Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Werner VENTER**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2025/6850**
Tribunal:	**Senior Member A Murphy**
Place:	**Melbourne**
Date:	**26 February 2026**
Decision:	**The Tribunal sets aside the decision under review and in substitution decides that the applicant's Class BW (subclass 857) Regional Sponsored Migration Scheme visa not be cancelled under section 501(2).**

…..……[SGD]……

Senior Member A Murphy

Statement made on 26 February 2026 at 10:04am

Catchwords

MIGRATION *- decision of delegate of Minister to cancel the applicant's Regional Sponsored Migration Scheme visa under s 501(2) of the Migration Act 1958 (Cth) - character test - Direction no. 110 -primary and other considerations - protection of Australian community - nature and seriousness of criminal offending - risk to the Australian community should the Applicant commit further offences or engage in other serious conduct - strength, nature and duration of ties to Australia - best interests of children - expectations of the Australian community - legal consequences of decision - extent of impediments if removed – impact on Australian business interests – decision under review set aside and substituted with the decision not to cancel the applicant's visa*

Legislation

Administrative Review Tribunal Act 2024 (Cth)
Migration Act 1958 (Cth)
Migration Regulations 1994 (Cth)

Cases

BSJ16 v Minister for Immigration and Border Protection [2016] FCA 1181
Hambledon v Minister for Immigration and Border Protection [2018] FCA 7
Minister for Immigration, Citizenship and Multicultural Affairs v RGKY [2022] FCAFC 177
Minister for Home Affairs v HSKJ [2018] FCAFC 217; (2018) 266 FCR 591
RCLN v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 876
Suleiman v Minister for Immigration and Border Protection [2018] FCA 594

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 under section 501CA (dated 7 June 2024)

The names of the applicant's partner, children, family members and lay witnesses have been substituted with pseudonyms in this published decision. Any references appearing in square brackets indicate that information has been removed from this decision and replaced with generic information so as not to identify those individuals.

Statement of Reasons

1. The applicant seeks review of the decision by a delegate of the respondent (the respondent) dated 9 October 2025 to exercise the discretion to cancel the applicant's Class BW (subclass 857) Regional Sponsored Migration Scheme visa (the visa) under s 501(2) of the *Migration Act* 1958 (Cth**) (the Act).**

BACKGROUND

2. Mr Venter (the applicant) is a 34-year-old male citizen of South Africa, who arrived in Australia in 2010, aged 19, as the holder of a subclass 857 visa pursuant to his father's sponsored Temporary Work (Skilled) visa.[1]

3. On 27 July 2017, the applicant pleaded guilty to and was convicted of the following offences:

   (a) One Charge of *Sexually Penetrated a Child over 13 and Under 16*: Criminal Code (WA) s 321(2); and

   (b) Five charges of *Used electronic communication with intent to expose a person under the age of 16 years, to indecent matter*: *Criminal Code* (WA) s 204B(2)(a)(ii).[2]

4. He was sentenced to 9 months imprisonment on the first charge and 3 months imprisonment on each of the remaining five charges to be served concurrently, being a total effective term of 12 months' imprisonment, that sentence being wholly suspended for 12 months.[3]

5. While the notices are not before the Tribunal, the Minister's SOFIC states that on 20 June 2020 and 27 August 2020, the applicant was notified that consideration would be given to

[1] Respondent's SOFIC [6]
[2] National Criminal History Check dated 1 July 2025 Hearing Book [104]
[3] Ibid

whether to cancel his visa on character grounds.[4] Between August and September 2020, the applicant provided submissions and supporting documentation as to why his visa should not be cancelled.[5] The materials available to the Tribunal do not indicate that the Minister made a decision to either cancel or not cancel the applicant's visa after receiving these submissions.

6. On 14 July 2025, the Minister sent the applicant another notice of intention to consider cancellation of his visa on character grounds. On 8 August 2025 the applicant responded and made representations as to why his visa should not be cancelled. On 6 December 2025, a delegate of the Minister decided to cancel the applicant's visa and that decision is the subject of the current review.

7. On 10 December 2025 the applicant was notified of the delegate's decision to cancel his visa and taken into immigration detention where he has remained since.

8. The Tribunal hearing was held on 18 and 19 February 2026 by video conference. The applicant was represented and the Tribunal heard evidence from the applicant's partner, father, sister, human resources manager and forensic psychologist Mr Bruce Hamilton.

LEGISLATIVE FRAMEWORK

9. Under s 501(2) of the Act, the Minister may cancel a visa that has been granted to a person if:

   (a) the Minister reasonably suspects that the person does not pass the character test; and

   (b) the person does not satisfy the Minister that the person passes the character test.

10. Pursuant to s 501(6) of the Act, a person does not pass the character test if they have a substantial criminal record in the circumstances set out in s 501(7). These circumstances include that the person has been sentenced to a term of imprisonment of 12 months or more

[4] Minister's SOFIC [12]
[5] Hearing Book [129] – [215]

(s 501(7)(c) of the Act) and. This applies no differently for a sentence imposed for two or more offences (s 5AB of the Act).

11. As noted above, on 27 July 2017 the applicant was sentenced to a term of 12 months imprisonment for sexually based offences involving a child. There is no dispute that he has a substantial criminal record and does not pass the character test. The remaining issue is whether the discretion to cancel the visa should be exercised pursuant to s 501(2).

THE DIRECTION

12. Under s 499(1) of the Act, the Minister may give written directions to a person or body having functions or power under the Act, and a person or body must comply with any direction given by the Minster (s 499(2A)).

13. The Minister has issued Direction 110, *Visa refusal and cancellation under s 501 and revocation of a mandatory cancellation of a visa under section 501CA* ('the Direction'). It is expressed to apply to the Administrative Appeals Tribunal in making a decision under s 501 or s 501CA of the Act, and the Tribunal must comply with the Direction.

14. Clause 5.2 of the Direction provides principles to provide a framework to approach decision making. These are:

    (1) Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.

    (2) The safety of the Australian Community is the highest priority of the Australian Government.

    (3) Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.

    (4) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in

Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

(5) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time.

(6) With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia may afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age.

(7) Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation.

(8) The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation, even if the information available at the time of consideration suggests that the non-citizen does not pose a measurable risk of causing physical harm to the Australian community.[6]

15. The Direction also sets out matters to be considered in refusing or not revoking the cancellation of a visa. It requires certain primary and other considerations to be considered in making a decision, and states that in taking these into account that:

(1) In applying the considerations (both primary and other), information and evidence from independent and authoritative sources should be given appropriate weight.

(2) The primary consideration … (protection of the Australian community) is generally to be given greater weight than other primary considerations. Otherwise, primary

[6] Minister for Immigration, Citizenship and Multicultural Affairs (Cth), *Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation under section 501CA* (dated 7 June 2024) cl 5.2 ('the Direction')

considerations should generally be given greater weight than the other considerations.

(3) One or more primary considerations may outweigh other primary considerations.[7]

THE PRIMARY CONSIDERATIONS

16. The Direction contains five primary considerations, which 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;

(5) expectations of the Australian community.[8]

17. I have considered each one in turn, keeping in mind the principles in cl 5.2 of the Direction.

The protection of the Australian community

18. The Direction requires decision-makers to keep in mind that the safety of the Australian community is the highest priority of the Australian Government and that the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens.[9]

19. The Tribunal is directed to have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.[10]

---

[7] Ibid cl 7.
[8] The Direction, cl 8.
[9] Ibid cl 8.1(1).
[10] Ibid.

20. 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. [11]

Nature and seriousness of the conduct

Criminal offending

21. The applicant's criminal offending is set out in full in the National Criminal History Check dated 1 July 2025:

(a) On 20 May 2013, *Exceed 0.05g alcohol per 100ml of blood – fined $200*;

(b) On 25 November 2013, *Exceed speed limit in a speed zone; Between 20 and 29km/hr* and *Reckless Driving (Inherently Dangerous) – fined $300* and *Unauthorised Driving by Learner Drivers – fined $50*;

(c) On 21 July 2014, *No authority to Drive – Suspended – fined $400;*

(d) On 27 July 2017*, Sexually Penetrated a Child over 13 and Under 16: Criminal Code* (WA) s 321(2) and five counts of *Used electronic communication with intent to expose a person under the age of 16 years, to indecent matter*: *Criminal Code* (WA) s 204B(2)(a)(ii) - sentenced to a total effective term of 12 months imprisonment, suspended for 12 months;

(e) On 20 October 2017, *No authority to drive (fines suspended) – fined $200*;

(f) On 22 May 2019, *Fail to comply with reporting – conviction recorded - fined $400;*

(g) On 7 July 2020, *Producing dangerous drugs*, *Possessing dangerous drugs*, *Possess utensils or pipes etc that had been used – no conviction recorded, recognisance $1000, good behaviour period 12 months.*

[11] Ibid cl 8.1(2).

22. The circumstances of the applicant's most serious offending, being sexually based offences involving a child, are set out in the sentencing remarks of the District Court of Western Australia dated 27 July 2017. In summary:

- The applicant pleaded guilty to one count of sexual penetration of a child between the age of 13 and 16 years, two counts of using electronic communication to expose that victim to indecent matter and three counts of using electronic communication with intent to procure the victim to engage in sexual activity;

- The offending took place between 14 May and 30 June 2016 and the victim was aged 15 years and eight months at the commencement of the offending, while the applicant was 24 years old;

- The applicant met the victim at a birthday party for the victim's mother to which the applicant was invited and the applicant believed the victim to be at least 18 years of age because she was smoking and drinking in her family home in the presence of her mother and her mother's partner;

- The next day the applicant and the victim engaged in consensual intercourse that occurred without any coercion on the applicant's part;

- The second and third offences took place on 21 May 2016 when the applicant sent the applicant photographs of his penis and asked her to show him her vagina;

- The fourth offence took place on 4 June 2016 when the applicant again sent the victim a picture of his penis via Facebook messenger. The fifth offence was committed on the same day when the applicant sent numerous explicit messages to the victim requesting sex and that she send him photographs of herself;

- On 7 June 2016 the applicant was confronted by the victim's family who accessed the victim's mobile phone in her absence and discovered the offensive messages and by that time at least the applicant knew that the victim was only 15 years old;

- Notwithstanding this confrontation, the applicant continued to contact the victim and the sixth offence was committed on 30 June 2016.

- The applicant was arrested on 1 July 2016 and participated in an interview but made no admissions.[12]

23. The sentencing judge made the following comments about the applicant's conduct:

> *Although your messages were criminally wrong they did not constitute cyber predatory behaviour in the way that most offences of this kind before this court do. They were merely incidental to an age inappropriate consensual sexual relationship.*
>
> *You accept that your actions were wrongful. You acknowledge that they involved poor judgement on your part. You accepted responsibility and expressed remorse for your wrongdoing.*
>
> *. . .*
>
> *You have no record of prior offending. I accept that your behaviour was initially spontaneous and resulted from a belief that the victim was of age. The gravity of your offending lies in persisting in the relationship after discovering that she was only 15.*
>
> *I accept that the victim was not so young when she experienced these events, that the offences can be said to have been obviously harmful. However, as has been submitted the law operates to protect children from age inappropriate sexual encounters and indeed to protect children from themselves.*
>
> *Age inappropriate sexual activity is harmful because it tends to be exploitative. That is, engaged in purely for self-gratification on the part of the older person. It thereby has the effect of diminishing the self-respect of the victim in a way that can lead to long-term problems.*
>
> *Although you are aged 24 and she 15, I do not find in this case the age disparity to be significant. I do not find that the offences were particularly corrupting of the victim and that is by reason of her age which was almost 16 and her apparent sophistication or at least worldliness.*
>
> *Your actions may be characterised as immature and ill judged. You exploited an opportunity for gratification without due concern for the age and welfare of the victim. You have good antecedents and your prospects of reoffending in a similar or any other manner are low. However in these cases as in all cases involving vulnerable victims general deterrence is the predominant sentencing consideration.*
>
> *I consider that the objective seriousness of the offences should be marked by a term of imprisonment but I consider that it would be appropriate to suspend that term by reasons of the particular facts of the offences and your good antecedents. I do not consider, having had the benefit of reading the references in the presentence report, that conditions need to be imposed on the suspended imprisonment order.*
>
> *You will by virtue of your offending, become a reportable offender pursuant to the Community Protection Offenders Reporting Act and there will be requirements of which you'll be informed that are placed on you by reason of that status.*

[12] Hearing Book [110]

> *I find that you are older and wiser than you were when these offences were committed. The suspension of the sentence does not mean that you go unpunished. As suspended imprisonment order is one that puts you at risk of having to serve the term if you reoffend within the period of suspension by committing any offence punishable by imprisonment. That includes some traffic offences so you must be ever mindful of that risk. If you do reoffend the court will have no choice but to order that you serve all or part of the sentence.*[13]

24. Clause 8.1.1 sets out the matters to which the Tribunal must have regard in considering the nature and seriousness of the applicant's conduct.

25. The applicant's offending includes a crime of a sexual nature against a child, which is viewed as very serious by the Australian government and the Australian community: cl 8.1.1(1)(a). None of his offending involves a crime committed against a government official in the performance of their duties: cl 8.1.1(1)(b).

26. The applicant was sentenced to a term of imprisonment of twelve months, wholly suspended for twelve months. As the applicant's offending involves a crime of a sexual nature against a child, it is viewed as very serious notwithstanding the sentence imposed by the court: cl 8.1.1(1)(c). The sentencing remarks record that the sentencing judge was not satisfied the applicant's pleading guilty at the earliest reasonable opportunity but that he did so at an early stage and the guilty pleas benefited the state as well as the witnesses, particularly the complainant. The sentencing remarks record that applicant was allowed a reduction of 20% of the sentence that would have been imposed after trial for pleading guilty.[14]

27. In relation to the impact of the applicant's offending on the victim, the sentencing judge accepted that the victim was not so young that the offences can be said to have been obviously harmful, but that age inappropriate sexual activity is harmful because it tends to be exploitative, engaged in purely for self-gratification on the part of the older person, and has the effect of diminishing the self-respect of the victim in a way that can lead to long-term problem: cl 8.1.1(1)(d).[15]

---

[13] Hearing Book [112] – [114]

[14] Hearing Book [111]

[15] Ibid

28. The applicant had earlier been convicted of three driving offences in 2013 and 2014 for which he received fines. The applicant's sexual offending in 2017 was obviously of increased seriousness to those driving offences, but his later offending is objectively less serious than the sexual offending: cl 8.1.1(1)(e). The Tribunal notes in that regard that the applicant was fined $400 for his reporting offence in May 2019 and no conviction was recorded in respect of his drug offending in July 2020, which arose out of the applicant's production of a cannabis plant and being in possession of cannabis and a pipe used to consume cannabis. I consider there to be a cumulative effect of repeated offending in respect of the applicant's sexual offending in 2017, as it involved six separate offences in respect of the same victim: cl 8.1.1(1)(f).

29. The applicant provided false or misleading information to the Department by failing disclose his prior criminal offending (being his first three driving offences in 2013 and July 2014) on his incoming passenger cars on 30 September 2014 (cl 8.1.1(1)(g)). It is not suggested that the applicant has reoffended after being warned about the consequences for his immigration status: cl 8.1.1(1)(h).

30. The applicant's offending was all committed in Australia and therefore cl 8.1.1(1)(i) is not relevant.

Other conduct

31. The Direction specifies at cl 4(2) that serious conduct includes behaviour or conduct of concern that does not constitute any criminal offence. The Minister does not suggest that the applicant has engaged in other serious behaviour or conduct of concern.

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

32. The Tribunal must also consider the risk to the Australian community should the Applicant commit further offences. To be of the Direction states, in part:[16]

> (1) In considering the need to protect the Australian community (including individuals, groups or institutions) from harm, decision-makers should have regard to the

[16] See also the Direction, cl 8.1(2)(b).

Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. Some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.

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

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

b) the likelihood of the non-citizen engaging in further criminal or other serious conduct, taking into account:

i. information and evidence on the risk of the non-citizen re-offending; and

ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).

c) where consideration is being given to whether to refuse to grant a visa to the non-citizen — whether the risk of harm may be affected by the duration and purpose of the non-citizen's intended stay, the type of visa being applied for, and whether there are strong or compassionate reasons for granting a short stay visa.

33. This requires an assessment of the nature of the harm should the applicant engage in further criminal or other serious conduct.[17] It also requires an assessment of the likelihood of the applicant engaging in such conduct.[18] There is no statutory constraint on the way that risk is assessed by the decision-maker other than that there must be a rational and probative basis for the assessment.[19]

---

[17] The Direction, cl 8.1.2(2)(a).

[18] Ibid cl 8.1.2(2)(b).

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

Nature of the harm

34. In order to determine the risk to the Australian community should the applicant commit further offences or engage in other serious conduct, the Tribunal must consider the nature of the harm to individuals, or the Australian community should the applicant reoffend.[20]

35. The applicant concedes that if he were to engage in further criminal activity similar in nature to his sexual offending, there would be a significant risk of harm to the Australian community. The Minister submits that if the applicant were to reoffend in a similar manner to that of his previous sexual offending, the nature of the harm that may result would be potentially significant and would have the potential to cause physical and/or psychological harm to members of the Australian community.

36. The sentencing judge explained that harm as follows:

> *. . . the law operates to protect children from age inappropriate sexual encounters and indeed to protect children from themselves.*
>
> *Age inappropriate sexual activity is harmful because it tends to be exploitative. That is, engaged in purely for self-gratification on the part of the older person. It thereby has the effect of diminishing the self-respect of the victim in a way that can lead to long-term problems.*

37. The Tribunal finds that the nature of the harm that may result from any future offending similar to the applicant's 2016 sexual offending is very serious, with the potential to cause serious physical and/or psychological harm to members of the Australian community.

Likelihood of the non-citizen engaging in further criminal or serious conduct

38. The applicant contends that his risk of reoffending in the manner of his 2017 offending is non-existent, as that behaviour was due to a relationship breakdown and external stress factors. He submits that his sincerely remorseful for his conduct, that he is a different person from whom he was nine years ago and that as a father of two young children, he now appreciates that his actions were very wrong and he made big mistakes. He submits that many of his family and friends are aware of his offending and will be able to monitor, assist, encourage and motivate him and he is now responsible for his own family and committed to complying with the law.

---

[20] The Direction, cl 8.1.2(2)(a).

39. The Minister accepts that that there are now protective factors that were not present at the time of the applicant's sexual offending, including the applicant's relationship with his de facto partner and the fact that the applicant has since spent a significant period of time in the community without reoffending in a similar manner. The Minister notes however that the applicant's 2020 drug offences were committed by the applicant while similar protective factors were present. The Minister contends that even if the risk of the applicant reoffending in a manner involving similar sexual offending is found to be low, the nature of the harm would be great such that any risk that it may be repeated is unacceptable.

40. The sentencing judge described the applicant's actions as 'immature and ill judged', noting that he exploited an opportunity for gratification without due concern for the age and welfare of the victim. The judge accepted that the applicant's prospects of reoffending in a similar or any other manner were low.[21]

41. A Forensic Risk Assessment Report prepared by Bruce Hamilton, Clinical Psychologist dated 11 February 2026 has been submitted to the Tribunal. Mr Hamilton assessed the applicant's risk of future sexual offending against the Sexual Offender Risk Appraisal Guide (SORAG) and Risk for Sexual Violence Protocol (RSVP v.2.0) instruments. The report states that the Sexual Offender Risk Appraisal Guide (SORAG) is an actuarial tool used for the prediction of sexual violence and records that the applicant's recidivism score indicated his risk of re-offending as within the Low range, being the lowest available risk rating.[22] During cross-examination, Mr Hamilton gave evidence that the applicant's score on this instrument put him in the top third of persons falling into the Low range.

42. In relation to the Risk for Sexual Violence Protocol instrument, (RSVP) Mr Hamilton's report states that this tool identifies 23 risk factors across five domains. Those five domains are the nature of sexual violence, psychological adjustment, mental disorder, social adjustment and manageability. Mr Hamilton states that the applicant had a limited loading on these domains and those loadings were historical in nature. Specifically the applicant has no loading on any of the nature of sexual offending items, which include chronicity, diversity, escalation, physical or psychological coercion. With respect to psychological adjustment items, there is some evidence of problems with stress or coping and with respect to mental

[21] Hearing Book [113]
[22] Hearin Book

disorder perpetrator items, there is some evidence of one item, being major mental disorder. Mr Hamilton records that there is no evidence of social adjustment items or manageability items.[23]

43. Mr Hamilton reports that he has assessed the applicant's risk using actuarial and structured professional judgment risk assessment measures in the context of his personal/family, psychological, substance related, criminal, employment and relationship history. Mr Hamilton states:

> *He is assessed as a low risk, and there are no treatment recommendations, in addition to the management and support he is already engaged in, to further ameliorate his assessed risk.*
>
> *. . .*
>
> *Whist his offending history is serious, it is conceptualised with an absence of malicious intent. Moreover, there is a distinct absence of sexually predatory behaviour, or other features that are often markers of concern in sexually motivated offenders, i.e. sexual preoccupation, sexual deviance. It is further noted that Mr Venter has limited general offending markers, with an absence of substance abuse history, pro criminal cognition, attitude or associations. Rather, Mr Venter's offending history is best conceptualised in my opinion via episodes of poor judgment and or consequential thinking, as a younger man. He has previously demonstrated impulsivity though now presents as a mature young adult and father to two young children, with the support of his fiancé and a sound employment history. He is help seeking for his mental health concerns.*
>
> *Mr Venter has a history of treatment for mental health concerns, commencing in childhood for ADHD, alongside experience of dyslexia, though now in adulthood for anxiety. This was triggered by his criminal history, his child sexual offending specifically. These concerns have undoubtedly been exacerbated in the current context, and Mr Venter is encouraged to continue to engage in treatment for symptoms over the longer term. He may wish to revisit Forensic Risk Assessment psychological therapies to compliment current treatment of a pharmacological nature.*[24]

44. During cross-examination, Mr Hamilton was asked if a diagnosis of autism would be affect the applicant's risk assessment. Mr Hamilton gave evidence that such a diagnosis would not affect scoring on either of the SORAG or RSVP instruments, but that it would be useful to know in terms of informing the applicant's formulation or management.

---

[23] Hearing Book [381], [382]

[24] Hearing Book [381]

45. I consider there to be insufficient evidence that the applicant has a diagnosis of autism. This is because the only reference to it in the materials available to the Tribunal is the applicant's self-report in a mental health assessment undertaken in detention in December 2025.[25] When asked at hearing about his autism diagnosis, the applicant said that he had been told he was on the spectrum but the main focus of his management is his ADHD and he did not receive any treatment or counselling for autism. He was vague about when he received that advice and said that he believed the dexamphetamines he had taken in the past were prescribed to him as treatment for autism. I note however that the mental health assessment records that the dexamphetamines were prescribed to him for ADHD.[26] While I accept the applicant may have at some point been advised that he is on the autism spectrum, I am not satisfied that he has received that he received a formal diagnosis.

46. When asked if the applicant's expressed feelings that he was deceived by the victim were incorporated into the risk assessment, Mr Hamilton said that he was aware of those feelings and they formed part of the formulation of the applicant's risk. He also gave evidence that the applicant's intermittent employment would not affect the risk assessment and that payment plans for historical debts may be stressors warranting further investigation.

47. Mr Hamilton was also asked if he was aware that the applicant's brother had been convicted of child sexual offences and jailed for 13.5 years and Mr Hamilton confirmed that he was not aware of this information and he was surprised that the applicant had not disclosed it to him. When asked if this information would affect his assessment of the applicant's risk of reoffending, Mr Hamilton said that it would not impact on the actuarial tool used for risk assessment, but might be more relevant to the applicant's understanding of himself and the risk issues that he needs to monitor and manage.

48. The Tribunal must also consider evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since the applicant's most recent offence: clause 8.1.2(2)(b)(ii). The evidence before the Tribunal indicates the applicant has maintained medical treatment since he offending for his ADHD and chronic anxiety, including medication and counselling. There is no evidence that the applicant has undertaken any formal rehabilitation courses, however this is consistent with Mr Hamilton's

[25] Full Medical Report A1 [19]
[26] Ibid

opinion that there are no treatment recommendations, in addition to the management and support he is already engaged in, to further ameliorate his assessed risk. The applicant spent four years in the community between his most recent offending and being taken into immigration detention.

49. It is apparent that there was information Mr Hamilton was not aware of at the time the applicant undertook the risk assessment. However Mr Hamilton's oral evidence indicates this information, had it been known, would not have changed his assessment of the applicant's risk.

50. On the basis of the Forensic Risk Assessment Report and the comments of the sentencing judge, I find that there is a low likelihood that the applicant will reoffend. Should the applicant reoffend in a manner of his most serious offending, I find the risk to the community is significant.

Conclusion on the protection of the Australian community

51. Having regard to the nature and seriousness of the applicant's offending and conduct, and the risk to the Australian community should the applicant commit further offences or other serious conduct, I find that this primary consideration weighs strongly in favour of exercising the discretion to cancel the applicant's visa.

Family violence committed by the non-citizen

52. Clause 8.2 of the Direction provides that decision-makers, such as the Tribunal, must have regard to family violence perpetrated by the non-citizen when deciding whether to revoke a visa cancellation decision.

53. The Direction states that the Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The Government's concerns are proportionate to the seriousness of the family violence engaged in by the non-citizen.[27]

[27] The Direction, cl 8.2(1).

54. There is no evidence that the applicant has committed any family violence and this factor is not relevant to my decision. I weigh this factor neither for nor against exercising the discretion to cancel the applicant's visa.

The strength, nature and duration of ties to Australia

55. This consideration requires the Tribunal to have regard to the strength, nature and duration of the Applicant's ties to Australia. Clause 8.3 of the Direction provides that:

> (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 whether to 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.

Immediate family

56. The applicant's immediate family members who are Australian citizens, Australian permanent residents or people who have a right to remain Australia indefinitely are his partner, his parents and his two siblings. I note the applicant also has two minor children and I deal with their interests separately later in these reasons.

(i) The applicant's partner, Ms AA

57. Ms AA has known the applicant since mid-2019. They are currently engaged to be married, they have purchased a house together and they have two young children. Ms AA is fully aware of the applicant's criminal history, all of which predates their relationship. She gave evidence that when the applicant disclosed his criminal history to her very early in their relationship, she was very shocked. Now that she has known him for seven years, she remains supportive of the applicant and described herself as wholeheartedly committed to their relationship. She gave evidence that they were engaged to be married and had communicated with a marriage celebrant but have not yet set a date for the wedding.

58. In a statutory declaration made 30 January 2026 Ms AA stated that the applicant works long hours in a stable job to provide for their family financially and is fully committed to Ms AA, their children and the life they have built together. During cross examination she agreed that she worked full time as a health administrator in stable and secure employment. She agreed with questions put to her indicating that the applicant did not earn very much while working as a subcontractor between 2023 and 2025 and that he had substantial outstanding debts relating to vehicles and motorbikes.

59. Ms AA gave evidence that her parents transferred $16,000 to cover the mortgage while the applicant was in detention and paid off Ms AA's credit card. Her evidence was that they were not in the position to further contribute financially to Ms AA as they were semi-retired and worked only two days a week and I accept that to be true. Similarly I accept the evidence of the applicant's father Mr BB to the effect that he and his wife are unable to offer further financial support, having already committed to paying the legal costs of these proceedings.

60. I accept that the applicant has maintained employment during the course of his relationship with Ms AA, including by operating a gardening business which he ultimately closed down for financial reasons and then working as a subcontractor. However I consider that it is only since he commenced his current employment as a plan operator in a civil construction company in April 2025 that he has had stable employment enabling him to make a significant financial contribution to the costs of the household. Even though this employment is relatively recent in the context of the length of the relationship, I accept that it is necessary to maintain the family's mortgage payments and that Ms AA may be forced to sell the house should the applicant be removed from Australia.

61. Ms AA gave evidence about the impact upon her if the applicant's visa remains cancelled and he is removed from Australia. She said it would be devastating to her as the applicant is the person with whom she wants to spend her life. She gave evidence that they support each other and everything that they do, it would be heartbreaking if he was forced to leave and she couldn't imagine her life if he wasn't here. She is currently raising both of their children as a single parent working full time, with some assistance from their extended families.

62. I find that if the applicant's visa remain cancelled and he is removed from Australia, the financial, practical and emotional impact on Ms AA would be multi-faceted and severe.

(ii) The applicant's parents and siblings

63. The applicant migrated to Australia in 2010 with his parents and two siblings. The family initially resided in Western Australia and the applicant and his parents relocated to Queensland after the applicant's 2016 offending. The applicant's adult brother and sister remain living in Western Australia.

64. I accept the applicant has a close relationship with his parents. The applicant's father gave evidence at the hearing and described the relationship as very close and bound by mutual trust, giving evidence that the applicant disclosed his offending to them as soon as he was questioned by police and expressed his guilt and remorse. His family were disappointed but offered their support. The applicant's father described his observations of his son's personal growth, particularly since becoming a father himself. He also gave evidence about the financial and practical support that he and his wife had provided to the applicant's partner and children since the applicant was detained.

65. The applicant's mother provided a statutory declaration to the Tribunal. She states that when the applicant lost his license she dropped him off and picked him up from work every day. When he told she and her husband about his sexual offending they were extremely disappointed, but have done their best to support him and encourage him to make better decisions. She marks his quarterly reporting obligations on her calendar and calls him each time to remind him of his obligations. The applicant's mother describes herself as very close to the applicant's partner Ms AA and their children, looking after the children when that is possible and assisting with meals.

66. I accept that the applicant's parents have continued to provide practical and financial support to the applicant and his family since the applicant was taken into immigration detention and I consider that to be further evidence of their close relationship. I accept that the applicant's removal from Australia would have a severe adverse impact on each of the applicant's parents.

67. The applicant's sister provided oral and written evidence to the Tribunal, in which she described their relationship as extremely close. She gave evidence that she visited her parents and brother every Christmas and that they otherwise communicated by phone and other electronic means. I accept they have a close relationship, albeit one that is primarily sustained by phone and other electronic means, and that the applicant's removal from Australia would impact her adversely.

68. The applicant described his relationship with his brother as particularly close and a relationship of 'best friends', giving evidence that his brother would be severely impacted if the applicant's visa remains cancelled. However when cross-examined about his relationship with his brother, he acknowledged that they had not seen each other for several years. It is of concern to the Tribunal that the applicant did not disclose in his evidence that his brother is currently several years into a 13.5 year prison term for child sexual offences in Western Australia, rather he suggested that his brother's failure to provide oral or written evidence in these proceedings was because the applicant had been advised he had enough submissions in support. Nonetheless I accept that the applicant's removal from Australia would have some level of adverse impact on all members of his family, including his brother.

Other ties with to the Australian community

69. The applicant has provided a number of other statutory declarations from friends who have known the applicant for a significant period of time. They are each aware of the applicant's criminal history and speak of his personal growth and commitment to his children, family and community.

70. I find the applicant has very strong ties to his partner Ms AA, strong ties to his parents and sister, as well as lesser ties to his brother and other members of the Australian community. I find that the strength, nature and duration of the applicant's ties to Australia weighs strongly against exercising the discretion to cancel the applicant's visa.

Best interests of minor children in Australia affected by the decision

71. Clause 8.4 of the Direction requires the Tribunal to consider the best interests of minor children in Australia affected by the decision. Under cl 8.4, the Tribunal must make a determination whether cancellation or refusal under s 501 of the Act, is or is not, in the best interests of children who are under 18 at the time the decision is expected to be made. Where there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests might differ.

72. Clause 8.4(4) of the Direction goes on to outline the factors that a decision-maker must consider when determining the best interests of a child affected by the decision where relevant. Those factors include:

- The nature and duration of the relationship between the child and the non-citizen, noting less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact;
- The extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any court orders relating to parental access and care arrangements;
- The impact of the non-citizen's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;
- The likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways;
- Whether there are other persons who already fulfil a parental role in relation to the child;
- Any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);
- Evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the non-citizen, or has otherwise been abused or neglected by the non-citizen in any way, whether physically, sexually or mentally; and

- Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen's conduct.[28]

73. The applicant and Ms AA have two children together, their eldest son BB who is currently aged 4 and their youngest son CC who is currently aged 1.5 years. There is no suggestion that the applicant has had long periods of absence from his sons other than the period he has spent in immigration detention, nor that there has been any period in which they have not been in meaningful contact. Rather I accept that the applicant has remained in daily contact with his children through electronic means during his time in immigration detention, and that his partner has brought them to visit when possible.

74. At hearing Ms AA gave evidence that the applicant has a positive parental relationship with their two children and described him as a present and devoted father who was loved and missed by their children. She said he provides for the children financially and emotionally, he helps take care of them and teaches them life lessons and he helps around the house. She described BB telling her every day that he misses his daddy and said the children cannot understand where he has gone or why they can't just go and see him. She also described changes to her sons' behaviour since the applicant's detention, their confusion as to why he is not living with them anymore and her struggle to care for the children as a single parent.

75. Ms AA said that if the applicant were to be removed from Australia it would have a devastating impact on their children who grow up without a father. She gave evidence that she and the applicant had discussed what would happen if the applicant had to return to South Africa and that their current decision was that she and her sons would remain living in Australia. Similarly the applicant's parents and sister gave evidence about the applicant's positive relationship with his children, as did those friends who provided statutory declarations in these proceedings

76. The Australian courts have held that there is no error with the Tribunal proceeding from the commonly held assumption that in most cases the child's best interests are served by remaining with their parents where that is possible.[29]

---

[28] The Direction, cl 8.4(4)(a)-(h).

[29] *Minister for Immigration, Citizenship and Multicultural Affairs v RGKY* [2022] FCAFC 177 [201].

77. I find that the nature of the relationship between the applicant and his sons is parental, that he is likely to play a positive parental role in the future and that it is a very significant period of time before the children turn 18, more than 16 years in respect of the youngest. I note there is no suggestion that the children have ever been abused or neglected by the applicant in any way, nor that the relevant authorities have ever held any concern about the safety of the children. I have had regard to the fact that Ms AA also fulfils a strong and loving parental role in relation to the children and the children are too young to express any views on their best interests.

78. I find that any extended or permanent separation of the applicant and his children will have a severe and negative impact upon BB and CC and that their best interests weigh very strongly against exercising the discretion to cancel the applicant's visa.

Expectations of the Australian Community

79. The fifth primary consideration requires the Tribunal to weigh the expectations of the Australian community. Clause 8.5(1) of the Direction provides that the Australian community expects non-citizens to obey Australian laws while in Australia. The Direction goes on to state that where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the government would not allow them to enter or remain in Australia.

80. Clause 8.5(2) directs that visa cancellation or refusal, or non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concerns or offences is such that the Australian community would expect that the person should not be granted or continue to hold a visa. This includes an expectation that a visa should be cancelled if they raise serious character concerns because of acts of family violence.[30]

81. Clause 8.5(3) of the Direction further confirms that the stated expectations apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

---

[30] The Direction, cl 8.5(2).

82. The Federal Court of Australia has held that the assessment of community circumstances is not a matter of evidence and does not turn on the personal circumstances of the individual non-citizen. Rather the Court held that a decision-maker can take into account the personal circumstances of an individual in so far as they are relevant to another primary consideration or one of the other considerations and adjust the relative weight to be given to each of the considerations accordingly.[31]

83. It follows that this consideration will, in all cases, weigh against revocation of a cancellation decision if that expectation has been breached or if there is an unacceptable risk that it may be breached in the future. For the reasons set out above I have found that the applicant poses a low risk of reoffending. I am mindful however that the seriousness of his offending must be considered regardless of the level of risk he poses to the Australian community and I weigh this factor moderately in favour of exercising the discretion to cancel the applicant's visa.

Other considerations

84. Clause 9 of the Direction states:

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

Legal consequences of decision under section 501 or 501CA

85. The Tribunal is required to consider the legal consequences of a decision on a non-citizen, including having regard to Australia's non-refoulement obligations in respect of unlawful

[31] *RCLN v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 876, [56], upheld by the Full Court in *RCLN v MIAC [2025] FCAFC* 113.

non-citizens.[32] While the applicant expresses a fear of returning to South Africa, he expressly does not claim that Australia's non-refoulment obligations apply in his case.[33]

86. If the applicant's visa is cancelled, he will continue to be detained under s 189 of the Act and he will be removed from Australia to South Africa as soon as practicable under s198 of the Act. He will face a prohibition on applying for most of the kinds of visas,[34] as well as permanent exclusion from Australia.[35] While these are all intended consequences of the operation of s 501, the Tribunal is obliged to consider those consequences having regard to the particular circumstances of the applicant.[36] In this case the legal consequences of the decision upon the applicant are significant because they involve his detention and removal from Australia, his separation from his children and his inability to return. I give this factor some weight against exercising the discretion to cancel the applicant's visa.

Extent of impediments if removed

87. Clause 9.2 of the Direction provides that taking into account the matters identified in sub-clauses 9.2(1)(a), (b) and (c) of the Direction, the Tribunal must consider the extent to which the Applicant would face an impediment or impediments in establishing himself and maintaining basic living standards in the context of what is generally available to other citizens of that country. The matters identified under sub-clauses 9.2(1)(a), (b) and (c) are:

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

88. The applicant was diagnosed with Attention Deficit/ Hyperactivity Disorder (ADHD) at age 7 and chronic anxiety disorder in 2017. His 2020 cannabis offending took place in the context that he was unable to afford the medical cannabis prescribed to him for his anxiety. He attends regular counselling in detention to manage his stress and mental health and no

---

[32] Ibid cl 9.1.

[33] Applicant's SOFIC [186], closing submissions

[34] Ibid s 501E.

[35] Ibid s 503, special return criteria (**SRC**) 5001.

[36] *Doan v Minister for Immigration and Multicultural Affairs* [2025] FCA 1411 at [17]-[20]; *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] FCA 1273 at [17]-[20]

longer uses medical cannabis. For the reasons set out earlier, I am not satisfied the applicant has a diagnosis of autism. I accept that the level of medical care available to the applicant, particularly in respect of his mental health conditions, would fall well below that which is available to him in Australia.

89. The applicant lived in South Africa until he was 19 years old. I note the submission that he would face a significant language barrier if returned to South Africa, because the country has 12 official languages and the applicant speaks only English and Afrikaans. That submission refers to country information indicating that only 8.7% of the population speaks English and 10.6% speak Afrikaans at home.[37]

90. The applicant was raised and educated in South Africa and speaks two of the country's official languages. While I accept that there are some languages which the applicant does not speak and some regions in which the applicant may have difficulties communicating, I do not accept the submission that the applicant would have such difficulties communicating as would mean he would be unable to access essential services, understand official information or engage in day-to-day activities.

91. The applicant has significant work experience as a gardener/landscaper and more recently in the civil construction industry. I note the evidence of the applicant and his father as to the levels of unemployment in South Africa, and the country information cited indicating that unemployment in the country currently sits at 31.4%.[38] I accept that the applicant may have difficulties obtaining employment in South Africa.

92. The evidence before the Tribunal indicates the applicant has 12 uncles and aunts, 17 nieces and nephews and 18 cousins in South Africa.[39] It is accepted by the Minister that the applicant is unlikely to receive any financial or other significant support from any of those family members living in South Africa and I find accordingly.[40]

---

[37] Applicant's SOFIC [195]
[38] Applicant's SOFIC [205]
[39] Hearing Book [124]
[40] Minister's SOFIC [70]

93. I accept the applicant is genuinely fearful of returning to South Africa, not just because of the separation from his family and the uncertainty of his prospects there, but also because of traumatic experiences that he and his family members experienced before their emigration to Australia. As noted above, the applicant expressly does not claim that Australia's non-refoulment obligations apply in his case.

94. I give this factor some weight against cancelling the applicant's visa.

Impact on Australian business interests

95. Clause 9.3 of the Direction states:

> (1) Decision-makers must consider any impact on Australian business interests if the non-citizen is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501 or 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

96. Since April 2025, the applicant has worked as a plan operator for a civil construction company in Queensland. At the Tribunal hearing the human resources manager of that company, Ms DD, gave evidence that the applicant is one of approximately 30 plan operators employed by the company. He is employed as a casual but works full time hours and he is highly regarded in that role as someone who shows up with dedication and commitment but also speaks up when things are not right, particularly around safety.

97. Ms DD gave evidence that the company has kept the applicant's position open since the applicant was taken into immigration detention, as the current job market in Brisbane would make his position difficult to fill. During cross-examination, Ms DD acknowledged that while she considered the applicant an ideal candidate for the plan operator position, his removal from Australia would not cause significant disruption to the operations of the company.

98. I find that the cancellation of the applicant's visa would not significantly compromise the delivery of a major project, or delivery of an important service in Australia and I weigh this factor neither for nor against exercising the discretion to cancel the applicant's visa.

CONCLUSION

99. The applicant does not pass the character test under s 501 of the Act, and I must consider whether his visa should be cancelled, having regard to the primary and other considerations in the Direction.

100. Clause 7 of the Direction sets out the way in which the relevant considerations are to be taken into account and weighed. There has also been this judicial consideration on the exercise of balancing and weighing considerations contained in the relevant Ministerial Directions (considering a number of Ministerial Directions preceding the Direction).[41]

101. The Full Court of the Federal Court in *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* ('*CRNL*') said '[t]he real burden of the task to be undertaken by a decision-maker who must comply with the Direction [the precursor Direction 90] is to bring together the considerations as part of a single evaluation of their relative significance thereby weighing them all together.'[42]

102. In determining the weight to be applied to each consideration, I have considered the primary and other considerations and weighed them in light of the evidence and findings using the guidance provided by the Direction.

103. Greater weight must generally be given to the protection of the Australian community than other primary considerations. Greater weight will also generally be given to primary considerations. In examining what this requires, the Full Court in *CRNL* states that this means greater weight will be given unless there is some reason why that general approach should not be adopted.[43] In the circumstances of this case I consider the general approach should be adopted that greater weight is given to the protection of the Australian community, and to the primary considerations.

104. In bringing together the considerations in the manner required by *CRNL*, I give the primary consideration of the protection of the community greater weight than other primary

---

[41] See *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594; *Minister for Home Affairs v HSKJ* [2018] FCAFC 217; (2018) 266 FCR 591.

[42] [2023] FCAFC 138, [23].

[43] Ibid [27].

considerations. I have assessed the applicant as being at low risk to the Australian community but that risk is appreciable and I have weighed this factor strongly in favour of cancelling the visa. I have found that the Australian community expects that the visa be cancelled and I have weighed this factor moderately in favour of cancellation.

105. In relation to the other primary considerations, I have found that the strength, nature and duration of the applicant's ties to Australia weigh strongly against cancellation of the visa, and that the best interests of the applicant's minor children weigh very strongly against cancellation. In relation to the other considerations, I have found that the legal consequences of the decision weigh somewhat against cancellation of the visa, as do the extent of the impediments on return. I have assessed the considerations relating to family violence and the impact on Australian business weigh neither for nor against exercising the discretion to cancel the applicant's visa.

106. Although I have given the consideration of the protection of the Australian community greater weight than the other primary considerations, I conclude that the combined weight of the considerations that weigh in favour of revocation of the visa cancellation outweigh those that favour cancellation of the applicant's visa. In particular the primary considerations of the strength, nature and duration of the applicant's ties to Australia, the best interests of his minor children, together with the consideration of the legal consequences of the decision and impediments on return, cumulatively weigh against cancelling his visa.

107. I therefore set aside the decision to cancel the applicant's visa and substitute a decision that the visa not be cancelled under section 501(2).

DECISION

108. The Tribunal sets aside the decision under review and in substitution decides that the applicant's Class BW (subclass 857) Regional Sponsored Migration Scheme visa not be cancelled under section 501(2).