Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**MFKF**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2025/0708**
Tribunal:	**Senior Member K Raif**
Place:	**Sydney**
Date:	**17 February 2026**
Decision:	**The Tribunal affirms the decision under review.**

Senior Member K. Raif

Statement made on 16 February 2026 at 11:47am

Catchwords

Refusal to grant a Protection visa – character test – sexual offending against a minor - Ministerial Direction No. 110 applied – whether Tribunal should exercise discretion to refuse to grant the visa – decision under review affirmed.

Legislation

Family Law Act 1975 (Cth)

Migration Act 1958 (Cth)

Migration Amendment Act 2024 (Cth)

*Migration Amendment (Removal and Other Measures) Act 2024 (*Cth)

Cases

HWLJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 1039 (22 July 2020)

HWLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 860

Ismail v Minister for Immigration, Citizenship and Multicultural Affairs [2024] HCA 2

Katoa v Minister for Immigration and Multicultural Affairs [2021] FCA 1000

Morgan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] AATA 189

NZYQ v Minister for Immigration Citizenship and Multicultural Affairs & Anor [2023] HCA 37

Secondary Materials

Direction No. 110 – Migration Act 1958 – Direction under section 499: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA

Statement of Reasons

INTRODUCTION

1. This is an application for review of a decision of the delegate of the Minister for Immigration and Citizenship (**the Respondent**) made on 28 January 2025 to refuse to grant a Protection Class XA visa to the Applicant.

2. The Applicant was born in December 1975 and is a national of Sierra Leone. He was granted a Partner visa and entered Australia as a holder of a permanent visa in 2011. He was subsequently granted a Resident Return visa (**RRV**). In August 2018 the Applicant's RRV was cancelled on character grounds. The Applicant sought review, but was ultimately unsuccessful. The Administrative Appeals Tribunal (**AAT**), on remittal from the court, affirmed the decision not to revoke the cancellation of the visa in April 2021.[1]

3. In November 2019 the Applicant made an application for the protection visa. That application was initially refused by the delegate but in February 2022 the AAT remitted the matter to the Department with a finding that the Applicant met section 36(2)(a) of the *Migration Act 1958* (Cth) (***Migration Act*** or ***the Act***).

4. In October 2024 the delegate issued the Notice of Intention to Consider Refusal (**NOICR, Notice**) of his application. The Applicant responded to the Notice and in January 2025 the delegate decided to refuse to grant the visa to the Applicant as the delegate determined that the Applicant did not pass the character test and that the discretion should be exercised to refuse to grant the visa. The Applicant seeks review of the delegate's decision.

5. On 15 April 2025 the Administrative Review Tribunal (**ART** or **Tribunal**) (differently constituted) decided to affirm the delegate's decision. The Applicant sought judicial review of the Tribunal's decision and in August 2025 the matter was remitted to the Tribunal for reconsideration.

6. The issues before the Tribunal are:

---

[1] *HWLJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1039 (22 July 2020); *HWLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] AATA 860

(a) whether the visa Applicant passes the character test as required by section 501 of the Act and, if not

(b) whether the Tribunal should exercise its discretion to refuse to grant the visa to the Applicant.

7. The Applicant appeared before the Tribunal on 9 and 10 February 2026. The Tribunal took oral evidence from the Applicant, his partner, Mr Watson-Munro and Mr Randall. The Applicant was represented on review. For the reasons that follow, the Tribunal has decided that the decision under review should be affirmed.

LEGISLATIVE FRAMEWORK

8. The 'character test' is defined in section 501(6) of the Act. Relevantly, paragraph 501(6)(e) provides in part:

> *For the purposes of this section, a person does not pass the character test if:*
> *(e) a court in Australia or a foreign country has*
> *(i) convicted the person of one or more sexually based offences involving a child; or*
> *(ii) found the person guilty of such an offence or found a charge against the person proved for such an offence, even if the person was discharged without conviction*

9. Should the Applicant not satisfy the character test, the discretion to refuse the visa under section 501(1) of the Act is enlivened.

10. *Direction No. 110 Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (**Direction 110**) sets out the principles that provide a framework within which decision-makers should approach their task. The principles set out at paragraph 5.2 of Direction 110 state that Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia.

11. At Paragraph 5.2(2), the Direction provides that the safety of the Australian community is the highest priority of the Australian government. Further, at Paragraph 5.3(3) the Direction provides that:

> *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.*

12. The primary considerations which are set out in clause 8 of Direction 110 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.

13. The other considerations, which are not exhaustive, are set out of clause 9 of Direction 110:

(1) legal consequences of the decision;
(2) extent of impediments if removed;
(3) impact on Australian business interests.

14. Paragraph 7(2) of Direction 110 states that the primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations. Otherwise, the primary considerations should generally be given greater weight than the other considerations.

DOES THE APPLICANT PASS THE CHARACTER TEST?

15. The Applicant's offending is summarised in the delegate's decision and various submissions. The Tribunal has also had regard to the Criminal Intelligence Commission report dated 16 July 2024. The information indicates that the Applicant has the following convictions

28/08/18 (call up)	• Driving motor vehicle while disqualified • Enter in-closed land without lawful excuse • Drive vehicle illicit drug present in blood	Imprisonment 3 months, 19 days Fines
06/17 and 09 /17	• Drive motor vehicle during disqualification period (multiple counts)	Various penalties
01/03/17	• Drive with low range PCA	Fines
10/02/16	• Indecent assault (2 charges)	Imprisonment 70 days (aggregate)

02/10/12	Various driving offences	Fines
30/03/12	• Assault with indecent intent • Indecent assault	6 months imprisonment

16. The delegate noted in the primary decision that the information in the Criminal Intelligence Commission report was inaccurate, but the above record appears to be not in dispute.

17. The terms 'sexually based offence involving a child' is not defined in the Act. In *Morgan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*[2] the Tribunal held that it is necessary to look at the actual content of the elements of the offences of which the Applicant was convicted.

18. The content of the elements of the offence is described more fully below. Essentially, the Applicant approached a 16 year old child, took the child to the hotel room and forced himself onto the child including by masturbating him and trying to have anal sex. The Tribunal is satisfied that the offence was a sexually based offence. Further, the victim in that case was 16 years of age and section 5CA of the Migration Act defines a child by reference to the *Family Law Act 1975* (Cth) which defines a child as a person under 18. The Tribunal is satisfied the victim was a 'child'. The Tribunal finds that the 2012 offending can be classified as a sexually based offence involving a child. Therefore, the Tribunal finds that a court in Australia has convicted the Applicant of a sexually based offence involving a child.

19. The Applicant concedes in his various submissions to the Tribunal that he does not pass the character test in section 501(6)(e). The Tribunal finds that the Applicant does not pass the character test as set out in section 501(6)(e) of the Act. The Tribunal finds that the discretion to refuse to grant the visa is enlivened.

---

[2] [2022] AATA 189 at [22].

CONSIDERATION OF DISCRETION

20. The Applicant concedes that he fails the character test. The Applicant submits that while his offending was serious, he is not an unacceptable risk of harm to the community, he has completed substantial rehabilitation and is ashamed and remorseful for his actions. The Applicant refers to the rehabilitation achieved and protective factors that presently exist and he submits that there is a low risk of reoffending. The Applicant refers that other factors, such as the best interests of his daughter, links and contribution to Australia, strength, nature and duration of ties and impact on his family, and claims that these factors outweigh other considerations.

21. The Respondent submits that the Applicant does not pass the character test and while the risk of reoffending is low, it is nevertheless, an unacceptable risk given the potential consequences of the reoffending. The Respondent submits that other considerations that weight in favour of visa grant should not outweigh considerations that weigh against the visa grant.

Protection of the Australian Community

22. Paragraph 8.1 of Direction 110 provides in part as follows:

> *8.1 Protection of the Australian community*
>
> *(1) 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… 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.*
>
> *(2) Decision-makers should also give consideration to:*
>
> *a) the nature and seriousness of the non-citizen's conduct to date; and*
>
> *b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct.*

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

23. Sub-paragraph (c) of paragraph 8.1.1(1) of the Direction requires a decision-maker (with the exception of certain crimes or conduct) to have regard to the sentence(s) imposed by the Courts for a crime or crimes of a non-citizen. Subparagraph (e)

requires the decision maker to have regard to the frequency of the non-citizen's offending and/or whether there is any trend of increasing seriousness.

24. The Applicant concedes that his offending was very serious when viewed individually and cumulatively. The Applicant notes that the Tasmanian offences related to a vulnerable minor and notes the sentence imposed. The Applicant concedes that the Melbourne offending, of sexual nature which had a serious impact on the victim, was also serious. The Applicant concedes that his driving offences were frequent and created a burden on the criminal justice system.

25. In the Statement of Facts, Issues and Contentions (**SFIC**), the Respondent submits that the offending should be considered 'very serious in circumstances where the offences were sexual crimes and, in relation to offending in Tasmania, sexual crimes against children'. The Respondent submits that the seriousness of the offending is increased by the vulnerability and/or impact on the victims. The Respondent refers to the 'litany of driving offences' which resulted in the term of imprisonment and submits that the Applicant's driving records should also be considered as serious, as it has the potential to harm others and showed a 'blatant disregard for the law'.

26. In considering the nature and seriousness of the Applicant's conduct to date, the Tribunal has had regard to the circumstances of his offending as set out in the sentencing remarks, police fact sheets and other materials.

2012 offending

27. The Tribunal has been provided with the Extract of Proceedings before Evans J, dated 30 March 2012 which reports the September 2011 incident as follows. On the morning of 18 September 2011, the Applicant walked down the street and came upon a 36 year old man he had been drinking with the previous night. The Applicant placed his arm around the man's shoulder and asked him if he would return to his hotel for a few drinks. After the man refused, the Applicant placed his arms around the man and began kissing his nick and squeezing his buttock.

28. Around 9 am the Applicant approached a 16 year old male waiting for a bus, shook the youth's hand, pulled the victim towards him. The Applicant grabbed hold of the victim's buttock and squeezed it. Notwithstanding that the victim took offence, the Applicant tried to get him back to his hotel room. The harassment continued for about 3 minutes until the victim boarded a bus.

29. About 15 minutes later the Applicant approached another youth, tapped him on the shoulder and asked whether he wanted to come back to his hotel room. When the victim declined, the Applicant struck him to the chin but not sufficiently hard to mark or injure him. When the youth persisted with his refusal to go with the Applicant, the Applicant grabbed his jumper. It is stated that the youth was vulnerable, being 16 years of age, living in a shelter and concerned by the death of a friend. It is stated that the victim was scared and intimidated and accompanied the Applicant to the hotel. In the hotel room the Applicant offered the victim a drink, which he had declined. When the victim sought to move away, the Applicant told him not to 'nick off'. The Applicant offered the victim $20 to stay. As the victim backed away, the Applicant grabbed him by his jumper, hugged him and ground his penis against the victim's right leg. The Applicant then grabbed the victim, struck him to the cheek and threw him on the ground and asked the victim to have anal sex with him. It is reported that the victim was terrified and tried to talk his way out before conceding. The Applicant removed the victim's pants and started masturbating him. The Applicant removed his own pants and guided the victim's penis between his buttocks. The victim was crying. The incident continued for about a minute before it stopped, and the victim was able to leave. There was no penetration. It is stated that the episode has had a profound and adverse impact on the victim.

30. It is reported that when interviewed, the Applicant claimed he was drunk and had taken speed. He acknowledged having given the youth at the bus stop a hug and touching his bottom. He denied criminal conduct in relation to the second victim and said they went to his hotel room so he could give the youth some money.

31. His Honour referred to the Applicant's personal circumstances. With respect to the offending, His Honour stated that on the morning in question the Applicant, when intoxicated, embarked on an indiscriminate search for a partner to provide him with sexual gratification and paid little regard to the age of those he propositioned or their interest in what he had in mind. He ultimately intimidated a vulnerable 16 year old into accompanying him to the hotel room.

32. The Tribunal has been provided with the Record of Proceedings dated 5 April 2012 before Evans J. Corrections were made to reflect the fact that the Applicant had entered a plea of guilty to one count of indecent assault and not two.

33. In his statement of 26 November 2024, the Applicant stated that he was given drugs and while intoxicated, he came into contact with a young man, believing him to be over 20 years of age. The Applicant stated that he offered this man money for the bus fare and offered to him to come to his accommodation while he was waiting for

the bus which the Applicant states was wrong. The Applicant states that he made a bad decision while intoxicated with drugs. The Applicant stated that he continued to take all necessary steps since that time to rectify the vulnerabilities surrounding his previous involvement with drugs, alcohol and undiagnosed mental illness. Since the incident he consistently expressed his apology and remorse while owning full responsibility for his actions and he pleaded guilty in March 2012. The Applicant submits that he believed the person to be over 18 and would not have spoken to him if he believed him to be underage. The Applicant stated that he had previously worked with children and never had any thoughts of engaging in a relationship with a child and he does not see anything sexual in children. The Applicant referred to the various reports which confirm that he is not a paedophile and his wife (who works in child protection) would not have stayed with him if she had any doubts that he had an interest in children.

2014 offending

34. The Tribunal has been provided with the transcript of proceedings in the Melbourne Magistrates Court before Magistrate Ayres. It is recorded that on 5 June 2014 the victim was standing at a shopping centre and was approached by the Applicant who said to the victim 'are you a school boy?'. The victim replied 'no'. The Applicant asked the victim if he smoked shard or drank beer and invited him to a hotel. The victim accepted the invitation, put his bicycle in the Applicant's car and they exchanged phone numbers. The Applicant drove to a park, parked the car in the car park behind shrubs and produced an ice pipe and a small amount of methamphetamines. The Applicant offered the drug to the victim, which was refused, and then a beer. The Applicant put his hand around the victim's neck, pulled his head towards him and started kissing the victim and blew smoke from his ice pipe into the victim's mouth. The victim tried to pull away but the Applicant was too strong. The Applicant inserted his tongue into the victim's mouth and blew smoke into his mouth. The Applicant started talking about having sex with other males and three or four times grabbed the victim, kissing him and blowing smoke into his mouth. The victim asked the Applicant to drive him to the hotel which the Applicant did. While driving, the Applicant was placing his hand on the victim's groin area, the victim asked him to stop which the Applicant did. The victim subsequently attended the police station, and samples were taken of his blood and urine which showed the presence of methamphetamines and amphetamines in the victim's blood and urine.

35. At the hotel, another person joined them. When they later spoke together, the Applicant spoke about how great it was to have sex while affected by MDMA. The Applicant in an upwards motion, touched that person's penis with his index finger.

36. His Honour noted that the Applicant was subject to several bail conditions, one of which required him to undertake psychological counselling. The evidence before His Honour is that the Applicant had been undergoing psychological counselling and, at that time, had completed three months of counselling with Mr Kandlish and was continuing counselling with another psychologist. The evidence before His Honour was that the Applicant was "not using illegal drugs at all" and has had an extensive period of counselling. (The Applicant told the present Tribunal that he only attended a few sessions at that time and that his counselling was minimal, the Applicant states that he was not properly diagnosed with a mental health condition at the time and did not find the treatment effective).

37. His Honour determined that a period of imprisonment was necessary to reflect the objective gravity of the conduct.

2018 incident

38. There is before the Tribunal a police report in relation to the April 2018 incident. It is reported that the Applicant and his neighbour were having drinks at home and the Applicant suggested having sex with the victim before the victim refused and left. It is reported that a few days later the Applicant messaged the victim, which the victim ignored. The Applicant approached the victim's window, calling his name. The Applicant picked up a stick and banged on the victim's bedroom window. The Applicant got a garbage bin, placed it near the victim's balcony, stood on the bin and used it to climb a wall and access the victim's balcony. The Applicant was on the outside of the balcony and looked into the victim's window. The victim called the police. When interviewed by the police, the Applicant denied accusations of indecent assault but admitted that he hit the victim's window with a stick and climbed up the wall to his balcony.

Alleged conduct while in detention

39. There are before the Tribunal detention notes concerning the Applicant.

    (a) A November 2023 note indicates that an outside caller alleged that a detainee (the Applicant) was in possession of a knife and planned to stab an officer. The Applicant claimed the caller was a vexatious person who had been

threatening him. In the absence of any further information, the incident was considered to be resolved. The Tribunal does not draw any adverse conclusions from that incident.

(b) In January 2021 it is reported that the Applicant requested a form from a staff member and when asked to clarify which form he need, the Applicant started to shout, calling the staff member 'disrespectful', swearing and stating, 'f**k you disrespectful' and was abusive using other profanities.

(c) It is reported that in December 2019 a room search was conducted on the Applicant which located an improvised weapon in his cupboard. It is stated that the improvised weapon was fashioned with multiple plastic bags and paper towels wrapped around each other to make a handle with a piece of coat hanger with a jagged attached to it. The improvised weapon was about 24 cm in length. It is stated that the Applicant claimed ownership of the weapon.

(d) An incident in December 2019 refers to a package containing clear crystallised particles being located in a sterile zone. Another detainee claimed that the package was meant for the Applicant.

(e) In April 2019 an incident is reported where an Applicant became abusive and aggressive towards staff when he was told he is not allowed to bring food into the compound. the Applicant is reported to have yelled at a staff member 'F**k you' and *f**k off' and he threw a packet of noodles through the staff windows. When the Applicant was advised that he would be screened prior to departure, he replied 'F**k you motherf**ker, I will take my things, f**k you, I am not getting searched'.

(f) In October 2018 it is reported that a Code Black response was called due to the Applicant and another detainee fighting. It is reported that there was a verbal altercation and the Applicant then threw a punch towards the other detainee and a fight ensued.

40. The Respondent submits, by reference to *Katoa*[3] that it is permissible to have regard, albeit with caution, to conduct even where there are no convictions or charges. There are, before the Tribunal, a number of police records describing other

[3] *Katoa v Minister for Immigration and Multicultural Affairs* [2021] FCA 1000 at [30].

incidents involving the Applicant. The Tribunal is mindful that these, as well as evidence concerning the applicant's conduct in detention, have not been tested in court and had not resulted in convictions. The Applicant was questioned about the police records in cross-examination and chose not to answer questions (having been warned about self-incrimination). The applicant was not questioned about the alleged incidents in detention. The Applicant submits that the Tribunal cannot be satisfied that these events occurred, particularly as the victims have not been cross-examined and their testimony had not been challenged. The Tribunal is mindful that the same reasoning applies in relation to detention records.

41. In the circumstances where the evidence has not been tested and has not been conceded by the Applicant, the Tribunal cannot comfortably accept the allegations and places no weight on these records.

42. The Tribunal has also been provided with police records relating to the driving offences.

    (a) The police facts sheet in relation to the 2017 driving offences indicates that the Applicant was disqualified in March 2017 for prior driving offences and despite being aware of the disqualification, the Applicant drove his vehicle and attempted to avoid detection by providing false particulars to the police. It is stated that on 8 April 2017 police approached the Applicant's car, the Applicant was subjected to a random breath test which returned a positive result. The Applicant initially provided false details to the police but eventually revealed his true identity.

    (b) In June 2017 the Applicant was stopped for a roadside breath test. He was unable to provide a driver license, initially denied being the driver and claimed that his passenger was the driver. When the police indicated they would obtain CCTV footage from a service station, the Applicant admitted to being the driver. He was breath tested with a negative result. At the time, the Applicant was disqualified from driving.

    (c) In July 2017 the Applicant's car was stopped by the police. He was unable to produce a driver license and initially gave a different name before providing his correct details. At the time of driving, the Applicant's license was suspended.

43. The Applicant's Traffic Record Report issued in June 2017 indicates that in June 2017 the Applicant was declared a habitual offender for three offences between October 2016 and April 2017, with the declaration then quashed.

44. The Respondent submits in the SFIC of 19 January 2026 that the sexual offending should be considered very serious in circumstances where it involved crimes of a sexual nature against others and where the Applicant was sentenced to terms of imprisonment. The Respondent refers to the impact on victims as significant. With respect to driving offences, the Respondent submits that these offences should be considered as serious given the potential harm to other road users and the frequency of the offending.

45. The Applicant submits in his SFIC that the 2016 offending was at the lower end of the scale, as evidenced by the fact that he was sentenced to a term of imprisonment of 70 days (time served). The Applicant notes that he is no longer on the Sex Offender Register and there are no reporting obligations. The Applicant submits that driving without licence is not a serious offence and there is no apparent trend of increasing seriousness. The Applicant submits that in 2017-18 his mental state was 'extremely bad' because of lack of proper diagnosis and treatment and the effects of PTSD and bipolar on his substance use. The Applicant refers to his lengthy period in detention, stating he has not committed any offences during that time. The Applicant refers to the report by Mr Cohen who identified the risk of reoffending as low, as long as the Applicant complies with treatment, and the assessments by Dr Ellis, Ms Gordon and Mr Watson-Munro.

46. In his SFIC to the present Tribunal the Applicant concedes that his offending falls within violent and/or sexual crimes including multiple sexually based offences. The Applicant acknowledges that the 2016 convictions resulted in imprisonment and can be characterised as 'violent and/or sexual crimes' attracting the Direction's highest level of seriousness. The Applicant refers to 'persistent driving – related offending' with numerous fines and disqualification periods and with a 'marked concentration of driving-related offences' in 2017-18 suggesting persistence and recidivism in that domain. The Applicant concedes that despite these offences being at the 'lower level', the overall pattern and recurrence of court outcomes over time elevates the seriousness through cumulative effect.

47. The Tribunal finds that the Applicant has been convicted of sexual offending, some of which was in relation to minors. The Tribunal considers that offending of sexual

nature to be serious. The Tribunal considers sexual offending against a minor to be extremely serious. The Tribunal finds that the Applicant engaged in extremely serious offending. The Tribunal further finds that the driving offences, while less serious, cannot be said to have been insignificant, given the potential harm to other road users from offending of that nature.

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

48. The Tribunal has considered the risk to the community, should the Applicant reoffend. Paragraph 8.1.2(1) provides that 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 of the 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.

49. Paragraph 8.1.2(2) provides that 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;
    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

The nature of harm, should the Applicant reoffend

50. The Applicant had engaged in predatory sexual conduct on several occasions, with the 2012 offending involving a minor. Such offending can have profound and long lasting detrimental effect on the victims. The Applicant committed other sexual offences only a few years later. The Tribunal finds that the harm that may be caused to others, should the Applicant commit sexual based offences, could be significant, including serious and life-long psychological injury to the victims. In his submission

of 12 January 2026 and oral submissions to the Tribunal the Applicant concedes that if conduct of that kind were repeated, the potential harm is 'inherently grave' involving 'serious sexual violation and ensuing physical and psychological trauma'.

51. The Applicant had also been convicted of driving offences including driving while under the influence and driving without a license. Driving under the influence has the potential of causing harm to other road users and the Tribunal considers that there is a possibility of serious harm to the community should the Applicant again commit such offending in the future.

The likelihood of the non-citizen engaging in further criminal or other serious conduct

52. The Tribunal has considered information and evidence on the risk of re-offending and evidence of rehabilitation achieved by the Applicant.

Applicant's submissions to the delegate

53. In his communication with the delegate of 2 December 2024 the Applicant states that he had made mistakes but had already 'evolved from that life' and is now a very conscientious and resourceful person who can contribute enormously to support economic growth in Australia.

54. In his response to the NOICR, the Applicant provided evidence of course completion, including an online Traffic Offenders Rehabilitation program completed in September 2020, sex offender treatment provider course, Attraction Love and Sexual Attitudes (6 hours), 12 step addiction recovery for alcohol, drug and food (43 mins), the ultimate sexual addiction and porn addiction treatment (9 hours), anger management and conflict resolution program (4 hours), master 12 step recovery (11.5 hours), addiction and mental health (2 hours), a complete guide to Prevention Of Sexual Harassment (1 hour), professional Post-Traumatic Stress Disorder (**PTSD**) counselling diploma (35 mins), sexual harassment training for employees in the workplace (34 mins), voice training for a confident and powerful voice (1 hour). There is evidence indicating the Applicant completed a Master of Science in April 2024.

55. In his response to the NOICR, the Applicant provided evidence of having engaged in counselling with Telecia Rittiman and a letter of support from Ms Rittiman, social worker who states that since her engagement in 2020 the Applicant has consistently demonstrated his willingness to listen, engage and implement all forms of suggestions and recommendations presented to him in terms of coping and

managing his mental health diagnostic. It is reported that the Applicant has complete abstinence from illicit drugs and alcohol, engaged in 12 steps programs and courses (including sexual harassment in the workplace and prevention of sexual harassment) and intends to remain drug and alcohol free for the duration of his life. Ms Rittiman states that the completion of these programs demonstrates the Applicant's ongoing commitment to exploring insight into his offending and mitigates future offending behaviour of the same nature. Ms Rittiman has expressed the view that the Applicant is a very low risk to the community and is at the same level risk as any member of the community. Ms Rittiman refers to the Applicant's concern for his family and states that his family, especially the Applicant's daughter, would be 'impacted immensely' if the visa cannot be granted. No explanation has been offered by Ms Rittiman in her statement about the nature of such impact, nor is it apparent from this statement whether Ms Rittiman has had any knowledge about the family's circumstances and living arrangements.

56. There is before the Tribunal a statement to the court, made by the Applicant's spouse Ms NC in August 2017. Ms NC refers to the Applicant struggling to adjust to life in Australia and his mental health issues. Ms NC states that in 2016 this has 'changed for the positive with ongoing support, understanding and intervention'. The Applicant also prepared a letter of apology in August 2017, which is before the Tribunal. There is evidence that the Applicant had enrolled in the traffic offenders intervention program in 2017.

57. The Applicant provided a number of other character references. The Applicant provided a letter from his daughter, M, dated 16 April 2024 who states that she misses her father and finds it hard to deal with the separation. There is before the Tribunal a further letter from M dated 4 January 2026. The Applicant provided a statement from his partner Ms NC who refers to the Applicant's positive contribution and the effect of separation on their daughter who has been diagnosed with developmental dyslexia, attachment disorder and anxiety. Ms NC states that the Applicant 'is not the man he was before' and is now a compassionate, reflective and conscientious individual who is respected even within the detention community.

58. The Applicant stated in his submission to the delegate that his offending was the result of untreated mental health challenges at the time including his use of illicit drugs. The Applicant states that he has had many years of reflection and insight and is confident that he will not relapse into further drug use in the future. The Applicant states that he has not taken drugs or alcohol since 2018 and has consistently attended rehabilitation support programs and therapy. The Applicant notes that he

has not been charged with any offending since May 2018 and had not previously received any warnings from the Department. The Applicant states that complete abstinence from illicit drugs will prevent him from relapse and mitigate any risk of recidivism.

59. In his written submission to the delegate the Applicant states that he has never been charged with any physical violent attack against any individual. (It is unclear to the Tribunal why the Applicant believes this is indicative of the lower risk of reoffending because harm to members of the community is not limited to violent attacks against individuals and sexual offending against a minor is capable of causing significant harm to the victim even if not violent.) The Applicant refers to an assessment by Dr Ellis and he submits that since the report was prepared, he has demonstrated commitment to all medication and willingness to individual counselling, having completed multiple courses. The Applicant refers to the assessment by Mr Watson-Munro who refers to the low risk of reoffending and to a 2012 report by Department of Health and Human Services principal practitioner who refers to the bond between the Applicant and his daughter. The Applicant refers to his attainment of the Masters degree and states that his priority is to work and provide financially for his family. The Applicant stated that he has demonstrated 'enormous steps' to address his previous offending behaviour and mitigate the risk of recidivism. The Applicant states that he has been living in Australia permanently since 2011, he refers to his family and community links in Australia and states that he had served as a productive member and supporter in the community. The Applicant refers to his past employment.

60. The Applicant states that he regrets speaking to the victim of his offending and states that he was confident the boy was above 18 at the time. In his November 2024 statement the Applicant describes the circumstances of the offending, also stating that he believed the victim to be over 18 and stating that he never had any interest in children. The Applicant states that he made bad errors in judgment and in his decision to invite the person to his room. The Applicant states that his actions during the offending were influenced by use of drugs, alcoholism and years of mental health challenges and he refers to the rehabilitation and the unlikely risk of future recidivism. The Applicant states that the offending occurred 13 years ago and he is now a 'different person' with insight into his offending and abstinence from drugs, alcohol. The Applicant refers to his mental health condition which was undiagnosed (the Applicant refers to witnessing traumatic events in Sierra Leone), leading to increased vulnerabilities and risk behaviours. The Applicant outlines his rehabilitative steps and plans for the future.

61. The Applicant refers to losing his job in Tasmania, stating that everything started ‘unravelling’ and he reverted to drug use as a coping mechanism. He states that his mental health condition remained untreated and resulted in other offending. In his May 2024 statement the Applicant referred to his background and also claimed he is not a danger to the community. The Applicant had addressed the best interests of his daughter. The Applicant made similar claims in his January 2023 submissions and he refers to various assessments which identified the risk of reoffending as low.

62. The Tribunal has also had regard to the Applicant’s statements dated 27 September 2022, 28 August 2022 and 17 November 2019 in support of his application for the substantive visa.

63. The Applicant presented in his response to the NOICR a report by Mr Watson-Munro dated 21 June 2024. Mr Watson-Munro refers to the earlier assessment completed in 2020 and states that the Applicant continues to improve, had matured and is focused on his future in Australia. Mr Watson-Munro states that the Applicant has expressed remorse for his past behaviour and is motivated to lead a pro-social life in Australia. Mr Watson-Munro refers to the Applicant’s medication and full compliance with treatment, stating that he is in full remission and his judgment has been restored. Mr Watson-Munro suggests the offending occurred when the Applicant was suffering from a bipolar disorder but was inappropriately medicated with anti-depressant medication and at the time he experienced poor impulse control, poor judgment and absence of consequential thinking. Mr Watson-Munro states that the Applicant holds strong feelings of remorse and stated that he is ashamed of his conduct and has taken steps towards rehabilitation. Mr Watson-Munro has expressed belief that the likelihood of reoffending is now low.

64. There is before the Tribunal a report by Mr Watson-Munro dated 2 December 2020. Mr Watson-Munro describes the Applicant in that report as a non—psychopathic criminal offender and states that the risk of sexual offending is now low. Mr Watson-Munro states that the Applicant’s intense period of offending occurred at the time when he was psychologically decompensating and experiencing escalating symptoms of PTSD. His bipolar disorder was not diagnosed and was untreated. It is noted that there had been no further breaches of the law and it is arguable that the offending was primarily a function of the Applicant’s undiagnosed and untreated psychiatric condition. Mr Watson-Munro agreed with the assessment of Dr Cohen that the risk of reoffending was low.

65. The Applicant had presented a November 2014 statement by Ms Linda Gerdtz, referring to an investigation by Child Protection relating to the safety of the

Applicant's daughter. The report indicates there is 'minimal risk' of the Applicant harming his daughter. In December 2012 Ms Gerdtz also concluded there is minimal risk of the Applicant harming his daughter.

66. The Applicant presented a statement by Amanda Gordon, psychologist, dated 16 May 2024. Ms Gordon refers to the Applicant experiencing PTSD symptoms from the events in his early life, stating these are now under control and dealt with in therapy. Ms Gordon states that the Applicant is compliant with medication and does not present with symptoms of mental illness, but prolonged detention may lead to depression and irreparable damage. Ms Gordon refers to the assessments by Dr Eagle and Dr Ellis indicating that he had committed offences while suffering from undiagnosed bipolar disorder and diagnosed PTSD and since that time he has been fully compliant with treatment and has not reoffended. Ms Gordon refers to the assessment of forensic experts who identify the risk of reoffending as low.

67. The Applicant had presented a report by Dr Andrew Ellis, forensic psychiatrist, dated 26 February 2021 which was prepared in relation to the earlier RRV cancellation. Dr Ellis refers to past treatment, including treatment for complex PTSD in 2015 and diagnosis of bipolar disorder in 2018 when the Applicant was placed under the Mental Health Act and treated with antipsychotic and mood stabilising medication, responding well to treatment. Dr Ellis refers to the Applicant's past alcohol and cannabis use from the age of 18 and other drug use in later years, including speed, cocaine and ice. Dr Ellis describes the Applicant's recitation of the offences, stating that during the 2011 incident he had used drugs and believed the child to have been over 16. With respect to the 2014 offending the Applicant reported that he was intoxicated and not treated for his mental illness and felt that he had 'misunderstood' the situation. It is reported that the Applicant stated he took full responsibility for his crimes and that he would be compliant with the medication regime and abstinent from substances. Dr Ellis agreed with the diagnosis of bipolar disorder and stated that the Applicant met the criteria for a substance use disorder, particularly alcohol and stimulant medication (crystal methamphetamine) which is currently in remission. Dr Ellis noted there are few symptoms of PTSD and no evidence of a serious personality disorder. Dr Ellis stated that it is not considered the Applicant suffers from a paraphilic disorder such as paedophilia. Dr Ellis stated that the past sexual offences occurred in the context of non or poorly treated mental illness, substance intoxication, anxiety and unstable living arrangements resulting in opportunistic impulsivity and poor judgment. It is stated that he Applicant's general offending relates to substance use, untreated mental illness and resultant poor judgment. Dr Ellis stated that with appropriate treatment, the Applicant would

present a risk profile of many persons in the Australian community managed by the mental health services. Without treatment, he would fall into a group of persons with a moderately elevated risk of violence and sexual violence compared with prisoners and psychiatric patients, which would rise to a higher level of concern with symptoms of illness were not treated and he was intoxicated.

68. The Applicant presented a report by Dr Kerri Eagle, forensic psychiatrist dated 7 March 2018. Dr Eagle had offered a diagnosis of untreated bipolar disorder, PTSD and substance use disorder and notes that severe mood disturbances result in disinhibited behaviours and increased risk taking, potential misinterpretation of surrounding events and impairment in judgment. Dr Eagle offers a view that both of these disorders may have contributed to the offending conduct in driving without a license. Dr Eagle outlines recommended treatment plan. Dr Eagle states that the Applicant does not display a pro-criminal or antisocial personality style and has few criminogenic risk factors and states that his prospects of rehabilitation are optimistic if he were to adhere to the recommended treatment plan but if he remains untreated, the risk of reoffending and the risk to the community of his offending conduct would remain elevated.

69. The Applicant presented copies of media reporting that related to his offending and there are before the Tribunal the Applicant's International Health and Medical Services records. The Applicant presented to the Tribunal evidence of his attendance at the Smart Recovery program. The Tribunal has had regard to the September 2017 Pre-sentence report prepared by Jendy Ellen. It reports that the Applicant denied having alcohol or drug problem and had acknowledged his wrong-doing. It is stated that the Applicant does not present with any outstanding criminogenic needs. A Community Correction report indicate that the Applicant failed to report for community service work between November and December 2017, he was advised to report to Community Corrections but failed to do so. The Applicant was sentenced to an Intensive Corrections Order but in April 2018 he claimed that it was unfair for him to complete the Intensive Corrections Order (**ICO**) and Community Service Order (**CSO**) and he claimed that he would not undertake the CSO hours.

70. The Tribunal has also had regard to the pre-sentence report prepared in November 2017 by Carolyn Frost and the ICO Breach report prepared in April 2018 in relation to the Applicant's failure to appear in court in breach of bail.

Summary of key evidence before the first Tribunal

71. The Applicant prepared and produced to the first Tribunal a Statement of Remorse dated 25 March 2025. Much of the evidence in that document has been put forward in other materials summarised elsewhere. The Applicant provided to the first Tribunal a statement from his partner and multiple character references.

72. The Tribunal had been provided with evidence of the Applicant's employment since his release from detention in January 2025.

73. The Respondent submitted in the SFIC prepared to the first Tribunal that the likelihood of reoffending is primarily dependent on the Applicant complying with medication, an absence of substance use, and ongoing treatment. The Respondent submitted that any evidence of rehabilitation must be considered in the context that the Applicant was detained between August 2018 and January 2025. The Respondent pointed to factors suggestive lack of insight by the Applicant, for example:

    (a) The Applicant initially denied indecent assault in relation to the Tasmanian conduct, stating in 2018 that he was being 'stitched up' and that he pleaded guilty on advice of his lawyer; and

    (b) The Applicant initially denied indecent assault or doing anything criminal in Sunshine.

74. In oral evidence to the present Tribunal the Applicant stated that his earlier denials do not represent who he is and stated that he appreciates the effects his conduct could have on children.

75. The Respondent submits that despite the rehabilitation, there remains an unacceptable risk of the Applicant offending.

Summary of evidence before the present Tribunal

76. The Applicant states that the material demonstrates he is not an unacceptable risk of harm to the Australian community and expert and behavioural evidence indicates substantial rehabilitation and low risk of recurrence.

77. The Applicant refers to the November 2025 report by Mr Watson-Munro who refers to the low risk of reoffending with the appropriate supports and protective factors in place. The Applicant refers to his ongoing employment with positive feedback. The

Applicant submits that the risk factors, such as substance use and unmedicated Bipolar Disorder have been addressed through long-term compliance with treatment and abstinence and he has remained drug and alcohol free for several years. His behaviour in detention and community since release has been incident-free. The Applicant submits that the combination of psychiatric stability, structured employment, ongoing therapy and spiritual and community engagement demonstrate strong protective factors mitigating residual risk. The Applicant submits that the evidence establishes that the risk of reoffending is low and acceptable. The Applicant submits that his rehabilitation and mental health management have been sustained for more than seven years, he refers to his ongoing engagement with counsellors and mental health practitioners. The Applicant submits that any residual risk is remote and manageable. The Applicant refers to 'strong compassionate and rehabilitative considerations' favouring his residence, including compliance history, demonstrated remorse and community integration. The Applicant submits that he no longer presents an unacceptable risk.

78. The Applicant provided a statement, dated 12 January 2026. The Applicant acknowledges the full responsibility for his past conduct and expressed remorse for his conduct. The Applicant states that at the time of offending he was suffering from undiagnosed and untreated mental health conditions including PTSD and bipolar disorder, impairing his judgment, emotional regulation and decision making capacity. The Applicant states that during that period he also took illicit drugs and alcohol, exacerbating his mental health symptoms and contributing to his offending behaviour. The Applicant states that during his six-year incarceration and detention he has had an opportunity to understand the causal relationship between mental illness, substance misuse and his past conduct and he understands that his failure to manage these factors presents a risk which he sought to address. The Applicant refers to his long-term abstinence from drugs and alcohol and engagement with professional mental health services, and attendance at Narcotics Anonymous (**NA**). The Applicant states that he has demonstrated insight into causes and consequences of his offending and has undertaken long-term rehabilitation. The Applicant submits that the risk of reoffending is very low. The Applicant refers to his completion of study and ongoing employment, stable accommodation and abstinence from drugs and alcohol as protective factors.

79. There is before the Tribunal a statement from Mentor Program confirming the Applicant's participation in the Mentor Program at Sydney East Community College since May 2025, as well as his participation in upskilling courses. The Applicant presented a reference letter confirming his weekly attendance at NA meetings,

evidence of his attendance at Smart Recovery program and the Applicant provided to the Tribunal a number of character references. The Applicant's spouse Ms NC spoke in oral evidence about the Applicant gaining better insight and states that she is more aware of the indicators impacting her husband.

80. The Tribunal has considered a report by Mr Graeme Randall dated 11 January 2026. The report indicates that the Applicant attended therapy since May 2025. Mr Randall sets out the Applicant's background, noting that he would have been required to hide his sexuality in Sierra Leone and, having experienced a period of 'release' upon arrival in Australia and in the absence of prior education or experience on how to express himself, and in the context of bipolar condition and drug use, the Applicant was unaware of how to appropriately express himself, leading to the offending behaviour. Mr Randall states that the Applicant requires further therapy to formalise his reflections over the previous years and he is likely to need therapy to address childhood experiences and he would benefit from ongoing 'maintenance and monitoring therapy'. Mr Randall has expressed a view that the Applicant does not suffer from a particular mental health condition but his experience of suppression of his sexuality and the threat of deportation have resulted in mild symptoms of PTSD which would require ongoing therapy and monitoring. Mr Randall has expressed the view that the Applicant would require resettlement in a country that is supportive of non-heterosexuals, stating that Nauru is not a safe place for people with non-heterosexual sexual identity and may represent an extreme risk to his mental health and safety. (As there is no evidence that any arrangements are being made for the Applicant's removal to Nauru, nor that such arrangements would be made in the future, the Tribunal considers any assessment of circumstances relating from removal to Nauru to be speculative and unhelpful. The Tribunal is not required to engage in such speculation.) Mr Randall has expressed the view that any fear of removal or incarceration would not act as a protective factor. Mr Randal states that if the Applicant was to be provided with a permanent visa, this would provide a level of security that may reduce the risk of criminal or sexual offending, reducing the risk to the community. He states that ongoing therapy, protective supports and maintenance therapy would also reduce the risk of reoffending.

81. In oral evidence Mr Randall outlined the nature of his engagement with the Applicant stating that in his view, the Applicant found these sessions helpful. Mr Randall stated that he generally suggests multiple sessions. He suggested that once the Applicant is not under the level of stress he experiences now, he may be able to engage

deeper with the sessions. Mr Randall confirmed that in his view, the Applicant was suffering from a mental health condition at the time of offending and that his risk of recidivism has been lowered with treatment. Mr Randall confirmed that the Applicant is aware of the seriousness of his offending and has expressed genuine remorse and shame. Mr Randall states that removal of stress would act as a significant protective factor. Mr Randall confirmed that the Applicant's risk of reoffending is at present low but could increase if the Applicant was in the situation where he is fearful for his life or under extreme stress and if there are no supports are available.

82. The Tribunal has had regard to the report by Mr Watson-Munro dated 4 December 2025. Mr Watson-Munro states that the Applicant has made strong progress in terms of rehabilitation and has expressed ongoing remorse. Mr Watson-Munro refers to the protective factors and has expressed the view that the risk of the Applicant reoffending can be considered as low.

83. In oral evidence Mr Watson-Munro also referred to significant progress the Applicant has made, his genuine ongoing rehabilitation and attendance at various programs. Mr Watson-Munro refers to maturity through the effluxion of time and the 8 year period of the Applicant being drug-free, suggesting full remission. Mr Watson-Munro referred to the Applicant's anxiety over being removed from Australia and the impact of separation from his partner and child. Mr Watson-Munro referred to the diagnoses and substance use as being factors that led to past offending stating that if the Applicant maintains motivation and ongoing treatment, these would act as strong protective factors. Mr Watson-Munro confirmed that the risk of offending was low and remote if the Applicant maintains treatment, remains drug and alcohol free, and maintains employment and other protective factors, but the risk factor would increase if the Applicant was to relapse, in particular into drug use. Mr Watson-Munro noted there was no suggestion of relapse in the past years including while the Applicant has been living in the community. Mr Watson-Munro suggested that life-changing events may result in relapse but the risk of that is minimal.

84. In oral evidence the Applicant stated that he had not used illicit drugs for over 7 years. He states that he found out about his PTSD diagnosis after coming to Australia and started treatment shortly before his detention. He continued treatment with various support groups and with medication (Sodium Valproate and later Mirtazapine). He continues with therapy, despite not using drugs, in order to avoid relapse. The Applicant expressed remorse for his past offending, referring to the 'challenges with his mental health condition' and the past use of illicit drugs which led him to make bad decisions leading to the offending.

85. The Applicant told the Tribunal that he did not appreciate the first victim was a minor but conceded that irrespective of that, his past offending was ‘shameful’. The Applicant stated that based on his insight, all of his offending was wrong. The Applicant conceded that in his evidence to the first Tribunal he denied some of his offending but states that at the time he did not have the extensive supports and discussions that he has now had, and which enabled him to gain better insight into his offending.

86. The Applicant states that he no longer takes drugs and is able to appreciate the wrongful nature of his offending. The Applicant also refers to the driving offending rehabilitation stating he appreciates the risks of such behaviour. The Applicant acknowledged his driving offences and stated that he has now completed a number of programs, so he better appreciates the risk of his offending.

87. The Applicant outlined his present circumstances. He submits that he has effectively engaged with mental health practitioners and has stopped using drugs and alcohol. The Applicant states that since living in the community he has been actively engaged in various programs, has his own accommodation and is gainfully employed. The Applicant acknowledged that he had also completed some counselling around the time of the 2014 offending but told the Tribunal that it was minimal and not as effective as the more recent counselling since he was not properly diagnosed. The Applicant referred to the protective factors such as the presence of his wife and daughter, a stable job, accommodation, a car, etc. The Applicant submits he does not pose any risk of reoffending and that, he claims, is consistent with the professional assessments. The Applicant submits that his last offending was in 2018.

88. The Respondent submits that the nature of harm, should the Applicant commit sexual offences, is so serious that any risk is considered unacceptable. The Respondent submits that even if it accepted that the risk of reoffending is low, the following considerations are relevant:

    (a) Mr Randall considered that the Applicant required further therapy to formalise his reflections over the previous years; and

    (b) The Applicant’s low risk of reoffending is contingent on him having continuing support and ongoing protective factors.

89. The Respondent submits that the Applicant's remorse and insight should be treated with concern in light of the following evidence:

(a) In relation to the incident in Tasmania the Applicant initially denied his criminal conduct and he continued to deny the incident in a March 2018 report and his statement in September 2019; and

(b) Similarly, in relation to the incident in Melbourne, the Applicant initially denied any criminal activity and in his 2019 statement he gave a contradictory version of events.

Assessment of the risk of reoffending

90. The Tribunal has considered the totality of evidence before it. It is of some concern to the Tribunal that the Applicant had previously undertaken counselling, which was mandated by the bail conditions following the 2012 offending. The evidence indicates that at the time of the 2014 offending, the Applicant had completed, or had been undertaking, some counselling and although the Applicant now claims such counselling was brief, that is not necessarily consistent with the information in the sentencing remarks, set out above. It is not apparent that the Applicant's engagement in that counselling had been effective in achieving rehabilitation, noting that the Applicant committed sexually based offending in 2014 and further offences between 2014 and 2018. In these circumstances, the Applicant's completion of various courses and other forms of rehabilitation on which he now relies is given more limited weight that may have been given otherwise, as evidencing his rehabilitation.

91. The Tribunal also notes the submission that was made to Magistrate Ayers that the Applicant was 'not using illegal drugs at all'[4] and, if true, that might suggest that the absence of drug use does not necessarily result in the absence of offending, given the Applicant's subsequent offending.

92. The Tribunal has formed the view that the Applicant has displayed a general disregard for the law. This is evident by the multiple driving offences when the Applicant used to drive when he knew he was disqualified from driving. In 2018 the Applicant unilaterally decided that it was unfair for him to complete the Community Service Order and the Intensive Corrections Order to which he was sentenced and

[4] G-documents, p 79.

he declared he would not undertake the requisite hours. The Applicant's actions seem to suggest that he believed he could decide which laws he would follow and which he could ignore because he perceived these to be unfair.

93. The Tribunal acknowledges the Applicant's multiple statements of remorse and evidence of rehabilitation, including his participation in formal courses and undertaking not to engage in alcohol and drug use and to engage in treatment. The Tribunal also accepts that the Applicant is now receiving treatment for his mental health conditions which he claims to be effective. However, the Tribunal also accepts the Respondent's submission that the likelihood of the Applicant engaging in further criminal conduct is dependent on his ability to comply with his undertakings, that is, to abstain from drugs and alcohol use and to engage in effective treatment for his mental health condition. The Tribunal notes that Dr Eagle and Dr Ellis both state in their reports that the risk of reoffending is low if the Applicant remains compliant with treatment but may be elevated if the Applicant remains untreated and that is also consistent with the evidence of Mr Randall who suggests further treatment and told the Tribunal that the risk of reoffending would be elevated if the Applicant experiences significant stress.

94. Overall, the Tribunal accepts the evidence that the Applicant had continued with treatment during his detention and following release into the community. The Tribunal accepts that the Applicant has completed a multitude of programs and, importantly, that he has been diagnosed and treated for mental health conditions that may have been undiagnosed during the past offending. The Tribunal acknowledges the Applicant's expression of remorse, shame and insight.

95. The Tribunal finds that the risk of reoffending is low (as long as treatment is continued*)*. That is consistent with the professional opinions expressed by various health professionals. However, the Tribunal is of the view that sexual offending against others, and in particular, any form of sexual offending against children, constitutes such conduct that, if it were to be repeated, it is so serious that *any* risk that it may be repeated is unacceptable.

96. Thus, despite the Tribunal's finding that there is a low risk of reoffending, the Tribunal finds that protection of the community weighs strongly in favour of exercising discretion to refuse to grant the visa.

Whether the conduct engaged in constituted family violence

97. Paragraph 8.2 of the Direction provides consideration for conduct constituted as family violence. There is no evidence to indicate that the Applicant had committed family violence offending. This consideration is neutral.

The strength, nature, and duration of ties to Australia

98. Paragraph 8.3 of the Direction provides:

> *(1) Decision-makers must consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.*
> *(2) Where consideration is being given to whether to cancel a non-citizen's visa or revoke the mandatory cancellation of their visa, the decision-maker must also consider the strength, nature and duration of any other ties that the non-citizen has to the Australian community. In doing so, decision-makers must have regard to*
> *a. How long the non-citizen has resided in Australia including whether the non-citizen arrived as a young child, noting that*
> *i. Less weight should be given where the non-citizen began offending soon after arriving in Australia; and*
> *ii. More weight should be given to time the non-citizen has spent contributing positively to the Australian community.*
> b. *The strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia*.

99. The Applicant has been living in Australia for a period of approximately 15 years. He did not arrive as a child. The Applicant's offending commenced soon after his arrival in Australia, so the Tribunal gives less weight to the length of the Applicant's residence in Australia given that he began offending soon after arriving in Australia.

100. The Applicant submits that he has worked and contributed to Australia. He refers to his recent positive contribution, including the payment of taxes, and his present circumstances stating that has secured stable accommodation, purchased a car, abstained from drugs and alcohol and complied with the visa conditions. The Applicant refers to his attendance at NA, mentoring programs at a Community College and attendance at upskilling courses and his completion of a higher degree.

The Applicant submits that there is a recent period of community contribution and stability.

101. In his response to the NOICR the Applicant refers to his relationship with his wife, who is an Australian citizen, and states that there would be 'grave' impact on his wife and child if his visa is refused. The Applicant states that his partner relies on him in providing caring to support their daughter. The Applicant stated that there are cultural differences that his wife cannot fulfill. The Applicant states that his wife and daughter require his financial support and moral support. (The oral evidence before the Tribunal suggests that Ms NM has been providing financial support to the Applicant, rather than relying on his support.) The applicant stated that his wife suffers from depression and needs support. The Applicant stated on the form that his daughter lives in Australia and that they have daily contact. The Applicant referred to various family members, including his mother, siblings and another adult child, nieces and nephews, residing overseas. The Applicant stated that there would be a devastating impact on his wife and 'gravely significant' impact on his daughter if his visa is refused as it would undermine his daughter's determination and confidence to fulfil her potential.

102. The Applicant in his response to the NOICR refers to his past employment in Australia and his involvement within the community, stating that he has many connections within the community.

103. The delegate notes that in his multiple submissions to the Department, and in his interactions with Mr Watson-Munro the Applicant repeatedly implied that his wife and child are resident in Australia, however, the Departmental records show that they had been residing overseas since November 2019. The delegate notes that the Applicant admits to being 'incorrect' when claiming that his wife and child were living in Australia, several times, after their departure from Australia. The delegate wrote to the Applicant in January 2025 seeking his comments on the above information. The Applicant replied by stating, essentially, that his wife took up a job in Bangladesh to ease the financial strain due to his incarceration but planned to return to Australia, with their daughter, once her contract in Bangladesh ended in 2025. The Applicant stated that he has regular contact with his wife and daughter who had visited Australia multiple times. The Applicant also provided a statement from his wife Ms NC who stated that discrepancies can be attributed to memory gaps and challenges associated with the Applicant's ongoing mental health issues.

104. In his more recent submission to the Tribunal the Applicant states that his wife and daughter currently reside outside of Australia due to his wife's employment and

financial circumstances, but their stated intention is to reunite and live together in Australia. The Applicant submits that although his immediate family do not reside in Australia at present, the decision on his visa would have direct practical impact on his family unit's ability to re-establish family life in Australia and end prolonged separation. The Applicant refers to his Australian citizen wife and daughter and their intention to re-establish family life in Australia. The Applicant refers to their frequent contract and emotional dependence. The Applicant refers to his community links and integration. The Applicant refers to long standing personal ties. He submits that his ties include immediate family and community supports, employment, accommodation, mentoring and local relationships.

105. In the SFIC the Respondent accepts that the Applicant has strong and indefinite ties to Australia in relation to his wife and child, however, the Respondent notes that the wife and daughter have been living outside of Australia since November 2019. The Respondent also notes that (if the visa is not granted), the Applicant will not be removed from Australia and will remain a holder of a BVR.

106. The Respondent submits that since the Applicant's wife and daughter are not presently in Australia, any impact on them should not be treated and afforded the same weight as a 'primary consideration' but should be considered as an 'other' consideration. The Respondent acknowledges that the Applicant's wife and daughter represent a significant tie to Australia, but the Respondent submits that this should be given only moderate weight in the circumstances where:

    (a) From about 2016 the Applicant moved to an area away from his family and did not live with his family;

    (b) Since May 2019 the Applicant's wife and daughter resided outside of Australia making only brief visits to Australia; and

    (c) Since the Applicant's release from immigration detention in January 2025 his family have not returned to Australia, and their return remains uncertain given the different claims made in various statements.

107. In oral evidence the Applicant told the Tribunal that his wife and daughter plan to return to Australia in mid-2026 as his wife's contract ends and his daughter has expressed the wish to return to Australia. That is also the evidence of Ms NM. The Applicant also suggested that the main decision regarding their return is yet to be made by his wife, based on all the circumstances.

108. The Tribunal is mindful that the Applicant claimed to the previous Tribunal that his family would be returning to Australia in 2025 and this has not taken place. The Applicant told the Tribunal that his wife could not return to Australia largely due to the financial constraints as his wife is the main breadwinner. The Applicant referred to his wife's senior role stating that he 'hopes' once her contract expires, she will make the decision whether to return to Australia and that 'ideally' she will return to Australia, but he claims that is the decision that his wife needs to make and there are a number of considerations.

109. The Applicant's evidence suggests to the Tribunal that there is no certainty that the Applicant's wife and daughter will return to Australia in 2026 or, indeed in the immediate future. On the Applicant's own evidence, there are a number of considerations that Ms NM needs to assess before making the final decision. The Applicant has not suggested to the Tribunal that the family have made any practical arrangements, such as finding accommodation or a school for his daughter. The Applicant's evidence to the Tribunal is that once the final decision to return to Australia is made, his wife will make these arrangements but at present, there are no arrangements in place, and no decision has been made yet about the family's return.

110. Ms NM's evidence to the Tribunal was somewhat different as she told the Tribunal that she has applied for jobs in Australia but is yet to hear back and she also made inquiries about schools. The Applicant seemed unaware of these steps.

111. Ms NM told the Tribunal that if the financial considerations permit, she and her daughter plan to return to Australia and if the Applicant is given a permanent visa, they would definitely return to Australia. Ms NM said that now that the Applicant is in the community, it 'makes sense' for the family to be reunited in Australia. Ms NM states that her daughter wants to live in Australia and it not safe for them to remain in Bangladesh. She said that her visa in Bangladesh is unlikely to be extended beyond September 2026 and if she was to live overseas, she may have to consider another country.

112. As noted above, the Applicant does not seem to have been fully aware of the steps that Ms NM claims to have taken to enable her return to Australia. The Applicant's evidence is that the final decision is yet to be made. On the evidence before it, the Tribunal cannot be satisfied Ms NM and the child will return to Australia in the immediate future. The Tribunal acknowledges the evidence that they may wish to do that, but the Applicant's own evidence is that there are several factors that need to be considered and that the decision for their return is yet to be made. That is,

whether or not the Applicant is granted the visa, he may continue to be geographically separated from his wife and daughter.

113. The Tribunal accepts that the Applicant's wife and daughter are Australian citizens and have the right to reside in Australia permanently. They were in Australia at the time of the hearing but do not appear to be overall 'resident' in Australia at present, given their long-term absence from the country. The Tribunal accepts that the uncertainty of the Applicant's visa status, and the possibility of his future removal from Australia, may adversely impact not only the Applicant, but his wife and daughter. The Tribunal gives this factor somewhat less weight in favour of the Applicant in circumstances where there is no certainty about the wife and daughter's return to Australia and the family being reunited, but nevertheless the Tribunal accepts that the Australian citizen wife and daughter represent strong family ties in Australia. The Tribunal also accepts the Applicant has formed ties through his employment, education and community participation. The Tribunal accepts the Applicant has meaningful community and employment ties in this country in addition to the family ties. The Tribunal gives this consideration significant weight against using discretion to refuse to grant the visa.

The best interests of minor child

114. Paragraph 8.4(1) of the Direction requires a decision-maker to make a determination about whether cancellation or refusal under section 501, or non-revocation under section 501CA is in the best interests of a child affected by the decision.

115. Paragraphs 8.4(2) and 8.4(3) respectively contain further considerations. The former provides that for their interests to be considered, the relevant child (or children) must be under 18 years of age at the time when a decision about whether or not to refuse or cancel the visa or not to revoke the mandatory cancellation decision is being made. The latter provides that if there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

116. Paragraph 8.5(4) sets out the factors that must be considered when considering the best interests of the child. These include

> *(a) The nature and duration of the relationship between the child and the non-citizen*
> *(b) The extent to which the non-citizen is likely to play a positive parental role in the future*

(c) The impact of the non-citizen's prior conduct, and likely to future conduct
(d) The likely effect that any separation from the non-citizen would have on the child
(e) Whether any other person already fulfils a parental role
(f) Any known views of the child
(g) Evidence that the child has been, or is at risk of being subject to or exposed to family violence
(h) Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct

117. The Applicant's minor daughter is an Australian citizen. As noted above, she lives overseas and there is some uncertainty about the date of her proposed return to Australia.

118. In his response to the NOICR the Applicant stated that his daughter is 14, that he speaks to her daily and helps with homework and gives her advice. The Applicant states that prior to his detention he would provide practical support to his daughter as well as financial support for schooling and personal items. The Applicant stated that his daughter struggles with significant psychological and emotional challenges since his detention and this had affected her academic performance.

119. In his SFIC prepared in January 2026 the Applicant submits that he has a parental relationship with his daughter despite the lengthy physical separation and he refers to statements by his partner and daughter. The Applicant refers to his ability to contribute and the consequences of his past conduct (resulting in his detention and separation from the family) on his daughter's welfare. The Applicant states that ongoing separation has been harmful to his daughter while his physical presence would be central to his daughter's stability. In oral evidence the Applicant spoke about close and supportive relationship with his daughter and stated that the separation has had a significantly adverse impact on her.

120. Ms NC in her statement to the delegate dated 26 November 2024 refers to the adverse effect of separation on the Applicant's daughter, stating she has been diagnosed with developmental dyslexia, attachment disorder and anxiety and has been confused and devastated due to the indefinite separation.

121. In her statement dated 8 January 2026 Ms NC states that the current separation is the result of legal proceedings, visa uncertainty and financial costs but their intention has always been to live together as a family in Australia. Ms NC refers to the sustained emotional and psychological burden on her daughter who is at a critical developmental stage and the effect of separation from her father. Ms NC states that

the Applicant has demonstrated genuine insight and undertaking sustained rehabilitation over the years, has abstained from drugs and alcohol, received mental health treatment and complied with reporting obligations, has been employed and has not reoffended. Ms NC states that the factors that had previously contributed to the offending have been actively addressed and managed. Ms NC submits that the risk the Applicant poses to the community is negligible and actively managed while the cost of continued uncertainty to the family is high. The Applicant's daughter M has also prepared a statement in January 2026 outlining the effect of separation from her father.

122. In oral evidence Ms NC confirmed that she has not been living permanently with the Applicant since 2014, before his detention, stating that they were previously living apart due to work requirements, but they were not separated. Ms NM spoke about the impact of lack of stability and the effect on her daughter.

123. In his written response to the NOICR the Applicant also refers to the effect of separation upon the child and submits that the mother cannot provide the child with the connection to the African culture and its heritage. The Applicant submits that there may be permanent developmental damage to the child if the child cannot live with the Applicant. The Applicant submits in his submission to the first Tribunal that he and his wife have different cultural and linguistic backgrounds, and his daughter has a right to inherit both, so neither parent can substitute for the other.

124. The Respondent submits in the submission to the first Tribunal that the best interests of the Applicant's daughter should be afforded moderate weight in favour of the Applicant as the daughter does not currently reside in Australia, there is no set date of return and her impending date of reaching adulthood in November 2028. The Respondent also notes that the Applicant has been able to maintain effective electronic communication with his daughter. In the submission to the present Tribunal the Respondent submits that the best interest of the Applicant's child should be considered as an 'other' consideration given that the child resides outside of Australia. The Respondent submits that the weight to be afforded in favour of the Applicant should be limited, having regard to:

    (a) Long periods of absence and limited meaningful contact between the Applicant and his daughter;

    (b) The daughter reaching majority in November 2028;

(c) If the daughter was to return to Australia, she would not be separated from the Applicant, even if his permanent residence in Australia would be uncertain; and

(d) The fact that the child's mother fulfils a parental role.

125. The Tribunal is prepared to accept that despite the separation, the Applicant has maintained a meaningful parental role in relation to his daughter. The Tribunal accepts that it is in the best interests of this child that she is able to live with her father, although having regard to the factors above, it is not clear that this will occur, at least in the immediate future, irrespective of the outcome of this review, if the child continues to reside overseas with her mother and, conversely, if the child returns to Australia, she will be able to reside with the applicant who lives in the community.

126. The Tribunal finds that this consideration weighs heavily against the exercise of discretion to refuse to grant the visa.

Expectations of the Australian community

127. Sub-clause 8.5 of Direction 110 provides that the Australian community expects non-citizens to obey Australian laws while in Australia. Paragraph 8.5(1) of the Direction sets out the government's view in relation to community expectations:

> *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.*

128. Paragraph 8.5(3) of the Direction provides that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

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

> *This consideration is about the expectations of the Australian community as a whole, and in this respect, decision-makers should proceed on the basis of the Government's views as articulated above,*

without independently assessing the community's expectations in the particular case.

130. Paragraph 8.5(2) contains a statement of the Government's views as to the expectations of the Australian community, which operates to ascribe to the whole of the Australian community an expectation aligning with that of the executive government which the decision maker must have regard to.

131. In *Ismail*,[5] the High Court said (regarding the same primary consideration as it appeared at paragraph 8.4 in the former Direction 90):

> *Further, para 8.4 does not stipulate that, in assessing what weight is to be given to the expectations of the Australian community, the decision maker must attribute to that hypothesised community knowledge of the personal circumstances of the Applicant for the visa as known to the delegate. To the contrary, para 8.4(4) stipulates that the decision maker is to proceed on the basis of the Australian Government's views as set out in para 8.4 "without independently assessing the community's expectations in the particular case.*
>
> *Paragraph 8.4(4) is to be understood as directing the decision maker not to attempt to infer what the expectations of the Australian community would be "in the particular case" (that is, with the knowledge of the delegate about the Applicant's personal circumstances), but to proceed on the basis that the views of the Australian Government set out in para 8.4(1)- (3) are the relevant norm described as the expectations of the Australian community...*

132. In his response to the NOICR the Applicant stated that his visa was cancelled and he has spent time in detention because of 'bad choices that he made'. The Applicant states that he is now fully aware of what the community expects from him and he accepts that in order for him to live in Australia, he must abide by the Australian laws and cannot commit further offences. The Applicant states that he is proud of the actions he has taken in recent years to address and mitigate past offending, and he maintains commitment to therapies, medications and online courses. The Applicant

[5] *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 2 at [51]-[52].

states that he has not taken illicit drugs or alcohol since the day of his imprisonment in May 2018.

133. The Applicant has committed multiple offences, including sexually based offending. Given the nature of the Applicant's offending, particularly sexual offending against a minor, and the potential harm to others caused by any repeat of such conduct, the Tribunal is of the view that the community expectations weigh heavily in favour of exercising the discretion to refuse the grant of the visa. The Tribunal gives this consideration significant weight in favour of discretion.

Other Considerations

134. It is necessary to look at the other considerations listed in section 9 of the Direction.

Legal consequence of the decision

135. The legislative provisions relevant to this case have been considered by the Tribunal elsewhere and are adopted here from earlier decisions.

136. Paragraph 9.1.1(2) of the Direction directs a decision-maker to take into account the following:

> *Section 197C(3) ensures that, except in the limited circumstances specified in section 197C(3)(c), section 198 does not require or authorise the removal of an unlawful non-citizen to a country in respect of which a protection finding has been made for the non-citizen in the course of considering their application for a protection visa. This means the non-citizen cannot be removed to that country in breach of non-refoulement obligations, even if an adverse visa decision under section 501 or 501CA is made for the non-citizen and they become, or remain, an unlawful non-citizen as a result. Instead, the non-citizen must remain in immigration detention as required by section 189 unless and until they are granted another visa or they can be removed to a country other than the country by reference to which the protection finding was made.*

137. The Applicant is the subject of the protection finding and such a finding implies that Australia owes protection obligations to the Applicant. That means that the Applicant cannot be removed to his home country.

138. The Applicant submits that he cannot be removed to a third country in Africa due to his homosexuality (he refers to relevant country reports). The Tribunal is mindful that the applicant will not be removed to his own country and there is no evidence before the Tribunal to indicate that any arrangements have been made, or indeed, any consideration given to the applicant's removal to a third country in Africa.

139. Evidence before the Tribunal indicates that the Applicant has been granted a Bridging R visa (**BVR**). If the Applicant is not granted a substantive visa, he is likely to remain a holder of BVR unless there is a removal pathway available. This is set out in the *Migration Amendment Act 2024* (Cth) and the *Migration Amendment (Removal and Other Measures) Act* (Cth) 2024 which provide that a BVR may cease to be in effect once a mandatory notice is given to a visa holder by the Minister that section 76AAA applies to the visa holder. The Applicant would be required to cooperate with efforts to ensure his prompt and lawful removal and may face a mandatory sentence of imprisonment if he does not cooperate with the Minister's direction or if there is otherwise a breach of visa conditions. The Applicant states that he would not cooperate with his removal, which would lead to prolonged immigration detention. In the absence of any evidence concerning steps being taken to remove the applicant, the Tribunal cannot speculate as to what will take place.

140. The Tribunal accepts that if the Applicant's visa is refused, he will not, practically, have the possibility of seeking other Australian visas in the future. The Tribunal also accepts that if the visa is not granted, the Applicant will face the uncertainty of his visa status, given the possibility of removal and the Tribunal accepts that this in itself may cause hardship to the Applicant and others.

141. The Tribunal finds that this consideration weighs somewhat in favour of the visa grant.

Extent of impediments if removed

142. Paragraph 9.2 of the Direction directs a decision-maker to take into account the extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

    a) the non-citizen's age and health;

b) whether there are any substantial language or cultural barriers; and

c) any social, medical and/or economic support available to that non-citizen in that country.

143. The Applicant is the subject of a protection finding and, as such, cannot be removed from Australia to his home country. Any hardship arising from removal to a third country is addressed below.

144. This consideration is neutral

Impact on Australian business interests

145. Paragraph 9.3.1 of Direction 110 directs a decision-maker to take into account the following:

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

146. In his submission to the delegate the Applicant refers to his past employment and community involvement stating that he had served as a productive member of the community and its business interest. The Applicant states that he is a 'smart and intelligent individual' who has recently completed a Masters degree and he will contribute productively to the Australian economy and business interests if granted a visa. The Applicant told the Tribunal about his present employment. In the Tribunal's view, the Applicant's claims are entirely speculative. There is no evidence before the Tribunal to indicate that a decision to refuse to grant the visa to the Applicant would adversely impact Australian business interest or significantly compromise the delivery of a major project or of an important service. This consideration is neutral.

Other considerations

147. As noted above, the Applicant cannot be removed from Australia as he is the subject of a protection finding. However, there is a possibility that the Applicant may be removed to a safe third country. While it is not for the Tribunal to speculate about

the likelihood of that occurring, the Tribunal has considered the hardship that may be caused to the Applicant if he is removed from Australia.

148. The Applicant is 50 years of age. In his response to the NOICR the Applicant refers to having Hepatitis B and bipolar (mild). In his January 2026 statement to the Tribunal the Applicant refers to receiving regular treatment for various conditions including enlarged prostate and fatty liver and investigations relating to a lipoma. The Applicant presented to the Tribunal a number of medical reports.

149. The Applicant states that if returned to his country of citizenship, he would be harassed, abused, assaulted, discriminated against, possibly incarcerated and persecuted because of his sexuality. The Applicant states that the challenges he faced with mental health would be trigged and exacerbated. The Applicant submits that the triggers surrounding his mental health condition will exacerbate if he is removed to another country and he would 'undoubtedly' face discrimination, harassment, persecution, shame and embarrassment because of his sexuality. The Applicant states that he fits the profile that will be vulnerable to suicidal ideation. The Applicant referred to an incident where he was posted on a job overseas but was removed from that country because of his criminal conviction. The Tribunal acknowledges that evidence but is mindful that the Applicant is the subject of a protection finding and cannot be removed to his country of citizenship.

150. Ms NM spoke in oral evidence about the hardship the Applicant would experience if he was removed to Nauru and Mr Randall also spoke about the extreme stress that is associated with removal to another country. In the Tribunal's view, there can be no certainty as to whether the Applicant would be removed to any other country and, if so, what that country might be. It would be speculative to determine what the applicant's circumstances might be at the time when a removal pathway might become available. In the Tribunal's view, it is equally difficult to determine the nature and strength of any adverse impact of removal in circumstances where no determination has been made to remove the Applicant to a third country and, importantly, where such third country has not been identified.

151. The Applicant states that his wife and daughter will face 'emotional breakdown' if he is removed from Australia. The Applicant refers to the impact on his friends in Australia if the visa is not granted. In his submission to the delegate the Applicant refers to a number of Tribunal decisions. The Tribunal considers such comparisons unhelpful firstly, because Tribunal decisions have no precedential value, secondly, because each case must be determined on its own facts which are necessarily different for each Applicant and, thirdly, because the Applicant's reliance on certain

cases is highly selective as there is a volume of other Tribunal decisions where different conclusions have been reached.

152. The Tribunal is prepared to accept that the applicant's wife and daughter may be impacted by the applicant's removal from Australia. As noted above, the Tribunal gives this consideration less weight in favour of the applicant where, firstly, they do not reside in Australia and the family have been living separately for a number of years, secondly, where there is no certainty as to whether Ms NC will return to Australia or seek employment in another country and, thirdly, where there is no certainty as whether, when and where the applicant may be removed.

153. The Tribunal generally accepts that removal of the Applicant to another country may cause emotional and practical hardship to the Applicant and his immediate family. There may also be some negative impact on others, such as friends or co-workers. The Tribunal finds that these matters weigh against the exercise of discretion to refuse the visa grant.

154. The Respondent submits that since the Applicant's wife and child are not resident in Australia, the impact on them should be an 'other' consideration and given less weight than a primary consideration. In the Tribunal's view, whether these factors are treated as a primary consideration or as another relevant consideration, there would be no difference to the outcome of this review. The Tribunal has given considerable weight to the best interests of the Applicant's daughter, which the Tribunal has determined weighs in favour of visa grant, and to the adverse impact of the decision not to grant on the Applicant's spouse and child. However, despite giving considerable weight to these factors as being in favour of the Applicant, the Tribunal has determined that other considerations outweigh these ones.

CONCLUSION

155. The Tribunal has had regard to the factors set out in the Direction and the Applicant's circumstances. The Tribunal has found that the Applicant had engaged in very serious offending, as his offending involved sexual conduct against minors and other predatory sexual conduct. The Tribunal has formed the view that, should the Applicant reoffend, this may be a significantly detrimental impact on the victims. These factors weigh strongly in favour of exercising the discretion to refuse.

156. As the Tribunal has formed the view that there is a low risk of reoffending, particularly having regard to the expressed views of the health professionals, the Applicant's engagement in rehabilitative programs, absence of recent offending,

claimed abstinence from drugs and alcohol and the protective factors identified. The Tribunal accepts the evidence that there is no possible lower classification of risk. However, the Tribunal has formed the view that the nature of past offending (sexual violence against children and predatory sexual behaviour) is such that any risk of reoffending is unacceptable. The Tribunal has determined that the protection of the community weighs heavily in favour of the discretion to refuse.

157. The Tribunal has also found that community expectations weigh in favour of the discretion, and, given the nature of the offending, the Tribunal gives this consideration significant weight in favour of the discretion.

158. The Tribunal accepts that it is in the best interests of the Applicant's minor daughter that his visa is not cancelled. The Tribunal gives this considerable weight in favour of the visa grant.

159. The Tribunal accepts that the Applicant has significant ties in Australia, including his family (at least in the longer term if they decide to return to Australia), employment and social ties, and that his Australian ties should be given weight against the exercise of discretion. The Tribunal also accepts that there may be considerable impediment if the Applicant was removed to a third country (noting that he cannot be removed to his home country) and the uncertainty of the immigration status itself may cause distress to the Applicant and those around him. The Tribunal places weight on the legal consequence of the decision, including the limitations on the Applicant's future visa options. These factors weigh strongly against the exercise of discretion.

160. In the particular circumstances of this case, the Tribunal has decided to give the greatest weight to the protection of the community and the expectations of the community. The Tribunal has decided that these considerations outweigh others that weigh in favour of the Applicant.

161. Having regard to all the circumstances, the Tribunal has decided that the discretion to refuse to grant the visa be exercised. The decision under review is affirmed.

DECISION

162. The Tribunal affirms the decision under review.

Date(s) of hearing:	**9 and 10 February 2026**
Counsel for the Applicant	**Dr J. Donnelly**
Solicitors for the Applicant:	**Ziya Zarifi, Zarifi Lawyers**
Solicitors for the Respondent:	**Mr Seviapan, Attorney General Solicitors**