IN THE ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL DIVISION
SYDNEY REGISTRY

Tribunal Ref: 2019/2019

BETWEEN:

JUDITH BURRELL
Applicant

AND:

MINISTER FOR HOME AFFAIRS
Respondent

INDEX TO ‘G’ DOCUMENTS

<table>
<thead>
<tr>
<th>Ref</th>
<th>Description</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>G1</td>
<td>AAT Application for Review</td>
<td>1-Jul-19</td>
<td>1-8</td>
</tr>
<tr>
<td>G2</td>
<td>Reviewable Decision</td>
<td>23-Jun-19</td>
<td>9-79</td>
</tr>
<tr>
<td>G3</td>
<td>RESTAART Certificate</td>
<td>3-Mar-19</td>
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## SECTION 1 APPLICANT (INDIVIDUAL)

### Personal details *

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other:</th>
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<table>
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<tr>
<th>Family name:</th>
<th>Burrell</th>
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<table>
<thead>
<tr>
<th>Given name(s):</th>
<th>Judith</th>
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<table>
<thead>
<tr>
<th>Female</th>
<th>Male</th>
<th>Unspecified</th>
<th>Date of birth</th>
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<td>22 / 7 / 1983</td>
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Are you of Aboriginal or Torres Strait Islander origin?

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<tr>
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### Street address *

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<th>Ashfield</th>
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<tr>
<td>NSW</td>
<td>2131</td>
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### Postal address *

As above’ if also your street address

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### Email

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<th>Mobile:</th>
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<td>XXXX XXXX</td>
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### Preferred method for receiving correspondence

Please select one *

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### Representative

If someone will represent you, please fill in these details

Name:

Organisation:

Postal address:

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<th>State:</th>
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### Email

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### Interpreter *

Do you need an interpreter?

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<th>Yes</th>
<th>No</th>
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If yes, for which language or dialect?

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Turn to page 2 ➔
SECTION 2 DECISION

Date you received the decision you want reviewed *

23 / 6 / 2019

Are you sending us a copy of this decision? *

Yes [x] Go to section 3 – attach a copy of the decision
No [ ] Complete all of section 2, then go to section 3

Briefly describe the decision

my visa was cancelled

Who made the decision?
Name and address of organisation

Name:
Address:

State: Postcode:

Date the decision was made

dd / mm / yyyy

Decision reference

SECTION 3 REASONS FOR THE APPLICATION

Why do you claim the decision is wrong? *

Please read the ‘Reasons you are making an application’ section in the Guide to applying for review before answering this question.

I think the decision that has been made is wrong and would like to seek further review.
### SECTION 4  TAX DECISIONS ONLY

Please answer both of these questions if you are applying to us for review of a tax decision.

Please refer to the 'Tax Decisions' and 'Application Fees' sections in the *Guide to applying for review* for more information before answering these questions.

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>1. Does the decision relate to a small business entity?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Is the amount of tax in dispute less than $5,000?</td>
<td></td>
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If yes, please state the amount of tax in dispute:

$ 

### SIGNATURE

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
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<tbody>
<tr>
<td>Judith Burrell</td>
<td>1 / 7 / 2019</td>
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</table>

* Mandatory field/question
GUIDE TO APPLYING FOR REVIEW

The Administrative Appeals Tribunal (AAT) can review a wide range of decisions made under Commonwealth laws by the Australian Government and some non-government bodies. We also review decisions made under Norfolk Island laws.

You should use this guide if you want to apply for a review of a decision in the AAT’s General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division, Small Business Taxation Division, Taxation & Commercial Division or Veterans’ Appeals Division.

The five parts of this guide will:

- help you choose which application form to use (Part 1)
- help you complete the application form (Part 2)
- help you work out if you must pay an application fee and, if so, how much (Part 3)
- give you some other information about applying to the AAT (Part 4) and
- show you where to send your form and how to contact the AAT (Part 5).

If you want to apply for a review of a decision in the AAT’s Migration & Refugee Division or Social Services & Child Support Division, go to www.aat.gov.au and follow the links on the website.

PART 1: CHOOSING WHICH APPLICATION FORM TO USE

The AAT has three application forms to apply for a review of a decision in the AAT’s General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Security Division, Small Business Taxation Division, Taxation & Commercial Division or Veterans’ Appeals Division.

Application for Review of Decision (Individual)
Use this form if you are an individual, unless you want to apply for a second review of a decision of the AAT’s Social Services & Child Support Division.

Application for Review of Decision (Organisation)
Use that form if you are an organisation.

Application for Second Review of Decision
Use that form if you want to apply for a second review of a decision made by the AAT’s Social Services & Child Support Division:

- about a Centrelink decision (except an employer-related paid parental leave decision)
- to refuse an extension of time to apply for a child support review
- about a person’s percentage of care for a child in a child support review.

For information about completing this form, see Part 2 of this guide.

PART 2: COMPLETING THE APPLICATION FORM

Read this guide and the form carefully. If you need more space to answer a question, continue your answer on another sheet of paper and attach it to the form.

If you need help filling out the form or if you need more information, ask us. When you have completed the form, you can bring it to the AAT in person or send it to us by post, email or fax. Our contact details are at the end of this guide.
APPLICANT

CONTACT DETAILS
The form asks you to give us your address, phone numbers, and any email addresses or fax numbers. Please tell us your preferred method for receiving written information from us by ticking the box. If you have given us an email address and you do not tick a box, we will email the documents to you.

REPRESENTATIVE
You can represent yourself at the AAT or any person you choose can represent you. If you tell us that you have a representative, we will send the letters and other documents about your case to your representative instead of sending them to you.

INTERPRETER
If you need an interpreter, we will arrange for a qualified interpreter to assist you free of charge. If you speak a particular dialect, please include this in the form.

DISABILITY
If you have a disability or special need and would like some assistance, we will try to make appropriate arrangements for you. Our offices (known as registries) have portable hearing loops and are wheelchair accessible.

DECISION

DATE YOU RECEIVED THE DECISION
We ask you to tell us on the form when you received the decision. We need this information so we can check if your application has been lodged within the time limit.

The time limit for lodging an application for a review of a decision is usually 28 days after you receive the decision. For some types of decisions, the time limit is longer and for others it is shorter. The time limit is usually stated in the information given to you by the decision-maker about your review rights.

If the time limit has expired, you can apply for an extension of time to make your application. We can extend most, but not all, time limits. You can use the Application for an Extension of Time for Making an Application for Review of Decision form which is on our website.

SEND US A COPY OF THE DECISION
If you can, send us a copy of the decision you want us to review. If you cannot, describe the decision briefly, for example: ‘The Tax Office decided that I have to pay a tax debt’.

WHO MADE THE DECISION
If you are not sending us a copy of the decision, you need to tell us the name and address of the department or organisation that made the decision.

DATE THE DECISION WAS MADE AND DECISION REFERENCE
If you are not sending us a copy of the decision, please tell us on the form when the decision was made and to give us a decision reference number. You will usually find a reference number on a covering letter or in the decision itself. Giving us these details helps us to identify the decision quickly.

REASONS YOU ARE MAKING AN APPLICATION
You must tell us briefly why you want to have the decision reviewed. For example, you may think the decision is wrong and a different decision should be made, or the information you provided was not taken into account, or the law was not applied correctly. We cannot start the review if you do not answer this question.
TAX DECISIONS

If you are applying for review of a tax decision, we need additional information to decide how the AAT will handle your application and the application fee you must pay.

If the tax decision relates to a small business entity, we will handle the review in our Small Business Taxation Division. In general, you are a small business entity if you were carrying on a business and your aggregated turnover was less than $10 million. In most cases, the letter from the Australian Taxation Office (ATO) telling you about its decision will state whether or not they consider you are a small business entity. For more information, please read the AAT’s Guide to the Small Business Taxation Division which can be found on our website.

If the decision does not relate to a small business entity, we will handle your review in our Taxation & Commercial Division.

The application fee you must pay depends on:
- the type of tax decision you want us to review, and
- the amount of tax in dispute, and
- whether the decision relates to a small business entity.

Please read the next section to find out what fee you must pay.

PART 3: APPLICATION FEES AND REFUNDS

You do not have to pay a fee when you apply to us for review of some types of decisions, such as applications about Commonwealth workers’ compensation, family assistance or social security payments, military compensation, the National Disability Insurance Scheme or veterans’ pensions.

For the review of other types of decisions, you must pay an application fee.

STANDARD APPLICATION FEE
The standard application fee is $932.

APPLICATION FEES FOR REVIEW OF TAX DECISIONS
A lower fee of $92 is payable for the review of the following tax decisions:
- the amount of tax in dispute is less than $5,000
- the ATO has refused your request to be released from paying a tax debt (regardless of the amount involved)
- the ATO has refused to extend the time for you to lodge an objection.

If the decision relates to a small business entity and you are not eligible to pay the lower fee of $92, the application fee is $500.

For other applications for review of tax decisions, the standard application fee of $932 is payable.

CONCESSIONAL FEE
You can pay a reduced fee of $100 instead of the $932 fee or the $500 fee if:
- you have been granted legal aid for your application
- you hold a health care card, pensioner concession card or Commonwealth seniors health card
- you are in prison or lawfully detained in a public institution
- you are under 18 years of age or receiving youth allowance, Austudy or ABSTUDY, or
- we decide that paying the full fee would cause you financial hardship.
To apply for a fee reduction on the grounds of financial hardship, you must fill out the *Request for Fee Reduction* form, which is on our website, and send it to us.

**APPLICATIONS FOR REVIEW OF MORE THAN ONE DECISION**

If the same person (an individual, organisation or other entity) applies for review of more than one decision that relates to them and we decide that the applications can be dealt with together, we can order that you only have to pay one fee.

If you are applying for review of more than one tax decision and different application fees would be payable if the applications were handled separately, you must usually pay the highest of the fees. However, if one of the fees is the $932 fee and the other is the $500 fee, you pay the $500 fee.

**WHEN THE FEE MUST BE PAID**

Application fees must be paid when the application is lodged. The AAT may dismiss your application if you do not pay the fee within six weeks after lodging the application.

**HOW TO PAY A FEE**

You can pay a fee in cash or by cheque, money order, EFTPOS or credit card. We accept payment by MasterCard and Visa.

All payment types are accepted at our registries. Credit card payments can also be made by phone.

**REFUNDS**

We will refund:

- the entire application fee if you were not required to pay it
- the difference between the fee you paid and a lower fee if the lower fee was payable
- if you pay the $932 fee or the $500 application fee and the application is resolved in your favour, the difference between the fee you paid and $100. There is no refund if you pay the lower application fee of $92 or the reduced fee of $100.

For more information about fees, including when there is no fee and whether you are eligible to pay a reduced fee, go to the AAT website or contact your local AAT registry.

**PART 4: OTHER INFORMATION ABOUT APPLYING TO THE AAT**

**APPLYING TO SUSPEND A DECISION**

In general, a decision continues to operate while we are reviewing it. In some cases, we can order that the decision be suspended while the review is taking place.

If you want to ask us to suspend the operation of the decision, you must complete a *Request for Stay Order* form, which is on our website, and send it to us.

**STEPS IN A REVIEW**

In most cases, we use alternative dispute resolution (ADR) to help the parties – you and the department or organisation that made the decision you want reviewed – try to reach agreement about how the case should be resolved. Many cases are resolved at this stage. ADR processes are held in private.

If agreement cannot be reached, we will hold a hearing and make a decision. Hearings are usually open to the public.

Our procedures and the time needed to complete the review vary from case to case. We aim to have cases finalised within 12 months.
We collect information from you to process your application and to carry out the review under the *Administrative Appeals Tribunal Act 1975*.

We give a copy of the form to the department or organisation that made the decision you want reviewed. We may also give a copy to any other person that is a party to the review.

If you give us other information during the review that another party does not have, we will usually give them a copy.

Limited information about cases in the AAT’s General Division, Freedom of Information Division, National Disability Insurance Scheme Division, Small Business Taxation Division, Taxation & Commercial Division or Veterans’ Appeals Division is usually made available to the public on request and can be accessed using *eCase Search* on our website. This information includes the names of the parties and any representatives, the type of application, dates of conferences, hearings or other case events, the types of key documents lodged by the parties and the outcome of an application.

More information is usually made publicly available if we hold a hearing and make a decision. If we prepare a written statement of the reasons for our decision in your case, it will usually be made public and published on the internet, including on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)). For more information about the decisions we publish, see our Publication of Decisions Policy on our website.

We can order that information be kept confidential if we believe there is good reason to do so. You can apply for an order by writing to us stating what information you want kept confidential and why. In some cases, legislation requires that information be kept confidential.

For more information see our fact sheet, *Privacy and confidentiality at the AAT*, and our Privacy Policy. Our Privacy Policy includes information about how you can access and seek correction of your personal information, make a complaint about the way we have handled your personal information and how we will deal with such a complaint. *Privacy and confidentiality at the AAT* and our Privacy Policy are on our website or are available from your local AAT registry.

**MORE INFORMATION ABOUT THE AAT**

For more information about the AAT and how we conduct reviews go to our website or call us. Our staff can give you information about procedures but cannot give you legal advice.
23 June 2019

Ms Judith Burrell
Villawood IDC
15 Birmingham Avenue
VILLAWOOD NSW 2163

In reply please quote:
Client Name: Judith BURRELL
Date of Birth: 22 July 1983
Client ID: XXXXXXXXXX
File Number: ABC2019/XXXXX

Dear Ms Judith BURRELL

Notification of decision not to revoke visa cancellation decision made under s501(3A) of the Migration Act 1958

On 19 January 2019 your Class TY Subclass 444 Special Category visa was cancelled under s501(3A) of the Migration Act (the original decision). You were invited to make representations to the Minister about revocation of the original decision, and you made representations within the period and in the manner specified.

After careful consideration of the representations you made, the decision-maker (who is a delegate of the Minister) decided, under s501CA(4) of the Migration Act, not to revoke the original decision.

Therefore, your visa remains cancelled and you do not hold a visa authorising you to travel to, enter or remain in Australia.

The notice of the decision not to revoke the original decision consists of this letter and the enclosed decision record and attachments.

Review Rights

As the decision not to revoke the original decision was made by a delegate of the Minister, you are entitled to have that decision reviewed by the Administrative Appeals Tribunal.

If you wish to have the decision reviewed, you must lodge your application for review within nine (9) days after the day on which you are taken to be notified of the decision. If you have an authorised recipient who is authorised to receive documents relating to the revocation of the original decision on your behalf, you are taken to be notified when your authorised recipient is taken to be notified of the decision.

Enclosed is an information sheet about ‘How to Apply for Merits Review by the AAT’, together with two copies of:

- the decision record (Statement of Reasons) that sets out the reasons for the decision (other than non-disclosable information, if any); and
- each source document (“Attachment”) considered by the decision maker (other than documents containing non-disclosable information, if any).
Enclosed is also some further information about the effect of s500(6A) to s500(6L) of the Migration Act, which the Department is required by law to provide to you.

As you are an *unlawful non-citizen* in Australia, you are subject to immigration detention and removal from Australia.

**Contacting the processing officer**

My contact details are in the footer at the end of the first page if you have any questions about this notice. You can also contact the Department on 1300 722 061.

Yours sincerely

Case Officer Name: Mitchell  
Position Number: XXXXXXXX  
National Character Consideration Centre  
Department of Home Affairs  
Sydney  
Telephone: 02 XXXX XXXX

**Enclosures**

- Decision record dated 23 June 2019
- Statement of Reasons dated 23 June 2019
- Table of Attachments
- Attachments
- Information sheet about how to apply for merits review by the AAT
- Further information regarding the effect of s500(6A) to s500(6L) of the Migration Act.

I acknowledge receipt of the *Notice of decision not to revoke visa cancellation under s501CA(4) of the Migration Act 1958* and a copy of the documents pertaining to the decision to not to revoke the cancellation of the visa formerly held by

Judith BURRELL

Signature:……………………………………
Date: ………………………………………

(for hand-delivered notifications – officer to confirm delivery)

I confirm that the documents referred to above were received by the above named person:

Witness: ………………………………………
Date: ………………………………………

I have considered all relevant matters including an assessment of the character test as defined by s501 of the Migration Act 1958 (the Act), Ministerial Direction No. 79 under s499 of the Act and all evidence before me provided by, on behalf of, or in relation to Judith BURRELL in connection with the possible revocation, under s501CA(4), of the decision under s501(3A) to cancel Ms BURRELL’s Class TY Subclass 444 Special Category visa.

(Please circle the option you select)

(a) Ms. BURRELL has made representations about revocation of the visa cancellation decision in accordance with the invitation. I am not satisfied that Ms. BURRELL passes the character test (as defined in s501). However, I am satisfied that there is another reason why the cancellation decision should be revoked. Accordingly, the power in s501CA(4) of the Act is enlivened and I revoke the decision to cancel Ms. BURRELL’s Class TY Subclass 444 Special Category visa. Ms. BURRELL is to be warned about her future conduct in relation to s501 of the Act.

OR

(b) Ms. BURRELL has made representations about revocation of the visa cancellation decision in accordance with section 501. I am not satisfied that Ms. BURRELL passes the character test (as defined by section 501). Nor am I satisfied that there is another reason why the original decision should be revoked. Accordingly, the power in section 501CA is not enlivened and Ms. BURRELL’s Class TY Subclass 444 Special Category visa remains cancelled. My reasons are set out in the attached Statement of Reasons.

Position No. XXXXXXXXXXX
Delegate of a Minister administering the Migration Act 1958 Date: 23 June 2019
STATEMENT OF REASONS FOR DECISION UNDER S501CA OF THE MIGRATION ACT 1958 NOT TO REVOKE A MANDATORY CANCELLATION VISA DECISION UNDER S501(3A)

(Judith BURRELL) (dob: 22 July 1983)

1. This statement relates to my consideration of possible revocation of the decision made on 24 June 2019 by a delegate to cancel the Class TY Subclass 444 Special Category visa held by Ms BURRELL until that date, under s501(3A) of the Migration Act 1958 (the Act) (which relates to mandatory visa cancellation of a person serving a sentence of imprisonment).

2. Section 501CA(4) of the Act enables me as the delegate of the Minister to revoke the mandatory visa cancellation decision if:

(a) the person makes representations in accordance with the invitation; and
(b) I am satisfied:
   (i) that the person passes the character test (as defined by s501); or
   (ii) that there is another reason why the original decision should be revoked.

REPRESENTATIONS IN ACCORDANCE WITH INVITATION

3. On 23 June 2019, Ms BURRELL made representations seeking revocation of the mandatory visa cancellation decision. These representations were made within the period and in a manner set out in the regulations. Thus, I find that Ms BURRELL has made representations in accordance with the invitation, as required under s501CA(4)(a) of the Act.

CHARACTER TEST

4. On 23 JUNE 2019, Ms BURRELL's visa was canceled under s501(3A) as a delegate was satisfied she did not pass the character test because of the operation of s501(6)(a) (substantial criminal record) on the basis of s501(7)(c) and because she was then serving a sentence of full-time imprisonment at Western Correctional Centre in New South Wales for a criminal conviction.

5. Section 501(7)(c) provides that for the purpose 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.

6. On 23 February 2018, Ms BURRELL was convicted in the Local Court of New South Wales of assault occasioning actual bodily harm and sentenced to a 12 month ICO to be served in the community. After failing to discharge her community service obligations, Ms BURRELL's ICO was revoked and she was remanded into custody.

7. I have considered the representations made by Ms BURRELL and the documents she has submitted in support of her representations.

8. In the representations/documents that Ms BURRELL submitted, she does not dispute the information in the National Police Certificate regarding her criminal convictions and sentences, or that she does not satisfy the character test.
9. Accordingly, I am not satisfied Ms BURRELL passes the character test (as defined by s501) as required under s501CA(4)(b)(i) of the Act.

SATISFACTION AS TO WHETHER THERE IS ANOTHER REASON WHY THE ORIGINAL DECISION SHOULD BE REVOKED – S501CA(4)(b)(ii)

10. As Ms BURRELL has made representations in accordance with s501CA(4)(a), but has not satisfied me that she passes the character test (as defined by s501) (s501CA(4)(b)(i)), I have considered whether I am satisfied that there is another reason why the mandatory visa cancellation decision should be revoked (s501CA(4)(b)(ii)).

11. I consider that the revocation request and any supporting submissions made by or on behalf of Ms BURRELL can reasonably be summarised as follows:

- she has one Australian citizen step-child and their best interests would not be served by her return to New Zealand;
- she has an Australian citizen partner and her best interests would not be served by her return to New Zealand;
- she has contributed to the Australian community through charity work and ongoing employment;
- she has re-iterated her intention to remain law abiding as she has addressed her alcohol abuse issues which contributed to her offending.

12. I have considered whether to revoke the mandatory cancellation decision in accordance with s501CA and Ministerial Direction No. 79 (the Direction) made under s499 of the Act. In doing so, I assessed the information set out in the attachments. In particular, I have considered Ms BURRELL's representations and the documents submitted in support of her representations regarding why the mandatory visa cancellation decision should be revoked.

13. As a delegate I must follow the Direction when making decisions exercising powers under s501 of the Act. Under s499(2) I must comply with a direction under s499. I have noted paragraph 13(2) of the Direction identifies three primary considerations which I must take into account when deciding whether to revoke the mandatory cancellation of a visa:

(a) Protection of the Australian community; (b) The best interests of minor children in Australia and (c) Expectations of the Australian community. These three primary considerations and other considerations listed in the Direction are discussed below.

14. I considered factors that weighed against and in favour of revocation and in making my decision I was mindful that Australia has a sovereign right to determine whether non-citizens who are of character concern are allowed to remain in Australia.

Protection of the Australian community

15. In making my decision I considered the Government’s commitment to protecting the Australian community from harm as a result of criminal activity by non-citizens. The
Australian community expects that non-citizens who wish to remain in Australia should be law abiding. Mandatory cancellation without notice of certain non-citizen prisoners is consistent with this principle, by ensuring that serious offenders remain in either criminal or immigration detention while their immigration status is resolved.

Nature and seriousness of the conduct

16. In considering the nature and seriousness of Ms BURRELL's criminal offending I note that the Direction states that violent offences are to be viewed very seriously.

17. On 23 February 2018, Ms BURRELL was convicted of assault occasioning actual bodily hard and placed on a 12 month ICO. I note that there is a sentencing judgment, in which the Applicant is noted to deny wrongdoing, or at least moral culpability for her actions. She does not seem to show much if any insight into her serious offending.

18. Ms BURRELL has also been convicted on a number of different occasions of various offences involving substance and alcohol abuse. I note that one of her convictions occurred when she was still on a good behaviour bond which is very concerning. Her disregard for the law, particularly in relation to her driving offences, is troubling. However, there is limited evidence regarding the circumstances of her driving offences.

21. The Direction states that sentences of imprisonment are a further indication of the seriousness of the offending. Dispositions involving incarceration of the offender are the last resort in the sentencing hierarchy.

22. I have had regard to Ms BURRELL's criminal history in Australia. I note that it began in 2010 and includes primarily drug related offences, including drink driving.

23. I note Ms BURRELL's criminal history in Australia and find that her offending relating to domestic violence is very serious. I also find that the cumulative effect of her offending over a prolonged period amounts to a serious criminal history.

Risk to the Australian community

24. In considering whether the person represents an unacceptable risk of harm, I have had regard to the principle that the Australian community’s tolerance for any risk of future harm becomes lower as the seriousness of the potential harm increases.

25. In making my assessment regarding the risk to the Australian community, I have had regard, cumulatively, to: a) the nature of the harm to individuals or the Australian community should the person engage in further criminal or other serious conduct; and b) the likelihood of further criminal or other serious conduct, taking into account information and evidence on the risk of the person re-offending.

26. I note that Ms BURRELL had a difficult upbringing, in that she was brought up in a very religious community and struggled with suppressing her homosexuality. When she did come out to her family, she was completely shunned. I am concerned by the fact that her offending has largely occurred under the influence of drugs or alcohol, and that beside expressing at one point that she would like to be better for her family, she has not made any active attempts to overcome her substance abuse issues.
27. I note that in sentencing Ms BURRELL, Seady J noted that he was concerned that her attitude to her violent offending "indicates to me that she bears little remorse for what she has done".

28. I have regard to Ms Lamb's view that her partner has made irresponsible mistakes however she truly regrets her actions and is genuinely sorry for what she had done to the community and to her family. I have also considered her belief that there is a low risk that she will re-offend.

29. I also note the letters in support of Ms BURRELL's good character, indicating she is popular in her church community and has volunteered extensively.

30. I have also considered her history of offending which includes offences in domestic situations and drug offences. Whilst I acknowledge that the offending may have been situational and related to her substance abuse, it causes me ongoing concern that her criminal history was ongoing since 2010. There is nothing before me to substantiate Ms BURRELL's purported ability to live within the bounds of the law. I cannot therefore rule out further offending by Ms BURRELL.

31. I find there is a risk that Ms BURRELL will re-offend. I consider that further offending of a similar nature could result in physical, psychological, and financial harm to members of the Australian community as well as imposing direct and indirect costs to the community.

**Best interests of minor children**


33. The Direction sets out a number of factors to be considered in assessing the best interests of minor children. These include: the nature and duration of the relationship between the child and the person; the extent to which the person is likely to play a positive parental role in relation to the child; the likely effect that any separation from the person would have on the child; whether there are any other people who fulfill parental roles with the child; any known wishes of the child; and any evidence that the person has abused or neglected the child or that the child has otherwise suffered trauma from the person’s actions.

34. I note that you are in a de facto relationship with Rachel Lamb, who has a 16 year old daughter and that you share responsibility for her with your partner and her biological father, who resides in Australia. The daughter has visited Ms BURRELL on only 4 occasions. Even though there seems to be limited contact between Ms BURRELL and her daughter, I understand it will be in the best interests of the daughter that Ms BURRELL's visa cancellation is revoked.

**Expectations of the Australian community**

63. I find that the Australian community would expect non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust, or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to not revoke the mandatory visa cancellation of such a person.
35. Ms BURRELL has breached this trust as she has been convicted in Australia of domestic violence offences.

36. Given the serious nature of these offences, I conclude that the Australian community would expect that Ms BURRELL should not hold a visa.

**Other considerations**

37. The Direction identifies five other considerations which I must take into account (where the considerations are relevant) when deciding whether there is any other reason why the original mandatory cancellation decision should be revoked. These considerations, as relevant in this case, are: strength, nature and duration of ties to Australia, impact on Australian business interests, and extent of impediments if removed to home country.

38. I have considered these considerations and consider that there is nothing substantial to be said in support of Ms BURRELL's case, suffice to say that she obviously has ties to Australia, that it will be difficult but not impossible for her to return to New Zealand and that business interests is not a relevant consideration.

**CONCLUSION**

39. In reaching my decision I conclude that Ms BURRELL represents an unacceptable risk of harm to the Australian community and that the protection of the Australian community outweighed the best interests of his minor step-children as a primary consideration, and other countervailing considerations as described above.

40. Having given full consideration to all of these matters, I am not satisfied that there is another reason why the original decision to cancel Ms BURRELL's Class TY Subclass 444 Special Category visa should be revoked as required by s501CA(4)(b)(ii). Accordingly, as I am not satisfied that there is another reason why the original decision should be revoked, my power to revoke is not enlivened and Ms BURRELL's visa remains cancelled.

K L Aire

Position No. 6XXXX
Delegate of a Minister administering the Migration Act 1958
## EVIDENCE OR OTHER MATERIAL CONSIDERED IN THIS CASE

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description of Attachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment A</td>
<td>National Police Certificate</td>
</tr>
<tr>
<td>Attachment B</td>
<td>Notice of cancellation, dated 19 January 2018</td>
</tr>
<tr>
<td>Attachment C</td>
<td>Signed acknowledgment of cancellation, dated 21 January 2019, received by email 24 January 2019</td>
</tr>
<tr>
<td>Attachment D</td>
<td>Extract of His Honour’s remarks on sentence at the New South Wales Local Court at Downing Centre on 23 February 2018</td>
</tr>
<tr>
<td>Attachment E</td>
<td>Revocation request dated 30 January 2019, received by mail 2 February 2019</td>
</tr>
<tr>
<td>Attachment F</td>
<td>Personal Details Form dated 30 January 2019, received by mail 2 February 2019</td>
</tr>
<tr>
<td>Attachment G</td>
<td>Ministerial Direction 79</td>
</tr>
</tbody>
</table>
Complete Disclosure
All recorded offences released
Name Check Only

This is to certify that the following disclosable court outcomes are recorded against the name of:

BURRELL, Judith born on 22 July 1983

<table>
<thead>
<tr>
<th>Court</th>
<th>Court Date</th>
<th>Offence</th>
<th>Court Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downing Centre Local Court</td>
<td>28 Feb 2018</td>
<td>assault occasioning actual bodily harm</td>
<td>H XXXXXXXX: guilty plea order:12 months imprisonment served as ICO's 7(1) court case reference number 2017/00199182</td>
</tr>
<tr>
<td>Liverpool Local Court</td>
<td>24 Nov 2017</td>
<td>Possess prohibited drug</td>
<td>H XXXXXXX5: (call up) community service 200 hours</td>
</tr>
<tr>
<td>Burwood Local Court</td>
<td>24 Nov 2017</td>
<td>Possess prohibited drug</td>
<td>H XXXXXXXX: bond s9 : 2 years</td>
</tr>
<tr>
<td>Newtown Local Court</td>
<td>10 Jun 2016</td>
<td>Prive with low range Prescribed Concentration Of Alcohol - 1st+off</td>
<td>H XXXXXXXX: fine:$1000 disqualification 6 months</td>
</tr>
<tr>
<td>Newtown Local Court</td>
<td>12 Nov 2015</td>
<td>Use unregistered registrable class a motor vehicle on road</td>
<td>H XXXXXXXX: bond s10a conviction with no other penalty</td>
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<tr>
<td>Burwood Local Court</td>
<td>22 Jul 2010</td>
<td>Possess prohibited drug</td>
<td>H XXXXXXXX: bond s10 : 12 months</td>
</tr>
</tbody>
</table>

The information contained in this document is valid as at date displayed.
The document is produced as a mock version of a national Police Certificate and is not a genuine document.
It should only be used for the purposes of the 2019 AAT Moot Competition.
NATIONAL POLICE CERTIFICATE

AFP Ref: XXXX/XXXXX
Client Ref: XXX - XX

18 February 2019

in the records of the Australian Federal Police and the Police in all Australian States and Territories as at 1 February 2019.

This document is not issued as a form of identification.

Authorised by:

For and on behalf of
Co-ordinator
Criminal Records

The information contained in this document is valid as at date displayed.

This document is produced as a mock version of a national Police Certificate and is not a genuine document.

It should only be used for the purposes of the 2019 AAT Moot Competition.
19 January 2018

Ms Judith BURRELL
MIN: XXXXXX
Sydney Correctional Centre
Locked Bag XXX Australia Post Centre
GALLAGHER NSW XXXX

In reply please quote:
Client Name: Judith BURRELL
Date of Birth: 22 July 1983
Client ID: XXXXXXXXXXXX
File Number: ABC2019/XXXXXX 6

Dear Ms Judith BURRELL

Notice of visa cancellation under s501(3A) of the Migration Act 1958

Purpose of this notice
You were granted a Class TY Subclass 444 Special Category visa on 5 September 2007 (your visa). The purpose of this notice is to advise you that on 19 January 2018 your visa was cancelled under s501(3A) of the Migration Act 1958 ('the Act').

Section 501(3A) of the Act is a mandatory cancellation power, and provides that the Minister must cancel your visa if the Minister is satisfied that:

- you do not pass the character test, either because:
  - you have a substantial criminal record under s501(6)(a) and the reason that you have a substantial criminal record is because of s501(7)(a), (b), or (c) of the Act; or
  - you do not pass the character test under s501(6)(e) because a court in Australia or a foreign country has convicted you of one or more sexually based offences involving a child; or the court has found you guilty of such an offence or found a charge for such an offence proved against you, even though you were discharged without a conviction; and
- you are serving a full-time sentence of imprisonment in a custodial institution because you have committed an offence or offences against Australian law.

Failure to pass the character test

Based on the information before the Department, the decision maker (who is a delegate of the Minister) was satisfied that you do not pass the character test on the following ground:

You have a substantial criminal record within the meaning of s501(6)(a) on the basis of s501(7)(a), (b) or (c) of the Act.

Under s501(7)(c) a person has a substantial criminal record if the person has been sentenced to a term of imprisonment of 12 months or more.
On 23 February 2019 you were convicted of **assault occasioning actual bodily harm** and sentenced to 12 months imprisonment to be served on an ICO basis with conditions to attend community service. Your failure to do so resulted in your entering into full time custody.

*Imprisonment on a full-time basis*

Based on the information available, the decision maker was also satisfied that, at the time of the decision, you were serving a sentence of imprisonment, on a full-time basis, in a custodial institution for an offence against a law of the Commonwealth, a State or a Territory.

*Your visa status*

Your visa has been cancelled and you no longer hold a visa.

*Opportunity to seek revocation of the cancellation decision*

While your visa has been cancelled and you no longer hold a visa, you have an opportunity to make representations about revoking the decision to cancel your visa.

You are hereby invited to make representations to the Minister about revoking the decision to cancel your visa. The representations must be made in accordance with the instructions outlined below, under the headings entitled “How to make representations about revocation of the decision to cancel your visa” and “Timeframe to make representations about revocation”.

The decision to cancel your visa may be revoked by the Minister under s501CA(4) of the Act if you make representations in accordance with the specified instructions and the Minister is satisfied that:

- you pass the character test **(as defined by s501 of the Act)**; or
- there is another reason why the decision to cancel your visa should be revoked.

*How to make representations about revocation of the decision to cancel your visa*

If you decide to make representations about the revocation of the decision to cancel your visa, you can write to us using the attached Revocation Request Form.

Under s499 of the Act which permits the Minister to issue written directions about the exercise of powers under the Act, the Minister has issued **Direction 79 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA** which identifies issues that are relevant to the revocation consideration. A copy of Direction 79 is enclosed for your information. You should address each paragraph in **PART C** of the Direction that is relevant to your circumstances.

Please note that if the decision–maker who makes the decision regarding whether or not to revoke the decision to cancel your visa is a delegate of the Minister, they must follow Direction 79. If, however, the Minister makes a revocation decision personally, he or she is not bound by Direction 79, although Direction 79 provides a broad indication of the types of issues that the Minister is likely to take into account in deciding whether or not to revoke the decision to cancel your visa.

You can provide any other information that you feel the decision–maker should take into account. This can include, but is not limited to, letters of support from your family, friends, employers or others.

Your representations must be in writing and in English, or if in a language other than English, accompanied by an accurate English translation (see Regulation 2.52 of the Migration Regulations 1994 (**‘the Regulations’**)).
Time-frame to make representations about revocation

Any representations made in relation to the revocation of a mandatory cancellation decision must be made within the prescribed timeframe. The combined effect of s501CA(3)(b) and s501CA(4)(a) of the Act and Regulation 2.52 of the Regulations is that any representations **MUST** be made within 28 days after you are taken to have received this notice.

If you make representations about revocation of the visa cancellation decision but the representations are received outside the prescribed timeframe of 28 days, the Minister or his/her delegate is not able to consider the representations because they would not have been made in accordance with the invitation, as required by s501CA(4)(a) of the Act.

Lodging the Revocation Request Form

If you decide to make representations to the Minister to revoke the mandatory cancellation of your visa, it is essential that you complete and lodge the Revocation Request Form within 28 days after you are taken to have received this notice as this timeframe cannot be extended.

As this notice was sent by mail from a place in Australia to an address in Australia, you are taken to have received it seven (7) working days after the date of this notice. A working day does not include weekends or public holidays in the Australian state or territory to where this notice was posted.

Where to send your representations about revocation

Your representations (as made in the completed Revocation Request Form) may be sent by mail, email or fax.

If you decide to send your representations by mail, you should send it to:

**Postal address:**
National Character Consideration Centre
Department of Home Affairs
GPO Box XXX
SYDNEY NS 2000

If you decide to send your representations by email, you should send it to:

**Email address:** RevokeMe@border.gov.au

Contacting the processing officer

If you have any queries about this notice, you can contact them by fax or email using the details above. You are free to show these documents to someone you think may be able to help you.

Yours sincerely

Position Number: XXXXXXX LP
National Character Consideration Centre
Department of Home Affairs
Corrective services team:

Please refer to the acknowledgement of receipt below and have Ms Judith BURRELL complete this page and return a copy to this office, preferably by email (nccc@homeaffairs.gov.au) or fax (03 9235 3626).

File Number: ABC2019/XXXXXX
Client ID: XXXXXXXXXXX
Attention: XXXXXXX LP

I acknowledge receipt of the *Notice of visa cancellation under subsection 501(3A) of the Migration Act 1958* and a copy of the documents referred to above.

Judith BURRELL  MIN: XXXXXX

Signature: .........................................
Date: ..............................................

(for urgent hand-delivered notifications – Corrective Services Officer to confirm delivery)

I confirm that the documents referred to above were handed to and received by the above-named person:

Name of Corrective Services Officer: ........................................
Date: ..............................................
Corrective services team:

Please refer to the acknowledgement of receipt below and have Ms Judith BURRELL complete this page and return a copy to this office, preferably by email (nccc@homeaffairs.gov.au) or fax (03 9235 3626).

File Number: ABC2019/XXXXXX
Client ID: XXXXXXXXXX
Attention: XXXXXXX LP

I acknowledge receipt of the Notice of visa cancellation under subsection 501(3A) of the Migration Act 1958 and a copy of the documents referred to above.

Judith BURRELL MIN: XXXXXX

Signature: [Signature]
Date: 21 Jan 2019

(for urgent hand-delivered notifications – Corrective Services Officer to confirm delivery)

I confirm that the documents referred to above were handed to and received by the above-named person:

Name of Corrective Services Officer: [Name]
Date: [Date]
HIS HONOUR: The accused has pleaded guilty to a charge of assault occasioning actual bodily harm contrary to s 59 of the Crimes Act 1900 for which the maximum penalty is imprisonment of five years.

The facts may be briefly stated as follows:

On the evening of 15 May 2017, the accused had been drinking at the Hurstville Hotel. After consuming what she estimates to have been between six to eight alcoholic drinks, she returned home to the residence she shared with her partner, Ms Rachel Lamb (the victim), and her partner’s 16 year old daughter. Upon entering the house the Accused observed that the daughter had left school books and clothes messily on the floor, and became upset. The police facts sheet states that the accused picked up a jumper off of the floor and threw it in the victim’s face and yelled, “Control this little shit, you’re lucky I stuck by you and didn’t throw her onto the street”. The facts then state that the accused pushed the victim with two hands into the back of a low coffee table, which caused the victim to fall back and hit her head. The victim sustained significant bruising to her head and multiple scrapes on her hand causing bleeding.

While the accused has pleaded guilty to this offence, she has disputed parts of these facts. She told the Court that upon returning home she became upset by the state of messiness of the house. She says she argued with the victim and became highly frustrated, at which point she attempted to leave the house. She says that due to her
intoxicated state she lost her balance while heading towards the door and accidentally fell into the victim, causing her to fall onto the table.

On the facts of the case, I consider that this offence should be considered as being one of moderate seriousness. I note that this offence was committed against the accused’s partner, in their shared home. Domestic violence offences of any kind, even ones of this nature, are rightfully not tolerated by the community. The Court when sentencing such offenders should be mindful of its responsibility to promote general deterrence.

When determining what sentence is appropriate to be imposed on the accused, I have taken into account the accused’s criminal history. I have noted that she has previously been convicted of a number of drug and traffic related offences, none of which are individually of a high degree of objective seriousness. I have noted that this is her first violent offence. However I note the number and frequency of those offences and consider that to be of some concern when considering the accused’s likelihood of committing more offences in the future.

I have taken into account the accused’s plea of guilty. However during these proceedings her insistence on arguing with the facts as reported by the police and continuing attempts to argue that the harm caused to the victim was not significant indicates to me that she bears little remorse for what she has done.

The accused is convicted and sentenced to a term of imprisonment of 12 months, to be served in the community by way of an Intensive Corrections Order in accordance with s 7(1) of the Crimes (Sentencing Procedure) Act 1999, with the additional condition imposed requiring her to perform a mandatory 32 hours of community service a month. The accused should note that if she fails to comply with her obligations under the order, the breach may be referred to the NSW Parole Authority and the order may be revoked pursuant to s 164(2) of the Crimes (Administration of Sentences) Act 1999.

-----
REQUEST FOR REVOCATION OF A MANDATORY VISA CANCELLATION UNDER S501(3A)

Your visa has been cancelled and under s501CA of the Migration Act 1958 you are permitted to request that the Minister revokes the mandatory cancellation of your visa, which you were notified of in this package. If the Minister or his/her delegate decides to revoke the mandatory cancellation of your visa, the cancellation decision is taken not to have been made and your visa will be reinstated.

If you decide to request the Minister to revoke the mandatory cancellation of your visa, your request must be received by the Department of Home Affairs (the Department), by mail, email or fax, within 28 days after you are taken to have received the notice regarding the cancellation of your visa. Details of where to mail, email or fax your request for revocation to, are provided in the Notice of visa cancellation under s501(3A) of the Migration Act 1958.

If you are unsure of what to do, please ring the Department of Home Affairs on the number provided in your cancellation notice.

If you wish to request revocation of your visa cancellation please complete all parts of this request form, as well as the ‘Personal Details Form’, which was attached to your notice of cancellation.

**PERSONAL DETAILS**

<table>
<thead>
<tr>
<th>Client ID (from cancellation notice)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>File Number (from cancellation notice)</td>
<td></td>
</tr>
<tr>
<td>Given name(s)</td>
<td>Judith</td>
</tr>
<tr>
<td>Family name</td>
<td>Burrell</td>
</tr>
<tr>
<td>Alias(es)</td>
<td></td>
</tr>
<tr>
<td>Date of Birth</td>
<td>22/07/1983 (day) 07/1983 (month) 1983 (year)</td>
</tr>
<tr>
<td>Country of Citizenship</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Residential Address</td>
<td></td>
</tr>
<tr>
<td>Email address – (please note: by providing your email address, you will be taken to have consented to receiving communication from the department by email)</td>
<td><a href="mailto:j.burrell@gmail.com.au">j.burrell@gmail.com.au</a></td>
</tr>
<tr>
<td>Telephone number</td>
<td>04XX XXX XXX</td>
</tr>
</tbody>
</table>
DECLARATION

I (.................................) hereby request that the Minister for Home Affairs revoke the mandatory cancellation of my visa under s501(3A) of the Migration Act, as permitted by s501CA(4) of the Migration Act.

Print Name: JUDITH BURRELL

Signed: J Burrell

Date: 30 Jan 2019

AUTHORITY TO SEEK AND DISCLOSE INFORMATION

It may be necessary for the department to seek further information about you, or disclose information about you to a third party, to assist the Minister or his/her delegate in assessing your request for revocation and verifying any information you provide to the department. This information may be personal or sensitive information otherwise protected by privacy laws and may extend to prison and parole reports.

In order to assist the department in doing so, please indicate below whether you authorise the department to seek personal or sensitive information about you, or to use and disclose personal or sensitive information about you, where doing so is relevant to, and will assist with, the processing of your request for revocation.

☑ Yes – I authorise the Department of Home Affairs to seek information about me and my situation. I understand that information may be disclosed to a third party.

☐ No – I do not authorise the Department of Home Affairs to seek information about me and my situation.

Print Name: JUDITH BURRELL

Signed: J Burrell

Date: 30 Jan 2019
PART A – Reasons for requesting revocation

In the space below, please provide your reasons as to why the Minister or his/her delegate should revoke the mandatory cancellation of your visa. Your representations **must be in writing and in English**, or if in a language other than English, accompanied by an accurate English translation (see Regulation 2.52 of the Migration Regulations 1994).

**IF A DELEGATE OF THE MINISTER CONSIDERS YOUR CASE**

To assist you in formulating your response, please note that in deciding whether to revoke or to not revoke the mandatory cancellation of your visa, a delegate of the Minister must use Ministerial Direction 65 as a guide to help them make the decision. Direction 65 is attached. Please read it thoroughly to understand what a delegate of the Minister must consider about your situation in order to decide whether revoking your cancellation is appropriate.

**IF THE MINISTER CONSIDERS YOUR CASE**

If the Minister personally decides to revoke or not revoke your mandatory cancellation, he/she does not have to use Direction 65 to guide him/her in making his/her decision, though it provides a broad indication of the types of issues he/she may take into account. For this reason, you may wish to address the elements of the Direction in your response.

If you need more room to set out your reasons why the mandatory cancellation of your visa should be revoked, please attach additional pages to this notice.

Reasons for Revocation:

```
I have a family in Australia which includes my partner and her daughter. I know what I did was wrong but please don't punish them by sending me away. I have learnt my lesson and promise not to be a risk and will never re-offend.

I do not have a home to go back to in New Zealand. My family hates me since I came out and won't speak to me.
```
PART B – Supporting documents

Please list and attach any documents that may assist the Minister or his/her delegate in making a decision about whether or not to revoke your mandatory visa cancellation. Any documents must be either the original document or a copy of the original document that is certified in writing to be a true copy. If the document is in a language other than English, it must be accompanied by an accurate English translation (see Regulation 2.52 of the Migration Regulations).

Please note that a request for revocation MUST be received by the department within 28 days after you are taken to have received the notice regarding the cancellation of your visa.

If you need more room to set out your supporting documents, please attach additional pages to this notice. Don’t forget to attach your supporting documents or tell us when you will provide them to the department.

**SUPPORTING DOCUMENTS**

<table>
<thead>
<tr>
<th>Personal Circumstances Form</th>
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</table>
PERSONAL CIRCUMSTANCES FORM

Response to Notice of Intention to Consider Visa Cancellation under s501(2) of the Migration Act 1958 or Notice of Mandatory Visa Cancellation under s501(3A) of the Migration Act 1958

This form asks for information that is important to the Minister or delegate making a decision about possible cancellation of your visa or revocation of a decision to cancel your visa. It is intended to help you respond to the notice of intention to consider visa cancellation under s501(2) of the Migration Act 1958 or to support your request for revocation of the mandatory cancellation of your visa under s501(3A) of the Migration Act 1958.

It is in your interests to respond however, if you choose not to answer the questions on this form and you do not provide any additional information, the Minister or delegate will rely upon the information the department currently holds when making their decision. Please note that if your visa is cancelled under character grounds and you are removed from Australia, you can never return to Australia under the law as it presently stands.

The collection of information in relation to whether you pass the Character Test is permissible under section 501D of the Migration Act and Regulation 2.53 of the Migration Regulations 1994.

Your personal information is protected by law, including the Privacy Act 1988. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in our Privacy Notice (Form 1442). Copies of the Privacy Notice are available at www.homeaffairs.gov.au/privacy or at any departmental office. You should ensure that you read and understand the Privacy Notice before completing this form.

I (state full name) Judith Burrell
confirm that the information I have supplied in this form is given to assist in the consideration of my case for the purposes of s501 of the Migration Act 1958.

Signed: J Burrell
Date: 30 Jan 2019

Please state the name of any other person who has filled in this form for you or helped you to complete it:

____________________________________________________________________________________

National Character Consideration Centre
GPO Box 241 • MELBOURNE • VIC • 3001 • Telephone 1300 722 061 • Facsimile (03) 9235 3625
Email: nccc@homeaffairs.gov.au • www.homeaffairs.gov.au

version 03/01/2018
BASIC PERSONAL DATA

Date of birth: 12 July 1983  Sex: M  F [✓]

Place of birth (town, and country):
Dunedin, New Zealand

Family Name: Burrell

Given Name(s): Judith

Have you ever spelt your name in any other way or been known by any other names (name at birth, nickname, married names, aliases) either in Australia or overseas? Yes [ ] No [✓]

If yes, please list these other names below:

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Name(s)</th>
<th>Date of birth (if different)</th>
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</tbody>
</table>

Current citizenship(s): New Zealand

Have you ever applied for Australian citizenship? If so, provide details: No

YOUR ARRIVAL IN AUSTRALIA

Date and place of your first arrival in Australia:
5 September 2007, Sydney

If you arrived by sea, please state the name of the ship:

Do you have a current passport or travel/identity document? Yes [ ] No [✓]

If so, where is it now? At home with my partner

If you travelled to Australia with other people, please provide their names, dates of birth and relationship to you (eg, father, mother, sister, brother, child, etc):

<table>
<thead>
<tr>
<th>Family Name</th>
<th>Given Name(s)</th>
<th>Date of birth</th>
<th>Relationship to you</th>
</tr>
</thead>
<tbody>
<tr>
<td># Lamb</td>
<td>Rachel</td>
<td></td>
<td>Partner</td>
</tr>
<tr>
<td>Brown</td>
<td>Mackenzie</td>
<td></td>
<td>'child'</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
YOUR CONTACT DETAILS

Telephone numbers:

Home: 02 XXX XXXX

Mobile: 04 28 XXX XXXX

Do you agree to the department communicating with you by email or other electronic means? Yes ☑ No ☐

Email address: j.bunwell@gmail.com .ax

What is your current residential address? (If in custody, please state the name of the prison)

Villawood Immigration Detention Centre.

What address do you intend to be living at, when released from custody? (If known):

347 Cecily Street, Ashfields, NSW, 2139

**If you change address or other contact details, please notify the department.

Do you authorise the Department to contact anyone (family or other persons), regarding your case? Yes ☑ No ☐

If yes, please list their details below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship to you (eg sister, friend, workmate)</th>
<th>Telephone number and/or email address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rachel Lamb</td>
<td>Partner</td>
<td>04 x x XXXXXX</td>
</tr>
</tbody>
</table>

Please note that if you would like to appoint a person to assist you with immigration matters, you must complete and submit Form 956.

YOUR RELATIONSHIP STATUS

What is your relationship status now?

Single ☐ Currently Married ☐

Separated ☐ Divorced ☐

Currently in relationship ☑

Widowed ☐

If you are not currently in a relationship, skip to page 5.
If you are currently in a relationship, please provide details of your partner below:

Family Name: Lamb

Given Name(s): Rachel

Alias/other names, including maiden name(s): N/A

Date of birth: 06/02/80 Nationality: AUSTRALIAN

Date of marriage ..../....../... OR Date relationship started: 4/11/2006

Current address and telephone number of your partner:
347 Cecily St, Ashfields, NSW 2131

Are you living with this person now? Yes [ ] No [x]

(If in prison/detention) Will you be living with this person following your release? Yes [ ] No [ ]

Please describe your relationship with your partner (e.g. how you met, how long you have been together):
We met in a park in New Zealand while she was having trouble adjusting. We really hit it off after she left her husband. I helped support her when she wanted to move back to Australia. I agreed to come with her.

Please describe the impact the cancellation of your visa would have, or has had, on your partner:
I am a major rock for my wife, Lamb and her baby. I provide financial and emotional support.
**MINOR CHILDREN (children under 18 years of age)**

The best interests of minor children are a primary consideration of the decision-maker so it is in your interest to include as much information as possible regarding any minor children who may be affected by your visa cancellation. Attach additional pages if more room is required and provide evidence to support your claims.

Please list your children who are aged 18 years and over in the Family Details section. Include all minor children in your life (including biological children, step-children, grandchildren, close nieces or nephews etc). Attach copies of birth certificates if available.

<table>
<thead>
<tr>
<th>Full Name of Child</th>
<th>Sex (M/F)</th>
<th>Date of Birth</th>
<th>Nationality</th>
<th>Father’s Name</th>
<th>Mother’s Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mackenzie Brown</td>
<td>F</td>
<td>8 Jul 2003</td>
<td>AUSTRALIAN</td>
<td>GORDON BROWN</td>
<td>RACHEL LAMB</td>
</tr>
</tbody>
</table>

Does the child or children currently reside with you? Yes [✓] No [ ]

Will the child/ren reside with you upon your release from prison/detention? Yes [✓] No [ ]

If you are not the primary carer for the child/ren, please indicate who is below and provide the current residential address(es) for the child/ren:

Rachel Lamb, my partner is Mackey’s primary carer. And we live together.

Do you authorise DIBP to contact the custodial parent/guardian of the child/ren?

Yes [✓] No [ ] Name/Tel Number Rachel Lamb 04 XX XXX XXX

Yes [ ] No [ ] Name/Tel Number ____________________________
Are there any court orders that relate to your child/ren? Yes □ No ✓
if yes, please provide details and attach evidence. This may include for example, custody
arrangements or child maintenance payments under the Family Law Act, care arrangements
with the Department of Human Services, Guardianship Orders, Domestic/Apprehended
Violence Orders etc.

Please describe your relationship with each child including when it began, how often
you contact/see the child/ren and the role you play in their lives.

I first met Macy in New Zealand a little after I met Rachel. When we
moved over to Australia, we lived together
and while I wasn't working I helped to
clean up after Macy and prepare
her for school.

Since we been in detention, I see
her only once in a while because
Rachel is very busy on her own trying
to financially support us and as well
in detention.

Please describe the impact the cancellation of your visa would have, or has had, on
the child/ren listed.

She wouldn't have the same support
from two parental figures in the house.
FAMILY DETAILS

List all living parents, step-parents, brothers, sisters, and adult children.

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Relationship to You</th>
<th>Date of Birth</th>
<th>Nationality</th>
<th>Country of Current Residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Burrell</td>
<td>Father</td>
<td>31/10/55</td>
<td>New Zealand</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Meredith Burrell</td>
<td>Mother</td>
<td>07/12/59</td>
<td></td>
<td></td>
</tr>
<tr>
<td>John Burrell</td>
<td>Brother</td>
<td>14/06/81</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

List other close family members including cousins, grandparents, uncles/aunts.

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Relationship to You</th>
<th>Date of Birth</th>
<th>Nationality</th>
<th>Country of Current Residence</th>
</tr>
</thead>
</table>

Please state how many other relatives you have in Australia or overseas:

<table>
<thead>
<tr>
<th>Number of uncles/aunts</th>
<th>Australia</th>
<th>Other Country – Specify</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of nieces/nephews</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of cousins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of grandparents</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please describe the impact the cancellation of your visa would have, or has had, on your family.

They hate me and wouldn't want me back.

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
CRIMINAL HISTORY AND RISK OF REOFFENDING

Do you believe that there are any factors that help to explain your offences which should be taken into account by the decision-maker?

I was in a bad place and frustrated with my own life and took it out on Macy & Rachel. Now that my life will be turned around if I get out of immigration detention and have worked out how to constructively reduce my anger so that I won't re-offend again.

I respect and love Australia and promise not to do anything wrong again.

Have you previously received a warning from the Department or Minister? 
Yes □ Date: __________ No □

If yes, please indicate why you re-offended.

________________________________________________________________________
________________________________________________________________________

What do you think is the likelihood that you may re-offend now? Please give reasons for your answer.

Low likelihood. I know am reformed and have done a course in prison for anger management and defusing tensions. I also don't want to lose my Rachel & Macy.

Have you completed any courses or programs that will help you to avoid further offending and to make a positive contribution to the community? Please provide evidence e.g. course completion certificates.

RESTART - Managing Agression and Redirecting anger.
Are you currently on parole or subject to reporting requirements? Yes ☐  No ☑

If yes, please provide:

Reporting office: __________________________________________

Officer name: ____________________________________________

Officer contact number: ___________________________________

Date parole ends: _________________________________________

Please provide a copy of the conditions of your parole/court order and a report from your parole/supervising officer outlining your behaviour while in the community.

Your conduct in a custodial environment is also relevant. Please provide prison conduct reports if available.

Are there any further charges against you that are yet to be dealt with? If so, please provide details:

________________________________________________________________________

________________________________________________________________________

STRENGTH, NATURE AND DURATION OF TIES TO AUSTRALIA

Have you studied in Australia? If so, please provide details including the highest level of education you reached?  ☐

________________________________________________________________________

________________________________________________________________________

List your employment history in Australia (list current employment first).
You may wish to provide character references from your employer or colleagues.

<table>
<thead>
<tr>
<th>Period</th>
<th>Occupation</th>
<th>Employer details (please include name of company and telephone number, if available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-2005</td>
<td>waitress</td>
<td>Teggburger Christchurch</td>
</tr>
<tr>
<td>2007-2009</td>
<td>waitress</td>
<td>Chips and Chicken, Ashfield</td>
</tr>
<tr>
<td>2009-2014</td>
<td>retail staff</td>
<td>Top Dollar</td>
</tr>
</tbody>
</table>

List positive contributions you have made to Australia for example, volunteer activities, participation in community and cultural activities, employment etc

Volunteer at Hurstville Girls High School and at my church.

What hardship would your removal from Australia cause to members of the Australian community?

No longer able to volunteer to help the girls at Hurstville Girls High School
IMPEDEMENTS TO RETURN

HEALTH INFORMATION

Please provide evidence from a medical professional to support your claims.

Do you have any diagnosed medical or psychological conditions? Yes ☐ No ☑ If yes, please provide details of the condition/s and explain what treatment you are receiving (e.g. if you are on any prescription medication or you are receiving counselling).

<table>
<thead>
<tr>
<th>Name of medication</th>
<th>Condition prescribed for</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If you are currently being treated by any doctor/health professional/counsellor, please provide their name/s and contact details. You may wish to provide a report from them regarding your treatment and progress.

<table>
<thead>
<tr>
<th>Name</th>
<th>Type (eg - doctor, physiotherapist)</th>
<th>Address/ phone number/ email address, if known</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Do you authorise DIBP to contact these persons to discuss relevant information? Yes ☐ No ☑

RETURN TO YOUR COUNTRY OF CITIZENSHIP

Do you face any criminal charges/convictions in your country of citizenship? Yes ☐ No ☑

If yes, what would happen about these matters on your return?

<table>
<thead>
<tr>
<th>Do you have any concerns or fears about what would happen to you on return to your country of citizenship? Yes ☑ No ☐</th>
</tr>
</thead>
</table>

If yes, please describe your concerns and what you think will happen to you if you return.

My family back home hates me because of my lifestyle choices, and won't speak to me or support me at home. I can't find a job in New Zealand, it was why I moved to Australia.
Are there any other problems you would face if you have to return to your country of citizenship?

__________________________________________________________

__________________________________________________________

__________________________________________________________

__________________________________________________________

ANY OTHER INFORMATION

Please outline any other information you would like to Minister or delegate to consider when making their decision.

__________________________________________________________

__________________________________________________________

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__________________________________________________________

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NOTE – If you want to provide additional information, you can use the other side of this sheet, and/or attach further sheets to this form.
## Suggested Documents to Support Your Claims

### Personal or Identity Documents
- Copy of your current passport
- Evidence your partner is an Australian citizen or permanent resident
- Marriage certificate(s) or Divorce certificate(s) as appropriate
- Birth certificate for biological children
- Evidence of Australian citizenship for other children
- Custody or other court orders relating to children
- Evidence of nature of relationship e.g. prison telephone or visit records, letters from children or statement from child’s primary carer etc

### Conduct and Rehabilitation
- Parole report which may include:
  - Conditions of current parole order
  - General conduct while on probation/parole;
  - Any psychological/medical evaluations or alerts;
  - Assessments as to the risk of recidivism;
  - Views held of person’s rehabilitation prospects;
  - Educational/Rehabilitation courses undertaken while on probation;
  - Employment (employment undertaken, including comment on attitude toward employment);
  - Available information on person’s family composition and their support and in particular, whether person has any children under the age of 18 and/or parental responsibility over their children

### Prison Conduct Reports

### Course Completion Certificates for Rehabilitation Courses, Educational or Vocational Courses or Similar

### Report from Your Counsellor/Medical Professional etc Regarding Progress to Rehabilitation

### Ties to Australia
- Evidence of participation in the community
- Evidence of current employment
- Character references from family, friends and members of the Australian community. Please note: people providing character references should be aware of your criminal conduct.

### Impediments to Removal
- Report from medical professional

---

12

42
I, DAVID COLEMAN, Minister for Immigration, Citizenship and Multicultural Affairs, give this Direction under section 499 of the Migration Act 1958.

Dated 20/02/2019

Minister for Immigration, Citizenship and Multicultural Affairs

Section 1 Preliminary

1. Name of Direction

This Direction is Direction no. 79 - Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA. It may be cited as Direction no. 79.

2. Commencement

This Direction commences on 28 February 2019.

3. Revocation

Direction no. 65, given under section 499 of the Migration Act 1958 (the Act) and dated 22 December 2014, is revoked with effect from the date this Direction commences.

4. Interpretation

Where terms used in this Direction have a particular meaning, they are defined in Annex B.
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA

5. Contents

This Direction comprises:

Preamble Contains the Objectives of this Direction, General Guidance for decision-makers and the Principles that provide a framework within which decision-makers should approach their task of deciding whether to exercise the discretion to cancel or refuse a non-citizen’s visa under section 501 or to revoke a mandatory cancellation under section 501CA.

Part A Identifies the considerations relevant to visa holders in determining whether to exercise the discretion to cancel a non-citizen’s visa.

Part B Identifies the considerations relevant to visa applicants in determining whether to exercise the discretion to refuse a non-citizen’s visa application.

Part C Identifies the considerations relevant to former visa holders in determining whether to exercise the discretion to revoke the mandatory cancellation of a non-citizen’s visa.

Annex A Provides direction on the application of the character test. The character test is set out in section 501(6) of the Act.

Annex B Defines terms used in the Direction.

6. Preamble

6.1 Objectives

(1) The objective of the Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.

(2) Under subsection 501(1) of the Act, a non-citizen may be refused a visa if the non-citizen does not satisfy the decision-maker that they pass the character test. A non-citizen may have their visa cancelled under subsection 501(2) if the decision-maker reasonably suspects that the non-citizen does not pass the character test, and the non-citizen does not satisfy the decision-maker that they pass the character test. Where the discretion to refuse to grant or to cancel a visa is enlivened, the decision-maker must consider whether to exercise the discretion to refuse or cancel the visa given the specific circumstances of the case.

(3) Under subsection 501(3A) of the Act, the decision-maker must cancel a visa that has been granted to a person if the decision-maker is satisfied that the person does not pass the character test because of the operation of paragraph (6)(a) (on the basis of paragraph (7)(a), (b) or (c) or paragraph (6)(e)) and the non-citizen is serving a sentence of imprisonment on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory. A
non-citizen who has had his or her visa cancelled under section 501(3A) may request revocation of that decision under section 501CA of the Act. Where the discretion to consider revocation is enlivened, the decision-maker must consider whether to revoke the cancellation given the specific circumstances of the case.

(4) The purpose of this Direction is to guide decision-makers performing functions or exercising powers under section 501 of the Act, to refuse to grant a visa or to cancel a visa of a non-citizen who does not satisfy the decision-maker that the non-citizen passes the character test, or to revoke a mandatory cancellation under section 501CA of the Act. Under section 499(2A) of the Act, such decision-makers must comply with a direction made under section 499.

6.2 General Guidance

(1) The Government is committed to protecting the Australian community from harm as a result of criminal activity or other serious conduct by non-citizens. The principles below are of critical importance in furthering that objective, and reflect community values and standards with respect to determining whether the risk of future harm from a non-citizen is unacceptable.

(2) In order to effectively protect the Australian community from harm, and to maintain integrity and public confidence in the character assessment process, decisions about whether a non-citizen’s visa should be refused or cancelled under section 501 should be made in a timely manner once a decision-maker is satisfied that a non-citizen does not pass the character test. Timely decisions are also beneficial to the client in providing certainty about their future.

(3) The principles provide a framework within which decision-makers should approach their task of deciding whether to refuse or cancel a non-citizen’s visa under section 501, or whether to revoke a mandatory cancellation under section 501CA. The relevant factors that must be considered in making a decision under section 501 of the Act are identified in Part A and Part B, while factors that must be considered in making a revocation decision are identified in Part C of this Direction.

6.3 Principles

(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.
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA

(2) The Australian community expects that the Australian Government can and should refuse entry to non-citizens, or cancel their visas, if they commit serious crimes in Australia or elsewhere.

(3) A non-citizen who has committed a serious crime, including of a violent or sexual nature, and particularly against women or children or vulnerable members of the community such as the elderly or disabled, should generally expect to be denied the privilege of coming to, or to forfeit the privilege of staying in, Australia.

(4) In some circumstances, criminal offending or other conduct, and the harm that would be caused if it were to be repeated, may be so serious, that any risk of similar conduct in the future is unacceptable. In these circumstances, even other strong countervailing considerations may be insufficient to justify not cancelling or refusing the visa.

(5) Australia has a low tolerance of any criminal or other serious conduct by people who have been participating in, and contributing to, the Australian community only for a short period of time. However, Australia may afford a higher level of tolerance of criminal or other serious conduct in relation to a non-citizen who has lived in the Australian community for most of their life, or from a very young age.

(6) Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, reflecting that there should be no expectation that such people should be allowed to come to, or remain permanently in, Australia.

(7) The length of time a non-citizen has been making a positive contribution to the Australian community, and the consequences of a visa refusal or cancellation for minor children and other immediate family members in Australia, are considerations in the context of determining whether that non-citizen’s visa should be cancelled, or their visa application refused.

Section 2 Exercising the discretion

7. How to exercise the discretion

(1) Informed by the principles in paragraph 6.3 above, a decision-maker:
   a) must take into account the considerations in Part A or Part B, where relevant, in order to determine whether a non-citizen will forfeit the privilege of being granted, or of continuing to hold, a visa; or
   b) must take into account the considerations in Part C, in order to determine whether the mandatory cancellation of a non-citizen’s visa will be revoked.
8. Taking the relevant considerations into account

(1) Decision-makers must take into account the primary and other considerations relevant to the individual case. There are differing considerations depending on whether a delegate is considering whether to refuse to grant a visa to a visa applicant, cancel the visa of a visa holder, or revoke the mandatory cancellation of a visa. These different considerations are articulated in Parts A, B and C. Separating the considerations for visa holders and visa applicants recognises that non-citizens holding a substantive visa will generally have an expectation that they will be permitted to remain in Australia for the duration of that visa, whereas a visa applicant should have no expectation that a visa application will be approved.

(2) In applying the considerations (both primary and other), information and evidence from independent and authoritative sources should be given appropriate weight.

(3) Both primary and other considerations may weigh in favour of, or against, refusal, cancellation of the visa, or whether or not to revoke a mandatory cancellation of a visa.

(4) Primary considerations should generally be given greater weight than the other considerations.

(5) One or more primary considerations may outweigh other primary considerations.

PART A

9. Primary considerations – visa holders

(1) In deciding whether to cancel a non-citizen’s visa, the following are primary considerations:

a) Protection of the Australian community from criminal or other serious conduct;
b) The best interests of minor children in Australia;
c) Expectations of the Australian Community.

9.1 Protection of the Australian community

(1) When considering protection of the Australian community, decision-makers should have regard to the principle 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. 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.
(2) Decision-makers should also give consideration to:

a) 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.

9.1.1 The nature and seriousness of the conduct

(1) In considering the nature and seriousness of the non-citizen’s criminal offending or other conduct to date, decision-makers must have regard to factors including:

a) The principle that, without limiting the range of offences that may be considered serious, violent and/or sexual crimes are viewed very seriously;
b) The principle that crimes of a violent nature against women or children are viewed very seriously, regardless of the sentence imposed;
c) The principle that crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties, are serious;
d) Where the non-citizen is in Australia, that a crime committed while the non-citizen was in immigration detention; during an escape from immigration detention; or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again is serious, as is an offence against section 197A of the Act;
e) The principle that any conduct that forms the basis for a finding that a non-citizen does not pass a subjective limb of the character test is or is not of good character under section 501(6)(c), is considered to be serious;
f) Subject to subparagraph (b) above, the sentence imposed by the courts for a crime or crimes;
g) The frequency of the non-citizen’s offending and whether there is any trend of increasing seriousness;
h) The cumulative effect of repeated offending;
i) Whether the non-citizen has provided false or misleading information to the department, including by not disclosing prior criminal offending;
j) Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the non-citizen’s migration status (noting that the absence of a warning should not be considered to be in the non-citizen’s favour);
k) Where the offence or conduct was committed in another country, whether that offence or conduct is classified as an offence in Australia.
9.1.2 The risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct

(1) In considering whether the non-citizen represents an unacceptable risk of harm to individuals, groups or institutions in the Australian community, decision-makers should have regard to the principle 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.

(2) In considering the risk to the Australian community, decision-makers must have regard to, cumulatively:

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 re-offending; 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 rehabilitative courses to be undertaken).

9.2 Best interests of minor children in Australia affected by the decision

(1) Decision-makers must make a determination about whether cancellation is, or is not, in the best interests of the child.

(2) This consideration applies only if the child is, or would be, under 18 years old at the time when the decision to cancel the visa is expected to be made.

(3) If there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

(4) In considering the best interests of the child, the following factors must be considered where relevant:

a) The nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);

b) The extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of
time until the child turns 18, and including any Court orders relating to parental access and care arrangements;

c) The impact of the non-citizen’s prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;

d) The likely effect that any separation from the non-citizen would have on the child, taking into account the child’s or non-citizen’s ability to maintain contact in other ways;

e) Whether there are other persons who already fulfil a parental role in relation to the child;

f) Any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);

g) Evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; and

h) Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen’s conduct.

9.3 Expectations of the Australian Community

(1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to cancel the visa held by such a person. Visa cancellation may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person should not continue to hold a visa. Decision-makers should have due regard to the Government’s views in this respect.

10 Other considerations – visa holders

(1) In deciding whether to cancel a visa, other considerations must be taken into account where relevant. These considerations include (but are not limited to):

a) International non-refoulement obligations;

b) Strength, nature and duration of ties;

c) Impact on Australian business interests;

d) Impact on victims;

e) Extent of impediments if removed.

10.1 International non-refoulement obligations

(1) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the
Refugees Convention); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT); and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act reflects Australia’s interpretation of those obligations and, where relevant, decision-makers should follow the tests enunciated in the Act.

(2) The existence of a non-refoulement obligation does not preclude cancellation of a non-citizen’s visa. This is because Australia will not remove a non-citizen, as a consequence of the cancellation of their visa, to the country in respect of which the non-refoulement obligation exists.

(3) Claims which may give rise to international non-refoulement obligations can be raised by the non-citizen in response to a notice of intention to consider cancellation of their visa under s501 of the Act, or can be clear from the facts of the case (such as where the non-citizen holds a protection visa).

(4) Where a non-citizen makes claims which may give rise to international non-refoulement obligations and that non-citizen is able to make a valid application for another visa, it is unnecessary to determine whether non-refoulement obligations are owed to the non-citizen for the purposes of determining whether their visa should be cancelled.

(5) If, however, the visa being considered for cancellation is a Protection visa, the person will be prevented from making an application for another visa, other than a Bridging R (Class WR) visa (section 501E of the Act and regulation 2.12A of the Regulations refers). The person will also be prevented by section 48A of the Act from making a further application for a Protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them – sections 48A and 48B of the Act refer).

(6) In these circumstances, decision-makers should seek an assessment of Australia’s international treaty obligations. Any non-refoulement obligation should be weighed carefully against the seriousness of the non-citizen’s criminal offending or other serious conduct in deciding whether or not the non-citizen should continue to hold a visa. Given that Australia will not return a person to their country of origin if to do so would be inconsistent with its international non-refoulement obligations, the operation of sections 189 and 196 of the Act means that, if the person’s Protection visa were cancelled, they would face the prospect of indefinite immigration detention.

10.2 The strength, nature and duration of ties to Australia

(1) Reflecting the principles at 6.3, decision-makers must have regard to:

a) How long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:
   i. less weight should be given where the non-citizen began offending soon after arriving in Australia; and
   ii. more weight should be given to time the
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation
of a visa under s501CA

non-citizen has spent contributing positively to the Australian community.

b) The strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia, including the effect of cancellation on the non-citizen’s immediate family in Australia (where those family members are Australian citizens, permanent residents, or people who have a right to remain in Australia indefinitely).

10.3 Impact on Australian business interests

(1) Impact on Australian business interests if the non-citizen’s visa is cancelled, noting that an employment link would generally only be given weight where visa cancellation would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

10.4 Impact on victims

(1) Impact of a decision not to cancel a visa on members of the Australian community, including victims of the non-citizen’s criminal behaviour, and the family members of the victim or victims where that information is available and the non-citizen being considered for visa cancellation has been afforded procedural fairness.

10.5 Extent of impediments if removed

(1) The extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

a) The 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.
Part B

11 Primary considerations – visa applicants

(1) In deciding whether to refuse a non-citizen’s visa, the following are primary considerations:

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

b) The best interests of minor children in Australia;

c) Expectations of the Australian Community.

11.1 Protection of the Australian community

(1) When considering protection of the Australian community, decision-makers should have regard to the principle 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. There is a low tolerance for visa applicants who have previously engaged in criminal or other serious conduct. Decision-makers should also give consideration to:

a) 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.

11.1.1 The nature and seriousness of the conduct

(1) In considering the nature and seriousness of the non-citizen’s criminal offending or other serious conduct to date, decision-makers must have regard to:

a) The principle that, without limiting the range of offences that may be considered serious, violent and/or sexual crimes are viewed seriously;

b) The principle that crimes of a violent nature against women or children are viewed very seriously, regardless of the sentence imposed;

c) The principle that crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties, are serious;

d) Where the non-citizen is in Australia, that a crime committed while the non-citizen was in immigration detention; during an escape from immigration detention; after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again is serious, as is an offence against section 197A of the Act;

e) The principle that any conduct that forms the basis for a finding
that a non-citizen does not pass a subjective limb of the character test is or is not of good character under section 501(6)(c), is considered to be serious;

f) Subject to subparagraph (b) above, the sentence imposed by the courts for a crime or crimes;

g) The frequency of the non-citizen’s offending and whether there is any trend of increasing seriousness;

h) The cumulative effect of repeated offending;

i) Whether the non-citizen has provided false or misleading information to the department, including by not disclosing prior criminal offending;

j) Where the offence or conduct was committed in another country, whether that offence or conduct is classified as an offence in Australia.

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

(1) In considering whether the non-citizen represents an unacceptable risk of harm to individuals, groups or institutions in the Australian community, decision-makers should have regard to the principle 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 likelihood that it may be repeated may be unacceptable.

(2) In addition, decision-makers should have regard to the principle that Australia has a low tolerance of any criminal or other serious conduct by visa applicants or those holding a limited stay visa, reflecting that there should be no expectation that such people should be allowed to come to, or remain permanently in, Australia.

(3) In considering the risk to the Australian community, decision-makers must have regard to, cumulatively:

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 from independent and authoritative sources on the likelihood of the non-citizen re-offending; and
   ii. evidence of any 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 rehabilitative courses to be undertaken); and
   iii. the duration of the intended stay in Australia.
Decision-makers should consider the risk of harm in the context of the purpose of the intended stay, and the type of visa being applied for, including whether there are strong or compassionate reasons for granting a short-stay visa.

11.2 **Best interests of minor children in Australia affected by the decision**

(1) Decision-makers must make a determination about whether refusal is, or is not, in the best interests of the child.

(2) This consideration applies only if the child is, or would be, under 18 years old at the time when the decision to refuse to grant the visa is expected to be made.

(3) If there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

(4) In considering the best interests of the child, the following factors must be considered where relevant:

a) The nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);

b) The extent to which the non-citizen is likely to play a positive parental role in the future (taking into account the length of time until the child turns 18), and including any Court orders relating to parental access and care arrangements;

c) The impact of the non-citizen’s prior conduct, and any likely future conduct, and whether that conduct has, or will have, a negative impact on the child;

d) The likely effect that any separation from the non-citizen would have on the child, taking into account the child’s or non-citizen’s ability to maintain contact in other ways;

e) Whether there are other persons who already fulfil a parental role in relation to the child;

f) Any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);

g) Evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; and

h) Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen’s conduct.
11.3 Expectations of the Australian Community

(1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to refuse the visa application of such a person. Visa refusal may be appropriate simply because the nature of the character concerns or offences are such that the Australian community would expect that the person should not be granted a visa. Decision-makers should have due regard to the Government’s views in this respect.

12 Other considerations – visa applicants

(1) In deciding whether to cancel a visa, other considerations must be taken into account where relevant. These considerations include (but are not limited to):

a) International non-refoulement obligations;
b) Impact on family members;
c) Impact on victims;
d) Impact on Australian business interests.

12.1 International non-refoulement obligations

(1) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations to non-citizens in Australia under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the Refugees Convention); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT); and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act reflects Australia’s interpretation of those obligations and, where relevant, decision-makers should follow the tests enunciated in the Act.

(2) The existence of a non-refoulement obligation does not preclude refusal of a non-citizen’s visa application in Australia. This is because Australia will not remove a non-citizen, as a consequence of the refusal of their visa application, to the country in respect of which the non-refoulement obligation exists.

(3) Claims which may give rise to international non-refoulement obligations can be raised by the non-citizen in response to a notice of intention to consider refusal of their visa under s501 of the Act, or can be clear from the facts of the case (such as where the non-citizen is an applicant for a protection visa).
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA

(4) Where a non-citizen makes claims which may give rise to international non-refoulement obligations and that non-citizen is able to make a valid application for another visa, it is unnecessary to determine whether non-refoulement obligations are owed to the non-citizen for the purposes of determining whether their visa application should be refused.

(5) If, however, the visa application being considered for refusal is a Protection visa application, the person will be prevented from making an application for another visa, other than a Bridging R (Class WR) visa (section 501E of the Act and regulation 2.12A of the Regulations refers). The person will also be prevented by section 48A of the Act from making a further application for a Protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them – sections 48A and 48B of the Act refer).

(6) In these circumstances, decision-makers should seek an assessment of Australia’s international treaty obligations. Any non-refoulement obligation should be weighed carefully against the seriousness of the non-citizen’s criminal offending or other serious conduct in deciding whether or not the non-citizen should be granted a visa. Given that Australia will not return a person to their country of origin if to do so would be inconsistent with its international non-refoulement obligations, the operation of sections 189 and 196 of the Act means that, if the person’s Protection visa application were refused, they would face the prospect of indefinite immigration detention.

12.2 Impact on family members

(1) Impact of visa refusal on 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;

12.3 Impact on victims

(1) Impact of a decision to grant a visa on members of the Australian community, including victims of the non-citizen’s criminal behaviour, and the family members of the victim or victims, where that information is available and can be disclosed to the non-citizen being considered for visa refusal;

12.4 Impact on Australian business interests

(1) Impact on Australian business interests if the non-citizen’s visa application is refused, noting that an employment link would generally only be given weight where visa refusal would significantly compromise the delivery of a major project or delivery of an important service in Australia.
PART C

13. Primary considerations – revocation requests

(1) Under subsection 501(3A) of the Act, the Minister must cancel a visa that has been granted to a person if the Minister is satisfied that the person does not pass the character test because of the operation of paragraph (6)(a) (on the basis of paragraph (7)(a), (b) or (c)) or paragraph (6)(e) and the non-citizen is serving a sentence of imprisonment on a full-time basis in a custodial institution, for an offence against a law of the Commonwealth, a State or a Territory. A non-citizen who has had his or her visa cancelled under section 501(3A) may request revocation of that decision under section 501CA of the Act. Where the discretion to consider revocation is enlivened, the decision-maker must consider whether to revoke the cancellation given the specific circumstances of the case.

(2) In deciding whether to revoke the mandatory cancellation of a non-citizen’s visa, the following are primary considerations:

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

b) The best interests of minor children in Australia;

c) Expectations of the Australian community.

13.1 Protection of the Australian community

(1) When considering protection of the Australian community, decision-makers should have regard to the principle 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. 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. Mandatory cancellation without notice of certain non-citizen prisoners is consistent with this principle by ensuring that serious offenders remain in either criminal or immigration detention while their immigration status is resolved.

(2) Decision-makers should also give consideration to:

a) 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.

13.1.1 The nature and seriousness of the conduct

(1) In considering the nature and seriousness of the non-citizen’s criminal offending or other conduct to date, decision-makers must have regard to factors including:
a) The principle that, without limiting the range of offences that may be considered serious, violent and/or sexual crimes are viewed very seriously;
b) The principle that crimes of a violent nature against women or children are viewed very seriously, regardless of the sentence imposed;
c) The principle that crimes committed against vulnerable members of the community (such as the elderly and the disabled), or government representatives or officials due to the position they hold, or in the performance of their duties, are serious;
d) Subject to subparagraph (b) above, the sentence imposed by the courts for a crime or crimes;
e) The frequency of the non-citizen’s offending and whether there is any trend of increasing seriousness;
f) The cumulative effect of repeated offending;
g) Whether the non-citizen has provided false or misleading information to the department, including by not disclosing prior criminal offending;
h) Whether the non-citizen has re-offended since being formally warned, or since otherwise being made aware, in writing, about the consequences of further offending in terms of the non-citizen’s migration status (noting that the absence of a warning should not be considered to be in the non-citizen’s favour);
i) Where the non-citizen is in Australia, that a crime committed while the non-citizen was in immigration detention; during an escape from immigration detention; or after the non-citizen escaped from immigration detention, but before the non-citizen was taken into immigration detention again is serious, as is an offence against section 197A of the Act;

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

(1) In considering the risk to the Australian community, decision-makers must have regard to, cumulatively:

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 available information and evidence on the risk of the non-citizen re-offending (noting that decisions should not be delayed in order for rehabilitative courses to be undertaken).

13.2 Best interests of minor children in Australia affected by the decision
(1) Decision-makers must make a determination about whether revocation is in the best interests of the child.

(2) This consideration applies only if the child is, or would be, under 18 years old at the time when the decision to revoke or not revoke the mandatory cancellation decision is expected to be made.

(3) If there are two or more relevant children, the best interests of each child should be given individual consideration to the extent that their interests may differ.

(4) In considering the best interests of the child, the following factors must be considered where relevant:

a) The nature and duration of the relationship between the child and the non-citizen. Less weight should generally be given where the relationship is non-parental, and/or there is no existing relationship and/or there have been long periods of absence, or limited meaningful contact (including whether an existing Court order restricts contact);

b) The extent to which the non-citizen is likely to play a positive parental role in the future, taking into account the length of time until the child turns 18, and including any Court orders relating to parental access and care arrangements;

c) The impact of the non-citizen’s prior conduct, and any likely future conduct, and whether that conduct has, or will have a negative impact on the child;

d) The likely effect that any separation from the non-citizen would have on the child, taking into account the child’s or non-citizen’s ability to maintain contact in other ways;

e) Whether there are other persons who already fulfil a parental role in relation to the child;

f) Any known views of the child (with those views being given due weight in accordance with the age and maturity of the child);

g) Evidence that the non-citizen has abused or neglected the child in any way, including physical, sexual and/or mental abuse or neglect; and

h) Evidence that the child has suffered or experienced any physical or emotional trauma arising from the non-citizen’s conduct.

13.3 Expectations of the Australian community

(1) The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has breached, or where there is an unacceptable risk that they will breach this trust or where the non-citizen has been convicted of offences in Australia or elsewhere, it may be appropriate to not revoke the mandatory visa cancellation of such a person. Non-revocation may be appropriate simply because the nature of the character concerns or offences are
such that the Australian community would expect that the person should not hold a visa. Decision-makers should have due regard to the Government’s views in this respect.

14. Other considerations – revocation requests

(1) In deciding whether to revoke the mandatory cancellation of a visa, other considerations must be taken into account where relevant. These considerations include (but are not limited to):

a) International non-refoulement obligations;

b) Strength, nature and duration of ties;

c) Impact on Australian business interests;

d) Impact on victims;

e) Extent of impediments if removed.

14.1 International non-refoulement obligations

(1) A non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. Australia has non-refoulement obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol (together called the Refugees Convention); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT); and the International Covenant on Civil and Political Rights and its Second Optional Protocol (the ICCPR). The Act reflects Australia’s interpretation of those obligations and, where relevant, decision-makers should follow the tests enunciated in the Act.

(2) The existence of a non-refoulement obligation does not preclude non-revocation of the mandatory cancellation of a non-citizen’s visa. This is because Australia will not remove a non-citizen, as a consequence of the cancellation of their visa, to the country in respect of which the non-refoulement obligation exists.

(3) Claims which may give rise to international non-refoulement obligations can be raised by the non-citizen in a request to revoke under s501CA the mandatory cancellation of their visa, or can be clear from the facts of the case (such as where the non-citizen held a protection visa that was mandatorily cancelled).

(4) Where a non-citizen makes claims which may give rise to international non-refoulement obligations and that non-citizen would be able to make a valid application for another visa if the mandatory cancellation is not revoked, it is unnecessary to determine whether non-refoulement obligations are owed to the non-citizen for the purposes of determining whether the cancellation of their visa should be revoked.
(5) If, however, the visa that was cancelled was a Protection visa, the person will be prevented from making an application for another visa, other than a Bridging R (Class WR) visa (section 501E of the Act and regulation 2.12A of the Regulations refers). The person will also be prevented by section 48A of the Act from making a further application for a Protection visa while they are in the migration zone (unless the Minister determines that section 48A does not apply to them – sections 48A and 48B of the Act refer).

(6) In these circumstances, decision-makers should seek an assessment of Australia’s international treaty obligations. Any non-refoulement obligation should be weighed carefully against the seriousness of the non-citizen’s criminal offending or other serious conduct in deciding whether or not the non-citizen should have their visa reinstated. Given that Australia will not return a person to their country of origin if to do so would be inconsistent with its international non-refoulement obligations, the operation of sections 189 and 196 of the Act means that, if the person’s Protection visa remains cancelled, they would face the prospect of indefinite immigration detention.

14.2 Strength, nature and duration of ties

(1) The strength, nature and duration of ties to Australia. Reflecting the principles at 6.3, decision-makers must have regard to:

a) How long the non-citizen has resided in Australia, including whether the non-citizen arrived as a young child, noting that:

i. less weight should be given where the non-citizen began offending soon after arriving in Australia; and

ii. More weight should be given to time the non-citizen has spent contributing positively to the Australian community.

b) The strength, duration and nature of any family or social links with Australian citizens, Australian permanent residents and/or people who have an indefinite right to remain in Australia, including the effect of non-revocation on the non-citizen’s immediate family in Australia (where those family members are Australian citizens, permanent residents, or people who have a right to remain in Australia indefinitely).

14.3 Impact on Australian business interests

(1) Impact on Australian business interests if the non-citizen’s visa cancellation is not revoked, noting that an employment link would generally only be given weight where non-revocation would significantly compromise the delivery of a major project, or delivery of an important service in Australia.

14.4 Impact on victims

(1) Impact of a decision not to revoke on members of the Australian community, including victims of the non-citizen’s criminal behaviour, and the family
members of the victim or victims where that information is available and the non-citizen being considered for revocation has been afforded procedural fairness.

14.5 Extent of impediments if removed

(1) The extent of any impediments that the non-citizen may face if removed from Australia to their home country, in establishing themselves and maintaining basic living standards (in the context of what is generally available to other citizens of that country), taking into account:

   a) The 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.
ANNEX A - Application of the character test

Section 1  Overview of the character test

Discretionary visa cancellation or refusal

(1) Under section 501 of the Act, a person may be refused a visa if the non-citizen does not satisfy the decision-maker that they pass the character test. A person may have their visa cancelled if the decision-maker reasonably suspects that the person does not pass the character test, and the person does not satisfy the decision-maker that they pass the character test.

(2) Persons who are being considered under section 501 of the Act must satisfy the decision-maker that they pass the character test set out in section 501(6) of the Act. In practice, this requires the decision-maker to determine, on the basis of all relevant information including information provided by the person, that the person does not pass the character test by reference to section 501(6) of the Act.

(3) Section 501(6) of the Act prescribes the circumstances in which a person does not pass the character test. A person need only be found to not pass one ground, in order to not pass the character test.

(4) In considering a person with unresolved criminal matters, decision-makers should note:
   a) Where a person already fails the character test, any other outstanding criminal matters would not generally prevent consideration of their case under section 501;
   b) A person who does not already fail the character test, and is the subject of criminal charges in Australia, which have not yet been finalised before the relevant court, would not generally be considered under section 501 until the charges have been finally determined;
   c) Where a person is in Australia, and they are facing charges in another country, and the charges will not be resolved in absentia, the conduct that is the subject of those charges may be considered in the context of section 501(6)(c)(i) and/or (ii).

(5) If the person does not pass the character test, section 501(1) of the Act enables a visa to be refused and section 501(2) of the Act enables a visa to be cancelled.

Mandatory visa cancellation

(1) Under section 501(3A), a person’s visa must be cancelled if:
   a) The decision-maker is satisfied that the person does not pass the character test because of the operation of:
      i. Paragraph 501(6)(a) (substantial criminal record), on the basis of paragraph 501(7)(a), (b) or (c) (the person
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA

has been sentenced to death, imprisonment for life, or to a term of imprisonment of 12 months or more); or

ii. paragraph 501(6)(e) (sexually based offences involving a child); and

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

(2) In considering whether a person is liable for mandatory cancellation, decision-makers should note:

a) that the term ‘serving a sentence of imprisonment, on a full-time basis’ does not include periodic detention or home or residential detention. However, a person who has been serving a sentence of imprisonment on a full-time basis and who is participating in a work release scheme, or is permitted home visits is liable for mandatory cancellation;

b) that mandatory cancellation is not enlivened unless and until a delegate makes a finding that they are satisfied that the requirements as set out in section 501(3A)(a) and (b) are met. Once a delegate is satisfied that these requirements are met, the delegate must cancel the person’s visa.

(3) The purpose of mandatory cancellation of the visas of certain visa holders who are in prison is to ensure that persons who pose a risk to the safety of the Australian community remain either in criminal or immigration detention until that risk has been assessed. In this context, there are some circumstances in which it may not be appropriate for a decision-maker to consider whether a person does not pass the character test (and is therefore liable for the cancellation of his or her visa). These circumstances include where a non-citizen is serving a sentence of imprisonment but will not have a visa which is in effect at the end of that sentence. This situation may arise:

a) where a person in prison has been granted a Bridging E visa (BVE) in order to maintain their lawful status while in prison. In circumstances where the BVE will cease upon the person’s release from prison, it is not recommended that mandatory cancellation consideration be commenced.

b) where a person is the holder of a criminal justice visa (CJV). CJVs are granted to non-citizens whose entry and/or continued presence in Australia is required for the purposes of the administration of criminal justice. A criterion for a CJV is that a criminal justice stay certificate (CJSC) or a criminal justice stay warrant (CJSW) about the non-citizen is in force. If the CJSC or CJSW is cancelled any CJV granted because of the CJSC or CJSW is cancelled by operation of section 164 of the Act. The only other power under which CJVs may be cancelled is on character grounds under section 501 of the Act. However, in circumstances where the CJV holder is serving a
sentence of imprisonment, this is unlikely to be appropriate.

Section 2  Application of the character test

1.  Substantial criminal record (section 501(6)(a))

   (1) A person does not pass the character test if the person has a substantial criminal record. The term 'substantial criminal record' is defined in section 501(7) of the Act.

   (2) For the purposes of the character test, a person has a substantial criminal record if:

   a) the person has been sentenced to death; or
   b) the person has been sentenced to imprisonment for life; or
   c) the person has been sentenced to a term of imprisonment of 12 months or more; or
   d) the person has been sentenced to 2 or more terms of imprisonment where the total of those terms is 12 months (if a person has been sentenced to 2 or more terms of imprisonment to be served concurrently (whether in whole or in part), the whole of each term is to be counted in working out the total of the terms)**; or
   e) the person has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
   f) the person has been found by a court to not be fit to plead, in relation to an offence; and as a result, the person has been detained in a facility or institution.

** Example:  A person is sentenced to 2 terms of 3 months imprisonment for 2 offences, to be served concurrently. For the purposes of the character test, the total of those terms is 6 months.

2.  Immigration detention offences (section 501(6)(aa) & (ab))

   (1) A person does not pass the character test if the person has been convicted of an offence that was committed;
   a) while the person was in immigration detention; or
   b) during an escape by the person from immigration detention; or
   c) after the person escaped from immigration detention but before the person was taken into immigration detention again.

   (2) A person does not pass the character test if the person has been convicted of an offence against section 197A.

3.  Membership/Association (section 501(6)(b))

   (1) A person does not pass the character test if the Minister reasonably suspects:

   a) that the person has been or is a member of a group or organisation, or has or has had an association with a group, organisation or person; and
b) that the group, organisation or person has been, or is, involved in criminal conduct.

(2) A suspicion is less than a certainty or a belief, but more than a speculation or idle wondering. For a suspicion to be reasonable, it should be:
   a) a suspicion that a reasonable person could hold in the particular circumstances; and
   b) based on an objective consideration of relevant material.

(3) A member is a person who belongs to a group or organisation. The evidence required to establish reasonable suspicion of membership of a group or organisation will depend on the circumstances of the case. Decision-makers should note that failure of this limb of the character test does not require an assessment that the person was sympathetic with, supportive of, or involved in the criminal conduct of the group or organisation. It is sufficient under this element of the test that the decision-maker has a reasonable suspicion that:
   a) the person has been, or is a member of a group or organisation; and
   b) the group or organisation has been, or is, involved in criminal conduct.

(4) In establishing association, the following factors are to be considered:
   a) the nature of the association;
   b) the degree and frequency of association the person had or has with the individual, group or organisation; and
   c) the duration of the association.

(5) Decision-makers should note that in order for a person to fail the association limb of the character test, the delegate must have a reasonable suspicion that the person was sympathetic with, supportive of, or involved in the criminal conduct of the person, group or organisation – mere knowledge of the criminality of the associate is not, in itself, sufficient to establish association. In order to not pass the character test on this ground, the association must have some negative bearing upon the person’s character.

(6) In some cases the information concerning association will be protected from disclosure by section 503A of the Act. In all cases, great care should be taken not to disclose information that might put the life or safety of informants or other people at risk.

4. **Involvement in certain criminal activities (section 501(6)(ba))**

(1) A person does not pass the character test if the Minister reasonably suspects the person has been, or is involved in, conduct constituting one or more of the following:
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA

a) an offence of people smuggling (as described in sections 233A to 234A of the Migration Act;
b) an offence of trafficking in persons;
c) the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime that is otherwise of serious international concern.

(2) In order to fail this limb of the character test, a person is not required to have been convicted of an offence constituted by the conduct.

5. Not of good character on account of past and present criminal or general conduct (section 501(6)(c)(i) and (ii))

(1) A person does not pass the character test if the person is not of good character, having regard to their past and present criminal and/or their past and present general conduct.

(2) The concepts of criminal conduct and general conduct are not mutually exclusive. Conduct can be both general and criminal at the same time or it may be either general or criminal conduct: Wong v Minister for Minister Immigration and Multicultural Affairs [2002] FCAFC 440 at [33].

(3) In considering whether a person is not of good character, all the relevant circumstances of the particular case are to be taken into account to obtain a complete picture of the person’s character.

a) In Godley v Minister for Immigration and Multicultural and Indigenous Affairs (2004) 83 ALD 411, Lee J said at [34] ‘the words “of good character” mean enduring moral qualities reflected in soundness and reliability in moral judgement in the performance of day to day activities and in dealing with fellow citizens. It is not simply a matter of repute, fame or standing in the community but of continuing performance according to moral principle. A person of ill repute by reason of past criminal conduct may nonetheless, on objective examination at a later stage in life, be shown to be a person reformed and now of good character.’

(4) In order to fail this limb of the character test, a person need not necessarily have a recent criminal conviction, or have been involved in recent general conduct which would indicate that they are not of ‘good character’. However, the conduct in question must be sufficient to indicate a lack of enduring moral quality that outweighs any consideration of more recent good behaviour.

a) In Godley, Lee J went on to say ‘For a finding to be made under s501(6)(c) that a person is not of good character it is necessary that the nature of the conduct said to be criminal, be examined and assessed as to its degree of moral culpability or turpitude. Furthermore, there must be examination of past and
present criminal conduct sufficient to establish that a person at the time of decision is not then of good character. The point at which recent criminal conduct, (as the term ‘present criminal conduct’ is to be understood), becomes past criminal conduct must be a matter of judgement. If there is no recent criminal conduct that circumstances will point to the need for the Minister to give due weight to that fact before concluding that a visa applicant is not of good character'.

‘Before past and present general conduct may be taken to reveal indicia that a visa applicant is not of good character continuing conduct must be demonstrated that shows a lack of enduring moral quality. Although in some circumstances isolated elements of conduct may be significant and display lack of moral worth they will be rare, and as with consideration of criminal conduct there must be due regard given to recent good conduct.

5.1 Past and present criminal conduct

(1) In considering whether a person is not of good character on the basis of past or present criminal conduct, the following factors are to be considered:

a) The nature and severity of the criminal conduct;
b) The frequency of the person’s offending and whether there is any trend of increasing seriousness;
c) The cumulative effect of repeated offending;
d) Any circumstances surrounding the criminal conduct which may explain the conduct such as may be evident from judges’ comments, parole reports and similar authoritative documents; and
e) The conduct of the person since their most recent offence, including:
   i. The length of time since the person last engaged in criminal conduct;
   ii. Any evidence of recidivism or continuing association with criminals;
   iii. Any pattern of similar criminal conduct;
   iv. Any pattern of continued or blatant disregard or contempt for the law; and
   v. Any conduct which may indicate character reform.

5.2 Past and present general conduct

(1) The past and present general conduct provision allows a broader view of a person's character where convictions may not have been recorded or where the person's conduct may not have constituted a criminal offence.

a) In considering whether the person is not of good character, the
relevant circumstances of the particular case are to be taken into account, including evidence of rehabilitation and any relevant periods of good conduct.

(2) The following factors may also be considered in determining whether a person is not of good character:

a) Whether the person has been involved in activities indicating contempt or disregard for the law or for human rights. This includes, but is not limited to:
   i. Involvement in activities such as terrorist activity, activities in relation to trafficking or possession of trafficable quantities of proscribed substances, political extremism, extortion, fraud; or
   ii. A history of serious breaches of immigration law, breach of visa conditions or visa overstay in Australia or another country; or
   iii. Involvement in war crimes or crimes against humanity;

b) whether the person has been removed or deported from Australia or another country and the circumstances that led to the removal/deportation; or

c) whether the person has been:
   i. dishonourably discharged; or
   ii. discharged prematurely; from the armed forces of another country as the result of disciplinary action in circumstances, or because of conduct that, in Australia would be regarded as serious.

(3) Where a person is in Australia and charges have been brought against that person in a jurisdiction other than an Australian jurisdiction, and those charges will not be resolved in absentia, the conduct that is the subject of those charges may be considered in the context of its impact on the person's overall character.

6 Risk in regards to future conduct (section 501(6)(d))

(1) A person does not pass the character test if, in the event that the person were allowed to enter or remain in Australia, there is a risk that the person would engage in any of the conduct specified in section 501(6)(d) of the Act. The types of conduct specified are discussed below.

(2) The grounds are enlivened if there is evidence suggesting that there is more than a minimal or remote chance that the person, if allowed to enter or to remain in Australia, would engage in conduct specified in section 501(6)(d) of the Act.

(3) It is not sufficient to find that the person has engaged in conduct specified in paragraph 501(6)(d) of the Act in the past. There must be a
Direction No. 79 - Migration Act 1958 - Direction under section 499
Visa refusal and cancellation under s501 and revocation of a mandatory cancellation
of a visa under s501CA

risk that the person would engage in the future in the specified conduct set out in section 501(6)(d) of the Act.

6.1 Risk of engaging in criminal conduct in Australia (section 501(6)(d)(i))

(1) A person does not pass the character test if, in the event that the person were allowed to enter or remain in Australia, there is a risk that the person will engage in criminal conduct in Australia.

(2) The reference to criminal conduct must be read as requiring that there is a risk of the person engaging in conduct for which a criminal conviction could be recorded.

6.2 Risk of harassing, molesting, intimidating or stalking another person in Australia (section 501(6)(d)(ii))

(1) A person will not pass the character test if, in the event that the person were allowed to enter or remain in Australia, there is a risk that the person will harass, molest, intimidate or stalk another person in Australia.

(2) ‘Harassment’, ‘molestation’, ‘intimidation’ and ‘stalking’ are to be given their ordinary meaning. Section 501(11) of the Act clarifies the scope of conduct amounting to harassment or molestation. Conduct and behaviours that may fall under this category include, but are not limited to, the following:

   a) conduct that could be construed as harassment or intimidation (whether or not it breaches the terms of an Apprehended or Domestic Violence (or similar) Order);

   b) conduct that potentially places children in danger, such as unwelcome and/or inappropriate approaches, including, but not limited to, approaches made through electronic media; or

   c) conduct that would reasonably cause an individual to be severely apprehensive, fearful, alarmed or distressed regarding the person’s behaviour or alleged behaviour towards the individual, any other individual, or in relation to their property or that of any other individual.

6.3 Risk of vilifying a segment of the community, of inciting discord or of representing a danger through involvement in disruptive and/or violent activities (section 501(6)(d)(iii), (iv) and (v))

(1) In deciding whether a person does not pass the character test under section 501(6)(d)(iii), (iv) or (v) of the Act, factors to be considered include, but are not limited to, evidence that the person:

   a) Would hold or advocate extremist views such as a belief in the use of violence as a legitimate means of political expression;

   b) Would vilify a part of the community;

   c) has a record of encouraging disregard for law and order;

Note: For example, in the course of addressing public rallies.
d) has engaged or threatens to engage in conduct likely to be incompatible with the smooth operation of a multicultural society;

Note: For example, advocating that particular ethnic groups should adopt political, social or religious values well outside those generally acceptable in Australian society, and which, if adopted or practised, might lead to discord within those groups or between those groups and other segments of Australian society.

e) participates in, or is active in promotion of, politically motivated violence or criminal violence and/or is likely to propagate or encourage such action in Australia;

f) is likely to provoke civil unrest in Australia because of the conjunction of the person’s intended activities and proposed timing of their presence in Australia with those of another individual, group or organisation holding opposing views.

(2) The operation of section 501(6)(d)(iii), (iv) and (v) of the Act must be balanced against Australia’s well established tradition of free expression. The grounds in these sub-paragraphs are not intended to provide a charter for denying entry or continued stay to persons merely because they hold and are likely to express unpopular opinions. However, where these opinions may attract strong expressions of disagreement and condemnation from the Australian community, the current views of the community will be a consideration in terms of assessing the extent to which particular activities or opinions are likely to cause discord or unrest.

7 Sexually based offences involving a child (section 501(6)(e))

(1) A person will not pass the character test if a court in Australia or a foreign country has convicted them of one or more sexually based offences involving a child or found them guilty of such an offence, or found a charge proven against them, even if the person was discharged without conviction.

(2) Sexually based offences involving a child include, but are not limited to offences such as:

a) Child sexual abuse;
b) Indecent dealings with a child;c) Possession or distribution of child pornography;
d) Internet grooming; and
e) Other non-contract carriage service offences.

(3) This provision applies irrespective of the level of penalty or orders made in relation to the offence.

8 Crimes under International Humanitarian Law (section 501(6)(f))
(1) A person will not pass the character test if the person has, in Australia or a foreign country, been charged with or indicted for one or more of the following:

a) the crime of genocide;
b) a crime against humanity;
c) a war crime;
d) a crime involving torture or slavery;
e) a crime that is otherwise of serious international concern.

9 National security risk (section 501(6)(g))

(1) A person will not pass the character test if the person has been assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security (within the meaning of section 4 of the Australian Security Intelligence Organisation Act 1979)

10 Certain Interpol notices (section 501(6)(h))

(1) A person will not pass the character test if an Interpol notice in relation to the person is in force, and it is reasonable to infer from that notice that the person would present a risk to the Australian community or a segment of that community.
ANNEX B - Interpretation

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act</td>
<td>means the <em>Migration Act 1958</em>.</td>
</tr>
<tr>
<td>Character test</td>
<td>is the character test prescribed in s501(6) of the Act and set out in Annex A of this Direction.</td>
</tr>
<tr>
<td>Decision-maker</td>
<td>means a person (sometimes referred to as a delegate), or a body (such as the Administrative Appeals Tribunal) with the power to perform functions or exercise powers under s501 of the Act.</td>
</tr>
<tr>
<td>Immigration detention</td>
<td>is defined in section 5 of the Act and means:</td>
</tr>
<tr>
<td></td>
<td>a. being in the company of, and restrained by:</td>
</tr>
<tr>
<td></td>
<td>1. an officer; or</td>
</tr>
<tr>
<td></td>
<td>2. in relation to a particular detainee – another non-citizen directed by the Secretary to accompany and restrain the detainee; or</td>
</tr>
<tr>
<td></td>
<td>b. being held by, or on behalf of an officer;</td>
</tr>
<tr>
<td></td>
<td>1. in a detention centre established under this Act; or</td>
</tr>
<tr>
<td></td>
<td>2. in a prison or remand centre of the Commonwealth, a State or Territory; or</td>
</tr>
<tr>
<td></td>
<td>3. in a police station or watch house; or</td>
</tr>
<tr>
<td></td>
<td>4. in relation to a non-citizen who is prevented, under section 249 of the Act, from leaving a vessel – on that vessel; or</td>
</tr>
<tr>
<td></td>
<td>5. in another place approved by the Minister in writing.</td>
</tr>
<tr>
<td>Minor</td>
<td>is defined in section 5 of the Act as a person is who less than 18 years old.</td>
</tr>
<tr>
<td>Non-citizen</td>
<td>is defined in section 5 of the Act as a person who is not an Australian citizen.</td>
</tr>
<tr>
<td>Remove</td>
<td>is defined in section 5 of the Act as remove from Australia.</td>
</tr>
<tr>
<td>Serious conduct</td>
<td>Behaviour or conduct of concern where a conviction may not have been recorded, or where the conduct may</td>
</tr>
</tbody>
</table>
not, strictly speaking, have constituted a criminal
goal.
Such conduct may include, for example, involvement in
activities indicating contempt or disregard for the law or
human rights, or a history of serious breaches of
immigration law. It also includes conduct which may be
considered under s501(6)(c) and/or s501(6)(d).

Section 501

means section 501 of the Act.

Substantial criminal record

is defined in section 501(7) of the Act.

Substantive visa

is defined in section 5 of the Act and means a visa other
than:

a. a bridging visa; or
b. a criminal justice visa; or
c. an enforcement visa.

Visa

Subject to the Act, the Minister may grant a non-citizen
permission, to be known as a visa, to do either or both
of the following:

a. travel to and enter Australia;
b. remain in Australia.

Visa applicant

is defined in section 5 of the Act as an applicant for a
visa and, in relation to a visa, means the applicant for
the visa.

Visa holder

is defined in section 5 of the Act as the holder of a visa
and, in relation to a visa, means the holder of the visa.
HOW TO APPLY FOR MERITS REVIEW BY THE ADMINISTRATIVE APPEALS TRIBUNAL

To apply to the Administrative Appeals Tribunal (AAT) for a review of the decision, you can either:

- apply online
- fill out an application form
- write a letter
- send an email

Regardless of which method you use, your application must contain a statement of reasons explaining why you are making the application for review. Further information is available at: www.aat.gov.au

If you are in the migration zone (i.e. in Australia) your application for review must be accompanied by a copy (or the original) of the document notifying you of the decision plus a set of all the documents given to you at the time of notification of the decision. Unless you do this your application for review will be invalid.

A list of the addresses of AAT offices in Australia is provided below. There is an application fee payable when you apply for a review. More information about fees can be obtained from the AAT.

Administrative Appeals Tribunal offices

<table>
<thead>
<tr>
<th>Australian Capital Territory</th>
<th>New South Wales</th>
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<tbody>
<tr>
<td><strong>Level 8</strong></td>
<td><strong>Level 6</strong></td>
</tr>
<tr>
<td>14 Moore Street</td>
<td>83 Clarence Street</td>
</tr>
<tr>
<td>CANBERRA ACT 2601</td>
<td>SYDNEY NSW 2000</td>
</tr>
<tr>
<td>GPO Box 9955 Canberra ACT 2601</td>
<td>GPO Box 9955 Sydney NSW 2001</td>
</tr>
<tr>
<td>Telephone: (02) 6243 4611</td>
<td>Telephone: (02) 9276 5101</td>
</tr>
<tr>
<td>Facsimile: (02) 6243 4600</td>
<td>Facsimile: (02) 9276 5599</td>
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<table>
<thead>
<tr>
<th>Northern Territory</th>
<th>Queensland</th>
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<tr>
<td><strong>Level 2</strong></td>
<td><strong>Level 6</strong></td>
</tr>
<tr>
<td>1 King William Street</td>
<td>295 Ann Street</td>
</tr>
<tr>
<td>ADELAIDE SA 5000</td>
<td>BRISBANE QLD 4000</td>
</tr>
<tr>
<td>GPO Box 9955 Adelaide SA 5001</td>
<td>GPO Box 9955 Brisbane QLD 4001</td>
</tr>
<tr>
<td>Telephone: (08) 8128 8000</td>
<td>Telephone: (07) 3361 3000</td>
</tr>
<tr>
<td>Facsimile: (08) 8128 8099</td>
<td>Facsimile: (07) 3052 3001</td>
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<tr>
<th>South Australia</th>
<th>Tasmania</th>
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<tr>
<td><strong>Level 2</strong></td>
<td></td>
</tr>
<tr>
<td>1 King William Street</td>
<td>Edward Braddon Building</td>
</tr>
<tr>
<td>ADELAIDE SA 5000</td>
<td>Commonwealth Law Courts</td>
</tr>
<tr>
<td>GPO Box 9955 Adelaide SA 5001</td>
<td>39-41 Davey Street</td>
</tr>
<tr>
<td>Telephone: (08) 8128 8000</td>
<td>HOBART TAS 7000</td>
</tr>
<tr>
<td>Facsimile: (08) 8128 8099</td>
<td>GPO Box 9955 Hobart TAS 7001</td>
</tr>
<tr>
<td></td>
<td>Telephone: (03) 6232 1712</td>
</tr>
<tr>
<td></td>
<td>Facsimile (03) 6232 1601</td>
</tr>
<tr>
<td>Victoria</td>
<td>Western Australia</td>
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<tr>
<td>---------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Level 4</td>
<td>Level 13</td>
</tr>
<tr>
<td>15 William Street</td>
<td>111 St Georges Terrace</td>
</tr>
<tr>
<td>MELBOURNE VIC 3000</td>
<td>PERTH WA 6000</td>
</tr>
<tr>
<td>GPO Box 9955 Melbourne VIC 3001</td>
<td>GPO Box 9955 Perth WA 6848</td>
</tr>
<tr>
<td>Telephone: (03) 9454 6100</td>
<td>Telephone: (08) 9327 7200</td>
</tr>
<tr>
<td>Facsimile: (03) 9454 6998</td>
<td>Facsimile: (08) 6222 7299</td>
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<tr>
<th>Norfolk Island</th>
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<tbody>
<tr>
<td>Registry Office</td>
</tr>
<tr>
<td>Supreme Court of Norfolk Island</td>
</tr>
<tr>
<td>Kingston</td>
</tr>
<tr>
<td>Norfolk Island 2899</td>
</tr>
<tr>
<td>Facsimile: +61 (02) 9283 4881</td>
</tr>
</tbody>
</table>

**OTHER SERVICES**

**National telephone number**

The AAT provides a national *toll free number* – 1800 228 333. *calls from landlines are free; calls from mobiles may incur a fee.

From Norfolk Island and overseas: +61 2 9276 5101.

**Administrative Appeals Tribunal website**

AAT forms are available from the website at www.aat.gov.au

**Translating and Interpreting Service (TIS)**

If you need the help of a translator or interpreter, please call TIS on 131 450.

**Telephone typewriter service**

The AAT has established a telephone typewriter service (TTY) for the deaf and hearing impaired. It is 1800 650 662.

This service can be used to call the AAT from anywhere in Australia free of charge. It is not a voice phone and cannot be used as such.
THE EFFECT OF SECTION 500(6A) TO SECTION 500(6L) OF THE MIGRATION ACT 1958

(The law requires that this information is provided to you. Section 500(6A) to s. 500(6L) of the Migration Act refer to decisions under s501 and s501CA of the Migration Act that relate to people in the migration zone (i.e. in Australia))

- Section 500(6A) of the Migration Act provides that if a decision is made to cancel, not revoke a cancellation, or refuse a visa under s501 or s501CA of the Migration Act, which relates to a person in the migration zone then s28 of the Administrative Appeals Tribunal Act 1975 (AAT Act) does not apply. Section 28 of the AAT Act entitles a person affected by a decision to request the decision maker to provide written reasons for the decision. It also sets out the obligations of the decision maker in providing those reasons. The giving of reasons for a decision is governed by, and reasons are furnished pursuant to, s501G of the Migration Act.

- Section 500(6B) of the Migration Act provides that if a decision under s501 or s501CA of the Migration Act relates to a person in the migration zone then the application for review with the Administrative Appeals Tribunal (AAT) for review of the decision must be lodged within nine days after the day on which the person was notified of the decision in accordance with s501G(1) of the Migration Act. Accordingly, s29(1)(d) and s29(7), (8), (9) and (10) of the AAT Act (which allow the AAT to extend the time within which an application for review may be made) do not apply to the application.

- Section 500(6C) of the Migration Act provides that the AAT review application must include a copy or original of the document notifying the person of the decision made and one set of all documents given to the person at time of notification of the decision.

- Section 500(6D) of the Migration Act provides that that if an application is made to the AAT for a review of a decision under s501 of the Migration Act, and the decision relates to a person in the migration zone, the Registrar of the AAT must notify the Minister that the application has been made. Section 500(6D) also provides that paragraph 29AC(1)(b) and s37 of the AAT Act do not apply. Section 37 of the AAT Act specifies the requirements for lodging documents by the Minister with the AAT.

- Section 500(6F) of the Migration Act provides that within 14 days after the day on which the Minister is notified that the application for review had been made, the Minister must provide the AAT with two copies of every document or part of a document that is in the Minister's possession or under the Minister's control that was or were relevant to the making of the decision, and that contains non-disclosable information. The AAT may have regard to that non-disclosable information for the purposes of reviewing the decision, but must not disclose that non-disclosable information to the person making the application.

- Section 500(6FA) of the Migration Act provides that the AAT may direct the Minister to lodge a specified number of additional copies of a document that is in
the Minister’s possession or under the Minister’s control, and that was relevant to the making of the decision and contains non-disclosable information. The Minister must comply with the direction.

- Section 500(6G) of the Migration Act provides that the AAT must not hold a hearing (other than a directions hearing) or make a decision under s43 of the AAT Act in relation to the decision under review until at least 14 days after the day on which the Minister was notified that the application for review had been made.

- Section 500(6H) of the Migration Act provides that the AAT must not have regard to any oral information submitted in support of an applicant’s case unless the information was given to the Minister in writing at least two business days before the hearing (other than a directions hearing).

- Section 500(6J) of the Migration Act provides that the AAT must not have regard to any documentary information submitted in support of an applicant’s case unless the applicant gave a copy of the document to the Minister at least two business days before the hearing (other than a directions hearing). (Note, this rule does not apply to those documents given to the applicant or the AAT by the Minister pursuant to s501G(2) or s500(6F) of the Migration Act.)

- Section 500(6K) of the Migration Act provides that if the AAT is of the opinion that particular documents, or documents included in a particular class of documents, may be relevant to the decision under review, the AAT may serve on the Minister a written notice stating that the AAT is of that opinion and requiring the Minister to lodge with the AAT, within the time specified in the notice, a copy or the number of copies specified in the notice of each of those documents that is in the Minister’s possession or under the Minister’s control. The Minister must comply with any such notice.

- Section 500(6L) of the Migration Act provides that if the AAT has not made a decision under s42A, 42B, 42C or 43 of the AAT Act in relation to the decision under review within the period of 84 days after the day on which the person was notified of the decision under review in accordance with s501G(1) of the Migration Act, the original decision of the Minister is taken to have been affirmed by the AAT under s43 of the AAT Act at the end of that period.
This is to certify that
Judith Burrell
has successfully completed
MANAGING TEMPERATURES AND REDIRECTING ANGER.

O. McDougal
Signature

3.3.2019
Date