Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division: GENERAL DIVISION

File Number: 2022/4150

Re: **XXXX**

APPLICANT

And **Minister for Immigration, Citizenship and Multicultural Affairs**

RESPONDENT

DECISION

Tribunal: **Senior Member J Rau SC**

Date: **08 August 2022**

Place: **Adelaide**

The decision under review is affirmed.

.....**[sgnd]**.....

Senior Member J Rau SC

CATCHWORDS

MIGRATION – mandatory cancellation of Class BF Transitional (permanent) visa ("his visa") under section 501 (3A) where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancelation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is affirmed.

LEGISLATION

Migration Act 1958 (Cth)

CASES

Uelese v Minister for Immigration and Border Protection [2016] FCA 348

YNQY v Minister for Immigration and Border Protection [2017] FCA 1466

Afu v Minister for Home Affairs [2018] FCA 1311

Suleiman v Minister for Immigration and Border Protection [2018] FCA 594

FYBR v Minister for Home Affairs [2019] FCA 50

MIEA V Singh (1997) FCR 288

Minister for Home Affairs v Omar (2019) FCAFC 188

Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17

SECONDARY MATERIAL

Direction No 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

REASONS FOR DECISION

Senior Member J Rau SC

08 August 2022

INTRODUCTION

1. The Applicant seeks a review of the decision by a delegate of the Minister for Home Affairs ("the Respondent") made under section 501CA (4) of the *Migration Act 1958* (Cth) ("the Act") on 12 May 2022, not to revoke the mandatory cancellation of his visa.

2. The Applicant's visa was cancelled on 25 October 2016 under section 501 (3A) on the basis that he did not pass the character test.[1]

3. Sections 501(6)(a) and 501(7)(c) of the Act provide that a person does not pass the character test if they have been sentenced to a term of imprisonment of 12 months or more. The Applicant fails the character test on account of a conviction on 13 December 2012, in the District Court of NSW. He was initially sentenced to eight and a half years imprisonment. He was to be eligible for parole on 19 February 2019.[2] He appealed the severity of the sentence. The NSW Court of Criminal Appeal reduced the sentence to 6 years imprisonment. (20 August 2013 until 19 August 2019). This made him eligible for parole on

[1] Exhibit 4, G32, Attachment R, pp 261-267.
[2] Ibid, G3, Attachment A, p 77 & G10, Attachment C, p 165.

20 February 2017.[3] The Applicant has been in Immigration Detention since that time. This is not the Applicant's only sentence of imprisonment.[4]

4. In response to a direction by the Tribunal, the parties have submitted an agreed "Table of terms of imprisonment, parole and immigration detention". A copy of this is attached and marked "Annexure B". As can be seen from this table, due to the Applicant's extensive criminal record, he has been imprisoned on various occasions since March of 1989.

5. The Applicant quite properly concedes that he does not pass the character test. The issue before the Tribunal is whether there is 'another reason' to revoke the mandatory visa cancellation pursuant to s 501CA(4)(b)(ii) of the Act.

6. The hearing was held on 25 and 26 July 2022. The Applicant was represented by Dr Jason Donnelly of Latham Chambers and the Respondent was represented by Mr Jonathon Hutton of Australian Government Solicitor.

7. The Applicant gave evidence by video link from Yongola detention centre in Western Australia. Technical problems necessitated part of his evidence being taken by phone and the interposition of other witnesses part way through his cross-examination. This was less than ideal, but it was the only realistic option, given the time constraints in this matter.

8. The Applicant was an unimpressive witness. He frequently had either had a poor recollection of events or gave answers that were non-responsive to questions. In many

---

[3] Ibid, G3, Attachment A, pp 76-77 & G9, Attachment B, 153.

[4] See "Attachment A" National Police Certificate (24 October 2016), pp 76-80, "Attachment B", pp 81-91, Australian Criminal Intelligence Commission Reports (1 June 2020) and (6 October 2021).

instances he offered repetitive pleas in his cause, rather than providing a relevant response. He engaged in hyperbole. There were several instances where his evidence was either inconsistent with his previous statements, or inexplicable, or unbelievable. I will provide some examples in due course. I note the Applicant's evidence that he will not be returning to Lebanon under any circumstances. He said that he has given it no consideration. He said "*I will not go to Lebanon. It is not an option*." He also said "*I will do whatever I have to do*" to avoid returning to Lebanon. This statement was undoubtedly truthful. It is a plausible explanation for much of the self-serving, or inconsistent evidence before the Tribunal. Although he equivocated somewhat when directly asked in cross examination, he would, in my view, if unsuccessful in these proceedings, be likely to seek a protection visa.

9. When pressed in cross-examination about whether he would seek out safer areas in Lebanon if he were returned, he said that he "*would not seek out safer areas.. I don't trust them.. I don't trust their way of life*."

10. I have little confidence in the Applicant's veracity and generally prefer alternative sources where they are available. My view of the Applicant's credibility is important in assessing, *inter alia*, his repeated statements to the Tribunal, that he is now, at 52 years of age, due to having been in immigration detention for some years, "a *different person."* It is also relevant to forming a view as to the reliability of his evidence regarding his connection to various minor children.

11. The Applicant called three witnesses.

12. Child A is his 17-year-old daughter. She presented in a straightforward manner. Her evidence was given in a way totally consistent with her age and her natural concern for her biological father. Her evidence was really focused on her level of attachment to her father.

It is important perhaps to note that she only lived with her father until she was about 2 years of age. She understandably has virtually no recollection of this period. Her parents split up. She has since lived with her mother and her maternal grandmother. Until he entered Immigration detention, Child A was told that her father was working overseas. This was done to shield her from any contact with the prison system. There was not much contact during this period. Since the Applicant has been in Immigration Detention, she has visited him and been in contact electronically. She describes their relationship as close and says that he is her "*best friend*". She said that she communicates with him by "*face-time*" most days now. She would like to see him as much as possible. If he were removed, it would be "*depressing*". She would not be able to travel to Lebanon to see him because her mother would not let her. It would be "*unsafe*". She has met the Applicant's current partner "*a few times*" and thought that she has two children. She could not recall her name. It was clear that Child A knew very little about the Applicant's current partner, or details about his criminal history.

13. The Applicant's former wife, Nasrien Amer, Child A's mother, also gave evidence. She met the Applicant in about 2001. They met when her brother was in prison with the Applicant. She met him when visiting her brother. In about October 2002 she married the Applicant. She was 5 months pregnant at the time but lost the baby. This was an Islamic religious marriage. Interestingly, she was unable to recall the date. They bought a house next to the Applicant's parents. Child A was born on 20 April 2005. They separated in 2007. She said in her statement of 4 October 2017[5] that this was due to the Applicant's drug taking.[6] In her oral evidence she said that she could not recall why they split, or when. He says it was

[5] Exhibit 4, G46, Attachment AC, p 309.

[6] Refer to Statement.

because she "*lost the plot when her brother was killed*". This is but one of several examples of the Applicant deflecting responsibility to other people or events, rather than accepting responsibility for himself. This is despite him frequently saying that he "*only had himself to blame*". Ms Amer said that she had concerns for her daughter's mental health if the Applicant were to be deported. She said that Child A had "*been promised he's coming home for so long*". This was apparently an expectation generated by the Applicant, after a successful conclusion to a recent matter in the Federal Court. She said that she would not allow Child A to travel to Lebanon if the Applicant were there, because it was not safe and that there were "*people overseas that don't' like him* (the Applicant)." She would not be drawn on who these people overseas may be and why they would not like the Applicant. I gained the strong impression that she was fearful about saying too much about this. I note that this issue has not been raised by the Applicant himself.

14. The Applicant also called his current partner, Ms YX OO. The Applicant has known Ms OO through family connections for many years. In 2020, Ms OO was asked by the Applicant's niece to assist the Applicant in her professional capacity as a migration agent. She continued in this capacity until November 2021, at which time she ceased to act and was replaced by Mr Issa, a lawyer. She gave two explanations for this. Firstly, the Applicant's criminal history was so extensive that his case was complex beyond her level of competence. Secondly, she became personally connected with the Applicant to the extent that she felt that she was at risk of acting in an unprofessional manner, such that it may place her continuing capacity to act as a migration agent in jeopardy. Her evidence traversed the period from 2020 to the present. She went through an Islamic religious ceremony by zoom on 14 February 2022. Both she and the Applicant describe this as a "marriage". She has only had electronic communication with the Applicant since 2020. She was very supportive of the Applicant. Overall, her evidence was more in the nature of advocacy on the Applicant's behalf, than responding relevantly to questions. This is perhaps

understandable given her background as a migration agent. She was clearly familiar with the considerations under Direction 90, particularly in regard to minor children. Many of her answers were prolix or tangential. I consider that her evidence needs to be treated with caution.

15. Various other statements in support of the Applicant were received as set out in Annexure A. Aside from the witnesses set out above, none of these were required for cross examination.

16. I note that the Applicant's former partner Kylie Gunns and his biological son Bilal Gunns did not give evidence, nor did they provide any statement in support of the Applicant.

Background Facts

17. The Applicant was born on 11 March 1970. He is a citizen of Lebanon.

18. The Applicant came to Australia in 1983. He came here with his father, mother and three brothers.[7] They joined his three sisters who were already in Australia. His father died in 2015. His mother is in her late 80's and is terminally ill, suffering from heart disease and dementia.[8]

[7] Exhibit 4, G59, Attachment AJ1, p 374.
[8] Ibid, G99, Attachment BD, p 768 & G108, Attachment BM, p 1052.

19. The Applicant spent 5 or 6 years at school in Lebanon. In Australia he attended Granville Boys High School leaving halfway through year 9.[9] He was badly behaved at school, getting into fights. He was suspended from school several times and was expelled when he was 14 years and 9 months old.[10] He did not tell his parents about this but commenced TAFE training as a mechanic. He did not complete his training due to incarceration for his criminal offending. He has since that time, whilst not incarcerated, had intermittent work. He has worked as a rigger, operating cranes, a truck driver and done other unskilled work.

20. The Applicant has an extensive criminal history, commencing as a juvenile in 1986, 3 years after his arrival in Australia. Between 1988 and 1994, the Applicant was convicted of multiple offences including road traffic offences, driving whilst disqualified, driving an unregistered and uninsured vehicle, breaking and entering, negligent driving, resist arrest, assault police and receiving.[11] A copy of an the Applicant's offending history is attached and marked "Annexure C".[12]

21. On 22 May 1988 the Applicant was convicted of stealing a welder.[13] The fact sheet dated 24 May 1988, states:

> *"At about 9.30pm 22.5.88 the defendant and co-offender (Bik TRAD) went to the Caltex Service Station, Fairfield Rd Wet Guildford. Both men then climbed onto the roof of the service station and the defendant removed several glass loovers from the*

---

[9] Exhibit 9, p 605.
[10] Exhibit 4, G91, Attachment AW2, p 730.
[11] Ibid, G4, Attachment A1, pp 84-85.
[12] Ibid, G4, Attachment A1, pp 81-85 and G5, Attachment A2, pp 86-91. See also Exhibit 9, pp 1-41.
[13] Ibid, p 567.

windows with the assistance of the co-offender. He then lowered himself down into the main workshop area of the garage, where he removed a MigMate brand still on the roof, the two males then left the garage on foot carrying the welder in their hands. They walked across Fairfield road and were observed by a security guard who was making his rounds in guard then approached the two offenders, who were standing next to motor vehicle number JOM-878 owned by co-offender (TRAD). After being questioned by the security guard, the co-offender was grabbed by the security and the defendant left the scene in motor vehicle JOM-878. He later attended the Merrylands Police Station on Monday 23 May 1988."[14]

22. On 24 September 1988, the Applicant stole a vehicle that was parked at the Apia Club.[15] On 26 September 1988, the victim, Mr Steven Apoifis made a statement, which stated:

"……

About 9:30pm on Sunday 24 September, 1988 I parked my vehicle in the carpark of the Apia Club at Leichhardt. I locked my vehicle, set the alarm and went into the club.

About 12.00am on Monday the 25 September, 1988 I left the Apia club and went to the carpark to go to my motor vehicle. I went to the car space where I have left my motor vehicle and it was not there.

---

[14] Ibid.

[15] Ibid, p 572.

About 12.30pm I attended Leichhardt Police Station and reported my car stolen. Whilst at the Police Station I was told something, and as a result of this I then attended Merrylands Police Station. I had then had a conversation with Constable A Merrylands Police Station.

About 1.15am I then went to the rear of the Police Station where I saw my car in the yard. I noticed that there was damage to the front pf the car and the front wheels were off. The interior of the car had been damaged, the dash had been damaged and also the steering column had been damaged. The Stereo system and the amplifier which was in the dash if the car was also missing.

When I left the car at the Apia Club there was no damage to the exterior or the interior of the car. When I first saw the car at Merrylands Police Station it was not in the same condition that I had left it at the Apia Club.

At no time did I give any person or persons permission to steal, take or use my motor vehicle. I estimate the damage to my car to be $600.00 and seek compensation for this amount. The value of my car is $6500.00

……"[16]

23. A pre-sentence report dated 20 March 1989 states:

---

[16] Ibid.

"Mr Barghachoun seems sincere in wanting to stay out of trouble, but he will need to make a greater effort if he is to succeed. *However, by virtue of his present conviction the offender is in breach of his recognizance of 4th July, 1988".*[17]

24. Between 23 March 1989 and 1 November 1989, the Applicant served his first term of imprisonment.

25. NSW Probation Services records report the Applicant as saying that on 17 September 1992, he married his cousin.[18] They had been "*sort of engaged*" for the previous 6 years. His mother travelled to Lebanon in 1992 and brought his soon to be wife, to Australia.[19] This relationship did not last. She returned to Lebanon in 1994.[20] Interestingly, in his evidence, to the Tribunal, the Applicant denied that he married his cousin. He said that he did not recall anything about this entire episode involving his cousin. It is inexplicable that the Applicant should have now forgotten about his marriage. If he did not marry, it is inexplicable that he should have reported it to NSW corrections in 1994. I can see no reason why he would have lied about this in 1994. He offered no explanation. It also seems that at this time, he was in a relationship with Ms. Kylie Gunns from the beginning of 1993. Their son, Bilal was born on 29 January 1994. They apparently lived with his parents at their home. Again, this is curious to say the least, if he was married to his cousin at the same time.

26. A NSW Community Corrections service pre-sentence report dated 17 December 1992 states:

---

[17] Ibid, p 604.
[18] 30 September 1994 supra.
[19] Exhibit 9, filed 19 July 2022, p 605.
[20] Ibid, p 628.

…….

Mr Barghachoun then had a patchy employment history. He has worked in several jobs (unskilled positions) coupled with period of unemployment.

After his release from prison in November 1989, Mr Barghachoun obtained work as a truck driver with a large juice company. He began on a casual basis until June 1990, when he bought a truck and worked on a contract basis. He later bought a second truck and employed a driver. In March, 1992, shortly before the commission for his current offences he was dismissed after an altercation with a supervisor.

At that stage he began sub-contracting his trucks to various courier companies. He now has tree trucks.

OFFENCE

In discussing the circumstances leading up to the offence Mr Barghachoun explained that on the morning prior to his dismissal he had an altercation with a person who would not move a truck which was blocking his exit. He stated that he was dismissed the following day without any opportunity to explain what had occurred.

He stated that he then devised a plan to ingratiate himself with his former employer. He said that he planned to steal a large quantity of juice and to hide it. He would approach his former employer saying that he know the whereabouts of the stolen juice.

ASSESSMENT

Mr Barghachoun presented as talkative and co-operative in interview. He also appeared as somewhat hyperactive with poor impulse control

Enterprising by nature, Mr Barghachoun would now seen to be developing his business acumen. He how has the added responsibility of his marriage, although in the extended family situation of his culture, he is still free to work seven days each week.

Mr Barghachoun appears sincere in his desire to stay out of trouble, but he will need to make a greater effort if he is succeed, as he still appears to lack insight*."*[21]

27. It is notable that this offending was premeditated.

28. On 8 March1993, the Applicant was convicted of assaulting police and resisting arrest. This was put to him in cross-examination. He did not recall the episode but did not deny assaulting police.[22]

29. On 1 June 1994 the Applicant was convicted of several counts of Social Security fraud. He explained that this was due to him continuing to claim job-start allowance for an employee who had left his employ. He presented this as an oversight rather than a plan to defraud the Commonwealth. Unfortunately, the Tribunal was not provided with any primary source

[21] Ibid, p 606.
[22] Exhibit 4, G4, Attachment A1, p 84.

material relating to this offending, so it is not possible to know the factual basis for these convictions. He was sentenced to 6 months imprisonment.[23]

30. In 1994 he was still living with his then de facto partner Kylie Gunns[24] and their son Bilal,[25] at his parents' home.[26] Bilal is now 28 years of age.

31. The Applicant remained in this de facto relationship until his incarceration, on 3 May 1994. His son was 3 months old at the time. The relationship did not survive this term of imprisonment, it ended in about 1999.[27] He remained in prison until 31 October 2002.

32. The Applicant has had very little to do with his son. He has been either imprisoned or disengaged from his son for most of his life. As has already been noted, Bilal did not give evidence or even provide a statement of support of his father in these proceedings.

33. On 29 August 1994, the Applicant was involved in setting a man on fire.[28] A prison officer filed a New South Wales Police Report, which states:

> *"…….*
>
> *About 9:25am today I was in the office in the cabinet making shop at Packles Prison. I noticed thick black smoke rising out of the lunchroom area. I then saw something*

---

[23] Ibid, p 90.
[24] Exhibit 9, filed 19 July 2022, p 49.
[25] Exhibit 4, G59, Attachment AJ1, p 379.
[26] Exhibit 9, filed 19 July 2022, p 608.
[27] Ibid, p 628.
[28] Ibid, p 261.

moving which was engulfed in flames. At first glance I did not realise it was one of the inmates. There were a lot of inmates milling around. I then realised that it was one of the inmates. A number of inmates were distressed and several appeared to be running looking for a way to extinguish the fire. I then saw it was an inmate who was on fire from the waist down. The flames were in excess of one metre high. A number of inmates were attempting to douse the fire by using clothing and I believe that someone got some water and put out the fire."[29]

34. This was put to the Applicant in cross-examination. He did not deny his involvement in this incident. A NSW Probation Service pre-sentence report dated 30 September 1994 says:

> *" Mr. Barghachoun is a 25 year old man separated from his previous wife and now living with his de factor partner and their son at his parent's home in Guildford. Prior to his incarceration he was self-employed as a subcontracting courier and earned $1500 nett per week.*
>
> ***PREVIOUS SUPERVISION***
>
> ***Mr Barghachoun was previously supervised by the Service during a two-year recognizance which he entered in 1998 until he was imprisoned in March, 1989, for a further offence**. He was also supervised when released to after-care probation in November, 1989, until the probation order expired in June, 1990.*

[29] Ibid.

He is currently being supervised on a three-year recognizance entered at Parramatta District Court on 17th December, 1992. Further offences led to his present prison term and other offences are before the court to-day. All these offences are breaches of recognizance.

Notwithstanding the further offences, Mr Barghachoun has reported as direct.

FAMILY BACKGROUND

Mr. Barghachoun was born in Lebanon and is the youngest of six children. The parents stated that the children were raised in a secure and financially stable family environment. At the age of fourteen his life was severely disrupted by the outbreak of civil war and the family fled to Australia leaving behind all their possessions.

Since migrating to Australia early in 1983, the offender and his parents have found it difficult to adjust to life in this country. Mr Barghachoun's father has been unable to work due to language difficulties and health problems.

Family relationships appear to be affectionate, strong and supportive.

On 17th September, 1992, Mr. Barghachoun married his cousin. Mr. Barghachoun explained that his liason was arranged and his wife returned to Lebanon in January 1994.

Prior to his marriage Mr Barghachoun was keeping company with an Australian girlfriend who waited for him while he was with his wife and who conceived a child to him during 1993. The child is now eight months old.

EDUCATION AND EMPLOYMENT

The offender sad he spent five or six years at school in Lebanon, leaving at the age of fourteen years. After arriving in Australia he attended Granville High School and left school halfway through Year Nine as he was not interested in learning and was often disruptive in class.

He states that he attended Granville Technical College for a year in a Motor Mechanic course and subsequently took up a two-year apprenticeship at a service station. He abandoned his apprenticeship a year later as he could not cope with the course.

Mr. Barghachoun then had a patchy employment history. He has worked in several jobs (unskilled positions) coupled with period of unemployment.

After his release from prison in November, 1989, Mr Barghachoun obtained work as a truck driver with a large juice company. He began on a casual basis until June, 1990, when he bought a truck and worked on a contract basis. He later bought a second truck and employed a driver. In March, 1992, he was dismissed after an altercation with a supervisor.

At the stage he began sub-contracting his trucks to various courier companies. He eventually had three trucks.

OFFENCE

In discussing the offence Mr Barghachoun stated that his involvement in the offences started two days prior to the offence when his cousin (co-offender) told him that he and his girlfriend had been attached by a group of Yugoslavs. The cousin also said that his car had been subsequently fire-bombed. Mr Barghachoun said that his cousin asked his assistance to find the Yugoslavs who were responsible, with the intention of notifying the police of their whereabouts. He said that they, together with a third cousin, went to Canley Vale on the day of the offence where they left the car and his cousin returned with another car.

The three men then drove to Cabramatta in this car and waited outside the cafe frequented by Yugoslavs. Mr Barghachoun related that they waited for three hours and that he was sitting in the back seat when one of his cousins saw a man going into a nearby bank carrying a bag. He said that his cousin took a pistol from somewhere, jumped out of the car, robbed the man with the bag, ran back to the car and they sped off.

Mr Barghachoun admitted, however, that he presumed that the car was stolen, knowing his cousin's pattern of stealing cars.

ASSESSMENT

Mr. Barghachoun presented as talkative and co-operative in interview. He also appeared as somewhat hyperactive with poor impulse control.

Enterprising by nature, Mr Barghachoun would seem to have developed his business acumen. He now has the added responsibility of a child, although in the extended family situation of his culture, he was still free to work seven days each week.

Mr. Barghachoun appeared sincere in his desire to stay out of trouble, but he will need to make a greater effort if he is to succeed, as he still appears to lack insight.

Supervision by this Service would appear to have had little impression upon the offender, notwithstanding his willingness ot report regularly. The added responsibility of his son and his partner may, in the long-term, provide Mr Barghachoun with the necessary incentive to address his attitudes and his lack of insight. In this event supervision during an extended period of parole may provide the offender with a level of support."[30]

35. The preceding passage refers to the Applicant's desire to stay out of trouble and his lack of insight. It also speaks of his partner and his son providing the incentive to address his problems. This same theme is repeated over and over again, in various reports over the next two decades. It is in substance the same representation that the Applicant makes to this Tribunal, this time referencing Ms OO and her children as providing an incentive not to reoffend.

[30] Ibid, pp 608-610.

36. On 3 February 1995, the Applicant was sentenced to imprisonment for armed robbery in the Campbelltown District Court.[31]

37. The decision of the NSW District Court relevantly states:

> *"HIS HONOUR: In this case Judge Phelan referred the matter to me for sentence. Mr X Barghachoun had previously pleaded guilty to the two charges in the indictment and he did so when re-directed, according to the note, on 14 October 1994.*
>
> ***The two charges to which he pleaded guilty were first that on 2 May at Canley Vale he stole a conveyance, a Gemini sedan, the property of Terrie Ann McGregor. And there was a second charge that on 2 May 1994 at Canley Vale, being then armed with an offensive weapon, namely a firearm, he did rob Chihua Lo of certain monies being the property of Chihua Lo***
>
> *Subsequently an application was made to His Honour Judge Phelan to withdraw those two please of guilty. His Honour gave his decision on that application on 16 November 1994. His Honour declined the application saying "I am not satisfied in the circumstances related by him. I am not satisfied that he should, at this stage, (that is X) should at this stage be permitted to reverse his pleas and thus his application is refused".*

[31] Exhibit 4, G4, Attachment A1, p 84 & G5, Attachment A2, p 90.

I have read His Honours's reasons for refusing the application. It is not my function to review what his Honour decided but I will say this, having heard evidence now from some of the persons who are eye witnesses and also from the applicant himself and also from George Yazbeck. I accept his Honour's ruling without hesitation.

As I said in the course of discussing the matter with counsel for the applicant, it appears to me that at the time the applicant was present in or near the motor vehicle parked outside the bank, outside which the robbery occurred. The main actor, the principal offender, was his cousin who had a pistol and menaced the person conveying money to the bank. The money was handed over. Then there was an escape in the stolen motor vehicle driven apparently by George Yazbeck with Barghachoun in the rear seat of that vehicle.

I am satisfied on the material presented to me and I have no hesitation in saying that Mr Barghachoun was present there, in or near the vehicle, ready and willing to give assistance to the main perpetrator of the offence, that is, the offence of committing an armed robbery.

George Yazbeck came before His Honour Judge Phelan on Friday 16 December 1994 and he was before His Honour having pleaded guilty to the very same charges to which the present applicant X Barghachoun has pleaded guilty. George Yazbeck, like the present applicant, was a relatively young man. I am not informed exactly as to his age, but he does not appear to be any older than X Barghachoun the present applicant who was born on 10 March 1969.

I have enquired of counsel appearing for the applicant, as to whether or not there is any reason to distinguish between this case and the case of George Yazbeck. The only distinction that struck me immediately was that the present applicant probably had a longer criminal record, or a more serious criminal record and it is to be noted that he was on a recognizance with sentence deferred which was imposed at Parramatta District Court on 17 December 1992. That was a recognizance for three years, so he is obviously in breach of that recognizance. And there have been in addition since then in 1994, sentences for imposition on the Commonwealth for which he has served a number of terms of imprisonment, the lengthiest of which was six months which expired last Tuesday.

I have ready his Honour's reasons for sentence. I notice that he made the comment that he had before him evidence to suggest, this is when he sentenced George Yazbeck, evidence to suggest that George Yazbeck was genuinely remorseful. Indeed he insists that he did not commit the offences at all.

But I consider that I should be guided by what his Honour did in relation to George Yazbeck. George Yazbeck may or may not have had some sort of drug problem, although he said here today in the witness box that he was affected by drugs at the time when he was interviewed by the police. But it has not been suggested to me, as I understand it, that the present applicant is affected by drugs or is subject to drugs. There is no suggestion of that is there Mr Lungo?

LUNGO: No your Honour,

HIS HONOUR: The evidence presented to me is that the applicant was conducting his own business. He was running a business and driving a truck as a sub-contractor and he said that he owned no less than three motor vehicles, one of which is a BMW.

Furthermore, he said that he has never been unemployed and even if he were, his parents are very, very generous people who would stand by him in any circumstances.

That being so, it appears to me that there is no reason why I should vary the ordinary proportion as between the minimum term and the additional term in this particular case. His Honour Judge Phelan did make such a variation when he ordered that the overall sentence of five years should be served as to three years by way of minimum term and as to two years by way of an additional term.

For myself I do not see the necessity for saying that there are special circumstances in this case. That being so and out of comity with his Honour I will impose a reduced additional term.

So the sentence that I impose is one of penal servitude for a term of three years, that is by way of minimum term, commending 31 January last. *Should that be thirty first or 1 February?*

PICKERING: It will be the thirty first. In regards to the starting date your Honour, I can indicate that Mr Barghachoun was bail refused from 2 May until he started serving a sentence on 1 June. Therefore he was bail refused one month on this offence alone.

HIS HONOUR: I see, so it should be taken back say to 1 January?

PICKERING: Yes your Honour.

LUNGO: Yes your Honour.

HIS HONOUR: ***To make allowance for the period in custody when bail was refused the sentence of three years by way of minimum term is to commence from 1 January 1995 and will expire on 31 December 1997. The additional term I impose is one of one year which expires on 32 December 1998, this being a sentence in excess of three years, there is no need for me to make any further orders as to release on probation.***

I should make it clear to you Mr Barghachoun that your release to parole will not be automatic. That will depend on the decision of the Offenders' Review Board."[32]

38. The relevant fact sheet says:

" About 12:15pm on 2/5/94 the defendant was with co-offender George YAZBECK when they received a phone call from another co-offender Fred BARGASHOUN to get a car for the intention of doing 'A Job'. The defendant went with George YAZBECK to the carpark in Westacott Lane Canley Wale where YAZBECK stole a red Gemini sedan # UAY-547, owned by Terry Anne McGREGOR. They then drove to the co-offenders home where they met up with

[32] Ibid, G13, Attachment F, pp 175-179.

Fred BARGASHOUN. The defendant was then the passenger in the stolen red Gemini which was then driven to the carpark where the vehicle was originally stolen. The defendant and his two co-offenders then drove to Cabramatta road, cambramatta near the Commonwealth Bank. There, the co-offender Fred BARGASHOUN got out of the vehicle and committed an armed robbery on victim Chiua LO who was banking his business takings at the bank. The offender Fred BARGASHOUN produced a .38 calibre revolver and demanded the money from the victim which the victim surrended to the offender. Fred BARGASHOUN then ran back to the Gemini sedan and the three drove back to Westacott lane, there the proceeds were removed along with the revolver and placed in the boot of the Sigma.

Patrolling police saw the defendant and his co-offenders get into the red Sigma and drive out of the carpark. Police followed the vehicle and chased the Sigma along a number of streets through Canley Vale. At the time, the defendant as a rear passenger of the Sigma. The vehicle stopped on Malabar street where the defendant and his two co-offenders ran from the car. The defendant only ran a short distance before he was apprehended.

All offenders were eventually apprehended. The two vehicles were towed to Cabramatta Police Station where a thorough search was conducted of the vehicles. In the boot of the Sigma sedan, police located a loaded .38 revolver, a yellow paper bag containing $11,000.00, a red plastic bag containing $8,200.00, and a black balaclava.

On the advice of his solicitor, the defendant declines to be interviewed."[33]

39. The Applicant said that his offending at this time was due to the influence of his cousin. In his evidence he said that his cousin was "*the downfall of his life*".

40. On 21 February 1995 he was before the Bankstown Local Court charged with possession of an unlicensed revolver. This was taken into account in the 3 February 1995 sentence.[34] He was also charged with assault occasioning actual bodily harm. This was also taken into account in the 3 February 1995 sentence.[35]

41. On 11 May 1995, the Applicant was convicted of stealing, making a false instrument, and using a false instrument. He was sentenced to 12 months imprisonment.[36]

42. On 1 September 1995, the Applicant was convicted of offences relating to armed robbery. He was sentenced to 4 years imprisonment.[37]

43. The decision of the NSW District Court relevantly states:

> *"At about 9:25pm on 6 January 1994 Mr David James Hickey, the manager of "Babyco" at 194 Stacey Street, Bankstown, went, with Mr Raph Green, a security guard employed by "MSSS", to the night safe of the National Australia Bank at the corner of Chapel Road South and Olympic Parade at Bankstown to deposit the*

---

[33] Exhibit 9, p 587.
[34] Ibid, p 79.
[35] Ibid, p 78.
[36] Ibid.
[37] Exhibit 4, G3, Attachment A, p 78.

business' daily takings. The takings were in the bank's night safe wallet held by Mr Hickey. As they were walking together on the footpath – Mr Hickey closest to the gutter and on Mr Green's left hand side – towards the night safe, they were approached by two young men. One of the men accosted Mr Hickey – this man held a revolver. The other man accosted Mr Green. The man holding the revolver who had accosted Mr Hickey demanded that he hand over the night safe wallet. The other man knocked Mr Green to the footpath and struggled with him in an attempt to take his revolver. Mr Hickey threw the night safe wallet into the footpath and the man holding the revolver picked it up. Then the man holding the revolver went to Mr green who was wrestling with the other man on the footpath and held the revolver at his head and told him to be still so that the other man could take his revolver. After the other man had taken Mr Green's revolver, the two men went across Chapel Road South towards a car parked on the road opposite the bank. As they did this, they passed in front of a car in which Mrs Lista Petrou was travelling as the front seat passenger. Mrs Petrou noticed the two men, particularly the one who was holding the revolver, and watched them enter into the car, in which two other men were seated, and watched the car be driven away. Mrs Petrou obtained the "registered number" of the car but, as it transpired, the number plates attached to the car had been removed (stolen) from another car.

As the description of the two men given by Mr Hickey and Mr Green to police – Mrs Petrou did not give a description to police – could have fitted thousands of men, police could not do much until luck turned their way. On 21 January 1994 Australian Federal Police attended at the prisoner's home at 20 Winston Avenue, Guildford, with a search warrant to search the home in relation to the prisoner's involvement on a "social security fraud" (if I may so describe it – see entry 1 June 1994 on Exhibit E). In the course of the search, police found Mr Green's revolver hidden (but not

very well) in a van in the backyard of the home. After arresting him, the prisoner was taken to the Sydney office of the Australian Federal Police where he was interviewed. In the course of the interview, he denied any knowledge of the revolver found in the van. Subsequently, (on 8 February 1994), Australian Federal Police told NSW Police of the finding of Mr Green's revolver and, in due course, a video tape showing the prisoner's face, as one of twelve faces, was prepared by police. This tape was shown (on 26 April 1994) to both Mr Hickey and Mr Green (although Mr Green believes that he was shown photographs, not a video tape). Mr Hickey identified the prisoner as the man holding the revolver who had robbed him of the night safe wallet but Mr Green was unable to identify anybody. Consequently (on 3 May 1994), the prisoner was interviewed and he denied any knowledge of the armed robberies and declined to be further interviewed about them. Notwithstanding his denials, the prisoner was charged with the armed robberies of Mr Hickey and Mr Green. Later (on 2 June 1994), when she was making a statement to police, Mrs Petrou viewed the videotape (the one shown to Mr Hickey and Mr Green) and she identified the prisoner as the man holding the revolver who was one of the two men who ran in front of her car on the night of the robbery.

the prisoner's trial for the armed robberies of Mr Hickey and Mr Green commenced on 8 august 1995. The Crown's case depended upon the identification of the prisoner by Mr Hickey and Mrs Petrou supported by the finding of Mr Green's revolver in the prisoner's van in the back yard of his home. Mr Hickey said that he was "absolutely sure" that the photograph of the man who had robbed him (Number 9 on the video tape) was a photograph of the man who had robbed him. Mrs Petrou said that the photograph of the prisoner (Number 9 on the video take) "looked like" a photograph of the man holding the revolver who ran in front of her car. Both Mr Hickey and Mrs Petrou identified the prisoner in court as being the man who they

had seen, Mr Green said that he "recognised somebody" in the photographs who he though "looked like him" but was unable to identify any photograph as being a photograph of ether man. Mr Green identified the prisoner in court as being the man holding the "gun" at his head. I warned the jury about the value of the "in court" identification of the prisoner as one of the two robbers by Mr Hickey, Mr Green and Mrs Petrou. Constable M and Constable DK told of the finding of Mr Green's revolver in the prisoner's van in the back yard of his home. Mr Harris told his purchase of the van from the prisoner and his later return of it to the prisoner's home. Mr McGuire told of helping Mr Harris return the van to the prisoner's home. Constable P and Constable L told of their investigation of the robberies and their interview of the prisoner. The prisoner made a statement in which he denied being involved in the robberies. Mr Yazbek (a friend of the prisoner) told of buying Mr Green's revolver from somebody at a snooker from Granville and outing it into the prisoner's van. The jury found the accused guilty of those robberies. The jury's verdicts did not surprise me. The Crown case was strong, if not overwhelming. Mr Hickey and Mrs Petrou were most impressive witnesses and their evidence had the fulsome sound of accuracy and truth and I can understand the jury's acceptance of their evidence. The finding of Mr Green's revolver n the prisoner's van in the back yard of his home greatly supported Mr Hickey's and Mrs Petrou's identification of the prisoner. Mr Yazbek was a most unimpressive witness and his evidence had the dull sound of concoction and lie and I can understand the jury's rejection of his evidence. I do not have any doubt that the prisoner was the armed robber who robbed Mr hickey if the night safe wallet and its contents and who held the revolver at Mr Green's head while the other robber took his revolver.

So, to the sentencing of the prisoner. He was born on 10 March 1969.[38] *Accordingly, he was aged nearly twenty five years when he committed the robberies and he is aged twenty six six months now. His background, upbringing, education and employments are referred to in the Pre-Sentence Report (Exhibit F) and they do not need to be restarted as nothing about them is relevant to his commission of these offences. He has a criminal record (Exhibit E) – putting aside the offences dealt with the Children's Court, he has been dealt with the Local Court or the District Court for a total of thirty four offences. Of these convictions, two are particularly relevant – firstly, on 17 December 1992 sentence was deferred in relation to a breaking, entering and stealing offence subject to his entering into a recognizance to be of good behaviour for a period of three years, that is until 16 December 1995, and his commission of the subject offences amounts to a breach of the recognizance and this is an aggravating feature of those offences; secondly on 18 June 1993 he was charged with, inter alia, two offences of possessing stolen goods and, after being charged, he was granted bail and his commission of the subject offences amounts to a breach "of his bail and this is another aggravating feature of the subject offences (he was dealt with for these offences on 18 March 1994). He has been in prison since 1 June 1994 serving the following sentences:*

1. Four concurrent sentences of a fixed term of two month from 1 June 1994 to 31 July 1994 for imposition on the Department of Social Security;

2. a concurrent sentence of a fixed term of six months from June 1994 to 30 November 1994 for imposition upon the Department of Social Security;

3. a cumulative sentence of a fixed term of four months from 1 December 1994 to 31 March 1995 for imposition upon the Department of Social Security;

---

[38] Actually 10 March 1970.

4. a partially concurrent/partially cumulative sentence of a fixed term of one year from 1 January 1995 to 31 December 1995 for stealing a motor vehicle (the conviction and sentence are under appeal.

5. a partially concurrent/partially cumulative sentence of a minimum term of three years from 1 January 1995 to 31 December 1997 for armed robbery (with an additional term of one year from 1 January 1998 to 31 December 1988) (the conviction and sentence are under appeal);

6. a concurrent sentence of a fixed term of one year from 11 May 1995 to 10 May 1996 for stealing;

7 a concurrent sentence of a fixed term of one year from 11 May 1995 to 10 May 1996 for using a false instrument;

A concurrent sentence of a fixed term of one year from 11 May 1995 to 10 May 1996 for using a false instrument,

Accordingly, he has been in prison from 1 June 1994 to today (1 September 1995), a period of one year three months and, irrespective of the sentences that I impose on him, he will be in prison from today until 31 December 1997 at the earliest, but subject to the decision of the Court of Criminal Appeal in relation to his appeals against the convictions and sentences for stealing the motor vehicle and the armed robbery. His criminal activities over six years from 1988 to 1994 indicate that he is something more than a "petty" criminal, that he has learnt nothing from the leniency extended to him or the punishments imposed on him, that he is not prepared to cease his criminal conduct and that he is not likely to be rehabilitated. He has been found guilty of having committed two armed robberies and he has admitted having committed two additional offences, firstly, the unlawful possession of Mr Green's revolver on 21 January 1994 (the second additional offence referred to in the Form 2 document) and, secondly, an assault upon Mr David Harris (the brother of the witness, Mr Mark Harris) on 18 April 1994 (the first additional offence referred to in

the Form 2 document). These additional offences must not be overlooked on the determination of an appropriate total sentence for the two armed robbery offences, which, I accept should be considered as related acts, or as contained in the one act, rather that as two separate and unrelated acts. Really, nothing more needs to be said as everything else (punishment, deterrence, lack of contrition) is obvious. I have determined that for the subject offences, taking into account the additional offences, the total sentences should be penal servitude for eight years. The "usual" minimum term would be six years and the "usual" additional term would be two years. However, as the prisoner has been in prison since 1 June 1994 and will be in prison to 31 December 1997, a period of three years six months, I propose, after taking into account the principle of totality, to reduce the total sentence so that the prisoner will serve a total minimum term of seven years six months from 1 June 1994 and thereafter be on parole for an additional term of to years six months for all of the offences dealt with since 1 June 1994. In the result, the total sentence that I will impose will be six years sin months with a minimum term of four years and an additional term of two years six months.

Accordingly, X Barghachoun for the offences of armed robbery, of which the jury found you guilty, you are convicted. As to the first offence, the armed robbery of Mr Hickey, I sentence you to penal servitude for a fixed term of four years to commence on 1 January 1998 and to expire on 31 December 2001. As to the second offence, the armed robbery of Mr Green, I sentence you to penal servitude for a minimum term of fur years to commence on 1 January 1998 and to expire on 31 December 2001, on which date you are to be eligible to be released on parole, although whether or not you will be released will be for the Offenders Review Board to decide, and I fix an additional term of two years six months to commence on 1 January 2002 and to expire on 30 June 2004. I order that you be subject to supervision by the

NSW Probation Service whilst you are on parole during the additional term. In sentencing you for this offence I have taken into account the additional offences referred to in the Form 2 document.[39]

44. On 23 October 1995, his application for leave to appeal against the conviction and the severity of sentence was dismissed.[40]

45. On 22 February 1996 the Applicant was convicted of assault occasioning actual bodily harm and sentenced to imprisonment for a period of four months from 22 February 1996.[41]

46. On 13 February 2001 the Applicant was advised that his visa was liable to cancellation under S 501 of the Act on character grounds. He made written representations in response on 25 May 2001.

47. By letter dated 5 July 2001, the Applicant was advised:

"On 13 February 2001, the Department of Immigration and Multicultural Affairs notified that your visa may be liable for cancellation under section 501 of the Migration Act 1958 on character grounds.

You responded in writing on 25 May 2001 and your comments were carefully considered and taken into account.

A decision has been made not to cancel your visa. It will continue to provide you with permission to enter or remain in Australia.

---

[39] Exhibit 4, G14, Attachment G, pp 180-185.
[40] Ibid, G3, Attachment A, p 78.
[41] Ibid.

Please note that cancellation of your visa may be reconsidered in the event of further or fresh information coming to notice. Your visa may also be cancelled in the event of you incurring a liability for cancellation or new or different grounds.

48. The Applicant said in relation to this warning:

> ***"I do not remember being given the warning in 2001. I don't remember signing anything to acknowledge the warning. For the 2010 (?) warning my solicitor never explained the seriousness of the matter. He made out that it was a misunderstanding. I saw him for about ½ an hour out that it was a misunderstanding. I saw him for about ½ an hour and gave him $200. Please see the attached my statement to explain further.***
>
> ***I definitely will not reoffend. Before I did not realise the seriousness of or that I could get deported. I though Permanent Residence means Permanent. I have also now addressed my drug problem and psychological condition (PTSD) which undiagnosed until 2015. I have not taken drugs for over 3 years and have had intensive treatment (VOTP) for my PTSD – I have received help. I will not reoffend again."***[42]

49. He was spoken to personally about this by an officer of the Department on 11 July 2001 at Long Bay prison.[43]

50. The Applicant says of this:

---

[42] Ibid, G16, Attachment I, p 202 and G59, Attachment AJ1, p 380.
[43] Ibid, G17, Attachment I1, p 203.

"I was shocked when I received news the department was considering a cancellation on my visa at the end of 2016. I do not remember Heidi Speed visiting me in Long Bay jail advising me of the decision not to cancel my visa."[44]

51. In his evidence the Applicant said that he did not take this warning seriously.

52. A NSW Department of Corrective Services (DCS) pre-release report dated 4 October 2001 states:

"……

SIGNIFICANT SOCIAL BACKGROUND

Attached is a copy of the Pre Sentence Report prepared by Ms H Goldrick and presented to the sentencing Court. This report outlines Mr Bargachoun's background and upbringing as well as his response to periods of supervision by the Probation and Parole Service.

During his time in gaol Mr Bargachoun has retained the support of his family, however his long term relationship with the mother of his child is no longer extant. He does however remain in contact with his son by way of visits with family members and phone calls.

[44] Ibid, G58, Attachment AJ, p 371, para 35.

It is also noted that Mr Bargachoun is not an Australian Citizen and was "of interest" the Department of Immigration and Multicultural Affairs. Contact with this Department has established that Mr Bargachoun has been issued with a warning and will be allowed to remain in Australia when released from custody.

PREVIOUS COMMUNITY SUPERVISION

The Case History indicates that whilst cooperative with his reporting responsibilities supervision by the Probation and Parole Service did not deter him from continuing illegal activity.

CORRECTIONAL CENTRE HISTORY

Correctional Centre Behaviour

During his sentence Mr Bargachoun has ***developed a reputation as a difficult prisoner for Correctional Staff. He has been identified as a leader of the Lebanese Community within the system and has been regularly moved from Centres for "good order and discipline". Mr Bargachoun acknowledges that he was seen as a leader and believes that this came from the reputation of his cousins who had preceded him to gaol leaving him with an inherited position.***

Although Mr Bargachoun's printout of offences in custody does not reflect this status he has been the subject of many orders for removal and segregation. However, there has been a more recent period that has demonstrated an effort by Mr Bargachoun to be more compliant. He was accepted into the Violence Prevention

Program and eventually has had his classification reduced to his present minimum security level.

Despite this reduction in classification Mr Bargachoun continues to have problems accepting the limitations of prison regulations. On 13 August 2001 he was found in possession of a mobile phone and was disciplined by way of being placed on boxed visits. On 28 August 2001 during an operation conducted by the Security Unit a mobile phone was located secreted in a position outside of Mr Bargachoun's cell. He was placed before a Case Management Team and recommendation for a change of gaol of classification was put forward. On 13 September 2001 a Mr Bargachoun signed a Behavioural Contract that requires him to accept all prison rules or he will face having his security classification reviewed again with the possibility of it being increased.

Education

During his sentence Mr Bargachoun has undertaken three AEVTI Modules in Reading and Writing. He has also completed a Health and Fitness Course and gained accreditation as a Sports First Aider.

Employment

For most of his sentence Mr Bargachoun has been housed in a maximum security environment which has limited his work history. Whilst at Cessnock he has been employed in the Demountable Refurbishment area.

DRUG AND ALCOHOL ASSESSMENT/TREATMENT

Whilst denying that his offences were linked in any way to drug misuse, Mr Bargachoun acknowledges that he did have a problem controlling his gambling on card machines when last at liberty*. He also acknowledges that at one time he attempted to bring steroids into Maitland Prison during a period when he was actively seeking to buildup his physique. As a result of this he attended for counselling with an Alcohol and Other Drug Worker and then completed the programs offered by this Service. During 1998 and 1999 he undertook Anger Management, Drug Education and Harm Minimisation courses.*

Mr Bargachoun has also participated in the Health Information Workshop and Peer Support Network conducted by the FIIV and Health Promotion Unit.

PSYCHOLOGICAL ASSESSMENT/TREATMENT

Mr Bargachoun has utilised this Service on an "as needed" basis. He had regular contact with a Psychologist during his stay at the Malabar Special Program Centre as outlined below.

MALABAR SPECIAL PROGRAM CENTRE

During the early part of 2001 Mr Bargachoun completed the first stage of the four (4) stage Violence Prevention Program. Initial reports indicate that he made good progress in the program area but continued to have difficulty conforming to prison discipline. He came to notice for unauthorised property and was suspected of having access to a mobile phone. A Custodial Officer submitted a report outlining a perceived threat and therefore Mr Bargachoun was removed from the program.

CHAPLAINCY

In May 2001 Mr Bargaehoun completed the Spiritual Awareness Course (stage 1). He states that he is of the Islamic Faith and that he has begun to think about the tenets of his religion and is attempting to live a lifestyle based on the teachings of the Koran.

RELEVANT ATTITUDES OF INMATE

Offence

Mr Barghachoun has been serving a variety of sentences for differing offences. Some he acknowledges full responsibility for and others he insists he was not guilty of. *However he states that he accepts that his behaviour in the period leading up to his imprisonment was leading him in the direction of gaol and he accepts that he deserved a gaol sentence.* ***In relation to the most serious of the matters, ie. the armed robberies, he insists that he was innocent of one but the evidence he presented to the Court was not accepted by the jury. In regard to the other he claims to have been unaware of the initial purpose but understood that something illegal was to take place and he took no steps to distance himself from the activity.***

When discussing this aspect of his life Mr Bargachoun advises that he was brought up in a respectable family. He related that his experiences as a youth in Lebanon and Australia left him with a feeling that authority and the law was not something to be respected but rather to be treated with some contempt. He now states that he

understands that his future is dependent on his accepting that hard work is the key to a successful life.

Conditional Liberty

Mr Bargachoun has previously been subject to such orders and has reported as required.

POST RELEASE PLANS

Accommodation

On Release Mr Barghachoun will reside with his parents and other family at the family home at 20 Winston Avenue, Guildford. An officer from the Fairfield District Office has visited the home and confirmed that Mr Barghachoun will be welcomed home by his family. The home is assessed as suitable accommodation.

Employment

Initially Mr Barghachoun will rely on benefits but believes that he will be able to secure work as a truck driver soon after release. He plans to eventually re-establish his transport business which he apparently ran with success prior to his imprisonment.

ASSESSMENT AND RECOMMENDATION

Assessment

Mr Barghachoun presents as a confident and talkative man. He acknowledges that he has a lengthy criminal record and that even though he was running an apparently successful business could not help himself when a chance to secure easy money presented itself. ***He now claims that the years in custody have taught him how much he has missed out on, especially in relation to involvement with his son and family.*** *It is accepted that Mr Barghachoun has the resourcefulness to carry out his plans and he will have the support of family to assist him.*

Whilst Mr Barghachoun appears earnest in his protestations that he has changed his attitudes, his history, both within the correctional and community setting indicates that he will have difficulty in modifying his behaviour when subject to less stringent scrutiny.

Recommendation

Release to parole is not supported at this time*. If the Board concurs with this recommendation then it is suggested that Mr Barghachoun be encouraged to demonstrate that his commitment to live by the rules should start whilst he is still in prison as a show of good faith that he will endeavour to carry this over on release to the community. A review in six months is recommended should the board refuse parole at this time. There does not appear to be any specific program that Mr Barghachoun should undertake in the interim."*[45]

[45] Ibid, pp 611-615.

53. A DCS pre-release report dated 4 October 2001 stated that the Applicant **"***has developed a reputation as a difficult prisoner*". It reports him as saying that "*years in custody has taught him how much he has missed out on, especially in relation to involvement with his son and family".* It goes on to say*:*

> ***"Whilst Mr Barghachoun appears earnest in his protestations that he has changed his attitudes, his history, both within the correctional and community setting indicates that he will have difficulty in modifying his behaviour when subject to less stringent scrutiny.***
>
> *Recommendation*
>
> *Release to parole is not supported at this time. If the Board concurs with this recommendation then it is suggested that Mr Barghachoun be encouraged to demonstrate that his commitment to live by the rules should start whilst he is still in prison as a show of good faith that he will endeavour to carry this over on release to the community. A review in six months is recommended should the board refuse parole at this time. There does not appear to be any specific program that Mr Barghachoun should undertake in the interim."*[46]

54. At its meeting on 3 December 2001 the NSW Parole Board refused parole on the basis of the Applicant's risk of reoffending and poor prison performance.[47]

55. DCS records dated 29 January 2002 state:

---

[46] Exhibit 9, pp 611-615.
[47] Ibid, p 662.

"X is professing to being a changed person. *He is intent on getting his parole. He works as many hours as he can, does some training, has his meal and then goes to his cell. Claims he has withdraw from the gaol politics. Has told the other Lebanese inmates to do their own gaol."*[48]

56. On 21 February 2002 a DCS parole report recommended release on parole.[49]

57. DCS records for 24 February 2002 state:

> *"……*
>
> *I interviewed Mrs Geogette Duggan and she informed me that her son Peter SABA had told her that* ***his life had been threaten by Inmate X BARGCHOUN after he had failed to make two knives in the demountable work shops and give them to BARGCHOUN.***
>
> *Mrs Duggan also stated that her son had informed her that he had been threaten by three inmates in 1 Wing shower block, and that these Inmates had placed a knife against her son's throat and had threaten to kill him, if $200.00 was not placed into inmate BARGCHOUN account by 27th February 2002.*
>
> *Mrs Duggan further stated that she had witnesses Inmate BARGCHOUN (identified to her by her son) approach her son during a contact visit in the minimum security visiting section on the 24th February 2002 and again threaten to kill him, if the monies were not placed into the account by the 27th February 2002*

---

[48] Ibid, p 43.
[49] Ibid, pp 617-8.

Mrs Suggan stated that she would send the monies to BARGCHOUN via a money order in the post. Mrs Duggan was advised by myself not to do that as the money order would be stopped.

I then interviewed Inmate SABA at the Deputy Governors Office and he confirmed to me that he was being stood-over and that his life was being threaten by Inmate BARGCHOUN after he had informed staff about the knives inmate BARGCHOUN was attempting to get made to arm other Lebanese inmates in his gang."[50]

58. The Applicant's conduct resulted in this recommendation being withdrawn. A DCS supplementary parole report dated 26 February 2002 states:

"……..

The report prepared by Senior Assistant Superintendent Latimer certainly raises serious concerns that Mr Bargachoun has been involved in stand over activities.

The activities outlined do not accord with Mr Bargachoun's undertaking to distance himself from untoward behaviour during the period of the Board's standover. Mr ***Bargachoun continues to involve himself in criminal activities inside gaol and therefore his ability to live a law-abiding citizen life on release must be doubted. In the initial report of 4October 2001, it was suggested that Mr Bargachoun should demonstrate by his behaviour that he was serious in his protestations that he had changed.***

---

[50] Ibid, p 371.

Given the information that has now come to light the recommendation in favour of release contained in the report of 21 February 2002 is withdrawn. It is recommended that Parole be refused."[51]

59. The recommendation against parole was maintained in a supplementary parole report dated 3 April 2002.[52]

60. At its meeting on 22 April 2002 the NSW Parole Board again refused parole on the basis that Correctional Officers indicate that the Applicant "*continues to live by his own code*,"[53]

61. At its meeting on 22 April 2002 the NSW Parole Board again refused parole on the basis of the Applicant's risk of reoffending and poor prison performance.[54]

62. A DCS pre-release report of 24 October 2002, recommended parole, subject to certain conditions:

> *"……*
>
> *Mr Barghachoun's former wife has taken out an ADVO against Mr Barghachoun., This apparently followed a threat made to her while Mr Barghachoun was still at Cessnock Correctional Centre.* ***He denies this, but does acknowledge a previous history of violence and is accepting of the Order. As a consequence, contact***

---

[51] Ibid, pp 621-622.
[52] Ibid, p 623.
[53] Ibid.
[54] Ibid, p 663.

for Mr Barghachoun with his son has been minimal, he stated an intention to seek some contact via Family Court action when released.

…….

RELEVANT ATTITUDE OF INMATE

This again remains similar to those reflected in Mr Fletcher's report. Further to this, he views his family, his partner and religious beliefs as being pivotal in his ability to lead a lawful lifestyle if released.

……

ASSESSMENT AND RECOMMENDATION

Mr Barghachoun presents as having taken heed of previous concerns that he demonstrate his "commitment to living by the rules". His performance at Bathurst excepting for the steroid offences would seem testament to his ability to abide by conditions expected of him.

The support offered to him by his family and community is seen as offering him the positive aspects required post-release conditional to his accepting their support and direction.

Release to parole is now supported conditional to:

- ***Alcohol and Other Drugs counselling.***
- ***Urinalysis.***

- ***Attendance for such anger/violence prevention programmes or counselling as directed."***[55]

63. The Applicant married Nasrien Amer in April 2003. She was 5 months pregnant.[56] She lost this baby. They have a daughter from that marriage however, "Child A". She is 17 years of age and will turn 18 on 20 April 2023. This marriage ended in about 2009 due to the Applicant's drug taking and lifestyle.[57]

64. The Applicant has a long history of drug abuse. He has been addicted to heroin, and since about 2004, methamphetamine.

65. He also has had a gambling addiction. He had line of credit against his house and claims to have spent over approximately $100,000 on this habit.[58]

66. The Applicant says that he has been diagnosed with PTSD. No expert evidence was called on this subject. There are, however, clear references to mental health issues in the material before the Tribunal.[59] The Applicant has seriously contemplated or attempted suicide.[60] Since about 2012 the Applicant has been proscribed Avanza (100 mg- later 50 mg.) and since about 2015 Seroquel (50mg).

---

[55] Ibid, pp 624-626.
[56] Ibid, p 53.
[57] See earlier discussion at para 13.
[58] Exhibit 9, p 644.
[59] Exhibit 6, pp 7-10, 12-13, 18-19, 70-74 and Exhibit 8, pp 99-101.
[60] Exhibit 6, pp 3-5, 10-11, 15, and 82-3.

67. The Applicant has been seen by various clinicians, mainly within the NSW Correctional system.[61]

68. DCS records dated 23 October 2002 state:

> *"visited family home. Mum and da and fiancé present. Accommodation suitable. Parents more than wiling to have X home. Very supportive, explained obligations of parole to parents and fiancé and explained that breach may very well result in return to prison. X has had no contact with old friends since he was incarcerated 8yrs ago and he has no plans to resume contact with them. Has a job awaiting him upon release – crane operator. No AOD issues. Parents are tired of worrying about him and want him home. Believe he has changed and 'grown up' and want them all to make a fresh start together. Discussed with fiancée difficulties X may face upon release after 8 years in jail and how this may impact on their relationship. She accepted that it may be difficult and is more than happy to maintain contact with ppo to help with any issues as they arise. Discussed possibility of parolee's program which she agreed would be a good idea. She also said they talked about r'ship counselling upon his release to help iron out some issues before they become problems. Had lengthy discussion with parents in arabic about their role in assisting son and the consequences of his failure to adapt to life on the outside- they are prepared to all they can to help. No problems in accepting visits from PPO or attending appts with son if needed."*[62]

69. At its meeting on 24 October 2002 the NSW Parole Board granted parole.[63]

---

[61] Exhibit 8, pp 7-10, 12-13, 18-19,70-74, and 99-101.
[62] Ibid, p 46.
[63] Ibid, p 664.

70. DCS records for 1 November 2002 state:

> *"client reported as directed in company of niece Rhonda. explained that I was his office and went through parole order and conditions. filed in PD form. also discussed reporting and HVs. ID organised. had a job driving trucks waiting for him, possibly to start tomorrow but X considering taking a week to catch up with mum and dad and siblings and fiancée. provided name of employer who has been to parole board in the past in support so he knows about supervision and history. discussed drug use – Ist used 3 years ago in jail to cope with death of cousin (also in custody) from an o/d. said he has only experimented with drugs and only in jail. has no intention of using. doesn't drink, not even socially. plans to remain living at home. has no idea where old friends are and doesn't want to know. wants to stay out of trouble. close to family and a small group of friends who are good support. no gambling issues – did program in jail and has no debts. niece Rhonda has contact with X ex wife and will be go between for now – ex wife has agreed to regular contact b/w X and his son. X made it clear that he wants to stay out of trouble, start work, make money and try to repair the damage he has done. knows it is up to him to comply with order and resist pressure to go back to old ways. is aware of the level of the level of support he has at home and doesn't want to let parents down again. discussed problems which may arise upon release – sleeping, coping with having choices and fewer restrictions. encouraged X to keep me posted so we can deal with them as they arise. didn't sleep well last night as bed was too big and comfortable – plus he is still excited about being out. will advise me if he chooses to start work this week."*[64]

[64] Ibid, p 46.

71. DCS records for 4 December 2002 state:

> *"client reported as directed. all going well except for access with his son. Ex wife has been asked to put in writing that she will allow access but she hasn't done it yet. X will wait for AVO to expire in 2 weeks. Kylie (ex-wife) is insisting on being present for any access X doesn't want that – will agree initially but then wants access alone so he can take his some places and do things with him. Fiance is now saying if Kylie will be there then she wants to as well. X has told her that this is about him and his son and not them. I advised that this is good. he said if worse comes to worse, he will seek legal advice and get orders from the family crt permitting him access. Other than that, all is well at home. work is good -always takes someone on the long drives – either fiance or nephews. it is easier to drive 3 hours if someone is with you and it also allows him to spend quality time with his family and fiance. swears no drug use. expl that relaxed reporting approved over Xmas."*[65]

72. DCS records for 19 December 2002 stat":

> *"The AVO from Kylie (ex-wife) expires tomorrow. Advised client to be careful when he tries to contact her in regards to seeing his son, stated that he was going to as his sister to contact her on his behalf. Is concerned about Kylie not letting him see his son and is willing to go to court to sort things out if he has to but wants to see if she will be reasonable in granting him access first. Work is still going well. Reminded to report to Faye on 06/01/03."*[66]

---

[65] Ibid, p 49.
[66] Ibid.

73. DCS records for 15 January 2003 state:

> *"parolee released after 8 years in custody. doing remarkably well, considering his early period of incarceration raised concerns about anger/standovers/lac of compliance. Employment verified and contact maintained with employer. Driving trucks with recent approval granted for interstate travel. had an AVO taken out against him by ex wife which was expired. contact with ex revealed no current issues concern and she has agreed to client having regular access with his son, which pleases him to no end. family and fiance supportive and HVs revealed no concerns. client works long hours and knows he must not revert to old habits and old associates. no D&A issues. from day one, client presented as committed to putting his past behind him and making significant changes to his life. has not missed an appt do date and shows maturity in his decision making."*[67]

74. DCS records for 15 April 2003 state:

> *"client reported – apologised for being late but very busy at work today. all going well. dad's health a bit poor. X got married 2 weeks ago and moved into his house next door to mum and dad's – 21 Winston Ave, Guilford. Ph 8720 2841. not seeing Bilal as much due to work – absolutely no trouble with ex, he has just been busy. I suggested it's more important to maintain contact as he fought so hard to get it and he wouldn't want his son thinking he didn't care – no pone contact either for 3 weeks – I expl it doesn't take much time to make a call. said I would do HV to new house soon. will call."*[68]

---

[67] Ibid, p 51.

[68] Ibid, p 53.

75. DCS records for 30 April 2003 state:

> *"client on parole after 8 yrs in jail for armed robbery. Performing extremely well on parole – employed full time permanent and employer has no problems with him. Recently married and expecting his second child. Has contact with son from first marriage. Family very supportive and proud of his progress. Wife said she was not expecting it to be this easy. No drugs, no alcohol, no gambling. HVs have been productive – he and wife recently moved into their own home next to mum and dad. – client always report and maintains contact regarding changes or problems. only associating with family – no old mates hanging around. has made a serious commitment to get his life on track and keep it that way. motivated and doing well to date. some concerns to do with his temper when he lived at home – he admitted it was to do with adjusting to living with mum and dad after 8 yrs jail. mum and dad not overly worried and understand they have to be patient while he adjusts and settles. no issues with his wife and client playing a carer's role in relation to his parents. PPS only playing a monitoring role at present – no major issues to discuss. seeking approval for bi monthly reporting in view of the above and my confidence that client will call if something goes wrong or he needs assistance."*[69]

76. DCS records for 20 November 2003 state:

> *"reported as HV difficult at the moment. no changes. doing extremely well and in his words 'have more than I deserve'. showed me a play slip for $3500 per fortnight. Loves to work and his employers are very good to him. home is good – dealt with losing the baby but it still comes up. parents overseas and doing ok, other than some*

---

[69] Ibid, p, 54.

health problems which keep propping up. talked about how well he is doing and how he respects that his job has grounded him. he said he now has one friend who has never been in trouble and his family – and that is all. he said he chose to stay on the right track and we talked about stuffing up and he said that is a choice too. he said he loves his life and has too much to lose if he jeopardises it. last saw son about 3 months ago and will take legal action to get regular contact. said Kylie is playing games and while he knows he should be in regular contact, it is hard if she isn't playing by the rules. he said rather than confront her, he has chosen to let the lawyers sort it out. will see his lawyer soon. told him not to leave it too long. he said he sends money but feels that void. seems to be going very well. no concerns about anything. told him I will do HV in December and then see him again in January."[70]

77. DCS records for 10 February 2004 state:

"X reported and had a joint interview with parolee Anthony Matar – MIN 318291 – had a long chat and the boys got along well. X told Anthony:

- *it's up to him whether he stays out or goes back in*
- *it's all down to choices we make and living with the consequences*
- *he should do everything he can to better himself – for himself, not for others*
- *he should disassociate himself from those in jail – start again, as hard as that is*
- *to be wary of 'easy money' or mates on dodgy cars*
- *to get a job and not try catch up on what he missed – Anthony said he needs time to settle down and then he will get a job – X told him he understands this but the aim is to get on track using this as an excuse for not getting a job will become his habit – as there will always be something he needs to sort out or someone he needs to support. told him to set goals and go for it*

[70] Ibid, p 57.

- *X said you never recover from being in jail if the sentence was too long. X has been out over a year and he still has nitemares and finds himself feeling odd – but it's over quickly and he gets on with life. he has responsibilities and he attends to them.*
- *X encouraged Anthony to move forward and make something of himself. get back into his spray painting trade or whatever he thinks he would like to do, day in and day out.*

Anthony interacted well with X – said he isn't doing badly and won't go back to jail as he has too much to lose. Interestingly, X said he knows he isn't going back as he isn't doing anything he shouldn't be doing and isn't associating with people he shouldn't be – that's his choice. Anthony said the same thing and then looked at me and I reminded him that using marijuana is illegal and people can do stupid things when the drink is too much. he nodded like he had heard it all. the guys chatted on and I think Anthony got something out of it – if only because X understood what he was talking about and he had been there too. I wanted Antony to see that XX history is longer and more violent and more concerning than most offenders, yet he has made some amazing changes to his thinking and lifestyle and has stuck to it. I just wanted Anthony to hear, from someone who understood, that it can be done."[71]

78. DCS records for 31 March 2004 state:

"wife home – X came later – said he had to go back to work after I left. Things going really well. X working hard. Had a chat to wife Nassrin – she is happy with him and glad he is focused on getting his life in order. She has no problems with his attitude or friends. She said he has 2 friends who call him from jail and he forever counsells them to stay on the right track b/c there is so much to be gained from being good and productive. Nassrin said at first she was concerned about these phone calls but after she eavesdropped, she felt relieved that he was helping them

[71] Ibid, p 58.

and that she didn't have to worry. He works 6 days and Sundays are usually with his family – she doesn't get a lot of time with him but she knows he makes an effort for her and sometimes they do day trips. She would rather he be working than getting into trouble.

X came home – he is fine, going to the gym and feeling better – even though he has little time for such things. working long shifts but likes that – happy with his boss who looks are him. he showed me his pay cheque - $3200 for 2 weeks. financially doing well but he has about $400 000 in loans – car and house loan. wants to pay off asap. not having access with son – kylie playing games and ***Bilal at last phone call told his dad he hates him and doesn't want to see him anymore.*** *X has not contact kylie and wont unless it is though soli – he saw soli but hasn't heard from him and will chase him up. he said that this hurt him a lot as he wants access with his child and will take whatever he gets. he said he knows she cant say anything about him as he has not don't anything wrong and has not stepped out of line and she can say what she likes. It isn't true. he asked me if I had any contact with kylie and I said no, but if I decided to call her, I would let him know."*[72]

79. DCS records for 4 May 2004 state:

"pc to ex wife Kylie – she said things that are not good – she initially didn't want X to have contact with his dad b/c he didn't want to but she convinced him and it was ok for a while – then ***he stopped calling or visiting and for a year, he had no contact with Bilal. now Bilal doesn't want to see or hear from his dad*** *– but a soli has been in touch. she has not told her son that. He hasn't been harassing her*

[72] Ibid, p 59.

but his wife is rude to her – they have had no contact for some time. her current partner is a cop. she said she is hearing things about X – he assaulted 2 relatives, he robbed a coke truck and he is into car rebirthing. He also told her that he as a daughter from a fling he had with a girl – she was born in December. she said initially X confided in her a bit – that's how she knows about the baby, but his wife doesn't know. she said she is not surprised that he cannot be faithful. she doesn't want me to discuss this with X or she will be in trouble. kylie is doing nursing part time – hard work. happy to speak to me again."[73]

80. DCS records for 11 May 2004 state:

"pc from Kylie – she is worries about her son. i told her he must be her priority and her feelings for X must stay out of this despite. she said last week at school, Bilal got into trouble and was taken to the principal – she had already told staff to watch for changes in his behaviour in view of what is going on – and ***he started crying and said he doesn't want to see his dad. the teacher and principal said they would go to court if they had to. told kylie to get some legal advice and do things properly – find out if a court can actually force him to have contact. she said she doesn't mind if they see each other – he is the father after all – but she doesn't want to force him to do something he doesn't want to do****. told Kylie this is becoming 'he said/she said' and i am not in a position to take sides – but she should keep talking to her son so he doesn't bottle things up. perhaps a school counsellor? she said that principal mentioned that."*[74]

---

[73] Ibid.

[74] Ibid, p 60.

81. DCS records for 29 June 2004 state:

> *"parole order expired 30/06/04. Current address: 21 Winston Ave, Guildford.*
> *client on parole after 8 yrs in custody for robbery offences. did very well, reported and was available for home visits. contact with family and wife indicated no concerns. X decided when he got out of jail that he would make it work this time. was employed within days of release and has not missed a day of work…his pay cheques show $3500 for two weeks. he has bought a house next door to mum and dad and helps them out as they are elderly.*
> *he has an ex and an 11 yr on sold – saw him initially after release but then got caught up in problems and stopped contacting him – XX wife fell pregnant, had complications, miscarried and she got very sick afterwards, spent a month in hospital. now that he wants access again, his son is saying no. family law solicitors involved – he is trying to sort it out before it goes to crt – all he wants is regular contact, but it seems son is resistant.*
> *ex gave info that X was involved in crim again but not enough evidence to charge him – she gave specific info and she said his relatives told her this…I checked with Intel – there are alerts about him but he has not been charged with anything…my concern is that his ex's new boyfriend is a cop who (i believe) is giving her info on X.*
> *I probed X – he said he is not doing anything but confirmed being stopped by cops and searched a few times – nothing on him. he said he knows how much he has lost over the years and he will not jeopardise that…he has many friends and relatives in and out of jail so he knows how easy it is to undo the good he has done. he seems pretty motivated and appears to work such long hours that there is no time for anything else. X is aware that the Intel have had alerts on him for years and he knows that if he is in the wrong place at the wrong time, he is back in jail…that*

is why he is staying away. seems to be involved in local mosque, working with young people to deter them…fingers crossed, he won't be back."[75]

82. DCS records for 15 September 2008 state:

> *"X presents as co-operative and stable. He seems to function at a fast past and presents with pressured speech.*
>
> *He reports he is re-experiencing some intrusive and traumatic memories of his childhood in Lebanon. It seems it is some aspects of the gaol environment that are triggering these memories. X reports he has only just started speaking about his experiences and this is cathartic for him. It seems boredom and idleness of gaol is also increasing his distress. Discussed some strategies for coping with these memories as well as some activity planning for his day. One of his aims is to get to Area 2 for employment.*
>
> *He reports a history of self-harm and suicide but nothing recent. Reports an attempted hanging at this gaol in 1994 due to being falsely accused of burning another cellmate. He reports engaging in various high risk behaviour (for example in his car, says always alone) in the community. He strongly denies any current/recent thoughts, acts, plans or threats of self-harm and/or suicide at the time of contact. He cites his 3 year old daughter as a significant protective factor and reports he has good support from family and friends.*

[75] Ibid, p 62.

Reports he was psychiatrically medicated in gaol in 1994 due to his suicide attempt and he reports to taking no psychiatric medication at this time. May consider mental health referral in the future but not at this time."[76]

83. On 8 October 2008, the Applicant was convicted of dealing with property suspected of being the proceeds of crime. He was sentenced to 16 months imprisonment commencing on 11 August 2008 with a non-parole period with conditions of 12 months subject to supervision.[77]

84. The Decision of the Fairfield Local Court relevantly states:

"HIS HONOUR: Mr Raheb certainly said everything Mr Barchachoun that could be conceivably said in your favour. However, it's my duty not only to reflect what is in your best interest but also what is in the community's best interest. And this is a very serious crime.

The facts are these, Mr Martin Badger is the owner and proprietor of Australian Trucking Services. The business is essentially a transport company dealing with movement of large loads. The witness quite often transports large shipping containers of goods to various locations on behalf of the business owners. At 2pm on Saturday 1 September, this particular chap was driving the prime mover bearing number plate so and so, I wont read that. He attended Port Botany, collected a 40 foot high cube container which was stocked with 104 unassembled Hummer motorcycles and various motorcycle parts.

---

[76] Ibid, p 65.

[77] Exhibit 4, G3, Attachment A, p 78.

Between 6.45pm and 7pm that night he parked his prime mover and attached cargo near the intersection of Fray Street an Fairfield Road, Guildford. The delivery location at the property was closed at the time so he left the truck there with the container.

At 8pm on Sunday 2 September he drove past the Foray Street and noticed that the truck and container were no longer there. The witness reported the matter to police. Everything, in short went missing. The wholesale value of the property is $1.150 per bike, totalling $119,600. The exact value of the motor cycle parts is unknown but estimated at $2,299.

On Thursday 20 September, that's 19 days later, were the at the premises at 21 Winston Street, Guildford West by virtue of a search warrant for an unrelated matter. The accused is the owner oof 21 Winston Street, Guildofrd however leases the property out. The accused states although he doesn't reside there at 21 Winston Street, he still occupies and controls the driveway and garage to that premise. He also owned the neighbourly property of 20 Winston Street, Guildofrd West with his parents. He resides in a rear granny flat and his parents occupy the main house.

Whilst police were at 21 Winston Avenue (as said), Guildford West they sighted Hummer motorcycle in a rear utility parked on the front lawn of 20 Winston Avenue, Merrylands (as said) This motorbike was incidental to one of the bikes stolen from the prime mover that I just mentioned.

In accordance with the lawful search warrant Guildford West Police searched the attached garage which is owned and occupied by the accused. This garage was adjacent to and adjoins the garage neighbouring the 20 Winston Avenue by common law. The door was open at the time of police entering, which enabled them to see

through in the rear of 20 Winston Avenue. Police sighted a further hummer motorcycle which was also identical to the model of the stolen Hummer Motorcycles.

Further inspection of the property" located at 21 Winston Avenue by virtue of a search warrant revealed a motor vehicle bearing AP 92 TY Toyota Hilux parked in the driveway of 21 Winston Avenue. This vehicle was also registered to the accused. On the rear of this tray of the vehicle was huge carboard boxes containing five Hummer motorcycles unassembled. These boxes were containing five Hummer motorcycles unassembled. These boxes were labelled with chassis and engine numbers matching the stolen bikes. The accused was stopped at the front of his premise at 20 Winston Avenue, Guildford West and spoken to by police. His details were obtained.

The facts go on to indicate that the accused was questioned in relation to the motorbikes. The accused stated that he had purchased the bikes from a guy only known as Tony who lives on a property located on the Northern Road, Narellan. He further stated he paid $88 per bike and an extra $400 for a motorbike engine. He stated he had a receipt for the purchase of the bikes but after many attempts he could not produce any receipt.

The charge sheet indicates that you were in possession or dealing with nine motorbikes, I counted, as well as motorbike parts. Self evidently those motorbikes were found stolen from the back of that truck on 1 September. As I say, you were found in possession of them on 20 September, Each one of those bikes is worth in the region of eleven hundred odd dollars and you were unable to prove you for them lawfully. As I say, the case against you was very strong. You have pleaded guilty and you are entitled to a benefit in regards to that matter.

You have been in trouble for a number of years. You certainly don't have the worst record I have seen but it's an unflattering record just the same. You first came before the courts, the juvenile courts in 1986/87 in regards to matters of dishonesty and traffic matters. In 1988 goods n custody. Warrants were issued for your arrest and eventually dealt with in 88 and some of the charges actually were dismissed. Other charges were matters in respect of which you received fines. At Parramatta Local Court in 89 you were sentenced to a term of imprisonment for stealing a car. In 1991 you were fined in regards to a traffic matter. In 1992 for break, enter and steal you were given a deferred traffic matter. In 1992 for break, enter and steal you were given a deferred sentence. In 1993 for assault you were fined. You've got other matters on your record through the years, including assault occasioning actual bodily harm, assault police, make false instrument. Imposition, a few counts of imposition, in fact, one, two, three, four counts, more than that, you've got seven counts of imposition. In 1994 you were given short Gaol terms. In 1094 however for robbery you were given a fixed term, by the looks of it, of 12 months with a minimum term of three. Anyway you received a gaol term for by the looks of it, armed robbery. In 1005 also for armed robbery you got a four year fixed term with a minimum term of two years and six months. Your record over recent times is not too bad in comparison to what it was like there originally. But this particular matter is indeed very very serious. You've also got other matters pending in respect of which you have pleaded not guilty at this stage.

You've been the subject of a pre-sentence report which spells out your domestic circumstances, your family history. And Mr Raheb of course has also complimented that in submissions. This matter is much too serious in my view to look at any viable community based options. We're not dealing with small property items. We're dealing with nine motorbikes plus motorbike parts that went missing from a

container. No too far from where you live incidentally, when you think about it, Guildford. I do recall the circumstances of this case where you even had photographed and certainly video recordings of the search warrant at the hearing prior to you actually pleading guilty to this particular charge.

You are unsuitable for a periodic detention. In my view the matters are much too serious to consider a fine or a good behaviour bond. Particularly having regards to your record.

YOU ARE CONVICTED SENTENCED TO SIXTEEN MONTHS IMPRISONMENT WITH A NON-PAROLE PERIOD OF TWELVE MONTHS.THAT WILL BE BACLDATED TO THE TIME THAT YOU CAME INTO CUSTODY ON 11 AUGUST 2008. YOUR DISCHARGE DATE WILL BE 10 AUGUST 2009 WHEN YOU CAN BE RELEASED ON FOUR MONTHS PAROLE.

THE OTHER MATTER WILL BE PUT OVER TO 21 OCTOBER TO A FIX HEARING DATE.

BAIL IS REFUSED."[78]

85. This was put to the Applicant. He said he knew the property was stolen.

86. On 18 September 2009, the Applicant was convicted of attempting to dispose of stolen property. He was sentenced to imprisonment of 12 months commencing on 11 August 2009 in concluding on 10 August 2010 with a non-parole period of nine months.[79]

---

[78] Ibid, G12, Attachment E, pp 172-174.

[79] Ibid, G3, Attachment A, p 78.

87. DCS records for 23 September 2009 state:

> *"Referred by Area 1 psychologist. X presented as calm, slightly anxious, clear in his thinking, cooperative. He states he is taking Avanza for depression but still does not eat or sleep well; has notified clinic for dosage review. He reports that he attempted to hang himself in prison about 2 months ago; placed on MNF. He states he now considers this to have been a foolish act; that he would ask for help if her ever felt the same. He strongly denies any current SSH ideation. However, I note that there are OIMS notes indicating he attempted to hang himself while in prison in 1994. He states he has strong family support as well as visits; attends the call to prayers on Friday; has completed drug awareness program and is starting the Get Smart program. He appears sincere in his decision to address his drug problems, however he did admit to using in prison. I also note that he was exposed to war related trauma in Lebanon and I have recommenced to Iman that he seek further counselling on that issue. At present I consider X to be a low risk of SSH and will arrange for a follow up in two weeks. He requested to see me but I advised that might not be possible but would try."*[80]

88. On 19 January 2010, the sentence imposed on 18 September was varied to a 12 month suspended sentence and the entering into a bond.[81]

89. The decision of the NSW District Court relevantly states:

> *"HIS HONOUR: X Barghachoun appeals against the severity of a sentence imposed upon him at the Liverpool Local Court on 18 September 2009. For ease I*

---

[80] Exhibit 9, p 78.

[81] Exhibit 4, G3, Attachment A, p 78.

shall simply describe the offences of which he was convicted as that of receiving. It was contrary to subs (1) of s 188 of the ***Crimes Act****. The maximum penalty that was available to Her Honour was two years imprisonment. On indictment of course it is an offence which attracts a ten-year maximum penalty.* ***He was sentenced to a non-parole period of nine months and a total sentence of twelve months which sentence was to commence on 11 August 2009.*** *He had been in custody since August 2008 and the sentence that was imposed upon him in relation to the matter that is before me commenced at the expiration of the non-parole period imposed for another offence. It should be notes that the offence was of a like nature to this and played some role in the reasons of her Honour when imposing the sentenced which is now under appeal.*

The appellant has a chequered history. He is not forty. He is married, he has two children, one aged sixteen and a child aged four and a half. He has on his record offences of a very serious nature; the last of which involved a significant custodial sentence. He was released to parole in relation to it in 2002 and between then and September 2007 it was clear that he was living a law-abiding life. True enough for two of those years he was on parole which may have been inducement to maintain te straight and narrow but in any event he clearly has been a very hard worker and has got himself appropriate qualifications to ear goof money whilst working, particularly as a crane operator. He has fork lift tickets, he has got a dogman's ticket, a rigger's ticket and clearly from the material before me he is a valued employee. I have before me a letter from Mr Gaucci of Stephenson's Cranes who indicates that there will be work available to him on his release from gaol. I have other material that was before the Magistrate which indicates that subsequent to his release from the prison in 2002 he was a diligent worker which is material that I accept.

He gave evidence before me which indicates that at the time that he committed this crime and in fact at the time that he committed the earlier crime for which he has also been in prison and served a sentence, he was under enormous financial pressure. Without going into the unhappy details, it would appear that one of his brothers took advantage of his ageing parents and took a mortgage over his parent's home, for whose benefit I am not quite sure, but it would appear to his brother's benefit. The appellant is the youngest member of a fairly large family. In view of the obligations of trying to repay enormous debts he was working fifteen to sixteen hours a day six to seven days a week, trying to finance those repayments and even though he was earning very good money those efforts proved insufficient to be able to save at least one of the properties which was the subject of a mortgage.

He frankly tells me that at the time he was probably using amphetamines to stay awake to be able to do the work that he was doing, I suspect that it was a crushing burden for him. Whilst the offers some explanation as to why he committed this particular crime and in fact the crime for which he has also served a sentence, It does not represent an excuse and he does not offer it as an excuse. He fully accepts his moral culpability in relation to this matter and I accept that his acceptance of his responsibility and his remorse for them is genuine. I also suspect that he is disappointed in himself for committing these crimes at all. To an extent they seem to be opportunistic in the circumstances in which he found himself, albeit that it involved a degree if organisation to effect the crimes. Nonetheless having read the material he does not appear to have the prime motivator behind what seems to have been a fairly well organised racket of stealing from freight forwarders and the freighting companies. He seems to have been caught in the middle of it. Albeit that his role may have been worse or more serious, the evidence would not suggest that

I could conclude that beyond a reasonable doubt, nor could anybody else for that matter.

He has now been in gaol solely in relation to this offence since 11 August 2009, that is just a bit over four months. I also bear in mind in considering this appeal the fate of his co-offenders, From the material that I have read it is hard to distinguish their relative culpability from his culpability. One received a s 9 bond and the other was fined. It would appear that there is a significant inconsistency amongst the sentenced that were imposed for those who participated in this offence. It should be noted however that at the time he committed this offence he was on conditional livery, namely, bail, which is a serious aggravating feature of this crime and he also has, as I have noted previously, a substantial criminal history. Again, I am prepared to conclude that from the time of his released from prison in 2002 he has made decent endeavours to live the life of a law abiding citizen within the community, accepting his responsibility as a father and family man.

What is to be done? I accept in large part what he told me in his evidence, that he accepts not only the stupidity but the criminality of his conduct, but he explains to me the context in which it occurred and I accept what he has to say to me. It seems to me having regard to the sentences that were imposed on his co-offenders, that there is significant disproportions between the sentences imposed upon him and the sentences imposed upon them. I gave a Parker warning in the course of submissions on the basis that the course I propose has the potential at least for a more severe sentence in terms of outcome for this man than that which was imposed by the Magistrate, ***in that what I propose to do is to send him to gaol for twelve months to date from today but o suspend it upon him entering into a bond pursuant to s 12. That in effect makes him his own gaoler but if he***

does breach the bond the sentence that he will confront will, in effect, be more severe than the sentence that was imposed by the Magistrate because the four months and elven days or o that he has served in custody in relation to this offence so far will not count against any sentence should he breach the bond*. Through his counsel he has indicated that he still wishes to pursue this appeal that warning having been given and accordingly I propose to vary the sentence as I have indicated.*

Stand up lease sir. In relation to your appeal it is dismissed. ***I vary the sentence though to be one of twelve months imprisonment. That sentence is to commence today 19 January 2010 and to expire on 18 January 2011. I suspend the sentence to pursuant to s 12 of the Crimes (Sentencing Procedure) Act upon you entering into a bond in the statutory terms for a period of twelve months. He is subject to the supervision of the New South Wales Probation and Parole Service.*** *To give effect to that conditions he is to report to the officer in charge of the Probation and Parole Service at Fairfield before 4pm on Friday 22 January 2010.*

Take a seat sir. Can I tell you this, if you breach this bond you are going to gaol. The five months that you have served in gaol so far does not count, right, this is start again. So if you breach the bond on the last day of the bond, In other words, if you breach the bond 17 January 2011 you are going to gaol and you will go to gaol for up to twelve months, you understand that? It is tour go. If what you told me on your evidence is fair dinkum, you will be right. If you are not fair dinkum bad luck, you miss we hot, simple as that, understand that?

APPELLANT: I appreciate the opportunity your Honour.

HIS HONOUR: Well you go. You will need to be taken back into custody for the time being because the officers have to undertake some administrative detail."[82]

90. DCS records for 15 February 2010 state:

"Offender reported as directed, accompanied by his niece. Commence completing Offender Intake Data Form to obtain information relating to his employment, relationships, mental health and drug and alcohol. Offender acknowledged and signed Release of Information.

EMPLOYMENT: The offender undertook to provide pay slips to verify employment at next contact. He informed that he is sub contracting to Steven Gouchie, BK Constructions and owns a business called IBN Cranes – Metal Fabrication. At the moment, he is reportedly working at his parents' property. Reported that he is a crane driver by trade.

RELATIONSHIPS: Described himself as single. Noted that the offender has two children Bilal GUNNS (16) and Marian BARGACHOUN (4.5) from separated union. Both children are reportedly in the care of their mothers.

DRUG AND ALCOHOL: The offender informed that he "relapsed" whilst in custody and as a result participated in the Drug Awareness and SMART programs. Given his completion of these programs, the offender does not consider that further intervention is warranted. Perusal of Pre Sentence Report dated 08.10.08 revealed that the offender was abusing methamphetamines for 18 months prior to the offence.

---

[82] Ibid, G11, Attachment D, pp 167-171.

MENTAL HEALTH: Perusal of case notes indicated that the offender was prescribed anti depressant medication during his recent reman period. The offender stated that he was experiencing pressing circumstances at the time. He reportedly ceased the medication 2 months prior to his release. He denied being on any mental health treatment/medication."[83]

91. DCS records for 28 April 2010 state:

"Offender reported as directed. With reference to previous case notes, the offender denied that it was his partner who was having a baby. He described her as a "friend" and stated that it is not his child. He revealed that his father is in hospital due to illness, which eh reported is having a profound negative impact on him.

- Case management interventions were discussed i.e AOD assessment / urinalysis. The offender claims that he is abstinent from illicit substances and is avoiding negative associates. A home visit was scheduled for next contact to fulfil LSIR and CP. Photo was taken for purposes of urinalysis.

- Offender continues to be self employed and sub contracting. He was direction to provide verification of his employment at next appointment.

- The offender revealed that his former partner Nasiren Amer is restricting him from having contact with his daughter. When questioned, the offender stated that and ADVO has been previously placed against him to protect his former partner. The offender asked about how to go about negotiating with his former partner re contact with his daughter. He was advised to consult with his solicitor and the Family Law Court."[84]

---

[83] Exhibit 9, p 83.

[84] Ibid, p 85.

92. On 21 May 2010, the Applicant was again advised that his visa may be cancelled on character grounds. After consideration he was issued with another warning in these terms:

> *"On 21 May 2010 the Department of Immigration and Citizenship notified you that the visa which authorises your continued stay in Australia may be liable for cancellation under section 501 of the Migration Act 1958 on character grounds.*
>
> *After taking into account all relevant considerations, a delegate of the Minister has made a decision not to cancel your visa on character grounds on this occasion. Your current Class BF transitional (permanent) visa will continue to provide you with permission to remain in and re-enter Australia. However the delegate decided that you are to be given the following formal warning.*
>
> ***Please note that visa cancellation may be reconsidered if you commit further offences or otherwise breach the character test in future. Disregard if this warning will weight heavily against you if your case is reconsidered.***
>
> *Some Australian government forms (including the Incoming Passenger Card completed when entering Australia) contain questions about criminal convictions and outstanding charges. It is important that you answer these correctly, declaring all criminal convictions and outstanding charges, as failure to do so would breach the law and could have serious consequences, including:*
>
> - *refusal of entry to Australia;*
> - *refusal of citizenship;*
> - *cancellation of your visa;*
> - *removal from Australia, and*
> - *criminal prosecution.*

I, X Barghachoun acknowledge that I have received the ***Notice of decision not to cancel visa under subsection 501 (2) of the Migration Act 1958.*** *I understand that I can again be considered for refusal or cancellation of any visa granted to me if further information of relevance comes to the attention of the Department at any time in the future and that if this happens, my past conduct and previous relevant information can also be considered."*[85]

93. The Applicant says of this warning:

"In relation to the 2010 warning, I attended the office of my solicitor John B Hajje for approximately half an hour. He told me "you won't be deported" and made it out like it all a misunderstanding. He never really told me about how serious it was. To me permanent means permanent. I didn't understand the difference between citizen and permanent resident. I gave him $2000 and I did no really hear from him much after that. I do not recall signing the notice of decision not to cancel my visa.

This time is the only time that I've really realise how serious this matter is, and that I can get deported. I realise that this is my last chance. I can't go back to Lebanon. I will kill myself before I go back there."[86]

94. I note that the Applicant was represented by lawyers at this time and that he made extensive representations through them. He signed an acknowledgement of notice under s501 on 31 August 2010.[87]

---

[85] Exhibit 4, G18, Attachment J, pp 205-6.
[86] Ibid, G58, Attachment AJ, p 371, paras 36-37.
[87] Ibid, G68, Attachment AM, pp 601-605 and G69. Attachment AM1, p 606.

95. DCS records of 9 June 2010 state:

> *"Offender is subject to a Sec 12 GBB for the offence 'Attempt/ Dispose property – theft' for a period of 12 months. The offender has an extensive criminal history and it would appear that although he has been predominantly employed in the community, he continues to offence / engage in criminal behaviour / activity. It has been confirmed that the offender is affiliated with Notorious OMCG via Intel Rpt 0830.10, hence referral to Community Compliance Group (CCG). Offender has little insight / acknowledgement of his substance abuse issues. Given recent urinalysis result, offender is to be directed to engage in AOD assessment / counselling. Although offender's self-employment / sub contracting is positive, it does not appear to deter him from engaging in anti social behaviour."*[88]

96. The Applicant denied any association with those groups but stated that he had previous contact in early 2010 with people who were subsequently called members.[89]

97. On 31 March 2012, IAT staff conducted a search on one of the Applicant's visitor's, Ms Aislen Brewitt, after there was information that suggested she may have been organised to traffic contraband into the Bathurst Correctional Complex. A NSW Corrective Services report states:

> *"……*
>
> *During a search of her handbag a plastic deal bag containing what appears to be crystal residue was located/ I formally cautioned BREWITT and questioned her in*

[88] Exhibit 9, p 88.
[89] Ibid, p 117.

relation to the bag. BREWITT stated that the bag contained "crystal meth" that she had used herself.

During further questioning and search of her vehicle, BREWITT stated that she was a friend of BARGHACHOUN's and admitted to having received $1000 in a bank transfer from BARGHACHOUN. BREWITT was unable to give an explanation as to why she had received this cash.

Bathurst Police attended the centre and conducted further searches. Nothing else was located during these searches.

As per GM Mr Fittler the visit was denied and BREWITT was directed to leave the Gaol grounds. The above incident was recorded via video camera and logged in the IAT Office."[90]

98. On 13 December 2012, the Applicant was convicted of multiple offences associated with an armed robbery. He was sentenced to 8 years and six months imprisonment commencing on 20 August 2013, to conclude on 19 February 2022, with a non-parole period of five years and six months.

99. The decision of the NSW District Court relevantly states:

"……

Barghachoun and Riley were arrested on 20 August 2011. They have been in custody since that date. When the offences were committed, each was on bail. Barghachoun is yet to be tried for the matter which he was on bail. The matters for

---

[90] Ibid, p 414.

which Riley was on bail for were later withdrawn. The sentences imposed upon Barghachoun and Riley should commence on 20 August 2011.

At this point I should acknowledge that the injury suffered by the victim of the truck robbery was a very serious injury. He continues to experience a high level of emotional trauma associated with the offences. Prior to August 2011, he enjoyed his jo. In June 2012, he terminated his employment because it placed him under too much stress. He continues to experience a high level of anxiety and has difficulty finding employment in any aspect of his life. Among other things, he is unable to enjoy the former pleasure of spending time with his children and grandchildren. In the witness box, the victim appeared to be extremely anxious. He was visibly shaking.

The facts of the offences are that, at about 9pm on 19 August 2011, an unmarked Pantech truck left Bankstown with a valuable cargo including mobile telephone handsets and foreign currency. The truck was to drive north along the Pacific Highway to Queensland.

Offences 1 and 2: At about 9:05pm on 19 August, Hussein and Barghachoun entered a service station at Silverwater for the purposes of stealing a vehicle for use in the intended robbery of the truck. They wore hoodie tops that partially concealed their faces. Hussein wore a black and white scarf across this face. He approached the driver of the airport shuttle bus that was located at the petrol pumps. He asked for the keys to the bus. The driver refused and ran into the office of the petrol station. Hussein and Barghachoun then approached the driver of a BMW. Barghachoun asked for the keys to that vehicle. The driver made an excuse and did not provide the keys. Hussein and Barghachoun ran from the service station. Manly had been

waiting nearby in his dark blue Subaru WRX vehicle. Hussein and Barghachoun entered Manly's vehicle.

……

Offence 5: On the northern side of Sydney, possibly in the Pennant Hills area, Riley was picked up. Initially, he may have been in the Many's vehicle. His backpack was later found in that vehicle. During the journey, possibly just south of Bulahdelah where two vehicles were observed by the highway, Riley entered the stolen vehicle. The jury found that, at a time when he had an opportunity to exit the vehicle., Riley knew the vehicle had been stolen but voluntarily remained as a passenger in the vehicle.

Offence 4: At a highway service station, Hussein and Barghachoun, the occupants of the stolen vehicle, stole number plates from a parked vehicle and attached them to the stolen Mazda for the purpose of disguising the vehicle.

Offence 6 and 7: At about 11:30pm, in the area of roadworks just north of Bulahdelah, the stolen Mazda overtook the Pantech truck, blocked its path, and forced the truck drover to stop the vehicle. Hussein, Barghachoun and Riley were in the stolen Mazda. Hussein exited the stolen Mazda armed with the Browning pistol. He fired a shot at the truck windscreen, striking the passenger side of the windscreen. Hussein walked to the drivers door of the truck brandishing a firearm and indicated that the driver should leave the vehicle. The drover got out of the vehicle. When he began to walk towards the rear of the truck, Hussein fired a shot at the ground and directed the driver to the side of the road near the front of the truck. He indicated that the driver should kneel on the ground. Hussein pushed the firearm into the driver's back and directed him to remain in a kneeling position.

Barghachoun and Riley entered the rear cargo area of the truck. Manly was at least waiting in the vicinity for the purposes of assisting if required.

Offence 8: On two occasions when other motorists stopped their vehicles behind the truck, Hussein fired the pistol at the ground indicating that they should leave.

Offence 10: Barghachoun and Riley drove the Pantech truck north up the highway for a short distance. They then turned off the Pacific Highway and drove towards a waste depot. Inadvertently, they drove the truck into a roadside culvert. Forced into abandon the truck, they walked a considerable distance through bushland south towards Bulahdelah. On the northern side of Bulahdelah, they came to a sawmill. They stole a bus belonging to the sawmill, which they drove north east to the Forster area. At about 3am on 20 August, police arrested them. When he was taken into police custody, Barghachoun appeared to be withdrawing from the heroin use.

Offence 9: After the truck robbery, Hussein and Manly returned to the town of Bulahdelah. A about midnight, one of them set fire to the Mazda vehicle. It was destroyed. Hussein and Manly entered Manly's vehicle and drove around Bulahdelah for some time, hoping to rendezvous with Barghachoun and Riley. Eventually, they left the Bulahdelah area.

Barghachoun

The offender was forty-two years old at the date of the offences. He has a long criminal history including offences of armed robbery in 1994. The cumulative effect of the sentences imposed for those offences was that Barghachoun was in prison for seven years from January 1995 to January 2002, after which he served an additional term of two years and six months in the community. There was a break of

offending behaviour until 2007, whether the offences for deal with property suspected proceeds of crime, he received a sixteen month sentence with a twelve month non-parole period from 11 August 2008 to 10 August 2009. For an offence of attempt to dispose of property, he received a twelve month suspended sentence from 19 January 2010. During period of incarceration, the offender committed a number of prison offences including offences relate to illicit drug use.

Counsel for Barghachoun submitted that there were reasonable prospects of rehabilitation in that the offender had informed his niece that he wanted to address his drug abuse problem. In the face of an apparently entrenched drug addition that seemingly continued during periods of incarceration, a stated intention to reform is no evidence that there are reasonable prospects of doing so. On the other hand, the lack of criminal activity during the period of 2002 to 2007 is some evidence that the offender is capable of remaining crime-free for an extended period.

All offences committed by Barghachoun prior to the truck robbery were part of a plan o rob the truck. They were not committed impulsively. Barghachoun was very much involved in the planning. From the outset, he was a participant. He made many telephone calls to other participants. Offence 1 and 2 were committed in company. For that reason, they were potentially more frightening from the victim's perspective. As it transpired, neither victim was sufficiently intimidated to surrender his car keys. Barghachoun and Hussein were disguised by the hoodies that they wore. In relation to offence 3, Barghachoun was not the principal offender. He is guilty because he was part of the joint criminal enterprise. Although, he was involved in planning the robbery, it was probably very last minute planning necessitated by the failure of offences 1 and 2. He was present at the scene of the robbery, inferentially a matter of metres away from Hussein. He was available to assist Hussein.

Offence 4 was a relatively minor matter.

Offence 6 was an objectively serious armed robbery. It was planned. The Pantech truck was unmarked and carried a valuable cargo. The offenders must have been aware of the cargo and targeted the truck because of the cargo that it was carrying. The offenders were prepared to drive a considerable distance up the Pacific Highway to rob the particular truck. Some hours before the robbery, they attempted to steal a vehicle for use in the robbery. As they travelled up the highway, they maintained telephone contact. The offence was committed in company. The truck driver was aware that Hussein was accompanied by at least two other people.

The prosecutor relies on s 21A(2)(g) and submits that the emotional harm to the driver was significantly worse than one would expect from an offence of this nature. I accept that the driver suffered very serious emotional harm However, the offence was very serious. In the absence of exert evidence, I am not satisfied beyond reasonable doubt that the emotional harm that the driver suffered was significantly worse than one would ordinarily expect for an offence of this nature.

Other relevant aggravative features under s 21A(2) are the fact that the offender a on conditional liberty (bail) at the time he committed all the offences. He has a record of previous convictions for offences of the same nature, i.e. serious offences of dishonesty.

Offence 10 was unplanned. Presumably the offenders did not intend to lodge the truck in the culvert. Offence 10 was an opportunistic offence. Having walked a considerable distance through bushland, the offences came upon the sawmill bus.

……

Mr Barghachoun, you are convicted of the offences that I have numbered 1,2,3,4,6 and 10. Starting with offence 10, the theft of the Mazda bus, you are sentenced to a fixed term of imprisonment of two years and six months from 20 August 2011 to 19 February 2014. For offences 1 and 2, I impose concurrent sentences of the same length. For each offence you are sentenced to a fixed term of imprisonment of two years from 20 August 2021 to 19 August 2014. In relation to offence 3, the armed robbery of Mr Bakhri, you are sentenced to a fixed term of imprisonment of six years from 20 August 2012 to 19 August 2018. In relation to offence 4, the theft of the number plates, you are sentenced to 12 months imprisonment from 20 August 2011 to 19 August 2013. In relation to the principal matter, the armed robbery of the truck driver, you are sentenced to a non-parole period of five and a half years from 20 August 2013 to 19 February 2019. I impose a balance of term of three years, making a total sentence of eight and a half years.

The effective sentence that I have imposed is a sentence of ten and a half years with a seven and a half year non-parole period. You will be eligible for release to parole on 19 February 2019. In imposing this sentence I have taken into account the special circumstances of your need for lengthy period of supervision upon your release to integrate into the community, address institutionalisation and address long standing substance abuse issue."[91]

100. The Applicant admitted that admitted that he was involved in planning the August 2011 robbery. He said in evidence, by way of an explanation or an excuse, that he thought that it was an "*inside job*". He admitted that it was done for his financial benefit. He said that he was "*offered $20,000 to do an inside job."*

[91] Exhibit 4, G10, Attachment C, pp 156-165, paras 3-6, 8-22 and 29-30.

101. This conviction and sentence was the subject of an appeal. On 17 April 2014 the sentence was reduced to 6 years commencing on 20 August 2013 including on 19 August 2019 with a non-parole period of three years and six months concluding on 19 February 2017.[92]

102. The relevant passages in the Court of Criminal Appeal's decision include:

> *"……*
>
> *The grounds of appeal advanced by Barghachoun as are follows:*
>
> *(a) As to the sentence imposed for counts 1 and 2:*
>
> *(i) the sentencing judge gave grater weight to the objective criminality than was warranted in the circumstances; and*
>
> *(ii) the sentence imposed was disparate to that imposed upon Hussein.*
>
> *(b) As to the sentence imposed for counts 3:*
>
> *(i) the sentence imposed failed to reflect the lesser roleplayed by Barghachoun in the commission of the offence; and*
>
> *(ii) the sentencing judge made findings of fact which were adverse to Barghachoun, which were not open.*
>
> *(c) As to the sentence imposed on count 6:*

[92] Ibid, G3, Attachment A, pp 76-77 and G9, Attachment B, p 103.

(i) the sentence was imposed failed to the lesser roleplayed by Barghachoun in the commission of the offence;

(ii) the sentence imposed failed to reflect that the role played by Barghachoun in the commission of the offence was substantially similar to that played by Riley; and

(iii) the sentencing judge made findings of fact which were adverse to Barghachoun which were not open.

(d) As to the overall sentence:

(i) the sentencing judge failed to give proper weight to the principle of totality.

In respect of the sentence imposed for count 6, senior counsel abandoned an assertion which was originally passed that the sentencing judge had erred by double counting the element of planning.

The findings of the sentencing judge

Her Honour reviewed (commencing at ROS [6]) the facts of the offending before turning to consider (commencing at ROS [15]) Barghachoun's background. Having noted his criminal history, her Honour rejected (at ROS [16]) a submission that there was a causal connection between Barghachoun's drug addiction and his offending, before finding (at ROS [17]) that there was some evidence that he was "capable of remaining crime-free for an extended period".

Her Honour then considered the nature of the offending. She found (at ROS [18]) that all offences committed by Barghachoun prior to the robbery of Mr Evans' truck

were part of an overall plan and were not committed impulsively. She found that Barghachoun was "very much involved in the planning" and that he was a participant from the outset.

Her Honour then considered the individual offences and made the following findings:

Counts 1 and 2

- *the offending was committed in company with Hussein and for that reason was potentially more frightening from the perspective of the victims (at ROS [19]).*

Count 3

- *Barghachoun was not the principal offender and was guilty because he was part of a joint criminal enterprise (at ROS [20]);*
- *although he was involved in the planning of the robbery it was "probably very last minute planning" necessitated by the "failure" of the offending in counts 1 and 2 (at ROS [20]);*
- *he was present at the scene of the robbery, inferentially a matter of metres away from Hussein, and was available to assist Hussein (at ROS [20]).*

Count 4

- *The offending was "a relatively minor matter" (at ROS [21]).*

Count 6

- *the offending was an objectively serious armed robbery which was planned (at ROS [22]);*
- *those involved were prepared to drive a considerable distance to rob the truck (at ROS [22]);*

- *the offence was committed in company (at ROS [22]);*
- *although Mr Evans suffered very serious emotional harm, the evidence did not establish beyond reasonable doubt that such emotional harm was significantly worse than would ordinarily be expected to stem from an offence of this nature (at ROS [23]);*
- *other relevant aggravating features included the fact that the offence was committed in company, that Barghachoun was on bail at the time and that he had a history of serious offences of dishonesty (at ROS [24]);*

Count 10

- *The offending was unplanned and opportunistic (at ROS [25]).*

Her Honour concluded (at ROS [26]) that in respect of the offending in counts 3 and 6 it was necessary to consider the guideline judgment in Henry. She found (at ROS [26]) that the offending in count 3 was more serious than was the case in Henry. She also found (at ROS [26]) that the offending in count 6 was "much more serious" than that in Henry. She then imposed (at ROS [27]) the sentences I have previously outlined.

The submissions on behalf of Barghachoun

Senior counsel argued that the criminality exhibited by Barghachoun in the offending the subject of 1 and 2 was less than that of Hussein. This, it was submitted, was demonstrated by (inter alia) the following:

> *(i) although both wore hoods, Barghachoun did not cover his face with a scarf;*

(ii) *the acts of Barghachoun were limited to attending the service station, demanding the keys from Mr So, and being present as a support for Hussein.*

Senior counsel also pointed, in respect of counts 1 and 2, to the fact that (inter alia) no person was placed in danger by any act of Barghachoun and that the offences were of limited duration. Whilst acknowledging that the plan to use the stolen vehicle to drive to a crime scene necessarily elevated the level of criminality, senior counsel submitted that the sentence imposed was indicative of greater weight having been given to the objective criminality than was warranted. He also submitted that even allowing for the fact that Hussein's subjective case was stronger, the differences in objective criminality favoured Barghachoun and that there was an undue disparity in the sentences which were ultimately imposed.

As to count 3, senior counsel submitted that Barghachoun's criminality was far less than that of Hussein, but that this was not reflected in the sentences which were imposed. It was further submitted that the offending should be viewed as opportunistic and impromptu. Senior counsel further submitted that Barghachoun's role was limited to one of being available to assist Hussein.

As to count 6, senior counsel pointed to the fact that by reference to sentencing statistics, the sentence imposed was at the high end of the range. He submitted that Barghachoun's role was substantially less than that of Hussein. It should be noted that senior counsel also submitted that Barghachoun's criminality in respect of count 6 should be regarded as being less than that of Hussein because of Hussein's possession and use of a firearm. In light of the conclusions I have reached in relation to counts 7 and 8 against Hussein, that submission is rendered nugatory.

Finally, senior counsel submitted that the overall sentence imposed failed to give proper weight to the principle of totality, and was manifestly excessive when consideration was given to Barghachoun's criminality.

The submissions on behalf of the Crown

The Crown submitted that there was little to distinguish the criminality of Barghachoun and Hussein with respect to the offending in counts 1 and 2. It was submitted that the differences in their methods of disguise were insignificant and that the more important consideration was that they had obviously agreed to steal a motor vehicle. It was submitted that in this respect, their criminality did not materially differ. The Crown also relied upon the CCTV footage of the offending in counts 1 and 2 which, it was submitted, supported the conclusion that Hussein was carrying a gun.

In terms of Barghachoun's criminality in the offending in count 3, the Crown expressly acknowledged in written submissions (at [67]) that "the seriousness of (Hussein's) involvement in count 3 was greater than (Barghachoun's)". However, the Crown submitted that this was properly reflected in the sentences imposed, which took into account the various subjective circumstances of the respective offenders.

In respect of count 6, the Crown submitted that any reliance upon sentencing statistics was of limited utility. It was submitted that no error arose from her Honour's findings as to the level of planning and that this Court should be "cautious" before reaching a conclusion that Barghachoun had any justifiable sense of grievance arising from the sentence imposed on him when compared with that of Hussein.

In terms of the overall sentence imposed, the Crown submitted that the sentencing judge had a broad discretion when determining issues of concurrency and accumulation, and that the overriding principle was that the aggregate sentence should fairly and justly reflect the total criminality of an offender's conduct. It was submitted that the sentence imposed achieved that objective and that it disclosed no error.

Consideration and conclusion

I am not able to accept the entirety of the submissions which were advanced by senior counsel in support of Barghachoun's position. In particular, I am not able to draw any real distinction between his offending and that of Hussein in respect of counts 1 and 2. The proposition that a distinction arises from a difference in their form of disguise relies upon a circumstance which, in terms of the overall offending, is of limited significance.

Similarly, I am not able to accept that reference to sentencing statistics demonstrates that the sentencing judge erred. This Court has said, on numerous occasions, that such statistics are of limited utility (see for example R v Nikolovska [2010] NSWCCA 153 at [117] per Kirby J). Consistency in sentencing is not demonstrated by, and does not require, numerical equivalence (see Hili v The Queen; Jones v The Queen [2010] HCA 45; (2010) 242 CLR 520 at [48]-[49]; 535; Barbaro v The Queen; Zirilli v The Queen [2014] HCA 2 at [40]).

However, the central proposition advanced by senior counsel was that when the offending was viewed both individually and overall, Barghachoun's criminality was less than that of Hussein and that this was not properly reflected in the overall sentences which were ultimately imposed. Whilst I am not able, for the reasons

advanced, to distinguish between their criminality in respect of counts 1 and 2, there is merit in the submission advanced by senior counsel that when the sentences are viewed overall, the differences in criminality in some of the other offending has not been properly reflected.

In terms of count 3, Barghachoun's role was generally supportive of that of Hussein. The fact that Hussein's role was greater was acknowledged by the Crown. Similarly, in terms of count 6, Barghachoun's role was predominantly that of driving the truck away from the scene. He was not positively identified as performing any other function.

In KR v R [2012] NSWCCA 32 Latham J (with whom Whealy JA and Harrison J agreed) observed (commencing at [19]) that the participants in a joint criminal enterprise are equally responsible for all of the acts which were committed in the course of carrying out the enterprise, irrespective of by whom those acts were committed, and that a particular participant's level of culpability was to be assessed by reference to his or her particular conduct. Her Honour went on to observe (at [20]) that such an approach is consonant with the distinction in law between an offender's responsibility for criminal conduct and his or her culpability, before saying (at [21]):

"Criminal responsibility, and therefore liability to punishment, attaches to a person who voluntarily and intentionally performs those acts constituting the offence. 'The concurrence of will and physical act and the concurrence of intent and physical act suffices to attract criminal liability': R v O'Connor [1980] HCA 17 at [20]; 146 CLR 64 at 72 per Barwick CJ.

[22] Culpability, on the other hand, is concerned with the assessment of an offender's moral responsibility for the offence. As such, it assumes liability for the offence and focuses upon aspects of the offender's conduct and his/her subjective circumstances in order to determine the appropriate degree of punishment: R v Merritt [2004] NSWCCA 19; R v Henry and Ors. [1999] NSWCCA 111 at [254]; 46 NSWLR 346; 106 A Crim R 149".

I am satisfied that Barghachoun's criminality was less than that of Hussein in an overall sense. That was not reflected in the sentences which were imposed and I am left to conclude that error has been established, and that lesser sentences are warranted in law. However in re-sentencing, two matters must be borne firmly in mind. The first is that Hussein's subjective case was much stronger than that of Barghachoun. In particular, Hussein was not on conditional liberty at the time and did not have a record for similar offending. The second is that as a consequence of the conclusions I have reached in relation to Hussein's appeal against conviction, the overall criminality for which he is to be sentenced is lessened. However, that of Barghachoun is not. It follows that resultant differential between the respective sentences that I propose will be narrower than might otherwise have been the case.

Finally, I note that following the conclusion of the hearing an affidavit sworn by Barghachoun on 1 April 2014 was received which the Court was asked to take into account, should it come to the question of resentencing. In that affidavit, Barghachoun details various courses he has undertaken since being in custody, including those directed at addressing gambling and substance abuse. He is presently employed as a wing sweeper and enjoys the support of his family. I have taken all of these matters into account in the orders that I propose.

Finally, I note that the sentences that I propose for both Hussein and Barghachoun will give effect to the finding of special circumstances made by the sentencing judge in each case."[93]

103. Since 2013 the Applicant has completed various courses within the corrections system. These include the "Best Bet Program" and "The Getting Smart Program "(2013), "Smart Recovery" course (2014), "EQUIPS Foundation Program" (2015), the "RUSH" program (2016), the "Health Survival Tips Program" and "Violent Offenders Therapeutic Program" (2016 and 2017).[94]

104. On 15 July 2014 a correctional officer filed a Corrective Services Misconduct Report, which states:

"……

I was in the wing office when I noticed on the monitor, a string line from the rear yard of cell 202 which houses inmate known to me as BARGHACHOUN, X, MIN 165346 and into the rear yard of the cell 206 which houses inmate known to me as WOOD, Clinton min 390058. SCO MPU1 Cathie Turner and myself went out to the sterile zone behind the rear yards to investigate what was being passed. As we entered the sterile zone I saw the string line between two rear yards and a plastic bag with a blister sheet with 10 orange casules and 5 loose orange capsules in it. There was another blister sheet laying on the ground with 10 orange capsules in it. I saw BARGHACHOUN standing near the rear yard fence where the string line and

---

[93] Ibid, G9, Attachment B, pp 144-151, paras 124-126.

[94] Ibid, G21, Attachment L1, pp 210-215, G24, Attachment M, pp 237-238 and g49, Attachment AE, pp 324-344.

one piece of flooring were located. I picked up the capsules and grabbed the string line. On the end of the string line were pieces of flooring on each end. I pulled the string line and collected the line and flooring. One piece of flooring had the words "Pull it in too the envelope" written on it in black marker pen.

On the back of the blister sheet was the description name Gabapentin 400mg. SM2 Mr Taylor was informed and IAT were contacted and attended the unit.

At no time was BARGHACHOUN given permission to destroy departmental property and unlawfully deliver or receive article to or from inmate".[95]

105. On 10 August 2016 the Applicant was convicted of an offence of possession of a Sim card. He was sentenced to 2 weeks imprisonment commencing on 19 February 2017.[96]

106. The Applicant could not explain this conduct.

107. DCS records for 4 October 2016 state:

"……..

X stated since entering custody he has lost everything, his home, his parents home and all of his belongings. X stated he had purchased a house next to his parents house (which had been completely paid for) but that his brother took a loan out on his parents place and after only making several repayments the then travelled overseas to Lebanon leaving his parents and X with a substantial amount of debt. X stated he was paying off his mortgage and that of his parents but coupled

---

[95] Exhibit 9, p 455.

[96] Exhibit 4, G3, Attachment A, p 76.

with his drug use, gambling and subsequent re-offending, he returned to custody unable to help retain his parents home. X stated his house was forfeited to the bank and after a considerable legal battle to keep his parents, that too was taken by the Bank. X stated his parents were then given access to a Housing NSW property where they have remained since.

…….

X stated he has 2 children born from two separate relationships. His first child, Bilal, aged 22 years, was born from his relationship to a woman named Kylie. He stated the relationship ended due to his ongoing incarceration. That she initially waited 7 years whilst he was in custody, but that she could not wait any further. he ***has no contact with his son reflected that "I have never been in his life. I've never been the father I should have been".***

X stated he was previously married in 2003 to a woman called Nasrien. From this relationship a daughter was born - Marian - who is now aged 11 years. X stated it was a religious marriage and not legally approved via Birth, Death and Marriages.

X stated he met Nasrien whilst he was still in gaol in the year 2000 but that it was a mutual decision to separate in 2005 / 2006.

……..

X stated that ***following their separation and his incarceration, he initially was not allowed to have contact with Marian and had not spoken to her for 4 years until 12 months ago; however he has re-established contact with his daughter by way of regular phone calls. X stated his daughter believes he***

is in Germany fixing cars. He stated that a strict condition was placed on his contact with Mariam and that she was not to know that he is in custody.

……..

*X reflected "gambling was the foundation of my fuck-ups"……. **He claimed that he had a line of credit on his home, and each time he made withdrawals he wasn't aware he was drawing against his mortgage. He claimed to have overdrawn $100,000.00.** He further noted that the premises where he was doing the majority of his gambling was very close to his home. X stated he had since separated from his wife, and there was no reason for anyone to know what he was doing.*

He initially claimed he would go every now and then when he would get bored; however stated 6 months prior to his recent incarceration, it escalated and he "would spend whatever I could get my hands on". He acknowledged that he was unable to hold onto his money and that he attempted to buy assets to try and control his addiction but he was making good money - $2500-$3000 as a crane driver and had the money to spend.

…….

In regards to treatment, X claimed he attended Gamblings Anonymous / Best Bets approximately 3-4 years ago and he now realises that you never fully win and that Pokies are set up to make you fail.

……..

X stated he first tried drugs at the age of 27 years. When questioned why he waited to that age, he reflected that he was introduced to heroin by his cousin when he was in custody.

……..

X stated he was clean for 3 years, despite separating from Nasrien and it was 12 months before his incarceration that he returned to regular drug use. X attributed his financial difficulties, lack of family support that he relapsed and used heroin and ice regularly, including excessive gambling.

……

X claimed he was spending $4000-$5000 per week, more than he was making on drugs and gambling.

……

X stated he suffers from PTSD due to witnessing the war in Lebanon. He said he still has horrific memories and continued to wet the bed until the age of 15 years. He stated he continues to work with the VOTP psychs and that he bore witness to dead bodies, limbs from people. He stated the counselling via VOTP has been beneficial, although traumatic at times, and that he can "never forget it, I can't erase what I saw or what I lost. In order to move forward I need to focus on my future".

……

X accepted that his intention was do wrong regardless of whether he thought the truck driver was involved or not. "I knew it was wrong, driving a stolen truck, I didn't know it would be an armed robbery".

X attributed that drugs and gambling were factors in his offending and that he had used heroin and ice prior to his involvement.

……..

X expressed a commitment to remain compliant and law abiding upon his release. However he acknowledged that if he were to "sleep away, hide things from my family and good friends" that that would be a trigger for him. Nonetheless, X believes this time will be different because he has the support of his family and friends and he has accommodation with his family*.*
……

X has multiple gaol charges and he could not remember all of them. In relation to the phone charges, he stated that he used the phone to try and call his son and be the father he needed to be. He also stated that he was both using it for personal use (call his son) but also holding it for someone else.*"*[97]

108. DCS records for 28 November 2016 state:

"……

*The inmate reflected sadly upon the relationship shared with his son, now aged 22 years, for reasons, "**I have never been in his life. I've never been the father I should have been". Regarding his daughter, now aged 11 years, Mr Barghachoun acknowledged there was a four year period of estrangement and it was not until 2015 that he was permitted to***

[97] Exhibit 9, pp 196-199.

establish telephone contact with his daughter. Mr Barghachoun stated that his daughter believes he is employed overseas and she remains uninformed about the realities of his situation, for which he is grateful.

…….

According to Mr Barghachoun he suffers from Post-Traumatic Stress Disorder (PTSD) as a consequence from time spent in war torn Lebanon.

…….

The inmate stated that unbeknownst to him, he had a line of credit against his house and he estimated to have spent approximately $100,000 against his property on gambling alone.

…….

… Mr Barghachoun disclosed a problematic history with illicit substances. He claimed to have been introduced to heroin at the age of 27 whilst in custody.

…….

Consequently, Mr Barghachoun attributed financial difficulties, a gambling addiction and negative associations as the factors related to his subsequent relapse 12 months prior to his return to custody. Mr Barghachoun admitted to 'smoking' heroin along with methamphetamines, namely the drug 'ice'. Including his gambling and drug use, Mr Barghachoun believed to have spent up to $5000 per week on his addictions. The inmate stated he was

under the influence of heroin and ice at the time of committing the offences for which he is now incarcerated.

……

Mr Barghachoun maintained that his involvement in the offence was a direct result of his financial stressors, gambling addiction and drug use….

……..

CORRECTIONAL CENTRE HISTORY

Behaviour in custody

- *Whilst serving the current sentence, Mr Barghachoun incurred the following internal charges:21 October 2011 — Fail Prescribed Urine Test - 42 Days Off Contact Visits*

Mr Barghachoun acknowledged that he was using drugs upon entering custody.

- *18 July 2012— Intimidation —56 Days Off Buy-Ups*

Records revealed that this charge related to Mr Barghachoun being abusive towards a Correctional Officer when asked to move to the next cell.

- *24 August 2012— Smoke Non-Smoke —7 Days Off Buy-Ups*

Mr Barghachoun was found to be smoking in a non-smoking area. The Correctional

Officer issued the charge after it was alleged the inmate knew he was doing the wrong thing.

- *14 November 2012 — Assaults — 2 Days Off Cells*

Records indicate Mr Barghachoun admitted to assaulting a fellow inmate. As a consequence, the inmate was also terminated from his role as a Sweeper.

- *14 November 2012 — Possess Mobile, SIM Card, Charger — 56 Days Off Contact Visits and Phone Calls*

Information was provided to staff that Mr Barghachoun had access to a mobile phone. A search was conducted and two mobile phone chargers were found. Mr Barghachoun admitted to sharing phones with other inmates. Recently, when asked why he wanted use of a mobile phone, Mr Barghachoun claimed it was used to try and locate his son and re-establish contact.

- *17 April 2013 — Smoke Non-Smoke Area — Reprimand and Caution*

Mr Barghachoun was found to be smoking in the common area.

- *20 May 2013 — Interfere Correctional Centre Property — Reprimand and Caution*
- *30 May 2013 — Possess Mobile, SIM Card, Charger — 28 Days Off Buy-Ups*

Mr Barghachoun maintained that any further charges related to phone access was solely motivated by his desire to reconnect with his son.

- *18 December 2013— Enter Other Cells — Dismissed, No Evidence*
- *9 July 2014 — Possess Mobile, SIM Card, Charger — 84 Days Off Amenities, Buy-Ups, and Contact Visits.*
- *15 July 2014 — Unlawful Deliver / Receive Article Inmate — 42 Days Off Buy-Ups, Amenities, Contact Visits*

- *14 September 2014 — Deliver Receive Unauthorised Article From Visitor — 56 Days Off Contact Visits.*
- *17 September 2014 — Damage Destroy Property — Reprimand and Caution*
- *14 August 2015 — Possess Drug — 14 Days Off Amenities, Buy-Ups, Contact Visits, Phone Calls, Television.*

Mr Barghachoun admitted to being in possession of prescription medication that was not his and he was counseled in relation to this behaviour and referred for a Justice Health review.

- *6 December 2015 — Intimidation — 3 Days Cells*

Records revealed the inmate was verbally abusive a Justice Health staff member.

- *8 April 2016 — Possess Tobacco E-Cig / E-Cig Acc W/I CC — 7 Days Off Buy-Ups*
- *8 April 2016 — Avoid Correctional Centre Routine — 7 Days Off Buy-Ups*
- *29 May 2016 — Intimidation — 3 Days Cells*

Mr Barghachoun believes this incident relates to him disagreeing with his brother in the visits area.

As evidenced by Mr Barghachoun's institutional record, his current sentence has been characterised by episodes of oppositional and at times, non-compliant behaviour within a correctional centre routine. Between 2011 and 2014, Mr Barghachoun demonstrated repeated insolent behaviour regarding Correctional Officer directions, wing routine and general disobedience with

gaol rules. 2015 saw a positive shift within Mr Barghachoun's interactions and attitude with correctional staff; however the inmate continued to come under negative attention by way of case management plans during the course of the VOTP. Nonetheless, Mr Barghachoun appears to have complied with all restrictions issued to him during the case management plans.

…….

PROGRAMS AND SERVICES IN CUSTODY

Offence-targeted programs

BEST BET (Gambling)

Mr Barghachoun completed the Best Bet Program in October 2013: He received positive feedback regarding his overall participation and it was noted that he was completely engaged in the program material. In addition, Mr Barghachoun was "receptive to new information, open to challenge on his existing beliefs and his feedback indicated that he had a reasonable understanding of the core concepts of the program".

EQUIPS FOUNDATION:

In February 2015, Mr Barghachoun completed the EQUIPS Foundation program with

positive reviews. The inmate was noted to be an active participant who was able to

recognise problems with "impulsivity...drug use and gambling issues [that] led to his offending behaviour". Facilitators reported being impressed with Mr Barghachoun's input and his overall comprehension of complex issues regarding program content.

Violent and Offender Therapeutic Program (VOTP)

Mr Barghachoun initially received a treatment offer for VOTP in February 2015; however due to changes in intake numbers, the inmate did not enter the program until May 2015. His behaviour, to date, can be summarised as inconsistent given Mr Barghachoun has been the subject of five case plans due to the ownership of non-prescribed medication, intimidation charges, contraband, and poor behaviour in group. Following the implementation of a case plan, Mr Barghachoun appeared to recognise the severity of his behaviour, and responded appropriately for the designated period and foreseeable future until such time that a further case plan is instigated due to inappropriate behaviour.

…….

….Despite the inmate's good intentions upon release, Mr Barghachoun remained realistic regarding his risk factors and is reliant upon skills learnt during VOTP, his family and external supports to facilitate his reintegration.

…..

Alcohol and other drug

Getting SMART

Mr Barghachoun completed the Getting SMART program in December 2013. Records revealed the inmate "was proactive, he presented to understand the concepts and content of the program". In addition, the program facilitator believed Mr Barghachoun's "honest participation in Getting Smart validates a need to address his addictive and at high risks A&OD behaviours in a A&OD pathway that is more intense and supportive". It was considered suitable that once Mr Barghachoun reached the required classification, he be referred for assessment to the Intensive Drug and Alcohol Treatment Program (IDATP). The inmate was agreeable to this occurring.

SMART Recovery

Mr Barghachoun completed the four compulsory sessions of the SMART Recovery Maintenance Program on 13 March 2014.

Intensive Drug and Alcohol Treatment Program (IDATP)

In May 2014, Mr Barghachoun expressed a willingness to participate in the IDATP pending the required classification. During July 2014, VOTP and IDATP requested further Violence Risk Assessment (VRA) be completed. In October 2014, Mr Barghachoun's referral was reviewed in consultation with the Acting Senior Psychologist and IDATP and it was determined that the inmate was eligible for entry into the medium-high intensity VOTP. Given Mr Barghachoun's subsequent entry into VOTP and his offence history this was deemed the most suitable program pathway and therefore an IDATP referral was not pursued.

Psychological / Psychiatric

Upon entering custody in 2011, Mr Barghachoun was initially seen by a psychologist in August when he was identified during the screening process. It was identified that Mr Barghachoun had a previous history of self-harm and suicide attempts in custody.

During the consultation, the inmate denied any current concerns regarding self-harm or suicidal ideations. In addition, Mr Barghachoun guaranteed his own safety and was aware of the self-referral process.

In April 2012, Mr Barghachoun found himself the subject of a Risk Intervention Team (RIT) after he was found with a noose in his cell. Although Mr Barghachoun admitted to making the noose, he claimed it was a past habit from his employment as a truck driver. Despite his minimisation, Mr Barghachoun was discharged from the RIT three days later.

During a consultation with psychology staff in May 2012, Mr Barghachoun admitted that he had intended to commit suicide whilst housed at Bathurst Correctional Centre (CC) in April 2012. The inmate reported feelings of isolation and concerns over his father's health which exacerbated his already low mood. Despite these disclosures, Mr Barghachoun reported improvements in mood and he remained future focused citing family support as positive influences.

Mr Barghachoun was reviewed regularly for mental health wellbeing and while housed in segregation. However, on 6 June 2013, the inmate was the subject of serious mental health concern when he was found with a noose

tied to a cell's shower. Consequently, Mr Barghachoun was placed on a RIT until 27 June 2013.

The inmate was seen regularly until his concerns were quelled. June 2014 was the final record of psychological intervention outside of his current program participation. The inmate was advised to self-refer for future needs.

……

…the offender is suitable for a ***Tier 3 (Medium)*** *level of intervention and monitoring by Corrective Services NSW, commensurate with the assessed risk and identified criminogenic*

needs.

Level of surveillance / monitoring

If released to parole, Mr Barghachoun will be required to accept the supervision of a Community Corrections Office in accordance with CSNSW policy and guidelines.

This will include reporting as directed, undertaking counselling pertinent to his criminogenic needs, contact with service providers and significant others to monitor progress and random drug testing as required. He will be subject to the new parolee supervision level during the first eight weeks of release which will include a field contact visit each four weeks and then as per the approved case plan.

Offence-targeted programs and services

If released on parole and subject to supervision, Mr Barghachoun would benefit from participating in drug and alcohol counselling due to the lapse in relevant alcohol and other drug (AOD) intervention. Fairfield Community Corrections have the facilities for random drug testing and referral to a community agency for AOD counselling. If Mr Barghachoun shows signs of relapse then referral to a residential rehabilitation service should be considered in the community.

Pending perusal of the Final VOTP Treatment report, it is recommended that he participate in the Violent Offenders Therapeutic Program (VOTP) community maintenance program to provide continued support to assist the inmate with his future goals and Good Life Plan. It was noted that Mr Barghachoun expressed motivation when discussing his future involvement in the community maintenance program.

In addition, given Mr Barghachoun's past gambling addiction, if signs of relapse occur, the inmate may require specific gambling intervention. This could be facilitated via a private psychologist and / or a community program. The St Vincent's Hospital Sydney Gambling Treatment Program is a government funded service providing free confidential and effective treatment for people concerned about problem gambling and located in the Darling hurst area.

In addition, the inmate could be referred to the local Community Corrections Senior Psychologist for case management support and assessment.

Finally, given the history of Mr Barghachoun's mental health issues, he may benefit from appropriate psychological intervention in the community to

address his ongoing PTSD. If so, Mr Barghachoun may be referred to the local community mental health team and / or a private community psychologist via the Mental Health Medicare referral scheme.

Employment

Mr Barghachoun does not have employment secured upon his release; however the inmate stated he would seek employment at the earliest opportunity.

……"[98]

109. On 14 July 2017, psychologist Thea Gumbert-Jourjon produced a report. Her opinion as to the Applicant's prognosis is:

"…….

Documentation from Mr Barghachoun's treating clinicians in the VOTP indicates that he engaged well with this program, demonstrating treatment gains and positive behavioural changes. I note that the VOTP is a challenging program involving intensive individual and group therapeutic approaches, and that many participants are not able to complete the program successfully.

Discussion with Mr Barghachoun further suggests that he has developed insight into his offending, and an ability to take responsibility for his offences. While he described various external, contributing factors to his offending, he

[98] Ibid, pp 641-652.

emphasised that his actions were a result of his own choices. He now expresses remorse for his offences, states a commitment towards maintaining the positive changes that he made during his participation in the VOTP, and is able to identify a range of realistic future goals including pursuing gainful employment and rebuilding family relationships.

Particularly of note is that Mr Barghachoun reports voluntary abstinence from illicit drug use for over three years at the time of assessment, which I understand has been confirmed to maintaining a drug-free lifestyle is a favourable sign for future re-adjustment to community living.

Furthermore, Mr Barghachoun reported a positive attitude towards the treatment programs that he has undertaken thus far, and a willingness to engage with treatment interventions as required in the future. He appears cognisant that he may require further support in future to maintain positive lifestyle changes and address ongoing symptoms of psychological distress."[99]

110. A psychologist report by the team at the Violent Offenders Therapeutic Program at Long Bay Gaol dated 28 August 2017 states *inter alia:*

"……

Mr Barghachoun is currently assessed as within the high risk category for violent offending with regard to actuarial static and dynamic factors as measured by the VRS. *The management of risk involves the offender*

[99] Exhibit 4, G61, Attachment AJ3, pp 474-475, para 7.4.

improving their level of functioning in the aforementioned dynamic risk areas. As individuals address and become more skilled at managing dynamic risk factors, their ability to manage their overall risk improves.

The process of developing the risk scenarios attempts to draw together the dynamic risk factors that contributed to the violent offence, and to identify circumstances and situations where an individual's risk of re-offending may increase in the future.

The context in which Mr Barghachoun may re-offend violently would be if he were to return to similar way of life as he had during his previous community living, and if he were to:

- *Use illicit substances*
- *Engage in gambling*
- *Associate with anti-social peers*
- *Lack community supports or refuse to ask for assistance and access supports when required*
- *Be unable to effectively cope with feelings of pride if he were unable to provide financially for himself in line with his expectations*
- *Feel overwhelmed or stressed by community life, including financial obligations, difficulties obtaining employment or family conflict*
- *Wish to earn additional, quick money*
- *Be unable to regulate his negative emotions, such as feeling angry, or that his family or himself have been disrespected*

Were Mr Barghachoun to re-offend, his offence would likely be in the context of associating with anti-social peers and being under the influence of illicit substances. The offence would most likely be for the

purposes of obtaining financial gain, such as Robbery or an Armed Robbery and may be impulsive or a pre-meditated act. It would likely occur in the company of others and would partly be related to Mr Barghachoun experiencing financial hardship, possibly related to debts incurred due to his substance abuse and gambling issues. This would likely be related to Mr Barghachoun's desire to earn quick money when presented with what he would perceive as an easy opportunity and with what he would consider to be low risk of being apprehended*. Mr Barghachoun may or may not be employed at the time. He may be lacking supports or be unwilling to access these due to feelings of pride and that a male should provide and not ask for assistance. Other stressors such as difficulties finding employment or family conflict would increase Mr Barghachoun's risk of re-offending. The commission of the offence may follow failed attempts at distancing himself from anti-social peers and substance use."*[100]

111. A psychological report dated 21 December 2017 was prepared by Ms. Yvette Aiello. Her summary is as follows:

> *"**To summarise:** Mr Barghachoun is a 47 year old man originally from Lebanon who was forced to leave his home country along with his family at the age of 13 as a result of war. Since arriving in Australia Mr Barghachoun reported he has made poor choices resulting in criminal behaviour and has spent an accumulates fifteen years in prison. Due to his multiple criminal charges Mr Barghachoun's permanent residency has been cancelled.*

[100] Ibid, G49, Attachment E, pp 341-342.

Mr Barghachoun presented and reported symptoms of Depression, Anxiety and Post Traumatic Stress Disorder (PTSD) as a consequence of his experiences in Lebanon which have been re-triggered by the threat of a forced repatriation in the context of his detention in VIDC. His scores on the HTQ-16 and HSCL-25 are consistent with this formulation.

Mr Barghachoun's limited education; impressionable nature; lack of early intervention; his need to belong; poor insight into his behaviour and drug dependency likely contributed to his engagement in criminal activities. Since this time however, he has expressed and demonstrated motivation and a commitment to addressing these problems. He has further articulated a desire despite the above to build a meaningful future for himself in wanting to mentor youth to stop others from making the same mistakes himself. He has previously demonstrated resourcefulness and a desire to move forward through his volunteering to enter into the Violent Offenders Treatment Program and enrolling himself at TAFE.

The threat of being returned to Lebanon was observed to cause Mr Barghachoun significant distress. Separation from his family, particularly his mother and daughter, as well as return to Lebanon where he experienced trauma, and reported having no family or friends would likely be detrimental to his recovery.

Trauma is often associated with the fragmentation of experiences. Avoidance associated with trauma makes integration more challenging. Achieving clarity around understanding the cumulative impact of Mr Barghachoun's multiple traumas on subsequent behaviours given this complexity, is beyond the scope of a single assessment session. Further exploration is recommended and Mr Barghachoun would likely benefit from participation in the maintenance program of the Violent Offenders Treatment Program (VOTP) which he reported finding useful in creating

insight into and addressing his behaviour. Further, he would benefit from participation in Narcotics Anonymous to assist him to manage his addiction to Heroin and Ice. Mr Barghachoun could also benefit from supportive counselling to assist him to ventilate his distress and better manage his current reported symptoms. In the longer term, if assured of a safe future, Mr Barghachoun may also benefit from trauma counselling to assist him to process his traumatic memories from Lebanon."[101]

112. On 25 September 2018 he was found to have a SIM card and tobacco that tested positive for pseudoephedrine.[102]

113. On 17 December 2019 a Client Incident Report states that two employees from the Emergency Response team conducted a matrix room search in the Applicant's room and found 5 white tablets of unknown origin, I pink tablet of unknown origin, a tap spout and pieces of metal foil.[103] The Applicant said that this was actually his proscribed medication.

114. In 2020, the Applicant's niece, Rhonda, asked Ms YX OO to assist with the Applicant's s 501 matter.[104] Ms OO is a registered Migration Agent and has known the Applicant for many years, through family connections. She separated from her husband in May 2019. She has 3 children of that Marriage, Child B,[105] Child C[106] and Child D.[107] She

---

[101] Ibid, G91, Attachment AW2, pp 736-737.
[102] Ibid, G102, Attachment BG, pp 831-833.
[103] Ibid, p 803.
[104] Statement of YX OO, filed 27 June 2022, p 2, para 10. [105] Daughter, aged 8.
[106] Son, aged 7.
[107] Son, aged 2.

has become close to the Applicant since 2020 and underwent a traditional, though not legally recognised, form of marriage by Zoom on 14 February 2022.[108]

115. On 17 June 2020, a psychologist report prepared by Mr Tim Watson-Munro states:

> *"Mr Barghachoun stated that he has ceased all drugs, although he acknowledged that this has been a struggle. In this setting, he stated that there was a "lapse" referable to him furnishing a positive urine screen in March 2020 for Buprenorphine. He stated that he needs ongoing treatment to reinforce the progress he has made, which in my view reflects some developing insight to the intensity of his problems over the years and in particular, the nexus between his unresolved psychological state and his drug use."*[109]

116. On 12 June 2020 the Applicant was convicted of multiple offences including supply of a prohibited drug and obtaining property by deception.[110]

117. On 17 July 2020 psychologist Mr. Tim Watson- Munro prepared a report regarding the Applicant. His opinion is stated as:

> *"Mr Barghachoun presents as a co-operative though depressed and anxious man who is currently before the Administrative Appeals Tribunal subsequent to being referred back by the Federal Court of Australia referable to a decision to cancel his Class BF transitional (permanent) visa under section 501(3A) of the Migration Act 1958. The background history in this case has been well documented. I note that*

---

[108] Statement of YX OO, filed 27 June 2022, p 8, paras 42-46. [109] Exhibit 4, G99, Attachment BD, p 771.

[110] Ibid, G4, Attachment A1, p 81-82 and Exhibit 9, pp 597-602.

*subsequent to completing a custodial sentence. Mr Barghachoun was transferred to the Villawood Immigration & Detention Centre where he has now been for approximately 3½ years. I note that he has been in custody inclusive of jail an detention since about 1994. He acknowledged his prior forensic history and appears to have insight to the dynamic surrounding his offending behaviour over the years. To this end**, Mr Barghachoun expressed appropriate remorse for his behaviour and attendant to this, a strong commitment to not reoffend if given the opportunity to remain in Australia. This has been galvanised by his deep love and concern for his children and in particular his daughter, with whom he enjoys a close, loving and well bonded relationship. He is also very concerned about his siblings and his elderly mother, who is evidently very ill.** I note that he is well supported by his family and in addition, his former partner Ms Nasiren Amer, who is still involved in his life in terms of their shared responsibilities for their child, in addition to visiting Mr Barghachoun's mother on occasion to provide support. It is clear that all family members will be deeply affected should he be deported.*

He describes a complex clinical and developmental history, the details of which I have described in the body of my report. I note that Mr Barghachoun was previously assessed by Ms Thea Gumbert-Jourjon on April 2017 and her history and opinion correlates very much with my own. It is clear that Mr Barghachoun has struggled with longstanding psychological problems arising from his early childhood trauma whilst living on Tripoli, Lebanon, where he was exposed to the horrors of the civil war. He described a range of symptoms reflective of Post Traumatic Stress Disorder, which was evidently first diagnosed in 2015. By his account, here was little improvement in his symptoms subsequent to arriving in Australia in the absence of treatment. In this context, he struggled with school, had difficulties with his

employment and eventually drifted into a pattern of substance use. His difficulties were further compounded by the influence of a cousin, who was the co-accused in relation to a number of earlier offences. Mr Barghachoun has experienced ongoing and intense symptoms of Post Traumatic Stress Disorder since his formative years in Lebanon and substantial Substance Use Disrober involving primarily heroin and crystal methylamphetamine since being in Australia. It is clear that he has been self-medicating with illicit drugs in the absence of prior treatment and an appropriate diagnosis until some five years ago. On a more positive note, he has now been treated with Zyprexa. In addition, he has been prescribed Avanza and Seroquel. I note that he was previously on other psychotropic medication. He as undertaken the VOTP, in addition to a range of earlier programs including EQUIPS, RUSH and the SMART recovery program. He stated that the most beneficial has been the VOTP, which has given him considerable insight to his past ways. Mr Barghachoun stated that he is keen to continue with treatment and to this end has become involved with the STARTTS program, with him seeking a Psychologist on two occasions, with further sessions being scheduled. He intends, if given the opportunity to remain in Australia to continue with treatment in the community.

It is clear that Mr Barghachoun's daughter will suffer a great deal if he is deported. Although she was not assessed, I note from the report of Ms Gumbert-Jourjon that even in 2017, significant concerns were being raised regarding her psychological equilibrium. I discussed the situation at some length with Mr Barghachoun's former wife, who has also been affected by the current uncertainty, regarding the chil'd father. She stated that she had high expectations of spending time with him when his custodial sentence was completed, only to have these hopes dashed when he was placed in detention at Villawood. She noted social withdrawal, depression, anxiety and some impact on her school performance then, with her fearing that there

will be a recrudescence of these issues if he is deported. Their daughter is currently completing Year 10 and is at a critical juncture in terms of adolescence development and academic life.

Mr Amer firmly believes that Mr Barghachoun has matured. She has noted that he is more reflective and open to suggestions than he has been in the past. ***She acknowledged, as he does, that he continues to struggles with drug issues and certainly, further treatment directed towards the development of relapse prevention strategies is indicated in this case, in addition to social skills training, systematic desensitisation for his anxiety, as well as supportive and motivational psychotherapy.***

Mr Barghachoun acknowledged that he has been charged with new matters whilst being in detention. The details concerning those charges are a matter of evidence before the Court. He steadfastly maintains his innocence and has entered a plea of not guilty in relation to those matters*. He impresses as a genuine individual who is continuing to suffer a broad spectrum of symptoms referable to depression and anxiety, as an integral component to a broader diagnosis of Post Traumatic Stress Disorder. Of concern, he expressed some suicidal ideation in the present, against a backdrop of his genuine fear of being separated from his family and being returned to Tripoli where he has not lived for the past 37 years. In every respect, Mr Barghachoun appears to identify as Australian, which is reflected in his educational and occupational history and indeed his accent. By his account, he attempted suicide whilst at Bathurst Correctional Centre some three years ago and the recrudescence of his intensity of suicidal thoughts and depression is currently a cause of considerable concern. In this setting,*

it may be advisable for his medication to be reviewed and possibly increased, in addition to him maintain his engagement with a treating Psychologist."[111]

118. On 26 August 2020, a Client Incident Report states that an Intel led room search was carried out in the Applicant's room. At the beginning of the search, the Applicant was asked if everything in the room belonged to him, to which he stated 'yes'. The Applicant was further asked whether there was any contraband in his room, to which he stated 'no'. However, during the search, a Detainee Service Officer found a glass smoking pipe, loose razor blade, plastic smoking implement and foil. The Applicant claimed ownership of all the contraband except the glass smoking pipe and stated that he was holding it for a fellow inmate.[112]

119. Correspondence from the Department dated 14 September 2020 states:

"The Department has reviewed the following information from NSW police regarding Mr BARGHACHOUN's association to organised crime.

There is no recent solid information that he is a member of the OMCG however he has very close associations with many high profile MEOC** and Organised Crime targets and these tend to cross over with OMCG. His most significant link is with criminal groups Brothers For Life who have associates in Comancheros and Nomads OMCG.*

** Outlaw Motor Cycle Gang*
*** Middle Eastern Organised Crime"*[113]

---

[111] Ibid, G99, Attachment BD, pp 775-777.
[112] Ibid G102, Attachment BG. p 791.
[113] Ibid, G103, Attachment BH, p 858.

120. The Applicant said in his evidence that he was not a member of an OMCG, but he had been friends with two men who later joined an OMCG.

121. Mr Watson -Munro prepared another report on 2 October 2020[114] and another on 24 May 2021. In this report he expresses the opinion that:

> *"…….*
>
> *Mr Barghachoun continues to improve in terms of his outlook and mood. He again expressed appropriate remorse for his past behaviour and attendant to this, a strong desire to move forward with his life, should he be permitted to remain in Australia. In addition to him, I also consulted with a number of family members, who are ad idem in terms of their strong support for him, their observations of his continuing maturation and expressions of regret referable to remorse, in addition to the impact of deportation will have not only upon him but also his elderly mother.*
>
> *It is apparent from my discussion that Mr Barghachoun despite his intention on the other side if Australia, remains highly supportive of the family and that they in turn on occasions turn to him for support and guidance. His mother evidently is fretting regarding his absence. Previously, when he was at Villawood she felt more secure because he was in the same City and for a time she was evidently able to visit him. At a psychological level him being so far according to Mr Barghachoun's sister, is having a negative impact upon her. There has also been significant loss in the family through the death of Mr Barghachoun's father, compounded by the fact that he was*

[114] Ibid, G108, Attachment BM, pp 1050-1053.

in custody at the time. He is very fearful that history may repeat itself and that if he is deported, he may never see his mother again.

In addition to his immediate family, Mr Barghachoun expressed concern for his extended family and in particular a number of nieces and nephews, whom he had regularly provided counsel to over the years. They evidently had consistent contact with him whilst he was at Villawood in Sydney and they now enjoy regular telephone contact with him. He expressed considerable concern for his sister Fouadi, to whom he has provided support for any years, as well as her daughter. She was subject to considerable turmoil during the course of her former marriage and in this regard Mr Barghachoun offered consistent emotional support. His comments reflect his maturation particularly in relation to his statements "I like the new me…the person I have become…the person I should have been a long time ago…a good human being". These sentiments clearly reflect a newfound approach to his life and attendant to this, a strong desire to relinquish his former ways. He stated in particular he was assisted by Violence Prevention Program.

In terms of my discussion with him, Mr Barghachoun appeared to be more sanguine in terms of his current situation. He stated that he now thinks through situations and endeavours to not be destabilised by the pressures that he is experiencing. He hopes to return to the community with a view to supporting his daughter, as well as other family members. He stated that he will also attempt to secure employment, with a view to effecting an ongoing support of the family and in particular, his daughter.

Mr Barghachoun now more comprehensively understands the consequences which will accrue, if he is given an opportunity to remain in Australia and then reoffends. It is clear that his current situation has had a salutary impact upon

him and caused him with the passage of time to reflect more thoroughly upon his past actions and the dynamics behind his criminal behaviour.

He is experiencing some escalating anxiety and ongoing depression in terms of his current situation. Beyond his concerns for his family, he has realistic concerns regarding his capacity to survive in Lebanon. He has no immediate family support there and as a matter of common knowledge, the Lebanese economy is very unstable, if not broken. There are also issues referable to COVID-19 and in the context of him having no income and no familial support, there will inevitably be a recrudescence and escalation of his depression and anxiety. This realisation too, is weighing heavily upon him.

Mr Barghachoun expressed a desire for professional assistance in the community, if he is permitted to remain in Australia. This would be singularly lacking in Lebanon. I believe that he would benefit from ongoing supportive and motivational psychotherapy, in addition to Dialectical Behaviour Therapy (DBT). Treatment should focus upon dealing with his anxiety and developing further skills in terms of managing his impulses. Given his age and the insight that he has developed, I am satisfied that he is progressing in a positive manner and attendant to this, the likelihood of him reoffending is now trending towards low.

I have good rapport with Mr Barghachoun and I have suggested that if he is unable to secure the services of a Psychologist in Sydney, that I am available to assist in this regard. He impressed as a genuine individual who fully understands the consequences for him and his family should he reoffend in any way in the future. It is unclear that there are a range of protective factors in place for him should he be

released to the community, including strong family ties, the offer of employment, an absence of substance use, expressions of remorse and a desire for treatment."[115]

122. A statement of agreed facts on sentence signed by the Applicant's solicitor on 13 November 2020, describes the details of the Applicant's part in an elaborate racket to dispose of stolen vehicles for profit.[116] This was managed by the Applicant from inside detention, using friends and relatives on the outside to collect the vehicles and transact the business. They used false names and identity documents. The used phrases as directed by the Applicant. He claims that he thought that this was all legitimate because a fellow detainee, Mr Deng, who's family owned a diamond mine, and was very wealthy, just wanted to get rid of his cars very cheaply. The Applicant conceded that the vehicles were priced way below market value. He engaged in the deals to make a profit. He said that the deals were "*too good to be true",* but it did not enter his head that this might be dealing with stolen property. He said that he should not have pleaded guilty because he was innocent. He had been persuaded to enter a plea by his lawyers. He was not told that, yet another conviction, would damage his chances in his case before this Tribunal.

123. The Applicant's evidence regarding this whole episode is totally unbelievable. He even went so far as to deny the existence of text messages, recovered from his phone by police. This is the most florid example of the Applicant attempting to rewrite history so as to paint himself in a more favourable light. It underscores his lack of credibility.

124. On 25 November 2020, an Incident Detail Report was created, which states that a total of 135 orange strips were concealed within an Ipad, which tested positive for

---

[115] Ibid, G109, Attachment BN, pp 1064-1066.
[116] Exhibit 9, pp 595-602.

Buprenorphine/Heroin/Naloxone and 2 grams of crystal substance, which tested positive to Amphetamine, Methamphetamine/Morphine.[117]

125. A DCS Sentencing assessment Report dated 3 December 2020 states:

> *"……*
>
> ***Factors related to offending***
>
> ***History of anti-social behaviour***
>
> - *Mr Barghachoun has had an extensive criminal history ranging from larceny, stealing robbery in company and other violence related offences.*
> - *He attributed his offending history to his dependency to poly substance abuse. He however claimed to have abstained from his further use of illicit substances since March 2018. This claim has not been verified.*
>
> *……*
>
> ***Mental Health****"*
>
> - *Mr Barghachoun claimed to have been diagnosed with Post Traumatic Stress Disorder and depression in 2016. This claim has not been verified.*
> - *He disclosed his recent attempt to harm himself approximately two months ago, swallowing a razor following the notification from the immigration authority of his transfer from Villawood detention centre to similar facility in Western Australia.*

[117] Exhibit 9, pp 493-494.

- *Mr Barghachoun claimed to have engaged with an in-house psychologist on a regular basis. He further claimed to be undertaking a mental health medication regime. This claim has not been verified.*

…….

Assessment and recommendations

Risk assessment

*Mr Barghachoun has been assessed at a **T2 Medium/High** risk of offending according to the Level of Service Inventory – Revised (LSI-R).*

Supervision Plan

*If the court makes a supervised order, Community Corrections will supervise Mr Barghachoun at the **T2 Medium/High** supervision level of the Service Delivery Standards. This means that he will be required to report to a Community Corrections Officer every week.*

At this time, Community Corrections will implement the following supervision plan:

- *A referral to engage in psychological intervention.*
- *Monitor his claimed compliance with his mental health medication regime.*
- *A referral to undertake departmental EQUIPS Foundation Program.*
- *Practice Guide to Intervention*
    - *Managing High Risk Environments, to assist in identifying high risk environments and people*

- *Pro-Social Lifestyle – to assist Mr Barghachoun in assimilating in community based activities.*

Recommend order conditions

If the court makes a supervised order, Community Corrections considers that the following conditions would assist to manage the identified risk factors:

- *You must engage in psychological interventions.*
- *You must engage with a mental health medication regime if prescribed by a medical practitioner."*[118]

126. On 23 February 2021, an Incident Detail Report was completed and states that a room search was conducted and various item were found, specifically:

- a plastic lighter submitted to Intel for destroying;
- a pink tablet (unknown medication), placed in and evidence bag and submitted to Intel for further investigation;
- two metal foils with remaining's from burning;
- an unknown modified electrical device; and

[118] Ibid, pp 657-660.

- a long black plastic phone leg (holder), the item was broken and therefore was submitted to detainees Personal property and a property receipt was issues for the Applicant.

The Applicant was notified that he might lose 10IAP pending information from his IMHS if he is permitted to have the medication.[119]

127. On 7 April 2022, a Incident Detail Report indicates that on 6 April 2022, a Detainee Service Officer was completing a room clearance on the Applicant room and found various contraband items, specifically, a glass pipe placed in black box labelled (Watch Exquisite), two make shift smoking implements described as mini shower bottles, one with an object placed in the top which appeared to be burnt, and a former Yongah Hill Immigration Detention Centre detainee.[120]

128. The Applicant says that if he were to be returned to Lebanon:

> *"I informed my legal representative that there is no way I could go back to Lebanon and lose all my family in Australia. I consider myself an Australian, having lived in this country for most of my natural life.*
>
> *If I were forcefully removed to Lebanon, I believe that I would commit suicide and end everything. From what I understand, Lebanon is an absolute mess at the present time. There has been considerable migration of refugees into Lebanon from Syria. There is big corruption in government circles in Lebanon. The COVID-19*

[119] Ibid, p 501.
[120] Ibid, pp 512-513.

pandemic has impacted the economic, health and political outlook in Lebanon in a bad way.

Since leaving Lebanon as a child I have never looked back. I have never returned to Lebanon nor kept ties in that country. I would have no support on the ground in Lebanon. Mt mental health would deteriorate. I fear that I would not be able to obtain sufficient mental health treatment for my health issues, inclusive of being able to afford prescription medication.

I also fear a risk of harm in Lebanon on account of being perceived as a foreigner. I have an Australian accent. I consider myself an Australian. I am not familiar with the local customs and culture in Lebanon. I consider myself a Muslim Australian with little real connection to the Islamic faith. I am scared that I would be kidnapped or otherwise targeted in Lebanon as a perceived westerner or foreigner. I believe my life could be at risk if removed to Lebanon."[121]

129. If the Applicant were to be released into the community, he says that:

"Although, not limited to, my future plans can broadly be described as follows:

(e) Lawfully marry YX under Australian law.

(f) Take up accommodation with YX and the three children. Eventually, we would like to get a bigger place to accommodate all of us (but keeping

[121] Statement of X Barghachoun, filed 27 June 2022, pp 3-4, paras 14-17.

steadily in mind the best interests of the three children: including ensuring no disruption to their schooling and established ties in the community).

*(g) I will attend upon a local general practitioner and seek out a Mental Health Treatment Plan (the **MHT Plan**). I understand that the MHT Plan is a plan for people with a mental health disorder. I readily appreciate that I will need ongoing mental health support and treatment in the community for my post-traumatic stress disorder, anxiety, and other mental health issues.*

(h) I will obtain employment as a concreter in the Blacktown area of Sydney. I have full time employment already lined up at Concrete Pumping (which is run by my nephew).

(i) I will provide emotional, financial, and practical support to my family in Australia. I am particularly committed to playing an important fatherly role in the lives of Mariam, Ahmed, and Mohammed. As outlined earlier in this statement, the biological father of the children does not play a fatherly role.

(j) It is my heartiest intention to both sustain and develop my relationship with YX. She has been an exceptionally good influence in my life. I am extremely grateful to have developed such a meaningful and loving relationship with YX over the last several years.

(k) I have absolutely no intentions to engage in future criminal offending. I have not had any adverse legal issues in immigration detention for a considerable period. I am getting older. Prolonged immigration detention has had a significant impact on my psychological disposition. I just want to

be released into the Australian community to live a life of peace and goodness."[122]

130. An Incident Detail Report dated 23 June 2022, produced by the Department of Home Affairs, contains records of the Applicant's conduct in detention. There are references to illicit substances, a glass pipe and other notes suggestive of drug use.

LEGISLATIVE FRAMEWORK

Does the Applicant Pass the Character Test?

131. The Applicant was sentenced by the NSW Court of Criminal Appeal on 17 April, 2014, to a term of imprisonment of 6 years, commencing 20 August 2013.[123]

132. The Tribunal finds that the Applicant has a "*substantial criminal record*" and, therefore, he does not pass the character test. This is not disputed by the Applicant. The Tribunal must consider whether "there is another reason why the original decision should be revoked".

Is there another reason why the original decision should be revoked under section 501CA(4)?

133. In considering whether to exercise this discretion, the Tribunal is bound by s 499(2A) to comply with any directions made under the Act. In this case, *Direction No 90 – Visa refusal*

[122] Ibid, pp 2-3, para 13.
[123] Exhibit 4, G3, Attachment A, p 76.

and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA ("the Direction") has application.[124]

134. For the purposes of deciding whether to refuse or cancel a non-citizen's visa or whether or not to revoke the mandatory cancellation of a non-citizen's visa, paragraph 5.2 of the Direction contains several principles that must inform a decision maker's application of the considerations identified in Part 2 where relevant to the decision.

135. The principles that are found in paragraph 5.2 of the Direction may be briefly stated as follows:

(1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.

(2) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.

(3) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in

---

[124] On 15 April 2021, the former applicable direction, *Direction No. 79 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*, was revoked and was replaced by Direction 90.

Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

(4) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non- citizens who have been participating in, and contributing to, the Australian community only for a short period of time. However, Australia may afford a higher level of tolerance of criminal or other serious conduct by non- citizens who have lived in the Australian community for most of their life, or from a very young age.

(5) Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation. In particular, the inherent nature of certain conduct such as family violence and the other types of conduct or suspected conduct mentioned in paragraph 8.4(2) (Expectations of the Australian Community) is so serious that even strong countervailing considerations may be insufficient in some circumstances, even if the non-citizen does not pose a measurable risk of causing physical harm to the Australian community.

136. Paragraph 6 of the Direction provides that:

> *Informed by the principles in paragraph 5.2, a decision maker must take into account the considerations identified in sections 8 and 9, where relevant to the decision.*

137. Paragraph 8 of the Direction sets out four Primary Considerations that the Tribunal must take into account and they are:

(1) protection of the Australian community from criminal or other serious conduct;

(2) whether the conduct engaged in constituted family violence;

(3) the best interests of minor children in Australia; and

(4) expectations of the Australian community.

138. Paragraph 9 of the Direction sets out five Other Considerations which must be taken into account. These considerations are:

a) international non-refoulement obligations;

b) extent of impediments if removed;

c) impact on victims; and

d) links to the Australian community, including:

i) strength, nature and duration of ties to Australia; and

ii) impact on Australian business interests.

139. I note the importance of the Other Considerations being "*other*" considerations, as opposed to "*secondary*" considerations. As noted by Colvin J in *Suleiman v Minister for Immigration and Border Protection*:[125]

> *"…Direction 65 [now Direction 90] makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including non-refoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given to both 'primary' and 'other considerations'. In effect, it requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply."*[126]

OFFENDING HISTORY

140. The Applicant's criminal history is discussed at some length above. His criminal records, as produced by the Australian Criminal Intelligence Commission is outlined at Annexure C. Also relevant is Annexure B.

PRIMARY CONSIDERATION 1 – PROTECTION OF THE AUSTRALIAN COMMUNITY

141. In considering this Primary Consideration 1, paragraph 8.1 of the Direction requires decision-makers to keep in mind the Government is committed to protecting the Australian

---

[125] [2018] FCA 594.
[126] Ibid, [23].

community from harm as a result of criminal activity or other serious conduct by non-citizens. Decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that this country confers on non-citizens in the expectation that they are, and have been, law abiding, that they will respect important institutions and that they will not cause or threaten harm to individuals or the Australian community.

142. In determining the weight applicable to Primary Consideration 1, paragraph 8.1(2) of the Direction requires decision-makers to give consideration to:

a) The nature and seriousness of the non-citizen's conduct to date; and

b) The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

The Nature and Seriousness of the Applicant's Conduct to Date

143. When assessing the nature and seriousness of a non-citizen's criminal offending or other conduct to date, paragraph 8.1.1(1) of the Direction specifies that decision-makers must have regard to a number of factors. I will now turn to addressing these considerations.

144. **Sub-paragraph (a)** of paragraph 8.1.1(1) of the Direction provides that without limiting the range of conduct that may be considered very serious, violent and/or sexual crimes; crimes of a violent nature against women or children (regardless of the sentence imposed); or acts of family violence (regardless of whether there is a conviction for an offence or a sentence imposed) are viewed very seriously by the Australian Government and the Australian community.

145. The Applicant's offending as set out above, has included violence and armed robbery. By any measure, this offending is very serious.

146. **Sub-paragraph (b)** of paragraph 8.1.1(1) of the Direction provides that without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:

> *(iii) causing a person to enter into or being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;*
>
> ***(iv) crimes committed against** vulnerable members of the community (such as the elderly and the disabled), **or government representatives or officials due to the position they hold, or in the performance of their duties;***
>
> *(v) any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test that is dependent upon the decision-maker's opinion (for example, section 501(6)(c));*
>
> *(vi) **where the non-citizen is in Australia, a crime committed while the non-citizen was in immigration detention**, during an escape from immigration detention, or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again, , or an offence against section 197A of the Act, which prohibits escape from immigration detention.*

147. The Applicant has been convicted of assaulting police.[127] He has also committed crimes while in immigration detention.[128]

148. He admits taking drugs in detention. He was at pains to point out that this was a "lapse" not a "relapse".

149. **Sub-paragraph (c)** of paragraph 8.1.1(1) of the Direction directs a decision-maker (subject to sub-paragraphs (a)(ii), (a)(iii) or (b)(i) of paragraph 8.1.1(1) of the Direction) to the sentence(s) imposed by the Courts for a crime or crimes of a non-citizen/applicant. The imposition of a custodial term is regarded as the last resort in any reasonably and correctly applied sentencing process. Custodial terms are viewed as a reflection of the objective seriousness of an applicant's offending.

150. The Applicant has been sentenced to several terms of imprisonment. The 6 year sentence imposed by the NSW Court of Criminal Appeal for armed robbery, demonstrates the gravity of his offending. The Applicant's full record of imprisonment is set out in detail in Annexures B and C.

151. **Sub-paragraph (d)** of paragraph 8.1.1(1) of the Direction points a decision-maker to the frequency of a non-citizen's offending and whether there is any trend of increasing seriousness.

---

[127] Exhibit 4, G3, Attachment A, p 79.
[128] Ibid, G102, Attachment BG, pp 790-857.

152. The Applicant has been a serial offender, who has not been deterred from reoffending, even by several terms of imprisonment. He has claimed to have seen the error of his ways on many occasions. He has continued to reoffend. There has been an escalation in his offending. He has been convicted twice of armed robbery. He has even continued to reoffend when in Immigration Detention.

153.

154. **Sub-paragraph (e)** of paragraph 8.1.1(1) of the Direction concerns itself with an examination of the cumulative effect of an Applicant's repeated offending.

155. The Applicant has been a serial offender. He has consumed public resources through his interactions with police, the justice system and correctional services. In at least one instance, his offending has had serious consequences on a victim. The decision of Judge Murrell SC dated 13 December 2012 relevantly states:

> *"…….*
>
> *At this point I should acknowledge that the injury suffered by the victim of the truck robbery was a very serious injury. He continues to experience a high level of emotional trauma associated with the offence. Prior to August 2011, he enjoyed his job. In June 2012, he terminated his employment because it placed him under too much stress. He continues to experience a high level of anxiety and has difficulty finding employment in any aspect of his life. Among other things, he is unable to enjoy the former pleasure of spending time with his children and grandchildren. In*

the witness box, the victim appeared to be extremely anxious, he was visibly shaking."[129]

156. **Sub-paragraph (f)** of paragraph 8.1.1(1) of the Direction points to an inquiry as to whether a non-citizen has provided false or misleading information to the Department, including by not disclosing prior criminal offending.

157. There is no evidence on this point.

158. **Sub-paragraph (g)** of paragraph 8.1.1(1) of the Direction looks for evidence about whether the non-citizen has re-offended since being formally warned about the consequences of further offending in terms of the non-citizen's migration status.

159. The Applicant has had the benefit of not one, but two warnings. The details are discussed at length above. The explanation given by the Applicant about forgetting, or not taking these warnings seriously, is difficult to accept. His disregard for these warnings in the past, undermines any assertion by him, that if he is just given a chance, he will not re-offend. He has had two chances already. One of these at least, involved a considerable amount of work being done by lawyers acting on his behalf.[130]

160. I do not consider factor (f) of paragraph 8.1.1(1) of the Direction applies to the Applicant's offending or circumstances. The rest of the relevant sub-paragraphs of paragraph 8.1.1(1)

---

[129] Ibid, G10, Attachment C, pp 156-157, para 4.

[130] Exhibit 4, G18, Attachment J, p 205 and G68, Attachment AM, pp 601-605.

of the Direction, in their totality, weigh very heavily against revocation of the cancellation of the Applicant's visa.

The Risk to the Australian Community Should the Applicant Commit Further Offences or Engage in Other Serious Conduct

161. Paragraph 8.1.2(1) provides that in considering the need to protect Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.

162. Paragraph 8.1.2(2) provides that in assessing the risk that may be posted by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:

(a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct;

(b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account (i) information and evidence on the risk of the non-citizen re-offending; and (ii) evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence; and

(c) where consideration is being given to whether to refuse to grant a visa to the non-citizen - whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.

Nature of harm should the Applicant engage in further criminal or other serious conduct

163. The assessment of the nature of the harm to individuals or the Australian community were the Applicant to engage in further criminal or other serious conduct, is properly informed by the nature of his offending to date, including any escalation in his offending. This assessment is also informed by the provision in the Direction which stipulates that the Australian community's tolerance for harm becomes lower as the seriousness of the potential harm increases.

164. If the Applicant were to re-offend, having regard to his history as set out above, the consequences to the community could be extremely serious. His lengthy period of incarceration highlights the serious and repeated nature of his offending.

Likelihood of engaging in further criminal or other serious conduct

165. Having regard to:

166. (a) the Applicant's lengthy criminal history,

167. (b) his continued offending, even after serving terms of imprisonment,

168. (c) his failure to take any notice of two explicit warnings about the possible consequences of his reoffending for his visa

169. (d) the assessment NSW Justice of as recently as 3 December 2020, that he presents a medium / high risk of reoffending.[131]

[131] Exhibit 9, pp 657-660.

170. (e) his repeated hollow assurances in the past about having seen the error of his ways and that he had reformed.

171. (f) his long term abuse of drugs and his gambling addiction.

172. (g) his continued offending and drug use in Immigration Detention

173. (h) his unreliable or false evidence to the Tribunal

174. I have formed the view that the risk of the Applicant re-offending is very high.

Conclusion: Primary Consideration 1

175. Primary consideration number one weighs very heavily against revocation of the Applicant's visa cancellation.

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE

176. Paragraph 8.2 of the Direction provides:

> *(1) The Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen (see paragraph (3) below).*
>
> *(2) This consideration is relevant in circumstances where:*
>
> *a) a non-citizen has been convicted of an offence, found guilty of an offence, or had charges proven howsoever described, that involve family violence; and/or*
>
> *b) there is information or evidence from independent and authoritative sources indicating that the non-citizen is, or has been, involved in the perpetration of family violence, and the non-citizen being considered under section 501 or section 501CA has been afforded procedural fairness.*

(3) In considering the seriousness of the family violence engaged in by the non- citizen, the following factors must be considered where relevant:

a) the frequency of the non-citizen's conduct and/or whether there is any trend of increasing seriousness;

b) the cumulative effect of repeated acts of family violence;

c) rehabilitation achieved at time of decision since the person's last known act of family violence, including:

i. the extent to which the person accepts responsibility for their family violence related conduct;

ii. the extent to which the non-citizen understands the impact of their behaviour on the abused and witness of that abuse (particularly children);

iii. efforts to address factors which contributed to their conduct; and

d) Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the non-citizen's favour. This includes warnings about the non- citizen's migration status, should the non-citizen engage in further acts of family violence.

177. There is evidence relevant to this consideration. Records do mention at least one AVO. Such evidence as there is however, is denied by the Applicant and relevantly, Ms Nasiren Amer. There is no direct evidence from Ms Gunns. There is no sound basis upon which to have confidence that the Applicant has offended in this regard.

Conclusion: Primary Consideration 2

178. This consideration is neutral.

PRIMARY CONSIDERATION 3: THE BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA

179. Paragraph 8.3(1) of the Direction compels a decision-maker to make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is in the best interests of a child affected by the decision. Paragraphs 8.3(2) and 8.3(3) respectively contain further stipulations. The former provides that for their interests to be considered, the relevant child (or children) must be under 18 years of age at the time when a decision about whether or not to refuse or cancel the visa or not to revoke the mandatory cancellation decision is being made. The latter provides that if there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ

180. The Direction sets out a number of factors to take into consideration with respect to the best interests of minor children in Australia. Those include, relevantly:

- the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);
- the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;
- the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;
- the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;
- whether there are other persons who already fulfil a parental role in relation to the child;

- any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);
- evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;
- evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

181. The relevant minor children in Australia can be divided into three categories. The first is the Applicant's biological daughter, Child A. The second is the 3 children of his current partner. (Child B, C and D) The final category is made up of some 21 great-nieces and great-nephews. (Child 1-21) The Applicant's detailed submissions are contained SOFIC filed on 26 June 2022 and a supplementary document, dated 15 July 2022. I note that The Applicant's SOFIC, prepared on his behalf by his lawyer Mr Issa on 28 November 2021, only makes reference to Child A as being relevant to this consideration.[132]

182. Child A is the Applicant's 17 year old daughter. She will turn 18 on 20 April 2023. The Direction requires that for the next 9 months, her best interests are relevant to this primary consideration. The Applicant and Child A's mother have been separated since about 2009. They have maintained a civil relationship and when the Applicant has not been incarcerated, he has seen his daughter. She regularly visited him when he was detained in Villawood. Since she was born however, he has been incarcerated for most of her life. Since she was 2 years old, she has been raised by her mother and maternal grandmother. The Applicant has been a remote or physically absent figure for as long as she can remember. He

[132] G- Documents, G124, Attachment BW, pp 1158-1160.

concedes that there was very little contact between 2011 and 2017. There is little evidence of him having made even a modest financial contribution. He has had ongoing contact with her by phone. For a long period, Child A was told that her father was working overseas. The Applicant's former wife is supportive of the Applicant having ongoing contact with Child A. The Child A now says that she has electronic communication with the Applicant most days. If the Applicant were to be removed to Lebanon, he could get access to communications opportunities sufficient to continue with the relationship broadly in the current manner. If the Applicant did not reoffend, it would be beneficial to Child A for the Applicant to remain in Australia. Child A wants her father to remain in Australia and said that she would be "*depressed*" if he were removed. The relevant benefit to Child A under this consideration is however limited by the fact that she will be 18 soon and the Applicant has been absent, other than by means of electronic communication, for most of her life. If he were to reoffend, he may be a negative influence in her life.

183. On 18 May 2017, psychologist Thea Gumbert-Jourjon interviewed Child A. She expressed the opinion in her report of 14 July 2017 that:

> *"Based on my interview with Child A, as well as those with her parents, I opine that the revocation of Mr Barghachoun's visa would be against Mariam's best interests and would likely impinge significantly upon her future adjustment and emotional wellbeing.*
>
> *Despite their separation during his most recent period in custody, Child A has maintained a clear, positive relationship with her father and continues to view him as an important parental figure. I note that Ms Amer expressed concerns about the impact of the current proceedings upon Child A's wellbeing, reporting symptomatology and behavioural changes that are associated with depression and*

anxiety in children. Child A convergently reported feeling sad, anxious and the likelihood of significant estrangement from Mt Barghachoun and, given the likelihood of significant estrangement in the event of his deportation, I suggest that this would increase her vulnerability towards psychological and emotional disturbances in the future.

I further note that Child A impressed as a thoughtful, forthright young lady who was able to clearly articulate her views in this matter. She expressed the clear, unwavering opinion that her father is a positive presence in her life, with whom she shares a loving, supportive relationship."[133]

184. Child B (8 years), C (7 years) and D (2 years) are the children of the Applicant's current partner, YX OO. They are her children with her former husband. She separated from her husband in 2019. She says that the relationship was abusive. The children's biological father has little to do with them. She has only been in a "relationship" with the Applicant since late 2021.They went through a form of religious "marriage" by zoom in early 2022. This is not legally recognised. The Applicant denied that this relationship was in any way connected with this matter. He married her because he "*fell in love with her*" and she is a "*beautiful soul, my soulmate*." He has never been happier in his life. He said that he had been performing a parental role for the children since mid-2021. He said "*their biological*

father is not in their life…. They are my family now…. They mean the world….. They are my own. I will be their father and show them love and affection." This was not mentioned in documents filed by Ms OO on the Applicant's behalf in July and November of 2021. It was not mentioned in the submissions prepared by Mr Issa on 21 November 2021, after

[133] Ibid, G61, Attachment AJ3, p 475, para 7.5.

Ms OO handed the case over to him. The explanations offered for this apparent oversight, both from the Applicant and Ms. OO are unconvincing. The relevance of minor children to the Applicant's case would have been well known, at least to Ms OO, from the beginning. Their decision, early this year to "*come out*" about their relationship and the Applicant's pivotal role in the lives of Child B, C and D is both timely and suspicious. The Applicant's statements about Child B, C and D stand in stark contrast to his actual parental role in the lives of his own biological children. The children are said to be in daily electronic contact with the Applicant. He even puts the children to sleep, electronically. The Applicant has been incarcerated for the whole of this time. All communication with the children has been electronic.

185. Given all of the above, and the view that I have taken of the Applicant's credit, there are good reasons to be sceptical about this evidence. If the Applicant were to be removed, this electronic contact could be maintained from Lebanon. Given his age, Child D probably has limited awareness of the Applicant.

186. Assuming in the Applicant's favour that if he were to be released, he would not reoffend, he may provide some financial and emotional support to his partner and her children. He hopes to be able to perform a parental role. This aspiration is subject however, to many variables and unknowns at present. For example, whether the Applicant will reoffend, whether the Applicant will obtain work and whether the current relationship continues, in the totally different context, of the Applicant not being incarcerated. They have never co-habited. The Applicant may be of some benefit to Child B, C and D, but this is difficult to quantify at present, with any certainty.

187. The Applicant has a number of great nieces and nephews who are aged less than 18 years. Again, no reference to the Applicant's close connection to these children appeared in the

21 November 2021 SOFIC. In the Applicant's Supplementary Contentions, filed on 15 July 2022, the Applicant lists 21 great nieces and nephews. An examination of paragraph 32 of that document, which lists the children, appears to repeat one child as Child 4 and Child 6. Child 4 and Child 6 have the same name and date of birth. This is discussed further below. These children are listed as follows:

1. Child 1 (DOB: 02/09/2003)
2. Child 2 (DOB: 25/04/2006)
3. Child 3 (DOB: 05/08/2008)
4. Child 4 (DOB: 03/06/2013)
5. Child 5 (DOB: 18/08/2014)
6. Child 6 (DOB: 03/06/2013)
7. Child 7 (DOB: 18/12/2011)
8. Child 8 (DOB: 12/10/2009)
9. Child 9 (DOB: 01/01/2016)
10. Child 10 (DOB: 04/07/2013)
11. Child 11 (DOB: 25/8/06)
12. Child 12 (DOB: 01/2/11)
13. Child 13 (DOB: 23/12/13)

14. Child 14 (DOB: 29/07/20)

15. Child 15 (DOB: 23/10/16)

16. Child 16 (DOB 21/04/13)

17. Child 17 (DOB: 18/02/11)

18. Child 18 (DOB: 29/09/09)

19. Child 19 (DOB: 18/09/07)

20. Child 20 (DOB: 08/03/05)

21. Child 21 (DOB:20/05/09)

188. Children 1-6 are the children of the Applicant's niece Mervat Aicha. However, as previously mentioned, it appears that Child 4 and Child 6 are the same child. The Applicant speaks with his niece and her children regularly electronically. The children visited him at Villawood when he was detained there. He is especially close to Child 5.

189. Children 7-10 are the minor children of the Applicant's nephew, Abdul Zaoud. The Applicant has a close relationship with his nephew and his children. He keeps in touch with them electronically. He is especially close to his great niece, Child 8.

190. Children 11-13 are the children of the Applicant's niece, Abir Zaoud. The Applicant has a close relationship with his niece and her children. They visited him at Villawood when he was detained there. He keeps in touch with them electronically.

191. Children 14-19 are the children of the Applicant's niece, Nahla Zaoud. The Applicant keeps in touch with his niece and her children electronically.

192. Children 20-21 are the children of the Applicant's niece, Randa Chaowk. The Applicant keeps in touch with his niece and her children electronically.

193. The Applicant claims to have the relationship of an uncle with Children 1-21. He is of course their great uncle. He has maintained a relationship with these children through their parents, primarily electronically. He told the Tribunal that he is in frequent contact with them all. He has not performed a parental role. They are not financially dependant upon him. It is relevant to note that the Applicant has been incarcerated since August 2011. Ten of these children were not born when the Applicant was last at liberty. Most of the others were very young. As with Children B, C and D there are reasons to be sceptical about the true nature and extent of the Applicant's relationship with his 21 great nieces and nephews.

194. Assuming in the Applicant's favour that all of his statements regarding these children are true, and that he did not reoffend, he may be of some modest support to various of the 21 children, from time to time. The practical consequence of his removal to all of them would however be minimal, given their longstanding reliance on electronic communications. If the Applicant were to reoffend, his influence may be negative.

195. Having regard to all of the above, and assuming in the Applicant's favour that he does not continue to offend, primary consideration 3 weighs only slightly in favour of revocation of

the Applicant's visa cancellation. If the Applicant were to resume offending, his presence may be a very negative influence, presenting a very poor role model.[134]

PRIMARY CONSIDERATION 4 – THE EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

The relevant paragraphs in the Direction

196. In making the assessment for weight to be allocated to Primary Consideration 4, paragraph 8.4(1) of the Direction provides that the Australian community expects non-citizens to obey Australian laws while in Australia. I should consider whether the Applicant has breached, or whether there is an unacceptable risk that he would breach, this expectation by engaging in serious conduct.

197. Paragraph 8.4(2) of the Direction directs that a visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person should not be granted or continue to hold a visa. In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:

(a) acts of family violence; or

(b) causing a person to enter into, or being party to (other than being a victim of), a forced marriage;

(c) commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes'

[134] See risk assessment in paras 166-175.

include crimes of a violent or sexual nature, as well as other serious crimes against the elderly or other vulnerable persons in the form of fraud, extortion, financial abuse/material exploitation or neglect;

(d) commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or

(e) involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or

(f) worker exploitation.

198. Paragraph 8.4(3) of the Direction provides that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

199. Paragraph 8.4(4) of the Direction provides guidance on how the expectations of the Australian community are to be determined. This paragraph states:

> *This consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.*

200. Paragraph 8.4(4) is consistent with the decision of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* [2019] FCAFC 185 ("FYBR") which affirmed the approach established in previous authorities that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an Applicant's circumstances or

evidence about those expectations. The Tribunal is to be guided by the Government's views as to the expectations of the Australian community, which are to be found in the Direction.[135]

201. Paragraph 8.4 contains a statement of the Government's views as to the expectations of the Australian community, which operates to ascribe to the whole of the Australian community an expectation aligning with that of the executive government which the decision maker must have regard to.

Analysis – Allocation of Weight to this Primary Consideration 4

202. Accordingly, in assessing the weight attributable to Primary Consideration 4, it is necessary to have regard to the following matters:

(a) the Applicant's criminal record as set out in Annexure C.

(b) The other matters set out above.

Conclusion: Primary Consideration 4

203. Primary consideration 4 weighs very heavily against revocation of the cancellation of the Applicant's visa.

---

[135] See *Uelese v Minister for Immigration and Border Protection* [2016] FCA 348; *Afu v Minister for Home Affairs* [2018] FCA 1311; *YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466 and *FYBR v Minister for Home Affairs* [2019] FCA 500.

OTHER CONSIDERATIONS

204. It is necessary to look at the Other Considerations listed at paragraph 9 of the Direction. I will now consider each of the four stipulated sub-paragraphs (a), (b), (c) and (d).

(a) International non-refoulement obligations

205. A comprehensive initial submission from the Applicant's lawyer in support of revocation of the Applicant's visa cancellation says, "*Our client does not advance any protection claims*"[136] This had changed by the time of the Applicant's SOFIC of 28 November 2021.[137]

206. Now the Applicant says by way of his SOFIC dated 26 June 2022:

> *"In the context of his request for revocation of the mandatory cancellation decision made under s 501(3A), the applicant made representations that he will face harm if returned to Lebanon due to his religion, nationality, or membership of a particular social group, being those with extensive ties to the West.*
>
> *The applicant's representations include that his family is from Bab al-Tabbaneh, an area which according to the applicant is notorious for civil conflict, exacerbated in recent years by the Syrian conflict. It is submitted that there have been reports of extortions, hijackings, street shootings, kidnappings, suicide bombings, sniper killings and politically motivated assassinations. The current conflict is between Sunni Muslims on one side and Shia and Allawi Muslims on the other and involves Hizballah links to Shia militia and Syrian army personnel. It is submitted that the area is known for ongoing and continuous persecution of Sunni Muslims.*

---

[136] Exhibit 4, G59, Attachment AJ1, p 447.

[137] Ibid, G124, Attachment BW, pp 1162-1164.

The applicant states that, although born into the Sunni Muslim faith, he is not a practising or committed member of that faith. He states that he has an 'indifferent attitude' towards the Islamic faith and does not practise it in any meaningful way, including not praying, fasting, or abstaining from alcohol or non-halal food. The applicant describes himself as 'very broadminded in my religious and social attitudes' and opposes religious fanaticism. He states that these attitudes and practices will draw the adverse attention of the religiously conservative and fanatical elements of the Sunni Muslim community in Lebanon.

It is submitted that Islamic radicalism is rife in Lebanon and individuals who return from Western countries are viewed with suspicion that they have apostatized. As the applicant has spent most of his life in a Western, developed, English-speaking country, the radical elements would regard his behaviour and tolerance of other faiths as evidence of his apostasy, forcing him to apply significant restrictions on his religious views and personal freedoms. He would also be at heightened risk of hostage taking or torture. It is submitted that there is currently a hostage taking crisis in Lebanon and if removed to Lebanon, the applicant also faces the risk of extortion and kidnapping for ransom in Lebanon.

Additionally, the applicant states that his criminal history and use of drugs and alcohol is well known among the Lebanese community and has been 'widely circulated' in Lebanon. These attributes are considered abhorrent and will cause him to be shunned and ostracised from society, as well as attract adverse attention from radical Islamic elements of society.

The applicant has submitted that there is no region of Lebanon which is devoid of any element of radical Islam, who specifically target Muslims and who they view as having abandoned the Islamic faith. It is submitted that these radical groups have increased their presence and influence in Lebanon since the Syrian civil war.

The applicant submits that he would not be able to rely on the protection of the Lebanese authorities as they are loathe to intervene in religious matters and would refer these matters to the Sunni Sharia Courts. The Sunni Sharia Courts would not

offer protection, nor guarantee his personal rights as any harm he experiences will be regarded as deserving given his indifferent attitude towards Islam.

At first instance, the delegate accepted that the nature of the claims outlined above indicated a potential for Australia's international non-refoulement obligations to be engaged in relation to the applicant. The delegate concluded, for the purposes of this decision, there is at least a possibility that non-refoulement obligations are enlivened in relation to the applicant, with the country of reference being Lebanon. This means that his removal to Lebanon may potentially breach these obligations. The delegate also accepted that there is currently no known prospect of removing the applicant to any other country.

The delegate noted:

> *Nevertheless, for the purposes of the present decision, I accept there is at least a possibility that [the applicant] could face a real risk of suffering the abovementioned kinds of harm in Lebanon, which might include kidnapping or extortion, degrading treatment, punishment, or persecution due to his religion, nationality, political opinion or membership of a particular social group, being those with extensive ties to the West.*

The Australian Government (Department of Foreign Affairs and Trade) website (as of 26 June 2022) demonstrates the following:

- *There have been armed clashes involving the exchange of live fire and multiple casualties. Protests are taking place, some of which have turned violent.*
- *There are shortages of medicines and fuel, with frequent power outages.*
- *Restrictions are in place, including closure of some areas and services.*
- *DFAT advises '[r]econsider your need to travel to Lebanon overall due to the changed security environment'.*
- *Lebanon's security situation is uncertain. This is due to conflict in Syria, the threat of terrorism, and political and religious tensions. Suicide bombings, rocket and attacks involving improvised explosive devices (IEDs), air raids and kidnappings have occurred.*

- *Extremist groups operate from camps. Armed clashes and violent crime can occur.*
- *Extremists may target Westerners, including in Beirut. Terrorist attacks are likely and could happen at any time and place. Be alert to your personal security.*
- *Kidnapping has occurred and targets have included foreigners.*
- *South of the Litani River, there is a high threat of armed conflict. The United Nations Interim Force in Lebanon (UNIFIL) has a peacekeeping presence there. Israeli forces occupy the southern border town of Ghajar. Tensions remain high in the surrounding region, including the Shebaa Farms, where military activities took place on 27 July 2020.*
- *Shelling has been reported. Avoid areas where military activity is occurring.*
- *The health care system is under strain from COVID-19 and the economic situation. There are shortages of pharmaceuticals and medical supplies. Most good hospitals are private and expensive. You will probably have to pay up-front.*
- *Religious law has the same standing as civil law.*
- *The security situation in the region remains unpredictable and could deteriorate with little or no warning. The ongoing conflict in Syria is affecting stability in Lebanon. Violent incidents related to Syria occur across Lebanon, including car bombs; improvised explosive device (IED) attacks; and rocket attacks.*

Before this Tribunal, the evidence at least establishes that the applicant is at risk of harm in Lebanon on account of the unstable security situation in that country, the threat of terrorism, and political and religious tensions. The evidence also demonstrates that extremists may target Westerners in Lebanon. The applicant is highly likely to be perceived as a Westerner in Lebanon on account of his Australian accent, his lack of understanding of local customs and traditions in Lebanon (having lived in Australia most of his life) and lack of local ties in that country. Kidnapping has occurred and targets have included foreigners, which the applicant is likely to be perceived as.

It is to be recalled, as Charlesworth J made plain in BCX16 v Minister for Immigration and Border Protection [2019] FCA 465 at [36]-[37]:

> *For reasons given below, the Tribunal misapplied the exclusionary provision.*
>
> *As has been observed, s 36(2B)(a) contemplates a circumstance in which a person may be exposed to a real risk of harm by reason of the location of a person in an area of a country and yet is able to relocate so as not to be exposed to that risk. Section 36(2B)(c) should be construed harmoniously with s 36(2B)(c). Read in the context of s 36(2B)(a), the concept in s 36(2B)(c) of a risk being faced by a non-citizen personally in my view may include a risk faced by a person because of the circumstance that he or she resides in an area of a country.* ***A risk to which a person is exposed because of the circumstance that he or she resides in a specific area of the country is, in my view, a risk that is faced by the person personally, notwithstanding that otherpersons residing in the same area are exposed to the same risk****. In such cases, s 36(2B)(a) operates so that in cases where it would be reasonable for such a person to relocate to an area of the country where there would not be a real risk that he or she would suffer significant harm, then the risk in fact faced by the person must be taken not to be a real risk (my emphasis in bold).*

The Tribunal would be aware that the statutory consequence of a decision to not revoke the cancellation of the applicant's visa is that, as an unlawful non-citizen, the applicant would become liable to removal from Australia under s 198 of the Act as soon as reasonably practicable.

However, the requirement to remove the applicant under s 198 would not apply if he is granted another visa. The Tribunal would acknowledge that if it decides not to revoke the cancellation of the applicant's visa under s 501CA, he will be prevented by s 501E of the Act from making an application for another visa, other than a Protection visa or a Bridging R (Class WR) visa (as prescribed by regulation 2.12A of the Migration Regulations 1994 (Cth)).
The delegate concluded as follows:

> *I am cognisant of the possibility that [the applicant] may be refused a Protection visa because of the ineligibility criteria, even if found to satisfy the protection criteria. However, even if he is not granted a Protection visa, any protection finding made for [the applicant] in the course of considering his Protection visa application in respect of Lebanon would prevent him being removed to Lebanon, except in the limited circumstances set out in s 197C(3)(c) (such as where the Minister has decided that [the applicant] is no longer a person in respect of whom any protection finding would be made and that decision is no longer subject to merits review).*

With respect, the delegate was correct to so find.

The delegate continued:

> *Further, where a criterion for a Protection visa grant implements a non-refoulement obligation, consideration of whether [the applicant] meets that criterion is in effect consideration of whether that non-refoulement obligation is in fact engaged in his case. However, I am mindful that Australia's international non-refoulement obligations may not be fully encompassed by the Protection visa criteria in s36(2).*

With respect, the delegate was again correct to so find.

Finally, the delegate concluded this other consideration in the following terms:

> *I am also mindful that consideration of whether [the applicant] satisfies a Protection visa criterion under s36(2), in the context of determining his Protection visa application, cannot be regarded as a substitute for consideration of non-refoulement claims in the present context. I accept that case law indicates that the issue to be determined under s501CA(4) (that is, whether there is 'another reason' why a cancellation decision should be revoked) is less categorical than the issue of whether a person satisfies a relevant criterion under s36(2), and that the material or representations advanced in support of a claim in the context of s501CA are not required to meet predetermined benchmarks.*

With respect, the delegate was again correct to so find.
For these reasons, international non-refoulement obligations are invoked in this case. This other consideration weighs very heavily in favour of revocation of the mandatory cancellation decision."[138]

207. In his Supplementary submissions filed on 15 July 2022, the Applicant states:

"……

The applicant's risk of harm claims, in the context of international non-refoulement obligations, are addressed at paragraphs [157]-[178] of the Applicant's Statement of Facts, Issues and Contentions (dated 26 June 2022). There are really, in substance, two strands to the applicant's risk of harm claims.

First, the applicant contends that he has a well-founded fear of persecution for reasons of membership of a particular social group and/or imputed political opinion on account of being either a Westerner or imputed to have the characteristics of a Westerner residing in Lebanon.

……

Secondly, the applicant otherwise respectfully contends that the complementary protection provisions in s 36(2)(aa) of the Migration Act 1958 (Cth) apply. Complementary protection covers applicants whose claims are assessed as not meeting the refugee definition, but who nevertheless face a real risk of "significant"

[138] Exhibit 1, pp 37-43, paras 158-178.

harm if returned to their receiving country. The real risk requirement has been held to impose the same standard as the real chance test."[139]

208. This issue has now been expressly raised by the Applicant in this matter.

209. The Applicant's Further Statement of Facts Issues and Contentions filed at the request/direction of the Tribunal on 5 May 2022, represents the Applicant's considered re-articulation of his assertion that he is owed non-refoulment obligations. In his statement of 27 June 2022, the Applicant states:

> *"……*
>
> *I informed my legal representative that there is no way I could go back to Lebanon and lose all my family in Australia. I consider myself an Australian, having lived in this country for most of my natural life.*
>
> *If I were forcefully removed to Lebanon, I believe that I would commit suicide and end everything. From what I understand, Lebanon is an absolute mess at the present time. There has been considerable migration of refugees into Lebanon from Syria. There is big corruption in government circles in Lebanon. The COVID-19 pandemic has impacted the economic, health and political outlook in Lebanon in a bad way.*

[139] Exhibit 2, pp 12 and 14, paras 57, 58 and 66.

Since leaving Lebanon as a child, I have never looked back. I have never returned Lebanon nor kept ties in that country. I would have no support on the ground in Lebanon. My mental health would deteriorate. I fear that I would not be able to obtain sufficient mental health treatment for my health issues, inclusive of being able to afford prescription medication.

I also fear a risk if harm in Lebanon on account of being perceived as a foreigner. I have an Australian accent. I consider myself Australian. I am not familiar with the local customs and culture in Lebanon. I consider myself a Muslim Australian with little real connection to the Islamic faith. I am scared that I could be kidnapped or otherwise targeted in Lebanon as a perceived westerner or foreigner. I believe my life could be at risk if removed to Lebanon."[140]

210. Two further matters were raised for the first time in the course of the hearing which may have a bearing on this other consideration. The first was raised by the Applicant's former wife Ms Amer. She alluded to her fear that "*people overseas don't like him."* She would not be drawn on any specifics. The Applicant himself did not raise this issue. The Applicant's current partner seemed to know something about this as well. She mentioned family-based conflict and killings. She gave no more details and did not seem to know more.

211. The second was a matter raised by the Applicant himself in cross-examination. He asserted that one reason for him having concerns about being identified if he were to return to Lebanon related to an Australian data breach concerning him. The Respondent was able to provide evidence that such a breach had in fact occurred for a 24 hour period on 7-8 April

[140] Statement of X Barghachoun, filed 27 June 2022, pp 3-4, paras 14-17.

2022. Some "*personal information"* may have been publicly accessible. It is not clear exactly what the specific content of the data may have been.[141] This may be further complicated by Section 16 of the Parliamentary Privileges Act, 1987.

212. The importance, if any, of these two matters is presently unclear. These matters may or may not be relevant to this other consideration. The Tribunal is left in the unsatisfactory position that it is aware of these matters, but is unable to weigh them properly, given the inadequate state of the evidence.

The Law – Non-refoulment

213. Section 499 of the act provides as follows:

> ***"Minister may give directions***
>
> *(1) The Minister may give written directions to a person or body having functions or powers under this Act if the directions are about:*
>
> *(a) the performance of those functions; or*
>
> *(b) the exercise of those powers.*
>
> *(1A) For example, a direction under subsection (1) could require a person or body to exercise the power under section 501 instead of the power under section 200 (as it applies because of section 201) in circumstances where both powers apply.*

[141] Exhibit 11.

(2) Subsection (1) does not empower the Minister to give directions that would be inconsistent with this Act or the regulations.

(2A) A person or body must comply with a direction under subsection (1).

(3) The Minister shall cause a copy of any direction given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after that direction was given.

(4) Subsection (1) does not limit subsection 496(1A).

214. The Tribunal is accordingly bound to comply with any such direction.

215. The currently applicable direction is Direction 90.

216. Under the heading of "other considerations", Direction 90 provides as follows:

9. Other considerations

(1) In making a decision under section 501(1), 501(2) or 501CA(4), other considerations must also be taken into account, where relevant, in accordance with the following provisions. These considerations include (but are not limited to):

a) international non-refoulement obligations;

b) extent of impediments if removed;

c) impact on victims;

d) links to the Australian community, including:

i) strength, nature and duration of ties to Australia;

ii) impact on Australian business interests

9.1 International non-refoulement obligations

(1) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the Refugees Convention), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act, particularly the concept of 'protection obligations', reflects Australia's interpretation of non-refoulement obligations and the scope of the obligations that Australia is committed to implementing. Accordingly, in considering non-refoulement obligations where relevant, decision-makers should follow the tests enunciated in the Act.

(2) ***In making a decision under section 501 or 501CA, decision-makers should carefully weigh any non-refoulement obligation against the seriousness of the non-citizen's criminal offending or other serious conduct. In doing so, decision-makers should be mindful that unlawful non-citizens are, in accordance with section 198, liable to removal from Australia as soon as reasonably practicable****, and in the meantime, detention under section 189, noting also that* ***section 197C of the Act provides that for the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen.***

(3) However, ***that does not mean the existence of a non-refoulement obligation precludes refusal or cancellation of a non-citizen's visa or non-revocation of the mandatory cancellation of their visa.*** *This is because such a decision will not necessarily result in removal of the non-citizen to the country in respect of which the non-refoulement obligation exists. For example, consideration may be given to*

removal to another country, or the Minister may consider exercising his/her personal discretion under section 195A to grant another visa to the non-citizen, or alternatively, consider exercising his/her personal discretion under section 197AB to make a residence determination to enable the non-citizen to reside at a specified place in the community, subject to appropriate conditions. Further, following the visa refusal or cancellation decision or non-revocation decision, if the non-citizen applies for a protection visa, the non-citizen would not be liable to be removed while their valid visa application is being determined.

(4) Claims which may give rise to international non-refoulement obligations can be raised by the non-citizen in response to a notice of intention to consider cancellation or refusal of their visa under section 501 of the Act, in a request to revoke under section 501CA the mandatory cancellation of their visa, or can be clear from the facts of the case (such as where the non-citizen holds a protection visa).

(5) International non-refoulement obligations will generally not be relevant to a consideration of the refusal, cancellation, or revocation of a cancellation, of a visa that is not a protection visa, where the person concerned does not raise such obligations for consideration and the person is able to apply for a protection visa in the event of an adverse decision.

(6) ***It may not be possible at the section 501/section 501CA stage to consider non- refoulement issues in the same level of detail as those types of issues are considered in a protection visa application. The process for determining protection visa applications is specifically designed for consideration of non-refoulement obligations as given effect by the Act.*** *A decision-maker, in making a decision under section 501/section 501CA, is not required in every case to make a positive finding whether claimed harm will occur, but in an appropriate case may*

assume in the non-citizen's favour that claimed harm will occur and make a decision on that basis.

(7) Where a non-citizen, in responding to a notice for the purposes of section 501 or 501CA, makes claims which may give rise to international non-refoulement obligations as given effect by the Act, and that non-citizen is able to make a valid application for a protection visa, those claims will, if and when the non- citizen makes such an application, be conclusively assessed before consideration is given to any character or security concerns associated with the non-citizen. This process would ordinarily be followed even in the highly unlikely event that consideration of the protection visa application is undertaken by the Minister personally.

(8) If, however, the refusal, cancellation or non-revocation decision is regarding a protection visa, the person will be prevented by section 48A of the Act from making a further application for a protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them - see sections 48A and 48B of the Act). Further, as a result of a refusal or cancellation decision under section 501 or a non-revocation decision under section 501CA, the person will be prevented from applying for any other class of visa except a Bridging R (Class WR) visa (see section 501E of the Act and regulation 2.12AA of the Regulations). In these circumstances, decision-makers should seek an assessment of Australia's international non- refoulement obligations.

9.2 Extend of impediments if removed

(1) Decision-makers must consider the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing

themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

9.2.1.1.1 *(a) the non-citizen's age and health;*

9.2.1.1.2 *(b) whether there are substantial language or cultural barriers; and*

9.2.1.1.3 *(c) any social, medical and/or economic support available to them in that country.*

9.2.1.1.4

217. A claim by the Applicant of harm or disadvantage that is not found to come within Clause 9.1 may nevertheless be relevant to Clause 9.2. It is also to be noted that "*other considerations*" are stated to" *include (but not be limited to)*" the specific considerations set out in Clauses 9.1 to 9.4.2. This may be relevant in some cases.

218. Given that Direction 90 is made under the Act, unless there is express reason to do otherwise,[142] it should be interpreted in a way that is consistent with the Act as a whole. In this context, it is also relevant to have regard to other provisions of the Act.[143]

219. The relevant date at which to make an assessment of the Applicant's status is the time at which the decision is made, not at any earlier time. In this instance, that is July 2022.[144]

220. The task of the Tribunal is:

---

[142] The Minister has given *"directions that would be inconsistent with this Act or regulations"* contrary to S 499 (2).

[143] Sections 5H, 5J, 5K, 5L, 5LA, 36, 91R (3), 197C, & 198 of the Act.

[144] *MIEA V Singh (1997) FCR 288.*

"Giving meaningful consideration to a clearly articulated and substantial or significant representation on risk of harm independently of a claim concerning Australia's non-refoulement obligations, requires more than the Assistant Minister simply acknowledging or noting that the representations have been made. Depending on the nature and content of the representations, the Assistant Minister may be required to make specific findings of fact, including on whether the feared harm is likely to eventuate, by reference to relevant parts of the representations in order that this important statutory decision-making process is carried out according to law (see Ezegbe v Minister for Immigration and Border Protection [2019] FCA 216; 164 ALD 139 at [32]-[36] per Perram J."[145]

221. This issue has been the subject of recent High Court consideration in *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17. In that case the majority of the Court said[146]:

"36. The Delegate was required to read, identify, understand and evaluate the plaintiff's representations. The Delegate's reasons record that they did so. ***The Delegate accurately identified that the plaintiff's representations raised a potential breach of Australia's non-refoulement obligations but said that it was unnecessary to determine whether non-refoulement obligations were owed in respect of him because he was able to make an application for a protection visa, "in which case the existence or otherwise of non-refoulement obligations would be fully considered in the course of processing that application".*** *The Delegate decided not to bring the plaintiff's representations in relation to non-refoulement to account (in the sense of giving weight to them and balancing them*

---

[145] *Minister for Home Affairs v Omar (2019) FCAFC 188* at [39].

[146] Gageler J substantially agreed with the majority, being Kiefel CJ, Keane J, Gordon J and Steward J.

against other factors) in making the Non-Revocation Decision, reasoning that a protection visa application was "the key mechanism provided for by the [Migration Act] for considering claims by a non-citizen that they would suffer harm if returned to their home country". That approach was not inevitable, but it was not erroneous.

37. Contrary to the plaintiff's submissions, the ***Delegate's reasons do not reflect a misunderstanding of the operation of the Migration Act.*** *For the reasons explained above,* ***the Delegate was not required to determine whether the plaintiff was owed non-refoulement obligations (by conducting an assessment of the merits of the plaintiff's claim) in the same manner, or to the same extent, as would be called for by a direct application of the international instruments to which Australia is a party or by reference to the domestic implementation of those obligations.***

38. The Court is not "astute to discern error" in the reasons of an administrative decision-maker73 . ***The Delegate's reasons convey that the Delegate had read and understood the plaintiff's claim and proceeded on the basis that non-refoulement obligations could be assessed to an extent and in a manner that they considered appropriate and sufficient to deal with the claim, namely in accordance with the specific mechanism chosen by Parliament for responding to protection claims in the form of protection visa applications. That provided a reasonable and rational justification for not giving weight to potential non-refoulement obligations as "another reason" for revoking the Cancellation Decision. Consequently, the Delegate did not fail to exercise the jurisdiction conferred by s 501CA(4) of the Migration Act or deny the plaintiff procedural fairness.***

39. ***Where the cancelled visa is not a protection visa and a decision-maker defers assessment of whether non-refoulement obligations are owed to permit a former visa holder to avail themselves of the protection visa procedures provided for in the Migration Act, it nevertheless may be necessary for the decision-maker to take account of the alleged facts underpinning that claim where those facts are relied upon by a former visa holder in support of there being "another reason" why the Cancellation Decision should be revoked.***

40. Here, the reasons record the Delegate's consideration of the issues of fact presented by the plaintiff's non-refoulement claims. The Delegate stated that they had considered the plaintiff's "claims of harm upon return to [South] Sudan outside the concept of non-refoulement and the international obligations framework" and that they accepted that, "regardless of whether [the plaintiff's] claims [were] such as to engage non-refoulement obligations, [the plaintiff] would face hardship arising from tribal conflicts were he to return to [South] Sudan". The harm, which formed the basis of his non-refoulement claims, was that if he was returned to South Sudan he faced persecution, torture and death. In concluding that they were not satisfied that there was another reason to revoke the Cancellation Decision, the Delegate stated that they had "considered all relevant matters including ... an assessment of the representations received in relation to the invitation for the purposes of s 501CA(4)(a)". The Delegate concluded that the plaintiff represented an unacceptable risk of harm to the Australian community and that the protection of the Australian community outweighed both the interests of his children and "other countervailing considerations", which would include the hardship identified by the Delegate."

222. I have come to the view that in this case, the Tribunal is faced with untestable assertions regarding the Applicant's likely treatment upon return to Lebanon. I am unable to be satisfied that the Applicant is personally owed any such obligations by reason of his personal circumstances, as opposed to general conditions applicable to other citizens of Lebanon. I am in no position to adequately assess these assertions.

223. I note that the Applicant has not sought a protection visa. The Tribunal has considered the possibility of indefinite detention as one possible outcome. At this stage, particularly in the absence of an application for a protection visa ever having been made, I consider such a possibility to be contingent upon the outcome of possible future events. To assess the possibility of such an outcome at present, would be an exercise in speculation.

224. I consider that the Applicant has "*raised a potential breach of Australia's non-refoulement obligations"* **but,** applying the reasoning in **Plaintiff M1** (above), I have formed the view that it is "*unnecessary to determine whether non-refoulement obligations (are) owed in respect of him because he (is) able to make an application for a protection visa".* Having regard to the Applicant's submissions and the decision in **Plaintiff M1** (above), I do "*not give weight to potential non-refoulment obligation as another reason*" for revoking the Cancellation Decision.

225. This consideration is neutral, for the reasons set out above.

(b) Extent of Impediments if Removed

226. As a guide for exercising the discretion, paragraph 9.2 of the Direction directs a decision-maker to take into account the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining

basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

(a) the non-citizen's age and health;

(b) whether there are any substantial language or cultural barriers; and

(c) any social, medical and/or economic support available to that non-citizen in that country.

227. The Applicant says;

> *"……*
>
> ***I cannot speak Arabic** and I know no one in Lebanon. I am afraid I will be targeted because I am a foreigner. I will have no house, nowhere to go and no licence to work. I am afraid that I will re experience events that caused my PTSD. I am afraid my PTSD will get worse. I will commit suicide if I have to go back to Lebanon.*
>
> ***I do not speak Arabic**, I know no one, I have no licence to work over there, I will commit suicide if I am deported.*
>
> *I am an Australian. I have grown up in Australia. I did not realise the difference between permanent resident & citizen. I do not have a passport and I have not been back to Lebanon since I left there when I was 13 years old. In my mind permanent meant permanent. Australia is my life and I have no life in Lebanon. Please see attached my statutory declaration for further information.*

……

Passport

Our client does not hold any Passport or travel document. Advice from the Lebanese Consulate is this is not an impediment removal.

Hardship in sending him to Lebanon and suicide risk

Our client is now 44 years old who grew up in Australia. He never left New South Wales ***since he was 10 years old****.*[147] *He has never returned to Lebanon and has no assets or contacts in Lebanon. He does not know anyone in Lebanon. This will make the move to Lebanon difficult. Our client is not fluent in Lebanese or French, the national languages of Lebanon.*

We asked our client about a possible return to Lebanon. On one occasion he said "I don't want to talk about that. What the fuck would I do in Lebanon.

He also said "if they force me to go back to Lebanon, I will kill myself".

The VOTP makes a number of recommendations for our client's maintenance. A lot of these services require a knowledge of available services. Our client is aware of these services in Australia but is ***not aware*** *of equivalent services in Lebanon.*

[147] Actually 13 years old.

The VOTP expressed concerns our client was reluctant to plan for his transition to Lebanon and preferred to plan for his transition to Australia. The investigation team believes our client is at an elevated risk of suicide if deported.

We submit our client requires a high level of support and care from social and medical services if returned to Lebanon.

Our client feels it is duty to look after his daughter. He previously supported his daughter financially before the 2011 offence.

We have earlier pointed out the risk of extortion, kidnapping, and ransom by armed militants looking to exploit an Australian resident or extort money from his Australian family.

Our client will not benefit from social assistance and post release services. His transition from jail to Lebanon, a country he is unfamiliar, will be a difficult one . It would require he overcome institutionalization in a foreign country that is struggling with a refugee crisis and a civil conflict. There will be no recognition of the fact that he has recently been release from prison. As we have earlier quoted, the denial of these services will adversely affect the wellbeing of our client. The effect of the Minister's decision will be to bar our client's attempts at reintegration into any society."[148]

[148] Exhibit 4, G59, Attachment AJ1, pp 382-3883 and G60, Attachment AJ2, pp 453-454.

228. It is interesting to note that the Applicant claims not to speak Arabic. It is clear from the materials in this matter that communication with his relatives, particularly his mother, has always been in Arabic. This statement is self-serving and literally untrue.

229. The Applicant is 53 years of age and is in good physical health. He does have an inadequately documented history of mental health issues. A lack of expert evidence on this topic makes assessment more difficult. He has reported making attempts on his life in the past. He has reported that he suffers from PTSD. He has been taking prescription medications to manage his condition. I am certain that the Applicant's access to mental health services in Lebanon would be much poorer than in Australia. This is a significant consideration.

230. He does have work skills that would be readily translatable to construction work in Lebanon. I note that the economic conditions in Lebanon are dire at present and that the Applicant may struggle to get paid work.

231. The Applicant has a history of drug use and addiction. A return to Lebanon may expose him to a greater risk of drug use and would afford him much less chance of receiving satisfactory addiction treatment services, than would be the case here.

232. The Applicant has lived in Australia since he was 13 years of age. He did attend school in Lebanon and speaks the language. He is familiar with the culture. Prison records confirm that he has remained an observant Moslem. This has been also demonstrated by his past religious marriages in the Islamic tradition. There would nevertheless be significant adjustment issues for the Applicant if he were to return to Lebanon.

233. The Applicant's immediate family and supports are in Australia. The Applicant would struggle with social, medical and economic support in Lebanon. He may be dependent on money from family in Australia, at least for a time. He would need to take care that he lived in parts of the country that exposed him to the smallest risk of harm due to internal political and social strife.

234. This consideration is weighs heavily in favour of revocation.

(c) Impact on victims

235. This Other Consideration (c) requires that decision-makers must consider the impact of the section 501 or 501CA decision on members of the Australian community, including victims of the non-citizen's criminal behaviour, and the family members of the victim or victims, where information in this regard is available and the non-citizen being considered for visa refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness.

236. There is no evidence on this other consideration.

237. This Other Consideration (c) is neutral

(d) Links to the Australian Community

238. In consideration of this Other Consideration (d), paragraph 9.4 of the Direction requires that decision makers must have regard to the following two factors set out in paragraph 9.4.1 and paragraph 9.4.2 respectively:

- the strength, nature, and duration of ties to Australia; and

- the impact on Australian business interests.

The strength, nature, and duration of ties to Australia

239. The Applicant has lived here since he was 13 years of age. I note that the Applicant's offending began very soon after his arrival in Australia and that it has continued. He has spent some periods being employed and paying taxes but on balance, his contribution to the Australian Community has been overwhelmingly negative. He has engaged in serious criminal conduct over a prolonged period he has consumed scarce resources in the NSW Corrections system, literally for years. He has been a significant net burden on the community.[149]

240. On the other hand, the Applicant has virtually all of his extended family connections here. He has two biological children, he has a current partner and her children. His links to the Australian community are deep. He says that he regards himself as an Australian.

241. In this case, Other Consideration 9.4.1(2) (a) weighs against revocation and 9.4.1 (2) (b) weighs in favour of revocation.

242. This Other Consideration (d), paragraph 9.4.1 of the Direction, on balance weighs in favour of revocation.

Impact on Australian business interests

243. There was no evidence on this other consideration, so this is neutral.

---

[149] I note the Applicant's submissions at Exhibit 4, G60, Attachment AJ2, pp 448-451.

Findings: Other Considerations

244. The application of the Other Considerations in the present matter can be summarised as follows:

(a) international non-refoulement obligations: neutral.

(b) extent of impediments if removed: weighs heavily in favour of revocation.

(c) impact on victims: neutral

(d) links to the Australian community including the strength, nature, and duration of ties to Australia: weighs in favour of revocation; and

(e) the impact on Australian business interests neutral

CONCLUSION

245. It is necessary to weigh up all of the primary and other considerations.

246. Primary consideration 1 weighs very heavily against revocation.

247. Primary consideration 2 weighs is neutral.

248. Primary consideration 3 weighs slightly in favour revocation.

249. Primary consideration 4 weighs very heavily against revocation.

250. Other considerations, (a) and (c) and (e) are neutral.

251. Other consideration (b) and (d) weigh in favour of revocation.

252. In my view, the proper application of the Direction favours the Tribunal not exercising the discretion to revoke the cancellation of the Applicant's Visa. I find that there is not "another reason" pursuant to s501CA (4)(b)(ii) to revoke the original decision.

DECISION

253. The decision under review is affirmed.

I certify that the preceding two hundred and fifty-three (253) paragraphs are a true copy of the reasons for the decision herein of Senior Member J Rau SC.

.....**[sgnd]**.....

Legal Associate

Dated:	08 August 2022
Date of hearing:	25 & 26 July 2022
Advocate for the Applicant:	Dr Jason Donnelly Latham Chambers
Advocate for the Respondent:	Mr Jonathon Hutton Australian Government Solicitor

Annexure A – List of Exhibits

Exhibit no.	Lodged by	Document
1	Applicant	Statement of Facts, Issues, and Contentions dated 27 June 2022
2	Applicant	Supplementary Contentions dated 15 July 2022
3	Respondent	Statement of Facts, Issues, and Contentions dated 19 July 2022
4	Respondent	G-Documents
5	Applicant	Bundle of Statements: 1. Statement of X Barghachoun 2. Statement of YX OO
6	Applicant	Tender Bundle Part 1 (Pages 1-89)
7	Applicant	Bundle of Statements 1. Statement of Abdul Zaoud 2. Statement of Dob Barghachoun 3. Statement of Fouadi Chaouk 4. Statement of Janet Pritchard 5. Statement of Mariam Barghachoun 6. Statement of Nasiren Amer 7. Statement of Randa Chaowk 8. Statement of Samer Ibrahim
8	Applicant	Tender Bundle Part 2 (Pages 1-192)
9	Respondent	Tender Bundle (Pages 1-710)

10	Respondent	Table of Applicant's Terms of Imprisonment, Parole and Immigration Detention
11	Respondent	Data Breach Notification Letter

Annexure B – Table of Imprisonment, Parole and Immigration Detention

Commenced	**Concluded**	**Event**
26 September 1988	4 October 1988	Remand
4 October 1988	23 March 1989	Recognisance order
23 March 1989	1 November 1989	Term of imprisonment
1 November 1989	June 1990	Parole
December 1992	September 1994	Recognisance order
3 May 1994	31 October 2002	Remand and term of imprisonment
31 October 2002	30 June 2004	Parole
12 August 2008	19 January 2010	Term of imprisonment
19 January 2010	18 January 2011	Good behaviour bond: 12 months
11 November 2010	24 November 2010	Remand, awaiting court date

11 November 2010		Bail
21 August 2011	19 February 2017	Term of imprisonment
19 February 2017		Parole
10 January 2020	27 March 2020	Remand
27 March 2020	To-date	Immigration detention

Annexure C – Applicant's Offending History

Court	Court Date	Offence	Court Result
Minda Children's Court	20/08/1986	4. Make False Representation	$50
Minda Children's Court	20/08/1986	3.Take & Drive Conveyance Without Consent (2 Counts)	1 2 & 3. On each charge admon & disc
Minda Children's Court	20/08/1986	2.Make False Representation	1 2 & 3. On each charge admon & disc
Minda Children's Court	20/08/1986	1.Frauduently Use Lic (2 Counts)	1 2 & 3. On each charge admon & disc

Paramatta Local Court	04/07/1988	BE&S	1.recog S558 self $500 GB 3 Years also fined $300
Ryde Local Court	08/11/1988	Not wear Helmet (FIW)	Charged and fined $70
Ryde Local Court	08/11/1988	UNINS (FIW)	Charged and fined $70
Ryde Local Court	08/11/1988	Carry Pillion Passenger (FIW)	Charged and fined $70
Ryde Local Court	08/11/1988	Unreg (FIW	Charged and fined $70
Ryde Local Court	08/11/1988	FTA (MINDA 110387) (FIW)	Charged and fined $100
Ryde Local Court	08/11/1988	FTA (PARRAMATTA 170288) (FIW)	Charged and fined $100
Paramatta Local Court	22/03/1989	Steal MV	2 years HL Non-Probation Period o12 Months
Waverly Local Court	17/07/1991	Drive Whilst Canc (Replaced by charge of	1. Fined $750 – Licenced

		drive whilst disq) 1. Drive whilst Disq 2. Unreg Vehicle 3. Unins vehicle	Disqualified for 6 months 2 & 3. On each charge fined $250
Paramatta Local Court	17/12/1992	1.BE&S	Sentence Deferred Enter Recog Self $1000 GB3 YRS Supv Community Correction Service
Paramatta Local Court	08/03/1993	4.Neg Drive	2 3 & 4 on each charge fined $100
Paramatta Local Court	08/03/1993	3.Off Lang	2 3 & 4 on each charge fined $100
Paramatta Local Court	08/03/1993	2.Resist Arrest (3 Counts)	2 3 & 4 on each charge fined $100
Paramatta Local Court	08/03/1993	1.Assault Police (3 Counts)	1. on each count fined $400
Paramatta Local Court	29/10/1993	1.Assault S61	1. fined $500
Paramatta Local Court	18/03/1994	1.Receiving (2 Counts)	1. on each count fined $1000

St James Local Court	01/06/1994	4.Imposition (3 Counts)	On each count fixed term 2
St James Local Court	01/06/1994	3.Imposition	On each count fixed term 2 months from 010694 reparation $1350
St James Local Court	01/06/1994	2. Imposition	2. Fixed term 4 months from 011294
St James Local Court	01/06/1994	1.Imposition	1. Fixed term 6 months from 010694 reparation $3960
St James Local Court	01/06/1994	Imposition on Commonwealth (6 Charges)	Charge 1: Convicted, sentenced to 8 months imprisonment to be released after serving 6 months Charge 2: Convicted, sentenced to 6 months imprisonment to be released after serving 4 months

			Charge 3: imprisonment 3 months. Pay reparation $1,350 Charge 4: imprisonment 3 months. Pay reparation $1,920 Charge 5: imprisonment 3 months. Pay reparation $640 Charge 6: imprisonment 2 months
Campbelltown District Court	03/02/1995	Indicted for 1. Steal MV 2. Armed Robbery	1. Fixed term 12 months from 010195 2. Min term 3 years from 010195 and term 1 year

Bankstown Local Court	21/02/1995	3. Possn Unlic Revolver	2&3 on each count charge adj gen
Bankstown Local Court	21/02/1995	2.ABOABH	2&3. On each charge adj gen
Lithgow Local Court	11/05/1995	3.Use False Instrument (S80AA Warrant) (By Summon)	1 2 & 3. On each charge 12 months imp
Lithgow Local Court	11/05/1995	2.Make False Instrument (S80AA Warrant) (By Summon)	1 2 & 3. On each charge 12 months imp
Lithgow Local Court	11/05/1995	1.Stealing (S80AA Warrant) (By Summon)	1 2 & 3. On each charge 12 months imp
Liverpool District Court	01/09/1995	Indicted for 1. Robbery being Armed 2. Robbery being Armed	1.Fixed term 4 years from 010198 (appealed) 2. Min term 4 year from 010198 add term 2 years 6 months release, subject to supervision

Court of Criminal Appeal Court	23/10/1995	Application for Leave to Appeal Conv & Severity of Sentence 030295	Ordered that the appeal be dismissed
Goulburn Local Court	22/02/1996	1.ABOABH	1. fixed term 4 months from 220296
Court of Criminal Appeal Court	12/03/1998	App for Leave to Appeal Conv & Severity of Sentence 010995	And has ordered that appeal conviction dismissed appeal against sentence not pressed but dismissed
Fairfield Local Court	08/10/2008	Deal with property suspected proceeds of crime	Imprisonment: 16 months commencing 11/08/2008 non parole period with conditions: 12 months release subject to supervision
Liverpool Local Court	18/09/2009	Attempt dispose property-theft=serious indictable > $5000-T1	Imprisonment: 12 months commencing 11/08/2009 concluding 10/08/2010 – non

			parole period conditions
Campbelltown District Court	19/01/2010	Attempt dispose property-theft=serious indictable > $5000-T1	Convicted: imprisonment 12 months suspended on enter bond S12 – 12 months supv NSW prob service
Sydney District Court	13/12/2012	Larceny value >$15000-T1	Indicted for imprisonment: 2 years commencing, 20/08/2012; concluding 19/08/2014
Sydney District Court	13/12/2012	Larceny value >$15000-T1	Indicted for imprisonment: 2 years commencing, 20/08/2012; concluding 19/08/2014
Sydney District Court	13/12/2012	Robbery while armed with dangerous weapon-SI	Imprisonment of 2 years 6 months

Sydney District Court	13/12/2012	Take & drive conveyance w/o consent of owner- T2	Imprisonment of 12 months
Sydney District Court	13/12/2012	Larceny value >$2000-T2	Imprisonment of 12 months
Sydney District Court	13/12/2012	In company rob while armed with dangerous weapon-SI	Imprisonment of 8 yeas 6 months – non parole period with conditions: 5 years 6 months
Parramatta District Court	28/03/2013	Take/detain person w/i to obtain advantage occasion abh-SI	Indicted for not guilty by verdict
Parramatta District Court	28/03/2013	Take/detain person w/i to obtain advantage-SI	Indicted for not guilty by verdict
Court of Criminal Appeal Court	17/04/2014	Take & drive conveyance w/o consent of owner- T2	Ordered that appeal dismissed
Court of Criminal Appeal Court	17/04/2014	Larceny value >$2000-T2	Ordered that appeal dismissed

Court of Criminal Appeal Court	17/04/2014	Larceny value >$15000-T1	Ordered that appeal dismissed
Court of Criminal Appeal Court	17/04/2014	Larceny value >$15000-T1	Ordered that appeal dismissed
Court of Criminal Appeal Court	17/04/2014	Robbery while armed with dangerous weapon-SI	Order that leave to appeal granted – appeal allowed – sentence quashed
Court of Criminal Appeal Court	17/04/2014	In company rob while armed with dangerous weapon-SI	Order that leave to appeal granted – appeal allowed – sentence quashed; in lieu imprisonment: 6 years with non parole period conditions: 3 years and 6 months
Waverley Local Court	10/08/2016	Inmate possess mobile phone/SIM card etc	Imprisonment: 2 weeks

Downing Centre District Court	17/10/2016	Inmate possess mobile phone/SIM card etc	Order varied: imprisonment: 2 weeks
Blacktown Local Court	12/06/2020	Dishonestly obtain property by deception- T1	Pending Court Appearance
Blacktown Local Court	12/06/2020	Dishonestly obtain property by deception- T1 (48 Attempt)	Pending Court Appearance
Blacktown Local Court	12/06/2020	Dishonestly obtain property by deception- T1 (48 Attempt)	Pending Court Appearance
Blacktown Local Court	12/06/2020	Dishonestly obtain property by deception- T1	Pending Court Appearance
Blacktown Local Court	12/06/2020	Knowingly/recklessly direct criminal group assist crime- T1	Pending Court Appearance
Blacktown Local Court	12/06/2020	Take prt supply prohibited drug <=small quantity- T2	Pending Court Appearance
Penrith Local Court	15/12/2020	Deal with property proceeds of crime <$100000-T2 (Attempt)	Taken into account on Form 1

Penrith Local Court	15/12/2020	Deal with property proceeds of crime <$100000-T2 (Attempt)	Taken into account on Form 1
Penrith Local Court	15/12/2020	Deal with property proceeds of crime <$100000-T2 (Attempt)	Fine: $1,200 Community Correction Order: 3 years commencing 15/12/2020 concluding 14/12/2023
Penrith Local Court	15/12/2020	Deal with property proceeds of crime <$100000-T2 (Attempt)	Fine: $1,200 Community Correction Order: 3 years commencing 15/12/2020 concluding 14/12/2023