exceptional such that it would not harm the best interests of children for the Applicant to be issued with a positive notice and blue card.

Publication

- [55] The Tribunal may make an order prohibiting the publication of the following (other than in the way and to the persons stated in the order):
- (a) the contents of a document or other thing produced to the Tribunal;
 - (b) evidence given before the Tribunal;
 - (c) information that may enable a person who has appeared before the Tribunal, or is affected by a proceeding, to be identified.⁵²
- [56] The Tribunal considers the order is necessary as publication of information in this case would be contrary to the public interest.⁵³

Orders

- [57] The orders are as follows:
1. The decision of the Director-General, Department of Justice and Attorney-General that the Applicant's case is not 'exceptional', within the meaning of section 221(2) of the *Working with Children (Risk Management and Screening) Act 2000* (Qld), is confirmed.
 2. Pursuant to section 66 of the Queensland Civil and Administrative Tribunal Act 2009 (Qld), the Tribunal prohibits the publication of the names of the Applicant and any non-professional witnesses appearing at the application.
 3. The decision of the Tribunal is to be delivered to the parties by email.

⁵² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 66(1).

⁵³ *Ibid*, s 66(2).