QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*VSS v Director-General, Department of Justice and Attorney-General* [2021] QCAT 96
PARTIES:	**VSS** (applicant) **v** **DIRECTOR-GENERAL, DEPARMENT OF JUSTICE AND ATTORNEY-GENERAL** (respondent)
APPLICATION NO/S:	CML153-20
MATTER TYPE:	Childrens matters
DELIVERED ON:	9 March 2021
HEARING DATE:	15 February 2021
HEARD AT:	Brisbane
DECISION OF:	Member McDonnell
ORDERS:	**1. The decision of the Director-General, Department of Justice and Attorney-General made on 7 April 2020 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 the applicant's case is not exceptional.** **2. The Tribunal prohibits the publication of the names of the applicant and any witnesses appearing for 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 criminal history for possession of dangerous drugs and unlawful possession of restricted drugs – where not categorised as serious or disqualifying offences under the *Working with Children (Risk Management and Screening) Act* 2000 (Qld) – recency of applicant's offending – whether an 'exceptional case' warranting departure from the general rule that a

	working with children clearance must be issued – application of factors in s 226 of the *Working With Children (Risk Management and Screening) Act* 2000 (Qld)
	Human Rights Act 2019 (Qld), s 13, s 58 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 19, s 20, s 24, s 66 *Working with Children (Risk Management and Screening) Act* 2000 (Qld), s 5, s 6, s 221, s 226, s 360, s 580, 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 Lister (No 2)* [2011] QCATA 87 *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 *Director-General, Department of Justice and Attorney - General v CMH* [2021] QCATA 6 *Re TAA* [2006] QCST 11
APPEARANCES & REPRESENTATION:	
Applicant:	Rawlings Criminal Law
Respondent:	G Yates, Legal Officer

REASONS FOR DECISION

Background

[1] The applicant, a 28-year-old man, was issued with a positive notice and blue card under the *Working with Children (Risk Management and Screening) Act* 2000 (Qld) ('WWC Act') on 26 February 2018. The respondent was later notified by the Queensland Police Service that the applicant's police information had changed. The information raised concerns for the respondent about VSS's eligibility to continue to work with children.

[2] The respondent invited the applicant to make submissions about whether or not there was an exceptional case for the applicant. The applicant provided material in response.

[3] 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.[1] The chief executive was satisfied the case was exceptional within the meaning of the WWC Act.

[4] The respondent advised of its decision to cancel VSS's positive notice and issued a negative notice on 7 April 2020. The applicant seeks a review of the decision that this

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1 WWC Act, s 221(2).

is an exceptional case within the meaning of s 221(2) of the WWC Act. He seeks a blue card to enable him to conclude the practical component of his nursing studies. He told the Tribunal that he had completed all the requirements for his diploma, except for two weeks of practical training.

[5] Section 354(1) of the WWC Act provides that a person who is not a 'disqualified person'[2] is entitled to apply for a review of a 'chapter 8 reviewable decision'[3] within the prescribed 28 day period.[4] 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.[5]

[6] The applicant is not a disqualified person and sought review of the decision within the prescribed period.

The decision making framework

[7] 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.[6] The purpose of the Tribunal's review is to produce the correct and preferable decision,[7] 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.[8] The review is to be undertaken under the principle that the welfare and the best interests of a child are paramount.[9] 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.[10]

[8] The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children and young people in Queensland.[11] 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.[12]

[9] 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.[13]

[10] Section 221 of the WWC Act provides:

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2 WWC Act, s 169 (at the time).
3 Ibid, s 353 (definition of 'chapter 8 reviewable decision').
4 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 33(3) ('QCAT Act').
5 WWC Act, s 353 (definition of 'chapter 8 reviewable decision').
6 QCAT Act, s 19(a).
7 Ibid, s 20.
8 Ibid.
9 WWC Act, s 360.
10 QCAT Act, s 24(1).
11 WWC Act, s 5.
12 Ibid, s 6.
13 As stated in Queensland, *Parliamentary Debates,* Queensland Parliament, *Commission for Children and Young People Bill* Second Reading Speech, 14 November 2000, 4391 (Anna Bligh).

> (1) Subject to subsection (2), the chief executive must issue a working with children clearance to the person if—
>
> (a) the chief executive is not aware of any police information or disciplinary information about the person; or
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> (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—
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> (i) investigative information;
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> (ii) disciplinary information;
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> (iii) a charge for an offence other than a disqualifying offence;
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> (iv) a charge for a disqualifying offence that has been dealt with other than by a conviction; or
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> *Note for subparagraph (iv)* — For charges for disqualifying offences that have not been dealt with, see chapter 7, part 4, division 4 and sections 199, 295(1) and 296.
>
> (c) the chief executive is aware of a conviction of the person for an offence other than a serious offence.
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> (d) the chief executive is aware of other information about the person that the chief executive reasonably believes is relevant to deciding whether it would be in the best interests of children for the chief executive to issue a working with children clearance to the person.
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> (2) If subsection (1)(b), (c) or (d) 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 working with children clearance, the chief executive must issue a negative notice to the person.

[11] For the present purposes, a working with children clearance 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 working with children clearance to be issued.

[12] 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.[14]

[13] In determining whether there is an exceptional case when a person has been convicted of, or charged with, 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.'[15]

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[14] *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [31], citing *Kent v Wilson* [2000] VSC 98, [22].

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

[14] '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'.

[15] The Appeal Tribunal[16] has said that 'it is not productive to approach the question of whether the Tribunal is "satisfied" from the viewpoint of an onus or standard of proof.' 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.[17]

[16] As these proceedings were commenced on 17 April 2020 after the commencement of the *Human Rights Act* 2019 (Qld) ('HRA'), the provisions of that legislation are relevant to this review.

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:

(a) Possessing dangerous drugs (x 4); and

(b) Unlawful possession of restricted drugs (x 2).

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

[19] None of the offences on the applicant's criminal history are serious offences[18] or disqualifying offences[19] 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

[20] The applicant's offending occurred in March 2019.

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

[21] The applicant's criminal history and the police information indicate that the applicant was convicted of possessing several dangerous drugs and several restricted drugs. The evidence was that the drugs were for the applicant's personal use.

[22] It is of concern to the Tribunal that the applicant was the holder of a positive notice and blue card at the time of his offending. However, there is no suggestion that the applicant's offending occurred in the presence of children.

[23] Blue card holders are expected to behave in a manner that protects and promotes a child's safety and physical and psychological wellbeing. Children have a right to be

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16 *Director-General, Department of Justice and Attorney-General v CMH* [2021] QCATA 6, [21].
17 *Commissioner for Children and Young People and Child Guardian v Storrs* [2011] QCATA 28.
18 WWC Act, Schedule 2.
19 Ibid, Schedule 4.

protected from drug involvement and to be cared for by people who are not using drugs that may impair their ability to promote and protect children's best interests. Continued drug offending by the applicant would likely detract from his ability to provide a protective environment for children in his care.

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

[24] The applicant's offending attracted a fine, with no conviction recorded. The court's reasons for imposing this penalty are not known to the Tribunal.

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

[25] 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

[26] 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

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

Information about the person given to the chief executive under the Disability Services Act 2006, section 138ZG

[28] No information was given under this section.

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

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

The material and the evidence

[30] The applicant provided the Tribunal with his life story[20] and an affidavit[21] as well as three character references[22] and a report from his private psychiatrist.[23] The witnesses were made available for cross examination. Oral submissions were made on his behalf.

[31] The respondent provided the Tribunal with its reasons for decision and a bundle of documents paginated BCS-1 to BCS-46[24] and documents obtained pursuant to notices to produce paginated NTP-1 to NTP-20.[25] The respondent had the opportunity to

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20 Ex 1.
21 Ex 2.
22 Ex 4, 5, and 6.
23 Ex 3.
24 Ex 7.
25 Ex 8.

cross-examine VSS and his witnesses. Oral submissions were made for the respondent.

[32] VSS told the Tribunal that he suffered from poor body image and anxiety from about the age of 11 or 12, with his poor body image contributing to his anxiety. During high school he played sport and went to the gym so became quite athletic and muscular. After high school he was unsure what he wanted to do. He obtained secure employment, where he remained for 10 years, and retained his interest in health and fitness, exploring some study options in pursuit of that interest.

[33] In 2016, when in his mid-20s, VSS had a group of friends who used illicit drugs. He did not condone their drug use, having been raised with the belief that drugs were bad. With hindsight he acknowledged that these friends treated him and others poorly. One day someone in this group gave him two MDMA pills. He said he succumbed to peer pressure. He took one that night and put the other in a tin in his room. He told the Tribunal that he had not used illicit substances prior to this.

[34] The same year he moved out of home. The following year he moved to the Gold Coast, in part to distance himself from the group of friends who used illicit substances, as he realised that these friends had a negative impact on his mental health and self-confidence.

[35] He commenced his nursing studies and obtained employment. A general practitioner prescribed medication at this time to assist him with anxiety he was experiencing.

[36] VSS told the Tribunal that during this time he did not maintain his training regime and as a result lost a significant amount of weight which impacted on his physical appearance and negatively impacted upon his self-esteem. He instead focused on his studies.

[37] He lived in share accommodation and found one of his new flatmates to be physically intimidating, particularly due to his own recent weight loss. This flatmate and his girlfriend had physical arguments at the home they shared with VSS. Further, VSS told the Tribunal the flatmate was open about his steroid use and attributed much of his aggressive nature to that use.

[38] VSS, after consultation with the leasing agent, found he was unable to leave the share house, and being intimidated by his flatmate, did not feel able to raise his concerns with him.

[39] Feeling like a prisoner in his home he told the Tribunal he decided to turn to steroid use to help him to build muscle in a short time, to enable him to return to a physical form that he believed would ease his anxiety and to protect himself from his flatmate. He put a great deal of research into the safety and effectiveness of the various steroids he considered, developing a regime for his use, comprising bulking cycle and post bulking cycle steroids. He purchased these steroids and a drug to assist him with his studies, online.

[40] With hindsight he realises that this was a terrible decision.

[41] Shortly after a new flatmate moved in with VSS and his flatmate, activities of the new flatmate caused police to execute a search warrant at their home. When police were searching the applicant's room, he declared to police that there were items of interest. Police located the steroids and an MDMA tablet in VSS's bedroom and associated bathroom. He told police that he had purchased the drugs for himself online and that

he was aware that this was an offence. He was charged. He pleaded guilty, was fined $850 and no conviction was recorded.

[42] VSS gave evidence that the MDMA tablet found in his possession when police searched his premises was the tablet he had placed in a tin some years earlier. Although he had moved house in that time he had not previously disposed of the tablet, saying he had forgotten it was there.

[43] VSS lost focus on his studies during the court process dealing with his charges. When his lease ended, he found safe accommodation. Today he lives on his own. VSS has not returned to the gym, feeling that he need no longer requires the validation he received as a result of his physical appearance. He said that he has grown both mentally and emotionally over the last couple of years, which has eased his insecurities.

[44] VSS now has only two weeks of practical training remaining to be completed to conclude his studies and it is for this purpose that he seeks a blue card. VSS indicated that in his placement he does not have direct contact with children and has no intention of working with children once his course is completed.

[45] Following his offending he engaged with Dr P, a clinical psychiatrist, initially for a character reference but realised he would derive benefit from consulting with her so engaged with her on a regular basis. He continues to engage with her today. In consultation with Dr P he has ceased the medication he was prescribed by his GP and Dr P and was taking in April 2019. He is no longer taking psychotropic medication.

[46] He told the Tribunal he made a huge mistake, expressed his remorse and regrets the decisions he made which resulted in his offending.

[47] Dr P provided two reports,[26] had read the respondent's reasons and was available for cross-examination. She reported that VSS returned a drug screen on 22 March 2019, which did not detect any illicit substances. VSS self-reported to her that he remains abstinent of illicit substances.

[48] Dr P identified negative body image as a long-standing and primary concern for the applicant. In particular, she indicated that in the context of a relationship, the applicant felt insecure in his personal appearance. Encouraged by his flatmate, to boost his self-esteem, and to feel more secure in his relationship, he used body building products. Dr P indicated she was aware that VSS was uncomfortable with his flatmate and had endeavoured to move out.

[49] Dr P did not identify any active risk factors for re-offending. She told the Tribunal the applicant was committed to treatment, had repeatedly told her that he was not using drugs and was committed to abstinence, and said that there was no clinical evidence of substance use. As to protective factors for VSS she identified insight, motivation for positive change, a good employment history, good social support network and his career focus. Further, Dr P reported that VSS understood the seriousness of his offending, exhibited good insight into the detrimental impact of the substances on his own physical and mental health as well as at his workplace and has committed to regular medical reviews.

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[26] Ex 3 and Ex 7, BCS34 to BCS35.

[50] WEK provided a statement[27] and was available for cross-examination. She has known VSS since 2017 and was his flatmate for 12 months. She was aware of the applicant's criminal history, the penalty and had read the QP9 from the police, but had limited knowledge of the details of the applicant's offending behaviour. She told the Tribunal she was very surprised by the applicant's offending, considering that it was out of character for him. She had observed the applicant with her partner's children and held no concerns for his conduct with children. WEK has no ongoing concerns about the applicant's drug use. She was aware that he knew he had made a mistake and regretted it.

[51] RSH provided a statement[28] and was available for cross-examination. She has known the applicant for about six years, and they speak almost daily. She considers him a trustworthy and caring friend. RSH understood that the applicant sought to boost his self-confidence using steroids. She confirmed that the applicant is no longer in contact with the friend who gave him the MDMA.

[52] TRE, VSS's current employer, has known VSS for two years. He provided a statement[29] and was available for cross-examination. He was aware of the applicant's criminal history, the penalty and had read the QP9 from the police but had limited knowledge of the details of the offending other than that the applicant was in possession of steroids for personal use. He said that he was surprised by VSS's offending, which he considered was out of character for him. He told the Tribunal that he had observed the applicant's positive interactions with children in the shop where he works. He considers the applicant to be a reliable, honest and hard-working employee with an excellent work ethic.

[53] The respondent was of the view that on the evidence the applicant's case remained exceptional. It expressed concern that the applicant has demonstrated by his conduct his inability to judge appropriate behaviour in times of stress and failed to demonstrate genuine insight into the potential harm caused by his drug misuse. Further matters of concern raised by the respondent were the recency of VSS's offending and that while his offending behaviour was not child related, he was the holder of a blue card at the time.

Consideration

[54] In undertaking this review and determining the correct and preferable decision the welfare and the best interests of a child are paramount.[30] The question to be determined is whether, in exercising its discretion, the Tribunal considers it is an exceptional case in which it would not be in the best interests of children to issue a working with children clearance.

[55] That VSS will not be working directly with children in his placement and does not intend to work with children upon conclusion of his studies is not relevant to the Tribunal's review. 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.

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27 Ex 4.
28 Ex 5.
29 Ex 6.
30 WWC Act, s 360.

Once issued, a blue card is unconditional and fully transferable across all areas of regulated employment and business.

[56] 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.[31]

[57] In the Tribunal's view, the recency of the applicant's drug offending is a risk factor in its assessment. Further, it is of concern to the Tribunal that the applicant was the holder of a positive notice and blue card at the time of his offending.

[58] While the applicant's evidence was that there were several reasons for his behaviour, Dr P recounted a reason for VSS's conduct which was not canvassed in the applicant's own evidence. The Tribunal accepts that it is likely that there are a number of reasons why a person might be in possession of steroids and if one of them is to address concerns in relation to poor body image then it is hardly surprising that to address body image issues experienced in the context of a relationship is another.

[59] Unlike the taking of the MDMA tablet, the applicant's possession of steroids was not the result of a spur of the moment event. Rather, the applicant said he undertook thorough research to identify the particular steroids he considered best suited his goals, and then actively pursued online purchases, aware that it was an offence to do so without a prescription. This level of planning by the applicant is a risk factor in the Tribunal's consideration.

[60] While VSS was in possession of both dangerous drugs and restricted drugs, the Tribunal accepts that the steroids were for his personal use. Apart from the single MDMA tablet VSS admits to taking in 2016, there is no evidence of drug use by him prior to or after the convictions. The applicant continued with his studies, placement and employment between the time of the charges in March 2019 and the issue of the negative notice in April 2020, without incident.

[61] The Tribunal relies upon the evidence of Dr P. She reported a number of protective factors for the applicant. Further, Dr P indicated that the applicant returned a clear drug screen in March 2019[32] and that VSS consistently reports he remains abstinent of drugs. Following his offending, VSS sought professional help in relation to his depression and anxiety and continues to engage with this support. The Tribunal considers that these are additional protective factors for the applicant.

[62] Dr P is of the opinion that VSS has developed insight into and is remorseful for his offending and did not identify any risk factors for reoffending. VSS's co-operation

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

32 Ex 7, BCS34.

with police in the course of the execution of the warrant, and his pleas of guilty are also indicators of remorse.

[63] Based upon Dr P's evidence, the Tribunal finds that the risk of VSS reoffending is low.

[64] The Tribunal accepts that the offences noted are the only entries recorded on the applicant's criminal history. He has not engaged in any concerning or offending behaviour since the offending behaviour two years ago. However, the passage of time is not determinative of whether or not a case is an exceptional case.[33] This risk factor must be considered in the context of all the relevant circumstances.

[65] VSS presented as a candid witness, remorseful for his offending conduct. The Tribunal finds that the applicant is remorseful for his offending behaviour and has developed insight into his conduct and accepts that he intends to continue to engage with professional support.

[66] The applicant's character witnesses considered his offending conduct to be out of character. Two of them gave evidence of his positive interactions with children. The Tribunal accepts the evidence of these witnesses.

[67] Mr Rawlings raised previous decisions of the Tribunal in which applicants convicted of drug offences sought blue cards and were successful or not depending upon the facts. The Tribunal has considered each of those decisions but will not discuss them in detail in these reasons. The factual circumstances in those matters were different to the present facts.

[68] In undertaking this review the Tribunal is acting in an administrative capacity and consequently is a 'public entity' for the purposes of the *Human Rights Act* 2019 (Qld) ('HR Act'). Thus, pursuant to s 48 of the HR Act, the Tribunal must interpret statutory provisions in a way that is compatible with human rights, and in undertaking this review is required to conduct itself in accordance with s 58 of the HR Act.

[69] As observed above, it is not the purpose of this review and decision to impose additional punishment on the applicant for his past conduct, but rather to protect children.

[70] This review does not constitute a retrial as the Tribunal's role is not to determine the applicant's guilt. Rather, the Tribunal's function is 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 a working with children clearance and blue card. The object of the WWC Act is to promote and protect the rights, interests and wellbeing of children in Queensland through a scheme '…to screen persons who work, or wish to work with children, to ensure that they are suitable persons to do so'.[34]

[71] As required by s 361(1) WWC Act, the hearing was held in private, which the Tribunal considers to be compatible with the human rights set out in s 31 of the HR Act.

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

34 *WJ v Chief Executive Officer, Public Safety Business Agency* [2015] QCATA 190, [17] (Thomas J).

[72] The applicant's human rights, in particular, his rights to a fair hearing[35] and not to be tried or punished more than once[36] were considered by the Tribunal. The Tribunal has also considered the right of every child to 'the protection that is needed by the child, and is in the child's best interests, because of being a child'.[37] The Tribunal is satisfied that this decision is compatible with human rights and that to the extent that there are any limitations on those rights, those limitations are reasonable and justifiable in accordance with s 13 of the HR Act.

[73] In exercising its discretion, the Tribunal is satisfied that this is not an exceptional case in which it would not be in the best interests of children for a working with children clearance to be issued. The Tribunal is satisfied that the correct and preferable decision is that VSS's case is not an exceptional case under s 221(2) of the WWC Act.

Non-publication

[74] Pursuant to s 66 of the QCAT Act the Tribunal considers it is not in the public interest to release identifying information regarding the applicant and any witnesses for the applicant. Accordingly, these reasons have been written in a de-identified format. The Tribunal orders that publication of information that may enable the applicant and witnesses to be identified is prohibited.

Orders

1. The decision of the Director-General, Department of Justice and Attorney-General made on 7 April 2020 that the applicant's case is an exceptional one 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 the applicant's case is not an exceptional case.

2. The Tribunal prohibits the publication of the names of the applicant and any witnesses appearing for the applicant.

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35 HR Act, s 31.
36 Ibid, s 34.
37 Ibid, s 26(2).