

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *RLJ v Director General, Department of Justice and Attorney-General* [2020] QCAT 173

PARTIES: **RLJ**
(applicant)

v

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

APPLICATION NO/S: CML 164-19

MATTER TYPE: Childrens matters

DELIVERED ON: 20 May 2020

HEARD ON: 29 January 2020

HEARD AT: Townsville

DECISION OF: Member Johnston

ORDERS: **The decision of the Director-General, Department of Justice and Attorney-General of 10 April 2019 to issue a negative notice to RLJ under the *Working with Children (Risk Management and Screening) Act 2000 (Qld)* is set aside as the Tribunal finds there is no exceptional case.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – blue card – review – where Applicant seeks a review of the decision to issue a negative notice – where change of criminal history – charges of possession and supplying dangerous drugs – Applicant ceased taking illicit substances – whether or not in the best interests of children to issue a positive notice

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 24, s 66
Working with Children (Risk Management and Screening) Act 2000 (Qld), s 5, s 6, s 221, s 226, s 354, s 360

Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291
Commissioner for Children and Young People and Child Guardian v Maher & Anor [2004] QCA 492

APPEARANCES &
REPRESENTATION:

Applicant: Self-represented

Respondent: N Rajapaksa, Government Legal Officer, for the
Director General, Department of Justice and Attorney-
General

REASONS FOR DECISION

Background

- [1] The Applicant, RLJ, has applied for the review of a reviewable decision under the *Working with Children (Risk Management and Screening Act) 2000 (Qld)* ('the WWC Act' or 'the Act').
- [2] The Applicant had previously been issued with a positive notice and blue card under the WWC Act in 2012 and 2015.
- [3] On 10 April 2019, after assessing the Applicant's eligibility, the Respondent issued a negative notice under the WWC Act.
- [4] The Applicant was provided with written notice of the decision and the reasons for the decision the relevant review information.
- [5] On 30 April 2019, the Applicant filed an application to the Queensland Civil and Administrative Tribunal ('the Tribunal') to review the Respondent's decision that the Applicant's case was an 'exceptional case' in which it would not be in the best interests of children for the Applicant to be issued with a positive notice and blue card.

Relevant law to be applied

- [6] The relevant law to be applied is the WWC Act and the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('the QCAT Act').
- [7] The object of the Act is to promote and protect the rights, interests and well-being of children in Queensland. The paramount consideration in an employment screening decision is a child's entitlement to be cared for in a way that protects the child from harm and promotes the child's well-being.
- [8] The decision under review is whether the Applicant's case is an 'exceptional case'. Unless satisfied that an 'exceptional case' exists in which it would not be in the best interests of children to do so, the decision maker must issue a positive notice.
- [9] In order to issue a negative notice to the Applicant the Tribunal must be satisfied, on the balance of probabilities and bearing in mind the gravity of the consequences involved, that an 'exceptional case' exists.
- [10] Any hardship or prejudice suffered by the Applicant due to such a determination is irrelevant to this consideration.
- [11] The Tribunal has decided in other cases that the passage of time alone is not determinative as to whether or not an 'exceptional case' exists.

What is an ‘exceptional case’?

- [12] The QCAT Act governs the processes and procedures to be adopted by the Tribunal with the decision-making process being governed by the Act to make the correct and preferable decision.
- [13] The decision under review was whether the case is an ‘exceptional case’ such that the presumption prescribed by section 221 of the Act has been displaced. Based on the Applicant’s police information the statutory presumption is that a positive notice should be issued to the Applicant.
- [14] In order to not issue a positive notice to the Applicant the Tribunal must be satisfied, on the balance of probabilities and bearing in mind the gravity of the consequences of such, that an ‘exceptional case’ does exist.
- [15] The Act does not define the meaning of an ‘exceptional case’. Section 226 of the Act refers to certain factors that the Respondent must have regard to in determining whether this is an ‘exceptional case’, including, amongst others, when the offence was committed, the nature of the offending behaviour and anything that the Respondent reasonably considers relevant to the assessment of the person.
- [16] The Tribunal must, in exercising its review function under the QCAT Act, in determining whether an ‘exceptional case’ exists, ensure that the welfare and best interests of children is its ‘paramount consideration’.¹
- [17] It has been previously determined by the Appeal Tribunal that the meaning of an ‘exceptional case’ is a matter of discretion and should not be confined to ‘any general rule’.² The Appeal Tribunal, in considering the decision in the *Commissioner for Children and Young People and Child Guardian v Maher*,³ stated:
- The proper approach to it is that, with respect, adopted by Philippines J [in *Maher*’s case]: to consider its application in each particular case, unhampered by any special meaning or interpretation.⁴
- [18] The Tribunal in determining whether an ‘exceptional case’ exists must be satisfied that in considering all of the circumstances including the nature of the offending behaviour, there are exceptional circumstances, which dictate that it would not be in the best interests for children for a blue card to be re-issued.
- [19] The purpose of employment screening is to assess the risk to children involved from anything disclosed by such check. The focus on convictions is not a mere theoretical or possible risk arising from the fact of the previous conviction, but it is a reference to an unacceptable risk, a real risk, a likelihood of harm or a recognisable potential for harm.
- [20] The Tribunal must be satisfied that this is an ‘exceptional case’ of harm to children. The onus is on the *Briginshaw* standard (on the balance of probabilities and bearing in mind the gravity of the consequences) to show that there is such ‘exceptional case’ relating to harm to children.

¹ *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 360.

² *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291.

³ [2004] QCA 492, [28].

⁴ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [33].

RLJ

- [21] RLJ told the Tribunal that in 2008 he became very depressed, showed poor judgement and put himself at risk of personal harm. He started using drugs and his mental state deteriorated. This is reflected in the Mental Health Service records for the period of 2012 to 2015. There were periods during this time when he was very unwell and he suffered a number of induced psychotic episodes. He tried a number of drugs, having taken LSD, MDMA, methamphetamines, marijuana, nitrous oxide and a designer drug on one occasion.
- [22] When he was placed under an Involuntary Treatment Order under the *Mental Health Act 2016 (Qld)* a case manager was assigned to his case. His case manager gave him homework and gave him strategies for dealing with his anxiety. This led to a decision on his part to cease hard drugs and just use marijuana. He was of the view that with the strategies for dealing with his anxiety his mental state remained stable. He claimed that this position was supported by the fact that since 2015 he hasn't had any admissions. He has been able to deal with the stressors he has experienced in the community without the need for admission into hospital.
- [23] He for a long time justified the use of marijuana as harmless because his mental state remained relatively stable.
- [24] The embarrassment and shock of his arrest was the final factor leading to him ceasing marijuana completely, which he has done. He was worried when he was charged that he might be deported so he was placed under great stress in these circumstances. He was subsequently convicted of the offences and placed on 12 months' probation. These occurrences were the impetus he needed to change. He has been clear of drugs for just under two years. He has re-joined his family and friends and tried to live a much healthier lifestyle.
- [25] The Applicant told the Tribunal that he had become involved with house renovation with his father, taken up physical activity and built a solid social network.
- [26] The Applicant pointed out that on one occasion following the ending of a relationship when he isolated himself from his family, his family contacted the Mental Health Service. The Mental Health Service sent workers to meet with him and this enabled him to be supported in the community. This showed that his family were working as part of his support network.
- [27] The Applicant pleaded guilty to the offences, accepted responsibility for his actions and served his probation without any issues, which included clean drug tests.
- [28] He told the Tribunal that he made sure that he was never intoxicated around children.
- [29] He told the Tribunal that he had never harmed any other person other than himself even when under the influence of drugs or during a psychotic episode. He has never been charged with an offence involving violence.
- [30] The Applicant stated to the Tribunal that he had matured as a person and had accepted he needs to be responsible for his own actions. He described the journey he was undertaking in relation to his mental health. He was in the early stages acutely unwell. His recollection of these events is hazy, however he felt persecuted and anxious. He began to learn the impact on his mental health of hard drugs. He developed insight into the early warning signs and developed strategies to deal with

his anxiety. He decided in 2015 that he didn't want to get unwell again. He put in place strategies to ensure that his mental state did not deteriorate. He improved his personal hygiene and took steps to live a healthier lifestyle. He built a support network that includes his sister, who is a mental health nurse, and friends. The members of this network know when he is showing signs of becoming unwell and are willing to take steps to support him. He has built up a new relationship which is very positive for his mental well-being. He started working with his father on house flipping.

- [31] The Applicant saw his triggers as: stress and anxiety; and drug taking. He watched, between 2012 and 2014, conspiracy movies that fed into his paranoia. He has learned that his mental state reacted really badly to certain drugs like LSD. He also noticed that he overreached when venting his feelings because of his anxiety. He has learnt strategies to deal with his anxiety. He has learnt to keep himself busy and not to overthink things. He has learnt to vent his feelings in an appropriate manner. He can go for a long drive or he can access his counsellor. He has learnt breathing and other techniques to deal with his anxiety. He has used his feelings of shame from being admitted into hospital to motivate himself to maintain his mental state.
- [32] He has changed the mix of people around him because he wants friends to support him to keep stable mental health. He doesn't want to be influenced by others to take drugs. He has a supportive peer group. He was involved with a nephew with mental health issues. He took responsibility for taking this person to hospital when he was unwell. This helped him to develop more insight into his own mental health issues.
- [33] The Applicant stated that he has changed his very nihilistic view of the world to a place where he wanted to benefit himself and the community he lives in. He now wants a brighter life. He has realised how important holding a job for him is in relation to his mental health and financial well-being. He realised he could only do this without drugs. The Applicant told the Tribunal that it had not been easy trying to change his social circle but he had done so. He wanted a circle of friends that supports him without the need to take drugs. He felt a lot happier than he has ever been. He has engaged in board games and video games. He has been doing exercise with his friends, his weight has dropped from 150 kg to 127 kg and he wanted to lose more weight to end up around 99 to 100 kg.
- [34] He is now more open to listening to his family and friends about his health. This has led to him walking with his family and friends to support his weight loss.
- [35] The Applicant has dealt with the stress of a relationship breakdown, the criminal charges, loss of his blue card and other stressors in a positive way without becoming unwell and having a relapse of his mental state. He has not been unwell for three years. He has not felt any temptation to use marijuana in the past two years despite his stressors. He accepts that in the past he minimised his drug use. He accepts that in the past he told the mental health practitioners what they wanted to hear.
- [36] The Applicant states that the hospital records show him as a person of low risk of aggression. When he became unwell the person at risk was himself. His mental state deteriorated and he needed to go into hospital for treatment. There is nothing in his hospital records that shows him as a risk to anyone else.
- [37] The Applicant conceded that his family and supports and relapse prevention plan had not worked to the extent that it stopped him from taking marijuana. What he did do was to ensure that his mental state was relatively stable. The charges were the

impetus for him to stop smoking marijuana. The Applicant stated that between 2012 and 2014/15 he made progress as there were no admissions after this period of time, which supports his contention that his mental state was much better. The Applicant stated that from 2015 he implemented positive support strategies. This included the decision to change his support network.

- [38] The Applicant acknowledged the concern that society has about the effects of drug use. He has made positive changes in his life. He has reduced the chances of relapse. He has undertaken considerable counselling. His admission reinforced over time that he needed to take more responsibility for his own actions, which he did. He accepts that he was ambivalent about his use of marijuana because it didn't have the same effect on his mental state. He began to recognise his triggers and to use the strategies to reduce the risks of relapse. He also told the Tribunal that there were periods when he was abstinent from using marijuana and that when he was unemployed his limited finances limited his ability to buy marijuana. The idea behind the marijuana parcel (see [68]) was financially driven. It would have enabled him to use the drug from time to time over 12 months without impacting upon his finances.
- [39] The Applicant told the Tribunal that he felt shame about the charges. He felt that he had let his family down. He repeated that the charges and surrounding stressors motivated him to stop smoking marijuana. The Applicant says that he had three admissions between 2012 and 2015. After that he has no admissions. This points to some of his strategies working. The charges were the final factor needed for a full change. He feels much better within himself. The fact he has had no admissions in five years shows that he is in a much better position. His improved mental state has led to changes in his self-care and led to improvements in his lifestyle. He has identified his triggers and developed strategies to reduce the risk of relapse.
- [40] He told the Tribunal that he had taken steps over the years to address his drug taking and the final step was to cease smoking marijuana. He told the Tribunal that he had never been intoxicated in control of a motor vehicle. He made sure that he was never intoxicated in the presence of young people and never intoxicated whilst at work.
- [41] The Applicant conceded drug taking was illegal and when smoking marijuana he was breaking the law. He is not proud of his actions. He accepts that his judgement would have been impaired when he was intoxicated. He stated however that there was no evidence of him being violent to other persons. He had positive goals and he had matured and was looking forward to a positive future.

RJ

- [42] RJ is a Registered Nurse working at the Secure Mental Health Rehabilitation Unit. She is the sister of the Applicant. Her evidence is that the Applicant has a large supportive family. She has seen him engaging appropriately with the young children of the family. She has no concerns him spending time with her own children. She has seen the changes that he has made since his drug charges. She told the Tribunal that she had no concerns about her brother's mental state. She believes that his mental state has been stable for several years. She has been able to see him grow as a person. She has seen him deal with issues and strengthened himself as a person. He is now a really different person to the person he was in 2015.
- [43] She told the Tribunal that she was surprised that her brother was smoking marijuana in 2018. He is a different person now. He has been well during the last five years. He is currently the best she has ever seen him. She has seen personal growth. She

has seen him learn lessons from the past to live differently. He has a great support network.

- [44] She was surprised by the 2018 charges. These seemed out of character and against his plans to cease drug taking. She believes that he has learned his lesson. He is a calm, reliable, kind person with empathy for others. He is a positive influence on her children. He is able to talk to them about his life experiences in a positive way.
- [45] She has been trained to deal with people with serious mental illness. She is able to recognise when someone's mental state has been affected by drugs or mental illness. She believes that her brother benefited from being placed on an Involuntary Treatment Order. This has helped him obtain a better appreciation of the importance of maintaining his mental state.
- [46] She told the Tribunal that her brother had informed her that he'd been charged and the details of the charges. She is aware of the effect of drugs on people's mental state and is opposed to the use of illicit drugs. She had in the past reported him to the Mental Health Service when she had concerns about his mental state. She would be prepared to act again if his mental state deteriorated. She has seen him abstinent from marijuana for two years and his current mental state is much better than she has ever seen him. She is aware that his triggers are: extreme stress and periods of anxiety. These have been triggers in the past. She believes that he has used appropriate strategies to minimise the risks.

JM

- [47] JM is a civil engineer who is a friend of the Applicant. He has known the Applicant for five years. He has witnessed the Applicant deal with life's stressors. They meet around three times a week and talk about matters of mutual interest. He sees the Applicant as a caring kind, dependable and trustworthy person. He is aware that the Applicant is extremely regretful and remorseful of his mistakes and has taken steps to make amends. He was of the view that the Applicant is safe around children.
- [48] He has seen the Applicant make drastic steps to change his life. Their relationship is supportive of each other. He is willing to talk about issues that concern him. The Applicant told him of his charges although he wasn't across all the details of the same. He had supported the Applicant losing weight and improving his general health.

RW

- [49] RW is the father of the Applicant. He has seen significant changes in his son over the last couple of years. He is aware that his son accepts that he has made mistakes. He accepts that his son has ceased smoking marijuana. He believes that his son is a gentle soul who was prepared to work to improve his life. He is now a happy person better able to deal with life's issues. He has tidied up his house, invites friends over and visits his family. He has no concerns about his son at this time and is happy that he has lost a lot of weight. He says that his son is a changed person from the person he knew between 2012 and 2015 when he would go into his room and not come out.

Respondent's submissions

- [50] The principal concerns of the Respondent are around the drug use and the recent date of the offending, namely 2018. The Respondent submits that it would be

beneficial given that the offences occurred in 2018 for the Applicant to apply at a later time, which would support his evidence that he addressed drug issues.

- [51] The Respondent also submitted that weight needed to be placed on the amount of the marijuana parcel, namely 460g.
- [52] The material from the Townsville Hospital records covered the period from 2008 to 2014. The period between 2012 and 2014/15 referred to the Applicant's drug use and the impact on his mental state. Despite the gap between 2015 and 2018 the evidence was that the Applicant was still using marijuana. The evidence is that he was charged in 2018. The Applicant gave evidence that but for the charges he would still be using marijuana. This showed at the time of the offence in 2018 he hadn't addressed his drug use. This indicates that he lacked insight into the effects of marijuana on his mental state.
- [53] The triggers from his relapse prevention plan show that his drug taking seems to be related to boredom and anxiety. The 2018 drug offence involved a large amount of the drug marijuana. The Applicant has not demonstrated insight into the impact of drugs on him and has paid lip service to the relapse prevention plan. He has shown no insight on the impact of his friend's overdose.
- [54] The Applicant states that he has family supports. These supports were present at the time of the 2018 offences and did not stop the Applicant from committing the offences. The Respondent submitted that the Applicant was still using drugs under the radar. All family members who gave evidence were surprised by the 2018 charges. The Respondent submits that the family network was not enough to stop the offending.
- [55] The Respondent accepted that there was evidence that his family had learned better to deal with his drug issues. His sister has seen other people affected by marijuana and has seen the Applicant suffering significant mental health problems.
- [56] The Applicant has not engaged with ATOD'S (Alcohol, Tobacco and Other Drugs Agency). His 2018 Mental Health Plan goal was long-term abstinence. His GP wouldn't have referred to drug issues unless there was an issue.
- [57] The Applicant has continued to minimise his drug use.
- [58] The Applicant, in relation to the ITO, was released due to him not being a risk.
- [59] His lack of insight into the effects of drug use led to a significant criminal offence. His strategies to stop using drugs clearly failed to stop the 2018 offences. The Applicant can't point to any rehabilitation since the offending. The Respondent is of the view that insufficient time has passed to show that his abstinence plan has worked.
- [60] There was an onus on the Applicant to show that he was rehabilitated. This would be hard without evidence of professional support.
- [61] The Respondent accepted that the Applicant had family support and that his friends have pushed him into living a healthier lifestyle.
- [62] The Respondent submitted that more time needs to pass and recommended a review in two years' time. The Respondent submitted that there was no independent evidence. The Tribunal would benefit from independent evidence by a psychologist showing that the strategies that the Applicant had adopted were lowering the risks.

Applicant's submissions

- [63] The Applicant stated that sister's partner (a lawyer) had helped him with the preparation of this case. He had talked to his family and friends about the issues.
- [64] The Applicant had used hard drugs between 2012 and 2014 and this had impacted on his mental state and brought him into contact with the Mental Health Service. The Applicant stated that between 2015 and 2018 he mitigated his drug use by switching to the use of marijuana. He stated that his recovery has been a continuing journey with periods of abstinence. He agreed that he had been ambivalent about his drug use in the past. The triggers for his drug use were boredom and anxiety.
- [65] When he was placed on the ITO his case manager helped him identifies triggers and develop strategies. She gave him homework to do, starting him off on breathing exercises to address his anxiety. She taught him to meditate and make himself calmer. This has helped him deal with stressful social situations. He has the support of his friends who have pushed him into a healthier lifestyle. He said that he was still learning but that he left hospital the last time with the goal to better look after his mental state. He has stayed out of trouble since the 2018 convictions. He has implemented his strategies to stay out of trouble and since the charges has stopped the use of marijuana.
- [66] The gravity of his offences had a silver lining in that he became aware that he was justifying his drug use. He became aware that he had to take responsibility for his own actions. One of the steps required to do so was that he cease his drug use.
- [67] He is aware of the effect of drug use having lost a friend who committed suicide. He suffered a relapse while working at the Cleveland Youth Detention Centre that led to him taking time off to recover. His hospital admission brought him closer to his family. When he broke up with his girlfriend and stayed in his room, his family contacted the Mental Health Service who visited to check up on his mental health. This meant that it was not necessary for him to be put in hospital; he could be supported appropriately in the community.
- [68] The Applicant talked about three instances of becoming acutely unwell. In a three-year period he had three admissions. During the subsequent five years he has had no admissions. This is evidence that his mental state has improved. The Applicant for a period supported a cousin who had mental health issues which was also insightful for him. He accepts that his behaviour has been hard for his family to deal with. He is remorseful for placing that pressure on them. The Applicant stated that his drug use between 2015 and 2018 was very scattered. The motivation around the purchase of the parcel of marijuana was the cost of the marijuana. He was of limited means and this was a cheap way to get a year's supply for himself. He told the Tribunal that he now feels remorseful for his actions. He is not proud his actions. He disputed the Respondent's contention that he was minimising his behaviour. He pleaded guilty to the charges. He accepts that the use of illicit substances is illegal, that the use of drugs has impacted on his mental state and impacted on his development as a person.
- [69] He agreed with the Respondent that he went to ATOD's and the GP because he was told to do so. He made a decision that he needed to stop taking drugs and has been successful in doing this. He has also taken steps to address his physical health and build a positive support network.

- [70] The Applicant states that being charged was a major happening in his life. He took notice and used this to motivate change in his life. He submitted that he was not an aggressive person and there was no evidence of aggression in relation to his behaviour towards others. The Respondent conceded that there was no evidence of causing harm to other people.
- [71] He submitted that the past two years without drugs shows that he is a good person who was willing to work to the benefit of his community.
- [72] He submitted that he had gained extra skills to deal with his personal issues, his family have a greater awareness of the issues and are willing to be more assertive. He also pointed out that on two of the three occasions when the Mental Health Service become involved it was due to his sister notifying the Mental Health Service that his mental health had deteriorated. He submitted that this showed that his family were prepared to support him when his mental health deteriorated. His family have a much better understanding and are supporting of him.
- [73] The Applicant stated that addressing his anxiety with strategies and having a support network had been really helpful. He submitted that none of his offences involved children. He submitted that he was not an unacceptable risk to children. He is using his family as part of his support network. If he doesn't contact them every three days, they follow-up on him to make sure that he is well.

Discussion of the evidence

- [74] The Tribunal accepts that the Applicant had serious issues with the use of illicit substances during the period 2012 to 2015. This is supported by the evidence that the Applicant had three admissions into the Mental Health Unit and was placed under an Involuntary Treatment Order under the Mental Health Act.
- [75] The Tribunal also accepts that the Respondent's contentions that the Applicant was using marijuana in the period 2015 to 2018 and at the time of the 2018 offences had continued plans to use marijuana into the future.
- [76] The Tribunal accepts the Applicant's evidence that his mental state was much improved. This is supported by the evidence of his sister (a mental health nurse) and by the fact that he had no admissions in the period 2015 to 2018.
- [77] The Tribunal accepts the Respondent's contention that the Applicant's views about the use of marijuana was ambivalent. He agreed to a Mental Health Relapse Prevention Plan that provided for abstinence from drug taking. His evidence was that he continued to use marijuana from time to time and his purchase of 460g supports this position.
- [78] The Tribunal does accept that events that might be looked at as a crisis or calamity can be life changing events. The process of being charged resulted in the Applicant feeling great shame. The Tribunal accepts the Applicant has been able to use the circumstances as the basis for ceasing drug use.
- [79] The evidence of the Applicant is that he has not taken any illicit substances since the date he was charged. His evidence was that he had served his 12-month probation without any problems including clean drug tests. The evidence of his sister and his father are of a person who has made drastic changes to his life. The evidence of his sister is that he is the best that she has ever seen him.
- [80] The evidence that the Applicant has made great progress is supported by:

- (a) reconnection with his family;
- (b) improved personal care;
- (c) a supportive friendship group;
- (d) adoption of strategies to deal with stress and anxiety; and
- (e) adoption of a plan to keep himself engaged and occupied with activities of work and pleasure.

- [81] The Tribunal accepts the Applicant's evidence that he has ceased taking drugs.
- [82] The Tribunal is of the view that in this case two years' abstinence is long enough to accept that the Applicant has made major lifestyle changes. For a person such as the Applicant with a history of using illicit drugs over several years, a period without drugs of two years is a significant achievement. There will always be a risk but the Tribunal is of the view that the risk has been greatly reduced. The Tribunal is of this view because the Applicant has effected these lifestyle changes while still having to deal with major stressors which in the past would have placed the Applicant at risk of relapse. He has navigated:
- (a) the criminal process;
 - (b) a relationship breakdown;
 - (c) changes to his support network;
 - (d) the loss of his blue card; and
 - (e) a range of other issues including significant weight loss.
- [83] The evidence around these matters strengthens the Applicant's case that he has successfully transitioned to a new lifestyle.
- [84] The Applicant is charged with offences that were not minor in their nature. The Magistrate who heard the matter decided in all the circumstances to record 'No Conviction' and ordered 12 months' 'Probation'. The Magistrate was clearly of the view that the Applicant had good prospects of rehabilitation. The fact that the Magistrate recorded 'No Conviction' says to the Tribunal that the Magistrate viewed these offences in the totality of its circumstances as being at the lower range of criminal behaviour. The amount of the drug was significant but the penalty reflected a different view by the sentencing Magistrate. The Tribunal is required to look at the penalty but the clear inference that must be made is that the Magistrate did not accept these were significant offences and the Magistrate sought for the Applicant to be rehabilitated.
- [85] The Tribunal notes that the charges of 18 July 2018 are the only criminal charges in the Applicant's criminal history. While the Tribunal accepts the Respondent's argument that there are several charges, they were all tied together for the purposes of sentence. The Applicant's criminal history is accordingly quite limited.
- [86] The Tribunal is of the view that the Applicant has taken the chance given to him to rehabilitate his life.
- [87] The Tribunal agrees with the Respondent that it is useful in these cases to have independent evidence. The Applicant could not afford to engage a psychologist so could not provide such evidence.

- [88] The Tribunal agrees with the Respondent that it is useful in these cases to have evidence of the Applicant having access to rehabilitation services and evidence of him having received that support. This is not a case where there is a lot of evidence of rehabilitation services having been accessed. What the Applicant has said here is that he has had access to a counsellor and he has benefited from the support of his case manager whilst under the Involuntary Treatment Order.
- [89] The Tribunal accepts that some individuals have the ability to make major life changes without recourse to formal rehabilitation. The evidence is that the Applicant learned strategies to help him cope with his stress and anxiety. The evidence in this matter is abundant that the Applicant has made those changes. He has adopted supportive strategies and he has the support of a network of friends and family.
- [90] The Tribunal accepts the evidence of the Applicant and JM that he has expressed remorse for his actions. The Tribunal accepts that the applicant has developed insight and that is supported by the evidence that he ceased drug taking and supported his nephew who had mental health problems.
- [91] The Tribunal accepts the Applicant's evidence that he accepts his having broken the law. The Applicant on the evidence has addressed his offending by ceasing to take drugs and has improved the quality of his life.
- [92] The Tribunal also notes that the Applicant does not have a history of causing harm to others. The Respondents conceded that there was no such evidence.
- [93] The Tribunal accepts that:
- (a) abstaining from taking drugs;
 - (b) reconnecting with his family;
 - (c) developing strategies to deal with anxiety and stress;
 - (d) changing his friendship group; and
 - (e) addressing his personal health
- have all reduced his risk of reoffending.
- [94] The supports were road-tested when he broke up with his partner and refused to come out of his room. The family called the Mental Health Service and they visit him at their home and provided support. This meant that he could be successfully supported in the community without him or any other person being placed at risk.
- [95] The Tribunal makes the following findings:
- (a) the Applicant ceased taking illicit substances on the day he was charged in 2018;
 - (b) the Applicant has remain drug-free for almost two years;
 - (c) the Applicant has expressed remorse for his actions;
 - (d) the Applicant has gained skills/strategies to deal with his anxiety and stress;
 - (e) the Applicant has changed his support network;
 - (f) the Applicant's mental state has improved greatly as a result of his positive strategies;

- (g) the Applicant has no admissions into the Mental Health Unit since 2015; and
 - (h) the sentencing Magistrate recorded ‘No Conviction’ and imposed 12 months’ ‘Probation’.
- [96] The Tribunal was of the view that there is also evidence of positive ways in which the Applicant interacted with children and young people within his own family group. The Tribunal sees this as an important factor.
- [97] The Tribunal is satisfied in undertaking the weighing exercise that it has been established on the balance of probabilities that the case against the Applicant is not an ‘exceptional case’, which would harm the welfare of children and young people.
- [98] The Tribunal takes the view that the Applicant’s charges must be taken into the context of:
- (a) his criminal history as a whole;
 - (b) the balance between risk and protective factors; and
 - (c) the strategies which the applicant has put in place to address his offending behaviour.
- [99] The Tribunal in the circumstances above does not accept the Respondent’s position, as set out in paragraph 6 of the Respondent’s Reasons document, that the evidence establishes an ‘exceptional case’.
- [100] The Tribunal is of the view that the cluster of protective factors outweighs the risk factors.
- [101] The Respondent was probably right to refuse the Applicant at first instance based on the information that was before the Respondent. The Tribunal has had the advantage of much more evidence than was before the Respondent and is of the view that the Applicant’s circumstances are such that the Tribunal is satisfied that this is not an ‘exceptional case.’
- [102] The Tribunal notes the decision of his Honour Justice Carmody in *RPG v Public Safety Business Agency* [2016] QCAT 331, [162] where he finds that the Tribunal can only in these circumstances set aside the decision of the Respondent and remit that back to the Respondent. The practice of the Respondent is to then take into account the reasons and decision of the Tribunal.

Orders

The decision of the Director-General, Department of Justice and Attorney-General of 10 April 2019 to issue a negative notice to RLJ under the *Working With Children (Risk Management and Screening) Act 2000* (Qld) is set aside as the Tribunal finds that there is no exceptional case.