

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *DAW v Director-General, Department of Justice and Attorney-General* [2020] QCAT 137

PARTIES: **DAW**  
(applicant)

v

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

APPLICATION NO/S: CML325-18

MATTER TYPE: Childrens matters

DELIVERED ON: 24 April 2020

HEARING DATE: 5 March 2020

HEARD AT: Toowoomba

DECISION OF: Member McDonnell

ORDERS:

- 1. The decision of the Director-General, Department of Justice and Attorney-General made on 5 October 2018 that the applicant's case is 'exceptional' within the meaning of s 221(2) of the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is set aside and replaced with the Tribunal's decision that there is no exceptional case.**
- 2. Pursuant to s 66 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* the Tribunal prohibits the publication of anything that may identify, or be likely to identify, the applicant.**

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

FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – where issue of negative notice – application for review – where applicant has convictions and charges – where not categorised as serious or disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* –

where applicant had inadequately treated mental illness at the time of offending – whether an ‘exceptional case’ warranting departure from the general rule that a positive notice must be issued – application of factors in s 226 of the *Working With Children (Risk Management and Screening) Act 2000* (Qld)

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 19, s 20, s 24, s 66, s 99(2)(a)  
*Working with Children (Risk Management and Screening) Act 2000* (Qld), s 5, s 6, s 221, s 226, s 353, s 354, s 360, Schedule 7

*Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291  
*Commissioner for Children and Young People and Child Guardian v Maher and Anor* [2004] QCA 492  
*Commissioner for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28  
*FMA v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 210  
*Re TAA* [2006] QCST 11

#### APPEARANCES & REPRESENTATION:

Applicant: R Marks of Queensland Advocacy Incorporated  
 Respondent: M Jago

#### REASONS FOR DECISION

##### Background

- [1] DAW was issued with positive notices and blue cards under the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (‘WWC Act’), between 2002 and 2011. In December 2011, the respondent received notification of a change to the applicant’s police information triggering a reassessment of the applicant’s eligibility to hold a positive notice and blue card. In July 2012, following reassessment, the respondent cancelled the applicant’s positive notice and blue card and issued a negative notice to DAW.
- [2] In September 2017, the applicant applied to cancel the negative notice. DAW seeks a blue card to enable her to complete the placement component of her studies, for future employment and for volunteer work.
- [3] The respondent proposed to continue the negative notice, so invited the applicant to make submissions about whether or not there was an exceptional case for the applicant.
- [4] Where a person has been convicted of an offence other than a serious offence, the chief executive must issue a positive notice, unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for a

positive notice to be issued.<sup>1</sup> The chief executive was satisfied the case was exceptional within the meaning of the WWC Act.

- [5] On 5 October 2018, the respondent advised of its decision to refuse to cancel the negative notice. The applicant seeks a review of the decision that this is an exceptional case within the meaning of s 221(2) of the WWC Act.
- [6] Section 354(1) of the WWC Act provides that a person who is not a ‘disqualified person’<sup>2</sup> is entitled to apply for a review of a ‘chapter 8 reviewable decision’<sup>3</sup> within the prescribed 28-day period.<sup>4</sup> This includes a decision as to whether or not there is an exceptional case if, because of the decision, the respondent issued a negative notice.<sup>5</sup>
- [7] DAW is not a disqualified person and sought the review of the decision within the prescribed period.

### **The legislative framework**

- [8] The Tribunal is required to decide the review in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’) and the WWC Act.<sup>6</sup> The purpose of the Tribunal’s review is to produce the correct and preferable decision,<sup>7</sup> on the evidence before it and according to law. For the review, the Tribunal stands in the shoes of the decision maker and makes the decision following a fresh hearing on the merits.<sup>8</sup> The review is to be undertaken under the principle that the welfare and the best interests of a child are paramount.<sup>9</sup> On review, the Tribunal may confirm or amend the decision, set the decision aside and substitute its own decision, or set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with or without directions.<sup>10</sup>
- [9] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland.<sup>11</sup> The principles under which the WWC Act is to be administered are:
- (a) the welfare and best interests of a child are paramount;
  - (b) every child is entitled to be cared for in a way that protects the child from harm and promotes the child’s wellbeing.<sup>12</sup>
- [10] It is not the intention of the WWC Act to impose additional punishment on a person who has police or disciplinary information, but rather is intended to put gates around employment to protect children from harm.<sup>13</sup>

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<sup>1</sup> WWC Act, s 221(2).

<sup>2</sup> WWC Act, s 169 (definition of ‘disqualified person’).

<sup>3</sup> WWC Act, s 353 (definition of ‘chapter 8 reviewable decision’).

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

<sup>5</sup> WWC Act, s 353(a).

<sup>6</sup> QCAT Act, s 19(a).

<sup>7</sup> *Ibid*, s 20.

<sup>8</sup> *Ibid*.

<sup>9</sup> WWC Act, s 360.

<sup>10</sup> QCAT Act, s 24(1).

<sup>11</sup> WWC Act, s 5.

<sup>12</sup> *Ibid*, s 6.

<sup>13</sup> As stated in Queensland, *Parliamentary Debates*, Queensland Parliament, *Commission for Children and Young People Bill* Second Reading Speech, 14 November 2000, 4391 (Anna Bligh).

[11] 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

*Note for subparagraph (iv)* — For charges for disqualifying offences that have not been dealt with, see sections 208, 217 and 240 (in relation to prescribed notices), and sections 269, 279 and 298 (in relation to exemption notices).
  - (c) the chief executive is aware of a conviction of the person for an offence other than a serious offence.
- (2) If subsection (1)(b) or (c) applies to the person and the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a positive notice, the chief executive must issue a negative notice to the person.

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

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

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

[14] In determining whether there is an exceptional case when a person has been convicted of an offence the Tribunal must have regard to the matters set out in s 226(2) of the WWC Act. The matters listed in s 226 are not exhaustive. Rather, s 226 ‘merely specifies certain particular matters which the [Tribunal] is obliged to consider in deciding the application.’<sup>15</sup>

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

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

[15] ‘Conviction’ is defined in Schedule 7 of the WWC Act to mean ‘a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded’.

[16] In determining whether there is an exceptional case the Tribunal must be satisfied on the balance of probabilities, bearing in mind the gravity of the consequences involved.<sup>16</sup> The Tribunal has a broad discretion to exercise when considering the merits in each case. Neither party bears an onus in determining whether an exceptional case exists.<sup>17</sup>

### **Consideration of s 226(2) of the WWC Act**

[17] The matters listed in s 226(2) of the WWC Act must be considered by the Tribunal and are addressed below.

#### *Whether the offence is a conviction or a charge*

[18] For the purposes of the WWC Act, the applicant has convictions for the following offences:

- (a) Using a carriage service to menace, harass or cause offence (two convictions) in January 2013, when DAW made abusive telephone calls to an administrative employee of the Queensland Police Service;
- (b) Using a carriage service to menace, harass or cause offence (three convictions) in April 2013, which offences involved DAW making telephone calls to a police officer and his family at their home;
- (c) Common assault and wilful damage in August 2011, the day DAW’S employment with was terminated. No conviction was recorded;
- (d) Using a carriage service to menace, harass or cause offence in December 2011 when DAW sent an abusive text message to a senior member of a previous employer. No conviction was recorded; and
- (e) Failing to appear in accordance with an undertaking in May 2015. No conviction was recorded.

[19] She has finalised charges for the following offences:

- (a) Wilful damage (two charges) in August 2011, were dismissed;
- (b) Using a carriage service to menace, harass or cause offence in April 2013 which was dismissed when no evidence was offered;
- (c) Breach of bail concerning February 2016 conduct which charge was dismissed when no evidence was offered;
- (d) Serious assault of a police officer in April 2016 which was dismissed with no evidence offered; and
- (e) Five offences which were dismissed by the Magistrates Court following their referral to the Mental Health Court:

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<sup>16</sup> Ibid, [30].

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

- (i) Stalking between January 2013 and July 2014, when DAW allegedly made abusive telephone calls and sent abusive letters and Facebook posts to an administrative employee of the Queensland Police Service;
- (ii) Using a carriage service to menace, harass or cause offence in February 2013, when DAW allegedly sent an email to an administrative officer of a previous employer;
- (iii) Using a carriage service to menace, harass or cause offence in July 2014 when DAW allegedly made an abusive Facebook post directed at a Queensland Police Officer;
- (iv) Using a carriage service to menace, harass or cause offence in December 2015; and
- (v) Obstructing police during an arrest in July 2014.

*Whether the offence is a serious offence and, if it is whether it is a disqualifying offence*

- [20] None of the offences on the applicant's criminal history are serious or disqualifying offences under the WWC Act. However, Parliament intended that all offences on a person's criminal history be able to be taken into account in assessing their eligibility to hold a blue card.

*When the offence was committed or is alleged to have been committed*

- [21] The applicant's offending and alleged offending occurred between 2011 and 2016.

*The nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children*

- [22] DAW's offending of concern relates to her pattern of violent, aggressive and harassing behaviour over a period of about five years. The behaviour included the use of physical violence, sending abusive and harassing messages and being abusive over the telephone and in person.
- [23] DAW was charged with making four abusive telephone calls to four people in April 2013. It was alleged that one of the four telephone calls was to a 17-year-old girl. One of the charges was dismissed after prosecutors did not tender any evidence for it. From the material available to the Tribunal it is not possible to conclude that the 17-year-old girl was involved in any of the three charges resulting in convictions.
- [24] Those engaged in child related employment must act in a controlled and rational manner. The applicant's criminal history raises concerns about her ability to exercise restraint, utilise appropriate conflict resolution strategies and deal with difficult and stressful situations appropriately.

*In the case of a conviction – the penalty imposed by the court and, if the court decided not to impose an imprisonment order for the offence or not to make a disqualification order under section 357, the court's reasons for its decision*

- [25] The court imposed a range of penalties in relation to the applicant's offending including fines, probation, good behaviour periods and a suspended term of imprisonment. The court recorded convictions in relation to some of the offending,

reflecting the gravity with which the court viewed the offending. The court's reasons for imposing these penalties are not known to the Tribunal.

- [26] It was submitted on behalf of the applicant that if the referral to the Mental Health Court had been made earlier, it was at least possible that DAW's offending behaviour would have ceased earlier, as it ceased when she started to receive appropriate treatment. However, the Tribunal cannot go behind the convictions.

*Any information about the person given to the chief executive under section 318 or 319*

- [27] No information was given under s 318 or s 319 of the WWC Act.

*Any report about the person's mental health given to the chief executive under section 335*

- [28] No information was given under s 335 of the WWC Act.

*Any information about the person given to the chief executive under section 337 or 338*

- [29] No information was given under s 337 or s 338 of the WWC Act.

*Anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the person*

- [30] Other factors relevant to the offending or alleged offending reasonably considered to be relevant are discussed below.

### **The material and the evidence**

- [31] The applicant provided the Tribunal with her life story and statements from her private psychiatrist, her current and previous public health psychiatrists and a clinical psychologist. Her daughter was also called to give evidence. Written submissions were made on her behalf.

- [32] The respondent provided the Tribunal with its reasons for decision, a bundle of documents paginated BCS-1 to BCS-97 and documents obtained pursuant to notices to produce paginated NTP-1 to NTP-970. The respondent had the opportunity to cross-examine DAW, her daughter, her previous public health psychiatrist, DRT, and her clinical psychologist. It provided written submissions.

- [33] In seeking to have her negative notice cancelled DAW suggested that her offending behaviour could be explained by the fact that she had been suffering from an undiagnosed mental illness at the time of the charges.<sup>18</sup> It is clear from the material before the Tribunal that the applicant was aware of her mental health diagnosis at the time of her offending behaviour but that DAW was not accepting of this diagnosis and was not actively engaged in appropriate treatment.

- [34] In 1996 DAW received a diagnosis of schizophrenia.<sup>19</sup> After separating from her husband in 2000 she raised their three children, undertaking various volunteer roles

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<sup>18</sup> Ex 5, BCS-83.

<sup>19</sup> Ex 6, NTP-1.

and was engaged in part time paid employment over the years, commencing employment in two new roles in 2006 and 2007.

- [35] DAW said that in about 2011 she began to experience workplace bullying. The bullying behaviour and her managers' alleged responses to DAW's unsuccessful efforts to have that behaviour addressed impacted adversely on her mental health, causing her to behave erratically. Her employment was terminated at one place of employment in August 2011 and at the other in around 2013. This further contributed negatively to DAW's mental health. She was guarded and distrustful. In about 2011 she began to misuse and self-medicate with alcohol.
- [36] In 2011 DAW consulted with a private psychiatrist, PSY, because she knew something was not right. He said that she consulted with him on 32 occasions between then and February 2015, as well as engaging in regular email correspondence with him over that time.<sup>20</sup> She said that PSY prescribed medication which she took 'on and off'. During 2014 she declined medication as she did not believe she needed it. She continued to self-medicate using alcohol and told the Tribunal that at the time she did not understand what she was going through.
- [37] She did not engage with PSY for much of 2015 and the extent of her engagement with him since 2015 is unclear, with PSY saying only that she has been his patient since 2011.<sup>21</sup> Despite this engagement with a mental health professional in the period 2011 to 2015 this is the period of much of her offending. DAW said that despite this engagement her thinking at this time was all over the place. DAW maintained intermittent contact with public mental health services over this time.
- [38] In May 2016 DAW was assessed as requiring immediate psychiatric care and was admitted to an acute mental health unit where she was commenced on an Involuntary Treatment Order. She remained an inpatient of Mental Health Services between May 2016 and September 2017. Upon discharge DAW and her daughter moved into a house together and they continue to live together today. Upon discharge to the community DAW was managed by a mobile intensive rehabilitation team through community mental health services. This continues today.
- [39] Outstanding criminal charges were discontinued against DAW when the Mental Health Court made a Forensic Order on 23 April 2018. The Forensic Order was revoked, and a Treatment Support Order was made in August 2019. In October 2019 it was observed that DAW's mental state was stable and that she was complying with treatment.<sup>22</sup>
- [40] Before the Tribunal DAW recalled behaving in many of the ways described in the documents and recalled doing so because she felt wronged. She disputed some of the events in the material. However, she accepted that her offending behaviour was confrontational and should not have occurred. She expressed remorse for her offending and for the way she has treated people during this time. She said she behaved as she did because she was mentally unwell at the time. She said that she is embarrassed by her behaviours and accepted that her victims would have been offended and disgusted by her behaviour and felt wronged. DAW said that she believes now that the police and other people whom she harassed were simply doing their jobs. She said she would handle such situations differently today.

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<sup>20</sup> Ex 6, NTP-78.

<sup>21</sup> Ex 2.

<sup>22</sup> Ex 8.

- [41] The respondent expressed concerned about two possible events allegedly involving children. One has been discussed above. In relation to the other, DAW has no recollection of approaching a mental health care worker's child<sup>23</sup> but accepted that in the circumstances described the child would have been 'scared'.
- [42] The applicant expressed the view that the involuntary treatment order was a good thing for her as it ensured that she received the treatment necessary to address her mental health issues. DAW said she acknowledged she has a mental illness and is motivated by her past behaviours to lead a productive life with a mental illness.
- [43] DAW is of the opinion that she has developed good insight, recognising the need to take her medication and maintain contact with her health workers. She disagreed with the observation by a psychiatric registrar of the Mental Health Services in August 2019 that her insight was 'superficial'.<sup>24</sup> DRT observed that her insight developed significantly from the time of her admission to the time of her discharge. Her present treating psychiatrist is of the view that DAW demonstrates good insight. While DAW has previously expressed some concern about whether schizophrenia is in fact her correct diagnosis – a view expressed by PSY and thus perhaps explaining her own views – before the Tribunal she accepted that diagnosis, and she continues to comply with her medication and support regime.
- [44] DAW has undertaken various courses and studies since her most recent charges, including a certificate 3 in individual support, a certificate 3 in beauty therapy and a mindfulness-based course to assist her to deal with addictive behaviours.
- [45] She said that she has been stable for years and is on medication with a good support network including her daughter and significant professional support and she knows when she needs to seek help. DAW said that she has abstained from alcohol since 2016. Her daughter confirmed this. She has strategies in place to assist her to manage this abstinence and to assist her to manage stress and anxiety and was able to articulate strategies she could adopt in a stressful workplace situation. She recognised the importance of continuing to take her medication, to engage with her treatment team and to utilise the various strategies to manage her ongoing mental health. She manages her own finances and her NDIS package. The applicant reported reconnecting with family members from whom she was estranged during her period of instability. She now also enjoys spending time with her grandchildren.
- [46] PSY provided a very brief letter to the Tribunal dated 5 July 2019,<sup>25</sup> and a report dated 6 February 2015, which he provided to previous lawyers for a different purpose, was also available.<sup>26</sup> DAW saw PSY on 32 occasions between 2011 and early 2015. In 2015 he was of the opinion that she was suffering from a post-traumatic stress disorder caused by workplace bullying, which having worsened, he described as a generalised anxiety disorder. DAW did not consult with PSY at all for about 12 months to March 2016.<sup>27</sup> Her level of engagement with PSY since that time is unclear. PSY was not available for cross examination so his level of knowledge of the applicant's offending behaviour could not be explored and the impact of this knowledge on his opinion could not be tested. For these reasons, the Tribunal affords PSY's evidence limited weight.

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<sup>23</sup> Ex 6, NTP-23.

<sup>24</sup> Ex 6, NTP 966.

<sup>25</sup> Ex 2.

<sup>26</sup> Ex 6, NTP 78-79.

<sup>27</sup> Ex 6, NTP 107.

- [47] DRT, a psychiatrist, consulted with DAW over the period 2016 to 2019 but is no longer DAW's treating psychiatrist. He had a thorough knowledge of the applicant's mental health issues and knows her. He had not seen the respondent's reasons for refusing to cancel DAW's negative notice. It seems likely that DRT's knowledge of the applicant's offending was limited to that which he had been told by DAW.
- [48] DRT expressed the opinion that 'the actions resulting in charges were related to her delusions and once her mental illness was adequately treated the behaviours abated.'<sup>28</sup> He indicated that there were no reports of breaches of the conditions of her Forensic Order. In his opinion DAW lacked insight into her mental health upon admission. Upon her discharge in 2017 he noted that she had experienced a considerable improvement in the level of her insight, but that it was not absolute. While the applicant continues to engage in treatment, DRT's view was that the risk of DAW relapsing or reoffending is relatively low. He observed that DAW has a robust support system so that should she become unwell it would be flagged early.
- [49] DAW's current treating psychiatrist, CDR, provided a report<sup>29</sup> a couple of days before the hearing but was not available for cross-examination. It is apparent from the report that CDR has some knowledge of the applicant's offending behaviour. In her opinion DAW was psychiatrically unwell at the time of her offending. She observed that DAW manages her NDIS package independently and has reconnected with family members. She observed that DAW 'remained adherent with prescribed treatment and continues to engage with case management and ongoing psychoeducation regarding triggers, early warning signs and the medication-wellness link.' Further she said that DAW 'is now doing well and is asymptomatic. Her mental state is stable and she demonstrates good insight.'
- [50] DAW has consulted with CHO, a psychologist, on a regular basis since January 2018. He noted she was anxious at their first meeting and he continues to help her to manage life stressors. He observed that the applicant has significant support, including professional health care. In his opinion DAW 'displays a sound insight into identifying both potential triggers and risk factors that could lead to her re-offending (eg. non-compliance with taking her medication, ceasing psychological and psychiatric consultation and isolating herself' and due to this and her numerous protective factors, he considers her risk of relapse to be very low. The Tribunal accepts that CHO is well placed to report on the state of the applicant's current mental health.
- [51] DAW lives with her daughter, IMS, in what IMS describes as a happy and healthy household. She demonstrated limited knowledge of the conditions of DAW's Treatment Support Order and offending behaviour but expressed the view that the offending occurred at a time when her mother was unwell. She had read the respondent's reasons. IMS described the applicant's symptoms when unmedicated and said that since being medicated she has observed DAW experience only normal anxiety. IMS confirmed that the applicant no longer consumes alcohol. She described a close relationship with her mother, saying they enjoyed various activities together. IMS observed that DAW does everything herself including managing her finances and her NDIS package. She was of the view that her mother would seek help and be receptive to intervention if she became unwell. The Tribunal finds that

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<sup>28</sup> Ex 3.

<sup>29</sup> Ex 7 dated 3 March 2020.

IMS was a reliable witness and considers her well placed to give evidence of the applicant's positive lifestyle factors.

### **Consideration**

[52] In undertaking this review and determining the correct and preferable decision, the welfare and the best interests of a child are paramount.<sup>30</sup>

[53] A blue card is transferable, allowing the holder to work in any child-related employment or conduct any child-related business regulated by the WWC Act. Thus, the Tribunal must take into account all possible work situations open to the applicant, not just the purpose for which a blue card is presently sought. Once issued, a blue card is unconditional and fully transferable across all areas of regulated employment and business.

[54] The possession of insight is recognised as an important protective factor, as noted by the former Children's Services Tribunal in *Re TAA*:

The issue of insight into the harm caused in these incidents is a critical matter for the Tribunal. The Tribunal is of the view that good insight into the harm that has been caused is a protective factor. A person aware of the consequences of his actions on others is less likely to re-offend than a person who has no insight into the effect of his actions on others. This is particularly important with children because they are entirely dependent on the adults around them having insight into their actions and the likely effect on children.<sup>31</sup>

[55] While mental health issues do not preclude a person from obtaining a positive notice and blue card, the possibility that such issues can manifest if not effectively managed on an ongoing basis, and trigger further offending behaviour, is a risk factor when assessing a person's eligibility to hold a blue card.

[56] DAW consulted with a mental health professional over the period 2011 to 2015, which largely coincided with the period of time over which her offending behaviour occurred. While DAW said that her offending behaviour can be explained by the existence of an undiagnosed mental illness, the Tribunal accepts that DAW is referring to her untreated or inadequately treated mental illness. Both CDR and DRT expressed the opinion that DAW was psychiatrically unwell at the time of her offending behaviour. The Tribunal accepts that the applicant was actively unwell and insufficiently treated over that time.

[57] Following her admission to a residential facility in 2016 it took some time for DAW to accept her diagnosis of schizophrenia and its long-term implications. She has since developed insight into her condition and her offending behaviour and is now adherent to her medication and support regime which was confirmed by CDR. Her adherence to treatment and to the conditions of her order and the development of insight were also confirmed by DRT.

[58] The Tribunal finds that DAW is remorseful for her behaviour of concern and for its impact on others. She has developed strategies and techniques to assist her to

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<sup>30</sup> WWC Act, s 360.

<sup>31</sup> [2006] QCST 11, [97]. See also *Commissioner for Children and Young People and Child Guardian v Lister (No 2)* [2011] QCATA 87.

manage her abstinence from alcohol and her anxiety. Her motivation to adhere to treatment was confirmed by CHO.

[59] The Court of Appeal has accepted the approach of considering relevant risk and protective matters in deciding whether a particular case is exceptional.<sup>32</sup>

[60] There are a range of protective factors relevant to the Tribunal's consideration:

- (a) The applicant has not engaged in in any concerning or offending behaviour since 2016. However, the passage of time is not determinative of whether or not a case is an exceptional case.<sup>33</sup> This risk factor must be considered in the context of all the relevant circumstances;
- (b) The applicant has a diagnosis for her mental illness for which she receives treatment, is compliant with her medication and has engaged with mental health professionals. She is accepting of her need for continued treatment;
- (c) Her mental health is stable and has been for a number of years;
- (d) She has undertaken a course of study with a view to her future;
- (e) DAW has reconnected with her adult children and other family members from whom she was estranged as a result of her mental illness;
- (f) Her treating medical practitioners attested to her insight and commitment to her treatment regime;
- (g) The applicant has established a support network comprising her daughter (with whom she lives) and medical support and has in place a robust regime to assist in the early identification and treatment of any relapse; and
- (h) DAW expressed remorse for her offending behaviour and its impact on her victims.

[61] The risk factors for the applicant are:

- (a) DAW's offending over the period 2011 to 2016 demonstrated her preparedness to engage in threatening and anti-social behaviour towards police and members of the public;
- (b) She was diagnosed with schizophrenia in 1996 and has a history of failing to engage in appropriate medical support, of self-medicating and has experienced relapses; and
- (c) The effect of issuing a blue card is that the applicant is able to work in any child related employment or conduct and child related business regulated by the WWC Act, not just for the reasons DAW has sought the card. Conditions cannot be imposed on a blue card and once issued it is unconditional and fully transferable across all areas of regulated employment and business.

[62] The Tribunal finds that on balance the protective factors outweigh the risk factors.

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<sup>32</sup> *Commissioner for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492.

<sup>33</sup> *FMA v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 210, [8].

[63] After consideration of all of the evidence, the findings of fact, weighing the risk and protective factors, and the relevant matters in the WWC Act, including s 226(2), in exercising its discretion the Tribunal considers, on the balance of probabilities, that this is not an exceptional case in which it would not be in the best interests of children for a positive notice to be issued.

**Non-publication**

[64] Pursuant to s 66 of the QCAT Act, the Tribunal may make non-publication orders. The Tribunal prohibits the publication of anything that may identify, or be likely to identify, the applicant or any proceeding of the Mental Health Court or Mental Health Review Tribunal.

[65] Accordingly, these reasons have been de-identified.