

**Decision and
Reasons for Decision**

Applicant: RGVG

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2026/2062

Tribunal: Senior Member P Martin

Place: Melbourne

Date: 13 August 2026

Decision: The decision not to revoke the cancellation of the Applicant's Absorbed Person Visa, is affirmed.

.....[SGD].....
Senior Member P Martin

Catchwords

MIGRATION – mandatory visa cancellation – citizen of New Zealand – criminal record – review under section 501CA(4) – failure to pass character test – Ministerial Direction No 110. applied – Primary Considerations – protection of the Australian community from criminal or other serious conduct – risk of re-offending – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – Other Considerations – legal consequences – extent of impediments if removed – decision affirmed.

Legislation

Administrative Appeals Tribunal Act 1975 (Cth)

Administrative Review Tribunal Act 2024 (Cth)

Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (Cth)

Migration Act 1958 (Cth)

Migration Amendment Act 2024 (Cth)

Migration Regulations 1994 (Cth)

Cases

BSJ16 v Minister for Immigration and Border Protection [2016] FCA 1181

Hambledon v Minister for Immigration and Border Protection [2018] FCA 7

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

Stonely v Minister for Immigration and Multicultural Affairs [2025] FCA 143

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

Bell and Minister for Immigration and Citizenship (Migration) [2025] ARTA 1409

Secondary Materials

Minister for Immigration and Multicultural Affairs (Cth), *Direction No 110: Visa Refusal and Cancellation under s 501 and Revocation of a Mandatory Cancellation of a Visa under s 501CA* (7 June 2024)

Statement of Reasons

1. This is an application for review of a decision made by a delegate of the Respondent not to revoke the mandatory cancellation of the Applicant's Absorbed Person Visa, made under section 501CA(4) of the *Migration Act 1958* (Cth) (the Act).

BACKGROUND

The Applicant's length of time living in Australia, his extent of family and his visa status

2. Utilising the evidence provided by the Applicant, a summary of his background is provided below. The Tribunal has avoided using the names of any relevant friends or relatives of the Applicant, out of respect for their privacy.
3. The Applicant was born in and is a citizen of New Zealand, but (with his mother and stepfather) came to Australia on 12 October 1972 when he was a 16-month-old baby. The Applicant growing up had two brothers and two sisters. The Applicant had two brothers but they have now both died. The Tribunal was told that in recent times, the Applicant is estranged from his two sisters.
4. The Applicant is currently aged 55. Hence it is undisputed that the Applicant has lived in Australia for nearly all of his life. In addition, the Applicant states that he has only returned to New Zealand once for about two weeks, to see his maternal grandmother who at that time was passing away.¹
5. The Applicant grew up in the northern suburbs of Adelaide. It was his evidence (and not disputed in itself by the Respondent) that the Applicant grew up in a violent and dysfunctional family, in which his abusive father would be particularly abusive towards the Applicant. This in turn led to the Applicant 'running away from home' when he was about thirteen and a half years old.
6. The Applicant then mostly lived away from home but would occasionally return, and was then put into a 'boys' home'. His oral evidence at the Tribunal hearing was that he found the structure and stability of being in a boy's home settling and appealing, presumably compared to the volatile and sometimes unsafe situation he found himself in when he was living at home.
7. When he became an adult, still living in Adelaide, it is stated at paragraph 10 of Dr Donnelly's submission that "The material before the Tribunal establishes that [The Applicant] has a lengthy criminal history extending from 1987 to 2021". Attached to these

¹ See Dr Donnelly's submission at [49].

Reasons at Appendix 1 is a copy of the applicant's National Criminal History Check (NCHC), which lists about three and a third pages of itemisation of the applicant's offending. It is common ground that this offending has led to the Applicant over time being significantly imprisoned.

8. Accordingly, it is self-evident that from when the applicant was aged 13 onwards, he has spent a large majority of his years either in boys' homes or in jail. Indeed, in the course of the Tribunal hearing, the Applicant's oral evidence was that he has at times been drawn back to what he has found to be the familiar and comforting structure and routine of being in prison.
9. The Tribunal will discuss further below the nature of the Applicant's family and the implications of same. At this stage, suffice to say that the applicant has had several romantic partners at different stage of his life and by the time of the Tribunal hearing had four children. Also by the time of the Tribunal hearing:
 - The Applicant's father had passed on.
 - His mother is still alive and lives in a rural town about two and a half hours drive north of Adelaide's northern suburbs.
10. With the applicant having spent so much of his life in boys' homes or in jail, it also follows that the Applicant has had (for someone his age) a limited extent of work experience. However it is common ground that the Applicant did 'earthmoving' type work over the period 2013 to 2019 or thereabouts and that this work was helpful in giving the applicant routine and structure, and that the applicant gained useful work experience and skills in this role.
11. It is undisputed that due to his extensive offending up to that point, in 2011 the Applicant was interviewed by Immigration Department officials about the possibility of him being deported from Australia. Although ultimately the decision made was to not deport the applicant, he was given a formal warning at that time. Hence it is self-evident that from this time onwards, the Applicant was very much on notice that any further offending by him might have implications for his ability to keep living in Australia.
12. Bearing in mind that he had paid work and that he was out of jail for (by the Applicant's standards) a quite extended period during roughly 2012 to 2019, the Applicant's oral evidence during the hearing was that this 2012 to 2019 period was a highlight in his life. That is, the Applicant's oral evidence was that during this period he had work, he had been allocated some form of 'affordable rental accommodation', he was in a romantic relationship and he was interacting in a pleasing way with his relevant children and grandchildren. The oral evidence of the Applicant and his daughter at the Tribunal hearing was that during this period it was common for the Applicant's children and grandchildren to visit the Applicant at his rental property for meals or a coffee.

13. In relation to the more significant developments in the Applicant's life over the last 10 years or so:
- The Applicant committed a substantial number of more minor motor vehicle offences.
 - The Applicant was convicted in August 2015 of 'Commit assault – basic offence'. In practice this involved the Applicant punching a motorbike rider (who was a stranger to the applicant) in the head, at a service station.
 - The Applicant's oral evidence was that he experienced a difficult period in or about 2019, when his most recent romantic relationship broke up in a difficult manner and where he was remanded for five months due to charges being laid against him, where those charges were ultimately dropped. It was said by the applicant that during these five months he was evicted from his rental property, his belongings inside the rental property were stolen and his dog ended up biting a stranger and then being put down.
 - His final index offending occurred during 2020. This index offending in practice involved the applicant along with another person entered the garage of a residence (while the family including children were inside the relevant house) to steal a motorbike and associated items. Whilst the applicant during the hearing disputed whether he needed to break into the garage,² he conceded that he was trespassing by entering the garage to steal the motorbike, while the family were home.
14. The index offending by the Applicant that led to his visa being mandatorily cancelled is described in the NCHC as – "Serious criminal trespass-residence occupied-aggravated. Basic: dishonestly dealing with property without consent. 2. Attempted basic: dishonestly deal with property without consent". In terms of the resulting sentencing, the NCHC reads as follows – "1. Sentenced 4 years 8 months 3 days imprisonment 2. Sentenced 1 year 18 days imprisonment Head sentence: 5 years imprisonment Non Parole period 3 years Start 29/7/20".
15. Having completed his imprisonment, the applicant has been held in detention since 29 January 2025. There have been no psychological reports prepared in relation to him. As discussed further below, during his imprisonment/detention the applicant formed a very positive relationship with a prison chaplain who is an Elder with the main Adelaide congregation of the Jehovah's Witnesses church. This in turn led to the Applicant beginning to regularly online-worship with that church. At the Tribunal hearing, the Applicants' evidence was that he continues to be a very active online church member and to maintain what has become a form of friendship between himself and the prison chaplain

² Noting however that in the relevant Sentencing Remarks of Justice Fuller, it is said that the garage window was found by the police to have been broken.

16. Also discussed during the hearing and considered further below is the fact that this prison chaplain owns a family business making olive oil and has formally offered the Applicant a full-time job at the family olive groves which lie in the region south of Adelaide, about a 15-20 minute drive from the main local town of Murray Bridge.
17. As mentioned above, where the index offending by the Applicant in 2020 led to him receiving a five-year sentence of imprisonment, this led to the mandatory cancellation of his visa on 27 July 2023. The Applicant then sought the Minister's review of this cancellation, but where this review was refused on 4 May 2026 and the Applicant was then advised that the delegate of the Minister had decided not to revoke such cancellation. The Applicant then lodged his application for review with the Tribunal on 12 May 2026.

Tribunal hearing

18. In the usual manner, there was a Directions hearing in the lead up to the scheduled main hearing on 28 May 2026, to clarify the arrangements for the exchange of information between the parties prior to the main hearing. This is a situation where the Tribunal under the Act must issue its decision by the relevant 84th day, which here is 28 July 2026. Pursuant to these Directions, the Respondent prepared and circulated a written Statement and shortly before the main hearing circulated a hard copy Hearing Book (HB), which was received into evidence. Both parties provided a detailed written Statement in the lead up to the hearing and the Applicant also provided a Reply Submissions document. The HB contained a number of pages which were upside-down and the various Statements were scattered throughout the HB in an unhelpful manner – the Tribunal trusts this will not happen again.
19. The Tribunal has taken into account the following written supporting Statements included in the Tribunal book:
 - The handwritten Statement by the Applicant dated 10 November 2021 – see HB87.
 - The Statement by a former partner at HB93.
 - The Statement by a son of the Applicant at HB96.
 - The Statement by the 'grove manager' of the relevant boutique olive grove at HB128.
 - The Statements associated with the Applicant completing the 'Footsteps to Recovery' course at HB162-164.
 - The typed Statement dated 4 July 2025 by the Applicant at HB163.
 - The Statement by the Applicant's daughter at HB167.
 - The Statement by the Applicant's son at HB175.
 - The Statement by the Applicant's grandson at HB178.
 - The Statement by the Applicant's granddaughter at HB180.
 - The Statement by another of the Applicant's granddaughters at HB182.
 - The Statement by another former partner of the Applicant at HB183.
 - The Statement by the relevant prison chaplain at HB188.
 - The Statement by the Applicant's mother at HB191.

- The Statement by [redacted] at HB192.
 - The Workskil Australia, olive grove business and Jehovah's Witnesses Statements at HB193 to 196.
 - The more detailed Statement by the Applicant's mother at HB301.
 - The more detailed Statement by the prison chaplain at HB307.
 - The more detailed Statement by the Applicant's daughter at HB311.
 - The more detailed Statement by the Applicant at HB315.
20. The Tribunal hearing occurred over 14 and 15 July 2026, during which each party spoke to their previous circulated submissions, materials and any Statements. Apart from hearing oral evidence from the Applicant, the Tribunal received oral evidence from the Applicant's relevant daughter and son and also from his mother and the aforementioned prison chaplain.
21. In the final result, the Tribunal issued a one-page decision on 27 July 2026, confirming the decision not to revoke the cancellation of the Applicant's visa, with an indication that the associated Reasons would follow within a reasonable period. These are the Reasons associated with that 27 July 2026 one-page decision.
22. I turn now to a summary of the position of each party, in terms of whether or not there would be another reason to overturn the mandatory cancellation of the Applicant's visa.
23. The Applicant urges the Tribunal to place major weight on what he submits are his very strong ties to Australia and it being in the best interests of his relevant children/grandchildren (as applicable) that he be allowed to stay in the Australian community. It was emphasised that in recent times the Applicant has re-connected with his mother and relevant children and their grandchildren, with it being said that these family members would all be devastated if the Applicant had to return to New Zealand. Otherwise, the Applicant highlighted what he said would be his major practical difficulties and challenges if he had to transition to living again in New Zealand, where it is said that he has no family that he has kept up any contact with.
24. By contrast, the Respondent submits that heavy adverse weight should be placed on the primary considerations 1 and 5. In this regard, the respondent relied upon the very lengthy criminal record of the Applicant, which includes a 2015 conviction for randomly assaulting a stranger at a service station and also the 2020 offence of "Serious criminal trespass-residence occupied-aggravated. Basic: dishonestly dealing with property without consent". The Respondent also highlighted the fact that the Applicant had been warned in 2011 that his offending might lead to him being deported from Australia, yet went on to commit further offending including the abovementioned assault of a stranger and aggravated trespass of an occupied residence. The Respondent's advocate noted that the Applicant on his own evidence had experienced a quite settled period during roughly 2012 to 2019 when he had the benefit of employment, stable accommodation and good relations with his family, yet he went on to commit the abovementioned 2015 and 2019 offending.

LEGISLATIVE FRAMEWORK

25. Section 501CA(4) of the Act states the Minister may revoke the original decision if:
 - (a) the person makes representations in accordance with the invitation; and
 - (b) the Minister is satisfied:
 - (i) that the person passes the character test (as defined by section 501); or
 - (ii) that there is another reason why the original decision should be revoked.
26. Section 501(6)(a) states that a person does not pass the character test if the person has a substantial criminal record. Section 501(7)(c) states that, for the purposes of the character test, a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more.
27. Under section 499(1) of the Act, the Minister may give written directions to a person or body having functions or power under the Act, and a person or body must comply with any direction given by the Minister (section 499(2A)).
28. The Minister has issued Direction 110, *Visa Refusal and Cancellation under section 501 and Revocation of a Mandatory Cancellation of a Visa under section 501CA* (the Direction) dated 7 June 2024.
29. The Direction sets out the considerations to be taken into account when considering a request to revoke a cancellation and states: a non-citizen who has had their visa cancelled under section 501(3A) may request revocation of that decision under section 501CA of the Act. Where the decision-maker considering the request is not satisfied that the non-citizen passes the character test, the decision-maker must consider whether there is another reason to revoke the cancellation given the specific circumstances of the case. The purpose of this Direction is to guide decision-makers in performing functions or exercising powers under sections 501 and 501CA of the Act.
30. Clause 5.2 of the Direction sets out the principles to provide a framework for decision making. These are:
 - (1) *Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to enter and/or remain in Australia. Being able to come to or remain in Australia is a privilege Australia confers on non-citizens in the expectation that they are, and have been, law-abiding, will respect important institutions, such as Australia's law enforcement framework, and will not cause or threaten harm to individuals or the Australian community.*
 - (2) *The safety of the Australian Community is the highest priority of the Australian Government.*
 - (3) *Non-citizens who engage or have engaged in criminal or other serious conduct should expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.*
 - (4) *The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they engaged in conduct, in Australia or*

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

- (5) *Australia has a low tolerance of any criminal or other serious conduct by visa Applicants or those holding a limited stay visa, or by other non-citizens who have been participating in, and contributing to, the Australian community only for a short period of time.*
 - (6) *With respect to decisions to refuse, cancel, and revoke cancellation of a visa, Australia may afford a higher level of tolerance of criminal or other serious conduct by non-citizens who have lived in the Australian community for most of their life, or from a very young age.*
 - (7) *Decision-makers must take into account the primary and other considerations relevant to the individual case. In some circumstances, the nature of the non-citizen's conduct, or the harm that would be caused if the conduct were to be repeated, may be so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation.*
 - (8) *The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa, or revoking a mandatory cancellation, even if the information available at the time of consideration suggests that the non-citizen does not pose a measurable risk of causing physical harm to the Australian community.*
31. Paragraph 8 of the Direction sets out the primary considerations to be taken into account:
- 8.1 *protection of the Australian community from criminal or other serious conduct;*
 - 8.2 *whether the conduct engaged in constituted family violence;*
 - 8.3 *the strength, nature and duration of ties to Australia;*
 - 8.4 *the best interests of minor children in Australia;*
 - 8.5 *expectations of the Australian community.*
32. Paragraph 9 of the Direction sets out other considerations to be taken into account including:
- 9.1 *Legal consequences of the decision;*
 - 9.2 *Extent of impediments if removed;*
 - 9.3 *Impact on Australian business interests.*

ISSUES

33. The issues to be determined in this application are:
- 1) *does the Applicant pass the character test as set out in section 501(6); and if not,*
 - 2) *whether there is another reason why the original decision should be revoked under section 501CA(4), having regard to the Minister's Direction No. 110.*

FINDINGS AND REASONS

Does the Applicant pass the character test?

34. Attachment 1 to this decision is the NCHC for the Applicant. It was put by Ms Baras-Miller at the hearing and not disputed in itself by the Applicant/Dr Donnelly that:
- Section 501(6)(a) of the Act states that the Minister may refuse to grant a visa if a person does not pass the 'Character test'.
 - Section 501(6)(a) provides that a person does not pass the 'Character test' if he or she has a 'substantial criminal record' as defined by ss 501(7).
 - As per s 501(7)(d) of the Act, a person has a 'substantial criminal record' if the person has been sentenced to two or more terms of imprisonment, where the total of those terms is 12 months or more.
 - The NCHC confirms that the Applicant over his adult life has been sentenced to well in excess of two years, regardless of how much time he has actually been incarcerated.
35. In summary, the Tribunal finds the Applicant has a 'substantial criminal record' as defined and hence does not pass the character test set out in section 501(6)(a) of the Act.

Whether there is another reason why the original decision should be revoked under section 501CA(4), having regard to the Minister's Direction No. 110

36. The Tribunal then needs to review whether there is another reason why the original decision by the Minister should be revoked under s 501CA(4), having regard to the Minister's Direction No. 110. The Tribunal has, with its discussion and findings below, assessed each consideration set out in the Direction in turn, keeping in mind the principles in clause 5.2 of the Direction.

8.1 The protection of the Australian community from criminal or other serious conduct

37. This consideration requires the Tribunal to keep in mind that the safety of the Australian community is the highest priority of the Australian Government, and that the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens.

38. The Tribunal must 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.
39. Paragraph 8.1(2) of the Direction requires decision-makers to:
- a) Consider the nature and seriousness of the non-citizen's conduct to date; and
 - b) the risk to the Australian community, should the non-citizen commit further offences or engage in other serious conduct.

8.1.1 Nature and seriousness of the conduct

40. This primary consideration involves taking into account the nature and seriousness of the Applicant's past conduct. Paragraph 8.1.1(1) states that when considering the nature and seriousness of the Applicant's criminal offending and other conduct to date, the Tribunal must have regard to a number of factors, which are addressed below.
41. For convenience, the Tribunal has included the three relevant Sentencing Remarks at Attachments 2, 3 and 4 to this decision.
42. In relation to Attachment 2, this is the most recent Sentencing Remarks dated 21 September 2021 by Justice Fuller in the Adelaide District Court. The first part of the Sentencing Remarks explains what transpired with the Applicant and another person entering the relevant garage when the family (including children) were home and then stealing a motorbike. It is confirmed that the value of the stolen property was \$25,000. The following paragraphs are relevant to these proceedings and worth setting out:

The victims of your offending were in court when I heard submissions. Their victim impact statements were read. Your offending has had a profound effect on them. The terrifying realisation that their home was not secure and that criminal's intent on stealing their property had broken into their garage and made off with valuable property has made them feel unnerved and unsettled.

Mr [A] believes you must have targeted or surveyed their property. Mr and Mrs [A] and their children were within metres of the garage and the thought of what might have happened if one of them or their children had ventured into the garage when Mr [L] was in there has left them traumatised.

Mrs [A] is now constantly afraid of entering the garage and is hypervigilant about the safety and security of their home and family. If she hears a noise or a car driving by, she checks the video surveillance system installed at her home.

43. Further down in these Sentencing Remarks it is said in relation to the Applicant that – “You have what can only be described as an appalling history of prior offending” and there is reference to “...your extensive offender history”. A few paragraphs further down it is stated that “Ironically and sadly, when you are in a regimented structured environment like prison or the Footsteps program, you thrive and excel”. It is also commented by Justice Fuller that the Applicant’s counsel confirmed that the Applicant was “...on an amphetamine bender” when the Applicant stole the motorbike. This was despite the Applicant only weeks earlier having successfully completed the Footsteps Road to Recovery Residential Rehabilitation 12 week live-in course”.
44. Towards the end of the Sentencing Remarks it is said that “You are at real risk of becoming a person for whom goal is the safest place to be and the safest place for you to be from the community’s point of view”.
45. I turn now to the Sentencing Remarks dated 22 September 2022 of Justice David of the South Australian Supreme Court. Again, these remarks provide considerable details about the nature of the offending that occurred, which was “...one count of illegally using a motor vehicle without consent and one count of dangerous driving to escape police pursuit”. The latter offence included the Applicant at one stage driving the stolen car down the wrong side of the road in traffic in Adelaide. It is then stated that:

I am told that throughout your life you have spent some 24 years in some sort of secure care, whether it be foster homes through to the adult system in prisons. You came from New Zealand [redacted] with your mother never having met your father and you have had a very difficult abusive and violent life.

46. Significantly for my purposes here, Justice David then states further down that (with my emphasis) – “You committed these offences whilst on parole and of course the offending is *very serious*. It is also very serious bearing in mind your continued breaches of the law in relation to similar offences involving cars”.
47. Further down it is recorded that the Applicant’s counsel stated that the applicant has “...had a problem with drugs”. Also, the Judge describes the Applicant’s criminal record (as it was 17 years ago in 2009) as ‘extensive’. The judge states “Your counsel put to me that the total period of driving was a little over four minutes, but it is to be noted that a lot of carnage can be done by a motor vehicle during that period of time”.
48. Finally, I refer to the Sentencing Remarks by Justice Robertson dated 1 September 2005. It is telling and sobering that despite these remarks being made almost 21 years ago, His Honour describes the Applicant’s offending history as ‘extensive’. Justice Robertson states:

Your conduct is serious criminal offending. You clearly do not have the capacity to respect the property rights of others. General deterrence and personal deterrence play prominent roles in sentencing you.

49. Further down, as part of His Honour dealing with the appropriate non-parole period, Justice Robertson states – “Sadly, it would seem that you do not have the capacity to rehabilitate yourself”.

50. The Tribunal will now turn to the various nominated Clause 8.1.1 considerations.

S 8.1.1(1)(a) & (b): Is the criminal offending or conduct by the Applicant considered ‘very serious’ or ‘serious’?

51. The Tribunal has taken into account the various sentencing remarks summarized above. To avoid duplication, I refer to my summary of these remarks set out further above, including a number of very relevant quotes. Also see the Appendixes 2 to 4 attached to this Decision.

52. The Tribunal has had regard to both the nature and the extent of the Applicant’s offending, as set out in the attached NCHC. There is also a helpful summary of the Applicant’s offending presented at paragraphs 24 to 27 of the Respondent’s SOFIC – see HB 385 to 387.

53. On the evidence before it and for the following reasons, the Tribunal finds that the Applicant’s criminal offending has been ‘very serious’.

54. First, it is striking the sheer length of time that the Applicant has been offending and the extent of offences that the Applicant has incurred. With the Applicant’s NCHC, the first recorded offence by the Applicant is shown as occurring in 1987, when the Applicant was presumably a teenager. This NCHC shows that the Applicant now has about three and a third page worth of listed offences. It is bracing that as early as 2005 (almost 21 years ago), Justice Robertson described the extent of the Applicant’s offending as ‘extensive’.

55. Second, in the 2009 Sentencing Remarks by Justice David, His Honour expressly describes the relevant offending by the Applicant (which included driving on the wrong side of the road) as ‘very serious’. The comments by His Honour allude to the high potential for ‘carnage’ on the roads, even over a few minutes, when dangerous driving occurs.

56. Third, it is significant that the sentencing process for the Applicant’s 2020 offending included the court taking into account ‘victim impact statements’. I have quoted further above Justice David’s summary of same. It is significant that Justice David refers to the victim family as being ‘terrified’ during the offending and to the parents of the children involved as being ‘traumatised’. There is reference to the mother involved now not wanting to go into the garage and becoming ‘hyper-vigilant’ as a result of the offending by the Applicant. In summary, these are all highly concerning and very serious repercussions/adverse impacts on the victim family, where the Applicant (along with another offender) entered the garage of the parent victims when their children were home and stole a motorbike.

57. Fourth, the Applicant's counsel Dr Donnelly (whose ultimate duty is to assist the Tribunal) properly made some significant acknowledgements that are relevant here, notably:
- At paragraph 33 of his written submission, he states that "The Tribunal should therefore accept the nature of the harm that may result from further offending is serious".
 - At his [34] he states, "The risk is more accurately characterised by reference to Mr Sweetland's demonstrated pattern of property, dishonesty, motor vehicle, driving and order-breach offending, together with the real personal impact such offending can have on victims and the community".
 - At his [36] it is said "[the Applicant] accepts that his criminal history is lengthy and serious, and that his past conduct is a relevant consideration".
58. The case of *Bell and Minister for Immigration and Citizenship (Migration)* [2025] ARTA 1409 is authority for the proposition that continuing repeat offending by an Applicant is an impost on the community, in terms of the accumulated costs of dealing with that person's behaviour.
59. Fifth, the Respondent's SOFIC refers to the following offending, which the Tribunal accepts is very adverse:
- The SOFIC at 26.1 refers to the relevant 2005 incident involving the receipt of about \$75,000 worth of equipment intended to be sold for drugs.
 - The SOFIC at 26.2 refers to the Applicant having multiple convictions involving resisting or hindering the police.
60. In summary, on the evidence before it and relying on the Sentencing Remarks and other relevant factors summarised further above, the Tribunal is satisfied that the Applicant's overall conduct for the purposes of s 8.1.1(1)(a) and (b) constitutes 'very serious' adverse conduct.

S 8.1.1(1)(c): The sentence imposed by the courts

61. In terms of how it views the Applicant's case, the Tribunal gives adverse weight to the fact that the applicant's index offending led to him receiving a cumulative sentence of five years. In this regard, the Tribunal finds that a 'five year prison sentence' is a quite significant length of prison sentence for the Applicant here to have received. In practice, this significant length of the prison sentence presumably reflects that when the applicant stole the motorbike from the relevant garage, he did so with an accomplice and at a time when the family in question were home.

S 8.1.1(1)(d): The impact of the offending on any victims

62. Where the Applicant has a very extensive criminal history, the Tribunal acknowledges that much of the offending can loosely be described as minor offending where there is no overt 'victim'.
63. However, the stand-out issue here seems the Applicant's index offending, given that this offending resulted in a significant cumulative prison sentence for a term of five years and that the provision of 'victim impact statement(s)' from the parent owners of the relevant house formed part of the sentencing process.
64. To avoid duplication, I refer to my discussion of same on my previous page above. The key points here seem that the Sentencing Judge was satisfied that:
- The offending of the Applicant would have had a 'terrifying' effect on the parent home owners, given that their children were very close to the garage at the time of the incident.
 - The parent home owners have been 'traumatised' by what happened.
 - The mother now experiences hyper-vigilance and does not want to go into the garage where the motorcycle theft occurred.
65. In summary, it is self-evident from the victim impact statement(s) that the index offending by the Applicant has had a very far-ranging and fundamental adverse impact on the family involved, particularly the parents and especially the mother.
66. Where the 2009 Sentencing Remarks by the Sentencing Judge involved a car theft by the Applicant and then a police pursuit where the Applicant at one stage was driving on the wrong side of the road, it is similarly self-evident that this would have been very scary for any other driver who was facing the possibility of a head-on accident with the Applicant's car.

S 8.1.1(1)(e) & (f): Frequency of offending and/or whether there is any trend of increasing seriousness/cumulative effect of repeat offending

67. If one reviews the Applicant's NCHC which runs to about three and a third pages of offending by the Applicant since 1987, it is noticeable that there is at least one recorded offence for every year between 1987 and 1990. There is then no recorded 1991 offence but six recorded offences in 1992, then one in 1993, then three in 1997, then at least one offence recorded for the period 2000 to 2009. There is no offence recorded for the years 2010-2011 but then at least one offence recorded for the years 2012 to 2016. There is then no 2017 or 2019 offence shown but six offences recorded for 2020 and one for 2021 (the aforementioned index offending).

68. In summary, it is self-evident that the offending by the Applicant is spread over a very long period, and over time has become prolific. The analysis done in the previous paragraph highlights that the Applicant's pattern of offending has been frequent, in the sense that:

- Most of the years since 1987 he has at least one offence recorded.
- There are a discrete group of years where in each of these years he committed multiple offences.
- There are two years where he is recorded as having committed six offences in the one years, being 1992 and 2020.

69. The Tribunal finds that there is some extent of a trend of 'increasing seriousness' with the Applicant's offending, given that:

- The NCHC shows that the Applicant more recently committed six offences in 2020.
- It also shows that the Applicant committed the index offending, for which he was sentenced in 2021 to five years of imprisonment.

70. With the Applicant over time having carried out what the Tribunal regards as a substantial extent of offending, the Tribunal accepts that there is a likely cumulative effect of his repeat offending on the Australian community.

S 8.1.1(1)(g): Providing false and misleading information

71. The Tribunal is not aware of the Applicant providing any false and misleading information to the Department of the delegate of the Minister.

S 8.1.1(1)(h): Reoffending since being warned

72. At that part of the Applicant's Statement found at HB168, the Applicant states that:

In 2009 was the first time that I heard from the department of immigration. There was talk then about sending me back to New Zealand. In 2011, I received a Notice of Intention to Consider cancellation.

73. The Applicant goes on to confirm in the same paragraph of this Statement that ultimately he simply received a warning from the department.

74. The record shows that on 22 September 2011 the Applicant was formally warned by an immigration official that because of the Applicant's offending, the Department was considering whether or not he should be deported.
75. Dr Donnelly queried whether the formal written notice sent to the Applicant was legally valid, because of the choice of words used in at least one aspect of it. However, in discussion with me at this relevant point in the hearing, he sensibly did not contest that it was still significant for our purposes here that in 2011 an Immigration Department official warned the Applicant that his offending might affect his legal capacity (as a visa holder) to be able to stay in Australia.
76. The Tribunal finds that it counts strongly against the Applicant that he received this formal warning from an immigration official and yet continued his offending from 2011 onwards. Indeed, reviewing the NCHC, much of the Applicant's offending occurred after 2011.

S 8.1.1(a)(i): Offences or conduct committed in another country

77. The Tribunal is not aware of the Applicant having committed any offences outside of Australia, keeping in mind that he was a baby when his family re-located to Australia.

Conclusion 8.1.1: Nature and seriousness of the conduct

78. Overall, having regard to the relevant evidence discussed above and also taking into account the Tribunal's findings with all of the relevant factors set out above, the Tribunal finds that the nature and seriousness of the Applicant's conduct on balance is 'very serious'.

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

79. Paragraph 8.1.2 of the Direction requires decision-makers to bear in mind the Australian 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. In addition, some conduct and the harm that would be caused (if repeated) is so serious that any risk that it may be repeated is unacceptable. In the circumstances here and in reaching its decision, the Tribunal has taken these considerations in Paragraph 8.1.2 into account.
80. In assessing the risk that may be posed to the Australian community, the Directions set out the following factors which decision makers must have regard to, cumulatively, as per s 8.1.2:
- a) The nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct; and

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

- i. information and evidence on the risk of the non-citizen reoffending; and
- ii. evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since their most recent offence (noting that decisions should not be delayed in order for rehabilitation courses to be undertaken)....

81. In essence then, on a cumulative basis, the Tribunal must have regard to the nature of the harm to individuals or the Australian community should the Applicant engage in further criminal conduct, and the likelihood of him doing so. With this particular provision, there is no statutory constraint on the way that risk is assessed by the decision-maker, other than that there must be a rational and probative basis for the assessment.³

Nature of the harm to individuals or the Australian community should the non-citizen engage in further criminal or other serious conduct

82. The Tribunal has already remarked that the offences shown in the Applicant's NCHC run for about three and a third pages. We also know from the Sentencing Remarks (see Appendixes 2-4 attached) that the Applicant's overall criminal record has been described as early as 2005 as 'extensive'. It is also the case that the Applicant carried out the offence of 'assault' in 2015 and that he was sentenced for the index offending in 2021. The Tribunal has further above discussed the 'victim impact statements' arising from that index offending.

83. The Tribunal accepts that if the Applicant were to reoffend in a similar manner, there would be a substantial risk of harm to members of the Australian community in the broad manner submitted by the Respondent and as the Tribunal has discussed above.

84. This 'risk of further harm' also has the element of the potential impost on the community of the costs of dealing with the Applicant's potential future adverse behaviour.

Risk of the Applicant re-offending and evidence of rehabilitation

85. The Tribunal has considered the risk of any further offending by the Applicant plus the evidence of any rehabilitation by him. In doing this, the Tribunal has taken into account the sentencing comments of any relevant Magistrate and Judge, the Applicant's mental health

³ See *BSJ16 v Minister for Immigration and Border Protection* [2016] FCA 1181, [568] per Moshinsky J, plus *Hambledon v Minister for Immigration and Border Protection* [2018] FCA 7, [41] per Kenny J.

and other health issues, protective factors, any evidence of rehabilitation and remorse and prison/ detention behaviour. The Tribunal has also considered the parties' contentions.

86. The applicant and Dr Donnelly put to the Tribunal that the applicant's risk of re-offending would be low if he was allowed to stay in the Australian community, as summarised below.
87. First, the Applicant in his written and oral evidence stated his remorse for his various offending.
88. Second, the Applicant with his written and oral evidence stated that he has matured in recent years and now has much greater self-awareness of situations where he may need help from family and/or friends. The Applicant with his oral evidence stated that whereas previously there was a real 'shame' factor to how he conducted himself which in practice led to him isolating himself, he now realises it is appropriate and helpful for him to reach out to others for help where this is needed.
89. Third, the Applicant relied on what he and Dr Donnelly submitted would be the strong 'protective factors' of the applicant's faith, his offer of employment from the prison chaplain and his renewed ties with his family.
90. With respect to his faith, the Applicant's evidence was that since 2022 he has become strongly involved with the Jehovah's Witnesses church, which he regularly attends online. Following this line-of-evidence:
 - An important aspect of this 'growth of faith' has been the Applicant during his imprisonment forming a strong connection with the prison chaplain, who is an Elder in the Adelaide Kingdom Hall of the Jehovah's Witnesses church.
 - The Applicant now has a very committed faith and desire to be closely involved in the church. He typically 'online attends' his Adelaide Kingdom Hall twice a week and also does a weekly bible study with the prison chaplain.
 - This will substantially assist the Applicant with his transition back to the Australian community, if he is successful in this proceeding.
91. In relation to his employment situation, the Applicant emphasised that the prison chaplain has made him a written offer of full time employment at the prison chaplain's family-owned olive grove plantation south of Adelaide, if the Applicant returns to the Australian community. The prison chaplain affirmed this offer in the course of giving his oral evidence to the Tribunal. It was the evidence of the Applicant and the prison chaplain (supported by the submissions of Dr Donnelly) that it will be very helpful for the Applicant's potential re-integration into the community that he is being offered a full time job in what was described as a remote location away from Adelaide, where the arrangement would include the

Applicant being able to live in the 'workers accommodation' which already exists on that property.

92. The prison chaplain's oral evidence was that there would be plenty of manual work for the Applicant to do even beyond the 'picking season' and that it would be helpful for the business that the Applicant had picked up additional metalwork skills whilst he was incarcerated at the Port Augusta prison during his prison term. He noted that because the Applicant would be not just working but living on-site, the Applicant would be separated from any persons in Adelaide who have previously been a bad influence on him.
93. The Applicant and Dr Donnelly gave evidence/urged the Tribunal to accept that the Applicant now has renewed ties with this family and that this would be an important 'protective factor' if the Applicant was allowed back into the Australian community. Following this line of thinking, the indications are that the Applicant would be substantially engaging with his family if he was to return to the Australian community, and this engagement would be positive and help make the Applicant's risk of re-offending low.
94. That is, on the one hand, it is common ground that the Applicant's two brothers/step-father have all passed on, where he confirmed that he is estranged from his two sisters and currently has no romantic partner. On the other, the Applicant emphasised that since he has been in detention, he has renewed his relationship with his older children and with his own mother. Likewise, when they gave oral evidence to the Tribunal:
 - The Applicant's mother stated that her relationship with the Applicant has recently improved and they now speak more often, albeit this is against the background of her stating in the first page of her written Statement dated 15 June 2026 that "My relationship with [the Applicant] has been painful and complicated. I have not seen him more than about a dozen times since he was around 14 years old. For much of his life, [the Applicant] did not keep in contact with me".
 - The Applicant's daughter confirmed that she and her children had in a positive way during the Applicant's recent detention experienced more contact with the Applicant and an improved relationship with him, albeit on the first page of her undated written Statement she described her relationship with the Applicant as "...complicated, especially whilst he is incarcerated".
 - The Applicant's son likewise stated that recently he and his children had in recently experienced more contact and an improved relationship with the Applicant.
95. Fourth, Dr Donnelly at paragraph 38 of his written submission emphasises what he describes as the Applicant's "...sustained disengagement from illicit drug use. At that paragraph he refers to the Applicant as not taking any illicit drugs since 2020. When he was asked about this issue in the course of his evidence-in-chief, the Applicant conceded that

he did fail one drug test whilst he was incarcerated, but confirmed that otherwise he had not failed any drug tests whilst in prison or detention.

96. Fifth, it was the evidence of the prison chaplain that he is aware of the Applicant's past offending, but nevertheless he had seen a marked positive improvement in the Applicant's outlook since 2022. At paragraph 7 of his written Statement, the prison chaplain refers to the Applicant as becoming more personally involved in his bible studies and mentoring other prisoners in a helpful way. At [11] the prison chaplain indicates that he still does a (presumably online) bible study with the Applicant every Tuesday evening. At [26] he states that he has built up trust in the Applicant and at [27-28] he states "From my perspective, [the Applicant] has built up his faith, principles and self-worth. I am fairly confident that he has turned a corner. I believe the difference now is that Tracey has support and a practical pathway: faith support, congregational accountability, employment, accommodation, lawful income and a reason to stay away from old associations".
97. In relation to the Respondent's submissions regarding the risk of the Applicant re-offending, it argued that the Applicant's extremely long and extensive history of offending still 'threw a heavy shadow' over all of these claimed positive considerations. It noted that the Applicant's offending included an assault of a random stranger and stealing a motorbike from a house where the family involved were at home. The Respondent submitted that the Applicant is unusually institutionalised, where he has lived in some form of institutional youth accommodation or prison for the majority of his time since he ran away from home when he was 13. On this basis, it was argued that there was still a major risk that the Applicant would under any pressure 'revert to type' and offend. The Applicant's long history of using illicit drugs was noted, as was the fact that he received an 'immigration warning' in 2011. It was questioned 'what has changed', where the Applicant in the past kept offending despite having the support of his family.
98. Turning to the Tribunal's findings, on the evidence before it and for the following reasons, the Tribunal finds that there is a significant risk of the applicant re-offending, if he is allowed to live in the Australian community.
99. It is a striking feature of this proceeding that the Applicant received a formal warning from Immigration officials in 2011 that his offending might affect his ability to stay in Australia, yet the Applicant kept offending. This is indicative of the Applicant's:
- Reckless indifference to the potential fundamental adverse consequences of any ongoing offending.
 - Willingness to 'roll the dice' with carrying on offending even where it was made very clear to him in 2011 that on-going offending would impact on his ability to stay in Australia.

In turn this is indicative of there still now being a significant risk of the Applicant re-offending.

100. It also seems very fair to say that that Applicant has been given many chances over a long period to reform himself to a lawful lifestyle. With many of his offences, the Applicant was given non-custodial orders. Where the Applicant was sentenced on 9 December 2003, the Presiding Judge commented on the Applicant having had the benefit of the services offered by the Drug Court Program. Between July and early October 2019, the Applicant completed a 'Footsteps Road to Recovery' residential three-month drug and alcohol rehabilitation program and received a glowing form of reference from the course coordinator. However the Applicant went on to carry out the index offending a short time after completing this course.
101. This is in the situation where as early as 2005 the Applicant's extent of offending was for sentencing purposes described as 'extensive'. When he was most recently sentenced in September 2021, Justice Fuller stated that "You have what can only be described as an appalling history of prior offending". At paragraph 36 of his written submission Dr Donnelly fairly states that "[The Applicant] accepts his criminal history is lengthy and serious, and that his past conduct is a relevant consideration".
102. The Tribunal shares the concern of the Respondent that the Applicant particularly during the period roughly 2012 to 2019 enjoyed (on his own evidence) a quite settled period where he was enjoying stable employment and accommodation and a high level of positive interaction with and support from his relevant family members, yet he still committed an assault in 2015 and went on to carry out the index offending in October 2019.
103. Where the Applicant is now urging the Tribunal to place weight on him having renewed his relationship with this mother and older children and their grandchildren, it is very fair for the Tribunal to ask 'what has changed' since this period 2012 to 2019 where self-evidently there was very positive 'family support' was in place, yet the Applicant assaulted a stranger in 2015 and carried out the index offending in October 2019.
104. It was striking that several times during his giving of his oral evidence to the Tribunal, the Applicant referred to himself as (over the course of his adult life) benefitting from the structure and routine of being in prison. In particular, the Applicant's oral evidence in effect was that when there were times in his adult life when he was really struggling out in the community, his default-reaction to this pressure was to offend and then have the benefit of returning to the structure and routine of prison.
105. This is consistent with the sentencing statement by Justice Fuller in September 2021 (see HB51) that "You are at real risk of becoming a person for whom goal is the safest place to be and the safest place for you to be from the community point of view". His Honour also stated on that same page that "...goal is where you appear to thrive...". It is also striking that at HB90 a former partner of the Applicant notes that the Applicant went back to prison in 2019 and states "I was devastated to say the least that he felt that his only safe place was back in prison".

106. The Tribunal is very conscious of the Applicant's very difficult experience of growing up, where he had a very abusive step-father and essentially 'ran away from home' when he turned 13. However, based on the sentencing remarks set out in the preceding paragraph and the Applicant's own relevant oral evidence, the Tribunal finds that the Applicant has become exceptionally 'institutionalised' over the course of his adult life. The Tribunal therefore sees a substantial risk that (even allowing for the various protective factors discussed further above) it will be tempting for the Applicant to fall back on his previous patterns and re-offend so as to then end up back in prison, if he is allowed out into the Australian community and then experiences real challenges and pressures with adjusting to that.
107. This very concerning situation is exacerbated by the Applicant's considerable history of the use of illicit drugs. At that part of his Statement at HB317 the Applicant states "I had a drug problem for many years". As early as Judge Robertson's sentencing remarks of September 2005, the court stated that "You have been addicted to illegal drugs for many years". Whilst Dr Donnelly put to the Tribunal that the Applicant has not used illicit drugs since 2020:
- The Applicant has been in a highly controlled environment since the latter part of 2020 i.e. prison and then immigration detention.
 - The Applicant conceded during his oral evidence that he had tested positive once for drugs during this period of being incarcerated.
108. It is very commendable that the prison chaplain has strongly engaged with the Applicant since 2022, which had led to the Applicant since then being strongly involved in an online manner with the Adelaide branch of the Jehovah's Witnesses. However, this can only be given limited weight by the Tribunal due to:
- The Applicant by his own admission never having had any in-person experience of worshipping with the Adelaide Kingdom Hall. This leads the Tribunal to query to what extent the Applicant has actually formed any meaningful relationships with other congregational members of that branch (apart from the prison chaplain), that are likely to be resilient and have longevity.
 - It being planned that the Applicant (if he is successful in this proceeding) would live in the Murray Bridge region, not in Adelaide. The prison chaplain in the course of his oral evidence indicated that his olive groves are at least 15 minutes drive from Murray Bridge, where we know that Murray Bridge is an hour's drive from Adelaide. Accordingly, it was conceded by him during his oral evidence that the Applicant would need to engage with the Kingdom Hall at Murray Bridge, not at Adelaide. It is self-evident that the Applicant has had no connection at all with the Murray Bridge Kingdom Hall and hence it is unclear whether he would in practice engage with that local community the way he has in recent years with the Adelaide Kingdom Hall.

109. The Tribunal has given some positive weight to the evidence of the Applicant's mother and relevant children that they (and the applicable grandchildren) have recently had more positive contact with the Applicant and are wishing to continue seeing and supporting the Applicant, if he is successful in this proceeding. However, this positive situation is significantly adversely off-set by the fact that:

- The Applicant's own evidence is that he is estranged from his two surviving siblings.
- His step-father has passed on.
- Whilst the situation has recently improved, his mother has conceded that she has only seen the Applicant about a dozen times between him being 14 and the date of her written Statement (15 June 2026)⁴. She indicates in the same paragraph that while she loves the Applicant deeply, she describes her relationship with him as being 'painful and complicated'. Given this very distant and painful history that characterises most of the period of their relationship, it is unclear to the Tribunal how the relationship will move forward and to what extent she can in practice be a positive influence on the Applicant.
- Both the Applicant's children acknowledged in the course of their evidence that their relationship with the Applicant has been complex and has featured considerable periods of limited contact while the Applicant was in jail. It was noticeable that during his period of incarceration since 2021, there has been limited visitations to the Applicant by any of his children.

110. The Tribunal has also given some positive weight to the inherent benefits of the Applicant already being offered a full time job at the olive grove plantation. That is, the Tribunal accepts that in a positive way this would provide some structure and routine to the Applicant's typical week, if he was allowed back into the Australian community. However this positive factor does not outweigh the many negative factors discussed above, in terms of the Applicant's risk of re-offending. Rather, even allowing for this positive factor of the Applicant being offered a full-time job, the Tribunal still relies on its other findings set out above in concluding that overall the risk of the Applicant re-offending is significant.

111. Similarly the Tribunal acknowledges the Applicant's expressions of remorse in his written and oral evidence and the evidence of him and his family/the prison chaplain that the applicant has changed for the better and is now more self-aware of where he needs to reach out for help. However the Tribunal finds that these positive considerations do not outweigh the various fundamental negative factors discussed above in relation to the applicant's significant risk of re-offending.

⁴ See paragraph 8 of her written Statement at HB301.

112. The Tribunal also took note that where during the hearing the Applicant was asked questions about his past offending, he at times engaged in what the Tribunal finds to be either blame-shifting or a lack of awareness of the traumatic impacts of his offending on the victims. For example, when he was asked about his random attack on a motorcyclist at a petrol station in 2015, the Applicant was very evasive about what happened and was reluctant to accept that he had randomly assaulted a stranger. When he was queried about the 2019 offending where he and an accomplice stole a motorcycle and associated items from a residential garage where the family including children were home at the time, the Applicant did not in any meaningful way acknowledge how traumatic this would have been for the parents who were inside the house with their young children when the offence occurred.
113. In terms of the issue of 'rehabilitation', on the one hand the Tribunal acknowledges that:
- The Applicant has been either in boys' homes or in prison/detention of the majority of his life since he 'ran away from home' at 13 years old.
 - He has done a range of 'general rehabilitation' courses over this extended period and also occupational training such as learning to do welding when he was in the Port Augusta prison. At HB31 it is said in the Statement of Reasons dated 4 May 2026 that such courses include 'Making Changes', 'Work Ready', 'Release, Ready, Mentor' and 'Bible Studies'. At paragraphs 21 to 22 of his Statement at HB 317-318, the Applicant describes in general words the range of relevant courses which he has attended.
 - He completed a 'Footsteps Road to Recovery' residential three-month drug and alcohol rehabilitation program and received a glowing form of reference from the course coordinator.
114. On the other hand, on the evidence before it including the Applicant's on-going offending right up to 2019, the Tribunal finds that any such rehabilitation has not led to the applicant being reformed. It is bracing for example that the applicant carried out the index offending only a short period after doing the 'Footsteps Road to Recover' three month live-in course and completing it with a glowing written reference. The Tribunal has referred further above to the indications at the Tribunal hearing that the applicant is still prone to being evasive about taking responsibility for his offending (the 2015 random assault of a stranger) and lacking insight into the traumatic impacts of his offending on the victims involved (the theft of the motorcycle from a residential garage where there were children close by).

Conclusion 8.1.2: The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct

115. In summary, where the Tribunal must assess the risk to the Australian community should the Applicant commit further offences or engage in other serious conduct, on the evidence before it and for the reasons set out above, the Tribunal finds that this risk is 'significant'.

Conclusion: 8.1 The protection of the Australian community from criminal or other serious conduct

116. Having considered the nature and seriousness of the Applicant's offending conduct as 'very serious', and where the Tribunal has concluded that the risk to the Australian community should the Applicant commit further offences or engage in other serious conduct is 'significant', the Tribunal overall finds that the 'protection of the Australian community' primary consideration weighs heavily in favour of affirming the decision under review.

8.2 Family violence committed by the Applicant

117. It is undisputed that the Applicant has not committed any 'family violence' and hence the Tribunal gives this criterion neutral weight.

8.3 The strength, nature and duration of ties to Australia

118. During the hearing, the Tribunal heard evidence from both the Respondent and the Applicant about the strength, nature and duration of the Applicant's ties to Australia. The Tribunal has also had particular reference to the information in the Applicant's own Statements as to why he wishes to stay in Australia, plus the various Character Statements made in support of the Applicant.
119. An obvious and more exceptional positive factor here for the applicant is the simple fact that the Applicant came to Australia when he was 16 months old and hence has now lived in Australia for 54 years. This is a very positive consideration for the Applicant.
120. The Tribunal has no reason to doubt the evidence of the Applicant, the Applicant's children, and the Applicant's mother that the Applicant has in a positive way more recently renewed his relationship with them. The Applicant's daughter in the course of her oral evidence indicated that her relations with her father had particularly improved since he had moved across to detention and then had a bit more freedom and IT access, compared to being in prison. The Applicant's mother indicated that she now speaks to the Applicant on a weekly basis. The Applicant's daughter stated that she had visited her father in-person once or twice during the last five years.

121. The Tribunal has also had regard to the fact that all of the Applicant's mother/two children who gave oral evidence at the hearing have stated that they are keen to have the Applicant playing a key role in their lives (and in the lives of the relevant grandchildren) and they would be devastated if the Applicant had to move to New Zealand. The Applicant's mother and daughter gave evidence that they would be worried about the Applicant being at risk of self-harm or suicide if he had to return to New Zealand, but provided no evidence to substantiate this particular concern. Both the Applicant's children emphasised that they are very keen for their father to be able to join in with significant family occasions and events on an in-person basis and that online or phone chats are no proper substitute for this.
122. The Applicant's evidence here is that he wishes to strengthen his relationships with his mother/relevant children and grandchildren and be a positive influence in their lives. The Applicant's mother is an elderly lady for whom international travel would be a significant practical issue and both the Applicant's children indicated that they would struggle to find the money to be able to fly to New Zealand to visit their father.
123. The Tribunal accepts that it is a plus for this aspect of the Applicant's case that since 2022 he has developed close ties with the prison chaplain and that over time the Applicant has on an online basis started worshipping twice a week with the Adelaide Jehovah's Witnesses Kingdom Hall and having weekly online bible study with the prison chaplain that the Applicant has got to know. However, the Tribunal has queried further above in these Reasons how much the Applicant has been able to develop meaningfully relationships with his fellow congregation members, when he has never attended this Kingdom Hall in-person. However, overall, the Tribunal still accepts that to some extent the Applicant's online worship activities (subject to the proviso mentioned below) carries some positive weight.
124. The proviso is as follows - see my comments on the preceding page of these Reasons about the logistical aspect that if the Applicant is successful in this proceeding, he will in practice need to shift from worshipping at the Adelaide Kingdom Hall to the Murray Bridge one (which he has no current relationship with).
125. In the situation where it is undisputed that the majority of the Applicants' life since he was a teenager has been spent in either boys' homes, prison or detention, it follows that his practical opportunities to 'positively contribute to Australian life' in his community have been limited. For example, on his own evidence, the applicant has a limited work history in Australia. The Applicant did not provide any examples of him volunteering or being part of community groups whilst he has lived in Australia.
126. There are otherwise various aspects of the Applicant's current relevant circumstances and history in Australia which are indicative of him having more limited ties to Australia, as follows:
- He currently has no romantic partner.

- His two brothers have already passed away.
- The applicant on his own oral evidence is estranged from his two sisters.
- On his own evidence, the Applicant has only met his youngest daughter once and essentially has no on-going contact with her or her mother.
- On the evidence of the Applicant's mother, until very recently he had minimal contact with her, where she has described their relationship in her written Statement as "painful and complicated".
- On the evidence of the Applicant's two children, their relationship with the Applicant has been complicated by the considerable periods of his absence while he has been in prison. This is the case noting that he has been in jail/detention for roughly the last five years.
- It was the oral evidence of the Applicant's son who gave evidence at the hearing that he has recently separated from his partner, such that there will now be 'shared parenting' rather than the Applicant's son having full custody of his children. It follows that even if the Applicant's son is keen per se for his father to come over and see the Applicant's son's children, the reality will be that some of the time the Applicant's relevant grandchildren will now be separately living with their mother. Where the Applicant's son with his oral evidence expressed real optimism that his former partner would still be keen for the Applicant to go around to see the children at her new accommodation, the Tribunal treats this optimism with major caution, given that the Tribunal has not been able to hear the views of the Applicant's son's former partner about this.
- If he is released into the Australian community, the Applicant plans to live not in Adelaide, but in the Murray Bridge region. The oral evidence of the prison chaplain was that the olive groves where the Applicant would work and live is at least 15 minutes drive from Murray Bridge, where Murray Bridge is roughly one hour's drive from Adelaide. There are two particular practical consequences of this, as follows. First, it will be substantially more problematic for the Applicant's children (and their own kids, as appropriate) to see the Applicant where a relatively long drive is involved, noting that the Applicant's children live on the northern side of Adelaide but Murray Bridge lies to the south-east of Adelaide. Second and as already discussed further above, it was conceded by the prison chaplain that the Applicant would need to change to worshipping in-person at the Murray Bridge Kingdom Hall if the Applicant is successful with this proceeding. The point here is that it is undisputed that currently the Applicant has no relationship at all with the Murray Bridge Kingdom Hall.

127. The Tribunal is also conscious that pursuant to Clause 8.3(2)(a)(i) of the Ministerial Guidelines, "...less weight should be given where the non-citizen began offending soon after arriving in Australia". However, the Tribunal gives this a neutral weight where there is the very unusual situation of the Applicant coming to Australia in October 1972 when he was a 16-month baby, but then the NCHC shows his offending as starting in 1987. In other words, there seems counter-balancing factors here where there was 15 years between the Applicant coming to Australia and the start of his offending as shown in the NCHC, but where the Applicant was a young child over this period.
128. In terms of the nature of the Applicant's relationship with any relevant children and grandchildren who are currently still minors, this will be separately dealt with in the next section of this decision.
129. In summary, on the evidence before it on this criterion, the Tribunal finds that the Applicant has significant ties to Australia. The Tribunal makes this finding with particular reference to the Applicant having lived in Australia for the last 54 years (nearly all of his life), but also with some weight added by the favourable considerations for the Applicant discussed above. The Tribunal cannot put the Applicant's ties to Australia any higher than 'significant' due to the various negative factors for the Applicant on this issue, as discussed above.
130. Overall, the Tribunal finds that the strength, nature and duration of the Applicant's ties to Australia provide moderate weight in favour of revoking the original decision.

8.4 Best interest of minor children in Australia affected by the decision

131. Section 8.4(1) of Direction 110 in essence provides that the Tribunal must assess whether or not the non-revocation of the Applicant's visa is or is not in the best interests of any affected child. Section 8.4(2) confirms that for the purposes of s 8.4, this provision only applies to a 'child' if that child "...is, or would be, under 18 years old at the time when the decision to refuse or cancel the visa, or to not revoke the mandatory cancellation of the visa, is expected to be made". Section 8.4(3) clarifies that if there are two or more relevant children involved, the best interests of each child should be given individual assessment, to the extent that their interests may differ. Section 8.4(4) sets out certain factors which must be considered where relevant, where the Tribunal is considering the best interests of the child.
132. At paragraph 62 of his written submission, Dr Donnelly identifies the following minor children as affected by this criterion:

No.	Child	Relationship	DOB/Age	Findings by Tribunal
1	[redacted]	Daughter	14/6/2015 – 10	See separate discussion further below.

2	[redacted]	Stepdaughter	28/2/2018 - 8	As above.
3	[redacted]	Granddaughter	7/6/2022 – 3	As above
4	[redacted]	Grandson via daughter	31/1/2019 - 7	As above
5	[redacted]	Grandson via daughter	8/12/2016 – 9	As above
6	[redacted]	Grandson	10/5/2015 – 10	As above
7	[redacted]	Granddaughter	26/6/11 - 10	As above
8	[redacted]	Granddaughter	14/6/10 – 15	As above
9	[redacted]	Grandson via daughter	26/4/2010 – 15	As above
10	[redacted]	Grandson	3/11/2010 - 15	As above

133. Whilst 10 minors are shown above, it was noticeable that Dr Donnelly appropriately highlighted that a particular focus should be on certain minors as follows – taken from [64] of his submission:

The evidence therefore requires the interests of each child to be considered, while recognising that the strongest direct evidence presently before the Tribunal concerns that of the Applicant's oldest daughter's children through her statement, and his youngest daughter and step-daughter through the Applicant's own evidence.

134. With the Applicant's own Statement beginning at HB315, there is a heading at HB319 'My children and grandchildren', where he identifies that he has four children. At a global level, the Applicant states that:

My hope is to show my children and grandchildren how much I love them. I want to play football, basketball and other sports with my grandchildren and be present in their lives. I know the difference between right and wrong now, and I want to share the lessons I have learned so that they do not follow my path into boys homes, prison, drugs or crime.

Tribunal findings regarding 'M' aged 15

135. The Tribunal has taken into account the Statement of the Applicant's daughter dated 13 June 2026 – see HB311. At a more general level, she states at her [3] that her father speaks to her children by telephone and plays games with them online. It is said at [16] that "My children would be upset if their grandfather were deported from Australia". At her [23-24] she states that more recently the Applicant has been more motivated to be a positive role model and engage more with her children.
136. At her [19] the Applicant's daughter states that she is in a same-sex relationship with her partner 'R', who is an Australian citizen. It is said that R supports the Applicant staying in Australia.
137. At [17] of her statement, the Applicant's daughter confirms that her oldest child 'M' is 'level 2 autistic'.
138. On common sense, the Tribunal acknowledges (and gives some positive weight to) the fact that:
 - For the Applicant's daughter to raise M is more challenging, where M is level 2 autistic.
 - It is beneficial for the Applicant's daughter and M, if the Applicant has been playing a positive role in M's life as has been indicated.
139. The Tribunal has also taken into account the undated written Statement prepared by M – see HB180. In this Statement she indicates that she has not seen the Applicant 'in a few years' but she is waiting for him to be released, so that she can 'rebuild a relationship'. She refers to remembering the Applicant as a 'fun grandparent' and refers (when they were together) to the Applicant doing things with her, teaching her things and challenging her. She states that the Applicant taught her to 'keep trying' in the face of adversity and that she wants to support him after the Applicant is released. She sets out her view that it would be 'unfair' if the Applicant was to be deported, which would stop her rebuilding a connection with him.
140. On the evidence before it and for the reasons set out above, the Tribunal accepts that it is in the best interests of M that the applicant be allowed to stay in the Australian community.

141. However some constraints on how much positive weight the Tribunal can give this factor are:

- M already has two parental figures in M's life, being the Applicant's daughter and her partner R. Hence it is not as if the Applicant would be playing a parental-type role in M's life.
- The Tribunal has received no Statement from the Applicant's daughter's partner R. Hence the Tribunal does not have any direct evidence regarding her views on whether she would like the Applicant to keep playing a meaningful role in M's life.
- The Applicant has either been in prison or detention for roughly the most recent third of M's life. Hence M has had minimal or no face-to-face contact with the Applicant over this period.
- It would be possible for the Applicant to continue having an online presence in M's life if he returned to New Zealand.
- There is no evidence before the Tribunal that the Applicant has provided any significant financial support for M's upbringing.
- M turns 18 in less than three years.

Tribunal findings regarding 'C' aged 9

142. The Tribunal has taken into account the Statement of the Applicant's daughter dated 13 June 2026 – see HB311. At a more general level, she states at her [3] that her father speaks to her children by telephone and plays games with them online. It is said at [16] that "My children would be upset if their grandfather were deported from Australia". At her [23-24] the Applicant's daughter states that more recently the Applicant has been more motivated to be a positive role model and engage more with her children. The Tribunal has also noted that the Applicant's daughter is in a same-sex relationship with R as indicated above.

143. At [17] of the Applicant's daughter's statement, she confirms that her middle child C is 'level 2 autistic'.

144. On common sense, the Tribunal acknowledges (and gives some positive weight to) the fact that:

- For the Applicant's daughter to raise C is more challenging, where C is level 2 autistic.

- It is beneficial for the Applicant's daughter and C, if the Applicant has been playing a role in C's life as has been indicated.
145. On the evidence before it and for the reasons set out above, the Tribunal accepts that it is in the bests interest of C that the applicant be allowed to stay in the Australian community.
146. However, some constraints on how much positive weight the Tribunal can give this factor are:
- C already has two to parental figures in C's life, being the Applicant's daughter and her partner R. Hence it is not as if the Applicant would be playing a parental-type role in C's life.
 - The Tribunal has received no Statement from C or for that matter from the Applicant's daughter's partner R. Hence the Tribunal does not have any direct evidence regarding their views on whether they would like the Applicant to keep playing a meaningful role in C's life.
 - The Applicant has either been in prison or detention for roughly the most recent half of C's life. Hence C has had minimal or no face-to-face contact with the Applicant over this period.
 - It would be possible for the Applicant to continue having an online presence in C's life if he returned to New Zealand.
 - There is no evidence before the Tribunal that the Applicant has provided any significant financial support for C's upbringing.

Tribunal findings regarding CT aged 7

147. The Tribunal has taken into account the Statement of the Applicant's daughter dated 13 June 2026 – see HB311. At a more general level, she states at her [3] that her father speaks to her children by telephone and plays games with them online. It is said at [16] that "My children would be upset if their grandfather were deported from Australia". At her [23-24] the Applicant's daughter states that more recently the Applicant has been more motivated to be a positive role model and engage more with her children. The Tribunal has also noted that the Applicant's daughter is in a same-sex relationship with R as indicated above.
148. At [17] of the Applicant's daughter's statement she confirms that her youngest child CT is 'level 2 autistic', where he has significant anxiety issues.

149. On common sense, the Tribunal acknowledges (and gives some positive weight) to the fact that:
- For the Applicant's daughter to raise CT is more challenging, where CT is level 2 autistic.
 - It is beneficial for the Applicant's daughter and CT, if the Applicant has been playing a role in CT's life as has been indicated.
150. On the evidence before it and for the reasons set out above, the Tribunal accepts that it is in the best interest of CT that the applicant be allowed to stay in the Australian community.
151. However some constraints on how much positive weight the Tribunal can give this factor are:
- CT already has two parental figures in CT's life, being the Applicant's daughter and R. Hence it is not as if the Applicant would be playing a parental-type role in CT's life.
 - The Tribunal has received no Statement from CT or for that matter from the Applicant's daughter 's partner R. Hence the Tribunal does not have any direct evidence regarding their views on whether they would like the Applicant to keep playing a meaningful role in CT's life.
 - The Applicant has either been in prison or detention for a large majority of CT's life. Hence CT has had minimal or no face-to-face contact with the Applicant over this period.
 - It would be possible for the Applicant to continue having an online presence in CT's life if he returned to New Zealand.
 - There is no evidence before the Tribunal that the Applicant has provided any significant financial support for CT's upbringing.

Tribunal findings regarding the applicant's youngest daughter S aged 10

152. The Applicant's evidence regarding his 10-year-old youngest child S can be summarised as follows. He conceded in his oral evidence that he has only met S face-to-face once. However, the applicant indicated that he still wishes to over time get to know S and be a positive influence in her life.

153. The Tribunal has had regard to the Statement by S's mother at HB186-187. The first part of this Statement provided background information about S. It is then noted that S has already experienced hardship in losing an older brother. The final three main paragraphs of the Statement focus on the author's strong desire and request that the Applicant be able to stay in Australia, so as to be able to grow their father-daughter relationship. It is said that "...their bond will flourish' and that the S is "...at a crucial age where the presence and support of both parents is incredibly important". There is a recent photo of S provided.
154. Having regard to this Statement, the Tribunal accepts that it is in the best interests of S that the Applicant be able to stay in the Australian community. However, the Tribunal can give this consideration only limited weight where:
- In terms of whether the Applicant has had any face-to-face contact with S, he gave oral evidence at the hearing that he has only met S once and that he only became aware of S when she was already three and a half years old.
 - The Statement by S's mother makes no reference to either her or S visiting the Applicant during the last five years that he has been incarcerated.
 - The Statement by S's mother makes no reference to S having had any online contact with the Applicant during the last five years that he has been in jail or detention.
 - It is possible that S could fly to visit the Applicant in New Zealand if he is unsuccessful in this proceeding, noting that the Statement by S' mother confirms that S is attending a private school.
 - There is no evidence before the Tribunal that the Applicant has been providing any significant financial support for S.

Tribunal's findings regarding the Applicant's stepdaughter AL aged 8

155. The Applicant's evidence included his desire to maintain contact with an eight-year-old girl (AL) who is the daughter of a woman who was the Applicant's partner at an earlier stage. AL was referred to by both the Applicant and Dr Donnelly as the Applicant's stepdaughter.
156. By way of preliminary comment, it seems very open to debate whether anyone can still use the terms 'stepfather' and/or 'stepdaughter' when the relationship between the biological parent of the child involved and the other person has ended. With the facts here, it is undisputed that that the Applicant used to be in a relationship with AL's mother, but this situation ended some time ago.
157. However, the Tribunal has noted the Applicant's position (see HB pages 372-373) that he "...has regarded her [AL] as part of his adopted family, and that he wants to keep and rebuild

positive relationships with people who have been part of this life”. It is likewise stated that the applicant “...considers AL as his own daughter and intends to maintain a close relationship with her”.

158. The Tribunal has also had regard to the Statement of AL’s mother (the Applicant’s former partner) at HB93-95. In this Statement, AL’s mother refers to AL has having (presumably online) very regular contact with the Applicant and referring to him as her ‘stepdad’. There is reference to AL and her mother regularly visiting the Applicant in-person on Sundays, and to AL treating the Applicant as a ‘father figure’. It is said that the Applicant and AL have an ‘amazing relationship’.
159. However the Tribunal is cautious at a high-level about how to apply the comments made in this Statement to the current situation when these Reasons are being provided, because:
- This Statement by AL’s mother is undated but appears to have been written some time before the Tribunal hearing.
 - As at the time of the Tribunal hearing, the Applicant confirmed that he was single. It follows that his relationship with AL’s mother must have ended at some prior time.
 - If by the time of the Tribunal hearing the relationship with AL’s mother and the Applicant had ended, it is then very unclear to the Tribunal to what extent AL’s mother and AL were over the period leading up to the Tribunal hearing still keeping in touch with the Applicant and/or still wish the Applicant to play an active role in the life of AL. This uncertainty is all the more the case when the Statement provided by AL’s mother is undated.
160. Where the Applicant has been in jail and detention for roughly the last five years and AL is eight years old, this indicates that the Applicant only had the chance in-person to be involved in the first three years of AL’s life.
161. However, on balance the Tribunal accepts that it would be in the best interests of AL for the Applicant to be able to stay in the Australian community, where the Applicant has expressed that he wishes to have a daughter-like relationship with AL.
162. However, some constraints on how much positive weight the Tribunal can give this factor are:
- The Tribunal has received no Statement from AL and hence the Tribunal does not have any direct evidence regarding her views on whether she would like the Applicant to keep playing a meaningful role in her life.
 - As mentioned, the Applicant has been incarcerated for the bulk of AL’s life to date.

- It would be possible for the Applicant to continue having an online presence in AL's life if he returned to New Zealand.
- There is no evidence before the Tribunal that the Applicant has provided any significant financial support for AL's upbringing.

Tribunal's findings regarding the Applicant's grandson J aged 15

163. At HB178-179 is a brief written Statement from the Applicant's grandson J and photo of J being lifted on the shoulders of the Applicant. The brief Statement is not signed by J but by the lady who is his guardian.
164. The Statement refers to J spending a lot of time with the Applicant, bearing in mind that J is now 15 years old. It is said that the Applicant "...was always a lot of fun". It is stated that despite the Applicant being incarcerated for the last five years, J has regularly spoken to him on the phone. The Statement indicates that J would love the Applicant to be able to stay in Australia and that J sees the Applicant as 'always giving J good advice'. It is said that "I ask that you allow him to stay in Australia so he can rebuild his life with us as a family. I love and miss him and will be very heartbroken if he was taken away".
165. With these comments in this written Statement in mind, the Tribunal accepts that it would be in the bests of J for the Applicant to be able to stay in the Australian community.
166. However, some constraints on how much positive weight the Tribunal can give this factor are:
 - The written Statement which is said to be authored by J is not actually signed by him.
 - It is less than three years until J turns 18.
 - It would be possible for the Applicant to continue having an online presence in AL's life if he returned to New Zealand.
 - There is no evidence before the Tribunal that the Applicant has provided any significant financial support for AL's upbringing.

Tribunal's findings regarding the Applicant's granddaughter S aged 10

167. At HB178 there is a Statement by the Applicant's granddaughter S which reads as follows:

Hello its [redacted] if my poppy gets more further away, me, my brother, my dad [redacted], my uncle [redacted], aunty [redacted] and my cousins would be devastated my poppy started the [redacted].

I've not seen him since I was 4.5 years old and I'm 9 years old now. I have iPad visits and talk to him on the phone. I enjoy talking to him and we've got plans if he stays here I love my poppy please let him stay here I don't have another poppy that I can see besides my great pop and he's really old I hope my letter persuades to keep him here.

168. There are also two photos – one of the Applicant holding S as a baby and the other a recent photo of S.
169. With these comments in this written Statement in mind, the Tribunal accepts that it would be in the bests of S for the Applicant to be able to stay in the Australian community.
170. However some constraints on how much positive weight the Tribunal can give this factor are:
- Dr Donnelly made no individual submissions about S in his written submission and no evidence was put to the Tribunal that the Applicant would be filling a parental role for S.
 - It would be possible for the Applicant to continue having an online presence in S's life if he returned to New Zealand.
 - There is no evidence before the Tribunal that the Applicant has provided any significant financial support for S's upbringing.
171. Tribunal's findings regarding the remaining children/grandchildren/stepchildren shown in the 'table of minor children'
172. About 7 pages above in these Reasons, the Tribunal reproduced with appropriate redacting the 'table of minors' as shown in Dr Donnelly's submission (see HB371). The Tribunal has individually commented in the pages above on those minors where there was a particular emphasis by the Applicant and Dr Donnelly, plus the minors J and S provided a Statement in support. I shall refer to the other minors shown in the table as the 'remaining minors'.
173. The Tribunal has to the extent practicable considered the best interests of the remaining minors on an individual basis. In terms of what is actually 'practicable' here, the Tribunal notes that where Dr Donnelly at [62 to 80] of his written submissions address this 'bests interests of any minor children affected by the decision' criterion:

- He only made individual submissions on five of the minors shown in the 'table of minors'.
 - Plus we know that the minors J and S have provided Statements in support.
174. On the basis that (all things being equal) it is beneficial for minors to be able to connect with adults who have previously had and wish to continue having a positive role in the lives of these minors, the Tribunal accepts that it is in the best interests of all of the remaining minors for the applicant to be able to stay in the Australian community.
175. However some constraints on how much positive weight the Tribunal can give this factor are:
- The fact that the Applicant has been incarcerated the last five years or so.
 - It would be possible for the Applicant to continue having an online presence in the lives of these remaining minors, if he returned to New Zealand.
 - There is no evidence before the Tribunal that the Applicant has provided any significant financial support for the upbringing of these remaining minors.
 - As none of these remaining minors have provided a specific written Statement to the Tribunal, the Tribunal has no direct evidence regarding whether these remaining minors actually would prefer and wish the Applicant to have an ongoing presence in their lives.
176. Overall, the Tribunal finds that the 'best interests of minor children in Australia affected by the decision' provides moderate weight in favour of revoking the original decision.

8.5 Expectations of the Australian Community

177. The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct which does not meet this expectation, or where there is an unacceptable risk that they may do so, the Australian community (as a norm) expects the Government to not allow such a non-citizen to enter or remain in Australia.
178. Clause 8.5(2) of the Direction sets out examples of conduct that would raise serious character concerns where the Australian community would expect that a person who undertook such conduct would not continue to hold a visa – this includes acts of family violence and the carrying out of serious crimes against children.

179. In determining whether the Applicant has acted in accordance with the deemed community expectations, it is well established that the Tribunal must not infer what the expectations of the Australian community would be by taking into account the personal circumstances of the Applicant. Rather, the Tribunal must proceed on the basis of the normative principles set out in ss 8.5(1) to (4), as per *Ismail v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 2 at [52].
180. On the evidence before it, the Tribunal finds the Applicant has failed to obey laws while in Australia and that he has engaged in conduct in breach of the Australian community's expectations.
181. The Tribunal finds that the 'expectations of the Australian community' element weighs significantly in favour of affirming the decision under review.

9 Other Considerations

182. In making a decision under section 501CA(4), the Tribunal must also take into account the following considerations.

9.1 Legal Consequences of the decision

183. The Tribunal acknowledges that if it affirms the decision being contested, the Applicant will remain an unlawful non-citizen, shall be placed (if not already) in immigration detention and will be liable for removal from Australia as soon as reasonably practicable. This will mean that his stated desire to be able to stay in Australia and be able to interact with his direct and extended family (as discussed above) will not occur.
184. The Applicant is not a person who is covered by a protection finding and he has not raised any specific claims that would bring into play or relate to Australia's non-refoulement obligations. There are no special circumstances affecting the Applicant that would result in indefinite detention.
185. The Tribunal accepts that the legal consequence of affirming the decision means the Applicant's ability to apply for another visa (other than a protection visa) would be curtailed under s 501E of the Act. The Tribunal also accepts that the Applicant may be subjected to indefinite exclusion from Australia by operation of the Special Return Criteria in s 500(1)(c) of Schedule 5 of the *Migration Regulations 1994* (Cth) if the Minister has not, acting personally, granted the Applicant a permanent visa. Affirming the decision will also adversely affect the Applicant's capacity to meet the requirements of the Public Interest Criterion 4001 of Schedule 4 of the *Migration Regulations 1994* in any future visa applications.

186. The Respondent argued that this criterion should be given neutral weight, on the basis that it is the intended practical effect of deportation that the Applicant's rights would be curtailed as indicated above, where the Applicant would be removed from and then excluded from returning to Australia.
187. However, bearing in mind the inherent stress for the Applicant where his oral evidence was that he is fearful of leaving Australia, on balance the Tribunal finds that this consideration provides very modest weight in favour of revoking the original decision.

9.2 Extent of impediments if removed from Australia

188. The Tribunal must also consider the extent of any impediments the Applicant may face if he is removed from Australia to his home country, in establishing himself and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account his age, health and whether there are substantial language or cultural barriers; and any social, medical and/or economic support available to him in that country.
189. The Tribunal acknowledges and has taken into account that there would in the short term be real practical challenges for the Applicant, in relocating as a 55-year-old man to New Zealand, where he has lived in Australia since he was a baby.
190. However, this situation would be greatly assisted by the fact that the Applicant would not face any language or cultural barriers upon return to New Zealand. People in New Zealand speak the same language (English) as in Australia and drive on the same side of the road.
191. Whilst noting the Applicant's evidence that he has had barely any contact with any extended family in New Zealand, it was at least by the end of the hearing clear through the oral evidence of his mother that:
- His mother has two brothers who live in New Zealand, where these brothers have had their own children.
 - It follows that the Applicant could connect with two uncles and a number of cousins in New Zealand.
192. The Tribunal notes the comments by the Applicant's mother that there is a family history of 'bad blood' and/or 'judgmental behaviour' between her and her brothers, which led the mother to be very concerned whether this extended family would in practice engage with the Applicant if he went back to New Zealand. However, the Tribunal gives these comments limited weight where:

- On his own evidence, the Applicant in the past did return to New Zealand for two weeks for a family funeral.
- The Applicant's mother was making these 'bad blood' type of assertions but later in her oral evidence admitted that she herself still speaks to one of her brothers off-and-on.
- There is no direct evidence before the Tribunal about how the Applicant's extended family in New Zealand regard the Applicant – what has been put to the Tribunal about this during the hearing is ultimately speculation.

193. As a New Zealand citizen, if he was to return to that country, the Applicant would be able to access health, education, welfare and other government services just like any other citizen of New Zealand.

194. As someone living in New Zealand, the Applicant would be able to maintain the same type of online contact with his extended family that he has utilised the last five years of so, while he has been in jail and detention.

195. During the hearing, it was put by the Respondent and not contested in itself by the Applicant or Dr Donnelly that (at HB393):

The applicant can also engage with PARS Services, which provides supported accommodation and other assistance for people that have been returned to New Zealand via deportation or removal. He may also receive structured support to re-establish his life in New Zealand through the operation of the *Returning Offenders (Management and Information Act 2015)* (NZ). This is because he appears to meet the criteria for determination that he is a 'returning prisoner' for the purposes of s 17 of the Returning Offenders Act....

196. The Tribunal notes that during the Tribunal hearing, all of the Applicant, his mother and his relevant daughter gave evidence that the Applicant's mental health would deteriorate if he had to return to New Zealand and it was questioned whether the Applicant in this situation might be suicidal. At that part of his Statement at HB322, the Applicant refers to the thought of returning to New Zealand as being 'overwhelming'. He acknowledges that he has not had any formal mental health assessment but asserts that he has 'struggled mentally'. Both at the hearing and at HB322 the Applicant has stated "I have said plainly that if I were sent to New Zealand I would not want to be alive anymore".

197. Whilst recognising the gravity of what is at stake here, the Tribunal can only give this evidence limited weight where:

- No formal evidence has been provided to the Tribunal of either any previous mental health diagnosis of the Applicant, or of the Applicant's current psychological condition. In particular, no supporting medical evidence was provided to substantiate the proposition that returning to New Zealand would be mentally damaging for the Applicant and/or that he might be suicidal. Accordingly, the views put forward about the Applicant's 'current and likely mental health issues if he had to return to New Zealand' are ultimately simply assertions or speculation (as applicable).
- The Applicant in New Zealand would be able (just like any other New Zealand citizen) to apply to access Government mental health support services. Also see the Tribunal's comments above about the PARS program.
- The Applicant would have other family in New Zealand to seek support from i.e. his two uncles and various cousins.
- It was during the hearing conceded by the prison chaplain that the Applicant would be able to readily engage with a local Kingdom Hall of the Jehovah's Witness church for support, if he returned to New Zealand. Hence the church could continue to play a strong role in the Applicant's life in New Zealand.

198. Taking into account of all of the factors set out above, the Applicant finds that this 'extent of impediments if removed' criteria provides limited weight in favour of revoking the original decision.

9.3 Impact on Australian business interests

199. The Tribunal must consider any impact on Australian business interests if the Applicant is not allowed to enter or remain in Australia, but an employment link would usually 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.

200. On his own evidence, any work the Applicant has done as been as an employee (notably working for an earthmoving business), rather than being someone running his own business.

201. The Tribunal notes the evidence of the Applicant and the prison chaplain that:

- A written job offer has been made to the Applicant, to work at the boutique olive growing business owned by the prison chaplain.
- Both the Applicant and the prison chaplain are keen for the Applicant to be able to take this offer up, if the Applicant is allowed to stay in the Australian community.

- The prison chaplain would highly value the Applicant being able to bring his skills to doing maintenance/picking work at the olive grove plantation.

202. The Tribunal is struggling to see any real evidence before it that the Applicant having to return to New Zealand would have any significant impact on “Australian business interests’. On his own evidence, the Applicant:

- Has either lived in a boys’ home or been incarcerated for the majority of his life since he ran away from home when he was 13.
- Hence only has a limited experience of being employed – notably working in an earthmoving business between roughly 2013 and 2019.
- Does not have any trade qualification or university qualification.
- Has never himself owned a business that would be impacted by his removal from Australia.
- Does not have any significant qualifications or previous work experience that can be said to be of strategic importance to the operation of business in Australia.
- Is not involved in any major project or the delivery of an important service to Australia.

203. Where the prison chaplain gave oral evidence that the Applicant would bring very particular skills to the olive grove business, it is very difficult to see what skills or previous work experience the Applicant has, that would make it awkward for the business to find another person to fill the Applicant’s intended work role. As mentioned, the Applicant has limited previous work experience and no trade or university qualifications.

204. Where the prison chaplain described the location of the olive groves as ‘remote’ and submitted that it is problematic for him to obtain labourers to work at his olive groves, the Tribunal can only give this limited weight:

- Where the use here of the word ‘remote’ seems an exaggeration – the prison chaplain acknowledged during his oral evidence that the olive groves are only about 15-20 minute drive from the nearest major town of Murray Bridge, which has a current population of around 23,000 people. It is not as if the Applicant has been offered a job in say Coober Pedy or Woomera.
- Where no corroborating evidence of the alleged ‘labour shortage’ was provided, such as supporting academic or labour market reports.

205. On balance, where the Tribunal has had regard to the relevant evidence of the prison chaplain that being able to employ the Applicant would benefit his boutique olive oil making business, the Tribunal gives this very modest weight in favour of revoking the original decision.

CONCLUSION

206. As discussed further above, the Tribunal finds that the Applicant does not pass the character test under section 501 of the Act, where the Tribunal then needs to make a finding whether there is another reason why the original decision should be revoked pursuant to section 501CA(4), having regard to the Minister's Direction No. 110.
207. The Tribunal has given appropriate weight to information from independent and authoritative sources, and the primary consideration at clause 8.1 has been given greater weight than the other primary considerations, while the remaining primary considerations have been given greater weight than the other considerations, consistent with the Direction.
208. The Tribunal has taken the principles found at 5.2 of the Direction into consideration, in reaching its conclusions set out below. The Full Court of the Federal Court in *CRNL v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 138 at [28] stated that "...[t]he real burden of the task to be undertaken by the 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".
209. As it is not applicable on the facts here, the Tribunal has weighed the 'family violence' criteria neutrally.
210. Having assessed the particular history and situation of the Applicant, the Tribunal considers the protection of the Australian community from criminal or other serious conduct weighs heavily in favour of affirming the decision under review. The expectations of the Australian community provides significant weight in favour of affirming the decision under review.
211. However the criterion of the strength, nature and duration of the Applicant's ties to Australia provides moderate weight in favour of revoking the original decision, as does the criterion of the 'best interests of a minor child in Australia affected by the decision'.
212. Of the other considerations:
- The legal consequences of the decision – this criterion provides very modest weight in favour of overturning the original decision.

- The extent of the impediments to the Applicant if he is removed – this criterion provides limited weight in favour of overturning the original decision.
- The impact on Australian business interests – this criterion provides very modest weight in favour of overturning the original decision.

213. Having weighed up all the factors as part of a single evaluation as set out in the ‘Conclusion’ discussion and findings above, the Tribunal is not satisfied there is another reason why the original decision should be revoked under section 501CA(4), having regard to the Direction.

DECISION

214. The decision not to revoke the cancellation of the Applicant’s Absorbed Person Visa is affirmed.

.....[SGD].....
Senior Member P Martin

Dates of hearing: **14-15 July 2026**

Solicitor for the Applicant: **Ms Mary Baras-Miller, AGS**

Counsel for the Respondent **Associate Professor Dr Jason Donnelly of Counsel**

APPENDIX 1

G5		Attachment A
21/09/2021	1. Serious criminal trespass-residence occupied-aggravated, Basic: dishonestly deal with property without consent 2. Attempted basic: dishonestly deal with property without consent	1. Sentenced 4 years 8 months 3 days imprisonment 2. Sentenced 1 year 18 days imprisonment Head sentence: 5 years imprisonment Non parole period 3 years Start 29/7/20 Convicted Discharged without penalty
16/12/2020	Drive under disqualification or suspension (2)	Convicted 3 months imprisonment Suspended sentence bond \$500 12 months Driver's licence disqualification 12 months
16/12/2020	Drive or use motor vehicle without consent	Convicted Fined \$1100 Driver's licence disqualification 12 months
16/12/2020	Drive a vehicle with combination of drugs in fluid or blood	Convicted Fined \$1500 Driver's licence disqualification 3 years
29/07/2020	Fail to allow blood sample to be taken	Convicted 8 months 3 weeks 16 days imprisonment Suspended sentence bond \$500 18 months Driver's licence disqualification 3 years
29/07/2020	Drive mv not authorised after drug driving disqualification (2) Damage building or motor vehicle (not graffiti or unknown) Drive under disqualification or suspension (4) Drive or use motor vehicle without consent Duty to hold licence or learner's permit Fail to comply with bail agreement (6) Unlawful possession Give false or misleading personal detail to officer	Convicted Fined \$1100 Driver's licence disqualification 12 months Convicted 3 days imprisonment Convicted Discharged without penalty
29/07/2020	Drive motor vehicle with methamphetamine in fluid or blood	1. Convicted 2 months imprisonment 2. Found proved 7 months imprisonment 3. Convicted 6 weeks imprisonment Head sentence: 14 months imprisonment Non parole period 7 months Start 3/6/16
25/10/2018	Fail to comply with bail agreement	Convicted
19/07/2018	Fail to comply with bail agreement	Convicted
30/11/2016	1. Drive under disqualification or suspension 2. Breach of BOND re 21/8/15 3. Drive under disqualification or suspension (2)	Convicted 2 months imprisonment Found proved Estreatment \$250 Convicted Fined \$900 Driver's licence disqualification 3 months Convicted 7 months imprisonment Suspended sentence bond \$500 12 months Convicted Fined \$350 Convicted Driver's licence disqualification 3 years
30/11/2016	Drive uninsured motor vehicle on road Drive unregistered motor vehicle on a road	Convicted
30/11/2016	Drive under disqualification or suspension	Convicted 2 months imprisonment
06/04/2016	Estreatment of bail	Found proved Estreatment \$250
21/08/2015	Drive motor vehicle with methamphetamine in fluid or blood (3)	Convicted Fined \$900 Driver's licence disqualification 3 months Convicted 7 months imprisonment Suspended sentence bond \$500 12 months Convicted Fined \$350 Convicted Driver's licence disqualification 3 years
21/08/2015	Drive under disqualification or suspension (3)	Convicted 7 months imprisonment Suspended sentence bond \$500 12 months Convicted Fined \$350 Convicted Driver's licence disqualification 3 years
14/08/2015	Commit assault - basic offence	Convicted Fined \$350
10/03/2015	Self and passenger - fail to wear approved motor bike helmet Unauthorised person drive motor vehicle on road	Convicted Driver's licence disqualification 3 years
19/12/2014	Hinder police Resist police	Convicted Good behaviour bond \$500 12 months
15/07/2013	Unlawfully on premises	Convicted 1 month imprisonment
28/09/2012	Breach of BOND re 26/7/12	Found proved Dismissed without penalty
26/07/2012	Fail to comply with bail agreement	Convicted 7 days imprisonment

02/11/2009	Fail to comply with bail agreement (6)	Convicted Discharged without penalty
	Unauthorised person drive motor vehicle on road	Driver's licence disqualification 3 years
	Fail to give particulars to specified persons at crash scene	
22/09/2009	Drive or use motor vehicle without consent	Sentenced 1 year 8 months 14 days imprisonment
	Drive dangerously to escape police pursuit-basic offence	Driver's licence disqualification 2 years from 22/9/10
22/07/2008	Unauthorised person drive motor vehicle on road	Convicted Driver's licence disqualification 3 years
11/04/2008	Unauthorised person drive motor vehicle on road	Convicted Fined \$50
25/10/2007	Unauthorised person drive motor vehicle on road	Convicted Fined \$150
		Driver's licence disqualification 3 years
07/06/2007	Unauthorised person drive motor vehicle on road	Convicted Fined \$100
13/01/2006	Non-aggravated serious criminal trespass (5)	Convicted 10 months imprisonment
	Larceny (2)	
	Basic offence: dishonestly take property without consent (3)	
01/09/2005	Basic offence: dishonestly receive property without consent	Sentenced 15 months imprisonment
		Non parole period 9 months
06/08/2004	Basic offence: dishonestly take property without consent	Convicted 6 months imprisonment
06/08/2004	Drive or use motor vehicle without consent (2)	Convicted 9 months imprisonment
	Interfere with motor vehicle without consent	Driver's licence disqualification 12 months
17/02/2004	Interfere with motor vehicle without consent	Found proved 20 months imprisonment
	Receiving (4)	
	Larceny	
09/12/2003	1. Drive or use motor vehicle without consent (4)	1. Convicted 16 months imprisonment
	2. Fail to comply with bail agreement	2. Convicted 2 months imprisonment
	3. Breach of BOND re 6/2/02	3. Found proved 30 months imprisonment
		Head sentence: 57 months 21 days imprisonment Non parole period 30 months Driver's licence disqualification 3 years
06/02/2002	Receiving (4)	Convicted 30 months imprisonment
	Interfere with motor vehicle without consent	Non parole period 20 months
	Larceny	Suspended sentence bond \$10 3 years
06/02/2002	Unlawful possession	Driver's licence disqualification 12 months from 1/3/02
	Receiving (2)	Convicted
	Larceny	
10/01/2002	Fail to truly answer	Convicted Fined \$300
	Drive under disqualification or suspension	
	Drive vehicle contrary to defect notice	
22/11/2001	Disorderly behaviour	Convicted
09/10/2001	Fail to comply with bail agreement	Convicted Discharged without penalty
15/02/2001	State false personal detail	Convicted
	Provide false information on a bail application	
10/01/2000	State false personal detail	Convicted Fined \$200
13/06/1997	1. Drive under disqualification or suspension, Larceny, Drive or use motor vehicle without consent	1. Convicted 15 months imprisonment 2. Convicted 20 months imprisonment 3. Convicted 18 months imprisonment 4. Convicted 1 month imprisonment

G5		Attachment A
	2. Larceny (2), Drive or use motor vehicle without consent (2) 3. Drive or use motor vehicle without consent, Drive under disqualification or suspension, Larceny, Damaging property 4. Unlawful possession (2), Drive under disqualification or suspension, Unregistered vehicle	Head sentence: 5 years 6 months 29 days imprisonment Non parole period 2 years Driver's licence disqualification 12 months from 21/4/98
13/06/1997	Drive in reckless or dangerous manner	Convicted Fined \$500 Driver's licence disqualification 2 years from 21/4/98
13/06/1997	Drive in reckless or dangerous manner	Convicted Fined \$300 Driver's licence disqualification 2 years from 21/4/98
23/01/1993	Buildingbreaking with intent to commit a felony	Convicted Discharged without penalty
22/07/1992	Receiving	Convicted 18 months imprisonment
22/07/1992	State false personal detail	Convicted Discharged without penalty
22/07/1992	Building breaking and felony	
22/07/1992	Fail to comply with bail agreement (3)	Convicted Discharged without penalty on each
22/07/1992	Drive in reckless or dangerous manner (2)	Convicted 3 months imprisonment on each
22/07/1992	Illegal use of a motor vehicle	Convicted 6 months imprisonment
21/04/1992	1. Illegal use of a motor vehicle (10), Illegally interfere with a motor vehicle 2. Building breaking and felony, Buildingbreaking with intent to commit a felony, Damaging property (2), Illegal use of a motor vehicle 3. Illegal use of a motor vehicle 4. Endangering life (2) 5. Illegal use of a motor vehicle	1. Convicted 18 months imprisonment 2. Convicted 12 months imprisonment 3. Convicted 6 months imprisonment 4. Convicted 4 years imprisonment 5. Convicted 3 months imprisonment
03/10/1990	Illegal use of a motor vehicle	Head sentence: 7 years 5 months 18 days imprisonment Non parole period 6 years Convicted 9 months imprisonment concurrent
03/10/1990	Illegal use of a motor vehicle	Convicted 9 months imprisonment
24/07/1990	Fail to comply with bail agreement (2)	Convicted Discharged without penalty on each
24/07/1990	Illegally interfere with a motor vehicle Larceny	Convicted 28 days imprisonment
24/07/1990	Illegally interfere with a motor vehicle	Convicted 6 months imprisonment
24/07/1990	Resist police	Convicted Discharged without penalty
24/07/1990	Illegally interfere with a motor vehicle (5)	Convicted 6 months imprisonment on each
05/06/1990	Estreatment of bail	Convicted Fined \$200
02/11/1989	Larceny	Convicted 28 days imprisonment concurrent
02/11/1989	Illegally interfere with a motor vehicle	Convicted 6 months imprisonment
31/10/1989	Illegal use of a motor vehicle	Convicted 6 months imprisonment
19/05/1989	Drive in reckless or dangerous manner Illegal use of a motor vehicle Fail to stop after accident Drive unlicensed	Convicted Discharged without penalty
07/12/1988	Drive at dangerous speed (2) Drive in reckless or dangerous manner (2) Fail to comply with directions for regulation of traffic (3) Illegal use of a motor vehicle (5) Drive unlicensed (2)	Convicted Discharged without penalty on each
07/12/1988	Drive under disqualification or suspension Assault occasioning actual bodily harm Unlawful possession Damaging property Building breaking and felony	Convicted Discharged without penalty
07/12/1988	Drive in reckless or dangerous manner	Convicted 3 months imprisonment
08/07/1988	Illegal use of a motor vehicle	Convicted 3 months imprisonment

		Suspended sentence bond \$10 6 months
28/06/1988	Illegal use of a motor vehicle	Convicted Bond \$10 to be of good behaviour for 12 months
28/06/1988	Unlawful possession	Convicted Discharged without penalty
16/03/1988	Illegal use of a motor vehicle (2)	Convicted Discharged without penalty
	Drive in reckless or dangerous manner (2)	on each
	Damaging property (3)	
	Drive unlicensed (3)	
16/03/1988	Illegal use of a motor vehicle	Convicted 3 months imprisonment
		Suspended sentence bond \$100
		180 hours community service
16/03/1988	Drive without due care	Convicted Discharged without penalty
	Building breaking and felony	
24/09/1987	Unlawful possession	Without conviction Discharged without penalty
	Drive unlicensed	
24/09/1987	Larceny	Without conviction Bond \$300 to be of good behaviour for 6 months
24/09/1987	Illegal use of a motor vehicle (2)	Without conviction Discharged without penalty on each

APPENDIX 2

IN THE DISTRICT COURT
CRIMINAL JURISDICTION
ADELAIDE

TUESDAY, 21 SEPTEMBER 2021 AT 9.35 A.M.

BEFORE HER HONOUR JUDGE FULLER

NO.DCCRM-20-1941

R V RGVG

HER HONOUR IN SENTENCING SAID:

[RGVG], on 12 March 2021 in this court, you pleaded guilty to the offence of attempted theft. The maximum penalty for that offence is two-thirds of the maximum penalty prescribed for the principal offence, being 10 years, which equates to just over six years and six months.

You are entitled to a discount of up to 10% on any sentence I impose in relation to that offence. I accept the submissions of your counsel that as a result of his oversight, a plea to this charge was not entered at a time which would have entitled you to a 15% discount. However, that circumstance is not one which enables me, under the Sentencing, Act to discount your sentence any further than 10%.

On 14 December 2020, you pleaded guilty in the Magistrates Court to the offences of aggravated serious criminal trespass and dishonestly dealing with property without consent. The circumstance of aggravation for the offence of serious criminal trespass is that another person was lawfully present in the place of residence when you committed the offence and you knew of the other person's presence or were reckless about whether anyone was in the home.

The offence is also aggravated by the fact that you committed it in company with another person. The maximum penalty for the offence of serious criminal trespass is life imprisonment.

The maximum penalty for the offence of dishonestly dealing with property without consent is imprisonment for 10 years. You are entitled to a discount of up to 15% for

any sentence I impose in relation to each of these two offences.

You have been in custody since 29 July 2020 and any sentence I impose can be backdated to that time.

I turn now to the circumstances of your offending. On 31 October 2019, at around 5.45, Mr [A], his wife and children returned to their home [redacted] after the children were picked up from school. Mr [A's] four motorbikes were parked in the garage adjoining his house when he drove in there. The family then went into the house after the roller door to the garage was closed. At about 8.55 p.m. Mrs [A] told her husband that she had heard a loud motorbike outside the house. She went to the front of the house and saw that the garage door was open and one of her husband's motorbikes, a 2015 KTM 1290 Super Duke motorcycle, was lying on its side at the front of the house.

Your conduct in entering the garage with your co-offender is the subject of count 1 on the Magistrates Court Information, aggravated serious criminal trespass.

Mrs [A] told her husband, who then ran outside and saw that the ignition switch of the motorbike was in the on position and the engine was off. The motorbike was stuck in third gear and was leaking petrol onto the ground. It appeared that the motorbike had stalled.

Mr [A] observed that a window in the garage, which his family kept locked, appeared to have been forced open.

In relation to count 1 on the District Court Information, attempted theft, that relates to this motorbike. Mr [A] then realised that his 2018 Aprilia Tuono RF 1100 cc motorbike was missing from the garage, as well as two motorbike helmets, two bluetooth headsets, two pairs of motorcycle gloves, four sets of motorbike keys and the remote control used to access the garage.

Those items are the subject of count 2 on the Magistrates Court Information, dishonestly dealing with property without consent. The value of the stolen property was over \$25,000.

Your co-accused, [Mr L], pleaded guilty in the Magistrates Court to aggravated serious criminal trespass with intent to commit theft of motorcycles, theft of a motorcycle and attempted theft of another. He was entitled to a discount of up to 30% for his pleas.

His offender history is much less extensive than yours and he is much younger than you. He was sentenced to two years, two months and three weeks imprisonment with a non-parole period of 15 months. He was ordered to pay compensation in the amount of \$4,291, as a consequence of which, no application for compensation to be paid by you is made in this case.

The victims of your offending were in court when I heard submissions. Their victim impact statements were read. Your offending has had a profound effect on them. The terrifying realisation that their home was not secure and that criminals intent on stealing their property had broken into their garage and made off with valuable property has made them feel unnerved and unsettled.

Mr [A] believes you must have targeted or surveilled their property. Mr and Mrs [A] and their children were within metres of the garage and the thought of what might have happened if one of them or their children had ventured into the garage when Mr [L] was in there has left them traumatised.

Mrs [A] is now constantly afraid of entering the garage and is hypervigilant about the safety and security of her home and family. If she hears a noise or a car driving by, she checks the video surveillance system installed at her home.

I turn now to your personal circumstances. You are a Maori, born in New Zealand. Your mother and stepfather moved to Australia in [redacted] when you were a baby. Your stepfather was a very violent man. You were one of two sisters and two brothers.

One of your brothers died at a young age and the remaining brother killed himself a couple of years ago when you were in prison [redacted]. His death and his previous suicide attempts have affected you deeply. You went to his funeral in handcuffs. You ran away from home when you were 11 and you spent a lot of time on the streets when you were not in secure care. You have had employment in landscaping and retaining walls. I am told by your counsel that you are a gifted sportsman. Sadly, your sporting talent is displayed on the fields of [redacted] and not somewhere where it might have led to something.

To your credit, you were able to buy your own home which you had for 13 years. You have three children and three grandchildren. You are now 50 years old. I was told by your counsel,[redacted] that of your 50 years, 37 have been spent in secure care when you were a child or in prison when you were an adult.

You have what can only be described as an appalling history of prior offending. There are a substantial number of driving offences, including drug driving and 15 driving whilst disqualified offences; 20 breaches of bail conditions; breaches of parole in 1997 and 2002; breaches of bonds in 2002, 2012 and 2015 and more than 28 illegal use offences; four counts of break and enter; five counts of nonaggravated serious criminal trespass, larceny and three counts of theft.

The most serious of your prior offending was in 1992 and involved a number of illegal use charges and two counts of endangering life for which you received a head sentence of seven years and five months.

However, from late 2009 onwards, until 2020, there were no offences of illegal use or the more serious of the offences that appear on your offender history dating back to 1987.

I accept that you do not have a history of violent offending and although you have a very old prior conviction as a juvenile for assault occasioning actual bodily harm, you were convicted of that and discharged without penalty.

Ironically and sadly, when you are in a regimented structured environment like prison or the Footsteps program, you thrive and excel. I am told that you provide support to other young prisoners who find themselves in the position that you were at their age.

Your counsel told me that you were on an amphetamine bender when you committed these offences, having returned to your own home only a few weeks prior after self referring and being accepted into and successfully completing the Footsteps Road to Recovery Residential Rehabilitation 12 week live-in program.

You participated in that program from 11 July 2019 to 3 October 2019. I received a letter from Mr Scott Wilson, the CEO of the Aboriginal Drug and Alcohol Council, in which he said that you had a long-time problem with addiction that had brought you into constant contact with the police and the justice system.

He said that you had not previously had help with these problems and it was his belief that your completion of the Footsteps program would assist you to move forward with your life and become a productive member of the community.

At first it seems inexplicable that you would complete this program on 3 October 2019 and by the end of that month, be breaking into a home and stealing property. However, your counsel explained to me that when you returned to your own house in [redacted], the friends and family who had promised to look after it for you had trashed it and the property in it and even more distressingly, your two dogs had been put down by the council.

I can well understand how distraught you must have been when you discovered that this had happened. Having lost everything dear to you, you went on a bender. It was whilst on that bender that you committed these offences, thereby repeating a cycle of drug use and offending that has been a constant theme throughout most of your life.

From July 2020, you have been in [redacted] Prison where you were first employed as a unit worker being responsible for keeping the living unit clean and tidy. Case notes indicate you have performed those duties well. You were then employed in the bakery where you remain employed to this day.

On 9 May 2020, during a period when you were serving a sentence, you returned a negative drug test result. No formal incidents have been recorded against you although there have been some warnings issued.

I do not need to go into the detail of those warnings as I do not consider that they cut across what your counsel told me about your good behaviour and work ethic in gaol. I turn now to sentence. Despite your extensive offender history, you are not a serious repeat offender and my discretion in respect of the setting of a non-parole period is not fettered.

Protection of the safety of the community is the paramount sentencing consideration. Your offending is too serious and the need to protect the safety of the community too important to impose anything other than an immediate gaol term. Home detention is not appropriate. Your counsel did not contend otherwise.

The sentence I impose has to reflect principles of general and personal deterrence and personal deterrence, that is, deterring you from offending again, is a significant factor in the sentence because of your lengthy record of similar offending.

I will sentence you on the basis that no violence was involved or intended by you in

your offending. While I fully accept that Mr and Mrs [A] believe that the tools left in reach in their garage were put there for the purpose of use should you and Mr [L] be disturbed, there is no basis upon which I can reject the submission of your counsel that you did not place them there and that was not your intention.

The difficulty in arriving at a just and appropriate sentence for you is that gaol is where you appear to thrive but the longer you spend in gaol, the higher the risk of your institutionalisation. On the other hand, given that you are middle aged, there may come a time when you simply cannot sustain the drug abuse and offending and you may well burn out.

Given your background, it is remarkable, in my view, that at age of 48 you self referred to Footsteps and you completed that intensive three month program. Sadly, when circumstances conspired against you and you lost everything dear to you, you turned to drugs and the cycle of offending began again.

You are at real risk of becoming a person for whom gaol is the safest place to be and the safest place for you to be from the community's point of view.

That does not mean that everyone, including you, should simply give up on the hope of you leading a law-abiding life. I do not know when that might occur or what it will take for that to occur but the criminal courts should never lose sight of the fact that no-one is beyond redemption or rehabilitation.

I consider that all three offences are part of a course of conduct but because the discounts that are applicable differ, I will use s.26 of the *Sentencing Act* for the offences of aggravated serious criminal trespass and theft and I will impose a separate sentence for the attempted theft. However, I consider that there should be a substantial degree of concurrency between those sentences.

For the offences of aggravated serious criminal trespass and theft but for your plea of guilty, I would have imposed a sentence of five years and six months imprisonment.

I discount that by 15% to four years, eight months and three days.

For the attempted theft, but for your plea of guilty, I would have imposed a sentence of 14 months. I discount that by 10% to one year and 18 days. I order that there be substantial concurrency between those sentences. The head sentence is therefore five years.

I set a merciful non-parole period of three years to enable you to have a lengthy period of parole in the hope that that will facilitate your rehabilitation and reintegration into the community.

The head sentence and non-parole period will commence on 29 July 2020. So [RGVG], [redacted] will explain this to you but you'll be eligible for release on parole in three years from 29 July 2020, so in a couple of years from now.

....

APPENDIX 3

Settled by the Honourable Justice David on 7 October 2009
IN THE SUPREME COURT
CRIMINAL JURISDICTION
ADELAIDE
TUESDAY, 22 SEPTEMBER 2009 AT 9.30 A.M.
BEFORE THE HONOURABLE JUSTICE DAVID
NO.SCCRM-09-207
R v [RGVG]
HIS HONOUR IN SENTENCING SAID:

[RGVG], you have pleaded guilty to one count of illegally using a motor vehicle without consent and one count of dangerous driving to escape police pursuit. You were originally charged with four other offences arising from the one course of behaviour on 23 October 2007, however, you have recently been re-arraigned and those four other charges, which were more serious, have been discontinued, leaving you with the present offences of illegal use and dangerous driving to escape police pursuit. I mention that because, although it is close to two years since you committed the offences, the withdrawing of the more serious charges was quite recent. I therefore give you full benefit for your pleas of guilty to the present charges.

The charge of illegally using a motor vehicle without consent is contrary to s.86A of the Criminal Law Consolidation Act and for a subsequent offence, which this is, the maximum term of imprisonment is four years. Also there is a mandatory term of licence disqualification of 12 months.

The charge of dangerous driving to escape police pursuit is an offence contrary to s.19A(c)

(1) of the Criminal Law Consolidation Act, and the maximum penalty is a term of imprisonment for three years and a mandatory loss of licence for two years.

I also have a report from the Parole Board which indicates that you were on parole when the offences were committed on 23 October 2007, and the balance of the parole at that date was three years, five months and 16 days. The upshot of that is, and there is no disagreement, is that any head sentence I impose if it is unsuspended should start at the expiration of three years, five months and 16 days.

I also point out that you have been in custody for some 20 months on these matters alone and as I indicated during submissions, that period of time will be deducted from both the head sentence and the non-parole period.

The basis of fact upon which I sentence you is set out in the statements that were tendered and also a videotape of the pursuit taken by the police from the helicopter which I examined very carefully.

Police had received information on the day in question that the person you were with was attending at premises at [redacted] with a suspected stolen vehicle. Police attended at the premises at [redacted] and observed a blue Holden utility which was admittedly stolen and parked at the side of the premises. They set out tactical road spikes and parked an unmarked police vehicle in the area. The stolen vehicle, driven by yourself, reversed out of the driveway at great speed. It managed to squeeze itself between another car and a police car which was trying to block the driveway. After that you drove

the vehicle at high speed up [redacted]. You came across more police with more spikes but you continued on and collided with a car with a person in it. You then drove on the wrong side of the road down [redacted], this was at about 4.30 in the afternoon, in the face of oncoming traffic. Police then, as a matter of practicality, ceased to chase you and you drove your car for about four minutes before it stopped, and you and your companion decamped but were finally apprehended. I find from the time you started to drive the car you clearly knew it was stolen and therefore that is the basis of count 1 and, of course, you were driving in a most dangerous manner along busy streets in the afternoon when there was other traffic. It was fortunate that nobody was injured or, indeed, killed.

You are aged 37 and you have an extensive criminal record, mainly in relation to the illegal use of motor vehicles, and failing to comply with bail and other like offences.

I am told that throughout your life you have spent some 24 years in some sort of secure care, whether it be foster homes through to the adult system in prisons. You came from New Zealand [redacted] with your mother having never met your father and you have had a very difficult, abusive and violent life.

Your counsel tells me you only realised that the car you were in was stolen after you had driven it some distance and your passenger told you so. Whether you realised from the start or partway through the journey it makes very little difference to my sentence as far as count 1 is concerned. But I am of the view, having read the papers, that there is a clear inference that you knew it was stolen from the beginning.

You committed these offences whilst on parole and of course the offending is very serious.

It is also very serious bearing in mind your continued breaches of the law in relation to similar offences involving cars. It appears as though you treat the laws of this State with utter contempt and that is borne out by your criminal record. Your driving was dangerous and was a hazard to other road users and to the credit of the police, they broke off their chase before it became even more dangerous.

Your counsel puts to me that the total period of driving was a little over four minutes, but it is to be noted that a lot of carnage can be done by a motor vehicle during that period of time.

Your counsel tells me you have had a problem with drugs and suggested you needed appropriate treatment and has invited me to suspend the inevitable term of imprisonment that I must impose. I say at the outset that I cannot do that because there is no good reason to do it, the offending is serious. It had the aggravating factor of being committed whilst on parole and your criminal record is extensive. In my view there is no scope for the exercise of such discretion.

In relation to count 1, I impose a term of imprisonment of three years which I reduce to two years because of your plea of guilty. I also disqualify you from driving for a period of 12 months.

In relation to count 2, I impose a term of imprisonment for two years which I reduce to 16 months because of your plea of guilty. Such term of imprisonment will be cumulative upon the term of imprisonment for count 1. Therefore that makes a total head sentence of three years and four months in prison. That term of imprisonment will start at the

expiration of three years, five months and 16 days. That makes a total head sentence of six years, nine months and 16 days. I deduct from that period the time that you have spent in custody in relation to this matter that being one year and eight months, which leaves a total head sentence of five years, one month and 16 days which I round down to five years as a head sentence. I set a non-parole period of four years from which I also deduct one year and eight months, making a non-parole period of two years and four months.

So your final sentence is five years with a non-parole period of two years and four months.

The licence disqualifications are cumulative, making a total licence disqualification of three years.

ADJOURNED 9.40 A.M.

APPENDIX 4

IN THE DISTRICT COURT
CRIMINAL JURISDICTION
ADELAIDE
THURSDAY, 1 SEPTEMBER 2005 AT 9.50 A.M.
BEFORE HIS HONOUR JUDGE ROBERTSON
NO.593/2005
R v [RGVG]
HIS HONOUR IN SENTENCING SAID:

1 [RGVG], you have pleaded guilty to the offence of Theft.

2 Your offending arose in the following circumstances. You knew a woman called "[J]". Sometime between 23 August 2003 and 12 March 2004, at [redacted], you received from [J] laser equipment consisting of an ATS Robotic Total Station valued at sixty thousand dollars (\$60,000), a Control Box valued at four thousand eight hundred dollars (\$4,800), an Electric Mast Receiver valued at four thousand five hundred dollars (\$4,500) and a Sonic Tracer valued at five thousand eight hundred dollars (\$5,800). This equipment had been stolen from the premises of a construction company on or about 24 August 2003.

4 After you received the equipment, you retained possession of it for some time. You were unaware of its value. It was your intention to sell the equipment to obtain money for the purchase of drugs.

5 All of the equipment was recovered by the Police and returned to the owner.

5 You are now thirty four years of age. You moved from New Zealand with your Mother when you were one year old. You have never met your biological Father. Your Mother remarried. You were regularly physically abused by your Step-Father. This was a particularly unhappy period in your life.

6 You left High School at the end of Year 10. Shortly after leaving School you were detained at the Youth Training Centre as a result of you committing

offences. After your release you worked in a number of jobs for a short period of time.

7 During your teenage years, you were regularly involved in criminal offending. Some of your offences led to your imprisonment. Indeed, since becoming an adult, there has been a regular pattern of criminal offending. Sadly, you have spent a total of about twenty years of your life in custody for criminal offences. A Pre-Sentence Report prepared in 1997 indicated that, at that point of time, you were considered to be institutionalised as a result of your incarceration for long periods of time. Since that time, you have received further sentences of imprisonment. You are currently in prison for other offending.

9 You have been addicted to illegal drugs for many years. Some time ago you were admitted to the Drug Court but, unfortunately, you were not able to defeat your habit and returned to the consumption of illegal drugs.

10 You have four children. I am told that you are devoted to your children. Whilst in prison you have worked at various jobs. The money you earn is mostly spent on communicating with your children by telephone.

11 You have an extensive offender history. Those offences include dishonesty offences.

12 You cooperated with the Police and, indeed, you called the Police to the prison for the purpose of confessing that the property found at the premises of an associate was property which belonged to you. You pleaded guilty on your Arraignment in this Court. I will give you a full discount for your plea of guilty from your sentence, in recognition of your cooperation and your plea of guilty.

13 Your conduct is serious criminal offending. You clearly do not have the capacity to respect the property rights of others. General deterrence and personal deterrence play prominent roles in sentencing you.

15 I impose a term of imprisonment of fifteen months. But for your plea of guilty I would have imposed a period of imprisonment of twenty months.

16 You are currently serving a term of imprisonment with a Head Sentence of 59 months and 29 days. The term of imprisonment I impose upon you is to be served cumulatively on that term of imprisonment.

17 I now turn to fix a fresh non-parole period. Sadly, it would seem that you do not have the capacity to rehabilitate yourself. I say 'sadly', because if you could rehabilitate yourself, then it would not only benefit the Community and yourself, but also your four children to whom you are devoted.

18 The current non-parole period for your current term of imprisonment is thirty months. Your non-parole period will expire on 8 June 2006. I need to set a new non-parole period. The new non-parole period will include the notional nonparole period for the sentence I have imposed upon you. The Pre-Sentence Report indicates that you have potential but, unfortunately, you seem unable to harness it. You are still young enough to make a serious attempt to set your life in order and commence providing a proper role model for your children.

20 I fix a notional non-parole period for your offending at nine months.

21 Accordingly, your new non-parole period, taking into account your current non-parole period and the notional non-parole period, is three years and three months. In other words, your current non-parole period which you have been serving has been extended by nine months.

22 As the Head Sentence I have imposed upon you is cumulative, then the sentence I have imposed is to commence at the conclusion of your current sentence.

23 With respect to your non-parole period, I order that it be deemed to have commenced on 9 December 2003. This is the date that you were sentenced to your current term of imprisonment. As I said, the effect of the new non-parole period is that your old non-parole period has been extended by nine months.

ADJOURNED 9.57 A.M.