Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Jade Levi Rowe**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2025/3977**
Tribunal:	**General Member R. West**
Place:	**Melbourne**
Date:	**22 August 2025**
Decision:	Pursuant to section 105(a) of the *Administrative Review Tribunal Act 2024* (Cth), the Tribunal affirms the decision of the delegate of the Respondent of 29 May 2025 not to revoke the cancellation of the Applicant's Special Category (Temporary) (Class TY) (Subclass 444) visa.

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

General Member R. West

Catchwords

MIGRATION *– mandatory cancellation of applicant's visa – conviction for family violence offences – applicant does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – Direction 110 – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – decision affirmed.*

Legislation

Administrative Review Tribunal Act 2024 (Cth)
Migration Act 1958 (Cth)
Migration Regulations 1994 (Cth)
Returning Offenders (Management and Information) Act 2015 (New Zealand)

Cases

Bainbridge and Minister for Immigration, Citizenship and Multicultural Affairs [2023] AATA 4184
Belmont v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 667
CKL21 v Minister for Home Affairs [2022] FCAFC 70; (2022) 293 FCR 634
CRNL v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 138
FYBR v Minister for Home Affairs [2019] FCAFC 185
Gaspar v Minister for Immigration and Border Protection [2016] FCA 1166
Holloway v Minister for Immigration, Citizenship and Multicultural Affairs [2022] FCA 1126
JWKG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 21
KCCD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] AATA 5145
LMCZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] AATA 4967
Minister for Immigration, Citizenship and Multicultural Affairs v HSRN [2023] FCAFC 68
Minister for Home Affairs v Stower [2020] FCA 407
QKVH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] AATA 4431
Rano v Minister for Home Affairs, Minister for Cyber Security [2024] FCA 1003

Rokobatini v Minister for Immigration and Multicultural Affairs [1999] FCA 1238

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

SZSS and Minister for Home Affairs (Migration) [2018] AATA 4079

Tera Euna and Minister for Immigration and Border Protection (Migration) [2016] AATA 301

Uelese v Minister for Immigration and Border Protection (2016) 248 FCR 296

Viane v Minister for Immigration and Border Protection [2018] FCAFC 116

ZTGP and Minister for Home Affairs (Migration) [2018] AATA 3518

Secondary Materials

Direction No. 110 – Migration Act 1958 – Direction under s 499: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA (dated 7 June 2024)

Statement of Reasons

1. This matter concerns an application for review of the decision of a delegate of the Respondent not to revoke the cancellation of the Applicant's Special Category (Temporary) (Class TY) (Subclass 444) visa (the **Visa**) under section 501(3A) of the *Migration Act 1958* (Cth) (the **Act**).

BACKGROUND

2. The Applicant is a citizen of New Zealand. He first arrived in Australia 8 October 1995.[1]

3. On 25 January 2024 the Applicant was convicted of a range of domestic violence offences including the offence of *choking, suffocating strangulation domestic relationship* for which he was sentenced to a term of imprisonment of four years.

4. On 4 March 2024 the Applicant's Visa was cancelled under section 501(3A) of the Act (**Cancellation Decision**) and the Applicant was notified of the cancellation and was invited to make representations about revocation.[2]

5. On 6 March 2024 the Applicant sought revocation of the cancellation of the Visa and made representations to the Respondent as to why the cancellation of the Visa should be revoked.[3]

6. On 29 May 2025 a delegate of the Respondent decided not to revoke the cancellation of the Applicant's Visa (**Reviewable Decision**) and notified the Applicant of the decision on 2 December 2024.[4]

7. On 6 June 2025 the Applicant applied to the Tribunal for review of the Reviewable Decision[5] (**Application**).

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[1] G15 at p.132.
[2] G16 at p.133.
[3] G8-9.
[4] G3.
[5] G2.

HEARING

8. The Tribunal conducted a hearing of the Application on 13 and 14 August 2025 by videoconference. The Applicant was represented by Associate Professor Dr. Jason Donnelly of counsel. The Respondent was represented by Mr Jarvis Kirstenfeldt, a solicitor.

9. In conducting the review, the Tribunal had regard to:

   (a) the documents produced to the Tribunal by the Respondent pursuant to section 501G of the Act, numbered G1 to G18 and paginated from pages 1 to 164 (**G Documents**), and further documents produced under summons sequentially numbered TB1 to TB7 and paginated from pages 1 to 254 (**TB Documents**);

   (b) Statement of Facts, Issues, and Contentions produced by the Applicant (**ASFIC**);

   (c) a Statement of Facts, Issues, and Contentions produced by the Respondent (**RSFIC**);

   (d) a bundle of documents tendered by the Applicant marked as exhibits and listed in Appendix A; and

   (e) the oral evidence of:

      i. the Applicant;

      ii. Nicole Te Whetu;

      iii. Danielle Broadhurst; and

      iv. Kristian Bradford.

LEGISLATIVE FRAMEWORK

10. Section 501CA(4) of the Act enables the Tribunal on review to revoke the mandatory visa cancellation decision if it is satisfied that:

   (a) the Applicant passes the character test (as defined by section 501); or

   (b) there is another reason why the cancellation should be revoked.

11. Section 501(6)(a) provides that a person is deemed not to pass the character test if they have a '*substantial criminal record*', which is defined in section 501(7)(c) to include having been '*sentenced to a term of imprisonment of 12 months or more*'.

12. On 25 January 2024 the Applicant was sentenced to a term of imprisonment of four years for the commission of the offence of *choking, suffocating strangulation domestic relationship*. As a result, the Applicant has a '*substantial criminal record*' as defined in section 501(7)(c). He, therefore, fails the character test under section 501(6)(a). The Applicant does not dispute that he fails the character test.[6]

13. Accordingly, the sole issue before the Tribunal is whether, under section 501CA(4)(b)(ii), there is *another reason* why the mandatory cancellation of the Applicant's Visa should be revoked. That reason:

> *... must be a reason that carries sufficient weight or significance to satisfy the Minister entrusted with the responsibility to consider whether to revoke the visa cancellation that the decision should be revoked. Only a reason of that character enlivens the statutory power to revoke. It is the absence of such a reason that will result in a decision not to revoke a visa cancellation.*[7]

DIRECTION 110

14. On 7 June 2024, the Minister issued *Direction No. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (**Direction 110**) to commence operation from 21 June 2024. Direction 110 provides guidance for decision-makers in determining, relevantly, whether there is another reason why the cancellation of the Applicant's Visa should be revoked.

15. Section 499 of the Act authorises the Minister to give written directions to a person or body having functions or powers under that Act, provided that the directions are about the performance of those functions or the exercise of those powers. Section 499(2A) of the Act mandates that the Tribunal must comply with the direction.[8]

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[6] ASFIC at [7]-[11].

[7] *Viane v Minister for Immigration and Border Protection* [2018] FCAFC 116 at [64] per Colvin J.

[8] See *Rokobatini v Minister for Immigration and Multicultural Affairs* (1999) 90 FCR 583 [17].

16. Paragraph 6 of Part 2 of Direction 110 provides that decision-makers must take into account the considerations identified in paragraphs 8 and 9 where relevant to the decision within the framework provided by the principles stated in paragraph 5.2.

17. Paragraph 8 of Part 2 sets out the five 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.*

18. Paragraph 9(1) of Part 2 sets out other considerations. These include, but are not limited to:

> *a) legal consequences of the decision;*
>
> *b) extent of impediments if removed;*
>
> *c) impact on Australian business interests.*

19. Paragraph 7(2) of Part 2 provides that the primary considerations should generally be given greater weight than the other considerations and specifically provides that the primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations.

Applicant's Criminal Record

20. A complete statement of the Applicant's criminal record as reported by the Australian Criminal Intelligence Commission on 18 March 2024 was included in the G Documents.[9]

21. The offending documented in the record includes the following convictions:

[9] G4 at pp;.45-48.

a. 16 March 2018 – Southport Magistrates Court – commit public nuisance at or near licensed premises, assault or obstruct police, in public place while intoxicated – fined $600

b. 26 March 2018 – Southport Magistrates Court – assault or obstruct police, in public place while intoxicated – community service order – commit public nuisance – contravene police banning notice – fined $1,000

c. 28 February 2019 – Southport Magistrates Court – breach community service order – fined $600 and resentenced for original offence and fined $600

d. 24 November 2021 – Brisbane Magistrates Court – possess dangerous drugs – unlawful possession of controlled drug – fined $550 – breach of order imposed on 21 July 2021 – recognisance forfeited and fined $300

e. 25 November 2022 – Southport Magistrates Court – contravention of domestic violence order – fined $400

f. 25 January 2024 – Southport District Court
    i. *choking, suffocating strangulation domestic relationship – 4 years imprisonment*
    ii. *common assault domestic violence offence – 12 months imprisonment*
    iii. *threatening violence – discharge firearm or other act – domestic violence offence – 6 months imprisonment*
    iv. *contravene domestic violence order (aggravated offence) – 9 months imprisonment*
    v. *contravene domestic violence order – 6 months imprisonment*
    vi. *unlawful use of motor vehicle, aircraft or vessel – 1 month imprisonment*

    All terms of imprisonment to be served concurrently with 410 days pre-sentence custody to count as time spent.

22. The sentencing remarks of Judge Jackson on 25 January 2024 indicate that the Applicant faced charges for eight indictable offences and 13 summary offences, to which he plead guilty.[10] His Honour set out the history of the offending as follows:

> *..you and the complainant were in an on-again, off-again de facto relationship. Only four months into that relationship, it was thought necessary to make a domestic violence order, naming you as the respondent and the complainant as the aggrieved, with one condition being that you be of good behaviour towards the aggrieved and not commit domestic violence towards her.*
>
> *Unfortunately, about six weeks later, or a little less, on the 14th of July, you were in the spare room of the complainant's unit, collecting some of your personal belongings, when you found a letter to her from a former partner. You then proceeded to throw the complainant's property about, verbally abuse her, and violently threaten her. That is the subject of summary charge 1.*

[10] G5 at p.50.

On the 20th of July, while she was getting ready for work, you asked to borrow her car, which she refused. You then commenced slamming doors and screaming, while walking through the unit hitting things. You then took the complainant's keys and bag and refused to return them until she threatened to call the police. That is the subject of summary charge 2.

On the 12th of September 2022, you were at her unit and she was sleeping in her car. You called her multiple times, telling her to come up to the unit because you were leaving. When she went to the unit, you were throwing her belongings around and packing a bag. You refused to return the complainant's keys, that is the subject of summary charge 3.

She asked you, perhaps reasonably enough, to stop throwing her belongings around, and you instead grabbed her and started choking her. You used your head to push against hers and pushed her onto the bed. You then jumped on top of her and continued to violently shake her. That is the subject of summary charge 4.

You got off the complainant and continued to pack your belongings. You left with the complainant's keys, returning a short time later, giving her back the keys to the unit, and leaving again with the car keys. That is the subject of summary charge 5.

Following those incidents, it was thought appropriate to vary the order that had been put in place, the domestic violence order, and to add a variety of conditions to it, including ones from prohibiting you from remaining at, entering, or attempting to enter or approach within 100 metres of where she lives.

On the 22nd of October then, you and the complainant went shopping. You had an argument. You began yelling at the complainant. Once arriving back at the unit, you refused to return the complainant's keys. She became scared and started an audio recording. Obviously being there was a breach of that domestic violence order, and that is the subject of summary charge 6.

As she started walking to her room, you struck her in the back with a plastic storage box containing property. She felt an intense sharp pain in her back. That is the first count on the indictment of common assault.

She asked you why you had hurt her. You then called her a variety of names. She retorted to some extent, and what then happened was, as she was trying to run to her bedroom, you grabbed her by the throat with one hand and slammed her against the glass sliding door to the balcony. While pinned against the door, you put both hands around her throat and applied pressure, squeezing her throat for about six seconds. She was unable to breathe or talk. You released her grip and she was able to breathe. That is count 2, strangulation.

She, perhaps unsurprisingly, complained about what you had just done to her and asked you why you had done that, to which you responded that she was, "Fucking lucky that that's all she fucking got." She told you that she was going to call the police. You then left the unit.

On the 25th of October, another argument broke out while you were at the complainant's unit. You were being verbally abusive towards her and she told you to leave or she would call the police. You refused and encouraged her to call the police. That is the subject of summary charge 7.

While she was on the phone to the police, you became frantic, sweating profusely and running around the unit, throwing items, punching doors and walls, and asking why the complainant had called the police. You then grabbed the complainant by the jumper, near the neck area, causing it to stretch. That is count 3.

You continued to panic, called her some names, grabbed her phone, went out to the balcony with it. What then occurred was she locked herself in the bathroom. You continued running around the unit saying that you were going to stab yourself in the throat, ending your life, and that it would be her fault. She opened the bathroom door with the intention of leaving the unit. You then walked towards her with a large kitchen knife in your hand, pointed it in her direction. That is the subject of count 4. As she went to close the bathroom door, you then pointed the knife towards your own throat and said to her again that she was the reason that you were going to kill yourself. She then ran from the unit, not without screaming out to you that she was calling an ambulance and not to hurt yourself.

You returned to the unit and were taken into custody. You made admissions to pushing the complainant to the shoulder, but you denied strangling her. You did admit to grabbing a knife. Generally it is fair to say that you minimised your conduct in relation to that. You were placed on bail.

Then on the 11th of December, another argument commenced. The complainant was talking loudly and you told her to be quiet as you had previously been breached by the real estate agent for being a nuisance on occasions where she had yelled for help and police attended. There was some slamming of doors. The complainant told you to leave and said she would call the police. You told her to fuck off. That is the subject of summary charge 8.

As she was calling the police, you approached her and grabbed her. The two of you struggled. You placed your hands around her face, pushed your face into hers, and said – told her to shut up and stop screaming. That is the subject of count 5.

During that struggle, the defendant – I am sorry – you got the complainant onto the ground using your body weight to hold her down, pinning her to the floor. You put both hands over her mouth and applied pressure. She could not breathe through her nose or mouth. She thrashed her head around in an attempt to breathe. She felt pins and needles through her fingertips and toes. From the application pressure she felt immense pain to her teeth and gums and was bleeding from her mouth. That is the subject of count 6.

You got off her. She told you that her mouth was bleeding and washed her mouth out at the basin. She continued screaming and you put your forehead against hers and said:

> *I'm going to punch you in the face. I don't give a fuck.*

That is the subject of count 7.

As she continued to scream and cry, you grabbed her, put her on the bed, and held her down, with more force than the previous occasion. You put your hands over her nose and mouth and applied pressure. She could not breathe and her head was spinning. She felt as though she lost consciousness for – a couple of times, and almost urinated herself. After some time, you got off her. She got up and ran out of the unit, to security. She had some difficulty running. You then drove off in her car, looking for her. That is the subject of summary charge 9.

You later admitted to placing your hands over the complainant's mouth on both those occasions. I should say that when the police came, they found a handwritten letter from you, apologising to the complainant. They also found drugs, including some methylamphetamine, which appears to have been a drug that has caused you some significant problems. That is the subject of summary charge 10. There were six grams of cannabis, summary charge 11. A glass pipe and a set of electronic scales, charges 12 and 13 respectively.[11]

PRIMARY CONSIDERATIONS

Protection of the Australian Community

23. Paragraph 8.1(2) of Part 2 of Direction 110 requires decision-makers to give consideration to:

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

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

Nature and Seriousness of the Applicant's Conduct to Date

24. Paragraph 8.1.1(1) of Part 2 of Direction 110 provides a description of what is considered '*very serious*' and '*serious*' conduct. Paragraphs 8.1.1(1)(a)(i)-(iii) list certain crimes which are to be regarded as '*very serious*' and include crimes of violence and particularly crimes of a violent nature against women and acts of family violence regardless of the sentence imposed.

25. The Applicant was convicted of multiple offences involving violence against his female partner being both acts of domestic violence and crimes of violence against a woman. Accordingly, they are to be regarded as very serious conduct for the purpose of Direction

[11] G5 at pp.50-53.

110 irrespective of the sentence imposed. It is not appropriate for the Tribunal to have regard to the length of the sentence in assessing the seriousness of these offences.[12]

26. In addition, paragraphs 8.1.1(1)(c)-(i) set out a range of factors decision-makers must consider in assessing the nature and seriousness of the criminal offending or other conduct to date. This includes, for relevant purposes in this case:[13]

(c) the sentence imposed by the court for offences, other than crimes of a violent nature against women and acts of family violence;

(d) the impact of the Applicant's offending on victims and their family;

(e) the frequency of the Applicant's offending; and

(f) the cumulative effect of any repeated offending.

27. In his sentencing remarks on 25 January 2024 Judge Jackson commented generally on the Applicant's criminal history stating:

> *You come before the Court with a criminal history which includes a number of public nuisance type events, which I was told some details about. On the 29th of September 2016, you got involved in a fist fight whilst intoxicated. On the 16th of 20 March 2018, you were dealt with for obstruction of police. You had been involved in kicking another man outside a hotel. You had a blood alcohol, on that occasion of .142. Ten days later, you were dealt with for chasing another man around Orchid Avenue, punching him in the face. There were further difficulties when the police tried to restrain you. Again, you were intoxicated.*
>
> *Relevantly also, falling within some of the events I have been so far describing, as in between the first events in October – the first indictable events in October – and those in December. On the 25th of November 2022 you were sentenced for contravention of a domestic violence order, that is when you were found on the complainant's balcony.*[14]

28. In addition, the Applicant has a history of traffic offences. He has been convicted of four counts of unlicensed driving and one count of drink driving, all whilst on his learner driver's

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[12] *Minister for Home Affairs v Stower [2020] FCA 407 at [45]-[54] Belmont v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 667 at [111].

[13] There is no evidence that the Applicant has provided false or misleading information to the Department or that he re-offended after being formally warned, or otherwise being made aware, in writing, about the consequences of further offending in terms of his immigration status as per paragraphs 8.1(1)(g) and (h).

[14] G5 at p.54.

license.[15] Traffic violations of this kind have the potential to cause injury, possibly fatal, to members of the public and are to be treated as serious conduct.

29. The Applicant's offending has been frequent, having involved twenty-one offences over seven years, and has escalated in seriousness from minor drug related crime, public nuisance offences and traffic infringements to very serious violence against his partner.

30. The offending for which the Applicant was convicted on 25 January 2024 had a serious impact on his former partner Ms V. The Statement of Facts tendered to the Court state:

> *On 13 December 2022, [Ms V] was examined by a forensic medical officer. As a result of the offending, [Ms V] sustained the following injuries:*
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> *a. Bruising to the inner surfaces of upper and lower lips;*
> *b. Tenderness to the right jaw and neck;*
> *c. Red mark to the neck; and*
> *d. Bruising and abrasions to the abdomen, buttocks, and limbs.* (**TB/133**):*"*

31. His Honour Justice Jackson noted:

> *Fortunately, both for the complainant and you, she was not more seriously injured than she was.*[16]

32. The Applicant conceded in his ASFIC that the offending for which he was convicted on 25 January 2024 was *grave,*[17] and conceded that:

> *Taken together, the pattern of offending—characterised by repeated breaches of protection orders, violent assaults, and threats with a weapon—reveals conduct that is both serious in nature and continuing in character. The gravity of the most recent convictions, the custodial sentence imposed, and the judge's remarks leave little doubt that the applicant's acts of family violence are of the highest seriousness and weigh against him.*[18]

33. Having regard to these matters, the Tribunal is satisfied that the Applicant's past criminal conduct was very serious.

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[15] TB at pp.248-53.

[16] G5 at p.53.

[17] ASFIC at [16]

[18] *ASFIC at [23]*

The risk to the Australian community should the Applicant commit further offences or engage in other serious misconduct

34. Paragraph 8.1.2(2) of Part 2 of Direction 110 requires the decision-maker, in assessing whether the Applicant represents an unacceptable risk of harm to the Australian community, to have regard, cumulatively, to:

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

    (b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account available information and evidence on the risk of the applicant reoffending.

Nature of the Harm

35. The Applicant's offending included multiple acts of violence against members of the community which if repeated would threaten physical and psychological injury for the victims. The Applicant's general anti-social offences such as minor drug related crime, public nuisance offences and traffic infringements threaten the good order of the community and involve the engagement of law enforcement and judicial resources and associated costs.

36. Of particular concern are the Applicant's repeated acts of family violence against his ex-partner notwithstanding court-imposed orders. The Applicant acknowledged in his written submissions that:

> *The historic harm is undeniably serious: his 25 January 2024 convictions include three counts of choking or strangulation and a series of related domestic-violence offences that, if repeated, could inflict severe physical and psychological injury.*
>
> *The sentencing judge's remarks underscore the inherent lethality of strangulation and the broader social scourge of family violence. That history places a heavy onus on the applicant to demonstrate genuine rehabilitation.*[19]

37. Justice Jackson commented in his sentencing remarks that:

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[19] ASFIC at [24].

> *The reason for the offence of strangulation or suffocation having been created a few years ago is because of just how dangerous it is, and the consequences that that sort of conduct can lead to, including killing people. It is taken terribly seriously.*[20]

38. A Department of Social Services publication referred to by the Respondent in the RSFIC commented on the effects of domestic violence noting that:

> *Violence against women and children has significant short-term and long-term effects on victim-survivors' physical and mental health and well-being. In addition, the profound impacts of violence against women and children ripple out across families, communities and society as a whole.*[21]

39. If the Applicant were to commit further family violent offences it would have the potential to cause serious physical and/or psychological injury to the victim and emotional harm to other members of the community.

Likelihood of reoffending

40. In assessing the risk of reoffending, the Tribunal is mindful of the comments of the Full Court of the Federal Court in *CKL21 v Minister for Home Affairs* that in curial and administrative decision-making, the task of assessing the degree of likelihood of an event occurring in the future '*must be based on a logical process of reasoning based on the known facts*'.[22]

41. Accordingly, the Tribunal has approached the assessment of risk having regard to a series of factors.

Nature of the Offending

42. The Applicant has a long history of offending, commencing from eighteen years of age. The seriousness of the offending escalated and involved multiple crimes. The Applicant was often under the influence of drugs and/or alcohol.

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[20] G5 at p.53.

[21] *National Plan to End Violence against Women and Children 2022-2023, Department of Social Services, available at National Plan to End Violence against Women and Children 2022-2023 (dss.gov.au).*

[22] (2022) 293 FCR 634 [74], citing the High Court's decision in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 574–5.

43. The Applicant's domestic violence was not confined to a single incident and is to be viewed in the context of a history of relationship difficulties experienced by the Applicant. The written submissions made on behalf of the Applicant to the District Court by his counsel on 25 January 2025 record that the Applicant had an eight-year relationship with a Ms L, which ended due to increased arguments and her violence toward him. He then met a Ms A with whom he had a relationship for about one year which the Applicant described as the worst relationship he has ever had. He experienced depressive states with Ms A and they both drank a lot of alcohol and arguments would erupt.[23] The Applicant confirmed in his oral evidence that a domestic violence order (DVO) was taken out against him for the protection of Ms A following an argument which resulted in him taking her house keys and car keys before being arrested by the police. That DVO remains current until 2027. The Applicant's convictions for domestic violence against Ms V on 25 January 2024 involved violent acts against his former partner on 14 July, 20 July, 12 September, 22 October, 25 October and 11 December 2023.

44. In assessing the risk of re-offending the Tribunal is also mindful that the Applicant's offending has been characterised by repeated anti-social behaviour.

45. He acknowledged in his oral evidence that he has displayed a lack of respect for authority when affected by alcohol. His criminal record involves multiple instances where he openly challenged authority such as assaulting or obstructing police, contravening direction or requirement, contravening police banning notice,[24] breach of community service order,[25] breach of his good behaviour order, and seven instances of contravention of DVO (one of which was an aggravated offence).[26] He also admitted in his oral evidence to the Tribunal that he had continued to live with Ms V up until his arrest in breach of a DVO preventing him from being present at the premises occupied by Ms V.

46. The Applicant also confirmed that he had repeatedly driven motor vehicles over several years when he was unlicenced and on his learners permit without a licenced driver being present. His Driver Licence History confirms multiple violations in the period from 18

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[23] TB at pp;.140-141.
[24] TB at p.150.
[25] TB at pp.148-9.
[26] G4.

September 1995 to 3 June 2025. On one occasion he was convicted of driving with a blood alcohol content above the limit and in another of driving at excessive speed.[27]

47. The Applicant did not respond positively to the imposition of non-custodial penalties for his earlier offending.

Remorse

48. The Applicant provided the following expression of remorse for his offending in his written statement:

> *I unreservedly acknowledge the gravity of each offence and the harm I caused. I neither minimise nor excuse my behaviour. Since then, I have engaged in extensive rehabilitation: completing a Men's Behaviour Change Program, attending regular drug-and-alcohol counselling, and undertaking additional personal-development courses.*
>
> *I am resolutely committed to ensuring that such conduct is never repeated and have used every opportunity—both in custody and in the community— to address the underlying causes of my offending and to make amends wherever possible…..*
>
> *I am genuinely remorseful for the harm I inflicted, particularly upon my former partner. Through the Men's Behaviour Change Program and ongoing counselling, I have gained a confronting but necessary insight into the emotional, psychological and physical impact of my conduct. I take full responsibility for my actions, without qualification, and remain committed to living as a safe, responsible and law-abiding member of the community.*[28]

49. In his oral evidence the Applicant stated that the DVO in respect of Ms V was varied to allow them to contact each other once he was imprisoned,[29] and Ms V regularly visited him in prison and they remained in a relationship until about one year ago when they decided to go their own ways. He said he apologised to Ms V every time she visited him. In a letter dated 7 January 2024 (which the Applicant relied on in support of his revocation application) Ms V stated that:

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[27] TB at pp.249-253.

[28] Exhibit A1 at [28]-[31].

[29] The DVO remains in effect until 2027.

> *On numerous occasions,* [Applicant] *has confessed to me the serious lack of judgement he exhibited and expressed deep remorse with a strong desire to address some personal issues at the heart of the matter.*[30]

50. Letters of support from various friends and extended family members provided in support of the Applicant assert that the Applicant is genuinely remorseful for his actions.

51. The Tribunal accepts that the Applicant is now genuinely remorseful, although it is noted that he expressed regret following the offences against Ms V[31] and yet went on to re-offend. This raises the question whether his genuine remorse would necessarily restrain him from further offending in the future.

Conduct in prison and detention

52. The Applicant described his experience in prison in his oral evidence as the worst time of his life. He said he was put in situations he did not want to repeat and he is determined not to go back.

53. While in prison the Applicant demonstrated constructive behaviour in his participation in rehabilitation programs and he was generally compliant,[32] save for some relatively minor disciplinary breaches in prison. During a cell search conducted on 16 December 2023, 11 Diazepam tablets and an 'offensive drawing' were located in his cell.[33] On another occasion he was found to have wilfully damaged or destroyed property by carving his name into a desk.[34]

54. The Applicant also stated in his oral evidence that shortly before his release from prison he was assaulted by another prisoner and stabbed in the face, but he did not report the incident because he feared for his own safety if he did so. He stated that he had no idea why he was assaulted. He did not know the other prisoner and he was new to the unit in which the assault took place.

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[30] TB at p.145.

[31] G5 at p.53.

[32] TB at pp.208-240.

[33] TB at pp.190-4.

[34] TB at p.195-6.

55. The Applicant's *Approved Security Classification* was determined by Queensland Corrective Services to be '*High*' on 4 March 2024.[35]

56. In a letter dated 10 December 2024 Dr Schader, IHMS medical officer in Brisbane Immigration Detention Centre, confirmed that while in detention the Applicant had been pro-actively working on his health (fitness, diet, weight management, and mental health) has attended weekly drug and alcohol counselling sessions with a mental health nurse and has been on treatment for a history of drug dependency which has enabled him to refrain from illicit drug use.[36]

Rehabilitation

57. The Applicant stated in his written evidence that:

> *I experimented with cannabis from about age 15 to 25. I used methamphetamine for approximately three months in 2022, ceasing upon my arrest in December 2022. I also used cocaine once on my 21st birthday.*[37]

58. The Applicant gave oral evidence regarding his substance use. He admitted smoking cannabis from around 15 or 16 years of age and drinking heavily and taking party drugs after he turned 18 years old. He attributed his violent offending and anti-social behaviour to excessive use of alcohol. He said that he commenced using methamphetamine when he started living with Ms V and after a close friend died in December 2021, with his use increasing after Ms V lost a baby in July 2022 through an ectopic pregnancy. He said he used the drug regularly as well as cannabis daily. He said that he ceased using drugs for the periods he worked for Hawthorn Engineering in Gympie from March to October 2022 because of the drug-testing requirements for working on site.

59. In his written statement the Applicant documented the steps he has taken to address his drug and alcohol use and anger management issues while in prison and immigration detention. He stated:

> *I have refused all offers of illicit drugs in prison and in immigration detention and have remained drug-free since December 2022.*

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[35] TB at pp.175-8.

[36] G11 at p.88.

[37] Exhibit A1 at [15].

*I completed the following rehabilitation programs while **incarcerated** at Arthur Gorrie Correctional Centre:*

• Low Intensity Substance Intervention (LISI).

• Resilience – Build Don't Break.

In Brisbane Immigration Detention Centre, I have undertaken extensive rehabilitation and personal-development work, including (but not limited to):

• Certificates in Anxiety Therapy 101; Behaviour Management 101; Building a Bully Free Future; Conflict Resolution; Emotional Healing; Healthy Relationships; Stress Management; Depression Management; Understanding Drugs & Alcohol Abuse; Drugs & Alcohol Awareness & Prevention; Understanding Addiction; and Anger Management Techniques.

• A 10-week Men's Behaviour Change Program (fortnightly sessions).

• Approximately 10 one-on-one psychology sessions (45–60 minutes each)

• Fortnightly drug and alcohol counselling.

• Weekly SMART Recovery online meetings.
• Enrolment in the SANE trauma-counselling program (individual sessions from 21 July 2025 and group sessions from 28 July 2025).

• Enrolment in Drug Arm (12- to 16-week program due to commence).

• Completion of six of eight modules of the Triple P Positive Parenting Program.

• Acceptance into the Circuit Breaker program post-release.

• Participation in the OSTP (Opioid Substitution Treatment Program) as a preventive measure.

These programs have equipped me with practical tools to manage cravings, address trauma and maintain pro-social behaviour.[38]

60. IHMS records confirm the Applicant's attendance at 3 mental health appointments, 7 AOD appointments and 16 counselling sessions with a psychologist while in detention up to June 2015.[39] Various certificates of completion for the courses were included in the G Documents.[40]

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[38] Exhibit A1 at [15]-[19].

[39] Exhibit A22.

[40] G12 at pp.89-123.

61. The Applicant is currently on the Opioid Substance Treatment Plan (**OSTP**) which involves regular Buprenorphine injections.[41] The Applicant confirmed in his oral evidence that he receives a 300mg injection each month under the OSTP.

62. The indications are that the Applicant has unresolved psychological issues which have contributed to his substance abuse and in turn to his offending. His crimes have exhibited an angry response to situations on multiple occasions and he has acknowledged that he has had problems with anger management. He was exposed to domestic violence at a young age. His mother gave evidence that she moved from New Zealand with the Applicant when he was 3 years old due to domestic violence by the Applicant's father. The Applicant was sent to New Zealand to live with his father at about 10 years of age. In his oral evidence the Applicant said his mother did this because she was having difficulty raising him without a strong male presence. The Applicant described suffering a serious assault by his father 6 or 7 months after arriving in New Zealand which prompted his mother to immediately bring him back to Australia. The Applicant's difficult relationship with his family continued. He stated in his oral evidence was that after returning from New Zealand he was evicted from home by his mother when he was 15 and still in high school and then lived with his aunt but moved out of her home because she was, in his own words, *too restrictive.*

63. The Applicant completed a Relapse Prevention and Management Plan as part of the ReClaim Wellness Program[42] in 2023. In his response to being asked to identify what had contributed to him having a problem with alcohol and drugs, the Applicant responded:

> *The PTSD from family abuse. The grief from the loss of my baby right before I came to prison. The grief from the loss of my best friend of 17 years. How dysfunctional my family is. The neglect from my mum. The lack of family support I've received throughout my entire life. The feeling of never being good enough or living up to my family's expectations. The trauma from the deceit of past relationships. The betrayal from old friends. Being ashamed of using.*[43]

64. In his written statement the Applicant claimed:

> *I have been diagnosed with major depressive disorder (first medicated at about age 15) and generalised anxiety (first medicated at about age 18). I was previously prescribed antidepressants and diazepam.*

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[41] TB at p.279.

[42] G12 at pp.113-122.

[43] Ibid at p.115.

Since my imprisonment in December 2022, I have been unable to obtain prescription medication; despite requesting treatment, I have remained unmedicated for more than two years. My symptoms persist, but I engage regularly with mental health professionals in immigration detention.[44]

65. This claimed diagnosis is not supported by any medical reports and no evidence was led by the Applicant regarding his mental health save for a report dated 8 July 2025 by Greg Hutcheon, an educational and developmental psychologist.[45]

66. The Applicant's enthusiastic participation in various rehabilitation programs is a positive indication. However, the Applicant's rehabilitation is essentially self-guided, taking advantage of whatever programs have been available to him in prison and immigration detention. The Tribunal has reservations regarding the effectiveness of the rehabilitation in the absence of a proper psychiatric assessment of the Applicant which could provide validation of the appropriateness of the courses he has undertaken. For example, a Drug Taking Confidence Questionnaire (DTCQ-9) completed by the Applicant before and after a 12 session Low-Intensity Substance Intervention program conducted by Lives Lived Well in 2023 showed the same results before and after the program. The facilitator noted that there were only some changes amongst individual questions reflecting only a small positive change in the Applicant's confidence to resist methamphetamines and cannabis use in a number of high-risk situations.[46] The report of Mr Hutcheon is of little value in this regard. It states that it is not a medical legal report and is not intended for any purpose other than as a summary of assessment findings and treatment offered to the Applicant. The report does not purport to give a definitive diagnosis of the Applicant's current mental health or to document his past condition.

Protective Factors

67. The Applicant outlined his plans if released into the community in his written evidence as follows:

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[44] Exhibit A1 at [12]-[14].

[45] Exhibit A23.

[46] G12 at pp.11-112.

> *Upon release I will reside with Ms Danielle Broadhurst at her home on the Gold Coast. She has committed to transporting me to all appointments, ensuring compliance with any parole or visa conditions.*
>
> *As for employment, Mr Christian Bradford (licensed electrician) has offered me full-time work as a solar-panel trades assistant commencing immediately upon release, with the prospect of an electrical apprenticeship in due course.*[47]
>
> *…*
>
> *…I will continue engagement with mental-health and drug-and-alcohol services, including SANE, Drug Arm, SMART Recovery and ongoing psychological counselling.*
>
> *I will comply strictly with all parole conditions.*
>
> *I will maintain stable employment with Mr Bradford, pursue further qualifications in the solar and electrical field and contribute positively to the Australian community through work and voluntary service.*[48]

68. Mr Bradford provided a written statement and gave oral evidence to the Tribunal. He confirmed that he had known the Applicant since he was 9 or 10 years old, having met him through friends of the Applicant's mother. He said that he and the Applicant didn't catch up socially *as much as we once did as he got older.* He confirmed that the last time he had contact with the Applicant was a couple of months before he went to prison. He said he was unaware the Applicant took drugs and was *totally flawed* [sic] when he learned of the Applicant's incarceration. He confirmed that he would employ the Applicant as a trades assistant in his business, Problem Solve Electrical, if he is released into the community. He explained that he has *always been a small fish* and he does not currently employ a trades assistant but has engaged one as needed from time to time. He said he saw an opportunity to expand his business in solar cell installation utilising the Applicant's skills as a scaffolder.

69. Ms Broadhurst gave evidence that the Applicant is her first cousin's child and in their extended family she is regarded as his aunt. She said she has known the Applicant since he was born and she and her older son had lived with the Applicant and his mother for some time after they arrived in Australia. She stated that she was shocked to learn of his offending and was not aware of his drug use before he was arrested. She confirmed that she would allow the Applicant to live with her and her family if he is released into the community. She

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[47] Exhibit A1 at [23]-[24].

[48] Ibid at [36]-[38].

explained that she is a former police officer, has a degree from Massey University in New Zealand in integrated human health and she is currently employed as a residential youth worker in Australia.

70. The Applicant's mother Ms Te Whetu also gave evidence. She confirmed that she came to Australia with the Applicant when he was 3 years old to escape domestic violence by her ex-partner who was a heavy drinker. She said she returned the Applicant to live with his father when he was about 10 years old but he was assaulted by his father and she flew to New Zealand and brought the Applicant back the next day. She confirmed that she has lived in Bali between October and March each year for the last 7 years and intends to return to Bali again in October 2025. She said that her mother, the Applicant's grandmother, has a similar arrangement. The Applicant's granmother is now re-married to an Italian man and spends six months each year living in Italy.

71. The Applicant provided 17 letters of support from friends and family in the community who all expressed support for the Applicant if he is released into the community.

72. The Tribunal also notes that the Applicant has been released on parole into the custody of Australian Border Force. He will be subject to parole conditions until 10 December 2026, unless otherwise determined by the Parole Board Queensland.[49] The conditions of parole are likely to act as a significant deterrent to the Applicant re-offending.

Expert Opinion

73. The Tribunal has not been provided with any independent expert opinion as to the Applicant's risk of reoffending. The report by Mr Hutcheon does not opine on the issue.

Consideration

74. Prior to his arrest in December 2022 the Applicant had not demonstrated behaviour suggesting that he was seeking to avoid further criminal conduct. He had been involved in various criminal conduct since turning 18. The seriousness of his offending displayed an

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[49] TB at pp.168-170.

escalating trend. It included multiple crimes of violence, anti-social behaviour and a lack of respect for authority which the Applicant has acknowledged.

75. The Applicant addressed the risk of him re-offending in a written statement attached to his revocation application submitted on 6 June 2025:

> *I understand the concerns regarding my potential threat to the community, but I can assure you that I am no longer the person who committed these offences. The combination of rehabilitation, professional support and the unwavering love and support of my partner [Ms V] has helped me become a better and more stable person. I now have the tools to manage my emotions and stress without resorting to violence nor substance abuse. I am fully committed to continuing this journey and remaining a positive member of society.*[50]

76. The Applicant's submissions regarding his capacity to become a positive member of society is somewhat contradicted by the submissions he makes regarding the prospect of relocation to New Zealand in relation to which the Applicant submitted:

> *At 29 years of age the applicant suffers from major depressive disorder, generalised anxiety and the lingering psychological effects of an unreported stabbing sustained in custody. He has been unable to access prescription medication for more than two years and relies instead on a structured regime of counselling and rehabilitation programs available in Australian detention facilities.*
>
> *A forced relocation would abruptly interrupt this fragile treatment pathway, heighten the risk of self-harm and relapse into substance abuse, and leave him without immediate access to comparable mental-health care.*[51]

77. The Respondent contended that, while the Applicant has undertaken some rehabilitative courses whilst in jail and immigration detention, undertaken some counselling and is currently undergoing drug treatment through the OSTP, his ability to refrain from drug use, manage his anger and to refrain from further domestic violence has not been tested in the community. In response the Applicant referred to the observation of the Federal Court in *CKL21 v Minister for Home Affairs* that:

> *It is a logical fallacy to conclude that a fact has been proved because it has not been disproved. As noted above, a conclusion or finding that a risk "cannot be ruled out" (such as was made by the Minister in the present case at [109] of his reasons) does not, of itself, logically establish the existence of a risk. So too, and as observed by Mortimer J in Splendido (at [95]) and by Colvin J in Logan (at [24]), a finding that the*

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[50] G10 at p.87.

[51] ASFIC at [82]-[83].

appellant's conduct has not been tested in the community does not establish that the appellant is a risk of reoffending. It is a negative finding about what is not known or established (because the appellant has not been living in the community), rather than a positive predictor of the appellant's future behaviour.[52]

78. The Tribunal does not contend that the fact the Applicant's conduct has not been tested in the community is probative of a risk that he will re-offend. However, in objectively assessing the effectiveness of the Applicant's efforts to rehabilitate, particularly in relation to his drug use, it is relevant to take into account that the Applicant has not had the same access to drugs as might be available in the community and that he has been subject to strict discipline and not exposed to the social and personal influences he may be subject to in the wider community. The Applicant's resilience is yet to be fully tested. As Justice Jackson noted in relation to drug and alcohol rehabilitation in his sentencing remarks ...*only small steps can be taken while you are in custody.*[53]

79. While the Applicant has abstained from drug use in prison and detention for over 2.5 years this is a relatively short period and he is currently receiving on-going opioide drug replacement therapy in the form of Buprenorphine injections. If the Applicant is released into the community, much will depend on his commitment to continuing treatment for his drug addiction. He has the support of Ms Broadhurst in this regard but there is room for doubt that he will continue treatment, even with her support. His history prior to his incarceration involved continuing drug use notwithstanding disincentives such as regular prosecution for possession offences and the imposition of mandatory drug testing at work. In October 2014 he was required to undertake a drug diversion assessment program but did not attend and complete the program,[54] and in 2018 he failed to comply with conditions of an Alcohol Fuelled Violence order imposed by the court.[55]

80. There are indications that the Applicant's substance abuse and aggressive behaviour are a reflection of psychological issues which have not been fully diagnosed. His rehabilitation has been essentially determined by what has been available in custody and in the absence of a proper psychiatric assessment.

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[52] [2022] FCAFC 70 at [79].
[53] G5 at pp.53-54.
[54] TB at p.101.
[55] TB at p.155.

81. Having regard to these matters the Tribunal is satisfied that the steps taken by the Applicant to rehabilitate himself have reduced the risk of him re-offending, but it is not a completed process and the factors underlying his criminal behaviour are not completely resolved. There remains a tangible risk that the Applicant will revert to drug and alcohol use and/or resort to anti-social behaviour including violence, if released into the community.

82. It is also notable that the Applicant's family violence offending occurred in the context of a self-confessed history of troubled relationships with women. There is a likelihood that the Applicant will again establish a relationship if released into the community and possibly with Ms V. The Applicant's evidence was that his relationship with Ms V persisted while he was in prison and immigration detention. He said that Ms V visited him weekly while he was in detention and assisted him in preparing his case by contacting witnesses and asking them to prepare statements. The Applicant referred to the *unwavering love and support of my partner* as recently as June 2025 but stated in his oral evidence that he had an argument with Ms V and had *'ordeals'* with her while in detention, and after speaking to his family he and Ms V agreed to go their separate ways. He also stated in his oral evidence that while in detention he recently established a relationship with another woman named K who he was speaking to *like a girlfriend*. He said that he and K broke up for 5 days but got together again but are now not together.

83. On the positive side, the Applicant has expressed genuine remorse for his conduct and has enthusiastically engaged in opportunities for rehabilitation available to him in prison and immigration detention. He has generally conducted himself responsibly since his arrest and behaved appropriately while in prison and immigration detention. His experiences in prison and the conditions of his parole are likely to act as a deterrent to his future offending.

84. If released into the community the Applicant's circumstances are not likely to be much different to those that applied before his incarceration in many respects. There are limits on the support that can be provided by his mother and grandmother who both intend to live overseas for substantial parts of the year. The offer of employment from Mr Bradford is positive but the Applicant has had secure employment as a scaffolder for many years prior to his incarceration. The support expressed by his friends and extended family members is not new. Their letters of support indicate that in most cases they had known the Applicant since his childhood. The one tangible difference is the offer of support from Ms Broadhurst, who has skills and experience which make her suited to a mentoring role for the Applicant.

She is an ex-police officer and qualified youth worker. The Tribunal gives significant weight to her willingness to act as a support person and mentor for the Applicant.

85. It is regrettable that the Tribunal does not have the benefit of a professional assessment of the Applicant's propensity to re-offend.

86. The assessment of risk in these circumstances is not easy but having regard to all of the factors the Tribunal is satisfied that viewed objectively there remains a significant risk that the Applicant may re-offend if released into the community and in particular that he will resort to some form of family violence. It is not a high risk but nevertheless is tangible. The Tribunal assesses it as a moderate risk. This risk must be balanced against the serious physical and/or psychological harm which could be caused to members of the Australian community if the Applicant were to commit further crimes, especially family violent offences.

87. The protection of the Australian community is a primary consideration under Direction 110, and paragraph 8.1(1) identifies the safety of the Australian community as the highest priority of the Australian Government. Accordingly, the Tribunal gives this consideration substantial weight in favour of not revoking the cancellation of the Applicant's Visa.

Family Violence

88. Paragraph 8.2(1) of Direction 110 states:

> *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.*

89. Paragraph 4(1) of Direction 110 defines family violence to mean 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.

90. The Applicant conceded in his written submission that:

> *.. his offending between July 2022 and December 2022 falls squarely within the Direction's definition of family violence: he repeatedly assaulted his then de-facto partner, Ms Lauren Vinall, including three counts of choking/strangulation, threats with a knife, and multiple breaches of a domestic-violence order.*

> *Those acts were plainly "violent, threatening or other behaviour" that caused Ms Vinall to fear for her safety. They therefore enliven cl 8.2(2)(a) and (b.)*[56]

91. Under cl.8.2(1) the Government's concern about conferring on non-citizens who engage in family violence the privilege of remaining in Australia is proportionate to the seriousness of the family violence engaged in. It requires the Tribunal to assess the seriousness of the offending having regard to the factors set out in cl.8.2(3).

92. Having regard to the factors set out in cl.8.2(3) for the assessment of seriousness, the Tribunal notes that the offending took place over a six-month period and involved six separate incidents of violence escalating from common assault to intimidation with a weapon and life-threatening strangulation, all while the Applicant was subject to a DVO and/or on bail. The victim Ms V suffered significant injuries.[57] The Applicant concedes that the '*the repeated assaults, breaches of protective orders and intimidation with a weapon would have compounded Ms V's trauma*'.[58]

93. As to rehabilitation achieved since the last offence, the Tribunal notes that the Applicant has remained drug-free in both prison and immigration detention, has engaged in counselling and has undertaken rehabilitation programs of which the only course specifically targeted to domestic violence is the *Men's Referral Service - Brief Intervention Program.*[59] The Applicant has expressed genuine remorse for his offending and demonstrated that he understands the impact of his behaviour on the victim, but the Tribunal notes that he has expressed regret following earlier offences but still re-offended. The Tribunal pays no regard to the absence of further offending since December 2022 as the Applicant has been in custody at all times.

94. It is also relevant to an assessment of the seriousness of the Applicant's family violence offending that he had been subject to a DVO for the protection of a previous partner, he admitted in his oral evidence that he ignored the DVO related to Ms V by continuing to live with her in breach of its conditions. He admitted in his oral evidence that he contravened

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[56] ASFIC at [35]-[36].
[57] TB at p.133.
[58] ASFIC at [38].
[59] G13 at p.127.

the DVO related to Ms V on seven occasions. The Applicant conceded that his continued family violence following a DVO showed a '*disregard for legal constraints*'.[60]

95. Having regard to the factors set out in cl.8.2(3) the Tribunal is satisfied that the Applicant's family violence is very serious. Accordingly, there should be a high level of concern for conferring on the Applicant the privilege of remaining in Australia. This is a primary consideration under Direction 110 and weighs heavily against revocation in his case.

The Strength, Nature and Duration of Ties to Australia

96. Paragraph 8.3 of Part 2 of Direction 110 requires that decision-makers:

> *(1) … 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) … must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to:*
>
> > *a) how long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:*
> >
> > > *i. less weight should be given where the non-citizen began offending soon after arriving in Australia; and*
> > >
> > > *ii. more weight should be given to time the non-citizen has spent contributing positively to the Australian community*
> >
> > *b) the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.*

97. In 1998 the Applicant migrated to Australia with his mother when I was three years old and he has lived in Australia continuously for the last 27 years but for a six month period when he returned to New Zealand to live with his father.[61] He completed his primary and secondary education in Australia.

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[60] ASFIC at [38].

[61] G15 at p.132.

98. He left school in Year 11 and commenced employment in 2011/2012 and since then has worked on a full-time or casual basis as a labourer in a meat processing plant, as a fencer and in the construction sector, including seven years as a leading-hand scaffolder. He has paid income taxes and acquiring advanced industry qualifications including certificates in Basic, Intermediate and Advanced Scaffolding, a Certificate III in Construction and a Certificate II in Hospitality (barista and café operations).

99. His immediate family in Australia is comprised of his mother Ms Te Whetu and his Grandmother Ms Jacqueline Ormond. He also has an extended family including his *aunt* Ms Broadhurst and her two sons and another aunt Ms Cali Ormond and her sons K (19), T (~17) and N (14) all of whom are Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.

100. Ms Te Whetu said that if the Applicant were deported to New Zealand it would have a huge effect on her and she would worry about the effect it would have on the Applicant's mental health. She confirmed in her oral evidence that she has lived in Bali for half the year each year for the last 7 years and intends to return to Bali in October 2025. She also confirmed that the Applicant's grandmother has recently re-married an Italian man and now lives in Italy for 6 months of each year. There is no evidence that the Applicant has provided or intends to provide any material support to either his mother or his grandmother.

101. The Applicant tendered twenty letters of support from members of his extended family and friends demonstrating that he has an extensive social connection with the Australian community. One of these contacts, Kristian Bradford, gave evidence that he had known the Applicant since he was a child and was prepared to offer the Applicant employment as a trades assistant in his electrical business if he is released into the community. Ms Broadhurst also gave evidence and confirmed that she is prepared to provide the Applicant with accommodation in her family home if he is released.

102. The Applicant claims, without any corroborating evidence that, in the months before his incarceration, he volunteered his own resources to prepare and distribute food to homeless people in Southport and routinely performed unpaid work for neighbours and friends.

103. The Applicant also claimed to have a close relationship with his *god-nephew* Levi, the son of his friend Michael Badawy. In a letter of support tendered to the Tribunal Mr Badawy

stated that the Applicant had been a constant figure in his son's life, attending birthdays, baptisms and family events, and is affectionately known as 'Uncle'. Mr Badawry stated his willingness to employ the Applicant in his surveying business.

104. The Applicant claimed in his written submissions that Ms V had previously relied on him for emotional stability and practical assistance and that her documented struggles with depression, anxiety and PTSD have worsened during his incarceration. However, the Applicant confirmed in his oral evidence that he and Ms V have now *gone their separate ways* and are no longer in a relationship.

105. The Respondent accepts that this primary consideration weighs in the Applicant's favour, but submits that it does not outweigh the first, second and fifth primary considerations weighing against revocation.

106. The Tribunal is satisfied that the Applicant has strong and enduring ties to the Australian community which warrants substantial weight in favour of revocation. This is a primary consideration under Direction 110.

Best Interests of Minor Children affected by the Decision

107. Paragraph 8.4(1) of Part 2 of Direction 110 requires that decision-makers must make a determination about whether refusal under section 501 or non-revocation under section 501CA is, or is not, in the best interests of a child affected by the decision.

108. In considering the best interests of the child, paragraph 8.4(4) requires specific factors to be considered. The consideration of the factors relevant in this case are set out below:

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

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

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

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

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

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

109. The Applicant identified six minor children requiring consideration by the Tribunal under Paragraph 8.4(1) of Part 2:

a. L, the son of his best friend Michael Badawy, whom he described as his god-nephew;

b. R the younger son of his aunt Ms Broadhurst;

c. the two children of his workmate Shane; and

d. his two younger cousins T and N.

God-nephew L

110. The evidence is not clear as to L's age. He is the son of the Applicant's friend Michael Badawy. The letter of support provided by Mr Badawry does not state L's age. Mr Badawy was not called as a witness. The Applicant referred to L in his undated written statement as being 3 years old, but in his oral evidence the Applicant claimed that he had known L from his birth and had contact with him for approximately 3 years before he was arrested in December 2022. He was unable to state L's date of birth when asked in cross examination.

111. Mr Badawry stated in his letter of support that the Applicant has '*been a constant figure in my son's life attending birthdays, baptisms and family events and is affectionately known as "Uncle". His absence would leave a real emotional gap for both of us'.*[62]

R the younger son of his Aunt

112. Ms Broadhurst has agreed to provide accommodation for the Applicant and generally support him upon his release. This would place the Applicant as part of the household and in daily contact with Ms Broadhurst's son, R.

113. The Applicant stated that he had seen R at family events prior to his incarceration but acknowledged in his oral evidence that he had not spoken to R since he was arrested in December 2022. Ms Broadhurst made mention of the relationship between the Applicant and her eldest son in her letter of support but did not mention R. In her oral evidence she confirmed that R is 15 years old but otherwise she made no mention of him having any relationship with the Applicant.

The two children of his workmate Shane

114. In his undated written statement the Applicant referred to the two children of my *workmate Shane.*[63] There was no evidence presented to the Tribunal from anyone named Shane. The Applicant stated in his oral evidence that he had known Shane for 7 or 8 years and saw his two children often when he visited Shane's home after work. When asked to name the children the Applicant said he couldn't recall either name, blaming it on a mental block. He subsequently named the children as A (a girl aged 11) and J (a boy aged 16). He said he had not had any contact with either of them since 2020 when he stopped working as a scaffolder.

Cousins T and N

115. The Applicant identified T (a boy aged17) and N (a boy aged 14) as the children of his aunt, Cali Ormond with whom he had lived on the Gold Coast for some time. The Applicant states that he had regular contact with T and N prior to his incarceration but acknowledged in his

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[62] Exhibit A6.
[63] Exhibit A1 at [21].

oral evidence that he had no contact with them while he was on drugs. He stated that he had been in contact with them since going into immigration detention and he intends to rebuild these relationships. Ms Ormond stated in her letter of support that the children love the Applicant dearly, have grown up with the Applicant and look up to him.[64]

Consideration

116. The Tribunal accepts the Applicant's submission that there is no suggestion that any of the children have been, or are at risk of being, exposed to family violence perpetrated by the Applicant, nor that they have suffered trauma arising from his conduct.

117. The scant evidence presented in relation to the children of the workmate Shane is inadequate to draw any reliable conclusion regarding their best interests. The evidence regarding the Applicant's so called god nephew L is also limited, but the Tribunal accepts the unsworn evidence of the child's father that it is in L's interest for the Applicant to remain in Australia. Similarly, no independent evidence was advanced regarding the best interests of R, even though his mother gave evidence on other matters, including the Applicant's relationship with her adult son. However, as the Applicant is a family member it can be inferred that it would be in R's interest to maintain direct contact with his cousin, albeit that he will be turning 18 within 3 years. The Tribunal is satisfied that the evidence supports a conclusion that it is in the best interests of the Applicant's cousins T and N that he remain in Australia, but there is limited time until both children turn 18, especially with regards to T who is currently 17.

118. The Applicant's relationship with all of these children is non-parental and not part of his immediate family. The Applicant has been absent from the children's lives for a significant period of time owing to his time in prison and immigration detention. There would be opportunities for any of the children to establish and maintain some relationship with the Applicant by electronic means if he were removed to New Zealand

119. Taking these matters into account the Tribunal gives the best interest of the minor children L, R, T and N limited weight in favour of revoking the cancellation of the Applicant's Visa, notwithstanding that it is a primary consideration.

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[64] Exhibit A4.

Expectations of the Australian Community

120. Paragraph 8.5 of Part 2 of Direction 110 provides:

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

121. Paragraph 8.5(4) 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.

122. The majority of the Full Court of the Federal Court has explained that paragraph 11.3 of the former Direction 65, which mirrors the wording of paragraphs 8.5(1) and (2) of Direction 110:

> *[75] … should be understood as expressing a deemed community expectation that all persons who have committed serious criminal offences giving rise to character concerns should have their visa applications refused. The nature of the character test is such that the deemed expectation will arise in most if not all cases falling for consideration under s 501(1) of the Act, having regard to the nature and seriousness of the non-citizen's conduct, assessed in accordance with cl 11.1. The text of the clause emphasizes that it may be appropriate to act in accordance with that expectation, so anticipating a class of cases in which it may not be appropriate to do so.*
>
> *[76] The question of whether it is appropriate to act in accordance with the deemed community expectation is in all cases left for the decision-maker to determine in the ultimate exercise of his or her discretion.*[65]

123. The Applicant has engaged in serious criminal conduct, including conduct specifically referred to in paragraph 8.5(2) of Part 2 of Direction 110, namely family violence and crimes of a violent nature against women. It is conduct raising serious character concerns.

124. The deemed expectation of the Australian community as expressed in paragraph 8.5 of Part 2 of Direction 110 is that a non-citizen who engages in such conduct should not be allowed to remain in Australia. In accordance with paragraph 8.5(3) of Part 2 of Direction 110, this expectation applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community. The Tribunal is satisfied that the expectation of the Australian community is that the cancellation of the Applicant's Visa should not be revoked.

125. The expectation of the Australian community is a primary consideration under Direction 110. Whether or not it is appropriate to act in accordance with that expectation is a matter to be determined having regard also to each of the other considerations. In weighing each of the

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[65] *FYBR v Minister for Home Affairs* (2019) 272 FCR 454 at [75]–[76]; see also *Minister for Immigration, Citizenship and Multicultural Affairs v HSRN* [2023] FCAFC 68 at [31]–[35].

considerations the Tribunal attributes substantial weight to the expectation of the Australian community in favour of not revoking the cancellation of the Applicant's Visa.

OTHER CONSIDERATIONS – PARAGRAPH 9 OF PART 2 OF DIRECTION 110

Legal Consequences of the Decision

126. Paragraph 9.1(1) of Part 2 of Direction 110 requires decision-makers to 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 non-citizen.*

127. In this case the Applicant does not make any direct claim that his circumstances enliven Australia's non-refoulement obligations and the circumstances do not suggest such a claim.

128. On the current facts, the immediate consequence of a decision not to revoke the cancellation of the Visa is that the Applicant will be liable for removal from Australia as soon as reasonably practicable, and pending removal, will remain in immigration detention under s 198 of the Act. The Tribunal also notes that once removed the Applicant will be subject to indefinite exclusion from Australia by operation of the Special Return Criteria in cl.5001(c) of Schedule 5 to the *Migration Regulations 1994* (Cth).[66]

129. The consequences of removal for the Applicant are matters which form the subject of other considerations under Direction 110. However, the legal consequences of deciding not to revoke the cancellation of the Applicant's Visa do carry their own adverse impact on the Applicant. It can be expected that the Applicant will be subjected to a further period of immigration detention depriving him of his liberty pending removal. As the Applicant's representative correctly contended any deprivation of liberty is detrimental. The Applicant will be permanently excluded from Australia and his deportation is likely to exact a significant emotional toll.

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[66] *Rano v Minister for Home Affairs, Minister for Cyber Security* [2024] FCA 1003 at [12]–[14] per Feutrill J.

130. These matters are considerations which favour revocation. While they are an expected consequence of the application of the law, they nevertheless warrant some moderate weight.

Extent of Impediments if Removed

131. Paragraph 9.2(1) of Part 2 of Direction 110 requires that:

> *(1) Decision-makers must consider the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:*
>
> *a) the non-citizen's age and health;*
>
> *b) whether there are substantial language or cultural barriers; and*
>
> *c) any social, medical and/or economic support available to them in that country.*

132. The Applicant has expressed his concern that he would face significant impediments if returned to New Zealand. He stated:

> *I have not lived in New Zealand since I was 11 years old (circa 2006) and have no meaningful support network there.*
>
> *If removed I would face homelessness, unemployment, disruption of treatment for my mental-health conditions and a heightened risk of relapse into substance abuse. The absence of familial and professional support would seriously undermine my rehabilitation.*
>
> *Deportation would sever my longstanding ties to my mother, grandmother, auntie, younger cousins and extensive friendship network—all of whom reside in Australia and constitute my primary emotional support.*[67]

133. The Tribunal is satisfied that the Applicant would not face any substantial language or cultural barriers in establishing himself in New Zealand.

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[67] Exhibit A1 at [32]-[35].

134. As a citizen of New Zealand, the Applicant would have access to the social, medical and financial support available to other citizens in that country, which is accepted as comparable to the support available in Australia.[68]

135. The Applicant is 29 years old and the evidence suggests that he is in good physical health. The IHMS medical officer in Brisbane Immigration Detention Centre has confirmed that while in detention the Applicant had been pro-actively working on his health (fitness, diet, weight management, mental health) has attended weekly drug and alcohol counselling sessions with a mental health nurse and has been on treatment for a history of drug dependency enabling him to refrain from illicit drug use.[69]

136. The Tribunal accepts that paragraph 9.2(1) of Part 2 of Direction 110 requires a consideration of all aspects of the Applicant's physical wellbeing, including '... *the overall state of a person's fitness and condition, including underlying health issues and ongoing effects of any past injury*'.[70] In this respect the Tribunal notes that the Applicant has implied some psychological vulnerability in relation to a return to New Zealand. He referred to his father, with whom he has a fractured relationship due to childhood physical abuse and said that he fears for his safety and mental wellbeing if forced to live in proximity to him in Auckland. He described his mental state as follows:

> *I have been diagnosed with major depressive disorder (first medicated at about age 15) and generalised anxiety (first medicated at about age 18). I was previously prescribed antidepressants and diazepam.*
>
> *Since my imprisonment in December 2022, I have been unable to obtain prescription medication; despite requesting treatment, I have remained unmedicated for more than two years. My symptoms persist, but I engage regularly with mental-health professionals in immigration detention.*
>
> *While incarcerated I experienced a violent assault in which I was stabbed in the face. I did not report the incident for safety reasons, but it has had a lasting impact on my mental health.*[71]

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[68] See *Uelese v Minister for Immigration and Border Protection* (2016) 248 FCR 296 at [44] and [68]–[69]; and *Tera Euna and Minister for Immigration and Border Protection (Migration)* [2016] AATA 301 at [101].

[69] G11 at p.88.

[70] *Holloway v Minister for Immigration, Citizenship and Multicultural Affairs* [2022] FCA 1126 at [12].

[71] Exhibit A1 at [12]-[14].

137. The Applicant's claims regarding his mental health are not supported by any medical reports and no evidence was led by the Applicant regarding his mental health save for a report by Greg Hutcheon, an educational and developmental psychologist. In addition, the Applicant has options as to where he lives in New Zealand and can resort to the law enforcement available to all citizens to deal with any inappropriate conduct by his father. To the extent that a return to New Zealand may lead to some mental health issues, it is noted that New Zealand has a similar health care system to that in Australia, and there is no evidence indicating that the Applicant would be unable to access appropriate mental health services in New Zealand.

138. The Applicant has transferrable skills and employment options. He is an experienced scaffolder and has worked in other positions and has acquired advanced industry qualifications including certificates in Basic, Intermediate and Advanced Scaffolding, a Certificate III in Construction and a Certificate II in Hospitality (barista and café operations).

139. The Tribunal has also recognised the support likely to be available to the Applicant as a returning prisoner to New Zealand in accessing benefits and employment and finding suitable short-term accommodation under the *Returning Offenders (Management and Information) Act 2015* (New Zealand) ('**ROMI Act**').[72]

140. The Applicant has stated that he has had limited contact with his two half-sisters who remain in New Zealand,[73] but he otherwise has no other social or familial connections in New Zealand.

141. The Tribunal accepts that a lack of support from family and friends would create some initial difficulties for the Applicant in establishing himself in New Zealand but such difficulties are likely to be temporary and he would be able to establish himself and maintain basic living standards consistent with what is generally available to other citizens of New Zealand. These initial difficulties warrant the Tribunal giving this consideration moderate weight in favour of revocation.

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[72] *SZSS and Minister for Home Affairs (Migration)* [2018] AATA 4079 at [240], and *ZTGP and Minister for Home Affairs (Migration)* [2018] AATA 3518 at [148]–[149].

[73] TB at p.254.

Impact on Australian Business Interests

142. Paragraph 9.3(1) of Part 2 of Direction 110 requires:

> *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.*

143. The Applicant has demonstrated that he has skills as a scaffolder and that he has offers of employment with Kristian Bradford in his electrical business and with Michael Badawy in his surveying business, both in unskilled positions. Mr Bradford confirmed that his business is small and that he does not employ anyone currently but engages people casually from time to time. He stated that the Applicant's scaffolding skills would assist him to expand his business into the installation of solar panels with the expected uptake in battery technology. Mr Badawy was not called as a witness but stated in his letter of support that the engagement of the Applicant would support the expansion of his growing surveying business and losing him would impede the firm's capacity to meet client demand and scale operations.

144. Clearly neither of the two businesses is a major project nor has the Applicant shown that either business provides a service more important than the general service provided in the relevant industries.

145. The Tribunal is satisfied that the removal of the Applicant from Australia would have a minimal effect on either business as the skills and experience possessed by the Applicant is readily available in the general workforce. Moreover, it is not possible for the Applicant to undertake employment in both businesses.

146. There is no evidence that a decision not to grant the Applicant a Visa would compromise the delivery of a major project or important service in Australia.

147. Accordingly, the Tribunal gives this consideration only minimal weight in favour of revocation.

Other Considerations

148. The considerations specifically referred to in paragraph 9 are not exclusive and the Tribunal is not limited in considering other relevant matters.

149. The Applicant has not raised any other specific consideration and the Tribunal is satisfied that all of the matters relevant to the Applicant's application have been considered in the context of the considerations specified in Direction 110.

CONCLUSION

150. In *Gaspar v Minister for Immigration and Border Protection*,[74] North ACJ elaborated on how to approach the exercise of the discretion under s 501CA(4)(b)(ii) of the Act:

> *The preferable conclusion is that s 501CA(4)(b)(ii) requires the Minister to examine the factors for and against revoking the cancellation. If satisfied, following an assessment and an evaluation of those factors, that the cancellation should be revoked, the Minister is obliged to act on that view.*

151. Weighing the factors for and against revocation requires the Tribunal to give both primary and other considerations '*appropriate weight'*.[75] Paragraph 7 of Part 2 of Direction 110 provides guidance on how the relevant considerations are to be assessed. It states that primary considerations should generally be given greater weight than the other considerations, but one or more primary considerations may outweigh other primary considerations.

152. There are three primary considerations weighing in favour of not revoking the cancellation of the Applicant's Visa.

153. The Applicant has been convicted of very serious offences and there is a moderate risk that he will re-offend if released into the Australian community. Further offending of the kind for which he was convicted would expose members of the Australian community to the risk of serious physical and/or psychological harm. The protection of the Australian community is a primary consideration under Direction 110 and paragraph 8.1(1) identifies the safety of the Australian community as the highest priority of the Australian Government. Accordingly,

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[74] [2016] FCA 1166 at [38].

[75] *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594 at [23].

the Tribunal gives this consideration substantial weight in favour of not revoking the cancellation of the Applicant's Visa.

154. The Applicant has committed multiple violent offences against his former partner. Family violence is to be regarded as very serious, warranting a high level of concern for conferring on the Applicant the privilege of remaining in Australia. This is a primary consideration under Direction 110 and weighs heavily against revocation in his case.

155. The deemed expectation of the Australian community as expressed in paragraph 8.5 of Part 2 of Direction 110 is that a non-citizen who engages in serious conduct, and specifically acts of family violence, should not be allowed to remain in Australia. This expectation applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community, as per paragraph 8.5(3). The expectation of the Australian community is that the cancellation of the Applicant's Visa should not be revoked.

156. The expectation of the Australian community is a primary consideration under Direction 110. Whether or not it is appropriate to act in accordance with that expectation is a matter to be determined having regard also to each of the other considerations. In assessing the weight to be given to this consideration, it is relevant to consider the nature and seriousness of the Applicant's past offending,[76] the Applicant's personal circumstances and the likelihood that he will re-offend if he is able to remain in Australia.[77]

157. The Applicant's family violence offending involved repeated violence over a six-month period. The level of violence involved escalated over that period. The Applicant offended notwithstanding a DVO and while he was on bail. The Applicant had a long history of criminal offending beforehand, including several violent offences. At the time of his offending the Applicant had lived in Australia for approximately 25 years since he was a young child. The Applicant had a difficult childhood having experienced domestic violence from his father as well as the death of a close friend and the loss of a baby to his ex-partner due to an ectopic pregnancy. He had become a heavy user of drugs and alcohol. He has

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[76] *JWKG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 21.

[77] *KCCD and Minister For Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] AATA 5145, *LMCZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] AATA 4967 *and QKVH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] AATA 4431.

expressed remorse and has taken steps to address the underlying cause of his offending, but he remains a moderate risk of re-offending.

158. The Tribunal is satisfied that the Applicant's circumstances do not disclose a justification for disregarding the expectations of the Australian community as expressed in paragraph 8.5 of Part 2 of Direction 110, but they do provide a qualification on the seriousness of his offending such that the expectation should not of itself be determinative of the issue. The expectation nevertheless warrants substantial weight in favour of not revoking the cancellation of the Applicant's Visa.

159. There are significant considerations which favour a decision to revoke the cancellation of the Applicant's visa. Of these, two are primary considerations.

160. First, the Applicant has strong and enduring ties to the Australian community which warrants substantial weight in favour of revocation. This is a primary consideration under Direction 110.

161. Secondly, it is in the best interests of the minor children L, R, T and N that the Applicant remain in Australia. However, the Applicant's relationship with all these children is non-parental and not part of his immediate family and he has had limited contact with them particularly over the last three years while he has been in prison and immigration detention. There would be opportunities for any of the children to establish and maintain some relationship with the Applicant by electronic means if he were removed to New Zealand.

162. Having regard to these matters the Tribunal gives limited weight to the best interests of these children in favour of revoking the cancellation of the Applicant's Visa, notwithstanding that it is a primary consideration.

163. There are other considerations which favour revocation. The enforced removal of the Applicant to New Zealand is a legal consequence of the cancellation of the Applicant's Visa, but it will involve some continuation of the Applicant's detention pending removal and will cause him some initial difficulties in establishing his life in New Zealand. These considerations are not trivial matters and warrant some consideration, but they are not primary considerations under Direction 110 and the appropriate weight to be accorded to them is substantially less than for the primary considerations.

164. In reaching a decision in this matter the Tribunal is required to do more than simply conduct a calculation of the net weight of the competing considerations. It is ultimately a task of an evaluative nature.[78] Deputy President Boyle described this in *Bainbridge and Minister for Immigration, Citizenship and Multicultural Affairs* as a requirement that the Tribunal:

> *…give appropriate weight to each relevant consideration, explain why such weight is given to the consideration and then, through a described, logical process, compare and balance all of the applicable considerations to determine whether there is another reason why the original decision should be revoked.*[79]

165. In weighing up the considerations for and against revocation the Tribunal is conscious of its responsibility to protect the Australian community from the risk of harm. That duty is expressed to be its highest priority. As an extension of this responsibility, the Tribunal is required to accept that the community expects it to remove persons from Australia who commit serious crimes. This is reflected in Principles 5.2(1)-(4) of Direction 110.

166. Principles 5.2 (5) and (6) recognise that a person who has participated in or contributed to the Australian community for a significant time is entitled to be afforded a higher level of tolerance for his criminal offending. The Applicant has lived in Australia since 1998 and has made some contribution to the community through his employment and his interactions with members of the community. The Tribunal takes these principles into account in assessing the competing considerations.

167. On the other hand, Principles 5.2(7) and (8), contemplate circumstances where the nature of the non-citizen's conduct or the harm that would be caused if it were repeated may be so serious that even strong countervailing considerations may be insufficient to warrant revocation. Principle 5.2(8) specifically refers to family violence as the type of conduct contemplated.

168. The Applicant has committed serious crimes including repeated acts of family violence which the Tribunal is required to regard with serious concern. There can be some tolerance for the Applicant's conduct. He has been a resident of Australia for almost his entire life and made some positive contribution to the community, although this contribution must be

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[78] *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [35].
[79] [2023] AATA 4184 at [122].

balanced against his long history of criminal offending. The Applicant is remorseful and taken steps to rehabilitate himself but he remains a moderate risk of reoffending. The consequences of any repeated offending are likely to involve a serious risk of physical or psychological harm to members of the Australian community. The safety of the Australian community is to be given the highest priority. The deemed expectation is that the Applicant does not remain in Australia. While he has strong and enduring ties to the Australian community which warrant substantial weight, the other factors in favour of revocation are not compelling. The Applicant has some relationships with minor children whose interests would be best served by him remaining in Australia but there is not a sufficient connection with any of the children to justify giving their interests substantial weight. The adverse consequences for the Applicant of removal to New Zealand are not trivial but the evidence does not support a conclusion that, after a period of adjustment, the Applicant could not establish himself in that country and maintain basic living standards in the context of what is generally available to other citizens.

169. Accordingly, on balance and having regard to all of the considerations required under Direction 110, the Tribunal is not satisfied that there is another reason why the cancellation of the Applicant's Visa should be revoked. The correct and preferrable decision is to affirm the decision under review.

DECISION

Pursuant to section 105(a) of the *Administrative Review Tribunal Act 2024* (Cth), the Tribunal affirms the decision of the delegate of the Respondent of 29 May 2025 not to revoke the cancellation of the Applicant's Special Category (Temporary) (Class TY) (Subclass 444) visa.

Dates of Hearing:	**13 and 14 August 2025**
Applicant's Representative:	**Ziaullah Zarifi** from Zarifi Lawyers
Counsel for the Applicant:	**Jason Donnelly**
Respondent's Solicitor:	**Jarvis Kirstenfeldt** from Sparke Helmore Lawyers

APPENDIX A – Applicant's Bundle of Documents

Exhibit A1	Statement of Jade Levi Rowe (the Applicant)
Exhibit A2	Statement of Nicole Te Whetu
Exhibit A3	Statement of Robert Keith Ormond
Exhibit A4	Statement of Cali Ormond
Exhibit A5	Statement of Danielle Broadhurst (COLE)
Exhibit A6	Statement of Michael Badaway
Exhibit A7	Statement of Brock Franklin
Exhibit A8	Statement of Daniel Lidmila
Exhibit A9	Statement of Darrin Penwarden
Exhibit A10	Statement of Hayden Butler
Exhibit A11	Statement of Jace Rheuben
Exhibit A12	Statement of Jack Schofield
Exhibit A13	Statement of James Mundy
Exhibit A14	Statement of Jesse Keyzer
Exhibit A15	Statement of Jody Firth
Exhibit A16	Statement of Liam White
Exhibit A17	Statement of Malisa Cvetovska
Exhibit A18	Statement of Thomas Carney
Exhibit A19	Statement of Zac Anderson
Exhibit A20	Statement of Kristian Bradford
Exhibit A21	Statement of Sjaan Van Der Moolen
Exhibit A22	Appointment Attendance Confirmation – Detention
Exhibit A23	Psychologist report of Greg Hutcheon
Exhibit A24	Application for Circuit Breaker Course
Exhibit A25	Changing for Good – Expression of Interest

Exhibit A26	GP Referral to Psychiatrist
Exhibit A27	GP Referral to Psychologist
Exhibit A28	Employment History
Exhibit A29	Letter from Drug Arm
Exhibit A30	Email from Linda Washburn – OSTP
Exhibit A31	Re-Integration Plan
Exhibit A32	Triple P Parenting Certificate
Exhibit A33	Certificate of Completion – 5 SMART recovery sessions
Exhibit A34	SANE – Summary of Engagement
Exhibit A35	Changing for Good Appointment Confirmations