

Applicant/s: Julian Waka TE PAIRI

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2025/4283

Tribunal: Senior Member N Manetta

Place: Adelaide

Decision date: 25 September 2025

Date of written reasons: 9 October 2025

Decision: The Tribunal sets aside the decision under review and substitutes a decision that the cancellation of the Applicant's visa be revoked.

The Tribunal will provide the parties with a statement of its reasons for this decision within a reasonable time hereof.

.....[SGND].....

Senior Member N Manetta

Catchwords

MIGRATION – mandatory cancellation of visa – applicant fails character test – whether another reason to revoke mandatory cancellation – Direction no. 110 – applicant has lengthy history of driving unlicensed or when disqualified – applicant has other offending history but also has positive familial ties including as a father to four minor children – applicant at low risk of reoffending – decision under review set aside and substituted

Legislation

Administrative Review Tribunal Act, 2024 (Cth)

Migration Act, 1958 (Cth)

Cases

Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2025] HCA 33

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* (7 June 2024)

STATEMENT OF REASONS

1. This is my statement of reasons for the decision I made on 25 September 2025.¹
2. This is an application by Mr Julian Waka Te Pairi seeking a review of a decision of the respondent's internal-review delegate dated 9 July 2025.² By this decision, the delegate declined to revoke the cancellation of Mr Te Pairi's visa,³ which had taken place earlier, and mandatorily so, under s 501(3A) of the *Migration Act, 1958* (Cth) ('the Act'). Mr Te Pairi has a number of criminal convictions. For present purposes, it is relevant that he was convicted

¹ As required by s 111(2)(b) of the *Administrative Review Tribunal Act, 2024* (Cth).

² The delegate's decision was before me at Hearing Book ('HB'), 40ff.

³ A Special Category (Temporary)(Class TY)(subclass 444) visa.

on 26 August 2022 of driving a motor vehicle during a period of disqualification, and that he was sentenced on that occasion to a term of imprisonment of 12 months (to be served by way of an intensive correction order). On 20 November 2024, Mr Te Pairi's visa was cancelled because on this date, he was in jail serving part of a sentence for another offence (again involving the driving of a motor vehicle during a period of disqualification). These two factors taken together⁴ mandated the cancellation of Mr Te Pairi's visa under the Act.

3. Mr Te Pairi sought a timely internal review of the cancellation decision. The internal-review delegate was required to address two questions under s 501CA(4)(b) of the Act. The first question was whether Mr Te Pairi passed the so-called 'character test' as defined by s 501(6) of the Act; and the second question, which only arose if the answer to the first question was *no*, was whether there was 'another reason' why the original cancellation decision should be revoked.
4. In respect of the first question, the delegate correctly concluded that Mr Te Pairi could not pass the character test given his conviction and term of imprisonment, and this was conceded by Mr Te Pairi on the review before me.⁵ So far as the second question was concerned, the delegate was required to apply any direction issued under s 499 of the Act. The delegate applied Direction no. 110 ('the Direction').⁶ Having weighed the various matters required to be addressed under the Direction, the delegate concluded that, on balance, they did not favour revocation of the cancellation decision. Given that conclusion,

⁴ Viz, Mr Te Pairi having been sentenced to a term of imprisonment of at least 12 months' duration at some point in the past and his current imprisonment on a full-time basis.

⁵ Ex A1, 2 [10].

⁶ 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* (7 June 2024).

the power under section 501CA(4)(b)(ii) permitting the delegate to revoke the cancellation for 'another reason' did not arise.⁷

TRIBUNAL'S TASK

5. I must address the same two questions as the delegate. I have already indicated that the delegate answered the first question correctly, and that Mr Te Pairi agrees in that conclusion.
6. In respect of the second question, I conducted a *de novo* merits review. In a case like this, the Tribunal hears the matter afresh on the evidence before it. It does not merely review the delegate's decision for error, but reaches the correct or preferable decision on the evidence adduced before it.⁸ It hears evidence and oral submissions and receives documents and written submissions. It follows that the Tribunal may set aside the decision under review notwithstanding the absence of any error in the delegate's reasons if that is the correct or preferable decision on the evidence before it. Equally, the Tribunal may affirm the decision under review notwithstanding the presence of a clear error in the delegate's reasoning if that is the correct or preferable decision on the evidence before it.⁹
7. At the hearing before me, Dr Donnelly appeared for Mr Te Pairi; Mr Fyfe, for the respondent. I acknowledge their assistance to me. Both made helpful and measured submissions.

⁷ HB, 55 [111].

⁸ See, for example, *Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2025] HCA 33. This decision concerned the Tribunal's predecessor, the Administrative Appeals Tribunal, but the same principles apply to the Tribunal's exercise of jurisdiction.

⁹ Paragraph [6] is one I routinely insert in my decisions in this area to describe the Tribunal's merits-review function.

STATEMENT OF CONCLUSION

I have decided to set aside the decision under review and to substitute a decision that the cancellation of Mr Te Pairi's visa be revoked. I now set out the background facts and my reasons for this conclusion.

BACKGROUND FACTS

8. Mr Te Pairi was born in New Zealand in 1981 and is now 44 years of age. He emigrated to Australia from New Zealand in 2003 and has resided here ever since. He has had a consistent employment history in Australia and presently co-owns and manages a private steel-fabrication business.
9. He has a former life partner who gave evidence to the Tribunal in support of his application. He continues to parent four children with her. Although he is not a biological father of one of the children, he has assumed the role of a father to that child.¹⁰ I shall return to these relationships in due course. Before his jailing and subsequent confinement in immigration detention, Mr Te Pairi lived just a few doors away from his ex-partner. He would return to live at his premises if the decision under review were set aside.
10. Mr Te Pairi's criminal history was before me.¹¹ It includes various offences in New Zealand.¹² His earlier traffic conviction history in New Zealand as a young adult includes, significantly, unlicensed driving, which was to become a feature of his later life in Australia. There were a number of other offences involving theft, the unlawful interference with motor vehicles, theft as a servant, and disorderly behaviour. Fines were imposed as well as obligations to perform community service work. All these offences occurred when Mr Te

¹⁰ HB, 147, [27III].

¹¹ HB, 57ff.

¹² HB, 67.

Pairi was a young adult. The last appearance before the Courts in New Zealand occurred in December 2003, when he was just 22 years of age. I have taken these offences into account; but, realistically, they cannot prove to be 'a tipping point' in my deliberations, and I have decided it is not necessary to deal with them further.

11. Mr Te Pairi has had a very large number of convictions in Australia, from 2006 onwards. They are so numerous that it would not be practical to list each offence in these reasons. What one can say without qualification is that there is a clear pattern of repeated offending over many years, which indicates, to put the matter in an unvarnished way, a straightforward defiance and refusal to comply with Australian law.¹³
12. It is convenient to divide the numerous offences into categories. Some involve what I would describe as breaches of road-traffic laws that do not necessarily connote dangerous driving. In this category, I would place driving whilst using a mobile phone (5/10/2006);¹⁴ failing to display an 'L' plate (22/5/2007 and 4/10/2007); driving or using an unregistered vehicle (27/8/2008); doing an unauthorised 'U' turn (27/8/2008); proceeding when lights/arrow were either yellow or red (27/8/2008); and ignoring a 'no right turn' sign (11/3/2015). These acts are certainly careless and, to some extent at least, antisocial because it is important for all people to drive carefully and in accordance with the applicable rules at all times. Nevertheless, the breaches do not of themselves necessarily indicate dangerous behaviour.
13. The next category of offence comprises driving on the road without being licensed to do so. Mr Te Pairi has never held, in fact, a licence in Australia other than a learner's permit. He

¹³ This point has been made repeatedly in sentencing remarks: see for example: HB, 123-124.

¹⁴ The dates in brackets refer to the court determination date as given in the criminal history.

was disqualified from driving in Australia for many years; and, in fact, the period of disqualification only ended very recently.

14. His first conviction for unlicensed driving in Australia dates back to 2006. Thereafter he was convicted of driving without another qualified driver being in the vehicle (22/5/2007) and of offences of driving whilst his licence was cancelled and/or whilst he was disqualified (27/8/2008), (4/11/2008), (1/12/2008), (11/10/2012), (3/5/2016), (16/7/2018), (10/10/2018), (19/3/2019), (15/7/2020), (28/8/2022), (29/8/2024), (21/10/24). This sort of offending is properly categorised as openly defiant. Despite numerous offences in this regard, Mr Te Pairi repeatedly offended, and his last offending took place when he was in his forties.

15. Mr Te Pairi did not explain to me convincingly why he had offended on so many occasions. It is fair to conclude that he was simply taking a calculated gamble on each occasion when he was caught. I think it is reasonable to infer that there must have been many other occasions when he drove but was not caught. Mr Te Pairi had in effect decided that he would drive whenever it suited him to do so. That is a strongly anti-social stance because the regime of licence disqualification is intended to inculcate a respect for orderly driving. Orderly driving benefits the community substantially for obvious reasons.

16. I bear in mind that Mr Te Pairi's offending in this regard was marked by extreme disregard for the law because he has never held a licence (other than a learner's permit). Nevertheless, I should also bear in mind that the offence of driving whilst disqualified is not to be equated *per se* with that of dangerous driving, which is a different statutory offence. It is not an element of the former type of offence, required to be proved on a prosecution, that the driving in question was dangerous or reckless. The prosecution need only prove driving by a person who was prohibited from driving.

17. That said, I proceed on the basis that Mr Te Pairi has not established before me that he is a capable driver (because he has never been assessed as competent in this regard by a relevant authority)¹⁵, and that his situation is not to be equated with that of a licensed driver who is under temporary disqualification. The more natural inference from all the evidence is that Mr Te Pairi most probably lacks the skills a competent driving instructor would impart to him and these skills would make him a much safer driver than he is.
18. There has been an instance where Mr Te Pairi has in fact been found guilty of dangerous driving. Most notably, Mr Te Pairi was found guilty of dangerous driving occasioning grievous bodily harm whilst under the influence of alcohol or drugs on 1 December 2008. That offending saw him convicted and imprisoned for 12 months. Nevertheless, that conviction is almost 17 years old as at the time of my decision. That is the only offence of dangerous driving in the record although the offence was a very serious one.
19. There have also been offences of driving 'under the influence'. As I have already indicated, the conviction on 1 December 2008 was one such incident. There were further such convictions on 3 May 2016 and on 19 March 2019. In addition, there were offences of driving with alcohol in the blood, or whilst a prohibited substance was in the blood, on the following occasions: 27 August 2008, 3 May 2016, and 21 October 2024. These are again very antisocial acts because it is clearly undesirable that people drive when they have an excess PCA or have used some recreational drug. There is a heightened risk of injury in this circumstance.
20. Another category of offence involves the possession or use of a prohibited drug. There is one conviction of this and it goes back to 3 May 2016. The consumption of a prohibited drug

¹⁵ This was the point made in the sentencing remarks at HB,123, for example.

is antisocial both on account of its effects upon community members, and because participation in the drug trade even as a mere consumer assists in the propagation of a highly dangerous activity that undermines a well-ordered community. Mr Te Pairi accepted that he has had an addiction in the past, and he has misused drugs repeatedly on the evidence before me. The criminal record makes it clear that he was sentenced for many of his offences by the Drug Court in Parramatta. Mr Te Pairi had a substantial drug-use problem.

21. The final category involves dishonesty offences. There are numerous convictions in this regard, and they date from a later time in Mr Te Pairi's life. He was found guilty of entering enclosed land without a lawful excuse on 12 January 2016 and was fined on that occasion. On 3 May 2016, he was found guilty of entering a building or land with the intention of committing an indictable offence; and on 30 May 2016 he was found guilty of possessing housebreaking implements. On 7 September 2017, Mr Te Pairi was found guilty of a number of offences involving entering a building or land with the intention of committing an indictable offence and of aggravated break and enter and actually committing the indictable offence in company. These were serious offences of dishonesty and show a marked antisocial disposition in Mr Te Pairi at a later time in his life.
22. So far as Mr Te Pairi's personal life is concerned, I have already adverted to the fact that he has four children (including a boy in relation to whom he acts as a father whilst not being biologically related to the child). He was running a steel-fabrication business in partnership at the time of his jailing, and the business premises have recently been relocated to be within cycling distance of Mr Te Pairi's residence.

REASONS

Prefatory remarks

23. With this background in mind, I come to the Direction. I usually set out four standard paragraphs that explain aspects of the Direction, and I do so again in what follows in paragraphs [24] – [27] below.
24. The Direction is framed against the stated objective of the Act, which is to regulate, in the national interest, the presence of non-citizens in Australia: see paragraph 5.1(1). The decision-maker is directed by paragraph 5.1(2) and (3) to consider the specific circumstances of the case. The explicit purpose of the Direction is to guide decision-makers in performing their functions under the Act: see paragraph 5.1(4).
25. Principles appear under paragraph 5.2 of the Direction. These principles provide the framework within which decision-makers should approach their task. They are stated in paragraphs numbered (1) to (8). I set out some of the salient features of these principles.
26. First, remaining in Australia is a privilege conferred on non-citizens in the expectation that they are law-abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community. Secondly, the safety of the Australian community is the highest priority of the Australian Government. Accordingly, non-citizens who engage in criminal or other serious misconduct should expect to forfeit the privilege of remaining in Australia, and the Australian community expects that the Australian Government should cancel visas or refuse non-citizens a right of entry where they have engaged in conduct that raises serious character concerns. This expectation arises whether or not the non-citizen poses a measurable risk of causing physical harm to the Australian community. Fourthly, Australia has a low tolerance of any criminal or other serious conduct by non-citizens who

have been participating in and contributing to Australia for a short period of time only. A higher level of tolerance of criminal or other serious misconduct may, however, be afforded to those who have lived in Australia for most of their life or from a very young age. Fifthly, the nature of the non-citizen's conduct and the harm that would be caused if the conduct were to be repeated may be so serious that even strong countervailing considerations may prove an insufficient counterweight. In particular, I note that the inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may prove insufficient justification (to warrant not cancelling the visa, not refusing the visa, or revoking a mandatory cancellation), and this is so even if the non-citizen does not pose a measurable risk of causing harm to the Australian community.

27. Informed by these principles, I am required under Part 2 of the Direction to take into account the considerations identified in sections 8 and 9. I add here that paragraph 7(1) directs me to give appropriate weight to information and evidence from independent and authoritative sources. Paragraph 7(2) also directs me to give greater weight 'generally' to the protection of the Australian community over other primary considerations, and it also provides that primary considerations should 'generally' be given greater weight over other considerations.

Application of the Direction

28. I now turn to apply the Direction. I turn first to consider the protection of the Australian community.
29. By paragraph 8.1(1), decision-makers, including this Tribunal on review, are required to keep in mind that the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, decision-makers should have particular regard to the principle that entering or remaining in Australia is a privilege conferred 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. I bear this principle in mind.

30. By paragraph 8.1(2), decision-makers should also give consideration to the nature and seriousness of the non-citizen's conduct to date and the risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct. In respect of the nature and seriousness of Mr Te Pairs's conduct, paragraph 8.1.1(1) sets out a number of matters to which a decision-maker must have regard (in paragraphs (a) to (i)).
31. Mr Te Pairs's criminal history is a very long one. It is appropriate, in my opinion, to consider it as a whole to obtain a true picture. Overall, there has been a very consistent pattern of offending regularly against Australian laws. I accept the respondent's submission that the offending should be considered very serious when taken as a whole.
32. I accept that Mr Te Pairs has been convicted on multiple occasions of driving whilst disqualified or whilst not in possession of a licence. These were acts of plain defiance; and it would beggar belief to suppose that these were the only instances where Mr Te Pairs drove. I can safely proceed on the basis that Mr Te Pairs has regularly decided to drive without lawful authority to do so. On every occasion, Mr Te Pairs's behaviour was not in the public interest since he ought to have respected the disqualification he was under. The refusal to respect the licensing regime regulating road-use is a very important feature of the matter before me, and needs to be weighed carefully.
33. Although it was some years ago now, Mr Te Pairs was found guilty of dangerous driving occasioning grievous bodily harm whilst under the influence of alcohol or drugs. That is a very serious offence self-evidently because passenger injury was the result of his offending on that occasion. Plainly enough, Mr Te Pairs should not have been driving at all and on that occasion his decision to drive did lead to serious injury. Mr Te Pairs has also been convicted

of driving whilst under the influence or with an elevated PCA in the blood or whilst a prohibited substance was in his blood as I have indicated earlier. These are, again, strongly antisocial acts and they ought to be regarded very seriously in the context of all Mr Te Pairi's other offending.

34. I regard Mr Te Pairi's dishonesty offences as also very concerning. There is clearly a right in Australian law to the secure possession of one's own property, and Mr Te Pairi's behaviour clearly attacked that fundamental right.

35. I think that the sentences that have been imposed make it clear how ever more serious Mr Te Pairi's offending became. The criminal record makes it clear that the courts had no choice but to impose sentences of imprisonment. That is always a serious step to take. The offending that was dealt with on 27 August 2008 resulted in sentences of imprisonment. The final sentences imposed by the Sydney District Court (after a severity appeal was lodged) reflect the seriousness of the offending, the longest term being 12 months' imprisonment. Further sentences of imprisonment were imposed by the Bankstown Local Court on 11 October 2012 and by the Parramatta Drug Court, where an indicative aggregate sentence of 18 months was imposed on 3 May 2016. These are long sentences.

36. As Mr Te Pairi was unable to remain offence-free, a number of earlier offences were called up on 19 March 2019 and these resulted in a term of imprisonment having to be served.¹⁶

37. Mr Te Pairi was sentenced to further terms of imprisonment by way of intensive corrections orders on 15 July 2020 and 26 August 2022 and to a further term of imprisonment on 29 August 2024. All these sentences mark out the seriousness of Mr Te Pairi's offending in my

¹⁶ HB, 59.

opinion. They reflect his stubborn determination to drive no matter what Australian law had to say about the matter.

38. I am required to take into account the frequency of the offending and whether there is any trend of increasing seriousness.¹⁷ Clearly enough, there is both very great frequency in Mr Te Pairi's offending, and there is clearly a trend of increasing seriousness because disqualification and court orders were regularly ignored. Moreover, Mr Te Pairi developed a drug dependence that compounded further antisocial offending.
39. There is a cumulative effect of repeated offending.¹⁸ In this regard, I would note that considerable amounts of court time have been wasted dealing with Mr Te Pairi's recalcitrance. That is an important social cost to weigh in this regard. I accept the respondent's submission¹⁹ that Mr Te Pairi failed to disclose his criminal convictions upon returning to Australia. This was again an instance of plain disregard of Australian law.
40. Most importantly, Mr Te Pairi was warned on 3 November 2008 that the department was considering cancellation of his visa on character grounds. That decision was not ultimately taken but clearly he was on notice that further offending would result in the cancellation of his visa.²⁰
41. I must also have regard to the risk to the Australian community should Mr Te Pairi re-engage in the conduct which is contained in his criminal record. In assessing this matter, I must have regard to the principle in paragraph 8.1.2(1) that provides that decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some

¹⁷ Paragraph 8.1.1(1)(e) of the Direction.

¹⁸ Paragraph 8.1.1(1)(f) of the Direction.

¹⁹ See Statement of Facts, Issues and Contentions at HB, 383 [28].

²⁰ HB, 325.

conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk of its repetition may be unacceptable. I bear this principle in mind.

42. Subparagraph (2) requires me to assess the risk posed by Mr Te Pairi. I am to have regard to two matters 'cumulatively'. The first is the nature of the harm to individuals or the Australian community should he engage in further criminal or other serious conduct and the second is the likelihood of his so doing.
43. The risk to the Australian community is potentially very grave in respect of offences of driving dangerously, of driving and causing grievous bodily harm, and of driving under the influence. In this regard, the possibility of serious and permanent injury (or worse) is self-evident. That is an important matter to weigh. There is no doubt that many people suffer grievously when they are struck by those who drive dangerously, or by those who drive under the influence, or by those who ought not to be driving because of an excess of alcohol or an illicit substance in their blood. Those are seriously antisocial offences.
44. More generally, it may be said that there is a heightened danger to the Australian community arising from Mr Te Pairi's decision to drive whilst disqualified and without holding a licence. As I have indicated earlier, these offences are, strictly speaking, not offences involving dangerous conduct as such: the gravamen of the offence, and what is required to be proved, is a mere absence of a right to drive. Nevertheless, I ought to bear in mind, I believe, that this applicant ought not to have been on the roads at all at any point of his life in Australia since the loss of his learner's permit. He has been driving unlicensed for a very long time now, and that in itself exposes the Australian community to an increased risk of harm. I have

no evidence before me that he is a competent driver, whilst I do know that he has never passed a driving test or otherwise substantiated his competence to drive.²¹

45. I accept also that the dishonesty offences in which Mr Te Pairi has engaged are antisocial, and their antisocial aspect has been heightened by the drug addiction which he developed. He ought to have taken steps to address that addiction promptly. Clearly, the community would be harmed in respect of its property were Mr Te Pairi to reoffend in this regard.
46. I now turn to consider the likelihood of his engaging in further criminal conduct. I have decided that, on balance, the risk is low. First, Mr Te Pairi has been brought to the brink of deportation. He has spent a considerable period of time deprived of his liberty, first in jail and now in immigration detention. The enormity of the personal consequences for Mr Te Pairi have been made apparent to him as a lived experience rather than as a theoretical prospect only. I genuinely believe that he has a loving relationship with his children (including the child of whom he is not the biological father). Mr Te Pairi appreciates how perilously close he has come to losing one-on-one contact with his children. The considerable period of time he has spent in jail and immigration detention as one continuous block has given him time to reflect carefully on the destruction of his familial ties.
47. Secondly and importantly, following the end of his disqualification period, Mr Te Pairi has recently become eligible again to obtain a learner's permit, and I understand that he has done so. As I understood the submissions made to me, given his age, he is not required to undertake any minimum number of hours in driving before seeking a provisional licence. Accordingly, Mr Te Pairi may progress now in the ordinary course of events to obtaining a licence. There would appear to be no obstacle to his obtaining a licence provided he can demonstrate the requisite skill and competence to an instructor and examining authority.

²¹ Cf the Court's observations at HB, 123.

There is no evidence before me to show that this could not occur or that Mr Te Pairi would face insurmountable impediments in that regard. Of course, he is likely to require tuition. I do regard it as of some significance that Mr Te Pairi has made sure that his premises are located nearby so that he does not have to drive in the interim. There is also a worker available to drive him while he obtains a licence.²²

48. So far as the offences relating to dishonesty are concerned, they were not, it must be said, a regular feature of Mr Te Pairi's life and were substantially connected with his drug abuse. That addiction appears to have subsided substantially. I accept Mr Te Pairi's statement that he has willingly participated in drug screenings whilst in detention.²³ That period has been a substantial one, substantial enough for me to have some confidence that Mr Te Pairi has ceased his habit.

49. All in all, therefore, I believe the risk of this applicant reoffending is low notwithstanding his extensive criminal record. I note, however, that I have not accepted Mr Te Pairi's expression of remorse. I certainly accept that he has experienced a sense of regret at the circumstances in which he finds himself, and he may bitterly regret the potential impact on his family of a forced separation; but I do not believe he has experienced genuine contrition in respect of his wrongdoing. To the contrary, it is quite clear that he has repeatedly chosen to defy Australian law and in particular to drive whilst not licensed to do so, and this despite the serious injuries that occurred when he drove while unlicensed many years ago. There have been too many breaches of the law to believe that Mr Te Pairi has ever had genuine insight into the antisocial aspects of his offending. Nevertheless, I note that I am asked to assess

²² HB, 175.

²³ HB, 147.

risk rather than remorse as such. So whilst I cannot give Mr Te Pairi credit for genuine remorse, I am nevertheless satisfied that his risk is low for other reasons.

50. It might be said that I am in danger of overestimating the effect of deterrence as a factor because Mr Te Pairi was warned on a previous occasion that his visa was up for cancellation, and that warning did not deter him. I acknowledge the force of that submission; but I also believe that Mr Te Pairi finds himself in a somewhat different position. He is confronted with the reality of immigration detention as a precursor to deportation; this is an experience he has not had before; and he has been in detention for some considerable time with an opportunity to reflect carefully, and to absorb fully the lessons that he needed to learn. Indeed, Mr Te Pairi struck me as a person who needed to be halted dramatically from persisting in his antisocial behaviours, and that both jail and an extended period in immigration detention have had a beneficial effect upon him.
51. Nevertheless, I note that this risk of recidivism has to be assessed cumulatively; that is, in conjunction with the harm to the Australian community that would be caused if he were to reoffend.
52. I must consider any family violence committed by the non-citizen.²⁴ This is not a factor in this case.
53. I must consider the strength, nature, and duration of ties in Australia. By paragraph 8.3(1), I must consider any impact of the decision on the non-citizen's immediate family members in Australia where those family members are Australian citizens, permanent residents, or people who have a right to remain in Australia indefinitely. Within this group I place Mr Te Pairi's four children. The children's mother is not Mr Te Pairi's partner at the present time

²⁴ Paragraph 8.2 of the Direction.

and so I do not include her as an immediate family member. The children, however, clearly are immediate family members. It is clear on the evidence before me that Mr Te Pairi lives close by and enjoys a positive relationship with his four children. That evidence was given by the children's mother. One child, the eldest, gave evidence of her strong attachment to her father. I think the impact on all the children of losing one-on-one contact with their father on a long-term basis when he has formerly lived close by and could be visited at any time would be particularly substantial.

54. I note the submission by the respondent,²⁵ which I accept, that so far as other ties are concerned (namely, those ties that are not immediate family ties), these ties weigh in favour of revocation as well, but only to a limited extent since Mr Te Pairi began offending soon after his arrival in Australia.²⁶
55. I must have regard to the best interests of minor children.²⁷ As I have said, Mr Te Pairi has four such children. The eldest child is almost 18 and so her interests as a minor child must be discounted somewhat for that reason according to the Direction²⁸ although the other children are much younger. All of them would be substantially affected by the absence of Mr Te Pairi from Australia. I do accept that the children's mother does at the present time fulfil in a loving way her parental responsibilities but it is also the case that a positive relationship with both parents is desirable. I note in particular that the boy who is not Mr Te Pairi's biological child was said to have a special rapport with him. He is able to calm the boy and encourage him to behave well. I believe Mr Te Pairi makes a substantial contribution to his

²⁵ HB, 385 [39].

²⁶ Paragraph 8.3(2)(a) of the Direction.

²⁷ Whilst this consideration must be separately addressed under paragraph 8.4 of the Direction, it is important not to double-count any consideration and I do not do so in this case.

²⁸ Cf paragraph 8.4(4)(a) of the Direction.

children's emotional welfare, and I believe it is substantially in their interests that he remain in Australia.

56. I accept that there are other means of communication²⁹ but one-on-one contact with an adolescent child on a regular basis is nevertheless very important in my view.
57. I must have regard to the expectations of the Australian community. Paragraph 8.5(1) provides that the Australian community expects non-citizens to obey Australian laws while they are in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, the Australian community as a norm – although not as an inflexible rule – expects the Government not to allow the person to remain in Australia. That is a very important principle to bear in mind in this case: it applies clearly to Mr Te Pairi, who has repeatedly breached Australian law and in a defiant manner.
58. The expectations of the Australian community apply irrespective of whether an applicant poses a risk of physically harming the Australian community: see paragraph 8.5(3) of the Direction. Moreover, I am to proceed on the basis of the Government's views as articulated in paragraph 8.5 without independently assessing the community's expectations in any particular case: see paragraph 8.5(4).
59. This consideration clearly counts against Mr Te Pairi substantially.
60. I am to have regard to so-called 'other' considerations under section 9. There are three such considerations specified in a non-exhaustive list in paragraph 9(1). I do not think there is any demonstrated impact on Australian business interests that I need to weigh in this case. Mr Te Pairi co-owns a private business, as I have said. It employs a number of people. Nevertheless, his co-owner was not called to give evidence, and a picture of the harm that

²⁹ Cf paragraph 8.4(4)(d) of the Direction.

is predicted to follow on deportation was not given by reference to detailed financial statements, but was to the contrary rather vague and unsatisfactory. I note that the business has been without Mr Te Pairi's active support and involvement since his jailing last year in August; and so any harm done to the business from his absence to date has already occurred. I do not believe that I am in a position to say that the continued absence of Mr Te Pairi from the business would now inflict new harm on those associated with the business. Accordingly, I do not give this consideration any weight.

61. I do accept that Mr Te Pairi would experience a period of dislocation on return to New Zealand since he came here as a young adult and after his formative years were spent in New Zealand. But the period of dislocation and challenge would not be prolonged, and he has skills in steel fabrication that would assist greatly his chances of finding employment.
62. I do accept here, because I have not considered it elsewhere, that Mr Te Pairi himself will experience a great deal of emotional turmoil and stress from being absent from his family. Mr Te Pairi's own interest in maintaining a family connection is something that I believe I ought to take into account.

Weighing the considerations

63. It is only proper to begin with a frank assessment of Mr Te Pairi's criminal history. It is extensive, and it evidences strongly antisocial tendencies. Although I have assessed his risk of recidivism is low, that risk is not nil. Moreover, the Direction speaks strongly against the antisocial aspects of criminal offending in the community-expectations section in paragraph 8.5. These expectations apply even if an applicant poses no risk at all of harming the Australian community. I must also give due weight to the fact that the protection of the Australian community is the most important consideration for the Government. There is much

in the Direction that speaks very strongly against the range of criminal offending in which Mr Te Pairi has engaged and its persistence.

64. I bear that in mind. I must bear in mind as well that the Direction requires me to give very careful consideration to the facts of the individual case.³⁰ The application of the Direction calls for the most attentive consideration of individual circumstances to ensure that they are fully appreciated. The Direction must not be applied mechanically.

65. In my opinion, I need also to weigh the fact that as fractured as his family is in one sense, because he has been away for over a year and because he has been in trouble with the law for such a long time, Mr Te Pairi remains an important member of his family. The interests of the children are particularly important in this case as I have made clear. I have often observed that children are frequently the victims of the dysfunction that is visited upon orderly family life by the misconduct of one or other parent. Children suffer directly and immediately from the loss of a parent, whether mother or father. I acknowledge that there are many families in Australia that cope successfully despite the absence of a parent from their lives; but equally, there are many where the absence is sorely felt or where the presence of the parent in question would assist the proper and safe development of the children involved. I bear in mind the needs of this particular family; and I bear in mind the role that Mr Te Pairi has played in the lives of his children, living as he does within a stone's throw, so to speak, of his ex-partner's premises. I accept that he is a genuinely committed father in his own way. I was impressed by the bond that he has chosen to develop with the child that is not his own biological son. He is committed to his family although he is in another way – and rather contradictorily so – substantially antisocial in his attitude towards Australian law.

³⁰ Paragraph 5.1(3) of the Direction.

FINAL CONCLUSION AND FORMAL DECISION

- 66. The decision in this case is far from easy because Mr Te Pairi has displayed such defiant, antisocial behaviour for so long, and, as I have said, the Direction speaks very strongly against that conduct. Nevertheless, on balance, my conclusion is that a proper weighing of the considerations required to be addressed under the Direction leads to a conclusion that they favour a revocation of the mandatory cancellation decision.

- 67. Having reached this conclusion, I also conclude that there is ‘another reason’ to revoke the cancellation decision for the purposes of section 501CA(4)(b)(ii) of the Act. My formal decision is to set aside the decision under review and to substitute a decision that the cancellation of the applicant’s visa be revoked. This decision was communicated to the parties on 25 September 2025.

I certify that the preceding sixty-seven (67) paragraphs are a true copy of the reasons for the decision herein of Senior Member Manetta.

.....[SGND].....

	Feng J, Associate	
Dated:		9 October 2025
Dates of hearing:		15 and 16 September 2025
Advocate for the Applicant:		J Donnelly (instructed by Milojkovic Visa and Migration Legal Service)
Advocate for the Respondent:		J Fyfe (of Minter Ellison)