Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

SQHG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 2810 (28 July 2022)

Division: GENERAL DIVISION

File Number(s): **2022/3722**

Re: **SQHG**

APPLICANT

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

RESPONDENT

DECISION

Tribunal: **Senior Member Damien O'Donovan**

Date: **28/07/2022**

Date of written reasons: **19/08/2022**

Place: **Canberra**

The decision made by the delegate of the respondent on 5 May 2022 is set aside and the Tribunal decides not to refuse the applicant's Protection (Class XA) visa under s 501(1) of the Act.

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Senior Member Damien O'Donovan

Catchwords

MIGRATION – Discretion to refuse a Protection (Class XA) (Subclass 866) Visa - where Applicant does not pass the character test – significant criminal record - whether discretion to refuse the visa should be exercised – Decision under review set aside

Legislation

Administrative Appeals Tribunal Act 1975 (Cth) ss 33, 44

Evidence Act 1995 (Cth) s 69

Migration Act 1958 (Cth) ss 197C, 499(1), 500(6L), 501, 501CA

Cases

Anderson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 205

Briginshaw v Briginshaw (1938) 60 CLR 336

CVN17 v Minister for Immigration and Border Protection [2019] FCA 13

Healey and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4309.

HZCP v Minister for Immigration and Border Protection (2019) 273 FCR 121

FYBR and Minister for Home Affairs [2019] FCAFC 185

Jagroop v Minister for Immigration and Border Protection and Another (2016) 241 FCR 461

Jones v Dunkel (1959) 101 CLR 298

LQFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 2145

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

R v White (1899) 20 LR (NSW) (L) 12

Suleiman v Minister for Immigration and Border Protection (2018) 74 AAR 545

The Commonwealth v AJL20 [2021] HCA 21

Secondary Materials

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 Damien O'Donovan

1. The applicant was born in Port Moresby, Papua New Guinea (**PNG**) on 27 June 1989 and is a citizen of PNG. The applicant's father travelled to Australia in 2000 on a student visa and brought his family with him. Except for a brief return to PNG between 2002 and 2004, the applicant has remained in Australia since that time. His stay has been dominated by one event and its consequences. On 7 July 2005, when the applicant was 16, he was involved in an altercation which ended with him stabbing a man in the neck. The weapon he used was a bottle which he had smashed for the purpose of attacking his victim. The victim bled to death and the applicant was subsequently convicted of murder. He was ultimately sentenced to 17 years and six months in prison with a non-parole period of 12 years and six months.

2. Since his conviction the applicant has either been serving his prison sentence or been confined in immigration detention.

3. The applicant held a bridging visa which remained in effect until he was released from prison.[1] On the date of his release from prison the visa was cancelled, and he was taken into Department of Immigration and Border Protection custody.[2]

4. The applicant applied for a Protection (Class XA) visa (**protection visa**). A decision of this Tribunal (differently constituted) has determined that the applicant meets a protection criterion for the grant of that visa, specifically the complementary protection criterion found in section 36(2)(aa) of the *Migration Act 1958* (the **Act**).[3] However, before the visa is granted a decision must be made on whether to exercise the discretion which is available to refuse to grant a protection visa to a person who does not meet the character requirements in the Act.

5. Under section 501(1) of the Act, the Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test. Under

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[1] Exhibit R1, G5, 94.

[2] Exhibit R1, G5, 88.

[3] Ibid 180-207.

section 501(6)(a) of the Act, a person who has a substantial criminal record does not pass the character test. Section 501(7)(c) of the Act provides that for the purpose of the character test, a person has a 'substantial criminal record' if the person has been sentenced to a term of imprisonment of 12 months or more. As a result of the length of the sentence imposed on the applicant, he does not pass the character test and the discretion to refuse his visa is available.

6. On two occasions the Minister has personally determined that the applicant should be refused a visa exercising that discretion. On two occasions the Federal Court has set aside the Minister's decision and remitted the matter to have the application determined according to law. After the second remittal, a delegate of the Minister considered the applicant's application for a protection visa. The delegate had to consider whether to exercise her discretion to refuse to grant the visa by reference to Direction 90, a binding direction made by the Minister under section 499 of the Act. The delegate found that the considerations favouring non-refusal were outweighed by the considerations favouring refusal. The delegate decided to refuse to grant the applicant a protection visa,.

7. On 5 May 2022 the applicant was notified of the delegate's decision. On 10 May 2022 the applicant applied to the Tribunal for review of the reviewable decision. In these proceedings I must consider whether to exercise the discretion to refuse the applicant's protection visa. Like the delegate, my exercise of this discretion is regulated by Ministerial Direction No 90.

MINISTERIAL DIRECTION NO. 90

8. The Minister is empowered by s 499(1) of the Act to give written directions to a person or body having functions or powers under the Act. The Direction must be applied by all decision-makers, including the Minister's delegates and the Tribunal, but does not apply to the Minister.[4]

9. On 8 March 2021, the Minister signed *Direction No. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section*

[4] Section 499(2A) of the Act; *CGX20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 69, [4] (Rares, O'Callaghan and Jackson JJ).

501CA (the **Direction**). The Direction commenced on 15 April 2021 and revoked Direction 79, the previous direction which dealt with section 501CA, on the same date.[5]

10. The Direction provides that:

> *The purpose of this Direction is to guide decision-makers in performing functions or exercising powers under section 501 and 501CA of the Act. Under section 499(2A) of the Act, such decision-makers must comply with a direction made under section 499.*[6]

11. The factors that must be considered in making a decision under section 501 or section 501CA of the Act are identified in Part 2 of the Direction. The following principles in paragraph 5.2 of the Direction provide a framework for decision makers:

> *(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 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.*
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> *(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.*

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[5] Direction No 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA, [2-3].

[6] Ibid [5.2].

(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.*[7]

12. Paragraph 6 of Part 2 of the Direction provides that, informed by the principles in paragraph 5.2, a decision-maker must take into account the considerations identified in paragraphs 8 and 9, where relevant to the decision.[8]

13. Direction 90 is divided into primary considerations and other considerations.

14. Paragraph 7(1) provides that, when taking the relevant considerations into account, '*…information and evidence from independent and authoritative sources should be given appropriate weight.*'[9]

15. Paragraph 7(2) states that '*[p]rimary considerations should generally be given greater weight than the other considerations'.*[10] This does not however preclude the Tribunal giving an '*other*' consideration the equivalent or greater weight than a primary consideration.[11]

16. Paragraph 7(3) states that *'[o]ne or more primary considerations may outweigh other primary considerations.'* However, as held in *Jagroop v Minister for Immigration and Border Protection and Another* (2016) 241 FCR 461 at [57]:

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[7] Ibid.
[8] Ibid [6].
[9] Ibid [7.1]
[10] Ibid [7.2].
[11] *Suleiman v Minister for Immigration and Border Protection* (2018) 74 AAR 545, [23]; [28] (Colvin J).

> *… the weighing process in each case is in substance left, as it must be, to the individual decision-maker exercising the power under s 501.*[12]

17. Paragraph 8 of the Direction identifies the following as primary considerations:[13]

    (a) Protection of the Australian community;

    (b) Family violence committed by the non-citizen;

    (c) The best interests of minor children in Australia affected by the decision; and

    (d) Expectations of the Australian community.

18. Paragraph 9 of the Direction identifies a non-exhaustive list of other considerations:[14]

    (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.

19. In the present cases both parties accept that, given the Tribunal's earlier protection finding, the applicant cannot be returned involuntarily to PNG so there is no contention that Australia will breach any non-refoulement obligation owed to the applicant.[15] Equally, due to a medical condition he suffers from and the fear he holds about what will happen to him if he is returned to PNG, both parties accept that he will not be returning to PNG

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[12] *Jagroop v Minister for Immigration and Border Protection and Another* (2016) 241 FCR 461, [57].

[13] Ibid [8].

[14] Ibid [9].

[15] Although the applicant's Statement of Facts, Issues and Contentions (at [154]) stated that the consideration should be given limited weight in the applicant's favour, the applicant's counsel clarified in closing submissions that this consideration should be given neutral weight.

voluntarily.[16] As a consequence of this the considerations identified in paragraphs 18(a) and (b) above have no role to play in my consideration. Of the remaining considerations two loom large in the consideration of whether the applicant should be denied a visa. First, the protection of the Australian community. The applicant committed a heinous crime. His behaviour in immigration detention is extremely troubling and he poses a risk of committing violent crime in the future. The quantum of that risk needs to be considered carefully. Second, if he is refused a visa on discretionary grounds, that condemns him to indefinite detention. In the present circumstances there are reasons to think that it would be lengthy and the psychological impact devastating. Balancing these two considerations which focus on two very different interests is not easy. In the end what tipped the balance in favour of the applicant was the fact that if he is released now from immigration detention he will be subject to parole and the supervision that entails. While the period of supervision is short, it gives the applicant a good chance of safe re-integation into the Australian community.

20. Accordingly, I have decided not to exercise the discretion to deny the applicant his protection visa.

EVIDENCE

21. The following material was taken into evidence in the course of the hearing:

- Exhibit A1: Applicant's tender bundle pages 1-80 filed on 13 June 2022;
- Exhibit A2: Statement of the applicant dated 11 June 2022;
- Exhibit A3: Statement of AT dated 13 June 2022;
- Exhibit A4: Statement of the applicant’s father dated 30 June 2022;
- Exhibit A5: Statement of the applicant’s mother dated 30 June 2022;
- Exhibit A6: Statement of Daniel Barber dated 30 June 2022;
- Exhibit A7: Statement of Ros Lowe dated 18 January 2022;
- Exhibit A8: Applicant's Supplementary Tender Bundle consisting of three media articles pages 1-12, filed on 1 July 2022;

[16] Applicant’s Statement of Facts, Issues and Contentions dated 13 June 2022 [139–140]. Both parties agree that the considerations which have as their factual premise a return by the applicant to PNG should be given neutral weight as the factual circumstance will not arise.

- Exhibit R1: G-documents pages 1-832 filed on 20 May 2022;
- Exhibits R2-R83: Extracts from pages in the Respondent's Tender Bundle filed on 27 June 2022 – The extracts contain material produced under summonses addressed to The Proper Officer, The Commissioner of Police (NSW) and The Proper Officer, Corrective Services of NSW. They also contain material from Serco and International Health and Medical Services (IHMS). A full list of these exhibits is annexed to these reasons.

22. The following witnesses gave evidence:

- The applicant;
- The applicant's father;
- The applicant's mother;
- Daniel Barber;
- AT; and
- Ros Lowe

FACTS

Fact finding principles

23. Set out below are my findings of fact. To the extent that any finding is controversial the evidence on which the finding is based is cited.

24. The evidence before the Tribunal included a significant amount of documentation concerning the applicant's conduct while in immigration detention. It came from two sources:

- Serco, the security contractor which provides security services to the Department which are critical to the running of Australia's immigration detention centres;
- IHMS, which provides medical services to Australia's immigration detention centres.

25. The documents are important because they give insight into how the applicant has conducted himself in recent years, which is relevant when assessing the likelihood of

further offending if released. A conflict has emerged between the applicant's oral evidence and some of the documents, which describe violent assaults and violent threats made against fellow detainees.

26. The applicant in his oral evidence insisted that Serco staff made up and falsely recorded incidents which did not happen. No evidence beyond the bare assertion was offered to the Tribunal. Counsel for the applicant was appropriately circumspect in pressing such a serious allegation.

27. The Serco records, on the other hand, are clear and detailed and describe the basis on which material has been included in the reports and what the source of the information is. Despite this, the applicant submits that the Tribunal should approach the records with caution as no live witness was called to verify the contents of the documents. According to the applicant, given the seriousness of the matters recorded in the documents, no finding should be made on the basis of them in the face of any denial by the applicant. Such an approach is to a degree consistent with the Federal Court decision of *CVN17 v Minister for Immigration and Border Protection* and a number of AAT decisions which deal with the question of the weight to be placed on information contained in police records.[17]

28. The approach I take to resolving the conflict has potentially significant consequences in this case. If I find that each of the incidents described in the documents (but denied by the applicant) occurred then I can take them into account in considering the protection of the Australian community criterion. If I accept the applicant's denials then I should disregard the recorded incidents. The choice is unusually stark between accepting oral evidence given under oath and contradictory documentary material which has not been verified by a live witness.

29. Ultimately I have preferred the evidence in the Serco records over the evidence given by the applicant. The applicant admitted that many of the Serco records accurately recorded events that did occur. It was only the records which were likely to have the most adverse

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[17] *CVN17 v Minister for Immigration and Border Protection* [2019] FCA 13 ('*CVN17*'); See, e.g., *Anderson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2021] AATA 205 (footnote 41); *Healey and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2021] AATA 4309 [74]-[75]; *LQFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2022] AATA 2145.

consequences for the applicant which were denied. The recorded incidents which the applicant denied were for the most part incidents where the applicant had been violent or used threats of violence or which suggested more extensive drug use by the applicant than he was prepared to admit. The applicant had very strong incentives for denying the accuracy of the records.

30. The Serco records however were detailed and on their face showed evidence of careful preparation and review. Sources of information were identified and included other inmates, CCTV footage as well as Serco employees. The records could also be cross referenced in some cases to records kept by IHMS. In these circumstances I regard the Serco records as more reliable than the evidence of the applicant. When those two sources of evidence have come into conflict I have preferred the evidence documented in the Serco records.

31. I note for completeness that even if the Tribunal were bound by the rules of evidence, the Serco records would be admissible as business records.[18]

32. The applicant's medical records and reports are also an important source of evidence. IHMS kept detailed records concerning the applicant's mental health and drug use while in immigration detention. I regard these records as reliable given how detailed they are and that they cross reference well with the applicant's own admissions and the records kept by Serco. In addition I have relied on admissions recorded by a psychologist briefed by the applicant, Mr Sheehan. To the extent that there is any conflict between the applicant's evidence and these records I have preferred the medical records. The applicant had a clear incentive to be less candid with the Tribunal about his drug use and the violence it induced than he was with his healthcare providers. On that basis I have preferred the history which they have recorded.

33. In relation to Mr Sheehan, the applicant raised the possibility that he was mistaken about certain matters of timing. I do not accept that evidence. The applicant has relied upon Mr Sheehan's report for a number of years now and has never sought to make a formal correction to it on the basis that it records an incorrect history. In those circumstances I

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[18] See Section 69 *Evidence Act 1995* (Cth)

am satisfied that it should be regarded as accurate and reliable in relation to all matters disclosed in it.

34. The applicant as a witness was at times very straightforward, but I was not satisfied that he was willing to admit to the full extent of his drug use while incarcerated or the extent of violence and threats of violence in which he engaged. On the contrary, I was satisfied that the written records kept by Serco and IHMS were accurate and gave the best picture of the applicant's conduct while in immigration detention.

The applicant's background – work, social and criminal history

35. As noted at the beginning, the applicant first arrived in Australia in 2000 as a dependent on his father's student visa. The applicant and his family returned to PNG in 2002. In January 2004, the applicant and his family returned to Australia, and have remained in Australia since that time.

36. In the Supreme Court of New South Wales' sentencing remarks, the applicant's upbringing was described as 'uneventful'.[19] Although he had witnessed poverty, violence and danger in PNG, his family was stable. There were no issues in his family relating to substance abuse, mental illness, or criminality.[20]

37. The applicant was described as 'an average student', with no significant behavioural problems although he was suspended for fighting when he was in Year 7.[21] The pastor at the applicant's church described him as 'a very well-behaved young man'.[22] The applicant stopped attending church in around 2004 when he joined a rugby league team. According to the sentencing remarks, at the age of 15 the applicant began drinking alcohol because of the association with this team.[23]

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[19] Exhibit R1, G5, 56.
[20] Exhibit R1, G5, 363.
[21] Exhibit R1, G5, 56.
[22] Ibid 57.
[23] Ibid.

38. In a psychological assessment conducted in 2018, the applicant admitted that prior to his incarceration he was using cannabis, speed, and cocaine.[24] A 2020 psychological assessment stated that around this time the applicant would smoke cannabis two or three times per week.[25] He also reportedly drank heavily with his peers, and that at one point he could consume a case of 24 beers in one sitting.[26]

39. The applicant found the initial transition and the social adjustment when arriving in Australia difficult. Upon, returning to Australia for Year 10 at Waratah Technology High School in Newcastle, the applicant suffered from feelings of inferiority and insecurity. He had several fights with his peers.

40. On 7 July 2005, the applicant was out drinking with his rugby team in a large group. Separately, two Australian Air Force members were also out that evening. They too had been drinking. For reasons which were never fully established at trial, on a public street the two members and the applicant's group came into contact and exchanged words and a fight developed. During the fight, several of the applicant's group struck the victim but the applicant became directly involved in a fight with the victim and was bested by him. After the fight had finished, but while the victim was still being antagonised by the broader group, the applicant broke a glass bottle and stabbed the victim in the neck, severing major arteries in his throat. The applicant and his group fled the scene, and the victim bled to death shortly after.[27]

41. The applicant pleaded not guilty but was convicted on one count of murder and was sentenced to 22 years with a non-parole period of 15 years and six months for this offence. The applicant's sentence was reduced to 17 years and six months imprisonment with a non-parole period of 12 years and six months following his successful appeal on 8 November 2013.[28]

42. The applicant served his sentence at a variety of locations.

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[24] Exhibit R2, 5.
[25] Exhibit R1, G5, 366.
[26] Ibid.
[27] Exhibit R1, G5, 56.
[28] Exhibit R1, G5, 65.

43. The applicant first applied for a protection visa on 21 December 2017 prior to his release from prison.

44. The applicant was released on parole on 7 January 2018 and was immediately transferred to Villawood Immigration Detention Centre (VIDC), as he was a non-citizen who did not hold a visa. The applicant resided in VIDC until 17 August 2021 when he was transferred to Yongah Hill Immigration Detention Centre. Subsequently, on 30 September 2021, the applicant was transferred to North West Point Immigration Detention Centre on Christmas Island, where he currently resides.[29]

45. The applicant's protection visa application has a long and complex history. On 9 February 2018, the applicant's visa was refused for the first time on the basis that he was not a refugee and was not entitled to complementary protection. The applicant appealed to the Tribunal, which, on 27 June 2018 set aside the delegate's decision and remitted the application to the Respondent, with the direction that the applicant satisfies the criteria for complementary protection.

46. The Minister then personally considered whether to grant the applicant a visa. He refused the applicant's visa on discretionary grounds on 11 September 2019. The applicant sought judicial review in the Federal Court. On 25 May 2020 the Federal Court quashed the Minister's decision and remitted it for reconsideration. The Minister again considered the application for the visa personally and again refused the application on discretionary grounds.The applicant again successfully sought judicial review in the Federal Court, which again quashed the decision and remitted it for reconsideration.

47. On 5 May 2022, a delegate of the Minister refused the applicant's visa under section 501 of the Act. The applicant applied to this Tribunal on 10 May 2022 for review of that decision.

Behaviour in prison and in immigration detention

48. During the time that he was in prison, the applicant's conduct was generally good.

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[29] Respondent's Statement of Facts, Issues and Contentions dated 24 June 2022, [17].

49. In 2007 he was diagnosed with a pancreatic tumour. Although the tumour was removed, the applicant is required to take medication for the rest of his life to compensate for the missing portion of his pancreas. That medication is required to enable the applicant to digest food. If the applicant does not have access to this medication the consequences will ultimately be fatal.

50. In his time in prison, the applicant received minor sanctions for three offences - failing to comply with a routine, failing a urine test, and possession of drugs.[30] The possession of drugs sanction was imposed in 2011. The urine test which the applicant failed was in 2013. Mirtazapine (an antidepressant) was detected.[31] No further positive tests were reported in prison after that date.

51. In 2012-2013 the applicant commenced smoking non-prescribed buprenorphine, stemming from 'apathetic and nihilistic beliefs about the future'.[32] After successfully appealing the length of his sentence, the applicant began to feel more positive about his future prospects and ceased drug use from 2013.

52. The applicant did not relapse into serious drug use until he was taken into immigration detention at Villawood Immigration Detention Centre in 2018.[33]

53. During his time in prison the applicant was a committed participant in rehabilitation programs and personal development. His courses included:

- Certificates I-II in Conservation and Land Management, which was completed at a local college on the central coast while the applicant was in Kariong Juvenile Justice (October/November 2005)
- NSW School Certificate through Girrakool School
- Year 11 completed through Girrakool School while at Frank Baxter Juvenile Justice (2006)
- Occupational Health and Safety Green Card, TAFE (2007)

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[30] Exhibit R1, G5, 785.
[31] Exhibit R1, G5, 90.
[32] Ibid 366.
[33] Ibid.

- Partial completion of Certificate III in Brick and Block Laying through TAFE (about July 2007)
- Certificate II in Business, TAFE
- Partial completion of Certificate IV Business Administration, TAFE
- Higher School Certificate (2009)
- Partial completion of Certificate IV in Horticulture, TAFE (2010)
- Health Survival Tips (3 October 2017)
- TAFE MOU Short Course, Agriculture & Rural skills (23 December 2016)
- TAFE MOU Ticket Workplace Hygiene, Food Handling (17 December 2014)
- TAFE MOU Short Course, Fitness/Health (17 June 2014)
- AVETI Business Studies V12 (16 October 2013)
- Health Survival Program (3 July 2012).[34]

54. On the whole, the applicant was mostly a compliant prisoner who earned the trust of prison authorities who slowly reduced the constraints on him. By the time the applicant was released from prison he was working in the community for a tree felling business and was spending time on weekends with his family with an ankle tracking device attached. One of the witnesses called, Daniel Barber, had been in prison with the applicant for about two years. He spoke highly of the way in which the applicant conducted himself in prison and it was clear that Mr Barber had very high regard for the personal qualities which the applicant demonstrated while he was in prison. In particular, the witness said that the applicant was a well-respected inmate amongst his peers and the prison officers, he was disciplined in physical gym training and he said that he 'had never seen anyone conduct themselves like [the applicant] did in there…and that is the reason why I have maintained my friendship with him since then'.

55. However, when the applicant was released into immigration detention the freedom which had been increasing within the prison system was suddenly and dramatically curtailed. There was no equivalent to weekend release and the applicant saw considerably less of his family and friends than when he was in prison.

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[34] Exhibit R1, G5, 504–505.

56. The applicant's behaviour deteriorated. He accepts that he used drugs and that he engaged in defiant behaviour and property damage but does not accept that all of the anti-social behaviour which he is recorded as engaging in actually occurred. The applicant claims that Serco fabricated some of the incidents which appear in the applicant's file. This is a bare allegation, and no evidence of any kind was led which would suggest it had substance. For the reasons stated at paragraphs 29 to 32 above I prefer the Serco accounts of the incidents they describe to the oral evidence of the applicant.

57. The applicant accepted that the following events occurred while he was in immigration detention:

a) He was smoking methamphetamine (ice) commencing from January 2018 for a considerable period, with usage gradually increasing to at least a few times per week;

b) He kicked a bucket and was yelling and screaming (4 March 2018);

c) He damaged a mop (12 May 2019);

d) He used offensive and abusive language on numerous occasions (20 May 2018, 2 July 2018, 20 May 2020, 15 June 2020);

e) His drug use resulted in a drug-induced psychosis on at least two occasions (4 February 2019, 22 April 2019);

f) He started a fire in his room when his father was denied visitation rights (9 June 2018);

g) There was a verbal altercation which ended with him breaking one of the centre's televisions on 22 August 2019.

58. The applicant either denied or did not recall the following incidents:

a) He had no recollection of assaulting an emergency paramedic (4 February 2019);

b) He had no recollection of throwing a bin against a wall (15 March 2019);

c) In relation to a recorded incident involving him punching another detainee in the head— the applicant said 'I don't remember this and don't think this happened.' On 15 March 2019 the applicant is recorded in Serco records as assaulting another detainee by punching him in the head. The applicant is recorded as admitting the assault and stated that the detainee 'has been baiting and has been being smart mouthed and it was like he was waiting for someone to hit him'[35];

d) In relation to a recorded incident involving him punching and kicking a detainee the applicant said —'I don't think it happened, this is made up' (15 July 2019);

e) In relation to a recorded incident involving him punching a detainee in the head the applicant said —'I don't think it happened, most likely it was made up' (22 July 2019);

f) In relation to a recorded incident involving him punching a wall and attacking a staff member and being restrained when in drug-induced psychosis the applicant said —'I do not have a memory of this' (22 April 2019);

g) In relation to a recorded incident involving him slapping a detainee in the face the applicant said it was– 'a complete lie—the Serco allegation—it's a complete lie' (28 November 2018);

h) In relation to a recorded incident involving him assaulting another detainee— 'I don't think it happened' (29 November 2019);

i) In relation to a recorded incident involving him throwing out possessions of another detainee from his room—he denied he threw them out but accepted that he did take property out of his room without the owner's consent, but this

[35] Exhibit R1, G5, 113; Exhibit R67, 937-940.

was not done in an aggressive manner.—The general tenor of the allegation, and in particular the hostility of his actions, was denied (15 June 2020);

j) In relation to a recorded incident involving him threatening to break the bones of another detainee who was going to share his room— the applicant denied he said such a thing and noted 'I didn't say fuck off or I'll break your bones' (30 June 2020);

k) In relation to a recorded search of the applicant's room where 15 foil strips and other drug paraphernalia were found in this room—the applicant said, 'nah, I don't recall that at all' and denied them being in his room (31 January 2021).

59. For the reasons stated at paragraphs 29 to 32 above I am satisfied that these incidents occurred as described in the written material. I do not accept the applicant's denials.

60. More details of some of these incidents are revealed in the applicant's medical records. On 4 February 2019 (referred to in paragraph 58(a) above) the applicant, during what appears to have been an episode of drug-induced psychosis, attempted to assault a paramedic, used his legs to kick emergency responders to prevent them from mechanically restraining him and said he would try to assault the paramedic again if he could.[36] The applicant has no memory of this incident. The applicant's medical records associate the episode with methylamphetamine consumption. He was hospitalised as a result.

61. IHMS records provide details of the applicant's drug use which explain the applicant's behaviour and to a degree the unreliability of his memory.

62. On 4 February 2019, the applicant consulted with an IHMS General Practitioner. The applicant reported 'smoking ice for the last couple of months' due to low mood and insomnia from spending a lengthy time in immigration detention.[37]

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[36] Exhibit R1, G5, 114.

[37] Ibid 3.

63. On 22 April 2019, the applicant was reviewed by an IHMS GP following his discharge from hospital due to an episode of drug-related psychosis. The applicant reported 'hearing voices and being aggressive after using ice' and that he had punched the wall.[38]

64. On 25 July 2019, the applicant was reviewed by an IHMS psychiatrist. The reason for review was that the applicant had now had a number of episodes of drug-related psychosis whilst in detention.[39] The applicant stated that he had recovered but at the time had paranoia that other inmates were going to assault him. He reportedly heard voices of people threatening him and became so paranoid that he assaulted one of his friends. He expressed regret and had apologised to this friend. The applicant initially attributed the episode to missing his prescribed medication Olanzapine, however on prompting acknowledged that drug use may have been a factor.[40] The psychiatrist noted the following under the 'impression' section:

- Recurrent drug induced psychosis from crystalline methamphetamine use in detention.

- No background mental health issues and no enduring psychosis. Episodes have been brief.

- Currently free of psychosis and showing good insight.

65. *- Risk to self and others currently low. But risk will escalate if he relapses back into drug use.*[41]Since the middle of 2020 the applicant's behaviour has improved. The only significant mark against him was the discovery of drug paraphernalia in his room on 31 January 2021.

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[38] Exhibit R47, 195.
[39] Exhibit R37, 153.
[40] Ibid.
[41] Ibid.

Present circumstances

66. Since being placed in immigration detention the applicant has formed a relationship with AT. AT grew up in the same area as the applicant and went to the same High School although she is significantly younger than the applicant. They had never met prior to his removal to immigration detention. She had however heard from others living in her area about the applicant's murder conviction and that he was in immigration detention. They connected over social media and a relationship formed.

67. While I was initially sceptical, I am satisfied that the relationship is a genuine one. When the applicant was detained in Villawood AT visited him there. AT is well known to the applicant's parents and they see her reasonably regularly and regard her as part of the family. AT and the applicant connect over the internet and there is a close emotional connection despite the limited physical contact they are able to maintain.

68. AT also has a son HT who is currently 3 years old. HT's father is not involved with him having left the relationship with AT before HT was born. He has never met HT. The applicant and HT are surprisingly close given that the opportunities for physical contact have been extremely limited. HT did meet the applicant in Villawood and does have regular contact with the applicant over the internet. They play games together on the internet and the relationship is warm. The applicant calls HT his son and HT calls the applicant 'Dad or 'Daddy'' and asks when he is coming home.

69. The relationship between the applicant and AT is however volatile. AT has also suffered from mental health issues. She has made two serious attempts at taking her own life and a number of witnesses commented on the volatility of the relationship. It was difficult to get exact details about the incident from the witnesses, but there was at least one incident where AT reacted so badly to an interaction with the applicant that his parents needed to drive the not insignificant distance to her house and check on her welfare.

70. On 30 September 2021 the applicant was moved from Villawood to Christmas Island. That is where he is currently held. Reports concerning his conduct there are good.

Contact with family and friends in Australia and in Papua New Guinea

71. The applicant has a strong and continuing relationship with his parents. Each witness at the hearing noted that the applicant and his parents maintained a loving and ongoing relationship throughout the applicant's time in custody. The applicant's parents have agreed to house the applicant if he were to be released.[42]

72. The applicant has a brother who lives in PNG. The applicant's evidence at the hearing was that he had no idea of the whereabouts of his brother in PNG. This was corroborated by the evidence of both of his parents.

Plans for the future

73. If the applicant is released from immigration detention, he will be subject to parole conditions until January 2023.[43] Those parole conditions mean he is likely to live with his parents and he will be required to:

(a) Abstain from alcohol; and/or

(b) Not use or be in possession of a prohibited drug or substance except those that have been prescribed for the offender, and must at the direction of the Officer undertake testing for alcohol and/or drugs where facilities are available

(c) The offender must also undertake and maintain AOD programs or counselling if directed to do so. If such a direction is given, the offender must authorise in writing that his/her treating health services provider make available to the Officer, a report on his or her medical and/or other conditions at all reasonable times.[44]

74. When the applicant's parole conditions expire on 7 January 2023, he hopes to move closer to AT and take up work at a gym set up by his friend Mr Barber. Mr Barber was in prison serving a sentence relating to involvement with the sale of a commercial quantity of

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[42] Exhibit R1, G5, 94.
[43] Exhibit R1, G5, 21.
[44] Exhibit R1, G5, 96.

illegal drugs. Mr Barber now appears to have been fully rehabilitated and is setting up a gym business. I am satisfied that he intends to offer the applicant work and there will be work available for the applicant which he is capable of doing.

75. The applicant hopes to strengthen his relationship with AT on release and establish a family with her and HT.

76. The Tribunal also heard evidence from the mother of the murder victim. She is supportive of the applicant's release into the community.

Primary Consideration 1 – Protection of the Australian community

77. Paragraph 8.1 of the Direction states:

> *(1) When considering protection of the Australian community, decision-makers should keep in mind that the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.*[45]

78. Paragraph 8.1(2) states that in considering the need for protection of the Australian community, decision-makers should also have regard to:[46]

> *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.*

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[45] Above n 5, [8.1].
[46] Ibid [8.1(2)].

(a) Nature and seriousness of the applicant's conduct to date

79. Paragraph 8.1.1 sets out factors to be considered in determining the nature and seriousness of the non-citizen's criminal offending or other conduct to date. Relevant to the applicant's conduct, the Tribunal must have regard to the following factors:[47]

(a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:

violent and/or sexual crimes;

crimes of a violent nature against women or children, regardless of the sentence imposed;

acts of family violence, regardless of whether there is a conviction for an offence or a sentence imposed;

(b) 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:

(i) …

(ii) 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;

(iii) any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test (for example, section 501(6)(c));

(iv) 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.

(c) with the exception of the crimes or conduct mentioned in subparagraph (a)(ii), (a)(iii) or (b)(i) above, the sentence imposed by the courts for a crime or crimes;

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

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[47] Ibid [8.1.1].

(e) the cumulative effect of repeated offending;

(f) whether the non-citizen has provided false or misleading information to the department, including by not disclosing prior criminal offending;

(g) whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the non-citizen's migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour).

80. The applicant's murder conviction can only be described as one of the most serious offences a person can commit. It is viewed by the Australian public as a very serious crime and the length of sentence for these offences reflects the seriousness with which they are regarded.

81. The sentencing remarks of Justice Howie describe the circumstances of the offending in the following terms:

> *…The offence is a serious example of homicide ... The offender must at least have intended to inflict grievous bodily harm of a very severe kind. He might not have intended to strike the deceased in the throat, but he armed himself with what was a very dangerous weapon ... The consequences of such a blow could have only been very serious injury indeed and the offender must have intended this result when he deliberately broke the bottle. This was an unprovoked attack on an unarmed person. The offender was one of the first persons into Hanbury Street...first to use violence ... I have no doubt that the offender was the instigator and the principal in the attack upon the deceased.*
>
> *I accept that the offence was not planned ... therefore, it is not in the most serious category of killing ... It was an act that was as cowardly as it was brutal. The offence was in company ...*
>
> *I know nothing of the offender's mental state at the time except what is disclosed from his actions. There is no evidence that he was intoxicated to any significant degree ... nothing in the psychological or psychiatric reports that is relevant in the determination of the objective seriousness of the offence ...*

> *In my opinion the offence falls within the midrange of objective seriousness ...Clearly the most significant factor is the offender's age both at the time of the commission of the offence and now at the time of sentencing...*[48]

82. The sentence imposed, after a successful appeal, was 17 years and six months with a 12-year six-month non-parole period.[49] The lengthy custodial sentence emphasises the seriousness of the conduct. This charge is the only conviction on the applicant's criminal record. The applicant has however engaged in serious conduct whilst in immigration detention. This other conduct has been described at length above. Many of the applicant's infractions in immigration detention are relatively minor, however there are several violent incidents involving harm or threats of harm to others. In particular:

a) An incident on 18 March 2019 where he is recorded on CCTV punching another inmate. He subsequently explained his conduct on the basis that the applicant was essentially asking for it;[50]

b) An incident on 29 November 2019 not recorded on CCTV but described by other inmates where the applicant assaulted someone because he believed they had said something about his hair;[51]

c) An incident on 4 February 2019 of assault on paramedic while in methamphetamine-induced psychosis;[52]

d) A threat on 1 July 2020 to break bones if a detainee assigned to his room remained there resulting in the detainee sleeping in a public area rather than in his assigned room.[53]

83. The murder conviction is obviously very serious and should be regarded as such. The violent and threatening incidents in immigration detention are also serious. They show that the applicant struggles with impulse control at times and resorts to violence on some occasions. The incident with the paramedic also demonstrates that the applicant can become very violent when consuming methamphetamine on a regular basis.

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[48] Exhibit R1, G5, 69-70.
[49] Ibid 54.
[50] Exhibit R67, 938.
[51] Exhibit R76, 1011.
[52] Exhibit R1, G5, 114.
[53] Exhibit R79, 1052.

(b) **The risk to the Australian community should the applicant commit further offences or engage in other serious conduct**

84. Paragraph 8.1.2(1) of the Direction states:

> *In considering the need to protect the 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 harms 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*.[54]

85. Paragraph 8.1.2(2) of the Direction provides that in assessing the risk that may be posed to the Australian community, decision-makers must have regard to, cumulatively:[55]

> *a) The nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and*
>
> *b) The likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:*
>
> *(i) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; 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 (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).*

86. There is a material risk to the Australian community if the applicant is released. The applicant's murder conviction establishes that he is capable of acting recklessly and dangerously with horrific consequences. The applicant was only 16 years of age when the murder was committed and has matured significantly in the intervening years. However, the applicant's conduct in immigration detention establishes that he can resort to violence if slighted and it is impossible to rule out the applicant responding to the same impulse to which he succumbed in 2005 when he murdered a stranger. While it is very unlikely that the applicant would murder again, there is still a chance that the applicant would kill or

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[54] Above n 5, [8.1.2(1)].

[55] Ibid.

grievously injure a member of the Australian community when angry or under the influence of alcohol or drugs. The likelihood of this occurring has been described as low but is undoubtedly a material risk.The risk the applicant posed was assessed repeatedly in the NSW prison system. As a result of those assessments he gradually progressed to minimum security prison and work and day release. NSW Corrective Services considered his risk of re-offending in a Pre-Release Report dated 27 October 2017. It determined that the applicant was 'suitable for a medium-low level of intervention by Corrective Services NSW, commensurate with the assessed risk and identified criminogenic needs.'[56] He was assessed using the Level of service Inventory (LSI-R) which is an actuarial assessment tool which seeks to classify an offender's risk of re-offending. He was placed in the low-medium category which carries with it a material risk of re-offending within 12 months.[57]

87. He was also classified on the violence risk scale (VRS). This system uses ratings of static and dynamic risk predictors to assess violence risk, identify targets for treatment, and assess changes in risk following treatment. He was assessed as being towards the upper limit of the low range. This was administered when the applicant was in prison in 2014. Substance abuse was identified as a treatment target.[58]

(a) Risk assessments conducted in prison and detention, also included:

(i) A Structured Assessment of Violence Risk in Youth (SAVRY) on 16 April 2010 reported that the applicant had all the necessary protective factors present.[59]

(ii) Million Clinical Multiaxial Inventory 3rd Edition (MCMI-111) assessment on 3 February 2015 reported that

> *An analysis of [the applicant]'s personality profile facet scales suggests that he is likely to view himself as sociable and charming, is likely to actively solicit praises and manipulate others to gain needed reassurance*

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[56] Exhibit R1, G5, 94.
[57] Ibid 84.
[58] Ibid.
[59] Ibid 85.

and-approval, and has a tendency to be highly emotional; impulsive and intolerant of inactivity.[60]

(iii) Hare Psychopathy Checklist – Revised (PCLR-R) assessment on 3 February 2015 reported that the applicant's score was in the 9th percentile, suggesting a 'low level of psychopathic personality traits'.[61]

(iv) Treatment Readiness Questionnaire (TRQ) assessment on 3 February 2015 reported that the applicant's score 'suggest that he is "Program Ready" and suitable to enter any program which matches his Criminogenic Needs.[62]

(b) Psychological reports prepared included:

(i) Psychological report prepared by Maree Hilton dated 16 April 2010 which concluded that the applicant 'is a young man with positive prospects for a successful rehabilitation and his attitude to his continuing incarceration is positive.'[63]

(ii) Serious Offenders Assessment Unit report dated 3 February 2014 prepared by Mandy Lau (Psychologist) estimated the applicant's risk of reoffending in the low-moderate range.[64]

(iii) Report of Psychologist Patrick Sheehan dated 19 November 2020.[65]

88. A few matters are worth commenting on in relation to these assessments.

89. In relation to the assessment tools used by correctional services to assess the likelihood of re-offending, they are used for the purpose of deciding what resources should be devoted to offenders based on risk. Even when the risk is described as 'low', it is

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[60] Ibid.
[61] Ibid.
[62] Ibid.
[63] Ibid 86.
[64] Ibid 86-87.
[65] Ibid 372-379.

important to understand, as Mr Sheehan states, that prisoners in the cohort who scored 'low' on the assessment were reconvicted of violent offences at a rate of 4.6% within five years.

90. In relation to Mr Sheehan's report and his assessment that the applicant has a low risk of re-offending, it is clear that Mr Sheehan was not aware of the full extent of the applicant's violent behaviour while in immigration detention and no attempt was made to update the report when more extensive Serco and IHMS records became available.[66] This is significant because Mr Sheehan notes that the 'applicant had been intermittently using various illicit substances over the past 12 years in institutional settings without recourse to violence'.[67] That was not correct. The medical notes kept by IHMS in June 2019 note '[the applicant] is at high risk of serious violence when intoxicated with substances. Has history of aggressiveness towards ambulance officers. Has demonstrated agitated and bizarre behaviour when under the influence of substances'.[68] This gap in Mr Sheehan's knowledge seriously undermines the veracity of his report.

91. In almost every assessment of the applicant's risk of re-offending substance use is identified as a risk factor and a particular risk factor for the applicant For example, Mr Sheehan's report states that 'Any future risk scenarios would likely revolve around the same factors, were [the applicant] to revert back to his previous manner of living, return to regular heavy substance use (particularly alcohol, but also other harmful substances such as methylamphetamine) … [the applicant]'s risk of a violent offence would be elevated.'[69] An IHMS report dated 13 July 2019 opined that the applicant is 'at high risk of serious violence when intoxicated with substances.' An IHMS report from 25 July 2019 noted that '[r]isk to self and others currently low. But risk will escalate if he relapses back into drug use.'[70] Unfortunately, the applicant's use of methamphetamine since being placed in immigration detention has been significant. He has had two episodes of psychosis induced by the use of methamphetamine that resulted in transfer to hospital.[71] He has admitted to significant use. There is evidence which suggests that use continued

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[66] See, e.g., Exhibit R1, G5, 374, [46].
[67] Exhibit R1, G5, 375, [50].
[68] Exhibit R43, 175.
[69] Exhibit R1, G5, 377, [60].
[70] Exhibit R37, 153.
[71] Exhibit R45, 182.

throughout the applicant's time at Villawood. In particular, the applicant's claims that he gave up illicit drug use in 2019 are unconvincing. The applicant reported to Mr Sheehan in November 2020 that he had ceased drug use 2-3 months before.[72] Drug paraphernalia was found in his room in November 2021.[73]

92. The applicant has however not experienced episodes of psychosis recently which suggests he has either stopped using the drug or has found a way to balance his use without inducing psychosis.

93. I am satisfied that the applicant was still using illicit drugs in the second half of 2020 and his use may have continued for the entire time he was kept in Villawood. It is certainly not the case that the applicant ceased use in mid-2019. But I am also satisfied that his use has significantly declined and that if taken out of the immigration detention environment and placed into the community on parole there are reasonable prospects that he will eliminate drug use from his life. In prison the applicant was largely drug free except for a period in the middle of his sentence, which suggests that in the right environment the applicant is capable of living without misusing drugs and alcohol. In the absence of substance misuse, the applicant's risk of violent offending is low.

94. Notwithstanding this assessment the applicant poses a risk to the Australian community. There is a risk of violent re-offending and the risk is material even though well short of more likely than not.

95. Consequently, this consideration weighs heavily against the applicant. There is a risk that he will commit violent crime again and even though the risk is low the consequences are potentially catastrophic. I am satisfied that the applicant's increased use of drugs and anti-social behaviour in immigration detention was significantly contributed to by the mental setback of being placed in detention having enjoyed increased freedom as his prison sentence was coming to a close. For that reason, I am optimistic that the applicant has good prospects of behaving better in the community than he has behaved in immigration detention. He has enormous incentives to be better.

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[72] Exhibit R1, G5, 366.

[73] Exhibit R80, 1062.

96. But there remains a low but material risk that he will re-offend in a violent way. That risk, small as it is, weighs heavily against the applicant in considering the exercise of this discretion.

97. It is however worth noting that the respondent insists that it would be an error for the Tribunal to proceed on the basis that as a result of the visa refusal the applicant will be detained 'forever' as opposed to 'indefinitely'. In the circumstances of this case this carries with it tacit acceptance that at some point there is significant prospect that even if the applicant's application for a visa is refused, the applicant will be released into the community.[74]

98. I say this because there is in my assessment no evidence on which I could reach the conclusion that the applicant will be released from immigration detention by removal to a third country and the parties agree that I should proceed on the basis that a return to PNG is so unlikely as to be unnecessary to bring to account.[75] This suggests that the respondent, by insisting that the applicant's detention is not 'forever' is asking me to entertain seriously the notion that there will be ministerial intervention which will have the result that at some point the applicant will be released into the community. If that is the case, the choice which I confront is not whether the community will be best protected by locking up the applicant for the rest of his life, but whether it is better protected if he is locked up for the time being and then released at some later point when further detention becomes legally or morally untenable.

99. That being the case it is important to appreciate that if I release the applicant now, he will be subject to parole conditions. The benefit of the applicant being released subject to parole is supported by Mr Sheehan who states in his report, 'In my view, were the applicant to be released to the Australian community, this should be undertaken as soon as practicable, maximising the benefit of supervised parole, which will expire in January 2023'.[76]

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[74] Respondent's Statement of Facts, Issues and Contentions dated 24 June 2022, [160].

[75] Which is the basis on which the non-refoulement consideration and the extent of impediments if removed consideration are given neutral weight.

[76] Exhibit R1, G5, 378, [65].

100. I have been expressly asked by the respondent to keep in mind that the Minister may consider exercising her personal powers under section 195A or s 197AB of the Act to grant the applicant a visa or to make a residence determination in his favour.[77] These are personal, non-compellable powers of the Minister which are exercised in accordance with the Minister's view of the public interest. The respondent specifically notes that the policy documents indicate that the detention intervention power may be appropriate when there are compassionate circumstances, when the interests of a child in Australia are impacted and/or when there are no outstanding primary or merits review processes, but removal would not be reasonably practicable.[78] That appears to describe the applicant's circumstances right now.

101. In these circumstances, the most that can be said of a decision to refuse the applicant's visa application is that it will result in his separation from the community for the time being. However, at some point, given the protection findings which have been made, and the improbability that a third country would be willing to take him, it is safest to proceed on the basis that he will be released into the Australian community at some stage in his life.

102. Consequently, it is important not to see the refusal of a visa as providing permanent protection to the Australian community from having a convicted murderer with a propensity to violence free in the community. There is a good prospect that the applicant's release will occur at some point. A significant difference will be that the applicant will be released without the benefit of the supervision which comes in the parole period and will be released having had further time in immigration detention which may entrench his use of methamphetamine. The applicant's time in immigration detention has seen his conduct deteriorate and there is no basis for thinking that additional time in detention will reduce the risk he poses to the community on release.

103. While keeping the applicant in detention for a further period will protect the Australian community for a period of time, that period is likely to be finite and delaying release may in fact aggravate the risk to the Australian community.

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[77] Respondent's Statement of Facts, Issues and Contentions dated 24 June 2022, [153]-[160].
[78] Ibid [158].

104. Consequently, the protection of the Australian community consideration weighs against the applicant, but much less strongly than it would in circumstances where removal to another country was a significant possibility.

105. Accordingly, although this consideration weighs heavily against the applicant it does not weigh so heavily that it could not be outweighed by other factors.

Primary Consideration 2 – Family violence committed by the non-citizen

106. The applicant and respondent both submitted that there is no evidence of family violence committed by the applicant.[79]

107. Consequently, no weight should be given to this consideration.

Primary Consideration 3 – The best interests of minor children in Australia affected by the decision

108. Paragraph 8.3(1) of the Direction requires decision-makers to make a determination whether revocation is in the best interests of any minor children affected by the decision.[80] This consideration applies only if the child is expected to be under the age of 18 years at the time the decision is made as per paragraph 8.3(2). If there is more than one child affected, the Tribunal must consider the interests of each child individually to the extent that their interests may differ: paragraph 8.3(3).

109. In considering the best interests of the child, paragraph 8.3(4) relevantly requires the following factors be considered:

> *(a) The nature and the 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);*

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[79] Ibid [99]-[100]; Applicant's Statement of Facts, Issues and Contentions dated 13 June 2022, [112].
[80] Above n 5, [8.3].

(b) 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;

(c) 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;

(d) The likely effect that any separation from the non-citizen would have on the child, taking into account the child's or the non-citizen's ability to maintain contact in other ways;

(e) Whether there are other persons who already fulfil a parental role in relation to the child;

(f) Any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);

(g) Evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen in any way, whether physically, sexually or mentally;

(h) Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

110. There is only one minor child whose interests are said to be affected in this case, HT, the son of AT.

111. The applicant clearly has a relationship with HT despite the fact that he is not HT's father and he has never lived with HT. There is a bond there which was apparent from the applicant's evidence and demeanour. It is HT's mother's hope and the applicant's hope that they can become a family. As HT's biological father is not involved in his life, it is likely HT would benefit from having a father figure in his life offering both material and emotional support.

112. However, for that to occur a lot of things have to go right. First, the applicant has to be able to establish a viable relationship with HT's mother. That is by no means a given. Neither the applicant nor AT have a history of stability and there are already identifiable strains on the relationship. Second, the applicant needs to stay off methamphetamine, alcohol and other drugs. The applicant's past shows that his behaviour is unstable when he is using methamphetamine and alcohol. There is clearly potential for him to introduce violence into the domestic lives of AT and HT if he misuses those substances. It is not

inevitable that the applicant will be a positive and permanent influence in HT's life. In my assessment, whether he will be is a matter of great uncertainty.

113. In terms of the factors which I am required to consider I note the following:

(c) The relationship between HT and the applicant did not begin until around November 2019 and is not strictly speaking parental even though HT already identifies the applicant as his father. There has been a surprising amount of meaningful contact over the internet but limited physical contact and there is no history of the two living in the same house together;

(d) For the reasons discussed above, I am not persuaded that it can be said with confidence that the applicant will play a positive parental role in HT's life in the future. That is clearly the applicant's hope, but the applicant has significant vulnerabilities which will make this a struggle;

(e) The applicant's prior conduct has not had a negative impact on HT but there is a significant risk that his future conduct in the form of drug and alcohol abuse and potentially violence, could have a negative impact on HT;

(f) HT has had limited physical contact with the applicant in the past and has sustained the relationship with the applicant over the internet. I am satisfied that that contact will continue while the applicant remains in detention;

(g) AT already fulfills a parental role;

(h) To the extent that it can be determined, it appears that HT would like to have the applicant physically present in his life, but HT is very young and those views have been largely conveyed through adults in his life;

(i) The applicant has a volatile relationship with AT and a history of violence when under the influence of alcohol and drugs. The risk of HT being exposed to domestic violence if the applicant were to move in with AT is material;

(j) HT has not experienced trauma as a consequence of his relationship with the applicant.

114. As should be clear from the assessment above, I accept that the applicant has a warm and loving relationship with HT which will be to his benefit if the applicant is able to maintain the high standards of behaviour which he displayed while in prison. However, if

he begins using alcohol and drugs and succumbs to the impulsive and violent side of his personality there are risks for HT. In those circumstances, I am not prepared to positively find that it is in HT's best interests for the applicant to be released into the community. That remains to be seen. In such circumstances this consideration does not weigh in favour of the grant of a visa.

Primary Consideration 4 – The expectations of the Australian community

115. Paragraph 8.4 of the Direction states:[81]

> *(1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.*
>
> *(2) In addition visa cancellation or refusal…may be appropriate simply because the nature of the character concerns or offences is such that the Australian community would expect that the person should not be granted or continue to hold a visa….*
>
> *(3) 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.*
>
> *(4) 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.*

116. Paragraph (4) of this consideration reflects the Full Court of the Federal Court's decision in *FYBR and Minister for Home Affairs* ('*FYBR'*) which found in relation to an earlier direction that the expectations of the Australian Community are not matters for evidence.[82] They are expressed normatively, and the expectations are what the Government says they are, even though in actual fact, if they were ascertainable, community expectations might be quite different.[83]

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[81] Above n 5, [8.4].
[82] [2019] FCAFC 185 (*'FYBR'*).
[83] Ibid [91] per Stewart J.

117. Accordingly, the expectation of the Australian community, as expressed in the Direction, is that a person like the applicant who has failed to obey the law will not be allowed by the Australian Government to remain in Australia.

118. However, to apply the consideration correctly it needs to be kept in mind that the Principles in paragraph 5.2 of the Direction make clear that the consideration does not operate in a uniformly harsh way where an applicant has breached Australian law. How heavily the consideration weighs against the applicant in circumstances where the applicant has not obeyed the law remains a matter of discretion for the decision-maker, and how much weight the consideration is given relative to the other considerations is also a matter for the decision-maker. A higher level of tolerance can be afforded if an applicant has lived in Australia for most of their life or from a very young age. The applicant fits both of those criteria. However, because the applicant's offending began soon after he arrived in Australia the impact of the long period of time he has spent here is diminished.

119. In these circumstances the Australian community would expect the applicant's visa to be refused, particularly given the seriousness of the conviction.

120. This consideration weighs in favour of refusing the applicant's visa.

OTHER CONSIDERATIONS

121. Paragraph 7(2) states that *'[p]rimary considerations should generally be given greater weight than the other considerations.'*[84]

122. The Tribunal notes that these considerations are 'other' considerations, as opposed to 'secondary' considerations. As Colvin J relevantly observed in relation to an earlier iteration of the Direction in *Suleiman v Minister for Immigration and Border Protection*:

> *... Direction 65 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*

[84] Above n 5, [7(2)].

> *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.*[85]

123. That is the basis on which I will proceed to apply them.

International *non-refoulement* obligations

124. A non-refoulement obligation, as is explained in the Direction, 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. In the present case, the applicant has been found previously by the Tribunal to engage Australia's complementary protection obligations under section 36(2)(aa) of the Act.

125. The respondent submits, and I accept, that having regard to the assessment completed by the Tribunal in 2018, the applicant is a person in respect of whom Australia has complementary protection obligations and to whom Australia has non-refoulement obligations.

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[85] [2018] FCA 594, [23].

126. As the respondent points out, it is significant in this proceeding that under section 197C(3) of the Act, where, as here, a protection finding is made with respect to a country in the course of a protection visa application, section 198 of the Act does not require or authorise an officer to remove an unlawful non-citizen to that country. The practical effect of section 197C(3) in this case is that a refusal of the Applicant's visa will not result in his removal to Papua New Guinea. Consequently, the risk of serious harm to which he would be exposed will not eventuate. Consequently, this factor should be given neutral weight. I accept that submission.

Extent of impediments if removed from Australia

127. The Direction states in paragraph 9.2:[86]

> *(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:*
>
> *(a) The non-citizen's age and health;*
>
> *(b) Whether there are substantial language or cultural barriers; and*
>
> *(c) Any social, medical and/or economic support available to them in that country.*

128. The parties accept that section 197C(3) of the Act has the effect that the applicant will not be returned to PNG. Consequently the impediments which the applicant may face in Papua New Guinea will not eventuate and the parties agree this factor should be given neutral weight.

Links to the Australian Community – Strength nature and duration of ties to Australia

129. Paragraph 9.4.1 of the Direction provides as follows:[87]

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[86] Above n 5, [9.2].

[87] Ibid [9.4.1].

(1) *Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*

(2) *Where consideration is being given to whether to cancel a non-citizen's visa or whether to revoke the mandatory cancellation of their visa, the decision-maker must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:*

> *a) how long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:*
>
> > *i. less weight should be given where the non-citizen began offending soon after arriving in Australia; and*
> >
> > *ii. More weight should be given to time the non-citizen has spent contributing positively to the Australian community*
>
> *b) the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.*

130. Despite the fact that the applicant had only been in Australia a short time before he was incarcerated, he has strong links to the Australian community. His immediate family (with the exception of one brother) lives in Australia and his family has remained strongly connected to him throughout his time in prison and immigration detention. The applicant has a romantic relationship with AT and the beginnings of a fatherly relationship with her son. The applicant also has at least one close friend, Daniel Barber, who gave evidence about his willingness to give the applicant an opportunity to work with him in his business.

131. These ties, though not numerous, are strong.

132. This consideration weighs strongly in favour of the applicant being granted a visa.

Impact on Victims and Australian Business Interests

133. There is evidence before the Tribunal which indicates that the murder victim's mother and sister are supportive of the applicant being released into the community.[88] It appears that the victim's mother and sister do not feel they will be afforded justice or closure in the event that the applicant is either removed from Australia or remains in immigration detention. The respondent accepts that in those circumstances refusal of the applicant's visa would have a negative impact on the victim's mother and sister.

134. However, the respondent also highlights that the lack of closure experienced by the victim's family is due to their inability to meet with the applicant because he fails to fully acknowledge his wrongdoing. The applicant's refusal to admit fully his guilt has meant the victim's family has been prevented from meeting with him by NSW Corrective Services.[89] This has led to the family being curious about the events of the night of the murder and curious enough to support his release so they can meet with him.[90]

135. That being said, it remains the case that the victim's family is supportive of the decision to grant the applicant a visa and that is worthy of consideration. It weighs in favour of granting the applicant a visa.

Other considerations – indefinite detention

136. The applicant emphasises that if he is not granted a protection visa then he will remain in immigration detention indefinitely.

137. The respondent accepts that he will not be forcibly returned to PNG in light of the protection finding by the Tribunal in 2018. I am satisfied that there is no prospect that he will seek to be returned voluntarily in light of his pancreatic condition which requires ongoing regular medication which if left untreated would be fatal. The applicant could not access appropriate medication in PNG at an affordable price.

138. In these circumstances, if the applicant is not granted a visa he will be detained indefinitely. The respondent accepts that there is at least a risk that continued detention

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[88] Exhibit A7.
[89] Exhibit R1, G5, 96.
[90] Exhibit A7.

will have an adverse effect on the applicant's health. I consider it is not just a risk, but a likely outcome, that a further period of detention will have an adverse effect on the applicant. The applicant suffered a significant decline in his mental and physical health when he was first moved to immigration detention. His increased drug use, behavioural problems and psychosis were all new problems which emerged in the context of immigration detention. He has to some degree worked his way back to managing his conduct and behaviour better than when he was first detained but it is not to the same standard that was reported in late 2017. I am satisfied that it is likely his mental health will deteriorate significantly if his time in immigration detention is extended.

139. While the respondent accepts that indefinite detention will be the outcome of a visa refusal, it emphasises that indefinite detention should not be understood as being detained forever. The respondent concedes that the detention to which the applicant will be subject to has no chronologically fixed end-point.[91] Not only can the respondent not point to when the applicant's detention will come to an end, it cannot point to an event which must bring the detention to an end.

140. If the applicant is refused a visa, his circumstances are as follows. Upon refusal, he can only apply for another visa if a Minister determines that section 48A of the Act does not apply to him, or if he were invited to apply for a Bridging R (Class WR) visa.[92]

141. Section 198 does not require or authorise the applicant's removal to PNG except in certain limited circumstances which the respondent concedes are not presently relevant.

142. The Act does not prohibit the removal of the applicant to a third country but the respondent accepts that presently there is no evidence to indicate that this will imminently happen. It would be more accurate to say that there is no evidence that this will ever happen.

143. The only other pathway out of detention for the applicant (and in my assessment the only realistic one) is if the Minister exercises her personal powers under sections 195A or

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[91] Respondent's Statement of Facts, Issues and Contentions dated 24 June 2022, [160].
[92] Ibid [153].

197AB of the Act to grant the applicant a visa or to make a residence determination in his favour. These are personal non-compellable powers of the Minister which are exercised in accordance with the Minister's view of the public interest. The applicant submits and I accept that Ministerial Intervention under sections 195A or 197AB would not be likely because the applicant's visa would have been (if I refuse it) refused on character grounds.[93] Policy documents in the Department specify that the Minister would not generally expect to have cases referred if a person has had their visa refused under section 501, but there are exceptions to that position.[94]

144. In these circumstances by refusing the applicant a visa I accept that I am not making a decision which has the inevitable consequence that the applicant will be held in immigration detention forever. Such an outcome is however possible, and it is likely that he will be held in immigration detention for a further significant period of time.

145. The harm the applicant will suffer from immigration detention with no chronological end point could be significant. When the applicant was first placed into immigration detention his drug use re-commenced and his mental health deteriorated. This resulted in episodes of psychosis and significant medical interventions. I am satisfied that this deterioration in the applicant's conduct and mental health was a consequence of him living with uncertainty about his future in immigration detention. There is a significant prospect that an adverse decision which results in a period of indefinite detention will have a similar impact on the applicant.

146. This consideration weighs very heavily in favour of the applicant.

CONCLUSION

147. Two considerations have dominated my assessment of how to exercise the discretion I have to refuse to grant the applicant a protection visa.

148. The first is Protection of the Australian Community. I am satisfied that if the applicant is released into the Australian community there is a material risk that he will abuse drugs

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[93] Applicant's Statement of Facts, Issues and Contentions dated 13 June 2022 [221].
[94] Ibid [217]-[219].

or alcohol and in doing so create a significant risk that a member of the community will be a victim of an impetuous act of violence or become the subject of attack during a drug induced psychosis.

149. The second is that in refusing the applicant a protection visa I am condemning him to a further period of indefinite detention where the end point is unknown.

150. I have weighed all of the relevant considerations discussed in the body of these reasons, but resolving the tension between the two considerations I have identified is the key to the decision I have made.

151. It is not an easy choice to make between taking steps to diminish the risk that a non-citizen poses to the Australian community and condemning a person to further detention in circumstances which are likely to cause psychological damage to them when they have already spent a significant period of their life in prison for a crime they committed as a teenager.

152. While the other considerations discussed above are influential, in the end I have decided that in circumstances where there is a likelihood that the applicant will be released into the Australian community at some point in the future regardless of the decision which I make, the best method of protecting the Australian community is to release the applicant now when he will be subject to parole conditions and be supervised for a period. This will maximise his prospects of re-integration into the community. A temporary delay in releasing him means he may be released into the community at some later point but without the discipline of parole conditions and possibly further down the road of drug use and violence as a consequence of his further period of detention.

153. Consequently, I have decided to exercise my discretion favourably to the applicant.

154. I also note that had I reached a different conclusion about the exercise of discretion, I would have had some misgivings about exercising a discretion to refuse a visa primarily for the purpose of keeping the community safe from a person who had completed their prison sentence and who could not be removed from Australia. In the applicant's circumstances, there is no duty on anyone to remove him to PNG (and thus release him from detention). If he were not granted a visa, then when his detention ends would be

entirely at the discretion of the Minister. The purpose served by the detention would be for the purposes of community protection and it is difficult to discern what purpose such a detention serves consistent with the Migration Act.

155. The High Court recently confirmed in *Commonwealth v AJL20*[95] that:

> *…it is because the duration of the detention of an unlawful non-citizen must end, either upon the grant of a visa or upon the removal of the non-citizen from Australia, that immigration detention under the Act is not punishment within the exclusive province of judicial power.*[96]

156. In *ALJ20* it was because the applicant could seek mandamus to compel his removal from Australia in accordance with the duty imposed by the Migration Act, that the High Court was satisfied that the detention was not bounded only by the 'unconstrained, and unascertainable, opinion of the Executive'.[97]

157. The regime which the Court was considering in *AJL20* has however been significantly modified by the Parliament. The duty to remove has been modified and, in this applicant's circumstances, does not presently exist.[98] This seems to place any detention which results from a refusal by me of a protection visa, on the very edge or perhaps just beyond what can be constitutionally authorised. The question certainly arose in my mind whether an unfavourable exercise of a bare discretion in these circumstances would in fact be beyond constitutional limits.[99] While that is not the basis on which I am proceeding as no such submission was put to me, it perhaps warrants close consideration in the future.

DECISION

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[96] [2021] HCA 21 ('*AJL20*'), [45].

[97] Ibid [30].

[98] *Migration Act 1958* (Cth) s 197C.

[99] Noting that the interaction between the scope of unconfined discretions with constitutional limitations is subject to some uncertainty – see in James Stellios *Marbury v Madison: Constitutional limits and Statutory discretions* (2016) 42 Australian Bar Review 324

158. The decision made by the delegate of the respondent on 5 May 2022 is set aside and the Tribunal decides not to refuse the applicant's Protection (Class XA) visa under section 501(1) of the Act.

I certify that the preceding 158 (one hundred and fifty eight) paragraphs are a true copy of the reasons for the decision herein of Senior Member Damien O'Donovan

.....

Associate

Dated: 19/08/2022

Date(s) of hearing:	**5-6 July 2022**
Date final submissions received:	**12 July 2022**
Counsel for the Applicant:	**Dr Jason Donnelly**
Solicitors for the Applicant:	**Maria Zarifi**

Counsel for the Respondent:	**Alison Hammond**
Solicitors for the Respondent:	**Elizabeth Warner Knight**

Annexure A - List of Respondent's exhibits

Exhibits R2 to R83 – extracts from pages in the Respondent's tender bundle (**RTB**)

Exhibit number	**RTB page numbers**	**Title**
R2	5	Extract from applicant's clinical records – 08.01.18
R3	8	Extract from applicant's clinical records – 21.04.22
R4	10	Extract from applicant's clinical records – 16.04.22
R5	12	Extract from applicant's clinical records – 08.04.22
R6	13	Extract from applicant's clinical records – 07.04.22
R7	17	Extract from applicant's clinical records – 23.02.22
R8	19	Extract from applicant's clinical records – 21.01.22
R9	23	Extract from applicant's clinical records – 31.12.21
R10	25	Extract from applicant's clinical records – 29.12.21
R11	31	Extract from applicant's clinical records – 15.12.21
R12	39	Extract from applicant's clinical records – 17.11.21
R13	47	Extract from applicant's clinical records – 09.11.21
R14	55	Extract from applicant's clinical records – 12.10.21
R15	56	Extract from applicant's clinical records – 11.10.21
R16	59	Extract from applicant's clinical records – 10.10.21
R17	71	Extract from applicant's clinical records – 30.09.21
R18	75	Extract from applicant's clinical records – 20.08.21
R19	80	Extract from applicant's clinical records – 17.06.21
R20	81	Extract from applicant's clinical records – 09.06.21
R21	82	Extract from applicant's clinical records – 02.06.21

R22	83	Extract from applicant’s clinical records – 13.05.21
R23	97	Extract from applicant’s clinical records – 01.11.20
R24	102	Extract from applicant’s clinical records – 15.10.20
R25	103	Extract from applicant’s clinical records – 10.09.20
R26	106	Extract from applicant’s clinical records – 05.08.20
R27	109	Extract from applicant’s clinical records – 17.07.20
R28	110	Extract from applicant’s clinical records – 13.07.20
R29	113	Extract from applicant’s clinical records – 01.07.20
R30	115	Extract from applicant’s clinical records – 25.05.20
R31	125	Extract from applicant’s clinical records – 31.12.19
R32	129	Extract from applicant’s clinical records – 28.11.19
R33	141	Extract from applicant’s clinical records – 28.10.19
R34	145	Extract from applicant’s clinical records – 12.09.19
R35	148	Extract from applicant’s clinical records – 29.08.19
R36	149	Extract from applicant’s clinical records – 23.08.19
R37	153	Extract from applicant’s clinical records – 25.07.19
R38	156-164	Extract from applicant’s clinical records – 22-24.07.19
R39	165	Extract from applicant’s clinical records – 21.07.19
R40	166	Extract from applicant’s clinical records – 20.07.19
R41	170-171	Extract from applicant’s clinical records – 11.07.19
R42	172	Extract from applicant’s clinical records – 03.07.19
R43	175	Extract from applicant’s clinical records – 13.06.19
R44	176	Extract from applicant’s clinical records – 12.06.19

R45	182-183	Extract from applicant's clinical records – 14.05.19
R46	188	Extract from applicant's clinical records – 01.05.19
R47	194-195	Extract from applicant's clinical records – 22.04.19
R48	202	Extract from applicant's clinical records – 18.04.19
R49	203	Extract from applicant's clinical records – 10.04.19
R50	205	Extract from applicant's clinical records – 28.03.19
R51	269	Extract from applicant's clinical records – 08.01.18
R52	380-384	Extract from applicant's IHMS medical records – 08.20
R53	390	Extract from applicant's IHMS medical records – 03.05.21
R54	392	Extract from applicant's IHMS medical records – 30.07.21
R55	404-408	Extract from applicant's IHMS medical records – 16.08.21
R56	416	Extract from applicant's IHMS medical records – 21.01.22
R57	437	Extract from applicant's IHMS medical records – 21.01.22
R58	459	Extract from applicant's IHMS medical records – 14.01.21
R59	492	Extract from applicant's IHMS medical records – 02.06.21
R60	568	Extract from applicant's IHMS medical records – 21.04.19
R61	718	Extract from applicant's IHMS medical records – 08.01.18
R62	756-758	Extract from applicant's incident reports – 04.03.18
R63	767-768	Extract from applicant's incident reports – 20.05.18
R64	769-771	Extract from applicant's incident reports – 02.07.18
R65	807-814	Extract from applicant's incident reports – 28.10.18
R66	916-931	Extract from applicant's incident reports – 03/04.02.19
R67	937-940	Extract from applicant's incident reports – 15.03.19

R68	941-947	Extract from applicant's incident reports – 15.03.19
R69	960-962	Extract from applicant's incident reports – 12.05.19
R70	963-973	Extract from applicant's incident reports – 09.06.19
R71	974-977	Extract from applicant's incident reports – 15.07.19
R72	978-980, 984-988, 996-998	Extract from applicant's incident reports – 22.07.19
R73	994-995	Extract from applicant's incident reports – 22.07.19
R74	999-1003	Extract from applicant's incident reports – 22.08.19
R75	1007-1008	Extract from applicant's incident reports – 28.11.19
R76	1009-1012	Extract from applicant's incident reports – 29.11.19
R77	1040-1042	Extract from applicant's incident reports – 20.05.20
R78	1045-1050	Extract from applicant's incident reports – 15.06.20
R79	1051-1053	Extract from applicant's incident reports – 30.06.20
R80	1060-1063	Extract from applicant's incident reports – 31.01.21
R81	1183-1186	A copy of the policy document "*PAM3: Act - Compliance and Case Resolution - Case resolution - Minister's powers - Minister's detention intervention power*"
R82	1187-1196	A copy of the policy document "*PAM3: Act - Compliance and Case Resolution - Case resolution - Minister's powers - Minister's residence determination power*"
R83	1197-1198	A Change.org petition by "*[Applicant's Partner]*" entitled "*Free Innocent Man [the applicant]*"