

**Decision and
Reasons for Decision**

Applicant/s: TBXM

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2026/2044

Tribunal: General Member G Schubert

Place: Melbourne

Date: 27 July 2026

Decision: The Tribunal affirms the decision under review.

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General Member G Schubert

Catchwords

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of a Absorbed Person visa - character test - Direction no. 110 -primary and other considerations - protection of Australian community - nature and seriousness of criminal offending - risk to the Australian community should the Applicant commit further offences or engage in other serious conduct - strength, nature and duration of ties to Australia - best interests of children - expectations of the Australian community - legal consequences of decision - extent of impediments if removed – Decision under review affirmed.

Legislation

Administrative Review Tribunal Act 2024 (Cth)

Migration Act 1958 (Cth)

Cases

AJL20 v Commonwealth of Australia [2020] FCA 1305

BHL19 v Commonwealth of Australia (No 2) [2022] FCA 313

BNY23 v MICMSMA [2025] FCAFC 14

CRNL v MICMA [2023] FCAFC 138

Le v MIC [2026] FCA 774

Love v Commonwealth (2020) 270 CLR 152

Mabo [No2] (1992) 175 CLR 1

MHA v HSKJ [2018] FCAFC 217

MIMA v Ali (2000) 106 FCR 313

Reid v MICMA [2023] FCA 1076

Suleiman v MIBP [2018] FCA 594

Trout v MICMA [2023] FCA 583

Secondary Materials

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 97* (7 June 2024).

Statement of Reasons

APPLICATION FOR REVIEW

1. This is an application for review of a decision of the delegate of the Respondent dated 1 May 2026 made under s 501CA(4) of the *Migration Act 1958* (Cth) (the Act) not to revoke a decision cancelling the applicant's Absorbed Person visa (the visa) under s 501(3A) of the Act.

BACKGROUND

2. The Applicant is a 47-year-old male citizen of New Zealand. He arrived in Australia in December 1979, when he was an infant of almost 14 months age, with his mother, father and sister. He has resided in Australia from that time and holds the visa described above. He has held the visa from 1 September 1994 by operation of law.¹
3. On 31 October 2025 the Applicant in the Local Court of New South Wales at Grafton was convicted and sentenced to an aggregate term of 16 months imprisonment for the following offences (the index offending):²
 - a) Supply prohibited drug >indictable &<commercial quantity-T1 (2 charges).
 - b) Fail to comply digital evidence access order direction - T2 (1 charge).
 - c) Custody of knife in public place – subsequent offence - T1 (1 charge).
4. On 1 December 2025 the delegate cancelled the visa under s 501(3A) of the Act on the basis that the Applicant did not pass the character test (the original decision). The Applicant seeks revocation of the original decision, under s 501CA(4) of the Act.
5. The Applicant made representations about revocation to the delegate.³ On 1 May 2026 a delegate of the Minister decided that the visa remains cancelled (the non-revocation decision).⁴ The Applicant was notified on 4 May 2026, and he subsequently applied for review in the Tribunal within the legislated period.⁵
6. The Applicant appeared before the Tribunal on 16 July 2026 to give evidence and present arguments. Both parties were represented, as recorded below, and the Tribunal heard oral evidence in the hearing from the Applicant and his mother.
7. The Tribunal marked a hearing book compiled by the Respondent as Exhibit R1 and the Applicant's bundle of documents as Exhibit A1. The evidence is referred to in the reasons where relevant.

¹ Exhibit R1 Hearing Book (HB) 67.

² HB 40.

³ HB 80.

⁴ HB 21.

⁵ s 500(6B) *Migration Act 1958* (Cth).

8. By order dated 24 July 2026 pursuant to s 70(1) of the *Administrative Review Tribunal Act* 2024 (Cth) (the ART Act) the Tribunal restricted publication of the name and any other information tending to reveal the identity of the Applicant.
9. For the following reasons the Tribunal affirms the decision not to revoke the cancellation.

RELEVANT LEGISLATION

10. Section 501(3A) states that the Minister must cancel a visa that has been granted to a person if:
 - (a) the Minister is satisfied that the person does not pass the character test because of the operation of:
 - (i) s 501(6)(a) (substantial criminal record), on the basis of paragraph (7)(a), (b) or (c); or
 - (ii) s 501(6)(e); and
 - (b) 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.
11. Relevantly a person fails the character test under s 501(6)(a) if the person has a 'substantial criminal record' on the basis the person has been sentenced to a term of imprisonment of 12 months or more (s 501(7)(c)).

DIRECTION No. 110

12. Under s 499 of the Act, the Minister may give written directions to a person or body exercising powers under the Act if those directions are about the performance of those functions or the exercise of those powers. The Minister made *Direction no. 110 – Visa refusal and cancellation under section 501 and revocation of mandatory cancellation of a visa under section 501CA* (the Direction) on 7 June 2024, which commenced on 21 June 2024. The Tribunal must comply with the Direction in force at the time of its decision: *Trout v MICMA* [2023] FCA 583; *Reid v MICMA* [2023] FCA 1076.

FINDINGS AND REASONS

Indigenous Descent

13. The Applicant initially represented that he and family members are Aboriginal.⁶ Before the Tribunal, both the Applicant and his mother gave evidence that while some family research had been done, no familial link to the Applicant has been found. The Applicant disclaimed any reliance on being an Aboriginal Australian in the review. He does not contend the Tribunal should consider him to be characterised as such understood according to the

⁶ HB 84.

tripartite test in *Mabo [No2]*.⁷ Considering that evidence and the material before it the Tribunal proceeded on that basis.

Was the cancellation of the visa under s 501(3A) legally effective?

14. Having regard to the criminal history of the Applicant and the operation of s 501(3A), s 501(6)(a) and s 501(7)(c) set out above cancellation was mandatory. There is nothing to suggest the cancellation was not legally effective for any other reason. The Tribunal is satisfied the original decision was legally effective.

Does the applicant pass the character test?

15. The Tribunal considered whether, under s 501CA(4)(b)(i) of the Act, it is satisfied the Applicant passes the character test as defined by s 501. The Applicant accepted before the Tribunal that he does not pass the character test. He has been sentenced to a term of imprisonment of 18 months on 31 October 2025 for the index offending and as a result he has a substantial criminal record within the meaning set out above.
16. Accordingly, the Tribunal is not satisfied based on the evidence before it that the Applicant passes the character test as defined by s 501 of the Act. The Tribunal therefore proceeds to consider s 501CA(4)(b)(ii) of the Act.

Is there another reason why the original decision should be revoked?

17. Section 501CA(4)(b)(ii) of the Act requires the Tribunal to consider whether it is satisfied there is another reason why the original decision should be revoked. The Tribunal must have regard to the Direction (s 499(2A)).
18. Paragraph 5.2 of the Direction sets out the principles which provide the framework within which the Tribunal should approach its task of deciding whether to revoke the original decision under s 501CA(4).
19. Paragraph 6 of the Direction provides that the Tribunal, informed by the principles in paragraph 5.2, must take into account the considerations identified in paragraph 8 (the primary considerations) and paragraph 9 (the other considerations) of the Direction, where relevant to the decision.
20. Paragraph 7 of the Direction directs the Tribunal, when taking the relevant considerations into account, as follows:
 - (1) In applying the considerations (both primary and other), information and evidence from independent and authoritative sources should be given appropriate weight.
 - (2) The primary consideration at 8.1 below (protection of the Australian community) is generally to be given greater weight than other primary considerations. Otherwise, primary considerations should generally be given greater weight than the other considerations.
 - (3) One or more primary considerations may outweigh other primary considerations.

⁷ (1992) 175 CLR 1; *Love v Commonwealth* (2020) 270 CLR 152 [52].

Primary considerations

21. Paragraph 8 of the Direction relevantly provides that in making a decision under s 501CA(4) the following are the primary considerations:
- (1) protection of the Australian community from criminal or other serious conduct;
 - (2) whether the conduct engaged in constituted family violence;
 - (3) the strength, nature and duration of ties to Australia;
 - (4) the best interests of minor children in Australia;
 - (5) expectations of the Australian community.

8.1. Protection of the Australian community

22. Paragraph 8.1 of the Direction requires the Tribunal to keep in mind that the safety of the Australian community is the highest priority of the Australian Government. To that end, the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. In this respect, the Tribunal should have particular regard to the principle that entering or remaining in Australia is a privilege that Australia confers on non-citizens in the expectation that they are, and have been, law abiding, will respect important institutions, and will not cause or threaten harm to individuals or the Australian community.
23. The Tribunal should also give consideration to:
- (a) the nature and seriousness of the Applicant's⁸ conduct to date; 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 to date

24. Under paragraph 8.1.1 of the Direction, in considering the nature and seriousness of the Applicants' criminal offending or other conduct to date, the Tribunal must have regard to the following:
- (a) without limiting the range of conduct that may be considered very serious, the types of crimes or conduct described below are viewed very seriously by the Australian Government and the Australian community:
 - (i) violent and/or sexual crimes;

⁸ The Direction use the terms 'non-citizen' or 'non-citizens' rather than 'applicant'. In describing the content of the Direction, where suitable, this decision has used the term 'applicant' and otherwise retained the term 'non-citizen' or 'non-citizens' as originally appearing in the Direction.

- (ii) crimes of a violent and/or sexual nature against women or children, regardless of the sentence imposed;
 - (iii) acts of family violence, regardless of whether there is a conviction for an offence or a sentence imposed;
- (b) without limiting the range of conduct that may be considered serious, the types of crimes or conduct described below are considered by the Australian Government and the Australian community to be serious:
 - (i) causing a person to enter into a being party to a forced marriage (other than being a victim), regardless of whether there is a conviction for an offence or a sentence imposed;
 - (ii) crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties;
 - (iii) any conduct that forms the basis for a finding that a non-citizen does not pass an aspect of the character test that is dependant upon the decision-maker's opinion (for example, section 501(6)(c));
 - (iv) where the applicant is in Australia, a crime committed while the applicant was in immigration detention, during an escape from immigration detention, or after the applicant escaped from immigration detention, but before the applicant was taken into immigration detention again, or an offence against section 197 of the Act, which prohibits escape from immigration detention;
- (c) with the exception of the crimes or conduct mention in subparagraph (a)(ii) or (b)(i) above, the sentence imposed by the courts for a crime or crimes;
- (d) the impact of the offending on any victims of offending or other conduct and their family, where information in this regard is available and the applicant whose visa is being considered for cancellation has been afforded procedural fairness;
- (e) the frequency of the applicant's offending and/or whether there is any trend of increasing seriousness;
- (f) the cumulative effect of repeated offending;
- (g) whether the Applicant has provided false or misleading information to the Department, including by not disclosing prior criminal offending;
- (h) whether the Applicant has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the applicant's migration status (noting that the absence of a warning should not be considered to be in the applicant's favour);
- (i) where the offence or conduct was committed in another country, whether that offence or conduct is classified as an offence in Australia.

25. The Applicant has a significant, although not uninterrupted, criminal history recorded in a Nationally Coordinated Criminal History Check that is before the Tribunal.⁹ The Applicant's overall history contains driving and road offences including matters relating to driving unlicensed and while disqualified, and with an illicit drug present in his blood, and using unregistered or uninsured cars on the road.¹⁰
26. The Tribunal had regard to the offending in the record. The reasons turn to the most relevant matters.
27. In regard to the index offending, the sentencing remarks of the Magistrate in the Local Court dated 31 October 2025 recorded the following:¹¹
- (a) The series of offences arose from the execution of a search warrant at the address where the Applicant was residing with his mother.
 - (b) The supply charges were the most significant and carried a maximum penalty of 15 years imprisonment.
 - (c) Objective seriousness of the supply matters was largely dictated by the weight of the drug. The prosecution relied on deemed supply.
 - (d) The supply charges concerned 14 MDMA tablets and 60 grams of methylamphetamine. The offending was a relatively serious example of this sort of offending.
 - (e) The fail to comply with digital evidence access order was a relatively serious example of that sort of offence.
 - (f) The applicant pleaded guilty and received discounts based on the timing of his plea, which included an early plea to the offence of fail to comply with digital evidence access order and then a plea following charge negotiations.
28. In his evidence before the Tribunal the Applicant said the context of his drug supply was to his friends without charge. He accepted this conduct was nevertheless drug supply and that supplying illicit drugs is harmful.
29. The Applicant was, as observed above, sentenced to 16 months imprisonment. A non-parole period of 8 months was ordered.
30. The Applicant was sentenced on the same occasion to several fines in relation to 3 charges of possession of a prohibited drug, which concerned possession of steroids, 6 grams of heroin, and 500 grams of cannabis.¹²

⁹ HB 39.

¹⁰ Ibid.

¹¹ HB 45.

¹² HB 46.

31. On 12 October 2015 the Applicant was sentenced to imprisonment in the Local Court of New South Wales in Coffs Harbour in relation to the following offences:
- (a) Stalk/intimidate intend fear physical etc harm (domestic) – T2 (3 charges).
 - (b) Stalk/intimidate intend fear physical etc harm (personal) – T2 (2 charges).
 - (c) Contravene prohibition/restriction in AVO (Domestic) (2 charges).
 - (d) Assault officer in execution of duty – T2 (2 charges).
 - (e) Armed w/i commit indictable offence – T1.
32. The Applicant was sentenced to 12 months imprisonment with a non-parole period of 6 months.
33. Police reports described the facts of the offending. as follows, in summary:
- (a) On 30 October 2014 the Applicant argued with his now former partner (the complainant) causing her to contact the police. In the argument the Applicant said ‘you wanna keep going, I’ll punch you in the face’ and the Applicant flinched toward her with a closed fist. The complainant feared being assaulted.¹³
 - (b) On 20 December 2014 the complainant allowed the Applicant to return to the residence in breach of AVO conditions (Apprehended Violence Orders). The Applicant yelled accusations at her around 2am and said ‘I am going to kill you,’ ‘call the fucking police,’ and continued to yell including statements that he was going to kill his mother-in-law and his 3 children who were also present upstairs in the house, and that he would find a knife and cut all of them and take them out. The police were called to the residence. The Applicant was found holding a steak knife and was directed to drop the knife. He refused and ultimately was capsicum sprayed by police after which he dropped the knife and was forced to the ground to be arrested.¹⁴
 - (c) On 13 February 2015 police, acting on information the Applicant was again present in the residence, attended the address. He was found inside the residence. He said his now former partner was upset and asked him to come to the house. His former partner said she had telephoned the Applicant but had not asked him to attend the house, and he refused to leave when asked.¹⁵
34. The evidence does not detail the underlying facts of the assault officer charges.
35. On 12 July 2021 the Applicant was sentenced to a fine in relation to a charge of contravene prohibition/restriction in AVO (Domestic).

¹³ HB 264.

¹⁴ HB 263.

¹⁵ HB 261.

36. On 16 June 2022 the Applicant was sentenced to imprisonment in the Local Court of New South Wales in Coffs Harbour in relation to the following offences:
- (a) Destroy or damage property < = \$2000 – T2.
 - (b) Contravene prohibition/restriction in AVO (Domestic).
 - (c) Stalk/intimidate intend fear physical etc harm (domestic) – T2.
 - (d) Possess or use prohibited weapon without permit – T2.
37. The Applicant was sentenced to a total of 18 months imprisonment on terms to be served concurrently. A non-parole period of nine months was ordered.¹⁶
38. The Applicant was sentenced on the same occasion to a conviction with no other penalty in relation to two offences of possess prohibited drug.¹⁷
39. The sentencing remarks of the Magistrate in the Local Court recorded the following:¹⁸
- (e) The offences took place when the Applicant under conditions of the relevant AVO was not allowed to go into the place where his former partner resided nor be in her presence within 12 hours of consuming alcohol or illegal drugs.
 - (f) The Applicant returned to the residence initially with the consent of his former partner (the complainant). A number of days later he was staying in the garage and unknown people were coming to the location. The complainant asked him to leave. There was an altercation regarding that issue.
 - (g) While arguing in the kitchen of the residence, the Applicant forced the complainant into the corner of the kitchen. He retrieved a switchblade with a 10-centimetre blade from his jumper. The Applicant held it by his side, standing over the complainant, and called her a filthy dog and mutt, and said ‘you’re going to be dead, you’re going to be a dead dog.’ The complainant believed the Applicant was going to stab her.
 - (h) The Applicant left the residence, damaging a child’s gate as he departed.
 - (i) Police attended and the Applicant was soon found a short distance away in possession of a knife and drugs.
 - (j) The plea of guilty was entered on the day of the hearing and not at the earliest opportunity.
40. The Applicant in his evidence before the Tribunal did not accept that he cornered or threatened his partner with a knife or made the verbal threats described. He accepted he had been in the residence, but said his partner started abusing him and he walked out. He

¹⁶ HB 60.

¹⁷ Ibid.

¹⁸ HB 53.

did not deny possession of a knife on the day but said it was not the knife described by the complainant.

41. The evidence includes a mental health plan referral written for the Applicant by a doctor on 25 November 2020, which records the Applicant's denial of the offending at the time to the doctor and some information known by the doctor supporting that the situation was 'complicated.'¹⁹
42. The Tribunal is entitled to treat evidence of convictions and sentences as strong prima facie evidence of the factual matters upon which they were necessarily based.²⁰ An applicant bears a heavy onus in challenging such facts.²¹ There is evidence the Applicant's former partner may have been troubled at the time of the police report but this does not come close to casting doubt on the facts. Having considered the available evidence, the Tribunal does not accept it should depart from the sentencing facts based on the Applicant's denials or anything else before it. It considers the facts that the Applicant now does not accept are the factual basis for offending for which he was convicted and sentenced and accepts they occurred as set out above.
43. The Applicant's criminal record contains instances of assault offences which are violent crimes.²² The Tribunal considers the Applicant's offending relating to his former partner included acts of violence against a woman, and family violence, noting his former partner was a person with whom he had an intimate relationship and she was caused to be fearful by the behaviour.²³ The Tribunal accepts it does not have sufficient evidence before it to find there were other victims in the family. The remarks do not provide sufficient particulars regarding the offences for which the Applicant was later convicted.²⁴ The Tribunal has regard as required by paragraph 8.1.1(a) of the Direction to the matter that the Australian Government and the Australian community view violent crimes, crimes of a violent nature against women, and acts of family violence, very seriously.²⁵
44. The Tribunal also has regard as required by paragraph 8.1.1(b(ii)) of the Direction to the matter that the Australian Government and the Australian community view crimes committed against police officers, being government officials due to the position they hold, in the performance of their duties to be serious.²⁶
45. While the Tribunal is to have regard to the above views, it remains a matter for the Tribunal to assess for itself the nature and seriousness of that offending.²⁷ The facts of the Applicant's family violence offending extended at its most serious to putting his former partner in fear for her life by his conduct and threats while holding a knife, and the Tribunal

¹⁹ HB 110.

²⁰ *MIMA v Ali* (2000) 106 FCR 313, [41]-[44].

²¹ *Ibid.*

²² HB 36-44.

²³ The Direction [4](1) and [8.1.1](1)(a)(ii).

²⁴ Applicant's Statement of Facts, Issues and Contentions (SOFIC) [11]; HB 53, 62.

²⁵ The Direction [4](1) and [8.1.1](1)(a).

²⁶ The Direction [8.1.1](1)(b).

²⁷ *BNY23 v MICMSMA* [2025] FCAFC 14 [107].

considers overall his family violence against his former partner was serious. The facts of the assault police officer offending are unclear however the matters in 2015 attracted a sentence of imprisonment as recorded. A historical offence of the same type received a fine in 1998. The Tribunal considers overall the assault police officer offending to be serious.

46. The Tribunal has regard to paragraphs 8.1.1(1)(b)(i)(iii) and (iv) of the Direction and does not consider the evidence engages them.
47. The Tribunal also has regard to the various sentences imposed in the Applicant's criminal record.²⁸ It is not required to have regard to sentences for offending coming within, relevantly, paragraph 8.1.1(a)(ii) and (a)(iii) of the Direction.²⁹ The Tribunal nevertheless considered the sentencing outcomes as recorded above for those matters in assessing seriousness. The sentences imposed by the courts in relation to the Applicant's overall history of offences range up to effective terms of immediate imprisonment including 18 months in 2022 and 16 months in 2025.³⁰ Imprisonment is a sentence of last resort and reflects the seriousness of the Applicant's offending. The Tribunal takes into account that the criminal record also contains multiple lesser penalties including shorter and suspended terms of imprisonment, fines, and conviction bonds. These are indicators of less serious offending by the Applicant.
48. The impact of the offending on victims is largely not known.³¹ The Applicant's former partner was put in fear in her home, as the police reports and sentencing remarks in the reasons above record. There is no evidence of what any longer-term impact on her, or the impact on any victims of the Applicant's other offending, may have been.
49. The Tribunal considered the frequency of the Applicant's offending.³² There have been notable periods without offending particularly around 2002 and 2011.³³ However, the number of occasions before the courts and convictions recorded satisfies the Tribunal the Applicant's offending has been frequent, notwithstanding that his offending was not continuous. The sentences imposed reflect a general trend of increasing seriousness of offending up to 2015 and comparable seriousness up to 2025.
50. The Applicant accepts the cumulative effect of his repeated offending has been substantial and 'demonstrates persistent disregard for the criminal law, court orders and the safety of others', contributing to the overall seriousness of the Applicant's offending.³⁴ In view of the overall criminal history the Tribunal considers that to be the case.

²⁸ HB 39.

²⁹ The Direction [8.1.1](1)(c).

³⁰ HB 61.

³¹ The Direction [8.1.1](1)(d).

³² The Direction [8.1.1](1)(e).

³³ HB39; A sentence imposed in the Local Court of New South Wales in Coffs Harbour on 21 July 2003 concerned breaches and revocation of community service orders made regarding earlier offending made on 30 January 2002, see HB 202-206.

³⁴ The Direction [8.1.1](1)(f); Applicant's SOFIC [24].

51. The Applicant reoffended since being formally warned about the consequences of further offending in terms of his migration status on 16 May 2023.³⁵ The written correspondence from the Department advised the Applicant to note that a delegate of the Minister has issued him with a clear warning of such consequences including the real possibility of being removed from Australia. The Tribunal considers this circumstance increases the seriousness of his subsequent offending committed on 9 April 2025 for which he was sentenced on 31 October 2025.³⁶
52. The Tribunal has regard to paragraph 8.1.1(1)(g) and (i) of the Direction and does not consider they are engaged by the circumstances of the case.
53. For the reasons above, the Tribunal assesses the overall nature and seriousness of the offending to date to be serious.

Risk to the Australian community should the applicant commit further offences or engage in other serious conduct

54. Under paragraph 8.1.2 of the Direction the Tribunal must assess the risk posed by the applicant to the Australian community should the applicant commit further offences or engage in other serious conduct, and should have regard to the Government's view that the Australian community's tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases, and that some conduct and the harm that would be caused, if it were to be repeated, is so serious that any risk that it may be repeated may be unacceptable.
55. In assessing the risk that may be posed by the applicant to the Australian community in this review, the Tribunal must have regard to, cumulatively:
- (a) the nature of the harm to individuals or the Australian community should the applicant engage in further criminal or other serious conduct;
 - (b) the likelihood of the applicant engaging in further criminal or other serious conduct, taking into account any information and evidence on the risk of re-offending, any evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since the applicant's most recent offence (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).
56. The Applicant's offending to date has been serious. The significant parts of the history include drug offending extending to supply offences, family violence, assaults on police officers acting in the course of their duties, assaults on others, knife offences, and driving and road offences.
57. The harm that may be caused by further serious drug offences such as drug supply offending includes mental and physical harm to end users and the social burden of related health and enforcement costs. The harm that may be caused by further family violence

³⁵ The Direction [8.1.1](1)(i); HB 67.

³⁶ HB, 8, 48.

extends to serious mental and physical trauma and death for the victims. Assaults on police officers acting in the course of their duties may cause mental and physical harm to the direct victims and undermine law enforcement generally. The harm that may result from the offences such as the Applicant's previous knife offending is its use to threaten, injure, or kill others in the Applicant's family or the community. Driving and road offences should they be repeated endanger road users and members of the public.

58. The Tribunal considered the likelihood of the Applicant engaging in further criminal or other serious conduct. The Applicant's offending has been driven by drug use. He states, and the evidence of his mother supported, that after an injury to his back in 2008 he was prescribed strong pain medication including oxycodone and fentanyl. He later became addicted to the use of illicit drugs including methamphetamine, and this brought him instability and loss of relationships and other ties.³⁷ In the hearing the Applicant said he started using methamphetamine seriously in 2009 and also used marijuana and opiates. The Tribunal accepts the Applicant's evidence that his offending after 2009, which is the more serious part of his record, was driven by the drug use he described. The Tribunal also accepts his history of childhood abuse, trauma, depression, insomnia, and chronic pain have been contributing factors.³⁸
59. The evidence and information before the Tribunal provides the basis for significant concerns regarding the Applicant. The Applicant's criminal history shows repeated offending and a failure to cease offending by taking steps to rehabilitate himself even after serving a sentence in jail as recorded in 2015 and 2022. He has also repeatedly breached court orders. He offended after receiving a formal warning from a delegate of the Minister.³⁹ He conceded his history shows he had a persistent disregard for the criminal law and court orders.⁴⁰
60. The sentencing Magistrate in 2025 provide the most recent judicial assessment.⁴¹ The Magistrate remarked that the Applicant had been unable to 'shake' his illicit drug use. It was observed that the Applicant had been attending Alcoholics Anonymous (AA) meetings in custody. The Magistrate remarked there were some prospects of rehabilitation, but the assessment of the Court was guarded.
61. The Applicant expressed remorse for his criminal offending overall and stated this was more than regret about being detained or separated from his family.⁴² He stated he is ashamed of the damage caused by his drug use and offending.⁴³ He earlier stated he did not want to be in this situation ever again and missed his family too much to do this to them.⁴⁴

³⁷ Applicant's Statement, 4.

³⁸ Applicant's Statement [28]-[35]; Applicant SOFIC [51].

³⁹ HB 67.

⁴⁰ The Direction [8.1.1](1)(f); Applicant's SOFIC [24].

⁴¹ HB 48.

⁴² Applicant's Statement [20].

⁴³ Ibid.

⁴⁴ HB 93.

62. The Applicant accepted that his criminal history was accurate including in relation to his 2022 family violence. The Applicant accepts his denial of the facts in 2022, as discussed in the reason above, limits any finding of remorse regarding that conduct. In relation to the 2015 family violence convictions, he accepted in his evidence that the conduct occurred but stated he could not remember the incident as he was under the influence of drugs and other medical issues at the time, having had a seizure previously. He said he is not proud of the behaviour. Character references state views the Applicant intends to rehabilitate.⁴⁵
63. The Tribunal accepts based on his evidence the Applicant has developed a sense of remorse for his past offending generally however it considers this issue as it pertains to his family violence further below.
64. There is evidence the Applicant has been involved in fights in prison. A 2025 briefing report states the Applicant had been identified as involved with a prison gang and had been involved in multiple incidents and exhibited a pattern of violent behaviour.⁴⁶ The Applicant was taken to this evidence. He said he had been hit and he was not in a gang; he just had to affiliate with them because there was no way around it. The evidence shows the Applicant was at risk of attacks from others.⁴⁷ The Tribunal considered the overall situation to be unclear and did not place weight on reports of misconduct in jail.
65. The Applicant's evidence is that he has not used drugs since shortly before being taken into custody in 2025.⁴⁸ The Applicant states further he does not want to return to drug use.⁴⁹ He gave evidence that he has reflected in his time in jail and detention and is aware of his 'triggers.' The Tribunal accepts the Applicant's evidence however it considers his intention is prone to disruption if released. Prison and immigration detention centres are more controlled environments. The fact that the Applicant's abstinence has not been in the community moderates the weight the Tribunal gives to the Applicant's sobriety and stated intentions not to return to using illicit drugs. Some weight is given however, and the Tribunal accepts abstinence has given him the benefit of physical abstinence, and a significant period with a routine based on structure and exercise.⁵⁰
66. The Applicant has not undertaken formal rehabilitation programs. In his evidence he said he tried to do AA for a time. He said no programs have been accessible to him even after asking authorities. The Tribunal accepts the evidence of the Applicant. However, the result is that he has not had the benefit of anything other than some participation in AA by way of structured rehabilitation to address the causes of his offending, which might have given the Tribunal more confidence regarding risk. The Applicant has not been in the community following his most recent offending.⁵¹

⁴⁵ HB 117, 126.

⁴⁶ HB 471.

⁴⁷ HB 467.

⁴⁸ Applicant's Statement [36].

⁴⁹ Ibid.

⁵⁰ Applicant's SOFIC [54].

⁵¹ The Direction 8.1.2(2)(b)(ii).

67. The Applicant has taken some steps by planning his intended course if returned to the community. If released, the Applicant intends to seek drug rehabilitation and a mental health treatment plan with professional support for relapse prevention.⁵² He intends to avoid anti-social people, and the places connected with his past drug use.⁵³ His mother has made some enquiries about rehabilitation options. The Tribunal accepts the Applicant's evidence however the weight to be given to his currently held intention is tempered by his history of persistent drug abuse and offending.
68. The Applicant proposes to reside with his mother if he returns to the community. He is in daily contact with her and wants to support her as she ages. His mother's evidence was consistent with this arrangement. She gave evidence that the Applicant has resided with her 'on and off' his whole life. The Applicant acknowledges the availability of his mother has not prevented his past offending but contends the circumstances are now materially different.⁵⁴ These being his age, further imprisonment and immigration detention, prospect of immediate removal from Australia, and that he has 'now articulated the connection between his drug use, lack of routine and offending.'⁵⁵
69. The Applicant's most recent offences were committed on 9 April 2025 when he was not significantly younger. Past terms out of the community and receiving notice of the effect of further offending did not prevent him committing the 2025 offending. The Applicant's insight into routine is helpful but the Tribunal is unable to accept that he has only recently articulated a connection between his drug use and offending. He had the benefit of remarks in court during sentencing noting such a connection and a need to rehabilitate in 2022.⁵⁶ For those reasons the Tribunal does not accept the circumstances are materially different as the Applicant contended.
70. The Tribunal considers the Applicant has resided with his mother 'on and off' his whole life and this has not rehabilitated in the past him from offending again. The personal importance of the Applicant's mother and his family including his children to him personally have also not prevented his past offending. The Applicant wants to care for his mother as she ages. The Tribunal accepts this is a protective factor.
71. The Applicant states he has been employed from around the age of 14 when not held out of the community and has paid taxes.⁵⁷ He worked in a number of roles including engineering, postal work, and various types of labouring and has acted as a site supervisor. He states a former employer in the Grafton area has indicated work would be available to him if he is returned to the community, and he gave evidence that role would be in construction full time. A letter is before the Tribunal in support.⁵⁸ The Applicant's evidence is that he is a fully qualified site supervisor and his back pain does not prevent him from working. He enjoys working and it brings stability to his life. He said that he was in employment most of the time from an early age. The Tribunal considers this factor did

⁵² Applicant's Statement [39], [69]-[71].

⁵³ Ibid [40].

⁵⁴ Applicant's SOFIC [65].

⁵⁵ Ibid.

⁵⁶ HB 59-60.

⁵⁷ Applicant's Statement [61]-[66], HB 91,139-147.

⁵⁸ HB 139.

not prevent him offending in the past and the weight to be given to his past employment is moderated.

72. Based on the evidence before it, the Tribunal assesses there is a real risk of the Applicant reoffending.

Conclusion on Protection of the Australian Community

73. Taking into account the nature and seriousness of the Applicant's past offending, and the real risk to Australian community of serious harm should the Applicant reoffend, the Tribunal finds that the protection of the Australian community weighs very strongly against revocation of the original decision.

8.2. Family violence committed by the non-citizen

74. Paragraph 8.2 of the Direction requires the Tribunal to consider any family violence engaged in by the applicant, noting the Government has serious concerns about conferring on non-citizens who engage in family violence the privilege of entering or remaining in Australia. The Government's concerns in this regard are proportionate to the seriousness of the family violence engaged in by the non-citizen.
75. This consideration is relevant in circumstances where:
- (a) an applicant has been convicted of an offence, found guilty of an offence, or had charges proven howsoever described, that involve family violence; and/or
 - (b) there is information or evidence from independent and authoritative sources indicating that the applicant is, or has been, involved in the perpetration of family violence, and the applicant has been afforded procedural fairness.
76. In considering the seriousness of the family violence engaged in by the applicant the following factors must be considered where relevant:
- (a) the frequency of the applicant's conduct and/or whether there is any trend of increasing seriousness;
 - (b) the cumulative effect of repeated acts of family violence;
 - (c) rehabilitation achieved at time of decision since the person's last known act of family violence, including:
 - (i) the extent to which the applicant accepts responsibility for their family violence related conduct;
 - (ii) the extent to which the applicant understands the impact of their behaviour on the abused and witness of that abuse (particularly children);
 - (iii) efforts to address factors which contributed to their conduct; and
 - (d) whether the applicant has re-offended since being formally warned, or since otherwise being made aware by a Court, law enforcement or other authority, about the consequences of further acts of family violence, noting that the absence of a

warning should not be considered to be in the applicant's favour. This includes warnings about the applicant's migration status, should the applicant engage in further acts of family violence.

77. The reasons above set out the relevant family violence matters before the Tribunal. The Applicant concedes that this consideration is engaged in relation to the 2022 offending and 2015.⁵⁹ As recorded above, the Tribunal is satisfied the conduct constitutes family violence within the meaning in the Direction.
78. The evidence does not show a continuous or high frequency of the Applicant's family violence conduct. However, it was not confined to a single occasion or a short span of time. The 2015 matters included incidents that were family violence that occurred separately on 30 October 2014 and 20 December 2014.⁶⁰ In 2022 the Applicant was convicted of Stalk/intimidate intend fear physical etc harm (domestic) – T2. The last matter involved serious threats against his partner while holding a knife, putting her in fear of her life. Due to the gap in time between the matters the Tribunal does consider there is a trend however of increasing seriousness.⁶¹
79. The cumulative effect of all the family violence is accepted by the Applicant to be substantial. The Tribunal has the same view considering the extent and circumstances of the conduct.⁶²
80. The reasons above consider matters relevant to the Applicant's general prospects of rehabilitation, and as the Tribunal accepts the drug and health issues contributed to his family violence offending there is relevance to his rehabilitation concerning family violence.
81. In regard to family violence rehabilitation specifically, the Applicant shows limited insight at the time of decision. At the time of making his written statement he denied all the matters.⁶³ He accepted his conduct that occurred in 30 October 2014 and 20 December 2014 in the hearing and said he did not feel good about it. He said he understands how serious family violence is. The Applicant states he understands the impact of family violence being that it can cause fear and lasting harm to a partner and children exposed to it.⁶⁴ In the hearing the Applicant said he didn't feel good about 'how his partner felt about it.' Regarding the 2022 sentence, which related to conduct on 28 September 2021, the Applicant in his evidence before the Tribunal did not accept that he cornered or threatened his partner with a knife or made the verbal threats described. He continued to state that his partner had fabricated the events.
82. The Tribunal found the Applicant's evidence showed limited insight into the impact of his behaviour on his partner and family. The Applicant's offending included repeated breaches of an AVO protecting his partner which shows a disregard for her safety and his

⁵⁹ Applicant's SOFIC [74]-[79].

⁶⁰ HB 264, 263, 261.

⁶¹ The Direction [8.2](3)(a).

⁶² The Direction [8.2](3)(b).

⁶³ Applicant's Statement [24].

⁶⁴ Ibid [25].

lack of insight into his family violence. It is in his favour that there is no family violence conduct after 28 September 2021, even if part of that time has not been in the community.

83. The Applicant's evidence is that no rehabilitative courses have been available to him in jail and detention, which may otherwise have assisted him in demonstrating efforts to address factors which contributed to his conduct. He has now ended the relationship with his partner and planning steps toward rehabilitation generally is in his favour. The previously mentioned written warning from a delegate of the Minister referred to family violence. There is however no family violence conduct after the date of the letter on 16 May 2023, so this is of neutral weight.⁶⁵

Conclusion on Family Violence

84. The Applicant's family violence was serious, and the Tribunal has regard to paragraph 8.2(1) of the Direction.
85. The Tribunal finds that the family violence committed by the Applicant weighs strongly against revocation of the original decision.

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

86. In accordance with paragraph 8.3 of the Direction the Tribunal must consider any 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.
87. Where consideration is being given to whether to revoke the mandatory cancellation of the applicant's visa, the Tribunal must also consider the strength, nature and duration of any other ties that the applicant has to the Australian community. In doing so, the Tribunal must have regard to:
- (a) how long the applicant has resided in Australia, including whether the applicant arrived as a young child, noting that less weight should be given where the applicant began offending soon after arriving in Australia, and more weight should be given to time the applicant has spent contributing positively to the Australian community
 - (b) the strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia.
88. The Applicant's mother, sister, and brother, and his 3 adult children, who are between 18 and 25, are his immediate family members in Australia.⁶⁶ The Applicant is very close to his mother. He describes his relationship with his sister as good, however he is estranged from his older brother. He is no longer in his previous de facto partnership with his former partner.

⁶⁵ HB 67.

⁶⁶ Applicant's Statement [42]-[49].

89. The Applicant's evidence is that his mother, who is over 70 years old, will not cope well if he is deported. He said his other siblings don't have much to do with her and she would be alone. His sister lives in Queensland. His mother's evidence is that currently her life is such that having the Applicant residing with her is not essential, but it would make life easier for her. She is over 70 years of age and has some health issues that make her sensitive to light and sound. She does not attend large shopping centres as a result. She can access some support from others when needed at this time.
90. The Tribunal considers in the future those needs may increase and the Applicant's residence with her may be more important.
91. The Applicant's mother made statements and gave evidence that she would be emotionally devastated if the Applicant is deported.⁶⁷ A statement from the Applicant's sister does not detail the personal impact on her but she is supportive of the Applicant and has a continuing relationship.⁶⁸ The Applicant's evidence was that he speaks with her weekly.
92. The Applicant states he speaks to his adult children regularly and loves them.⁶⁹ He intends to continue to rebuild his relationship with them. A letter from his middle child is before the Tribunal.⁷⁰ It is supportive of the Applicant by confirming he has expressed a desire to provide some level of guidance and structure to the adult children. The letter was written in December 2025 and notes the child's relationship with the Applicant has been 'complex.' It also states the younger 18-year-old adult is being supported by his sibling and positive support would be of assistance. There were other statements and statutory declarations which are supportive of the Applicant's being a proud father and good to his mother.⁷¹ The Applicant's mother said he has a very good relationship with the adult children and the 18-year-old needs guidance. A statement from the 18-year-old person states that he needs his father in to be in Australia, it was his plan to live with his father, he needs a parent in his life, and the Applicant is his only father figure.⁷²
93. The Tribunal considers the impact on the Applicant's mother of a decision not to revoke the original decision will cause significant emotional distress. It would also carry practical implications for her that may require her to rely on others for care or relocate from her home in the future. The impact on his sister is less known, and she resides in another state, however the Tribunal considers the decision would also cause her some emotional distress. There is no evidence of an effect on the Applicant's brother, and he has no active relationship with him. The Tribunal is unable to determine an impact on the Applicant's brother. The Applicant's adult children will be negatively emotionally impacted based the evidence available. They will lose physical access to him in Australia, and this will limit their relationship. The youngest adult child will be most impacted accepting the statements above.
94. The Applicant has resided in Australia after arrival as an infant which is significant in the assessment. He did not begin offending soon after arriving in Australia. He accepts his

⁶⁷ HB 120, 125.

⁶⁸ HB 120.

⁶⁹ Applicant's Statement [48].

⁷⁰ HB 122.

⁷¹ Applicant's bundle, HB 130 - 137

⁷² HB 132.

lengthy criminal history is relevant.⁷³ The Tribunal accepts the Applicant made positive contributions to the Australian community. The Applicant was employed and paid taxes and has helped others in the community around him while also participating in volunteer and charity work.⁷⁴ The material before the Tribunal establishes the Applicant has substantial social connections who found him to be honest, helpful, and loyal in the Australian community notwithstanding his time spent in custody, jail and detention.⁷⁵ He is particularly close and supportive to one family of 'Ms W' with nine children, four of whom have high-level disabilities. He has been a father figure to his adult nephew.

95. The Applicant states many of his social connections are Aboriginal Australians and the Tribunal accords greater weight to this consideration overall as it recognises the importance of kinship and connection. The evidence does not allow more individual consideration.
96. The Tribunal accepts the Applicant's contention that this consideration weighs strongly in his favour.⁷⁶

Conclusion on strength, nature and duration of ties to Australia

97. For the reasons above, the Tribunal finds that the strength, nature and duration of ties to Australia weighs strongly in favour of revocation of the original decision.

8.4. Best interests of minor children in Australia affected by the decision

98. In accordance with paragraph 8.4 of the Direction the Tribunal must determine whether non-revocation under s 501CA is, or is not, in the best interests of a child affected by the decision. This consideration applies only if the child is under 18 years old at the time the Tribunal's decision is expected to be made. If there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.
99. In considering the bests interests of the child, the Tribunal must consider the following, where relevant:
 - (a) the nature and duration of the relationship between the child and the applicant. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact)
 - (b) the extent to which the applicant is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements

⁷³ Applicant's SOFIC [113].

⁷⁴ Applicant's statement [65]-[66]. Applicant's SOFIC [116]-[118].

⁷⁵ HB 127-139; Applicant's bundle.

⁷⁶ Applicant's SOFIC [143]-[[144].

- (c) 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 child
- (d) the likely effect that any separation from the applicant would have on the child, taking into account the child's or applicant's ability to maintain contact in other ways
- (e) whether there are other persons who already fulfil a parental role in relation to the child
- (f) any known views of the child (with those views being given due weight in accordance with the age and maturity of the child)
- (g) evidence that the child has been, or is at risk of being, subject to, or exposed to, family violence perpetrated by the applicant, or has otherwise been abused or neglected by the applicant in any way, whether physically, sexually or mentally
- (h) evidence that the child has suffered or experienced any physical or emotional trauma arising from the applicant's conduct.

100. The Applicant identified several minor children:⁷⁷

- (a) 2 children born 2018 and 2015 of his former partner, who he states are his stepchildren.
- (b) 2 children born 2021 and 2023 who he identifies as grandchildren.
- (c) One child born 2016 who he identifies as a niece.
- (d) 9 children born 2010, 2011, 2012, 2013, 2015, 2016, 2019, 2022, 2020, who are children of 'Ms W' mentioned above.

101. The Applicant's evidence is that there is no existing court order restricting contact with the children in (a) above. He said they are living with their grandmother in Sydney, and their mother remains their primary carer. He would like to be present for them their whole lives and he considers himself a father, and they turn to him for help. He is not their biological father. The Applicant accepts any future role in their lives must be in compliance with any court orders that may be made.

102. The Applicant's evidence is that the grandchildren identified in (b) above are in Sydney. The Applicant is in contact by telephone and their father is not around. He said the child in (c) above is living in Sydney and had lived with him for about 6 months before he last went into custody.

103. The Applicant's evidence is that the children in (d) above he considers to be extended family. A statement from Ms W states the Applicant has been an ongoing and reliable source

⁷⁷ Applicant's Statement Schedule A.

of support including with transport and practical support for the children.⁷⁸ As noted, the evidence is the family has four children with high-level disabilities.

104. The Applicant accepted in the hearing he is not the primary caregiver of any child now, or prospectively if he was to be returned to the community.
105. The evidence before the Tribunal allows it to accept the following in relation to the children in each of the above related subparagraphs:
 - (a) The Applicant has been identified by the children as 'Dad.' The Applicant's mother in her evidence said the children have behavioural disorders. There has been contact between the children and the Applicant however it is not constant. The Applicant has been in jail and detention for substantial periods. The background of family violence and past protection orders means the Tribunal cannot accept that the Applicant will necessarily have a physical presence in the lives of these children. There is a significant period remaining before they reach adulthood and, if it is allowed, there is some prospect of the Applicant playing a positive parental role in the future. There is no evidence of the impact of the Applicant's prior conduct on them. The likely effect of separation is not well evidenced however the Tribunal accepts they will lose the chance of re-establishing a closer relationship involving physical presence. The children have a mother and grandmother who play a parental role. The views of the children are not known. It is not entirely certain whether these children have been exposed to family violence or abuse perpetrated by the Applicant however he accepts they were in the vicinity of some family violence.⁷⁹ The risk of future family violence is real, should the Applicant regain substantial access to the household, based on the reasons regarding the considerations above. There is no evidence of physical or emotional trauma caused by the Applicant to the children.
 - (b) The Applicant's relationship with his grandchildren is not well evidenced. He has a relationship with them by telephone and may establish one in person in Sydney if he returns to the community. One of the grandchildren is closer and the Applicant is in telephone contact more frequently. The Applicant does not play a parental role for these children and there is no indication he may. There is no evidence of the impact of his conduct in the past or future on them. Separation from the Applicant would result in loss of the possibility of a greater physical presence in their lives. The children are already parented. There are no known views from the children. There is no evidence of past family violence of the Applicant affecting the children. There is no intention to share a house or ongoing proximity with the grandchildren, and the Tribunal assesses there is a lower risk of family violence in those circumstances based on the Applicant's history. There is no evidence of physical or emotional trauma caused by the Applicant to the children.
 - (c) The Applicant's evidence is that his niece turns to him for support and she is close to him, having resided with him for 6 months in the past. The Applicant has been absent in jail and detention for significant periods but contact between them was available. The Applicant's relationship in the past is regarded as partly parental. The

⁷⁸ HB, 133.

⁷⁹ Applicant's SOFIC [164].

child is still distant from adulthood. There is some prospect the Applicant could play a positive parental role in the future. There is no evidence of the impact of his conduct in the past or future on the child. Separation from the Applicant would result in loss of the possibility of a greater physical presence in her life. The child is already parented. There are no known views from the child. There is no evidence of past family violence of the Applicant affecting the child or of physical or emotional trauma caused by the Applicant to the child. The Applicant did not state he intended to share a house or ongoing proximity with the child again, and the Tribunal assesses there is a lower risk of family violence in those circumstances based on the Applicant's history.

- (d) The statement of Ms W is that the Applicant assists with transportation and practical support, and helps ensure the children can attend appointments, school, and essential services.⁸⁰ The Applicant states he has acted as a support person with government support services for members of the family.⁸¹ The evidence of the Applicant is that he is very close to the child born in 2013. The evidence does not otherwise differentiate the children. The Applicant's role is not parental, and he has been absent for significant periods in jail and detention. The evidence does not indicate that the children's care will be deficient without his support. There is no evidence of the impact of his conduct in the past or future on the children. Separation from the Applicant would result in loss of the possibility of a greater physical presence in their lives and the loss of practical assistance. The children are already parented. There are no known views from them. There is no evidence of past family violence of the Applicant affecting the children or of physical or emotional trauma to the children. The Applicant would not reside with the children. The Tribunal assesses there is a lower risk of family violence in those circumstances based on the Applicant's history.

106. The Applicant states that the above children, apart from the children in (a), are to his understanding, Aboriginal. The Tribunal places some additional weight on this consideration overall in recognition of kinship relationships and connection in the Aboriginal community, but the material does not allow specific findings in relation to each child. The Applicant concedes no finding could be made of a loss of cultural guidance other than as extended family support figure.⁸²

Conclusion on best interests of minor children in Australia affected by the decision

107. The Tribunal finds non-revocation is not in the best interests of each of the children above. This consideration weighs moderately in favour of revoking the original decision.

8.5. Expectations of the Australian community

108. Paragraph 8.5(1) of the Direction states the Australian community expects applicants to obey Australian laws while in Australia. Where an applicant has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they

⁸⁰ HB 133.

⁸¹ Applicant's Statement [57].

⁸² Applicant's SOFIC [157].

may do so, the Australian community, as a norm, expects the Government to not allow such an applicant to enter or remain in Australia.

109. Paragraph 8.5(2) of the Direction directs that in addition, non-revocation of the mandatory cancellation of a visa, may be appropriate simply because the nature of the character concern 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
 - (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
 - (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
 - (f) worker exploitation.
110. The expectations of the Australian community apply regardless of whether the applicant poses a measurable risk of causing physical harm to the Australian community.
111. The Direction provides that this consideration is about the expectations of the Australian community as a whole and in this respect, the Tribunal should proceed on the basis of the Government's views as articulated above, without independently assessing the community's expectations in the particular case.
112. The Applicant's past offending has been assessed overall as serious. He has carried out act of family violence against a woman, and crimes against government officials, being police, in the performance of their duties. The Australian community, as a norm, expects in such circumstances the Government to not allow such an applicant to remain in Australia.
113. The Tribunal must consider the weight to be afforded based on its own assessment in each case guided by the Direction and any other relevant considerations. The Tribunal has regard throughout the decision to the framework in paragraph 5.2 of the Direction, and consider the application particularly of paragraphs 5.2(3), (4), and (6).

Conclusion on expectations of the Australian community

114. Notwithstanding the relevance of paragraph 5.2(6) of the Direction, this consideration weighs strongly in favour of not revoking the original decision.

Other considerations under the Direction

115. Paragraph 9 of the Direction relevantly provides that in making a decision under s 501CA(4) the considerations below must also be taken into account, where relevant, (but are not limited to):
- (a) legal consequences of the decision;
 - (b) extent of impediments if removed;
 - (c) impact on Australian business interests.

9.1. Legal consequences of the decision under s 501CA(4)

116. Paragraph 9.1(1) of the Direction requires the Tribunal to be mindful that unlawful non-citizens are, in accordance with section 198 of the Act, liable to removal from Australia as soon as reasonably practicable in the circumstances specified in that section, and in the meantime, detention under section 189, noting also that section 197C(1) of the Act provides that for the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen. Paragraph 9.1(2) sets out what a non-refoulement obligation is. Paragraph 9.1(3) notes that international non-refoulement obligations will generally not be relevant where the person concerned does not raise such obligations for consideration and the circumstances do not suggest a non-refoulement claim.

9.1.2 Applicant not covered by a protection finding

117. The Applicant does not raise claims which may give rise to international non-refoulement obligations.
118. There are a range of legal consequences of a decision not to revoke the original decision to cancel the Applicant's Absorbed Person visa. The consequences of a visa refusal or cancellation under s 501 or related provisions include:
- Unlawful status;
 - The likelihood of becoming subject to detention and/or removal;⁸³
 - Refusal of other visa applications and cancellation of other visas;⁸⁴
 - A prohibition on applying for other visas;⁸⁵ and
 - Periods of exclusion and special return criteria may apply.⁸⁶

⁸³ *Migration Act 1958* (Cth) ss 189, 196, 197C, 198.

⁸⁴ *Ibid* s 501F.

⁸⁵ *Ibid* s 501E.

⁸⁶ *Ibid* s 503, special return criteria (SRC) 5001.

119. Generally, if a visa is cancelled its former holder becomes an unlawful non-citizen immediately after cancellation.⁸⁷ Under s 189 of the Act, the Applicant must be detained and removed as soon as reasonably practicable under s 198.⁸⁸ He will continue to be detained under s 189 of the Act and will be removed from Australia as soon as practicable under s198 of the Act.
120. The Tribunal is obliged to consider those consequences having regard to the particular circumstances of the Applicant.⁸⁹ In this case the legal consequences of the decision on are significant because it they involve his detention and removal from Australia, his separation from his mother, remaining family and connections in Australia and his inability to return.

Conclusion on legal consequences of the decision under s 501CA(4)

121. Having regard to the evidence before the Tribunal, this consideration is given moderate weight in favour of revoking the original decision.

9.2. Extent of impediments if removed

122. Paragraph 9.2 of the Direction provides that the Tribunal must consider the extent of any impediments that the applicant may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country) taking into account:
- (a) the applicant's age and health;
 - (b) whether there are substantial language and cultural barriers; and
 - (c) any social, medical and/or economic support available to them in that country.
123. The Applicant is 47 years old at the time of decision which is not of an advanced age. He does however have a history of back injury and associated chronic pain, depression, insomnia, and complex trauma. He also a history of serious chronic substance abuse. The Tribunal accepts the disruption and dislocation of removal to New Zealand, and feelings of isolation, will make managing his conditions, and avoiding relapse into substance abuse, more difficult than if he was returned to the community in Australia. The Applicant's work skills are transferrable however managing his health conditions in the circumstances may interfere with his employability.
124. There are no substantial language and cultural barriers faced by the Applicant in New Zealand. The Applicant speaks English and the culture in New Zealand is similar to that in Australia.

⁸⁷ Ibid s 15.

⁸⁸ The Court in *BHL19 v Commonwealth of Australia (No 2)* [2022] FCA 313 followed *AJL20 v Commonwealth of Australia* [2020] FCA 1305 to find the applicant's detention had at all times been lawful at [112]-[122].

⁸⁹ *Le v MIC* [2026] FCA 774.

125. The Applicant states he has no meaningful memory of New Zealand.⁹⁰ The evidence is that he has some relatives on his father's side in the country, however he has no relationship with them. His mother's evidence is that apart from having social media connections the family is not in contact with these relatives, and she does not know what they are like as people or whether contacting them would assist the Applicant.
126. The Applicant accepts citizens in New Zealand have access to public health, housing, employment and welfare services.⁹¹ He is concerned to receive prompt professional support for his wellbeing. The Tribunal accepts there will be hardship for the Applicant in arranging access to services due to the burden of his conditions above, and the impact on him of removal from Australia and his connections here.
127. The Tribunal accepts there are real impediments faced by the Applicant if removed taking into account all the known circumstances.

Conclusion on extent of impediments if removed

128. Taking into account the above, this consideration is given moderate weight in favour of revoking the original decision.

9.3. Impact on Australian business interests

129. Paragraph 9.3 of the Direction provides that the Tribunal must consider any impact on Australian business interests if the applicant is not allowed to enter or remain in Australia, noting that an employment link would generally only be given weight where the decision under section 501CA would significantly compromise the delivery of a major project, or delivery of an important service in Australia.
130. The Applicant does not contend this consideration to be applicable in the circumstances of this case.⁹² The Tribunal considered the impact on an Australian business that, on his evidence, had offered him prospective employment. While the business may lose the opportunity to employ the Applicant, this would not significantly compromise the delivery of a major project, or delivery of an important service in Australia. The Tribunal sees no reason not to follow the general approach to not give weight to this consideration in such circumstances.

Conclusion on impact on Australian business interests

131. This consideration is of neutral weight.

CONCLUSION

132. The Applicant does not pass the character test under s 501 of the Act. The Tribunal must consider whether there is another reason why the original decision should be revoked, having regard to the primary and other considerations in the Direction.

⁹⁰ Applicant's Statement [73].

⁹¹ Applicant's Statement [79].

⁹² Applicant SOFIC [246].

133. Paragraph 7 of the Direction sets out the way in which the relevant considerations are to be taken into account and weighed.
134. There has been extensive judicial consideration on the exercise of balancing and weighing considerations contained in the relevant Ministerial Directions (considering a number of Ministerial Directions preceding the Direction).⁹³
135. The Full Court of the Federal Court in *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* ('CRNL') said '[t]he real burden of the task to be undertaken by a decision-maker who must comply with the Direction [the precursor Direction 90] is to bring together the considerations as part of a single evaluation of their relative significance thereby weighing them all together.'⁹⁴
136. The Tribunal has considered the primary and other considerations and weighed them having regard to what is before it using the guidance provided by the Direction In determining the weight to be applied to each consideration.
137. Greater weight must generally be given to the protection of the Australian community than other primary considerations. Greater weight will also generally be given to primary considerations. In examining what this requires, the Full Court in *CRNL* states that this means greater weight will be given unless there is some reason why that general approach should not be adopted.⁹⁵
138. Taking into account all the circumstances of the case, the Tribunal considers the general approach should be adopted that greater weight is given to the protection of the Australian community, and to the primary considerations.
139. The Tribunal considered in the reasons above that the protection of the Australian community weighs very strongly against revocation of the original decision, family violence weighs strongly against revocation of the original decision, the strength, nature and duration of ties to Australia weighs strongly in favour of revocation of the original decision, the best interests of minor children in Australia affected by the decision weighs moderately in favour of revoking the original decision, expectations of the Australian community weighs strongly in favour of not revoking the original decision, legal consequences of the decision under s 501CA(4) is given moderate weight in favour of revoking the original decision, and extent of impediments if removed is given moderate weight in favour of revoking the original decision.
140. The Tribunal considers the the protection of the Australian community, family violence, and expectations of the Australian community considerations outweigh the countervailing considerations in this case in its evaluation of all of the considerations together.

⁹³ See *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594; *Minister for Home Affairs v HSKJ* [2018] FCAFC 217; (2018) 266 FCR 591.

⁹⁴ [2023] FCAFC 138, [23].

⁹⁵ *Ibid* [27].

141. The Tribunal is not satisfied the applicant passes the character test. Undertaking the single evaluation described in *CRNL* the Tribunal is not satisfied there is another reason why the original decision should be revoked under s 501CA(4).
142. Given the above findings, the appropriate course is to affirm the decision under review.

DECISION

The Tribunal affirms the decision under review.

Date(s) of hearing: 16 July 2026

Counsel for the Applicant: Associate Professor Dr Jason Donnelly

Solicitors for the Respondent: Australian Government Solicitor