



Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL

GENERAL DIVISION

)
) No: 2022/7740
)

Re: Dale Jay Garratt
Applicant

And: Minister for Immigration, Citizenship and Multicultural Affairs
Respondent

DIRECTION

TRIBUNAL: Member McLean Williams

DATE OF CORRIGENDUM: 6 February 2023

PLACE: Brisbane

The Tribunal directs the Registrar, pursuant to subsection 43AA(1) of the *Administrative Appeals Tribunal Act 1975*, to alter the text of the decision in this application.

1. The Date of Written Reasons as recorded on page 3 of the Written Reasons published on 1 February 2023 is altered thus:
'1 February 2023'
2. The record of Representatives found at page 67 Written Reasons published on 1 February 2023 is altered thus:

'Dates of hearing: **28 November and 1 December 2022**

Counsel for the Applicant: **Dr J Donnelly**

Solicitors for the Applicant: **Maria Zarifi**

Zarifi Lawyers

Solicitors for the Respondent: **Mr A Burgess**

Sparke Helmore Lawyers





Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

Division: GENERAL DIVISION

File Number: **2022/7740**

Re: **Dale Jay Garratt**

APPLICANT

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

RESPONDENT

DECISION

Tribunal: **Member McLean Williams**

Date of Decision: **8 December 2022**

Date of Written Reasons: **1 February 2023**

Place: **Brisbane**

Pursuant to section 43 of the *Administrative Appeals Tribunal Act 1975* (Cth), the Tribunal **sets aside** the decision made by the Delegate of the Respondent dated 14 September 2022 to not revoke the mandatory cancellation of the Applicant's visa and **substitutes** a decision to revoke the mandatory cancellation of the Applicant's visa.

.....[SGD].....
Member McLean Williams



CATCHWORDS

MIGRATION – Non-revocation of mandatory cancellation of a Skilled (Class BN) (Subclass 136) visa - where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

LEGISLATION

Administrative Appeals Tribunal Act 1975 (Cth)

Migration Act 1958 (Cth)

CASES

Bartlett and Minister for Immigration and Border Protection (Migration) [2017] AATA 1561

QJYD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 1

CKL21 v Minister for Home Affairs [2022] FCAFC 70

Uelese v Minister for Immigration and Border Protection [2015] HCA 15

FYBR v Minister for Home Affairs [2019] FCAFC 185

MWNX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 1450

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

Member McLean Williams

1 February 2023

INTRODUCTION

1. On 21 September 2022, the Applicant filed an application seeking review of the decision of a Delegate of the Minister made on 14 September 2022 not to revoke, under s.501CA(4) of the Migration Act 1958 (Cth) ('the Act'), the mandatory cancellation of his Skilled (Class BN) (Subclass 136) visa ('the visa'), pursuant to s.501(3A) of the Act. This visa had been conferred upon the Applicant on 5 October 2006.
2. This application for review is made in accordance with s.500(1)(ba) of the Act, which allows applications to be made to the Administrative Appeals Tribunal ('the Tribunal') for review of decisions of a Delegate of the Minister under s.501CA(4) not to revoke a decision to cancel a visa.
3. The hearing of this application for review took place on 28 November 2022 and 1 December 2022.
4. The Tribunal also considered the documentary evidence submitted by the Applicant and by the Respondent, as detailed in the **attached** Exhibit Register, now marked as 'Annexure A' to these reasons.

Factual Background And Offending History

5. Mr Dale Jay Garratt ('the Applicant') is a 31 year old male citizen of the United Kingdom.
6. The Applicant was born in March 1991, and first arrived in Australia on 21 August 2004. Since his first arrival, the Applicant has spent the following periods outside Australia:
 - 01 September 2004 – 09 September 2004;
 - 12 September 2004 – 10 November 2006;
 - 13 October 2007 – 20 June 2009;

- 18 July 2009 – 20 November 2010.¹

7. The Applicant's immediate family in Australia is comprised by his parents – Mr Lee Garratt and Mrs Janet Margaret Garratt, his brothers – Mr Karl Lee Garratt and Mr Alexander Paul Garratt, and his sisters Mrs Michaela Budworth, and Ms Olivia Jane Garratt.² The Applicant also claims to share a very close and strong relationship with his nieces (Ms Budworth's daughters) – 'S' and 'G' to whom the Applicant also provides emotional, financial, and practical assistance.³
8. The Applicant has a criminal history in Australia from 2011 to 2021. His offending prior to 2021 was considered minor by the Court at his most recent sentencing appearance.
9. Between 29 March 2011 and 14 March 2017 the Applicant had appeared before the Queensland courts on two occasions, and was found guilty of 'commit public nuisance'; 'assault or obstruct police officer'; three counts of 'possessing dangerous drugs'; 'possess property suspected of having been used in connection with the commission of a drug offence'; 'possess utensils or pipes etc that had been used'; and 'possession of a knife in a public place or a school'.⁴ The Applicant received fines and 12 months' probation and no convictions were recorded. On a later occasion a sentencing judge stated in relation to these drug offences that the Applicant had been found in possession of cannabis and a small quantity of cocaine, for personal use.⁵ The public nuisance offence arose in circumstances wherein the Applicant had been intoxicated whilst at a soccer game at Suncorp Stadium. The Applicant's obstruct police offending in March 2017 related to his failing to give fingerprints to police. On 12 March 2020, the Applicant was convicted in the Magistrates Court of Queensland for breaching a bail condition, and was not further punished.⁶ The offending just described is all comparatively minor, and should be given little weight during these deliberations by the Tribunal.

¹ Exhibit 1, page 186.

² *ibid*, page 67.

³ Exhibit 4, page 3, para [10].

⁴ *Ibid*, page 8, para [20].

⁵ *Ibid*, para [21-22].

⁶ *Ibid*, para [23].

10. The Applicant's most serious offending resulted in a significant number of convictions on 8 March 2021, for which he received a head sentence of eight years imprisonment. This offending had occurred over a 12-month period during which the Applicant was trafficking methylamphetamine, GHB and cannabis, as a 'prolific' street-level, and wholesale-level drug dealer.⁷ On 8 March 2021, the Applicant was convicted in the Supreme Court of Queensland at Brisbane, before his Honour Mr Justice Flanagan.⁸ The offences dealt with by his Honour on that day were as follows:

- Deal or traffic in illicit drugs commercial quantity: sentenced to 8 years imprisonment;
- Possess illicit drug: sentenced to 4 years imprisonment;
- Manufacture or cultivate illicit drugs – Not further defined: sentenced to 3 years imprisonment;
- Possess illicit drug: sentenced to 2 years imprisonment;
- Sell possess and/or use prohibited weapons/explosives: sentenced to 2 years imprisonment;
- Deal or traffic in illicit drugs - Not Further Defined: sentenced to 18 months imprisonment;
- Possess illicit drug: sentenced to 12 months imprisonment;
- Proceeds of drug offences: sentenced to 12 months imprisonment;
- Deal or traffic in illicit drugs - Not Further Defined: sentenced to 12 months imprisonment;
- Possession of drug utensils: sentenced to 12 months imprisonment;
- Sell/possess and/or use prohibited weapons/explosives: sentenced to 6 months imprisonment;
- Dangerous driving: sentenced to 6 months imprisonment;
- Receiving stolen property: sentenced to 6 months imprisonment;

⁷ Exhibit 4, pages 8-9, para [19].

⁸ Exhibit 1, pages 34; Exhibit 2, page 2, paras [5]-[6]; Exhibit 4, page 2, para [3].

- Possess illicit drug: sentenced to 6 months imprisonment;
- Possession of drug utensils: sentenced to 6 months imprisonment;
- Possess illicit drug: sentenced to 3 months imprisonment;
- Sell/possess and/or use prohibited weapons/explosives: sentenced to 3 months imprisonment;
- Misuse of regulated weapons/explosives (remainder): sentenced to 3 months imprisonment;
- Unlawfully obtain or possess explosives: sentenced to 3 months imprisonment;
- Possess illicit drug: sentenced to 3 months imprisonment;
- Possession of things for unlawful entry: sentenced to 1 month imprisonment;
- Possess illicit drug: sentenced to 1 month imprisonment;
- Proceeds of drug offences: sentenced to 1 month imprisonment;
- Receiving stolen property: sentenced to 1 month imprisonment;
- Sell possess and/or use prohibited weapons/explosives: sentenced to 1 month imprisonment;
- Break and enter other building: sentenced to 6 months imprisonment;
- Possess illicit drug: sentenced to 1 month imprisonment;
- Illicit drug offences (remainder): sentenced to 1 month imprisonment;
- Unlawfully obtain or possess explosives: sentenced to 1 month imprisonment;
- Sell/possess and/or use prohibited weapons/explosives: sentenced to 1 month imprisonment;
- Unlawfully obtain or possess regulated weapons/explosives (remainder): sentenced to 1 month imprisonment;
- Proceeds of drug offences: sentenced to 1 month imprisonment;
- Receiving stolen property: sentenced to 1 month imprisonment;
- Sell/possess and/or use prohibited weapons/explosives: sentenced to 1 month imprisonment;

11. The circumstances giving rise to the Applicant's arrest on these serious drug trafficking and other charges were that between 30 August 2019 and 19 October 2019 the Applicant had been the target of a police surveillance operation, including sustained telephone intercepts, which found that he was predominantly selling methylamphetamine, with 27 actual instances of supply being captured by means of the telephone intercepts. The Applicant had also arranged the supply of 'wholesale' amounts of methylamphetamine for seven customers.⁹
12. The 67-day telephone intercept period also found that the Applicant had supplied or engaged in acts to supply the drug GHB, on 12 occasions. The Judge stated that whilst the Applicant did not sell GHB as often as he had sold methylamphetamine, he still sold 'significant quantities' of GHB. In relation to cannabis, the Applicant sold quantities ranging from a stick, up to two ounces.¹⁰
13. His Honour stated that the Applicant had conducted drug transactions at the back of shops; in side streets; or on licenced premises; and that some customers would also attend at the Applicant's residence in order to purchase drugs. The Applicant would also use a private messenger app, and his partner's bank account for receiving the proceeds of sale, in an effort to avoid detection. His Honour noted that the Applicant was addicted to methylamphetamine, yet found that his conduct went well beyond merely supporting his personal drug habit; and that the Applicant had been 'financially motivated'.¹¹
14. The Applicant was also found in possession of weapons (including knuckledusters, ammunition, fireworks, and rifle scopes), and had threatened violence during his business, however, his Honour found that there was no actual evidence that the Applicant had used either violence - or weapons - during the conduct of his illicit business. The Crown did not accept the Applicant's explanation that he had taken guns off people in exchange for drugs so they wouldn't shoot him, and the Judge noted that during a telephone intercept the Applicant had told an associate that he was paranoid about being robbed, and had discussed carrying guns for protection.¹²

⁹ Exhibit 1, pages 53-60.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

15. His Honour also noted that a significant aspect of the Applicant's trafficking offending was that he had been on bail during the entire period when trafficking drugs and under police surveillance, and that whilst already on bail for other charges the Applicant had been subject to five (5) police searches at various times which had found substantial quantities of drugs, money and, on occasion, weapons in the possession of the Applicant. Despite the fact of the Applicant being on bail the Applicant still continued with his illicit activities,¹³ unperturbed by the fact of bail conditions.
16. The final police search was conducted in the Applicant's home on 17 October 2019 and in the kitchen it found various chemicals used in the production of methylamphetamine, although missing at the time was the key ingredient, iodine. The police described the laboratory as an 'addict-based' set-up, which was consistent with the Applicant's professed drug addiction. The Applicant was then taken into custody.¹⁴
17. Subsequent to the Applicants appearance and sentencing in the Supreme Court at Brisbane on 8 March 2021 before his Honour Mr Justice Flanagan, the Applicant appeared in the Magistrates Court of Queensland, on 6 April 2021, in order to be dealt with in relation to some other, still outstanding offences. On this occasion the Applicant was convicted of:¹⁵
- two counts of possessing dangerous drugs;
 - possess property suspected of having been used in connection with the commission of a drug offence;
 - two counts of unlawful possession of weapons (Category A, B or M);
 - possessing/acquiring restricted items;
 - two counts of authority required to possess explosives;
 - possession of property suspected of being the proceeds of an offence under the *Drugs Misuse Act*;
 - possess tainted property and unlawful possession of weapons (Category D/H/R);
 - and

¹³ Exhibit 1, pages 53-60.

¹⁴ Ibid.

¹⁵ Ibid, pp 38-42.

- Enter premises and commit indictable offence by break.¹⁶
18. At the Magistrates Court appearance on 6 April 2021 the Applicant received a one-month concurrent term of imprisonment for all of the preceding offences, absent the last break and enter offence – for which the Applicant received a six month term of imprisonment.
 19. On 13 May 2021 the Applicant was notified that his visa had been cancelled under s.501(3A) of the Act: on the basis that he had a ‘substantial criminal record’ because of his having been sentenced to a term of imprisonment of more than twelve months; and because the Applicant was serving a sentence of imprisonment on a full-time basis in a custodial institution, for an offence against a law of a State (ss. 501(6)(a) and 501(7)(c)).¹⁷
 20. On 2 June 2021, the Applicant requested revocation of the cancellation of his visa and made representations in support of that request.¹⁸
 21. On 14 September 2022, a Delegate of the Minister decided, pursuant to s.501CA(4) of the Act, not to revoke the visa cancellation decision.¹⁹
 22. On 21 September 2022, the Applicant applied to this Tribunal for review of the Delegate’s decision.²⁰

ISSUES

23. The issues to be determined by the Tribunal in this review are:
 - whether the Applicant passes the character test for the purpose of s.501CA(4)(b)(i) of the Act (as defined in s.501(6)); and, if he does not;
 - whether there is ‘another reason’ why the cancellation should be revoked under s. 501CA(4)(b)(ii) of the Act, having regard to the principles and considerations prescribed by Ministerial Direction No 90 – *Visa refusal and cancellation under*

¹⁶ Exhibit 1, pages 38-42.

¹⁷ Ibid, pages 37-42; Exhibit 2, page 1, para 5; Exhibit 4, pages 1-2, para 2-3.

¹⁸ Ibid, page 61; Exhibit 2, page 2, para 7.

¹⁹ Ibid 1, page 20; Exhibit 4, pages 2-3, paras 5-10.

²⁰ Ibid 1, page 3; Exhibit 2, page 2, para 9.

s.501 and revocation of a mandatory cancellation of a visa under s.501CA ('the Ministerial Direction').

24. The Applicant concedes²¹ that he does not pass the character test, in the manner required in order to satisfy s.501CA(4)(b)(i) of the Act; such that the issue before the Tribunal practically narrows, to become a determination whether there is now 'another reason' why the visa cancellation decision should be revoked, having regard to the principles and considerations prescribed by the Ministerial Direction.

ORAL EVIDENCE BEFORE THE TRIBUNAL

25. The Tribunal hearing was conducted over two days, and during that time oral evidence was received from the following witnesses:

- The Applicant;
- Ms Samantha Jane Hogan (a family friend);
- Ms Mikayla Budworth (Applicant's Sister);
- Mrs Janet Garratt (Applicant's Mother);
- Mr Lee Garratt (Applicant's Father); and
- Professor James Freeman (Forensic Psychologist).

Evidence of the Applicant

26. The Applicant's primary evidence before the Tribunal is contained in a five-page statement dated 28 October 2022. The Applicant was also extensively cross-examined. A summation of the Applicant's oral evidence when appearing before the Tribunal is as follows:

- The Applicant accepts the accuracy of his criminal history:

*'I am very embarrassed about my offending, I find it very difficult to look at it on paper, you know, I accept how reckless and inconsiderate it was of me and I find it very hard to – I believe the words are – I find it very hard to look at it and believe that it is me, that I've done this.'*²²

²¹ Exhibit 4, page 3, para 7.

²² Transcript, page. 7 lines 17-21.

- When in gaol, the Applicant had an opportunity to become sober:

'I fully accept the consequences and I am very remorseful for what happened. So, I try not to blame anything or anybody but myself. And I just wish I never consumed methamphetamines.

...

*...Going to prison really opened my eyes to the dramatic effect that drugs have on the community and what they really – how they ruin a person. It took me going to gaol to actually have conversations with people who were very (audio malfunction) and I experienced all types of things, people were eating food out of bins, the real – it made me really aware of how it destroys people's lives and their mental health. Dependencies – like it is really heart breaking to really witness it.'*²³

- The Applicant had spiralled into an addiction to methamphetamine after a series of adverse life events:

'There was a breakdown of a long relationship with a partner I was with for six, seven years. I was also witness to a friend of mine that died, who I was very close to, he had a heart attack, and I was there. I also, at that time, I lost my driving licence, I fell off a motorbike and injured myself, all these were parts that led towards my offending and then hanging around with the wrong social groups led to methamphetamines and that was like a shield, like a cover for everything that was going on, so I distanced myself from family members and started socially using methamphetamines which led to a daily basis.

...

*...I just knew I was very depressed and I had anxiety but I was too anxious to even go and seek any type of mental health or even seek help from a GP.'*²⁴

- Whilst in prison, the Applicant endeavoured to use his time productively, in an effort to address his problem with drugs:

*'I did the Do It programs, SSI which is short substance abuse. And then the LSI which is long substance intervention. I also did a resilience program and then – these were scattered in between due to COVID, it was very difficult to get onto drug courses and rehabilitation classes. So, I – my family paid for a specialist, Rebecca Geddey to come in and do a treatment plan and – about my rehabilitation, recognising my offending.'*²⁵

- In addition to the courses run by the prison, the Applicant sought out additional rehabilitation treatment, from private providers:

²³ Transcript, page 7, lines 40-43; page. 8, lines 24-30.

²⁴ Ibid, lines 46-47; page. 8 lines 1-7; lines 14-16.

²⁵ Ibid, page. 9 lines 2-7.

'The resilience program was actually probably one of the best out of the lot of them, that was any day for six weeks, on and off, due to COVID. It wasn't recognised by QCS, it was like their own personal one and I found that one most effective because you'd sit in a group and you'd go through – you'd listen to everybody and over time people tend to come out of their shells a lot more when they become more comfortable and that's when you really get to know somebody's upbringing and really recognise how different their lifestyles were and how they have led to drug use and crime and how they have been incarcerated. It was a very good course.

...

*Yes, since I've been in detention I did a couple of sessions with Rebecca Geddey's relapse prevention plan, things like that, I also booked into a local psychologist who was local to the area if I was released – to where I would be released, called Freddy Bashir, I did four sessions with him and I just more – I did that so it was somebody local to where I would be living, so it was easily accessible and, you know, I found it very calming, he was trying to teach me about mindfulness and to stop negative thought patterns, things like that.'*²⁶

- The Applicant and his family have arranged for a network of further drug rehabilitation support in the community, in the event that the Applicant is to be allowed to remain in Australia:

'DR DONNELLEY: So, Mr Garratt, you were seeing Rebecca Geddey as a psychologist and - - -?

APPLICANT: Yes.

DR DONNELLEY: And also, Freddy Bashir, is that right?

APPLICANT: Yes.

...

DR DONNELLEY: Now, you spoke before about support on the outside, what kind of support, what – otherwise have you learned about on the outside?

APPLICANT: I also got in touch with Bayside Drug and Alcohol Clinic and they made me aware of group meetings that I can attend. Relapse prevention meetings that go on every week, I was – I am booked on for one from 7 December which will go every 15 week in person. A lot of these – I found like a lot of these companies like Lives Live Well, I also connected with them. There are more of an in person, they were very hard to help me while I'm in the detention centre, so I also connected with a company called SMART Recovery and they do AA meetings and SMART Recovery meetings. I think I would've done about 28 of the sessions while I've been in detention because they're two or three a week I was doing, SMART recovery meetings. I found them very helpful, you're in touch with all different types of people, all over Australia, and people who were just beginning their – at the beginning stages of their recovery, from their addictions, it was drug and alcohol. To people who have been sober for three, four years and still maintain a meeting every week for sobriety.

²⁶ Transcript, page. 9 lines 47-49; age. 10 lines 1-9; lines 33-40.

DR DONNELLEY So you said you've done about, sorry, was it 28 sessions with SMART Recovery?

APPLICANT: Yes, yes.

DR DONNELLEY Right. And that's been during your time in immigration detention?

APPLICANT: Yes.

DR DONNELLEY And can I ask you this, since we're on the topic of rehabilitation, could you just summarise for the tribunal what are your plans for rehabilitation if you are released into the Australian community?

APPLICANT: I will maintain SMART Recovery meetings regularly, they are free and they are a permanent thing, you become part of a group. You can really explore your boundaries with it and I feel comfortable when I am in the meetings, it's like men only ones on a Saturday night which I actually really enjoy doing them. I got a lot from it. What was a bigger picture was how people would say look, I've been sober for two years and they would actually go into detail how they've gone from being nearly homeless to having a good job, you know, (audio malfunction) like they've bought their own car now, they're in a relationship, they're in a stable environment, and it just showed positivity. And a lot of the people have been in very similar circumstances to myself in regards to being in trouble with the law, going to gaol, so I definitely encourage – like stayed with that for my rehabilitation. I would also go to a GP and get a bit of a mental health plan so that – it'll facilitate me with reversing me to go and see Freddy Bashir which will make it a lot more accessible because it's a lot cheaper. I have also been in touch with a rehab called Victory House. Now I first applied for Victory House in 2020 when I went for Supreme Court bail. But I was never granted Supreme Court bail, so it got postponed and then again when I was sentenced in 2021, they gave me a bed for in house rehabilitation. And that could be for 12 months, and then that was when I got sentenced but I wasn't released so it got postponed again and then I also just got in touch with Victory House probably two, three months ago, and I've got it there as a backup in case – things do happen, I am fully aware of this, so if I do lapse – I have got all of these preventative in place so like if I feel like I need to go to rehab, or my family says look, we want you to go to rehab, we're concerned about you, I can go there straight away, there is a bed permanently booked in for me. I also believe that my family will be a great deal towards my rehabilitation and maintaining being, you know, sober.

MEMBER: When does your parole expire?

APPLICANT: 2027.

MEMBER: 2027, so five years away?

APPLICANT: Yes, yes.

MEMBER: All right, thank you?

APPLICANT: That would be a big deterrent as well from reoffending.

MEMBER: Well, I should think so.²⁷

²⁷ Transcript, page 9, lines 47-49; page 10, lines 1-9; lines 33-40; page 11, lines 6-47; page 12, lines 1-25.

- The Applicant has not used any drugs for a period exceeding 3 years, and has ceased all contact with any former drug associates, including having deleted all social media accounts.²⁸
- The Applicant has a very supportive family, and has thought through a plan to ensure that he does not relapse back into drug use:

'DR DONNELLY: All right, well before I move onto another topic, just one final question. What if you do run into life stressors, life is complex and difficult, what are you going to do?

APPLICANT: Can you repeat that question?

DR DONNELLY: Sure. Say you do run into some struggles, right, life is difficult, things come up, what are you going to do?

APPLICANT: Well, part of my relapse prevention plan is recognising risky behaviours, old associates, things like that, and that's why I have such a – I would say, a positive relapse prevention plan of recognising so I don't put myself in that type of situation, I set a lot of boundaries. I will make my family aware instantly if there are any problems, I will also be in contact with regular appointments with Freddy Bashir, he basically said I can just pick up the phone and dial in, whenever necessary.

DR DONNELLY: All right. Now I just want to talk about another topic and that's in relation to your family, so just could you – the relationship you have with your immediate family in Australia, who they are and the nature of the relationship?

APPLICANT: My mum and – my mum and dad live in Australia, I have a very strong relationship with them. Even more since I went to gaol, like my mum has become my best friend, we talk about everything. I have a very strong bond with my dad through work ethics and just an understanding. So he would be one who I would be – I will be living with my parents, if I am released, and I would be working at my dad's building company. Taking on a bit more of a important role and so he can keep a watch over me as well. I also have two brothers and two sisters, my older sister is Mikayla, she is a school teacher, she's got two daughters, G and S. S suffers from autism and severe anxiety and she is stage two autistic, she is six and a half years old now. I have a very strong bond with S out of everybody, I've known – I was there from day one, since she was born. I get regular visits in gaol and regular visits at the detention centre often. My older brother, he's a – owns a tiling company, he's very successful and I talk to him regularly, I don't – I haven't really got visits off him due to COVID restrictions and him being not vaccinated but I still talk to him every other day on the phone. Next is my other younger brother, his name is Alex, he has just finished his apprenticeship for my dad's business probably two years ago and he's started his own company now. And he is going very successfully. I am in touch with him regularly, his partner regularly, and then I have my younger sister who is a cardia nurse on the Gold Coast, and she comes and visits me regularly. Between

²⁸ Transcript, page. 13.

everybody, there isn't a week that I never got a visit when I was in gaol, my family are very supportive'.²⁹

Evidence of Samantha Jane Hogan

27. Ms Samantha Hogan, a nurse administrator, is a friend of the Applicant's mother and has known the Applicant for many years.³⁰ Ms Hogan believes that she knows the Applicant well enough to be able to say that the drug trafficking and weapons offences for which he was convicted are highly out of character. Ms Hogan stated that when the Applicant was arrested this caused considerable distress for his family, yet they have been very proactive and have enrolled in courses, in order to better equip themselves with the skills and understanding necessary to assist recovering drug addicts.

Evidence of Mikayla Budworth

28. Ms Budworth is a school teacher, and is the older sister of the Applicant. Her evidence centred around the relationship of the Applicant with her two young daughters, S and G:

'DR DONNELLY: What relationship does Mr Garratt, your brother have with your children?

MS BUDWORTH: So, before incarceration, he had a really good relationship with S. I would fly down to Brisbane every few weeks, every four/five weeks roughly from Moranbah where we lived, I was a teacher up there. And Dale had a lovely relationship with her, he'd basically help me if I needed respite. S is autistic, at the time we obviously didn't know, she had lots of sensory issues and lots of emotional dysregulation. And Dale had a lovely way with her, and could calm her, took her out, helped me, would come out for walks with us when I was down visiting my parents. Then I had G, I don't know how old G was when he was incarcerated but when we developed a relationship again when he was incarcerated, I took the girls in to see him and then from then on whenever I could, I took them in, and he had that relationship with them in prison. And then since he's in the detention centre as well. They come with me to visit him. So, they're quite entertaining. What else? Phone calls. They skype most days, like Facetime most days. Whenever anything happens they call him to let him know. S had a celebration of learning, they do it every term. And we Skype Dale so that he could actually watch it, as well. So, he was actually there. She was showing him everything that she'd done that term because she's in prep. So yeah, that's pretty much the relationship that they have with him.

DR DONNELLY: All right. And if Dale was able to just stay in Australia, what kind of relationship do you want Dale to have with the children?

²⁹ Transcript, page 14, lines 8-46.

³⁰ Ibid, page.48 line 13-14.

MS BUDWORTH: Oh, I would love for him to have that uncle relationship with them. I need it more because they need someone that they can trust. They need someone other than myself to have relationships with, to support them when S has meltdowns and just that uncle relationship. I just really – I really want them to be a part of their life. I just don't want him to miss it. They need all the help that they can get. They only have my immediate family here. And my husband's family don't live in the country and it's really, really hard work. So, I really want Dale to be a part of their lives. Like taking them out, going to these celebrations of learnings through school because they – we just had a Christmas concert and we videoed – video called him. Like they want him to be there. And they don't actually quite understand why he can't be.

...

MEMBER: All right. Now, I'm interested to know about other family support that you have around you. I mean, your brother's been incarcerated for quite a deal of time now?

MS BUDWORTH: Yeah.

MEMBER: What other supports are there for you? Particularly, in your parenting of S, but also G?

MS BUDWORTH: My sister's a nurse, but Olivia's now. Olivia lives on the Gold Coast and she – she doesn't have as much support in place for me for the girls, as I'd like to. Last year, I particularly struggled really badly, and I asked her for help, but she just couldn't really give it to be honest, with what was going on in her own mind, I suppose with a post-graduate nurse and things. My mum and dad have been – I haven't been able to survive without my Mum and Dad to be honest with my husband flying in and out for like, you know, four or five days, or six days at a time. My mum would – if I was at work and I couldn't leave school because I – I don't like leaving school because it's my career and my Mum will go pick her up. If there was a meltdown, that would happen where walls have been punched, holes in the walls, I've had things damaged. I've been physically hurt a lot. My parents had – would come around very quickly because they don't live that far away and they'd be able to diffuse that situation. Just having that extra person available to diffuse the situation is phenomenal like it can be very – brought down quickly. If I don't have that, a meltdown can happen for over an hour, two hours.

MEMBER: All right. Well, let's introduce your brother, the applicant into this discussion?

MS BUDWORTH: Yes.

MEMBER: Why is he important to the social fabric of your raising of your daughters? Explain that to me?

MS BUDWORTH: So, with S, for example, PDA kids have a real sense of humour. Humour can get them on side very quickly. And it's about trust with that. And I'm not very good to be honest with that side because I'm in the thick of it all the time. But Dale has a way of bringing her around quite quickly. He would be able to give me respite. I'm not entitled to respite. I'm applying – I've applied twice and been knocked back by NDIS for a behaviour management plan for S, where you get funding where they come and they help you figure out a plan to support you at home. And I've been knocked back twice. We're in the process of applying again. I don't have that ability to have respite or carer's respite. So he will be that for me. He'll be someone that S and G can go to when they can't go to me, because I'm at the beginning of this

journey and it's terrifying and what comes through the teenage years can be even more difficult with regards to depression, anxiety, it's even (indistinct) drug abuse, like who knows what I'm going to be facing? And I want them to have someone that they can trust to go to. And Dale, even though he's been inside has managed to actually build that relationship with them.

MEMBER: All right. Yes, all right. Thank you. Dr Donnelly, anything that flows on from any of that?

DR DONNELLY: Just one question, Member.

You mentioned the – you said beginning of the journey?

MS BUDWORTH: Yes.

DR DONNELLY: What part of that journey has Dale been part of in relation to assisting S?

APPLICANT: So Dale's been speaking to me a lot actually, there's been a lot of support for me. I'm trying to figure out – out of all my siblings, he's the one that actually attempts to figure out what is going on and how to solve the problems that will help keep S emotionally regular. Also, for me too, because it's a lot – it's a lot for me to juggle. Yeah, his phone calls with me, his - just the relationship with the girls. He's been a part of it since he's been incarcerated really, like since we rebuilt our relationship. I don't know if – I think I've forgotten your question now.³¹

Evidence of Mrs Janet Garratt

29. Mrs Janet Garratt is the mother of the Applicant, and indicated that currently, she speaks with her son every day by the phone, and sometimes two or three times per day:

'DR DONNELLY: All right. Looking at your dealings with Dale now and spending time with him do you think that he is someone that would commit further criminal proceedings if he's returned to the community?

MS J GARRATT: Most definitely not. I think I can say that 100 per cent. I would say when he went to prison I think it's been the biggest shock of his life. I think he's gone through so much, and everything he says when he talks to you I believe from the bottom of my heart he means what he says, how sorry he is. He realises exactly what he's done and I think he's very remorseful for it, and I do think he's going to have to live with that for the rest of his life. I think he's very embarrassed. I definitely think that he has been rehabilitated, and I wouldn't say prison's for everybody and they come out and they don't reoffend, but I actually feel Dale's been long enough in there and gone through a lot while he's been in there. I don't think he would ever go - want to go back there again, and I can tell when he talks to me, the things he says, heartfelt things, very intimate heartfelt things actually, I do believe he really means it. In all reality and with all his heart I can definitely say he won't ever reoffend. I think the fact that what he's put the family through, me and his dad, and I think what he's done in the community I think he's very embarrassed about it and remorseful. I do, definitely.

³¹ Transcript, page.68 lines 26-47; page. 69 lines 1-13; page. 71 lines 15-47; page. 72 lines 1-29.

DR DONNELLY: This next question might sound like a silly question. If Dale had to live in the UK how would you feel about that?

MS J GARRATT: I'd actually feel like - I don't think I could even deal with that, because it's going to change everything, you know. I'll be worried sick about him. I just can't - I haven't got the support there and he hasn't got the support there. He's come such a long way with his drug addiction. He's been clean all through prison, and I know he could have took drugs there, and he hasn't. You can see it in him, that he's not into drugs, it's not him any more, and it wasn't him before. And I think if he went to the UK he could - he could end up, with no support and no one looking over him and helping him out with his future, he could end up back on drugs, and I don't want that for him. I think honestly, and I know this sounds dramatic, I actually feel like - I feel like I'll never be happy again. I think my life has been horrendous this last three to four years, and two years prior to that when everything was going on, and the distance he was from us, you know, it was all a body and mind and how it took over him. I actually feel as if I've got him back again now and he can be what he was before, a much better person. I think if he went to the UK it would destroy our family life. Dale's - he's got nothing there and I fear for his life there, because I actually feel he could end up back on drugs, because what will he have? No family members looking over him, no job. It would be horrendous for me and the family. I just - it just doesn't bear thinking about to tell you the truth, and I know everybody was saying the same thing, but I really mean it would affect us severely. My health has been appalling since a lot of this has been going on, you know. It's took a real deterioration, and (indistinct words). But I actually feel like I (indistinct) go forward with that. I think it's a lifetime of worry and fright, I would fear for his life, and that's the truth.

...

MEMBER: When did you first become aware that he was involved in all of these very serious crimes?

MS J GARRATT: Oh, that was actually once he'd been arrested and the - and the barrister contacted us for money. That was the only time we knew that Dale was involved in any activity of that - of any kind like that. We did not know until he was arrested. He wasn't taking phone calls from us, he wasn't coming near us and even the police after the (indistinct), can say they never came to our house because, you know, he wasn't involved at home and he'd - they knew that he - we had nothing to do - as I've been told by the police either that's why they never came and involved us in any way because we didn't know. He'd kept that all away from us. We didn't know. And then when we did find out, obviously, he was already in prison and then we actually got - we tried to him bailed and bailed into a rehab centre called Victory House. They accepted Dale to go with that and it was a 18 months' program. Instead of him being in prison, that he could be rehabilitated and get rid of the drug addiction and everything that was going on. But he admitted to everything so they wouldn't - we did go to court but they wouldn't let us out and we have got - still got the ties to them now where - because we've paid for the space a couple of times and they will honour that if Dale ever needed it. We've gone on so many courses. I've been involved with the local hospital - we're lucky to have that on our doorstep - which has drug, alcohol and mental health department. And they are involved with me, I've done a course there. Lee's done a course.

MR BURGESS: Ms Garratt, sorry, my question was about your knowledge in 2016 - - -?

MS J GARRATT: 2016.

MR BURGESS: - - - of his offences?

MS J GARRATT: 2016 I didn't know of any offences.

MR BURGESS: Okay?

MS J GARRATT: Nothing.

MR BURGESS: Member, I don't have any further questions.

MEMBER: All right?

MS J GARRATT: Thank you. Thank you.

MEMBER: I have a few questions?

APPLICANT: Yes.

MEMBER: In the event that - there's really two options here, either Dale goes back to the UK or he doesn't. In the event that Dale were to remain in Australia, what's the plan for Dale's supervision? What's the family plan, in terms of keeping him on the straight and narrow?

MS J GARRATT: Oh, we've got a lot in plan. He can come home with - there's only me and Lee at home so no other children are at home. So we can help him a hundred per cent. Everybody's moved out. Dale can go and work for his dad, he's got a really good business of - and really desperately needs someone of Dale's expertise in his woodworking. So, he's got a job straight away and he can stay at home. We have contacted the local drug and alcohol, and Dale - and Dale has done this as well, he's contacted them as well. They're supporting me and Lee in supporting Dale. We've done a drug course with Lives Lived Well and I'm much more aware about drugs. In fact, I think I could - I think I could help there. I think I could help others now whereas before, I didn't have a clue. He's going to be home. I can work from home for Lee. I just do his bookwork so I'm always home. He'll be with his dad, and we've got a close network of friends that can help us. And we've reached out to a couple of places. He's got somewhere else - a course he's - he can - well, he has been booked on a course that he's done for one day a week to go to that. And we've also got Dale connected to a psychology department where I actually go as well - different psychologists there for different reasons - which will help Dale with addiction and depression, or anything else that, you know, he needs. So we've set all this up, he's set it up, and it's all local. I mean, there's a massive network there.

MEMBER: Who's going to pay for all of this?

MS J GARRATT: Well, a lot of them are free but me and dad are willing to pay with our - you know, we've been paying for his legal fees now. We'll do anything it takes. And Dale will have a good job and will be earning good money, and he can pay for himself where he needs to as well. It wasn't like this before; he's been a good lad.

MEMBER: Dale's also subject to a parole order for at least another five years. Has your home been approved by the Queensland Parole Board?

MS J GARRATT: Well, I didn't know about - I knew he was on parole but not yet but I can get that done. There's only me and Lee live here and we're not - we've got no criminal records and, you know, he's got his own room, he's own TV place, you know, he can go to work with his dad till he gets his licence sorted out properly. Lee leaves every day at 5.30. Dale can go. He can eat with us, you know, his - his brother lives around the corner, his sister lives up the road. We've got good friends and a

good network for Dale to be able - he's much more talkative and open about things, he's matured a lot.

MEMBER: All right?

MS J GARRATT: Definitely has learned by his lesson.

MEMBER: I'll just ask counsel whether there's any questions arising out of my questions?

MS J GARRATT: Yes, thank you.

DR DONNELLY: Just one question, Member. The witness mentioned the course of Lives Lived Well. I just wanted to ask more precisely what you learnt from that course that you undertook?

MS J GARRATT: Oh, we've learnt to see the signs of addiction and what pressure not to put them under, because I do feel like we weren't equipped to understand what was happening. If anything, I was a bit of a dictator and a bit like, you know, you've got to do this and you've got to do that. I think I've learnt how to approach things with a better manner, should I say, and not to aggravate, I suppose, in a way, which I think I probably wasn't a person you could of come to before. I feel that I can help Dale a lot more. We learnt the cycle of drugs and what drugs affect what areas of the brain, and the substances that they take for uppers, downers and all other things. And I think we learnt a lot from that and how to access the help, because there is a big network of help there if you know how to access it. I've even passed the course onto another family that I know that they're still struggling, and she's started doing it. So I think we've learnt an awful lot about drugs, and what it can do in the community and what it does, obviously, to your loved ones and to the families, you know. We've learnt a lot. I feel we've learnt a lot.³²

Evidence of Mr Lee Garratt

30. Mr Lee Garrett, a builder and tiler originally from Manchester, who now owns a small building company in Brisbane performing bathroom renovations, is the father of the Applicant:

'DR DONNELLY: How long have you had the company for?

MR L GARRATT: Started when I first came to - I had it in the UK before I came here. I did the same thing. I started when I came to Australia. When I came here with the family, I didn't have a job because I'd been self-employed before I came here so we had to go through hoops then - because we were in Queensland, I was registered - or me trade was assessed by South Australia but I came here - I came to Queensland so they didn't actually accept my trade. So, I worked within the first week of coming here and I've never not worked since then. I got licensed as a tiler, so I had to [do] courses for that. I was a builder in the UK before I came here but it was very complicated to get a builder's licence. I got me builder's licence here about five years ago. And so just from doing tiling, we then went on to do full bathroom renovations. I'm licensed for kitchens and bathrooms, but we only concentrate on

³² Transcript, p 77, lines 24-47; p 78, lines 1-23; p 81, lines 1-47; p 82, lines 1-47; p 83, lines 1-7.

*the bathrooms. This is why Dale has always been in woodworking and kitchens. Mostly kitchens and that sort of thing since he was in Australia when he was working. So, you know, I've got a job for him straightaway. I'm quite desperate for him, really. We were actually – we've actually tried to get people and you just cannot get anybody at the moment. You can't even get labourers, never mind qualified and skilled people.*³³

...

*...I feel privileged to be in Australia and – but I want all my family here. It's absolutely devastated my wife and me, what's gone on over this past – I never thought at this time in my life I'd be visiting prisons and visiting detention centres whatsoever. It come as a total shock when I found out what Dale was up to. And I must admit – I mean, I'll say now I was angry when I found out what he'd been doing. I never in my wildest dreams thought he would do something like that. But he was a different person. He was a totally different person to what he is now...*³⁴

...

*...And looking back on it I should have noticed this, but I've never had any dealings with this sort of thing. I don't whatsoever. I've never taken any drugs in my life, I've never smoked a cigarette in my life. And I don't drink and neither does the wife. So, it is – it was a totally alien culture to us to see that. So, we just never thought about it. We thought he was depressed, which was – when he was living with us he was depressed because he'd split up with his girlfriend, he wasn't working at the time after the bike accident when he hurt his leg. So, he was laid up in our house, really he never moved out of the house for about six months. Anyway, he looked bad with depression. And then he got a job. My timeline might be a bit out on this, but then he – I'm sure he got a job, but he didn't have a licence. He'd lost his licence and I was running him to the other kitchen place – kitchen manufacturers which wasn't far away, it was in Thornlands where we were living at the time. It was probably about 20 minutes away and it was – I'd take him in the morning and drop him off when I went – because I start early, I'd drop him off really early in the morning, and then he'd wait and I'd pick him up on the way home and drop him back off. And then – so his leg was better and that and he was working, and then he moved out. And I think that's when the drugs took hold properly".*³⁵

...

MEMBER: In the event that your son were to be deported and go back to the UK, can you paint a picture for me? What do you say as his father would be the impact for Dale? What's the impact for you and your wife? What's the impact for the rest of your family if he were to be deported?

MR L GARRATT: Right. Right. Well, the impact for Dale – he's totally cleared of drugs now and has been, from prison. I'm sorry. I keep trying to divert to things I want to say, but they're not what you're asking. So, he's free from drugs now. He comes out, and you allow him to stay here, he'll come back and live with me in the house. We'll sort his licence out. He's got no problem with transport. He's got no problem with work. He'll be an asset to work. It's not like, "Oh, he's my son, I'll give

³³ Transcript, p.85 lines 15-32.

³⁴ Ibid, lines 2-10.

³⁵ Ibid, p.87 lines 46-47; p.88 lines 1-18.

him a job just to stop him going on drugs", anything like that. It's not. He'll be an asset to what I do. He will have money, good money, so he'll be paying taxes. He can pay money back for the cost of what - you know, the cost of his incarceration, all the rest of it, back to the state in time. We'll be able to watch him. You see, if everything is going right there's no reason to ever go back on drugs. If he's got a good job and he's got a home and he's got a vehicle, there's no reason to go back on drugs whatsoever. I mean, he's had his - I think he's learnt a lesson. I definitely know he's learnt a lesson. I can see it in him.

MEMBER: All right?

MR L GARRATT: The change in him now - he's a totally different person.

MEMBER: The thing is if he were to be deported and he ends up in the UK, what do you say the ramifications for Dale will be, living in the UK - - -?

MR L GARRATT: Yes.

MEMBER: - - - and what are the ramifications for you and your family? If you can just paint the picture for me?

MR L GARRATT: Right. Well, he goes back to the UK, he's got no contacts in the UK for work. Anyone that I knew - now, I've been here for 16 years. They've all retired or stopped working or moved on. We've not really had much contact back with the UK since we left and came here. We made our life here. So, he'll have no job; he'll have no money. Accommodation - we've looked - I've looked. Accommodation is exactly the same as here. It's gone through the roof with the cost of accommodation. There's no council accommodation. So, you know, it's not like - they don't - a single man - they won't put you up or find you somewhere to live. I've looked into it, you know, and googled it. I watch the news. I watch the UK news. I'm interested in what's going on, and, you know, it's in a little bit of a mess at the moment, the UK.

MEMBER: What about the fact that Dale's a qualified joiner who specialises in heritage work? Won't that be an asset?

MR L GARRATT: Yes, but where would he possibly find work? If they do have a recession, which, you know, it sounds like they're heading that way, all that sort of stuff stops. I mean, I've seen it stop here twice since I've been here, but it picks up virtually within a matter of months or weeks, actually, but I saw it in the UK. It doesn't pick up for years when it goes there. So, like I said, why - how is he going to get a job if he goes for a job? What have you been doing? If you google his name - and I've googled his name - it comes up and says what he's done. Now, he's my son, I'll employ him, but if someone else came for a job, and I google their name, and, you know, he'd been in prison for drugs and firearms and whatever, and I didn't know him, he weren't my son, you know, you just - you wouldn't employ him. So, I don't think he'd get employment over there.

MEMBER: All right?

MR L GARRATT: And even if he did, the wages over there wouldn't allow him to pay for accommodation for a long time. And I'm not in a position to, sort of, like, send him an allowance or pay for his accommodation over there, anything like that. It frightens me. It frightens me. What frightens me most is he goes back to the UK; he's got nothing; he's got no family; and he's got no prospects; he's got nowhere to live. So, if he's ever thinking about going back on drugs again, that is when he's going to go back on drugs, when you've got nothing. And obviously this - I can see

Dale on this screen in front of me, so, you know, I don't want to say it, but I've had nightmares that he goes back; he goes back on drugs because he's got nothing. And he's had bouts of depression. We all know - I can see you're all men here - you all know - I don't like saying this, but, you know, it's prevalent in young men in suicide, more so than in women. You know, about - women get upset and say they're going to do it and don't do it, but men just don't say anything, and do it because they've had enough. And it frightens me to death that that might happen.

MEMBER: All right. I understand all of that?

MR L GARRATT: This is how I feel. Now, that's from Dale's point of view, going back to the UK, really. He'll go back to nothing.

MEMBER: Yes. All right. Well, let's talk about your wife and you and your daughter and your grand-daughters?

MR L GARRATT: Yes.

MEMBER: Let's talk about the impact on them. Paint the picture for me?

MR L GARRATT: Right. Well, my wife - well, you spoke to my wife. I mean, I didn't hear what she was saying. I couldn't hear what she was saying, but I can imagine what she was saying. She would [be] absolutely devastated. She's suffered from depression as well. I think she's on medication now. I don't think she'd cope, to be quite honest. I mean, we're both shadows of our former selves through this, and Dale has apologised, and he's actually wrote us a letter a while back, you know, saying how sorry he is for what he's done. He can see the change in me and what's happened to me. I had dark, and I had some hair when he weren't in prison, and not now. It just destroyed the family. I mean, the girls love him. The girls love him. Mikayla's girls. They're always on the phone to him. They go to visit him. They're actually - they've been to the centre (indistinct), there's quite a little scene at the centre they, they go there and they start writing and they're playing with the books and things like that and drawing and play with the garden. Dale could help out a lot. S - they're both very hard work. But S mainly - I know my daughter's told you about - she's got the autism and things like that. And she can be very, very hard work, demanding, full on, and my daughter sometimes is absolutely worn out with it all. She just - 'cause it's constant from 5.30 in the morning until she gets them into bed at, like, 7/7.30 at night. There's no break whatsoever. See, I work. I work. I leave here half 5, 6 o'clock in the morning. I get back about 5 o'clock, 4.30/5 o'clock, and I'm shattered when I come in, so, you know, I might go and see them, whatever, for half an hour, but I'm not up to, like, looking after them that much. At the weekends we're good, you know. We have them over here and that to give her a break.

MEMBER: All right. Now, I understand from reading the material that your wife had some depression in relation to all of this?

MR L GARRATT: She does, yes.

MEMBER: It was in relation to Dale's situation that her depression onset?

MR L GARRATT: Yes. Yes. She had it in the past. We lost a child years ago, and she had it then. But since Dale was arrested and, you know, and the drugs and things like that, and been in prison, she got quite bad, and then she got off the medicine, and then recently with the thought of him getting sent back home, she's back on antidepressant. She suffers badly from anxiety. Like, when the COVID was on - well, it still is, but now we can visit together when we go to see him, but they would only allow one person to see him. So, I used to have to drive to the centre

*and sit in the car, and then Janet could go and see him because she wouldn't drive to the centre. She couldn't drive to the centre with her anxiety. But they only allowed us to do half an hour each, and now they allow us to see him all together because now the restrictions are a little bit less now.*³⁶

...

...Well, he'll work with me. Even if, after a while if he doesn't want to work with me and he wants to go and get a job, he'll still be living with me. So, we'll keep our eye on him. I didn't – I was naïve before because I'd never been around this sort of thing. I'm not now. Our lives have been totally changed by all this just like, you know, Dale's life's been changed. I'm not a naïve person anymore about drugs. I know quite a lot. I've read up about them, I've done this course, we've seen the devastation that it causes. I mean, I am very, very anti-drugs. I've always been anti-drugs. I will not stand for him doing drug. I'd even drug test him myself if I even had the inkling that he was doing it again. I presume if he's allowed to stay he'd be going to meet the bail person and or the parole officer or whatever it is.

MEMBER: *The parole officer?*

MR L GARRATT: *I'm sure – yes, the parole officer – and I'm sure they all do drug tests on him as well. I'm 100 per cent certain – I mean I would like to give you my guarantee as his dad that he will never, ever offend again. I mean I know no one can be 100 per cent, but I am 99.9 per cent sure that he has definitely learnt his lesson from this. I wish to God that he'd had put him in prison, even for a short, sharp shock. I know they don't. When he was first arrested, I think, because this prison has done it for him. If they'd have put him inside when he first got arrested for whatever he was doing at the beginning before it got huge then we wouldn't be having this issue because he wouldn't have got a big long sentence. I don't think he'd have done it again, because then we'd have known he was doing drugs and all the rest of it and we could have got something. Because we've been – we've phoned up the rehab places, spoke to the rehab places. I mean, it was a lot of hard work to get him a place at a rehab, but we've gotten what we paid for it.*

MEMBER: *And what about rehab going forward?*

MR L GARRATT: *We've got it all – we've got plenty of places we've spoke to. He's been offered places if he needs. I don't think he'll personally need it, but it's there for him if he does. And I'll not have this. I'll definitely won't have this again what's happened before. I mean, with the drugs and that. And I don't allow – I don't even allow the lads at work to have a smoke at work. So, there'd be nothing – I mean, I've read his statement from where he was working at – the young lads smoke marijuana and things like that. The lads that work for me don't do that.*³⁷

³⁶ Transcript, page.89, lines 15-47; page 90, lines 1-47; page 91, lines 1-38.

³⁷ Ibid, page 85, lines 15-32; page 87, lines 3-10; page 87, lines 46-47; page 88, lines 1-18; page 89, lines 15-47; page 90, lines 1-47; page 91, lines 1-38; page.93 lines 44-47; page 94 lines 1-33.

Evidence of Professor James Freeman.

31. Professor James Freeman, a consulting forensic and clinical psychologist prepared an expert report on the Applicant dated 11 March 2022,³⁸ as well as an addendum report,³⁹ dated 3 November 2022. On the basis of his assessment, Professor Freeman diagnosed the Applicant as suffering from 'methamphetamine dependency in partial remission in a controlled environment', and 'adjustment disorder'.
32. In relation to the risk of the Applicant re-offending, during his evidence before the Tribunal Professor Freeman indicated that he considered the Applicant to be a 'lower than average' risk:

'PROFESSOR FREEMAN: ...his risk of recidivism is much lower than that; well, can be considered lower than the average inmate, although that research is based in northern America I must say, so we're making an assumption that North Americans are similar to Australians, which is not an unusual proposition. But if I can just briefly highlight that his risk is of relapsing into methamphetamines. I'd like to highlight that to the tribunal. I don't see in my structured professional opinion that he has a tremendous risk of committing violence-based offences, or obviously sexual-based offences. It's his risks really rely – are linked to something very specific, which meaning the actuarial scales don't really accurately measure or predict. So that's the dilemma that I'm in as an expert witness.

DR DONNELLY: Yes, and I think you make that point at paragraph 12.5 of your report. You say, "Similarly there is a lack of all validated tools," and then it goes on?

PROFESSOR FREEMAN: Yes.

DR DONNELLY: Just so I understand your evidence, as a professional expert, you're not in a position to give a precise opinion as to the prospect of Mr Garratt relapsing into drug use?

PROFESSOR FREEMAN: I can give a structured professional opinion, but this is my opinion. So, structured professional judgment is what - which forensic psychologists are now meant to use, structured professional judgment. So that is a combination of the use of actuarial scales, which we're trained in, and in - two, it's the clinical expertise or the experience of the practitioner, and we combine both my own expertise with that of the scale. So, my assessment of the applicant is, one, he presents as somebody who has gone above and beyond in regards to trying to complete as many rehabilitation programs as possible, or as many intervention programs as possible, to develop a robust relapse prevention plan against methamphetamines. So, in my experience, he has impressed me with his commitment to be able to demonstrate how much he wants to avoid relapse, and research has demonstrated that a strong commitment to avoid relapse, not surprisingly, is a good predictor of being able to avoid relapse. So his risks relate to

³⁸ Exhibit 1, page 91.

³⁹ Exhibit 5, page 3.

relapsing into methamphetamines. Given his current situation, given the fact that he's got an adjustment disorder, given the fact that he doesn't have broader criminogenic treatment needs about violence, but in all those things I think collectively we could say – my opinion is his risk of relapsing into methamphetamines is low, but that can only be based on my opinion, but if he were to relapse into methamphetamines then the risk of reoffending could be considered to escalate.

MEMBER: Professor, it's the Member here. What about the risk of relapsing into another drug, marijuana, cocaine, something of that description, instead of amphetamines?

PROFESSOR FREEMAN: That's a very good question, and given that I'm not a pharmacologist, however, in my experience and reading the research, methamphetamine is one of the more addictive drugs. There's certainly some possibility of relapse into cannabis or cocaine, but, one, my opinion is I still think that's low. He's gone through so much personal trauma and lifestyle instability to get to this point of his life where he's so committed and thrown all his resources into trying to get his visa back, the risk of relapsing is not commensurate – I'm not sure if that's the right word, but it's not reflective of what he's trying to do presently. I think his risk is – whilst it's low, I think it's linked to methamphetamine. But I would be surprised if he were to use any illicit drugs if he were to be permitted to remain in Australia. He doesn't have that classic drug use history of starting drugs in adolescence, consistently aligning himself with a pro-drug support group throughout adulthood, having multiple cycles of being incarcerated and being released, and choosing drugs over lifestyle stability; he doesn't fit that profile.

MEMBER: He did fit that profile for a period - - ?

PROFESSOR FREEMAN: His offending appears to be – well, very much so, and hopefully I'm just here today to highlight to the tribunal and to assist with the decision about just how impairing and destructive methamphetamines is.

MEMBER: Yes?

PROFESSOR FREEMAN: And it's clearly reflective in this current case: tradesman, pro-social, working hard, and it all unravels and it spirals into behaviour which even he's bewildered by, as methamphetamines got a really good grip on him.

MEMBER: Yes?

PROFESSOR FREEMAN: And this is what the drug does.

MEMBER: Yes, I understand that. Is the take-away from all of this, this discussion that we're having, that in your professional opinion you think that your conclusions, although they are specifically framed around the index drug, which is methamphetamine, also apply in the case of other drugs as well?

PROFESSOR FREEMAN: Very much so. Given what he has done and all the hurdles that he has jumped through, he's got a high level of awareness into how he got himself into this situation, and he's stacked the page with as many things as he could possibly do to try and get himself out of the situation. Yes, it's my opinion that the likelihood that he would use any sort of illicit drug is low. He's clearly cognisant of the effect, what relapse would do to him. He doesn't have any cognitive impairments. He knows what would happen if he were to relapse, and all his hard

work to this point would be poured down the drain. So, I don't think that risk is commensurate with what he's trying to do currently.⁴⁰

When under cross examination, it was put to Professor Freeman that, in the event of the Applicant relapsing into the use of a drug such as methamphetamine, then the risk of the Applicant reoffending would increase. Professor Freeman conceded⁴¹ this would certainly be the case, however the following exchange then took place:

'MR BURGESS: If it was the case that there's evidence that Mr Garratt was dealing drugs prior to ever trying methamphetamines, would that increase his risk on any of the scales, or in your mind, of reoffending if he were released into the community?

PROFESSOR FREEMAN: Well, one, it would depend what the drug was, and two, it would depend on what the circumstances were. You know, if he was smoking some grass and, you know, selling some to his close mates just to support his own consumption, in that sort of environment, I don't think it would change my opinion about what his risks are and what his response will be to the decision that the tribunal makes. It certainly paints a broader picture of the fact that maybe he wasn't submerged within a drug culture for a longer period of time and that eventually caught up with him, and that vulnerability evolved, but I can't draw a direct strong link between if he was supplying some sort of substances before he developed methamphetamines – I would need to know what they were, and I'd need to know the specific circumstances.

MR BURGESS: One thing you said there was, you seemed to make a distinction between a person who is dealing drugs to support their habit, and a person who is dealing drugs for a profit or as a business - - -?

PROFESSOR FREEMAN: Yes.

MR BURGESS: - - - is it the case that a person who is doing more than dealing just to support their habit, is it the case that they would be a higher risk than someone who was dealing simply to fund their own drug addiction?

PROFESSOR FREEMAN: That is a good question, but you would have to also consider their personality profile, who they are as people. Do they have more deviant criminal ideation, what is their view of drugs, are they happy selling drugs to other people knowing that it could be detrimental, but they're doing it for their own personal gain. It's a good question, but it is a very complex question, and my initial response is the risk of relapse depends on (1) how chronic the addiction was, and (2) what treatment they have done to build a relapse prevention plan, and (3) how committed they are to utilise and implement the relapse prevention plan. In my opinion they would be the strongest predictors of relapse, rather than whether somebody was only selling drugs to fund their own addition, but this is making a bit of extra money for lifestyle reasons.

MR BURGESS: What about, is it relevant what someone's motivations are for dealing drugs or for committing offences?

PROFESSOR FREEMAN: Yes.

MR BURGESS: So, if one of those motivations was greed and that was an inherent personality component or component of their make up it would be the case, would it

⁴⁰ Transcript, page 106, lines 15-47; page 107, lines 1-47; page 108, lines 1-5.

⁴¹ Ibid, page 111, lines 8-10.

not, that without any specific treatment for that part of their personality that that would increase their risk of reoffending?

PROFESSOR FREEMAN: It would depend on your definition of greed and how it is operationalised, but if somebody was willing - if somebody exhibited supply-based offences in order to personally profit for a long period of time with a large outcome, well then that would be indicative of more anti-social traits, so there would be questions about their willingness to abide by the rules and regulations of society. So whether they're choosing to deliberately take a different path which extends beyond the addictive qualities of drugs.

MR BURGESS: You said in answer to my question two questions ago, in relation to whether someone was dealing for a profit versus dealing to support a habit, you focused partially in your answer on whether they were aware of the consequences of dealing drugs to the people they were dealing. Would that be a fair understanding of what you had said?

PROFESSOR FREEMAN: No, I don't think I have said that, because in my experience people who are addicted to drugs and thereby they start supplying drugs it's always the same, they engage in non-consequential thinking where they diminish the possible consequences or the penalties in the future for short term immediate gain of funding their drug addiction. I have heard that story hundreds and hundreds of time. So I'm sorry if I - - -

MR BURGESS: In relation to that if it was more than for funding their drug addiction though - - -?

PROFESSOR FREEMAN: Yes, it would depend on how much.

MR BURGESS: Okay?

PROFESSOR FREEMAN: Yes, there's a difference between making a couple of hundred extra dollars inadvertently versus a coordinated premeditated drug trafficking scheme in order to profit financially.

MR BURGESS: And if there was a coordinated financial trafficking scheme that would indicate a higher risk of relapsing if those personality traits weren't treated?

PROFESSOR FREEMAN: M'mm.

MEMBER: Professor, it's the member here, do you have the sentencing remarks for Flanagan J in the Supreme Court of Brisbane as part of your briefing materials?

PROFESSOR FREEMAN: Yes. I'm just going to the scroll to the - hang on, don't tell me I've just put my hand on it - is that dated 8 March 2021?

MEMBER: Yes, it is. Just so that we bring this discussion back to the specific frame of this case, the factual basis for sentencing is set out in his Honour's sentencing comments. On page 2 at around line 35, if you can see that, his Honour says,

"There was trafficking at a very intensive street level basis as well as a wholesale basis." Then if you turn to page 4 at the first line his Honour concludes that, "Mr Garratt was financially motivated in his business"?

PROFESSOR FREEMAN: Yes.

MEMBER: All right. Now, it's not explicitly said in his Honour's reasons, but it becomes clear - actually it is said by his Honour. If you turn to page 7 of his sentencing remarks, at about line 10, it says:

"Unfortunately, the more drug dependent you became the less you worked, and you started dealing drugs initially I accept to fund your own habit, but then your trafficking went well beyond funding your own habit and was for commercial gain".?

PROFESSOR FREEMAN: Yes.

MEMBER: *All right. That is the specific factual context that I am obliged to have regard to in relation to Mr Garratt. Now, in relation to the line of questions that you are now being asked, could you just bear that in mind, because that's the factual backdrop that I must accept as part of my deliberations?*

PROFESSOR FREEMAN: Sure.

MEMBER: *All right?*

PROFESSOR FREEMAN: *Sure. Yes. And Mr Burgess asked a very good question, but I can't answer that question without considering what somebody's response is to the application of legal sanctions. So, in my research at the university a lot of my research has been on how to people respond, what is the specific deterrent effect of the application of sanctions, being held in custody, losing your liberty, and so on. So, it's very difficult for me to determine whether somebody is at high risk of reoffending because they did seek to commercially gain from it, without me considering just how damaging or how much of a deterrent the application of real sanctions can be. And in the current case here the applicant clearly does not want to be incarcerated, he clearly does not want to be removed from the country. He's done everything he possibly can. So, in my professional opinion, I would think that the situation he is in and that level of specific deterrence is going to outweigh the historical matter of whether he may have commercially gained and what were the circumstances surrounding that commercial gain. And apologies for raving, but the other issue is from a forensic psychology point of view is how robust - how realistic is his release plan. So this is not a man who is going to be - I used to work 13 years at the Parole Board - so this is not a man who's going to be back couch surfing with his mates, not having employment, not having a secure support network. He's going to be reabsorbed back into his family and he has clear and realistic plans. So, from my perspective I have to weight those things more heavily than a theoretical - not a theoretical, but, you know, trying to dissect the nuances of at what point was it addiction, at what point was he trying to financially gain for it, if that makes more sense.*

MEMBER: *Mr Burgess can correct me if I'm wrong, but I apprehend his line of questioning is that, look, there's a factual backdrop that suggests that there was an element of commerciality to this offending, and the question then becomes to what extent, if any, does the motive of greed transcend all the other things that have been put in place to prevent this man from reoffending? Is there a chance that pure greed might be enough for him to reoffend in a similar manner?*

PROFESSOR FREEMAN: *That is a very good question, and my professional opinion is the motive of greed in regards to being a prominent risk of reoffending cannot be considered high in the current circumstances. Apologies for labouring the point, but this is again a clear example of what methamphetamine does to people, it promotes risk, and I have seen hundreds and hundreds of times prosocial individuals just spiralling to behaviour which they look back on and they cannot believe they did it, so - - -*

MEMBER: So, are you saying that the commerciality that his Honour remarked upon in the sentencing remarks that I took you to, are you saying that that is another artefact of the non-consequential thinking of an amphetamine addict?

PROFESSOR FREEMAN: Exactly. It's only my working hypothesis, but I would imagine he was submerged within a very pro-drug network with different forces pulling on him in different ways, and I don't understand just how powerful those intergroup forces were, but I think that could probably be - that would explain it, but that's only my working hypothesis, I wasn't there.

MEMBER: And, look, I want to ask you a question too about the Hare Psychopathy Checklist assessment that you undertook. Now, my understanding of the Hare Checklist is that it includes an amalgam of things, but at least in one part it looks at psychological aspects of the individual which are unique to that individual?

PROFESSOR FREEMAN: Yes, exactly.

MEMBER: At least in relation to those aspects of the actuarial checklist, the Hare Psychopathy Checklist, the personality traits of Mr Garratt, who was the subject of your assessment, do they point to a person who might have a lust for money - - -?

PROFESSOR FREEMAN: No.

MEMBER: - - - that would transcend anything else?

PROFESSOR FREEMAN: No. That's a very good point, and I'm always learning when I write these reports, and I should have spent a bit more time outlining all those personality traits, so he's not superficial, he's not - - -

MEMBER: Let's unpack them a little bit here. Just explain to me your assessment of his personality traits at that aspect of the Hare Psychopathy Checklist actuarial assessment, just your clinical impression of his psychological traits, his unique individual traits that suggest that, you know, a lust for commercial gain will not be, or is less likely to be an issue going forward?

PROFESSOR FREEMAN: Okay. So, I'm going to just - I will go through them, and I'll try and go through them slowly. So, there's 10 effective scores, so that's their personality. He doesn't score on glibness or superficial charm, but that's more related to psychopathy, you know, somebody's glib and superficial.

MEMBER: Yes, I understand. Yes?

PROFESSOR FREEMAN: Two, he doesn't have - the second one - he does not have a grandiose sense of self-worth. So that's narcissist, that's people who are histrionic, and again you're going down the path of psychopathy, et cetera, if you score on that. Three, the big one is pathological lying. He has not demonstrated a tendency to pathologically lie throughout his life span. It hasn't destroyed relationships, it hasn't destroyed his vocational capacity. Four, is he conning and manipulative; no. I didn't see - I couldn't find any evidence, hard evidence in his life where he's deliberately been conning and manipulative. The next one is six, lack of remorse and guilt. This is a big one. So, somebody's got a personality disorder or somebody's got motivated by greed. They lack remorse, they lack guilt, they externalise their offences, they minimise their offences, they project their offences onto other people. That's not him. Shallow affect is similar to lack of remorse. You just don't have a depth of emotion or feeling if you've got a shallow affect. He doesn't have that. He went on and on about the negative impact of his behaviour upon his parents who he's got this strong familiar bond with his parents. (Indistinct) is callous and a lack of empathy. He doesn't present as somebody who is - who could get

enjoyment out of harming other people. He's not walking around being violent, he's not really mistreating people through multiple different contexts. And the last one is failure to accept responsibility through his own actions. Again, he's consistently accepted culpability the times that I have seen him. What he does score on is, understandably, he scores some minor points on the behavioural aspects. When he's on drugs he can be somewhat impulsive, or clearly the evidence indicates, and he's demonstrated some level of criminal versatility, but I'm kind of nit picking there. He doesn't have the full spectrum of violent sexual offences, property offences, and so on. And what he does score on, on the behavioural side is probably better explained by methamphetamine, because if you take that period of his life out when he's dependent upon methamphetamine then he doesn't score on need for stimulation or proneness to boredom. He doesn't score on a parasitic lifestyle across his life, because he's worked hard. He got a trade. He doesn't engage in promiscuous sexual behaviour, he doesn't have early behavioural problems. These are all predictive of reoffending. Importantly he doesn't lack realistic short or long term goals. In my 13 years with the Parole Board it was always the people who didn't have a clear plan. They were the ones I was most worried about. Sure, I've scored him 1 on impulsivity and irresponsibility, but again it's only in the sense of methamphetamine dependency. He hasn't had lots of short-term marital relationships, he doesn't have an extensive juvenile delinquency, but I scored him 1 on revocation of conditional release, because even though he was caught he appeared to be in such a precarious position that he admits that he was continuing to do some sort of offending even while everything was falling apart.

MEMBER: Well, he was on bail and he has been detected by the police engaged in certain drug related crimes - - -?

PROFESSOR FREEMAN: Yes.

MEMBER: - - - and despite being on bail and despite having police seize weapons and drugs from him he kept doing it?

PROFESSOR FREEMAN: Yes, and I can only read between the lines, Member, that to me is an individual who got way in over his head and probably had quite significant debts and, yes, needed to somehow address those debts whatever way possible, and while he was dependent he wasn't thinking straight and that's all he could do.

MEMBER: All right. Understand. Yes, gentlemen; first to you, Mr Burgess, any questions arising out of my lines of questions?

MR BURGESS: Nothing out of your lines, but I do have some other questions.⁴²

The 'Aladdin's Cave' – Tribunal's assessment

33. There is one specific factual aspect of the evidence in this case that warrants further exposition by the Tribunal as part of enabling proper understanding of these Reasons for decision. As part of the Applicant's criminal offending he was detected, apprehended and ultimately charged by the police - and later convicted by the courts - in relation to his having

⁴² Transcript, page 111, lines 14-47; page 112, lines 1-47; page 113, lines 1-47; p 114, lines 1-47; page 115 lines 1-47; page 116, lines 1-13.

control over a storage shed, filled with an arsenal of weapons and other illicit items: that which was described by the Tribunal during the reception of oral evidence as an 'Aladdin's Cave' of underworld accoutrements.

34. At first blush this evidence was enough to give rise to concerns during preliminary deliberations by the Tribunal on the character - and as to the criminogenic motivations - of the Applicant, in the context of the Tribunal's overall assessment as to whether the Applicant should be allowed to remain in Australia. Ultimately, in its deliberations regarding the implications of this tranche of evidence, the Tribunal has concluded that the evidence does *not* lead ineluctably to a conclusion that the Applicant is pathologically deviant; in a manner that transcends aberrational behaviours arising out of his past methamphetamine addiction, and as now representing simply too great a risk for the Australian community to allow the Applicant to remain in this country.
35. To that end, during the evidence of Professor Freeman, the following exchange took place between the Tribunal and the expert witness, which has been influential in placating these initial reservations, as were held by the Tribunal:

'MR BURGESS: Professor, I have two more brief questions. One is your knowledge of, what your knowledge was of his weapons offences?

PROFESSOR FREEMAN: Yes.

MR BURGESS: Did you have evidence before you or were you told by him about the weapons offences?

PROFESSOR FREEMAN: Yes. So this was in 3.5 of my first report. One, again I'm painting a picture where he's not thinking straight, he's clearly got a lot of stresses in his life. He's dependent upon methamphetamines, and then he told me as outlined in 3.5 that was his rationale. I didn't place too much weight on that. I essentially attributed that to somebody who was clearly not thinking straight and probably had lots of worries in his life, and it's just another one of those erratic decisions. I didn't focus too much on it because I wasn't sure that I'd get anything that would really reveal more about him as a person. I saw that behaviour as a consequence of the situation that he's in. He doesn't have a lifelong historical fascination with weapons.

MEMBER: Professor, it's the member here again. When we traversed that aspect to the evidence, I must profess to having been rather stunned that this gentleman, Mr Garratt, had accumulated a veritable cache of weapons, some 18 restricted firearms, together with a veritable Aladdin's cave of illicit underworld items, all accumulated in a storage shed somewhere. And it struck me, and I wondered whether this was a manifestation of purposeful, deliberate behaviour, to accumulate a 'one stop shop' for the underworld in terms of items and things, you know, false passports, false Defence IDs, drugs, drug utensils, hydroponic grow equipment, and weapons, all in one spot, together with house-breaking implements. Are you able to comment? You

know, it struck [me] as it almost being a purposeful assemblage of underworld items?

PROFESSOR FREEMAN: It would appear that way on the surface, Member, and I think that is a fair perspective to say. The only things that I can respond is (1) is I'm not an expert on outlaw motorcycle gangs, but I am aware that their threats can be perceived as real and tangible; but (2) regardless of what his motives were, it appears by his statements of the level of assaults that he was exposed to whilst on remand by such groups that - yes - that it didn't seem to put him in good stead with those individuals regardless. So, you would have to ask him. I apologise. (1) Is it reflective of deviant ideation; or (2) is it somebody who's just increasingly found themselves in water that was way over their head.

MEMBER: I suppose throughout that epoch he's continuing to use methamphetamine prolifically?

PROFESSOR FREEMAN: And just - - -

MEMBER: Might it be just another product is disordered thinking?

PROFESSOR FREEMAN: That is my working opinion. When I did this assessment I myself did not think that (1) he had a fascination with weapons; or (2) he was planning or cultivating some scheme to utilise the weapons in something. I saw it as somebody who was just increasingly making impulsive, reckless, chaotic thoughts and behaviours which in part were probably fuelled by paranoia, and the people he was increasingly associated with.⁴³

36. The Tribunal accepts the opinion evidence of Professor Freeman, and here records it being a matter of considerable influence in the Tribunal's ultimate conclusions.

LEGISLATIVE FRAMEWORK

37. Revocation of the mandatory cancellation of visas is governed by s.501CA(4) of the Act. Relevantly, this provides that:

4 *The Minister may revoke the original decision if:*

the person makes representations in accordance with the invitation; and

the Minister is satisfied:

- i) that the person passes the character test (as defined by section 501); or*
- ii) that there is another reason why the original decision should be revoked.*

⁴³ Transcript, page 118, lines 29-47; page 119, lines 1-28.

38. The Tribunal is satisfied that the Applicant made the representations required by s.501CA(4)(a) of the Act. Thus, the issue is whether the discretion to revoke the mandatory cancellation of the Applicant's visa may be exercised.

Does the Applicant pass the Character Test?

39. As indicated above, the Applicant concedes that he does not pass the character test. The character test is defined in s.501(6) of the Act. Under s.501(6)(a), a person will not pass the character test if they have a '*substantial criminal record*'. This phrase, in turn, is defined in s 501(7), which relevantly provides that a person will have a substantial criminal record if:

...

(c) *the person has been sentenced to a term of imprisonment of 12 months or more;*

(d) *the person has been sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more;*

...

40. The Tribunal therefore finds that the Applicant has a '*substantial criminal record*'. Accordingly, and as a matter of law the Applicant does not pass the character test, and cannot rely on s.501CA(4)(b)(i) of the Act for the mandatory cancellation of his visa to be revoked.

Is there another reason for the revocation of the cancellation of the Applicant's visa?

41. In considering whether to exercise the discretion in s.501CA(4) of the Act, the Tribunal is bound by s.499(2A) to comply with any directions made under the Act. In this case, *Direction No. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* ('the Ministerial Direction') has application.⁴⁴
42. The Ministerial Direction provides guidance for decision-makers on how to exercise the discretion. Relevantly, it provides that:

⁴⁴ Direction No 90 commenced on 15 April 2021. It replaces *Direction No. 79 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*.

*'Informed by the principles in paragraph 5.2, a decision-maker must take into account the considerations identified in sections 8 and 9, where relevant to the decision.'*⁴⁵

The principles in paragraph 5.2

43. Paragraph 5.2 of the Ministerial Direction is designed to, *'provide a framework within which decision-makers should approach their task'* under s.501 or s.501CA (as the case may be).

These principles are:

- (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.
- (2) Non-citizens who engage in, or have engaged in, criminal or other serious conduct should expect to be denied the privilege of coming to, or 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 have engaged in conduct in Australia or elsewhere that raises serious character concerns (regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community).
- (4) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time. However, Australia may afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age.
- (5) Decision-makers must consider 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,

⁴⁵ Direction No 90, para [6]. See also Direction, para [4(1)] which provides that a, "*decision-maker*" includes the Administrative Appeals Tribunal in making a decision under s 501 or 501CA of the Act.

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.

THE PRIMARY AND OTHER CONSIDERATIONS

44. Paragraphs 8 and 9 of the Ministerial Direction specify four '*Primary Considerations*', as well as four '*Other Considerations*' which must guide the Tribunal's deliberations.
45. The Primary Considerations are:
- (1) *protection of the Australian community from criminal or other serious conduct;*
 - (2) *whether the conduct engaged in constituted family violence;*
 - (3) *the best interests of minor children in Australia; and*
 - (4) *the expectations of the Australian community.*⁴⁶
46. The Other Considerations which, where relevant must also be taken into account include, yet are not limited to:
- 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*

⁴⁶ Direction No 90, para [8].

ii) *impact on Australian business interests*⁴⁷

47. Paragraph 7 of the Ministerial Direction also provides guidance as to how to take into consideration each Primary and ‘Other’ Consideration. To summarise, the Ministerial Direction instructs decision-makers that:

- (1) Information from independent and authoritative sources should be given appropriate weight;
- (2) Primary Considerations should “generally” be given greater weight than Other Considerations; and
- (3) One or more Primary Considerations may outweigh other Primary Considerations.

PRIMARY CONSIDERATION 1 – PROTECTION OF THE AUSTRALIAN COMMUNITY

48. When considering Primary Consideration 1, paragraph 8.1 of the Ministerial Direction requires decision makers to keep in mind that the Government is committed to protecting the Australian community from harm arising in consequence of criminal activity, or other serious conduct by non-citizens. Decision makers are required to have particular regard for the principle that entering or remaining in this country is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding; that they will respect important institutions; and that they will not cause or threaten harm to individuals, or to the Australian community.

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

- The nature and seriousness of the Applicant’s conduct to date; and
- The risk to the Australian community should the Applicant commit further offences or engage in other serious conduct.

⁴⁷ Direction No 90, para [9(1)].

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

50. When assessing the nature and seriousness of a non-citizen's criminal offending or other conduct to date, paragraph 8.1.1(1) of the Direction specifies that decision makers must have regard for a number of further factors. These are set out, as sub-paragraphs (a) – (g) inclusive, of paragraph 8.1.1(1) of the Direction:
- (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:*
 - (i) *violent and/or sexual crimes;*
 - (ii) *crimes of a violent nature against women or children, regardless of the sentence imposed;*
 - (iii) *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) *causing a person to enter into or being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;*
 - (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 that is dependent upon the decision-maker's opinion (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;*
- (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).*

51. The Respondent Minister submits that when having regard for the relevant matters set out in paragraph 8.1.1 of the Ministerial Direction, the nature and seriousness of the Applicant's conduct to date should now be assessed by the Tribunal as 'very serious'.

52. To this end, the Respondent submits⁴⁸ that regard must be had particularly for the Applicant's conviction on 8 March 2021 in the Supreme Court of Queensland on 46 offences, which resulted in an eight year sentence of imprisonment for offences including, most seriously, trafficking in dangerous drugs; production of Schedule 1 dangerous drugs; aggravated supply of dangerous drugs to a minor; supplying Schedule 1 dangerous drugs; nine counts of possession of dangerous drugs; and four counts of possession of unlawful weapons. The Respondent makes reference to the sentencing remarks, where his Honour Mr Justice Flanagan observed:⁴⁹

'...You trafficked for the period October 2018 to October 2019. In all, you were involved in the business of dealing in three types of dangerous drugs for a period of 12 months and 10 days.

The drugs that you were trafficking in were methylamphetamine, GHB and cannabis. You were a prolific street and wholesale-level dealer who sold to both street-level dealers and to end users. In a 67-day period between 30 August 2019 and 19 October 2019, you were subject to a telephone intercept warrant. In that period you had a customer base that was identified as being 35 customers. You executed 92

⁴⁸ Exhibit 2, pages 6-10, paras [26] – [40].

⁴⁹ Exhibit 1, page 54.

individual supplies in that time...A significant aspect of your trafficking is that you committed that offence whilst you were on bail...'

53. The Respondent further submits that the sentencing remarks from 8 March 2021 reveal that:⁵⁰

- The Applicant was 'commercially orientated' and took steps to avoid being detected by using the *Wickr* app, and his partner's bank account;
- The Applicant was in possession of a number of weapons including knuckledusters, ammunition, a firework and rifle scopes. He would threaten violence in the course of his business, but there was no evidence of him "actually doing violence to any person;"
- On 10 October 2018, the Applicant was found to be in possession of 878 grams of cannabis;
- On 23 November 2019, the Applicant was found to be in possession of 108.552 grams of pure methylamphetamine as well as MDMA, a quantity of cocaine, a small quantity of cannabis and \$7,350;
- The Applicant engaged in preparatory acts for a supply to a 17-year-old girl;
- On 14 May 2019, the Applicant was found to be in possession of 19.567 grams of methylamphetamine;
- On 23 June 2019, the Applicant was found to be in possession of 888 grams of cannabis; and,
- On 17 October 2019, the police found various paraphernalia for acts preparatory to the production of methylamphetamine. The only ingredient missing was iodine.

54. In relation to the Applicant's other offending, the Respondent submits⁵¹ that:

- On 6 April 2021, the Applicant was convicted in the Cleveland Magistrates Court of 12 further offences including three counts of unlawful possession of weapons, two counts of possessing dangerous drugs and enter premises and commit indictable offence by break.

⁵⁰ Exhibit 2, page 7, paras [28.1]-[28.8].

⁵¹ Ibid, pages 8-9, paras [31]-[36].

- In respect of the possessing dangerous drugs offences, the relevant Queensland Police Service Court Brief⁵² reveals that, on 13 November 2018, police intercepted the Applicant's vehicle for the purpose of a licence check. After reviewing recent intelligence on the applicant and his female passenger, police conducted a search in relation to drugs and weapons. During the search, police located a clip seal plastic bag of green leafy material in the centre console of the vehicle, which the Applicant admitted was cannabis (count one). Police also located a small plastic container containing a white crystal substance in a black backpack, which the Applicant admitted was methylamphetamine (count two).
- The enter premises and commit indictable offence by break involved the Applicant entering a secured storage facility and removing parts from a trailer.⁵³ When the Applicant's residence was searched in respect of this incident, Police located firearm barrel part, a firearm magazine part and a bucket of Remington 22 Golden Bullet 1400 High-Velocity Long Rifle cartridges. This formed the basis of the three counts of unlawful possession of weapons.
- Previously, on 14 March 2017 and 12 March 2020, the Applicant had appeared in the Cleveland Magistrates Court in respect of contravene direction or requirement, possession of a knife in a public place or school, three charges of possessing dangerous drugs, other drug-related offences and breach of bail condition.
- In respect of the possession of a knife in a public place or school, three charges of possessing dangerous drugs and other drug-related offences, the relevant Queensland Police Service Court Briefs⁵⁴ reveal that:
 - At 11:50pm on 16 October 2016, the Applicant was found to be in possession of a digital scale, three clip seal bags containing 13.9g of GLM and a clip seal bag containing 300mg of a white powdery substance which was found to be cocaine. The Applicant told police that the scales were used to weigh gold and denied ownership or knowledge of the clip seal bags containing the drugs.

⁵² Exhibit 3, pages 150-155.

⁵³ Ibid, pages 316-319.

⁵⁴ Ibid, pages 98-112.

- In the early hours of 12 November 2016, the Applicant was found to be in possession of 7 grams of cannabis. That evening, the applicant was found to be in possession of a cone piece, a knife and what appeared to be knuckle dusters. While the Applicant claimed that he used the knife for opening letters, police observed the knife to have a strong smell of cannabis.
- Prior to that, on 29 March 2011, the Applicant appeared in the Brisbane Magistrates Court in respect of charges of commit public nuisance and assault or obstruct police officer. The relevant Queensland Police Service Court Brief⁵⁵ reveals that:
 - At approximately 7:20pm on 13 March 2011, the Applicant approached a police officer who was conducting manual traffic control at the intersection of Hale and Caxton Street and asked for directions to the Normanby Hotel.
 - The police officer provided the Applicant with directions, however, the Applicant stated: "No I want directions to the Normanby" and "No, I want you to explain to me where the Hotel is." When the police officer refused to further engage with the Applicant, the Applicant encroached into the police officer's personal space and became verbally abusive, yelling "You're a rude cunt!" The police officer pushed the Applicant back and told him to leave the area. The Applicant then started ranting abuse, using foul and unwarranted language in the presence of families and children.
 - The police officer told the Applicant to leave, or else he would be arrested. The Applicant again encroached into the police officer's personal space. The Applicant was restrained and pushed onto the side of the road. He became abusive and was subsequently transitioned to the ground where he was restrained.
 - The police officer seized the Applicant's licence and told him to attend the Brisbane City police station. The Applicant continued to be abusive, stating '*Arrest me then ya cunt!*' several times.

⁵⁵ Exhibit 3, pages 93-97.

55. The Applicant also has a number of traffic-related offences,⁵⁶ including excessive speeding and driving whilst disqualified which should also be considered serious: R1. Senior Member Tavoularis in *Bartlett and Minister for Immigration and Border Protection (Migration)* [2017] AATA 1561 at [43]-[45] noted the serious nature and adverse consequences of driving offences. In *QJYD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 1 at [51], Senior Member Dr Evans-Bonner stated:

'Indeed, the Tribunal has often regarded driving offences to be of a very serious nature. Road traffic laws are in place to protect the community, including innocent road users, from harm. Additionally, repeated breaches of road traffic laws tends to indicate a disregard for laws and authority generally, an inability to distinguish right from wrong, and a selfish disregard for the safety of innocent members of the community who share the roads.'

55. Dr Donnelly on behalf of the Applicant readily concedes⁵⁷ that, when having regard for the requirements of the Ministerial Direction, the nature and seriousness of the Applicant's conduct to date should be assessed as very serious – *'he's been a drug dealer on a pretty serious scale for a substantial period of time'*⁵⁸ and as a matter that ought ordinarily weigh very heavily⁵⁹ against revocation of the mandatory visa cancellation; yet submits there are 'difficult and complex' questions⁶⁰ that arise for the Tribunal in relation to the risk of the Applicant reoffending that ultimately go to the question of weight.

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

56. Paragraph 8.1.2(1) of the Ministerial Direction provides that, when 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 harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.

⁵⁶ Exhibit 2, pages 10-11, paras [40].

⁵⁷ Transcript, page 121, lines 30 - 31.

⁵⁸ Ibid, line 39 - 40.

⁵⁹ Ibid, page. 122, line 4.

⁶⁰ Ibid, line 5.

57. Paragraph 8.1.2(2) then provides that, when assessing the future risk that may be posed by the non-citizen to the Australian community, decision makers must have regard to, cumulatively:
- (a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct;
 - (b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:
 - information and evidence on the risk of the non-citizen re-offending; and
 - evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence; and
 - (c) where consideration is being given to whether to refuse to grant a visa to the non-citizen - whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.

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

58. The Respondent Minister submits⁶¹ that this is a case wherein the Applicant presents as a risk of future physical, psychological and financial⁶² harm to the Australian community, and submits that the risk of future harm is now so serious that any risk of the Applicant re-offending becomes unacceptable.
59. Dr Donnelly accepts that the Applicant's prior offending was very serious, and that any future offending of a similar nature would have the potential to cause downstream financial, physical and/or psychological harm to members of the Australian community.⁶³
60. For present purposes the Tribunal accepts that, in the event that the Applicant were to re-offend in a similar manner to his prior offending, then the prospective future harm would be, as the Minister contends, apt to be very serious.

⁶¹ Exhibit 2, page 11, para [42]; page 14, para [50].

⁶² Ibid, page 11, para [43].

⁶³ Exhibit 4, page 12, para [39].

Likelihood of the Applicant engaging in further criminal or other serious conduct in the future

61. The Respondent Minister submits that there remains an ongoing and unacceptable risk of the Applicant reoffending, for the following reasons:⁶⁴

- The Applicant's methamphetamine addiction was not the sole cause of the offending. The sentencing judge remarked that the Applicant's 'conduct extended beyond merely supporting (his) personal habit' and that he was 'financially motivated' in his 'business'.⁶⁵ The Applicant agreed with the proposition put to him by Ms Geddes that, while financial gain provided for his own drug use, the status afforded by living a criminal lifestyle was also rewarding.⁶⁶
- Professor Freeman identified the Applicant as having a sufficiently significant history of substance use dependency to warrant a diagnosis of 'Methamphetamine dependency (partial remission in a controlled environment)'.⁶⁷
- The only evidence before the Tribunal of the Applicant's rehabilitation efforts is a completion certificate in a 6-hour DrugArm 'SSI Explore Program'⁶⁸, a completion certificate and letter regarding a 12-session 'Do It Program' (run by Lives Lived Well)⁶⁹; and a report from Ms Rebecca Geddes, Health Psychologist, which confirms that the Applicant attended five private sessions with her.⁷⁰ These programs and counselling appear to have been undertaken whilst the Applicant was incarcerated. While the Applicant claims that he has undertaken 16 SMART recovery sessions, engaged with a psychologist, Freddy Bashour, and recommenced seeing Ms Geddes during whilst in detention, there is no independent evidence of this. Accordingly, the Applicant's attempts at rehabilitation should be assessed as being only in their 'very early' stages.
- The key facts in assessing the likelihood of a future event include the regularity with which the event has occurred in the past, the conditions under which the

⁶⁴ Exhibit 2, pages 12-13, paragraph [49.1]-[49.9].

⁶⁵ Exhibit 1, pages 55-66.

⁶⁶ Ibid, page 105.

⁶⁷ Ibid, page 95, para [10.2].

⁶⁸ Ibid, page 111.

⁶⁹ Ibid, pages 112-114.

⁷⁰ Ibid, pages 103-108.

event occurred in the past, and the likelihood that those conditions have since changed or other events have intervened to interrupt the cycle of regularity.⁷¹

While a finding that the Applicant's conduct has not been tested in the community may not, of itself, establish that he is a risk of re-offending,⁷² it is nonetheless relevant having regard to the regularity with which the Applicant was using drugs prior to his incarceration, and his limited rehabilitation, to date.

- Professor Freeman also identified that the Applicant 'has a vulnerability to engage in impulsive and reckless behaviours with reduced consideration for the consequences. As such, he can engage in self-damaging behaviours.'⁷³
- The events which the Applicant says were the catalyst for his drug use (namely, peer pressure and the death of a close friend), whilst unfortunate, are part of the vicissitudes of life. The possibility that the Applicant will experience the same, or similar, hardships in the future cannot be discounted. The fact that the Applicant is 'extremely concerned' that he will return to drugs in the event he is removed to the United Kingdom indicates that the Applicant himself has doubts in respect of his rehabilitation, and his ability to abstain from drugs in the face of further adversity.
- The Applicant continued to offend whilst on bail and previous police and Court interventions have not prevented him from committing further like-offences.
- While the Applicant claims that he has reconnected with his family, and that their support is now a protective factor, he has distanced himself from his family in the past in order to conceal his drug use.⁷⁴
- Insofar as the Applicant claims that he will be working at his father's business, under his father's supervision, and that there are strict drug and alcohol policies in place, the Applicant previously worked in his father's business, and this does not appear to have prevented the Applicant from using drugs.

62. Overall, the Respondent Minister submits, that there is a remaining 'very real and unacceptable' risk that the Applicant will re-offend, potentially causing significant harm to

⁷¹ *CKL21 v Minister for Home Affairs* [2022] FCAFC 70 at [74].

⁷² Exhibit 4, page 16, para [65].

⁷³ Exhibit 1, page 96, para [10.6].

⁷⁴ *Ibid*, page 85, para [38].

members of the community: such that protection of the Australian community should now be assessed by the Tribunal as now weighing 'heavily' against revocation.

63. Dr Donnelly on behalf the Applicant submits that the Applicant should now only be assessed as a fairly low risk of re-offending, on the basis of the following:

'With that question and issue in mind, the Applicant respectfully contends that the Tribunal would have regard particularly to the following themes in making its assessment in the context of risk of recidivism. The first theme is this question of remorse and insight. The Applicant said he was very embarrassed. He said he found it difficult to look at his offences on paper. He said he didn't blame anyone or anyone but himself. He seems to have also realised that his propensity to engage in criminal offences and take drugs was linked not only to the drugs itself, but a pro-social drug network of individuals, and he said that he ceased all contact with bad friends; he deleted his social media accounts such as Facebook, and he's distanced himself fully from those individuals.

He also said that he had a very distorted thinking pattern. Of course, he says that with the benefit of hindsight, not being impacted by drugs. He said that he did not recognise the law at the time. Of course, it doesn't excuse his offending, but he seems to understand now that his offending and his adverse conduct in the community is materially linked to his drug taking and his drug addiction, particularly for methylamphetamine in combination with, of course, other drugs such as cannabis. He said, 'I still can't believe that I was stupid and reckless', and he takes full responsibility.

And to an extent, the Applicant's remorse and insight was corroborated by the evidence of his mother, Janet Garratt, who said that he was very remorseful and very embarrassed and that she formed that view herself having spoken to her son over the last several years. And, of course, there's the expert evidence of Professor Freeman in his report in both the first report and in the more recent addendum report that there was evidence at least in the professor's mind that the applicant was remorseful, and it had insight into his offending. The second theme that, in my respectful submission, the Tribunal should take into account is sustained remission.

The Applicant said that when he was put in prison, he began to sober up; he did not use drugs in prison or, indeed, in immigration detention. And so, there is evidence of sustained remission for a period of at least three years which, in my respectful submission, is significant. Professor Freeman gave evidence - anecdotal evidence that unsurprisingly drugs are available in a controlled environment, and no doubt the Applicant would've come across drugs, and certainly that was his evidence yesterday, but nonetheless he has been able to stay away from drugs.

In my respectful submission, that actually is a very important historical fact in this case because there's no question that the Applicant has had a nasty and, with respect, sustained drug abuse problem for a very significant period of time, particularly in relation to a very destructive drug, ice, methamphetamine, and he has been able to remain away from drugs for a substantial period of time. So, a sustained remission is an important aspect, in my respectful submission. And a third theme that we say is important is implications of prison. The Applicant said that he had conversations with people. He experienced all kinds of things.

He also gave evidence to Professor Freeman that he was physically assaulted, but more importantly he said he became aware how drugs destroy people's lives, and he said that with his time in prison he has honestly learnt his lesson. Again, his mother said yesterday in evidence that going to prison was the biggest shock of his life. And significantly, yesterday afternoon the Applicant's father, despite the elongated nature of his evidence, did say that he started to see a change in his son when he went to prison. He said less than a year after being in prison he virtually went back to being himself.

And he said that his son said to him, 'I am not touching drugs ever again.' That's not just a subjective assertion; it's supported by the historical facts of a person who has remained in remission for a period of three years. And so, prison has been significant for the Applicant. The fourth theme is important also, and it's rehabilitation. The rehabilitation undertaken by the Applicant.

The Applicant gave evidence that he did the Do It program, the SSI program, the long substance intervention program, the resilience program, that he's had sessions with various clinical psychologists, including Freddy Bashir and Rebecca, that he's undertaken at least 25 sessions or 28 sessions on another piece of the evidence of SMART Recovery programs, but more than just saying he has actually done these rehabilitation programs, I asked him to detail what has he actually learnt from the rehabilitation, and he spoke about recognising his triggers, behaviour observations, recognising how his offending commenced and how it developed, to learn about lapses and relapses.

He learned about diving to problematic behaviour. He learned about structuring future plans for the future to avoid being placed in this position. Consequential thinking. Group sessions with other drug addicts and really peeling away at a vulnerable and emotional level the serious destructive nature of the drugs, and he said that he got a lot particularly out of that by just pausing for a moment and reflecting with other drug users just how significant and adverse the use of drugs are for individuals and for the broader community.

So, in my respectful submission, in case, to borrow the words of Professor Freeman, has been impression in his undertaking of rehabilitation and do whatever he can usefully over the last number of years to put his life back on track from one that has spiralled considerably out of control to one that is respectful, that is structure, and can give a fair level of confidence to the tribunal that this is an individual that has - - -

MEMBER: How much of this rehabilitation has been undertaken whilst in immigration detention?

DR DONNELLY: I understand most of the - a significant amount of the rehabilitation was in immigration detention, particularly the SMART Recovery. Of course, his evidence was that he was unable to undertake more structured rehabilitation courses in prison because of COVID. And the position that he faced. He did say in particular, I think, for the first year that he was coming to terms with now being off drugs, and fighting the comedown of being off drugs, and dealing with that, and of course facing the implications of being in a prison environment, and what that meant for him. Coming now, Member, to the next theme - - -

MEMBER: Well, before we get to that, I'm concerned that the intensity of the rehabilitative effort might just stop if he's released into the community. What assurances can you give me about a pathway of ongoing rehabilitation and treatment such as he's been doing whilst in immigration detention once he's

released into the community, and how might that fit into a structure that includes an ongoing parole order?

DR DONNELLY: Thank you, Member. There's a couple of points to make in relation to that. The first is that - and it seems to be really that - I'll address the point now - is that as the evidence of the Applicant's parents gave yesterday, they have really assisted him in a very active and vocal way to ensure there's rehabilitative assistance for him in the Australian community, and these include a fixation of a place at the Bayside Drug and Alcohol Services Centre whenever the applicant needs it. The Applicant himself gave evidence of wishing to continue with the SMART Recovery sessions on the outside.

But critically, there's also the fact that he has established a clinical relationship with Freddy Bashir, the psychologist who lives in close proximity to his house, and the parents have, as I understand the evidence, given credible evidence that they will make sure that he gets the rehabilitative services that he needs. And what's important, Member, and that's different now than from before - because, of course, his parents were there before.

Something extraordinary, in a sense, in this case that I have not myself seen in many, many years - his parents have undertaken their own form of professional course where I think, *Life Lived Well*, to understand more about drug addiction and the issues associated with drugs so that they know the signs and they know how to speak to him, and his mother herself said she was a - I shouldn't use the - I can't recall the express - the exact phrase, but she was a bit of a Nazi. She was a bit strong in her words to him in the past, and she simply didn't know the signs, like his father; didn't know how to deal with the situation at all, but now that they themselves have become educated and armed with knowledge and education to assist him with his rehabilitation in the community.

There is also of course the evidence of the Applicant's family friend, Samantha Hogan, who herself said that she would provide the support to the applicant with his drug issues in the community. She spoke about her own professional background and experiences and access to rehabilitative services and knowledge of that. So, in my respectful submission the Tribunal can have confidence that the applicant will continue to engage with rehabilitation in the community. He also spoke of course about undertaking a medical treatment plan and going to a local GP to get that so that he can get those sessions as part of his rehabilitation in the community, and that really I think feeds into the other question that the learned Tribunal asked, and that of course is parole. The evidence is I think his parole expires in 2027. He said that it would be - - -

MEMBER: Do you know the precise date when the operative parole period ends?

DR DONNELLY: I will come back to that, Member. I will have to check that in the G documents, but I will take that on notice.

MR BURGESS: Dr Donnelly, I think it's G6 page 50 notes 16 October 2027.

DR DONNELLY: Thank you.

MEMBER: The 16 October 2027. That's a good deal of time in the distance. I mean that means this man is on a very short leash.

DR DONNELLY: That's so, Member. That's so. We respectfully submit that that will act as a significant deterrence, and a continuing reminder of the Applicant's commitment and obligations to deal with his partial remission of methamphetamine

dependency, which of course the expert opined was not fully remission because it hadn't been tested in the community.

Apart from the rehabilitative plans that the Applicant has by reference to himself and support from his family friend and through his parents, and this really leads into the next thing which is linked to rehabilitation, it's the structured family plans - sorry, future plans of which Professor Freeman spoke, how important that is to have those plans in place, as opposed to someone who doesn't really have a plan in place. And I think Professor Freeman's words were in the 13 years on the Parole Board that was one of his biggest concerns, of people who don't have those plans. So apart from the rehabilitation that the applicant has lined up in the community there's the fact that he will have a job straight away in the family business.

It's a genuine position and the father has said he's not just giving it to him because he's his son - certainly that's a relevant consideration - but because he's an excellent tradesman and the two character references that his father had even impressed upon him that he is someone who has the tools of the trade, so to speak, to contribute positively to the community of Australia in the construction building industry. So, he has a job, but more importantly his father said that he would be keeping a close eye on him, be working with him in the family business. That will be something that will assist him.

The evidence also was that he would be living with mum and dad. That's a really important thing, because it appears, with respect, to be a protective and very good positive environment. His parents indicate they don't even drink alcohol of any variety at all, or of course that they are anti-drugs. Certainly, the father said that yesterday in evidence. So, he will be surrounded by a positive safe environment so that he can reintegrate into the Australian community and go the full remission, not just partial remission for the methamphetamine dependency.

The other important aspect I think, Member, structured future plans is his genuine commitment to assist his sister with her two children, S and G, but particularly S, and the regrettable - and I will say more about this shortly - the regrettable issues that she faces and disability she faces in her own life, and obviously the Applicant has been able to continue to develop his relationship with both of those minor children in Australia, and the Applicant's evidence he was committed to being an uncle and wanting to continue with that into the future. So that's an important thing that will also assist him to avoid what has happened to him in the past.

The last thing in terms of themes I wanted to just draw the Tribunal's attention to was a couple of key points made by Professor Freeman in his evidence earlier this morning. He did say that despite the limitations that the PCL was a very useful scale. He said that his assessment was that the applicant's risk of drug relapse was low, and that was clarified when the tribunal asked was it just in relation to methamphetamine or other drugs, and he said that in effect he put them into the same basket, that the drug relapse prospects were low. He said that the Applicant went above and beyond in the patient intervention programs. But he also said specifically that the level of specific deterrence, namely legal sanctions, breach of parole or the prospect of future visa cancellation, in his professional structured judgment outweighing the motive for financial gain and other adverse prospects in the community. The expert also said in response to a question put that he is not persuaded that the Applicant had a lust for money. He also said that, as I had mentioned earlier, that he was remorseful and accept responsibility for his actions.

The last thing I wanted to just say something about, which I think is important, the learned Tribunal rightfully described the Applicant's assimilation of prohibited items, the Aladdin's cave, and then the question became why would he possess all of these unlawful items, including prohibited firearms, knuckle dusters, ammunition, knives, blades, and so forth. Professor Freeman indicated that the implications of taking a prohibited drug ice made the Applicant impulsive, reckless, fuelled by paranoia, erratic decisions and simply not thinking straight, and appears to have linked those qualities of a drug user to the Applicant's possession of those items. Now, what I would like to say further about that is this; despite the, with respect, bizarre and strange hoarding of very serious prohibited weapons the Applicant, in my respectful submission, should be taken at his word in relation to possession of those items. There is certainly no direct evidence that he was dealing those prohibited items with the underworld. He said that his phone was tapped for a period. There is no evidence that he was trading in those prohibited items for money himself. He certainly said that it was for the drugs.

His evidence was also that he had an attraction to things that were shiny. Again, very strange kind of evidence, but consistent with what Professor Freeman says with a person who has a very serious drug addiction problem, a person who's reckless, fuelled by paranoia and someone who makes erratic decisions, is not thinking straight. It fits in the glove, Member. The Applicant was pulled over on a number of occasions. Of course, he was convicted of the drug related matters, but the Applicant does not seem until being found guilty, let alone charged for using these weapons in any dangerous way, which does tend to indicate over that period of time that what he said is true, that he was taking those items, but wasn't actually using them at all. That's something that the Tribunal, even if it has some suspicion, would not be satisfied that there was any other more sinister motive related to criminal organisations whether it be as he described the Asians or otherwise.

So, in my respectful submission this is a case where based on remorse, insight, remission, prison, rehabilitation, structured future plans, particularly the parole, the support network and the evidence of Professor Freeman, that the Tribunal could be persuaded that the Applicant is a low risk of reoffending, and as Professor Freeman said that he was persuaded that he has a low prospect of drug relapse. Certainly, there's no expert evidence to the contrary. And even if one accepts the limitations of Professor Freeman's report there are a lot of positive factors in this case going to the risk of recidivism.

So, for those reasons, Member, we say and accept of course primary consideration of protection of the Australian community weighs against revocation, but the attribution of weight to this should be somewhat moderated or reduced on account of the Applicant not being a material risk of reoffending.⁷⁵

Conclusion: Primary Consideration 1

64. Ultimately, the Applicant's prior conduct insofar as it relates to Primary Consideration 1 is viewed by the Tribunal **very seriously**.

⁷⁵ Transcript, page 122, lines 9-47; page 123, lines 1-47; p 124, lines 1-47; page 125 lines 1-47; page 126 lines 1-47; page 127, lines 1-47; page 128, lines 1-4.

65. However, the Tribunal is not persuaded that the Applicant now presents as a very real or unacceptable future risk to the Australian community, in the manner now contended by the Respondent.
66. Having had a good opportunity to hear and view the Applicant – and to test his thinking - over an extended hearing the impression formed by the Tribunal on the basis of the totality of the evidence is that the Applicant has gone to very considerable efforts to address his prior difficulties with drug addiction, and has essentially overcome these, such that the Applicant now presents as only a very low risk of re-offending in like manner in the future. The Tribunal also accepts the opinions on future risk proffered by Professor Freeman and, in light of them, assesses any further risk to the Australian community from the Applicant as being at a level that is now tolerable. That conclusion regarding future risk serves to attenuate the amount of weight otherwise attributable by the Tribunal to Primary Consideration 1; thus reducing the weight attaching to Primary Consideration 1 from ‘very heavily’ to only ‘heavily’ in favour of non-revocation of the visa cancellation decision.
67. In the Tribunal’s assessment, Primary Consideration 1 **weighs heavily** against revocation of the cancellation of the Applicant’s visa.

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE

68. Paragraph 8.2(1) of the Direction provides:
- (1) The Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The Government’s concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen (see paragraph (3) below).*
 - (2) This consideration is relevant in circumstances where:*
 - a) a non-citizen has been convicted of an offence, found guilty of an offence, or had charges proven howsoever described, that involve family violence; and/or*
 - b) there is information or evidence from independent and authoritative sources indicating that the non-citizen is, or has been, involved in the perpetration of family violence, and the non-citizen being considered under section 501 or section 501CA has been afforded procedural fairness.*

- (3) *In considering the seriousness of the family violence engaged in by the non- citizen, the following factors must be considered where relevant:*
- a) *the frequency of the non-citizen's conduct and/or whether there is any trend of increasing seriousness;*
 - b) *the cumulative effect of repeated acts of family violence;*
 - c) *rehabilitation achieved at time of decision since the person's last known act of family violence, including:*
 - i. *the extent to which the person accepts responsibility for their family violence related conduct;*
 - ii. *the extent to which the non-citizen understands the impact of their behaviour on the abused and witness of that abuse (particularly children);*
 - iii. *efforts to address factors which contributed to their conduct; and*
 - d) *Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the non-citizen's favour. This includes warnings about the non- citizen's migration status, should the non-citizen engage in further acts of family violence.*

Conclusion Primary Consideration (2)

69. There is no evidence before the Tribunal that the Applicant has engaged in family violence such that this Primary Consideration has no relevance in this deliberation, and it is **weighed neutrally**.

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

70. Paragraph 8.3(1) of the Ministerial Direction compels a decision-maker to make a determination about whether cancellation or refusal under s.501, or non-revocation under s.501CA is in the best interests of a child in Australia who may be affected by the decision. The former provides that for their interests to be considered, the relevant child (or children) must be under 18 years of age at the time when a decision about whether or not to refuse or cancel the visa or not to revoke the mandatory cancellation decision is being made. The

latter provides that if there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

71. Paragraph 8.3(4) in the Ministerial Direction then sets out a number of factors to be taken into consideration with respect to the best interests of minor children in Australia. These include:

- a) the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);
- 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 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, or has otherwise been abused or neglected 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.

72. The Applicant has no children of his own yet has two nieces: S aged 6; and G, aged 3. In relation to S, the evidence before the Tribunal is that S suffers from level 2 autism, which gives rise to special needs that create an additional burden for the Applicant's family. As well as the need for therapy - of a type ordinarily provided by allied-healthcare professionals

- autistic children are known by the Tribunal as requiring significant additional supervision, and adult carer interventions, in an effort to either prevent or otherwise ameliorate the behavioural diss-regulation that is so typical of autism disorder. The constancy of this requirement is emotionally and physically draining for family members.

73. The Respondent Minister, citing *Uelese v Minister for Immigration and Border Protection*⁷⁶ contends that revocation of the visa cancellation decision is 'neither in favour of, nor contrary to' the best interests of either S and G, such that this consideration should now be weighed by the Tribunal only neutrally; or at best only minimally, in favour of revocation, for the following reasons:⁷⁷

- The nature of the Applicant's relationship with these children is that of an uncle, not of a parent. The Applicant has been in criminal custody or immigration detention for the majority of S and G's lives and his contact with these children has been limited (paragraph 8.3(4)(a) of Direction 90);
- Any exposure to drugs or weapons would no doubt have a negative impact on S and G (paragraph 8.3(4)(c) of Direction 90);
- There is no obvious impediment to the Applicant having contact with S and G via electronic means if he were to return to the United Kingdom (paragraph 8.3(4)(d) of Direction 90).
- S and G live with their mother (the Applicant's sister) and father, who fulfil the parental role (paragraph 8.3(4)(d) of Direction 90). The Applicant does not claim, and there is no evidence to suggest, that S and G's parents are fulfilling the parental role ineffectively, or that their needs have not been met during the Applicant's incarceration and subsequent detention.

74. Ultimately, in light of the evidence heard before the Tribunal, particularly in relation to the special needs of child S, the Tribunal cannot accept that only neutral or minimal weight in favour of revocation of the visa cancellation decision attaches to Primary Consideration 3. That submission is just not maintainable, in light of the oral evidence.

⁷⁶ [2015] HCA 15.

⁷⁷ Exhibit 2, pages 15-16, paras [56.1]-[56.4].

75. Dr Donnelly on behalf the Applicant submits the following:

'DR DONNELLY: Now, having given this matter some more thought in my respectful submission this is a case where the Tribunal would treat the interests of S and G differently on the basis that S has - - -

MEMBER: Special needs.

DR DONNELLY: - - - special needs.

MEMBER: Yes.

DR DONNELLY: And the evidence also appears to be first from the Applicant that he has a strong bond with S, he's known her since she was born. The evidence was that he's able to snap her out of her meltdowns. That was corroborated by the evidence of his sister Michaela Budsworth in evidence yesterday, who also said that he had a really good relationship with her and he was lovely in his dealings with her.

She also said that the Applicant had a way of bringing her around quite quickly, and that the applicant keeps S emotionally regulated. Now, of course the Tribunal heard the evidence from Ms Budsworth yesterday that she was (indistinct), she had really struggled with her children, not just S, but also with G, taking care of them, particularly when her husband has been away for long stints for work, and that the Applicant could be a person who could assist to alleviate some of that practical emotional difficulties that she herself is facing.

Then of course there's the evidence in relation to G. The Applicant said that he loves G and that he developed a good relationship with her also. The evidence otherwise at a more general level was the Applicant had regular visits in detention, he was a supporting uncle to the children, that he had Skype and Facetime phone calls with the children, that the sister would love him to be an important uncle into the future, and his sister said that she needed it, she needed it. The Applicant's mother in particular said that in effect they needed all hands on deck to assist, particularly given that the Applicant's father works full-time and has not been around as much to assist his daughter take care of S and G.

And particularly given that although there is evidence that the Applicant's mother has played a role in assisting with the children, particularly S, the evidence otherwise has been that she herself has been emotionally struggling, that she's back on antidepressants and not in a good way herself emotionally given what of course has happened to her son. So in my respectful submission this is a case, particularly in relation to S, where the (indistinct) is weighed very heavily in favour of revocation, even accepting the fact that he is only the uncle, he is not a parent, but playing an important role given what appears to be his special and strong bond with the child to assist her and indeed her mother to deal with the special needs that she in fact has. Added to that of course was also the evidence of Michaela, the sister, that although the child was on NDIS that there had been a rejection of further assistance which the sister said that she needed, and that had been a distressing thing for her and that it meant that she was non-stop from early morning until late in the evening.

In relation to G, in my respectful submission, it is still a consideration that the Tribunal should give considerable weight in favour of revocation given the nature of the relationship and the assistance that the applicant can provide to her, and that's an

*important consideration in this case, notwithstanding the fact that the Applicant as I said before is not the biological parent of those children.*⁷⁸

Consideration: Primary Consideration 3

76. The Tribunal accepts the full weight of the submission by Dr Donnelly relating to Primary Consideration 3 on behalf the Applicant. Taking into account the best interests of the children, mentioned above, both separately, and in conjunction with one another, and in light of the specific evidence traversed in these reasons, the Tribunal assesses that this Primary Consideration now **weighs heavily** in favour of the revocation of the decision resulting in the cancellation of the Applicant's visa.

PRIMARY CONSIDERATION 4: THE EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

77. Paragraph 8.4(1) of the Ministerial Direction provides that the Australian community expects non-citizens to obey Australian laws while in Australia. Serious conduct in breach of this expectation by a non-citizen, or an unacceptable risk of that by a non-citizen ordinarily gives rise to a community expectation that the Government will not then allow the non-citizen to remain in Australia.
78. Paragraph 8.4(2) of the Ministerial Direction directs that a visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns, or the offences are such that the Australian community would expect that the person should not be granted or continue to hold a visa. In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:
- (a) acts of family violence; or
 - (b) causing a person to enter into, or being party to (other than being a victim of), a forced marriage;
 - (c) commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes'

⁷⁸ Transcript page 128, lines 10-47; page 129, lines 1-23.

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

- (d) commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or
- (e) involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or
- (f) worker exploitation.

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

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

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

81. Paragraph 8.4(4) is consistent with the decision of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* [2019] FCAFC 185 ('FYBR') which affirmed the approach established in previous authorities that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an Applicant's circumstances or evidence about those expectations. The Tribunal is to be guided by the Government's views as to the expectations of the Australian community, which are to be found in the Ministerial Direction.

82. The Respondent Minister submits⁷⁹ that when observing the norm specified in paragraph 8.4(1) and in accordance with the guidance contained in Principles 5.2(2), (3), (4) and (5) of the Ministerial Direction, the Australian community would expect that the Applicant should not continue to hold a visa, in light of his offending in Australia. Overall, the Respondent

⁷⁹ Exhibit 2, page 16, paras [61] – [62].

Minister submits that Primary Consideration 4 weighs ‘heavily’ against revocation, even if the Tribunal concludes that the Applicant does not pose a measurable risk of causing physical harm to the Australian community.

83. Dr Donnelly on behalf the Applicant observes that:⁸⁰

- Having regard to the expectations of the Australian community as stated in paragraph 8.4 of the Direction, the Applicant has breached Australian law and committed serious offences, which the community would generally expect to result in the cancellation of his visa.
- The Applicant has lived in Australia for many years. The Applicant also spent some periods of time in Australia between 2004 and 2009.⁸¹ Having regard to the factors in principle 5.2(4) of the Direction, particularly the length of time the Applicant has been in Australia, this supports a finding that there is a higher level of tolerance by the Australian community for the Applicant’s criminal conduct than there would be for a non-citizen who has not lived in the community for an extended period of time: see *MWNX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2022] AATA 1450 [109].
- Having had regard to the Government’s views in relation to the expectations of the Australian community and giving them appropriate weight, and considering the nature, seriousness and impact of the Applicant’s criminal offending, and the duration of his residency in Australia, the Tribunal would find that this primary consideration weighs moderately against revocation of the mandatory cancellation decision.

Conclusion: Primary Consideration 4

84. The Applicant’s past criminal offending has been truly serious. Having regard to the specific strictures imposed by paragraph 8.4(4) of the Ministerial Direction the Tribunal is here simply unable to conclude that community expectations might contemplate that only ‘moderate’ weight should attach against revocation of the visa cancellation decision. Considering all relevant factors, the correct and preferable decision now compels a

⁸⁰ Exhibit 4, pages 26-27, paras [104]-[106].

⁸¹ Exhibit 1, page 186.

conclusion that Primary Consideration 4 now **weighs heavily** against revocation of the cancellation of the Applicant's visa.

OTHER CONSIDERATIONS

(a) International non-refoulement obligations.

85. The Applicant does not make any claims with respect to Australia's non-refoulement obligations, and none arise on the evidence. This Other Consideration is not relevant, such that **neutral weight** attaches to it in relation to this deliberation.

(b) Extent of Impediments, if Removed

86. As a guide for exercising the discretion, paragraph 9.2 of the Direction directs a decision-maker to take into account the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:
- (a) the non-citizen's age and health;
 - (b) whether there are any substantial language or cultural barriers; and
 - (c) any social, medical and/or economic support available to that non-citizen in that country.
87. The Applicant is a 31 year old male who spent the first 13 years of his life in the United Kingdom, and who also returned to the United Kingdom for an extended period whilst undertaking his apprenticeship in heritage restoration carpentry.
88. The Respondent Minister submits, that:
- It cannot be said that the United Kingdom is a place unfamiliar to the Applicant. The Applicant accepts that there are no substantial language or cultural barriers.⁸²
 - While the Applicant has been diagnosed with methamphetamine dependency and adjustment disorder, and there is some suggestion that being removed to the

⁸² Exhibit 4, page 29, para [113].

United Kingdom could exacerbate his relapse vulnerabilities, there is no evidence to suggest that he would be unable to access the appropriate medication and other treatment for these conditions in the United Kingdom.

- As a citizen of the United Kingdom, the Applicant would have the same access to medical services and social welfare as other citizens. The standard of health care, social welfare and housing support in the United Kingdom would be comparable to that in Australia. The Applicant has acknowledged that he would be able to access welfare in the United Kingdom.⁸³
- The Applicant completed High School up to Grade 10 and, whilst incarcerated, undertook courses in numeracy and literacy, as well as a “prepare to work safely” course. He has also completed an apprenticeship in bespoke carpentry in the United Kingdom and has experience working in Australia as a tradesman and cabinet maker. There is no obvious reason why the Applicant would be unable to find similar employment in the United Kingdom.
- Further, the Applicant has declared that he has three aunts or uncles who are currently residing in England.⁸⁴ While the Applicant claims that he has not had contact with these family members for some time, a lack of pre-existing connections in the United Kingdom does not necessarily mean the Applicant will fail to re-establish himself there.
- In all of the circumstances, it is likely that the Applicant will succeed in re-establishing himself in the United Kingdom and maintaining basic living standards. Accordingly, the Minister contends that this other consideration does not weigh in the Applicant’s favour, and should be assessed by the Tribunal as a neutral factor, neither in favour of, or against revocation of the visa cancellation decision.
- If the Tribunal finds that this consideration weighs against non-revocation, the Minister contends that it should be given only limited weight, and is not sufficiently compelling to outweigh the primary considerations weighing heavily in favour of non-revocation.

⁸³ Exhibit 1, page 89, para [78].

⁸⁴ Ibid, p 76.

89. Dr Donnelly on behalf the Applicant concedes⁸⁵ that the Applicant faces no substantial language or cultural barriers in the event that he were to be deported to the United Kingdom, yet submits that the deliberation must be in the context of the Applicant having anxiety and depression, and a history of substance abuse issues;⁸⁶ and is unlikely to obtain immediate access to either welfare or employment in the United Kingdom. Dr Donnelly further submits⁸⁷ that the Respondent's contention that the Applicant's unique trade skills will now stand him in good stead once deported to the United Kingdom suffers from superficial analysis, by reason that the Applicant's serious history of drug addiction and substantial criminal history are apt to be matters that create a significant practical impediment to the Applicant obtaining employment in the United Kingdom, no matter his admitted trade skills. Dr Donnelly also raises that the Applicant has no close family in the United Kingdom, other than an Uncle in poor health whom he has not seen for at least ten years, and Dr Freeman's opinion⁸⁸ that the prospect of homelessness, joblessness and social isolation in the United Kingdom are all matters that are apt to exacerbate relapse vulnerabilities.⁸⁹ In light of same, Dr Donnelly submits⁹⁰ that this other consideration should be assessed by the Tribunal as weighing 'very heavily' in favour of revocation of the mandatory cancellation decision
90. Ultimately, the Tribunal considers that the Applicant is likely to struggle very considerably in terms of re-establishing himself in the United Kingdom. In the Tribunal's view the vast preponderance of prospective employers – and no matter the Applicant's bespoke trade skills – will be unlikely to wish to employ the Applicant, when given his recent criminal history, which is now a matter of public record, and able to be accessed via the internet.
91. The Tribunal also accepts that the prospect of considerable difficulties in obtaining employment, coupled with likely difficulties in securing housing, together with social isolation are likely to be crushing for the Applicant and could, reasonably foreseeably, send the Applicant into a downward psychiatric trajectory. There is an objectively foreseeable prospect that the Applicant's forced deportation to the United Kingdom will exacerbate the Applicant's pre-existing vulnerabilities towards anxiety, depression and drug use. Further

⁸⁵ Exhibit 4, page 29, para [113].

⁸⁶ Ibid, para [112].

⁸⁷ Ibid, para [117].

⁸⁸ Exhibit 1, page 102.

⁸⁹ Exhibit 4, pages 29-30, paras [118] – [119].

⁹⁰ Ibid, para [122].

weight in the assessment in favour of revocation of the mandatory visa cancellation decision must apply, because of it.

92. This Other Consideration (b), is assessed therefore as **weighing heavily** in favour of revocation of the mandatory cancellation.

(c) Impact on victims

93. There is no evidence before the Tribunal relating to the impact that the Applicant's continued presence in Australia would have on any victims. This Other Consideration is therefore not relevant and **weighs neutrally** as part of this deliberation.

(d) Links to the Australian Community

94. In consideration of this Other Consideration, paragraph 9.4 of the Ministerial Direction requires that decision makers must have regard to the following two factors set out in paragraph 9.4.1 and paragraph 9.4.2 respectively:

- the strength, nature, and duration of ties to Australia; and
- the impact on Australian business interests.

(i) *The strength, nature, and duration of ties to Australia*

95. The Applicant first arrived in Australia in August 2004, and has remained in Australia since November 2010 and has been gainfully employed as a cabinet maker/carpenter between 2011 and 2016.
96. The Respondent Minister accepts that this Other Consideration weighs in the Applicant's favour, yet submits⁹¹ that it does not outweigh the heavy weight that the Tribunal should give to the primary considerations that are against revocation of the visa cancellation decision.

⁹¹ Exhibit 2, page 19, para [78].

97. Dr Donnelly on behalf the Applicant submits⁹² that all of the Applicant's immediate family are in Australia, and the available evidence demonstrates the family to be a close and loving one. The Applicant's parents have health issues such that the Applicant's deportation would be a lifelong punishment for them, and likely to be immediately detrimental to their well-being. There are also several community letters in support of the Applicant. The Tribunal should acknowledge the Applicant's arrival in Australia at the age of 15 and his positive community contributions during his periods of employment in Australia. Given the Applicant's social and familial context, it is submitted that the Tribunal ought conclude that the Australian community would afford a higher level of tolerance of the Applicant's criminal conduct, such that this other consideration should be assessed by the Tribunal as now weighing very heavily in favour or revocation of the visa cancellation decision.
98. In the Tribunal's view the Applicant has been in Australia for a long time and has established roots and connections with this country that must be taken up as factors that weigh in favour of revocation of the visa cancellation decision. The Applicant's social and familial links, and the impact on his family of his removal from Australia are matters that were greatly impressed on the Tribunal, particularly in the evidence of the Applicant's parents. These are matters that now weigh heavily in favour of revocation of the visa cancellation decision.

(ii) Impact on Australian business interests

99. The Applicant does not claim that his removal from Australia would adversely impact on Australian business interests. No weight can be allocated under paragraph 9.4.2 of the Direction.

Conclusion: Other Consideration (d)

100. Overall, the Tribunal is of the view that the Applicant's links to the Australian community weigh **moderately heavily** in favour of revocation, with the otherwise heavy weight attaching to this other consideration having then been somewhat attenuated, by reason of no weight having attached to the consideration of potential adverse impact on Australian business interests.

⁹² Exhibit 4, pages 31-33, paras [124] – [140].

CONCLUSION

101. The Tribunal is required to weigh all of the Considerations in accordance with the Ministerial Direction.
102. In accordance with the elaboration of reasons given above, the Tribunal attaches the following weight to the various 'Primary' and 'Other' Considerations as specified in the Ministerial Direction:
103. With regard to the weight, the Tribunal has allocated to each of these Primary and Other Considerations within the Directions, the Tribunal finds as follows:
- (a) Primary Consideration 1: viewed 'very seriously'. Carries a **heavy weight** against revocation of the visa cancellation decision;
 - (b) Primary Consideration 2: not relevant, **weighs neutrally**;
 - (c) Primary Consideration 3: **weighs heavily** in favour of revocation of the visa cancellation decision;
 - (d) Primary Consideration 4: **weighs heavily** against revocation of the visa cancellation decision;
 - (e) Concerning the Other Considerations, I find:
 - (i) Other Consideration (a): **weighs neutrally**;
 - (ii) Other Consideration (b): **heavy weight** in favour of revocation of the visa cancellation decision;
 - (iii) Other Consideration (c): **weighs neutrally**;
 - (iv) Other Consideration (d): **moderately heavy weight** in favour of revocation of the visa cancellation decision.
 - (f) The Tribunal finds that the combined weights allocated to Primary Consideration 3 and Other Considerations (b) and (d) respectively, are sufficient to outweigh the combined weights allocated to Primary Consideration 1 and 4.

104. Application of the Direction therefore favours the revocation of the decision giving rise to the cancellation of the Applicant's visa.
105. Consequently, the Tribunal now exercises the discretion to revoke the cancellation of the Applicant's visa.

DECISION

106. Pursuant to section 43 of the Administrative Appeals Tribunal Act 1975 (Cth), the Tribunal **sets aside** the decision made by the Delegate of the Respondent dated 14 September 2022 to not revoke the mandatory cancellation of the Applicant's visa and **substitutes** a decision to revoke the mandatory cancellation of the Applicant's visa.

*I certify that the preceding 106
(one-hundred and six)
paragraphs are a true copy of
the reasons for the decision
herein of Member McLean
Williams*

.....[SGD].....

Associate

Dated: 1 February 2023

‘Dates of hearing: **28 November and 1 December 2022**

Counsel for the Applicant: **Dr J Donnelly**

Solicitors for the Applicant: **Maria Zarifi**

Zarifi Lawyers

Solicitors for the Respondent: **Mr A Burgess**

Sparke Helmore Lawyers

ANNEXURE A – EXHIBIT LIST

EXHIBIT	DESCRIPTION OF EVIDENCE	PARTY	DATE OF DOCUMENT	DATE RECEIVED
1	G-Documents (G1-G88, pages 1-218)	R	Various	5 October 2022
2	Respondent SFIC (pages 1-19)	R	11 November 2022	11 November 2022
3	Tender Bundle (pages 1-627)	R	Various	11 November 2022
4	Applicant SFIC (pages 1-35)	A	28 October 2022	29 October 2022
5	Supplementary Bundle (SB 1-22, pages 1-169)	A	Various	23 November 2022
6	Statement of Dale Jay Garratt [App] (pages 1-5)	A	28 October 2022	29 October 2022
7	Statement of Lee Garratt (pages 1-2)	A	28 October 2022	29 October 2022
8	Statement of Michaela Budworth (pages 1-2)	A	28 October 2022	29 October 2022