



Administrative
Appeals Tribunal

DECISION AND
REASONS FOR DECISION

Division: GENERAL DIVISION

File Number(s): **2020/5136**

Re: **WCGD**

APPLICANT

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

RESPONDENT

DECISION

Tribunal: **Senior Member J Rau SC**

Date: **22 June 2023**

Place: **Adelaide**

The decision under review is affirmed.



[sgnd].....

Senior Member J Rau SC

CATCHWORDS

MIGRATION – mandatory cancellation of Class BC Subclass 100 Spouse visa under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 - decision under review is affirmed.

LEGISLATION

Migration Act 1958 (Cth)

CASES

Afu v Minister for Home Affairs [2018] FCA 1311

FYBR v Minister for Home Affairs [2019] FCA 50

LRMM v Minister for Immigration, Citizenship and Multicultural Affairs [2022] FCA 1571

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

Thornton v Minister for Immigration, Citizenship, Migrant Service and Multicultural Affairs [2020] FCA 1500

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

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

SECONDARY MATERIALS

Direction No 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

Migration Regulations 1994 (Cth)

REASONS FOR DECISION

Senior Member J Rau SC

22 June 2023

INTRODUCTION

1. The Applicant seeks a review of the decision by a delegate of the Minister for Home Affairs (**“the Respondent”**) made under section 501CA(4) of the *Migration Act 1958* (Cth) (**“the Act”**) on 19 August 2020, not to revoke the mandatory cancellation of his Class BC Subclass 100 Spouse visa (**“the Visa”**). His visa was cancelled on 16 September 2019, under section 501(3A) of the Act, on the basis that he did not pass the character test.
2. Sections 501(6)(a) and 501(7)(c) of the Act provides that a person does not pass the character test if they have been sentenced to a term of imprisonment of 12 months or more. The Applicant fails the character test on account of his conviction on 19 June 2019 of the offence of *“burglary and commit indictable offence”* and sentenced to 18 months imprisonment.
3. The Applicant quite properly concedes that he does not pass the character test. The issue before the Tribunal is whether there is ‘another reason’ to revoke the mandatory visa cancellation pursuant to section 501CA(4)(b)(ii) of the Act.
4. The hearing was held on 6 June 2023. The Applicant was represented by Dr Jason Donnelly of Latham Chambers and the Respondent was represented by Mr Jon Papalia of Australian Government Solicitor.
5. The Applicant gave evidence by Microsoft Teams and telephone, due to weather and technology related issues at Yongah Hill Detention Centre. The Applicant generally gave his evidence in a direct and responsive fashion. There were, however, instances where I formed the view that his evidence was somewhat self-serving and tailored to tell the Tribunal what he thought it should be told, in his best interests. One example of this was his evidence regarding his relatives, or lack thereof, still living in the Solomon Islands. He started off saying that he had no relatives or connections there, but was cross-examined back from that point, initially recalling just his maternal grandmother. He had no recall about cousins. He said that he had no idea if he had uncles or aunts there. I do not accept that a man of

nearly 30 years of age, would not know whether his parent's siblings still lived there or not. On another occasion, he said that Child A had been in the care of his biological father, but he did not know the man's name. This seems strange given that the Applicant regards himself as Child A's stepfather and that he was understandably very distressed when he confirmed his suspicion, that Child A was not his son, with a DNA test. One would have thought that the identity of the actual father, a recent former partner of Child A's mother, would have stuck in his mind. When pressed, he told the Tribunal that he thought that the man may be called "Wayne". I also note his evidence to the Tribunal that Child A has been in the care of his biological father for the last two to three years. I also note that the name of this man is given in a statement from KJ to the Tribunal, dated 5 September 2020.¹

6. Where there are independent records of the Applicant's conduct, I have generally preferred them, to the extent that they diverge from the evidence of the Applicant.
7. I have also taken note of the Applicant's sworn evidence before the previous Tribunal on 2 and 3 November 2020. This material is contained in the Exhibit 4.² This material deals with inter alia, the Applicant's version of events relating to reported and/or charged acts of family violence. Having regard to the procedural fairness accorded to the Applicant in that hearing, the Respondent did not reagitate these issues. I note from this material for example, that the Applicant elected not to answer some questions on the basis of legal advice. This is discussed further below.
8. The Applicant called Professor Freeman, a psychologist, who gave evidence by telephone. His evidence was generally helpful.

Background Facts

9. The Applicant was born in the Solomon Islands.³ He is 29 years of age.
10. In about 1996, the Applicant's parents separated.⁴

¹ Exhibit 4, Exhibit A2, p 173.

² Ibid, pp 427-513.

³ Ibid, G19, Attachment G, p 96.

⁴ Ibid, Exhibit A6, p 181.

11. Between approximately 1999 to 2002, The Applicant lived with his mother (JK), his siblings and JK's then partner, DB. JK and DB ceased their relationship in about 2003.⁵ During that relationship, according to the Applicant's older sister, (RC), JK and DB were "*a/ways arguing...and they were always drunk*". In about 2002, JK had a daughter, but lost custody of her, after her split from DB.⁶
12. According to the Respondent's records, the Applicant first came to Australia with his mother on 15 October 2000. He departed on 10 February 2001 and returned again on 26 August 2001. He has remained here since then.⁷
13. The Applicant's mother (JK), biological father, (JC)⁸ three sisters and a brother all now live in Australia.⁹
14. On 29 November 2001, the Applicant was granted a Class BC Subclass 100 Spouse visa ("**the visa**").
15. In about 2004-2005 the JK commenced a relationship with JJ, whom the Applicant describes as his "stepfather". They married in about 2011. At the time, JJ was imprisoned in Wacol Correctional Centre. He was released in 2012.¹⁰ JK reports having been the victim of family violence at the hands of JJ, and that this was witnessed by the Applicant.¹¹
16. The Applicant reports having had an unstable childhood. In about 2006, aged 13, he left home and was living with friends.¹²
17. ***Juvenile offending:***
18. On 29 February 2008, the Applicant was involved in assaults occasioning bodily harm.

⁵ Ibid.

⁶ Ibid, Exhibit A9, p 191.

⁷ Ibid, G23, Attachment K, p 123.

⁸ Ibid, Exhibit A6, p 180.

⁹ Ibid, Exhibit A1, p 161.

¹⁰ Ibid, Exhibit A6, p 181 and p 191.

¹¹ Ibid, Exhibit 8, p 188.

¹² Ibid, Exhibit A1, p 161.

19. On 26 April 2008, the Applicant was involved in assaults occasioning actual bodily harm whilst armed/in company and receiving stolen property.
20. On 30 May 2008, the Applicant was involved in assaults occasioning actual bodily harm and stealing from the person. The Court brief contains the following details:

"At about 8.00pm on the 30th of May 2008 the victim was at Crackerjack Carnival at Creek Road Carina with three friends namely [redacted]. The victim and friend was waiting in line for a ride when they were approached by the deft and his associate, the deft's associate has then approached the victim and said, 'what the fuck are you staring at?'. The victim ignored this however was then struck by the associate of the deft. [Redacted] has then shouted at the deft's associated which resulted in the deft's associate assaulting the victim. [Redacted] was struck in the head number of time by the deft's associate.

The deft has then stepped towards the victim and punched him in the mouth. The deft then punched the deft a second time in the mouth. The victim received a cut to his mouth and cheek area and was bleeding. The deft then said words to the effect, 'look you are bleeding, what are you going to do about it now>' The victim then grabbed his girlfriend [redacted] and ran from the scene.

The deft then proceeded to assist his associate who was assaulting the victim [redacted]. This assault is subject to a number of charges. [Redacted] then managed to get away from the deft and his associate.

The victim sought first aide treatment at the Crackerjack Carnival and was later transported to the Mater Private Hospital Accident and Emergency for treatment. Whilst at the first ais centre at the Crackerjack Carnival he met up with [redacted] and all then approached police and reported the matter. They then sae the deft walking past the first aide station and informed police. Police immediately gave chase and apprehended the deft. The deft was not interviews on the night and was later transported to his home address and left the custody of his mother.

Police conducted a number of inquiries in attempt to locate the deft. Police attended the Slacks Creek Police Station on the 16th of June 2008 and spoke with the deft who was in the company of his mother [redacted]. The deft agreed to be interviewed in relation to the matter. During the interview the deft stated that earlier he and his associates had been drinking alcohol and that he does not recall being at the Crackerjack Carnival. The deft stated that he recalls later being spoken to police and also remembers police providing first aid on his right

wrist which was injured. Although the deft stated he could not recall assaulting the victim he agreed that it was possible he was responsible for the assault. The deft was then arrested and conveyed to Brisbane Watchhouse and formally charged.”¹³

21. On 25 July 2008, the Applicant was involved in assaults occasioning actual bodily harm whilst armed/in company.
22. On 26 July 2008, the Applicant was involved in an assault with intention to steal.
23. The relevant schedule of facts states:

COUNT	DATE	OFFENCE	FACTS	COMPLAINANT	AMOUNT
<i>Ex-officio indictment 1</i>	26/7/2008	<i>Armed robbery in company s409, 411(2) Criminal Code</i>	<p><i>The complainant’s are [VWVT], [JD], [DTP], and [JL]</i></p> <p><i>At about 8.55pm on Saturday 26 July 2008 the complainant children were sitting at two tables outside the Night Owl convenience store at [redacted]. The complainants were waiting for their parents to pick them up.</i></p> <p><i>[The Applicant], co offender [H] and a third unknown male were sitting at a bus shelter across the road. [The Applicant] and the offenders started to tell abuse at the complainants. [H] said words to the effect of “what do you fuckers want? Why do you keep looking at us?” “Do you</i></p>	<p><i>[VWVT]</i></p> <p><i>[JD]</i></p> <p><i>[DTP]</i></p> <p><i>[JL]</i></p>	

¹³ Ibid, TB2, p 269.

			<p>want us to cut your fingers off?”</p> <p><i>[H] walked up closer to the complainants and said “Choose which one of you want your fingers cut off first”.</i></p> <p><i>The accused then said to [VWVT] and [JD] that they should play “paper, rock, scissors” to decide who would get their fingers cut off first.</i></p> <p><i>[H] asked [VWVT] for a cigarette and [the Applicant] told [VWVT] to give him the whole packet as the accused would probably cut his face. [VWVT] threw the packet to the accused.</i></p> <p><i>[H] the pulled out a large meat cleaver with a blue/grey handle from under his shirt. The accused held it in a threatening manner towards the complainants and said “Give us your money, anything you got”</i></p> <p><i>[The Applicant] approached [VWVT] and picked with the Smirnoff bottle and tapped [VWVT] on the shoulder with it. [The Applicant] said words to the effect of “Maybe we should bottle these guys”</i></p>		
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			<p>[VWVT] gave [the Applicant] a \$5 note from his pocket.</p> <p>[H] said “Come on guys hand over your money” and made another comment about cutting their finders off.</p> <p>[H] said to [JD] word to the effect of “You look rich empty your pockets”</p> <p>[H] and [the Applicant] and the third male surrounded the complainants and [H] said to [JD] “Why don’t we cut this one up?”</p> <p>[H] told the complainants that he was “Nino from the JJ Gang”. The third offender then said “leave it alone, let’s go” and the offenders walked back across the road and towards the Gabba cricket grounds.</p> <p>One of the compliannats went inside the Night Owl and told the attendant that they had just been robbed and asked her to call the police.</p> <p>At about 1.30am on 29 July 2008 [H] was located at [redacted] during an execution of search warrant relating to another matter. Police located a</p>		
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			<p><i>large meat cleaver with a blue/grey handle in the refrigerator of the unit.</i></p> <p><i>On 7 August 2008 [JL] participated in a photoboard identification and identified [the Applicant].</i></p> <p><i>On 16 August [JD] identified [the Applicant] in a photoboard identification.</i></p>		
1	On 26/07/2008	<p><i>Grievous bodily harm x 1</i></p> <p><i>S320 Criminal Code</i></p>	<p><i>The complainants are [LC-D] and [ATC]. Both complainants were students at [redacted]. The complainants were in year 10 at the time of the offence and were both aged 15 years.</i></p>		[CD]
		<p><i>Wounding</i></p> <p><i>S323(1)(a)</i></p>	<p>Background to offences:</p> <p><i>On 27 July 2008, [SG] told his friends that his sister had been raped by a number of pupils. [SG] went to the co-accused [the Applicant's] house where [C], [M] and [L] were visiting [SG] told them he was going to [redacted] to speak to the boys.</i></p>		[LG]
		<p><i>Criminal Code</i></p>	<p><i>The next day, 28 July 2008, [the Applicant] rang [C] on his mobile phone and told him they were going to go to the school.</i></p>		

			<p><i>[The Applicant], [C], walked into the City and met up with [H] and [SG] and [C].</i></p> <p><i>The offenders caught a bus to Woolloongabba and the group of offenders including [the Applicant] walked to [redacted]. [H] was armed with a meat cleaver which he had put down the front of his pants. [H] had shown the cleaver to the others as they walked along the school.</i></p> <p><i>Whilst walking up to the school [SG] used his mobile phone to call, [DS], a student at [redacted] and warn him that he was coming to the school with 10 friends. He told [DS] to stay where he normally sits and not to come down. [SG] asked to speak to another student [C]. [SG] also told him that he was coming to the school, with some friends and to stay where he was sitting.</i></p> <p><i>Once they arrived at bottom end of the school, the offenders split into two groups. The first group consisted of [H], [SG], [S] [C] and the second group, [the Applicant], [M], [L] and [C]. [H] told the second group to enter the school via the lower oval.</i></p>		
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			<p><i>[H's] group walked further up the street and entered the school via [redacted].</i></p> <p><i>The group walked up through the school towards where the grade 10 students have lunch. The group were all wearing hoodies and several bandanas partially covering their faces. [H] was walking about a metre in front of the group and ran up towards a group of year 10 students sitting at a table. The complainant's and several other students were at this table. [H] was armed with the meat cleaver and another offender was armed with a metal pole. [H] approached a group of students sitting at a table and said "which of you cunts is first". [H] produced the meat cleaver with his right hand and his [CD] in the fact causing a deep laceration to his cheek.</i></p> <p><i>Complainant [C] was attempting to run away when [H] hit him in the back with the meat cleaver. [C] received two lacerations to his back. A teacher [O] ran towards the group and yelled stop and put his hand up. He stood up between [H] and the students. [H] took a step back and the group ran back down</i></p>		
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			<p><i>the path towards the staff carpark. One of the offenders threw the metal pole into a garden bed in the school grounds.</i></p> <p><i>[The Applicant] and three other co-accused entered from the rear of the school and walked up from the lower oval, past the pool beside the library and through to the main quadrangle area. Several school students saw this group and described three of them as wearing hoodies and one as wearing a yellow cap. Two students and a teacher give evidence that they saw at least one male armed with a knife in this second group. The group walked towards the outside of the administration area of the school and sat on the edge of a garden bed, two teachers, [MPS], and [AS] approached the boys. [AS] said “you blokes wait here, don’t go anywhere”. The offenders walked off down the driveway towards the Mater Hospital. [MPS] followed the group and called 000.</i></p> <p><i>[The Applicant], [M] and [C] were located hiding under a house on Woolloongabba. They were taken to Dutton Park police station.</i></p>		
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			<p>Interview:</p> <p><i>[The Applicant] participated in an interview with police on 28 July 2008. He stated that he had walked into the City with [L], and met [SG] and [H] at Hungry Jacks. Ge stated that [H] and [SG] looked “really pissed off” and they were “gonna go up there to [redacted] at lunch tome and go talk to whoever it was and scare them or something like that”. [The Applicant] told police that he saw [H] had a knife while they were walking up to the school. He stated that [H] had the knife tucked onto his pants and was showing them the handle.</i></p> <p><i>[The Applicant] stated that he thought [H] “was just going to pull a knife and like yeah touch her again I’ll do something, I didn’t know he was going to do anything”.</i></p> <p><i>He stated “oh I had a feeling he was gonna pull it out, cause he showed us the knife”.</i></p> <p><i>[The Applicant] stated that the group split up and that he didn’t want to be with [H] and that he wanted to stay with [L]. He stated that [H] told them to go</i></p>		
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			<p><i>through a gate but it was locked so they climbed a fence to enter the school. He stated they decided to leave and that they just walked through the school. He stated that security guards followed them all the way down to the Mater Hill Bus stop.</i></p> <p><i>[The Applicant] stated "as soon as we got into the school that's when we just started thinking nah, consequences, you could get into trouble, so we just walked out and the security guard followed us out".</i></p> <p><i>On 29 July 2008 police executed a search at [H's] residence at [redacted]. The offenders [H], [S] and [L] were present. Police located a meat cleaver in the top compartment of a freezer.</i></p> <p><i>The cleaver was analysed by Forensic Scientist [IM]. Complainant [CD's] DNA was found on cleaver.</i></p> <p><i>Injuries:</i></p> <p><i>Both complainant's were taken to the Mater Children's Hospital</i></p> <p><i>The complainant [CD] suffered 7 1/2 cm laceration to the left side of outer cheek and a laceration of the buccal mucosa</i></p>		
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			<p><i>inside the mouth. Dr [JL] examined [CD] in the Emergency Department and treated him with intravenous antibiotics and fluids and applied gauze soaked in lignocaine and adrenalin to the wound.</i></p> <p><i>[CD] was then treated by a plastic surgeon and sustained 60 sutures to the inner and outer wound during surgery.</i></p> <p><i>The complainant [C] was examined and treated by Dr [DB] in the Mater Children's Emergency Department. It was noted that [C] sustained two lacerations to his back:</i></p> <ul style="list-style-type: none"> <i>– 5cm by 1cm above the left ilian crest down to the fascia</i> <i>– 1cm x 1cm above the left ilian crest</i> <p><i>Both wounds required a total of 9 sutures and was treated with a course of antibiotics.</i></p>		
<p><i>Ex-officio</i></p> <p>3</p>	16/08/2009	<p><i>Grievous bodily harm</i></p> <p><i>s3200 Criminal Code</i></p>	<p><i>The complainant is a 35 year old male from Somali. The complainant has been working as a taxi driver for Yellow Cabs for 6 months and was working at the time of the offence.</i></p>	<i>[MSM]</i>	

			<p><i>At about 2am on 16 August 2009 the complainant was driving on Wishart Road, Wishart and turned left in Newhamn Road. The complainant noticed a group of people at a bus stop on the right hand side of the road, trying to flag down a taxi. The complainant did a u-turn and drove up to the group.</i></p> <p><i>The group consisted of four males, including the accused and a female. The group got into the taxi and asked to be taken to Cavendish Road. The complainant stated that the group was quite loud but the started to whisper amongst themselves. The group told the complainant to just keep driving down Cavendish Road and they would tell him when to stop.</i></p> <p><i>The complainant showed the taxi down and [R] came up behind the driver and put his arm over the complainant's neck onto the steering wheel.</i></p> <p><i>The males said "Driver what are you doing? Stop the car"</i></p> <p><i>Another male reached from the rear and grabbed the collar of</i></p>		
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			<p><i>the complainant's shirt and pulled him back against his seat.</i></p> <p><i>The complainant stopped the taxi and asked them what was wrong.</i></p> <p><i>One of the males said "Open the door". The complainant asked "Who is going to pay the fare?" A male replied "if you ask me to pay the fare, I will punch you in the face".</i></p> <p><i>The group was yelling for the door to be opened. The complainant noticed one of the males jumped out from a back window of the taxi.</i></p> <p><i>The complainant got up and tried to run into the road. The offenders knocked him down and surrounded the complainant. The complainant was lying on his back and the offenders were kicking him in the body and face. The complainant yelled "Please don't kill me" and tried to get up. The offenders continued to kick the complainant and he tried to crawl away.</i></p> <p><i>A male and the female continued to kick the complainant. The male and female followed the</i></p>		
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			<p><i>complainant. The female hit the complainant in the right side of his ribs with a fence paling.</i></p> <p><i>The complainant started to lose consciousness and lay on his left side. The last thing the complainant remembers is being kicked in the back of the head.</i></p> <p><i>The complainant was taken to the Princess Alexander Hospital.</i></p> <p><i>Injuries:</i></p> <p><i>The complainant was examined and it was noted he appeared confused and agitated. The complainant suffered the following injuries:</i></p> <ul style="list-style-type: none"> <i>– Closed head injury</i> <i>– Fractured left ulna</i> <i>– Bruises and scratches to upper body and feet</i> <p><i>The complainant was given, morphine for pain relief. The fractured ulna required surgical treatment with open reduction and internal fixation of the fracture site with metal plate and screws.</i></p> <p><i>The complainant spent 5-6 days in hospital.</i></p>		
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24. On 17 March 2009, the Applicant appeared in the Brisbane Children’s Court charged with the offending occurring between 29 February 2008 and 26 July 2008. One penalty was imposed. No conviction was recorded, and he was placed on 12 months’ probation and ordered to perform 100 hours of community service.¹⁵
25. On 9 April 2009, the Applicant was involved in unauthorised dealing with shop goods (maximum \$150).
26. On 9 April 2009, the Applicant was involved in unauthorised dealing with shop goods (maximum \$150).
27. On 21 April 2009, the Applicant failed to appear in accordance with an undertaking.
28. On 28 April 2009, the Applicant appeared in the Brisbane Children’s Court charged with unauthorised dealing with shop goods (maximum \$150) and failing to appear in accordance with an undertaking. No conviction was recorded but he was sentenced to 6 months detention, to be released after serving 3 months.¹⁶
29. On 22 April 2010, the Applicant appeared in the Brisbane District Court charged with armed robbery in company (26 July 2008), attempted armed robbery (26 July 2008), assault occasioning bodily harm (27 December 2009) grievous bodily harm and wounding. (on 28 July 2008), He was dealt with as a juvenile. A conviction was recorded, and he was sentenced to 3 years and 9 months detention.¹⁷

The relevant schedule of facts states:¹⁸

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¹⁴ Ibid, TB1, pp 249-253.

¹⁵ Ibid, G14, Attachment B1, p 63.

¹⁶ Ibid, G12, Attachment A, p 62.

¹⁷ Ibid.

¹⁸ Ibid, TB1, pp 255-256.

C	DATE	OFFENCE	FACTS	COMPLAINANT	AMOUNT
1	On or about 27/12/2009	<p>Assault occasioning bodily harm</p> <p>S339(1) Criminal Code</p>	<p>The complaining is 17 year old [GL]. The complainant was staying with his brother and his brother's girlfriend [RM] at Wongawallen over the Christmas period.</p> <p>On the evening of 26 December 2009, the complainant's brother left for work and the complainant and [RM] stayed at home. The complainant and [RM] decided to have some drinks.</p> <p>At about 10.30pm A group of people arrived in a vehicle. There were 5 males including the accused and a female that arrived. The group were drinking inside the house with the complainant and [RM]. The complainant continued drinking and consumed about 10-12</p>	[GL]	

			<p>beers in a few shots of vodka. The complainant states that the accused was walking around trying to steal peoples drinks and was being aggressive and smart.</p> <p>The complainant walked over to the accused and said “Look mate, this is my brothers place and we don't want any drama here. You're going to have to leave”</p> <p>The complainant states he was not rude but just did not want any dramas inside his brothers house. The accused was escorted outside.</p> <p>The complainant walked to the steps to go outside and was followed by the accused. The accused punch the complainant and he fell to the ground.</p>		
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			<p><i>The complainant was on his back and the accused swung punches and hit him in the face approximately 10 times. The complainant states the accused punch him "A heap of times in the face". the complainant states that the punches were slow but powerful and it hurt every time he was hit.</i></p> <p><i>The complainant yelled out for help and [RM] pull the accused from the back of his shirt. [RM] said "Come on stop this. Leave him alone".</i></p> <p><i>the accused swung his right arm towards [RM] Ann hit her in the face with his elbow.</i></p> <p><i>The accused walked away and [RM] helped the complainant back inside the house, the complainant states he</i></p>		
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			<p><i>had blood all over his face and in his eyes.</i></p> <p><i>Approximately 2 hours later an ambulance arrived and the complainant was taken to Robina hospital.</i></p> <p><i>The complainant was examined and underwent a CT scan of the brain and facial bones. The complainant sustained an undisplaced right maxillary sinus lateral wall fracture. The complainant stayed in hospital and was examined again 8 hours after presentation by a maxillofacial surgeon. The complainant was actively opened his mouth and was prescribed antibiotics and analgesia for pain and swelling.</i></p> <p><i>On 28 December 2009 the accused attended Coomera Police Station in the company of his father. The accused</i></p>		
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			<p><i>participated in an interview and made admissions to the assault. The accused stated that he was intoxicated and behaving badly at the gathering. He states that he was asked to leave by the complainant and he walked outside. He stated that the complainant walked outside and he punched him in the head. He states that they fell to the ground and wrestled and he punched the complainant about 10 times un the face and mouth area.</i></p> <p><i>The accused stated that he was stopped and he was taken to the Coomera Railway Station.</i></p>		
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30. I note the sentencing remarks of Judge Shanahan of the Brisbane District Criminal Court:

“HIS HONOUR: [The Applicant], would you stand up, sir? [The Applicant], you've pleaded guilty to a number of criminal offences. The two that I've already described in relation to your

co-offender [S] of unlawfully doing grievous bodily harm and unlawful wounding, but most seriously there are other offences of violence.

You've also pleaded guilty to an offence of armed robbery in company and an offence of attempted armed robbery in company whilst armed.

You've pleaded guilty to a further offence of unlawfully doing grievous bodily harm and finally to an offence of assault occasioning bodily harm.

The first two offences in point of time are the offences of robbery and attempted robbery. They occur on the 26th July 2008 and you and two co-offenders, again including the man [H], who apparently was 18 years of age at the time, menaced and robbed a group of 15 year old schoolboys. On that occasion, Mr [H] was armed with a meat cleaver, presumably the one he used two days later in the St Laurence incident.

You also played a role in this. **You had a bottle, you used that in a threatening manner, money was stolen from one of the complainants and the others were menaced before you ran off.**

The events that I've described on the 28th July 2008 then took place. You were a member of the second group and you desisted when confronted by a teacher. You were not with the group that actually inflicted the serious injuries on the two complaints, but you obviously were a party to the plan to enter that school and to confront people in an armed manner, and obviously you've accepted your responsibility for the grievous bodily harm and the unlawful wounding.

You were arrested and granted bail in relation to those matters. Whilst on bail on the 16th August 2009, you committed the offence of unlawfully doing grievous bodily harm.

On that occasion, a group of you hired a taxi vehicle. The taxi driver was directed to go to a particular street. Once he arrived, he was set upon and it appears he was set upon by a group. He got out of his cab, he was again assaulted, **at some stage he picked up some sort of bar to defend himself, you got that and then you beat him with it, and you beat him in such a way that it occasioned grievous bodily harm to his left arm. He suffered bruises and scratches as a result of the attack but he suffered a serious fracture to his left arm which required five days' hospitalisation, operations and the insertion of plates and screws.**

It is clearly a serious offence in that it involved an attack by a group on a taxi driver who was simply following the course of his employment. It was cowardly and it has resulted in a serious injury being suffered by that man.

You got bail for that and whilst on bail, on the 27th December 2009, you committed the final offence of assault occasioning bodily harm. On that occasion you were intoxicated, you and others were attending a particular dwelling, you were asked to leave because of your conduct, you were being escorted outside and you turned and

punched the complainant, causing him to fall. You then delivered a further 10 punches to his face. He suffered a broken nose, and bleeding from the nose.

You turned yourself into the police as a result and when interviewed, you accepted your guilt and you described yourself as being intoxicated.

The first groups of offences occurred when you were only 14 years of age and the later when you were 15. Unfortunately, you do have some appearances before the Courts and they are of relevance, in my view.

On the 17th March 2009, in the Children's Court you were dealt with in relation to offences of violence. They were offences of assault occasioning bodily harm, attempted robbery, receiving, assault occasioning bodily harm whilst armed and in company, two charges of common assault, a further offence of assault occasioning bodily harm and another offence of assault occasioning bodily harm whilst armed and in company.

A combination of orders were imposed, including probation and community service. You were thus subject to those supervised orders at the commission of these, or some of these offences.

You were on those supervised orders in relation to the offence of the grievous bodily harm committed on the taxi driver and the offence of assault occasioning bodily harm which was last in point of time.

There are parity issues involved with you as well, particularly in relation to the offences committed at the St Laurence school. As I say, you were in the second group. It seems to me there are parity issues with the youth [C], who was sentenced for a similar role. He was dealt with by his Honour Judge Samios and sentenced to six months' detention. He also was in the second group. It seems to me considering that aspect that a similar penalty should be imposed on you in relation to those two matters.

Concurrent sentences should be imposed in relation to the other matters, but it seems to me the offence of grievous bodily harm committed upon the taxi driver is the most serious of these offences. As I say, it was committed on bail and after the episode at St Laurence's.

It seems to me a penalty of three years' detention would have been imposed, or could have been imposed if that matter had stood alone, particularly noting that you were subject to those probation and community service orders at the time for offences of violence.

It also seems to me appropriate to increase that sentence to recognise the whole series of offences that you've committed here.

Taking into account the contents of the pre-sentence report, it is clear that you've had a disruptive upbringing and obviously loyalty to your friends was important to you in the

commission of these matters. I also accept that you were having substance abuse issues, particularly in relation to alcohol.

What I intend to do is sentence you to a head sentence of three years and nine months' detention in relation to the grievous bodily harm offence committed on the taxi driver, to recognise the totality of your criminal conduct here. I intend to impose concurrent sentences in relation to the other matters and I also intend to order your release after serving 50 per cent of the sentences. It seems to me the pre-sentence report does contain some positives, particularly in relation to your current attitude in detention. I know that you've spent now some significant time in detention, which will, of course, also be counted in relation to these sentences.

It also seems to me to be appropriate to record a conviction in relation to the offence of grievous bodily harm on the taxi driver. I am of that view because of the serious nature of that offence, particularly as it must be seen in the light of your history.

Again, in your case, in relation to the principles espoused in the Youth Justice Act, I am of the view that detention is the only appropriate penalty in relation to all of these matters to recognise just how serious they are.

On each of counts 2 and 3 on the three count indictment involving the incident at St Laurence's School, I order that you be detained for a period of six months. On each count of robbery and attempted robbery, I order that you be detained for a period of nine months.

In relation to the offence of grievous bodily harm committed upon the taxi driver, I order that you be detained for a period of three years and nine months.

In relation to the offence of assault occasioning bodily harm, I order that you be detained for a period of nine months. All those sentences are to be served concurrently.

I order your release from that period of detention at the 50 per cent mark. A conviction is recorded in relation to the offence of grievous bodily harm committed on the taxi driver.

*No convictions are recorded in relation to the other matters.*¹⁹

31. On 3 June 2010, the Applicant was in the Brisbane Children's Court charged with unauthorised dealing with shop goods (maximum \$150) and contravening a direction (on 3 September 2009). He was reprimanded but no conviction was recorded.²⁰
32. On 27 August 2011, the Applicant turned 18.

¹⁹ Ibid, G16, Attachment D, pp 80-86.

²⁰ Ibid, G12, Attachment A, p 62.

33. For a period between 2011 and 2013, the Applicant did some landscaping work. Between 2013 and 2014, he did “picking and packing” work.²¹ After that, he was on Centrelink benefits until he was imprisoned.²²
34. In mid-2014, the Applicant commenced a relationship with KJ. KJ is ten years older than the Applicant. KJ has a son, (AA) from a previous relationship. AA was about six years old at the time.²³ KJ is also the daughter of JJ and therefore, also the Applicant’s stepsister.
35. On 12 February 2015, KJ’s son, (Child A) was born. The Applicant initially thought that Child A was his biological son, but he had suspicions that this was not so. He was soon left with the responsibility of being Child A’s primary carer, when KJ suffered from post-natal depression.²⁴
36. In about 2015, the Applicant’s biological father (JC) migrated to Australia.²⁵
37. On 31 August 2015, the Applicant was in the Beenleigh Magistrates Court, charged with possession of dangerous drugs and implements (on 19 July 2015). The Police Court Brief records:

“At about 12,30pm on the 19th of July 2015 police attended [redacted] to locate an offender in relation to a matter. At the address police spoke with [the Applicant] who gave police permission to enter the dwelling. Once inside police observed on the dining room table a bowl containing green leafy material, a pair of scissors and a plastic drink bottle containing residue with a smoking cone piece attached.

The defendant participated in a digitally recorded electronic record of interview at the location and admitted that the green leafy material was cannabis, that he had used the scissors to chop the cannabis and the water pipe to smoke it. Police seized the utensils and cannabis which weight 6 grans and issued the defendant with a notice to appear before the Beenleigh Magistrates Court. ”²⁶

²¹ Ibid, G20, Attachment H, p 110.

²² Ibid, p 443, lines 30-34.

²³ Ibid, TB5, p 383.

²⁴ Ibid, G20 Attachment H, p 104, G21, Attachment I, p 114 and Exhibit A1, p 161.

²⁵ Ibid, Exhibit A6, p 180.

²⁶ Ibid, TB2, p 275.

38. No conviction was recorded, and he was fined \$900.00.²⁷
39. In about September of 2015, the Applicant received the result of a DNA test that excluded him from being Child A's father. This, perhaps unsurprisingly, caused serious problems in his relationship with KJ.²⁸ Child A's biological father was KJ's former partner, Wayne.²⁹
40. On 17 December 2015, a domestic violence order was made against the Applicant, for the protection of KJ.³⁰
41. On 9 January 2016, the Applicant contravened the domestic violence order. The particulars, as recorded in the Police Court Brief are as follows:

"The Respondent in this matter is [the Applicant].

The Aggrieved and the Respondent have been in a de-facto relationship for approximately two (2) years and have one child together.

The named child in this matter is [redacted].

On Thursday the 17th December 2015 a Domestic Violence Order with mandatory conditions was granted by Beenleigh Magistrates Court naming [the Applicant] as the Respondent. [Redacted] as the Aggrieved and as a named person.

On Monday the 21st of December 2015 the Respondent was personally served with a copy of the Domestic Violence Order by Senior Constable [BS] of the Logan District Domestic Violence Unit, who read the document in full and explained the conditions of the order to the Respondent.

At approximately 8.00pm on Saturday the 9th of January 2016 she and the Respondent were at their place of residence of [redacted]. The named child was also with them at this time.

²⁷ Ibid, G12, Attachment A, p 62.

²⁸ Ibid, G21, Attachment I, p 114.

²⁹ Ibid, Exhibit A2, p 173.

³⁰ Ibid, TB2, p 277.

The Respondent and the Aggrieved began to argue about the state of their relationship. While arguing with the Aggrieved, the Respondent was holding their 10 month old infant in his arms. During the argument the Respondent has approached the Aggrieved and told her to shut her mouth. The Respondent whilst still holding the named child then placed his free hand over the mouth of the Aggrieved. The Aggrieved continued to argue with the Respondent and as a result the Respondent has then told the Aggrieved to leave the address.

The Aggrieved has refused to leave the address at which point the Respondent has pushed the aggrieved backwards. As a result, the Aggrieved' s head has collided with the wall with sufficient force so as to cause damage to the wall (A large hole). The Aggrieved has then followed the Respondent as he walked back into the lounge room of the dwelling.

The Respondent and the Aggrieved have continued to argue and another altercation has taken place within the lounge room during which the Aggrieved has fallen to the floor, resulting in the dislocation of her left knee. The Aggrieved has called out in pain as a result of her injury, at which point the Respondent has grasped the Aggrieved by her hair and proceeded to drag the Aggrieved from lounge room floor to outside of the dwelling.

The Aggrieved remained outside for some time while the Respondent has returned inside. The Aggrieved later returned to inside the dwelling where the Respondent has assisted her by providing her with an ice pack for her injuries.

At approximately 4.30pm on Sunday the 10th January 2016 police from the Local District Domestic Violence Unit attended [redacted] in relation to following up with both the Aggrieved and Respondent for referral.

Upon arriving at the address, Police took up with the Aggrieved who immediately observed had bruising to her right eye, red marks to her throat and other minor contusions to her face and neck. Police further observed that the Aggrieved was limping heavily. When Police asked the Aggrieved about her injuries she informed Police that she had been assaulted by the Respondent and provided Police with a statement in relation to the incident.

Police contacted QAS who attended and transported the Aggrieved to Hospital for first aid.

On the Tuesday the 19th of January 2016 Police from the Logan District Domestic Violence Unit attended [redacted] and conducted an electronic record of interview with the Respondent during which he made admissions to committing the offence.

*The respondent was issued with a notice to appear in Beenleigh Magistrates Court on the Tuesday the 9th of February 2016.*³¹

42. On 3 February 2016, a Police Court Brief records:

“On 3rd of February 2016 Police from the Ipswich Police Station were conducting Random Breath Testing on King Edward Parade, Ipswich. At around 10:00am Police intercepted a grey Holden Commodore bearing Queensland Registration plates [redacted]. Police introduced themselves and told the driver that he had been stopped for a random breath test and license check. Police then gave a requirement to the defendant to provide a specimen of breath for the breath test. The driver complied with the requirement.

Offence 1:

Police then asked the defendant for his driver’s license. The defendant told police that he did not have his license on him. Police asked the defendant for his name and provided the name [JC]. Police looked up the name given by the defendant on the Police computer system and asked the defendant for his date of birth. The defendant struggled to tell police his date of birth saying that it was in March. Police then gave a requirement for the defendant to provide his true and correct name and proof thereof and warned him that it was an offence to provide a false name. The defendant told police that his name was [JC]. Police became suspicious when the defendant could not produce any identification and asked for the defendant to confirm his home address. The defendant could not provide this address.

Police told the defendant that he could not be found in the Police system and that he need to state his true and correct name. The defendant then told Police that his real name was [the Applicant] and that he did not currently hold a License.

Offence 2:

³¹ Ibid.

A police check of the driver's particulars indicated that the defendant's learner's license had expired on the 15th of August 2014.

The defendant told police that he was driving home from a friend's house and provided no emergent reason for driving the vehicle. The defendant further stated that he would continue to drive and that police should stop picking on him and catch real criminals.

A check of the defendants past history revealed that on the 13th of January 2015 he was charged and convicted on one count of Driving Motor Vehicle without a driver's license.

*Subsequently the defendant was issued with a NTA and the license plates were confiscated by Police.*³²

43. On 3 March 2016, a Police Court Brief records:

*"That on the 3rd day of March 2016 at Ipswich in the Magistrates Court District of Ipswich on the State of Queensland one [the Applicant] without reasonable excuse contravened a requirement given by a Police Officer named Constable [JM] under the Police Powers and Responsibilities Act 2000 namely to state his true and correct name."*³³

44. On 15 March 2016, a Police Court Brief records:

"At approximately 2.15am on the 15th day of March 2016, police from Hendra intercepted the defendant driving a silver Holden Commodore sedan on Nudgee Road at Ascot. Police approached the vehicle and observed the defendant seated in the passenger seat of the vehicle, the deft was the sole occupant in the vehicle at the time. The deft Was unable to explain why he was seated in the passenger seat; upon exiting the vehicle police observed that the defendant was seated on vehicle immobilisation paperwork.

Police then conducted investigations into a number of traffic related offences. During the course of these investigations police observed a BMX bicycle sitting in the rear seat of the vehicle. Police observed there was a floor mat placed over the bike partially covering it from view.

³² Ibid, TB2, pp 281-282.

³³ Ibid, TB2, p 281.

Police conducted further inspection of the bicycle; the bicycle was an unknown brand BMX with all stickers removed and the bike appeared to have been repainted recently in a white colour. Police further observed that the serial number of the bicycle had been ground off from under the bottom bracket of the frame.

The defendant was explained his PPRA rights and cautions, the defendant was then questioned in relation to the bicycle. When questioned the defendant stated that he purchased the bike off an unknown person after seeing it advertised on the online sales website 'gumtree'. The defendant was then unable to provide details of the person he purchased the bike from and further was unable or unwilling to provide police with his Gumtree User details. The defendant was questioned in relation to whether transaction took place and the defendant was unable to provide details other than it was an industrial area. The defendant was also questioned in relation to a serial number of the bike being removed; the defendant denied removing the serial number and initially stated he did not know the serial number had been removed. Later in the interview the defendant stated that he attempted to sell the bicycle at a bike shop however they declined to purchase it due to the fact that serial number had been removed from the bicycle. The defendant stated he didn't know if the bicycle was stolen.

The defendant was unable to provide any plausible information in relation to lawfully obtaining the bicycle.

*the defendant was subsequently issued with a notice to appear in the Brisbane Magistrates Court on the 05/04/2016 to answer the charge.*³⁴

45. On 19 March 2016, a Police Court Brief records:

*"That on the 19th day of March 2016 at Ipswich Magistrates Court in the State of Queensland one [the Applicant] being a respondent against whom a domestic violence order had been made contravened the order namely the Protection Order made on 21st day of January 2016 in the Magistrates Court at Beenleigh and [the Applicant] had been served with a copy of the order."*³⁵

46. On 4 April 2016, a Police Court Brief records:

³⁴ Ibid, TB2, p 286.

³⁵ Ibid, TB2, pp 295-296.

“That on the 4th day of April 2016 at Beenleigh Magistrates Court in the State of Queensland one [the Applicant] without reasonable cause failed to surrender into custody at the Beenleigh Magistrates Court in accordance with his undertaking entered into on 29th February 2016 at Beenleigh Magistrates Court and was apprehended under a warrant issued pursuant to section 28 of the Bail Act 1980.”³⁶

47. On 26 April 2016, the Applicant was in the Ipswich Magistrates Court, charged with contravention of a direction (on 3 March 2016). He was convicted and fined \$350.00.³⁷
48. On 14 May 2016, the Applicant was taken into custody for family violence offences. He remained in prison until 4 August 2016. During this time, KJ abandoned Child A to the care of the Applicant’s mother (JK).³⁸ It is to be noted that Child A is the biological grandchild of the Applicant’s stepfather, (JJ) and therefore, the step grandchild of the Applicant’s mother.
49. A Police Court Brief records:

“That on the 23rd day of March 2016 at Ipswich in the Magistrates Court District of Ipswich in the State of Queensland one [the Applicant] without reasonable excuse contravened a requirement given by a Police Officer namely Constable [NS] under the Police Powers and Responsibilities Act 2000 namely to attend the Ipswich Police Station within seven days to have his identifying particulars recorded.”³⁹

50. On 16 May 2016, the Applicant was in the Beenleigh Magistrates Court, charged with failure to appear in accordance with an undertaking (on 4 April 2016). He convicted and fined \$500.00.⁴⁰
51. On 4 August 2016, the Applicant was in the Beenleigh Magistrates Court, charged with contravention of a domestic violence order (on 19 March 2016), unlawful possession of suspected stolen property (on 15 March 2016), contravention of a domestic violence order (on 9 January 2016), operating a vehicle during a numberplate confiscation period and tampering with a numberplate (on 15 March 2016), contravention of a direction (on 23 March

³⁶ Ibid, TB2, p 295.

³⁷ Ibid, G12, Attachment A, p 62.

³⁸ Ibid, Exhibit A1, p 161 and Exhibit A6, p 183.

³⁹ Ibid, TB2, p 296.

⁴⁰ Ibid, G12, Attachment A, p 62.

2016). He was convicted and sentenced to a concurrent term of 9 months imprisonment and fined \$600.00.⁴¹

52. I note the sentencing remarks of Acting Magistrate Kucks dated 4 August 2016:

*“BENCH: So, [the Applicant], I will take into account that you have pleaded guilty today, and what has been said on your behalf and the facts that have been put before me. **The way that you behaved on that date in January, the 9th of January, was certainly not a manly approach to things. It is something that no right-minded male would consider as a way to treat their partner and the mother of their child. There was a substantial injury that was caused to her knee. There was damage to the wall. And, certainly, when the police turned up the next day, the injuries to her face were obvious. That sort of behaviour is entirely inappropriate and unacceptable in any community.***

Now, in relation to that matter, I am going to order that a conviction be recorded and that you be convicted and sentenced to a term of nine month’s imprisonment. That term of imprisonment is to be served concurrently with any other term of imprisonment you are serving or liable to serve. Having regard to everything that has been put before me, I am going to set the parole release date as today. That means that you are now – or you will very shortly be on Court-ordered parole. There are a number of conditions that attach to Court-ordered parole. And you need to be very well aware of the fact that if you hiccup at all in the next six months, essentially, that you do not even get to come back to Court to beg not to go to jail. It is just the same as getting take out to [AG], knocking on the door and saying, “Here I am; let me back in.”

Okay. So the conditions are that you must report to the – you are under the chief executive’s supervision until the end of your period of imprisonment. You are to 25 carry out the lawful instructions of the chief executive. You are to give test samples of blood, breathe, hair, saliva or urine if required to do so by the chief executive. You must report to and receive visits as directed by the chief executive and notify the chief executive within 48 hours of any change of your address or employment during the parole period. And as I said, most importantly, not commit another offence. Now, are you still going to be living at that Monarch Street address?

DEFENDANT: Yes, your Honour.

MS HANSON: That is the street I have got.

BENCH: Okay. So you will be required to report to the probation and parole office at Logan Central by 5 pm today, okay.

DEFENDANT: [indistinct] released until 6.

BENCH: Where are we? What is today? Wednesday. We will make it by 5 pm – or 4 pm, right, tomorrow afternoon. That is the 5th of August. Fourth of August – 5th – 4th – 5th.

⁴¹ Ibid, G12, Attachment A, p 61.

MS [H]: Fifth tomorrow - - -

BENCH: Fifth - - - MS [H]: - - - your Honour.

BENCH: - - - tomorrow, yes. I just do not want Christmas to get here too quickly. Okay. But if you can get there today then you get there today, okay, because if you do not – if you certainly – if you have not done it by 4 o'clock tomorrow afternoon, that means that you will be unlawfully at large and you can be arrested with or without warrant. To be unlawfully at large without reasonable excuse leads to a penalty of up to two years imprisonment. It also means this parole order that I have made may be revoked and you spend the rest of the time in custody.

Okay. So that is what is effectively the head sentence. With regards to the breach of the protection order from March where you were in the car with her then on that, I will order that you be convicted and sentenced to one month to be served concurrently with the same parole release date and the same declaration of time served. For the fail to provide your identifying particulars, in regards to that matter, I will order that a conviction be recorded but you be convicted and not further punished.

With regards to the possession of the bicycle, on that matter, I will also order that you be convicted and sentenced to one month to be served concurrently with the same declaration and parole release date. It will also – I will order the property be returned to the owner, although - - -

PROSECUTOR: If they could be - - -

BENCH: - - - I do - - -

PROSECUTOR: - - - located.

BENCH: - - - I do note that the serial number is no longer there.

PROSECUTOR: Yes. It could be forfeited - - -

BENCH: Yes.

PROSECUTOR: - - - if it is not - - -

BENCH: Otherwise - - -

PROSECUTOR: - - - located.

BENCH: The three matters from the 15th of March with regards to the unlicensed driving and using the car after you had taken the confiscation notice off it, deal with all three of those with one order, and that is that a conviction be recorded and you be convicted and fined \$600. Also, that you be disqualified from holding or obtaining a driver's licence for a period of two months from today's date [indistinct] just do not drive a motor vehicle at all for the next two months. No ifs, buts or maybes. Apart from the fact you will be breaching your parole, you are looking at \$7000 in fines, up to 18 months in jail and you will not be allowed to drive

for at least a further two years, okay. So you can knock on the door and get let back out. Once you have signed the paperwork and been released, you make sure you hotfoot it straight down to the parole office at Logan Central.

DEFENDANT: Yeah. Thank you.

BENCH: Okay.

PROSECUTOR: Thank you, your Honour.

MS [H]: Thank you, your Honour. If I - - -

PROSECUTOR: If I might be - - -

MS [H]: - - - excused.

PROSECUTOR: - - - excused.

BENCH: Yes, you may.

*MS [H]: Thank you. Good morning.*⁴²

53. The Applicant was clearly on notice about the seriousness of his family violence offending and the consequences of reoffending more generally. As it turned out, this warning was ignored.

54. In respect of this incident, the Applicant says:

"To the department of home affairs. My name is [the Applicant] and I am writing this letter to explain a few things that has happened in my life in the last four years now that I find myself in a deportation centre trying to get my visa back. First i would like to address the incident that happened in 2016, I was 23 years old when i met the mother of my children. After a couple of months of meeting her she told me that she was pregnant with my child so we got a place together We would never argue and everything was all good until she gave birth to our first son [Child A]. After she gave birth she had something wrong with her called post-natal depression and she wouldn't do what normal mothers do for their babies, so the care for our son was left to me not that it was a problem. I bottled fed and bathe my son and spent countless nights awake because there was something wrong with his mother that's when we started arguing i didn't know how to handle the situation I was in. I would put in all this effort to raise my son and to watch her do nothing got to me after a while. When (Child A) was about 7 months old I got a DNA test to see if I was the father, something I should of done a

⁴² Ibid, G15, Attachment C, pp 72-74.

lot earlier but I was too busy changing nappies and making countless bottles to feed him and just no sleep. The DNA test came back negative and I wasn't the father and that's when we had the huge argument in 2016 when the police was called and everything went downhill for me. After I spent 3 months in jail I got out to my ex-partner losing her mind and leaving her son at my mother's house and never returning to pick him up, that's when my mom called me up and asked me to come see Child A. From the day she left him at my mother's house he has been in my care because I honestly didn't know what to do I couldn't get a hold of her so kept him until 2019 that's when she came to her senses and started trying to contact me and just coming to my house uninvited and I couldn't turn her away because she was his real mother and I was just some random person I don't know. Since I've been away my ex-partner has lost both of our children into the custody of the department of child safety and if I were to get out of this place I would return to Brisbane and try with all my might to get my daughter and son out from their custody and I have spoken with child safety they are saying they can't get a hold of the mother of my kids and they are asking me where I am and I just feel like scum. It's ruining my mental health I keep thinking about what my son is thinking and he must think I don't love him for leaving him in some random person's care, the same goes for my daughter but she's still young so I still have a chance to be in her life before she realizes where my dad has been this last year. Thank you for reading.”⁴³

55. On 20 November 2018, the Applicant seriously assaulted KJ. The circumstances of this offending were put to the Applicant in the previous Tribunal matter, on 2 and 3 November 2020. He declined to answer questions about this incident, on legal advice.⁴⁴

56. A Child Protection Intake form, dated 22 November 2018, records the following:

“Family Details

- *[KJ] is the mother of [Child A].*
- *[KJ] is in a relationship with [the Applicant]. [KJ] is 27 weeks pregnant with [the Applicant's] child. [The Applicant] is not the biological father of [Child A] although [KJ] has been in her relationship with [the Applicant] for 5 years. The biological father is unknown.*

⁴³ Ibid, G21, Attachment I, p 114.

⁴⁴ Ibid, p 460 at [25]-[28].

- The family reside at [redacted]
- [KJ] has an older child, to a previous relationship who resides with his father.

Current Concerns:

On 22 November 2018, the Brisbane Intake Service received the following:

- On 20/11/18, there was a dv incident between [the Applicant] and [KJ]. During the incident, **[the Applicant] attempted to strangle [KJ], punched her in the stomach repeatedly in an attempt to kill the unborn child, pushed her to the ground and repeatedly hit her head on the floor. A neighbour phoned the police who attended and [KJ] was taken to hospital by QAS. She is still in hospital and has received 4 broken ribs.**
- **[KJ] stated that the attack was persistent and that [the Applicant] wanted to kill the unborn child. The police apprehended [the Applicant] and the child was cared for by someone else. [The Applicant] is out of police custody and back at home and the child is back with him. [KJ] is still in hospital. It is known there is a history of violence. In July 2017, [the Applicant] had locked her in the room all day for being “disrespectful”, would not let her out or allow her to eat and repeatedly called her derogatory names like “fucking cunt”.**
- There is also history in [KJ's] family of origin and in Feb and March 2017m [KJ] was experiencing violence from her father. She has some diminished mental capacity from being assaulted by her father.
- No complications with the unborn child.
- [KJ] is quite transient, a number of recent addresses over the past 2 years.

Child Protective History:

History dates back to 2009 and includes 8 CCRs and 1 Notification. **History of dv between the parents including [the Applicant] dislocating [KJ's]knee, pushed head through a wall, attempted to strangle, bruising, these incidents occurred while [KJ] holding the child. Concerns that mother has mental health issues (including PND), history of drug**

usage, depression, self-harming behaviour, incarcerations for drug issues, alcohol use, allegations [KJ] is an alcoholic and ice user (2015).

Most recent concerns received in February 2017 in relation to [KJ] going missing for a month, child in care of [the Applicant] who is violent, has had physical altercations with maternal extended family. Paternal family have history of violence, incarcerations, drug and alcohol use. [The Applicant] is not the father of child but caring for him with paternal family.

.....

Comments

The subject child is at an unacceptable risk of physical harm due to significant an ongoing domestic violence perpetrated by [the Applicant] towards [KJ]. files indicate that [the Applicant's] violence includes strangling, punching, hitting [KJ's] head repeatedly against walls and floor, pushing, deprivation of liberty (locking in room and preventing [KJ] to leave), controlling behaviour in relation to demanding respect from [KJ]. Previously, the violence has occurred on occasions while [KJ] has been holding [Child A] in her arms. On 20/11/18, there was a serious DV incident in which [KJ] required hospitalisation. [The Applicant] attempted to strangle [KJ], punch her repeatedly in the stomach in an attempt to kill the unborn child, banged her head repeatedly against the floor. [KJ] received 4 broken ribs and remains in hospital and [the Applicant] is caring for [Child A]. the violence in the relationship has been ongoing since the beginning of the relationship 5 years ago. The child remains at an unacceptable risk of harm due to the ongoing violence.

.....

Comments

The violence between [KJ] and [the Applicant], perpetrated by [the Applicant] has been ongoing since the birth of [Child A]. [Child A] has been exposed to this violence and, at time, directly implicated in the violence as [KJ] has been holding [Child A] during assaults. The child continued to be exposed to violence and therefore remain at unacceptable risk of emotional harm.

.....

Physical harm/Likelihood of physical harm

Are there life-threatening injuries or conditions requiring immediate medical attention, or is there plausible threat to life? No

Were severe or cruel disciplinary measures used? No

Is any child under age five years or limited by disability? Yes

Is there a severe or escalating pattern of paternal behaviour that is likely to result in physical harm within the next 24 hours? No

Emotional harm/Likelihood of emotional harm

Does the child display severe emotional distress or fear that needs a response within the next 24 hours? No

Is there an escalating pattern of parental behaviour that may result in severe emotional distress for the child; or is the child afraid of being in the home? No

.....

Harms

Name of child [Child A]

Harm Category

Neglect – No

Physical harm – Yes – Most serious

Sexual abuse – No

Emotional harm – Yes

Name of child [Unborn Child B]

Harm Category

Neglect – No

Physical harm – Yes – Most serious

Sexual abuse – No

Emotional harm – Yes

.....

Emotional harm comments: *The violence between [KJ] and [the Applicant], perpetrated by [the Applicant] has been ongoing since the birth of [Child A]. [Child A] has been exposed to this violence and therefore remain at an unacceptable risk of emotional harm.*

Physical harm comments: *The subject child is at an unacceptable risk of physical harm due to significant an ongoing domestic violence perpetrated by [the Applicant] towards [KJ]. Files indicate that [the Applicant's] violence includes strangling, punching, hitting [KJ's] head repeatedly against walls and floor, pushing, deprivation of liberty (locking in room and preventing [KJ] to leave), controlling behaviour in relation to demanding respect from [KJ]. Previously, the violence has occurred on occasions while [KJ] has been holding [Child A] in her arms. On 20/11/18, there was a serious DV incident in which [KJ] required hospitalisation. [The Applicant] attempted to strangle [KJ], punch her repeatedly in the stomach in an attempt to kill the unborn child, banged her head repeatedly against the floor. [KJ] received 4 broken ribs and remains in hospital and [the Applicant] is caring for [Child A]. The violence in the relationship has been ongoing since the beginning of the relationship 5 years ago. The child remains at an unacceptable risk of harm due to the ongoing violence.*⁴⁵

57. On 1 January 2019, the Applicant lost custody of Child A.⁴⁶
58. On 9 January 2019, the Applicant was involved in the theft of a motor vehicle, which he ultimately crashed into a bollard. He was under the influence of drugs.⁴⁷

⁴⁵ Ibid, TB5, pp 384-393.

⁴⁶ Ibid, G20, Attachment H, p 105.

⁴⁷ Ibid, TB2, p 300.

59. Between 7 and 10 January 2019, a Police Court Brief records that:

"The defendant in this matter is [the Applicant].

The victim in this matter is [redacted].

On Tuesday the 8th day of January 2019 police received a complaint from the victim in relation to his vehicle being stolen. The victim reported that between 5:00am and 9:00am on the 8th of January 2019 an unknown person had entered his house through an opened front door and had taken his car keys and his phone. The unknown person has then driven away in his vehicle.

The victim described his vehicle as being a grey Mitsubishi bearing Queensland registration [redacted].

At approximately 12:22am on Wednesday the 9th of January 2019 Police were conducting patrols along Alawoona Street Redback Plains and have observed a grey Mitsubishi Lancer bearing Queensland registration [redacted]. This vehicle was identified as being a stolen vehicle.

Police have attempted to intercept the vehicle however it has evaded police.

At 12:30pm on Wednesday the 9th day of January 2019 police have located a grey Mitsubishi Lancer bearing Queensland registration [redacted] at Downs Park which is located on Cashmere Street Redbank Plains.

The vehicle had been abandoned after colliding with a timber bollard.

Police located two witnesses who described two males running away from the car after it had crashed. One male was described as being wither indigenous or Torres Strait islander in appearance, late teens to early twenties, with dark hair.

The vehicle was subsequently towed to a holding yard for a forensic examination.

On Thursday the 10th day of January police from Ipswich Scenes of Crime attended the vehicle and conducted a forensic examination of the vehicle which revealed a fingerprint on the interior trim on the front dash.

This fingerprint was later identified as belonging to [the Applicant], the defendant in this matter.

Police from Ipswich District Property Team contacted the victim in this matter who stated he had never heard from the defendant and gave him no permission to be in his vehicle.

Police attempted to locate the defendant however identified that he had no fixed place of address.

Police have attempted to contact the defendant on his recorded contact numbers with no result.

Police have further attempted to contact residents of his previous recorded address for any forwarding addresses with no result.

On the 16th day of January 2019 police obtained an arrest warrant for the apprehension of the defendant.”⁴⁸

60. On 25 February 2019, the Applicant's daughter (Child B) was born.⁴⁹ The Applicant has deposed to the fact that he discovered Child B's existence in or about 2019. He claims that Child B is his biological daughter, but his name does not appear on her birth certificate.⁵⁰
61. Child B has serious health problems including brain tumours and epilepsy. She requires special care. There is medical evidence to suggest that she may not survive past the age of 5 years.⁵¹
62. On 28 February 2019, the Applicant was involved in a police pursuit.⁵²
63. On 2 March 2019, a Police Court Brief records:

“Facts of the charge 3 of 6

⁴⁸ Ibid, TB2, p 300.

⁴⁹ Ibid, G20, Attachment H, p 104.

⁵⁰ Ibid, TB5, p 395.

⁵¹ Ibid, Exhibit A6, p 183, Exhibit 8 p 189, Exhibit A14, pp 221-222, Exhibit A15, p 223 and Exhibit A16, p 224; E.g. early 2024.

⁵² Ibid, TB2, p 308.

The defendant in this matter is [the Applicant].

On the [redacted] In relation to a single vehicle accident. Further information was supplied to police by witnesses that stated that they observed a single male occupant get out of the driver's side and run off up the road.

Witnesses stated that the driver was male in appearance, 170cm tall, brown curly hair, brown beard, cream shorts and possibly of dark appearance. Witnesses also stated that the male appeared to be under the influence of either alcohol or drugs.

Upon police attending the location they observed a single vehicle which was a Holden Captive bearing Queensland registration [redacted] facing in the wrong direction with extensive damage to the vehicle . Police also observed that the front passenger side tyre had been dislodged from the vehicle and was wedged up against a concrete street lamp which had been ripped out of the ground because of the crash.

QFRS and Energex Attended the scene as fluid leaking out of the vehicle. Yesterday it was caused to the light pole and railing surrounding the area.

At the request of police, Logan Dog squad attended the scene to conduct a track of the male driver. Logan Dog squad deployed their dog and successfully track the male driver to an address about 800 metres away from the crash site.

The male driver was transported to Logan Hospital for observations by QAS. Whilst at the hospital police spoke with the male driver who identified himself as [the Applicant], the defendant in this matter.

Charge 1:

The defendant stated to police that he fell asleep whilst driving the vehicle on Chatswood Road, Daisy Hill. The defendant remembers minor details of the crash. The defendant further stated that he fled the scene as he just wanted to go home and go to bed as vehicle that he was driving was undrivable. The defendant did not say anything further in relation to the crash.

Charge 2:

Police conducted a cheque on the defendant's licence which revealed that he was currently unlicensed due to him not applying back for his licence after being disqualified by the courts. His disqualification. His disqualification period expired on the 3rd day of October 2016.

The defendant did not answer any questions regarding his licence status.

Charge 3:

Police located a bum bag in the possession of the defendant. Inside the bum bag along with the defendant's identification police located a small clip sealed bag which contained a crystal item weighing 0.9g. Police believed that the crystal item was methylamphetamine (ICE).

The defendant did not answer any questions over the location of the drug item.

Charge 4:

Police observed that the defendant appeared flighty, his voice was ranging from high to low tones comma he was easily irritable, and his eyes were pinpoints. Due to the defendant displaying these indicia signs comma he was arrested outright for driving UID.

On the 3rd day of March 2019, upon requirement made and direction given, the Defendant provided a specimen of blood required by a police officer.

upon clearance by the doctors at Logan Hospital the defendant was transported to the Beenleigh Watch house and was released on a bail undertaking. The defendant is to appear in court on the 5th day of March 2019 in relation to these offences.

.....

Charge 1 of 6 // [TORA] 831(1) Drive without due care and attention or Drive without reasonable consideration for other persons using road or place

That on the 2nd day of March 2019 at Daisy Hill in the Magistrates Court District of Beenleigh in the State of Queensland one [the Applicant] did drive a motor vehicle namely a car on a road namely Chatswood Road Daisy Hill without due care and attention and it was averred that the said car is a motor vehicle as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that the said Chatswood Road is a road as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995

Charge 2 of 6 // [TORA] 78(1) Driving of motor vehicle without a driver licence

That on the 2nd day of March 2019 at Daisy Hill in the Magistrates Court District of Beenleigh in the State of Queensland one [the Applicant] did drive a motor vehicle namely a car on a road namely Chatswood Road Daisy Hill the said [the Applicant] Not being at that time the holder of driver licence authorising him to drive that vehicle on that road and it is averred that the said car is a motor vehicle as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that the said Chatswood Road is a road as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that on the 2nd day of March 2019 the said [the Applicant] was not the holder of a driver licence authorising him to drive the said motor vehicle on the said road.

Charge 4 of 6 // [TORA] 79(1)(a) Did drive U.I.L (motor vehicle/tram/train/vessel)

That on the 2nd day of March 2019 at Daisy Hill in the Magistrates Court District of Beenleigh in the State of Queensland one [the Applicant] whilst he was under the influence of liquor or a drug did drive a car namely a motor vehicle on a road namely Chatswood Road Daisy Hill and it is averred that the said car is a motor vehicle as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that the said Chatswood Road is a road as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995

Charge 5 of 6 // [PPRA] 754(2) Evasion offence

That on the 28th day of February 2019 at Kingston in the Magistrates Courts District of Beenleigh in the State of Queensland one [the Applicant] being the driver of a motor vehicle namely a car having been given a direction to stop the said motor vehicle by a police officer namely Constable [GB] exercising power under an Act and using a police service motor vehicle failed to stop the said motor vehicle as soon as reasonably practicable in circumstances where a reasonable person would stop the motor vehicle and it is averred that the said car is a motor vehicle as defined in schedule 6 of the Police Powers and Responsibilities Act 2000.

Charge 6 of 6 // [TORA] 78(1) Driving of motor vehicle without a driver licence

That on the 28th day of February 2019 at Kingston in the Magistrates Courts District of Beenleigh in the State of Queensland one [the Applicant] Did drive a motor vehicle namely a car on a road namely Marshall Street Kingston the said [the Applicant] Not being at that

time the holder of a driver licence authorising him to drive that vehicle on that road and it is averred that the said car is a motor vehicle as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that the said Marshall Street is a road as defined in schedule 4 of the Transport Operations (Road Use Management) Act 1995 and it is averred that on the 28th day of February 2019 the said [the Applicant] was not the holder of a driver licence authorising him to drive the said motor vehicle on the said road.

.....

Facts of charge 1 of 6

The defendant in this matter is [the Applicant]

On the 2nd day of March 2019 at 11:05pm Police from Springwood were detailed to attend the location of [redacted] in relation to a single vehicle accident. Further information was supplied to police by witnesses that stated that they observed a single male occupant get out of the driver's side and run off up the road.

Witnesses said that the driver was male in appearance, 170cm tall, brown curly hair, brown beard, cream shorts and possibly of dark appearance. Witnesses also stated that the male appeared to be under the influence of either alcohol or drugs.

Upon police attending the location they observed a single vehicle which was a Holden Captive bearing Queensland registration [redacted] facing in the wrong direction with extensive damage to the vehicle. Police also observed that the front passenger side tyre had been dislodged from the vehicle and was wedged up against a concrete street lamp which had been ripped out of the ground because of the crash.

QFRS and Energex Attended the scene as the pole that was knocked over was a light pole and there was fluid leaking out of the vehicle. Extensive damage was caused to the light pole and railing surrounding the area.

At the request of police, Logan Dog squad attended the scene to conduct a track of the male driver. Logan Dog squad deployed their dog and successfully track the male driver to an address about 800 metres away from the crash site.

The male driver was transported to Logan Hospital for observations by QAS. Whilst at the hospital Police spoke with the male driver who identified himself as [the Applicant], the defendant in this matter.

Charge 1

The defendant stated to police that he fell asleep whilst driving the vehicle on Chatswood Road, Daisy Hill. the defendant remembers minor details of the crash. The defendant further stated that he fled the scene as he just wanted to go home and go to bed as the vehicle that he was driving was undrivable. The defendant did not say anything further in relation to the crash.

Charge 2

Police conducted a cheque on the defendants licence which revealed that he was currently unlicensed due to him not applying back for his licence after being disqualified by the courts. His disqualification. Expired on the third day of October 2016.

The defendant did not answer any questions regarding his licence status.

Charge 3

Police located a bum bag in possession of the defendant. Inside the bum bag along with the defendants identification police located a small clip sealed bag which contained a crystal item weighing 0.9g. Police believe that the crystal item was methyldamphetamine (ICE).

The defendant did not answer any questions over the location of the drug item.

Charge 4

Police observed that the defendant appeared flighty, his voice was ranging from high to low tones, he was easily irritable, and his eyes were pinpoints. Due to the defendant displaying these indicia science, he was arrested outright for driving UID.

On the third day of March 2019, upon requirement made an direction given, the defendant provided a specimen of blood required by a police officer.

Upon clearance by the Doctors at Logan hospital the defendant was transported to Beenleigh watch house and was released on a bail undertaking. The defendant is to appear in court on the 5th day of March 2019 in relation to these offences.

Facts of the charge 5 of 6

The defendant in this matter is [the Applicant].

On the 28th day of February 2019 at 9:10pm, police from Gold Coast RAP were patrolling in an unmarked vehicle on Mayes Ave, Kingston when a vehicle came travelling up from behind them at speed, police moved over to the left and the vehicle drove past.

The vehicle was a silver Holden Captiva station wagon Qld registration [redacted]. the vehicle turned right from Mayes Avenue onto Orana Street. This vehicle was swerving left and right on this road. The vehicle then turned left onto Mawarra Street Kingston, police then activated lights and siren and vehicle pulled over outside number.

As police were exiting their vehicle the Holden Captiva drive off slowly. The vehicle had stopped in an odd position weather road deviate, so police believed that the vehicle was moving forward to a better location. The vehicle then drove about 20 metres and stopped on the Crest of the hill and the driver immediately got out of the vehicle , however the vehicle kept moving forward and started rolling down the other side of the hill.

Police observed the driver to be a male, approx 20 years, dark complexion, 175cm tall, slim build, black curly hair, short black beard wearing a yellow sports t-shirt with advertising on it - like that of a team sports t shirt. The driver appeared to be significantly drug effected. As the vehicle was rolling away the driver got back into his vehicle, restarted the vehicle and drove forward onto Hill Street and then Marshall Street at normal speed – this distance is approximately 50 meters.

The vehicle stopped at the intersection of Marshall Street and Kingston Road. Police then pulled up next to the driver and spoke with him while still seated in the car. Police asked the driver if he was alright and told him to put the vehicle in park. The driver was rambling and then turned left quickly and drove along Kingston Road. Police have then informed PCC and inform them of an evade police [redacted] refers. Police observed the Holden Captiva turn left into Mayes Ave without stopping at a red traffic control light. Police were unable to pull over on Kingston Road as the section had 3 lanes with no shoulder, police turned into Mayes

Ave and pulled over to the left. Con [B] was the driver of the marked police vehicle. Con [B] then got out of the vehicle and conducted the vehicle safety checks.

On the 2nd day of March 2019 at 11:05pm Police from Springwood were detailed to attend the location of [redacted] in relation to a single vehicle accident. Further information was supplied to police by witnesses that stated that they observed a single male occupant get out of the driver's side and run off up the road.

Witnesses stated that the driver was male in appearance, 170cm tall, brown curly hair, brown beard, cream shorts and possibly of dark appearance. Witnesses also stated that the male appeared to be under the influence of either alcohol or drugs.

Upon police attending the location they observed a single vehicle which was a Holden Captive bearing Queensland registration [redacted] Facing in the wrong direction with extensive damage to the vehicle. Police also observed that the front passenger side tyre had been dislodged from the vehicle and was wedged up against a concrete street lamp which had been ripped out of the ground because of the crash.

QFRS and Energex attended the scene as the pole that was knocked over was a light pole and there was fluid leaking out of the vehicle. Extensive damage was caused to the light pole and railing surrounding the area.

At the request of police, Logan Dog squad attended the scene to conduct a track of the male driver. Logan Dog squad deployed their dog and successfully track the male driver to an address about 800 metres away from the crash site.

The male driver was transported to Logan Hospital for observations by QAS. Whilst at the hospital Police spoke with the male driver who identified himself as [the Applicant], the defendant in this matter.

Charge 5:

The defendant disclosed to police after being informed of the evade details that he was the driver of the vehicle at the time of the offence and had been in possession of that vehicle for an undisclosed amount of days. The defendant did not disclose any further details regarding this.

Charge 6:

Police conducted a cheque on the defendants licence which revealed that he was currently unlicensed due to him not applying for his licence after being disqualified by the courts. His disqualification period expired on the 3rd day of October 2016.

The defendant did not answer any questions regarding his licence status.

Upon clearance by the Doctors at Logan Hospital the defendant was transported to the Beenleigh Watch house and was released on a bail undertaking. The defendant is to appear in court on the 5th day of March 2019 in relation to these offences.’⁵³

64. On 19 March 2019, the Beenleigh Children’s Court made orders regarding the welfare of Child A, in the following terms:

“An application to extend the court assessment order was made by [DA], an authorised officer under the Child Protection Act 1999, in the Children’s Court at Kent Street, Beenleigh QLD 4207, Australia, on Tuesday, 19 March 2019 in relation to the above-named child.

Having considered the grounds of the application I am satisfied that an investigation is necessary to assess whether the child is a child in need of protection, and that such investigation cannot be properly carried out unless the order is made.

I MAKE a court assessment order in relation to the child –

Authorising a medical examination or treatment of [Child A]

Granting temporary custody of [Child A] to the chief executive an authorising an authorised officer or police officer to keep the child in the chief executive’s custody while the order is in force

Directing [KJ] and [the Applicant] not to have contact, direct or indirect, with [Child A] other than when a departmentally approved person is present.

This court assessment order will continue in force until Tuesday, 2 April 2019.’⁵⁴

⁵³ Ibid, TB2, pp 304-311.

⁵⁴ Ibid, TB5, p 381.

65. On 2 April 2019, the Beenleigh Children's Court made orders regarding the welfare of Child A, in the following terms:

"An application to extend the court assessment order made in the Children's Court at Kent Street, Beenleigh QLD 4207 on Tuesday, 19 March 2019 in relation to the above-named child was by [DA], an authorised officer under the Child Protection Act 1999, on Tuesday, 2 April 2019.

Having considered the grounds of the application I am satisfied that it is in the child's best interest to extend the court assessment order.

*I ORDER that the court assessment order in relation to the child be extended until Tuesday, 30 April 2019.*⁵⁵

66. A Police Court Brief for the events of 26 April 2019 states:

"

In relation to charge 4 – Burglary (Alternatively charge 5 – Receiving Tainted property)

The victim in this matter is [redacted] a 23-year-old male residing at the occurrence address of [redacted].

At about 8:50am on the 26th day of April 2019, the victim left his dwelling, securing the dwelling behind him with all doors and windows locked. The victim returned home at approximately 10:30am on the same day. Upon walking into the dwelling noticed that his dogs were distressed and further noticed property scattered throughout the dwelling and backyard as well as the garage door opened.

The victim conducted a search of the dwelling and noticed that it appeared as though entry had been forced through a broken rear window.

The victim further located a wallet in his bedroom that did not belong to him. The victim opened the wallet located identification and bank cards belonging to the defendant in this

⁵⁵ Ibid, TB5, p 382.

matter. The victim advised that he does not know the defendant and that there was no lawful reason for the defendant's wallet to be in his dwelling.

The victim compiled a list of property that was stolen which included 2x debit cards, and necklace with a gold pendant, a Ford car key and Holden car key.

As per Charge 2, The defendant was arrested in the same yard the following day after decamping from his parents dwelling and jumping their back fence into the occurrence address for this burglary. Upon being arrested, police conducted a search of the defendant and subsequently located 2x debit cards in the name of the victim in his pocket as well as both of the stolen car keys. Police also located the victims necklace which the defendant was wearing.

In relation to charge 6 – Serious assault person over 60 and charge 8 (wilful damage)

The victim in this matter is [redacted] a 60-year-old male residing at [redacted].

The victim is married to the defendant's mother, the victim and defendant have known each other for 16 years.

On the 26th April 2019 at about 9:00am The victim was at home at [redacted] with his wife, [redacted] when the defendant has pushed open their bedroom door.

The defendant appeared to be under the influence of an intoxicating substance, the victim preceded to walk past the defendant and went into an adjacent room to go through some paperwork.

The defendant then walked into the lounge room, the victim has then walked out to the computer which was approximately 3 metres from the office he was in. A short time later the defendant came walking down the hallway in an aggressive way. As the victim turned around, he observed an office chair flying into a nearby corner.

The defendant has then walked to the front door which was approximately 3 metres away from where the victim was sitting, the victim has then stood up and walked towards the defendant and said, 'what's wrong', the defendant has then got up in the victims face and yelled words to the effect 'you don't treat me good'. the victim calmly said, 'please leave, I am not doing anything wrong'.

*the defendant has then charged away towards the back door of the house, the victim heard a bang come from the back of the house and heard his wife say, 'just leave'. **the victim felt worried for the safety of himself and his wife.** The victim then went back to the office and picked up an axe and had a plastic sheath over the axe head. **The victim was scared for his own safety as the defendant appeared to be under the influence of something and the defendant has previously assaulted the victim before.** The victim had no intention of hitting the defendant.*

The victim then saw the defendant walking back towards the front door, the defendant picked up a genie statue and threw it into the front door on his way out. The defendant then started to walk back towards the front garage and the victim has then followed the defendant out while holding his axe in his right hand down by his side.

The defendant has then thrown a brick at the victim and has hit his left upper chin causing immediate pain and discomfort. The defendant then threw another brick at the victim hitting his right thigh causing further immediate pain and discomfort.

*The victim has then run towards the victims Red Holden Commodore ute, bearing Queensland registration [redacted] which was parked in the front of the garage. The defendant has raised one of his hands which the victim saw over the roof of his youth and **the victim has heard the driver's side window smashing.***

*The victim has then gone back inside where I put the axe back in the office. **The victim has then called the police, while the victim was finding the police the victim's wife has walked at the front of the house.***

***A short time later the defendant has walked back to the front door of the house and said words to the effect 'where's my knife', the defendant was now holding a shovel in both of his hands by the handle.** The victim said to the defendant 'put the shovel down'. The victim then walked to the front door and said to the defendant 'can you please leave'.*

*The victim then told the defendant that he had called the police. **The defendant has then raised the shovel, he was now standing approximately one and a half metres away from the victim and while holding the shaft of the shovel with both hands has shoved the handle and into the victims stomach in a driving motion, the victim felt immediate pain and discomfort.***

*The victim has launched towards the defendant to try and put him in a headlock, the defendant hit my hand away causing the victim to fall to the ground, which has caused pain to his knee. **The victim saw that his wife was standing behind the defendant and has heard a scuffle happening between the defendant and his wife, he has then heard his wife yell ‘don’t hurt my husband’.***

The victim has then got off the floor where he has gone inside again and for in the police, his wife has then walked back inside, and the victim has noticed her bleeding from her two fingers on her left hand, his wife then said ‘lock all the doors’.

The victim then stated he heard footsteps on the roof of his house, a short time later police then arrived although they were unable to locate the defendant and believe that he decamped shortly prior to their arrival.

In relation to charge 7 – Common Assault

The victim in this matter is [redacted] (the defendant’s mother), a 55-year-old female residing at [redacted].

*As per the facts of charge 6m whilst the defendant and victim [redacted] were In a struggle at the front of the dwelling, **the victim [redacted] has attempted to intervene whilst the defendant was swinging the shovel in the air towards [redacted].***

as a result, the defendant hit [redacted] in the left hand with the shovel causing immediate pain, swelling and bleeding from her hand. The defendant was not stopped by assaulting his mother and continued on his path against victim.⁵⁶

67. A Police Court Brief for the events of 27 April 2019 states:

“The defendant in this matter is [the Applicant], a 25-year-old male currently residing at [redacted]

In relation to charge 1 – Burglary and commit indictable offence

⁵⁶ Ibid, TB2, pp 322-324.

The victim in this matter is the defendant's [redacted] a 60-year-old male currently residing at the occurrence address of [redacted].

At about 10:30am on the 27th day of April 2019, the victim was asleep inside his dwelling located at [redacted]. The victim was woken by the defendant who immediately began arguing with the victim. The victim is unsure as to how the defendant entered the dwelling although has advised that the defendant is not welcome at the dwelling.

The argument Has escalated until the defendant has picked up a high pressure cleaner and thrown it inside the dwelling causing damage to the cleaner. The argument continued until the victim left the dwelling and contacted police who went nearby.

The defendants tola gold necklace and a debit card belonging to the victim and upon police arriving at the dwelling, decamped out the back door of the dwelling still in possession of a stolen items.

Police arrived at the occurrence address, activated their body worn video cameras (which caught all events as per the facts of the charge) and entered the dwelling immediately hearing the defendant decamp out of the rear door.

In relation to charge 2 – Trespass

The victim in this matter is [redacted] a 23-year-olf male residing at the occurrence address.

The defendant decamped out of the back of the occurrence address and jumped the back fence into a rear yard of a dwelling located at [redacted] without any permission from the victim, and continued to run from police.

Upon entering the rear yard, the defendant was met by police who were at the location conducting an examination relating to a burglary that had occurred the previous day.

In relation to charge 3 – Wilful Damage of Police Property

After citing the defendant, police arrested him although he attempted to struggle and resist arrest. Police restrained the defendant and transported him to their waiting marked police vehicle.

Upon approaching the vehicle, the defendant lifted his right knee and pushed against the police vehicle causing damage to the passenger side front quarter panel. The defendant said, "you're not slamming my head into the car, I'm going to tell my lawyer you made that dent with my head"

*the defendant again attempted to resist entering the police vehicle although offered only minor resistance.*⁵⁷

68. On 29 April 2019, the Applicant was in the Beenleigh Magistrates Court, charged with failure to appear in accordance with an undertaking (on 5 March 2019). He was convicted and fined \$ 650.00.⁵⁸
69. On 19 June 2019, the Applicant was in the Beenleigh Magistrates Court charged with burglary (on 27 April 2019), escape from lawful custody (on 13 March 2019), receiving tainted property (on or about 26 April 2019), common assault (on 27 April 2019), serious assault on a person over 60 (on 26 April 2019), unlawful use of a motor vehicle (between 7 and 10 January 2019), possession of dangerous drugs (on 2 March 2019), trespass (on 27 April 2019), wilful damage of police property (on 27 April 2019), breach of a bail condition (between 4 March and 27 April 2019 and an evasion offence (on 28 February 2019). He was convicted and sentenced to 18 months imprisonment concurrent.⁵⁹
70. The sentencing remarks of Magistrate Kilmartin, on 19 June 2019, are highly relevant:

BENCH: Defendant, you've pleaded guilty today to a range of offences, a serious assault upon your stepfather and a common assault on your mother are offences that stand out, as does the burglary charge. The serious assault charge and the common assault charge are magnified in their seriousness by the relationship you had to the two people who were the victims and made infinitely worse by the fact that, right back since 2009, you've clearly been a friend of assaulting people.

You must understand, you can't go through life assaulting people just because you don't like what they're doing - - -

DEFENDANT: Yes, your Honour.

⁵⁷ Ibid, TB2, p 322.

⁵⁸ Ibid, G12, Attachment A, p 61.

⁵⁹ Ibid, G12, Attachment A, pp 59-61 and Exhibit A1, p 161.

*BENCH: - - - or whatever. You just can't do it. **You've had opportunities. You just keep on going on and on and on with it.** I accept that you've had some problems in the past. I accept that these are all pleas of guilty. I accept that they're entered in some measure of timelessness. You were entitled to have the matters adjourned so you could get some competent legal advice, and that's what you've done, having regard to the seriousness of the outcomes, which are obviously going to be formed here today, but to ensure that they didn't get worse.*

***The court has to impose penalties which discourage thuggery. Just going around beating people up for reasons you think are important are just totally unacceptable. And taking – breaking into people's houses and taking their property is also very serious.** In a sense, it's the most serious of the offending and it's a sentence which the prosecutor urges a – the maximum penalty for this that the court – which is going to impose today. And that [indistinct] you just can't go around breaking into people's property.*

The jewellery, for example, might not be worth much money at all, but the facts are it's the hurt that people feel when their homes are invaded and the sentimental value of that kind of property is tremendous. It might be jewellery worth \$10.50 down the road a hockshop, it might be all it's worth, it mightn't even be worth that. But to the minds of the people who've lost it, it's very, very personal and it's a very – it's a sense of great humiliation.

The court today is going to impose a substantial head sentence, but the court's going to release you earlier than it otherwise would. And the reason why the court's going to release you earlier, is that the court's heard what Ms [B's] had to say about the troubles you've had in the past and, also, to see you in the community, under supervision for a substantial period of time, so you can address your drug issues, find yourself with some better qualifications and adjust your life so as you can move forward into the future. The court notes that you're were taking responsibility for that child. It's unfortunate that that all blew up.

DEFENDANT: Thank you, your Honour.

BENCH: And it turns out that you weren't the father of the child after all, but at least you had the human decency to try to be responsible for the child. But that doesn't, of course, exclude your overall liability, but it certainly gives the court some confidence that, if you are pointed in the right direction, as it were, you can see the light at the end of the tunnel. Now, the drugs and the utensils, of course, are to be forfeited and the 53 days in custody is to be declared and all sentences are to – going to be served concurrently. The driving no licence and fare evasion, you'll be convicted and not further punished. I'm going to set a parole release date of the 2nd of December. That means you get out of custody on the 2nd of December and you've got the rest of the period of time – which I'll come to in a minute – to use parole constructively so as you can hopefully benefit and get your life back in order. Rule a line across the page, as it seems, look to the future.

*BENCH: Yes. That's what I said, I'm sorry. You're – **the burglary charge, you're sentenced to two years imprisonment. The serious assault charge of a person over 60, to 18 months imprisonment. For the common assault charge, 12 months imprisonment. For the breach of bail, trespass, damage to police property, driving without due care and attention, wilful damage, you're sentenced to three months imprisonment.***

Escaping from lawful custody, six months in prison. Receiving, nine months in prison. That's another offence, without people receiving, there wouldn't be thieving. That's

why the punishment for receiving is far greater under the Criminal Code than for stealing. Unlawful use of the motor vehicle, again, other people's property, six months in prison.

The – you lose your licence for two years for failure to stop the motor vehicle. You're sentenced to 50 days imprisonment for not stopping the motor vehicle. You lose your licence for drunk driving for six months. And you're sentenced to 30 days imprisonment for drunk driving. And you're ordered to pay the compensation, \$2000 and \$1000, respectively, for the serious assault and the common assault. Those sums in the [indistinct]

BENCH: When – now, when you're on parole, you've got the keys to prison in your pocket. If you act responsibly, you don't go back to jail. Right. Thank you.⁶⁰

71. I also note the information provided to the Respondent regarding this offending:

The Department has received the following information regarding [the Applicant's] conviction of 19 June 2019.

1) [CC] 340(1)(g) Serious assault person over 60

That on the 26th day of April 2019 at Daisy Hill in the State of Queensland one [the Applicant] unlawfully assaulted one [VICTIM1] a person 60 years or more.

Facts of the charge:

The victim in this matter is [VICTIM1] (the defendant's step father), a 60-year-old male residing at [redacted].

The victim is married to the defendant's mother, the victim and defendant have known each other for 16 years.

On 26th April 2019 at about 9:00am the victim was at home at [redacted] with his wife, [VICTIM2], when the defendant has pushed opened their bedroom door.

The defendant appeared to be under the influence of an intoxicating substance, the victim proceeded to walk past the defendant and went into an adjacent room to go through some paperwork.

The defendant then walked into the lounge room, the victim has then walked out to the computer which was approximately 3 metres from the office he was in. A short time later the defendant came walking down the hallway in an aggressive way. As the victim turned around, he observed an office chair flying into a nearby corner.

The defendant has then walked to the front door which was approximately 3 metres away from where the victim was sitting, the victim has then stood up and walked towards the

⁶⁰ Ibid, G13, Attachment B, pp 64-67.

defendant and said, 'what's wrong', the defendant has then got up in the victim's face and yelled words to the effect 'you don't treat me good'. The victim calmly said, 'please leave, I am not doing anything wrong'.

The defendant has then charged away towards the back door of the house, the victim heard a bang come from the back of the house and heard his wife say, 'just leave'. The victim felt worried for the safety of himself and his wife.

The victim then went back to the office and picked up an axe which had a plastic sheath over the axe head. The victim was scared for his own safety as the defendant appeared to be under the influence of something and the defendant has previously assaulted the victim before. The victim had no intention of hitting the defendant.

The victim then saw the defendant walking back towards the front door, the defendant picked up a genie statue and threw it into the front door on his way out. The defendant then started to walk back towards the front garage and the victim has then followed the defendant out while holding his axe in his right hand down by his side.

The defendant has then thrown a brick at the victim and has hit his left upper chin causing immediate pain and discomfort. The defendant then threw another brick at the victim hitting his right thigh causing further immediate pain and discomfort.

The defendant has then run towards the victim's Red Holden Commodore ute, bearing Queensland Registration [redacted] which was parked in the front of the garage. The defendant has raised one of his hands which the victim saw over the roof of his ute and the victim has heard the driver's side window smashing.

The victim has then gone back inside where I put the axe back in the office. The victim has then called the police, while the victim was phoning the police the victim's wife has walked at the front of the house.

A short time later the defendant has walked back to the front door of the house and said words to the effect 'where's my knife', the defendant was now holding a shovel in both of his hands by the handle. The victim said to the defendant 'put the shovel down'. The victim then walked to the front door and said to the defendant 'can you please leave'.

The victim then told the defendant that he had called the police. The defendant has then raised the shovel, he was now standing approximately one and a half metres away from the victim and while holding the shaft of the shovel with both hands has shoved the handle end into the victim's stomach in a driving motion, the victim felt immediate pain and discomfort. The victim has lunged towards the defendant to try and put him in a headlock, the defendant hit my hand away causing the victim to fall to the ground, which has caused pain to his knee. The victim saw that his wife was standing behind the defendant and has heard a scuffle happening between the defendant and his wife, he has then heard his wife yell 'don't hurt my husband'.

The victim has then got off the floor where he has gone inside again and phoned the police, his wife has then walked back inside, and the victim has noticed her bleeding from her two fingers on her left hand, his wife then said 'lock all the doors'. The victim then stated he heard footsteps on the roof of his house, a short time later police then arrived although they were unable to locate the defendant and believe that he decamped shortly prior to their arrival.

2) [CC] 335 Common assault

That on the 27th day of April 2019 at Daisy Hill in the State of Queensland one [the Applicant] unlawfully assaulted one [VICTIM2].

Facts of the charge:

The victim in this matter is [VICTIM2] (the defendant's mother), a 55-year-old female residing at [redacted]. As per the facts of charge 6, whilst the defendant and victim [VICTIM1] were in a struggle at the front of the dwelling, the victim [VICTIM2] has attempted to intervene in whilst the defendant was swinging the shovel in the air towards [VICTIM1].

As a result, the defendant hit [VICTIM1] in the left hand with the shovel causing immediate pain, swelling and bleeding from her hand.

The defendant was not stopped by assaulting his mother and continued on his path against victim [VICTIM1].⁶¹

72. In respect of this offending, the Applicant says:

"Next I would like to address the incident that happened in April 2019. I have already apologised to my mother and my stepdad for my behaviour that day but that is due no excuse for the way I acted. I feel ashamed of the person I was that day, I have told them that I will pay for the damage that I caused. If I were to get out of this place I would seek help with a rehab centre or find someone to talk about my issues. The day this all happened I wasn't in the right state of mind I was trying to run away from the problems with my ex partner and our son, I was truly in a bad time in my life and I turned to drugs to ease the pain of leaving my son with his mother after all the effort and time I spent with him. Now I think about it I should have fought harder to keep him in my life. He was the only stability I had in life, I grew up in a broken home and I was all over the place until I had someone to care for. Even though [Child A] wasn't my blood, my family and I took care of him like he was. Every week I jump on the phone and call my mom and step dad just to say sorry and we are on good terms , they have done so much for me to this day my mom is the only one trying to get my kids out of welfare and she sees them twice a week but I don't want to leave that burden up to my mother she has lung cancer and I'm not sure how much longer she has left in this world anyways my kids are my responsibility and I wish I could see them again it hurts every day being away from them. Thanks for reading."⁶²

⁶¹ Ibid, G14, Attachment B1, pp 68-70.

⁶² Ibid, G21, Attachment I, p 115.

73. After his incarceration, KJ lost custody of Child A and Child B due to her drug abuse. They have both been in State care.⁶³ Child A has also spent two to three years in the care of his biological father. The Applicant told the Tribunal that in recent weeks, Child A has returned to the custody of KJ. The Applicant's mother maintains regular contact with the children. She has been diagnosed with lung cancer and could not realistically care for them full time.⁶⁴
74. On 16 September 2019, the Applicant's visa was cancelled under s 501(3A) of the Act, on the basis of his sentence of 18 months imprisonment.⁶⁵
75. On 17 September 2019, the Applicant requested the revocation of the visa cancellation.⁶⁶
76. On 2 December 2019, the Applicant became eligible for parole.⁶⁷
77. On 19 August 2020, the Respondent determined not to revoke the visa cancellation. The Applicant acknowledged receipt of this decision on 20 August 2020.⁶⁸ On 16 September 2020, the Beenleigh Children's Court made orders regarding the welfare of Child A, in the following terms:

"On Tuesday, 19 March 2019 the Beenleigh Childrens Court made a court assessment order under Section 44 of the Child Protection Act 1999 in relation to your child [Child A]. A copy of the order is attached. This order will expire on Tuesday, 2 April 2019 unless it is extended or revoked.

The court states that health professional are permitted to carry out any medical examinations and treatment of [Child A] that are considered necessary.

The court order also states that the custody of [Child A] is granted to the Chief Executive Officer, Department of Child Safety for the period of the order. The order therefore permits

⁶³ Ibid, Exhibit A6, p 184.

⁶⁴ Ibid, Exhibit A6, p 186.

⁶⁵ Ibid, G18, Attachment F, p 89.

⁶⁶ Ibid, G19, Attachment G, pp 96-98, G20, Attachment H, pp 99-113, G21, Attachment I, pp 114-115 and G22, Attachment J, pp 116-122.

⁶⁷ Ibid, Exhibit A1, pp 162-163.

⁶⁸ Ibid, G25, p 157.

departmental officers and police officers to keep the child in the custody of the Chief Executive Officer.

The effect of this order is that although you retain guardianship, departmental officers have the authority to make decisions about where [Child A] will leave for the period of the order and about his daily care. This includes decisions regarding schooling, routine medical care and everyday activities. It also means that you must not remove [Child A] from the care of the person with whom he has been placed. The department has responsibility for [Child A's] daily care, but as his guardian, you continue to have responsibility for his long term welfare.

The court order also states that [KJ] and [the Applicant] is only to have contact with [Child A] when a departmentally approved person is present.

*Under the Child protection Act 1999 You have the right to appeal the court's decision to make the order. To lodge an appeal you should see a solicitor or make application directly through the Registrar of the Children's Court. Your appeal will then be heard by a Childrens Court Judge. Please note that you must lodge your appeal within **28 days** of the court order being made.*⁶⁹

78. A Case plan of the same date states:

“ **[KB]**

Child Safety are worried that Ms [KJ] Is not agreeable to administering medication for [Child B], Despite a number of medical professionals explaining to her the gravity of [Child B's] condition and the impact this can have on her life and development. If [Child B] is not provided medication this can result in increased clinical seizure activity; delayed development and or ill health/death.

Child Safety are worried that if Ms [KJ] is stressed and frustrated she may shout and yell in front of the children; may not engage with services (after initially consenting) and becomes isolated from her network and this could result in the children being scared and trying to appease Ms [KJ] to reduce the outbursts; lonely and withdrawn (impacting on development). Additionally this could result in Ms [KJ] becoming heightened and ultimately fracturing family and professional relationships.

⁶⁹ Ibid, TB5, p 379.

Child Safety are worried that if Ms [KJ] Has post Natal depression this result in her being unable to meet the basic care needs of [Child A] and [Child B] in that she is unable to bathe them or herself for a number of days and requires assistance in meeting their needs for food and warmth. This has previously been observed when [Child A] was younger and current behaviours may suggest a recurrence. If Ms [KJ] Is unable to supervise the children appropriately this is likely to make them feel lonely; scared and they may injure themselves.

Child Safety are worried that Ms [KJ] May use methamphetamines and this could cause her to become verbally abusive (yell and shout); leave [Child A] with unsafe people and not properly supervised the children which could result in them becoming hurt, not being fed and feeling lonely and scared.

[The Applicant]

Child Safety are worried that [the Applicant] Has perpetrated violence on Ms [KJ] which looks like strangling, threats to harm, punching, kicking; being locked in a room and not allowed to leave and using derogatory names and this will result in the children being scared, frightened and they could be physically hurt. Additionally this could further exacerbate Ms [KJ's] Mental health, family and professional relationships due to a lack of trust and her drug use.

Child Safety are worried that [the Applicant] Will use methamphetamines and this could lead to him becoming verbally and physically abusive; he may threaten to hurt their children and may not properly supervise the children which could result in them becoming hurt, not being fed; feeling scared for themselves and for their mother

.....

[KB]

[Child B and [Child A] need a mother who is able to:

- meet her own mental health needs and who can develop coping strategies in relation to important information received in light of their medical needs, to ensure that she is providing the best care in light of [Child B's] tuberous sclerosis and [Child A's] speech delay if they were to be returned to her full-time care.*

- *Be a safe a sober adult so that she is available to meet her children's basic care needs if they were to return to her full-time care.*
- *Understand the impacts of domestic violence on children so that she can be aware of how this may affect [Child B] and [Child A] if they were to return to her full time care.*

Please note: [KJ] was uncontactable and was not a part of the case planning process. The below actions are recommendations from Child Safety.

.....

[The Applicant]

[Child B and [Child A] need a father who is able to:

- *Communicate effectively with their mother (other people, family members or romantic partners), free from violent and criminal behaviours in order to ensure they are not physically harmed nor that they develop negative learned behaviours.*
- *Be a safe a sober adult so that he is available to meet the children's basic care needs if they were to return to his full time care.*
- *Abstain from criminal behaviour so they have the opportunity to build on their relationships free from absence due to incarceration.*

.....

[The Applicant]

- ***[Child B] Currently does not have contact with [the Applicant] as she is listed on the DVO, which [the Applicant] needs to get amended through the court.***
- *Once [Child B] Is removed from the DVO – A Child Safety staff member or an approved member of the family would be able to take [Child B] to see [the Applicant].*

[KJ]

- *[KJ] Is not currently having contact with [Child B] as her whereabouts in contact details are unknown to Child Safety and her family members.*

Arrangements for Contact between child and other family members and significant persons

- *the children are able to see [KJ] and [the Applicant's] parents twice every week.*
- *In addition to this, they are able to see their paternal Aunty's, Uncles and cousins who visit them at [J's] home whilst they are having contact.*

ASSESSMENT OF HARM AND UNACCEPTABLE RISK OF HARM

Section 9 of the Child Protection Act 1999 states is concerned with defining how harm is defined. Harm, to a child, is defined as any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. It is immaterial how the harm is caused. Harm can be caused by physical, psychological or emotional abuse or neglect; or sexual abuse or exploitation and can be caused by a single act, emission or circumstance or a series or combination of acts, omissions or circumstances.

Section 10 of the Child Protection Act 1999 is concerned with defining how a child is considered a child in need of protection. This assessment defines that a child in native protection needs to have suffered harm, be suffering harm or be at an unacceptable risk of suffering from harm AND also not have a parent both willing and able to protect the child from harm

It is my assessment that [Child B] and [Child A] have suffered harm of the significant and detrimental nature as a result of neglect (abuse) with Ms [KJ] as the person responsible.

Furthermore, it is my assessment that [Child B] and [Child A] children are unacceptable risk of suffering significant and detrimental physical harm end of suffering emotional harm of a cumulative nature resulting from neglect, influenced by parental mental health, with Ms [KJ] as the person responsible for this harm. It is my further assessment that [Child B] and [Child A] at risk of emotional and physical harm resulting from emotional abuse (domestic violence), with [the Applicant] being the person responsible for this harm through perpetration of domestic violence and neglect. The reasons for this assessment include:

- a. *Ms [KJ] has neglected [Child A's] need for therapeutic input with regards to his development and continues to obstruct medical recommendations for [Child B] which are likely to have significant impacts in the future if they remain unmet.*
- i. *Ms [KJ] Has not been following medical direction for [Child B] by refusing to provide her with the medication prescribed by head of neurology Dr [R]..Ms [KJ] house or secondary opinions in relation to the gravity of [Child B's] condition however continues to minimise the severity by failing to attend or follow up medical appointments. [Child B] is now having clinical seizures which have been detected by EEG resulting in the need for her medication to be doubled.*
- ii. *[Child A] Is four years of age and has very limited speech; however is able to articulate "mummy angry" and "mummy naughty" And is displaying traits of emotional distress such as crying when his mother, or Carol leave without him. Furthermore, [Child A] has been observed to state "dad bad, hurt mummy," thus demonstrating an understanding of his environment and experiences.*
- iii. *Ms [KJ] has attended only one speech appointment for [Child A] and whilst articulating that he would benefit from further sessions, has not been proactive in meeting this need. A subsequent report has been provided following a comprehensive speech assessment of [Child A] which identifies that "[Child A] has significant speech delay. [Child A] does not have labial sounds (/p b m/) which are the earliest forming sounds in our development and true back sounds (/k, g, ng). [Child A] Produces entire inventory of speech sounds between his alveolar ridge and palate which is an extremely restricted set of phonemes and means his intelligibility is in the severe range of impairment. [Child A] Requires an oral motor examination which looks at the functioning of the cranial nerves in relation to both speech and non-speech movements."*
- a. *Ms [KJ's] Transients has impacted her ability to provide a safe and stable home environment for [Child A], since birth and her ability to main support networks. Ms [JH] Has some strong family relationships however these relationships have been fractured at various points of her adult life and this has at times been problematic.*
- b. *Ms [KJ] has a history of leaving her older children in the care of unsafe individuals for a number of months. It is reported that [Child B's] paternal grandmother has been taking over the care of [Child B] for the past two months however she has a history of alcohol use and it is unknown if she is a safe person.*

- c. *Ms [KJ] is avoidant with Child Safety and is not a parent willing to engage with Child Safety to encourage and strengthen her ability to meet the needs of [Child B] nor [Child A]. Ms [KJ] Continues to present as difficult to engage and will not speak openly with Child Safety in light of her children. Furthermore, she has been uncontactable for more than six weeks and has not sought for ongoing contact with [Child B] and [Child A].*
- d. *Ms [KJ] has a history of depression, anxiety, suicidal ideations and borderline personality disorder. Ms [KJ] Has identified that she feels she needs a break and cannot care for the children at this time. Ms [KJ] Self reports a recent diagnosis of post Natal depression. Ms [KJ] Presents as withdrawn and vacant in her expressions (staring at the wall; a low and slow tone) and is not attending to her own hygiene for up to three to four days, which is indicative of her poor mental health.*
- e. *Ms [KJ] Has a history of methamphetamine use in the past particularly when her mental health is low.*
- f. ***[The Applicant] Has perpetrated domestic violence towards Ms [KJ] since the duration of their relationship and there has been two domestic violence orders with [the Applicant] as the Respondent and Ms [KJ] as the Aggrieved (December 2015-2017 and November 2018-April 2024) With the latter inclusive of stringent no contact conditions. The domestic violence has been characterised by choking; strangling; kicking in the head; punching in the stomach (whilst pregnant). [Child A] has been held by [the Applicant] During violent behaviours and can articulate, “dad bad, hurt mummy.”***
- g. ***[The Applicant] has continued to engage in criminal and violent behaviour, inclusive of the perpetration of domestic violence towards family members (stepfather and mother) resulting in injury.***
- h. ***[The Applicant] Is currently incarcerated and has been sentenced until February 2020 for a number of charges, thus indicating his ongoing prioritisation of engagement in criminal activity over the needs.***
- i. ***[The Applicant] Has a long history of drug use including methamphetamine and this has resulted in criminal charges and poor parenting choices. [The Applicant] Has not engaged with the department in relation to proposed case plan goals and does not acknowledge his drug use as a concern.***

Parent Willing and Able

[KJ]

It is my assessment that Ms [KJ] is a parent unwilling and unable to meet the care and protective needs of [Child B] and [Child A]. Ms [KJ] has remained absent for more than six weeks and has not sought to have contact with either child or seek updates on their well being. Ms [KJ] is reported to have not cared for [Child B] since May 2019 and in July 2019 vocalised her wish not to care for [Child B] and that maybe she did need a break and has subsequently relocated. Ms [KJ] Has not been proactive in ensuring [Child B's] medical needs are met, nor, [Child A's] basic care needs for food and hygiene and development support (speech). Ms [KJ] is not open to engaging with supports and has remained avoidant and ambivalent since April 2019 within previous child safety interventions.

Ms [KJ] continues to be adverse to the opinions of health professionals and difficult to contact.

[The Applicant]

It is my assessment that [the Applicant] is a parent unwilling and unable to meet the care and protection needs of [Child B]. [The Applicant] has limited engagement with Child Safety, denies and minimises his perpetration of domestic violence and is currently incarcerated which is suggestive of ongoing criminal activity and poor parenting choices, whereby he is unable to prioritise the needs of [Child B] and her brother [Child A]. Furthermore, [the Applicant] is at risk of deportation following the finalisation of his current sentence.

[Mr W]

It is my assessment that [Mr W] is a parent willing yet unable to meet the care and protection needs of [Child A], as this time given his limited relationship and [Child A's] lack of recognition of him as father. [Mr W] is aware of Ms [KJ's] history of drug use and the concerns regarding [the Applicant] however has not been in contact with him for more than two years.

.....

[Child A] and [Child B] Do not have parents willing and able to meet their care and protection needs or effectively prioritise her needs without ongoing support at this time.

Ms [KJ] Is avoidant and unwilling to engage with Child Safety under a Protective Supervision Order resulting in limited contact with [Child B] and [Child A] and no progress in proposed case plan goals. Ms [KJ] Will not engage in frequent and effective communication with Child Safety to assist in risk reassessing.

Ms [KJ] Has not prioritised [Child B's] medical needs for treatment for monitoring despite obtaining 3 professional opinions in relation to her tuberous sclerosis, raising concerns with her ability to make guardianship decisions. [Child B] Is now observed to have clinical seizure activity of which was observed in her recent EEG. Ms [KJ] Has not engaged in a relapse prevention plan in relation to her history of drug use.

[The Applicant] Has not engaged in a relapse prevention plan in relation to his ongoing drug use.

[The Applicant] Continues to engage in criminal activities inclusive of drugs and violent offences and has not engaged in supports to alter these behaviours. [The Applicant] Has continued to exhibit extreme domestic violence with family members (April 2019 – stepfather and mother) and thus demonstrates his unwillingness and inability to make decisions to secure [Child A] and [Child B's] care and protection.

[The Applicant] Is currently incarcerated until February 2020 following a recent sentencing in contact with [the Applicant] is impacted by prison regulations and booking procedures (three week time frame presently) thus impacting his ability to provide guardianship decisions within a reasonable time frame.

Ms [KJ] Has not engaged in frequent ongoing therapeutic support for herself in light of her mental health and this is reflective in her continued response to child safety staff; hospital professionals and her support networks at times of increased stress. Ms [KJ] Is reporting she needs a break and that a doctor has advised her that she has post Natal depression of which she does not wish to be medicated for. Ms [JH] believes it will just go away (as she suffered post Natal depression following [Child A's birth] however concerns that her transient lifestyle a fractured relationships will exacerbate her mental health as this reduces the support she can access.

Historically, Ms [KJ] has left [Child A] in the care of a number of individuals throughout her early childhood and she has not cared for [Child B] for the past two months.

Mr [W] Has no relationship with [Child A] and has limited contact during his life, particularly after Ms [KJ] returns to remove [Child A] from his care when he was under 2 years of age. [Child A's] Birth certificate identifies another male as [Child A's] father ([the Applicant]).⁷⁰

79. On 6 October 2020, the Applicant participated in a telephone forensic psychological assessment, with Professor James Freeman.⁷¹ His notes of the interview, clinical summary and risk assessment is as follows:

"[The Applicant] is a 27 year old male who experienced an uneventful early childhood and relocated to Australia when aged 7. However, he immediately experienced reduced parental supervision and was reportedly exposed to his mother's alcoholism. He was influenced by a negative peer support group that resulted in multiple episodes of juvenile detention and fuelled his substance abuse. He accepts misusing a range of substances from a young age that culminated in periods of methamphetamine dependency (which most recently created impairments in psychosocial functioning). In regards to the latter, it is noteworthy that exposure (and affiliations) with deviant subgroups significantly enhances drug dependencies. In fact, it is one of the most reliable predictors of an individual's substance use³. The only other marked aspect of his psychosocial functioning was engagement in an unstable relationship, which was fractured by infidelity and questions about the paternity of his young son. [The Applicant] appears to have placed considerable weight in his parental responsibilities, and was likely psychologically ill equipped to respond to the corresponding emotional distress. More specifically, he accepts that such parental responsibilities were a protective factor in regards to him avoiding substance use, and he spiralled into methamphetamine dependency (and engaged in erratic behaviours) when he lost custody of his son.

[The Applicant's] early offending history can be attributed to substance abuse and alignment with a negative peer support group. The applicant's most recent offences (2019) are best explained through his methamphetamine dependency and associated emotional distress (from lifestyle instability). That is, [the Applicant] accepts engaging in a range of reckless behaviours when impaired with methamphetamines (and in fact, he cannot recall the origins

⁷⁰ Ibid, TB5, pp 402-424.

⁷¹ Ibid, Exhibit A13, pp 209-220.

of attending his family's residence). It is noteworthy that methamphetamine usage promotes maladaptive decision making and response inhibition and elevated risk taking propensities. The applicant was also experiencing elevated depressive symptomatology (at the time) that was a likely additional contributor, as individuals who suffer from depression are more vulnerable to engage in impaired decisions.

The risk of recidivism relates primarily to him avoiding relapsing into substance abuse, avoiding alignment with a negative peer support group and securing lifestyle stability e.g., avoiding high risk-emotionally agitating situations. Encouragingly [the Applicant] has a sufficient level of insight into the extent of his substance abuse, recognises the link between his substance abuse and offending, and subsequently articulates a strong commitment to avoid relapse. However, he will need to be vigilant of relapse for an extended period of time as methamphetamine dependency is usually chronic and requires lasting aftercare e.g., treatment, support and monitoring. As a result, he should be encouraged to engage in complementary community-based relapse prevention interventions e.g., Drug ARM, ATODS, etc. Additionally, his risk of relapse is likely linked to experiencing lifestyle instability (and associated emotional turmoil), and thus, he should be encouraged to develop a secure support network, avoid past drug associates and manage his mood. In regards to the latter, he could benefit from remaining under the care of a medical practitioner to treat his depression and provide referrals (if needed). Given that a sizeable proportion of his offending history directly relates to substance abuse, if he can achieve ongoing abstinence, then his risk of recidivism may prove to be less than calculated through the HCR-20 and VRAG.

Additionally, the maturation process (including his parental responsibilities) is likely to prove to have a salutary effect on the risk of recidivism. In regards to the latter, a central theme of the assessment was [the Applicant's] concern regarding the secondary victims of his deportation (e.g., his children) as they remain in care. He presented as particularly concerned about his children's welfare, and articulated a strong commitment to recommence parental duties. This factor may prove to be a particularly salient factor against recidivism, not least because he experienced a weak parental bond himself during childhood. The letter from the Department of Child Safety (etc) supports the reconnection of [the Applicant] with his young daughter.

In summary and based on the writer's Structured Professional Judgement (SPJ), [the Applicant] presents as a male who was destabilised (during adolescence) by substance misuse and contact with a negative peer support group. He regained some level of lifestyle

stability when he had primary custody of his young son, which dissipated when he lost the role and struggled with methamphetamine dependency.

In regards to the cancellation of his visa cancellation, [the Applicant] has no confirmed place of residence in the Solomon Islands. More specifically, the applicant's entire direct family reside in Australia and he has not been in contact with his extended family members (e.g., cousins) for an extended period of time e.g., "I'd be homeless. I honestly don't know – I wouldn't even know how to survive there." He could not articulate any work opportunities that is further reflective of him not residing in the Solomon Islands since 2000 (as a child) e.g., "I don't even know the lifestyle. I can't speak pigeon English." It is also likely that he will have limited contact with his children, as they reside in Australia (and are reportedly at risk of remaining in foster care for an extended period of time). In regards to the latter, he presents as particularly despondent and anxious about this possible outcome, and is eager to return to his parental responsibilities."⁷²

80. On 28 October 2020, the Applicant's mother deposed to having made an application to obtain custody of Child A and Child B.⁷³
81. On 28 October 2020, the Applicant reported suffering from severe "*anxiety, depression and sleeplessness*". He was proscribed anti-depressants and melatonin.⁷⁴
82. The matter came before the Tribunal on 2 and 3 November 2020.⁷⁵ I have had regard to the transcript of these proceedings, which is before the Tribunal in this matter.⁷⁶
83. The Tribunal determined to affirm the visa cancellation decision on 12 November 2020.
84. The Applicant sought judicial review.
85. On 28 November 2022, the Federal Court quashed the Tribunal's decision and ordered that the Tribunal determine the Applicant's application for review according to law.⁷⁷

⁷² Ibid, Exhibit A13, pp 215-217.

⁷³ Ibid, Exhibit A8, p 189.

⁷⁴ Ibid, Exhibit A6, p 185.

⁷⁵ Ibid, pp 427-514.

⁷⁶ Ibid.

⁷⁷ Ibid, pp 517-541.

86. On 26 March 2023, the Applicant's father signed a statement which is in evidence. This states, *inter alia*:

"If [the Applicant] were forcefully removed to the Solomon Islands, I would be heartbroken and devastated. Not only would I have lifelong heartbreak and sadness, I would be extremely concerned for [the Applicant's] well being and ability to live in the Solomon Islands.

[The Applicant] has not been back to the Solomon Islands since he was a young child. He does not have a comprehensive level of knowledge of the Pidgin language. Solomon Islands is a poor country. There are no unemployment benefits in the Solomon Islands. Solomon Islands has a poor healthcare system. [The Applicant] has no close family members in the Solomon Islands.

I am extremely concerned that if [the Applicant] was deported to the Solomon Islands, eh would be homeless and unable to sustain himself. Moreover, given [the Applicant's] criminal history in Australia, this would likely add a considerable limitation on [the Applicant] obtaining lawful employment in the Solomon Islands.

Independent on myself, I know that my children and grandchildren would be heartbroken if [the Applicant] was deported from Australia. There would be a not insignificant number of members of the Australian community that would be adversely impacted in [the Applicant] were deported from Australia.

I am also concerned for [the Applicant's] mental health if he is deported. [The Applicant] will be heartbroken and devastated to be permanently excluded from returning to Australia. Without [the Applicant] being in close proximity to his family in Australia, it will be extremely hard for [the Applicant] to cope.

In circumstances where [the Applicant] is returned to the Australian community, he will have safe and stable accommodation at my place of residence. My property is over 10 hectares in size. There is sufficient room to provide accommodation to [the Applicant].

I am currently employed. My wife works at the [redacted]. She worked in the capacity as a registered nurse. I am generally in satisfactory health, although I have cataracts and diabetes. Nonetheless, I can provide my son with strong emotional and practical assistance in the Australian community.

*Please give my son another chance at life in Australia.*⁷⁸

87. On 26 March 2023, the Applicant's mother signed a statement, which is in evidence. This states, *inter alia*:

".....

I would describe my current health situation as extremely poor. I have lung cancer. A few years ago, I had a part of my lung removed. Since that time, I have not been the same. I have very serious difficulties with breathing, lack energy and cannot focus.

I have spent a very considerable period in hospital. At the present time, the doctors are talking about chemotherapy as an additional treatment in relation to my cancer. I do not believe I have the capacity or ability to cope with aggressive chemotherapy treatment.

I have previously also had several minor heart attacks and a stroke. My health situation is extremely volatile. I am in a bad way.

At the present time, my financial situation is very strained and difficult. My husband is supporting me financially. We have many bills, including lawyer fees, medical expenses, and day to day bills. I would describe my current financial situation as poor. We are really struggling, especially with the rising costs of living throughout Australia.

My husband suffers from heart issues but has had to continuously work for the reasons described above.

Owing to the prolonged immigration detention of my son, my mental health has also been severely compromised. I am absolutely devastated and heartbroken that my son is not in the Australian community. My son is constantly on my mind. He means the world to me.

I have a close, loving, and ongoing relationship with my son. We speak regularly by telephone and through video calls. Every Sunday, I have dedicated time to organise a video conversation between [Child B] (my granddaughter), my son and myself.

⁷⁸ Exhibit 6.2 at [13]-[20].

I have played an active role to ensure that my son has been able to maintain a clear line of communication with his daughter. It is clear to me that [the Applicant] loves his daughter very much. Moreover, it is also clear to me that [Child B] loves her father very much.

Beyond myself, I can otherwise confirm that [the Applicant] enjoys a continuing and loving relationship with his biological father, siblings and nieces and nephews in Australia. [The Applicant] is a much loved and respected member of the family unit in Australia.

[The Applicant's] daughter, [Child B], is currently being looked after by a foster family in Brisbane. In that context, [Child B] is not under the care or control of her biological mother. It would be amazing if [the Applicant] was released into the Australian community so that he could spend more valuable time with his daughter (and possibly assume full parental care in relation to her).

I can confirm that [Child B] loves her father very much. However, it is important to emphasise that [Child B] has serious health issues. [Child B] has epilepsy. She has seizures. We were informed several years ago that she would never talk or be able to walk.

Thankfully, my beautiful granddaughter has proven the doctors wrong. [Child B] can communicate. [Child B] can also walk. [Child B] is on medication in relation to her epilepsy. [Child B] looks very much like her father, [the Applicant]

If [the Applicant] were returned to the Australian community, he could provide me with emotional and practical assistance. It would be amazing if my son could accompany me to medical appointments and spend valuable time with me. Given I have a very serious health condition, there is a very real prospect that I could pass away in foreseeable future.

Moreover, if my son was returned to the Australian community, he could provide me with very significant emotional support. I really need my son to be with me. I plea with the Tribunal to give my son another chance in this beautiful country we call Australia.

If [the Applicant] is deported from Australia, I am very concerned for his life and ability to survive in the Solomon Islands. The Solomon Islands is a poor country. There are no unemployment benefits. Moreover, [the Applicant] does not have a satisfactory understanding of Pigeon English.

I am also concerned that it would be extremely difficult for [the Applicant] to obtain lawful employment in the Solomon Islands. [The Applicant] would need to explain his history, which

would include his criminal record in Australia, health battles in this country and the fact that he was deported from Australia on the basis that he was a dangerous criminal.

[The Applicant] has not been back to the Solomon Islands since he was a young child. He does not have a close relationship with anyone in the Solomon Islands. He does not have social ties upon which he could rely to survive and live in the Solomon Islands.

I am extremely concerned that [the Applicant's] mental health would significantly deteriorate if deported. [The Applicant] would be heartbroken to be permanently excluded from his large family and social contacts in Australia. [The Applicant] would be a shattered individual.

I am extremely concerned that my son would be homeless in the Solomon Islands. Otherwise, I am also concerned that my son might commit suicide if deported. [The Applicant] is likely to be in a very dark place. Moreover, [the Applicant's] family in Australia (me included) would never be the same. We would be heartbroken and shattered for life.

Given my extensive conversations with [the Applicant] over the last several years, it is my respectful opinion that [the Applicant] is a changed man. [The Applicant] has learned a lot. [The Applicant] has indicated to me that he is very remorseful for his prior criminal offending in Australia.

[The Applicant] has personally apologised to me for his criminal offending. [The Applicant] is truly remorseful for his bad conduct in Australia.

[The Applicant] also continues to maintain a relationship with [Child A]. [The Applicant] raised [Child A] and considers him to be an important part of his life. I have also ensured that [Child A] maintains a relationship with [Child B]. If [the Applicant] is returned to the Australian community, he will be able to play an important father role to [Child A]. I have literally seen [Child A] cry for [the Applicant].

At the present time, [Child A] resides with his biological father in Brisbane. However, for many years, it was thought that [the Applicant] was the biological father of [Child A]. However, it was only after a DNA test was performed that it was confirmed that [the Applicant] is not the biological father of [Child A].

Notwithstanding the preceding, it is clear to me that [the Applicant] and [Child A] share a very special bond.

I understand that [the Applicant] has done wrong by the Australian community. However, [the Applicant] deserves another chance in Australia.

I miss my son dearly. Please allow him to come home.

Writing in my capacity as a victim, I forgive my son for his prior offending against me. I do not personally hold any concerns of future harm in relation to my son. I fully support my son's application to be returned to the Australian community. Compassion and mercy should be shown in relation to my son. very special bond.⁷⁹

88. On 26 March 2023, the Applicant's brother (JC Jr) signed a statement, which is in evidence. This states, *inter alia*:

"

I continue to enjoy a close and loving relationship with my brother, [the Applicant]. I keep in contact with my brother by both telephone and video calls. We keep in regular contact and communicate several times per week.

I confirm that I have the following children:

- *[JC1].*
- *[JC2].*

I confirm that my boys have a very good relationship with my brother. [The Applicant] keeps in contact with my children through telephone and videocalls. Naturally, given the close relationship I have with my brother, I would like him to continue to play an important uncle role with my children in the future.

[The Applicant] has previously lived with me at various places of accommodation in Australia. [The Applicant] provided strong emotional and practical support for my children. [The Applicant] enjoyed playing games with my kids. He would take them out socially. He would provide them with life advice. He was always there for them.

[The Applicant] also continues to enjoy a warm connection with my partner. They keep in contact by both telephone and through video calls.

⁷⁹ Exhibit 6.3 at [8]-[20]; see also Exhibit 4, Exhibit A8, pp 188-190.

I would be devastated if [the Applicant] were deported from Australia. I would suffer lifelong heartbreak. [the Applicant] is my dear brother. I will miss him terribly. Moreover, my children would be denied the opportunity to have their uncle near them.

Beyond my immediate family, my parents and siblings would be devastated if [the Applicant] were deported to the Solomon Islands. They would be devastated for life. I am also concerned for my brother's prospects in the Solomon Islands. My brother has not been back to the Solomon Islands since he was a child. My brother has no close substantial ties in that country.

If [the Applicant] is deported, his children ([Child B] and [Child A]) would lose their father. [The Applicant] has maintained contact with [Child B] and [Child A] during his prolonged absence from the Australian community. Although [Child A] is not the biological son of [the Applicant], [Child A] was raised by my brother.

[The Applicant] would like to be there for both [Child B] and [Child A] if returned to the Australian community. [The Applicant] would also like to continue to play an important uncle role for all his nieces and nephews in Australia. [The Applicant] is a respected and much-loved member of the family unit in Australia.

If [the Applicant] is returned to the Australian community, he will be able to reside on the property of my current address. I live on the same property as my father. We are constructing another property on the land. There is plenty of room to accommodate [the Applicant].

The benefit of [the Applicant] living with us is that he will be away from old associates in the Brisbane area. [The Applicant] will be surrounded by his family in [redacted] Queensland. [The Applicant] will have safe and stable accommodation. As a family, we will provide [The Applicant] with considerable emotional and practical assistance to ensure his re-integration into the Australian community.

In my dealings with [The Applicant] over the last several years, he has made considerable changes in his life. He is truly remorseful for his prior offending in Australia. I believe that [the Applicant] is an entirely different person. He has changed for the better.

I love my brother very much. Please give him a final chance at life in Australia.⁸⁰

⁸⁰ Exhibit 6.4 at [8]-[20]; see also Exhibit 4, Exhibit A6, p 180.

89. On 30 March 2023, the Applicant's sister (RC) signed a statement, which is in evidence. This states, *inter alia*:

".....

I am the mother of the following four children in Australia:

- [ZP]*
- [MJP]*
- [CP]*
- [TP]*

I am currently on sickness benefits through Centrelink. I previously received compensation payments because of an injury sustained at work. I am currently at home taking care of my four children. The work injury I sustained was a broken ankle. I slipped and fell in the cold room of the supermarket.

I continue to be in a relationship with my partner, [GP]. [GP] is also currently on sickness benefits. He was diagnosed with Fibromyalgia and has a

bad back. My partner is on medication for his various health issues. As such, our financial situation at the current time is poor.

I continue to maintain a close, loving, and special relationship with [the Applicant]. At the present time, I keep in contact with [the Applicant] through telephone calls, video calls and text messages. Although [the Applicant] is my brother, he is more like my son than a brother. I assisted in raising him. Previously, my mother went through post-natal depression.

My four children have continued to maintain a relationship with [the Applicant]. They have largely kept in contact with him through video calls when I speak to my brother. My children love their uncle. Naturally, given the close relationship I have with [the Applicant], I want him to continue to play an important uncle role to my children in the future.

[The Applicant] otherwise has a close and ongoing relationship with the balance of our family in Australia. For example, this includes our parents, siblings, nieces and nephews and [the Applicant's] own children. [The Applicant] is deeply missed by his family in the Australian community. We are all hoping that [the Applicant] will be returned to the Australian community soon.

In circumstances where my brother is deported from Australia, I will be heartbroken and shattered. I love my brother deeply. I will suffer lifelong emotional hardship and sadness. My

children will also be adversely impacted in an emotional sense if their uncle is deported from Australia.

Our parents, siblings, respective nieces and nephews and [the Applicant's] own children will also suffer very considerable hardship if [the Applicant] is deported from Australia. Both [Child B] and [Child A] will be denied the opportunity to develop a sustainable close relationship with their father. I know for a fact that [the Applicant] loves [Child B] and [Child A] deeply.

My daughter, [MJP], is due to have her own child on or about 25 April 2023. I will become a grandmother. I would like my brother, given the closeness of our relationship, to develop a relationship with my future grandchild.

I am extremely concerned for [the Applicant's] ability to survive in the Solomon Islands. [The Applicant] has lived in Australia for most of his life, from a young age. [The Applicant] will not have sustainable assistance if returned to the Solomon Islands. I appreciate that [the Applicant] has done wrong by the Australian community. However, I sincerely believe that he should be given a final chance at life in Australia.

*The whole family unit will be absolutely shattered if my brother is deported.*⁸¹

90. On 30 March 2023, the Applicant's sister (EC) signed a statement, which is in evidence. This states, *inter alia*:

".....

My brother's name is [the Applicant].

I am the mother of five children in Australia:

- *[AF]*
- *[KF]*

⁸¹ Exhibit 6.5 at [7]-[17]; see also Exhibit 4, Exhibit A9, pp 191-193.

- [CF]
- [EF]
- [LA]

I am very close to my brother, [the Applicant]. We keep in contact at the present time through telephone calls, videocalls and text messages. I love my brother very much. Equally, I know my brother loves me deeply also. We have a special connection as siblings.

I can otherwise confirm that [the Applicant] has a close, ongoing, and loving relationship with my five children. [The Applicant] largely keeps in contact with my children through videocalls at the present time. My children have much love and respect for their uncle [the Applicant].

[The Applicant] is a special part of our family unit in Australia. [The Applicant] has a close and loving relationship with our other siblings and parents in Australia. [The Applicant] has been dearly missed by all of his family in Australia. We just want him to come home soon. [The Applicant] also has a loving relationship with our other nieces and nephews in Australia (being the children of [RC] and [JC Jr]). [The Applicant] is a special uncle to his nieces and nephews in Australia.

[QA] is the biological father of my youngest child, [LA].. [QA] abandoned my family and his daughter. [QA] resides in South Australia. I currently have no contact with [QA].

My current circumstances are extremely challenging. I reside near my mother's property in Brisbane. My mother has cancer and other serious health issues. I try to help my mother. I am unemployed. I am on Centrelink payments (being a family tax benefit and single parenting payments). I also receive rental assistance. I am single.

The biological father (i.e. [RF]) of my four oldest children was murdered. I understand that he was stabbed to death. As a result, both my children and myself suffer from depression and great sadness as a result of my former partner being murdered. My children are now without a dad.

Given I am the sole carer for five children, it has been impossible to find the time to work. I really am struggling. If [the Applicant] was in the Australian community, he would be able to

play an important uncle role to my children. [The Applicant] would be able to provide my children with considerable emotional and practical assistance.

Otherwise, if [the Applicant] were released into the Australian community, he would be able to provide me with respite and some assistance directly. My mother is unable to provide me with any real assistance, given her serious ongoing health issues.

I reside in a five-bedroom house. It is a two-story house. As such, there is sufficient room for [the Applicant] to reside with me if needed. Given that I live close to our mother, [the Applicant] could stay with me whenever he needed. He has my full support as his sister.

If [the Applicant] were deported to the Solomon Islands, I would be absolutely devastated. I would suffer lifelong sadness and emotional distress. It has been explained to me that if [the Applicant] is removed from Australia, he would generally be subject to permanent exclusion from Australia.

Beyond myself, I know that my parents, siblings, children and nieces and nephews would suffer very considerable emotional hardship if [the Applicant] is deported from Australia. [The Applicant] would not be able to physically see the family. We would feel like we have lost [the Applicant].

If [the Applicant] were deported, I would also be extremely concerned for [the Applicant's] life and ability to survive in the Solomon Islands. [The Applicant] has not been back to the Solomon Islands since he was a child. [The Applicant] would not have support in the Solomon Islands. I am concerned [the Applicant] would fall into heavy depression.

I am extremely concerned that [the Applicant] would not be able to receive satisfactory healthcare in the Solomon Islands. [The Applicant] would be heartbroken if deported to the Solomon Islands. He will be very distressed. [The Applicant] will miss his daughter ([Child B]) and son ([Child A]).

Although it has become clear now that [the Applicant] is not the biological father of [Child A], [the Applicant] raised him. [Child A] is considered a member of our family unit and a special boy. If [the Applicant] is deported from Australia, he will be denied the chance to be there for his children in Australia. This is not right.

*If required, I will give evidence at [the Applicant's] appeal proceedings before the Tribunal. I fully support my brother's bid to remain in Australia. As outlined earlier in my statement, I love [the Applicant] very much.*⁸²

91. On 5 April 2023, the Applicant's signed a statement, which is in evidence. This states, *inter alia*:

"I continue to maintain a close and loving relationship with my parents, siblings, nieces and nephews and children. I keep in contact with my family by telephone, text messages and videocalls. I miss my family deeply. I know that miss me also.

On a Sunday, I speak with my mother, [Child B], and other family members. My mother has made an effort to ensure I speak to [Child B] every Sunday by videocalls. Our family unit in Australia is close. Although I am not the biological father of [Child A], I consider him like my son.

If I am removed from Australia, my family in Australia will be absolutely devastated. They will suffer lifelong sadness and grief at my permanent exclusion from Australia. They will, in effect, suffer very considerable emotional hardship.

My mother is extremely sick at the present time. She has been battling cancer for several years. My mother has been doing it very tough. If I am returned to the Australian community, I will be able to spend valuable time with my mother. I do not know how long she will be around.

During my time in immigration detention, I have been focused on my rehabilitation. For example, I have completed the following rehabilitation courses:

- *Understanding Addictions (11 January 2023).*
- *Stress Management (15 January 2023).*
- *Depression Management (10 January 2023).*
- *Domestic Violence 101 (23 January 2023).*
- *Anger Management 101 (11 January 2023).*
- *Positive Parenting Technique (16 January 2023).*
- *Dealing with Difficult People (24 January 2023).*

Annexed hereto and marked 'A' is a copy of the certificates for completion of these courses.












⁸² Exhibit 6.6 at [5]-[22]; see also Exhibit 4, Exhibit A6, pp 181-186.

I will now explain the learning outcomes for each of the courses.

For the Understanding Addictions course¹, the Learning Outcomes are as follows:

Learning Outcomes












By successfully completing this course, students will be able to:

- | | |
|--|---|
|  Define what constitutes an addiction. |  Determine whether or not you are an addict. |
|  Summarize health risks in addiction. |  Describe advantages to quitting your addiction. |
|  Define your personalized recovery plan. |  Summarize the myth about recovery and addiction. |
|  Define methods you can use to set yourself up to succeed and commit to change. |  Describe being mindful by conquering your emotions. |
|  Summarize methods you can use to avoid relapse. |  Identify ways to get support. |
|  Demonstrate mastery of lesson content at levels of 70% or higher. | |

For the Stress Management course², the Learning Outcomes are as follows:

Learning Outcomes












By successfully completing this course, students will be able to:

- | | |
|---|---|
|  Define and identify stress. |  Define and identify stressors. |
|  Describe the idea of small changes and large rewards to relieve stress. |  Describe methods and techniques for preventing stress. |
|  Develop coping skills. |  Identify stress in the home. |
|  Describe ways to overcome monetary stress and unhealthy worry. |  Describe stress and the workplace and how to overcome it. |
|  Deal with frustration and anger. |  Demonstrate stress reducing exercises. |
|  Demonstrate mastery of lesson content at levels of 70% or higher. | |

For the Depression Management course,³ the Learning Outcomes are as follows:

Learning Outcomes







By successfully completing this course, students will be able to:

 Define depression.	 Recognize the myths surrounding depression.
 Describe causes of depression.	 Summarize new developments and ideas about depression.
 Describe methods to help yourself with depression.	 Describe the types of physical exercise that can help depression.
 Describe alternative approaches to depression management.	 Describe the affects of nourishment on depression.
 Recognize when to seek and what to expect from counseling and psychotherapy.	 Summarize steps to take to get motivated in life.
 Demonstrate mastery of lesson content at levels of 70% or higher.	

For the Domestic Violence 101 course,⁴ the Learning Outcomes are as follows:

Learning Outcomes

By successfully completing this course, students will be able to:

 Define domestic violence.	 Recognize signs of domestic violence.
 Describe the reasons why victims stay with abusers.	 Describe ways you can help victims of domestic abuse.
 Summarize the legal issues involved with domestic violence.	 Describe methods for keeping safe from domestic abuse.
 Describe the after-effects of domestic abuse.	 Summarize methods for helping domestic abuse survivors with life after abuse.
 Describe methods for stopping the cycle of abuse.	 Demonstrate mastery of lesson content at levels of 70% or higher.

For the Anger Management 101 course,⁵ the Learning Outcomes are as follows:

Learning Outcomes

By successfully completing this course, students will be able to:



Identify what anger is.



Recognize area responses to anger.



Perform variety of methods to control anger.



Develop empathy.



Recognize different forms of passive aggressive behavior.



Identify stress factors that cause anger.



Recognize the use of anger in key relationships.



Identify when to seek professional help.



Utilize breathing and relaxation exercises to better control anger and outbursts.



Demonstrate mastery of lesson content at levels of 70% or higher.

For the Positive Parenting Technique course,⁶ the Learning Outcomes are as follows:

Learning Outcomes

By successfully completing this course, students will be able to:



Define positive parenting.



Describe major influences on positive parenting.



Summarize the importance of understanding child development.



Describe methods for establishing a close, healthy parent-child relationship.



Recognize effectively guiding behavior.



Identify ways to foster emotional intelligence.



Define ways to cognitive abilities and education.



Summarize challenges and roadblocks you may encounter when parenting.













Demonstrate mastery of lesson content at levels of 70% or higher.

For the Dealing with Difficult People course,⁷ the Learning Outcomes are as follows:

Learning Outcomes

By successfully completing this course, students will be able to:

 Describe basic conflict resolution processes.	 Evaluate body language.
 Identify bullies.	 Recognize power struggles.
 Describe and identify slackers and energy vampires.	 Recognize office gossip and its effects on the workplace.
 Recognize and reconcile problematic personalities.	 Describe methods for dealing with a bully as a boss.
 Describe benefits of successful collaboration.	 Demonstrate mastery of lesson content at levels of 70% or higher.

I am committed to future rehabilitation. I really am trying to make changes in my life to be a better person. I have been in remission from drugs since about 2019. It should be noted that drugs are readily available in immigration detention. However, I have resisted the urge to take illicit drugs. Given that I have not taken drugs since 2019, it can be concluded that I am in sustained remission from drugs in a controlled environment.

I have also undertaken other rehabilitation. For example, I have undertaken consultation with psychologist Mr Fredi Bashour. Annexed hereto and marked 'B' is a copy of an email I received from Redlands Psychologists, 22 March 2023. I will be undertaking more consultations with Mr Bashour. I have also signed up to undertake rehabilitation programs with Lives Lived Well if released into the Australian community. Annexed hereto and marked 'C' is a chain of emails between the service provider of Lives Lived Well and myself, various dates.

I have also undertaken considerable rehabilitation in completing the Smart Recovery Program. Annexed hereto and marked 'D' is a copy of my Attendance and Participation Forms in relation to the Smart Recovery Program and a letter from the Facilitator of SMART recovery.

Moreover, if I am released into the Australian community, I have been offered admission to the [redacted] residential rehabilitation program. Annexed hereto and marked 'E' is a copy of the [redacted] Offer of Admission, 4 January 2023.

Further, I have made inquiries with QulHN. Annexed hereto and marked 'F' is a copy of a letter I received from QulHN. If released into the Australian community, I will take up the services offered by QulHN.

At the time of writing, I am also seeking steps to complete the circuit breaker course. Annexed hereto and marked 'G' is an email exchange between the circuit breaker course personnel and myself.

I really have worked hard to change and become a better person. With the close support of my family, I will be able to continue with further rehabilitation in the Australian community.

If I am deported to the Solomon Islands, I will face very significant hardships.

First, I do not have any real ties in the Solomon Islands. I have lived in Australia for most of my life. Solomon Islands is not my home. I consider Australia to be my home. My family are in Australia. This includes my parents, siblings, children, nieces, nephews, and friends.

Secondly, in considering the exceptional hardship I will face in the Solomon Islands, I expressly seek for the Tribunal to take the following matters into account:

- (a) Most of the people live in small rural villages. They engage mainly in subsistence gardening, pig raising and fishing.*
- (b) Pijin, an English-based Melanesian pidgin, is the language that is most widely used and understood.¹⁴ I do not have a satisfactory grasp of the pidgin language. English is only spoken by 1%-2% of the population.*
- (c) Due to its political and financial situation, the Solomon Islands are considered one of the least developed countries in the world.*
- (d) Hospitals and pharmacies in Solomon Islands are limited to populated areas and religious missions.*
- (e) Solomon Islands is one of the poorest countries in the region with a low level of human development. Poverty and hardship in Solomon Islands is compounded by the legacy of civil conflict. The economic performance of Solomon Islands has lagged behind other Pacific Island countries and territories (PICTs), and is reliant on development assistance and a few primary commodities.*
- (f) Youth unemployment is a major problem as young people lack the education and experience to find paid work.*

- (g) *Medical facilities, rescue and emergency services throughout Solomon Islands are very limited. The standard of public healthcare is still below that expected in larger and more developed nations. In common with other medical facilities on the Solomon Islands, the hospital suffers from a regular shortage of basic medicines.*
- (h) *The Solomon Islands lack an adequate supply of properly trained healthcare workers, specifically doctors and nurses, with only two fully trained doctors for every 10,000 people in the country. The Solomon Island does not have a formal welfare system. Social assistance and welfare payments are only provided by NGO's and donor agencies.*
- (i) *There are no state funded welfare support benefits in the Solomon Islands. People survive within their own resources (social, physical, and financial) to support themselves and their families.*
- (j) *Solomon Islanders face many barriers to development, including poor infrastructure, low levels of sanitation, and lack of education and employment opportunities.²⁸ The Solomon Islands faces some of the most difficult challenges in the Pacific. Ethnic violence, fragile state institutions, corruption and increasing crime have affected the country's development.*
- (k) *A third of rural people lack access to safe water and over half the people living in Honiara's poorest communities have no sanitation facilities.*

Thirdly, given my criminal record in Australia, this is also likely to inhibit my ability to find lawful employment in the Solomon Islands. I would need to explain the basis of returning to the Solomon Islands (i.e. deportation from Australia on the basis that I was an unacceptable risk of harm).

There is a real prospect that a prospective employer would not wish to employ me on the basis of my criminal record in Australia.

Fourthly, I am concerned that my mental health issues will considerably deteriorate if I was deported to the Solomon Islands. I would be a broken man, forcefully removed from my family and life in Australia. I would suffer lifelong sadness and heartbreak.

Moreover, I would be unable to receive ongoing satisfactory rehabilitation in the Solomon Islands. The evidence shows the Solomon Islands has a poor healthcare system with a lack of medicine. I would otherwise not have the close physical support of my family, given they would remain in Australia.

I am very concerned I would face insurmountable hardship if deported to the Solomon Islands.

I understand that I have committed serious offences in Australia. I am extremely remorseful for the full extent of my offending. If I am deported from Australia, it will have lifelong adverse consequences for me. I will be a broken man.

*Please give me a final chance at life in Australia.*⁸³

92. There are various other statements in support of the Applicant that were before the previously constituted AAT matter.⁸⁴
93. On 22 May 2023, Professor Freeman produced a supplementary report that noted “no identifiable self-reported changes” since his last report.⁸⁵
94. If the Applicant were to be released into the community, he plans to go and live with his father. His father lives on a rural property with the Applicants’ brother and sister in the Western Downs town of Tara, Queensland. This is about 300kms west of Brisbane.
95. The Applicant says that the remote location will help him to get himself sorted out, without being exposed to his old peer group and drug users. The Applicant says that he will have general access to support and medical support there, as well as online services. The Applicant’s family may provide a protective environment for him. In this sense, he is planning to replace his current controlled environment (immigration detention) with another, based on remoteness. I note that the range and level of support available in a remote regional town will be much less than would be the case in Brisbane or a larger regional centre. It is also common knowledge that the scourge of methamphetamines, is not confined to major population centres. The Applicant has recently had four or five remote sessions with psychologist, Mr Fred Bashour. There is an offer for these to continue in the community if so required. The Applicant says that he will take this offer up. Aside from this, the Applicant does not have any specific, concrete plans for engaging with ongoing support and rehabilitation in Tara, or anywhere else. This is particularly relevant given Professor Freeman’s opinion that he will require significant, ongoing supports, to avoid relapsing into past behaviours and drugs.⁸⁶

⁸³ Exhibit 6.1 at [5]-[36].

⁸⁴ Exhibit 4, Exhibit A2, p 173, Exhibit A3, pp 174-175, Exhibit A4, p 176, Exhibit A5, pp 177-179, Exhibit A6, p 180, Exhibit A6, pp 181-187, Exhibit A8, pp 188-190 and Exhibit 9, pp 191-193.

⁸⁵ Exhibit 7.

⁸⁶ See report set out above.

96. The Applicant plans to get his life stabilised before trying to obtain custody of Child B. He plans to keep in touch with his children and family electronically and to visit them from time to time. Visiting Child B and other family in Brisbane may present risks to the Applicant, particularly exposure to old peers and drugs.
97. The Applicant plans to work on his father's property and perhaps to build a house there. If he can obtain a driver's license, he may seek to work on roads.
98. As discussed above, the Applicant has an extensive criminal history,⁸⁷ commencing as a juvenile in 2009. A copy of his record of convictions is annexed hereto and marked "B".
99. His offending as a juvenile carries less weight due to him having been in Australia since he was a young boy. Some charges did not result in convictions. It is, however, relevant to the assessment of the Applicant's overall conduct.⁸⁸
100. The Applicant's motor vehicle offences are contained in material provided by the Queensland Department of Transport and Main Roads.⁸⁹

LEGISLATIVE FRAMEWORK

Does the Applicant Pass the Character Test?

101. The Applicant was sentenced by Queensland Magistrate's Court, on 19 June 2019, to a term of imprisonment of 18 months.
102. As set out above, the Tribunal finds that the Applicant has a "*substantial criminal record*" and, therefore, he does not pass the character test. This is not disputed by the Applicant. The Tribunal must consider whether "there is another reason why the original decision should be revoked".

⁸⁸ *LRMM v Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCA 1571.

⁸⁹ Exhibit 4, pp 366-370.

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

In considering whether to exercise this discretion, the Tribunal is bound by s 499(2A) to comply with any directions made under the Act. In this case, *Direction No 99 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (“the Direction”)* has application.⁹⁰

103. Paragraph 5.2 of the Direction contains several principles that must inform a decision maker’s application of the considerations identified in Part 2, where relevant to the decision.
104. The principles that are found in paragraph 5.2 of the Direction may be briefly stated as follows:
- (1) *Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia’s law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
 - (2) *Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*
 - (3) *The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.*
 - (4) *Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non- citizens who have been participating in, and contributing to, the Australian community only for a short period of time.*
 - (5) *With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia will generally afford a higher level of tolerance of criminal or other serious conduct by non-citizens*

⁹⁰ On 15 April 2021, the former applicable direction, *Direction No. 79 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA*, was revoked and was replaced by Direction 90, this in turn was replaced by Direction 99 on 3 March 2023.

who have lived in the Australian community for most of their life, or from a very young age. The level of tolerance will rise with the length of time a non-citizen has spent in the Australian community, particularly in their formative years.

- (6) *Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the noncitizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation. In particular, the inherent nature of certain conduct such as family violence and the other types of conduct or suspected conduct mentioned in paragraph 8.55(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.*

105. Paragraph 6 of the Direction provides that:

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

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

- (1) protection of the Australian community from criminal or other serious conduct;
- (2) whether the conduct engaged in constituted family violence;
- (3) the strength, nature and duration of ties to Australia;
- (4) the best interests of minor children in Australia; and
- (5) expectations of the Australian community.

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

- a) Legal consequence of the decision;
- b) extent of impediments if removed;
- c) impact on victims; and
- d) impact on Australian business interests.

108. I note the importance of the Other Considerations being “*other*” considerations, as opposed to “*secondary*” considerations. As noted by Colvin J in *Suleiman v Minister for Immigration and Border Protection*:⁹¹

*“...Direction 65 [now Direction 99] makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including non-refoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given to both 'primary' and 'other considerations'. In effect, it requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply.”*⁹²

OFFENDING HISTORY

109. The Applicant’s criminal record as produced by the Australian Criminal Intelligence Commission is outlined at Annexure B.
110. The Applicant has a criminal history which commenced when he was a juvenile, and continued into his adulthood. His last convictions were recorded on 19 June 2019.⁹³ The Applicant has been before the courts on criminal charges on multiple occasions. He has been convicted of multiple offences, of various sorts, including violence (including family violence), stealing and driving offences. Some of these have resulted in custodial sentences.
111. The Applicant’s juvenile convictions are a relevant consideration in this context.⁹⁴

PRIMARY CONSIDERATION 1 – PROTECTION OF THE AUSTRALIAN COMMUNITY

112. In considering this Primary Consideration 1, paragraph 8.1 of the Direction requires decision-makers to keep in mind the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-

⁹¹ [2018] FCA 594.

⁹² Ibid, [23].

⁹³ See details above.

⁹⁴ See *Thornton v Minister for Immigration, Citizenship, Migrant Service and Multicultural Affairs* [2020] FCA 1500 at [32] (Rangiah J).

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

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

- (1) The nature and seriousness of the non-citizen's conduct to date; and
- (2) The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct.

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

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

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

116. The Applicant's extensive criminal history, commencing as a juvenile, is set out above. His offending has included violent crimes and robbery.

117. He has committed acts of family violence against his partner, this has even included punching her in the stomach when she was pregnant with Child B, in an attempt to kill the unborn child.

118. He has committed acts of family violence against his mother and against his stepfather, who was over 60 years of age at the time. The Applicant was at the time, less than half the

age of his victim. He has committed acts of family violence in the presence of his stepson, Child A. He has breached Apprehended Violence Orders and bail.

119. The Applicant has committed numerous driving offences, including driving under the influence of drugs. He crashed a stolen car whilst drug driving.⁹⁵ This conduct, especially if repeated, is very serious. It carries with it the real risk of causing serious harm and possibly fatalities, to innocent road users or even pedestrians.

120. His conduct has been very serious.

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

- (1) *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;*
- (2) ***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;***
- (3) ***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));***
- (4) *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.*

122. As mentioned in paragraph 118 above, the Applicant assaulted his stepfather.

123. His conduct generally is certainly such that he does not pass the character test.

⁹⁵ Exhibit 4, TB2, pp 309-309.

124. **Sub-paragraph (c)** of paragraph 8.1.1(1) of the Direction requires a decision-maker (with the exception of the crimes or conduct mentioned in sub-paragraphs (a)(ii), (a)(iii) or (b)(i) of paragraph 8.1.1(1)) to have regard to the sentence(s) imposed by the Courts for a crime or crimes of a non-citizen/applicant. The imposition of a custodial term is regarded as the last resort in any reasonably and correctly applied sentencing process. Custodial terms are viewed as a reflection of the objective seriousness of an applicant's offending.
125. The Applicant has been sentenced to imprisonment for multiple offences as set out above. This is indicative of the very serious nature of his offending. Imprisonment is always a last resort and reserved for repeat offenders and/or the most serious offending.
126. **Sub-paragraph (d)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to the frequency of a non-citizen's offending and whether there is any trend of increasing seriousness.
127. The Applicant has been a serial offender since he was a juvenile. The gravity of his offending has escalated over time, in complete disregard of numerous cautions, reprimands and warnings. He has offended when on bail and under supervision. The details are set out above. This is very serious.
128. **Sub-paragraph (e)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to the cumulative effect of an Applicant's repeated offending.
129. The cumulative effect of the Applicant's offending has been very serious. He has accumulated many victims over his career as an offender. These include his partner, his mother and his stepfather. He has wasted community resources in policing, corrections and the justice system. He has been a consistent burden on the community. In the case of his driving offences, it is perhaps only good fortune, that has prevented serious injury or worse being visited upon innocent victims.
130. **Sub-paragraph (f)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to whether a non-citizen has provided false or misleading information to the Department, including by not disclosing prior criminal offending.
131. There is no evidence of this conduct.

132. **Sub-paragraph (g)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard to whether the non-citizen has re-offended since being formally warned about the consequences of further offending in terms of the non-citizen's migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour).
133. There is no evidence of any previous warning.
134. **Sub-paragraph (h)** of paragraph 8.1.1(1) of the Direction requires a decision-maker to have regard, where the offence or conduct was committed in another country, to whether that offence or conduct is classified as an offence in Australia.
135. There is no evidence of any such conduct in another country.
136. I do not consider factors (f) to (h) of paragraph 8.1.1(1) of the Direction apply to the Applicant's offending or circumstances. The rest of the relevant sub-paragraphs of paragraph 8.1.1(1) of the Direction, in their totality, weigh very heavily against revocation of the cancellation of the Applicant's visa. The Risk to the Australian Community Should the Applicant Commit Further Offences or Engage in Other Serious Conduct
137. Paragraph 8.1.2(1) provides that in considering the need to protect Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.
138. Paragraph 8.1.2(2) provides that in assessing the risk that may be posted by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:
- a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct;
 - b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:

- i. information and evidence on the risk of the non-citizen re-offending; and
 - ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence; and
- c) where consideration is being given to whether to refuse to grant a visa to the non-citizen - whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.

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

139. Assessing the nature of the harm to individuals or the Australian community that may occur if the Applicant were to engage in further criminal or other serious conduct, is informed by the nature of his offending to date, including any escalation in his offending. This assessment also notes that the Direction provides that the Australian community's tolerance for harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, is so serious that any risk that it may be repeated may be unacceptable.⁹⁶
140. The potential harm that may be caused to the Australian community if the Applicant were to reoffend is very serious. This may involve offending against family members, future domestic partners, or even random members of the community. His drug driving could easily result in catastrophic consequences for an unfortunate member of the community who happened to be in the wrong place at the wrong time. The Applicant's offending has been so serious and longstanding, that even a low risk of repetition is unacceptable.

Likelihood of engaging in further criminal or other serious conduct

141. The Applicant claims to be rehabilitated. In the case of a serial offender like the Applicant, these claims must be treated with caution, based on his history. The Applicant says that his children are a motivation to stop offending. Child A was born prior to his most recent and

⁹⁶ Paragraph 8.1.2(1) of the Direction.

serious offending. Child protection records suggest that he was a risk to the health and safety of both Child A and Child B. One of his offences involve punching his pregnant partner in the stomach when she was carrying Child B. The evidence before the Tribunal is that his children have been in the custody and control of child protection authorities. Any future possible contact between them and the Applicant, is in the hands of the relevant child protection authorities and possibly the Courts.

142. The Applicant has a history of being a serious violent offender as set out above. Incarceration has not deterred him from reoffending in the past. Professor Freeman administered a Violent Risk Appraisal Guide test, which placed the Applicant “*on the border between the “medium” and “high” range for violent reoffending.*” Professor Freeman noted that this test relies heavily on listed “*static factors*”.⁹⁷ In his evidence, Professor Freeman suggested that although it was impossible to predict with certainty, the Applicant may have now acquired some of the tools and the motivation, to reduce his dynamic risk factors to the low to medium range.
143. The Applicant has a history of longstanding drug and alcohol abuse. There is a clear escalation of the risk of the Applicant reoffending if he engages in substance abuse. This connection is noted by Professor Freeman. He says that the Applicant would need to need to engage with community-based relapse prevention programmes if released.⁹⁸ I note that he has no such arrangements in place, although the Applicant has general plans to seek such supports, for example from Mr Bashour, as may be available to him in Tara.
144. The Applicant has produced some evidence of having recently successfully completed various online rehabilitation courses to deal with his history of violence, family violence or substance abuse, as set out in his statement of 6 April 2022.⁹⁹
145. He claims that he now has insight, remorse and plans for the future. He has undertaken 5 sessions with an external psychologist. The claim that the Applicant has not abused drugs or alcohol in prison or detention, even if taken at face value, is no predictor of his likely behaviour in an uncontrolled environment. I note that his proposal to go to Tara is to some degree, a variation on the controlled environment theme. He will be away from his former

⁹⁷ Exhibit 4, Exhibit A13, p 215.

⁹⁸ Ibid, Exhibit A13, p 216.

⁹⁹ Above.

peers. He assumes that he will not be presented with drug use. This may or may not be so. He would rely on his family to support him. He would also visit Brisbane from time to time to see Child B and other family.

146. Having considered all of the evidence, I accept that the Applicant genuinely does not wish to relapse into drug use and a life of crime. I accept that he now appreciates what is at stake and that he does not want to be removed from the country.
147. On the other hand, his record is against him. He has a history of having poor coping skills and resilience. A methamphetamine dependency is also notoriously difficult to contain or manage. He has such a disorder according to Professor Freeman.
148. In my view, the risk of the Applicant reoffending if released into the community, is at least moderate. Any relapse into substance abuse, which on the evidence, can not be regarded as unlikely, would significantly further escalate the Applicant's prospects of reoffending.
149. In summary, if he were to reoffend, the potential harm may be very serious. The tolerance of any such harm is very low. His risk of reoffending, is at least moderate in my view, unless he slips back into drug use, a prospect of which there is a significant risk. In that event, his prospect of reoffending would be high.

Conclusion: Primary Consideration 1

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

PRIMARY CONSIDERATION 2: FAMILY VIOLENCE

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

violence, and the non-citizen being considered under section 501 or section 501CA has been afforded procedural fairness.

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

152. The Applicant has committed acts of serious family violence against his partner, his mother and his stepfather as set out above. His violence has been witnessed by his infant son, Child A.

Double counting:

153. The Applicant's Counsel submitted that, having taken into account the Applicant's history of family violence for the purposes of Primary Consideration 1,¹⁰⁰ it would be "*legally unreasonable to again hold those same matters against the Applicant under the primary consideration of family violence.*"¹⁰¹ He characterised this as "*double-counting*".
154. At the end of the hearing on 6 June 2023, the Tribunal invited the Applicant's Counsel to make further written submissions on this subject and another separate submission regarding the legal consequences of the decision.¹⁰² These submissions were received on

¹⁰⁰ Protection of the Australian Community, paragraph 8.1 of the Direction.

¹⁰¹ Primary Consideration 2, paragraph 8.2 of the Direction.

¹⁰² Other Consideration 1, paragraph 9.1 of the Direction.

12 June 2023. These submissions, and an associated article in the Australian Journal of Administrative Law, have been considered. The Respondent made submissions in reply on 20 June 2023.

155. It is useful to start by considering the scheme of the Act.

156. S 499 of the Act provides:

“Minister may give directions

(1) The Minister may give written directions to a person or body having functions of powers under this Act if the directions are about:

(a) the performance of those functions; or

(b) the exercise of those powers.

(1A) For example, a direction under subsection (1) could require a person or body to exercise the power under section 501 instead of the power under section 200 (as it applies because of section 201) in circumstances where both powers apply.

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

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

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

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

157. Direction 99 is a written direction by the Minister made under section 499 (1) of the Act.

158. The Tribunal is a body that ***“must comply with a direction under subsection (1).”***

159. The Tribunal is not simply to have regard to Direction 99. It is not the case that the Tribunal may comply with Direction 99. The Tribunal **must comply with Direction 99**.
160. It is not contended that Direction 99 is inconsistent with the Act or the regulations.

Direction 99 structure:

161. Direction 99 commences with an expansive definition of “*family violence*”. *The Direction states:*

*“family violence means violent, threatening or other **behaviour** by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful. Examples of **behaviour** that may constitute family violence include:*

- a) an assault; or*
- b) a sexual assault or other sexually abusive behaviour; or*
- c) stalking; or*
- d) repeated derogatory taunts; or*
- e) intentionally damaging or destroying property; or*
- f) intentionally causing death or injury to an animal; or*
- g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or*
- h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
- i) preventing the family member from making or keeping connections with his or her family, friends or culture; or*

j) *unlawfully depriving the family member, or any member of the family member's family, or his or her liberty."*

162. It is notable that this definition is open ended. It does not purport to contain or confine the conduct that may be captured within the concept of "*family violence*". It is also notable that it is defined by reference to "*behaviour*", it is not confined by reference to criminal charges or convictions.

163. When making a decision, "*Primary Considerations should generally give greater weight than the other considerations*".¹⁰³

164. Paragraph 8 of the Direction sets out the Primary Considerations which are set out as follows:

"In making a decision under section 501(1), 501(2) or 501CA(4), the following are primary considerations:

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

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

(3) the strength, nature and duration of ties to Australia;

(4) the best interests of minor children in Australia;

(5) expectations of the Australian community.¹⁰⁴"

165. Primary Considerations 1, 2, 4 and 5 explicitly require the Tribunal to consider family violence.

166. Primary Consideration 1 requires consideration of family violence "*regardless of whether there is a conviction for an offence or a sentence imposed*".¹⁰⁵

¹⁰³ Paragraph 7(2) of the Direction.

¹⁰⁴ Paragraph 8 of the Direction.

¹⁰⁵ Paragraph 8.1.1(1)(a)(ii) of the Direction.

167. Primary consideration 2 requires consideration of family violence where:

(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.¹⁰⁶*

168. When assessing the seriousness of family violence under Primary Consideration 2, the Tribunal must consider the following factors where relevant:

(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,

¹⁰⁶ Paragraph 8.2(2) of the Direction.

*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.*¹⁰⁷

169. Primary Consideration 4¹⁰⁸ requires consideration of family violence both explicitly and implicitly.

“(4) In considering the best interests of the child, the following factors must be considered where relevant:

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;***

*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.***¹⁰⁹

170. Primary Consideration 5¹¹⁰ explicitly requires consideration of family violence¹¹¹ It is a deeming provision.

171. Other Consideration 3,¹¹² may, in some instances, also implicitly require a consideration of family violence.¹¹³

¹⁰⁷ Paragraph 8.2(3) of the Direction

¹⁰⁸ Best interests of minor children in Australia.

¹⁰⁹ Paragraph 8.4(4)(b),(c),(g) and (h) of the Direction.

¹¹⁰ Expectations of the Australian Community, Paragraph 8.5 of the Direction.

¹¹¹ Paragraph 8.5(2)(a) of the Direction

¹¹² Impact on Victims.

¹¹³ Paragraph 9.3(1) of the Direction.

172. Direction 99, taken as a whole, evinces a determination by the Minister, to elevate consideration of family violence to a level of the greatest significance, in the assessment of whether a former visa holder, should have the privilege of remaining in Australia, restored to them. It does not however, require the Tribunal to reach any particular conclusion.
173. The weight to be given to instances of family violence, is a matter for the Tribunal to determine, after proper consideration of the facts, in each case.
174. The Tribunal has taken family violence into account here in the context of Primary Consideration 1, as required by paragraph 8.1 of the Direction. It weighs very heavily against the Applicant.
175. Primary Consideration 1 requires a consideration of the “*nature and seriousness of the non-citizen’s conduct to date*” (i.e. a historical analysis) for the purpose of a **general assessment of the risk of future harm**. The Applicant’s past conduct is considered in the context of an assessment of future risk. It is notable that in the case of family violence, it is relevant “*regardless of whether there is a conviction for an offence or a sentence imposed*”.
176. Primary Consideration 2 is exclusively concerned with family violence. It requires an assessment of the Applicant’s past conduct and its seriousness. It is focused on the gravity of **past conduct**, considering also past rehabilitation efforts, insight and any offending after having been warned about the consequences of family violence.¹¹⁴
177. It is not a prospective assessment of risk. There is an explicit statement of government policy set out in paragraph 8.2(1) of Direction 99. The weight to be given to this Primary Consideration is again, a matter for the Tribunal.
178. In Primary Consideration 4, family violence is considered in the **very specific context** of any impact on minor children who may be affected by a decision to restore the Applicant’s visa.
179. In Primary consideration 5, family violence is considered in the context of community expectations, as articulated in Direction 99. This operates as a deeming provision. It weighs

¹¹⁴ S 8.2(3) of the Act.

against the Applicant, irrespective of any future risk of harm. The weight to be given to this Primary Consideration however, is again a matter for the Tribunal.

180. In Other Consideration 3, family violence may be considered in the **very specific context** of its impact on victims. It is possible for this other consideration to be of assistance to an Applicant, where a victim has provided supportive evidence. Such a proposition is in fact advanced by the Applicant's counsel in this case.
181. I **do not** accept that the Tribunal can elect to simply ignore the explicit wording of the Direction, on the basis of a submission, that Primary Consideration 2 is otiose. I note that it was not submitted that there was "*double counting*" in respect of Primary Considerations 4 and 5, or Other Consideration 3.
182. I **do** accept that if the matter of family violence has been thoroughly explored in the context of Primary Consideration 1, it may be sufficient to simply refer to that analysis in the discussion of the same topic in other contexts, without the need for it to be repeated verbatim.
183. The Applicant has taken some rehabilitation courses as outlined above. He claims to have insight into his offending and its causes. The nature and extent of his offending is however very serious.
184. **Conclusion: Primary Consideration 2**
185. This consideration weighs very heavily against revocation of the cancellation of the Applicant's visa.

PRIMARY CONSIDERATION 3: THE STRENGTH NATURE AND DURATION OF TIES TO AUSTRALIA

186. Paragraph 8.3 of the Direction provides:
- (1) *Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*

- (2) *In considering a non-citizen's ties to Australia, decision-makers should give more weight to a non-citizen's ties to his or her child and/or children who are Australian citizens, Australian permanent residents and/or people who have a right to remain in Australia indefinitely.*
- (3) *The strength, duration and nature of any family or social links generally with Australian citizens, Australian permanent residents and/or people who have a right to remain in Australia indefinitely.*
- (4) *Decision-makers must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:*
- a) *the length of time the non-citizen has resided in the Australian community, noting that:*
- i. *considerable weight should be given to the fact that a noncitizen has been ordinarily resident in Australia during and since their formative years, regardless of when their offending commenced and the level of that offending; and*
 - ii. *more weight should be given to the time the non-citizen has resided in Australia where the non-citizen has contributed positively to the Australian community during that time; and*
 - iii. *less weight should be given to the length of time spent in the Australian community where the non-citizen was not ordinarily resident in Australia during their formative years and the noncitizen began offending soon after arriving in Australia.*

187. The Applicant has lived in Australia for most of his life, having arrived as a seven year old child.
188. The Applicant does not have a current partner in Australia, but his biological parents, his stepfather, brother, three sisters and three “in-laws” all live here. He also has 11 nieces and nephews here, two of them are adults.¹¹⁵

¹¹⁵ As discussed above.

189. He has two young children here, but his connection with them is complex given that both he and their mother have been drug addicts, he has been incarcerated since June 2019, and they have both been in State care or in unstable care arrangements. His youngest child, Child B has had virtually no contact with him and tragically, she may have a very short life expectancy due to congenital illness. The Applicant understandably wants to be there for Child B. In time, he would like to have custody of her.
190. He says that if he does not get his visa, this will “*affect my whole family but it will affect my mother more than anyone else because she will have to fight for custody and look after my two kids.*”¹¹⁶ The Applicant’s mother is in poor health, and he understandably wants to be there for her. If the Applicant were returned to the Solomon Islands, he could communicate with his children and family, as he has done since being incarcerated in 2019. They could visit him there.
191. The Applicant has spent relatively little time making any positive contribution to the community through working and paying taxes. He was on Centrelink from 2014 onwards. He has in fact been a significant burden on the community. His description of his contribution to society is “*I have done volunteer work for Boystown doing fencing for the elderly in housing commission.*”¹¹⁷
192. The Applicant has been here for most of his life and his closest family and children are here. There is no evidence to suggest that any of his connections to the Australian community are such that others are reliant or dependent upon him. He has been in custody or immigration detention since 27 April 2019. He has a long history of criminal behaviour and has made very little contribution to the community.

Conclusion: Primary Consideration 3

193. This consideration, taken at its highest from the Applicant’s perspective, weighs moderately in favour of revocation of the cancellation of the Applicant’s visa.

¹¹⁶ Exhibit 4, G20, Attachment H, p 108.

¹¹⁷ Ibid, G20, Attachment H, p 111.

PRIMARY CONSIDERATION 4: THE BEST INTERESTS OF MINOR CHILDREN IN AUSTRALIA

194. Paragraph 8.4(1) of the Direction requires a decision-maker to make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is in the best interests of a child affected by the decision.
195. Paragraphs 8.4(2) and 8.4(3) of the Direction respectively contain further considerations. 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
196. The Direction sets out a number of factors to take into consideration with respect to the best interests of minor children in Australia. Those include, relevantly:
- the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);
 - the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;
 - the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;
 - the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;
 - whether there are other persons who already fulfil a parental role in relation to the child;
 - any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);
 - evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;
 - evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.

197. The relevant minor children in Australia are:
198. Child A is aged six years old. He is not the Applicant's biological son, though he regards him as his "stepson". The Applicant was Child A's primary carer for the first nine months of his life, due to KJ suffering from post-natal depression. Child A was then with KJ until she left him with the Applicant's mother, when he was about 18 months old. He then lived with the Applicant, his sister and her children for two to three years. He has not been in the care of the Applicant since 1 January 2019. He has, since then, been in the care of child protection authorities, his biological father for "*two or three years*" and as of two weeks ago, apparently, he is back with his mother, KJ.¹¹⁸ The Applicant told the Tribunal that he would look after Child A if the boy wanted to live with him, but he would not seek custody. If he remained in Australia, he would "*buy him [Child A] birthday presents or something...nothing too serious.... I have my own problems to fix*".
199. I note the change in the tone of representations now made by the Applicant in respect of Child A, compared to the evidence given to the previous Tribunal hearing.
200. It was accepted by the Applicant's Counsel that there was no real prospect of the Applicant assuming a parental role. There is no prospect of him resuming his former relationship with KJ, though he claims that they are now "*on good terms*".
201. The Applicant told the Tribunal that he contacts his mother, JK by phone each Sunday and speaks with Child B, who visits JK each Sunday and Child A if he is there. This has been the nature of contact with Child A since the Applicant was imprisoned in June 2019. If the Applicant were to leave Australia, this level of contact could continue.
202. Child B is a girl aged three years old. The evidence suggests that the Applicant has had very little to do with her. She has never been in his care. He told the Tribunal that he only found out about her birth from child safety officers. He admitted that both he and Child A's mother, KJ were on drugs at the time and that he was "*messed up*". She was born with a very serious medical condition. This is summarised as follows:

¹¹⁸ Ibid, G20, Attachment H, p 105.

*"[Child B] is diagnosed with tuberous sclerosis and is under the care of Queensland Children's Hospital neurology department for bi monthly reviews. Given the nature of her condition which is likely to impact her development, there would be no viable option of facilitating contact away from the Brisbane region at this time with [the Applicant]. [Child B] is one year and five months of age and cannot communicate via telephone calls at this time."*¹¹⁹

203. She sadly may not survive for more than a few years. She has had delayed development and speech.¹²⁰ She has been in the care of child protection authorities and foster carers.
204. The Applicant said that his plan, if released into the community, would be to prioritise working on himself, to stabilise his life. He plans to live with his father in Tara, a small town of approximately 2000 inhabitants, 300kms west of Brisbane. He plans to visit Child B occasionally, working towards gaining full custody, eventually. It seems that Child B's medical condition is such, that she should, in her best interests, remain in Brisbane, to be near high quality medical services. This creates a tension between the Applicant's stated desire to live in Tara, far away from old peer groups and the temptations of drug use, and his desire to have custody of Child B.
205. To obtain access to or custody of Child B would require the co-operation of the relevant child welfare authorities and possibly Court orders. The Applicant's past connection with Child B has been limited. He speaks with her by phone on Sundays when she is visiting her grandmother. Child B's complex medical condition would almost certainly see her remaining in Brisbane.
206. There is no independent expert evidence to suggest that either the children would be materially or emotionally worse off, if they were to remain separated from the historically absent, or at best intermittent, presence of the Applicant in their lives.
207. The Applicant's history of violence and abuse of methamphetamine, is a matter of serious concern to child protection authorities.¹²¹

¹¹⁹ Ibid, Exhibit A15, p 223.

¹²⁰ Ibid, Exhibit A14, p 221-222, Exhibit A15, p 223 and Exhibit A16, p 224.

¹²¹ Ibid, TB5, pp 379-424.

208. Child C (AA) is KJ's son from a previous relationship. He is now aged about 15 years old. He lives with his biological father. The Applicant gave no evidence about Child C, relevant to this consideration.
209. The Applicant told the Tribunal that he had a close relationship with nine nieces or nephews aged under 18 years. I have had regard to the Applicant's submissions concerning his connection to these children.¹²² I have also had regard to the various statements from these minor children.¹²³
210. The Applicant has spent more time with some of these children than others, for example when he lived with his sister, but he has never performed a parental role. These children would naturally prefer the Applicant to remain in Australia. He could however continue to contact them by electronic means if he were removed from Australia. In this regard, the situation that has applied since 2019 would simply continue. The Applicant's Counsel made no special representation in respect of any of these children, such as to suggest that their interests were other than held in common.
211. If the Applicant were to be returned to community **and** if he did not reoffend **and** if he remained drug and alcohol free **and** if he was able to persuade child protection authorities and possibly a court that he was capable of safely caring for Child B, **and** he was able to successfully return to Brisbane (so Child B could have proper medical care) **and** he did not resume contact with his old peer group, he **may** make a positive contribution, to varying degrees, to the lives of each of the children mentioned above. All of this is highly contingent on his conduct. As discussed above, the risk of him reoffending and returning to drug/alcohol abuse is significant.
212. If he were to be returned to the community and be gainfully employed, a prospect that seems improbable given his history, he may be able at least to make some financial contribution towards his children's welfare.
213. If he were to be removed from Australia, he could continue his current electronic modes of communication with each of the children. They could visit him.

¹²² Exhibit 1 at [90]-[93].

¹²³ Exhibit 7.

214. Having regard to all of the above, Primary Consideration 4 weighs slightly in favour of revocation of the Applicant's visa cancellation.

PRIMARY CONSIDERATION 5 – THE EXPECTATIONS OF THE AUSTRALIAN COMMUNITY

The relevant paragraphs in the Direction

215. In making the assessment for weight to be allocated to Primary Consideration 5, paragraph 8.5(1) of the Direction provides that **the Australian community expects non-citizens to obey Australian laws while in Australia**. I should consider whether the Applicant has breached, or whether there is an unacceptable risk that he would breach, this expectation by engaging in serious conduct.
216. Paragraph 8.5(2) of the Direction directs that a visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person should not be granted or continue to hold a visa. **In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:**
- a) ***acts of family violence; or***
 - b) ***causing a person to enter into, or being party to (other than being a victim of), a forced marriage;***
 - c) ***commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, 'serious crimes' 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.***
217. Paragraph 8.5(3) of the Direction provides that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

218. Paragraph 8.5(4) of the Direction provides guidance on how the expectations of the Australian community are to be determined. This paragraph states:

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

219. Paragraph 8.5(4) of the Direction is consistent with the decision of the Full Court of the Federal Court in *FYBR v Minister for Home Affairs* [2019] FCAFC 185 ("FYBR") which affirmed the approach established in previous authorities that it is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an Applicant's circumstances or evidence about those expectations. The Tribunal is to be guided by the Government's views as to the expectations of the Australian community, which are to be found in the Direction.¹²⁴
220. Paragraph 8.5 of the Direction contains a statement of the Government's views as to the expectations of the Australian community, which operates to ascribe to the whole of the Australian community an expectation aligning with that of the executive government which the decision maker must have regard to.

Analysis – Allocation of Weight to Primary Consideration 5

221. Accordingly, in assessing the weight attributable to Primary Consideration 5, it is necessary to have regard to the following matters:
- (1) the Applicant's criminal record as set out in Annexure B.
 - (2) The other matters set out above
 - (3) the Applicant has committed serious acts of family violence and other violent crimes. He has seriously assaulted his father-in-law who is twice his age, as set out above.

¹²⁴ See *Ueese v Minister for Immigration and Border Protection* [2016] FCA 348; *Afu v Minister for Home Affairs* [2018] FCA 1311; *YNQY v Minister for Immigration and Border Protection* [2017] FCA 1466 and *FYBR v Minister for Home Affairs* [2019] FCA 500.

Conclusion: Primary Consideration 5

222. Primary Consideration 5 weighs very heavily against. revocation of the cancellation of the Applicant's visa.

OTHER CONSIDERATIONS

223. It is necessary to look at the Other Considerations listed at paragraph 9 of the Direction.

(a) Legal consequence of the decision;

224. Paragraph 9.1 of the Direction directs a decision-maker to take into account the following:

- (1) Decision-makers should be mindful that unlawful non-citizens are, in accordance with section 198, liable to removal from Australia as soon as reasonably practicable in the circumstances specified in that section, and in the meantime, detention under section 189, noting also that section 197C(1) of the Act provides that for the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful noncitizen.*
- (2) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the Refugees Convention), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT), and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act, particularly the concept of 'protection obligations', reflects Australia's interpretation of non-refoulement obligations and the scope of the obligations that Australia is committed to implementing.*
- (3) International non-refoulement obligations will generally not be relevant where the person concerned does not raise such obligations for consideration and the circumstances do not suggest a non-refoulement claim.*

9.1.1 Non-citizens covered by a protection finding

- (1) Where a protection finding (as defined in section 197C of the Act) has been made for a non-citizen in the course of considering a protection visa application made by the non-citizen, this indicates that non-refoulement obligations are engaged in relation to the non-citizen.*

- (2) *Section 197C(3) ensures that, except in the limited circumstances specified in section 197C(3)(c), section 198 does not require or authorise the removal of an unlawful non-citizen to a country in respect of which a protection finding has been made for the non-citizen in the course of considering their application for a protection visa. This means the non-citizen cannot be removed to that country in breach of non-refoulement obligations, even if an adverse visa decision under section 501 or 501CA is made for the non-citizen and they become, or remain, an unlawful non-citizen as a result. Instead, the non-citizen must remain in immigration detention as required by section 189 unless and until they are granted another visa or they can be removed to a country other than the country by reference to which the protection finding was made.*
- (3) *Decision-makers should also be mindful that where the refusal, cancellation or non-revocation decision concerns a protection visa, the person will be prevented by section 48A of the Act from making a further application for a protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them - see sections 48A and 48B of the Act). Further, as a result of a refusal or cancellation decision under section 501 or a non-revocation decision under section 501CA, the person will Page 12 of 24 Direction No. 99 - Migration Act 1958 - Direction under section 499 Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA be prevented from applying for any other class of visa except a Bridging R (Class WR) visa (see section 501E of the Act and regulation 2.12AA of the Regulations).*

9.1.2 Non-citizens not covered by a protection finding

- (1) *Claims which may give rise to international non-refoulement obligations can also be raised by a non-citizen who is not the subject of a protection finding, in responding to a notice of intention to consider cancellation or refusal of a visa under section 501 of the Act, or in seeking revocation of the mandatory cancellation of their visa under section 501CA. Where such claims are raised, they must be considered.*
- (2) *However, where it is open to the non-citizen to apply for a protection visa, it is not necessary at the section 501/section 501CA stage to consider non-refoulement issues in the same level of detail as those types of issues are considered in a protection visa application. The process for determining protection visa applications is specifically designed for consideration of non-refoulement obligations as given effect by the Act and where it is open to the person to make such an application a decision-maker, in making a decision under section 501/section 501CA, is not required to determine whether non-refoulement obligations are engaged in respect of the person. Having considered the person's representations, the decision-maker*

may choose to proceed on the basis that if and when the person applies for a protection visa, any protection claims they have will be assessed, as required by section 36A of the Act, before consideration is given to any character or security concerns associated with them.

(3) Non-refoulement obligations that have been identified for a non-citizen with respect to a country, via an International Treaties Obligations Assessment or some other process outside the protection visa process, would not engage section 197C(3) to preclude removal of the non-citizen to that country. In these circumstances, in making a decision under section 501 or 501CA, decision-makers should carefully weigh any non-refoulement obligation against the seriousness of the non-citizen's criminal offending or other serious conduct. However, that does not mean an adverse decision under section 501 or 501CA cannot be made for the non-citizen. A refusal, cancellation or non-revocation decision will not necessarily result in removal of the non-citizen to the country in respect of which the non-refoulement obligation exists. For example, consideration may be given to removal to another country, or the Minister may consider exercising his/her personal discretion under section 195A to grant another visa to the non-citizen, or alternatively, consider exercising his/her personal discretion under section 197AB to make a residence determination to enable the non-citizen to reside at a specified place in the community, subject to appropriate conditions. Further, following the visa refusal or cancellation decision or non-revocation decision, if the non-citizen makes a valid application for a protection visa, the non-citizen would not be liable to be removed while their application is being determined.

225. The Applicant has not raised any protection issue, but his Counsel has raised another "legal issue", namely that, if the visa cancellation decision is affirmed, he will be permanently precluded for entering Australia. It was submitted that this *"is a very serious legal consequence that is not proportionate in all of the circumstances."*

226. The Tribunal accepts that if it were to find that there was not *"another reason"* to revoke the Applicant's visa cancellation, it would be highly unlikely, if not impossible, for him to succeed in any future visa application. This is presently however, a matter of speculation. This flows from the current *"exclusion criteria"* contained in the *Migration Regulations*.¹²⁵ The regulations may change in the future.

¹²⁵ 1994 (Cth).

227. This consequence of permanent removal is not however, in any way unique to the Applicant, or any novel circumstances peculiar to him. It would have no impact on his freedom in his country of origin.
228. He would share this consequence with any applicant whose visa was mandatorily cancelled under s 501(3A) of the Act, and not restored. This is an essential, basic element of the scheme of the Act. It is designed to protect the Australian community, by excluding former visa holders who, commit serious crimes, and who do not have their visa restored for "*another reason*". This is not, in and of itself, another reason to revoke the cancellation of the Applicant's visa.
229. I do not accept that a clear policy of the Act, namely the ongoing exclusion of former visa holders, who have had their visa cancelled for having committed serious criminal offences attracting a term of imprisonment of 12 months or more, is itself to be taken into account, as a factor weighing in favour of revocation of cancellation.
230. This other consideration is neutral.
231. If I am wrong in this assessment, I would give this Other Consideration minimal weight. It would not be sufficient, in the context of my assessment of the Primary and remaining Other Considerations, to shift the overall balance, in the Applicant's favour.

(b) Extent of impediments if removed

232. 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.

233. The Applicant is aged 29 years old. The Applicant seems to be physically well, but he has variously reported mental health issues. These include depression, an adjustment disorder, cannabis use disorder and a methamphetamine dependency disorder. He has been proscribed anti-depressant medication. In this context I note the reports¹²⁶ and the oral evidence of Professor Freeman. The Applicant's proscribing medical practitioner was not called and did not provide a report.
234. According to Professor Freeman, passages from who's report are quoted above, the Applicant would require ongoing treatment and support if he were to be released into the community. This includes ongoing general practitioner care and support to remain drug/alcohol free. I have considered Professor Freeman's reports and his evidence in its totality.
235. It is accepted by the Tribunal that the Applicant would be highly unlikely to have access to the same levels of medical care and other support for his mental health and substance abuse issues in the Solomon Islands, as he would, if he remained in Australia.
236. It is also accepted that his return to the Solomon Islands may, in and of itself, increase his stress and adversely impact on his mental health. If this were to precipitate, or to include a relapse into mental illness or substance abuse, his treatment options there would be inferior to those available in Australia. They would be similar to those available to any other citizen of that country.
237. The Applicant is not fluent in Pidgin, or conversant in other local languages. He is broadly familiar with the culture through his early years there and his family. If he returned, he would certainly have a difficulty at least for a time, in adjusting to the language and the culture. He may find it difficult to obtain employment.
238. He told the Tribunal that he had no ties there and that he would be homeless. When cross-examined, he conceded that he did have his maternal grandmother living there. He has not spoken to her recently. It is possible that he could obtain her contact details from his mother. He conceded that he may have cousins. He said that he did not know whether he had any

¹²⁶ Exhibit 4, Exhibit A13, pp 209-220 and Exhibit 7.

aunts or uncles there. I contrast this also with the sworn evidence given to the last Tribunal on 2 November 2020.¹²⁷ I regard this evidence as self-serving and unreliable.

239. This consideration is weighs in favour of revocation of the visa cancellation.

(c) Impact on victims

240. Paragraph 9.3 of the Direction directs a decision-maker to take into account the impact of the section 501 or 501C decision on members of the Australian community, including victims of the non-citizen's criminal behaviour, and the family members of the victim or victims, where information in this regard is available and the non-citizen being considered for visa refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness.

241. The Applicant's mother was one of several victims of his family violence, as discussed above. I note that she has forgiven him for his offending against her and wishes for him to be returned to the Australian community.¹²⁸ It is not unreasonable to observe that she is highly motivated to see the Applicant remain in Australia.

242. In my view, this other consideration weighs very slightly in favour of revocation of the Applicant's visa cancellation.

(d) Impact on Australian business interests

243. Paragraph 9.4 of the Direction directs a decision-maker to take into account the following:

Decision-makers must consider any impact on Australian business interests if the non-citizen is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501 or 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

244. There was no evidence on this topic, so this consideration is neutral.

¹²⁷ Ibid, p 475.

¹²⁸ Exhibit 6.3 at [33]-[35].

245. This Other Consideration (d) is neutral.

Findings: Other Considerations

246. The application of the Other Considerations in the present matter can be summarised as follows:

- (a) legal consequence of decision under s501 or s501CA: neutral
- (b) extent of impediments if removed: weighs in favour of revocation of the visa cancellation
- (c) impact on victims: weighs very slightly in favour of revocation of the Applicant's visa cancellation.
- (d) the impact on Australian business interests: neutral.

CONCLUSION

247. It is necessary to weigh up all of the Primary and Other Considerations.

248. Primary Consideration 1 weighs very heavily against revocation of the visa cancellation.

249. Primary Consideration 2 weighs very heavily against revocation of the visa cancellation.

250. Primary Consideration 3 weighs moderately in favour of revocation of the cancellation of the Applicant's visa.

251. Primary Consideration 4 weighs slightly in favour of revocation of the Applicant's visa cancellation.

252. Primary Consideration 5 weighs very heavily against revocation of the cancellation of the Applicant's visa.

253. Other Considerations, (a) and (d) are neutral.

254. Other Consideration (b) weighs in favour of revocation of the visa cancellation.

255. Other Consideration (c) weighs very slightly in favour of revocation of the Applicant's visa cancellation.
256. In my view, the proper application of the Direction favours the Tribunal not exercising the discretion to revoke the cancellation of the Applicant's Visa. I find that there is not "another reason" pursuant to section 501CA (4)(b)(ii) of the Act, to revoke the original decision.

DECISION

257. The decision under review is affirmed.

I certify that the preceding two hundred and fifty-seven (257) paragraphs are a true copy of the reasons for the decision herein of Senior Member J Rau SC.

.....[sgnd].....
Legal Associate

Dated:	22 June 2023
Date of hearing:	6 June 2023
Advocate for the Applicant:	Dr Jason Donnelly Latham Chambers
Advocate for the Respondent:	Mr Jon Papalia Australian Government Solicitor

Annexure A – List of Exhibits

Exhibit no.	Lodged by	Document
1	Applicant	Statement of Facts, Issues & Contentions filed 5 April 2023
2	Respondent	Statement of Facts, Issues & Contentions filed 1 May 2023
3	Applicant	Applicant's Reply to Respondent's Statement of Facts, Issues and Contentions filed 25 May 2023
4	Respondent	Remittal Bundle (Pages 1-541) filed 14 February 2023
5	Applicant	Applicant's Tender Bundle filed 5 April 2023
6	Applicant	Bundle of Statements filed 5 April 2023: 6.1 Statement from the Applicant (05.04.2023) 6.2 Statement from Applicant's father (26.03.2023) 6.3 Statement from Applicant's mother (26.03.2023) 6.4 Statement from Applicant's brother (26.03.2023) 6.5 Statement from Applicant's sister (30.03.2023) 6.6 Statement from Applicant's sister (30.03.2023)
7	Applicant	Applicant's Supplementary Bundle in Reply filed 25 May 2023

Annexure B – Applicant's Offending History

Court	Court Date	Offence	Court Result
Brisbane Childrens Court	17/03/2009	Assaults occasioning bodily harm whilst armed/in company	One penalty imposed with other matters dealt with on this date: no conviction recorded
Brisbane Childrens Court	17/03/2009	Stealing from the person Assaults occasioning bodily harm	One penalty imposed with other matters dealt with on this date:

		<p>Common assault</p> <p>Assaults occasioning bodily harm whilst armed/in company</p> <p>Receiving stolen property (or property fraudulently obtained)</p> <p>Assault with intend to steal</p> <p>Assaults occasioning bodily harm</p>	no conviction recorded
Brisbane Childrens Court	28/04/2009	<p>Unauthorised dealing with shop goods</p> <p>Failure to appear in accordance with undertaking</p>	<p>One penalty imposed:</p> <p>No conviction recorded reprimanded</p>
Brisbane District Court	22/04/2010	<p>Grievous bodily harm</p> <p>Wounding and similar acts</p>	<p>On each charge: No conviction recorded: sentenced to 6-month detention period</p>
Brisbane District Court	22/04/2010	<p>Robbery armed in company</p> <p>Attempted robbery – use/threaten violence armed/pretends to be armed or in company whilst with actual violence</p>	<p>On each charge: No conviction recorded: sentenced to 9-month detention period</p>

		Assaults occasioning bodily harm	
Brisbane District Court	22/04/2010	Grievous bodily harm	Dealt with as a juvenile: conviction recorded: sentenced to 3 years and 9 months detention
Brisbane Childrens Court	03/06/2010	Unauthorised dealing with shop goods Contravene direction or requirement	On all charges: no conviction recorded: reprimanded
Beenleigh Magistrates Court	31/08/2015	Possessing dangerous drugs Possess utensils or pipes etc for use	No conviction recorded: Fined \$900.00
Ipswich Magistrates Court	26/04/2016	Contravene direction or requirement	On all charges: fined \$350.00
Beenleigh Magistrates Court	16/05/2016	Failure to appear in accordance with undertaking	Conviction recorded: fined \$500.00
Beenleigh Magistrates Court	04/08/2016	Contravene direction or requirement	Conviction recorded
Beenleigh Magistrates Court	04/08/2016	Offence to operate vehicle during number plate confiscation	On all charges conviction recorded: \$600.00

		Offence to remove, tamper with or modify number plate confiscation notice	
Beenleigh Magistrates Court	04/08/2016	Contravention of domestic violence order	Conviction recorded: sentenced 9 months imprisonment
Beenleigh Magistrates Court	04/08/2016	Unlawful possession of suspected stolen property	Conviction recorded: 1 month imprisonment (concurrent)
Beenleigh Magistrates Court	04/08/2016	Contravention of domestic violence order	Conviction recorded: 1 month imprisonment (concurrent)
Beenleigh Magistrates Court	29/04/2019	Failure to appear in accordance with undertaking	Conviction recorded: fined \$650.00
Beenleigh Magistrates Court	19/06/2019	Evasion offence	Conviction recorded: 50 days imprisonment (concurrent)
Beenleigh Magistrates Court	19/06/2019	Possessing dangerous drugs Trespass – entering or remaining in dwelling or yard Wilful damage or police property Breach of bail condition Wilful damage	Conviction recorded: 3 months imprisonment (concurrent)

Beenleigh Magistrates Court	19/06/2019	Unlawful use of motor vehicles aircraft or vessels	Conviction recorded: 6-month imprisonment (concurrent)
Beenleigh Magistrates Court	19/06/2019	Serious assault person over 60	Conviction recorded: 18-month imprisonment (concurrent)
Beenleigh Magistrates Court	19/06/2019	Common assault	Conviction recorded: 12-month imprisonment (concurrent)
Beenleigh Magistrates Court	19/06/2019	Receiving tainted property	Conviction recorded: 9-month imprisonment (concurrent)
Beenleigh Magistrates Court	19/06/2019	Escape by persons in lawful custody	Conviction recorded: 6-month imprisonment (cumulative)
Beenleigh Magistrates Court	19/06/2019	Burglary and commit indictable offence	Conviction recorded: 12-month imprisonment (concurrent)