Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Luke Humphries**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2025/5324**
Tribunal:	**General Member S Evans**
Place:	**Sydney**
Date:	**18 December 2025**
Decision:	The reviewable decision is set aside and in substitution the mandatory cancellation of the Applicant's visa is revoked.

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

General Member S Evans

Catchwords

MIGRATION - Mandatory cancellation of Applicant's visa – Traffic in commercial quantity of controlled drug - Substantial criminal record –- Direction 110 – Citizen of United Kingdom - Whether there is 'another reason' to revoke mandatory cancellation – Low risk of reoffending - Mental health condition – Ties to the Australian community - Decision set aside and substituted.

Legislation

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

Cases

FYBR v Minister for Home Affairs [2019] FCAFC 185

PNLB and Minister for Immigration and Border Protection (Migration) [2018] AATA 2757

Stoneley v Minister for Immigration and Multicultural Affairs [2025] FCA 143

Secondary Materials

Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

Statement of Reasons

INTRODUCTION

1. Luke Humphries (the **Applicant**) is a 36-year-old citizen of the United Kingdom (**UK**) who has resided in Australia for 14 years. On 9 September 2022 he was convicted in the District Court of NSW of drug offences for which he sentenced to a term of 10 years imprisonment.

2. The Applicant's Class BS (Subclass 801) Partner visa (**visa**) was mandatorily cancelled on 22 August 2024 by a delegate of the Minister for Immigration and Citizenship (the **Respondent**) under s501(3A) of the *Migration Act 1958* (Cth) (the **Act**) as he was deemed not to pass the *character test.*

3. On 30 September 2024 the Applicant requested the mandatory cancellation of the visa be revoked pursuant to s501CA of the Act. On 25 September 2025, a delegate of the Respondent decided under s501CA(4) not to revoke the mandatory cancellation of the visa (the **reviewable decision**).

4. For the reasons that follow, the reviewable decision will be set aside.

RELEVANT LAW AND MINISTERIAL DIRECTION

5. Section 501CA of the Act applies where the Minister makes a decision under s501(3A) to cancel a visa that has been granted to a person.

6. Subsection 501(3A) of the Act requires the Minister to cancel a visa that has been granted to a person if the Minister is satisfied that the person does not pass the character test due to the operation of paragraphs 501(6)(a) and 501(7)(c) of the Act.

7. Paragraph 501(6)(a) provides that a person does not pass the character test if they have a 'substantial criminal record'. Paragraph 501(7)(c) provides that a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more.

8. The Minister may revoke the original cancellation decision pursuant to s501CA(4) of the Act. Paragraph 500(1)(ba) of the Act provides the Tribunal with the power to review decisions of a delegate of the Minister under s501CA(4) not to revoke a decision to cancel a visa.

9. The Minister has made written directions under s499 of the Act which apply to decision-makers in the exercise of power under subsection 501CA(4). The relevant direction is *Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (the **Direction or Direction 110**).

10. Paragraph 5.2 of Direction 110 provides overarching principles which I have considered when reviewing the application. It relevantly provides:

> *(1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
>
> *(2) The safety of the Australian Community is the highest priority of the Australian Government.*
>
> *(3) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*
>
> *(4) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.*
>
> *(5) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time.*
>
> *(6) With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia may afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age.*
>
> *(7) Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation.*
>
> *(8) The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation, even if 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.*

11. Part 2 of Direction 110 identifies the considerations the Tribunal must take into account where relevant to a decision.

12. In applying the considerations, information and evidence from independent and authoritative sources should be given appropriate weight. The primary consideration of the protection of the Australian community is generally to be given greater weight than other

primary considerations. Otherwise, primary considerations should generally be given greater weight than the other considerations. One or more primary considerations may outweigh other primary considerations.

13. The primary considerations in the Direction are:

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

14. The other considerations set out in Direction 110 which must be taken into account where relevant include, but are not limited to:

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

ISSUE TO BE DETERMINED

15. The issue for the Tribunal is whether to revoke the original decision to cancel the Applicant's visa pursuant to s501CA(4) of the Act. Subparagraph 501CA(4)(b) provides that the Tribunal may revoke the original decision if it is satisfied:

(a) that the Applicant passes the character test; or

(b) that there is another reason why the original decision should be revoked.

16. The Applicant has been sentenced to a term of imprisonment of 12 months or more and has a substantial criminal record within the meaning of s501(7)(c) of the Act. It is not in dispute that he does not pass the character test pursuant to s501(6)(a) of the Act.

17. As he does not pass the character test, the sole issue for determination is whether there is another reason why the mandatory cancellation of the visa should be revoked.

CONSIDERATIONS AND REASONING

Primary Consideration 1: Protection of the Australian Community

18. The Direction requires me to have regard to the protection of the Australia community from criminal or other serious conduct. Relevantly, paragraph 8.1(1) of the Direction states:

> *When considering protection of the Australian community, decision-makers should keep in mind that the safety of the Australian community is the highest priority of the Australian Government. 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, decision-makers should 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.*

19. Paragraph 8.1(2) of the Direction provides that decision-makers should 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 offending or engage in other serious conduct.

The nature and seriousness of the Applicant's conduct to date

20. The Applicant's offending history is set out in a criminal history check report dated 3 September 2025.[1] On 1 October 2021, the Applicant pleaded guilty to one charge of *attempted trafficking of a commercial quantity of a controlled drug* (the offending) for which he was sentenced to a term of imprisonment for 10 years, with a non-parole period for six years. The sentence was backdated to commence in December 2019 and the head sentence will expire in 2029. The non-parole period will expire later this month.[2]

21. The sentencing remarks of Judge Shead in the District Court set out in detail the circumstances of the offending.

22. In summary, the Applicant travelled to NSW knowing that he was to engage in activity that was likely to be illegal. Approximately 628 kg, amounting to 487 kg of pure MDMA, had been secreted inside barbecues which were shipped to Australia from Greece. The

[1] HB 66-67
[2] HB 145

shipment was intercepted by Australian law enforcement officials and the MDMA was replaced with an inert substance. The Applicant took receipt of the shipment under a false identity and was subject to surveillance by Australian Federal Police who observed him working at a warehouse between late October 2019 until his arrest on 16 December 2019. At the warehouse, the Applicant unpacked and deconstructed the modified barbeques before arranging for the distribution of the substitute MDMA he had extracted from them.

23. The Court found that the Applicant was somewhat naïve and occupied a low rank within the syndicate. That said, his offending was extensive and he was a trusted and important member of the criminal syndicate's attempt to distribute and sell MDMA. He Court observed his role was indispensable. Judge Shead rejected the Applicant's evidence that he was not aware that he was involved in the attempted importation of drugs from the beginning. Further, the significant amount of cash found in the Applicant's possession when he was arrested was determined to be compensation for at least part of the work he had done.

24. The seriousness of the offending is reflected in the significant term of imprisonment received by the Applicant. I accept the Respondent's submission that sentences involving terms of imprisonment are the last resort in the sentencing hierarchy, and any such sentence must be viewed as a reflection of the objective seriousness of the offences involved.[3] I also note the sentencing judge found that the Applicant committed the offending for financial reward.

25. The Applicant concedes that attempting to import MDMA posed the potential for substantial harm to the Australian community. Had the illicit drugs been distributed, it may have caused significant social and financial damage.[4]

26. The Applicant was on bail at the time of the offending, which was viewed by the sentencing judge is an aggravating factor. These charges remain pending and the charges themselves have not been afforded any weight in making this decision. However, the fact that the offending occurred while the Applicant was on bail does weigh against him.

27. In considering the seriousness of the Applicant's offending, I take into account the Applicant was afforded a discount for his guilty plea. I also note the Court's finding that the Applicant's

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[3] See *PNLB and Minister for Immigration and Border Protection (Migration)* [2018] AATA 2757 at [26]

[4] Applicant's Statement of Facts, Issues and Contentions [15]

moral culpability was somewhat diminished by his psychological conditions at the time of the offending, combined with his drug abuse.

28. Overall, the sentence imposed on the Applicant, and potential harm to the community should the importation scheme have been successful, supports a finding that the Applicant's offending was serious.

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

29. I am required to consider the risk to the Australian community should the Applicant commit further offences. Paragraph 8.1.2(1) of the Direction provides:

> *In considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.*

30. In assessing the risk that may be posed by the non-citizen to the Australian community, decision-makers must have regard to, cumulatively:

> *a) the nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and*
>
> *b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:*
>
> *i. information and evidence on the risk of the non-citizen re-offending; and*
>
> *ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).*

31. Should the Applicant repeat the conduct for which he was convicted, the potential harm includes significant physical, psychological and financial injury to individuals, disruption to families and communities, and substantial cost to the criminal justice system.

32. In assessing the likelihood of reoffending, I have taken into account the relevant observations in the sentencing remarks. Judge Shead identified symptoms of the

Applicant's mental health conditions included amotivation, anhedonia, and helplessness. He observed the Applicant had been diagnosed as having major depressive disorder, generalised anxiety disorder and drug and alcohol use disorders. The Applicant has a history of being prescribed various psychotropic medications for management of his mental health conditions including anti-depressants and anxiety management medications.

33. It is noted that the Applicant reported experiencing suicidal thoughts as far back as his childhood, and that the Applicant's suicidal ideation had escalated in the decade prior to the offending. The Applicant gave evidence at the hearing that he experienced daily thoughts of taking his own life during the offending period.

34. The Applicant grew up in impoverished and difficult circumstances. He was surrounded by abuse, violence and neglect.[5] He was the youngest in his family and his father was violent and an alcoholic, and frequently abused and tormented all his children. When the Applicant was 14 years old his father left home. When he was 17 years old, the Applicant's mother was diagnosed with terminal cancer, and he spent the next three years as her sole carer.

35. The Court accepted that there was a connection between the Applicant's offending and his mental health. It also accepted that the Applicant's upbringing may have compromised his capacity to mature and learn from experience.

Psychological assessment report

36. In evidence is a psychological report prepared by Dr Marcelo Rodriguez dated 9 July 2025.[6] In preparing the report, Dr Rodriguez considered the Applicant's background, substance use, medical history, mental health and criminal history.

37. Dr Rodriguez reports the Applicant claimed to have experienced a significant decline in his mental health after his sister in Australia was diagnosed with Multiple Sclerosis. The Applicant reported that the news triggered intense emotional distress and led to a marked deterioration in his mental health. At about the same time, the Applicant was contacted by

[5] HB 172-176
[6] HB1 284-311

an acquaintance with an offer to collect quantity of drugs in Sydney. He reported that the scale of the operation was unknown to him at the outset, and he later felt 'stitched up'.

38. The Applicant told Dr Rodriguez that his time in prison had been the most constructive period of his life, which has allowed him to reflect and change. He considers it a turning point. He said that prior to being imprisoned, he was unhappy, frequently depressed, anxious, lonely and reckless with low self-esteem. He expressed a strong belief that he had grown significantly and was better equipped to manage life stressors and regulate his emotions.

39. Dr Rodriguez reports the Applicant estimates having had 250 sessions with a psychologist or counsellor in his lifetime. He views psychological intervention as essential; assisting with self-awareness and personal growth.

40. Dr Rodriguez detailed the Applicant's history of drug and alcohol use. His consumption of alcohol and binge drinking behaviour commenced when he was 15 years old. After a period of abstinence, the Applicant reported relapsing into alcohol use when he moved to Sydney prior to the offending. He began almost daily drinking in response to loneliness and declining mental health, and concurrently reported heavy diazepam use to manage acute anxiety or facilitate sleep.

41. The symptoms of the Applicant's depression included extreme fatigue and anhedonia, which he used cocaine to overcome. He reported the stimulant effects of cocaine enabled him to get up and get out of bed. He acknowledged that despite its functional use, cocaine typically exacerbated his anxiety and caused physical symptoms such as shaking. He also reported using anabolic steroids intermittently over a period of up to three years.

42. As recorded in the sentencing remarks, the Applicant reported suicidal ideation, which he told Dr Rodriguez dated back to when he was four or five years old. He said he had diagnosed with ADHD in his mid-twenties, and reported a psychologist had raised the possibility of his having an autism spectrum disorder. The Applicant has since been diagnosed with a condition known as avoidance/restrictive food intake disorder.

Pre-release report dated 14 August 2025

43. A NSW Justice pre-release report was prepared in anticipation of the expiry of the Applicant's non-parole period.[7] Regarding the drivers of his offending conduct, the report is generally consistent with the Applicant's evidence and Dr Rodriquez's report. However, the author notes that while the Applicant accepted the illegality of his actions, he rationalised that he was not forcing anyone to use drugs. Further, had he not been involved in the scheme, someone else would have been.

44. The Applicant reported that prison had caused a shift in his perspective regarding illicit drugs, mental health, his future outlook and goal setting. He emphasised his stability and future oriented goals, which include a conventional lifestyle with his wife.

45. The Applicant was assessed as willing to undertake intervention. The report notes that he incurred two institutional charges during his sentence, but that he had been subject to an abundance of positive case notes pertaining to his work performance and his interactions with staff and inmates. However, he was also reported to have engaged in conduct where he has been argumentative or challenged routines or processes.

46. In relation to the two breaches in prison, the Applicant explained at the hearing that one related to the possession of *Berocca*, which is permitted in prison. The second followed an incident where other inmates entered his room and attempted to forcibly take his food. He explained that a scuffle ensued, and prisoner protocol prevented him from reporting what had happened.

47. The Applicant has self-referred and engaged in regular appointments with psychologists in custody to maintain his mental health. The pre-release report states that he has been assessed as being a low risk of reoffending according to the Level of Service Inventory Revised – (LSI-R) and notes the shift in his attitude due to incarceration and the positive impact of psychological intervention in custody. The report recommends a parole order is made for the Applicant, with conditions.

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[7] HB 573-584

48. The Applicant has identified pro-social family, friends and community ties that will support his reintegration into the community. I accept the Applicant's evidence that the experiences following his arrest have been positive and transformative.

49. Overall, I am satisfied that the evidence supports there is a low risk that the Applicant may reoffend. I make this finding on the basis of the NSW Justice pre-release report's conclusion to that effect and:

- the Applicant's limited offending history;
- the Applicant's insight into the causes of his offending conduct;
- the strict parole conditions that the Applicant will be subject to following his release into the community;
- the support the Applicant will have from his wife and her family to reintegrate and secure stable employment;
- the Applicant's sustained abstinence from drugs and alcohol; and
- the significant progress the Applicant has made to stabilise and enhance his mental health.

Conclusion as to the protection of the Australian community

50. The protection of the Australian community weighs against revocation given the seriousness of the offence, but this primary consideration is afforded less weight owing to the Applicant's low risk of reoffending.

Primary consideration 2: Family Violence committed by the non-citizen

51. Paragraph 8.2(1) of Direction 110 provides that the Australian government has '*serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia*'.

52. Paragraph 4(1) of Direction 110 defines family violence as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful.

53. Paragraph 8.2(3) of Direction 110 specifies the following factors must be considered where relevant when considering the seriousness of family violence:

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

54. On 20 February 2019 the Applicant was found to have committed *Common assault* with no conviction recorded and a protection order was issued.[8] At the hearing the Applicant was asked about the assault, the protection order and a separate temporary protection order issued in April 2017.[9] He was also taken to a schedule of facts produced under summons which related to an incident in April 2018 involving his then partner.[10]

55. Regarding the common assault, the Applicant denied agreeing to the schedule of facts in evidence. He gave evidence that he and his then partner had engaged in a 'screaming match', and vehemently denied physically assaulting his partner. However, he conceded the argument would reasonably have been expected to have caused her to be fearful. Given the broad definition of family violence in paragraph 4(1) of the Direction, I am satisfied the conduct constitutes family violence.

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[8] HB 616

[9] HB 627

[10] HB 669

56. There is a paucity of evidence regarding the protection orders or assault record, but I found the Applicant's recall credible and his evidence was consistent with the documentary evidence. Unlike the disputed schedule of facts, the Applicant's account of the incident in April 2018 is commensurate with no conviction being recorded.

57. The Applicant appreciates the impact of his behaviour and accepts responsibility for his conduct. This primary consideration is afforded limited weight against revocation.

Primary Consideration 3: The strength, nature and duration of ties to Australia

58. I am required to consider the impact of the decision on the Applicant's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely. I am also required to consider the strength, nature and duration of any other ties that the Applicant has to the Australian community having regard to:

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

59. The Applicant has resided in Australia since October 2011. His immediate family members in Australia include his wife, Ms Humphries, and her parents. The Applicant's sister also lives in Australia.

60. The Applicant and Ms Humphries have been in a relationship since September 2024 and married in May 2025. They independently gave evidence that they maintain close contact with daily video calls, and Ms Humphries regularly travels from interstate to visit the Applicant in prison. In a statement of support, Ms Humphries detailed how important the

Applicant is to her and the detrimental consequences his removal would have on both her and her family.[11]

61. Ms Humphries gave evidence that she resides with her parents. The Applicant enjoys a strong connection with both her mother and her father, who has significant health issues.

62. The Applicant's mother-in-law provided a statement in which she says her family is looking forward to his parole and her daughter commencing married life with the Applicant. Should the Applicant be removed, she expects that her daughter will accompany him to the UK, which she fears would 'rip our family apart'.[12]

63. In a character reference dated May 2022, the Applicant's sister wrote he had always struggled with emotional dysregulation and suffered with low mood for many years.[13] She speaks fondly of the Applicant and her experience of following him from the UK to start a new life in Australia. The Applicant said that his sister in Australia is his closest sibling and he considers her the only biological family he has. There are indications their relationship is fractious, but they have maintained contact. The Applicant plans to focus on his relationship with her should he return to the community.

64. The Applicant has provided character references from individuals including Stephen Keating who has known him for 12 years and considers him a close friend. Aaron Grundy has known the applicant since 2016 and also considers him a close friend.

65. The Applicant maintained paid employment until 2019 and made a positive contribution to the Australian community working in security, retail, and as a shopping centre manager.

66. The Applicant's period of residence in Australia is considerable and he has spent the vast majority of his adult life here. His offending commenced many years after his arrival in Australia, and he has developed meaningful ties and relationships with Australian residents and citizens throughout his time here.

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[11] HB 405-408
[12] HB 409-410
[13] HB 563-564

67. The Applicant's ties to the Australian community are substantial and weigh very heavily in favour of revocation of the mandatory cancellation decision.

Primary Consideration 4: Best interests of minor children affected by the decision

68. Paragraph 8.4 of the Direction requires the Tribunal to decide whether the cancellation is, or is not, in the best interests of minor children in Australia affected by the decision. This consideration applies only if the child is under 18 years old at the time of the decision. In considering the best interests of each child, the factors that must be considered where relevant include:

> *(a) the nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);*
>
> *(b) the extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;*
>
> *(c) the impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;*
>
> *(d) the likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;*
>
> *(e) whether there are other persons who already fulfil a parental role in relation to the child;*
>
> *(f) any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);*
>
> *(g) evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally;*
>
> *(h) evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.*

69. The Applicant has identified the daughter of his close friend as a minor child who would be affected by the decision.

70. Child K is 17 years old, and the Applicant submits that over 12 years he has established a close and beneficial non-parental bond with the child. This is supported in a statement from

the child's father in which he says his daughter would be 'deeply affected' by the Applicant's deportation.

71. The Applicant gave evidence that prior to the offending he picked Child K up from school, took her to meals and spent Christmas and other occasions with her. The Applicant has not spoken to Child K or allowed her to visit him while in prison because he does not wish to expose her to that environment. Instead, he says he has maintained contact through the child's father.

72. Although the Applicant is not Child K's parent and the parental roles are fulfilled by her mother and father, the Applicant maintains it is in her best interests that he remains in Australia.

73. The Applicant claims to have recently discovered he has a 12-year-old daughter after being sent a notice for child support payments. The child lives in Sweden with her mother, and the Applicant gave evidence he understood the child's mother expressed an intention to return to before she left Australia. As the child ordinarily resides in Sweden, and there is no evidence she or her mother have plans to reside in Australia, I do not consider her interests are affected by this decision.

74. Although I accept that the Applicant has a long-standing relationship with Child K, his ability to play a positive parental role in the future is limited as he plans to reside in a different state. No known views of Child K are in evidence, and the Applicant has demonstrated he is able to maintain contact with her through other means while in prison.

75. Taking into account that the child turns 18 in 2026, I afford this consideration very limited weight in favour of revocation.

Primary Consideration 5: Expectations of the Australian community

76. Paragraph 8.5(1) of the Direction relevantly provides:

> *The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the*

Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.

77. Paragraph 8.5(3) of Direction 110 states that these expectations apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

78. It is not for the Tribunal to determine for itself the expectations of the Australian community by reference to an applicant's circumstances or evidence about those expectations. Rather the Tribunal must give effect to the 'norm' stipulated in the Direction.[14]

79. Paragraph 8.5(2) of the Direction provides that the Australian community expects that the Australian Government can and should refuse entry to noncitizens, or cancel their visas, if they raise serious character concerns. On this basis, I accept the Respondent's submission that non-revocation would be appropriate in this case because the nature of the Applicant's character concerns and offending is such that the Australian community would expect he should not continue to hold a visa.

80. The Applicant does not dispute that this primary consideration weighs against revocation. Having regard to the Direction, I afford this consideration moderate weight against revoking the visa cancellation.

OTHER RELEVANT CONSIDERATIONS

Legal consequence of decision under section 501 or 501CA

81. Paragraph 9.1 of Direction 110 requires decision makers to be mindful that the legal consequences of a decision to cancel a non-citizen's visa are that they are liable to removal from Australia as soon as reasonably practicable, and in the meantime, detention under s189. Section 197C(1) of the Act provides that for the purposes of s198, it is irrelevant whether Australia has non-refoulement obligations in respect to an unlawful non-citizen.

[14] See *FYBR v Minister for Home Affairs* [2019] FCAFC 185; 272 FCR 454 at [75] (Charlsworth J).

82. The Applicant understands the criminal network that orchestrated the illegal enterprise hold him responsible for the failure of the scheme. He believes that key individuals involved are based in the UK and may seek retribution should he return. However, he does not claim he is owed protection in respect of the UK on these or any other grounds.

83. Should the decision be affirmed, except for a protection or bridging visa, the Applicant will be prohibited from applying for another visa while in Australia. He will be detained before being removed from Australia. He would be unable to satisfy the special return criteria in cl 5001(c) of Schedule 5 of the *Migration Regulations 1994* (Cth) which is required for the grant of most visa types. Unless the Minister were to personally grant the Applicant a visa, he is likely to be indefinitely excluded from Australia.

84. With reference to *Stoneley v Minister for Immigration and Multicultural Affairs* [2025] FCA 143, the Respondent contends that these outcomes are the intended purpose of the statutory scheme, and the consequences underly and are subsumed in the evaluation and considerations in the Direction. For the most part, I accept the Respondent's submission in this regard. However, the prospect of being detained may disrupt the continuation of the Applicant's mental health, which is not accounted for in other considerations. For this reason, the legal consequences of the decision are afforded some weight in favour of revocation.

Extent of impediments if removed

85. Paragraph 9.2 of the Direction provides:

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

86. The Applicant is 36 years-old and lived in UK until he migrated to Australia when he was 22 years old. He speaks English and does not contend he would face any substantial cultural or language barriers should he return UK.

87. The Applicant has been diagnosed with a back condition which has caused significant pain and discomfort in the past but is currently well managed. He was diagnosed with lupus in 2017. The Applicant has a history of serious mental health conditions for which he has been receiving treatment over many years. He is currently in psychological therapy and taking prescribed medication. Treatment for the Applicant's mental and physical health would be available to him in the UK, but I accept there will be transitional and other delays in re-establishing treatment and supports should he return to that country.

88. The Applicant expressed fears that he will suffer extreme hardship in the UK where there is limited employment opportunities and inadequate welfare and social housing. He fears he may risk destitution as he would be unable to rely on family or friends for support or practical assistance in the UK.

89. I accept that the Applicant would be expected to face practical challenges reestablishing himself in the UK, and that he would be required to do so without the support of family or friends. Despite lacking formal qualifications, he has proven to have skills which have made him employable. It would also be open for him to reside where he has the best prospects of securing employment. He would not be required to return to Liverpool, where he submits there is very high unemployment.

90. Should he return to the UK, the Applicant will be required to manage his health, and particularly his mental health, which would require organising continued and ongoing care. The Applicant fears that transitional delays in re-establishing treatment and rehabilitation supports would likely lead to practical, financial and emotional hardship should he return to the UK. I afford this considerable weight given the seriousness of the Applicant's mental health conditions and the evidence that the sustained, long-term treatment he has undertaken, and the support network he has established, has been effective.

91. Having regard to the Applicant's heath conditions and the lack of an existing support network in the UK, this consideration is afforded very significant weigh in favour of revoking the visa cancellation.

CONCLUSION

92. The protection of the Australian community weighs in favour of cancelling the Applicant's visa owing to the seriousness of his offending. However, the weight afforded to this consideration is tempered significantly by the strong evidence of rehabilitation and the low risk that he will reoffend.

93. The expectations of the Australian community weigh moderately against revoking the visa cancellation. The primary consideration of family violence is afforded some weight against revocation.

94. The Applicant's ties to the community weigh very heavily in favour of revoking the cancellation, primarily on account of the interests of his wife and her family, as well as the Applicant's sister. Having spent most of his adult life in Australia, the impediments the Applicant will be expected to face should he return to the UK are considerable and weigh very significantly in favour of revocation. The legal consequences of the decision are not significant but weigh in favour of revocation. The best interests of the minor child affected by the decision are afforded very limited weight in favour of revoking the cancellation of the visa.

95. On balance, I find there is another reason why the cancellation of the Applicant's visa should be revoked, and the reviewable decision will be set aside.

DECISION

96. For the reasons outlined above, the reviewable decision is set aside and in substitution the mandatory cancellation of the Applicant's visa is revoked.

Date of hearing:	**2 December 2025**
Counsel for the Applicant:	**Dr Jason Donnelly**
Solicitor for the Respondent:	**Mr Ingmar Duldig, Clayton Utz Lawyers**