

To: Assistant Minister for Citizenship, Customs and Multicultural Affairs

OR

To: Assistant Minister for Immigration

CONTENT WARNING delete if not applicable

Administrative Review Tribunal (ART) set aside case for Assistant Minister consideration

[Refusal] On XXX, the ART set aside the Department of Home Affairs' (the Department) decision to refuse Mx XXX's XXX (subclass XXX) visa. The Department is seeking guidance on whether you wish to exercise your powers to set aside the ART's decision and refuse Mx XXX's XXX (subclass XXX) visa under s501A of the *Migration Act 1958 (Cth)* (the Act).

[Mandatory Cancellation] On XXX, the ART set aside the Department of Home Affairs' (the Department) decision to not revoke the cancellation of Mx XXX's XXX (subclass XXX) visa. The Department is seeking guidance on whether you wish to exercise your powers to set aside the ART's decision and cancel Mr/s XXX's XXX (subclass XXX) visa under s501BA of the *Migration Act 1958 (Cth)* (the Act).

[Discretionary Cancellation] On XXX, the ART set aside the Department of Home Affairs' (the Department) decision to cancel Mx XXX's XXX (subclass XXX) visa. The Department is seeking guidance on whether you wish to exercise your powers to set aside the ART's decision and cancel Mr/s XXX's XXX (subclass XXX) visa under s501A of the *Migration Act 1958 (Cth)* (the Act).

CLIENT DETAILS			
Name	First Name SURNAME	Client ID	XXXX
DOB (age)	XX/XX/XXXX (XX)	Citizenship	XXXX
Current visa	Visa Title (subclass XXX) visa	Location	Community (NSW) Detention (NSW) Prison (NSW)
CASE DETAILS			
Visa reviewed	Visa Title (subclass XXX) visa	Powers	eg. s501A / s501BA
Decision dates	XX/XX/XXXX – ART set aside decision XX/XX/XXXX – cancellation not revoked XX/XX/XXXX – mandatory cancellation XX/XX/XXXX – discretionary cancellation XX/XX/XXXX – refusal decision	Previous PDMS ref #	XXX / Nil identified
ARRIVAL DETAILS AND IMMIGRATION HISTORY			
On XXXXX, Mr/Ms XXXX arrived in Australia aged XX, as the holder of a XXXX.			
Include relevant immigration history / previous cancellations & refusals / protection applications / citizenship applications, etc.			
OFFENDING HISTORY			
Mr/Ms XXX's National Criminal History Check released on XXX, confirms his/her first conviction was recorded on XXX, aged XX.			

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- First dot point – offending related to cancellation/refusal
- On XXX, Mr/Ms XXX was convicted of XXXXX and sentenced to XXX.
 - Include sentencing remarks to provide further insight to main offending
- Previous offending starting with most recent

Offending following the ART/cancellation/refusal decision: [delete if not applicable]

•

ART DECISION SUMMARY

Opening para...

Protection of the Australian community

- In considering the nature and seriousness of XXX's offending...
- In assessing the risk to the Australian community... [nature of the harm / likelihood of re-offending]
- Weight given to protection of the community:

Family violence

•

Strength nature and duration of ties to Australia

•

Best interests of minor children in Australia

- [dependency/emotional ties/impact on development and wellbeing]

Expectations of the Australian community

•

Other considerations

- Legal consequences
- Impact on Australian businesses
- Extent of impediments if removed

Conclusion

Overall/Ultimately, ...

ADDITIONAL SENSITIVITIES

- Minors/children [and their ages and citizenship – do they live in Aus? Include the specifics only if it has not been included in the ART summary section]
- Other links to the Australian community
- Are there other things to consider/investigate [mental health concerns / unreasonable delay / guardianship / reduced sentence / etc]
- Check COI notes/CMAL and add any important information (such as lodged appeals, NZYQ, indigeneity claims, Australian citizenship claims, or a BWART allegation which may raise sensitivities or need follow up such as terrorism/family violence/identity issues).
Update Sensitivities section in checklist document (if there are any of these, or other relevant info)
- Any possible NZYQ attributes/indicative protection findings/TCRA? BVR conditions/behaviour? Any info on removal options/Fitness to travel
- Has there been offending offshore?

- OMCG / Syndicate links, if applicable
 - Media – nil identified
- OR**
- Media reporting indicates Mr/Ms XXX... The article suggests...
- Previous briefings: Provide a brief summary of the purpose/outcome of subs/briefs/corro (CID is not always included in doc titles in PDMS, so check by both name and CID)
 - This case is likely to be the subject of public discussion and/or media reporting. The Department advises against any public comment regarding management of this case prior to the individual being notified of the outcome, or located and detained (where relevant). Should information regarding the individual's character consideration/liability for visa refusal or cancellation become public, the Department's efforts to locate and notify the individual may be frustrated and may also negatively impact officer safety.

OPTIONS FOR THE ASSISTANT MINISTER

a) Please indicate whether you are minded to consider exercising your personal power under s501A/s501BA to set aside the ART's decision, in the national interest.	Yes / No
b) If yes, a submission will be prepared for your consideration in due course.	Noted
i. Please indicate whether your preference is to consider the matter by giving the non-citizen natural justice, or without natural justice.	With natural justice / Without natural justice
c) If no, the Department will manage this matter and [the pending visa application will be returned for continued visa processing/Mr/Ms XXX's visa will remain in effect].	Noted
i. Indicate if you wish the Department to issue a warning letter to Mr/Ms XXX about his/her ongoing obligation to satisfy the character test under s501 of the Act.	Yes / No

Clearance and contact officer:

Jodi Stubbs

Assistant Secretary

Character Cancellation Branch

Phone: s. 22(1)(a)(ii)

Date: Click or tap to enter a date.

Date first prepared: Click or tap to enter a date.

Date last updated: Click or tap to enter a date.

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS26-XXXXXX

Date of clearance: ____ / ____ / 2026

To **Minister for Home Affairs, Minister for Immigration and Citizenship,
Minister for Cyber Security / Assistant Minister for Immigration /
Assistant Minister for Citizenship, Customs and Multicultural Affairs**

Subject **Mr/Ms Full Name (aged XX) – Consideration of cancellation of
(Name)'s visa under s501BA of the Migration Act 1958 (the Act)**

Timing *At your earliest convenience* [use this option for standard submissions]
OR Please consider by [date], in order to (state reason for timing)

Options

After considering this submission, please:

Indicate whether you wish to consider exercising your personal power under s501BA to set aside the delegate's/ART's decision and cancel the visa of (Name) because you are satisfied that s/he does not pass the character test and you are satisfied that the cancellation is in the national interest. Yes / No

a. If **yes**, please indicate whether you wish to consider cancellation under s501BA with, or without offering (Name) an opportunity to provide information or comments (natural justice). With natural justice / Without natural justice

b. If you wish to consider cancellation under s501BA **with** natural justice, note that a further submission will be prepared for you once that has been done and it is therefore not necessary to respond to the options below. Noted

c. If you choose to consider cancellation under s501BA **without** natural justice, please record your decision on and sign the decision page at **Attachment 1**. If you agree with the reasoning set out in the draft Statement of Reasons at **Attachment 3**, please also sign that statement, with any amendments you consider necessary. Signed / Not signed / Please discuss

d. If you decide to cancel (Name)'s visa, they may be affected by the NZYQ High Court decision and a delegate may consider granting them a Bridging R (subclass 070) visa (BVR). Noted

**Minister for Home Affairs, Minister for Immigration and
Citizenship, Minister for Cyber Security / Assistant Minister
for Immigration / Assistant Minister for Citizenship,
Customs and Multicultural Affairs**

Signature.....

Date:...../...../2026

Minister's Comments

Key issues

1. This matter is referred to you for possible consideration of whether to set aside a decision of the delegate/Administrative Review Tribunal (ART) under s501CA of Act which, in effect, reinstated (Name)'s (Visa), and to cancel that visa under s501BA.
2. (Name), a [age] year old national of (Country), is the holder of a (Visa). (Name) has normally resided in Australia since arriving on DD Month YYYY, aged [age on arrival].
3. On DD Month YYYY (Name)'s visa was cancelled by a delegate under s501(3A) of the Act (mandatory cancellation) while s/he was serving a sentence of imprisonment Attachment X. (Name) made a request for revocation of the mandatory cancellation, which was found to have been validly made Attachment X.
4. On DD Month YYYY a departmental delegate decided not to revoke the mandatory cancellation of (Name)'s visa.
5. On DD Month YYYY the ART decided in substitution that the mandatory cancellation of (Name)'s visa should be revoked under s501CA(4) of the Act [use wording as per decision] Attachment X. As a consequence of the ART decision, (Name)'s (Visa) was reinstated and (Name) was released from immigration detention OR (Name) remains in prison and his/her expected date of release from prison is DD Month YYYY OR (Name) was released to parole on DD Month YYYY and has remained in the community since then Attachment X.
6. DELETE IF NOT APPLICABLE (Name) sought judicial review of your/the/a previous Minister's cancellation decision under s501BA and on DD Month YYYY the Federal Court of Australia set aside/quashed the cancellation decision [or as otherwise worded in the Order].
7. DELETE IF NOT APPLICABLE (Name) is the subject of a protection finding with respect to (Country) and so, in accordance with s197C(3) of the Act, the Department is not authorised to remove (Name) to (Country) if (Name)'s visa is cancelled.
8. On DD Month YYYY, a client brief was prepared for your direction regarding (Name) (refer to MBX-XXXX). On DD Month YYYY the Department of Home Affairs (the Department) was asked to provide a submission to you for your consideration.

Requirements of s501BA(2)

9. In accordance with s501BA(2)(a), you must be satisfied that (Name) does not pass the character test because of the operation of s501(6)(a), on the basis of s501(7)(a), (b) or (c); or s501(6)(e) of the Act.

If using s501(6)(a):

10. On DD Month YYYY (Name) was convicted by the Court of (offence/s), for which s/he was sentenced to [sentence] years imprisonment. It is therefore open to you to be satisfied that (Name) does not pass the character test as per s501(6)(a) of the Act, with reference to s501(7)(c).

OR if using s501(6)(e), delete above and use this:

On DD Month YYYY in the (Court), (Name) was convicted/found guilty/found to have a charge proven against him/her of (offence/s), which constitute/s sexually based offending involving a child/ren, for which s/he was sentenced to [sentence]. It is therefore open to you to be satisfied that (Name) does not pass the character test as per s501(6)(e) of the Act **Attachment XX**.

11. If you are so satisfied, the condition specified by s501BA(2)(a) is met.

12. In accordance with s501BA(2)(b), you must also be satisfied that the visa cancellation is in the national interest.

Proceeding under s501BA

13. The discretion to cancel (Name)'s visa under s501BA would be enlivened if you are satisfied that (Name) does not pass the character test and you are satisfied that cancellation is in the national interest.

14. While a decision under s501BA therefore does not require natural justice, it is nevertheless open to you to afford (Name) with an opportunity to be heard under s501BA, if you wish. In that event, (Name) would be invited to make submissions, within the time of your choosing, and a further s501BA submission for cancellation consideration, including any comments and information provided by (Name) in response to the invitation, would be prepared and referred to you for decision once the natural justice period had expired.

15. In determining whether to give (Name) an opportunity to comment before any cancellation decision is made, you may wish to note that:

- If you choose to proceed without giving (Name) an opportunity to be heard before making your decision, (Name) will not have any further opportunity to advance reasons as to why his/her visa should not be cancelled.
- However (Name) had the opportunity to make representations in seeking revocation of the mandatory cancellation, and subsequently made comparatively recent submissions during the ART proceedings on DD Month YYYY.

16. If you choose to consider cancelling (Name)'s visa under s501BA without affording him/her natural justice, you may proceed to do so on the basis of the information in this submission and anything else known to you.

17. Information that is relevant in deciding whether or not to cancel the visa is summarised in this submission and in the statement of reasons at **Attachment 3**, which have been prepared based on the documents contained in **Attachment 4**. You are not required to read all of the documents in **Attachment 4** and it is open to you to rely on the summary which has been provided.

18. If you proceed to a decision under s501BA, please record your decision on the Decision Page at **Attachment 1**.

19. Possible reasons for a decision to cancel (Name)'s visa under s501BA have been set out in the draft Statement of Reasons at **Attachment 3**. If you are minded to cancel, and if you agree that the Statement of Reasons is an accurate summary of your reasons for decision, please sign it, after any amendments you consider necessary to the Statement of Reasons have been made.

20. If you cancel (Name)'s visa, s/he could not seek merits review of your decision in the Administrative Review Tribunal. However it would be open to (Name) to seek judicial review of your decision in the Federal or High Court of Australia.

If Onshore

21. A decision to set aside the decision of the ART and cancel (Name)'s visa will result in him/her becoming an unlawful non-citizen, liable for immigration detention under s189 of the Act. Following such a decision, the Department will give (Name) notice of your decision and take him/her into immigration detention. Once detained, unless a new visa is granted, (Name) will be liable to removal from Australia as soon as reasonably practicable, and in the meantime, liable to detention under s189, provided that removal is practicable in the reasonably foreseeable future, or until granted a visa. If you do not cancel (Name)'s visa s/he will remain in the community/prison.

22. OR If you decide to set aside the decision of the ART and cancel (Name)'s visa, (Name) will remain in criminal custody and then be liable for ongoing immigration detention until his/her removal from Australia. OR If you decide to set aside the decision of the ART and cancel (Name)'s visa, (Name) will remain in criminal custody and if and when s/he is released from prison /(Name) will remain in the community and, it would then be necessary to consider further steps, which may include granting a Bridging R (Subclass 070) (Bridging Removal Pending) (BVR) visa to him/her.

If Offshore (delete if not relevant)

23. If you decide to set aside the decision of the ART and cancel (Name)'s visa, (Name) will remain offshore, notwithstanding the possibility of further Federal Court of Australia legal challenges to your decision.

Consultation – internal/external

24. Nil. OR Eg. Humanitarian Program Operations Branch/ Migration and Citizenship Litigation Branch/ Australian Government Solicitor (AGS)/ Outposted Counsel.

Consultation – Secretary/Commissioner

25. Nil.

Client service implications

26. Nil.

Sensitivities

27. N/A. (Name) is located in the community/ (Name) is currently in prison with an expected date of release of DD Month YYYY.

28. This case is likely to be the subject of public discussion and/or media reporting. The Department advises against any public comment regarding management of this case prior to the individual being notified of the outcome, or located and detained (where relevant). Should information regarding the individual's character consideration/liability for visa refusal / cancellation become public, the Department's efforts to locate and notify the individual may be frustrated and may also negatively impact officer safety.

Financial/systems/legislation/deregulation/media implications

29. Nil.

Attachments:

Attachment 1 Decision Page

Attachment 2 Index of Relevant Material

Attachment 3 Draft Statement of Reasons

Attachment 4 Relevant Material attached

Authorising Officer
Cleared by: Jodi Stubbs Assistant Secretary Character Cancellation Branch Date: ____/____/2026 Ph S. 22(1)(a)(ii)

Contact Officer Jodi Stubbs, Assistant Secretary, Character Cancellation Branch, Ph S. 22(1)(a)(ii)

Through

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Minister for Home Affairs, Minister for Immigration and Citizenship, Minister for Cyber Security (Delete if submission is already addressed to MHA)
Secretary (only if high profile, or of known interest to the Secretary)
Head of Immigration
Deputy Secretary, Immigration Compliance
Deputy Secretary, Legal
First Assistant Secretary, Character, Cancellation and Case Resolution Division
Assistant Commissioner, Immigration Compliance Operations (only if field action may be required, or in detention)
Assistant Commissioner, Immigration Detention (only if in detention)
Assistant Secretary, Migration & Citizenship Litigation
Assistant Secretary, Temporary Visas/Skilled Visas/Family Visas (only if a visa applicant – and please pick relevant AS according to visa)
Assistant Secretary, Humanitarian Program Operations (only if case involves a PV applicant or PV holder)
Senior Director, Status Resolution Network (only if managing the case)
Assistant Secretary, Complex Case Management and Support Programs (only if NZYQ)
Commander, Field Operations and Sponsored Monitoring (only if field action may be required)
Commander, Community Protection Board (only if NZYQ)
Chief Superintendent, Removal operations (only if managing the case)

DECISION BY THE MINISTER UNDER SECTION 501BA OF THE *MIGRATION ACT 1958*

The following is my decision under s501BA of the *Migration Act 1958* (the Act) in relation to **Honorific (Full name)'s (Visa)**.

(Please indicate the option you select)

Non–cancellation outcomes

(a) I am satisfied that **(Name)** passes the character test.

OR

(b) I am satisfied that **(Name)** does not pass the character test because of the operation of **s501(6)(a), on the basis of s501(7)(a)/(b)/(c) OR s501(6)(e)**. However I am not satisfied that it is in the national interest to cancel **(Name)'s (Visa)**, with the result that the power under s501BA of the Act is not available to me in this case.

OR

(c) I am satisfied that **(Name)** does not pass the character test because of the operation of **s501(6)(a), on the basis of s501(7)(a)/(b)/(c) OR because of the operation of s501(6)(e)**, and I am satisfied that it is in the national interest to cancel **(Name)'s visa**. However, I have decided NOT to exercise my discretion to set aside the **Administrative Review Tribunal/delegate's** decision and cancel **(Name)'s (Visa)** under s501BA of the Act.

OR

Cancellation outcome

(d) I am satisfied that **(Name)** does not pass the character test because of the operation of **s501(6)(a), on the basis of s501(7)(a)/(b)/(c) OR s501(6)(e)**, and I am satisfied that it is in the national interest to cancel **(Name)'s visa**. I have decided to exercise my discretion under s501BA of the Act. I hereby set aside the decision of the **Administrative Review Tribunal/delegate** dated **DD Month YYYY** and cancel **(Name)'s (Visa)**. My reasons for this decision are set out in the attached Statement of Reasons.

THE HON TONY BURKE MP

Minister for Home Affairs, Minister for Immigration and Citizenship

OR

THE HON MATT THISTLETHWAITE MP

Assistant Minister for Immigration

OR

THE HON JULIAN HILL MP

Assistant Minister for Citizenship, Customs and Multicultural Affairs

Signature.....

Date: ____/ ____/ 2026

Time: _____

Place: _____

OFFICIAL: Sensitive Personal Privacy

Document 2

Time taken on decision: _____ hours _____ minutes

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INDEX OF RELEVANT MATERIAL

Attachment	Description of Attachment
Attachment A	National Criminal History Check dated DD Month YYYY
Attachment	New Zealand Police Criminal History Report dated DD Month YYYY
Attachment	Sentencing remarks of the (title of court – e.g. Supreme Court of Victoria) dated DD Month YYYY
Attachment	Appeal judgment of the [title of court] on DD Month YYYY
Attachment	Police summary of facts dated DD Month YYYY
Attachment	Conviction, Sentences and Appeals report from the New South Wales Department of Corrective Services dated DD Month YYYY
Attachment	Integrated Offender Management System, Sentence Calculation Details report from the Queensland Department of Corrective Services, created on DD Month YYYY
Attachment	Prisoner (Conduct) Report consisting of the Visitors/Attempted Visitors for a Prisoner list, Incident Inquiry, Urinalysis – Breath Test Enquiry, Prisoner Risks Enquiry dated DD Month YYYY
Attachment	Prisoner report dated DD Month YYYY
Attachment	Revocation request dated DD Month YYYY
Attachment	Personal Circumstances Form dated DD Month YYYY
Attachment	(Name)'s submissions re revocation and other matters
Attachment	Letter/character reference from [writer's name] dated DD Month YYYY
Attachment	Psychological report dated DD Month YYYY
Attachment	Medical report dated DD Month YYYY
Attachment	Warning about future conduct (following prior decision not to cancel) dated DD Month YYYY and acknowledgement
Attachment	Incoming Passenger Card/s dated DD Month YYYY
Attachment	International Treaties Obligations Assessment, dated DD Month YYYY
Attachment	ART decision record dated DD Month YYYY
Attachment	Movement records
Attachment	

NOTE: if the decision will be made without NJ, only material considered significantly relevant needs to be included. Do not include Ministerial Direction(s), notice(s) of cancellation, natural justice letters or other general information not specific to person, e.g. lengthy country information, bulk conduct incident reports, detailed medical histories, etc – paraphrase into brief summaries if info needed. **If an ART decision is being set aside, you must attach that decision and take account of its arguments and findings in the SoR**

If NJ is given, the Department is obliged to include all information provided by the person in response to an invitation

Attachment 3**STATEMENT OF REASONS FOR DECISION UNDER SECTION 501BA OF THE *MIGRATION ACT 1958* –
DECISION BY A MINISTER****Honorific (Full name)****Date of birth: DD Month YYYY**

1. This statement relates to my decision under s501BA of the *Migration Act 1958* (the Act) to set aside a decision made by the **Administrative Review Tribunal (ART)** and to cancel the **(Visa)** held by **(Name)** at the time of my decision.
2. **(Name)** does not hold, and has no outstanding application for, a protection visa or any other visa prescribed by the *Migration Regulations 1994* (Cth). As a result of my decision, **(Name)** therefore no longer holds any visa, and all applications for any other visa have been finalised.
3. In making my decision, I have had regard to the summary of material provided to me by the Department **[and where specified, to documents provided to me by the Department]**.

PRELIMINARY MATTERS

4. On **DD Month YYYY**, **(Name)**'s visa was mandatorily cancelled by a delegate under s501(3A) of the Act; **(Name)** subsequently made a request for revocation of that cancellation decision. On **DD Month YYYY**, a delegate made a decision under s501CA not to revoke the cancellation decision.
5. On **DD Month YYYY**, the ART decided in substitution that the mandatory cancellation of **(Name)**'s **(Visa)** **[wording per decision]** **should be revoked** pursuant to s501CA(4) of the Act (ART decision). As a consequence of that decision, **(Name)**'s **(Visa)** was reinstated.

Power to cancel a visa under s501BA

6. Section 501BA of the Act empowers me, acting personally, to set aside a decision of **the ART/a delegate** that, in effect, reinstated a person's visa, and to cancel that visa, if:

- I am satisfied that the person does not pass the character test because of the operation of:
 - (i) s501(6)(a), on the basis of s501(7)(a), (b) or (c); or
 - (ii) s501(6)(e); and
- I am satisfied that the cancellation is in the national interest.

7. I am aware that I have a discretion not to cancel the visa, even if I hold the relevant satisfaction regarding the character test and am satisfied about the national interest.

8. I note that decisions under s501BA are not subject to the rules of natural justice. Nonetheless, I am aware that it is open to me to afford **(Name)** with an opportunity to be heard in respect of my possible exercise of power under s501BA. I have elected **not** to do so.

CHARACTER TEST

For s501(6)(a) '*Substantial Criminal Record*' cases use the following:

9. Section 501(6)(a) provides that for the purposes of s501, a person does not pass the character test if the person has a substantial criminal record, as defined by s501(7). Section 501(7)(c) provides that for the purpose of the character test, a person has a 'substantial criminal record' if they have been sentenced to a term of imprisonment of 12 months or more.

10. On DD Month YYYY (Name) was convicted in the (Court) of (offence/s), for which s/he was sentenced to (sentence) years/months imprisonment **Attachment XX**.

OR For s501(6)(e) child sex cases use the following:

11. Section 501(6)(e) provides that a person does not pass the character test if a court in Australia or a foreign country has convicted a person of one or more sexually based offences involving a child or has been found guilty of such an offence, or found a charge against the person proved for such an offence, even if the person was discharged without a conviction.

12. On DD Month YYYY in the (Court) s/he was convicted of/found guilty of/found to have committed (offence/s), which constitutes a sexually based offence involving a child/ren **Attachment XX**

For all cases continue with:

13. Accordingly, I am satisfied that (Name) does not pass the character test because of the operation of s501(6)(a), on the basis of s501(7)(a)/(b)/(c) **OR** s501(6)(e), and so the condition under s501BA(2)(a) of the Act is met.

NATIONAL INTEREST

14. I have considered the question of whether cancellation of (Name)'s visa is in the national interest. I recognise that this question is separate and distinct from the question of whether or not I am satisfied that (Name) does not pass the character test.

15. 'National interest' is not defined for the purposes of s501BA of the Act. Generally, courts have been reluctant to attempt to define the meaning of national interest in statutory contexts, but the national interest has been determined to be a different concept to the public interest.

16. In *Plaintiff S156/2013 v Minister for Immigration and Border Protection* [2014] HCA 22 at [40], the High Court said that "What is in the national interest is largely a political question". To the same effect, a number of Federal Court decisions hold that the question of what is or is not in the national interest is an evaluative one that is entrusted by the legislature to the Minister to determine according to his or her satisfaction (provided that satisfaction is obtained reasonably).

17. I consider that matters of national interest include, amongst other things, [list all factors relevant to NI in the case, eg the protection of the community, the prevention of conduct constituting family violence and the expectations of the Australian community; don't include factors that are not relevant to NI, which are to be considered below, under Discretion].

Protection of the community

18. In determining whether it is in the national interest to cancel (Name)'s visa, I have given the highest priority to the safety of the Australian community and the need to protect the Australian community. In doing so, I considered the seriousness of (Name)'s criminal or other conduct [delete if no relevant 'other conduct'] having regard to the circumstances and nature of the conduct, the

likelihood of **him/her** reoffending [**or engaging in other serious conduct**], and the risk **s/he** poses to the Australian community if such a likelihood eventuated.

Seriousness of criminal conduct

19. The Australian government considers that all offending involving violence or sexual assault, particularly against women or children, or otherwise constituting family violence, is viewed very seriously by the Australian community.

20. Offending involving actual, threatened or implied family violence is of special concern to the Australian community, because of the special vulnerability of victims who live in a domestic relationship with and/or are dependent on the perpetrator, and the very harmful impact of such conduct on family life, especially on children who experience or witness it.

21. (Name)'s offending includes matters falling within the scope of the above considerations, as further detailed below.

22. Summarise and discuss any non-FV violent/sexual offending, noting salient features of relevance to its seriousness, eg use of weapons, planning, multiple offenders, etc etc.

23. Discuss any actual family violence separately and emphasise in findings how seriously the government and community regard such offending. You may wish to discuss points such as the high incidence of domestic violence, the profound impact of such violence on victims and others who are exposed to it, especially children, and the great cost to the community in terms of law enforcement and the consequences of the breakdown of family relationships.

24. Discuss impact of the specific offending on victims and their families, where there is clear information on this and it has been NJed to client (if this is a decision with NJ).

25. Discuss other offending. If describing other types of offending as 'very serious' you will need to argue the reasons for this (from general principles, without citing the Direction).

26. I consider that the **sentence/s (Name)** received **is/are** a further indication of the seriousness of the offending. Outcomes involving incarceration of the offender are the last resort in the sentencing hierarchy and I consider that the custodial sentence/s imposed in this case further reflect the **very** serious nature of the relevant offending. [Include this para only if there was a prison sentence imposed; otherwise delete.]

27. [discuss any other matter(s) relevant to the nature and seriousness of the conduct in this case, particularly: the frequency of offending and/or whether there is a trend of increasing seriousness in the offending; the cumulative impact of repeated offending; whether the person has provided false or misleading information to the Department, including by not disclosing prior criminal offending; whether the non-citizen has reoffended after being formally warned or otherwise made aware, in writing by the Department, about the consequences of further offending in terms of their migration status (noting that the absence of a warning should not be considered to be in the non-citizen's favour); and, where the offence or conduct was committed in another country, whether that offence or conduct is classified as an offence in Australia]. [The following are some possible further findings about seriousness of offending, but they need to be properly argued from the evidence cited. Use or delete as appropriate]

- *Noting the frequency of (Name)'s offending and the cumulative effect of such repeated offending, I find that [discuss cumulative impact. This argument is usually most valuable*

when making the point that some offences (eg frequent dishonesty/theft/burglary; driving offences) may not seem so serious separately, but are more so when viewed collectively.]

- I also find that there has been a trend of increasing seriousness in (Name)'s offending, as can be seen from [describe, if relevant. Otherwise omit].
- Noting that (Name) provided false or misleading information to the Department, being [describe, e.g. not disclosing prior criminal offending on incoming passenger cards – specify], I find that this adds to the weight of his subsequent offending.
- I consider it adds to the seriousness of the offending in this case that (Name) reoffended after being informed in writing by the Department on DD Month YYYY about the potential consequences of further offending in terms of his/her migration status. I consider that this adds substantially to the adverse weight to be given to (Name)'s offending.

28. (For serious criminal history) (Name) has a lengthy criminal history that includes violent and other serious offences, and many of his offences have resulted in sentences of imprisonment. OR has been convicted of (offence name), a very serious offence.

29. [identify here the crime or conduct which encompasses the conduct engaged in by the non-citizen eg 'violent crimes'] is/are viewed seriously/very seriously by the Australian Government and the Australian community.

OR

30. In considering the nature and seriousness of (Name)'s criminal offending, I take the view that offences such as (name of offence/s i.e. stealing) are serious. If other than violent/sexual, explain further why serious. If offending mainly minor but repeated, consider the cumulative effect.

31. In particular, [provide further details of criminal history and sentences (include references to relevant Attachment/s XX)]

32. I find that the sentence/s (Name) received is/are a further indication of the seriousness of the offending. Dispositions involving incarceration of the offender are the last resort in the sentencing hierarchy and the imposition of such penalties indicates that the court viewed the offending as very serious. [Include this para only if there was a prison sentence imposed; otherwise delete]

33. I have also had regard to [discuss in detail any other matter(s) relevant to the nature and seriousness of the conduct in this case, particularly the following: the frequency of offending; whether there is a trend of increasing seriousness in the offending as can be seen from; whether false or misleading information has been provided to the Department; and whether the non-citizen has reoffended since being formally warned or otherwise made aware, in writing by the Department about the consequences of further offending in terms of their migration status].

34. [Insert conclusion about the nature and seriousness of the relevant conduct. The following are some possible findings, but care must be taken to ensure the findings being made are properly supported by the evidence available. Use numbered paragraphs]

- Noting the frequency of (Name)'s offending and the cumulative effect of the repeated offending, I find that [describe finding regarding nature and seriousness]. In this regard, I consider that there was a trend of increasing seriousness in the offending as can be seen from [describe].

- *I find that (Name) provided false or misleading information to the Department, being [describe, e.g. not disclosing prior criminal offending on incoming passenger cards dated ...].*
- *I consider it a matter of serious concern that (Name) has reoffended since being formally warned or otherwise made aware, in writing by the Department on DD Month YYYY, about the consequences of further offending in terms of his/her migration status.*

Risk to the Australian community

35. Having regard to (Name)'s offending history, as outlined above, I consider that any future offending of a similar nature or seriousness would have the potential to cause **serious physical and/or psychological** injury **and/or financial harm** to members of the Australian community [provide explanation why it may cause that type of harm... Note that this has to be linked to "offending of a similar nature or seriousness"].

36. In assessing the likelihood of (Name) reoffending in the future, I have considered available information as to matters that may have contributed to (Name)'s past conduct, as well as indications of remorse and the extent of (Name)'s rehabilitation, **including their more recent conduct in custody, where relevant information is available.**

(a) Factors contributing to past conduct

37. I have taken into account.....

Discuss contributing factors, taking into account the non-citizen's representations and in particular any available sentencing remarks/sentencing reports/etc. Depending on the facts of the case, relevant factors may include the following:

- substance abuse, in particular and period of use, as well as any information about substance use at time of relevant offending]
- (Name)'s history of childhood trauma, including sexual or other abuse, exposure to domestic violence, family/relationship fragmentation or breakdown, refugee experiences, etc
- Deterioration in (Name)'s mental and/or physical health due to substance abuse
- (Name)'s estrangement from family and subsequent homelessness, leading to ...
- Diagnosed mental health problems /intellectual disability/deficit/cognitive impairment/acquired brain injury/ etc
- (Gambling or other) addiction ... detail and evidence
- Past criminal associations (eg with OMCGs) [Consider to what extent are they still in contact with them - in the next section]

For factors such as drug abuse, mental illness, etc it is reasonable to note that the person's prospects of avoiding further such offending depend heavily on whether they can effectively address their rehabilitation needs – taking into account their past efforts and progress in this regard.

(b) Remorse and rehabilitation

Discuss representations/claims and any available sentencing remarks or other material regarding remorse, rehabilitation and any steps taken to address the factors contributing to past conduct, as outlined earlier. State if no such submissions have been made. Discuss any rehabilitative training undertaken and steps toward self-improvement, such as educational/vocational courses undertaken in prison. It will also be important to note what past opportunities for such training the person has had and what they claimed about remorse and rehab to the courts/department in the past, if this is available from info held. Also note any evidence of drug use, esp. in prison/detention, since any previous consideration under s501 or past undertakings to courts.

38. [Discuss any recent adverse conduct of non-citizen, including conduct while in prison (if current or quite recent). Such further conduct may include fighting with other inmates, being found with drugs or other dangerous contraband, refusing to comply with staff requests and/or becoming abusive and aggressive towards staff. If there is no relevant information of significance, omit para.]

39. In relation to the above incidents, (Name) has made the following representations:
[Summarise the representations, if any – otherwise delete para. May require response to claims, especially if they dispute content of prison or other reports]

Conclusion on risk to community

[Insert overall conclusion on the risk posed by the non-citizen to the community, including a finding on the **nature and extent of harm** that may result from the type of conduct if the non-citizen reoffends and the **degree of likelihood** of future offending. It is important then to attribute weight to this consideration. Note that it can be unsafe to conclude that a person will reoffend merely because they have offended in the past, without supporting argument/evidence. Note also that the wording “the risk of future offending cannot be ruled out” is also inadvisable, as the same can be said about many people. However it is reasonable to draw conclusions from a history of reoffending and breaching of judicial orders. Some suggested wording is provided below.]

40. The safety of the Australian community is the highest priority of the Australian government, which is committed to protecting the community from harm resulting from criminal activity or other serious conduct by non-citizens.

<Example 1: where the likelihood of reoffending is assessed as low, but the gravity of the harm is serious>

41. I have found that the nature of (Name)'s conduct is **very** serious. I have further found that **insert brief description of conduct** has the potential to cause serious physical **and/or** psychological injury **and/or** financial harm **[delete whatever is not relevant in this case]** to members of the Australian community, if repeated.

42. On balance, I consider there to be a **low, but not negligible** likelihood that (Name) will reoffend and note that should s/he engage in similar conduct again, it would be likely to result in serious psychological **and/or** physical harm **and/or** financial harm **[delete whatever is not relevant in this case]** to members of the community. I have given this consideration weight in support of cancellation being in the national interest. **[It will sometimes be appropriate to further observe that some conduct, and the harm that would be caused if it were to be repeated, is so serious that any risk that it could be repeated may be unacceptable.]**

<Example 1 ends>

<Example 2: where the likelihood of reoffending is assessed as more than low>

43. I have found that (Name)'s conduct is **very** serious and that such conduct has the potential to cause physical **and/or** psychological injury **and/or** financial harm [delete whatever is not relevant in this case] to members of the Australian community.

44. A number of factors, as outlined above, may have contributed to (Name)'s offending behaviour. I note that [briefly note factors contributing to risk of reoffending, including where such past factors have ceased]. However I remain concerned that [identify factors of ongoing risk]. I have found that on balance that there remains an ongoing, **albeit somewhat reduced**, likelihood that (Name) will reoffend.

45. Considering the nature and seriousness of (Name)'s conduct, the potential harm to the Australian community should the non-citizen commit further offences or engage in other serious conduct, and taking into account the likelihood of (Name) reoffending, I consider that the need to protect the Australian community from criminal or other serious conduct weighs **moderately/heavily/etc** in support of cancellation in this case in the national interest.

<Example 2 ends>

Expectations of the Australian community

46. The Australian community expects non-citizens to obey Australian laws while in Australia. Where a non-citizen has engaged in serious conduct in breach of this expectation, or where there is an unacceptable risk that they may do so, the Australian community, as a norm, expects the Government to not allow such a non-citizen to enter or remain in Australia.

47. In particular, I consider that the Australian community expects that the Australian Government can and should cancel a visa if the holder raises serious character concerns through certain kinds of conduct. Relevantly in the case of (Name), it is my view that such conduct includes [e.g. family violence, forced marriage, crimes against women/children/vulnerable, government reps, human trafficking and worker exploitation]. Noting that (Name) has engaged in conduct of that nature, I find that s/he raises serious character concerns and the community expectation described above applies in this case.

48. The Government's view is that the above expectations of the Australian community apply regardless of whether the non-citizen poses a measurable risk of causing physical harm to the Australian community.

49. [If the submissions refer specifically to the non-citizen's particular circumstances (e.g. their health conditions, their prolonged detention, the low risk they pose to the community), briefly summarise such submissions and respond as follows. Otherwise this para can be deleted.] In my view, this consideration, as it relates to the national interest, is about what the Australian community expects as a norm, rather than how the community might weigh up the specific circumstances of an individual non-citizen. Nevertheless, I have considered (Name)'s specific circumstances, to the extent relevant to my consideration of the matters discussed in other parts of this statement of reasons.

50. [If the submissions refer to the views expressed by specific members of the community, eg activists or the non-citizen's friends, or if the submissions seek to dispute the community expectations as stated in the Direction, insert the following response] The consideration here is about the expectations of the Australian community as a whole, rather than any expectations that particular members of the community may have. While I accept that certain members of the

community may expect [describe relevant expectations], I am of the view that the broader Australian community's general expectations about non-citizens apply in this case. I have attributed this consideration significant weight towards a finding that it is in the national interest to cancel (Name)'s visa.

Conclusion on national interest considerations

51. In deciding whether I am satisfied that it is in the national interest to cancel (Name)'s (Visa), I am required to make an evaluative judgement. I am entitled to make that judgement having regard to a range of matters that may inform the national interest, the content of the national interest being in large part a political question.

52. In the specific case of (Name) [Include brief summary of type of conduct and the other national interest considerations as to why it remains in the national interest to cancel the visa.]

53. Having regard to all of the above, I conclude that the use of my discretionary power to cancel (Name)'s (Visa) is in the national interest.

DISCRETION

54. Recognising that the power to cancel a visa under s501BA is discretionary, I considered whether there were relevant considerations that might support a decision not to set aside the decision of the ART/delegate and cancel (Name)'s visa even though I am satisfied that they do not pass the character test and even though I am also satisfied that it is in the national interest to cancel the visa. I have taken into consideration the circumstances below.

55. In exercising my discretion, I have given due weight to the matters discussed above under National Interest, but will rely on that discussion rather than repeat it here. While I give the protection of the Australian community greater weight than any other relevant matters when exercising my discretion, I have in addition taken into account the following considerations.

Best interests of minor children

56. In considering whether to cancel (Name)'s visa, I was mindful of Article 3 of the United Nations Convention on the Rights of the Child, to which Australia is a signatory, and treated the best interests of any affected minor children in Australia as a primary consideration.

57. The information available to me does not contain any claim or other information indicating that the cancellation of (Name)'s visa could impact on the best interests of any minor child in Australia. **USE THIS PARA AND DELETE THE REST OF THIS SECTION BELOW IF THERE ARE NO CLAIMS OR OTHER INFORMATION ABOUT MINOR CHILDREN WHO MAY BE AFFECTED**

OR IF THERE IS INFO - USE THIS:

(Name) submits that (or specify other sources of info if necessary) the following minor children in Australia could be affected by a decision to cancel his/her visa (include name/s, DOB/s and relationship/s to client)[Discuss possible effects of decision on each identified child, noting and addressing any representations made by or on behalf of the non-citizen and paying particular attention to the following factors, to the extent relevant in the particular case:

- the nature and duration of the existing relationship between the child and the person;

- the extent to which the client is likely to play a positive parental role in relation to the child in the future, in light of likely future living arrangements and whether the marital relationship with the other parent is ongoing;
- the likely effect that any permanent separation from the person would have on the child, taking into account the person's involvement in the child's life so far and any information about possible contact in the event of separation;
- whether there are other people who fulfil a parental role toward the child and their attitudes to access and involvement in child rearing by the client, if known;
- any known views of the child;
- evidence that child has suffered or experienced physical or emotional trauma from the non-citizen's conduct, including direct abuse and/or exposure to family violence perpetrated by the non-citizen, or has otherwise been harmed by the non-citizen physically, sexually or mentally.];
- Draw some conclusion/s about the relationship/s and its/their importance to the child/ren's development, e.g. 'I find that (Name) has a close and ongoing parental relationship with (children's names)' or 'I find that (Name) has an uncle-type role in the lives of (children's names) and that they might suffer some emotional impact if he is removed from Australia, but that they would not be deprived of the presence of a person who is essential or otherwise has a role of critical importance to the child/ren's development', etc, as appropriate.

<Example 1 – positive finding>

58. I find that it is in the best interests of (child/ren name/s) that I do not cancel (Name)'s visa. I have given this significant weight against cancellation.

<Example 2 – limited finding>

59. (Discuss factors by which the harm to a child's best interests may be limited e.g. the child is primarily cared for by others/already close to their 18th birthday/child rarely sees client and info does not suggest this is likely to change/judicial orders limiting access in place/client does not know where children are/etc.)

60. While I find that it is in the best interests of (child/children name/s) that I do not cancel (Name)'s visa, this is tempered by my concerns discussed above. I have accordingly attributed this consideration moderate/some/etc weight against the cancellation of (Name)'s visa.

(Do not use the phrase 'less weight' – this expression may suggest the Minister is not treating it with the same weight as other considerations)

<Example 3 – negative finding>

61. On balance, I find that it is in the best interests of (child/children name/s) that I cancel (Name)'s visa.

Ties to Australia

62. (Name) has resided in Australia for (number of years) years, having arrived as an adult/child of (age) years. I have taken into account the length of time that (Name) has ordinarily resided in Australia DELETE IF NOT RELEVANT, and afforded particular weight to the fact that this period began when (Name) was a young child. Based on (Name)'s circumstances, including [discuss the

person's periods of primary and secondary education, and any particular events that may have impacted significantly on the person's development. I find that [detail findings. If appropriate, refer to periods spent developing/significant experiences outside Australia. Separately note duration of other (usually adult) years spent living in Australia.]

63. I have also considered that (Name) began offending soon after arriving in Australia and has since continued to offend repeatedly.

Impact on immediate family in Australia

64. (If applicable, otherwise delete) I note that (Name) has immediate family members in Australia who are citizens, permanent residents or otherwise authorised to remain indefinitely in Australia, being: [set out the **immediate** family members, and their relationship to the person]

65. [Go on to discuss impact of decision on immediate family members, as set out in claims. These may need separate paras, depending on info available] OR (Name) has not listed any **other** immediate family in Australia.

66. If there are claims about immediate family members in Australia who do **not** have the right to remain indefinitely, discuss briefly, but these temporary links can be given less weight for this reason.

67. I have considered the impact of visa cancellation upon (Name)'s immediate family in Australia and find that those persons would experience **emotional/ practical/financial hardship** (summarise as applicable to the case and available info) if (Name) is unable to remain in Australia.

Other family and social ties

68. [as relevant] (Name) also has links to Australia through **other/extended family members, and social links including friends and other persons** who are Australian citizens, Australian permanent residents or have the right to remain in Australia indefinitely. [Discuss further in light of available info. Probably numbers are enough unless they have provided separate representations or are discussed specifically by client.]

69. If there are claims about other family members in Australia who do **not** have the right to remain indefinitely, discuss briefly, but these temporary links can be given less weight for this reason.

70. [Briefly summarise person's education history in Australia, if any. Normally, don't include educational, personal or rehabilitative training in prison or detention – this may be relevant under Risk, but is not usually a contribution to the community. Summarise any claims and assessment about employment, voluntary service and other community contribution claims or other ties to the Australian community.]

71. I note that [go on to discuss any other relevant ties/positive contributions, especially employment and evidence of paying taxes, giving more weight to any time when the non-citizen has contributed positively to the Australian community.

72. However I also note that [discuss any matters of negative relevance here, e.g if the person has begun offending not long after arriving and continued thereafter, whether they have spent a lot of their 'residence' period in prison/detention, whether they have been reliant on public welfare for long periods, etc.].

Conclusion

73. I have considered the strength, nature and duration of (Name)'s ties to Australia and find that on balance, they weigh **very strongly/ quite strongly/ moderately/ slightly/ etc against** visa cancellation in this case.

Legal consequences of the decision

If person is in Australia and has not made any claims about harm upon return to their home country, as part of submissions, an ITOA/PV application or otherwise, use this para and delete the rest of the section:

74. (Name) has not made any claims which require assessment in relation to Australia's international non-refoulement obligations, nor does the other available evidence indicate that such an assessment is necessary in this case. Further, (Name) is not covered by a protection finding as defined in s197C of the Act.

OR

If person is outside Australia, use this para and delete rest of section (including above para)

75. (Name) is not in Australia and accordingly Australia's non-refoulement obligations, as implemented in the Act, cannot be engaged in respect of **him/her**.

OR for all other scenarios, delete above paras, leave in the following paras and then insert relevant additional text from the separate NRO wording template for s501(2) cases (without the Scenario headings in that document)

76. I am aware that under s198 unlawful non-citizens are liable to removal from Australia as soon as reasonably practicable, and in the meantime are liable to detention under s189 provided that removal is practicable in the reasonably foreseeable future, noting also that s197C(1) provides that, for the purposes of s198, it is irrelevant whether Australia has non-refoulement obligations in respect of the unlawful non-citizen.

77. However s197C(3) provides that s198 does not require or authorise removal of a person to a country in relation to which a 'protection finding' has been made in the course of considering a protection visa application by the person, except in the circumstances set out in s197C(3)(c).

78. A 'protection finding', as defined for the purpose of s197C(3) of the Act, made in the course of considering a protection visa application from a non-citizen, means that Australia will not forcibly return, deport or expel a person to a place where they will be at risk of a specific type of harm. The Act, in particular the concept of 'protection obligations', reflects Australia's interpretation of its non-refoulement obligations and the scope of such obligations that Australia is committed to implementing.

79. If relevant circumstances change, a reassessment of a protection finding can be made under s197D. A decision that the person was no longer a person in respect of whom a protection finding would mean that the person no longer engaged Australia's non-refoulement obligations and that s197C(3) no longer operated in respect of the person.

Impediments if removed to (Country)

80. I have considered the extent of any impediments that (Name), if removed from Australia to (Country), will face in establishing himself/herself and maintaining basic living standards, in the context of what is generally available to other citizens of (Country), taking into account the following factors.

Scenario 1: Use the following if the non-citizen is the subject of a protection finding and thus cannot be removed to their home country. Otherwise delete this option. Then proceed to paras below for all cases.

81. Because of the protection finding made regarding him/her, (Name) cannot be removed to (Country) at present. (Name) has made submissions regarding impediments that (he/she), if removed from Australia to (Country), would face in establishing himself/herself and maintaining basic living standards, in the context of what is generally available to other citizens of that country.

82. [Briefly summarise representations re extent of impediments and overall finding]

83. [OPTION: If there would be significant impediments] However, as noted above, the protection finding made for (Name) means that s198 of the Act does not require or authorise the removal of (Name) to (Country) (s197C(3)). In this regard, I have noted that the limited circumstances in which removal is required, as set out in s197C(3)(c), do not presently exist for (Name). Therefore, even if (Name) would face the impediments described above if removed to (Country), I find that those impediments will not eventuate as a direct result of my decision to cancel his/her visa.

84. [OPTION: If no significant impediments] In any event, as noted above, the protection finding made for (Name) means that s198 of the Act does not require or authorise the removal of (Name) to (Country) (s197C(3)) and the limited circumstances in which removal is required, as set out in s197C(3)(c), do not presently exist for (Name).

Scenario 2: If the non-citizen is NOT the subject of a protection finding proceed as below

Age and health

85. (Name) is aged (age) and has/has not identified any significant adverse mental or physical health issues, including [briefly summarise and refer to whether the information is submitted by the person or known from other sources.].

Language and/or cultural barriers

86. [Outline relevant information/submissions]

87. [Insert finding. Depending on the facts of the particular case, some possible findings may be along the following lines]

<Example 1>

88. I find that the difficulties (Name) would be likely to experience on moving to (Country) would be limited, given that the main language in his/her home country is English (or a language they speak, as known from their submissions or other information) OR discuss length of absence/unfamiliarity with local language, customs, etc/general economic and security conditions in the country, etc.

<Example 2>

89. I find that (Name) is likely to face substantial language and/or cultural barriers if required to resettle in (Country) explain further as necessary. (Name)'s hardship would be further exacerbated by the negative impacts that relocating to (Country) would have on his/her family, should they choose to relocate. (May need to make specific reference to challenges facing spouse and children, if it is clear that they would go with the client AND are not nationals of the country. Not necessary to discuss on a merely speculative basis.)

Social, medical and/or economic support available in (Country)

90. [Outline relevant information/submissions]

[Insert finding. Depending on the facts of the particular case, some possible findings may be along the following lines:]

91. <Example 1> I find that (Name) will experience practical, financial and emotional hardship if removed to (Country), because of (identify relevant factors such as age, lack of family and social support, language and cultural barriers, lack of medical and economic support).

92. <Example 2> I find that (Name) will, if needed, have access to health and welfare services in (Country) on the same basis as other nationals, although I acknowledge that such services may not be of a standard and accessibility comparable to that of Australia. I also acknowledge that (Name) would need to establish a new network of contacts for medical support, if needed.

93. While (Name) is not the subject of a protection finding, I note that s/he has made claims relating to Australia's non-refoulement obligations. These claims have not yet been assessed. I recognise that (Name)'s fear in relation to their possible future treatment in (Country) in itself constitutes an impediment to their return and have given this weight against cancellation.

Impact on Australian business interests

[If relevant claims are made, discuss and include Attachment references]

94. [Example conclusion:] I do not accept that cancellation of (Name)'s visa would significantly compromise the delivery of a major project or delivery of an important service to Australia.

95. Accordingly, I have attributed this consideration significant/some/no weight against/in support of a decision to cancel (Name)'s visa.

ADDITIONAL MATTERS CONSIDERED

96. In addition to the considerations discussed above, I have also taken into account other matters that are relevant to the present decision.

97. [Include any additional matters raised in the representations, or identified by the Department and which have been put to the non-citizen for comment, that fall outside the considerations above. Importantly, the Minister must take into account any alleged facts underpinning a protection claim, where those facts are being relied on by the person in support of non-cancellation – and have not already been the subject of a Departmental finding]

CONCLUSION

98. I am satisfied that (Name) does not pass the character test because of the operation of, in this case, s501(6)(a) with reference to s501(7)(a)/(b)/(c) OR s501(6)(e) of the Act. Further, I am satisfied that it is in the national interest to cancel (Name)'s visa.

99. My discretion to set aside the decision of the ART/delegate and cancel (Name)'s visa under s501BA is therefore enlivened.

100. In considering the use of my discretion, I have given the highest priority to the safety of the Australian community and the need to protect its safety.

101. I have found that the best interests of (Name)'s minor child/children weigh significantly/heavily/somewhat/etc against cancellation of (Name)'s visa.

102. In addition, I have found that a number of other factors also weigh against a decision to cancel the visa. These include [list considerations against cancelling – eg. Strength and nature of ties to Australia; impediments if removed to home country (unless the person is covered by a protection finding which precludes removal, in which case impediments should be mentioned in the next para below instead). International non-refoulement obligations should be mentioned as a factor against cancellation only if the person will be returned to the country in question, ie if the person is not covered by a protection finding with respect to that country. In that case, make sure any risk of harm on return, if the claim is accepted by the Department, is mentioned here in addition to acknowledging non-refoulement obligations.]

103. [Where international non-refoulement obligations are engaged, and the non-citizen is the subject of a protection finding which prevents removal to the country where they may face harm, use the following wording.] Also, I accept that (Name) has been found to engage international non-refoulement obligations. In this regard, I accept that (Name), if returned to (Country), would face [describe risk of harm]. However, the protection finding made for (Name) with respect to (Country) means that his/her removal to that country is neither required nor authorised in the present circumstances. Therefore, the risk of serious harm mentioned above will not eventuate for (Name); nor will the impediments that (Name) would face in (Country) eventuate.

104. I have given very significant weight to matters weighing in favour of cancellation. In doing so, I considered [eg. the [very] serious/serious nature of the crime/s committed / family violence (noting any rehabilitation and mitigating circumstances)].

105. (Name) has committed serious crimes, including that of offence and offence involving [violence/other]/(Name) has an extensive history of offending causing great harm and great cost to the Australian community. Non-citizens such as (Name) who have a criminal history of such offences should not generally expect to be permitted to remain in Australia.

106. I find that the Australian community could be exposed to (significant) harm should (Name) reoffend in a similar fashion OR continue to breach the law and judicial orders OR continue to engage in other serious conduct by his/her association/membership of/with person/group/organisation. I could not rule out the possibility of further criminal/other serious conduct by (Name). The Australian community should not tolerate any risk of further harm.

107. Noting that (Name) has lived in Australia for most of his/her life from a young age, I have taken into account that the Australian community may afford a higher level of tolerance of criminal or other serious conduct by (Name) than it would otherwise. However I also recognise that where great harm could be inflicted on the Australian community, even strong countervailing considerations are generally insufficient to warrant not cancelling the visa.

108. In addition to the need to protect the Australian community from risks of harm, I have also considered what the community would expect in relation to non-citizens. I am of the view that the Australian community generally would expect non-citizens who [eg. have a very serious criminal

history involving violence and sexual crimes] not to continue to hold a visa, especially where the non-citizen continues to pose a significant risk to the Australian community.

109. I find that the considerations against cancellation are outweighed by the serious national interest considerations in this case.

DECISION

110. Given my conclusion above, I decided to exercise my discretion to set aside the decision of the ART/delegate dated DD Month YYYY and cancel (Name)'s (Visa) under s501BA of the Act.

THE HON TONY BURKE MP

Minister for Home Affairs, Minister for Immigration and Citizenship

OR

THE HON MATT THISTLETHWAITE MP

Assistant Minister for Immigration

OR

THE HON JULIAN HILL MP

Assistant Minister for Citizenship, Customs and Multicultural Affairs

Signature.....

Date: __/__/2026

Time: _____

Place: _____

Time taken on decision: _____ hours _____ minutes

OFFICIAL: Sensitive Personal-Privacy

CONTENT WARNING remove if not relevant

Administrative Review Tribunal (ART) Set Aside Threshold Assessment

CLIENT AND CASE DETAILS			
Name	First Name SURNAME	Minister's powers	eg. s501A / s501BA
DOB (age)	XX/XX/XXXX (XX)	Current visa	Visa Title (subclass XXX) visa
Client ID		Visa reviewed	Visa Title (subclass XXX) visa
Nationality		Decision dates	XX/XX/XXXX – ART set aside decision XX/XX/XXXX – cancellation not revoked XX/XX/XXXX – mandatory visa cancellation [delete/update]
Location	Eg. Community (NSW) Detention (NSW) Prison (NSW)		
CCP advice	Eg. On XXXX, Character and Cancellation Policy confirmed they agree with legal advice not to seek judicial review on the basis that no clear jurisdictional errors were identified. Or. Character and Cancellation Policy yet to confirm their position on judicial review.		
ARRIVAL DETAILS AND IMMIGRATION HISTORY			
On XXXXX, Mr/Ms XXXX arrived in Australia aged XX, as the holder of a XXXX. Include relevant immigration history / protection applications / citizenship applications, etc - does not need to be too detailed.			
OFFENDING HISTORY			
Mr/Ms XXX's National Criminal History Check released on XXX, confirms his/her first conviction was on XXX, aged XX.			
- First dot point – offending related to cancellation/refusal - Include sentencing remarks – if it helps to explain the offence - Previous offending in order of newest to oldest			
Offending following the ART/cancellation/refusal decision: [delete if not applicable]			
ART DECISION SUMMARY			
- Summarise the ART decision.			
ADDITIONAL SENSITIVITIES			
- Minors/children and their ages and citizenship – do they live in Aus? - Other links to the Australian community - Any possible NZYQ attributes, or are there any indicative protection findings? - Media – nil identified			
OR Media articles saved in TRIM XXXX. Media reporting indicates Mr/Ms XXX... The article suggests...			

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AGREED MINISTERIAL THRESHOLDS	
- Where there is a <u>serious</u> risk to the Australian community or individual, which could include: - Serious violent or sexual offences, particularly against women or children - Substantial criminal record - Disregard for Australian laws, i.e. breaching bail conditions, continual reoffending - Where the non-citizen has been convicted or found guilty of a violent and/or repeated <u>domestic violence offences</u> - Where the ART's decision is <u>inconsistent with community expectations</u>, including: - Historic offending that is serious in nature, including murder and sexual assault - Serious identity and/or fraud concerns - Where there are other <u>exceptional circumstances</u>, including: - Significant media interest - High profile case	Yes / No
ASSESSMENT RECOMMENDATION	
[delete what is not relevant]	
The Department considers that this case meets agreed ministerial referral thresholds, as XXX.... Recommend preparing a submission for the Minister. *** The Department does not consider this case to meet agreed ministerial referral thresholds, as XXX's offending has not involved any violent or sexual offending [change as appropriate]. However, recommend escalating this case for the Minister's direction following previous advice that all Minister losses under Ministerial Direction 110 should be referred for consideration. Recommend preparing a client brief for the Minister. *** The Minister's personal powers are no longer available, as XXX (eg. Mr XXX's Special Category (subclass 444) visa subject of the ART review, permanently ceased to be in effect on XXX) Recommend administratively finalising this matter.	
CASE OFFICER CHECKS	
Are names on the same line?	Yes / No
Are dates on the same line?	Yes / No
Are visa titles on the same line?	Yes / No
Is the ART summary written in the 'past tense'?	Yes / No
Are all numbers up to ten in written format (rather than number [2, 3] format) – this excludes dates	Yes / No
Have media articles and other referenced documents been saved to client's TRIM container?	Yes / No
All font 'Calibri' and size '11'	Yes / No

Update for acting EL2

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EL2 Endorsement

s. 22(1)(a)(ii)

PN 60208693

Click or tap to enter a date.

CONTENT WARNING delete if not applicable

Escalation brief for Administrative Review Tribunal (ART) set aside case

CLIENT AND CASE DETAILS			
Name	First Name SURNAME	Powers	s501A / s501BA
DOB (age)	XX/XX/XXXX (XX)	Current visa	Visa Title (subclass XXX) visa
Client ID		Visa reviewed	Visa Title (subclass XXX) visa
Citizenship		Decision dates	XX/XX/XXXX – ART set aside decision XX/XX/XXXX – cancellation not revoked XX/XX/XXXX – mandatory cancellation XX/XX/XXXX – refusal [delete/update]
Location	Eg. Community (NSW) Detention (NSW) Prison (NSW)		

National Criminal History Check: released on XX.

Offending related to cancellation/refusal

Include a line or two on what the offending entailed – if it provides more clarity for the EL2

ART reasons: TRIM reference.

Media: [only if significant] Summary / Nil identified.

OMCG/Syndicate: Delete if not applicable.

Of note: Is there anything else that should be included that will help the EL2? Delete if not applicable

CHECK PDMS for other corro (CID is not always included in doc titles in PDMS, so check by both name and CID)

OPTIONS FOR EL2	
Please indicate how you would like to notify the Minister of the ART set aside decision.	
a) Ministerial Submission.	Yes / No
b) Ministerial Client Brief.	Yes / No

s. 22(1)(a)(ii)

Director, Merits and Judicial Review Response Click or tap to enter a date.

COMPLETE THE TABLE and LEAVE ATTACHED TO THE EB

CASE OFFICER CHECKS	
Are names on the same line?	Yes / No
Are dates on the same line and months spelled out (where applicable)?	Yes / No
Are there media articles? If yes, save to client TRIM container	Yes / No

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Steps to record ICSE “Cancellation - Set Aside Cancellation” event for Minister Loss

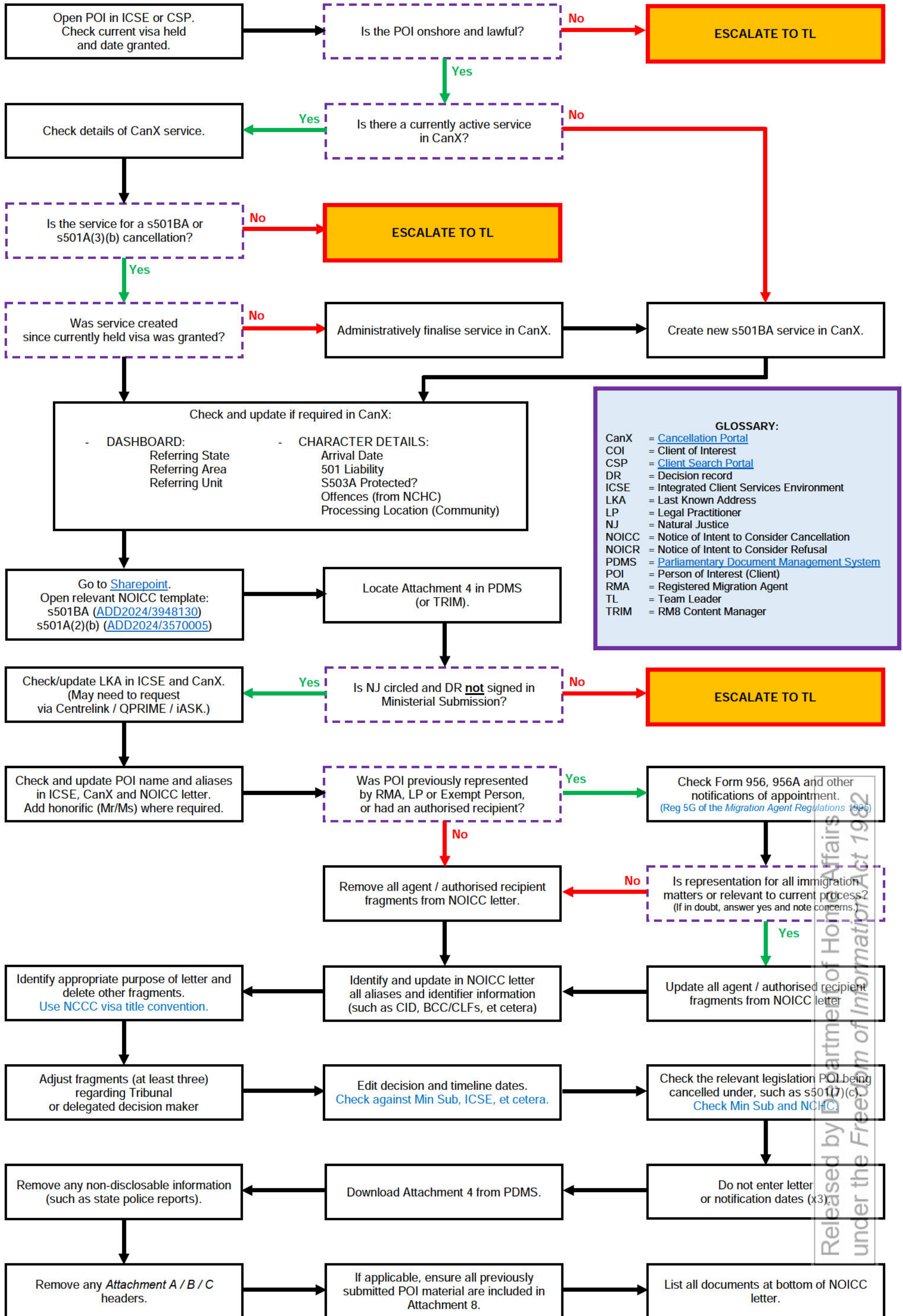
- Cancellation – Set Aside Cancellation event is only recorded for ‘Cancellation under s501’
- This event is recorded after receiving an email request from Litigations and only after the Administrative Appeals Tribunal (AAT) overturns the Departmental decision/s.

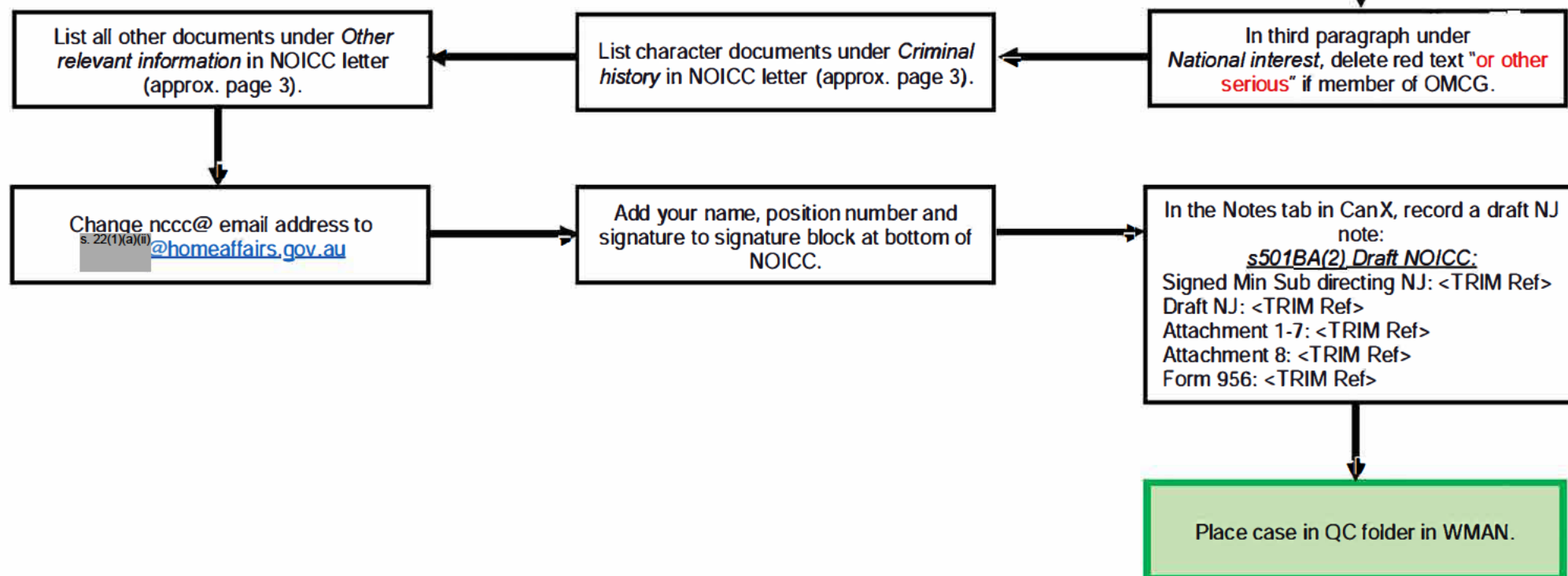
From systems perspective, ‘Cancellation - Set Aside Cancellation’ ICSE event can only be added if the ICSE permission request ‘Cancellation-Cancellation’ had been correctly commenced.

Note: Undoing visa Cancellation / ICSE Refusal event does not reinstate the visa status automatically.

The confirmation of the decision will come from Litigation in a form of the hand down decision notification email. This email will contain client information such as ICSE ID, full name, and date of birth. However, we must ensure client details mentioned in the email corresponds with ICSE records.

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Commencing a New Cancellation Service

Cancellation Portal

Important – if a visa holder already has an active cancellation service under a different power, that transaction must be administratively finalised in both ICSE and Cancellation Portal (and CCMD for old cases) before commencing the new cancellation action. This will ensure that the old cancellation transaction is captured as a separate activity.

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****ALPHA does not finalise matters or update system notes where the minister has requested the visa be cancelled or has requested NJ be provided****

System	Narrative
Client of Interest Note	Contact MJR s. 22(1)(a)(ii) @homeaffairs.gov.au) prior to visa/citizenship grant. This character matter is being considered by the Minister. Contact MJR if the non-citizen engages in further conduct of concern.
CMAL - PAL	Contact MJR s. 22(1)(a)(ii) @homeaffairs.gov.au) prior to any visa/citizenship grant. This character matter is being considered by the Minister seeking views as to whether they wish to consider setting aside the decision of the ART. Please refer this case to the MJR should the non-citizen engage in any further conduct of concern.

Step 1 – ICSE

S. 47E(d)

Step 2 – CSP client history

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Step 3 – visa history

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Step 4 – cancellation setup

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Step 5 – character details

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Step 6 – allocation

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Step 7 – work management

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Threshold Assessment Guide and Checklist

Remember to do a final check of your assessment before sending it to your supervisor, please check for the following:

- All text in assessment is **Calibri 11pt**
- All dates are to have a comma at the end, e.g. **XX Month XXXX**, (unless listing 'between' dates – eg. **between 1 January 2022 and 2 February 2022**, - only place the comma after the second date)
- Dates in written format do not have a '0' in front of the day (ie. 2 April 2025 not 02 April 2025)
- All references to **the ART**, are to be called "**the ART**", not Tribunal
- No Names, Dates or Headings are to be split over two lines – to fix the document:
 - **Place cursor** behind the **last word** on the top line, hit **Backspace bar**, this will move the word to the next line. Then press **Ctrl, Shift** and **Space Bar** to add a space between the first two words on the second line.
- Make sure it is clear to the reader when the client was **in** and **out** of immigration and criminal detention.

CONTENT WARNING remove if not relevant

Administrative Review Tribunal (ART) Set Aside Threshold Assessment

Client and Case Details			
Name	First Names SURNAME	Current status Check for the correct <u>Visa Title</u> in - <u>LEGEND</u> – <u>Migration</u> - <u>Schedule 2 Visa Subclass Table</u> .	Visa Title (subclass XXX) visa. Examples: Special Category (subclass 444) visa, Bridging C (subclass 030) visa, Partner (subclass 100) visa etc. Do not add visa class (TY-444), (WA-010) or (BC-100) or if it is an (Onshore) or (Offshore) application.
DOB (age)	XX/XX/XXXX (XX)	Visa reviewed cancelled/refused	Visa Title (subclass XXX) visa
Client ID		Powers	eg. s501A / s501BA [Delete irrelevant power]
Location	E.g. Community (NSW) Detention (VIC) Prison (QLD)	Decisions dates	XX/XX/XXXX – ART set aside decision XX/XX/XXXX – cancellation not revoked XX/XX/XXXX – mandatory visa cancellation XX/XX/XXXX – Refusal [delete/update]
Nationality			
CCP appeal on advice	On XXXXXXXX, Character and Cancellation Policy advised they agree with legal advice not to seek counsel's views and not to seek judicial review on the basis that there no clear jurisdictional errors were identified.		

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Arrival Details and Immigration History

On XX Month XXXX, Mr/s SURNAME arrived in Australia aged XX, as the holder of a Visa Title (subclass XXX) visa.

Include relevant immigration history/ cancellation history /departed Australia X times, last arrival on XX Month XXXX / citizenship applications / etc.

Protection application/visa details and BV-R details should be included here.

Does not need to be too detailed.

Offending History

Mr/s SURNAME's National Criminal History Check, released on XX Month XXXX, states that his/her first conviction was recorded on XX Month XXXX, aged XX.

- First dot point – **offending related to cancellation/refusal**
- Each dot point should start - On XX Month XXXX, Mr/s SURNAME was convicted (adjust if no conviction) of *Capital Italicised 11pt, Each charge* (number of counts) and was sentenced to XX months imprisonment, commencing XX Month XXXX, concluding XX Month XXXX. Include non-parole period and if that is the reason of release (if applicable). Include when client is in and out of criminal/immigration detention. Example – On XX Month XXXX, Mr/s SURNAME was released from criminal custody and transferred to immigration detention under s189 of the *Migration Act 1958* (the Act). On XX Month XXXX, the ART set aside Mr/s SURNAME's visa cancellation/refusal decision and Mr/s SURNAME was released from immigration detention.
 - Include Sentencing Remarks – if it helps to explain the seriousness of the offence.
 - Use the client's name (eg. Mr SMITH), not 'the accused'
 - Sentencing Remarks contain the facts of the case
 - Police Charge Sheet, Police Statement of Facts, Cancellation decision record etc, are one sided views of events. **Only use these** if Sentencing Remarks are not available
 - Make it clear where the information has come from (eg. According to sentencing remarks)
- Remember to read NCHC's from the bottom up, to make sure you understand if there is an appeal or if a previous conviction has been called up, **rather than listing as a new conviction.**
- Previous offending in order of newest to oldest

Offending following the Tribunal/Cancellation/Refusal decision: [choose which one, or delete if not applicable]

- On XX Month XXXX, after the XXXX decision, Mr/s SURNAME was convicted of *Capitalise charge and italicised 11pt* and was sentenced to XX months imprisonment, commencing XX Month XXXX, concluding XX Month XXXX.

ART Summary

- Summarise the ART's decision. Each dot point should start with one of the following: The ART found, The ART stated, The ART viewed, The ART considered, The ART reflected, The ART concluded etc. (Make sure to switch around in each dot point, to keep reader interest)
- Make sure you write in **past tense** (especially when copying and pasting text from the ART decision), as you are reporting on what the ART has said/found. (eg. Was not is/would not will/etc)
- Use the individual's name (eg. Mr SMITH), not 'the applicant'

Additional Sensitivities

- Links to the Australian community - immediate family members, state their citizenship / or if they are permanent residents, mention parental obligations to minors, and state children's ages, and are living in the Australian community. (Add a second dot point for other identified relatives).
- Any health concerns..... Mental or Major physical health issues, and add the resource of the information e.g. On XX Month XXXX, Dr XXX prepared a psychologist report for the sentencing judge which stated that Mr/s SURNAME was diagnosed with
- Any possible NZYQ attributes...

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- Has there been an indicative protection finding?
- Either - **Media - Nil Identified** or Media articles relating to **Mr/s SURNAME's** offending were identified and can be found at **TRIM reference**. (Make sure you save the media articles to the Client's current **TRIM container (check spreadsheet)**).

Ministerial Thresholds

- Where there is a serious risk to the Australian community or an individual, which could include:
 - Serious violent or sexual offences, particularly against women or children
 - Substantial criminal record
 - Disregard for Australian laws, i.e. breaching bail conditions, continual reoffending
- Where the non-citizen has been convicted or found guilty of a violent and/or repeated domestic violence offence(s)
- Where the Tribunal's decision is inconsistent with community expectations, including:
 - Historic offending that is serious in nature, including murder and sexual assault
 - Serious identity and/or fraud concerns
- Where there are other exceptional circumstances, including:
 - Significant media interest
 - High profile case

Yes / No
(delete
not
relevant)

Assessment Recommendation

[Delete what is not relevant]

Option 1: Meets thresholds – request min sub

The Department considers this case to meet thresholds, as XXXX...**explain which thresholds are met. (one or a combination).**

Recommend preparing a submission for the Minister.

Option 2: Does not meet thresholds – raise with Minister

The Department does not consider this case to meet agreed ministerial referral thresholds, as Mx XXXX's offending **has not involved any violent or sexual offending [change as appropriate]**. However, recommend escalating this case for the Minister's direction following previous advice that all Minister losses under MD110 should be referred for consideration.

Recommend preparing a client brief for the Minister.

Option 3: Admin finalise – only use when ministerial powers are no longer available

Provide the specific reason(s) as to why the case should be admin finalised.

Eg. Mr SMITH's Special Category (subclass 444) visa subject to ART review, **permanently ceased to be in effect on XXXXX**. As such, the Minister's personal powers are no longer available.

Recommend administratively finalising this matter.

Include the EL2's name and position number. Update these if there is an acting EL2.

EL2 Endorsement

s. 22(1)(a)(ii)

PN 60208693

Click or tap to enter a date.



Australian Government

Department of Home Affairs

Creating client brief PDRs on PDMS

Team Alpha - MJR

Updated May 2026

The following instructions are for creating the client brief shell in PDMS. Before commencing a PDR, draft your client brief and save to TRIM (ADF2026/106397). After QA, follow the below instructions to upload your client brief.

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Troubleshooting

If you encounter any issues, contact PDMS ^{s. 22(1)(a)(ii)} [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) or Ministerial Support [s. 22\(1\)\(a\)\(ii\)@homeaffairs.gov.au](mailto:s.22(1)(a)(ii)@homeaffairs.gov.au) for assistance.

Also refer to the PDMS page on the intranet for further help: <https://intranet.bcz.gov.au/help-text/pdms-subsite/ministerial-briefs>.



NCCC help card - Referring cases in PDMS Plus

Please follow these instructions when referring cases to a minister in Parliamentary Document Management System (PDMS) Plus.

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Training and resources

The [PDMS Sharepoint](#) page is a valuable resource, and provides informative and comprehensive PDMS training and video tutorials - [PDMS Training and Video Library](#). The 'Getting Started with PDMS' presentation is a terrific resource, and the Home Page gives specific timestamps for particular topics.

For more information, please contact the PDMS team:

Phone: s. 22(1)(a)(ii)
Email: s. 22(1)(a)(ii)@homeaffairs.gov.au

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Contact relevant stakeholders to advise pending s501 decision

1. Contact relevant internal and external stakeholders. If the client is in the community or prison you should contact the relevant State Compliance/Removals team via email. If the client is in prison include the name of the prison, EDOR and offender ID (if known). If the client is in immigration detention you should advise relevant stakeholders via email. SharePoint has relevant email stationary templates and contact lists:

Revocations SharePoint page:

Processing Resources – Email stationery templates - opens in Outlook.

Contacts – Compliance and detention contacts.

Contacts – Prison contact list and other agency by state.

Case Officer SOP - ADD2025/6072262

Discretionary SharePoint page:

Processing Resources – Email templates - opens in Outlook.

Contacts – Notification contacts - Australian Border Force and Detention Operations

Case officer SOP - ADD2025/6072262

VACCU SharePoint page:

Processing Resources – Email stationery templates - opens in Outlook.

Contacts – Compliance and detention contacts.

Contacts – Prison contact list and other agency by state.

Case officer SOP - OPD2019/340881

MJR SharePoint page:

Processing Resources – Email stationery templates - opens in Outlook.

Contacts – Compliance and detention contacts.

Contacts – Prison contact list and other agency by state.

Case officer SOP - ADD2025/6072262

2. Advise internal stakeholders of any sensitivities including health, young children, links to OMCGs or anything else that could affect location or detention placement.
3. Please note, at this stage, you are notifying relevant stakeholders that the case has progressed to the decision-maker. Similar templates are available on SharePoint for notification of the outcome of the case.

Consider preparing draft notification letters in advance of the decision to save time when the decision is made and prompt notification is required.

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Appendix A

Sending the white folder

Please refer the case to the Character Cancellations Triage team for action. This team will print out the attachments to the ministerial submission with tabbed references and assemble them in a white folder with the appropriate cover page and spine title.

After the Assistant Secretary clears the submission, you will be copied into a PDMS record when the case is assigned to Parliamentary Coordination.

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