QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*MVN v Director-General, Department of Justice and Attorney-General* [2020] QCAT 291
PARTIES:	**MVN** (applicant) **v** **DIRECTOR-GENERAL, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL** (respondent)
APPLICATION NO/S:	CML131-19
MATTER TYPE:	Childrens matters
DELIVERED ON:	21 July 2020
HEARING DATE:	29 November 2019
HEARD AT:	Brisbane
DECISION OF:	Member Quinlivan
ORDERS:	**1. The decision of the Director-General, Department of Justice and Attorney-General that MVN's case is exceptional within the meaning of section 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 this is not an exceptional case.** **2. The Tribunal prohibits the publication of the names of the Applicant and his children and any non-expert witnesses.**
CATCHWORDS:	CHILDREN'S MATTER – BLUE CARD – EXCEPTIONAL CASE – where applicant has a criminal history – where none of the offences are serious or disqualifying – where domestic violence – where drug abuse — whether adult has insight into previous actions – whether applicant's case is 'exceptional' NON-PUBLICATION ORDER - where contrary to public interest to identify applicant's children *Working with Children (Risk Management and Screening) Act* 2000 (Qld) sections 6, 221(2), 226, 360 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) sections 3, 20(1), 20(2). *Cmr for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492

	Cmr for Children and Young People and Child Guardian v Storrs [2011] QCATA 28 *Cmr for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 *CEO, Department of Child Protection v Scott [No 2]* [2008] WASCA 171 *Grindrod v CEO, Dept for Community Development* [2008] WASAT 289
APPEARANCES & REPRESENTATION:	
Applicant:	D Wenitong, solicitor, Aboriginal and Torres Strait Islander Legal Service (Qld)
Respondent:	N Rajapakse, In-house Solicitor, Department of Justice and Attorney-General

REASONS FOR DECISION

[1] On 29 November 2019 the Queensland Civil and Administrative Tribunal heard an Application by MVN seeking a review of a decision under the *Working with Children (Risk Management and Screening) Act* 2000 (Qld) (WWC Act).

Background

[2] The Applicant through his mother is a member of the *Wangan/Jagaliangou* Aboriginal clans and through his father the *Mian* clan. The clans are from the highlands of Central Queensland. He was raised by his mother and did not meet his father until he was around 35 years old. He had a long-term relationship with his partner and they have five children aged between 12 to 17 years old.

[3] On 28 February 2019, the Department of Justice and Attorney-General issued MVN with a negative notice on the basis that his case was "exceptional" and as a result it would not be in the best interests of children for him to be issued with a positive notice and a blue card.

[4] On 29 March 2019, MVN sought a review of the decision to issue him with a negative notice.

[5] The WWC Act states that if the Tribunal is not satisfied that an "exceptional" case exists then it must issue the Applicant with a positive notice.[1]

[6] The Tribunal's decision must be decided in accordance with the provisions of both the WWC Act and the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act).[2]

[7] The purpose of the review is to reach the correct and preferable decision.[3]

[8] The Objects of the WWC Act[4] are to promote and protect the rights, interests and wellbeing of children and young people in Queensland through a scheme requiring:

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1 WWC Act, s 221(2).
2 QCAT Act, s 20(1).
3 QCAT Act, s 20(2).
4 WWC Act s 3.

(a) the development and implementation of risk management strategies; and

(b) the screening of persons employed in particular employment or carrying on particular businesses.

[9] The principle under which the WWC Act must be administered is that every child is entitled to be cared for in a way that protects them from harm and promotes their wellbeing.[5] A child related employment decision must be reviewed under the principle that "the welfare and best interests of the child are paramount".[6]

[10] In the matter of *Maher*,[7] the Appeal Tribunal determined that 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.

[11] Neither party has an onus of proving that an "exceptional" case exists.[8]

[12] The term "exceptional" is not defined in the legislation. An exceptional case is to be determined in each case having regard to "…the context of the legislation which contains (it), the intent and purpose of the legislation, and the interests of the persons whom it is here, quite obviously, designed to protect: children".[9]

[13] Any prejudice or hardship to an Applicant is not relevant in determining whether a case is "exceptional".[10] Likewise, if the case is exceptional due to identified risk factors, "… any benefit which might be thought to flow to children by having access to the Applicant's knowledge, experience or flair in working with children is of no relevance".[11]

[14] Section 226 of the WWC Act sets out the considerations to be taken into account in determining whether an "exceptional" case exists:

> (1) This section applies if the chief executive—
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> (a) is deciding whether or not there is an exceptional case for the person; and
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> (b) is aware that the person has been convicted of, or charged with, an offence.
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> (2) The chief executive must have regard to the following—
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> (a) in relation to the commission, or alleged commission, of an offence by the person—
>
> (i) whether it is a conviction or a charge; and
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> (ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and

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5 WWC Act, s 6.

6 WWC Act, s 360.

7 *Cmr for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 citing the test matter of *Briginshaw v Briginshaw & Anor* [1938] HCA 34; (1938) 60 CLR 336.

8 *Cmr for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28.

9 *Cmr for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 at 31, citing *Kent v Wilson* [2000] VSC 98 per Hedigan J at [22].

10 *CEO, Department of Child Protection v Scott [No 2]* [2008] WASCA 171 per Buss J at 109.

11 *Grindrod v CEO, Dept for Community Development* [2008] WASAT 289.

(iii) when the offence was committed or is alleged to have been committed; and

(iv) the nature of the offence and its relevance to employment, or carrying on a business, that involves or may involve children; and

(v) 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;

(b) any information about the person given to the chief executive under section 318 or 319;

(c) any report about the person's mental health given to the chief executive under section 335;

(d) any information about the person given to the chief executive under section 337 or 338;

(e) 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.

[15] Section 226(2) of the WWC Act does not contain an exhaustive list of considerations and does "… not expressly or impliedly confine the [Tribunal]"[12] to considering only those matters. They are simply matters that the Tribunal must address when considering the application.

[16] In this case, the Department submits that it has addressed each of the relevant considerations in the Reasons accompanying their decision.

[17] The role of the Department is not necessarily to promote the decision it has made, but rather to assist the Tribunal to come to the correct and preferable decision. The role of the Department is informed by the "Model Litigant" principles.

[18] Pursuant to section 21 of the QCAT Act, in proceedings for the review of a reviewable decision, the decision maker of the reviewable decision must use their best endeavours to help the Tribunal so that it can make the correct and preferable decision.

What is the Applicant's case?

[19] The applicant explained that he was seeking a review because the majority of his criminal behaviour occurred between 1995 and 2001. He says that during that time he and his partner did not have children and as a result his children were not impacted by his behaviour. He readily admits that he has committed crimes in the past and since 2001 but argues that he has had only one recorded offence since 2011.

[20] He says that since that time he has undergone significant personal rehabilitation. He has undertaken study and achieved a diploma of community services which has assisted him to obtain full-time employment.

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12 *Cmr for Children and Young People and Child Guardian v Maher & Anor* [2004] QCA 492 per Philippides J.

[21] He claims that he demonstrated levels of restraint, used conflict resolution strategies and dealt with stressful situations in a more rational and law-abiding manner since 2011.

[22] The Applicant relied on the following material:

(a) Affidavits by MVN dated 23 October 2019 and 25 November 2019;

(b) A Life History of MVN dated 7 May 2019;

(c) A Diploma of Community Services (Case management) issued 2 October 2015;

(d) A reference from a community worker, dated 24 July 2019;

(e) A reference from an educator, dated 26 July 2019;

(f) A reference support worker dated 22 July 2019;

(g) A Report from a Psychologist, Mr Rudy Vander Hoeven dated 11 September 2019;

(h) A reference from a friend, dated 26 July 2019;

(i) A reference from an Education Co-ordinator, dated 21 July 2018;

(j) An undated reference from an Indigenous Elder.

[23] The Applicant provided his life story dated 7 May 2019. At the time of his birth, his father was serving 10 to 12 years in jail for arson and other crimes. He described a childhood characterised by violence and tragedy. His mother managed from week to week with her four children in what appears to have been a chaotic upbringing.

[24] Religion played a strong role in his mother's life as the family moved up and down the north coast of Queensland and Palm Island. He describes how a lot of time was spent visiting uncles who were in jail. He was exposed to regular domestic violence in his family during his childhood.

[25] The Applicant was born on 1 November 1979. He turned 18 years old on 1 November 1997. He has an extensive criminal history that appears to have commenced in the Children's Court in Townsville with offences occurring in March 1995. He was imprisoned for the first time on 18 November 1997 for a period of three months and subsequently on 2 March 1998 for a period of two years and nine months.

[26] He had further short terms of imprisonment during the period from 2000 to 2010 with one further offence in 2017. He explained a gap in his offending between 2000 and 2008 by the fact that he was away working.

[27] The Applicant also has a significant traffic history extending from 1997 to 2017.

[28] The Department confirms[13] that none of the offences recorded in the Applicant's criminal history are defined as "serious" offences or "disqualifying" offences under the WWC Act. However, they point out that when considering eligibility to hold a blue card, a decision maker can take into account all offences not only those defined as "serious" or "disqualifying".

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13 Respondent's Statement of Reasons dated 28 February 2019 at paragraph 5.2.

[29] The applicant gave evidence in person. He acknowledged his extensive criminal history including a lot of time in the Juvenile Justice system. He admitted to using drugs but claimed he stopped using them in 2004 to 2006. He stated that most of his criminal behaviour was alcohol related.

[30] He explained that was seeking a blue card so he can help his people, family and children. He said that he was refused a blue card because of his criminal history and domestic violence.

[31] He claims that he met a new partner who is from Woorabinda and they had a baby son. He says that he stopped associating with his old friends and now focuses on his own family.

[32] He moved from Townsville in 2002. He currently lives in Rockhampton where he played football. He says that he still sees his old friends, but they have noticed the change in him.

[33] The Applicant claims that he has learnt to say "No". He had full-time employment and he is intent on keeping his family together.

[34] He learnt to play music in jail and "it has been his therapy".

[35] He also regularly talks to two of his supporters, who he describes as "just really good friends". They help him talk about relationships, raising children, alcohol, controlling his anger, suicide and murder.

[36] In his oral evidence, he spoke about his little sister (cousin) who was murdered in 2009. He described how family members support him daily and "full on". Despite the ongoing and difficult life, he has lived, the applicant demonstrated a strong and determined desire to distance himself from his past so that he can try and help his children, some of whom are also having problems of their own. He maintained his position that his children did not see any of the "serious stuff" he engaged in and expressed his belief that his behaviour did not impact on his children.

[37] The applicant stated that domestic violence was "not the right thing to do". He says that he came to the realisation in 2014 that it is unacceptable to raise his voice and engage in domestic violence. He uses boxing to help him deal with anger management and takes his children with him.

[38] He thinks that he is too old now to keep making mistakes and says it is not hard to keep off alcohol.

[39] The applicant's evidence was basic and, in some respects, vague and lacking time frames. He did not appear to try and embellish his situation. He appeared to tell his story the way he saw it. When asked about his criminal history, he did not attempt to justify it in any way. He acknowledged some of the incidents that had been recorded.

[40] He admitted spending a lot of time in the Juvenile Justice system. He said that he was young and wanted to party and do "silly stuff" with his mates.

What is the Department's position?

[41] The Department referred to the Court of Appeal decision in *Maher*[14] and submitted that the Court accepted the approach of considering relevant risk and protective factors in deciding whether a particular case is exceptional.

[42] The Department submitted that the following protective factors could be accepted as relevant to the applicant:

(a) The evidence indicates that he has undertaken a range of initiatives to improve himself.

(b) He completed a Diploma of Community Services (case management) on 2 October 2015;

(c) He enrolled in a Bachelor of Social Welfare which he is studying part time;

(d) He had been working as a drug and alcohol worker since November 2018;

(e) He has engaged in some rehabilitation with a psychologist since July 2019. His Psychologist gave evidence at the hearing and while he did not have specific knowledge of the applicant's criminal and behavioural history, he stated that the applicant's insight is developing and growing. He said that in his view the applicant is growing emotionally and that giving up is not an option for him because too many people now rely on him and his motivation bodes well for him.

(f) He has participated in some cognitive behaviour and anger management programs while in prison. There was very little information regarding his involvement in these programs;

(g) He has reconnected with his indigenous culture and is involved in cultural talk, music, dance and art. His psychologist emphasised in his oral evidence that an important protective factor was the applicant's "growth in cultural values".

(h) The applicant has provided statements from a number of professional people most of whom have some knowledge of his criminal history. They speak well of him. In particular, the Indigenous elder described the challenges and experiences encountered by young indigenous men.

[43] The Elder attended the hearing and gave evidence in support the applicant. He described himself as the applicant's stepdad who he had known for about 27 years. He indicated that he understood this application related to the applicant's attempt to obtain a blue card. He admitted that he was not sure about the applicant's full criminal history but was aware that he had spent time in jail.

[44] The Elder highlighted the considerable difficulties experienced by young Indigenous men who even if they try to educate themselves by studying and bettering themselves, "are still reminded of their past and told you cannot change, which is not true".[15] He confirmed his opinion that the applicant "is a great role model, for our young 'murrie' boys and men."[16]

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

15 Statement of Elder (undated) page 1.

16 Ibid.

[45] The Department also submitted that there are a number of risk factors in this matter:

(a) The applicant's criminal history extends over the period from 1995 to 2017, primarily involving alcohol and drug related anti-social behaviour. The applicant's offending has resulted in imprisonment on multiple occasions.

(b) The applicant's criminal history spanned a period from when he was 16 years old to 38 years old and therefore, he cannot claim that youth or immaturity contributed to his behaviour.

(c) The Department notes that the applicant's offending continued despite having children who are now aged between 12 years old and 17 years old.

(d) The Department expressed concern that the applicant has not addressed the underlying triggers to his offending.

(e) The Department emphasised that the applicant has been unable to refrain from offending behaviour on a long-term basis.

(f) The Department points out that the applicant's own psychologist considers that the applicant is in early remission in relation to his alcohol abuse.

(g) The Department expressed further concerns about the applicant's ability to act in the best interests of children by refraining from illicit drug use.

(h) The Department submits that there are also questions about whether the applicant can act protectively towards children by preventing exposure to domestic violence. It points to a period between 2004 to 2008 when it claims that the applicant had a history of domestic violence.[17]

(i) The Department argues that it is unlikely that the applicant can act as an appropriate role model for children because of his own statements regarding the behaviour of his own children.

(j) The Department maintained that the applicant has not demonstrated any insight into his criminal behaviour and has not provided any details of his understanding of the impact of his behaviour on his children.

[46] The Department stressed the importance of genuine insight as a protective factor and refers to the decision of *Re TAA*[18] where the former Children's Services Tribunal stated:

> 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.

[47] In summary, the Department acknowledged that the applicant seeks a blue card so that he can work as an alcohol and drug worker. However, the Department points out that the effect of issuing a blue card is that the applicant will be able to work in or conduct any child related business regulated by the Act. A blue card is

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17 Department's SOR dated 27 November 2019 at page 12 para (f).
18 [2006] QCST 11, [97].

unconditional and is fully transferable across all areas of regulated employment and business.

[48] Therefore, the Department submits that the risk factors in this matter render the case to be an "exceptional" case such that it would not be in the best interests of children and young people for the applicant to be issued with a positive notice and a blue card.

Discussion

[49] In an application such as this I am required to address the factors set out in the legislation[19] and any other relevant matters.

[50] With respect to the items identified in the legislation, I make the following findings:

(a) The applicant has had a large number of charges and convictions. He has served various periods of imprisonment.

(b) None of the offences were "serious offences" as defined in the legislation.

(c) A large number of the offences occurred before 1 November 1997, when he turned 18 years old.

(d) During the period to August 2011 he was charged and convicted of numerous offences. Since that time his only further offence occurred in August 2017; that related to a failure to attend a police station to provide his identifying details as required. I do not place significant weight on that offence in the context of these proceedings.

(e) Most of the applicant's offences are relevant to his application because they involve dishonesty and violence.

(f) Significantly in March 1998, the applicant was sentenced to two years and nine months' imprisonment.

(g) He readily admitted that a lot of his earlier adult offending involved drugs and very heavy alcohol use. He says that he stopped using drugs around 2004 to 2006 by which time he had a partner and a baby son.

(h) In 2008 the applicant was the subject of a protection order that required that he be of good behaviour towards his partner and not commit domestic violence. At the time the applicant and his partner had been in an 'on/off' relationship for the previous seven years. The material indicates that there had been a previous domestic violence incident in April 2004.

(i) I am not satisfied, based on the evidence that this supports a finding of a history of violent behaviour by the applicant.

(j) The Department provided material that they submitted indicates that in August 2010 the applicant and his partner were smoking cannabis in the presence of children while his partner was pregnant. The material relates to hearsay information that the applicant's partner had been smoking marijuana while pregnant. The notifier believed other children may have been exposed to this drug use and that the pregnant person's partner whose first name was the same as the applicant's name (last name unknown) also smokes marijuana. I am not

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19 *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 226.

satisfied that this information supports a finding about the applicant's ability to act in the best interests of children by refraining from illicit drug use. I note that in 2011 there was another notification, but no details were provided.

(k) The applicant's criminal history extends over the period from 1995 to 2017, primarily involving alcohol and drug related anti-social behaviour. His offending has resulted in imprisonment on multiple occasions. I accept that he has endeavoured over a reasonable period of time to put that life behind him.

(l) The Department contends that the applicant's criminal behaviour occurred from when he was 16 years old to 38 years old and therefore, he cannot claim that youth or immaturity contributed to his behaviour. I am satisfied that the applicant's criminal activity as a young person is typical of many young indigenous men. The applicant presented as a person who is attempting to move past that stereotype.

(m) The Department notes that the applicant's offending continued despite having children who are now aged between 12 years old and 17 years old. In my view the evidence demonstrates that apart from his serious traffic history, the applicant has not continued to offend.

(n) The Department expressed concern that the applicant has not addressed the underlying triggers to his offending. In relation to the offence in 2017, there is no evidence of criminal activity but simply a failure to produce evidence of his identity to a police station. I find that the applicant has demonstrated that he is able to stop offending and has done so since 2011.

(o) The Department points out that the applicant's own psychologist considers that the applicant is in early remission in relation to his alcohol abuse. I accept this submission.

(p) The Department expresses further concerns about the applicant's ability to act in the best interests of children by refraining from illicit drug use. I find that there is no evidence of the applicant using drugs since at least 2011.

(q) The Department submits that there are also questions about whether the applicant can act protectively towards children by preventing exposure to domestic violence. It points to a period between 2004 to 2008 when it claims that the applicant had a history of domestic violence.[20] I find that there is no evidence of any recent history of domestic violence.

(r) The Department argues that it is unlikely that the applicant can act as an appropriate role model for children because of his own statements regarding the behaviour of his own children. I find that the actions taken by the applicant to improve the quality of life for his family and himself are appropriate steps to address any concerns regarding his ability to become a role model for his children and others.

(s) The Department asserts that the applicant has not demonstrated any insight into his criminal behaviour and has not provided any details of his understanding of the impact of his behaviour on his children. The applicant did not present as a confident and articulate man which is not unusual for an indigenous person in such a setting. However, I accept that he has made a

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[20] Department's SOR dated 27 November 2019 at page 12 para (f).

> conscious attempt to change his behaviour. He has undertaken steps to educate himself and become admitted to university where he is currently studying. He had obtained suitable employment in a position he appears well suited to. He has sought out and maintained good mentors and supporters. He has re-discovered his culture and appears to be pursuing it further.

[51] In her oral submissions, the Department's representative, Ms Rajapakse, argued strongly that the applicant has admitted his drug and alcohol abuse. He has been in remission for less than 12 months. He has not sought professional help. The gap in his offending is similar to a previous gap from 2000 to 2008.

[52] She submitted that it is not enough to want to do things. She contended that the evidence presented by the applicant was limited. She argued that the evidence from the psychologist, Mr Vander Hoeven was not useful because he was not sufficiently informed, particularly about the extent of the applicant's offending and he had not provided any treatment to the applicant.

[53] She pointed out that the references provided by the applicant should not carry any weight because the people providing them had not attended the hearing to give evidence. She emphasised that there is a real risk that the applicant will return to his old behaviours.

[54] The applicant's representative, Mr Wenitong, pointed out that his client is an Aboriginal man with a Grade 8 education. His family is supportive and that is a protective factor. The evidence regarding the applicant's behaviour is largely historical. He argues that too much weight was being placed on the applicant's offending and not enough on the positive changes that he has made in his life.

[55] Mr Wenitong acknowledged that the Elder had no knowledge of the applicant's criminal history but submitted that he is able to speak to the applicant's current circumstances.

[56] Mr Wenitong also emphasised that the psychologist assessed the applicant as "open and honest" who was not masking or faking his situation. He asserted that the applicant has good support from a range of professional people as mentors who while they did not give evidence had provided written letters of support.

[57] Finally, Mr Wenitong submitted that that Mr Vander Hoeven supported the application. The applicant is not proud of his history. With respect to his insight, he has learnt to say "no". His primary protective factors are his partner, his children and his work.

Decision

[58] I must decide whether this is 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 on the balance of probabilities.

[59] I am satisfied that there are some risk factors present. A review of the applicant's criminal history reveals a long history of violent, inappropriate and in some instances self-destructive criminal behaviour and excessive use of alcohol. The applicant appears to have one drug conviction, but there are a number of references to the applicant and his partner smoking cannabis.

[60] There are numerous protective factors with respect to the applicant seeking further educational opportunities, changing his lifestyle, distancing himself from his

previous associates, re-connecting to his culture and developing positive and respectful relationships within the indigenous community and also the broader community.

[61] He presents as willing to develop strategies to manage his life and to try and support his family to manage the challenges they are facing. The information presented indicates that he had made progress in his employment role as a drug and alcohol worker in what was likely to be a very difficult environment. He appeared willing and determined to provide a normal lifestyle for his family and be a good example for his children.

[62] I take into account that a blue card is issued unconditionally and allows a person to work unsupervised with children across a range of circumstances. In making the original decision, the Department found that "there was insufficient evidence that the applicant had successfully addressed the triggers that led to his offending, or that he had protective strategies in place to reduce or eliminate the likelihood of further offending in the future".[21]

[63] I accept that the evidence does raise those concerns. However, I am satisfied that the applicant has demonstrated that he has moved on from his past and is aiming for a better life for himself and his family. In doing so he is addressing the "triggers" that caused his previous behaviour.

[64] His criminal record began as a juvenile and was fuelled by alcohol abuse. He has now managed to put together a strong network of support incorporating some appropriate mentors to assist him to deal with his family difficulties. He appears to be managing his alcohol use and he has matured with age and the responsibility of providing for his family and engaging with his culture and community. He is developing his ability to respond to conflict and stress in an appropriate way.

[65] The Working with Children Act 2000 focusses on the protection of children. I am not satisfied on the balance of probabilities that this is an exceptional case in which it would not be in the best interests of children for the applicant to be issued with a Blue Card. He has taken appropriate steps to become a worthwhile member of the community and continues to seek to improve himself through his university studies. He was working in an environment where the importance of receiving support is recognised and encouraged. He has demonstrated that he is engaging with his colleagues and other professionals to stop him returning to his previous lifestyle.

[66] I am satisfied that the correct and preferable decision is that the Department's decision is set aside.

[67] I consider it is appropriate in this case to make a non-publication order under s 66 of the QCAT Act. MVN did not seek a non-publication order. I may make such an order, if I am satisfied that it is necessary for any of the reasons specified in the QCAT Act s 66(2). The question for determination is whether the publication would be contrary to the public interest or contrary to the interests of justice. A non-publication order should be made in this instance to protect the identity of MVN's children.

[68] The public interest is served through the publication of these reasons in a de-identified format.

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[21] SOR dated 28 February 2019 at page 7.

Orders:

1. The decision of the Director-General, Department of Justice and Attorney-General that MVN's case is exceptional within the meaning of section 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 this is not an exceptional case.

2. The Tribunal prohibits the publication of the names of the Applicant and his children and any non-expert witnesses.