FEDERAL COURT OF AUSTRALIA

RRRB v Minister for Immigration and Citizenship [2026] FCA 337

Review of:	*RRRB and Minister for Immigration and Multicultural Affairs (Migration)* [2025] ARTA 471
File number:	WAD 103 of 2025
Judgment of:	**MCDONALD J**
Date of judgment:	25 March 2026
Catchwords:	**MIGRATION** – application for judicial review of decision of Administrative Review Tribunal – non-revocation of visa cancellation – failure to satisfy character test due to substantial criminal record – whether Tribunal misapplied Ministerial Direction 110 issued under s 499(1) of *Migration Act 1958* (Cth) – whether the conduct listed in cl 8.5(2) is exhaustive for the purposes of cl 8.5 – whether Tribunal independently assessed the expectations of the Australian community – whether Tribunal denied applicant procedural fairness in decision to decline further evidence from witness – whether Tribunal misapplied "two-day rule" – whether Tribunal failed to consider, or engaged in irrational or illogical reasoning concerning, applicant's risk of reoffending – application dismissed
Legislation:	*Migration Act 1958* (Cth) ss 499, 500, 501, 501CA
Cases cited:	*Abraham v Minister for Immigration and Citizenship* [2026] FCA 100 *CVDQ v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FCA 1101 *DVO16 v Minister for Immigration and Border Protection* (2021) 273 CLR 177; [2021] HCA 12 *FYBR v Minister for Home Affairs* (2019) 272 FCR 454; [2019] FCAFC 185 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321; [2024] HCA 12 *LRMM v Minster for Immigration and Multicultural Affairs* [2025] FCA 51 *Minister for Home Affairs v DUA16* (2020) 271 CLR 550; [2020] HCA 46

	Plaintiff S22/2025 v Minister for Immigration and Multicultural Affairs (2025) 99 ALJR 1378; [2025] HCA 36 *Prasad v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 791 *Uelese v Minister for Immigration and Border Protection* (2015) 256 CLR 203; [2015] HCA 15
Division:	General Division
Registry:	Western Australia
National Practice Area:	Administrative and Constitutional Law and Human Rights
Number of paragraphs:	128
Date of hearing:	1 October 2025
Counsel for the Applicant:	Dr J D Donnelly
Solicitor for the Applicant:	Zarifi Lawyers
Counsel for the First Respondent:	Ms J A Lucas
Solicitor for the First Respondent:	Sparke Helmore
Counsel for the Second Respondent:	The Second Respondent filed a submitting notice

ORDERS

WAD 103 of 2025

BETWEEN:	**RRRB** Applicant
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** First Respondent
	ADMINISTRATIVE REVIEW TRIBUNAL Second Respondent
ORDER MADE BY:	**MCDONALD J**
DATE OF ORDER:	**25 MARCH 2026**

THE COURT ORDERS THAT:

1. The amended application for judicial review dated 15 August 2025 be dismissed.

2. The applicant pay the costs of the first respondent, to be agreed or assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MCDONALD J:

Introduction

1 The applicant, RRRB, is a citizen of New Zealand. He has resided in Australia since 2005 from the age of 18, living first in Brisbane and more recently in Perth. Between 2013 and 2019, RRRB was the holder of a Special Category (Temporary) (Class TY) (Subclass 444) visa.

2 On 8 August 2017, RRRB was convicted in the District Court of Western Australia of the offence of possessing a prohibited drug with intent to sell or supply, which he had committed on 17 November 2015. The drug was methylamphetamine. He was sentenced to 10 years' imprisonment. This was RRRB's only criminal conviction in Australia, apart from convictions for six traffic offences in 2009, for which he had been fined amounts between $270 and $1,000.

3 On 15 May 2019, RRRB's visa was cancelled by a delegate of the predecessor of the first respondent (**Minister**) as required by s 501(3A) of the *Migration Act 1958* (Cth) (**cancellation decision**). The delegate was satisfied that RRRB did not pass the "character test" by virtue of his having a substantial criminal record; that he had been sentenced to a term of imprisonment of 12 months or more; and that he was serving a sentence of imprisonment on a full-time basis in a custodial institution.

4 On 10 June 2019, RRRB requested that the cancellation decision be revoked and made representations in support of that request. On 18 December 2024 (by which time RRRB had been granted parole, released from prison and taken into immigration detention), a delegate of the Minister considered RRRB's representations in favour of revocation and made a decision under s 501CA(4) of the *Migration Act* not to revoke the cancellation decision (**non-revocation decision**).

5 On 23 December 2024, RRRB applied to the Administrative Review Tribunal (**Tribunal**) for review of the non-revocation decision.

6 On 27 and 28 February 2025, the Tribunal conducted a hearing. RRRB was not represented at the hearing. He gave evidence before the Tribunal and was cross-examined by the Minister's representative. The Tribunal also took evidence from witnesses including a psychologist, RRRB's uncle, his supervisor in a prison program, some of his friends, former employers, a prospective employer, and Ms B.

7 Ms B is RRRB's partner, and the mother and primary carer of RRRB's son, S, who was born in 2015. Ms B provided evidence by way of affidavit and gave oral evidence on the first day of the Tribunal hearing, 27 February 2025. After her oral evidence had been completed, on 28 February 2025, she made a request to provide further evidence to the Tribunal, but was not permitted to do so. The circumstances in which this occurred are relevant to RRRB's second ground of judicial review and are addressed further below.

8 On 7 April 2025, the Tribunal made a decision affirming the non-revocation decision.

9 RRRB seeks judicial review of the decision of the Tribunal. For the reasons that follow, the application for judicial review will be dismissed.

The Tribunal's decision and reasons

10 At the hearing before the Tribunal, it was not in dispute that RRRB did not pass the character test. The remaining issue for the Tribunal's determination was whether there was "another reason" why the cancellation decision should be revoked, pursuant to s 501CA(4)(b)(ii) of the *Migration Act*. In accordance with s 499(1) and (2A) of the *Migration Act*, the Tribunal approached this question having regard to the Ministerial Direction entitled "Direction no 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA" (**Direction 110**).

11 The Tribunal recognised that cl 6 of Direction 110 required that it take into account the five "primary considerations" identified in cl 8 and the "other considerations" identified in cl 9. The Tribunal's reasoning and conclusions in relation to each of the considerations may be summarised as follows.

12 In considering the nature and seriousness of RRRB's conduct, the Tribunal concluded that there are crimes not specifically mentioned in Direction 110, such as serious drug offences, that can be categorised as "very serious". The Tribunal considered RRRB's drug conviction to weigh against revocation. Considering the risk to the Australian community should RRRB commit further offences or engage in other serious conduct, the Tribunal found that, although RRRB's risk of re-offending was low, the harm associated with even a low likelihood of reoffending was significant, and weighed against revocation.

13 The Tribunal was not presented with evidence suggesting RRRB had engaged in acts of family violence. Therefore, this consideration was deemed irrelevant and the Tribunal gave it neutral weight.

14 The Tribunal considered that the strength, nature and duration of RRRB's ties to Australia weighed in favour of revocation to a moderate extent. The Tribunal did not consider any of RRRB's ties to Australia to be overly strong, with the exception of his tie to his son. The Tribunal considered that the revocation decision would be in the best interests of the minor children identified, being S and Ms B's other children. The Tribunal found that the interests of S carried moderate weight against revocation of the cancellation decision, and the interests of Ms B's other children carried limited weight, having regard to the non-parental nature of RRRB's relationship with them.

15 The Tribunal found the expectation of the Australian community to weigh strongly against revocation. The Tribunal characterised RRRB's conduct as very serious, accepting that the kinds of conduct identified in the sub-paragraphs of cl 8.5(2) of Direction 110 did not constitute an exhaustive list of conduct that could be regarded as very serious.

16 In connection with the three "other considerations" identified in cl 9 of Direction 110, the Tribunal:

(a) afforded slight weight to the legal consequences of the decision in considering RRRB's general concerns about returning to New Zealand;

(b) found that RRRB may encounter some difficulty establishing himself were he to return to New Zealand, but that this only weighed slightly in favour of revocation, given that those difficulties were not considered to be significant impediments; and

(c) found that RRRB's skills as a diesel mechanic and his prospective employment opportunities should be given limited weight in favour of revocation.

17 After balancing the considerations in Direction 110 that were relevant to the review, the Tribunal was satisfied that there was not "another reason" why the cancellation decision should be revoked.

The application for judicial review

18 By his amended originating application dated 15 August 2025, RRRB advances three grounds for his contention that the Tribunal's decision not to revoke the cancellation decision was affected by jurisdictional error. The grounds are as follows:

(1) The Tribunal misunderstood or misapplied a mandatory relevant consideration under Direction 110, being the expectations of the Australian community.

(2) The Tribunal's decision to decline to receive, or to decline to adjourn its hearing in order to receive, further evidence from Ms B resulted in a denial of procedural fairness to RRRB, or alternatively was unreasonable.

(3) The Tribunal failed to lawfully consider RRRB's representations concerning his risk of reoffending or, alternatively, engaged in irrational or illogical reasoning in its assessment of RRRB's risk of reoffending.

Ground 1 – misunderstanding or misapplication of Direction 110 in relation to the expectations of the Australian community

19 By his first ground of judicial review, RRRB contends that the Tribunal misunderstood or misapplied one of the primary considerations to which it was required to have regard under Direction 110, being the consideration relating to the expectations of the Australian community. If this contention is correct, this would amount to a jurisdictional error, because s 499(2A) of the *Migration Act* required the Tribunal to comply with Direction 110: see *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321; [2024] HCA 12 at 333 [31].

20 Clause 8.5 of Direction 110 states the fifth primary consideration in the following terms:

> **8.5. Expectations of the Australian Community**
>
> **(1)** 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.
>
> **(2)** In addition, 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. In particular, the Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they raise serious character concerns through conduct, in Australia or elsewhere, of the following kind:
>
> a) acts of family violence; or
>
> b) causing a person to enter into, or being party to (other than being a victim of), a forced marriage;
>
> c) commission of serious crimes against women, children or other vulnerable members of the community such as the elderly or disabled; in this context, "serious crimes" include crimes of a violent or sexual nature, as well as other serious crimes against the elderly or other vulnerable persons in the form of fraud, extortion, financial abuse/material exploitation or neglect;

d) commission of crimes against government representatives or officials due to the position they hold, or in the performance of their duties; or

e) involvement or reasonably suspected involvement in human trafficking or people smuggling, or in crimes that are of serious international concern including, but not limited to, war crimes, crimes against humanity and slavery; or

f) worker exploitation.

(3) The above expectations of the Australian community apply regardless of whether the non-citizen poses a measureable risk of causing physical harm to the Australian community

(4) 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.

21 In the course of considering the first of the primary considerations, the protection of the Australian community from criminal or other serious conduct, the Tribunal found that RRRB's offending was "very serious" and that the nature of the harm which would be caused if he were to reoffend was also "very serious", even though the Tribunal considered the likelihood of his reoffending "low". When it came to assess the expectations of the Australian community, the Tribunal made reference to its earlier finding that the offending was very serious, saying (at [170] of its reasons):

> While the applicant has not engaged in conduct identified in paragraphs 8.5(2)(a)-(f), *that list is not exhaustive*. I have found that the Applicant's offending was very serious for the reasons outlined above. This raises the sort of serious character concerns referred to in the part of the Direction and *I find the Australian community would expect that the Applicant's visa would remain cancelled due to the character concerns raised by his very serious offending.* Accordingly, the expectation of the Australian community weighs against revocation.
>
> (Emphasis added.)

22 The reference in the Tribunal's reasons to "the part of the Direction" is somewhat ambiguous but would seem most naturally to refer to the part of Direction 110 that addresses the expectations of the Australian community as a consideration, namely cl 8.5 as a whole.

23 The Tribunal proceeded (at [172]-[173]) to consider other requirements of Direction 110 to determine the extent to which community expectations should be treated as weighing against revocation of the cancellation decision:

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

> of staying in Australia. Paragraph 5.2(4) expresses a principle similar to para 8.5(3) with respect to serious character concerns and makes it clear that those concerns are not restricted to circumstances where there is a measurable risk of physical harm to the Australian community.
>
> However, the principles also note the increased tolerance afforded to non-citizens who have been in the community from a very young age or for most of their lives. The Applicant did not spend his formative years in Australia, this consideration applies to an extent to the Applicant who arrived as a young adult and has lived here most of his adult life. I find the community would afford him some limited additional tolerance for his offending behaviour consistent with the Direction in this regard. However, I consider the serious nature of his offence and the fact he has spent a significant period of his time as an adult in Australia serving a sentence for that offence would lessen that tolerance and the weight to be placed on it.

24 RRRB submits that the Tribunal misconstrued Direction 110 by treating the list of kinds of conduct in cl 8.5(2) as "not exhaustive" and interpreting cl 8.5(2) as permitting the Tribunal to determine, for itself, whether the Australian community would consider that RRRB's conduct was such as to give rise to "serious character concerns" for the purpose of cl 8.5(2).

25 Relying on the judgment of the Full Court in *FYBR v Minister for Home Affairs* (2019) 272 FCR 454; [2019] FCAFC 185 (***FYBR***), RRRB submits that this approach is legally erroneous. He submits that what cl 8.5 does is to set out the government's view of the expectations of the Australian community, and to require the Tribunal to have due regard to that view: see *FYBR* at 471 [66], 473 [74] (Charlesworth J), 476 [95], 478 [103] (Stewart J). RRRB submits that the Tribunal's approach was forbidden by cl 8.5(4) of Direction 110, because the Tribunal independently assessed what community expectations would be in relation to offending of a kind that was not listed in paragraphs (a)-(f) of cl 8.5(2), and treated RRRB's offending as conduct that raised "serious character concerns" such that the community would expect that the non-citizen's visa should remain cancelled.

26 RRRB accepts that the submission on which he relies is inconsistent with the decision and reasoning of Collier J in *LRMM v Minster for Immigration and Multicultural Affairs* [2025] FCA 51 (***LRMM***) (and see also *Abraham v Minister for Immigration and Citizenship* [2026] FCA 100 at [54]-[63]). However, he submits that *LRMM* was wrongly decided and should not be followed. Although the decision of the Tribunal that was considered by Collier J in *LRMM* was made at a time when an earlier direction, Direction 99, applied, cl 8.5 of that Direction was identical terms to cl 8.5 of Direction 110.

27 In *LRMM*, Collier J addressed this issue as follows (at [82], [85]-[88]):

> The question arises whether the Tribunal erred because, as submitted by the applicant, it improperly performed its own assessment of what the "Australian community would expect" and, based on that assessment and despite the applicant's offending not falling within para 8.5(2), it formed the view that the Australian community would expect that the Australian Government can and should cancel the applicant's visa. In so contending the applicant further relied on para 8.5(4) of Direction 99 …
>
> First, I am not persuaded that the list of offences as set out in para 8.5(2) of Direction 99 is exhaustive as submitted by the applicant, and that the decision-maker should not have regard to offending by the non-citizen other than that list. I have formed this view because:
>
> - Paragraph 8.5(1) specifically states that where a non-citizen has engaged in serious conduct, 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. This paragraph is framed in general terms, referable to "serious conduct". A decision-maker may have regard to this general provision in assessing the expectations of the Australian community, and form a view as to whether the non-citizen has engaged in "serious conduct" such that he or she should not be permitted to remain in Australia.
> - Paragraph 8.5(2) is plainly an addendum to para 8.5(1). It commences with the words "in addition", presumably being "in addition to para 8.5(1). Para 8.5(2) gives further leeway to a decision maker to cancel or refuse a visa, or refuse to revoke the mandatory cancellation of a visa, on the basis that such a decision "may be appropriate". It provides examples of the types of offences which raise serious character concerns through conduct, being "in particular" of the kind set out in para 8.5(2)(a)-(f), and indicates the Government's views of the seriousness of such offences. The manifold qualifications to para 8.5(2), in my view, clearly mean that the list of offences in para 8.5(2)(a)-(f) is not an exhaustive list, being only "in particular" types of offences which raise serious character concerns through conduct.
>
> Second, on the basis that the list of offending as set out in para 8.5(2) is not exhaustive, the question arises whether the Tribunal at D[180] improperly made an independent assessment of what the Australian community would expect for the purposes of para 8.5 of Direction 99.
>
> I am not persuaded that the Tribunal did so in this case.
>
> The Tribunal at D[180] had regard to the nature of the applicant's offending which came before the District Court of Queensland in July 2020, as a result of which the applicant was convicted and sentenced to terms of imprisonment of three and four years. As set out earlier in this judgment, those convictions related to, *inter alia*, offences of robbery, assault and using personal violence. Unlike, for example, the decision of the Tribunal considered by Rofe J in *Muller v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 924 (***Muller***) where the Tribunal had assessed the community's expectations in light of the personal circumstances of the applicant, the decision of the Tribunal in this case was referable only to the "magnitude of seriousness" of the convictions of the applicant in July 2020. As accepted by her Honour in *Muller* at [86], para 8.5(1) of Direction 99 is a deeming clause which ascribes or imputes to the Australian community an expectation that wholly aligns with the expectation of the executive government of the day, with such

> expectations to be applied as norms. To assert that the Tribunal in this case was unable to have regard to the existence of the applicant's convictions in applying the relevant norm as set out in para 8.5(1) of Direction 99 would render the terms of para 8.5(1) meaningless.
>
> (Emphasis in original.)

28 Any consideration of this issue must also now take into account the subsequent decision of the High Court in *Plaintiff S22/2025 v Minister for Immigration and Multicultural Affairs* (2025) 99 ALJR 1378; [2025] HCA 36 (***Plaintiff S22/2025***). The plaintiff in *Plaintiff S22/2025* sought judicial review of a decision of a delegate of the Minister not to revoke the cancellation of his visa. One of the issues raised for the consideration of the High Court was the application of cl 8.5 of Direction 110 in circumstances where the plaintiff had been convicted of an offence that did not involve conduct of the kind specified in cl 8.5(2).

29 The reasoning of the delegate in *Plaintiff S22/2025* (set out in the reasons of the High Court at 1384 [23]) was expressed in terms that were different from the reasons of the Tribunal in the present case. The relevant parts of the delegate's reasons in *Plaintiff S22/2025* did little more than paraphrase parts of cl 8.5, concluding:

> I have proceeded on the basis that the Australian community's general expectations about non-citizens, as articulated in the Direction, apply in this case. I have attributed this consideration significant weight against revocation of the cancellation of [the plaintiff's] visa.

30 The plaintiff in *Plaintiff S22/2025* relevantly submitted that the delegate had misapplied cl 8.5(2) of Direction 110, in that, as none of his conduct was of the kind identified in cl 8.5(2), there was "no logical basis to apply the community expectation in that provision": *Plaintiff S22/2025* at 1384 [24]). The Court rejected this submission. While the Court's reasons relate to the particular way in which the delegate's reasons in that case were expressed, they contain statements which assist in explaining how cl 8.5(2) is properly to be applied. The Court explained (at 1384-5 [25]-[26]):

> … In referring, in para 104, to the "Australian community's general expectations", it is not to be assumed or inferred that the delegate wrongly believed the plaintiff's conduct fell within the list specified in para 8.5(2) of Ministerial Direction 110, thereby triggering the application of the "particular" expectation in the second sentence of that paragraph. To the contrary, the fact that the delegate does not identify any such specific conduct of the plaintiff and instead refers at a high level of generality to para 8.5(2) as concerning "certain kinds of conduct" conveys that the delegate understood both that the plaintiff had not engaged in any kind of the specified conduct and that the plaintiff was therefore not subject to the particular expectation in the second sentence of that paragraph.

> This reading of the delegate's reasons is reinforced by the fact that in para 104 the delegate refers only to the "Australian community's general expectations". Those "general" expectations are to be understood as a reference to the "norm" identified in para 8.5(1) (that "[t]he Australian community expects non-citizens to obey Australian laws while in Australia" and "[w]here a non-citizen has engaged in serious conduct in breach of this expectation ... the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia") *and the statement in the first sentence of para 8.5(2) (that "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"). The provision in the second sentence of para 8.5(2) beginning with the words "[i]n particular", as a matter of ordinary English text, operates separately and solely by reference to the specified conduct.* Having already characterised the plaintiff's custodial sentence for his offending as reflecting the view of the sentencing court that the offending was "very serious", the delegate was entitled to give the expectations of the Australian community significant weight in deciding against the revocation of the mandatory cancellation of the plaintiff's visa even though the plaintiff's conduct was not of the kind specified in para 8.5(2).
>
> (Emphasis added.)

31 The italicised part of this passage indicates that the High Court in *Plaintiff S22/2025* accepted that the reasons of the delegate were to be construed as meaning that the delegate had applied the expectations of the Australian community identified in cl 8.5(1) of Direction 110 and in the first sentence of cl 8.5(2). This was in a case where it was accepted that the plaintiff's offending did not fall within any of the categories identified in the "particular" consideration in the second sentence of cl 8.5(2). The Court held that the delegate's decision was not affected by jurisdictional error. It is thus clear that there was no error in the delegate having regard to the expectation stated in the first sentence of cl 8.5(2) even in a case where the offending was not of any of the specific kinds listed in paragraphs (a)-(f) of cl 8.5(2).

32 The last sentence of the quoted passage confirms that, where a decision-maker has formed the view that a non-citizen's offending was "serious" or "very serious", they are entitled to give significant weight to the expectations of the Australian community to the effect that non-citizens who have committed serious offences should not be permitted to continue to hold a visa, notwithstanding that the non-citizen's conduct was not of any of the kinds specified in paragraphs (a)-(f) of cl 8.5(2).

33 The decision in *Plaintiff S22/2025* has since been considered and applied in *CVDQ v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FCA 1101 (***CVDQ***). In that case, Lee J, after quoting part of the passage from the judgment in *Plaintiff S22/2025* which is set out at [30] above, said (at [32]-[33]):

> Hence para 8.5(1) contains an expectation which a decision-maker is required to consider as reflecting the Government's views, that a person who engages in serious conduct in breach of the expectation that the person obey Australian laws while in Australia, should not be allowed to enter or remain in Australia; and a more "particular" expectation is expressed in the second sentence of para 8.5(2) that arises in certain identified circumstances.
>
> Given the applicant's criminal history summarised at [4] above, it was clearly open to find that she presents "serious character concerns". The fact the conduct did not involve conduct of the particular kind specified in para 8.5(2) does not demonstrate error by the Tribunal in its reasons at TR [88].

34 I do not think that the decision of Collier J in *LRMM* is inconsistent with the interpretation of cl 8.5(2) of Direction 110 which appears from *Plaintiff S22/2025*, and which was applied in *CVDQ*. Once it is accepted that the first sentence of cl 8.5(2) is a general proposition that is capable of applying to offences beyond the kinds listed in paragraphs (a)-(f), the statement contained in that first sentence can really only be understood as contemplating that the Tribunal may form its own conclusion as to whether the conduct in the particular case is such that "the nature of the character concerns or offences" is such that the Australian community would expect that the person should not continue to hold a visa. I consider that I should follow the decision in *LRMM*. I am not satisfied that the reasoning of Collier J is wrong and, in any case, the issue of the construction of cl 8.5(2) of Direction 110 is one about which reasonable minds could differ.

35 The list of kinds of offences in paragraphs (a)-(f) of cl 8.5(2) may be said to be "exhaustive" in the sense that the specified kinds of offences are the only ones which Direction 110 states *must* be treated as raising "serious character concerns", such that the Australian community must be taken to expect that a non-citizen's visa should remain cancelled. However, the list should not be regarded as "exhaustive" in the sense of preventing the Tribunal from having regard to other kinds of offending when considering whether the first sentence of cl 8.5(2) is relevant in the particular case before it. The first sentence of cl 8.5(2) relevantly states a general principle that non-revocation of the 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". The fact that the kinds of offences listed in 8.5(2) does not include a range of offences which are generally regarded as extremely serious (such as murder, serious drug offences, or serious violent or sexual offences committed against persons who are not women, children or other vulnerable members of the community), tends to support this view.

36 The Tribunal in the present case was clearly aware that RRRB's offending did not fall within the categories listed in paragraphs (a)-(f) of cl 8.5(2) of Direction 110. In saying that this list was not exhaustive, the Tribunal should be understood as recognising that the statements in the first sentence of cl 8.5(2) could apply in circumstances involving offences other than those listed. I do not think that the Tribunal was relevantly substituting its *own* view of the expectations of the Australian community; rather, it was adopting its own characterisation of RRRB's offending, which it found to engage the general expectations of the Australian community which are expressed in cl 8.5(1) and the first sentence of cl 8.5(2). The Tribunal was entitled to take the view that RRRB's conduct was "very serious", and to regard RRRB as presenting "serious character concerns", and to treat these conclusions as engaging those general expectations of the Australian community. As in *CVDQ*, I do not consider that the Tribunal's reference to RRRB's offending being "of serious character concern" demonstrates any relevant error in its decision.

37 For these reasons, I do not accept that the Tribunal's decision was affected by jurisdictional error as contended in ground 1.

Ground 2 – denial of procedural fairness or legal unreasonableness

38 By his second ground of judicial review, RRRB submits that the Tribunal's decision to decline to permit his partner, Ms B, to give further evidence on the second day of the Tribunal hearing on 28 February 2025, or, alternatively, its decision not to exercise its power to adjourn the hearing to permit Ms B to give further evidence, was legally unreasonable or constituted a denial of procedural fairness. RRRB submits that the evidence Ms B sought to adduce was potentially relevant to two considerations to which the Tribunal was required to have regard under Direction 110: the best interests of children affected by the decision and the extent of impediments to RRRB were he to be removed from Australia.

39 Although ground 2 is framed in terms of an alleged denial of procedural fairness or legal unreasonableness, as the submissions in relation to this ground were developed, they raise a further contention that the Tribunal proceeded on the basis of a misunderstanding of the applicable law in connection with the operation of s 500(6H) and (6J) of the *Migration Act*. It is appropriate to consider this further contention in circumstances where the Minister did not object to its being advanced, and took the opportunity to make submissions in response to it.

40 Section 500 of the *Migration Act* relevantly states:

> **500 Review of decision**
>
> …
>
> (6H) If:
>
> (a) an application is made to the ART for a review of a decision under section 501 or a decision under subsection 501CA(4) not to revoke a decision to cancel a visa; and
>
> (b) the decision relates to a person in the migration zone;
>
> the ART must not have regard to any information presented orally in support of the person's case unless the information was set out in a written statement given to the Minister at least 2 business days before the ART holds a hearing (other than a directions hearing) in relation to the decision under review.
>
> (6J) If:
>
> (a) an application is made to the ART for a review of a decision under section 501 or a decision under subsection 501CA(4) not to revoke a decision to cancel a visa; and
>
> (b) the decision relates to a person in the migration zone;
>
> the ART must not have regard to any document submitted in support of the person's case unless a copy of the document was given to the Minister at least 2 business days before the ART holds a hearing (other than a directions hearing) in relation to the decision under review. However, this does not apply to documents given to the person or ART under subsection 501G(2) or subsection (6F) of this section.

41 These provisions were collectively referred to in the hearing before the Tribunal as the "two-day rule".

Facts and findings of the Tribunal relevant to ground two

42 I will first identify relevant aspects of the evidence that was before the Tribunal and the factual findings it made regarding the circumstances of Ms B and her children, and RRRB's relationship with them.

43 As has been mentioned, Ms B is RRRB's partner and the mother of RRRB's son, S, who was born in 2015. RRRB and Ms B were each in other relationships at that time. RRRB only became aware of his son's existence while he was on home detention bail, following his arrest in late 2015. Despite the limited contact they had at that time, RRRB paid some child support before he was imprisoned. Ms B's evidence before the Tribunal was that she and RRRB had been close friends since meeting in 2008. The Tribunal accepted Ms B's evidence that she visited RRRB in prison six times with S, who was then one year old, in late 2016 to early 2017.

The Tribunal's characterisation of these visits is slightly imprecise, as Ms B's evidence to the Tribunal was to the effect that the visits occurred while RRRB was remanded on bail, rather than in prison. Ms B ceased contact with RRRB because she had another high-risk pregnancy with medical complications, and because her then-husband was controlling and limited her contact with other people. RRRB said that he did not pursue further contact at that time as he felt this was best for S, whom he did not want to expose to the prison environment. Ms B left her ex-husband in 2021 in circumstances of family violence and, in late 2024 when RRRB was released from prison and entered immigration detention, she and RRRB reconnected and entered a relationship.

44 Ms B has eight children in total, three of whom live with their grandmother. Two of those three children are adults. Ms B's other five children, including S, live with her. S is the only child whose father is RRRB. Ms B's evidence was that five of her children have disabilities, two of whom live with her (S and E). The Tribunal accepted that S's needs were "complex", that he had been diagnosed with "Level 2 Autism, epilepsy and hypermobility", and that he had experienced bullying at school, which had led Ms B to decide to homeschool him. The Tribunal also described El, aged 17, as having "significant needs". In her evidence, Ms B described El as "pretty much nonverbal … he doesn't understand language" and as requiring support "for the rest of his life".

45 Ms B herself has been diagnosed with several psychological and physical conditions. The Tribunal referred to a statement from a National Disability Insurance Scheme (**NDIS**) support worker who stated that Ms B "faces a range of complex disabilities, with mental health challenges" as well as "debilitating illnesses and sensory disorders". Ms B's statutory declaration that was before the Tribunal and her affidavit before this Court describe these conditions in more detail. In the affidavit she deposes to having diagnoses of "level 3 autism, attention deficit hyperactivity disorder, complex post-traumatic stress disorder, cardio-vascular disease, disc and spinal degenerative disease, May-Thurner syndrome, rare chromosome syndrome, white matter disease (in both hemispheres of [her] brain) and small vessel ischemic disease". Ms B also states that in 2020 she had a stroke that has caused weakness in the left side of her body. Ms B's evidence before the Tribunal included that she had experienced serious mental health crises in June 2024 and December 2024, and that RRRB, with whom she had then recently reconnected, had provided significant support. She also said that RRRB had provided her close emotional support since that time.

46 Ms B's evidence before the Tribunal was that she "struggles to meet the needs of managing the children" and that the NDIS supports which were in place were "not sufficient", so she relies on RRRB's support to care for her children, including S, and herself. For example, her evidence was that NDIS support will not cover S's homeschooling. In that respect, the evidence of both Ms B and RRRB was that Ms B has no other options for informal support, with no immediate family she can rely on, as her father died in 2014 and Ms B is estranged from her mother. The Tribunal in its reasons found that Ms B "is navigating the review of [NDIS] plans and other challenges with the children" and that she had testified that RRRB's removal from Australia "would rob her of a key support at a difficult time".

47 The evidence of RRRB and Ms B before the Tribunal was to the effect that some of Ms B's children have spoken with RRRB over the phone whilst he has been in immigration detention, that S spoke with him daily, and that S and one of her other children, E, had visited RRRB in immigration detention on one occasion.

48 The report of the psychologist who gave evidence to the Tribunal stated that RRRB was raised by his mother in New Zealand after his father left when RRRB was nine months old, and that he was witness to his mother having a physically and emotionally abusive partner. In a statutory declaration submitted to the delegate who made the non-revocation decision, which was before the Tribunal, RRRB stated:

> As someone who had an absent father since I was young, I don't want the same thing for my son. I have not had this opportunity since finding out about him on bail and I will not be able to build this relationship if I am in New Zealand. My son has been a big motivator to starting a new life.

49 In its reasons for the non-revocation decision, the Tribunal accepted that RRRB has a developing relationship with S and "desires to have a close relationship with his son and to support him". The Tribunal noted the evidence given by an NDIS support worker assisting Ms B's family, who said that the renewed relationship between RRRB and Ms B and S had had a "profound effect" on S.

Events at the Tribunal hearing

50 In these proceedings, RRRB relies on an affidavit of Ms B dated 16 August 2025, which sets out certain events which occurred at, and around the time of, the Tribunal hearing on 28 February 2025. Ms B's affidavit evidence was not challenged by the Minister. RRRB also relies on an affidavit of his solicitor, Ziaullah Zarifi, dated 15 August 2025, which annexes the transcript of the hearing before the Tribunal.

51 On the first day of the Tribunal hearing on 27 February 2025, RRRB relied on written evidence provided by Ms B and called her to give oral evidence before the Tribunal. Ms B was cross-examined by the Minister's representative. In the course of the cross-examination, which lasted around 30 minutes, she gave evidence regarding her disabilities and those of her children, including S and El. Ms B referred to the NDIS support plans that were in place for S and El. She told the Tribunal that those plans (as well as her own) had been under review since the previous week and that she was "waiting for that to come in". Ms B said that she was unable to provide much detail about the plans and the needs they covered because, in effect, the situation was dynamic: in relation to El because he had recently finished school and "his needs are now different", and for S because he had "just been reassessed for autism" and they expected "a jump in the severity, which will increase his need". Ms B stated that the support provided through the NDIS to S and the other family members was insufficient to meet the family's needs and that she did not "have any other supports outside of NDIS" or "anyone [she] can call on".

52 In her affidavit, Ms B states that during her cross-examination at the Tribunal hearing she felt "overwhelmed, rushed and anxious", and felt that she was not given the opportunity to fully explain her answers to the questions posed to her. At the end of the cross-examination of Ms B, RRRB asked her a few further questions in re-examination, and the Tribunal also asked some further questions. Ms B's evidence was then complete, and the hearing was adjourned until the following day. At the completion of Ms B's evidence, the Deputy President constituting the Tribunal said to her, "You're welcome to come back tomorrow if you want, you're welcome to sit in, but you're not required to come back."

53 Ms B's evidence is that, after returning home from the Tribunal on 27 February 2025, she found three sealed envelopes in her mail which she believed were from the National Disability Insurance Agency. She suspected they were the updated NDIS plans she had been waiting for. On the morning of 28 February 2025 at around 9.30am, Ms B attended the Tribunal registry in Perth. Shortly after arriving, she asked the Tribunal registry clerk if she could give further evidence to the Tribunal, including the three NDIS plans she said she had received in the envelopes, which she showed to the clerk. It appears that Ms B had not opened the envelopes at that point. She told the clerk that she could open the mail in front of the Tribunal and give more evidence about her and S's health issues. According to Ms B, the clerk told her that she would ask the Tribunal member and let Ms B know.

54 Shortly after the second day of the hearing commenced on 28 February 2025 at 10.04am, the Deputy President raised with RRRB the question of Ms B giving further evidence and providing further documents. According to the transcript of the Tribunal hearing, the following exchange occurred:

> DEPUTY PRESIDENT: ... I understand from the hearing attendant that [Ms B] is here, [RRRB], and she was saying she wanted to give further evidence.
>
> [RRRB]: Yes.
>
> DEPUTY PRESIDENT: She's completed her evidence. And, as we discussed, I think she was indicating that she had documents. But it would be problematic for you to submit documents at this point because of the two-day rule.
>
> [RRRB]: Yes
>
> DEPUTY PRESIDENT: [Counsel for the Minister], I understand from the hearing attendant that these are the [NDIS] plans. What is the Minister's position in relation to either further evidence from Ms [B] or the [NDIS] plans?
>
> [COUNSEL FOR THE MINISTER]: It's obviously hard without seeing the documents in the first instance. And if I was in the room in previous occasions when this has come up, I've asked to just have a look at the documents in the first instance before forming a view. But yes, obviously the two-day rule does apply at the moment. So the tribunal is not able to accept the evidence, the documents, from Ms [B]. I do know that some Members go through the avenue of seeing if the respondent would submit those documents or if there's further hearings. That's a position that some Members take about future listings and bringing it on that way. But I'm not sure if that's been tested in the Federal Court, but I haven't seen those documents.
>
> DEPUTY PRESIDENT: I think the other thing … was [Ms B] was ask[ed] about the [NDIS] plans in cross-examination and in questions from the tribunal. Documents that are submitted in response to questions in cross-examination would arguabl[y] not offend the two-day rule based on the authorities. Evidence doesn't. Whether the documents would similarly not because they're offered in response, I'm not 100 per cent sure. Maybe what we could do is I can ask Ms [B] to go down and get the hearing attendants to scan the documents and give them to you before we ask you[r] take them on. I haven't seen them. So that way I can get the Minister's submissions on them first on how we proceed with that, and maybe go from there.
>
> [COUNSEL FOR THE MINISTER]: I'm more than happy to do that. I have to seek instructions, so there may have to be a short adjournment.
>
> DEPUTY PRESIDENT: That's fine. Well, why don't we just arrange to do that now and we will defer consideration of that until later after we've had an adjournment. We'll just do it after whenever we have a break. We can take evidence from [another witness] in the meantime and see where we get to. I'm not sure that it matters particularly whether it's oral evidence or the documents. It's the same issue really.
>
> [COUNSEL FOR THE MINISTER]: Yes. I suppose the documents would be, opening her evidence would be a different position of the documents. I don't think she would, the applicant is able to tender documents himself at this point. But whether Ms [B] comes back to give evidence, I don't think the two-day rule necessarily applies to that aspect other than the fact that her evidence has now closed. So it would be hard for her to comment on documents, I guess, without having submitted those, yes.

> DEPUTY PRESIDENT: All right. I'll ask the hearing attendant to get them sent to you. I'll go and get them to get them off her and get them scanned.

55 It is apparent that, at this stage, the Deputy President had been notified that Ms B may wish to give further evidence and that she was in possession of documents that she could provide to the Tribunal. The Deputy President herself had not seen the documents, but had been told that they were NDIS plans. It is not apparent that the Deputy President had been told that the documents had only been received by Ms B the previous evening. Her reference to "the [NDIS] plans" might suggest that she assumed that they were the existing NDIS plans to which Ms B had referred in her evidence, rather than newly received plans.

56 This situation was somewhat unusual, in that it was Ms B, who was not a party to the proceedings before Tribunal, who had raised the prospect of her providing further documents to the Tribunal. RRRB was not in possession of the documents and had not seen them. Even Ms B had not opened the envelopes and looked at the documents. I do not think the Deputy President was expressing any concluded view as to the operation of "two-day rule" in this exchange, but it is apparent that she was conscious that s 500(6H) or (6J) of the *Migration Act* might bear on whether the documents could or should be received.

57 The exchange then continued as follows:

> [RRRB]: Am I allowed to speak, sorry?
>
> DEPUTY PRESIDENT: Yes.
>
> [RRRB]: I believe that there are only two documents today in the mail.
>
> DEPUTY PRESIDENT: Yes. The two-day rule doesn't really – it varies. It's not something that I can waive. It's just a rule that applies. There are some nuances to the rule including that it doesn't apply to questions answered in cross-examination or questions answered, material put by the tribunal. There's some suggestion that it doesn't apply to material that's put in submissions on the fly as well. But the Minister is entitled to form a view on it because it is evidence that's being offered after the witness has left the stand and it isn't two days prior to the hearing. So we need to have a conversation about it, and I'll ask the - - -
>
> [RRRB]: I think she was just more like, she froze yesterday, she feels, and she wants to - - -
>
> DEPUTY PRESIDENT: Yes. Okay. All right. I've asked the registry to do that, [Counsel for the Minister], so we'll just have to, we'll come back to it once you've had an opportunity. …

58 This exchange tends to confirm that the Tribunal was still not expressing any final view as to the operation of the "two-day rule", and was aware of potential nuance in its application, but regarded its operation as a matter on which the Minister should have an opportunity to be heard.

59 RRRB made one comment that could potentially have alerted the Tribunal to the fact that the documents had only recently been received: "I believe that there are only two documents *today in the mail*". However, that comment was not itself accurate (there were three documents, and Ms B had received them the previous evening, not that day), and in any event did not convey that the documents were the updated NDIS plans which Ms B had said she was expecting. The Tribunal's response to RRRB's comment, which related to the two-day rule, did not suggest that it understood that the documents to which reference had been made were new NDIS plans.

60 In her affidavit, Ms B states that, when the registry clerk came back to her, she told Ms B words to the effect of, "No, they will not be allowing you to give evidence. They want the NDIS plans and want you to give them to me." Ms B then says she told the clerk she would "need a minute to think". It is not clear whether the "registry clerk" referred to in Ms B's affidavit is the same person as the "hearing attendant" referred to in the Tribunal hearing. It is apparent that, if Ms B has accurately recalled the effect of what she was told, it is not entirely consistent with what the Deputy President asked the hearing attendant to convey to Ms B. It is possible that Ms B is mistaken about what was said to her, or that she has accurately recalled her own understanding of what was said, but that her understanding was mistaken. It is apparent from the Tribunal transcript that no decision had yet been made as to whether Ms B would be permitted to give evidence. In circumstances where Ms B's evidence was not challenged, I am prepared to accept that, whatever precisely might have been said to her, she understood that she was being told that she was not to be called to give further evidence, at least at that point in time, and was being asked to provide the NDIS plans to the clerk. The clerk's request that Ms B provide the NDIS plans was at least broadly consistent with the course contemplated by the Deputy President, which was to allow copies of the NDIS plans to be made and provided to RRRB and the Minister's counsel.

61 According to Ms Bs evidence, she then opened the envelopes. In her affidavit, Ms B deposes that the envelopes included NDIS plans for S and E. She has annexed to her affidavit a copy of what she says are the NDIS plans, and the annexure indicates that the envelopes also included an NDIS plan for El. Ms B states that, upon review of the documents, she noticed "inaccuracies" in the plans. Ms B's evidence is that she then spoke to the clerk again, explained the issues with the NDIS plans and said that she "did not want to hand over those documents because the information in them was incorrect". She says that she told the clerk that she "needed to go in and explain the inaccuracies in the plans".

62 Ms B next deposes that the clerk then went back into the hearing room and returned, saying to Ms B words to the effect of, "Sorry, but they won't let you give evidence." Ms B says that she then told the clerk that she would "write some things down to provide to the Tribunal if they would not … allow [me] to speak to them". She says that the clerk then told her that she could do that but that "[i]t's up to the member to decide whether or not to admit anything in". Ms B says that she then began to write a handwritten letter, outlining issues and topics she wanted to give further evidence on, although she "did not have time to write down everything" she wanted to say what she thought was relevant.

63 Ms B next states that, at around 10.30am to 11.00am, she gave the letter to the clerk and asked if it could be given to the member. She says that the clerk told her words to the effect of, "I will give it to the member. It's up to them whether they would admit it or not." After this, Ms B says, she waited in the waiting room at the Tribunal for several hours. She was not told whether the Tribunal would accept her letter or allow her to speak about it, and she left the building around 3.00pm or 3.30pm. She says that she would have been willing to attend on another day to give evidence if the Tribunal had permitted her to do so.

64 The affidavit evidence of Ms B is difficult to reconcile with the events recorded in the transcript of the Tribunal hearing.

65 Between 10.15am and 10.47am, a psychologist gave evidence before the Tribunal. Immediately after the completion of her evidence, the Deputy President informed RRRB and counsel for the Minister that "the tribunal officers tell me that Ms [B] wants to explain the documents before she hands them over to be scanned" and "she's writing out a letter to go with them".

66 The transcript does not support Ms B's evidence that, before she indicated she would write a letter, a clerk of the Tribunal had returned to the hearing room to ask whether she could give further oral evidence and was told that the Tribunal would not permit her to do so. It may be that there was some misunderstanding on the part of either the clerk or Ms B.

67 The exchanges at the Tribunal hearing, as recorded in the transcript, continued as follows:

> DEPUTY PRESIDENT: All right. Okay, so the tribunal officers tell me that [Ms B] wants to explain the documents before she hands them over to be scanned. She's writing out a letter to go with them. That can just go to you, [Counsel for the Minister], and you can get some instructions on it. Yes. I think we just to go from there. I want to give you an opportunity to see them rather than me. Apparently, it's something in relation to one of the conditions that's listed there.

> [COUNSEL FOR THE MINISTER]: Okay. Sorry, was the letter coming to me for the purposes of tendering (indistinct) - - -
>
> DEPUTY PRESIDENT: Well presumably – yes, to take a view on whether it's going to be tendered or whether she's called back to the stand.
>
> [COUNSEL FOR THE MINISTER]: Yes.
>
> DEPUTY PRESIDENT: I'd rather just give you an opportunity to look at it first, to tell me what the minister's position is in relation to either of those options before it's put before the tribunal.
>
> [COUNSEL FOR THE MINISTER]: Yes, thank you.
>
> DEPUTY PRESIDENT: The letter seems a fair way to go, because otherwise we'd have to put her in the stand anyway, which rather would remove from the minister the opportunity to get instructions on the evidence. I can exclude it, but it seems better to try and deal with it in advance, if we can.
>
> [COUNSEL FOR THE MINISTER]: I appreciate that.

68 At this point, the Tribunal and counsel for the Minister, evidently understood that Ms B was preparing a letter to explain her concerns about "the documents" (ie, the NDIS plans). It does not appear to have been contemplated that Ms B would produce a letter that was itself intended to be admitted as evidence, at least independently of the admission of "the documents". It may be noted that the Deputy President had only referred to "the documents" and it is not apparent that she appreciated that they were new NDIS plans that had only been received by Ms B the previous evening.

69 Shortly before 11.35am, the Minister's representative confirmed he had not yet received the letter from Ms B. The Tribunal then heard evidence from three further witnesses. Following a short adjournment, the hearing resumed at 11.50am, and the following further exchange occurred:

> DEPUTY PRESIDENT: … Now, just before we start with their evidence, I just want to confirm, Ms [B] has indicated to the registry staff that she's spoken to the social worker and was advised not to give the documents over, so she's not providing them. So I think the issue is probably resolve[d]. She doesn't want to give the documents.
>
> Counsel: Okay. Thank you, Deputy President.
>
> RRRB: There's a conflict on the – maybe the - - -
>
> DEPUTY PRESIDENT: I beg your pardon?
>
> RRRB: I believe there's conflict in the way that the (indistinct) things are not allocated correctly, I believe.
>
> DEPUTY PRESIDENT: Well, in any event, she's indicated she doesn't want to give them to us, so I think that is the end of the matter.

70 The transcript of the Tribunal hearing establishes that the Tribunal was informed that Ms B no longer wished to provide the plans. Ms B deposes that she ultimately determined that she did not want to hand over the NDIS plans because she was concerned that they contained information that she regarded as inaccurate or deficient, and that she communicated this to a clerk of the Tribunal.

71 After the remaining witnesses had given their evidence, at around 12.26pm, a further discussion took place which RRRB submits is "really important" for his case in that it reveals the thought process of the Tribunal:

> DEPUTY PRESIDENT: … So, no further witnesses for you, [RRRB]. [Ms B] has indicated that she does not want to give the documents that she had indicated, and in those circumstances, [Counsel for the Minister], did you want to get instructions on whether the Minister's position on her giving further evidence, if that was still her desire? I am not clear on whether she is still seeking to give evidence.
>
> [COUNSEL FOR THE MINISTER]: I suppose, if that would be the position, that I guess the oral evidence is done. It would be helpful in circumstances if it was to talk to documents which had come up recently, or they weren't able to get before the two-day discipline in other ways. I suppose that would be the current position if Deputy President is minded to hear it, I can seek instructions. But I suppose, she did have the opportunity as today to look for that evidence.
>
> DEPUTY PRESIDENT: I'm not sure that it would take us any further. I think the evidence that she has given is the evidence. I think, the likelihood that we would receive evidence that, given that we cannot, there is no documentation to verify that or anything to otherwise provide detail. I am not sure that it is going to add much to the testimony she gave yesterday while she was on the stand. And in those circumstances, I think there is probably not a lot to be gained from it. I can understand that she feels she had additional information. But in terms of this application and the relevance, she did give fairly detailed evidence yesterday on what her support arrangements were, and the fact they were under review. [Counsel for the Minister], maybe we can just, sorry, go ahead, [RRRB].
>
> [RRRB]: I believe, I think she was, yes, she froze and she decided like, after it she was quite concerned that she didn't really sort of elaborate how far the support doesn't go. She's also had dramas in regards to the them guys saying that she doesn't have, she doesn't have any informal supports, and then that's become a bit of a drama with her and the NDIS. She wanted to sort of relay on how that was relating to her. And that she failed to sort of explain, yes, the need for informal supports. Especially for ongoing NDIS support, is important to her.
>
> DEPUTY PRESIDENT: All right. I mean, I think she had the opportunity to give her evidence on those things yesterday, and prior to the hearing, consistent with the two-day rule. I would not be inclined to put her back in the stand for that reason. And I do not think that it would substantively change the evidence in any event. But I think she had an opportunity in evidence yesterday, and prior to that, to put on the evidence that she wanted to, in relation to her circumstances. And given that it is just more oral testimony from her, I do not think that is really going to take us much further.
>
> [RRRB]: Yes.

> DEPUTY PRESIDENT: [Counsel for the Minister]? Is there anything else the Minister wants to say?
>
> [COUNSEL FOR THE MINISTER]: Yes. No. Nothing further. I agree with that position.

72 The statement made by RRRB in the course of this exchange suggested that he believed that Ms B was concerned that she had not elaborated sufficiently on topics about which she had given evidence the previous day. What was said by RRRB did not alert the Tribunal to the fact that "the documents" to which reference had been made were new NDIS plans that Ms B had received the previous evening.

73 Following an adjournment, the Minister's counsel and RRRB made their oral closing submissions. At the conclusion of the closing submissions, at around 3.00pm, counsel for the Minister informed the Tribunal that he had just received a copy of a 6-page, handwritten letter produced by Ms B, by way of an email from the Perth registry of the Tribunal. It appears that Ms B had provided the letter to the registry, which had forwarded it to the Minister's counsel. It is not clear when Ms B provided the letter to the registry. The events recorded in the transcript of the Tribunal hearing tend to suggest that the letter may have been provided by Ms B sometime later than she estimates in her affidavit (her evidence being that she provided it to a clerk of the Tribunal at around 10.30am to 11.00am). Nevertheless, it may be accepted that there may well have been some delay between Ms B's providing the letter to the Tribunal clerk and its coming to the attention of the Minister's counsel and the Deputy President.

74 A copy of Ms B's letter was not provided to the Deputy President at this time, or at all. However, as this is the document which RRRB contends the Tribunal should have admitted into evidence, I shall set out its contents in full. It read:

> Hi,
>
> There is incorrect information in [S]'s plan. His goals, strength's and background & who he lives with is in correct.
>
> I have to now go back to NDIS & change the info on his plan. [S]'s interest's, things he likes is out dated & referring to when he was much younger.
>
> They have also cut the amount of support hours per week. This comes under Core Supports.
>
> I can not use Support workers in lieu of family. [RRRB] is unfamiliar with how NDIS works.
>
> NDIS is incredibly difficult to deal with.
>
> In this new plan they have not included that I too am an NDIS participant.

> His total amount of funding is $130,000 for 12 months.
>
> I should have gone into more detail also regarding my health. I have Vascular disease, My heart is inlarged & I have white matter lession disease in my brain. My mobility will also decline due to the disease with in my entire spine. Disc degenerative disease where my spinal cord is severely compressed at the C/5,6 & my L5 to S1.
>
> I also have May-Thurner Syndrome, that is where your iliac arteries are compressed up against my lumbar spine. This restrict's blood flow in my legs which give's me a high risk of developing clots in my legs. I suffer debilitating pain.
>
> I also have the genetic high cholesterol & partial blockage in 2 main arteries.
>
> I see neurology, Cardiology & pain management at Sir Charles Gardiner Hospital. I had a stroke in July 2020 which has left me with significant weakness down the left side of my body.
>
> I apologise for not clarifying my health issues yesterday this is incredibly difficult for me. I have extreme difficulties articulating information due to my disabilities.
>
> I felt rushed yesterday & drove home to find these NDIS plan's in my letterbox.
>
> If something were to happen to me I do not know what will happen to my youngest 3 children including [S] if [RRRB] were to be removed from Australia.
>
> There is alot more information I could give that I believe is relevant, I'm Sorry I was just so incredibly anxious yesterday which affects my ability to articulate information.
>
> [S]s Brother [E] has the same amount as [S].
>
> Total Capacity Building Supports is $47,757 for 12 month, that's his therapy buget which isn't enough given [S]'s challenges.
>
> Total Core Supports for the year is $81,967.
>
> I will be requesting a plan review and appealing all 3 plan's.
>
> Please excuse my messy handwriting, I was hoping to get a chance to explain things. I know NDIS very well, I don't like NDIS either[.] I have significant trauma around NDIS.
>
> [RRRB] can't answer questions relating to NDIS yet.
>
> I have been in hardship for year's & when I finally reconnected with [RRRB] it has been life changing. I have hope & please beg you to reconsider the cancellation of [RRRB]'s visa.
>
> [RRRB]'s knowledge of everything related to healthy life style habit's like diet & exercise would help me reverse or slow the medical condition's I have.
>
> My 21yr old son [J] who is also Autistic want's to join a gym with [RRRB].
>
> [S] & my other children need & deserve to have [RRRB] in their lives. So do us all.
>
> He ([RRRB]) deserved a second chance. Please

75 Read in its entirety, the letter can be seen to have addressed several different topics. First, it sought to point out that there were errors or omissions in the new NDIS plans that Ms B had discovered in her letterbox the previous evening. In the course of doing so, it referred

incidentally to some of the contents of the new NDIS plans, but did not provide any overall explanation of what the plans contained, or context that would have been necessary to evaluate Ms B's criticisms of the NDIS plans.

76 Secondly, it indicated that Ms B was not happy with the updated NDIS plans, that they would need to be changed, and that she would be "appealing" all three NDIS plans.

77 Thirdly, the letter sought to provide further information about Ms B's health, medical conditions and disabilities. That was a topic that had been addressed in her written and oral evidence to the Tribunal. The information in the letter about that topic consisted of information that Ms B had already provided, or could have provided.

78 Fourthly, the letter contained information and submissions about the hardship Ms B would face if RRRB were removed from Australia and why the Tribunal should revoke the cancellation of RRRB's visa. Again, this was an elaboration on topics that she had already addressed, and the information in the letter either was, or could have been provided earlier.

79 In the hearing before the Tribunal, Ms B's letter was discussed, initially between counsel for the Minister and the Deputy President, as recorded in the following part of the Tribunal transcript:

> [COUNSEL FOR THE MINISTER]: It seems to be a hand-written note, the email from the tribunal reads 'Please find a copy of Ms [B]'s correspondence dated 28 February. Previously discussed [NDIS] documents were not provided to the tribunal.' And I had received it only while you were speaking with the applicant that it came in at 2.53. I received it at 2.58. I've had a brief read. Obviously I haven't sought instructions or, there doesn't seem to be, some of the points that were raised in there obviously would need to be – the only way this document could be given, in my opinion, is if there was cross-examination of Ms [B]**.** And I intend to, at this point, is when it came through, the evidence is not only done by the closing submissions, but there doesn't seem to be anything in here that's necessarily, I'm not sure. It's obviously come in at a very unfortunate point.
>
> DEPUTY PRESIDENT: I haven't seen it. So I think the - - -
>
> [COUNSEL FOR THE MINISTER] Broadly, it speaks to the NDIS plan and some concerns within there of what the plans were. Lots of the details weren't discussed and it's more about corrections and difficulties. There's also additional details about [Ms B]'s conditions and (indistinct).
>
> DEPUTY PRESIDENT: Do you want us to stand down for a few minutes and you can get some instructions? I guess the question is, there's a number of things we can do. As I said before, I'm not sure, I haven't looked at it. And I'm not sure that, without looking at it, I'm not sure that it's going to change the evidence significantly in relation to the considerations that it's relevant in the sense that [Ms B] gave extensive evidence yesterday about the family circumstances being complex and there being a range of diagnoses and other things, about which I don't have any medical evidence, but about

> which I'm prepared to, absent any objections from the Minister, which there weren't, I'm prepared to accept that in broad terms, in terms of the fact that the family have a range of needs which are being, engaging with NDIS is respect of those, and that that is something which is subject to review. I'm happy to adjourn for 10 minutes and look at it and see if we think it's worth convening for further evidence and submissions on just that element.
>
> [COUNSEL FOR THE MINISTER]: I think at this point I would agree with that …
>
> …
>
> [COUNSEL FOR THE MINISTER]: Obviously the two-day rule is applicable in this matter, and the earlier suggestions of getting instructions of whether we would submit something, if it was in circumstances where [Ms B] would come back and speak to it orally, and I had understood that a note like this was coming to contextualise why something further was being provided.
>
> DEPUTY PRESIDENT: Being provided, yes. That was my understanding.
>
> [COUNSEL FOR THE MINISTER]: In circumstances where, yes, this is otherwise a late or very late further statement from a witness who had the benefit of giving oral evidence yesterday, and this is now received at the point of closing, it's not something that necessarily we would want to submit. And even if we were, it would be something that possibly would have to open up to cross-examination because there's a lot of information in here. But it's very late in the piece. But I don't think there's much in here that, my instructors would probably not. Now, happy to stand down and try. But - - -

80 I note that, although the Deputy President raised the possibility of a short adjournment to "look at" the letter from Ms B and determine whether to take further evidence, this did not ultimately occur. The hearing before the Tribunal continued as follows:

> DEPUTY PRESIDENT: [RRRB], have you seen the letter from Ms [B]?
>
> [RRRB]: I just read it now.
>
> DEPUTY PRESIDENT: Okay. So what is your position in relation to that letter? Are you seeking for that to be taken into account or not?
>
> [RRRB]: *It's just describing the hardship she's going to face on removal.* So if you believe that there's no added weight to be given to that - - -
>
> DEPUTY PRESIDENT: Well, I mean, I think she's, I think she gave extensive evidence about that.
>
> [RRRB]: Yes.
>
> DEPUTY PRESIDENT: There isn't, in relation to some of the things that she gives evidence about, I'm effectively going on her oral evidence. That is, I don't have evidence about the [NDIS] plans. I don't have evidence to verify some of the things she said, and I don't see that as problematic in the sense that I'm prepared to accept that the circumstances are complicated and there are a number of children who have complex needs. There's supports being provided. The Minister hasn't suggested that I not accept her evidence in that regard. Additional evidence of that same kind, I don't think that is going to change how much weight I can put on that, if that makes it clear.

[RRRB]: It's not really about how much support is given. It's about probably more the lack of support given by NDIS.

DEPUTY PRESIDENT: I think she gave evidence yesterday about that. And I don't have any basis on which to verify that other than she says, she wants your support.

[RRRB]: Yes.

DEPUTY PRESIDENT: So in terms of how far it can take me, she says she wants your support. She has some [NDIS] support. She says that's not enough. I think she's given evidence to that effect. So I don't think, given the prejudice to the Minister and the fact I can't take it into account, we would have to effectively come back.

[RRRB]: Yes, I understand.

DEPUTY PRESIDENT: And have another hearing. And I don't know that it's going to add any value in that regard. Because it is just going to be her evidence again, giving more evidence that she had an opportunity to do already. And as I say, I'm prepared to place some weight on the evidence that she gave as an account of her own circumstances and the children's circumstances. I can't take it much further than that because I don't have evidence to support or verify other than that, you know, I accept she's getting [NDIS] support. I've got a statement from one of the people who has that role in the house. But the details of that I don't have.

[RRRB]: I would have provided them if I knew a bit more. I didn't realise.

DEPUTY PRESIDENT: It's fine. But we can't do it now because it's the end of the hearing. And I don't know that it takes us that much further. It's not my job to assess the sufficiency of [NDIS]A support in this circumstance. My job is to weigh that consideration about the best interests of your children and about the best interests of the impact on people who are connected to you in Australia who are impacted by that decision. And I think that we have evidence about that from her with respect to her and her family unit.

[RRRB]: Yes.

DEPUTY PRESIDENT: That wouldn't be substantially changed, I don't think, by her clarifying or providing additional colour on what she already told me during the hearing.

[RRRB]: Yes.

DEPUTY PRESIDENT: So I'd be inclined not to accept it on that basis, not to adjourn and to come back on another time when we're already at closing.

[RRRB]: Yes

DEPUTY PRESIDENT: If I thought it was evidence not supported already by evidence that's before me, then it might be another situation. If it was something new that otherwise I couldn't take into account, then I might treat it differently. But given she's just effectively elaborating on evidence she's already given, I don't think that we can allow it in that circumstance.

[RRRB]: Okay, yes.

…

DEPUTY PRESIDENT: I mean I think the difficulty, even with specific details, is that at this point in the process, I wouldn't be able to verify them.

> [COUNSEL FOR THE MINISTER]: I agree.
>
> DEPUTY PRESIDENT: And even then, the details don't, I think, add to what I would see as the issue in relation to her concerns and her evidence about impact on her and the family.
>
> … I think we'd then proceed on the basis that the letter is excluded and I won't have regard to it. I haven't seen it at this point, but if it's been circulated to both of you, it's presumably on the record. … I'm not going to have regard to it, but if there's any speculation about what we were discussing, it's probably worth having the document identified. … Well, I will, I haven't seen it. I'll mark for identification purposes only, the letter which was provided today at some point during the proceedings by Ms [B], which the tribunal has indicated it won't take into account having regard to the provisions of the Act with respect to the notice to be given to the Minister, and the other comments that I made in relation to the likely probative value of that evidence.
>
> (Emphasis added.)

81 I make the following observations about this exchange. In doing so, I do not intend to be at all critical of RRRB. An assessment of the reasonableness of the course taken by the Tribunal must be based on what was known to the Tribunal, and in light of what had been said by the parties, including RRRB.

82 First, it was clear from what the Deputy President had said earlier that she had not herself read the letter. Neither party pressed for her to do so.

83 Secondly, the Deputy President directly asked RRRB whether he was seeking to have the letter taken into account, and his own answer drew on the Deputy President's earlier indicative observation that she did not think further evidence was "going to change the evidence significantly in relation to the considerations" in the sense that Ms B had given "extensive evidence … about the family circumstances being complex and there being a range of diagnoses and other things", and that she was "prepared to accept that in broad terms, … the family have a range of needs which are being, engaging with NDIS is respect of those, and that that is something which is subject to review". The Deputy President's earlier observation had not suggested that she was aware that Ms B's letter contained evidence about the updated NDIS plans that were, in effect, evidence about the outcome of the review. As noted above, it is not apparent that the Deputy President was told, or appreciated, that "the documents" to which reference had earlier been made, were new NDIS plans.

84 Although RRRB did not directly state that he wished to have the letter taken into account, the Deputy President appears to have proceeded on the basis that he did, or at least might.

85 Thirdly, the Deputy President's indication of her preliminary views as to the general nature of the findings she was prepared to make, based on Ms B's oral evidence, conveyed that she was

prepared to accept the key aspects of RRRB's case to which the letter was potentially relevant – namely that Ms B and her children suffered from severe medical conditions and disabilities and struggled with insufficient supports, and that RRRB could provide them with additional support. A fair reading of the Tribunal's statement of reasons indicates that the Deputy President ultimately proceeded on the basis that she accepted those aspects of RRRB's case.

86 Fourthly, RRRB's statement that Ms B's letter was "just describing the hardship she's going to face on removal" did not fully describe all that was said in Ms B's letter. That description would have suggested to the Deputy President that the letter was no more than an elaboration or further statement about matters that could have been addressed, and to a significant extent had been addressed, by Ms B in her written witness statement and oral evidence to the Tribunal. In particular, RRRB did not identify that the letter was referring to new NDIS plans and, to some extent, addressing what Ms B was saying were inadequacies in those plans. Nothing that RRRB said suggested that he regarded the new NDIS plans, or what Ms B said about them in the letter, as something that it was important for the Tribunal to consider, or that he was asking the Tribunal to consider the letter as relevant to any issue other than that which he described.

87 Fifthly, the Deputy President's statements that "[i]f it was something new that otherwise I couldn't take into account, then I might treat it differently" and that "given she's just effectively elaborating on evidence she's already given, I don't think that we can allow it in that circumstance" were not contradicted by RRRB. He did not correct the Deputy President or suggest that she had not fully appreciated the import of the letter.

88 Sixthly, it is clear that the Deputy President did not overlook that Ms B's letter may have contained additional details that were not contained in the evidence she had already given, but, as she noted, the receipt of additional detailed evidence at the end of the hearing would have given rise to further potential difficulties.

Relevant parts of the Tribunal's reasons

89 The Tribunal briefly summarised these events in its reasons (at [24]-[25]):

> Following the completion of her evidence on the first day of the hearing, at the commencement of the second day, [Ms B] indicated through a Tribunal officer that she wished to provide a document with further evidence of her and her children's … [NDIS] supports. She later indicated she did not wish to provide the document but may want to provide further oral evidence about those issues. This was discussed with the parties at the hearing including that the addition of this evidence would be outside the limitations imposed by the Migration Act for information and documents not provided to the Minister two days prior to the hearing [citing in a footnote ss 500(6H) and

> 500(6J) of the *Migration Act*]. I indicated that given the lateness of the information and the fact I accepted [Ms B]s evidence she felt her [NDIS] supports were not sufficient to fully support her and her children's needs (discussed further below) the additional information was not likely to add to the consideration of the issues and in such circumstances I did not consider it would be appropriate to adjourn the hearing to enable further evidence be considered in compliance with the Migration Act requirements. The Applicant did not press consideration of the information.
>
> Again, following closing submissions the Respondent noted it had received forwarded correspondence from [Ms B] provided to the Tribunal Registry which she was seeking to put before the Tribunal. It was agreed the Tribunal could not have regard to that information and the Applicant did not press it being tendered. The Tribunal has not had regard to that information which was marked for identification purposes only as MFI1.

90 Later in its reasons, the Tribunal, in connection with its consideration of the best interests of minor children, recounted (at [147]) the evidence Ms B gave on 27 February 2025 which related to the "complex personal needs" of S and made the following finding:

> S has complex personal needs including diagnoses of Level 2 Autism, epilepsy, and hypermobility. [Ms B] testified he was struggling at school due to bullying and that she had made the decision to homeschool him. She testified he received NDIS supports though *the details before the Tribunal of these supports were limited*. This included home supports provided in conjunction with his mother and some siblings. *These plans were under review and changes were likely*. His mother regarded the supports as insufficient and *said she needed the Applicant's support to assist with* [S]. The Applicant said he wanted to support [S] both financially, emotionally and practically and *I accept he would attempt to do so if he remains in Australia*.
>
> (Emphasis added.)

91 The Tribunal also made equivalent findings (at [158] of its reasons) in relation to the needs of Ms B's other minor children, accepting that RRRB's support was needed to care for the family and for Ms B, and that RRRB would attempt to provide this support if he remained in Australia.

Legal unreasonableness and denial of procedural fairness

92 I do not think it was procedurally unfair to RRRB, or legally unreasonable, for the Tribunal not to take further steps to obtain "the documents", or to give further consideration to whether they should be admitted into evidence.

93 As has been seen, neither RRRB nor the Minister – the parties before the Tribunal – had a copy of the updated NDIS plans. Ms B made the decision not to provide the updated NDIS plans because she regarded them as containing information that was inaccurate or incomplete. Once Ms B indicated that she did not want to provide the documents, neither RRRB nor the Minister asked the Tribunal to obtain them or to request that Ms B provide them to the Tribunal. By the

time the Tribunal came to consider whether to receive Ms B's letter into evidence, the situation, as the Tribunal understood it, was that:

(a) Ms B had initially asked to provide documents (which were not clearly identified or described) to the Tribunal, but no longer wished to provide them;

(b) the documents were not before the Tribunal and no party was asking the Tribunal to receive them;

(c) Ms B had provided a written witness statement, and had given oral evidence the previous day, and the taking of her evidence had been completed;

(d) Ms B had initially asked to provide a letter to explain the documents, but had now provided a letter which the Tribunal understood to address both the documents that she had not provided, as well as other topics, which Ms B had already addressed to a significant extent in her written and oral evidence.

94 Ms B was not a party to the proceedings. Her evidence had been completed on 27 February 2025. Even if there was more she would have liked to explain, or if she was unsatisfied with the evidence she had given, as a witness, she had no right to insist that she be permitted to give further oral evidence. Neither RRRB nor the Minister asked the Tribunal to recall Ms B to give further oral evidence, although the Minister's counsel did indicate that, *if* Ms B's letter were to be received, there may be a need for her to be recalled to give further oral evidence, presumably so that the Minister's counsel could cross-examine her further.

95 At no point did RRRB ask the Tribunal to receive the NDIS plans into evidence. The only further evidence that the Tribunal considered admitting was the letter written by Ms B. The initial intended purpose of the letter, to explain the inaccuracies in the NDIS plans, had fallen away, because the NDIS plans were never provided to the Tribunal by Ms B (or, it appears, to either of the parties to the review before the Tribunal), and neither of the parties asked the Tribunal to receive the NDIS plans.

96 When the letter was provided to the Minister's counsel, he informed the Tribunal of that fact. The Minister's counsel made it clear that the Minister was not asking for the Tribunal to admit the letter into evidence. To the extent that the letter can be said to have been "submitted" to the Tribunal, it was a document that was sought to be submitted in support of RRRB's case. It was not given to the Minister at least two business days before the hearing held by the Tribunal.

Therefore, subject to two possibilities which must be considered, s 500(6J) of the *Migration Act* applied in terms to the letter, and the Tribunal was required not to have regard to it.

97 The first of those two possibilities was the possibility of the Tribunal itself deciding to admit the letter into evidence. It may be that, if the Tribunal had decided to admit the letter into evidence of its own motion, then the letter should not have been regarded as a document "submitted in support of [RRRB's] case", so that s 500(6J) of the *Migration Act* would not have applied to it. I shall proceed on the assumption that that is right. The second possibility was that the Tribunal could adjourn the proceedings to allow the letter to be submitted by RRRB at least two days before the Tribunal held a (further) hearing.

98 The Tribunal did not have any duty to consider whether to admit into evidence a document that was provided to the Tribunal by a witness who had already given evidence. However, once it decided to consider the admission of the letter, the Tribunal was required to do so in a manner that was not legally unreasonable and which did not result in a denial of procedural fairness to RRRB.

99 The Tribunal correctly understood that the letter provided certain further information about matters that had been addressed by Ms B in her written witness statement and her oral evidence. The Tribunal understood, albeit only at a general level, that the letter contained further evidence that Ms B wanted to provide about NDIS plans that applied to her children, including S, and that she was not satisfied with the oral evidence she had given. The parties knew that the Tribunal had not seen the contents of the letter. It was thus clear that the discussion about the possible admission of the letter, and the tentative views the Deputy President expressed as to whether the contents of the letter would be likely to assist her, were made solely on the basis of the information provided to her by RRRB and the Minister's counsel about the letter's contents.

100 I do not consider that the decision of the Tribunal not to admit the letter into evidence, or to adjourn the hearing for at least two days so that the letter could be admitted by RRRB, was legally unreasonable.

101 A court or tribunal which is asked to receive further evidence from a witness, after that witness's evidence has been completed (whether by way of further oral evidence or the receipt of further evidence in writing prepared by that witness), is not generally required to look at the proposed evidence for itself or to know the precise content of the proposed evidence before

deciding whether to allow the witness to give further evidence. Generally speaking, it is not legally unreasonable for a tribunal to determine whether a witness's evidence should be reopened having regard to a general description of the nature of the further evidence which the witness could be expected to give.

102 Legal unreasonableness must be assessed at the time of the decision, on the basis of the circumstances known to the decision-maker: *Minister for Home Affairs v DUA16* (2020) 271 CLR 550; [2020] HCA 46 at 563 [26] (Kiefel CJ, Bell, Keane, Gordon and Edelman JJ); *DVO16 v Minister for Immigration and Border Protection* (2021) 273 CLR 177; [2021] HCA 12 at 192 [21] (Kiefel CJ, Gageler, Gordon and Steward JJ).

103 With the benefit of hindsight, it may have been preferable for the Tribunal in this case to consider the content of Ms B's letter for itself directly – particularly given that the Tribunal does not appear to have fully appreciated that part of Ms B's letter was addressed to NDIS plans that were not before the Tribunal. However, I do not think it was legally unreasonable for it not to do so, in circumstances where:

(a) no party had specifically asked the Tribunal to receive the letter in evidence;

(b) the letter had been produced in circumstances where the Tribunal had originally understood that its purpose was to explain documents which Ms B had initially sought to provide, but which she had then decided not to provide the parties, and which no party had asked the Tribunal to receive in evidence;

(c) a general description of the topics addressed in the letter had been provided to the Tribunal by RRRB, and by the Minister's counsel in RRRB's presence;

(d) Ms B had already given written and oral evidence about the extent of the disabilities with which she and her children were living, her view that the support provided by the NDIS in respect of them was inadequate, and her view that RRRB was capable of providing additional support;

(e) Ms B's oral evidence had been completed the previous day;

(f) the letter was not documentary evidence that existed independently of the Tribunal proceedings but was, in effect, a statement of the further evidence which Ms B wished to give in the proceedings;

(g) the general topics which the Tribunal understood the letter to address were topics that she had addressed in her written and oral evidence; and

(h) the Tribunal was already inclined to accept (and ultimately did in fact accept) that Ms B and her children suffered from serious medical conditions and disabilities of the kinds described by her in her evidence, that Ms B regarded the NDIS supports available to her as deficient, and that RRRB could provide them with additional support.

104 In deciding whether to admit the letter into evidence for itself, or to adjourn the hearing to allow RRRB to submit it, should he wish to do so, it was not unreasonable for the Tribunal to take into account considerations of efficiency (having regard to the intimation of the Minister's representative that he would likely seek to further cross-examine Ms B if the letter were admitted), as well as the Tribunal's own impression of the extent to which the letter would assist the Tribunal (including by reference to its tentative view of the evidence already given by Ms B and its relevance to the issues to be determined by the Tribunal). The Tribunal was not bound to admit the letter for itself, or to adjourn the proceedings to enable RRRB to submit it, even if it thought that there was a prospect that it would be marginally helpful to RRRB's case.

105 By raising these considerations orally with RRRB, the Deputy President was, in my view, fairly exposing her thought processes and allowing RRRB to understand the reasons why she was not inclined to take steps to enable the letter to be received into evidence. It is true that RRRB might have been influenced not to press for the admission of the letter into evidence (or for an adjournment of the hearing to allow him to submit it) by the Tribunal's intimation that it did not think the letter would assist his case much. However, I do not think the procedure which the Deputy President adopted was procedurally unfair to RRRB.

106 The Tribunal's characterisation of Ms B's letter as "not likely to add to the consideration of the issues" (at [24] of its reasons) must be understood in light of the Tribunal's understanding about the nature of the content of the letter.

107 Procedural fairness required that RRRB be provided a fair opportunity to advance his case. It did not require the Tribunal to allow a witness whose evidence had already been completed to put further evidence before the Tribunal.

108 The way that the Deputy President had been informed about Ms B's letter did not explain the extent to which the letter attempted to describe some parts of the documents (ie, the NDIS plans). For that reason, the Deputy President did not directly address the possibility of receiving secondary evidence, in the form of a letter from Ms B, which selectively described only limited

parts of the new NDIS plans. However, in circumstances where Ms B had already completed her evidence, had decided not to provide the new NDIS plans themselves, and herself considered that the NDIS plans contained inaccuracies and would need to be the subject of "further review", the admission of the letter into evidence was not likely to have assisted the Tribunal in respect of that issue. It would have left the Tribunal in the situation of knowing that, although revised NDIS plans had been received, Ms B disputed their accuracy and intended to seek further review of them. That is not materially different from the position that was accepted by the Tribunal at [147] and [158] of its reasons, referred to at [90] above.

The Tribunal's alleged misunderstanding of the two-day rule

109 RRRB further submits that the Tribunal proceeded on the basis of a misunderstanding of s 500(6J) of the *Migration Act*. In particular, he submits that the Tribunal failed to appreciate that the two-day rule did not preclude it from requesting, of its own initiative, the evidence that Ms B sought to give: see generally *Uelese v Minister for Immigration and Border Protection* (2015) 256 CLR 203; [2015] HCA 15 at 209 [5], 217 [44] (French CJ, Kiefel, Bell and Keane JJ), 231-4 [97]-[104] (Nettle J); *Prasad v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCA 791 at [65]. I do not accept that the Tribunal's decision was affected by any relevant misunderstanding of s 500(6J).

110 As explained above, the Deputy President does not appear to have appreciated that the documents to which Ms B had earlier referred were updated NDIS plans. The only document which the Deputy President considered admitting into evidence was the letter from Ms B. She had not looked at that letter herself, but did not consider that it would be of assistance.

111 The statements of the Deputy President in the course of the Tribunal hearing suggest that she was alert to the possibility that there were steps which could potentially be taken if she considered it appropriate to receive further evidence which RRRB could not submit as part of his own case because of the operation of the two-day rule. In particular, the Deputy President appears to have considered that it may have been possible to adjourn the hearing so as to enable RRRB to submit new documents.

112 The Tribunal's reasons, and a consideration of the transcript, demonstrate that the Tribunal declined to accept the letter because of the stage of the hearing at which it was received, and because, based on what was known to the Tribunal and its tentative views about the evidence already given by Ms B, it did not consider that the letter would significantly advance RRRB's case.

113 I would not infer that the Tribunal misunderstood that it could potentially admit Ms B's letter on its own initiative, and that, in that event, the two-day rule would not apply. The more obvious reason why the Tribunal did not allude to that possibility in its reasons was that it was not inclined to admit the letter into evidence on its own initiative because it had formed a view, based on what was known to it, that the letter was unlikely to add to RRRB's case or assist the Tribunal to make its decision, and would likely lead to the Minister's requiring Ms B's to be recalled to give further evidence.

114 In any event, even if it could be inferred that the Tribunal misunderstood that it had the capacity to admit the letter of its own motion, in the circumstances, there was no realistic possibility that the Tribunal would have done so, because it had formed the view that the letter was unlikely to add to RRRB's case or to assist the Tribunal further in making its decision, and would further extend the hearing for no apparent gain. For the reasons already given above, I do not consider that the Tribunal's view in that regard was legally unreasonable or failed to afford RRRB procedural fairness.

115 For these reasons, I do not consider that RRRB has established any of the bases on which he argued that Tribunal's decision was affected by jurisdictional error in relation to ground 2.

Ground 3 – constructive failure to exercise jurisdiction or irrational or illogical reasoning

116 By his third ground of judicial review, RRRB argues that the Tribunal ignored, overlooked or misunderstood relevant facts or materials underlying his representations concerning his risk of reoffending, and thereby constructively failed to exercise its jurisdiction. RRRB contends in the alternative that the Tribunal engaged in irrational, internally inconsistent or illogical reasoning in its assessment of his risk of reoffending, and thereby committed jurisdictional error.

117 RRRB submits that the Tribunal failed adequately to explain why it preferred the Minister's stance that "any risk is unacceptable where the potential harm is very serious", to RRRB's position that the likelihood of his reoffending was so low that he did not present an unacceptable risk to the community. The Tribunal (at [85]-[86] of its reasons) recognised and summarised the competing submissions of RRRB and the Minister in this regard as follows:

> The Applicant maintained that there is a low likelihood he will reoffend. He contended he has dedicated his time in prison to reforming himself through study and prison work activities, he has prosocial supports and offers of employment in the community, underlying mental health issues including PTSD and ADHD have been identified and are being treated and he has a strong incentive not to reoffend in order to remain in

> Australia to support his son and partner. He has been released on parole following an assessment that he did not pose an unacceptable risk to the community in the context of parole. Accordingly, he does not represent a risk to the community, and in any event not an unacceptable risk to the community.
>
> The Minister accepted that there was a low likelihood of the Applicant reoffending but contended that any risk of reoffending was unacceptable given the very serious nature of the harm which would be caused if he did reoffend in a similar manner to his past offences, including his serious drug offence and driving offences. The Minister contended that the factors which contributed to the Applicant's offending remain present including financial instability, impulsivity, and ADHD. This presents an ongoing risk of reoffending, albeit a low likelihood.
>
> (Footnotes omitted.)

118 In the following 17 paragraphs of its reasons, the Tribunal referred to evidence, circumstances and perspectives which supported a conclusion that RRRB's risk of reoffending was low. The Tribunal referred in greater detail to the evidence of a psychologist and a prison support worker, to the reasons of the Prisoner Review Board (**Board**) for granting RRRB parole, to prison records, and to particular submissions made by the Minister and by RRRB in relation to the assessment of the risk of his reoffending. The Tribunal also identified aspects of the evidence which, it concluded, indicated that there may continue to be risks for RRRB in the community, and that the complex family circumstances of Ms B "may not provide the social stability which was identified to be an important protective factor in the Applicant's case".

119 In relation to its assessment of the risk of RRRB's reoffending, the Tribunal concluded:

> Overall, I accept there is a low likelihood of the Applicant reoffending if he were permitted to remain in the Australian community.

120 The Tribunal then went on to express its conclusions in relation to the consideration involving protection of the Australian community at [105]-[106], as follows:

> The Applicant's conduct and offending was very serious. The nature of the harm which would be caused were he to [reoffend] is also very serious. However, there is a low likelihood he will reoffend in a similar manner. Notwithstanding the likelihood of reoffending is low, I consider that the serious harm which would be caused by further serious offending means the risks associated with even a low likelihood of reoffending are significant and weigh against revocation of the visa cancellation.
>
> Having regard to the nature and seriousness of the Applicant's offending and conduct, and to the risk to the Australian community should the Applicant commit further offences or other serious conduct, I find that this primary consideration weighs strongly against revocation.

121 The way in which the Tribunal expressed its conclusion does not suggest that it simply accepted the Minister's submission that even a low risk of reoffending was "unacceptable"; merely that, because of the seriousness of the harm that would be caused by further serious offending, even

a low likelihood of reoffending was "significant" and weighed "strongly" against revocation. It is apparent from its reasons that the Tribunal engaged with the consideration of the likelihood of reoffending and the potential seriousness of harm that might be caused by such reoffending. I do not accept that the Tribunal's reasoning, or its conclusion, on this issue was unreasonable or illogical.

122 RRRB further submits that the Tribunal failed to grapple directly with, or meaningfully weigh, RRRB's clearly articulated representations in relation to three "planks" of his case.

123 The first was that the prior financial stressors or debts which were said to have motivated the offending for which RRRB was convicted – where he was living "paycheck to paycheck", had lost his home and was experiencing severe financial hardship – were no longer present. The Tribunal addressed this issue in its reasons at [101]. It referred expressly to RRRB's explanation for his offending. The Tribunal couched its conclusion on this issue in terms of accepting that the circumstances suggested that "there may continue to be risks for [RRRB] in the community, noting protective factors including family and employment prospects were not sufficient to pre[v]ent offending in the past". I do not accept that it can be concluded that the Tribunal failed to address this issue, or that it overlooked the substance of RRRB's submissions about it. The whole point of the discussion at [101] was to address the competing submissions of RRRB and the Minister on this issue, and the cautious expression of its conclusion suggests that RRRB's submission, that the financial circumstances that motivated his offending would no longer exist, was the premise for the Tribunal's consideration of the issue.

124 RRRB submits that the next plank of his case was that his almost eight years in prison had had a profound deterrent effect on him, and that he demonstrated sustained rehabilitation and study, including "exemplary" prison behaviour. That was supported by substantial evidence and supporting statements before the Tribunal showing his involvement in peer-support prison programs, employment in positions of trust while in prison, a clean drug and alcohol testing record for the duration of his incarceration, and awards for academic excellence received in relation to his Bachelor of Information Technology (with units in science, mathematics and business, while in prison in difficult circumstances. The Tribunal referred to positive evidence regarding RRRB's rehabilitation, noting that it weighed in his favour. The Tribunal said that it placed additional weight on the evidence of the manager of reintegration programs in the prison, who gave a very positive supporting statement. The Tribunal concluded that RRRB was "clearly committed to a path of self-improvement through education", that he had generally

been a "model prisoner" and that his behaviour was "to be commended". I do not accept RRRB's submission that the Tribunal overlooked or failed to address this plank of his case. On the contrary, the Tribunal essentially accepted this aspect of his case.

125 The third plank of RRRB's case which the Tribunal is said not to have responded to adequately the Board's conclusion in granting him parole on 27 November 2024 assessed him as "low risk" and determined that his release "does not pose an unacceptable risk to the safety of the community". The Tribunal referred expressly to this conclusion and noted that it attracted "weight". The Tribunal noted that the Board's assessment was conducted under different circumstances, and that the assessment of whether the risk is acceptable is a matter the Tribunal was required to determine for itself, having regard to Direction 110 and the information before it. The Tribunal nevertheless concluded:

> Notwithstanding that the parameters for the Board's assessment differ from those of the Tribunal, I consider weight should be placed on the Board's decision to grant parole and on the factors identified by them as reducing the risk of reoffending in the Applicant's case.

126 The Tribunal's reasons indicate that it gave careful consideration, and weight, to the assessment of the Board in reaching its own view as to the risk of RRRB's reoffending.

127 The Tribunal accepted the conclusion, which RRRB, had urged upon it, that his risk of reoffending was low. Its reasons do not suggest that it failed to understand and respond to RRRB's submissions in relation to the risk of reoffending. For these reasons, ground 3 is not established.

CONCLUSION

128 For the foregoing reasons, the application for judicial review is dismissed with costs.

I certify that the preceding one hundred and twenty-eight (128) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice McDonald.

Associate:

Dated: 25 March 2026