

**Decision and
Reasons for Decision**

Applicant: Tracey Clayburn

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2026/0845

Tribunal: Senior Member K Rosser

Place: Sydney

Date: 27 May 2026

Decision: The decision under review is set aside and substituted with the decision that the cancellation of the applicant's Class BF Transitional (Permanent) visa is revoked under s 501CA(4).

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

Senior Member K Rosser

CATCHWORDS

MIGRATION – Refusal to revoke cancellation of a Class BF Transitional (Permanent) visa under s 501CA(4) of the Migration Act 1958 (Cth) - where the applicant does not pass the character test - whether there is another reason to revoke the cancellation - Direction No 110 - protection of the Australian Community - expectations of the Australian Community - ties to the Australian community - interests of minor children - legal consequences of decision under review - impediments - additional other consideration

LEGISLATION

Crimes Act 1900 (NSW)

Crimes (Sentencing Procedure) Act 1999 (NSW)

Migration Act 1958 (Cth)

Migration Regulations 1994 (Cth)

CASES

CRNL v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCAFC 138

FHHM v Minister for Immigration [2022] FCAFC 19

HZCP v Minister for Immigration and Border Protection [2019] FCAFC 202 (21 November 2019)

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

RCLN v Minister for Immigration, Citizenship and Multicultural Affairs [2024] FCA 876

Suleiman v Minister for Immigration [2018] FCA 594

SECONDARY MATERIALS

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

Statement of Reasons

INTRODUCTION

1. The applicant, who is a national of the United Kingdom, seeks review of a decision made by a delegate of the Minister on 4 March 2026 not to revoke the mandatory cancellation of her Class BF Transitional (Permanent) visa (**visa**). The delegate's decision was made under s 501CA(4) of the *Migration Act 1958* (Cth) (**Act**).
2. The applicant's visa was mandatorily cancelled on 17 June 2025 because she does not pass the character test as she has a substantial criminal record and was serving a sentence of imprisonment on a full-time basis for an offence against a law of a State.
3. The delegate found that the applicant has a substantial criminal record because on 7 February 2024 she was convicted in the Local Court of NSW of two counts of *Assault occasioning actual bodily harm (DV)* (**the index offences**). The applicant was sentenced to terms of imprisonment of 12 and 18 months respectively for these offences. Orders protecting the victim were also made against the applicant. The protection orders are in force until 6 February 2027.
4. On 8 July 2025, the applicant made representations seeking revocation of the delegate's decision.
5. On 4 March 2026, the delegate decided not to revoke the cancellation of the applicant's visa. The applicant lodged the application for review on 6 March 2026.
6. The application for review was heard on 18 and 19 May 2026. The applicant was represented at the hearing by Dr J Donnelly of Counsel, instructed by Ms W Milojkovic. Ms Milojkovic appeared alone on the morning of the first day of hearing and examined the applicant. Dr Donnelly represented the applicant during the remainder of the hearing. The Minister was represented by Ms C Cloudsdale, solicitor.
7. The applicant gave oral evidence, as did her sister, Ms Cheryl Clayburn, her son Mr Garry Matthews, her niece Ms Shaye Clayburn, her friend Mr Stephen Beard, and forensic psychologist Ms Julie Dombrowski.

8. For the following reasons, I have decided to set aside the decision under review and revoke the cancellation of the applicant's visa.

JURISDICTION

9. The Tribunal has jurisdiction to hear and determine the application for review under s 500(1)(ba) of the Act because, in accordance with s 500(6B), it was lodged within nine days after the decision was notified.

EVIDENCE AND SUBMISSIONS

10. With the exception of the applicant's tender bundle, the following material was included in the Hearing Book (**HB**) prepared by the Minister:
 - (a) The applicant's Statement of Facts, Issues and Contentions (**SOFIC**) - Exhibit A1
 - (b) The Minister's SOFIC - Exhibit R1
 - (c) The Minister's tender bundle - Exhibit R2
 - (d) The G-Documents - Exhibit G
11. In addition to relevant material contained in the HB, in deciding the application I have also considered:
 - (e) The applicant's tender bundle (**ATB**) - Exhibit A2;
 - (a) The oral evidence given by the applicant and her witnesses; and
 - (b) The closing oral submissions made by the parties
12. Relevant parts of the documentary evidence, the oral evidence and the submissions are considered below.

BACKGROUND

13. The following background is taken largely from the parties' SOFICs,¹ the sentencing judge's remarks in the NSW Local Court and on appeal in the NSW District Court,² the applicant's statutory declaration in these proceedings,³ Ms Dombrowski's report⁴ and other material contained in the HB and the ATB, as well as the oral evidence of the applicant and her witnesses.

Family and personal background

14. The applicant was born in the United Kingdom (**UK**) on 10 December 1963. She arrived in Australia with her parents and older sister in 1965, when she was two years old. The applicant's maternal grandparents and aunt followed two years later. Her family migrated to Australia through the Assisted Passage Migration Scheme and were what is colloquially referred to as '10 pound Poms'. The applicant acquired her visa on 1 September 1994, under the *Migration Reform (Transitional Provisions) Regulations* (Cth).
15. The applicant's parents separated shortly after their arrival in Australia. Her mother re-partnered and the applicant then lived with her mother, her stepfather and her sisters and half-sisters. The applicant's stepfather was unemployed, and the applicant regularly saw him physically assault her mother. The applicant's mother worked as a barmaid. She used alcohol heavily and brought friends home to drink with her. The applicant believes that her mother gave preferential treatment to her younger sisters and was desperate for her mother's affection and approval.
16. The applicant's mother regularly physically and emotionally abused her. She claims that at about the age of four, a group of boys who were her babysitter's children, sexually abused her and her older sister. The police routinely came to their home following domestic disturbances. The applicant claims to have witnessed police physically assault her mother on multiple occasions.

¹ HB 1-12 and 13-34.

² HB 92-99 and 103-109.

³ ATB 39-47.

⁴ ATB 3-38.

17. At the age of twelve, the applicant was removed from her home, placed in a juvenile justice centre for two weeks and then in foster care for twelve months. The applicant returned to live with her mother and stepfather when she was thirteen. She had ongoing conflict with her mother and was regularly evicted from home. When the applicant was seventeen, she obtained her own accommodation, but she experienced housing instability throughout much of her adulthood. She has also had periods of homelessness. The applicant has lived on the NSW Central Coast, and in regional areas of NSW. At the time of the index offending, she lived in social housing accommodation in Orange, in the Central West of NSW.
18. The applicant had no contact with her father after her parents separated. She searched for him and located him when she was in her thirties. Her father visited her once but had little interest in maintaining a relationship with her. She has not seen him again. The applicant has maintained contact with her mother and sisters.
19. The applicant left school at the age of fourteen and started working as a factory hand. She had a limited work history thereafter. The applicant has worked as a babysitter, a sales attendant, in a takeaway food shop, in a greengrocer's shop, and as wool classer and roustabout for a shearing shed. Her longest period of employment was as a factory hand for nine months when she was in her early to mid-twenties. The applicant was last employed in her forties. Since then, she has been in receipt of welfare payments. The applicant was in receipt of the Disability Support Pension (**DSP**) for physical disability and Alcohol Use Disorder at the time of her most recent offending in 2024.
20. The applicant is single and has one son, Mr Garry Meadows, who is aged 44. She has had seven significant partners in her lifetime. Her longest relationship was with her son's father, which lasted six years. The applicant states that her other six partners have been violent and abusive men. All of her partners have abused alcohol or drugs.

History of substance abuse

21. The applicant told Ms Dombrowski that she was introduced to alcohol by one of her mother's associates when she was twelve years old. She started experiencing alcohol dependency during adolescence. The applicant said that she became belligerent and angry when intoxicated and typically consumed alcohol until she lost consciousness. The applicant described using alcohol to manage negative thoughts and feelings associated with her childhood experiences of abuse, separation from her son, and domestic violence

victimisation. The applicant told Ms Dombrowski that from 2010 to 2021, she was able to reduce her alcohol use to two beers a day. She stated that she started using alcohol again excessively when she allowed 'a peer' to live with her. She claimed that he frequently assaulted her in 2021. The applicant told Ms Dombrowski that she last used alcohol at the time of her incarceration for her most recent offences in October 2024 and that she has not consumed alcohol since that time.

22. The applicant told Ms Dombrowski that she used cannabis sporadically from childhood. She stopped using it some time ago because it caused her to experience paranoia. The applicant denied any other regular illicit substance use or deliberate medication abuse.
23. The applicant has participated in substance abuse treatment programs, both through counselling and medication, on multiple occasions since 2001.

Physical health

24. When the applicant was in her fifties, the applicant experienced two transient ischemic attacks (**TIAs**), for which she received treatment in hospital. The applicant has back and head injuries from an assault in prison in December 2024. In November 2025, the applicant was diagnosed with a rotator cuff tear in her left shoulder and has continued to experience shoulder pain from this injury. In the same year, she was also diagnosed with moderate bifrontal parenchymal atrophy 29, which is believed to be the signs of early dementia arising from her long-term heavy alcohol use, and with degenerative disease of the cervical spine. The applicant takes medication to manage her neck, shoulder and back pain.

Mental health

25. The applicant told Ms Dombrowski that she was unsure if she had ever been diagnosed with a psychiatric illness. However, she described experiencing distressing intrusive thoughts and negative alterations in cognition and mood. She also described episodes of anxiety, panic attacks, difficulty sleeping and relaxing, chronic worry and an impending sense of doom. The applicant denied that she had any current suicidal intent but told Ms Dombrowski that she has used alcohol heavily to avoid thoughts and feelings associated with past traumatic events and that she was deliberately trying to kill herself by consuming large amounts of alcohol.

26. The applicant's past contacts with mental health services have been for the purpose of addressing her alcohol use. However, since July 2025, she has taken antidepressant medication and since March 2026 she has taken antipsychotic medication. The applicant has found these medications helpful in stabilising her mood.

Criminal history

27. The applicant has a lengthy criminal history. Her adult criminal history runs for some four pages and shows that she was convicted of multiple offences between 1983 and 2024.⁵ The applicant was also charged with offences when she was a minor. It is not in dispute that the applicant's juvenile offending cannot be considered when deciding the application for review. The applicant's offending history has been helpfully summarised in Ms Dobrowski's report.⁶
28. The applicant's first offences as an adult were in 1983 when she was convicted of stealing. Between 1985 and 2010, the applicant was convicted of multiple offences including stealing, unlicensed driving, drink driving, offensive behaviour, assault police, resist police, assault, offensive language, malicious damage, failing to leave licensed premises, contravene domestic violence order, possess prohibited drug and shoplifting.
29. The applicant was not convicted of any offences between June 2010 and January 2021. In January 2021, the applicant was convicted of unlicensed driving, driving with high range prescribed concentration of alcohol and possession of a prohibited drug. In July 2022, the applicant was convicted of a domestic violence related property damage offence.
30. Sentences imposed on the applicant include fines, bonds, imprisonment, an intensive corrections order, community service and driver disqualification. As far back as 2001 and then again in 2005, the applicant was directed to participate in drug and alcohol rehabilitation programs and counselling.

⁵ Her adult criminal history is set out on HB 76-79.

⁶ ATB 13-19.

Index offences

31. The convictions which led to the cancellation of the applicant's visa occurred on 4 August 2023. The victim was Mr John Peters, a friend of the applicant. They had known each other for some years. While they did not live together, their relationship was apparently described in the police facts as 'sometimes sexual in nature'.⁷ The applicant denied that this was the case. The applicant was convicted of two counts of assaulting Mr Peters. The first occurred when the applicant and Mr Peters were at the taxi stand outside the Orange City Bowling Club, where they were sitting on a bench. The applicant pushed Mr Peters off the bench, causing him to fall and sustain injuries. The second assault occurred after the bench incident, at the applicant's home. The applicant and Mr Peters had apparently argued over an amount of money and the applicant struck Mr Peters on the arm with a piece of galvanised steel pipe.
32. The applicant was charged with two counts of *assault occasioning actual bodily harm* and was convicted of both counts following a defended trial. She was sentenced to twelve months imprisonment for the first assault with a non-parole period of nine months, and eighteen months imprisonment for the second assault with a non-parole period of thirteen months. The applicant appealed the convictions and the sentence. On 16 October 2024, the District Court of NSW confirmed the convictions and varied the non-parole periods to six and nine months respectively. The applicant was eligible for parole on 15 July 2025.

Conduct in prison and immigration detention

33. There is no evidence suggesting that the applicant has engaged in problematic conduct in prison or in immigration detention.

LEGISLATIVE FRAMEWORK

34. Section 501 of the Act deals with decisions to cancel a visa on character grounds.
35. Relevantly to this case, under s 501(3A) the Minister must cancel a visa that has been granted to a person if the Minister is satisfied that the person does not pass the character test because the person has a substantial criminal record, having been sentenced to a term

⁷ HB 95 lines 4-7.

of imprisonment of 12 months or more, and the person is serving a sentence of imprisonment on a full - time basis in a custodial institution for an offence against a law of the Commonwealth, a State or a Territory.

36. In accordance with s 501CA(3), as soon as practicable after making a decision under s 501(3A), the Minister must give the person whose visa was cancelled written notice setting out the decision together with particulars of specified information that were the reason or part of the reason for making the decision. The Minister must also invite the person whose visa was cancelled to make representations to the Minister about revocation of the decision.
37. Under s 501CA(4) the Minister may revoke the original decision if representations are made in accordance with the invitation and the Minister is satisfied that the person passes the character test (as defined by s 501) or that there is another reason why the original decision should be revoked.
38. An application to review a decision made under s 501CA(4) not to revoke the cancellation of a visa may be made to the Tribunal under s 500(1)(ba).
39. The Minister may give written directions under s 499(1) of the Act to a person or body having functions or powers under Act if the directions are about the performance of those functions or the exercise of those powers. Section 499(2A) requires the Tribunal to comply with any directions made under s 499(1).

DIRECTION 110

40. 'Direction No 110 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA'⁸ (**the Direction**) applies in this case.
41. For the purposes of deciding whether to refuse an application for a visa or whether to revoke the mandatory cancellation of a visa, 5.2 of the Direction sets out several principles that

⁸ Minister for Immigration, Citizenship and Multicultural Affairs (Cth) *Direction No 110: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA* (7 June 2024).

must inform the decision-maker's application of the primary and other considerations set out in Part 2 of the Direction, where those considerations are relevant to the decision.

42. These principles are:

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

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

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

(4) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or elsewhere, that raises serious character concerns. This expectation of the Australian community applies regardless of whether the non-citizen poses a measureable risk of causing physical harm to the Australian community.

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

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

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

(8) The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation, even if the

information available at the time of consideration suggests that the noncitizen does not pose a measureable risk of causing physical harm to the Australian community.

43. In making a decision informed by these principles, I must take into account the relevant primary and other considerations set out in the Direction.
44. Section 7.1 of the Direction states that appropriate weight is to be given to information and evidence from independent and authoritative sources. Section 7.2 of the Direction states that the primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations. It also states that primary considerations should generally be given greater weight than 'other' considerations.
45. The primary considerations are set out in section 8 of the Direction. They are:
- (1) Protection of the Australian community from criminal or other serious conduct;
 - (2) Whether the conduct engaged in constituted family violence;
 - (3) The strength, nature and duration of ties to Australia;
 - (4) The best interests of minor children in Australia; and
 - (5) Expectations of the Australian community.
46. A non-exclusive list of other considerations is set out in section 9 of the Direction. They are:
- (1) The legal consequences of the decision;
 - (2) The extent of impediments if removed; and
 - (3) The impact on Australian business interest.
47. In *FHM v Minister for Immigration*,⁹ the Full Federal Court considered 8.4 of Direction 79, which also stated that primary considerations should generally be given greater weight than other considerations. O'Callaghan and Colvin JJ (Derrington J agreeing) referred to remarks made by Colvin J in *Suleiman v Minister for Immigration*,¹⁰ and stated at [34] that

⁹ [2022] FCAFC 19.

¹⁰ [2018] FCA 594 at [23].

'...particular circumstances may pertain that may justify greater weight being given to one or more of the other considerations than one or more of the primary considerations'.

ISSUES

48. The issues to be decided in this matter are:

- Does the applicant pass the character test?
- If not, is there is another reason to revoke the decision cancelling the applicant's visa, taking into account considerations in the Direction and any other relevant considerations?

CONSIDERATION

Does the applicant pass the character test?

49. As noted above, under s 501(3A)(a)(i) of the Act, the Minister must cancel a visa if a person does not pass the character test and the person is serving a sentence of imprisonment, on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory.

50. A person will not pass the character test if they have a substantial criminal record. A person will have a substantial criminal record if they have been sentenced to a term of imprisonment of 12 months or more.

51. The applicant conceded and I find that the applicant does not pass the character test because she has a substantial criminal record, having been sentenced to terms of imprisonment of 12 and 18 months.

Is there is another reason to revoke the decision cancelling the applicant's visa, taking into account considerations in the Direction and any other relevant considerations?

52. I have considered each of the relevant primary and other considerations. I have also considered the additional other consideration put forward by the applicant in oral submissions.

Primary considerations

Protection of the Australian community from criminal or other serious conduct - 8.1

53. In accordance with 8.1(1) of the Direction, in considering the protection of the Australian community, I have had regard to the principle that the Government is committed to protecting the Australian community from harm as a result of criminal activity. I have also considered that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.
54. As required by 8.1(2) of the Direction, I have considered:
- (a) the nature and seriousness of the applicant's conduct; and
 - (b) the risk to the Australian community, should the applicant commit further offences or engage in other serious conduct.

Nature and seriousness of the applicant's conduct - 8.1.1

55. In accordance with 8.1.1(1) a) i and 8.1.1(1) b) ii, when considering the nature and seriousness of the applicant's conduct, I must have regard to the fact that violent crimes are viewed very seriously, and that crimes against government officials in the performance of their duties are viewed seriously by the Australian government and the Australian community.
56. As noted above, the applicant has a long history of adult offending. Some of her prior offending has involved violence: for example, in addition to the assaults comprising the index offending, she was convicted of assault in 1989 and in 2001. In addition, the applicant has been convicted of assault police and resisting police on multiple occasions from 1988 onwards.¹¹

¹¹ HB 75-79.

57. The index offences also involved violence. The applicant was convicted of these offences after a contested trial. While the applicant concedes that she pushed Mr Peters off a bench outside the club where they had been drinking, claiming that she did so after he attempted to touch her breast, she continues to deny the second index offence. She denies striking Mr Peters on the arm or at all. The applicant strongly maintained this position in her oral evidence at the hearing.
58. For the applicant to have been convicted of the second index offence of assault occasioning actual bodily harm, the Local Court must have been satisfied beyond reasonable doubt that the applicant struck Mr Peters on the arm with the pipe. This is a central factual finding underpinning the Court's ultimate finding that the applicant was guilty of the offence. It is not open to me impugn or question that finding.¹²
59. I acknowledge that the index offences and the other offences the applicant has committed as an adult are overwhelmingly related to her alcoholism. The applicant has been diagnosed with Alcohol Use Disorder. I therefore consider that the applicant's offending results from the effects of a disease rather than from a conscious choice to engage in criminal behaviour. This is consistent with remarks made in the appeal proceedings in the District Court, where the Court described the applicant's criminal history as follows:¹³
- It is relatively limited and contains offences of fairly low level antisocial behaviour. There is a gap in the offending and it is consistent with a person with a long term severe alcohol issue. She had also provided a sworn affidavit which states that drinking was normalised in her home and she started drinking very, very early. She has been significantly affected by her alcohol use and it remains a problem.*
60. However, while I am satisfied that the applicant's criminal behaviour is inextricably linked to her Alcohol Use Disorder, I am nevertheless satisfied that her offending should be categorised as very serious overall.
61. This conclusion is supported by other factors listed in 8.1.1(1). The relevant factors in this case are:
- The sentence imposed on the applicant - 8.1.1(1) c);

¹² See *HZCP v Minister for Immigration and Border Protection* [2019] FCAFC 202 (21 November 2019).

¹³ HB 105.

- The impact of the applicant's offending on any victims of offending and their family - 8.1.1(1) d);
 - The frequency of the applicant's offending and/or whether there is any trend of increased seriousness - 8.1.1(1) e); and
 - The cumulative effect of repeated offending - 8.1.1(1) f).
62. In relation to 8.1.1(1) c), the applicant was sentenced to terms of imprisonment of 12 and 18 months respectively for the index offences. On appeal, the non-parole periods were reduced to six and nine months, but the sentences were not varied. The imposition of a custodial sentence reflects the seriousness of the offences. This is because s 5(1) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) states that a court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.
63. In relation to 8.1.1(1) d), there is no evidence of any ongoing adverse impact on Mr Peters. Mr Stephen Beard, who gave evidence at the hearing, was the victim of the malicious damage offence of which the applicant was convicted in 2022. It is clear from his evidence that the applicant's conduct has had no ongoing adverse impact on him. On the contrary, he expressed his view that the applicant should not have been charged with the offence.
64. There is no evidence before me directly addressing the impact on victims of the applicant's other offending. That said, I conclude that the applicant's offending has had an adverse impact on the Australian community, including on people who have witnessed the applicant's behaviour while intoxicated in public places. Further, I conclude that a significant impact of the applicant's offending has been on the police, who on numerous occasions over many years have been required to deal with her behaviour while intoxicated. This would have taken significant time and other resources.
65. In relation to 8.1.1(1) e) and 8.1.1(1) f), I am not satisfied that the applicant's offending has particularly increased in seriousness over time. Rather, she has committed the same types of offences repeatedly. Even accepting that most of the applicant's offending can be characterised as being at the less serious end of the scale, I consider that her offending has a cumulative adverse effect. I reach this conclusion notwithstanding the fact that there was a lengthy gap in the applicant's offending between 2010 and 2021.

Risk to the Australian community - 8.1.2

66. In accordance with 8.1.2, when assessing the risk that the applicant may pose to the Australian community, I must have regard to, cumulatively:
- The nature of the harm to individuals or the Australian community should the applicant engage in further criminal or other serious conduct - 8.1.2(2) a);
 - The likelihood of the applicant engaging in further criminal or other serious conduct, taking into account information and evidence about the risk of the applicant re-offending, as well as evidence of rehabilitation achieved by the time of the decision - 8.1.2(2) b).
67. The applicant's most recent offences resulted in physical injury to Mr Peters. I consider that the nature of the harm to individuals or the Australian community should the applicant engage in further criminal or other serious conduct would be serious.
68. I have considered the evidence relevant to the risk of the applicant re-offending.
69. The Sentencing Assessment Report dated 5 February 2024,¹⁴ which was before the Local Court, stated that the applicant had been assessed at a T2 Medium risk of reoffending according to the Level of Service Inventory - Revised (**LSI-R**). It did not suggest that the applicant was at a high risk of re-offending. Ms Dombrowski's report also did not suggest that the applicant was at a high risk of re-offending. Rather, her report noted that the applicant's responses to a Self-Appraisal Questionnaire (**SAQ**) used to assess the applicant's risk of non-violent and violent recidivism placed her at a 'high-moderate' risk of committing further offences.¹⁵ Ms Dombrowski also used the Historical Clinical Risk-20 V 3 tool (**HCR-20**) to assess the applicant's risk of violent recidivism. This assessment placed the applicant at a moderate risk of violent re-offending.¹⁶
70. However, Ms Dombrowski advised that the LSI-R, SAQ and HCR-20 results should be considered with caution, as these assessment tools are not designed for female offenders

¹⁴ HB 385-388.

¹⁵ ATB 22.

¹⁶ ATB 22-23.

and in particular older female offenders. In relation to this, Ms Dombrowski states in her report:¹⁷

In my opinion, the estimate of risk using the LSI-R, SAQ and HCR-20 V3 are all likely to be an overestimation of Ms Clayburn's risk because risk profiles for older women may differ substantially given declining physical agility, comorbidity, social isolation, and age-related cognitive decline.

71. In oral evidence, Ms Dombrowski reiterated and expanded on her opinion in this regard.
72. Further, in her report and in oral evidence, Ms Dombrowski stated that the applicant is not inherently antisocial and does not have Antisocial Personality Disorder.¹⁸
73. I accept that Ms Dombrowski's report and her oral evidence constitute expert evidence. In my view, the reasons she gave for her opinion that the risk assessment tools overestimate the applicant's risk of reoffending were cogent and persuasive, as was her opinion that the applicant is not inherently antisocial. I accept Ms Dombrowski's expert opinion that the applicant's age and gender, with attendant decline in physical and cognitive ability and reduced access and ability to engage in offending behaviour, together with the fact that she is not inherently antisocial, mean that the applicant's risk of re-offending should be regarded as below average.
74. I have also considered the evidence of the rehabilitation the applicant has achieved.
75. In sentencing the applicant, the Local Court found that the applicant showed no remorse and no contrition and that the applicant's prospects of rehabilitation were 'extremely limited'.¹⁹ The District Court also found that the applicant had shown no remorse and that she had no insight into the need to engage with services to address her longstanding alcohol addiction and the consequences that flow from it. The District Court further stated that the applicant's evidence to the Court and her engagement with services to date 'give the Court no confidence that either she understands the need for assistance, or that she has a willingness to engage'.²⁰

¹⁷ ATB 26.

¹⁸ ATB 22.

¹⁹ HB 98.

²⁰ HB 107-108.

76. However, at the hearing, the applicant was able to demonstrate a degree of insight into her offending. She stated on several occasions that her offending history made her feel ashamed. She also described her criminal record as 'absolutely disgraceful', stating that she could not understand how one person could do all those things. The applicant acknowledged that the Australian community and the police and have been affected by her offences. She also acknowledged that her son has been affected, stating that a counsellor once told her that she had chosen alcohol over him. In relation to this, the applicant commented that when you are intoxicated all the time, you do not show love.
77. The applicant did not express any remorse for the index crimes. As noted above, she concedes that she pushed Mr Peters. However, she states that she did so because he tried to touch her breast. The applicant continues to deny that she committed the second index offence. At the hearing, the applicant stated that she did not hit Mr Peters and that she would have been remorseful had she done so.
78. I do not consider that the applicant's lack of remorse for the index offences of itself elevates the risk of the applicant re-offending or is evidence determinative of her degree of rehabilitation. I accept that the applicant genuinely believes that she did not hit Mr Peters. It would be disingenuous for the applicant to now express remorse for something she has steadfastly maintained that she did not do. However, as the applicant was intoxicated at the time of the offence, I conclude that her evidence on this point is inherently unreliable.
79. Nevertheless, I consider that the applicant's belief that she did not commit the offence is somewhat problematic in relation to the degree of insight she has into her offending. As submitted by the Minister, it indicates that the applicant trusts her memory over other evidence, including the findings of the Local Court. It also suggests that the applicant has not considered that she has done things under the influence of alcohol that she may not remember doing.
80. That said, central to the applicant's rehabilitation is how she deals with her alcoholism. In this regard, I accept that the applicant has not consumed alcohol since her incarceration in October 2024 and that she takes Naltrexone daily. At the hearing, the applicant commented that her life has changed dramatically since she stopped drinking. Her health has improved and she is eating and sleeping properly. The applicant's witnesses, in particular her sister

Ms Cheryl Clayburn and her friend Mr Stephen Beard, also commented on the positive differences they have seen in the applicant since she has been sober.

81. The applicant stated that she will take Naltrexone for the rest of her life. She stated that although she took the drug as part of a trial in 2011, she had not taken it 'properly' because she kept on drinking. The applicant stated that having been sober for almost two years 'feels heaps different' and that she does not want to return to her previous life. She stated that she is getting old, that she needs to change and that she has the power to stop drinking. She noted that her alcoholism nearly killed her and that she was 'on her deathbed' before she went to gaol.
82. The applicant stated that she has been participating in a SMART Recovery program²¹ and that if she goes back into the community, she will apply what she has learned in the program by having to 'think about what [she is] doing'. She stated that she will ensure that she has a local general practitioner to prescribe Naltrexone, will continue drug and alcohol treatment and will obtain counselling. The applicant stated that she wants to go to a residential facility in the Orange district for treatment dealing with her childhood trauma. She also stated that she would like to move away from Orange to an over-60s social housing facility, possibly near her mother. In relation to this, the applicant indicated that she wants to repair her relationship with her mother.²²
83. I accept that the applicant genuinely does not want to relapse into alcohol abuse, intends to keep taking Naltrexone and wants to obtain counselling and psychological treatment if she is released into the community. I also accept that the applicant intends to stop associating with antisocial peers. As noted above, in sentencing the applicant, the Local Court remarked that the applicant's prospects of rehabilitation would have to be regarded as 'extremely limited', having regard to her age and 'her lengthy history of alcohol abuse and offending related to alcohol'²³. However, I accept that the applicant's age and gender in particular, together with the fact that the applicant has remained sober for a period of

²¹ Records from the immigration detention centre indicate that the applicant has been actively participating in a SMART Recovery program. See HB 435-455.

²² I note Ms Dombrowski's oral evidence at the hearing that the applicant's childhood trauma has probably been in part processed and that the applicant's primary need is for alcohol use counselling, using a trauma informed approach.

²³ HB 98.

some 19 months with the assistance of her Naltrexone regime, has participated in the SMART Recovery program and now knows the consequences of further offending for her residency status in Australia, mean that her prospects of rehabilitation should no longer be regarded as extremely limited. Rather, they should be regarded as hopeful.

84. Weighing against this is that the applicant's rehabilitation has so far only been tested in a controlled environment. Further, Ms Dombrowski's report and her oral evidence at the hearing make it clear that the applicant needs Alcohol and Other Drug counselling while in the community to achieve long term treatment gains. In addition, Ms Dombrowski's report states that the applicant would also benefit from treatment that addresses her antisocial beliefs and attitudes, deals with the negative effects of crime and improves her stress management and coping skills.
85. The applicant's evidence at the hearing clearly demonstrates that she wants to remain sober. I accept that she is highly motivated to do so. However, while the evidence shows that the applicant's Naltrexone regime has removed her physiological dependence on alcohol, it does not support a conclusion that the applicant has achieved full rehabilitation from her alcoholism. The applicant's answers to questions about her plans for the future and the strategies she would use in the community showed genuine motivation, but they were somewhat lacking in detail. While the applicant clearly recognises that she needs to continue to take Naltrexone and that she needs counselling, she does not appear to have taken concrete steps to arrange the latter. It is commendable that the applicant has maintained sobriety over a period of some 19 months. However, the evidence overall supports a conclusion that there is some way to go before she can be considered in remission from her Alcohol Use Disorder and fully rehabilitated.

Conclusion in relation to protection of the Australian community

86. I have found the applicant's offending to be very serious. I accept that should the applicant again engage in similar conduct, the resulting harm to an individual and to the Australian community would also be serious.
87. I have also found that there is a below average risk that the applicant will re-offend. The applicant feels shame and otherwise has a degree of insight - but not full insight - into her offending. Furthermore, her commitment to continue her rehabilitation is as yet untested in the community.

88. The view of the Government is that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases. In this regard, I have had regard to 8.1.2(1), which states that '[s]ome conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable'.
89. I do not consider this to be one of those cases. While the applicant has a very lengthy criminal history, as noted above, the District Court described it as 'relatively limited and contains offences of fairly low level antisocial behaviour' and 'consistent ... with a long terms severe alcohol issue'.²⁴ I agree with this assessment. Further, the evidence does not support a conclusion that any person has been seriously injured as a result of the applicant's offending.
90. However, taking into account the nature and seriousness of the applicant's offending overall and the fact that the applicant's rehabilitation is neither complete nor tested in the community, I conclude that this consideration weighs strongly against revocation of the cancellation of the applicant's visa.

Family Violence – 8.2

91. Family violence is defined in 4.1 of the Direction as:
- [V]iolent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.*
92. For the purposes of the definition of family violence, a member of the person's family includes a person who has, or has had, an intimate personal relationship with the person. Examples of behaviour that may constitute family violence relevantly include an assault, stalking and intentionally damaging or destroying property.
93. At the hearing, the Minister conceded that the index offences do not constitute family violence. However, the Minister submitted that the offences committed against Mr Graham Anderson and Mr Stephen Beard are family violence offences.

²⁴ HB 105.

94. In relation to the offence committed against Mr Graham Anderson, this concerns a conviction for *Common assault T2*.²⁵ The date of the offence was 13 February 2001.²⁶ Mr Anderson's injuries were noted as 'grazing and scratching to his right and left knee areas'.²⁷ The applicant was convicted of the offence in the Local Court on 31 May 2001 and was fined \$350 plus court costs. At the time the offence was committed, the applicant and Mr Anderson were in an intimate personal relationship. The evidence suggests that the relationship was volatile, as the Police Fact Sheet notes that the applicant and Mr Anderson 'have had numerous arguments and have ended their relationship for short periods'.²⁸
95. The assault on Mr Anderson was committed in the context of an argument between the parties. In relation to this, the police statement which refers to Mr Anderson's injuries also states that the applicant phoned the police on the day of the incident. The police attended premises where the applicant was located. It was noted that the applicant had 'a scratch to her right cheek and scratches to her right forearm and an abrasion to her left elbow'.²⁹ When the police officer asked the applicant what had happened, she responded that she and Mr Anderson had had a fight and that Mr Anderson had pulled her hair and hit her face.³⁰
96. It is not clear whether Mr Anderson was charged with assaulting the applicant. The applicant's evidence at the hearing suggested that they were both arrested, but that Mr Anderson's father was wealthy and he was released. What is clear is that apprehended violence orders were issued against Mr Anderson as well as against the applicant in relation to the incident.³¹
97. There is no further evidence concerning the incident that led to the assault conviction. However, given that the applicant and Mr Anderson were in an intimate personal relationship at the time of the assault, given that Mr Anderson suffered an injury (albeit an apparently minor injury) and given that the applicant was convicted of common assault, I

²⁵ This refers to an offence under s 61 of the *Crimes Act 1900* (NSW) classified as a Table 2 (T2) offence. The case is typically heard in the Local Court, though it can escalate to the District Court if the prosecution elects to do so.

²⁶ HB 291.

²⁷ HB 292.

²⁸ HB 309.

²⁹ HB 290.

³⁰ HB 290-291.

³¹ HB 294-304.

am prepared to infer that the applicant's conduct caused Mr Anderson to be fearful. I therefore find that the assault constitutes family violence.

98. In relation to the offence committed against Mr Stephen Beard, I am satisfied that the applicant was previously in an intimate personal relationship with Mr Beard. The incident occurred in June 2022. The police incident report indicates that the applicant went to Mr Beard's premises in an intoxicated state and accused him of various crimes. She would not leave when Mr Beard asked her to do so. According to the police notes of the incident, the applicant assaulted Mr Beard.³² She was charged with smashing a dinner plate belonging to Mr Beard. The applicant was convicted of *Destroy or damage property <=\$2000 (DV) T2* on 12 July 2022. Mr Beard has denied that the applicant deliberately smashed the plate. At the hearing he said that he does not know why she was charged with having done so. However, consistent with my finding above in relation to the index offences, I cannot look behind an essential finding of fact that underpins the Court's conclusion that the applicant was guilty of the offence with which she was charged.
99. At the hearing, Mr Beard stated that the applicant's conduct had not made him fearful. However, given the evidence that the applicant would not leave Mr Beard's home, despite his requests that she do so, I conclude that at the relevant time the applicant was coercing or controlling Mr Beard, albeit to a limited extent. I therefore find that the applicant's 2022 conviction constitutes family violence.
100. Section 8.2(1) of the Direction states that the Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. It further states that the Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in.
101. In determining the seriousness of the family violence, I must consider relevant factors listed in 8.2(3) of the Direction. In this case, the following factors are relevant:
- The frequency of the applicant's conduct and whether there is any trend of increasing seriousness - 8.2(3) a);
 - The cumulative effect of repeated acts of family violence - 8.2(3) b);

³² HB 231.

- Rehabilitation achieved at the time of the decision since the last known act of family violence, including the extent to which the applicant accepts responsibility for her family violence related conduct and efforts to address factors which contributed to her conduct - 8.2(3) c); and
 - Whether the applicant has re-offended since being formally warned or otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a warning should not be considered to be in the applicant's favour - 8.2(3) d).
102. The applicant has committed two offences which constitute family violence more than twenty years apart. Therefore, notwithstanding the applicant's extensive criminal record, she has committed acts of family violence very rarely. Indeed, the evidence overall suggests that she has more often been a victim of family violence than a perpetrator. There is no trend of increasing seriousness of family violence. Nor is there a cumulative effect of repeated acts of family violence. Rather, in the context of family violence offences, the applicant's offences are minor.
103. In relation to rehabilitation, the evidence demonstrates that she was affected by alcohol at the time the offences were committed. Therefore, both offences were committed in the context of the applicant's Alcohol Use Disorder. The applicant is ashamed of her actions. There is no evidence of any ongoing adverse effect of these incidents on either Mr Anderson or Mr Beard. In my view, the applicant does not require family violence rehabilitation. Rather, if she remains abstinent from alcohol, the chance that she will commit another family violence offence is minimal.
104. There is no evidence that the applicant has been warned of the consequences of family violence.
105. I conclude that this consideration weighs against revocation of the cancellation of the applicant's visa, but only marginally so.

The strength, nature and duration of ties to Australia - 8.3

106. In accordance with 8.3(1) of the Direction, I have considered the impact of the decision on the applicant's immediate family members in Australia, where those family members are

Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.

107. In the revocation application the applicant identified the following immediate family members in Australia:³³
- Her son, Garry Matthews;
 - Her mother, Shirley Lowry and her stepfather Dennis Lowry;
 - Her sisters, Cheryl and Michelle Clayburn; and
 - Her half-sisters, Paula and Kelly Ann Lowry.
108. The applicant's father, Ray Clayburn, also lives in Australia. However, the applicant has not seen him for many years and has no ongoing relationship with him.
109. The applicant has been in several long-term relationships, including with her son's father. She has never been married and is currently single.
110. For present purposes, I accept that the applicant's immediate family members are either Australian citizens or have the right to remain permanently in Australia.
111. The immediate family members who provided statements in support of the revocation request or the application for review and who gave oral evidence at the hearing are Garry Matthews³⁴ and Cheryl Clayburn.³⁵
112. In her oral evidence, Ms Cheryl Clayburn stated that she has a close relationship with the applicant. They speak often by phone and FaceTime. She stated that if the applicant were removed from Australia, she would feel 'very sad, disheartened, broken'.
113. Mr Matthews stated in his oral evidence that he would be sad if the applicant was removed to the UK. He described her as 'a beautiful lady', who was always 'loving and caring' and who 'sometimes gets angry'. He stated that he phones his mother 'a lot'. He lived with her

³³ HB 126.

³⁴ ATB 1.

³⁵ HB 179.

at one point, but she asked him to leave. He would not live with her again if she went back to live in the community.

114. While the applicant's other sisters, her mother and her stepfather did not provide statements, Ms Cheryl Clayburn indicated that the applicant has positive relationships with their sisters and has always maintained a relationship with their mother. She further stated that their mother and a home carer provide care to their stepfather and that their mother does not require care.
115. I find that the decision would have a significant adverse emotional impact on the applicant's son, Mr Matthews, and on her sister, Ms Cheryl Clayburn. I conclude that the decision would not have a significant adverse impact on other members of the applicant's immediate family. While I accept Ms Cheryl Clayburn's evidence that the applicant has a good relationship with their other sisters and maintains a relationship with their mother, I conclude that their relationship with the applicant is less strong than the relationship between the applicant and her son and the applicant and her older sister. There is no evidence that the applicant provides any care or financial support to any members of her immediate family. Further, while the applicant frequently speaks to her son and to her sister, the evidence does not support a conclusion that she is in frequent contact with other members of her immediate family.
116. In accordance with 8.3(2), I have also considered the strength, nature and duration of other ties the applicant has to the Australian community. In doing so, I have placed weight on the fact that the applicant has spent more than sixty years in Australia. I also place weight on the fact that the applicant did not begin offending until some eighteen years after her arrival in this country.
117. I have first considered the applicant's ties to her extended family, who I accept are either Australian citizens, Australian permanent residents or people who have an indefinite right to remain in Australia.

118. The applicant's extended family members in Australia include her Aunt Maxine,³⁶ her niece Ms Shaye Clayburn, other nieces and nephews and a number of cousins.³⁷ At the hearing, Ms Shaye Clayburn referred to the relationship between the applicant and her children, K (aged thirteen) and I (aged eleven). The interests of these minor children are separately considered below.
119. Ms Shaye Clayburn is the only member of the applicant's extended family who provided a statement.³⁸ At the hearing, she stated that she has a close relationship with the applicant. She described the applicant as family oriented and as someone who was 'always there' for her. Ms Shaye Clayburn stated that if the applicant were removed from Australia, she would have less contact with her, that she would not be able to see her in person and that she would be very sad. She stated that she and the applicant are in regular fortnightly contact by phone or FaceTime.
120. I accept that the applicant has always had a strong relationship with her niece. I further accept that the applicant's removal from Australia would have an adverse emotional impact on her niece. It is clear from Ms Shaye Clayburn's evidence that she sees the applicant as a positive force in her life and the lives of her children, notwithstanding the applicant's history of offending. In addition, Ms Shaye Clayburn described the applicant as someone who always remembers birthdays and as someone who would always help out at events. She described, for example, the assistance the applicant would give to an aunt who is a florist, which involved setting up and cleaning the shop and otherwise working in the shop to help out.
121. The applicant's friends, Mr Stephen Beard, Mr Patrick Riley and Ms Michelle Collimore provided letters in support of the revocation request.³⁹ As noted above, Mr Beard also gave evidence at the hearing. Mr Beard and Mr Riley have both been in a domestic relationship with the applicant in the past. They both relevantly refer to the length of time the applicant has lived in Australia and to the fact that she has no family, friends or support in the UK. Ms

³⁶ Surname not provided.

³⁷ HB 126.

³⁸ HB 183.

³⁹ HB 181-182, HB 184 and HB 185.

Collimore is a long-time friend of the applicant and states that it would be unfair to deport her to the UK, as she has lived here all of her life.

122. At the hearing, Mr Beard, who is an Australian citizen, stated that he has known the applicant for some twenty-two years. He stated that it would be inhumane to deport the applicant to the UK, as she knows nobody there and would have no way of looking after herself. He indicated that the applicant's long residence in Australia means that she knows 'the ins and outs' of this country.
123. I accept that after living in Australia for more than sixty years, the applicant has developed strong ties to the country, including but not limited to the friends who provided evidence in support of her application.
124. That said, it appears that many of the applicant's social relationships have been with antisocial peers. The applicant stated that she would get herself into situations where everyone was drinking and that 'alcoholics attract alcoholics'. Further, the applicant's evidence indicated that the men with whom she has been in a relationship tended to be violent and abusive. Ms Cheryl Clayburn and Mr Beard both referred to the applicant having many friends in both the Central West and on the Central Coast. However, none were named.
125. In the revocation application, the applicant claimed to have strong connections to the Australian community not only through her family and friends, but also through her employment and other activities. As noted above, the applicant has worked as a factory hand, babysitter, sales attendant, in a takeaway food shop, in a greengrocer's shop, and as wool classer and roustabout. In addition, according to the revocation request, the applicant has undertaken calling for the Red Cross, house cleaning and cooking for the elderly in a community centre. While no evidence has been provided to corroborate the applicant's claim of involvement in community activities, I accept that she has had some involvement in such activities over the years. However, the applicant has not worked and has been in receipt of a DSP for a significant period. This fact, coupled with the applicant's extensive criminal history, leads me to conclude that although the applicant has spent some time contributing positively to the Australian community, her contribution has not been significant.

126. That said, given the adverse effect the removal of the applicant would have on her older sister, her son and her niece in particular and the fact that the applicant has lived in Australia for more than sixty years, I consider that this consideration weighs significantly in favour of revoking the cancellation decision.

The best interests of minor children in Australia - 8.4

127. As noted above, at the hearing Ms Shaye Clayburn stated that she has two children, her son K (aged 13) and her daughter I (aged 11), with whom the applicant has a close relationship. I have therefore considered their best interests. Ms Shaye Clayburn advised that K has level 3 autism with echolalia. However, the evidence before me does not indicate that K and I have different interests, other than as identified below.

128. The applicant has not claimed that the interests of any other minor children need to be considered in these reasons for decision.

129. The factors to be considered in respect of this consideration are set out in 8.4(4). They are:

- The nature and duration of the relationship between the applicant and the children - 8.4(4) a);
- The extent to which the applicant is likely to play a positive parental role in the future - 8.4(4) b);
- The impact of the applicant's prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the children - 8.4(4) c);
- The likely effect that any separation from the non-citizen would have on the child, taking into account the child's or non-citizen's ability to maintain contact in other ways - 8.4(4) d);
- Whether there are other persons who already fulfil a parental role in relation to the child - 8.4(4) e);
- Any known views of the children, with those views being given due weight in accordance with the age and maturity of the child - 8.4(4) f);
- Evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the applicant, or has otherwise been abused or

neglected by the non-citizen in any way, whether physically, sexually or mentally - 8.4(4) g); and

- Evidence that the child has suffered or experienced any physical or emotional trauma arising from the applicant's conduct - 8.4(4) h).

130. The applicant is K and I's great-aunt. She has known them all of their lives. She does not play a parental role in their lives and will not do so in the future. There is no evidence to suggest that the applicant's past conduct has had any adverse impact on K and I, that either child has suffered or has been or is at risk of being subject to or exposed to family violence perpetrated by the applicant, that the applicant has abused or neglected K and I in any way or that they have experienced physical or emotional trauma arising from the applicant's conduct.
131. The applicant is in regular contact with K and I. They have met her in person six or seven times in their lives, the last time being at a family funeral some three or four years ago. The applicant speaks to the children approximately once a week, when they are at the applicant's sister's (their grandmother's) home. According to Ms Shaye Clayburn, this is a positive experience for I, as I has expressed this to be the case. K's autism means that his views about contact with the applicant are not known as he cannot communicate them.
132. In my view, the applicant's removal from Australia is unlikely to have a significant adverse impact on either K or I in circumstances where she does not fill a parental role and will not do so in the future and where K and I have not seen the applicant in person for some years. Further, as most of their communication is done electronically, this could be continued if the applicant were removed to the UK, subject to the applicant having the means to do so.
133. I conclude that revocation of the cancellation of the applicant's visa is in the best interests of K and I, but only slightly so.

Expectations of the Australian community - 8.5

134. In relation to this consideration, 8.5(1) of the Direction states:

(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 remain in Australia.

135. In this case, the applicant has engaged in very serious conduct in breach of the expectation that she will obey Australian laws.

136. I note that 8.5(2) of the Direction states:

(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 ...

137. The applicant has engaged in conduct of a kind specified in 8.5(2) a) and d) of the Direction, being acts of family violence and offences against police officers in the performance of their duties.

138. I must also consider 8.2(3) of the Direction, which states that the expectations of the Australia community apply 'regardless of whether the non-citizen poses a measureable risk of causing physical harm to the Australian community'.

139. Finally, in accordance with 8.5(4) of the Direction, I must also consider the expectations of the Australian community as a whole and proceed on the basis of the Government's views expressed in the Direction, without independently assessing the community's expectations in the particular case.⁴⁰

140. In *RCLN v Minister for Immigration, Citizenship and Multicultural Affairs*,⁴¹ Horan J stated:

The assessment of community expectations is therefore not a matter of evidence, and does not turn on the personal circumstances of the individual non-citizen: compare, in relation to an earlier iteration of the Ministerial direction: FYBR v Minister for Home Affairs (2019) 272 FCR 454 at [66]–[67], [74]–[75] (Charlesworth J), [91]–[93], [103]–[104] (Stewart J); see also CKL21 v Minister for Home Affairs [2022] FCAFC 70; (2022) 293 FCR 634 at [29]–[30] (Moshinsky, O'Bryan and Cheeseman JJ). The "degrees of tolerance" referred to elsewhere in the Direction "are matters

⁴⁰ See *Ismail v Minister for Immigration, Citizenship & Multicultural Affairs* [2024] HCA 2, at [38] and [51] to [52].

⁴¹ [2024] FCA 876 at [56].

that fall for consideration by the decision-maker in the ultimate exercise of his or her discretion” (or, in the present context, the determination whether there is another reason to revoke the original cancellation decision), and “in determining whether it is appropriate to give more or less weight to a deemed community expectation of visa refusal that might otherwise arise simply because of the nature of the non-citizen’s character concerns or offences”: FYBR at [77] (Charlesworth J). In other words, the decision-maker can take into account the personal circumstances of the individual non-citizen in so far as they are relevant to another primary consideration or one of the other considerations, and adjust the relative weight to be given to each of the primary and other considerations accordingly.

141. The applicant has engaged in very serious conduct in breach of Australian laws. This includes family violence offences, albeit family violence offences at a low level of seriousness, and offences against police officers.
142. I conclude that this factor weighs strongly against revoking the cancellation of the applicant’s visa.

Other considerations

Legal consequences of the decision - 9.1

143. A legal consequence of the decision to cancel the applicant’s visa not being revoked is that she will remain in immigration detention pending removal from Australia under s 198 of the Act, which in accordance with s 198(2B) would need to occur as soon as reasonably practicable.
144. Another legal consequence is that there will be significant restrictions on the applicant’s ability to apply for another visa. An application for any visa other than a protection visa would be subject to s 501E; that is, it could not be made from within the migration zone unless it was for a Bridging Visa R (Class WR) as prescribed by cl 2.12AA of the *Migration Regulations 1994*. The applicant could only apply for such a visa in response to an invitation.
145. Further, depending on the visa that may be applied for once the applicant is offshore, the applicant may be subject to indefinite (or permanent) exclusion as she may not be able to meet Special Return Criteria 5001(c) if it applies to the relevant schedule 2 criteria of the visa.
146. The applicant has not claimed that her case raises non-refoulement obligations.

147. I consider that the legal consequences of the decision - specifically the possibility of permanent exclusion from the country in which she has lived since she was two years of age, with the consequent separation from her family - weigh moderately in favour of revocation of the decision to cancel the applicant's visa.

Extent of impediments if removed - 9.2

148. This consideration refers to impediments the applicant may face if she is removed from Australia to the United Kingdom in establishing herself and maintaining basic living standards in the context of what is generally available to other citizens of the United Kingdom. I must consider the applicant's age and health, whether there are substantial language or cultural barriers, and any social, medical and/or economic support available to her in the United Kingdom.
149. The applicant is 62 years of age and suffers from both physical and mental health issues. In relation to her physical health, the applicant has experienced two TIAs, she received back and head injuries from an assault in prison, she suffers pain from a torn left shoulder rotator cuff tear, and she has degenerative cervical spine disease. Significantly, in 2025 the applicant was diagnosed with moderate bifrontal parenchymal atrophy 29, which is believed to be a sign of early dementia. The applicant takes medication to manage her neck, shoulder and back pain. In relation to her mental health, the applicant has Alcohol Use Disorder, from which she is not yet in full remission. She has also been prescribed anti-depressant and anti-psychotic medication. I am of the view that the applicant's physical health, her mental health and her history of alcohol abuse will cause her considerable difficulty in establishing herself in the UK. Her likely early dementia is likely to cause her particular difficulty in this regard.
150. As the applicant is a national of the United Kingdom, I am satisfied that the applicant would not face a language barrier or any significant cultural barriers if she were returned there. Furthermore, I am satisfied that she would have access to the same social, medical and health services that are available to other nationals of the United Kingdom, which I consider would be comparable in quality to services that are available to the applicant in Australia. However, the applicant has lived in Australia for more than sixty years, having arrived in Australia as a two-year-old. Given the length of time the applicant has lived in Australia, the fact that she has not left this country since her arrival, the fact that she has no family or

social supports in the United Kingdom and the fact that the applicant is a recovering alcoholic with mental health issues, she is likely to face very significant difficulty accessing and then maintaining access to appropriate services.

151. In my view, the applicant's age, physical and mental health, likely early dementia, together with her unfamiliarity with the UK and its systems are likely to lead to the applicant becoming socially isolated. This would increase the likelihood of the applicant relapsing into excessive alcohol consumption, which in turn could lead to the applicant becoming homeless. It could also lead to the applicant not having the means to communicate with family members and friends in Australia electronically. In my view, these factors mean that the applicant will face overwhelming impediments in establishing herself and maintaining basic living standards in the context of what is generally available to other citizens of the United Kingdom.
152. I conclude that this consideration weighs very strongly in favour of revocation of the cancellation of the applicant's visa.

Applicant's history as a victim of crime

153. This is an additional other consideration raised in oral submissions made by on behalf of the applicant. It is based on the applicant having been a victim of family violence and the victim of an assault while she was in prison.
154. The applicant's evidence is that she was a victim of physical abuse by her mother. I accept that this occurred. I also accept that the applicant has had apprehended violence orders made in her favour, not just against her.⁴² I further accept that the applicant was assaulted in prison, which lead to head and back injuries.
155. The family and other violence to which the applicant has been subjected, both as a child and as an adult, occurred in Australia, while she was lawfully resident in this country. Given that the applicant's alcoholism emerged during her adolescence, it is arguable that this illness and the applicant's consequent criminality had its origins in the family violence she witnessed and was subjected to as a child, and the excessive alcohol use she witnessed in her home.

⁴² See, for example HB 302-304.

156. That said, the applicant's background and the fact that she has been a victim of violence does not excuse her criminal history. Many people in this country have been the victims of family and other forms of violence without becoming perpetrators of violence or otherwise committing crimes. Likewise, people who are alcoholics do not necessarily commit criminal offences, particularly with the frequency that characterises the applicant's history in this regard. While I am of the view that this consideration weighs in the applicant's favour, I conclude that it does so only slightly.

Impact on Australian business interests – 9.3

157. In relation to this consideration, I must consider any impact on Australian business interests if the applicant is not allowed to remain in Australia. I note that an employment link would generally only be given weight where the decision would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

158. The applicant has limited work experience in Australia and has been in receipt of a DSP for a number of years. I consider it unlikely that she will work again in the future. There is no evidence that a failure to revoke the decision to cancel the applicant's visa would have any impact on Australia's business interests. It would certainly not compromise the delivery of a major project, or delivery of an important service in Australia.

159. I conclude that this consideration should be given neutral weight.

CONCLUSION

160. I have made the following findings concerning the relevant primary considerations in the Direction:

- (a) Protection of the Australian community against criminal and other serious conduct weighs strongly against revoking the cancellation of the applicant's visa.
- (b) The family violence consideration weighs marginally against revoking the cancellation of the visa.
- (c) The strength, nature and duration of ties to Australia weigh significantly in favour of revoking the cancellation of the visa.

- (d) The best interests of minor children weigh slightly in favour of revoking the cancellation of the visa.
- (e) The expectations of the Australian community weigh strongly against revoking the cancellation of the visa.

161. I have made the following findings concerning the other considerations:

- (a) The legal consequences of the decision weigh moderately in favour of revoking the cancellation of the visa.
- (b) The extent of the impediments if the applicant were removed to the United Kingdom weighs very strongly in favour of revoking the cancellation of the visa.
- (c) The additional other consideration of the applicant's history of being a victim of violence weighs slightly in her favour.
- (d) Australian business interests are neutral.

162. Compliance with the Direction is not achieved by focussing upon the weight given to the various considerations in isolation. In deciding this case I must 'bring together the considerations as part of a single evaluation of their relative significance thereby weighing them all together'.⁴³

163. In *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* stated:

The balancing process is directed to determining whether there is "another reason" why the visa cancellation should be revoked. It requires an identification of the matters that may constitute "another reason" and bringing to bear the considerations that the Direction requires the Tribunal to take into account where relevant in determining whether or not the Tribunal is satisfied that there is another reason (or reasons) to revoke the visa cancellation. Some of the considerations set out in the Direction, where relevant, may weigh in favour of revocation, and so may constitute "another reason" capable of supporting the state of satisfaction required in order for revocation under s 501CA(4)(b)(ii) to occur. But whether they do qualify as a reason of that kind will need to be assessed in the context of different considerations set out in the Direction which may weigh against revocation, where relevant. That is why it is appropriate to describe it as a process of weighing and balancing. But to go beyond that to treat the Direction as mandating some sort of calculation of the net

⁴³*CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [28].

*weight to be given to the considerations on each side is to lose sight of the ultimately evaluative nature of the statutory task.*⁴⁴

164. As noted above, 7.2 of the Direction states that the primary consideration of the protection of the Australian community is generally to be given greater weight than other primary considerations. It also states that primary considerations should generally be given greater weight than 'other' considerations.
165. In this case, the protection of the Australian community and the expectations of the Australian community weigh strongly against revoking the cancellation of the applicant's visa. Balanced against this are the other considerations, of which the most significant is the extent of the impediments the applicant will face on being removed to the United Kingdom, after spending more than sixty years in Australia, having arrived in this country at the age of two and having lived here ever since.
166. The applicant has an extensive criminal history. However, virtually all of her offending is linked to her Alcohol Use Disorder. While she is not yet in full remission from this condition, she has been sober for some 19 months, which Ms Dombrowski described at the hearing as 'remarkable', even taking into consideration the fact that the applicant has been incarcerated during this period. There is a below average risk that the applicant will re-offend, and I have not found that any risk that she will do so is unacceptable. The applicant is strongly motivated not to fall back into alcoholism and consequent criminal behaviour. Apart from the motivating factors such as her health and wellbeing, the consequences for the applicant's status in Australia should she again commit an offence will act as a powerful deterrent to further criminal behaviour.
167. In these circumstances, I conclude that the applicant's ties to the Australian community and the other considerations which weigh in the applicant's favour - in particular the extent of the impediments the applicant will face on removal to the United Kingdom - outweigh those considerations which weigh against revoking the cancellation of the applicant's visa.

⁴⁴ *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [38]

DECISION

168. I conclude that there is another reason to revoke the cancellation of the applicant's visa. I have therefore set aside the decision under review and substituted a decision that the cancellation of the applicant's Class BF Transitional (Permanent) visa is revoked under s 501CA(4).

Date of hearing:	18 and 19 May 2026
Solicitor for the Applicant:	Wendy J Milojkovic - Milojkovic Visa & Migration Legal Services
Counsel for the Applicant:	Dr J Donnelly
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