Decision and Reasons for Decision

Administrative Review Tribunal

Applicant/s:	**Lesley Maburay Pillay**
Respondent:	**Minister for Immigration and Citizenship**
Tribunal Number:	**2023/2606**
Tribunal:	**Deputy President O'Donovan**
Place:	**Brisbane**
Date of Decision:	**13 October 2026**
Decision:	**The decision under review is affirmed.**

Deputy President D O'Donovan

Statement made on 13 October 2026 at 3:04pm

Catchwords

MIGRATION – whether to revoke the mandatory cancellation of applicant's visa – character test – substantial criminal record – family violence - breaches of domestic violence order – property and fraud offences – traffic offences – drug offences in immigration detention - Direction no. 110 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – seriousness of family violence - strength, nature and duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – extent of impediments if removed – citizen of South Africa – relapse into heroin use a risk – the interests of minor children affected – likely to be able to overcome any impediments to establishing basic living standards in South Africa – significance of claim against the Commonwealth - decision under review affirmed

Legislation

Migration Act 1958 (Cth) ss 499, 500, 501CA

Cases

HZCP v Minister for Immigration and Border Protection [2019] FCAFC 202

Secondary Materials

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

Statement of Reasons

1. The applicant was born in South Africa and lived there until he was 22 years old. He emigrated to Australia with his family in 2008 and for a short period was a law abiding and productive member of the Australian community. However, he began engaging in family violence in 2012 and, after losing his driver's licence, began to accumulate driving offences. He married in 2014 and commenced his own business as a locksmith. However, by 2016 he had begun using heroin. His marriage collapsed and he began stealing and committing fraud to fund his habit. In 2018 he was convicted of a range of offences and sentenced to a term of 12 months in prison. His visa was cancelled for the first time.

2. His visa was restored to him by a delegate of the Minister on 14 February 2020.

3. After he was released back into the community, he continued to use heroin. He formed a new relationship with a woman called Siobhan who had four children from a relationship with a former partner. Siobhan was also a heroin user. The applicant continued to commit fraud and traffic offences and offences related to complying with legal requirements like bail conditions. Siobhan fell pregnant with the applicant's child. Before the baby was born the applicant was convicted of a number of offences and was returned to prison.

4. His visa was cancelled again on 15 August 2022. On 20 April 2023 a delegate decided not to revoke the cancellation. The applicant sought review of that decision in the Administrative Appeals Tribunal ('AAT'). The AAT affirmed the decision under review, however that decision was set aside by the Federal Court by consent. The matter was then re-heard in this Tribunal and the delegate's decision affirmed again. That decision survived a first instance appeal but was overturned by the Full Court of the Federal Court. The matter was remitted again to this Tribunal. It was the subject of a hearing commencing on 17 August 2026.

5. The applicant is currently in immigration detention.

6. The Tribunal has jurisdiction under section 500(1)(ba) of the *Migration Act 1958* ('the Act') to review the decision. The test to be applied on review is set out in s 501CA.

7. Section 501CA(4) of the Act provides that the Minister may revoke the cancellation decision if, following representations, the Minister is satisfied that the person passes the character test or that there is another reason why the original decision should be revoked. The Tribunal, standing in the shoes of the Minister on review can do the same.

Character Test or Another Reason

8. Section 501 of the Act relevantly provides:

> *(6) For the purposes of this section, a person does not pass the character test if:*
>
> *(a) the person has a substantial criminal record (as defined by subsection (7)); …*
>
> *(7) For the purposes of the character test, a person has a substantial criminal record if:*
>
> *…*

(c) the person has been sentenced to a term of imprisonment of 12 months or more;

9. The applicant concedes that he does not pass the character test because he has been sentenced to a term of imprisonment of 12 months or more.

10. It is therefore only necessary to consider whether there is another reason why the decision to cancel the applicant's visa should be revoked.

11. In considering whether there is another reason why the decision to cancel the applicant's visa should be revoked, the Tribunal must have regard to the matters contained in a ministerial direction issued under section 499 of the Act. The relevant direction is *Direction No. 110: Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA*, which was executed on 7 June 2024 and commenced on 21 June 2024 ('the Direction'). Informed by the principles identified in the Direction, I must take into account the considerations identified in sections 8 and 9 of the Direction when I am considering the question of whether there is another reason why the original decision should be revoked.

12. The discussion below of the principles and considerations I must take into account under the Direction, is drawn largely from one of my earlier decisions on this issue, but it has been revised to appropriately reflect the circumstances of this case.

13. The Direction is divided into 'primary' and 'other' considerations. In applying the considerations, information and evidence from independent and authoritative sources should be given appropriate weight. The protection of the Australian community consideration should generally be given greater weight than other primary considerations and primary considerations should generally be given greater weight than other considerations. There is however scope to give greater weight to other considerations in appropriate circumstances, and similar flexibility is available in the relative weighting of primary considerations.

14. The primary considerations are:

    (1) Protection of the Australian community from criminal or other serious conduct;

    (2) Whether the conduct engaged in constituted family violence;

    (3) The strength, nature and duration of ties to Australia;

(4) The best interests of minor children in Australia; and

(5) Expectations of the Australian community.

15. The other considerations are:

(a) The legal consequences of the decision;

(b) The extent of impediments to the applicant establishing and maintaining basic living standards if removed from Australia; and

(c) The impact on Australian business interests.

16. I am also required to consider any other considerations raised by the applicant. In this case he has raised one further consideration being the impact of the deportation on proceedings currently on foot in the Federal Court brought by the applicant to recover damages from the Commonwealth in relation to an assault he suffered during his time in detention.

17. The principles set out in paragraph 5.2 of the Direction make it clear that the safety of the Australian Community is the highest priority of the Australian Government. 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. The Australian community expects that the Australian Government can and should cancel non-citizen's visas if they engaged in conduct, in Australia, 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. Australia has a low tolerance for 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. 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. 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 support a decision not to revoke the cancellation decision. The inherent nature of certain conduct such as family violence is so serious that even strong countervailing considerations may be insufficient to justify the revocation of a visa 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.

18. Having considered each of the considerations and weighed them appropriately, I have decided to affirm the decision under review.

19. My reasons for that decision are set out below.

Evidence before the Tribunal

20. The bulk of the material before the Tribunal was assembled in a remittal bundle consisting of some 3130 pages. Included in this material were a number of statements prepared by the applicant. He adopted each of these statements in the witness box and was cross-examined.

21. In addition to the remittal bundle, the applicant tendered a further bundle of material and a statement of Siobhan Correia dated 27 June 2026.

22. The applicant's further tender bundle included a further statement from the applicant along with certificates relating to courses that the applicant had undertaken to assist in improving his behaviour. It also included information about recent drug convictions which followed incidents while the applicant was in immigration detention. It also included financial and medical material relevant to the application.

23. In addition to the new documentary material relied on by the applicant, he also called his current partner Siobhan Correia, and his aunt, Nancy Chetty who gave evidence in support of his application. Both were cross-examined.

24. The respondent also relied on a further tender bundle consisting of recent incident reports concerning the applicant in immigration detention, as well as an updated national criminal history 'check results' report.

25. Because the remittal bundle was so large I took it in on the basis that I would only guarantee consideration of documents I was specifically referred to by one or other of the parties during the hearing or in submissions however, I may have regard to any material that is included and

relevant to an issue I need to determine. Both parties indicated that they were content to proceed in that way.

26. There was very little in the way of factual disagreement between the parties.

Fact finding principles

27. In reaching my findings on the primary facts I must apply the principle, clarified by the Full Court of the Federal Court in *HZCP v Minister for Immigration and Border Protection*[1] (‘*HZCP*’) at [68], that '…relying on evidence contrary to the essential conviction or sentencing facts would in itself be an error'. The sentencing remarks however do not provide much in the way of detail about the applicant’s offending. I have relied upon more detailed accounts of the offending in police reports.

28. In earlier hearings the applicant disputed important details of the family violence conduct in particular. In the hearing before me the applicant’s representative conceded in closing submissions aspects of the conduct previously disputed. In light of those concessions, I have proceeded on the basis that the police reports that record the victim’s version of events constitute the most reliable basis on which factual conclusions can be drawn about the family violence conduct.

Facts

29. My findings of fact are set out below.

30. The applicant was born in South Africa in 1986. His father was killed in a motor vehicle accident when he was 18 months old. His mother remarried.[2] During his childhood and adolescence, the applicant describes his stepfather as abusive towards him when drunk.

[1] [2019] FCAFC 202.

[2] Applicant’s Tender Bundle, 103.

31. The applicant completed a significant amount of schooling (up to at least the equivalent of year 10) and after leaving school, trained as a locksmith.[3] He also worked with his aunt who ran a funeral directors' business.

32. He emigrated with his family and arrived in Australia in November 2008 at the age of 22. He has not left Australia since December 2012.[4]

33. The applicant found work as a locksmith. He also commenced a relationship with a woman called Ana, who had children from a previous relationship. The relationship between Ana and the applicant was sexual, but the level of commitment involved is unclear. The applicant concedes it was sufficiently intimate for the purposes of the definition of family violence and does not dispute that the violence that occurred within this relationship constituted family violence.

34. The first violent incident happened on 19 January 2012. It began after Ana had gone to a pizza shop with a female friend. When she returned home the applicant got out of his car and said, 'you fucking slut, you had to go and fuck someone'. Ana responded that she had just gone up the road to buy pizza with a friend. The applicant replied, 'so you can't get dick so you have to get pussy'. When they returned to Ana's house the applicant followed Ana into her bedroom and locked the door. He then grabbed Ana around the neck with his left hand. He then pushed her against a wall causing her to bump her head. He then jumped on top of her and hit her and gave her a black eye. He left soon after but returned around midnight and another argument commenced. Ana started to dial 000 but the applicant got her in a headlock saying, 'let's see if you can do it'. The 000 operator rang back and advised that the police would be sent if Ana did not answer. Ana answered the call on the next occasion and she asked the police to attend. The applicant left the building.[5]

35. No charges were laid in relation to this incident, but an application was made for a domestic violence order, and it was granted on 24 January 2012 and served on the applicant.[6]

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[3] Ibid.
[4] Remittal Bundle, 104.
[5] Ibid, 1312.
[6] Ibid, 1032-1034.

36. The applicant breached the order in November 2012. Ana and the applicant were outside her house. The applicant was washing his car but became jealous when Ana was texting someone. After accidently spraying her with water he whipped her with the garden hose causing a welt on her forearm. He followed Ana into the house demanding to look at her phone. He then grabbed her by the throat and attempted to grab her phone. He eventually released his grip and slapped Ana across the face and neck. They continued to argue for a further period. When the applicant left the house, he said to one of Ana's children 'your mother is a bitch and a slut and you will turn out like her'.[7]

37. The applicant was convicted of breaching a domestic violence order as a consequence.[8] I note that Ana did walk back from some of her statements and that charges of Common Assault were dropped.[9] However, in light of the concessions made in closing, I am satisfied on the evidence available that the incidents occurred as originally described to police.

38. The third incident involving Ana occurred while the two were out at the Brisbane casino on 10 March 2013. Ana and the applicant were arguing when the applicant headbutted her in the face. The argument continued at the applicant's home address where he struck Ana with his right hand.[10] He was arrested on 5 April 2013 and charged with *contravention of domestic violence order*. He was convicted on 15 October 2013.[11]

39. It would appear that the applicant continued to have contact with Ana. This led to a further Protection Order being issued in December 2014 and charges relating to the breach of it in May 2016. That incident occurred on 22 May 2016 and involved the applicant pushing Ana. That conduct resulted in a conviction for *contravention of domestic violence order (aggravated offence).*

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[7] Ibid, 1286.

[8] Ibid, 1326.

[9] See: Remittal Bundle, 1353 and 1329.

[10] No formal concession was made about the striking incident, but the applicant's evidence has been inconsistent overtime and I am satisfied that reports to police are the most reliable account.

[11] Ibid, 44.

40. At about this time, the applicant's eventual wife, Raeeza, moved to Australia. He had met her in South Africa when he was 20 years old. She had visited several times after he had emigrated in 2008. They became a couple in 2013 and married in 2014.[12]

41. In 2016 the applicant was working as a mobile locksmith in his own business. However, because he lost his driver's licence, he needed to employ a driver so he could get to jobs.

42. His loss of licence came about as a consequence of a long history of driving-related offences, including use of an unregistered vehicle, exceeding the speed limit (including exceeding it by over 20 kmph on some occasions).[13]

43. He discovered that his driver was a heroin user and learned where he stored his heroin. He found it and smoked it and enjoyed the sensation. He then began using regularly and his habit slowly increased.[14]

44. In 2017 Raeeza became pregnant with the applicant's child. In April 2017, when Raeeza was seven-and-a-half months pregnant the applicant began to get aggressive towards her claiming that she had slept with his cousin and that their unborn baby's father was really his cousin. The applicant was questioned about this incident at the first hearing of this application in the AAT and denied threatening the baby. He now, through his representative, concedes that he did threaten to kill the baby. I am satisfied that the most accurate account of the incident is in the information included by police in a Domestic Violence Order application made by police on behalf of Raeeza. It read:

> *The respondent and aggrieved have one unborn child together with the aggrieved being seven and a half months pregnant with the respondent's child… The aggrieved stated to police that she was extremely scared and fearful of the respondent due to his history of unreported violence and abuse from within their relationship…. The aggrieved stated that she believes the respondent has lost his job and was now asking her for money to cover his drug debts. The aggrieved stated that the respondent has entered their house at about 5 pm and demanded the aggrieved take him to his mother (sic) house to get money from her. The aggrieved told the respondent no at which point he has slammed the front door, stormed to the bathroom, and smashed several items within the bathroom. The aggrieved has entered the bathroom and said "What the hell." The aggrieved*

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[12] Ibid, 107.

[13] RB 1007-1009.

[14] Applicant's Bunde, 106.

stated that throughout the last week, the respondent has become extremely aggressive towards her claiming that she had slept with his cousin and that the unborn baby really was his cousin's and he would kill the child before letting it into the world claiming he would "pull it out". The aggrieved has stated that due to the previous aggression shown buy (sic) the respondent she felt fearful for her safety and has then grabbed her car keys and ran out of the house to her vehicle. The respondent has attended her car and attempted to open the front door screaming at her "Get out Get out". The aggrieved stated that the respondent was not able to get into the vehicle as she had locked the doors prior to him running after her. The aggrieved stated that she did not want the respondent in the car as he had previously, that week threatened to kick her out of the moving vehicle earlier in the week because she did not do as she was told.[15]

45. On 3 May 2017 a Protection Order was issued against the applicant preventing him from entering or attempting to enter the marital home.[16]

46. The applicant's daughter E was born in June 2017. At this point the couple separated under the same roof. When E was six months old, Raeeza took her back to South Africa for a visit. On return from South Africa in early 2018, Raeeza moved into her own residence. There is evidence of a breach of the domestic violence order on 11 February 2018.

The aggrieved provided a typewritten statement stating that between about 1pm and 2.20pm on 11th February 2018 she was asleep on her bed, with her baby and the respondent has barged into the room, demanding $20 for fuel. When denied the money, he became angry and said, "I'll fucking show you". When he has left the room, the aggrieved heard a loud bang. The respondent returned into the room and demanded $10 for fuel. The aggrieved stated she did not have the money. The respondent then told her, "I'm going to fuck you up." The respondent then told the aggrieved to lend him her phone because he wanted to phone his mother. The aggrieved denied this request, fearing the respondent would damage the phone. The aggrieved then phoned the respondent's mother and spoke to her, stating that the respondent was threatening her for money, asking her to call him.

DAMAGE TO PHONE: At this time, the respondent has then tried to grab the phone out of the aggrieved' s hand with his right hand with a large degree of force. The aggrieved has then discovered the phone screen was cracked on the right hand side. A further discussion took place in relation to the respondent trying to obtain money from his mother and the aggrieved at which time, the respondent said to his mother, "She's a fucking bitch, a dog and she's sitting with money and can't give me money for fuel." The respondent then asked his mother, "Are you going to give me the $20, you are taking the bitches side, I'm going to fuck her up and then come there and fuck you up." Shortly after this, the respondent demanded the aggrieved phoned two other numbers, saying they were in relation to work, but there was no answer on either number. The aggrieved stated she

[15] Remittal Bundle, 1303.

[16] Ibid, 1303.

heard the respondent having another conversation on the phone with his mother, at which time, the aggrieved heard him
say, "Let her fucking go, she's a fucking bitch, I'll show her, I'll kill her." The respondent then stated, "Why did you come back from South Africa and the aggrieved replied, "I was forced back because of and said, "Yes I will go back". The respondent replied "This time you will fucking go back yourself, you are not taking the baby, I will murder you." The aggrieved left the lounge and went to the bedroom to feed the baby, observing the respondent to leave the unit block carpark towards the roadway on [redacted].

DAMAGE TO TELEVISION AND PLAQUE. The aggrieved stated she then came back into the lounge room to see what the noise was she heard earlier and saw the television was damaged with a dent in the right hand side of the screen. Upon police arriving, the aggrieved also observed a wall plaque which had been hanging on the wall near the kitchen was on top of the lounge chair and was broken in to pieces.

On 12th February 2018 the defendant was interviewed in an electronically recorded ROI at Holland Park Police Station in relation to the matter. He denied the allegations made by the Aggrieved. On 19th March 2018 the defendant was located on [location redacted] and agreed to accompany Police to Holland Park Station where he agreed to take part in an electronically recorded record of interview regarding this matter. He again denied the allegations of the Aggrieved and stated the damage to the television was pre-existing and he was unaware of damage to the plaque. He stated he didn't grasp the phone at all and didn't damage it. The defendant has been convicted in the Brisbane Magistrates Court on 15/10/2013 for a Breach of Domestic Violence Order. Notice of Intention to Allege Previous Conviction has been served on defendant.

CHARGE 2: (WILFUL DAMAGE) The Aggrieved is the owner of a Samsung S7 Edge mobile phoned she stated the Respondent grabbed tightly when arguing causing the screen to crack. The defendant denied damaging the mobile phone stating he didn't grasp it at all.[17]

47. I am satisfied that the incident occurred as recorded by police. The behaviour is consistent with the applicant's past behaviour and he pleaded guilty in relation to the charge. A conviction was recorded in relation to the incident, and the applicant received a custodial sentence.

48. Raeeza has been physically separated from the applicant (as opposed to a one roof separation) since that time.

49. After his wife left him, the applicant's heroin use increased as did his criminal offending.

[17] Ibid, 1191.

50. He was eventually arrested and remanded in custody from 17 November 2018. He was dealt with by the Magistrates Court on 5 December 2018 and convicted on multiple charges including:

- Breach of a community service order imposed on 19/07/2018 in relation to a breach of a domestic violence order;
- Contravention of a domestic violence order (aggravated);
- Breach of bail conditions;
- Stealing;
- Fraud and dishonestly gaining a benefit;
- Receiving tainted goods;
- Possessing dangerous drugs; and
- Unlawful use of a motor vehicle.

51. In relation to the last charge the applicant received a sentence of 12 months with a parole release date of 18 February 2019.[18]

52. The sentencing remarks included the following:

> *This is a significant accumulation of criminal behaviour over a significant period of time. But in particular, in relation to the persons whose car you took and have never returned has involved a significant financial loss to that person, not only in the form of the money that you defrauded them of, but also the fact that you took their car and when you were specifically told not to and it's lead to it never being seen again…*
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> *At the same time, to defraud [the victim] of $600 for work you said you were going to do that was never done.*

[18] Ibid, 43.

The offending behaviour in this case spans roughly a two-year period. A period over which not only were you repeatedly committing criminal offences but repeatedly failing to appear in court as well. Over the same period of time, you've been dealt with since the beginning of 2017, so you've been dealt with by the courts one, two, three, four, five, six, seven, eight times before today….A lot of this offending…was committed while you were subject to a community service order for breaching a domestic violence order, that's a significant aggravating feature and a portion of it was committed while you were unlawfully at large as well.

…in addition to that, of course, you've got not only a further charge of unlicensed driving, and having only been dealt with for unlicensed driving in January of this year and that was your …fourth conviction for unlicensed driving, but since that time two further convictions for now disqualified driving whilst on bail…

So each of those offences constitutes contempt of court order because it indicates that you have no regard for the order of the court disqualifying you from driving and did it anyway which is a mark of disrespect and contempt for the court and it's a serious offence having regard to that. On top of that, of course, we've got the additional breach of domestic violence order when you were subject to a community order for breaching a domestic violence order as well as each of the frauds, the stealing, the petrol drive-offs…in addition to being disqualified by the court and on bail, you were in an unregistered, uninsured motor-vehicle so you could have an accident, then whoever the poor person was who might've come into collision with you would be unable to recover from third party insurance and from you, in all likelihood. So that just indicates what a significant risk you pose to others on the road.[19]

53. The applicant was convicted of further fraud and stealing offences on 20 December 2018.

54. The applicant served his time in prison and was discharged to immigration detention on 18 February 2019, his visa having been cancelled on 15 February 2019.[20] The applicant then applied to have the visa cancellation revoked.

55. It is worth noting that the applicant's application for revocation was supported by his mother, his half-sister and his ex-wife Raeeza who claimed to have noticed a positive change in the applicant while in prison and detention. The application was also supported by a report by Dr Gavan Palk, a Forensic Psychologist. Dr Palk's assessment in a report dated 12 June 2019 was as follows:

In the writer's view Mr Pillay's prospects for remaining law abiding in the future have improved considerably since his imprisonment and subsequently learning to live

[19] Ibid, 46.
[20] Ibid, 199.

> *without heroin. If Mr Pillay can remain free of heroin use he is highly likely to become hard working again and refrain from illegal activities and hence currently presents as a low risk for future offending.*[21]

56. Dr Palk also concluded that there was no evidence that Mr Pillay suffered from major clinical psychopathology. There was evidence of past major depression, anxiety and severe dependency on heroin.[22]

57. In his own statement the applicant said he was 'asking for another chance to fix myself and reside in this beautiful country and correct the wrongs I have done'.[23]

58. On 14 February 2020 a delegate revoked the visa cancellation, and the applicant was released into the community.[24]

59. The decision contained the following statements:

> *Warning: if you engage in further criminal or other serious conduct, this may again result in your visa being cancelled on character grounds.*
>
> *…*
>
> *"A stern warning should be issued to Mr Pillay on this occasion, that he must refrain from further offending and continue to rehabilitate, especially given his addiction to heroin. He should not expect to receive any further leniency."*

60. The remittal bundle contains a signed acknowledgement in the following terms:

> *I understand that if I engage in further criminal or other serious conduct, this may again result in any visa I hold being cancelled on character grounds, and in this case my past conduct and previous relevant information held by the Department can also be considered.*[25]

61. On his release the applicant lived with his mother and stepfather on the Gold Coast. He lived there for several months but friction developed with his stepfather. He decided then to move

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[21] Ibid, 253.
[22] Ibid, 250.
[23] Ibid, 276.
[24] Ibid, 101.
[25] Ibid, 103.

in with his new partner Siobhan and her four sons. At this point Siobhan's sons were spending one week with their father and one week with their mother. At some point, because of concerns about how their father was treating them, Siobhan and the applicant stopped giving the boy's father access.[26]

62. By October 2020 the applicant had returned to heroin use and the criminality needed to fund his habit. He developed a scam which he repeated numerous times. He would respond to requests on the internet platform Airtasker to perform repair work on various household items. When he attended to repair the item he would advise that the repair required an expensive part and that he needed cash to buy the necessary part. Once he had secured the cash he would never return to complete the job. On occasion he would receive deposits into the bank account of a friend if the client was unwilling or unable to supply him with cash.

63. His other scam involved obtaining Bunnings receipts left behind by other customers, collecting the listed items from the shelves and then attending the refunds desk seeking a refund.

64. In November 2021 Siobhan was evicted from their accommodation, and they needed to move out by 24 January 2022. The applicant and Siobhan moved in with a friend (who was also a drug user).[27] Siobhan's children stayed with their father. By this time Siobhan was pregnant with the applicant's daughter N.

65. The applicant was still seeing his daughter E using the Contact Centre to facilitate supervised visits. Those contact visits were stopped when Raeeza discovered the applicant was in a relationship with Siobhan.

66. Siobhan's boys were removed from their father's care for safety reasons by their grandparents.

67. On 29 April 2022 at 1 am police noticed a Kia Carnival being driven at speed in the suburb of Belmont in Brisbane. The police attempted to intercept the vehicle however it slowed and drove off the road into long grass. The applicant was the driver and exited the car. He was tracked down by the dog squad and found hiding on the roof of a house. He gave his brother's name,

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[26] Ibid, 1889.
[27] Ibid.

Damien Pillay, to police. Police confirmed that the applicant did not hold a driver's licence. He was remanded in custody from this point.[28]

68. At this point Siobhan had to move out of the house they were staying in and had no accommodation options. She ended up in hospital. The applicant's daughter N was born on 25 June 2022. Accommodation was found for her in a unit in Moorooka. She lived there with her two older boys while the younger boys lived with their grandparents.

69. The applicant was dealt with by the Cleveland Magistrates Court on 8 July 2022. Convictions were recorded in relation to 12 counts of dishonestly obtaining property from another, two counts of dishonestly gaining a benefit or advantage, six counts of breaching bail conditions and one count of failure to appear in accordance with an undertaking.

70. He was sentenced to 15 months in relation to the dishonesty offences and given a parole release date of 29 September 2022.[29]

71. His visa was cancelled on character grounds on 15 August 2022 while he was serving his sentence.[30] He sought revocation of that visa cancellation.[31]

72. The applicant was released to immigration detention on 29 September 2022.

73. On 20 April 2023 a delegate decided not to revoke the cancellation.[32]

74. The applicant sought review in the AAT.

75. By May 2023 support for the applicant among his family and friends was slowly reducing. His mother moved to Mackay to be closer to the applicant's sister. The applicant's mother reported that his ex-wife 'wants nothing to do with him'.[33] However, his mother implored the AAT to give the applicant his life back. The applicant also received support from his aunt, Nancy Chetty.

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[28] Ibid, 1046.
[29] Ibid, 40-41.
[30] Ibid, 105.
[31] Ibid, 61.
[32] Ibid, 16.
[33] Ibid, 424.

76. The applicant's partner Siobhan continued to maintain a close relationship with him while he was in prison and in immigration detention. She contacts him multiple times a day, visits him with his daughter N and remains supportive of him remaining in Australia. In October 2023 all of her children returned to her care. She currently lives in a five-bedroom house with all of her boys and N.

77. In the context of the first AAT hearing the applicant obtained a further report from Dr Palk dated 19 June 2023. He concluded:

> *In the writer's view Mr Pillay's prospects for remaining law abiding in the future have once again improved considerably since his re-imprisonment and immigration detention and subsequently learning to live without heroin. If Mr Pillay can remain free of heroin, he is highly likely to become hardworking again and refrain from illegal activities and hence currently presents as a low risk for future offending. If he returns to heroin use his risk of re-offending will be high…*
>
> *Mr Pillay is now aware that his addiction to heroin was more powerful than the threat of further imprisonment and the cancellation of his visa and deportation. He regrets his relapse and further offending and desperately want to ensure he does not relapse again*.[34]

78. The AAT affirmed the visa cancellation, but the decision was overturned by consent after an appeal to the Federal Court.

79. When the matter was heard on remittal by the AAT, the applicant relied upon evidence from his partner Siobhan, his aunts Lorna Reddy and Nancy Chetty, his mother, his brother and a friend and obtained a fresh report from psychologist Jacqui Yoxall. Each of those witnesses gave oral evidence at the hearing.

80. The applicant's aunt, Nancy Chetty gave evidence about the improvement she noticed in the applicant when she visited him in February 2024. She gave a statement about the difficulties that arose from the applicant's brother Damien being sent back to South Africa and the difficulties he has faced obtaining employment. She also indicated that she was willing to employ the applicant in her cleaning company if he were released into the community.

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[34] Ibid, 1898.

81. A fellow detainee confirmed that the applicant maintained a strong connection with his family while in detention - especially with his 'young daughter through frequent phone calls, video chats, and visits whenever possible.'[35]

82. The applicant's mother also gave a statement talking about her visit with the applicant on 1 February 2024 and commented on the profound changes she saw in the applicant during her visit.[36]

83. Other letters of support were provided.

84. The applicant's brother Damien also provided a statement. He described how difficult conditions were in South Africa after he was deported in July 2023. He gave evidence about the poor health care available and the absence of mental health support, the high crime rates, limited electricity and high unemployment. He also described the limited government support available for a person living outside the country and returning. At the date of that statement, he had only secured part-time work and was living in a boarding house. Both involved significant safety risks.[37]

85. Two of Siobhan's sons also wrote letters of support.

86. On 15 April 2024 the AAT decided to affirm the cancellation of the applicant's visa.

87. The applicant successfully appealed to the Federal Court. The matter was remitted to this Tribunal to be heard again.

88. In the period between the last AAT hearing and the hearing on remittal, there were two significant developments. On 3 November 2024 the applicant was the victim of a serious, unprovoked assault while in immigration detention. The assault resulted in facial fractures and surgery was required to insert metal plates to assist in healing. The applicant commenced proceedings against the Commonwealth for the recovery of damages. At present the parties

[35] Ibid, 2431.
[36] Ibid, 2426.
[37] Ibid, 2439-2440.

to those proceedings are in discussions concerning settlement. If the matter does not settle it is likely to go to hearing in the first half of 2027.

89. The other development is that the applicant was convicted of two further offences. The first arose from conduct on 25 March 2026. Siobhan and N were visiting the applicant. During the visit the applicant reached into the back pocket of N and removed an item. This was observed by detention centre staff. When questioned later by detention centre staff the applicant denied being in possession of contraband. A pat search did not detect any. However, when the Queensland Police arrived and undertook a strip search the applicant was found to be in possession of 10 Suboxone strips. Suboxone is an opioid substitute. The applicant's partner Siobhan uses the medication to control cravings. It is only available on prescription and can be abused – for example by injecting or snorting.[38] Convictions for possession of a dangerous drug have been recorded as a consequence of this incident.

90. The second incident occurred on 31 March 2026 when the applicant was again found in possession of Suboxone. A conviction was entered for possessing S4 or S8 medicines.[39]

91. The applicant denies that he obtained Suboxone to deal with opioid cravings. He gave evidence that he never injected any drug and obtained the drug to deal with pain arising from his assault. He says he needed to obtain the drug because he was not being given adequate pain relief by the doctors in the detention centre. I do not accept that evidence. There are no medical records which indicate that the applicant was seeking opioids for ongoing pain arising from his facial injuries from his treating doctors. Indeed, what evidence there is suggests that the pain was receding. On 16 April 2025 the applicant's physiotherapist reported that his pain was returning to normal.[40]

92. I am satisfied that the applicant obtained the Suboxone for his own use and his desire to use was not for the purposes of pain management.

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[38] Respondent's Tender Bundle, 1-11; Applicant's Tender Bundle, 41-46.

[39] Updated criminal check results report dated 5 August 2026.

[40] Applicant's Tender Bundle, 292.

93. Two further psychologists' reports were relied upon by the applicant. Neither report was prepared based on a history which included the applicant's most recent convictions. Neither psychologist was called to give evidence at the hearing.

94. The first report was dated 12 May 2025 from Greg Hutcheon. The history he received was that the applicant became clean in 2022 while in prison and has not used since this time and is not on the Buprenorphine program and denies any cravings. If that history was true at the time, I am satisfied that it is no longer true. Mr Hutcheon notes that the applicant is currently medicated on Escitalopram. He does not record what this is for. Greg Hutcheon recorded that the applicant was actively engaging in therapy.

95. The second report was from Dr Yoxall and is dated 5 June 2025. The report appears to be directed at issues relevant to the proceedings to recover damages in relation to the attack in immigration detention. Dr Yoxall diagnosed the applicant with complex posttraumatic stress disorder; major depressive disorder (recurrent); and substance use disorder (opioid dependence) in sustained remission. Dr Yoxall notes that these conditions pre-dated the assault on 3 November 2024. However, Dr Yoxall concludes that Mr Pillay now has an exacerbation of the cPTSD and chronic pain as a direct consequence of the assault on 3 November 2024. Dr Yoxall's opinion is that the assault has impaired his capacity to engage in or sustain employment particularly in physical labour/service roles such as cleaning.

96. Notwithstanding the evidence of Dr Yoxall I am satisfied that the applicant remains in good physical health. His work plans include working at his aunt's cleaning business on a full-time but flexible basis, which suggests that he has reasonable physical capacity. He presents as being in reasonable mental health, but I accept he has substance use disorder, and I disagree with Dr Yoxall that it is in remission. I accept he has cPTSD and major depressive disorder. These will impact on his ability to sustain employment.

97. The applicant has undertaken a very wide range of courses and treatments over an extended period to assist him to avoid problems associated with drug addiction, domestic violence, anger management and other issues. I have listed these at annexure A to this decision.

98. The courses on anger management and addressing family violence I am satisfied have been effective. The balance of the evidence satisfies me that the applicant has not overcome his substance abuse problems.

CONSIDERATION

Primary Considerations

Protection of the Australian Community

99. When examining this consideration, I am required to keep in mind that the safety of the Australian community is the highest priority of the Australian Government. To that end, the Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. 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.

100. Deciding not to revoke the applicant's visa cancellation will be protective of the Australian community. The applicant has only lived in Australia since 2008 and he has failed to abide by the law for extended periods since his arrival. In the roughly 12 years in which he was free in the community he has committed a long list of offences. He has been a user of illegal drugs since 2016 and committed many serious crimes between 2013 and 2022 including assaults and fraud. Removing the applicant from Australia is likely to keep Australians safe from the risks posed by his susceptibility to engage in criminal activity.

101. In addition to considering generally the protection of the Australian community, I need also to give specific consideration to:

(a) The nature and seriousness of the applicant's conduct to date; and

(b) The risk to the Australian community, should the applicant commit further offences or engage in other serious conduct.

Nature and seriousness of the conduct

102. In considering the nature and seriousness of the conduct there are factors to which I must have regard specified in paragraphs 8.1.1(1)(a)-(h). I apply these factors as follows.

103. In relation to paragraph (a) I am satisfied that some of the applicant's conduct falls into the 'very serious' category. Acts of family violence, regardless of whether there is a conviction for an offence or sentence imposed are viewed very seriously by the Australian Government and the Australian Community. I agree with the assessment that family violence should generally be treated as very serious, and that is the case in relation to the applicant given the particular family violence conduct in which he engaged.

104. I am satisfied and the applicant concedes that he has engaged in family violence on four occasions in relation to Ana and on two occasions with his ex-wife Raeeza. These occurred between 2012 and 2018. On four occasions physical assaults were perpetrated.

105. In relation to paragraph (b), the applicant has committed other crimes that should be regarded as serious. His stealing and dishonesty offences that landed him in prison in 2018 are all serious as evidenced by the custodial sentence imposed. The same can be said for the long list of fraud and dishonesty offences that led to his imprisonment in 2022.

106. Further, he has been charged with drug related crimes committed while in immigration detention. Even within a confined environment the applicant engages in serious criminal conduct.

107. In relation to paragraph (c), the fact that custodial sentences of more than 12 months were imposed establishes the objective seriousness of the fraud and dishonesty conduct which led to his incarceration on two occasions.

108. In relation to paragraph (d), there is limited information about the impact of the offending on any victims. It is clear that many victims of the applicant's crimes were deprived of property and cash. The applicant's family violence involved incidents and threats that would have made the victims fearful. It is unclear whether there were any ongoing effects from those incidents.

109. In relation to paragraph (e) the frequency of the applicant's fraud and dishonesty offending did steadily increase the longer he was in the community. His family violence offending ceased once his relationship with his wife ended. The offending related to failure to comply with lawful requirements and traffic offending remained consistent over many years once the applicant commenced heroin use.

110. The cumulative effect of the offending was that the applicant deprived many honest and trusting people of a considerable quantity of property over time. (paragraph (f)).

111. There is no evidence that the applicant provided false or misleading information to the Department (paragraph (g)).

112. The applicant has reoffended since being formally warned in the clearest possible terms of the consequences of further offending and its likely effect on his migration status (paragraph (h)).

113. No offences have been committed in another country (paragraph (i)).

The risk should the non-citizen commit further offences

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

115. In assessing the risk to the community, I have had regard to the factors identified in paragraph 8.1.2(2) of the Direction. I must have regard to the nature of the harm to individuals or the Australian community should the applicant engage in further criminal or other serious conduct and the likelihood of the non-citizen engaging in further criminal conduct, taking into account information and evidence on the applicant's risk of reoffending and evidence of rehabilitation achieved by the time of the decision, giving weight to time spent in the community since the most recent offence. My analysis is as follows.

<u>Nature of the harm from further criminal conduct</u>

116. The harm to others should the applicant engage in further conduct of a criminal or serious nature includes the theft of property, fraud, physical assaulting of an intimate partner, risks to the public from driving infringements and the waste of public resources in dealing with the applicant’s unwillingness to comply with lawful requirements.

<u>Likelihood of further criminal conduct</u>

117. I am satisfied that the risk of the applicant engaging in further criminal or serious conduct should be assessed as high.

118. All the psychologists who have considered the issues concerning the applicant's criminal behaviour note its link to his heroin use. The applicant has been unable to sustain any significant period in the community without heroin use. I am satisfied that if the applicant is released into the community again, he is very likely to succumb to heroin use. He has engaged in a plethora of courses during his periods in custody or detention. The applicant undertook the Transformations Drug Rehabilitation course on the Gold Coast three times without any durable success. These courses failed to give him the necessary tools to resist falling back into drug use reasonably soon after release. The applicant's recent convictions suggest that he has learnt no lessons at all about resisting criminal conduct and suggest that he may have an ongoing susceptibility to the use of opioids. If the applicant were released and started using again (as seems likely), he simply does not have the financial means to sustain his habit without resorting to crime. In those circumstances the likelihood of further criminal conduct is high. To the extent that the psychologists suggest a lower risk, their assessments are not up to date or are based on an incomplete picture of the applicant's offending.

119. The applicant claims that if he is released into the community he will have a protective framework that lowers his risk of offending which includes family support, ongoing treatment, medical review, counselling, employment and parenting responsibilities. I accept that these elements working in combination do reduce the risk of re-offending, but not significantly. The applicant had every incentive to avoid opioids when he was released into the community on the last occasion but was unable to do it. Treatment for his addiction has been tried in the past. The applicant has had parental responsibilities and a close and supportive family but these have not proven to be adequate protective factors.

120. In relation to the applicant's family violence offending, my assessment is that the likelihood of re-offending is low. Since the applicant has been in a relationship with Siobhan there has been no repeat of the aggressive arguments that characterised his relationship with Ana and Raeeza. It would appear that the applicant has matured and poses much less of a threat to his intimate partner than was previously the case.

121. In light of the applicant's prior history of family violence, long history of drug use and the crime associated with that use, and the high likelihood applicant will relapse into heroin use if released into the community, this consideration weighs heavily in favour of non-revocation.

Family violence committed by the non-citizen

122. I am satisfied that there is evidence from an independent and authoritative source which indicates that the applicant has been involved in the perpetration of family violence in relation to both Ana and Raeeza. Family violence occurred on six occasions and what I am satisfied occurred is set out at paragraphs [34] to [47] of these reasons. The applicant concedes, and I am satisfied that the conduct amounted to family violence.

123. In considering the seriousness of the family violence I must have regard to the factors enumerated in paragraphs (a) to (d) in 8.2(3).

124. In relation to paragraph (a) I am satisfied that there were six incidents of family violence which occurred between 2012 and 2018. There were two different victims of that violence. It is difficult to judge the cumulative effect on the victims. Both remained in some form of relationship with him despite the conduct, although both were clearly wary of him and have ultimately decided to have nothing to do with him. However, that may be for different reasons.

125. In relation to assessing rehabilitation achieved since the person's last act of family violence, I am satisfied, as required by (c)(i) that the applicant accepts responsibility for his family violence conduct. He was not directly questioned about it at the hearing before me, but through his representative he conceded that the incidents identified by the respondent were incidents of family violence and that they counted against him.

126. In relation to paragraph (c)(ii) I am prepared to accept that the applicant now understands the impact of his behaviour on his victims. He undertook courses in prison that were directed at reducing his anger and improving his behaviour. Parts of those courses involved considering victim impact. Since doing those courses and his release into the community, his behaviour towards his intimate partner has been satisfactory.

127. In relation to paragraph (d), the applicant has not committed family violence since he was released into the community in 2020.

128. Given the seriousness of the incidents of family violence and the number that occurred, this consideration weighs heavily against the applicant notwithstanding that the risk of similar behaviour is low.

Strength, Nature and Duration of Ties to Australia

129. I am obliged to consider any impact of the decision on the non-citizen's immediate family members in Australia, where those family members are Australian citizens, Australian permanent residents, or people who have a right to remain in Australia indefinitely.

130. I must also consider other ties to the Australian community. In doing so I must have regard to how long the applicant has resided in Australia, including whether he arrived as a young child, noting that less weight should be given where the non-citizen began offending soon after arriving in Australia and more weight should be given to time spent contributing positively to the Australian community.

131. The applicant did not come to Australia until 2008 when he was 22. His offending began in 2012. He does not get beneficial consideration resulting from arriving as a young child. Further, even though he has been in Australia for 18 years, his behaviour of concern began after less than four years in Australia.

132. Having said that, there is no doubt that the applicant has long and strong family ties with Australia and the decision will have a profound impact on his extensive family in Australia. The applicant will also feel the significant loss of these connections if he is deported.

133. The applicant's mother and stepfather live in Australia, as does his half-sister. He has four aunts and three uncles here. His current partner is Australian.

134. The applicant has two daughters in Australia. One who he is in daily contact with over the internet and he receives regular in-person visits from her. The immediate impact on her will be significant. The other, he has no contact with as a result of the difficult relationship he has with his ex-wife. I accept that in the long term, the loss of the possibility of physical contact with a parent is significant.

135. The applicant also has a close connection with his partner Siobhan and her four otherchildren. The applicant submits that the most important aspect of this consideration is the impact Siobhan will suffer, emotionally, practically and financially, if the applicant is deported. I accept that removal of the applicant from the country will be very difficult for Siobhan. She will lose the close emotional support and intimacy that the applicant can only provide if he is in Australia. She will also lose the practical assistance that he might be able to provide in the home (although I note his current plan is not to live with Siobhan) and she will lose the possibility of any financial assistance coming from the applicant. These are significant impacts.

136. His half-sister has two children and he has had some contact with them over the course of their lives. He has eight cousins and has had some contact with their children. It is clear that when the applicant was free in the community, he was a regular participant in his broader family's activities. That connection has however inevitably suffered as a consequence of his extended period of incarceration and detention. He has not been free in the community since April 2022.

137. The applicant also had a good employment history between his arrival in Australia and prior to commencing heroin use. Until 2016 he was a reasonably productive member of society.

138. His work history essentially ended when he became seriously addicted to heroin.[41] His working life after that appears to consist mostly of soliciting jobs on Airtasker and defrauding the customers who used his services.

139. The applicant's relationship with his ex-wife is essentially non-existent despite his mother's best efforts to maintain a bond.

140. It is however fair to say that all the people who are important to the applicant and care about his welfare, with the exception of his brother, are all located in Australia. Removing the applicant from Australia would strain or sever all the important long-term intimate and familial relationships he has had in his life.

141. This consideration weighs very strongly in favour of revoking the visa cancellation.

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[41] Applicant's Tender Bundle, 104.Fairt

Best interests of minor children in Australia

142. If I am satisfied that a child is affected by the decision, Direction 110 requires me to make a determination about whether a non-revocation decision is or is not in the best interests of that child. The best interests of each child must be given individual consideration to the extent that their interests may differ. There is a list of relevant facts in paragraph 8.4(a)-(h).

143. There are numerous minor children whose interests the applicant contends are affected by the decision to cancel his visa.

The applicant's daughter N

144. The applicant is the biological father of N. He has never lived with N as he was incarcerated just prior to her birth. He does however maintain an ongoing relationship with N's mother and he is in daily contact with N over the internet. N visits him regularly with her mother. N is now four and knows that the applicant is her father.

145. In relation to factor (a) I am satisfied that the relationship is parental. There has been a long period of absence at a critical point in N's life, but I am satisfied that that has been made up for by meaningful contact facilitated by N's mother.

146. I am uncertain whether the applicant will play a positive parental role in the future in N's life if he is released into the community (factor (b)). It is very troubling that the applicant and Siobhan were willing to use N to facilitate the exchange of contraband at the immigration detention centre by placing prohibited items in her pocket for collection. I am also concerned about how the applicant behaves when he is in the grip of his heroin addiction. There appears to be a significant likelihood that he will return to heroin use if released into the community. If that happens there is a significant likelihood that he will return to criminality and may be incarcerated again. Even if he is not incarcerated the applicant conceded in earlier Tribunal proceedings that he has been drug affected around children. This suggests that the applicant may struggle to play a positive role in N's life.

147. In relation to factor (c), I do consider it likely that the applicant will resume heroin use and his conduct in relation to N will be affected by that. Given that he has already been willing to use

his daughter to facilitate access to drugs, it is realistic to think that there will be conduct in the future from the applicant that will have a negative impact on N.

148. In relation to factor (d), it is unclear what the effect of separation will be on N. To this point she has never lived with the applicant and most of the contact that she has with him is over the internet. I do accept that permanently depriving N of the opportunity to have physical contact with her father is a very significant effect of any deportation and that needs to be considered carefully when considering N's best interests. However, the applicant's daily absence has been a permanent reality for N since birth and so the effect of separation is likely to be less than it would be in other circumstances.

149. In relation to factor (e), it is the case that Siobhan has already fulfilled the parental role to date and will continue to do so if the applicant is deported.

150. In relation to factor (f), what is known about N's attitude is that she is hopeful that the applicant will come home at some point. It is however unclear whether releasing the applicant into the community will bring about that result. Siobhan was of the view that the applicant would come and live with her and her children once released, however the applicant's evidence was that he planned to live with his aunty. Even though N has expressed a desire to live with her father, given her age and the uncertainty of the situation I do not put significant weight on that fact.

151. In relation to factor (g), I am not satisfied that there is any risk of N being exposed to family violence from the applicant. His relationship with Siobhan has not involved any family violence. There is no evidence of the applicant abusing or neglecting N.

152. In relation to factor (h) there is no evidence that N has suffered or experienced any physical or emotional trauma arising from the applicant's conduct.

153. Direction 110 requires me to determine whether non-revocation is either in, or not in, N's best interests. The weight of the evidence favours the view that it is in N's best interests if the applicant's visa remains cancelled. The applicant has difficulty abstaining from the use of illegal opioids. When his addiction is dominating his behaviour the interests of others give way to the demands of the addiction. This has been evident in his treatment of his ex-wife when they were still in a relationship and the fraudulent scams he pursued to fund his drug habit. His recent

use of N to facilitate access to drugs indicates that his addiction means he is willing to use N to facilitate his access to drugs, regardless of what is in her best interests.[42]

154. While the loss of physical contact with a parent is a dramatic thing to deprive a child of, sparing the child exposure to the chaotic and self-interested life of a person likely to succumb to drug addiction is relevant to determining what decision is in her best interests.

155. I am satisfied that non-revocation of the cancellation is in N's best interests.

The applicant's daughter E

156. The applicant has not had contact with E since her mother found out about the applicant's relationship with Siobhan. This appears to have been at some point in 2021. Before the applicant could re-establish regular contact with E in the future, he would need to obtain court orders requiring his ex-wife to comply with an access order. It is unclear whether the applicant will have the capacity to seek and obtain such orders if released back into the community.

157. In relation to factor (a), the applicant is E's parent and this is an important and relevant factor. However, he lived with her only for a brief period of around six months after she was born and before his relationship with E's mother deteriorated. The applicant has not lived with E since 2018. Subsequently, there have been long periods of absence and eventually a long period of no contact at all. The applicant was absent during his incarceration from December 2018 until his release from immigration detention in February 2020. By 2022 the applicant's relationship with E's mum had broken down to the point where there was no contact at all. There is now no meaningful relationship and only a remote prospect of a meaningful relationship being resumed.

158. In relation to factor (b), it appears unlikely that the applicant will play a positive parental role in the future. Even leaving aside his propensity to addiction, E's mother to this point has cut off contact and it is difficult to see a feasible path by which the applicant can re-establish contact and credibly and responsibly fulfil his role as E's father.

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[42] The applicant (and Siobhan) gave evidence that there will not be a repeat of such incidents. In circumstances where a longstanding opioid addiction at the heart of the issue, I am not persuaded that such assurances can be reliably accepted.

159. In relation to factor (c), there is no evidence about the applicant's behaviour having an impact on E. However, he has behaved abusively towards E's mother when E was an infant. That behaviour occurred in E's presence. It is unlikely that the conduct will be repeated, but only because E's mother is not prepared to deal with the applicant in person. For that reason only, I am not satisfied that there will be a negative impact on E from the applicant's conduct.

160. In relation to factor (d), I am not satisfied that there will be any effect on E resulting from separation from the applicant. She has not lived with the applicant since 2018 and all contact has been severed since 2022. If the applicant is deported E will not be conscious of any material change to her interactions with her father.

161. In relation to factor (e), E's mother fulfils the parental role.

162. In relation to factor (f), there is no evidence about E's wishes in relation to her father that I regard as sufficiently current to reflect her views.

163. In relation to factor (g), I am satisfied that E was exposed to family violence perpetrated by the applicant on 11 February 2018. She has not otherwise been abused or neglected by the applicant.

164. In relation to factor (h), there is no evidence that E has suffered or experienced any physical or emotional trauma arising from the applicant's conduct.

165. Direction 110 requires me to determine whether non-revocation is either in, or not in, E's best interests. The weight of the evidence favours the view that non-revocation of the cancellation is in E's best interests. Non-cancellation leaves open the possibility of a relationship being established over the internet but rules out the possibility of destabilising court action and other interactions with the E's mother. E's mother has a fraught and volatile relationship with the applicant. Re-introducing the applicant to E's life via the mechanism of court proceedings (which is the only viable mechanism for a face-to-face relationship to be pursued by the applicant at this point) is not in E's interests. It is not in E's interests that this destabilising possibility be made available by the revocation of the visa cancellation. If E wishes to re-establish and develop a relationship with the applicant when she is older, that can be done over the internet. I accept that it is a rare case where it is in a child's interest to eliminate the possibility of a child having physical contact with their father, but in this case, where any hope

of direct contact is likely to be contingent upon the applicant initiating court proceedings against E's mother, I am not satisfied it is in E's interests for that to occur.

The applicant's stepsons

166. The applicant's current partner has four sons. Only three are still minors. The applicant for a period took on some kind of parental role in relation to those boys. He appears to have lived with them between 2020 and 2021. In that period there was a shared custody arrangement with the boys' father so the applicant was living with them every second week. However, that arrangement ended when Siobhan was evicted from the premises in January 2022. The applicant then lived separately with his partner while the boys lived with their biological father and then their grandparents. The applicant still takes an interest in the boys and early on in his period of incarceration, the boys expressed a desire to see him. The more recent evidence is that the boys have some communications with the applicant during video calls, but he concedes it is hard to get them to come to the phone.

167. As the relationship is similar with each of the boys I will consider the relevant factors on the basis that the differences in the analysis as between each boy are not material .

168. In relation to factor (a), the relationship with the boys commenced in 2020. The relationship is best described as a stepparent. The applicant was in a relationship with the boys' mother and he has lived in the same house as the boys for a period from late 2020. He has not lived with any of the boys since his incarceration in mid-2022. There have been long periods of absence.

169. In relation to factor (b) it is possible that the applicant will play a positive role in relation to the boys if he is released into the community. It is however difficult to tell whether he will be moving in with Siobhan and the boys or whether he will be living with his aunt in Brisbane, about 15 minutes away from Siobhan. There was conflicting evidence on that question. It appears more likely that the applicant will not immediately live with Siobhan or the boys. Even if he were to, there is a good chance that the applicant will not play a positive parental role in relation to the boys. His heroin addiction has made him an unreliable parent in the past and may do so again.

170. In relation to factor (c), it is possible that the applicant's conduct will have a negative impact on the boys. He has not consumed heroin in front of the children in the past, but he has

interacted with them when affected by heroin.[43] If this conduct is repeated it could have a negative impact on the boys either by normalising drug use or as a consequence of inattentive adult supervision.

171. In relation to factor (d) there is evidence that indicates that the applicant did perform important parental tasks for the boys including taking them to sporting fixtures.[44] There are also notes from the boys early in the applicant's incarceration indicating that they wanted him to return home. However, the more recent evidence suggests that the boys have become used to the separation. The boys currently maintain contact through video calls and very occasional visits. Video calls would be a communication available if the applicant is returned to South Africa.

172. In relation to factor (e), Siobhan already plays a parental role in relation to the children. In emergencies that role is played by their grandparents and sometimes their biological father.

173. In relation to factor (f), the boys expressed the view early in the applicant's incarceration that they would like him to return to their lives. That evidence has only been updated for this hearing through their mother

174. In relation to factor (g) there is no evidence that the boys are at risk of being exposed to family violence. There is insufficient evidence to conclude that the boys have been abused or neglected. There is evidence that the applicant has taken care of the children while under the influence of heroin,[45] and there have been periods where the applicant has ended up living with other drug users while other responsible adults have had to take care of the children. This is evidence that the applicant is irresponsible and unreliable but does not provide a basis for concluding that the children have been neglected.

175. In relation to factor (h), there is no evidence that the boys suffered any trauma arising from the applicant's conduct.

176. Direction 110 requires me to determine whether non-revocation is either in, or not in, the boys' best interests. The weight of the evidence favours the view that non-revocation of the

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[43] Ibid, 2068.
[44] Ibid, 2419.
[45] Ibid, 2068.

cancellation is in the boys' best interests. In my assessment it would not be in the best interest of Siobhan's three minor sons for the applicant's visa cancellation to be revoked. It is the case that when he is not using drugs he could well be a helpful figure in the home and a financial contributor to their upbringing. However, if the applicant returns to using heroin, neither of those things would be true. To the contrary, he would be a bad influence and potentially a drain on the household's resources. Given the significant risk that the applicant may return to heroin use, I am satisfied that it is not in the boys' best interests for the applicant's visa cancellation to be revoked given the level of involvement in the boys' life that Siobhan anticipates he will have.

Nieces

177. The applicant has identified his sisters children as potentially children affected by the decision. His half-sister has two children, aged 5 and 2 and he has some contact with them when he is in contact with his sister and he has, in the past, had contact with them at family events. I am not satisfied that the relationship is sufficiently close for the conclusion to be reached that these children are 'affected by the decision' to revoke the applicant's visa cancellation.

Other Children

178. The applicant has identified other children whose interests may be affected if he is deported.

179. Those children are MGV (a cousin's daughter), ZJV (a cousin's daughter), JAV (a cousin's son), ARN (a cousin's daughter), AMN (a cousin's daughter), JN (a cousin's son), and TIC (a cousin's son). There may be other children but the applicant was unable to particularise all of the children in this category.

180. As these children all appear to have a similar relationship with the applicant I will consider their interests as a group. For the factors in paragraph 8.4(4) of the Direction to be relevant I must be satisfied that the children's interests are affected by the decision on the applicant's visa. The evidence of any effect is difficult to identify. The applicant's representative in closing submissions conceded that it was not open to give weight to the interests of the cousins identified. In the absence of any convincing evidence of an effect on the identified children, I am not satisfied that the children are affected by the decision therefore I am not required to determine whether the revoking the visa cancellation would be in their interests.

Conclusion

181. Having regard to my conclusions about where the best interests of affected children lie in this matter, this consideration does not weigh in favour of revocation of the visa cancellation.

Expectations of the Australian Community

182. As the Direction makes clear, the Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, the Australian community, as a norm, expects the Government not to allow such a non-citizen to remain in Australia. As a person with a long criminal history who has engaged in family violence, the applicant has not met that expectation.

183. The Direction goes on to say that visa non-revocation may be appropriate simply because the nature of the character concerns are such that the Australian community would expect that the person should not continue to hold a visa. Acts of family violence are identified as raising concerns of that kind.

184. These expectations apply regardless of whether the non-citizen poses a measurable risk of causing harm to the Australian community.

185. This consideration weighs in favour of non-revocation of the visa cancellation. In light of his acts of family violence and general disregard for Australian law over an extended period, the expectation of the community is that the applicant would not be allowed to stay in Australia.

OTHER CONSIDERATIONS

Legal consequences of the decision

186. The legal consequences of a non-revocation decision are that the applicant will remain in immigration detention and will be removed to South Africa as soon as is practicable. Once returned to his home country the applicant will be prohibited from applying for another visa or subject to periods of exclusion and special return criteria under the Migration Act (see ss189, 196, 197C, 198, 501E and 501F). The consequence will be that the applicant is likely to face

difficulties if he ever wants to return to Australia and may be permanently excluded from Australia.

187. I acknowledge and accept that these consequences flow from any decision not to revoke the visa cancellation. They are legal consequences that will have an emotional impact on the applicant. In particular the separation from his youngest daughter will be very painful. There is also some potential for the applicant's claim against the Commonwealth (discussed later in these reasons) to be interfered with if the applicant cannot return.

188. There is no reason to think that any non-refoulement obligations are engaged in this case.

189. I give this some weight in favour of revocation of the cancelation on the basis that as a result of the legal consequence of this decision the applicant will experience a permanent physical separation from his daughter. Further there is a risk that the applicant's exclusion from Australia will have a negative impact on his ability to successfully pursue the proceedings currently on foot against the Commonwealth.

Extent of Impediments if Removed

190. I am also obliged to consider the extent of any impediments that the applicant may face if removed to South Africa, in establishing himself and maintaining basic living standards (in the context of what is generally available to other citizens of South Africa), taking into account:

(a) The non-citizen's age and health;

(b) Whether there are substantial language or cultural barriers; and

(c) Any social, medical and/or economic support available to them in that country.

191. The applicant is a citizen of South Africa. All of his close relatives have moved to Australia. His brother was deported in July 2023 and now lives in South Africa. The applicant is 40 years of age. He has no serious physical medical conditions and appears well. Despite Dr Yoxall's views about the impact of the applicant's current mental health conditions on his physical capacity, I am satisfied that the applicant himself remains confident of his ability to perform physically. He described to the Tribunal ongoing pain from an assault he suffered while in immigration detention although the objective evidence for that is limited. His mental health is

variable, and in 2024 he was diagnosed with complex posttraumatic stress disorder arising from childhood trauma, as well as substance use disorder and depression. The applicant suffered a recent exacerbation of his cPTSD following an assault in immigration detention.

192. He was raised in South Africa and so I am satisfied that there are no substantial language or cultural barriers.

193. I am satisfied that the applicant will face very significant hardship if returned to South Africa. His criminal record will make it difficult to get work. There is also a significant risk that he will return to drugs in circumstances where South Africa has a very poor public health system and poor rehabilitation services. Drug use in South Africa attracts risks of certain diseases that are not present in Australia.

194. His brother provided a statement that was taken into evidence for the purposes of the second hearing of this matter. It sets out the circumstances that he has found himself in in the following terms:

> *Everything is really bad here. We don't have electricity for many hours everyday. It's called load shedding here. Violent crime is out of control, i was recently in the middle of an armed robbery that happened at a retail store i was shopping in at the time thankfully i was not harmed. I miss my family a lot. There's no mental health support here, and it literally takes days standing in lines to be seen by a doctor at any of the government hospitals. Unemployment is very high here, it's almost impossible to get a decent paying job. There is no government support as i have been living in another country and paying taxes, I have to work and pay taxes for 12 months before i am entitled to any government assistance, however once that occurs i will be entitled to R400 a month, a loaf of bread and 2L of milk at the corner store is R37. I spent a few months homeless and on the streets, currently I am living in a boarding house which is not stable or safe because there are different people all the time and it is in a dangerous area. I pay R2500 a month not including water, electricity and food, I only afford to pay half the other half my mum helps me with from Australia, she is very sick and will not be able to help me for much longer.*[46]

195. Clearly there are difficulties in establishing basic living standards.

196. However, given the applicant's reasonably good physical health, relatively young age and familiarity with South Africa, despite the identified difficulties, I am satisfied that the applicant

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[46] Ibid, 2439.

will be able to maintain very basic living standards there, though I do not doubt he will face significant hardship.

197. This consideration weighs very strongly in favour of revocation of the visa cancellation.

Impact on Australian business interests

198. The applicant's aunt gave evidence about wanting to employ the applicant in her cleaning business so that she can free up time to pursue other interests she has. The applicant is essential to this process because he has a work history with his aunt and she feels she can trust him. She could not have the same level of trust for another person who she did not know as well. This is an impact on an Australian business interest. It weighs slightly in favour of revoking the visa cancellation.

Other considerations

199. The applicant was injured after an assault in immigration detention in Brisbane. He suffered multiple facial fractures and required surgery. He has commenced negligence proceedings in the Federal Court against the Commonwealth and these proceedings have not been completed. I accept that if the applicant is deported there is a risk that the conduct of the proceedings will be interfered with. If the applicant's circumstances deteriorate on his return to South Africa, he may not be in a position to give instructions and may not be able to give evidence even if it is assumed that the Federal Court will allow evidence to be taken by video.

200. This consideration weighs in favour of revoking the visa cancellation.

CONCLUSION

201. I have decided not to revoke the cancellation decision. I am satisfied that the protection of the Australian community weighs heavily against allowing the applicant to remain in Australia. He remains a high risk of reoffending if released into the community and given the range and seriousness of the offending I am satisfied that he should not be allowed to stay. The applicant's conduct includes family violence and that weighs against revoking the cancellation, as do the expectations of the Australian community. As the applicant has succumbed on many occasions to opioid addiction which has had a very adverse effect on his behaviour, I am not

satisfied that it is in the interests of any of the minor children affected by the decision that he be allowed to remain in Australia. My conclusion on the best interests of the various children is very finely balanced. Even if I had reached a more favourable conclusion in relation to the best interests of the relevant children, it would not have made a difference to the outcome.

202. The applicant's ties to the Australian community are very strong and close and that consideration weighs in favour of revoking the visa cancellation. I am also satisfied that he will face considerable difficulties maintaining even basic living standards when returned to South Africa. Despite these and other considerations weighing in favour of revocation they are not sufficient to persuade me that there is another reason to revoke the visa cancellation.

203. The decision under review is affirmed.

Date of hearing:	17 and 18 August 2026
Applicant's Counsel:	Associate Professor J Donnely
Respondent's Solicitor:	Sparke Helmore

Annexure A: Applicant's courses and rehabilitation

Courses

- AOD Essentials – Models of substance use on 10 May 2026
- AOD Essentials – Substance use and the law in Queensland on 12 May 2026
- AOD Essentials – Substance use: Foundational concepts on 10 May 2026
- AOD Essentials – Rates and trends of substance use on 20 May 2026
- AOD Essentials – Person-centred care on 20 May 2926
- AOD Essentials – Working with diverse populations on 17 May 2026
- AOD Essentials – Challenging stigma on 17 May 2026
- Emerging Minds – Understanding childhood bullying and mental health on 12 February 2024
- Emerging Minds – The impact of family and domestic violence on the child on 5 February 2024
- Emerging Minds – Family and domestic violence and child-aware practice on 10 February 2024
- Positive Parenting Program on 26 February 2024
- Pursuing Happiness; Successful Strategies on 29 February 2024
- Lives Lived Well Beenleigh group program in June 2023
- Basic Parenting on 13 February 2023
- Understanding Addictions on 20 February 2023
- Anger Management 101 on 26 March 2023
- Stress Management on 3 April 2023
- Depression Management on 15 April 2023
- Drug and Alcohol Abuse 101 on 18 April 2023
- Healthy Relationships
- Fundamentals of Domestic Violence and Abuse;
- Opioid Crisis;
- Criminology basics
- Understand mental health and wellbeing in learning communities (1 hr);
- Connect through strong relationships (1 hr);
- Include by embracing diversity within the community (1 hr);

- Partner with families through purposeful and positive relationship (1 hr);
- Assist families to support and promote mental health and wellbeing (1 hr);
- Affirm the importance of social and emotional learning and resilience (1 hr);
- Embed evidence-based social and emotional learning strategies (1 hr);
- Empower children and young people to look after their mental health and
- wellbeing (1 hr);
- Notice the early signs of mental health issues (1 hr);
- Inquire sensitively about the child or young person's circumstances (1 hr);
- Provide support within and beyond the early childhood service or school (1 hr);
- Recognise the potential impact of critical incidents (1 hr);
- Respond collaboratively to critical incidents (1.5 hrs);
- Natural disasters and other community trauma support those affected by community trauma (1.5 hrs);
- Leading through natural disasters and other community trauma (2 hrs); and
- Therapeutic storytelling (2.5 hrs);

Other rehabilitation

- attending the Transformations Drug Rehabilitation Centre on the Gold Coast on three occasions prior to his imprisonment;
- counselling with psychologist Mr Fredi Bashour to address criminogenic needs and manage symptoms;
- counselling with psychologist Dr Josh Kelly;
- participating in the Smart Recovery Program meetings. Smart Recovery program meetings offer a supportive environment to achieve behaviour change goals around any behaviours of concern, including alcohol and illicit drugs;
- a 6-week course. "The Relapse Process" through Lives Lived Well;
- a number of appointments with SANE. SANE is a program for people with recurring, persistent or complex mental health issues and trauma, and for their families, friends and communities;
- between 15 and 20 sessions with psychologist Greg Hutchins.