Tipping the (Im)balance: Risk, Rehabilitation and Membership in Administrative Appeals Tribunal Decision Making for Convicted New Zealander Long Term Residents of Australia

Author

Powell, R, Wickes, R

Published

2023

Journal Title

Journal of Immigrant & Refugee Studies

Version

Accepted Manuscript (AM)

DOI

10.1080/15562948.2023.2297225

Tipping the (im)balance: Risk, rehabilitation and membership in Administrative Appeals Tribunal decision making for convicted New Zealander long term residents of Australia

Rebecca Powell, Monash University
Rebecca Wickes, Griffith University
Contact: rebecca.powell@monash.edu

Abstract

New Zealanders are currently the largest nationality group of people deported from Australia. When a non-citizen has their visa cancelled under s501 by a delegate of the Immigration Minister, they have the opportunity to appeal at the Administrative Appeals Tribunal (AAT). AAT Members (decision makers) decide the fate of the applicant by weighing up the perceived risk of the individual to community safety against a series of mitigating factors that relate to the life the applicant has established in Australia. As a site of investigation into s501 visa cancellation decision making practice, this paper quantitatively and qualitatively examines a set of AAT visa cancellation decisions from 2015-2018 under Ministerial Direction No. 65, for 97 New Zealander long term residents. It focuses on how AAT decision makers considered and valued mitigating factors in a decision making process that is inherently imbalanced towards constructing non-citizens as a risk. Our analysis reveals that of all mitigating factors considered, evidence of rehabilitation and legal representation at the AAT hearing are associated with reduced perceptions of risk. When comparing two AAT decisions that are matched on all relevant factors but have different decision outcomes, we find that even where mitigating factors for reducing perceptions of risk are present, potential for inconsistencies in AAT decision making remains.

Keywords: crimmigration, deportation, administrative decision making

Introduction

New Zealanders are currently the largest group of people deported from Australia under Section 501 of the *Migration Act 1958 (Cth),* which mandates visa cancellation or refusal on character grounds (s501). This is a consequence of legislative amendments made to s501 in December 2014 against non-citizens that expanded the grounds of character based visa cancellation and increased executive power to cancel visas on suspicion of criminal activity or association. These amendments expanded the classification of which non-citizens are considered a risk to the Australian community based on actual or perceived criminal status as means to exclude and remove them via visa cancellation and deportation. They reflect an escalation of crimmigration trends based on risk in Australia's criminal deportation policy – a policy designed to protect the Australian community from the potential risk of convicted non-citizens. At the same time, a new iteration of s501 decision making policy, the Ministerial Directions, were issued: No. 65. Ministerial Directions provide decision making guidance on s501 visa cancellation to the Immigration Minister and his/her delegate responsible for the primary visa cancellation decision, and to Administrative Appeals Tribunal (AAT) Members at the decision review stage. This iteration of the Ministerial Directions elevated the construction of convicted non-citizens as a risk to the Australian community and deemphasized the consideration of mitigating factors associated with the life they had established in Australia.[1] These legislative and policy developments have particularly impacted on New Zealander long term residents of Australia and have extended to the s501 visa cancellation decision making process at the AAT.

When a convicted non-citizen has their visa cancelled under s501 by a delegate of the Immigration Minister[2], they have the opportunity to appeal the visa cancellation decision at the AAT. S501 decisions made by the Immigration Minister or his/her delegates are not publicly available which is why we concentrate on AAT s501 decisions here, because all s501 AAT decisions are public.[3] Thus, they are one of the few sources to provide insight into the factors that lead to deportation. In this article we present our analysis of 97 AAT decision summaries for New Zealander long term residents of Australia[4] who appealed their s501 visa cancellation at the AAT between 2015-2018 under Ministerial Direction No. 65.[5] The purpose of this article is to understand the mitigating factors associated with the applicants'[6] life in Australia that may influence perceptions of risk in the decision making process. Guided by the considerations contained in the Ministerial Directions, our analysis specifically focuses on how AAT decision makers construct convicted New Zealanders as a risk, and if

[1] Ministerial Direction No. 65 differed from the preceding Direction No. 55, with relegation of 'Strength, duration and nature of ties to Australia' from primary to other considerations, consequently reducing decisional weighting of this mitigating factor for applicants.

[2] In Australia, s501 visa cancellation decisions can be made by either a delegate of the Immigration Minister (a departmental civil servant) or, personally by the Minister. Those s501 visa cancellation decisions made personally by the Immigration Minister are restricted from AAT review.

[3] AAT s501 visa cancellation decisions are made publicly available via the Austlii website http://www8.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/AATA/ [Accessed 12 January 2022]

[4] Long term residence is defined as New Zealanders who have lived in Australia for a period of 10 years or more, and guided by previous legislative provisions of the Migration Act (1983-1999) that protected non-citizens resident in Australia for 10 years or more from criminal deportation.

[5] To date there have been eight iterations of the Ministerial Directions for visa refusal and cancellation under s501 from when the Ministerial Directions were introduced in 1999 (at the same time as s501 legislation was introduced under the *Migration Act 1958 (Cth)).* Each iteration of the Directions largely reflect associated legislative developments and the incumbent government's approach to border control and value of non-citizen long term residents' membership to the Australian community. Associated with the various iterations, different weightings have been applied to some of the considerations presented in Directions as they have been reshuffled across primary and other sets. Some considerations have been scrapped and other considerations have been (re-) introduced. The first was Ministerial Direction No. 17 (1999-2001) followed by Ministerial Direction No. 21 (2001-2009), No. 41 (2009-2011), No. 55 (2011-2014), No. 65 (2014-2018), No. 79 (2018-2021), No. 90 (2021-March 2023), and No. 99 (March 2023-present)

[6] In this instance, the 'applicant' is the person who has received an s501 visa cancellation decision made by a Delegate of the Department of Home Affairs, and who then applies to the AAT for independent review of that decision outcome.

or where mitigating factors associated with the New Zealander applicants' long term residence have the potential to balance or counter the elevation of risk in AAT decision making.

Crimmigration in the Australian criminal deportation context and the impact on New Zealand citizen residents

Crimmigration is a contemporary theoretical concept coined by American legal scholar Juliet Stumpf in 2006[7] and was developed to understand the merging of immigration and criminal law in the US criminal deportation context. It is used as a framework for analysis of criminal deportation systems in the Global North (Koulish and van der Woude, 2020; Aas, 2019; Billings, 2019a) and the Global South (Ramachandran, 2019; Salamon et al., 2020). Crimmigration conceptualizes the merging of criminal and immigration law and incorporates three key characteristics: expansion, exclusion and membership. Stumpf acknowledges that, "[B]oth criminal and immigration law are at their core, systems of inclusion and exclusion. They are similarly designed to determine whether and how to include members of society or exclude them from it." (Stumpf, 2006: 380). In the US criminal deportation context, Stumpf relates the characteristics of expansion to the exclusion of non-citizens in two ways: "an ever-expanding [non-citizen] population of the excluded and alienated" (2006: 378) and expanding "the range of crimes leading to [exclusion and] deportation" for non-citizens (2006: 383). Membership is presented in association with membership theory, marking the boundary of flexible sovereign governance over who belongs and is included, and who is excluded as an accepted member of society (2006: 377-379]. These characteristics have been identified and are present in the evolution of Australia's criminal deportation policy and practice from Federation in 1901 and continuing from the enactment of the *Migration Act (Cth) 1958* that has enshrined criminal deportation legislation (see, Finnane and Kaladelfos, 2019; Powell, 2023). They have escalated particularly since amendments were made to Section 501 in December 2014 when character grounds for visa cancellation and executive power over visa cancellation decisions were expanded to exclude a wider cohort of non-citizens from membership of the Australian community.

Theoretical advances in the application of crimmigration to the Australian context are largely limited to legislative and policy developments associated with Australia's border control and criminal deportation system (Grewcock, 2014; Billings, 2019a, 2019b; Hoang and Reich, 2017; Weber and Powell, 2020). Here we seek to advance from conceptual applications of crimmigration to the Australian criminal deportation system, by presenting empirical findings that emerge from the interplay of risk and mitigating factors in AAT s501 decisions for convicted New Zealander long term residents.

Following the December 2014 amendments, legislative and policy grounds for character based visa cancellation expanded, widening the scope of non-citizens who would be classified as an 'unacceptable' risk to the Australian community. Consequently, an increased number of non-citizens became susceptible to exclusion from membership of the Australian community via visa cancellation and deportation. From December 2014, the legislative grounds for visa cancellation and criminal deportation expanded with the introduction of mandatory visa cancellation, with retrospective enforcement and additional powers afforded to the Immigration Minister to cancel the visas of non-citizens based on suspicion of criminal activity or association, where no offence has been committed. The legislative definition of 'substantial criminal record' was expanded, subjecting those non-citizens convicted and sentenced to prison for a period of 12 months or more, including multiple prison sentences that add up to a period of 12 months or more, to mandatory visa cancellation. Mandatory visa cancellation provisions can be applied retrospectively to those who served a 12 month prison term at any time in the past, but who are now living back in the Australian community.

[7] Stumpf, J. (2006) 'The crimmigration crisis: Immigrants, crime and sovereign power', *American University Law Review*, Vol. 56: 367- 419.

When the 2014 amendments were made to s501, a new iteration of Ministerial Directions (No. 65) was released as a policy to guide s501 visa cancellation decision making. The guidance provided by the Ministerial Directions supports decision makers in the Department of Immigration and Border Protection (now, Department of Home Affairs) and at the AAT in their assessment of the individual's risk to the Australian community against a series of mitigating factors that may outweigh or counterbalance the risk. Other commentators have noted that Ministerial Direction No. 65 is inherently imbalanced and elevates the construction of the convicted non-citizen as a risk to the Australian community based largely on their risk of recidivism in association with the Government's commitment to protect the Australian community from (future) criminal activity or other serious misconduct by non-citizens (McCabe, 2013; Coyle and Keyzer, 2015). However, it is important to note that although risk assessment tools are a part of the Australian criminal justice process as means to predict recidivism, in the AAT process, there are no formalized risk assessments.[8] Assessment of a non-citizen's risk rests on the individual AAT Member's interpretation of risk as per guidance provided in the Ministerial Directions. While this allows for some flexibility in constructions of risk that are not bound to a particular framework, it opens the decision making process to inconsistencies.

The Directions are presented as a series of primary and other considerations, where primary considerations carry greater decisional weighting (Keyzer and Coyle, 2016) .[9] For Ministerial Direction No. 65, two out of three primary considerations are risk-based[10] and are near impossible for decision makers to award anything but maximum weighting. First, a convicted non-citizen who has their visa cancelled under s501 is classified to have a 'substantial criminal record' under the mandatory visa cancellation provisions, and from whom the Australian community must be protected. The definition of 'substantial criminal record' under s501 legislation and referenced in the Ministerial Directions, is wide ranging from a person who has been sentenced to imprisonment for life, or to a term of imprisonment of 12 months or more. Second, Australian community expectations that a non-citizen obey the law whilst in Australia will also have been violated when a non-citizen is convicted of a criminal offence/s. As one AAT Member B W Rayment QC remarked in *JL and the Minister for Immigration and Border Protection, 2018, AATA 754* and in reference to relevant case law, "this consideration is one which automatically favours affirming the decision under review".

These two considerations associated with the construction of perceptions of the convicted non-citizens' risk to the Australian community have the potential for wide interpretation by AAT Members. There is an absence of any reference to, or provision of a risk assessment tool in s501 legislation or the Ministerial Directions from which to provide a potential degree of consistency around constructions of convicted non-citizens as a risk to the Australian community. Further, there are no indices of public opinion with regards to community expectations contained within s501 legislation or the Ministerial Directions that instead guides decision makers to "have due regard to the Government's views in this respect" (Ministerial Direction No. 65).

---

[8] Risk assessment is a part of the sentencing and parole process, however, there has been significant research and commentary on the problematic nature of actuarial risk assessment tools and practices which construct risk based on criminal group types and associated behaviors, leaving little room for consideration of individual situations and circumstances. See, Morgan, F. et al. (1995-1996) and Goddard, T. (2021).

[9] Ministerial Direction No. 65 available here, https://nowakmigration.com.au/direction-no-65-visa-refusal-and-cancellation-under-s501/#:~:text=This%20Direction%20is%20Direction%20no,65 [Accessed 13 May 2022]

[10] The three primary considerations included under Ministerial Direction No. 65 are, a) Protection of the Australian community from criminal or other serious conduct (risk of recidivism), b) Expectations of the Australian community that non-citizens will obey the law while resident in Australia (where there a non-citizen can be classified as an unacceptable risk from breach of this trust), and c) The best interests of minor children in Australia, where a) and b) are risk based.

With the exception of 'Best interests of minor children in Australia', mitigating factors associated with the applicant's life in Australia, are contained in the series of other considerations and afforded reduced decisional weight. 'Strength, nature and duration of ties to the Australian community' captures age on arrival to Australia and length of residence, connection to Australian based social links including family and significant partners, and employment. The weighting system associated with the Ministerial Directions therefore serves to reinforce a "reliance on the existence of a criminal record as the major determinant of risk" (Grewcock, 2009). However, as our analysis of 97 AAT decisions for New Zealander long term residents reveals, the extent to which any of these mitigating factors have the capacity to overturn or counter balance risk is not clear.

When New Zealanders and other convicted non-citizens are deported from Australia under s501, they are barred from returning for life. Following the December 2014 s501 legislative amendments, visa cancellations of convicted non-citizens under s501 dramatically increased by 1400%.[11] The upward trend has remained steady since this time and is also reflected in statistics for the New Zealander nationality cohort (Home Affairs Visa Cancellation Statistics website). New Zealanders are one of Australia's largest migrant groups with special visa conditions that allow them to freely enter, reside and work in Australia indefinitely.[12] Until July 2023, they have experienced particular barriers to achieving citizenship, leaving many with a permanently temporary migration status (McMillan, 2017; Hamer, 2019).[13] Consequently, New Zealanders have been caught under the widening s501 visa cancellation net. Following the legislative amendments, from the 2014-15 to 2019-20 reporting years, 2,475 New Zealanders had their visas cancelled (out of 5,851 total cancellations across all nationalities) of whom almost 70% (1,729) were deported (Home Affairs FOI, 2021). The majority are Maori or Pasifika that reflect Australia's historically racialized border control policies and practices that continue to echo in the present (McNeill and Marmo, 2023; Boon-Kuo, 2019).[14] Associated with the increased number of s501 visa cancellations, New Zealanders have consistently been recorded as the largest or second largest nationality group of detainees within Australia's immigration detention network from August 2015 (Department of Home Affairs, Immigration Detention Statistics website).

In this article we seek to understand how, in a crimmigration legislative and policy context, convicted New Zealander long term residents have been constructed as a risk in AAT s501 decision making and if or where there is potential for mitigating factors associated with their length of residence, or membership of the Australian community, to balance or counter perceptions of risk. This is ultimately reflected in exclusionary or inclusionary consequences associated with affirm or set aside decision outcomes respectively. Before presenting our evidence we provide a brief outline of the role of the AAT and the s501 decision making process.

The AAT, decision making and risk

[11] 76 visas were cancelled under s501 before amendments were introduced in the 2013-14 reporting year increasing to 1,287 in 2016-17 (Australian Government, Department of Home Affairs Visa Cancellation Statistics website).

[12] At the end of June 2019, 569,540 New Zealand-born people were living in Australia, equivalent to 7.6 per cent of Australia's overseas-born population and 2.2 per cent of Australia's total population. New Zealanders can enter and reside in Australia indefinitely on a Special Category Visa (Subclass TY 444) established under the Trans-Tasman Travel Arrangement from 1973. See, Australian Government, Department of Home Affairs, Country Profile-New Zealand website.

[13] As of 1 July 2023, New Zealander Special Category Visa (SCV) holders who have been resident in Australia for a period of four years or more are eligible to apply for Australian citizenship. Previously, New Zealanders (and other non-citizens) had to first qualify for Permanent Residence, then live in Australia for a period of four years before applying for citizenship. See https://www.homeaffairs.gov.au/news-media/archive/article?itemId=1047#:~:text=%E2%80%8BFrom%201%20July%202023,be%20granted%20a%20permanent%20visa

[14] The Department of Home Affairs or the AAT does not record the ethnicity of deportees. However, McHardy (2021) presents statistics recorded by New Zealand Police who are part of the reception and integration process when returning offenders arrive in Aotearoa, New Zealand to show that 60% of New Zealander deportees are Maori or Pasifika. See also, Hamer(2019).

The AAT was established by the *Administrative Appeals Tribunal Act 1975 (henceforth, The Act 1975)*. The Tribunal sits under the Federal Government portfolio of the Attorney General's Department with a remit to independently review decisions made under more than 400 Commonwealth Acts and legislative instruments which includes visa-related decisions (AAT website). When a convicted non-citizen lodges an appeal to the AAT following receipt of a visa cancellation notice from the Department of Home Affairs (previously, the Department of Immigration and Citizenship) and a failed primary appeal to the Department, they have the opportunity to defend their case to remain in Australia. At this stage of the visa cancellation process, AAT Members are the decision makers with whom the fate of the applicant to remain in Australia rests in their decision to affirm or set aside the original visa cancellation decision made by the Immigration Minister's delegate. If a decision is affirmed by the AAT, the applicant is on a pathway to deportation from Australia.[15]

As instructed by *The Act 1975,* the AAT is meant to uphold an independent and merit based decision making process. AAT Members are selected and recommended by the Attorney General and appointed by the Governor General (AAT website). However, the appointment process has been critiqued for being "opaque" with repeated and stacked appointments of Members who have direct political affiliations. These appointments are less likely to have legal expertise and detailed knowledge of the AAT decision making process and of s501 decisions and migration law (Wood et al., 2021; Commonwealth of Australia, 2022; Ghezelbash et al., 2022).[16] Some argue that the appointments process has potentially "insufficient safeguards to uphold the actual and perceived independence of the [AAT] system" (Wood et al., 2021: 3). This generates a concern that in s501 decisions, such appointments will have the potential to sustain the government's risk based approach towards convicted non-citizens.

AAT decisions are complex, requiring a review of both the factual (evidence) basis and the lawfulness of the Immigration Department's decision, whereby the AAT Member has the power to set aside the Department's primary visa cancellation decision (Lucy, 2017). They are administrative and non-adversarial, meaning AAT Members base their decision on review of all available evidence against the Ministerial Directions that usually goes beyond the evidence reviewed by the primary decision-maker (Paterson, 2019).[17] At the AAT, applicants have the opportunity to provide a full suite of evidence to the Tribunal for consideration relating to their character and in support of their case to remain in Australia.[18]

Given the number of AAT Members tasked with s501 visa cancellation review[19], it has been argued that "there is a tendency to inconsistency in making decisions" (Brennan J. cited in McCabe, 2013: 116). Among the AAT Members who review s501 visa cancellation decisions, with regard to

---

[15] There is opportunity for applicants to appeal AAT affirmed s501 visa cancellation decisions at the Federal Court, however there must be grounds for such an appeal on a question of law. The process is often time consuming which results in additional time spent in immigration detention for the applicant, costly, and one that benefits from legal representation, all of which are not always accessible or available to convicted non-citizens.

[16] In the last Australian Liberal National Party (LNP) AAT appointments round in April 2022, six of the 19 AAT Members appointed were affiliated with the LNP. More than 85 former Liberal MPs, staffers and candidates have been appointed to the AAT since the Liberal Government took office in 2013 (see, Karp 2022). Note that the time of writing (October 2023), the AAT is undergoing significant reform which began in December 2022, in part to address the stacking Issue.

[17] Given the mandatory visa cancellation provisions for convicted non-citizens sentenced to 12+ months prison, evidence of mitigating circumstances related to the applicant's circumstances and residence in Australia is not likely to have been included or consulted at the primary decision stage by the Immigration Minister's delegate.

[18] Documentation and written evidence can be provided in advance of the AAT hearing, and presented orally in person by the applicant, family and community members, and/or other experts and witnesses at the hearing itself.

[19] At 30 June 2022, there were 110 Members assigned to the AAT General Division, with responsibility for s501 visa cancellation review. See, https://www.transparency.gov.au/annual-reports/administrative-appeals-tribunal/reporting-year/2021-22-52

interpretations of the applicant's risk, "there may be differences in the estimates made as to the risk of recidivism although, where experience in calculating such risks is comparable, variations will be a function of the known facts…[T]o some degree, each decision-maker will vary from another in his[/her] perception of Australia's interests, the effect of offending conduct, and the effect of a decision, one way or another, upon those interests." (Brennan J. cited in McCabe, 2013: 116). Further, studies have shown that Members have the potential to approach their decision making subjectively, from their positions of experience (or lack of experience) whereby individual idiosyncrasies and values appeared to affect the ultimate decision outcome (McCabe, 2013; Luker, 2013; Smith-Kahn, 2019).

The Ministerial Directions first emerged when s501 was introduced to the Migration Act in 1999 and aim to provide a basis of consistency in visa cancellation decision making as "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" (Ministerial Direction No. 65, see also Billings and Hoang, 2019; McCabe, 2013; Bostock, 2011). They do not contain any specification on how risk is to be determined and AAT Members usually make their decisions by considering the evidence at hand against the series of relevant primary or other considerations.

In this paper we draw on AAT decisions that were made with reference to Ministerial Direction No. 65 (2014-2018) to explore if, in a decision making process where there is a "tendency to inconsistency" and an absence of formal risk assessment, we could identify any trends or consistencies in decision making to counter perceptions of risk. S501 legislation, policy and practice is centred on risk, yet our analysis of AAT decision summaries shows an inconsistency in the decision making process around considerations of risk and considerations of mitigating factors that may challenge the construction of the convicted non-citizen as a risk. Such inconsistences evidently impact on fairness in decision outcomes.

Methodology

We took a two stage mixed-method approach beginning with a quantitative analysis of s501 AAT decisions that informed the second stage of qualitative analysis. The quantitative analysis examined the relationship between mitigating factors and risk to uphold the decision. The qualitative analysis provided a deeper investigation of an identified subset of decision summaries. From this subset, we present a comparison of two applicant decision summaries with matching background criteria and different decision outcomes to expose inconsistencies in AAT s501 decision making.

Quantitatively, we have adapted, extended and conducted a secondary analysis in STATA from an original SPSS dataset of all s501 AAT decisions established by the Australian Research Council Discovery Project, 'Exporting risk: The Australian Deportation Project'.[20] The original purpose of this dataset was to code AAT s501 decision summaries from 2005-2010 against a series of variables associated with the demographics of each AAT applicant, the legal components of the primary visa cancellation decision, and the AAT decision making practice against considerations of the associated Ministerial Directions. For the current paper, the AAT dataset was adapted and reduced to variables that concentrate on demographic details of the applicant and their offending histories as well as the decision making process and outcomes guided by the relevant Ministerial Directions. The researchers extended the dataset to code AAT cases for the period 2011-2018 to capture decisions made under Ministerial Direction No. 65.

[20] Exporting risk: The Australian deportation project, CIs Sharon Pickering, Leanne Weber, Mike Grewcock and Marie Segrave, 2011-2016, DP110102453. https://dataportal.arc.gov.au/NCGP/Web/Grant/Grant/DP110102453

The variables are derived from AAT decision summaries. These summaries have a consistent structure that allow for the quantification of the qualitative content. For example, the summaries provide a background to each case including demographic detail of the individual, details of their arrival to Australia, circumstances of their life in Australia and their offence history, including around their visa cancellation, and a justification for the final AAT decision. This justification specifically outlines the AAT Member's response and reasoning against each relevant primary and other consideration contained within the Ministerial Directions and usually presents a summary of how the considerations were weighed up in order to reach their final decision. The initial coding of these data in SPSS and the further coding in STATA engaged herewith takes a systematic approach to the analysis of these summaries which compliments the original structure of the data. Rooted in the social sciences and "borrowed" and adapted by legal scholars, the methodological approach to the quantitative coding of the AAT decisions involved a socio-legal systematic content analysis of these decisions (see, Hall and Wright, 2008; Krippendorff, 2004). Traditionally, this approach has been applied to the analysis of judicial opinions, however we have transposed it to the AAT setting to investigate the interplay of risk and mitigating factors in AAT decision making.

The 97 New Zealander AAT cases from the period 2015-2018 correspond with the lifetime of Ministerial Direction No. 65, following the introduction of s501 amendments from December 2014. During this period, 117 New Zealanders appealed their visa cancellation.[21] Of the 117 New Zealanders, 97 were long term residents, 66 arriving to Australia as children. Of the 97 applicants, 93 were men and 4 were women.[22] Our analysis focuses on long term residents given they are likely to have stronger ties to the Australian community as a result of their length of residence. Further, length of residence has historically protected convicted non-citizens from deportation[23] and continues to often ground an applicant's case for revocation of the Department's primary visa cancellation decision.

The AAT summaries show that Australian based family, particularly dependent, minor children and significant partners, are usually at the centre of the applicant's case to remain in Australia when presenting evidence at the AAT. They are also associated with particular considerations of the Ministerial Directions. Our initial focus for the secondary analysis of the AAT decisions, was on evidence of the applicant's strong family ties to Australia with Australian born dependent children and/or significant partners[24] connected with their length of residence. We also examined other mitigating factors that might impact on AAT decision outcomes, including the applicant's age at time of arrival in Australia, employment status at the time of visa cancellation, offence history and evidence of rehabilitation.[25]

Next, we conducted a deeper qualitative analysis of all of cases that presented evidence of rehabilitation (n=30). Using NVivo, nodes were established to code for the offence type/s and

[21] 43% of AAT s501 appeals from 2015-2018 were New Zealanders, the largest nationality group over this time period.

[22] The scope of this paper does not allow for an investigation into a gendered analysis of AAT decision outcomes for this New Zealander cohort, however of the 4 women, 2 had their visa cancellation affirmed at the AAT and 3 were deemed to be high risk from the AAT decision making process.

[23] In 1983, the Hawke Labor Government introduced a '10 year rule' to the *Migration Act 1958* that protected non-citizens who had resided in Australia for a period of 10 years or more, from visa cancellation and criminal deportation. These legislative provisions remained until 1999.

[24] The definition of family ties that we used for our analysis includes if the applicant was in a current relationship with children, or if the applicant was in a current relationship without child/ren, or the applicant was not in a relationship but has children.

[25] While we coded for 'Most serious offence' and 'Cancellation offence' variables in the SPSS data set, we could not include these in our secondary STATA analysis due to the wide range of offence types that were classified under these variables resulting in very small sample sizes. These variables are included in the qualitative comparative cases of HWYY and DND presented below.

offence histories of each applicant, the types of rehabilitation they had completed or engaged in, the time each applicant invested in rehabilitation and how the AAT members considered the presentation of rehabilitation evidence. From this analysis we present case summaries of two New Zealander applicants, HWYY and DND[26] as prototypes for comparison. These cases are similar in nature in terms of criminal history, length of residence and connection to Australian family members and a presentation of evidence of rehabilitation, yet each received a different decision outcome at the AAT. We use the comparison of these two cases below to highlight inconsistencies in AAT s501 decision making practice.

Variable Description

Dependent variables

Our analysis examined two dependent variables. In our initial models we examined *perceptions of risk* as the outcome variable. We constructed this variable from how the AAT Member considered risk of recidivism in the decision summaries. Low risk of recidivism was coded 0 and high risk of recidivism was coded 1.

The second dependent variable of interest was the final decision outcome of the AAT. Again, using the case summary information, this variable was coded 0 if the decision was upheld and 1 if the cancellation decision was set aside.

Independent variables

There are several factors that may influence both perceptions of risk and the decision to uphold the visa cancellation. In our analysis we consider the following:

Minor at arrival in Australia: From the original dataset, we created a binary variable to identify those cases where the applicant arrived in Australia as a child (under 18 years). Those who arrived as a minor were coded 0 and those who arrived as an adult were coded 1.

Australian family ties:[27] To assess family ties, we created a categorical variable from the AAT data to identify those in an intimate relationship with children. Applicants who were in a current relationship with children were coded as 1, those who were in a current relationship without children were coded as 2. Those who were not in a relationship but had children were coded as 3 and those who were not in a relationship and had no children were coded as 4. There was missing data for this variable as only 77 case files had this information.

Employment: As employment could be considered a protective factor and evidence of connection to the community, we assessed whether or the not the applicant was employed at the time of their visa cancellation. We coded this variable 1 if there was evidence of employment (casual, part time and full time) and 0 if there was no evidence of employment in the file. In 15 cases, employment was not stated. We coded this as missing.

[26] These are the names of each of these cases by the AAT. They have been given these alphabetized names to protect the identity of the applicant. See, *DND and Minister for Home Affairs (2018), AATA 2716* and *HWYY and Minister for Home Affairs (2018), AATA 4602*.

[27] In the SPSS dataset, categories for coding within this variable include, Australian citizen child/ren (1), non-Australian citizen child/ren (2), Child/ren not living in Australia (3), No child/ren (4), Multiple children Australian and non-Australian citizen (5) and Unknown (999).

Prior convictions: To understand if prior offending history can influence decision outcomes, we created a variable to indicate whether the offence that led to the initial cancellation was the first offence. Drawing on the original dataset we created a categorical variable where 1 indicated no prior offences and no time spent in prison, 2 indicated prior offences but less than 12 months in prison and 3 indicated more than 12 months in prison was served. There was one case with no information which was treated as missing in our analyses.

Visa warning: It is possible that decisions to uphold the visa cancellation might also be influenced by the presence or absence of a prior warning of visa cancellation from the Immigration Department. To assess this, applicants who received a prior warning that their offending could lead to a visa cancellation were coded 1. Those who did not receive a warning were coded 0.

Evidence of rehabilitation: Given that evidence of rehabilitation could be a protective factor which could influence the decision outcome, a variable was created from the SPSS dataset where 0 indicated no evidence of rehabilitation and 1 indicated evidence of rehabilitation was present in the AAT decision summary. Evidence of rehabilitation was coded this way in the original dataset and was based on any presence of evidence of rehabilitation documented in the AAT decision summary. We are not able to provide any judgement on the quality of the evidence presented. Two cases did not have information on rehabilitation and were treated as missing.

Legal representation: Our final variable captured whether the applicant had legal representation at the AAT hearing whereby 0 indicated no representation was present and 1 indicated the applicant had obtained legal counsel.

Please see Table 1 for all the variables examined in this paper.

Table 1: Univariate statistics for the 97 AAT s501 decisions for New Zealander long term residents of Australia 2015-2018

Variable	N	Percentage
Visa cancellation affirmed	79	81
Visa cancellation set aside	18	19
Arrived in Australia as children (under 18 years)	66	69
Arrived in Australia as an adult (18 years or over)	30	31
Has dependent Australian born children and/or significant partner	58	72
Employed at the time of visa cancellation	71	74
First time offenders (no prior convictions)	18	19
Prior convictions resulting in imprisonment < 12 months	26	27
Prior convictions resulting in imprisonment > 12 months	52	54
Recent visa cancellation warning notification by Immigration Department for earlier offending	52	54
Evidence of rehabilitation presented at AAT	30	32
Applicant had legal representation at AAT	39	40

Analytic strategy and limitations of the data

As perceptions of risk are the most proximate influence on the decision to affirm or set aside a visa cancellation, we first examine the variables that are likely to influence these perceptions using chi-square or bivariate regression techniques. We then consider whether perceptions of risk influence

the final AAT member's decision. As there is significant missing data in the publicly available AAT decision summaries that have been used to create our dataset, we do not have sufficient information or case numbers to proceed with multivariate modelling. We recognize this is a limitation of the data, nevertheless, this dataset is the only one of its kind and provides important insights into the factors that influence the AAT's decision to uphold or set aside applicants' s501 visa cancellation.

The value of mitigating factors as a means to counter risk in AAT decision making for New Zealander long term residents

Looking first to the relationship between the mitigating factors that may influence whether an applicant is considered at risk of reoffending or not, we found that the majority of factors we examined in this study did not influence perceptions of risk. Our results indicate that arriving in Australia as a child and the presence of family ties have no statistical relationship with perceptions of risk. Being employed at the time of visa cancellation, criminal history (with or without imprisonment) or receiving a visa cancellation warning did not influence risk perceptions. However initial chi square analyses did reveal a relationship between perceptions of risk and evidence of rehabilitation ($chi2 = 5.92$, $p<0.05$). A bivariate logistic regression revealed that applicants with evidence of rehabilitation were approximately 73 percent less likely to be in the high risk category ($z = -2.34$, $p< 0.05$). Further, the presence of legal representation for applicants at the AAT also influenced perceptions of risk ($chi2 = 4.24$, $p<0.05$) whereby people with legal representation were 65% less likely to be in the high risk category ($z = -2.01$, $p<0.05$). This finding is reflective of studies of non-citizens' access to justice and due process in other contexts, where the engagement of legal representation increases the likelihood of positive migration decision outcomes (see for example Smith et al., 2021; Srikantiah et al., 2015, Ghezelbash et al., 2022).

We then looked at these relationships with the decision to affirm or set aside the visa cancellation. In guiding the assessment of the applicant's risk, the Ministerial Directions instruct AAT Members "to have regard, cumulatively, to the nature of the harm to individuals or the community should the non-citizen engage in further criminal or other serious conduct, and to the likelihood of him or her doing so…" (see Ministerial Direction No. 65 s 13.1.2 (2)). Perhaps unsurprisingly, perceptions of risk were significantly associated with whether the visa cancellation was set aside or affirmed ($chi2 = 58.532$, $p<0.001$) whereby those who were perceived as high risk were significantly unlikely to have their visa cancellation set aside ($z=-5.54$, $p<0.001$). Of the 75 applicants deemed as high risk, only 3 had their decision set aside.

Following, we wanted to assess whether any of the factors that influenced perceptions of risk resulted in a decision to set aside or affirm a visa cancellation. Bivariate analyses revealed that only those variables that influenced perceptions of risk (evidence of rehabilitation and the presence of legal representation for the applicant) had a direct relationship with the AAT Member's final decision. Due to time constraints to lodge an s501 visa cancellation review at the AAT[28] and an under-resourced legal aid sector to manage the s501 caseload, legal representation is often difficult for convicted non-citizens to access, particularly from prison or immigration detention. It can also be prohibitively costly and therefore inequitable (see Crock and Bones, 2022; Billings and Hoang, 2019). Such restrictions can impact on due process for non-citizens in the visa cancellation appeal process. From the 97 cases analyzed in our dataset, 39 (40%) had legal representation. S501 visa cancellation as a component of the *Migration Act 1958 (Cth)* is complex to navigate and the AAT system may be unfamiliar to the applicant. Without legal representation an applicant representing themselves at

[28] For s501 appeals, convicted non-citizens have 9 days from when they receive their visa cancellation notice from the Department of Immigration to lodge their appeal at the AAT.

the AAT often "prepares their case inadequately", fails to focus on "the most relevant factors, and fails to obtain relevant reports from experts that would help their case" (Parliament of the Commonwealth of Australia, 2019: 44).

Given that evidence of rehabilitation influenced perceptions of risk in AAT decision making for this cohort of New Zealanders, we next investigate if there was any kind of correlation between a particular type or level of investment in rehabilitation that increased the potential for consistencies in positive AAT decision outcomes. Our quantitative analysis shows that evidence of rehabilitation is often considered favorably by AAT members. However, our qualitative analysis reveals that inconsistencies remain in AAT decision making where evidence of rehabilitation is presented as illustrated in the comparison of the two AAT decisions for convicted New Zealanders DND and HWYY below.

A comparison of two AAT decisions including the presentation of evidence of rehabilitation

A deeper, qualitative investigation was conducted into the decision summaries of 30 New Zealander applicants from the original dataset of 97: those who presented evidence of rehabilitation at the AAT. A close examination and analysis of these 30 cases reveals varying degrees, types and investment of time in attending rehabilitation (from hours to years) and how AAT Members considered rehabilitation in their decision making. Rehabilitation was largely prison based (although some applicants had completed rehabilitation programs in immigration detention) and were programs associated with the circumstances around the applicant's criminal offending. Some of the applicants who are multiple offenders provided evidence of attendance at rehabilitation programs between prison sentences whilst on parole and/or whilst they were back in the Australian community. Evidence of participation in rehabilitation programs from applicants included for drug and alcohol addiction, anger management, positive parenting and psychological counselling. Some applicants also presented evidence of attendance at career and professional development programs in further support of their rehabilitation.

According to the Directions, evidence of rehabilitation can support a judgement of good character.[29] However, there is no guidance for decision makers to assess what kind of rehabilitation, level of investment in rehabilitation or rehabilitation outcomes lower risk and increase support of the applicant's good character. Further, and inherent of the administrative tribunal, there seems to be no consistency from AAT decision makers as to what type of rehabilitation, investment of time or rehabilitation outcome contributes to a favorable decision for the applicant.

Two cases were matched on all relevant factors (see Table 2 below) to better understand how rehabilitation was used to either uphold or set aside the decision. The comparison of the AAT cases for HWYY (2018) and DND (2018) is illustrative of the potential for different approaches in AAT decision making, applications of the Ministerial Directions and interpretations of evidence (including for rehabilitation) by AAT Members that lend to inconsistencies in decision outcomes. From the AAT summaries for DND and HWYY, both applicants share a similar situation in regard to risk from their offence histories and mitigating factors (see Table 2 below). However, each received a different visa cancellation decision outcome at the AAT at the discretion of the respective AAT Member, both of whom are experienced legal practitioners.[30] Our examination of the cases for HWYY and DND, compliments the research on variability and subjectivity of AAT Members in decision making referenced above.

[29] See, Ministerial Direction No. 65 S5.1 1(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..."
[30] AAT Member Evans is a law academic and AAT Member Taylor is a Senior Council.

For DND the Senior AAT Member PW Taylor SC presents a relatively compassionate approach to ultimately revoke the visa cancellation decision. Taylor recognized factors associated with DND's membership of the Australian community including "his youth, his Australian upbringing, and the limited evidence of significant physical harm from his offences, contemplate, and permit, a significant level of tolerance being extended to him" to counter the perception of his risk to the Australian community. Further Senior Member Taylor elevates the importance of DND's "father-child" relationship, and the "large step" involved in a visa cancellation decision "that would likely involve permanent parental separation". Taylor foresees the opportunity for DND to access further rehabilitation should he be permitted to remain in Australia, where "the time has not yet come to call a halt to the uncertainty of the prospect of Mr DND's rehabilitation in Australia." (Senior AAT Member PW Taylor SC, DND and Minister for Home Affairs, 2018, AATA 2716).

For HWYY the Senior AAT Member Dr M Evans affirmed the visa cancellation despite what appears to be a stronger investment in rehabilitation compared to DND, and evidence of significant family ties in Australia. While the best interests of the applicant's child were given increased value by Senior Member Evans in their decision making where, "the best interests of the Applicant's biological daughter are likely to be better served by the Applicant being permitted to stay in Australia", the Member concluded that this consideration was outweighed on balance by the other two primary considerations. The applicant's criminal history and lack of evidence of rehabilitation contributed to AAT Senior Member Dr M Evans' perception of HWYY as a high risk to the Australian community. HWYY's "unmet treatment needs" was regarded by Evans to, "increase the likelihood of the Applicant re-offending [and] contributed to the decision to affirm the visa cancellation." [Senior AAT Member Dr M Evans, HWYY and Minister for Home Affairs, 2018, AATA 4602]. Unlike the decision justification for DND where AAT Senior Member Taylor upheld their revocation decision in part to provide the applicant with further opportunity for rehabilitation in Australia, HWYY's "unmet" rehabilitation needs contributed to the decision to affirm visa cancellation. This decision outcome therefore serves to push the responsibility for rehabilitation to Aotearoa, New Zealand, HWYY's country of citizenship after 23 years residence in Australia since he was 3 months old.

This comparative case study shows that despite the provision of decision making guidance contained within the Ministerial Directions, two Senior Members arrived at completely different conclusions on two very similar cases. This is a concern for actual and perceived predictability of risk, consistency, and fairness in s501 decision making, especially given the serious implications of affirm decisions.

Table 2: A comparison in AAT s501 decision making for DND and HWYY

AAT decision making considerations	DND (2018, AATA 2716)	HWYY (2018, AATA 4602)
Gender	Male	Male
Age at arrival in Australia	1 year old	3 months old
Length of residence in Australia	20 years	23 years
Family ties including dependent children and significant partner	3 year old daughter, 14 month old son Significant ex-partner (mother of children)	3 year old daughter Significant ex-partner (mother of child) and current partner
Offence history	46 offences, beginning from when DND was a juvenile	63 offences, beginning from when HWYY was a juvenile
Most serious offence	Aggravated offence	Aggravated offence
Visa cancellation offence	Dishonest use of a credit card	As above

Previous warnings of visa cancellation	No	Yes
Employment status at time of visa cancellation	Employed	Employed
Evidence provided of rehabilitation	Drug and alcohol – limited to five sessions	Counselling sessions with a psychologist (4-6 hours)
	Positive parenting – limited to "several sessions"	Completion of drug and alcohol program (4 x 45 minute sessions)
		Completion of life skills re-entry program
		Brief Intervention Cognitive Skills Program including skill development around self control, critical reasoning, problem solving, interpersonal perspective taking and relapse prevention (20 hours)
Legal representation at AAT	Yes	Yes
AAT decision outcome	Set aside	Affirmed

Conclusion

Our research and analysis on a cohort of 97 New Zealander applicants from 2015-2018 demonstrates the broad scope for discretion, and consequent inconsistencies in AAT s501 decision making. It brings new empirical evidence from AAT decision making practice to the pre-existing, more theoretical scholarly criticisms of the broadening legislative and policy grounds for of s501 visa cancellations. Our findings reveal that these decisions are not made consistently and fairly. It exposes ill-defined conceptions of risk in s501 legislation and policy which are then carried through into AAT decision making practice. It identifies how s501 policy works to construct convicted non-citizens as a risk to the Australian community and how that has impacted on considerations of mitigating factors associated with New Zealanders long term residence in Australia. It shows how the risk based policy and decision making practice designed to uphold collective community safety has a reductive impact on considerations of mitigating factors to counter risk.

Our analysis of the New Zealander cohort who experienced s501 visa cancellation following the escalation of a crimmigation response in associated legislation and the Ministerial Directions, expanding grounds to exclude a wider cohort of non-citizens from membership of the Australian community, shows that the assessment of risk does not consistently carry from policy to practice. Further, the minimal influence of mitigating factors reflects a refusal to acknowledge the value of long term resident applicants' membership to the Australian community in practice as well as policy. This presents an opportunity for legislative and policy revision to increase consistency in s501 visa cancellation decision making and therefore, the possibility of fairer outcomes.

Declaration of interest statement: *The authors report there are no competing interests to declare.*

References

Aas, K. (2020). *The Crimmigrant Other: Migration and Penal Power*, Abingdon: Routledge

Administrative Appeals Tribunal website, https://www.aat.gov.au/

Australian Government, Department of Home Affairs, New Zealand Country Profile website, https://www.homeaffairs.gov.au/research-and-statistics/statistics/country-profiles/profiles/new-zealand#:~:text=At%20the%20end%20of%20June,cent%20of%20Australia's%20total%20population

Australian Government, Department of Home Affairs, Immigration Detention Statistics website, https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/immigration-detention

Australian Government, Department of Home Affairs, Visa cancellation statistics website, https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/visa-cancellation

Australian Government, Department of Home Affairs, Freedom of Information (FOI) request 2021, s501 visa cancellation by nationality 2014/15-2019/20.

Billings, P. (ed.) (2019a). *Crimmigration in Australia: Law, politics and society,* Springer Link, Singapore.

Billings, P. (2019b). Getting rid of risky foreigners: promoting community protection at the expense of administrative justice?. *Federal Law Review*, *47*(2), 231-260.

Billings, P. and Hoang, K. (2019). Characters of Concern, or Concerning Character Tests? Regulating Risk through Visa Cancellation, Containment and Removal from Australia. In P. Billings (Ed.), *Crimmigration in Australia: Law, politics and society* (pp.119-148). Springer Link, Singapore.

Boon-Kuo, L. (2019). 'Race', Crimmigration and the Deportation of Aboriginal Non-citizens. In Peter Billings (Eds.), Crimmigration in Australia: Law, Politics, and Society, (pp. 39-62). Singapore: Springer.

Bostock, C. (2011). The effect of Ministerial Directions on Tribunal independence. *AIAL Forum*, No. 66, 33-42.

Commonwealth of Australia (2022). The performance and integrity of Australia's administrative review system. The Senate, Legal and Constitutional Affairs References Committee, March 2022. https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024867/toc_pdf/TheperformanceandintegrityofAustralia'sadministrativereviewsystem.pdf;fileType=application%2Fpdf

Coyle, I. and Keyzer, P. (2016). The removal of convicted non-citizens from Australia: Is there only a 'minimal and remote' chance of getting it right?, *Alternative Law Journal, 41*(2), 86-88.

Finnane, M. and Kaladelfos, A. (2019). Australia's long history of immigration, policing and the law. In P. Billings (Ed.), *Crimmigration in Australia: Law, politics and society* (pp. 19-37). Springer Link, Singapore.

Ghezelbash, D. Dorostkar, K., & Walsh, S. (2022). A data driven approach to evaluating and improving judicial decision-making: Statistical analysis of the judicial refugee of refugee cases in Australia. *UNSW Law Journal, 45*(3), 1085-123.

Goddard, T. (2021). The Trouble with Using Risk Assessment Instruments to Quantify the Chance of Future Offending. *Sustainability, 13*, 1-15.

Grewcock, M. (2014). Reinventing "the stain" - bad character and criminal deportation in contemporary Australia. In S. Pickering and J. Ham (Eds.), *Routledge Handbook on Crime and International Migration* (pp. 121-138). Routledge, Abingdon.

Grewcock, M. (2009). Border Crimes: Australia's War on Illicit Migrants. Sydney: Institute of Criminology.

Hall, M. A. and Wright, R.F. (2008). Systematic content analysis of judicial opinions. *California Law Review*, *96*, 63-122.

Hamer, P. (2019, 17 April). Deportation across the Tasman Sea', Australian Institute of International Affairs. https://www.internationalaffairs.org.au/australianoutlook/deportation-across-tasman-sea/

Hoang, K. and Reich, S. (2017). Managing crime through migration law in Australia and the US: a comparative analysis. *Comparative Migration Studies*, *5*(12), 1-24.

Karp, P. (2022, 4 April). Pru Goward among six Liberal-linked appointments by Coalition to Administrative Appeals Tribunal. *The Guardian*. https://www.theguardian.com/australia-news/2022/apr/04/pru-goward-among-six-liberal-linked-appointments-by-coalition-to-administrative-appeals-tribunal

Koulish, R. and van der Woude, M. (2020). *Crimmigrant nations: Resurgent nationalism and the closing of borders,* New York, Fordham University Press.

Krippendorff, K. (2004). *Content analysis: An introduction to its methodology*, Sage Publications Inc: Thousand Oaks, California.

Lucy. J. (2017). Merits Review and the 21st Century Tribunal. *Australian Journal of Administrative Law, 24*(2), 121- 139.

Luker, T. (2013). Decision making conditioned by radical uncertainty: credibility assessment at the Australian refugee review tribunal. *International Journal of Refugee Law, 25*(3), 502-534.

Marmo, M. and McNeill, H. (2023). Past-present differential inclusion: Australia's targeted deportation of Pacific Islanders, 1901-2021, International Journal for Crime, Justice and Social Democracy, 12(1), 42-55.

McCabe. B. (2013).Community values and correct or preferrable decisions in Administrative Tribunals. *University of Queensland Law Journal, 32*(1),103-121.

McHardy, C. (2021). Punishment on arrival: New Zealand's Returning Offenders Act 2015, *Punishment and Society, 24*(4), 622-641.

McMillan, K. (2017.) ''Affective integration" and access to the rights of permanent residency: New Zealanders resident in Australia post-2001. *Ethnicities*, *17(*1), 103-127.

Morgan, F. et al. (1995-1996). *Risk assessment in sentencing and corrections*. Australian Institute of Criminology, No. 22.

Parliament of the Commonwealth of Australia (2019, February). *The report of the inquiry into review processes associated with visa cancellations made on criminal grounds*. Joint Standing Committee on Migration.
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Visacancellationprocess/Report

Paterson, M. (2019). Adventures on the administrative decision-making continuum: Reframing the role of the Administrative Appeals Tribunal. *AIAL Forum*, No. 96, 65-78.

Powell, R. (2023). A return to the 10 year rule? The deportation of convicted New Zealander long-term residents from Australia under Section 501 of the Migration Act, *Current Issues in Criminal Justice*, Online first. DOI: 10.1080/10345329.2023.2263258

Ramachandran, S. (2019, August). The contours of crimmigration control in India. A Global Detention Project Working Paper No. 25. https://www.globaldetentionproject.org/wp-content/uploads/2019/08/GDP-Working-Paper-25-The-Contours-of-Crimmigration-Control-in-India.pdf

Salamon, N.K, Frett, B. and Ketchum, E.S, (2020). Global crimmigration trends. In, N.K. Salamon (Ed.), *Causes and Consequences of Migrant Criminalization* (pp.3-25). Switzerland, Springer Nature.

Smith, D.C., Rehaag, H. and Farrow, T. (2021). *Access to justice for refugees: How legal aid and quality of Counsel impact fairness and efficiency in Canada's asylum system*, Excellence Research Chair in Migration and Integration, Centre for Refugee Studies, Canadian Forum on Civil Justice.

Smith-Khan, L. (2019). Why refugee visa credibility assessments lack credibility: a critical discourse analysis. *Griffith Law Review, 28*(4), 406-430.

Srikantiah, J., Hausman, D., & Weissman-Ward, L. (2015). Access to justice for immigrant families and communities: study of legal representation of detained immigrants in northern California. *Stanford Journal of Civil Rights & Civil Liberties, 11*(2), 207-236.

Stumpf, J. P. (2006). The Crimmigration Crisis: Immigrants, Crime, & Sovereign Power. *American University Law Review 56*, 356-420.

Weber, L. and Powell, R. (2020). Crime, Pre-crime and Sub-crime: Deportation of 'Risky Non-citizens as 'Enemy Crimmigration'. In, J. Pratt and J. Anderson (Eds.), *Criminal Justice, Risk and the Revolt against Uncertainty* (pp.245-272). Palgrave McMillan, Switzerland.

Wood, D., Emslie, O. and Joiner, R. (2021, 24 November). Towards a better AAT appointments process Submission to the Senate Standing Committee inquiry into the performance and integrity of Australia's administrative review system. Grattan Institute. https://grattan.edu.au/wp-content/uploads/2022/01/Grattan-AAT-submission.pdf