Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Dilpreet Singh**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2025/4252**
Tribunal:	**Deputy President Burford**
Place:	**Perth**
Date of decision:	**22 September 2025**
Date of written reasons:	**1 October 2025**
Decision:	The Tribunal affirms the decision under review.

.....[sgd].....

Deputy President

Catchwords

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of bridging A visa – character test – Direction no. 110 – fraud convictions – Applicant is a 29-year-old citizen of India – Applicant has applied for COVID-19 visa – Non-Revocation Decision is affirmed

Legislation

Migration Act 1958 (Cth) ss 15, 36, 36A, 15, 189, 196, 197C, 197D, 198, 198AD, 198AE, 199B, 499, 501, 501(1), 501(3A), 501(6), 501(7), 501CA(3), 501CA(4), 501F, 501E, 503

Migration Regulations 1994 (Cth) regs 1.03, 2.20, 2.25AB, special return criterion 5001

Cases

AJL20 v Commonwealth of Australia [2020] FCA 1305

BHL19 v Commonwealth of Australia (No 2) [2022] FCA 313

BSJ16 v Minister for Immigration and Border Protection [2016] FCA 1181

CRNL v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 138

Deng v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 1456

FCFY v Minister for Home Affairs (No 2) [2019] FCA 1990

Hambledon v Minister for Immigration and Border Protection [2018] FCA 7

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

Khalil and Minister for Home Affairs [2019] FCAFC 151

Minister for Home Affairs v HSKJ [2018] FCAFC 217

Re Harrison and Minister for Immigration and Citizenship [2009] AATA 47

RRRB v Minister for Immigration and Multicultural Affairs [2025] ARTA 471

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

Secondary Materials

Minister for Immigration, Citizenship and Multicultural Affairs (Cth), *Direction no. 110 — Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (21 June 2024) paras 2, 3, 5, 6, 8, 9

Statement of Reasons

The decision in this matter was made and provided to the parties on 22 September 2025 with a note that written reasons would be provided within a reasonable time. These are those written reasons.[1]

THE APPLICATION

1. The Applicant seeks review of a decision of a delegate of the **Minister** for Immigration and Citizenship under section 501CA(4) of the ***Migration Act*** *1958* (Cth) not to revoke the mandatory cancellation of the Applicant's Bridging A (subclass 010) **visa**. That visa was cancelled on 22 July 2024 under s 501(3A) of the Migration Act.[2]

BACKGROUND

2. The Applicant is a 29-year-old citizen of India. He first arrived in Australia on 3 July 2015 at the age of 18 on a Student visa.[3] On 25 March 2022 he applied for a Temporary Activity (subclass 408) COVID-19 Pandemic Event visa (**COVID-19 visa**),[4] and was granted a Bridging A visa on 13 April 2022.[5] He has returned to India once since arriving in Australia, from 9 January to 16 February 2018.[6]

3. On 21 June 2024, the Applicant plead guilty to and was convicted of the following offences in the Brisbane District Court:[7]

   (a) '*Fraud to the value in excess of $100,000*', for which he was sentenced to 3 years' imprisonment;

   (b) '*Attempted fraud in excess of $30,000 but less than $100,000*', for which he was sentenced to 2 years' imprisonment, to be served concurrently; and

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[1] *Khalil and Minister for Home Affairs* [2019] FCAFC 151 [41].
[2] Exhibit T1, page 206.
[3] Exhibit T1, page 205.
[4] Exhibit T1, page 357.
[5] Exhibit T1, page 361.
[6] Exhibit T1, page 205.
[7] Exhibit T1, page 44.

(c) '*Obtain or deal with another entity's identification of information for the purpose of committing, or facilitating commission of, an indictable offence*', for which he was sentenced to 18 months' imprisonment, to be served concurrently.

The sentence was suspended after the Applicant had served six months' imprisonment for a period of four years.

4. On 22 July 2024 the Applicant's visa was cancelled under s 501(3A) of the Act on account of the conviction and sentence for these offences (the **cancellation decision**).[8]

5. The Applicant was notified of cancellation decision by hand at Brisbane Correctional Centre and was invited to make representations to the Minister about revocation.[9]

6. The Applicant made those representations to the Minister via his then representative within the required timeframe[10] and on 27 June 2025 a delegate of the Minister decided not to revoke the visa cancellation under s 501CA.[11] The Applicant was notified of the decision by email to his authorised recipient on 30 June 2025.[12]

7. On 8 July 2025, the Applicant applied to the Tribunal for review of the decision made on 27 June 2025 not to revoke the cancellation of his visa.[13] That is the **reviewable decision** before me.

8. In determining the application for review, the issues for consideration are:

   (a) whether the Applicant passes the character test, as defined by s 501(6) of the Migration Act; and

   (b) if the Applicant does not pass the character test, whether I am satisfied that there is another reason why the cancellation cecision should be revoked.[14]

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[8] Exhibit T1, pages 206, 214.
[9] Exhibit T1, page 214.
[10] Exhibit T1, page 69-73.
[11] Exhibit T1, page 18.
[12] Exhibit T1, page 18-19.
[13] Exhibit T1, page 1.
[14] See s 501CA(4) of the Migration Act.

9. For the reasons outlined below, I have decided that the Applicant does not pass the character test. Further, having considered all the circumstances of the Applicant's case and having weighed the relevant matters in Direction no. 110, I have decided that there is not another reason why the cancellation decision should be revoked. Accordingly, I have decided that the decision under review should be affirmed.

VISA CANCELLATION ON CHARACTER GROUNDS

10. The Migration Act provides special powers for the Minister to refuse or cancel visas on character grounds. In some circumstances, such as where a visa is cancelled on character grounds, that cancellation decision can be revoked by the Minister or by the Tribunal on review.

11. These powers generally involve consideration of whether a person passes the character test, and if they do not, consideration of whether there is another reason that the decision to cancel a visa should be revoked.

12. The character test is set out in s 501(6) of the Migration Act and provides that a person does not pass the character test if the circumstances listed in that subsection apply. Section 501(6)(a) of the Migration Act relevantly provides that:

> (6) For the purposes of this section, a person does not pass the **character test** if:
>
> (a) the person has a substantial criminal record (as defined by subsection (7)); …
>
> (Original emphasis.)

13. A '*substantial criminal record*' is relevantly defined by s 501(7)(c) of the Migration Act as follows:

> (7) For the purposes of the character test, a person has a **substantial criminal record** if: …
>
> (c) the person has been sentenced to a term of imprisonment of 12 months or more; …
>
> (Original emphasis.)

14. Under s 501(3A) of the Migration Act, the Minister must cancel the visa of certain persons if the Minister is satisfied that the person does not pass the character test because the person has a substantial criminal record as a result of being sentenced to a term of imprisonment of more than 12 months.

15. Additionally, under s 501(3A) of the Migration Act, the person must be serving a '*sentence of imprisonment*', on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.

16. If a visa is cancelled under s 501(3A), the Minister must give the person a written notice inviting them to make representations about revocation of the original decision.[15] If the person makes representations in accordance with the invitation, then under s 501CA(4), the Minister may revoke the original decision if satisfied that the person passes the character test or that there is another reason why the original decision should be revoked.[16]

THE HEARING AND THE EVIDENCE

17. The hearing was conducted via video at the Tribunal's Perth Registry on 8 and 9 September 2025. The hearing was assisted by an interpreter who was fluent in the English and Punjabi languages. The Applicant was represented by Dr Jason Donnelly, instructed by Zarifi Lawyers. The Respondent was represented by Ms Caitlin White of Minter Ellison. All parties appeared by video.

18. The Applicant gave evidence and was cross-examined at the hearing. The Tribunal also took evidence from Dr Jacqui Yoxall, forensic psychologist. The Applicant and Dr Yoxall appeared by video.

19. I admitted the following documents into evidence:

    (a) Joint hearing bundle filed 29 August 2025 (**Exhibit T1**);

    (b) Report of Dr Yoxall, dated 29 August 2025 (**Exhibit A1**).

20. The hearing bundle included the following submissions:

    (a) The Applicant's Statement of Facts, Issues and Contentions, dated 6 August 2025 (**Applicant's SFIC**); and

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[15] Migration Act s 501CA(3).

[16] *HZCP v Minister for Immigration and Border Protection* (2019) 273 FCR 121, 136 [66].

(b) The Respondent's Statement of Facts, Issues and Contentions, dated 20 August 2025 (**Respondent's SFIC**).

DOES THE APPLICANT PASS THE CHARACTER TEST?

21. As noted above, the character test is defined in s 501(6) of the Migration Act. Section 501(6)(a) of the Migration Act provides that a person does not pass the character test if they have a '*substantial criminal record*', as defined by s 501(7). Relevant to the Applicant's case, a person has a substantial criminal record if they have been '*sentenced to a term of imprisonment of 12 months or more*'.[17] Failure to pass the character test arises as a matter of law.[18]

22. The Applicant conceded he did not pass the character test.[19]

23. As noted above, on 21 June 2024 the Applicant was convicted in the Brisbane District Court of a number of offences including '*Fraud to the value in excess of $100,000*', for which he was sentenced to 3 years' imprisonment.[20]

24. As the Applicant has been sentenced to a term of imprisonment of 12 months or more, he does not pass the character test by operation of s 501(7)(c) of the Migration Act.

25. Accordingly, I am not satisfied that the Applicant passes the character test.[21]

CONSIDERATION OF REVOCATION

26. As I am not satisfied that the Applicant passes the character test, I must then determine whether there is another reason why the cancellation decision should be revoked. The statutory power to revoke will only be enlivened if there is '*another reason*' why the cancellation decision should be revoked.[22]

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[17] Migration Act s 501(7)(c).
[18] *Re Harrison and Minister for Immigration and Citizenship* [2009] AATA 47; (2009) 106 ALD 666 at 685 [63].
[19] Applicant's SFIC [6], Exhibit T1, page 361.
[20] Exhibit T1, page 44.
[21] See Migration Act s 501CA(4)(b)(i).
[22] Migration Act s 501CA(4)(b)(ii).

27. I am required to form a state of satisfaction as to whether there is '*another reason*' why the cancellation decision should be revoked, reasonably and on a correct understanding of the law.[23] In doing so I must comply with written directions about the performance of its functions or the exercise of those powers which are given by the Minister pursuant to s 499(1) of the Migration Act.[24]

Direction no. 110

28. On 7 June 2024, the Minister made '*Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA'* (**Direction no. 110**) under s 499 of the Migration Act. Direction no. 110 commenced operation on 21 June 2024, replacing the previous Direction no. 99.[25]

29. An objective of Direction no. 110 is to guide decision-makers in exercising powers under ss 501 or 501CA of the Migration Act.[26] In considering the exercise of the power under s 501CA(4), informed by the principles set out in paragraph 5.2 of Direction no. 110, I must take account of the primary and other considerations set out in Direction no. 110 where relevant to the decision.[27]

30. In making a decision under s 501CA(4), the primary considerations to be taken into account are:[28]

- the protection of the Australian community from criminal or other serious conduct;
- family violence engaged by the Applicant (if any);
- the strength, nature and duration of the Applicant's ties to Australia;
- the best interests of minor children in Australia affected by the decision; and
- the expectations of the Australian community.

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[23] *FCFY v Minister for Home Affairs (No 2)* [2019] FCA 1990 at [63] (Thawley J); *Deng v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCA 1456 (Halley J) at [119].

[24] Migration Act s 499(2A).

[25] Direction no. 110 para 2-3.

[26] Direction no. 110 para 5.1(4).

[27] Direction no. 110 para 6 referring to paras 8 and 9.

[28] Direction no. 110 para 8.

31. The other considerations that the Tribunal must take into account, insofar as they are relevant to the application, include (but are not limited to):[29]

- the legal consequences of the decision;
- the extent of impediments if removed; and
- the impact on Australian business interests.

32. I must also take into account any other considerations or representations made by the Applicant in support of his request that the cancellation of his visa be revoked.

33. The principles set out in paragraph 5.2 of Direction no. 110 '*provide the framework within which decision-makers should approach their task of deciding whether to … revoke a mandatory cancellation under section 501CA*'. Those principles highlight that the safety of the Australian community is the government's highest priority, and that Australia has a right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. They stress that entering or remaining in Australia is a privilege conferred in those individuals will be law-abiding, will respect Australia's law enforcement framework, and will not harm members of the community. The principles state that the community expects the government to cancel visas of individuals whose conduct raises serious character concerns regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

34. Direction no. 110 provides that while the community has a low tolerance of any criminal or other serious conduct by individuals holding a limited stay visa, or who have only been contributing to the community for a short period of time, Australia may afford a higher level of tolerance of such conduct where the individual has lived in the community for most of their life, or from a very young age.

35. Noting that primary and other considerations relevant to the individual case must be taken into account, Direction no. 110 states that, in some circumstances, the nature of the conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to

[29] Direction no. 110 para 9.

justify revoking a mandatory cancellation of a visa including in circumstances where the information available at the time of consideration suggests that the non-citizen does not pose a measurable risk of causing physical harm to the Australian community.

36. Further guidance as to how a decision-maker is to apply the considerations in Direction no. 110 can be found in paragraph 7, which provides that:

- Information and evidence from independent and authoritative sources should be given appropriate weight when applying the considerations.
- The primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations and primary considerations should generally be given greater weight than the other considerations.
- One or more primary considerations may outweigh other primary considerations.

37. The Applicant made written and oral representations to the Department and the Tribunal in support of the revocation request. Written submissions were made to the Department by the Applicant's then representative.[30] Later submissions were provided to the Tribunal by Counsel.[31] Where those submissions were inconsistent, I have relied on the submissions from Counsel who appeared before the Tribunal.

38. With respect to the matters arising for consideration under Direction no 110 the Applicant contended, in summary:

- The Applicant's offending was properly characterised as serious. However, the prospective harm, being economic loss, was at the lower end of the spectrum contemplated by Direction no. 110. Taking into account all of the factors, including the lack of any prior record, the Applicant's expressions of remorse, prosocial supports and time spent in the community on bail without reoffending, the prospect of recidivism is remote;
- The consideration of family violence is not relevant in the Applicant's case;

[30] Exhibit T1, pages 76-102.
[31] Exhibit T1, pages 361-375.

- The Applicant has resided in Australia for almost a decade and has studied and worked here. The Applicant's removal from Australia would have a direct adverse impact on Australian family members and on his broader social connections including extended family and friends and the community served by the Sikh temple for whom he volunteers. The emotional hardship on Australian citizens and permanent residents, the length and depth of his integration and his demonstrated community involvement together favour revoking the cancellation decision;
- The best interests of eleven children who are the children of friends of extended family or friends who he considers to be family would be served by the cancellation decision being revoked, allowing the positive and stabilising relationship they have with the Applicant to be preserved;
- The Applicant accepts his serious financial offending breaches the community's expectation that non-citizens obey Australian law and raises serious character concerns leading to an expectation the visa would not be reinstated. In the balance this consideration would not outweigh others in favour of revocation;
- The general legal consequences of immigration detention pending removal and of permanent exclusion from Australia are serious adverse consequences and should weigh in favour of revocation;
- Diminished family support, impaired employability due to a criminal record, likely non-recognition of Australian qualifications and decade-long disengagement from local networks indicate that the applicant would face notable hardship in re-establishing himself and maintaining a basic standard of living relative to other Indian citizens;
- The considerations weighing in favour of revocation, in particular the strength and duration of his ties to Australia and the best interests of the children impacted by the decision, outweigh those weighing against.

39. The Minister submitted, in summary, that:[32]

[32] Respondent's SFIC, Exhibit T1, pages 240 – 258.

- The Applicant's offending should be viewed as very serious, noting in particular the aggravating features of the offending, the sentence of imprisonment and the frequent nature and cumulative effect of the offending;
- The nature of the harm which would be caused if the Applicant were to reoffend incudes serious harmful financial consequences to victims, significant law enforcement and prosecution costs and the community vulnerability caused by dissemination and exploitation of confidential personal information. Limited reliance can be placed on the Applicant's expressions of remorse or prosocial supports in circumstances where he provides self-serving justifications for his offending;
- The consideration of family violence is not relevant in the Applicant's case;
- The Applicant overstated his claimed family ties to Australia. While he has friends in Australia and people he claims are '*like sisters*' these people are cousins and others claimed as cousins are friends and there is limited reliable evidence from his friends about the impact his removal would have on them. While he has worked in Australia, limited weight should be placed on this as a tie, given he offended through his employment over a significant period. Evidence does not support his claims to have a '*pivotal*' role at his Sikh temple;
- While the best interests of the identified children weigh in favour of revocation, limited weight should be placed on this consideration given the relationships are non-parental and there is limited evidence regarding the relationship he has with many of the children;
- The Applicant has engaged in offending raising serious character concerns and the Australian community would expect he should not hold a visa, noting in particular the principle in Direction no. 110 that Australia has a low tolerance for those holding a limited stay visa. This principle would apply to the Applicant's bridging visa, held only in association with his application for a COVID-19 visa with a maximum stay period of 12-months;
- The Applicant would be subject to detention and removal provisions as a consequence of not holding a visa. Non-refoulment issues do not arise in the Applicant's circumstances and this consideration should carry neutral weight;

- The Applicant completed secondary schooling in India, has parents and extended family members there and does not have any health or age related issues which might impede his return to India. While he would need to establish himself, including obtaining employment, there is no evidence to support a claim he would have significant barriers to employment including because of his criminal history;
- While the Applicant has an employment offer from his previous employer who valued the Applicant's skills and provided evidence his business has suffered since the Applicant was imprisoned, the Applicant's experience and skills are not such that his unavailability would adversely impact Australian business interests more broadly;
- The primary considerations of the protection of the Australian community and the expectations of the Australian community weigh very heavily against revocation and outweigh any considerations in favour of revocation.

Protection of the Australian Community

40. The first primary consideration, paragraph 8.1(1), focuses on the protection of the Australian community. Direction no. 110 requires decision-makers to keep in mind that the safety of the Australian community is the highest priority of the Australian Government and to that end the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, the Tribunal is directed to have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.[33]

41. Direction no. 110 provides that the protection of the Australian community is generally to be given greater weight than other primary considerations.[34]

[33] See also Direction no. 110 para 8(1).
[34] Direction no. 110 para 7(2).

42. In considering the protection of the community, the Tribunal is assess the nature and seriousness of the Applicant's conduct to date and the risk of harm arising from any such conduct in the future.[35]

Nature and seriousness of the conduct

43. I must consider the nature and seriousness of the Applicant's criminal offending and other conduct to date.[36] In doing so, para 8.1.1(1) of Direction no. 110 provides that I must have regard to specific types of crimes or conduct which are '*viewed very seriously*' by the Australian Government and the Australian community. Direction no. 110 also provides that certain other offences or conduct are considered to be '*serious*'. I note that while Direction no. 110 expressly provides categories of conduct to be considered to be very serious or serious, it does not limit the range of conduct that may be so regarded.[37]

44. In considering the nature and seriousness of the Applicant's criminal offending or other conduct to date, I must have regard to the frequency of the non-citizen's offending and/or whether there is any trend of increasing seriousness; the cumulative effect of repeated offending; whether the Applicant has provided false or misleading information to the Department, including by not disclosing prior criminal offending; whether the Applicant has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the Applicant's migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour). In addition, Direction no. 110 introduced a requirement under this consideration that I consider the impact of the offending on any victims and their family, where information regarding this is available, and the non-citizen whose visa is being considered for refusal or cancellation, or who has sought revocation of the mandatory cancellation of their visa, has been afforded procedural fairness as part of its consideration of the nature and seriousness of the Applicant's offending and other serious conduct.[38]

45. The offences for which the Applicant was convicted on 21 June 2024 are his only recorded convictions.

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[35] Direction no. 110 clause 8.1.
[36] Direction no. 110 para 8.1(1).
[37] Direction no. 110 para 8.1.1(1)(a).
[38] Direction no. 110 para 8.1.1(1)(d).

46. The Applicant accepted that his offending was properly characterised as serious. However, he contended that the prospective harm, being economic loss, was at the lower end of the spectrum contemplated by Direction no. 110. He contended that taking account of all the factors including the lack of any prior record, the Applicant's expressions of remorse, prosocial supports and time spent in the community on bail without reoffending, the prospect of recidivism is remote.

47. The Minister submitted the Applicant's offending should be regarded as very serious, noting in particular the aggravating features of the offending including the breach of trust as an employee, the sentence of imprisonment, the frequent nature and cumulative effect of the and the broad impact of that offending.

48. I am required, pursuant to Direction no. 110, to take into account a range of factors, including certain conduct which is to be regarded as '*very serious'* or '*serious*'.[39] While the Applicant's offences could not be said to naturally fall within the crimes specified in the part of the Direction, it is clear that there will also be crimes or other conduct which can properly be characterised as serious or very serious, but which are not specifically mentioned in this part of Direction no. 110.

49. According to the sentencing remarks of the District Court, the Applicant was involved in an '*elaborate scheme*' by which new electronic devices were dishonestly obtained and then sold off in a black-market enterprise. The sentencing remarks describe the details of the scheme as follows:[40]

> Personal details of customers of Telstra, Optus and Vodafone were somehow obtained by those orchestrating the scheme. The scheme operators then enlisted a cohort of people to cold call customers. The callers lied to the customers and purported to be staff of the telecommunications company and offered the customers a new device - a phone or a tablet - at a discounted price or some other type of discount in relation to the customer's telecommunication service. The personal information in the possession of the caller provided enough information for them to convince the customer that they were genuine.

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[39] Direction no. 110 para 8.1.1(1)(a) and 8.1.1(1)(b).
[40] Exhibit T1, page 46.

When the customer agreed to take up the offer, information was then sought and obtained from the customer on the necessary to complete the deal that had been offered. Customers were persuaded that the caller was genuine, they gave over that information: further personal and account information. With the further personal and account information. With the further information and account details then obtained, the caller was able to purchase a brand-new electronic device - a phone or a tablet - in the customer's name simply by going onto the telco's website. However, in purchasing the device, the scammer would set a delivery address that was not the address of the customer but instead a carefully orchestrated address to had access through their network of delivery drivers.

The second step in the dishonest scheme relied upon a cohort of dishonest delivery drivers who worked for StarTrack. The items dishonestly purchased would be addressed to an address within the delivery area of a particular delivery driver who was working with the scheme. In addition to their other employment responsibilities for StarTrack, the parcels containing the dishonestly obtained devices would be identified in the StarTrack system and monitored by those involved in the scheme. It would eventually end up with the driver, who had responsibility for the area within which the dishonestly obtained item was sent. That driver was then able to mark it off within the StarTrack system so as to indicate that it had been delivered, whereas, in fact, it had not been delivered but was instead taken by the driver and passed onto others within the scheme to be sent off and sold elsewhere.

So, the item was then passed onto someone else for distribution back to the syndicate coordinator or coordinators and on sold for some benefit to them. Meanwhile, the original customer was charged for the item which they never received, and in some cases, never even ordered. The scheme was, therefore, quite sophisticated and relied upon a number of people with separate tasks and skills to be able to make the fraudulent purchases and obtain the items for free to cover their tracks, so as to make it look like the item had been delivered and so that the value of it was able to be realised on the black market to the substantial benefit of the principals or the orchestrators of the scheme.

50. In terms of the Applicant's involvement, the sentencing judge found that he and his co-accused, his friend Manjinder, operated as delivery drivers and recruited other drivers to the scheme. They coordinated a team of delivery drivers to intercept parcels dishonestly obtained using other people's personal information to benefit a larger syndicate. The sentencing judge was satisfied that the Applicant could have '*been under no*

misunderstanding the scheme was dishonest'.[41] They '*facilitated a significant fraud by providing a valuable service of intercepting parcels and passing them on to others'*.[42] It was not their scheme, but they provided a vital service to its success.

51. The sentencing judge observed that the Applicant's actions were a significant breach of trust against his employer which continued over a period of approximately 8 months and caused significant loss to others.[43] It was, in the Court's assessment, '*serious offending*'.[44]

52. The sentencing judge observed that the Applicant's guilty plea demonstrated insight and remorse, albeit the plea followed an extensive investigation and the Applicant's cooperation was '*not immediate*'.[45] The sentencing judge observed that the offending was a '*deliberate, concerted act of dishonesty over a significant period of time with significant consequences in terms of loss to others*'.[46]

53. I consider the sentence imposed by the court as a sentence of more than 4 years imprisonment reflects the serious nature of the offending. However, the suspension of a significant portion of the sentence reflects factors personal to the Applicant, including his lack of prior convictions.[47] This may be considered to reduce the overall seriousness of his offending.

54. There is no information in the sentencing remarks about the impact of the offending on any specific victims, through his Honour noting that in addition to the financial loss directly caused, the exploitation and proliferation of victims' personal information created an '*understandable ongoing concern*' to those who were the subject of the dishonesty in that their personal information had been compromised. These impacts contribute to the overall general seriousness of the offences.[48]

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[41] Exhibit T1, page 47.
[42] Exhibit T1, page 48.
[43] Exhibit T1, page 49.
[44] Exhibit T1, page 50.
[45] Exhibit T1, page 49.
[46] Exhibit T1, page 51.
[47] Direction no 110 para 8.1.1(1)(c)
[48] Exhibit T1, page 49.

55. The Minister contended that the Applicant's offending was frequent and that it had a cumulative impact in terms of the losses caused, but also due to the proliferation of confidential personal information and the contribution this made to a general sense of community vulnerability. I consider that the Applicant's offending was marked by frequency in the sense it involved repeated acts over an extended period and that this adds to the assessment of the offending as serious. I also consider that repeated offending of this nature, including the personal information of a large number of members of the community, does have a cumulative impact which is also serious.[49]

56. While the Applicant sought to explain his involvement in the scheme as a response to financial pressures he was under due to employment uncertainty during COVID-19 and the need to support his parents financially, I do not consider this explanation mitigates the seriousness of the Applicant's offending which was sustained and persistent and involved a significant breach of trust.

57. While the Applicant claimed not to have understood the activities were illegal this was rejected by the sentencing judge and I do not accept he did not understand the scheme was dishonest. The very nature of the scheme and his involvement can leave no doubt the Applicant understood that what he was doing was wrong and that he was personally profiting from his involvement. In my view, ongoing minimisation of his responsibility for his part in the scheme is not a factor in his favour.

58. I accept that the Applicant did plead guilty albeit a significant period into the investigation and that he has provided cooperation to the authorities since that time. This suggests insight into the seriousness of his conduct and remorse for the consequences which is to his credit.

59. The Applicant included in his revocation request information claiming purported family relationships which I do not consider on the evidence existed. The Applicant contended that it was a cultural practice to refer to close friends in familial terms. While no evidence was offered to support that contention, I accept that may but the case. However, I do not accept the Applicant misunderstood that in the context of his request for revocation the answers

[49] Direction no 110 para 8.1.1(1)(e)-(f).

he provided would be understood as referring to biological or legal family members noting it was not until the proceedings before the Tribunal that the Applicant clarified the nature of these relationships. While his explanation for this misrepresentation was unsatisfactory, I do not consider the fact that the Applicant misdescribed relatives and friends as immediate or extended family members meets the threshold of providing false and misleading information to the Department. While I consider the Applicant understood the descriptors in the forms to relate to family members in the biological or legal sense, the Tribunal also accepts that the Applicant may have extended family and friends he considers to be '*like family*', noting he conceded the nature of the relationships when asked in evidence. As such I do not consider this contributes to the overall assessment of his conduct and offending as serious.

60. There was no evidence that the Applicant had been formally warned about the impact of offending on his visa status though the lack of such a warning is not a matter which carries weight in favour of revocation.[50]

61. Before the Tribunal, the Applicant conceded that his offending was serious and I consider that it was. However, I note that the offences are the Applicant's first and only offences, that they were not crimes of a violent or sexual nature and that he attempted to mitigate his wrongdoing through pleading guilty to the offences.

Risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct

62. I am required to assess the risk that may be posed by the Applicant to the Australian community by considering, cumulatively, the nature of the harm to individuals or to the community should the Applicant engage in further criminal or other serious conduct and the likelihood of the Applicant engaging in such conduct.[51] There is no statutory constraint on the way that risk is assessed by the decision-maker other than that there must be a rational and probative basis for the assessment.[52]

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[50] Direction no 110 para 8.1.1(1)(h).

[51] Direction no. 110 para 8.1.2(2)(a) and (b).

[52] See *BSJ16 v Minister for Immigration and Border Protection* [2016] FCA 1181, at [68] per Moshinsky J; *Hambledon v Minister for Immigration and Border Protection* [2018] FCA 7, at [41] per Kenny J.

63. Direction no. 110 refers the '*risk to the Australian community*' and '*likelihood of reoffending*' as distinct though related concepts.[53] '*Likelihood'* of reoffending is an element to be considered in determining the '*risk'* to the community. The other is the nature of the harm which would be caused if the Applicant were to reoffend. The concept of 'risk' is not the same thing as the 'likelihood of the non-citizen engaging in further criminal or other serious conduct' but is to be determined taking account of both likelihood and prospective harm, requiring the Tribunal to make a qualitative assessment of risk to the community.

Nature of the harm

64. Determining the risk to the Australian community should the Applicant commit further offences or engage in other serious conduct involves an assessment of the nature of the harm to individuals or the Australian community should the Applicant reoffend.[54]

65. The Applicant submitted that, were the Applicant to reoffend, the nature of the harm caused would be primarily financial and psychological, acknowledging however that fraud-related conduct committed for the benefit of scamming syndicates erodes public trust in commercial and postal systems, exposes individuals to economic loss and distress, and can fuel broader criminal activity. The Applicant contended that as the offending did not involve violence, threats to personal safety or physical injury, this places the prospective harm at the lower end of the spectrum contemplated by Direction no. 110 '*being confirmed to repeated economic loss rather than risks to life or bodily integrity*'.[55]

66. The Minister contended that the nature of the harm to the community should the Applicant re-offend incudes serious harmful financial consequences to victims, significant law enforcement and prosecution costs and the community vulnerability caused by dissemination and exploitation of confidential personal information.

67. With respect to the offences the Applicant was convicted of, the sentencing judge noted that the offending caused significant loss to others, undermined community confidence and contributed to the general sense of community vulnerability over the misuse of personal

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[53] *RRRB v Minister for Immigration and Multicultural Affairs* [2025] ARTA 471.
[54] Direction no. 110 para 8.1.2(2)(a).
[55] Applicant's SFIC [16], Exhibit T1, page 363.

information and the potential for damage to the confidence in the business model of the telecommunication companies and the postal service, on which there is a heavy reliance for commerce transacted in a virtual environment.[56] A bulletin from the Australian Institute of Criminology was also submitted by the Minister. That report notes the widespread prevalence of identity crime and the significant costs of such crime to the community.[57]

68. I consider that the harm which would be caused were the Applicant to reoffend includes serious financial harm to victims, community vulnerability caused by dissemination and exploitation of confidential personal information, loss of consumer confidence in virtual commerce and postal services and costs to law enforcement in detecting and prosecuting such crimes. While I accept the submission that such harm may be regarded as less serious than serious physical harm caused by some kinds of offending, the harms caused by organised fraud is serious and has broad community impacts, as reflected in the observations of the sentencing judge.

69. I consider the nature of the harm which would be caused were the Applicant to reoffend in a similar manner to be serious.

Likelihood of reoffending

70. In order to determine the risk to the Australian community should the Applicant commit further offences or engage in other serious conduct, the Tribunal must also consider the likelihood of the Applicant reoffending if he were permitted to remain in the Australian community.[58]

71. The Applicant contended in submissions there was a very low likelihood of reoffending, having regard in particular to the lack of any prior record, the Applicant's expressions of remorse, prosocial supports and the significant time the Applicant spent in the community on bail without reoffending and during which time he demonstrated a commitment to reform through further study and productive employment. The Applicant offered a report from Dr

[56] Exhibit T1, pages 48, 50-51.
[57] Exhibit T1, pages 339-356.
[58] Direction no. 110 para 8.1.2(2)(b).

Yoxall, a registered psychologist who assessed the Applicant demonstrates a high degree of insight and presents a low risk of reoffending.[59]

72. The Minister submitted that limited reliance can be placed on the Applicant's expressions of remorse or prosocial supports in circumstances where he provides self-serving justifications for his offending and where those supports were not effective in preventing past offending. The Minister submitted the Applicant continued to minimise his offending by suggesting he was not aware the scheme was dishonest when he became involved, had ceased offending when he became aware the scheme was unlawful rather than when he was alerted StarTrack was investigating irregularity in deliveries and that he had assisted police when there had been a significant delay in his guilty plea and cooperation. Further, while he claimed to have offended due to financial stress he was continually employed during this period.

73. The Applicant indicated he was not offered rehabilitation programs in prison which was consistent with the suspension of the bulk of his sentence and the limited information in the 'Risk of Re-Offending Assessment dated 27 June 2024 from Queensland Correctional Services which was included in the material.[60] That document indicated the Applicant scored a total of 4 where the range of scores was expressed as 'Range of Scores 1 to 22: 22 being highest risk of re-offending.' While there was limited information as to how that assessment was reached in that document I accept it was consistent with an assessed low likelihood of reoffending and a lack of programmatic interventions in prison. It was also consistent with Dr Yoxall's report.

74. The Applicant provided evidence of having completed a Smart Recovery course in detention[61] which he said was beneficial in understanding the consequences of offending though it was directed at addiction-related offending. There is no suggestion the Applicant's offending was addiction related or that he presents a risk of offending of that type.

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[59] Exhibit A1.
[60] Exhibit T1, page 337.
[61] Exhibit T1, page 385.

75. The Applicant has also attended several sessions with a psychologist in August 2025 in detention.[62] According to the clinical notes provided, these sessions focussed on demonstrating his remorse and commitment to being an honest member of Australian society. The notes generally record the Applicant's self-reporting of the circumstances of his offending, remorse over the impact on his parents, including his father's ill-health, and desire to remain in the community. The notes record that the Applicant '*presents as honest and sincere in his efforts to move forward honestly*' but do not otherwise record any clinical diagnosis, any program of treatment, or any psychological strategies to address any likelihood of reoffending and maintain a prosocial life in the community. As such, while the notes demonstrate the Applicant has reached out to mental health supports and record a consistent account of his circumstances to that provided to the Tribunal, in my view they are of somewhat limited value in assessing the likelihood the Applicant would reoffend or in demonstrating strategies which may be implemented in the community to reduce the likelihood of reoffending. As such, I place less weight on these records than on the psychological report provided by the Applicant.

76. Dr Yoxall's evidence is more directly related to the assessment of the likelihood of reoffending. She provided a report and gave evidence before Tribunal having been engaged by the Applicant to provide a report assessing his risk of reoffending. Dr Yoxall indicated that her report was prepared following a video interview with the Applicant in August 2025.

77. Dr Yoxall reports that applying a Risk and Responsivity model (the Level of Service Inventory – Revised or LSI-R) which is used in prisons, as well as the interview, to estimate risk and rehabilitation needs indicate that the Applicant is '*highly motivated to ensure that his risk of reoffending is low*'.[63] She noted that while it did not appear the Applicant was suffering from clinical levels of anxiety at the time of the offending, he reported stress and anxiety which impaired his judgement and coping capacity and '*these vulnerabilities combined with an overreliance on the reassurance of a friend from work*' lead him to participate in the scheme.

78. She noted that there were inconsistencies in his account of his knowledge of the scheme but that '*he was aware at some level that the activity was unlawful and dishonest and chose*

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[62] Exhibit T1, pages 407-409.
[63] Exhibit A1, page 28.

to proceed'.[64] She observes that he demonstrates insight and remorse and that 'h*is motivation to be a better person appears genuine, with observable insight and empathy for both victim companies and individuals affected*.'[65] In answer to the question of whether the Applicant demonstrated insight into his offending, Dr Yoxall assessed that:

> [The Applicant] demonstrates a high degree of insight into his offending. He has engaged in rehabilitation both in terms of vocational and personal development courses as well as group and individual counselling. He has demonstrated a commitment to change and a willingness to seek out the support, assistance and advice of others to achieve positive and prosocial change.[66]

79. In summary, Dr Yoxall assessed the Applicant presented as a low risk of reoffending. Her summary of her reasons was as follows:[67]

> [The Applicant's] overall risk of reoffending is assessed as low. The offending appears situational and stress-related, rather than reflective of enduring criminogenic traits. He does not present with entrenched criminal thinking patterns, antisocial attitudes, or high-risk peers. The major deterrent of deportation further strengthens his motivation to avoid reoffending.
>
> Given his strong protective factors, demonstrated rehabilitation, and community supports, [the Applicant] is likely to transition well back into the community. His remorse, insight, and prosocial orientation suggest a good prognosis, provided that he maintains his current supports and continues to engage constructively with work, study, and community life.

80. In her report and in oral evidence, Dr Yoxall noted that the 2 ½ years the Applicant was in the community on bail demonstrated a degree of resilience and commitment to reform which supported the assessment that he had both insight and remorse. Dr Yoxall observed that maintaining a prosocial and positive life, undertaking study and establishing himself in a new role in Mr Brar's automotive workshop would not have been easy for the Applicant to do given the shame he expressed over the charges, and the fact he had done so indicated a degree of rehabilitation. I accept Dr Yoxall's evidence in this regard and consider the time the Applicant spent positively contributing to the community on bail weighs in his favour and

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[64] Exhibit A1, page 29.
[65] Exhibit A1, page 30.
[66] Exhibit A1, page 31.
[67] Exhibit A1, page 31.

supports his claimed commitment to living a prosocial life. However, this is somewhat tempered by the fact the Applicant was subject to the supervisory oversight of bail during this period in the sense that he was facing serious pending charges. This somewhat distinguishes this period from being in the community without supervision or restriction. However, in the Applicant's case, if released from detention he will be the subject of a suspended sentence for a significant period in the community[68] and I accept the conditions of such a sentence, carrying as it does the threat of imprisonment in the event of further offending, will act as a protective factor against further offending until the suspension is complete in December 2029.[69]

81. I also note that the Minister submitted that while the Applicant may be remorseful for the impact his offending had on his family and friends and on his own situation, the assessment regarding his insight for victims and the community should be tempered given he admitted in questioning that he has not made any effort to compensate victims for their losses even though he was working for a significant period following the offence. I agree in part that the Applicant's expressions of remorse generally centred on himself and his family members. However, as there is no information to suggest a mechanism by which the Applicant would have been in a position to compensate victims, I place limited weight on this as a factor suggesting a lack of remorse.

82. I was more troubled in terms of the assessment of the Applicant's insight by what Dr Yoxall referred to as '*inconsistencies*' in his account of whether he knew the scheme was unlawful, why he ceased participating and the degree to which he assisted authorities. I found the Applicant's claim not to have realised the scheme was unlawful to be implausible and note it was not accepted by the sentencing judge. This indicates an ongoing minimisation of responsibility for what was serious offending. I do not accept the Applicant was unaware the scheme was unlawful until around the time he ceased involvement. I do not accept he ceased involvement because he discovered the scheme was unlawful. I find on the evidence he did so because the scheme had drawn the attention of his employer and then the authorities. The Applicant also demonstrated limited insight into his role in involving friends as delivery drivers, exposing them to criminal sanction. Further, he sought to claim a role in assisting police from an early stage, however this is not supported on the evidence,

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[68] 4 years: Exhibit T1, page 44.
[69] Exhibit T1, page 56.

including in relation to the timing of his statement to police in 2023.[70] Again, this demonstrated a minimisation by the Applicant of his own culpability and an attempt to portray his role in a more positive light than the facts establish.

83. Notwithstanding these concerns about the level of the Applicant's remorse and insight, I found Dr Yoxall to be a frank witness who clearly explained the basis for her assessments and overall I accept her assessment and place weight on it in assessing the likelihood of the Applicant reoffending. I note that in the conclusion section of the report Dr Yoxall was asked if the Applicant presented a '*risk to the community*'. I note that in the context of this consideration in the direction that question is one for the Tribunal to determine on the basis of both the likelihood of reoffending (the risk assessed in Dr Yoxall's report) and the harm which may be caused if the Applicant were to reoffend. The latter is not a matter for Dr Yoxall's assessment and is properly a matter for the Tribunal.

84. The Tribunal accepts the Applicant's submission that his experience in being convicted of the offences, in particular the impact on his visa status and his consequent detention, and the shame of his convictions, is a factor which reduces the likelihood of his re-offending. The Tribunal accepts the Applicant has good prospects for stable employment in the community if he maintains his commitment to further education and to not re-offending. The Tribunal also regards that this is a protective factor against re-offending.

85. However, the Tribunal considers that the Applicant took a calculated risk in engaging in the fraudulent scheme for personal financial reward. While he has expressed remorse this has principally focussed on the disadvantage suffered by him and the harm caused to his family members as a result and I consider that if the opportunity to make a profit were available to the Applicant again, and he assessed the risk to himself to be acceptable, he may engage in similar unlawful activity for profit, albeit he would calculate that risk differently based on his experience of being convicted in the past. The Tribunal considers that the fact he offended while on a bridging visa, enabling him to remain only while his application for the COVID-19 visa was being finally determined, suggests limited weight should be placed on the threat of removal as a protective factor against reoffending as the temporary nature of his visa status was not sufficient to protect against his prior offending.

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[70] Exhibit T1, page 300.

86. Overall, the Tribunal finds that there is a low likelihood the Applicant will reoffend. The Tribunal considers that, given the nature of the harm which would be caused if the Applicant were to reoffend, which includes widespread financial harm to members of the community, there would be a low tolerance for such risk and that this carries weight against revoking the visa cancellation. However, I do not consider this is a circumstance where any risk would be unacceptable or that risk is determinative of the application. This must be weighed against all the primary and other considerations in determining whether there is another reason why the visa cancellation should be revoked.

Conclusion on the protection of the Australian community

87. With regard to the protection of the Australian community, the Tribunal finds that the Applicant's offending was serious. The Tribunal considers that serious harm would result to members of the community were the Applicant to re-offend in a similar manner. However, I find that there is a low likelihood of the Applicant engaging in further criminal or other serious conduct.

88. On balance, I find this consideration weighs moderately against revocation.

Family violence committed by the non-citizen

89. Paragraph 8.2 of Direction no.110 provides that decision-makers, such as the Tribunal, must have regard to family violence perpetrated by the non-citizen when deciding whether to revoke a visa cancellation decision.

90. There is no evidence before the Tribunal that the Applicant has engaged in acts of family violence and the parties agreed this consideration was not relevant. I find that this consideration is not relevant in the Applicant's case and I afford it no weight.

The strength, nature and duration of ties to Australia

91. I am required to consider any impact of the decision on the Applicant's immediate family members in Australia.[71] I must also consider the strength, nature and duration of any other ties that the Applicant has to the Australian community, having regarding to how long they

[71] Direction no. 110 para 8.3(1).

have lived in Australia and the strength, duration and nature of any family or social links with citizens, permanent residents and/or people who have an indefinite right to remain in Australia.[72]

92. The Applicant arrived in Australia when he was almost 19 years old and has lived here just over 10 years. His first recorded offence was in 2021, 6 years after his arrival. He is single, has never been married and does not have any children. Prior to his incarceration he was renting a house with a friend, who was his co-accused.

93. The Applicant contended that has resided in Australia for almost a decade and has studied and worked here. He submitted that his removal from Australia would have a direct adverse impact on Australian family members and on his broader social connections including extended family and friends and the community served by the Sikh temple for whom he volunteers. His removal would cause emotional hardship to his Australian citizen and permanent resident friends and family. He has been part of the community for a significant period, has made a contribution through work, community activities and his relationships with his friends, and these factors weigh in favour of revoking the cancellation decision.

94. The Minister submitted that the Applicant misstated his claimed family ties to Australia and does not have any immediate family members here. While he has extended family and friends here there is limited reliable evidence about the impact his removal would have on them. While he has worked in Australia, limited weight should be placed on this as a tie, given he offended through his employment over a significant period. While he is a member of a Sikh temple, the evidence does not suggest his removal would impact the community services undertaken by the temple.

95. In his 'Personal Circumstances Form' accompanying his request for revocation, the Applicant listed his immediate family members in Australia as:[73]

    (a) His sister, Karamjeet Kaur and brother-in-law, Rajinder Gill, both Australian citizens;

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[72] Direction no. 110 para 8.3(2).
[73] Exhibit T1, page 116.

(b) His sister, Amanjeet Kaur and brother-in-law, Lakhwinder Singh Thiara, both Australian citizens.[74]

96. He also listed 12 cousins and an aunt and uncle on his form together with 11 nieces and nephews.

97. During the hearing the Applicant clarified that Karamjeet and Amanjeet Kaur were not his biological sisters but were in fact his cousins (the daughters of his mother's sister). He confirmed he had not been raised in the same household as these women but had met them in India before moving to Australia and had met '*once a month or a couple of times in a month*' when they all lived in India. He said their mother, his aunt, also lived in Australia although he did not know her name. He said he considered these women to be his sisters and that in his culture it was normal to refer to relations in this way. He also conceded Mrs Kaur's daughters were not his biological nieces but stated that he considered them family and that he was like an uncle to them.

98. The Applicant conceded that his only biological sister lives in Italy where she has resided for about 16 years.[75] The Applicant noted that his mother and father both live in India, however advised that his sister is making arrangements to resettle them in Italy. He did not know when this would happen.

99. In his evidence he also conceded that the people listed as 'cousins' were friends he had met in Australia who were like family to him. The children listed and nephews were in fact the children of these close friends.

100. The Applicant provided statements of support from number of friends or extended family members to the Department and Tribunal.[76]

101. The Applicant's cousin, Amanjeet Kaur, and her husband, Lakhwinder Singh Thiara, provided a letter of support to the Department.[77] Their letter describes pride in the

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[74] Ms Kaur also described herself as the Applicant's cousin in a letter provided with the Applicant's revocation request: Exhibit T1, page 158.

[75] Exhibit T1, page 160.

[76] Exhibit T1, pages 158, 162, 164, 168, 170, 172, 175, 177, 179, 181, 182.

[77] Exhibit T1, page 158.

Applicant's character and achievements, and describe him as a '*kind and caring individual with empathy and compassion for his family'*. They refer to his volunteer work at the local Sikh temple and state that '*his volunteer work is a testament to his selflessness and dedication to the well-being of others*'. They say that the Applicant '*feels deep regret and remorse for his actions. He is certain to never repeat this mistake*.' Ms Kaur also provided another letter to the Department.[78] She stated that with her experience in financial planning she will assist the Applicant with skills such as budgeting and money management, savings and investment planning, debt management, and long-term financial goals.

102. Amrik Singh and Sandeep Kaur also provided a letter of support to the Department which was in very similar terms to the letter provided by Amanjeet Kaur and Lakhwinder Singh Thiara.[79] In the same terms as the letter provided by Ms Kaur and Mr Thiara, the couple describes their pride in the Applicant's character and achievements, and describe him as a '*kind and caring individual with empathy and compassion for his family'*. They also refer to his volunteer work at the local Sikh temple and submit that '*his volunteer work is a testament to his selflessness and dedication to the well-being of others*'. They also state the Applicant '*feels deep regret and remorse for his actions. He is certain to never repeat this mistake*.'

103. Miss SK, daughter of Amanjeet Kaur and Lakhwinder Singh Thiara, provided a letter to the Tribunal stating the Applicant was her uncle and she '*loved him a lot*' and that it would upset her deeply if he were removed.[80]

104. Mr Nitin Karanti provided a letter of support to the Department[81] which described the Applicant's involvement in various community events, noting he was '*an asset to the community, and his continuous involvement in cultural and social activities has made a positive difference'*. Further, Mr Nitin says that the Applicant's '*contributions to the community are significant, and his removal would be a considerable loss to all of us who have benefitted from his kindness and leadership*'.

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[78] Exhibit T1, page 162.

[79] Exhibit T1, page 158.

[80] Exhibit T1, page 380. Her sister Miss RK provided a drawing saying she missed her uncle 'Dil': Exhibit T1, page 379.

[81] Exhibit T1, page 164.

105. Several other friends also provided letters of support to Department.[82] This included Davinder Singh[83] and Gurpreet Singh[84] who provided letters in almost identical terms. Another friend, also named Gurpreet Singh, provided a letter of support to the Department noting his belief the Applicant is of good character and can continue to make a positive contribution to the community.[85] Ravinder Singh provides a letter where he notes the applicant has cultivated good relationships in the community and has made a positive contribution supporting those in need.[86] Other friends provided letters noted the Applicant's connection to their families, kindness to their children and hardworking nature.[87]

106. Before the Tribunal, Harmanpreet Singh provided a letter describing the Applicant as his brother and stating he was close to their family and that his children love their uncle and miss him.[88] He states he will be heartbroken if the Applicant is removed. Several other letters of support were provided to the Tribunal from the parents of children mentioned in the material supporting the revocation request, including Navjat Kaur and Bikramjeet Singh who provided a letter to the Tribunal noting the applicant is a family friend who visited their house and serviced their cars, and that their young daughter enjoys his company.[89] Ramandeep Singh and Tarandeep Kaur provided a statement indicating the Applicant has a bond with their family, including their son Mstr Z, who regards him as a favourite uncle.[90] The consider him to be more than a friend and more like a member of their family. They state his removal would be a profound loss to them and to the community. Several drawings from children of the Applicant's friends were provided.[91]

107. The Applicant contended that he had strong ties to the community through his involvement in his local Sikh temple stated that he organised outreach programs in the community. In his request for revocation to the Minister, the Applicant contended that he played a pivotal role at the temple in providing essential support services, and that the temple's ability to

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[82] Exhibit T1, pages 174, 177, 179, 181, 182.
[83] Exhibit T1, page 168.
[84] Exhibit T1, page 170.
[85] Exhibit T1, page 172.
[86] Exhibit T1, page 175.
[87] Exhibit T1, pages 174, 175, 177, 179, 181, 182.
[88] Exhibit T1, page 376.
[89] Exhibit T1, page 396.
[90] Exhibit T1, page 387-398.
[91] Exhibit T1, page 398-399.

deliver services to vulnerable members of the community would be significantly compromised if he was removed.[92] He provided a letter of support from Kawarpreet Singh, the General Secretary of the Brisbane Sikh Temple (Gurdwara).[93] In this letter Mr Singh said the Applicant attends religious services, assists in the maintenance and cleanliness of the temple, and regularly helps serve free food to the congregations and visitors that attend the temple. The Applicant provided photos to the Tribunal which appear to show him volunteering at the temple.[94] When, at the hearing, it was put to the Applicant that the Secretary General's letter did not suggest the Applicant had a vital role in providing outreach services for the temple, he clarified that he would volunteer at events like the Sikh games, providing water and food to the people involved in the games, as well as other programmes organised by the Sikh temple. He conceded there were others who also volunteered in this way and that these activities would continue were he not present.

108. The Applicant also provided a letter of support from Rajinder Singh Brar, the Applicant's employer at his auto car workshop.[95] Mr Brar notes the Applicant made a significant contribution to the business through his dedication to his work and was a valuable employee. He speaks positively of the Applicant's character and his commitment to the community and confirms his offer of employment to the Applicant on his release. Mr Brar provided an additional statement to the Tribunal saying the Applicant '*practically ran*' the workshop. He said the workshop saw growth through the Applicant's leadership and that this allowed Mr Brar to focus on expanding his transport operations. He noted that since the Applicant was imprisoned he has been unable to find someone with his dedication and responsibility and this has impacted his business. He notes that if things don't improve, he may have to close the business and he hopes the Applicant can return to take charge of the workshop.[96]

109. The Applicant's sister, Rajwinder Kaur, who resides in Italy, provided a letter in support which noted her belief that the Applicant had made a contribution to the Australian community and was committed to remaining a part of the community.[97] Her later statement

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[92] Exhibit T1, page 121.
[93] Exhibit T1, page 132.
[94] Exhibit T1, pages 404-406.
[95] Exhibit T1, page 133.
[96] Exhibit T1, page 378.
[97] Exhibit T1, page 160.

to the Tribunal said that her parents' health had deteriorated significantly since the commencement of the proceedings and her father had been engaging in excessive alcohol consumption which had damaged his physical and emotional well-being and is affecting their mother. She states she plans to bring her parents to Italy to live with her to support them and to have assistance with her family which includes her three young children.[98]

110. It is clear from the material the Applicant has a broad network of support in the community and that he has made these connections to community during his time here. This includes extended family and friends he considers to be close family. The Minister submitted the Applicant has overstated his family connections here and I accept that is the case. I accept the Applicant may, as a cultural practice, refer to close friends as '*family'* and may be referred to as a '*brother'* and '*uncle'*. However, it was also evident that, save for two cousins (identified in the personal circumstances form as his sisters) and an aunt he does not know, he does not have biological family members in Australia. This was not consistent with the information in his personal circumstances form. In any event, I consider his ties to Australia can be assessed on the quality of the relationships he has with those who provided letters of support and I accept those evidences relationships which are ties to the community. I accept those friends and extended family would suffer emotionally from separation from the Applicant if he were removed and consider those ties weigh in favour of revocation.

111. The Applicant contended that he has paid taxes and been consistently employed in Australia. He has also undertaken several courses of study and provided tax returns and education certificates evidencing this. I accept the Applicant has generally been positively employed while in Australia, paid taxes and studied here. I accept that he made a valued contribution to his last employer in the automotive industry. While these activities weigh in his favour, I consider they carry less weight in circumstances where he committed serious offences through his employment with StarTrack involving a significant breach of employer and public trust.

112. Overall, I consider the Applicant has demonstrated he has ties to friends and extended family in Australia and has contributed to the community though some periods of employment, and through study and community activities including with his Sikh temple. As

[98] Exhibit T1, page 394.

noted above, I place less weigh on his contribution through employment, noting he committed serious offences connected with his employment with StarTrack over an extended period.

113. I find that the strength, nature and duration of the Applicant's ties to Australia weigh slightly in favour of revocation.

Best interests of minor children in Australia affected by the decision

114. Paragraph 8.4 of Direction no. 110 requires the Tribunal to consider the best interests of minor children in Australia affected by the decision. Under paragraph 8.4, the Tribunal must make a determination whether cancellation or refusal under s 501, is or is not, in the best interests of children who are under 18 at the time the decision is expected to be made. Where there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests might differ.

115. Paragraph 8.4(4) of Direction no. 110 goes on to outline the factors that a decision-maker must consider when determining the best interests of a child affected by the decision where relevant. Those factors which include, in summary:[99]

- the nature and duration of the relationship;
- the extent to which the Applicant is likely to play a positive parental role in the future;
- the impact of the Applicant's prior conduct, and any likely future conduct, on the child;
- the likely effect that any separation from the Applicant would have on the child;
- whether there are other persons who already fulfil a parental role in relation to the child;
- any known views of the child;

[99] Direction no. 110 para 8.4(4)(a)-(h).

- evidence that the child has been, or is at risk of being exposed to family violence by the Applicant or has otherwise been abused or neglected by the Applicant; and
- evidence that the child has suffered or experienced any physical or emotional trauma arising from the Applicant's conduct.

116. In his personal particulars form supporting his request for revocation the Applicant identified the following children whose best interests are that the cancellation decision is revoked :[100]

- Miss SK, niece, 16 years old, daughter of Amanjeet Kaur and Lakhwinder Singh Thiara;[101]
- Miss RK, niece, 7 years old, daughter of Amanjeet Kaur and Lakhwinder Singh Thiara;
- Miss JK, niece, 7 years old, daughter of Bikramjeet Singh and Navjot Kaur;[102]
- Mstr IS, nephew, 7 years old, son of Harmanpreet Singh and Harpreet Kaur;
- Mstr AS, nephew, 4 years old, son of Harmanpreet Singh and Harpreet Kaur;
- Mstr ZS, nephew, 4 years old, son of Ramandeep Singh and Tarandeep Kaur;
- Miss NK, niece, 10 years old, daughter of Nitin Kranti and Ishika Rana;
- Miss MK, niece, 4 years old, daughter of Harvir Singh and Hardeep Kaur;
- Mstr GSD, nephew, 8 years old, son of Mandip Singh and Parvinderdeep;
- Miss SKD, niece, 2 years old, daughter of Mandip Singh and Parvinderdeep;
- Miss SKS, niece, 2 years old, daughter of Dilpreet Singh Samra and Loveleen Kaur Samra.

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[100] Exhibit T1, pages 114 and 381.
[101] Exhibit T1, page 116.
[102] Exhibit T1, page 369.

117. Although the children above were listed as either the Applicant's niece or nephew, at the hearing he clarified they were either the children of his cousin (Miss SK and Miss RK) or the children of his friends within the Sikh community (the remaining children). His only nieces and nephews are the children of his only sibling, his sister. Those children live in Italy.

118. The Applicant maintained, however, that his two cousins are like sisters to him and the children of his friends regard him as being like an uncle (and in some instances refer to him as such). As this familiar terminology is used in some of the supporting letters, I accept the Applicant and his friends refer to each other using family relationship designations as a sign of closeness.

119. The Minister accepted that this consideration will weigh in favour of revocation, though submits it only weighs marginally in favour of revocation.[103]

120. There was very limited evidence before the Tribunal regarding the children. That evidence was restricted to the Applicant's evidence, letters of support, photographs and drawings from several children and a letter from one child. As the Applicant claimed a closer relationship with Miss SK and Miss RK I have considered their interests together as siblings, but separately to the extent there is evidence specific to their circumstances. I have considered the other children together as there is no evidence their interests or relationships with the Applicant differ on the material before me. I have considered evidence regarding the children individually where it is before me. [104]

Miss SK and Miss RK

121. Miss SK, aged 16, and Miss RK, aged 7, are the daughters of Amanjeet Kaur and Lakhwinder Singh Thiara. They live with their parents, who fulfil a parental role for them. As addressed above, although these children were described as the Applicant's nieces and Amanjeet Kaur was described as the Applicant's sister,[105] during the hearing the Applicant clarified that Ms Kaur was his cousin. The Applicant's relationship with these children is non-parental as an extended family relative who is like an uncle, and I infer from the material

[103] Respondent's SFIC [50], Exhibit T1, page 254.
[104] Direction no. 110 para 8.4(3).
[105] Exhibit T1, page 116, 158.

that the Applicant has known the children since he came to Australia (in the case of Miss SK) or birth (in the case of Miss RK).

122. As noted earlier, the Applicant's cousin, Amanjeet Kaur, and her husband, Lakhwinder Singh Thiara, Miss SK and Miss RK's parents, provided letters of support to the Department.[106] Their letter describes pride in the Applicant's character and achievements, and describe him as a '*kind and caring individual with empathy and compassion for his family'*. They refer to his volunteer work at the local Sikh temple and state that '*his volunteer work is a testament to his selflessness and dedication to the well-being of others*'. They say that the Applicant '*feels deep regret and remorse for his actions. He is certain to never repeat this mistake*.' Ms Kaur also provided another letter to the Department.[107] She stated that with her experience in financial planning she will assist the Applicant with skills such as budgeting and money management, savings and investment planning, debt management, and long-term financial goals.

123. The letters do not address the impact the decision would have on the children. However, they are strongly supportive of the Applicant remaining in Australia.

124. As noted earlier, Miss SK provided a letter stating the Applicant was her uncle and she '*loved him a lot*' and that it would upset her deeply if he were removed.[108] Her sister Miss RK provided a drawing saying she missed their uncle 'Dili'.[109]

125. I accept the children would be negatively impacted by the Applicant's removal as he is a member of their family's close social network.

126. The Applicant gave evidence before the Tribunal that the children called him '*uncle*' and that he has played a mentor role in their lives. The Applicant stated he speaks to the girls every week and I accept that he is in regular contact with them from detention through their parents. I note the Applicant has maintained contact with them by phone or in writing in

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[106] Exhibit T1, page 158.
[107] Exhibit T1, page 162.
[108] Exhibit T1, page 380.
[109] Exhibit T1, page 379.

prison and he could maintain contact with the girls by those means if he returns to India. However, the Tribunal accepts this would not be a substitute for personal contact.

127. The girls are currently 16 and 7 years old. There are a number of years before they turn 18, during which period, if the Applicant could make a positive contribution to their lives, while in Australia as a member of their family's social support network.

128. There was no evidence the Applicant's offending had negatively impacted either child in the past. There is no evidence the Applicant has abused or neglected the children in any way in the past, nor is there any evidence the children have suffered or experienced any physical or emotional trauma arising from the Applicant's conduct. There is no evidence they have been, or is at risk of being, exposed to family violence by the Applicant or have otherwise been abused or neglected by the Applicant

129. While there is very limited evidence on which to assess the best interests, I consider revocation of the cancellation decision would be in Miss SK and Miss RK's best interest.

The children of the Applicant's friends

130. As noted earlier, the Applicant also identified 9 children impacted by the decision who are the children of his close friends. These are:

- Miss JK (7 years old), daughter of Bikramjeet Singh and Navjot Kaur.[110] There were no known views of Miss JK before the Tribunal.
- Mstr IS (7 years old), son of Harmanpreet Singh and Harpreet Kaur.[111] There were no known views of Mstr IS before the Tribunal.
- Mstr AS (4 years old), son of Harmanpreet Singh and Harpreet Kaur.[112] There were no known views of Mstr AS before the Tribunal however a drawing identified as being by Mstr AS was submitted.[113]

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[110] Exhibit T1, page 396 (statement by Miss JK's parents).
[111] Exhibit T1, pages 376-377 (statement by Mstr IS' father).
[112] Exhibit T1, pages 376-377 (statement by Mstr AS' father).
[113] Exhibit T1, page 398.

- Mstr ZS (4 years old), son of Ramandeep Singh and Tarandeep Kaur.[114] There were no known views of Mstr ZS before the Tribunal however a drawing identified as being by Mstr ZS was submitted.[115]
- Miss NK (10 years old), daughter of Nitin Kranti and Ishika Rana.[116] There were no known views of Miss NK before the Tribunal.
- Miss MK (4 years old), daughter of Harvir Singh and Hardeep Kaur. There were no known views of Miss MK before the Tribunal.
- Mstr GSD (8 years old), son of Mandip Singh and Parvinderdeep. There were no known views of Mstr GSD before the Tribunal.
- Miss SKD (2 years old), daughter of Mandip Singh and Parvinderdeep. There were no known views of Miss SKD before the Tribunal.
- Miss SKS (2 years old), daughter of Dilpreet Singh Samra and Loveleen Kaur Samra. There were no known views of Miss SKS before the Tribunal.

131. While there was limited information about the children's circumstances I infer each lives with their parents who fulfil a parental role with respect to each of them. The nature of the Applicant's relationship with the children is non-parental, as a close family friend who is regarded as an uncle.

132. The Applicant stated that he is like an uncle to the children and maintains weekly contact with them from detention. They call him 'uncle'. During the hearing the Applicant said that he would often see the children on the weekend where they play cricket together.

133. Several drawings from the children were submitted.[117] While I do not regard the drawings as expressing their views on the impact the decision would have on their best interests, I conder the drawings provide evidence of a relationship with those children. I accept the drawings demonstrate the children are close to the Applicant and value the relationship he has with them.

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[114] Exhibit T1, page 397 (statement by Mstr ZS' parents).
[115] Exhibit T1, page 399.
[116] Exhibit T1, page 164-165 (statement by Miss NK's father).
[117] Exhibit T1, pages 398 (by Mstr AS), 399 (by Mstr ZS).

134. During the hearing the Applicant described Harmanpreet Singh as a friend. The Applicant said he saw Mstr IS and Mstr AS, Harmanpreet Singh's children, when he went to their house for lunch or dinner, and sometimes they met outside their parent's home. The Applicant said he would play with them and had spoken to them on the phone once a week.

135. Although Miss NK's father, Mr Karanti, provided a letter of support to the Tribunal, he did not address the Applicant's role in Miss NK's life.[118] Mr Karanti's letter detailed various community events that both he and the Applicant attended, and I accept that it is possible that Miss NK may have been in attendance and that the Applicant is past of Miss NK's family's social network.

136. The Applicant stated he speaks to the children every week and given their ages I infer this is contact through their parents. I accept that he is in regular contact with the children and their parents from detention. Noting the Applicant has maintained contact with the children and their families by phone or by writing in prison and he could maintain contact by those means if he returns to India. As noted above, such contact is not a substitute for personal contact with the Applicant, particularly as a number of the children are young and may struggle to maintain a relationship remotely without personal contact.

137. The children range in age but all are relatively young. There are a significant number of years before they turn 18, during which period the Applicant could make a positive contribution to their lives while in Australia as part of the children's families' social network.

138. There was no evidence the Applicant's conduct or offending had negatively impacted any of the children in the past. There is no evidence the Applicant has abused or neglected the children in any way in the past, nor is there any evidence the children have suffered or experienced any physical or emotional trauma arising from the Applicant's conduct. There is no evidence they have has been, or are, at risk of being exposed to family violence by the Applicant or have otherwise been abused or neglected by the Applicant.

139. While there is very limited evidence on which to assess their best interests, on the basis that the Applicant's removal would negatively impact their families, I consider revocation of

[118] Exhibit T1, page 164.

the cancellation decision would be in the best interests of these children. The relationship with the Applicant is clearly valued by their parents and, on that basis, I accept they would suffer from the loss of support and interaction with the Applicant were he removed. I consider it is in the best interests of the children identified that the visa cancellation be revoked.

Conclusion on best interests of minor children

140. The Tribunal finds that the best interests of Miss SK and RK weigh in favour of revocation. The best interests of the other children also weigh in favour of revocation but to a lesser extent given the very limited information regarding the relationship.

141. I consider it is in the best interests of identified minor children that the cancellation decision be revoked. Having regard to all the circumstances, I afford this consideration slight weight in the Applicant's case.

Expectations of the Australian Community

142. The fifth primary consideration requires the Tribunal to weigh the expectations of the Australian community. Paragraph 8.5(1) of Direction no. 110 provides that the Australian community expects non-citizens to obey Australian laws while in Australia. Direction no. 110 goes on to state that 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 would not allow them to enter or remain in Australia.

143. Paragraph 8.5(2) directs that 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.

144. Direction no. 110 notes that 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 particular kinds. The paragraph directs that the Australian community expects that the Australian Government should cancel a non-citizen's visa if they raise serious character concerns

through specific conduct listed in sub-paras 8.5(2)(a)–(f). Those particularised types of harm generally reflect the types of conduct identified in para 8.1.1 as conduct which is considered '*very seriously*' or '*serious*'. While the Applicant's offences may not fall squarely within those harms identified, the Tribunal has found earlier that the Applicant has been convicted of serious offences and he conceded this was the case.

145. Paragraph 8.5(3) of Direction no. 110 further confirms that the stated expectations apply, regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community. In doing so, para 8.5(3) arguably further qualifies the '*norm*' expressed in para 8.5(1), which refers to the '*unacceptable risk*' of conduct being engaged in. This makes it clear that a '*measureable* [sic] *risk*' of physical harm to the community is not required for the community expectation that the non-citizen not hold a visa to be engaged, where serious character concerns are raised through the persons conduct or offending.

146. This consideration will, in most cases, weigh against revocation of a cancellation decision if that expectation has been breached.

147. The Applicant accepts his serious offending breaches the community's expectation that non-citizens obey Australian law and raises serious character concerns leading to an expectation the visa would not be reinstated. It was submitted that this consideration would not outweigh others in favour of revocation.

148. The Minister contended that the Applicant's offending raises serious character concerns and the Australian community would expect he should not continue to hold a visa. This weighs against revocation. In terms of the weight to apply the Minister contended that attention should be paid in particular the principle in the Direction that Australia has a low tolerance for those holding a limited stay visa. This principle would apply to the Applicant's bridging visa, held only in association with his application for a COVID-19 visa with a maximum stay period of 12-months.

149. The Tribunal finds the Applicant's offending raises serious character concerns and that the norm with respect to the Australian community's expectation that he would not continue to hold a visa is engaged. I find the Australian community would expect that the Applicant's

visa would remain cancelled. Accordingly, the expectation of the Australian community weighs against revocation.

150. However, it remains for me to determine the appropriate weight to be given to this consideration. This will depend on my assessment of the totality of the relevant considerations including the primary and other considerations.

151. In weighing this consideration, I am also guided by the principles in para 5.2 of Direction no. 110. Paragraph 5.2(2) states that the safety of the Australian community is the highest priority of the Australian Government. Paragraph 5.2(3) directs that the Applicant, having engaged in criminal conduct, should expect to forfeit the privilege of staying in Australia.

152. I note that while the Applicant has spent a significant period in Australia he did not arrive as a child or spend his formative years here and has not spent most of his life in Australia. As such he would not be afforded the kind of additional tolerance identified in para 5.2.

153. Further, I accept the Minister's submission that the principle in para 5.2(5) of Direction no. 110, that Australia has a low tolerance for those holding a limited stay visa, applies in the Applicant's circumstances. While it was initially contended that the Applicant's Bridging visa allowed him to remain 'indefinitely' in Australia and was not a limited stay-visa, this contention was not pressed by Counsel and I consider that while the visa is not time limited as such, it is not a permanent visa and allows the Applicant to stay only until his substantive visa application is determined. The Bridging visa would cease once he was either granted that visa, a COIVD 19 visa, or alternatively within 35 days of a refusal decision.[119] In this case that substantive visa in respect of which the bridging visa was granted is also a limited stay visa. The Minister submitted evidence that the COVID-19 visa could only be issued for a period of no more than 12 months which the Tribunal accepts.[120]

154. While his Bridging visa would allow him to remain in Australia until his COVID-19 visa application is determined, it is not a permanent visa and neither the bridging visa nor the substantive visa with which it is associated would allow the applicant to remain in Australia permanently. The Applicant has never held a permanent visa in Australia. This was

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[119] Exhibit T1, page 255 citing Clause 010.511(1), Schedule 2, *Migration Regulations* 1994 (Cth).
[120] Exhibit T1, pages 255; 338.

conceded by counsel for the Applicant. I consider that consistent with the principle expressed in para 5.2(5) of Direction no. 110 applies in the Applicant's case.

155. Overall, I consider this primary consideration weighs strongly against revocation in the Applicant's case.

Other considerations

156. Paragraph 9 of Direction no. 110 states:

> (1) In making a decision under section 501(1), 501(2) or 501CA(4), the considerations below must also be taken into account, where relevant, in accordance with the following provisions. These considerations include (but are not limited to):
>
> a) legal consequences of the decision;
>
> b) extent of impediments if removed;
>
> d) impact on Australian business interests

Legal consequences of decision under section 501 or 501CA

157. I am required to consider the legal consequences of a decision on a non-citizen, including having regard to Australia's non-refoulement obligations in respect of unlawful non-citizens.[121]

158. While this consideration in Direction no. 110 refers to non-refoulment obligations, it also makes reference to detention and removal, highlighting that there are a range of legal consequences of a decision not to revoke the cancellation of the Applicant's visa. The consequences of a visa refusal or cancellation under s 501 or related provisions include:

- Unlawful status;
- The likelihood of becoming subject to detention and/or removal;[122]
- Refusal of other visa applications and cancellation of other visas;[123]
- A prohibition on applying for other visas;[124] and
- Periods of exclusion and special return criteria may apply.[125]

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[121] Direction no. 110 para 9.1.

[122] Migration Act ss 189, 196, 197C, 198.

[123] Migration Act s 501F.

[124] Migration Act s 501E.

[125] Migration Act s 503; ***Migration Regulations*** *1994* (Cth) special return criteria (**SRC**) 5001.

159. Generally, if a visa is cancelled its former holder becomes an unlawful non-citizen immediately after cancellation.[126] Under s 189 of the Migration Act, an Applicant must be detained and removed as soon as reasonably practicable under s 198.[127]

160. Neither the Applicant's request for revocation of the cancellation decision, his personal circumstances form, or any other information provided did not raise any claims he would suffer harm on return to India such that would give rise to a non-refoulment obligation arising from his return.

161. The Applicant contended that there are serious adverse legal consequences to the Tribunal's decision including the prospect of permanent exclusion from Australia and this consideration should weigh in the Applicant's favour.[128]

162. The Minister submitted that while the Applicant would be subject to detention and removal provisions as a consequence of not holding a visa, non-refoulment issues do not arise in the Applicant's circumstances and the legal consequences were not such that the consideration should weigh in favour of revocation. The Minister contended the consideration should carry neutral weight.

163. I accept that, as a consequence of the cancellation of his visa, the Applicant will be barred from applying for any other Australian visa other than a Bridging R (Subclass 070) visa (**BVR**).[129] The Applicant may also be subject to permanent exclusions from Australia as he may not be able to meet Special Return Criteria 5001(c).

164. As the Applicant has expressed a desire to settle in Australia permanently I give the prospect of exclusion some weight. I also give some weight to the fact the Applicant would remain detained pending removal. However, there was no evidence to suggest that process would be lengthy or that the Applicant's health or circumstances were such that detention would cause particular harm to the Applicant, such that this might be a factor carrying significant weight.

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[126] Migration Act s 15.

[127] The Court in *BHL19 v Commonwealth of Australia (No 2)* [2022] FCA 313 followed *AJL20 v Commonwealth of Australia* [2020] FCA 1305 to find the applicant's detention had at all times been lawful at [112]-[122].

[128] ASFIC [52], Exhibit T1, page 367.

[129] *Migration Regulations 1994* (Cth) reg 2.25AB.

165. In the Applicant's case this consideration carries slight weight in favour of revocation.

Extent of impediments if removed

166. Paragraph 9.2 of Direction no. 110 provides that taking into account the matters identified in sub-paragraphs 9.2(1)(a), (b) and (c) of Direction no. 110, the Tribunal must consider the extent to which the Applicant would face an impediment or impediments in establishing himself and maintaining basic living standards in their home country, in the context of what is generally available to other citizens of that country. The matters identified under sub-paragraphs 9.2(1)(a), (b) and (c) are:

- The Applicant's age and health;
- Whether there are substantial language or cultural barriers; and
- Any social, medical and/or economic support available to the Applicant in their country.

167. The Applicant was born in India and moved to Australia when he was 18 years old. The Applicant was raised in India, speaks the local language, and completed high school in India.

168. The Applicant contends that, having lived in Australia for a decade, his education and employment history are oriented to Australian standards and his qualifications may not be recognised or valued in India. Further, he submits there may be stigma in relation to his fraud convictions which may '*materially reduce his prospects of obtaining skilled work comparable to his Australian experience*'.[130]

169. No country information was offered to support the contention the Applicant would struggle to obtain would in India due to his offending history or that his qualifications obtained in Australia would not be recognised. While I accept the Applicant will need to find employment, he has experience working in Australia and his training includes trade related training in the automotive industry. Further, there was no evidence offered to support the

[130] ASFIC [53] – [57], Exhibit T1, page 369.

contention that criminal convictions in Australia would become known to prospective employers in India. I consider the Applicant has skills which will likely be transferrable in a general sense and that any requirements to meet professional requirements in India would not present an impediment to establishing himself and maintaining basic living standards in India.

170. In any event, Dr Yoxall noted in evidence that the Applicant has demonstrated resilience following the offending in reestablishing himself here. He has built a social network in Australia and maintained employment, suggesting a capacity to adapt and to apply his skills to obtaining employment and in the face of personal challenges. While I accept he would face the prospect of a period reestablishing himself in India he is not without some support as his parents are currently there to provide initial support and he acknowledged that while they remain in India he could return to live with them. Even were his parents not in India I consider he has demonstrated the ability to settle in a new environment in the past and I consider reestablishing himself in India and obtaining employment would not be an impediment to him maintaining basic living standards in that country.

171. I find that this consideration weighs in favour of revocation however afford it slight weight in the Applicant's circumstances.

Impact on Australian business interests

172. Paragraph 9.3 of Direction no. 110 states:

> (1) 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.

173. As noted earlier, the Applicant has provided two letters of support from Mr Rajinder Singh Brar of Jimboomba Autocare.[131] The letter of support from Mr Rajinder Singh Brar provided to the Department guaranteed the Applicant employment and said that the Applicant's *'contributions to the business are significant, and his presence at the workshop ensures we can continue to deliver quality services to our customers'*.[132]

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[131] Exhibit T1, pages 133-134; 378.
[132] Exhibit T1, page 133.

174. The later letter provided to the Tribunal Mr Brar said the Applicant '*practically ran the workshop*'. He states that the Applicant *'handled everything—customer service, staff management, machine maintenance, ordering inventory, and ensuring smooth day-to-day operations*.' In his later letter Mr Brar maintains that:[133]

> Under [the Applicant's] leadership, the workshop saw excellent growth and steady profits. His work ethic, honesty, and dedication were unmatched. Customers trusted him, and my staff respected him. He created an environment where the business ran smoothly, and I could focus on expanding my transport operations.
>
> Unfortunately, since [the Applicant] was sentenced and unable to work, things have become very difficult. I've tried to find someone who could fill his shoes, but honestly, no one has come close to his level of responsibility and dedication. As a result, my focus is now divided between the workshop and my transport business, and I'm starting to see a decline in both. The workshop especially has taken a big hit in profits, and if the situation doesn't improve soon, I may have no choice but to shut it down—a business that [the Applicant] helped build from the ground up.

175. The Applicant contends that '*losing a qualified mechanic with recent Certificate III training and planned Certificate IV studies*' would '*reduce the workshop's capacity to meet customer demand in a tight labour market, delay vehicle repairs that local households and businesses rely on and disrupt the in-house mentoring of apprentices—a pipeline critical to sustaining regional automotive services and job creation*'. It was contended that *'[g]iven the skill shortages in the light-vehicle sector and the employer's specific dependence on the applicant's expertise, his removal would materially compromise the delivery of an important community service'*.[134]

176. The Minister noted the Applicant did not have qualifications as a mechanic and that this might cast doubt on a claim he was managing the workshop in a supervisory sense.

177. While I accept that the Applicant played a valued role in Mr Brar's business and that Mr Brar desires his return, there was no evidence that the Applicant was qualified to supervise apprentices or that his participation in the business was '*critical to sustaining regional*

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[133] Exhibit T1, page 378.
[134] ASFIC [61] – [62], Exhibit T1, page 370.

automotive services and job creation.' I do not accept the evidence supports such a contention.

178. Notwithstanding this, I accept Mr Brar considers the Applicant a valued employee who he trusts and that he would be an asset to the business going forward and I afford the consideration some weight in favour of revocation. However, noting neither the Applicant's bridging visa nor his COVID-19 visa, if granted, would allow him to remain permanently to work for the business I consider only slight weight should be given to this consideration in the Applicant's circumstances.

CONCLUSION

179. The Applicant does not pass the character test under s 501 of the Migration Act.

180. I have therefore considered whether there is '*another reason*' why the cancellation decision should be revoked, having regard to the primary and relevant other considerations in Direction no. 110.

181. Paragraph 7 of Direction no. 110 sets out the way in which the relevant considerations are to be taken into account and weighed.

182. I must weigh the various primary and other relevant considerations outlined in Direction no. 110 against each other and undertake an evaluation of whether there was '*another reason*' why the cancellation should be revoked.[135]

183. I have considered all the primary and other relevant considerations and weighed them in light of the evidence and findings and according to the guidance provided by Direction no. 110. I have gone on to compare and balance all of the considerations to determine whether the cancellation decision should be revoked having regard to all the circumstances of the Applicant's case.

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[135] *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [35]. See also *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594; *Minister for Home Affairs v HSKJ* [2018] FCAFC 217; (2018) 266 FCR 591.

184. I found that the protection of the Australian community weighs against revocation and I afford the consideration moderate weight in the Applicant's circumstances.

185. The consideration of family violence was not relevant in the Applicant's case and I afford it no weight.

186. The strength, nature and duration of the Applicant's ties to Australia weighs in favour of revocation and carries slight weight.

187. The best interests of minor children weigh in favour of revocation, though this consideration also carries slight weight in the Applicant's circumstances.

188. The expectations of the Australian community weigh against revocation and I find this consideration should be afforded strong weight in the Applicant's case.

189. In relation to the relevant '*other considerations*' identified in Direction no. 110, I find that the legal consequences of the decision weigh in favour of revocation and carry slight weight. The extent of impediments if removed and the impact on Australian business interests both weigh in favour of revocation and carry slight weight in the Applicant's case.

190. Having considered the representations made by the Applicant and the matters raised in the Direction, I have weighed the considerations in favour of the revocation of the cancellation of the Applicant's visa and the considerations against revocation, I find that the considerations weighing against revocation, being the primary considerations of the protection of the Australian community and the expectations of the Australian community, outweigh those weighing in favour of revocation, being the primary considerations of the strength, nature and duration of ties to Australia and the best interests of minor children, and the other considerations of the legal consequences of the decision, the extent of impediments if removed and the impact on Australian business interest.

191. In summary, having regard to all of the primary considerations, and the relevant other considerations in Direction no. 110, I am not satisfied that there is '*another reason*' why the cancellation decision should be revoked.

DECISION

192. The decision under review is affirmed.

I certify that the preceding 192 (one-hundred-and-ninety-two) paragraphs are a true copy of the reasons for the decision herein of Deputy President S Burford

.....[sgd].....

Associate

Dated: 1 October 2025

Date of hearing:	8 and 9 September 2025
Counsel for the Applicant:	Dr Jason Donnelly
Solicitors for the Applicant:	Zarifi Lawyers
Counsel for the Respondent:	Ms Caitlin White
Solicitors for the Respondent:	MinterEllison