COMPLEMENTARY PROTECTION IN AUSTRALIA

ADMINISTRATIVE APPEALS TRIBUNAL

Last updated 30 June 2022

On 1 July 2015, the Refugee Review Tribunal (RRT) was merged with the Administrative Appeals Tribunal (AAT). Previous RRT decisions can be found in the separate RRT table (archived on the Kaldor Centre website). Pre-1 July 2015 AAT decisions (also archived on the Kaldor Centre website) relate to cases where a visa was cancelled or refused on character grounds (including exclusion cases). Tribunal cases from 2015–2016, 2017 and 2018 are in separate Tribunal tables archived on the Kaldor Centre website).

basic services by the local authorities including health care, welfare and permission to register even temporarily in other areas for the purpose of work. The Tribunal further accepted that the discriminatory denial of these services would threaten the applicant's 'capacity to subsist'. On this basis, the Tribunal accepted that there was a real chance the applicant would face serious harm

the 2016 ‘Formosa’ chemical spill was Vietnam’s worst-ever environmental disaster. Chemicals from the Formosa Plastic Corporation spilled into the sea, killed marine organisms and ended the livelihood of fisheries workers. Protests demanding more compensation led to arrests of both street protesters and online activists, notably including Catholic clergy and their followers. DFAT understands that Formosa protests are no longer

1716821 (Refugee) [2022] AATA 1774 (29 April 2022) (Unsuccessful)	29 April 2022	51–54	The Tribunal affirmed the decision of a delegate of the Minister refusing to grant the applicants protection visas. The primary applicant’s claim for protectioapu6oa

on an opioid substitution program which he would need to pay for in Lebanon. Given the applicant's particular vulnerability, the Tribunal considered that he would have little to no prospects of securing employment and would be left with no other means of support. The Tribunal was satisfied that the applicant would be unable to subsist and would be rendered destitute and homeless.

The applicant claimed that many of his family and friends had been diagnosed with cancer and other diseases

			deliberate act or omission by any group or person done with the intention of causing him to suffer significant harm.

1727960 (Refugee) [2022]

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2008268 (Refugee) [2022]
AATA 1541 (7 April 2022)
(Unsuccessful)

1729793 (Refugee) [2022]
AATA 1540 (4 April 2022)
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2012718 (Refugee) [2022] AATA 1543 (31 March 2022) (Unsuccessful)	31 March 2022	161–174

			the drug syndicate upon his return to Chile. Country information considered by the Tribunal suggested that there had been an increase in drug-related crime in Chile, and that there were significant institutional imbalances in the police force in Chile which had resulted in the police committing human rights abuses. The Tribunal noted that while the country information suggests that individuals in Chile would not be ignored by the police if they reported being targeted by an organization, there was no witness protection program or other government organization that could offer long-term protection. In addition, the Tribunal noted reports of increasing evidence of interaction between police officers and local criminal organizations. On the basis of this country information, the Tribunal was satisfied that the applicant could not obtain protection from the authorities in Chile.
1723229 (Refugee) [2022] AATA 1547 (29 March 2022) (Successful)	29 March 2022	63–70, 102	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the

DFAT further assesses that Sri Lankan journalists, investigators, activists, and former police officers probing historical abuses face a high risk of official harassment and a moderate risk of violence. This assessment, combined with the forgoing DFAT country information, indicates the current government and political administration may be actively working pre-emptively to ensure that persons who may expose atrocities allegedly committed against civilians, and by necessary implication, against themselve3.7 (A)6.64.6 (onw11 (i)6.2 4.2 408.6 27

police officers who probe historical abuses of human rights.

and that this risk of harm was faced by him personally. In arriving at this conclusion, the Tribunal placed weight upon the following factors (at [62]):

a. the applicant has not lived in Uganda since he was [age] years old, and has lived in Australia since he was [age] years old;

b. the applicant would relate information to the security or immigration services in Uganda that is consistent with the evidence he provided to the T

			act of removal itself, will not meet the definitions of 'significant harm' in s 36(2A).
1834018 (Refugee) [2022] AATA 1276 (11 March 2022) (Unsuccessful)	11 March 2022	111	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal did not accept that the applicant was harmed in the past in Taiwan, or that he faced a real risk of significant harm if he were to return. Further, the Tribunal observed that in circumstances where an applicant could obtain protection from an authority of the country such that there would not be a real risk that the applicant will suffer significant harm, the complementary protection criterion will not be made out. The Tribunal observed that Taiwan has low crime, an effective police force and an impartial judicial system. Therefore, even if the applicant were to be targeted, the Tribunal was satisfied that he could obtain protection from the authorities such that there would not be a real risk of significant harm.
2013037 (Refugee) [2022] AATA 1131 (10 March 2022) (Unsuccessful)	10 March 2022	32–34	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal accepted that there was a real risk the

			accepted that the relevant country information indicated that there is a higher risk of significant harm due to generalised violence in The Bahamas, in the form of violent crime and homicide, than in many other countries, the Tribunal did not accept that the first applicant had been or would be specifically targeted for violent crime. The risk the applicant faced was one faced by the population generally and not him personally.
1724639 (Refugee) [2022] AATA 5154 (3 March 2022) (Successful)	3 March 2022	32, 36, 37	The Tribunal considered that the applicant, a separated child with USA citizenship was entitled to protection under s36(2)(aa). The Tribunal considered article 37(a) of the Convention on the Rights of the Child (CROC), which, other than its focus on children, mirrors a ( )]TJ372.84 Tm[(unde)480.4 16 13.8 n454.

reason. The Tribunal also considered the applicants' claim that the third applicant, a child, would struggle to adapt to life in India. While the Tribunal acknowledged that the third applicant may experience 'short-term' challenges associated with adapting to life in India, and initial difficulties communicating in Punjabi, the Tribunal concluded that the third applicant, with the support of her family, would quickly learn to communicate in Punjabi and adapt to the new 1 (rm)nld qui neurmii 1wd20.2

			Jordan. The Tribunal also did not accept that a risk of generalised and extremist violence in Jordan gave rise to a real risk of significant harm in the requisite sense.
1721311 (Refugee) [2022] [illegible] 2022) (Successful)	24 February 2022	80–84, 129–134	The Tribunal remitted the applicant's matter for reconsideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The Tribunal considered evidence that the applicant had used social media to repost anti-Communist views of the Viet Tan and that the applicant's husband was a member of the Viet Tan and had interacted with the Viet Tan official website. Having regard to extensive country information, the Tribunal concluded that it was satisfied that there was a real risk that the applicant's husband would face significant harm if he were returned to Vietnam. The Tribunal was furthero urthe[illegible]B4&wntntnad t ntoc te rd tntococialion Aehent

evolved position in this case is that [the applicant] fears being unable to afford in India the expensive treatment he requires, we were unable to identify any element of intention to harm [the applicant]; the position is that he simply would not be able to access treatment and support because payments of his medical bills by his insurer would cease upon his departure from Australia. Whereas this would have a devastating effect on his health, life expectancy and dignity, and thus activate consideration of the adjectives in some of the definitions of “significant harm”, such as “cruel or inhuman treatment or punishment” or “degrading treatment or punishment,” we could not find the essential element of intention that might help to establish “significant harm” for the purposes of the Act, notwithstanding that, in the event of removal to India, [the applicant] evidently faces a real risk

and taking into account the applicant’s personal

			relocation would require the family to move to an environment where they do not have familial support that could provide some degree of mitigation against discrimination or protection from physical harm.
YKWD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 164 (Successful)	7 February 2022	128–148	The AAT set aside the decision of a delegate of the Minister refusing to grant the applicant a temporary protection visa on the basis that he did not pass the character test, and remitted the matter for reconsideration with the direction that the applicant passed the character test for the purposes of s 501(1) of the *Migration Act*. Relevantly, in making a decision under s 501(1), the Tribunal considered Australia's non-refoulement obligations in respect of the applicant, in accordance with Direction No. 90. Based on the evidence, the Tribunal was satisfied that the applicant was a person in respect of whom Australia has protection obligations, and that the particular circumstances of the applicant were such that he would remain in detention indefinitely if his visa was refused. The Tribunal went on to consider Australia's obligations under international law, observing: 137. The obligations of the Australian Government under international law have been articulated in the following authorities. 138. The High Court of Australia (the High Court) in *Minister of State for Immigration and Ethnic Affairs v Teoh*, in which Mason CJ and Deane J stated: *...ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted*

> *standards to be applied by courts and administrative authorities in dealing with basic human rights ... Rather,* ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention [emphasis added]

Toohey J further remarked:

> *For, by ratifying the Convention Australia has given a solemn undertaking to the world at large* ...

139. Recently, the Full Federal Court in *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CWY20* identified Australia's obligations in accordance with international law. Allsop CJ relevantly stated:

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			visa decision maker should take into account, on the basis that liberty is one of the most basic human rights and fundamental freedoms known to the common law…' and '[d]ecision makers in the position of the Tribunal are not entitled to ignore the continued deprivation of liberty of a person in the position of the appellant, while the executive pursues its policies to avoid refoulement'. Weighing all the evidence, the Tribunal was satisfied that the consideration of international non-refoulement obligations weighed very strongly against exercising the discretion to refuse to grant the applicant's visa.
LMHK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 166 (Unsuccessful)	7 February 2022	131–146	The AAT affirmed a decision of a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa. The respondent conceded and the AAT accepted that the applicant engaged Australia's non-refoulement obligations. The Tribunal determined that having been granted a SHEV in 2017, a 'protection finding' within the meaning of s 197C(4) of the *Migration Act* must have been made in respect of the applicant. On this basis, and noting that none of the qualifications in s 197(3) applied, the Tribunal observed that Australia would not remove the applicant to Myanmar. The AAT rejected the respondent's submission that the practical consequence of a non-revocation decision was not indefinite detention because of the other options available, obse0 Td()-2 (i) refEl

returned to the wider community or removed to a third

			to consider that the applicant may be at risk for any Convention reason if he returned to Nicaragua.
QDWQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 226 (4 February 2022) (Unsuccessful)	4 February 2022	136, 142, 143, 145, 146, 163	The applicant was a Hazara Afghani who had never lived in Afghanistan but was born and raised in Iran. He had

			Act" (at [142]). It did, however, acknowledge the serious consequences for the applicant. Despite a number of factors weighing heavily in favour of revocation, the Tribunal refrained from revoking the visa cancellation, due to the serious nature of the applicant's offending.
1916227 (Refugee) [2022] AATA 553 (31 January 2022) (Successful)	31 January 2022	50, 56, 57	The AAT remitted the matter for reconsideration. The Iraqi applicant was found to have a well-founded fear of persecution for reasons of political opinion, but it was found that this fear did not persist throughout Iraq, as the applicant could relocate to places where he and his family would live as IDPs, and so the applicant did not meet the definition of a refugee (at [50]). This was not considered "reasonable in circumstances where his wife and children would have to accompany him [as, according to DFAT advice] protection risks for IDPs remain acute, with many suffering from confiscation of documents, detention, forced evictions and disproportionate restrictions on access to safety and freedom of movement" (at [56]). The applicant's mental ill-health was also considered relevant. This risk of harm was faced by the applicant personally and not the general population, and so protection under s36(2)(aa) was available.
Lukasa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 192 (Unsuccessful)	25 January 2022	382, 393, 416–419	The AAT affirmed a decision of a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa. Relevantly, the Tribunal noted (at [382]): The Tribunal must give active intellectual consideration to the Applicant's fairly articulated

			representations about risk of harm, regardless of characterisation. This cannot be deferred because the Applicant is able to apply for a protection visa. The Tribunal's engagement with such claims, however, relates to whether there is "*another reason*" for revocation, pursuant to section 501CA of the Act, rather than the more expensive analysis routinely undertaken for protection visa applications In this case, the Tribunal was not satisfied that the applicant was owed non-refoulement obligations, concluding that in either Sudan or South Sudan, the applicant would be at the same risk of generalized violence and crime as faced by the population of either country more generally.
1721346 (Refugee) [2022] AATA 799 (20 January 2022) (Successful)	20 January 2022	8695	The AAT remitted the application to the primary decision-maker, on the basis that the applicant was entitled to complementary protection due to a real risk that he would suffer significant harm, namely arbitrary deprivation of life, if returned to Syria. Having previously received an exemption from military service as a result of his parents paying a fee and a health exemption, the applicant feared that, if he returned to Syria, he would be forcibly recruited into the armed forces due to the deterioration of the security situation for Syria since his exemption was granted (at [61]). The Tribunal noted that "there must be a real and personal risk to the individual" and that "where the threat is from non-state actors, decision-makers should be satisfied that

question’” before protection obligations will be found (at [90]). It was found that such a risk existed in this case. There was no possibility of protection elsewhere in Syria where government forces were not in control, due to the risk that the applicant would be considered pro-Assad which could lead to significant harm (at [91]). Thus the

VNPC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4628 (Unsuccessful)	15 December 2021	122–139	The AAT affirmed a decision of a delegate of the Minister not to grant the Turkey applicant a protection visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal noted ([131]; emphasis in original and footnotes omitted): > In the present case, by decision dated 18 March 2018, the Migration and Refugee Division of the Tribunal made a decision remitting the application for reconsideration with a direction that the Applicant satisfied s 36(2)(aa) of the Act [ie that the applicant satisfied the complementary protection criterion]. The Minister accepts that Australia owes the Applicant non-refoulement obligations. As the Minister notes, by that decision, the Tribunal found that due to ongoing conflict in south eastern Turkey between the government and the Kurdistan Workers' Party (**PKK**), the Applicant faced a well-founded fear of persecution on return there as a Kurd. The Tribunal concluded ([138]–[139]): > 138. … Based on the [relevant] authorities, statements of executive policy, [Ministerial] Direction [No] 90 and legislative provisions including the amendment to s197C of the Act, I find that Australia will not, as a consequence of a refusal of his visa, remove the Applicant to the country in respect of which the non-refoulement obligation exists. I find, as the Minister concedes, that the administrative steps and inquiries to be undertaken in effecting the executive's policy may take a long time and not have any clear outcome, despite

the provisions of s 197C. This may result in prolonged detention with no fixed chronological end point.

139. As I am required to do by para 9.1(2) of Direction 90, I weigh the consequence described in [138] above against]nd ibee

			The Act, particularly the concept of 'protection obligations', reflects Australia's interpretation of non-refoulement obligations and the scope of the obligations that Australia is committed to implementing. Accordingly, in considering non-refoulment obligations where relevant, decision-makers should follow the test enunciated in the Act. 110. I summarise here the further parts of this consideration, taking into account the fact that YYZQ has made a protection visa application, and this has been rejected … but remains subject to a pending application for review, and that he has made clearly articulated claims that he is owed a non-refoulment obligation. Relevantly, the consideration states: decision-makers are to weigh any obligation that is found to exist against the seriousness of the non-citizen's offending, mindful of the provisions in the Act requiring their detention until removal as soon as reasonably practicable (paragraph 9.1(2)); and such an obligation does not preclude non-revocation due to the existence of Ministerial discretions under the Act with respect to the granting of visas (paragraph 9.1(3)). I note that due to recent legislative changes, it may be, subject to circumstances, that the duty to remove may not be enlivened. In the present case, however, the Tribunal concluded that the applicant's claims of feared harm did not rise to the threshold required by the *Migration Act* for the grant of refugee or complementary protection. As such, this

			'other consideration' weighed neutrally in the Tribunal's decision.
1931197 (Refugee) [2021] AATA 5074 (Unsuccessful)	10 December 2021	31–32	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, having concluded that the s 36(2)(a) criterion was not satisfied, the Tribunal stated that for the same reasons it had found there was no *real chance* of serious harm, it considered that the *real risk* element of the test in s 36(2)(aa) had not been met. The Tribunal further observed that ([32]): > To the extent that that the definitions of 'serious harm' and 'significant harm' differ, I am satisfied that economic hardship falling short of denial of the ability to subsist and/or employment discrimination in some workplaces or [Industry 1] sectors where Bumiputera may be the subject of affirmative action policies, where the applicant is an Indian-Tamil, do not constitute 'significant harm' of the kind contemplated by ss 36(2A) and 5(1).
Omoregie and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4590 (Successful)	10 December 2021	90–98	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the

			visa where his claims could be more fully considered. Overall, however, the Tribunal still gave this other consideration 'low to moderate weight in favour of revocation of the delegate's decision' ([98]).
JTNW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4948 (Successful)	9 December 2021	116–117, 122–139, 144–148, 151–152, 172–174, 192	The AAT set aside a decision of a delegate of the Minister refusing to revoke a mandatory visa cancellation decision, and in substitution, revoked the cancellation of the applicant's Safe Haven Enterprise visa. In considering the application of Ministerial Direction No. 90, the Tribunal noted that while the primary considerations 'carry particular weight' ([116]), the other considerations in the Direction are 'other' considerations, as opposed to 'secondary' considerations ([117]). In this regard the Tribunal quoted (at [118]) *Suleiman v Minister for Immigration and Border Protection* [2018] FCA 594 at [23] per Colvin J: > Direction 65 [now Direction 90] makes clear that an evaluation is required in each case as to the weight to be given to the 'other considerations' (including non-refoulement obligations). It requires both primary and other considerations to be given 'appropriate weight'. Direction 65 does provide that, generally, primary considerations should be given greater weight. They are primary in the sense that absent some factor that takes the case out of that which pertains 'generally' they are to be given greater weight. However, Direction 65 does not require that the other considerations be treated as secondary in all cases. Nor does it provide that primary considerations are 'normally' given greater weight. Rather, Direction 65 concerns the appropriate weight to be given

requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply.

In respect of the consideration of international non-refoulement obligations, the respondent accepted, and the TBl no1n-2 Int aonal nonTrihat

			Obligations for Removal) Bill 2021. The essential effect of this bill is that it requires the executive to undertake a protection assessment before considering removal of a non-citizen from Australia. Previously, *Direction 79 – Visa refusal and cancellation under s501 and revocation of a mandatory cancellation of a visa under s501CA* provided something like an *"executive promise"* that this would occur (which, to our knowledge, was never dishonoured). After referring to the applicant's claims of feared harm, the Tribunal considered the meaning of 'cruel or inhuman treatment or punishment' and discussed the requirement in Australian law for such harm to be inflicted intentionally. The Tribunal explained ([120]–[124]; emphasis in original and footnotes omitted): The majority [of the High Court of Australia in *SZTAL v Minister for Immigration and Border Protection*] wrote: *"[C]ruel or inhuman treatment or punishment" is relevantly defined in s 5(1) of the Act as an act or omission by which "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" (emphasis added). As Edelman J explains,* this definition is not taken from the ICCPR The ICCPR did not provide a definition. It did not expressly require that pain or suffering of the requisite degree be intentionally inflicted; nor has it subsequently been interpreted as importing such a requirement.*The definition of "cruel or inhuman treatment or punishment" in s 5(1) is a partial*

adaptation of the definition of "torture" in s 5(1), which is clearly enough derived from the definition of "torture" in Art 1 of the CAT, which, in turn, speaks of "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for certain purposes such as obtaining information or a confession, or intimidating or coercing the

under the Act may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. As Mortimer J said in Minister for Home Affairs v Omar:

> *Critically, what matters for the exercise of the s 501CA(4) discretion is not the consideration of a visa criterion which might have similar content (in some respects) to Australia's non-refoulement obligations: it is whether Australia's non-refoulement obligations are engaged in respect of a particular individual.*

124. Reading *SZTAL* and *NQKB*

			135. We are of the view that his articulated and propounded claims consequent upon a return to Poland are not sufficiently advanced to reach the threshold of engaging Australia's non-refoulement obligations. Overall, we are of the view (and we find) that the actual or possible degrading treatment the Applicant may experience on a return to Poland are factors that attract a certain, but not determinative, level of weight in favour of revocation. This weight is outweighed by the combined heavy weights we have attributed to Primary Considerations 1 and 4.
1837029 (Refugee) [2021] AATA 5026 (Successful)	30 November 2021	80–87, 89	The AAT set aside a decision of a delegate of the Minister to cancel the applicant's protection visa and substituted a decision not to cancel the applicant's protection visa. In deciding whether to exercise the power to cancel the applicant's visa pursuant to s 109(1) of the *Migration Act*, the Tribunal relevantly considered whether the cancellation would lead to the applicant's removal in breach of Australia's non-refoulement and family unity obligations. In this regard, the Tribunal disagreed with the delegate's assessment that, because cancellation of the visa would not automatically lead to the applicant being removed from Australia, the non-refoulement issue did not arise. The Tribunal observed ([81]): The effect of cancellation would leave no legal pathway for the applicant to seek a further visa in Australia. Therefore, for the purposes of the exercise of its discretion, the Tribunal considers it appropriate to consider whether the applicant's removal would enliven Australia's non-refoulement obligations even where, in

			practice, the Department would conduct an ITOA before the time of removal. Having regard to country information in a DFAT Report on Pakistan in relation to Hazaras and Shia Muslims, the Tribunal accepted that there was a real risk that if the applicant returned to Pakistan, he would be seriously harmed for reasons for his religion and ethnicity. The Tribunal further accepted that the government of Pakistan had shown itself unable or unwilling to protect the applicant and other Hazara against the harm feared. Accordingly, the Tribunal found that Australia's protection obligations wee invoked by the applicant's circumstances and that, as a result, a decision to cancel his visa would place Australia in breach of its non-refoulement obligations. Weighing the discretionary factors, the Tribunal gave this effect 'by far the greatest weight' ([89]).
1827090 (Refugee) [2021] AATA 5171 (Unsuccessful)	30 November 2021	52–59	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Having found that the applicant did not satisfy the s 36(2)(a) criterion, the Tribunal observed that as the 'real risk' test is the same as the 'real chance' standard, it followed that the Tribunal did not accept that there were substantial grounds for believing, as a necessary and foreseeable consequence of the applicant being removed from Australia, that the applicant faced a real risk of significant harm for reasons based on the applicant's economic circumstances.

economy in combination with market forces to inflict significant harm, including subjecting the applicant to

			consequence of Australia upholding its international non-refoulement obligations to be the applicant's indefinite detention. The Tribunal ultimately gave 'heavy weight' to this other consideration ([359]).
PYCS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4405 (Unsuccessful)	25 November 2021	112–120	The AAT affirmed a decision of a delegate of the Minister to cancel the Afghani applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal reasoned as follows ([116]–[120])

118. There is also the question as to whether the Applicant would be able to go somewhere other than Afghanistan. There is presently no evidence before the Tribunal to suggest that he can.

119. There were questions raised prior to the hearing as to whether it was an open possibility for the Applicant to be returned to Iran, pending the ascertainment of whether he is eligible to hold Iranian citizenship. It is agreed by the Applicant and the Respondent that the Applicant has no right to return to Iran, or to obtain Iranian citizenship. It is agreed that the only relevant country for the purposes of this other consideration is Afghanistan.

120. I am particularly mindful of Paragraph 9.1(6) of [Ministerial] Direction [No 90]. Having regard to all of the above, and the dynamic and unpredictable course of events that may unfold over the weeks, months, and years ahead in Afghanistan, I am of the view that this Other Consideration (aTJ0unr2 (e)-1.6 1g[(d i)-1.1 Tw 0 -1.5h3.9

(Migration) [2021] AATA 4510 (Unsuccessful)

international non-refoulement obligations, the Tribunal explained ([198]):

> Sections 36(2)(a) and 36(2)(aa) of the [*Migration Act*] provide the tests for protection on the basis of refugee

207. Second, the Applicant claims that he will be subjected to cruel, inhumane and degrading treatment because of his mental illness. According to a country information report on Iraq, dated August 2020, by the Department of Foreign Affairs and Trade ("the DFAT report"), a significant proportion of Iraq's population suffers from a mental health or psychological disability. There is significant societal stigma attached to mental health issues which discourages some from seeking treatment. I am not satisfied that the Applicant suffers from a mental illness, but I accept that he experiences symptoms of depression and/or anxiety in times of stress. There is no evidence that the Applicant would tell people in Iraq that he has a mental illness or that, if he obtained anti-depressant medication or other medication to help him sleep, anyone other than those prescribing or dispensing it would know about it. There is no evidence that when the Applicant experiences symptoms of anxiety or depression, it results in conspicuously abnormal behaviour or impairs his ability to perform ordinary functions such that he would be seen to have a mental illness or disability. I am therefore not satisfied that there is a real possibility that the Applicant would be subjected to cruel, inhumane and degrading treatment, or any other kind of serious or significant harm, for reasons relating to his mental health.

208. Third, the Applicant claims there is a risk that he will be kidnapped due to his lengthy stay in the West. The DFAT report indicates that the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted among Iraqis, as evidenced by the large numbers of dual nationals from the United States ("US"), Western Europe and Australia who

			return to Iraq. There is considerable evidence that Iraqis who are granted protection by western countries often return to Iraq, sometimes only months after securing residency abroad, to reunite with families, establish and manage businesses or take up or resume employment. The report does not mention any risks of kidnapping or other harm associated with being a person who has lived in a western country. 209. The Applicant referred the Tribunal to a report by the United Kingdom Home Office on Iraq, dated February 2019, which was not provided. The report apparently referred to findings made by the Upper Tribunal in *BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)* ("BA") about kidnappings in Iraq. A decision by another Tribunal is not binding on this Tribunal but it might be helpful as a form of country information. The decision is comprehensive, being some 126 pages long. The summary of findings, which appears at the beginning of the decision relevantly says: *"Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings <u>might</u> be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad <u>may</u> depend on how long he or she has been away from Iraq. <u>Each case will be fact sensitive</u>, but in principle, the longer a person has spent abroad the greater the risk. However, <u>the evidence does not show a real</u>*

> *risk to a returnee in Baghdad on this ground alone."*
>
> (Underlining added [by Tribunal.])
>
> 210. These findings are speculative at best and they expressly indicate that having lived in the West, of itself, is not considered a risk factor. The Applicant did not put forward any other risk factors that, together, with having lived in the West, would put him at real risk of being kidnapped.

The applicant's remaining claims 'relate[d] to his

247. The DFAT report mentions that returning Iraqis

SRKB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4390 (Successful)	18 November 2021	119–135	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Afghani (or Pakistani) applicant's protection visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained that ([123]) > given the applicant's personal circumstances, the applicant will not be removed to Pakistan or Afghanistan in the event that the original [cancellation] decision is not revoked: the applicant has been granted his current visa following an assessment of the applicant's own protection obligations (as per section 197C(3)(a) – (b) of the Act). Accordingly, mandatory cancellation will not deprive section 197C(3) of its effect until the applicant formally request to be removed to Pakistan or to Afghanistan; or if the applicant is found to no longer engage Australia's non-refoulement obligations. Here, the Tribunal concluded ([131]–[135]): > 131. The Respondent, and the Tribunal, accepts that the applicant is owed non-refoulement obligations. The Tribunal also accepts that the applicant has had a

			applicant may find himself in indefinite detention, should the Tribunal not revoke the cancellation of his visa, unless he personally requests removal. 133. There is also the distinct possibility that, if the applicant is removed, he would be targeted due to his race in both Pakistan and Afghanistan, and potentially harmed. 134. The Tribunal considers possible indefinite detention to be a serious consideration in this matter. It strongly weighs in favour of revocation of the decision. 135. The Tribunal separately considers that the international non-refoulement consideration weighs heavily in favour of revocation of the cancellation decision. It is not entirely clear precisely on what basis Australia's international non-refoulement obligations arose with respect to the applicant; indeed, the reference to the applicant potentially being targeted by reason of his race ([133]) suggests that the Tribunal may have understood the applicant to have had a well-founded fear of persecution on the ground of race (one of the five Convention reasons). For completeness, however, the decision has been included in this table of case summaries.
1621866 (Refugee) [2021] AATA 5073 (Unsuccessful)	17 November 2021	115	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Having found that the applicant did not satisfy s 36(2)(a), the Tribunal relevantly observed in respect of the operation of s 36(2)(aa) ([115]):

			As the 'real chance' standard for the Convention is the same as the 'real risk' test under the complementary protection provisions, given the Tribunal has already made findings that the applicant, who is ethnically Tutsi, faces only a remote and far-fetched chance of serious harm arising from any prospective tension or strife between Hutus and Tutsi, if returned to Rwanda, then it follows that the applicant only has a remote and far-fetched risk – and not a real risk – of significant harm, if returned to Rwanda, based on assessment of the country information, and does not satisfy s 36(2)(aa) in this regard.
2010472 (Refugee) [2021] AATA 5018 (Unsuccessful)	16 November 2021	10	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the AAT observed ([10]): It remains for the applicant to satisfy the Tribunal that all of the statutory elements for the grant of protection are made out (*MIEA v Guo & Anor* (1997) 144 ALR 567 p.596); and although the concept of the onus of proof is not appropriate to administrative inquiries and decision making (*Yao-Jing Li v MIMA* [1997] FCA 289; (1997) 74

BLSL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4177 (Successful)	15 November 2021	89–101	The AAT affirmed a decision of a delegate of the Minister to refuse to grant the Indian applicant a protection visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal commented on recent amendments to the *Migration Act* concerning the removal f1 Tw 1-0.7a5nco gr t (he)4.32 reW nBW nBW nq1sl (l)-2 (

			detention since 2017, which carries very substantial weight in favour of approving the visa. The specific circumstances of this case are such that the Tribunal has given this consideration comparable weight to a primary consideration. While the existence of the MRD's finding suggests that the Tribunal was referring principally, if not exclusively, to international non-refoulement obligations arising under the *Refugee Convention*, for completeness, the decision has been included in this table of case summaries.
1706282 (Refugee) [2021] AATA 4886 (Unsuccessful)	12 November 2021	54	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicants protection visas. Relevantly, the Tribunal was satisfied that if the first applicant were to return to Tonga, he would not express support for any political party or become involved in any political affairs. Based on the applicant's testimony, the Tribunal was satisfied that this would be 'due to disinterest rather than out of fear for his safety' ([54]). As the applicant suffered no harm in Tonga at a time when he did express support for the Democratic Party of the Friendly Islands, the Tribunal was satisfied that there was not a real chance or a real risk that he would suffer serious or significant harm if he returned to Tonga by reason of his political opinion
JSMJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4183 (Unsuccessful)	12 November 2021	156–197	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Burundian applicant's refugee visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained ([162]):

practicing mindfulness. The counselling he attends relates to alcohol, not anxiety or depression. While he currently exercises at the gym, he said he could exercise without a gym. There is no evidence that he could not attend church, exercise and practice mindfulness in Burundi. I accept that the Applicant's separation from his family could impact on his emotional and psychological wellbeing, and he might not have access to sleeping tablets, but I am not satisfied that this would be deliberate and due to anything personal to him or that it would amount to serious or significant harm.

…

182. … I am satisfied that if the Applicant were removed to Burundi, he would face a real risk of societal violence and crime. However, that risk is one faced by the general population and not personal to him, so I am not satisfied that it engages Australia's non-refoulement obligations.

183. I am satisfied that, should the Applicant appear to be a visitor, he could be a target of kidnapping. However, he would not be a visitor: he would be a Burundian national settling in Burundi.

…

186. … I accept that the Applicant could face

country as opposed to somewhere else or because he would be seen as having a wealthy family.

…

188. … I accept that Burundians who live in regions bordering DRC, and who travel to and from DRC or otherwise engage in activities that could raise suspicions that they are aligned with any anti-government groups, are at risk of arbitrary detention, torture or death. There is no evidence before me of where the Applicant's parents are from and he did not indicate any preference for, or aversion to, particular regions in Burundi in the event that he is deported. He did not indicate an intention to live in any region that borders the DRC, to have anything to do with DRC or to engage in any activity that could be perceived as anti-government.

…

191. … While I accept that [the applicant] does not speak [the national language of Burundi] perfectly, and he may well speak with an accent that is unfamiliar in Burundi, there is nothing in the country information to suggest that those things would expose him to harm. Since 2017, more than 120,000 Burundians have returned from other countries, presumably including people who do not speak Kirundi perfectly or who speak with an accent, and the country information does not contain any reports of those people being at risk of harm from the government. Indeed, the government is encouraging them to return and assisting them to re-settle.

			The Tribunal concluded ([192]): > On the evidence before me, I am not satisfied that the Applicant engages Australia's non-refoulement obligations. However, in terms of harm and hardship, I am satisfied that Burundi is a dangerous place and that the danger comes from society and the authorities. I am also satisfied, for reasons given under Other Consideration (b) that the Applicant is likely to experience significant hardship in Burundi. The Tribunal concluded that 'Other Consideration (a)' (non-refoulement) weighed 'heavily in favour of revocation' ([197]).
Eid and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4155 (Successful)	11 November 2021	71–84	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Lebanese applicant's permanent visa. In the context of considering the relevance of Australia's international non-refoulement obligations, although the Tribunal held some credibility concerns about the veracity of the applicant's claims of feared harm, the Tribunal nonetheless concluded ([75]): > … not only does the Tribunal accept that the Applicant has a subjective and genuinely-held concern for his own safety should he be returned to Leba9.2 4 21sw(b)112 0 0 010.9 (-2 cls-2 9 (e)9.2 (t)e-4.6 (xp0.e-2 d l)-4.0.641 Tw0.641 Twd lnlina

			concerning fear of harm by Hezbollah and Syrian forces, those concerns have a proper foundation having regard to what the Tribunal accepts as the political situation in Lebanon. And ([83]): … in giving weight to this consideration, and in balancing the seriousness of the Applicant's past conduct and the risk of offending against the real likelihood of serious harm or death being occasioned to the Applicant should he be returned to Lebanon, the Tribunal concludes that the non-refoulement consideration strongly outweighs the Applicant's past criminal conduct and risk of future offending. While the language of the Tribunal's reasoning (in particular, the references to 'serious harm' rather than 'significant harm') suggests that the Tribunal was referring principally, if not exclusively, to international non-refoulement obligations arising under the *Refugee Convention*, for completeness, the decision has been included in this table of case summaries.
1910791 (Refugee) [2021] AATA 5110 (Successful)	8 November 2021	65	The AAT remitted the matter for reconsideration with a direction that the applicant satisfies s 36(2)(a) of the *Migration Act*. Having found that the applicant satisfied s 36(2)(a), there was no need for the Tribunal to consider the applicant's claims under s 36(2)(aa). Nevertheless, the Tribunal indicated that while it accepted that the applicant would suffer some discrimination upon return to Afghanistan without his children due to his domestic circumstances, any such discrimination would not amount to significant harm for the purpose of s 36(2)(aa).

1711135 (Refugee) [2021] AATA 4513 (Unsuccessful)	3 November 2021	38–44	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, in the context of the latter criterion, and in rejecting the applicant's claim of feared harm based on the possibility of imprisonment in Malaysia, the Tribunal explained ([44]): On the basis of the DFAT information, I accept that prison conditions in Malaysia are generally poor, with over-crowding and insufficient medical services. I further accept that any period of imprisonment will cause some degree of hardship to the applicant. The DFAT information indicates that the Malaysian government has recently collaborated with Malaysia's Human Rights Commission to undertake a review and reform of the prison management system, including compliance with minimum standards of detention following international standards. It also suggests that newer prisons are being built to a higher standard than existing prisons, such as the inclusion of flushing toilet systems. This causes me to consider that the poor prison conditions in Malaysia arise as a result of inadequate resourcing rather than any intent by the Malaysian authorities to inflict pain or suffering or extreme humiliation on Malaysia' prisoner population. For these reasons I do not accept that pain and suffering will be intentionally inflicted on the applicant if he is imprisoned, nor that the poor prison conditions in Malaysia are intended to cause extreme humiliation.

causes it. Consistently with this, the Complementary Protection Guidelines state that the assessment is subjective, in that it depends on the characteristics of the victim (such as gender, age and state of health). The Complementary Protection Guidelines also provide examples of treatment which are ‘very likely’ to constitute breaches of art 7, including rape, female genital mutilation, forced abortion and forced sterilisation and, in some cases, circumstances arising from a forced marriage and domestic violence. These casDC 0.2 g11 b04 cas1DC 0.4 BDC 04 0 0 13.3 0-4.6 (ET/ET/ET476.16 385.3)-4 (t)

			It remains for the applicant to satisfy the Tribunal that all of the statutory elements for the grant of protection are made out (*MIEA v Guo & Anor* (1997) 144 ALR 567 p.596); and although the concept of the onus of proof is not appropriate to administrative inquiries and decision making (*Yao-Jing Li v MIMA* [1997] FCA 289; (1997) 74 FCR 275 p.288), the relevant facts of the individual case will have to be supplied by the applicant themselves, in as much detail as is necessary to enable the decision maker to establish the facts. A decision maker is not required to make the applicant's case for him or her (*Prasad v MIEA* (1985) 6 FCR 155 pp.169-70; *Luu & Anor v Renevier* [1989] FCA 518; (1989) 91 ALR 39 p.45). The Tribunal acknowledges this guidance had been developed for the purposes of considering refugee protection claims, however, I am satisfied it is materially applicable to the assessment of complementary protection claims. In this case ([12]): … the Tribunal is not satisfied all the statutory elements for the grant of protection are made out. Accordingly, I do not accept the applicant has a well-founded fear of persecution for a reason prescribed in the Act; or that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there is a real risk that he will suffer significant harm.
1713394 (Refugee) [2021] AATA 5225 (Unsuccessful)	27 October 2021	59–64	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicants protection visas. Relevantly, in respect of the application of the complementary protection criterion, the AAT considered the applicants' claims to fear harm from non-

state actors, their family and the wider Muslim community for their conversion to the Catholic religion. The Tribunal noted ([61]):

> The Department's Complementary Protection Guidelines state that there must be a real and personal risk to the individual, saying that where the threat is from non-state actors, decision-makers should be satisfied 9 (a)

him, he will be subjected to torture or cruel or inhuman treatment or punishment or he will be subjected to degrading treatment or punishment if he returns to Nepal. As discussed above, the Tribunal considers that on the accepted facts, the applicant has some experience and skills in hospitality and strong English language skills, and he will gain some level of employment on this basis. The Tribunal has also found above that the applicant has access to some family support in Nepal,

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The country information alongside the applicant's experiences indicate some degree of state discrimination including in finding employment in the shipbuilding, manufacturing and petrochemical industries and from working in local government, but considering the applicant's past employment and skill set alongside country information that suggests there is limited discrimination I find that exclusion from those industries and sectors would not lead to him facing a real chance of serious harm or a real risk of significant harm. Other negative circumstances arise as a result of Tehran's policy towards Khuzestan. While I accept that poor air quality due to the petrochemical industries, poor water quality and other circumstances may impact the applicant I note that no evidence was provided nor has been found to suggest that the harm the applicant would face as a result of these general environmental concerns would lead in his specific circumstances to serious or significant harm that is discriminatory for refugee reasons or that there is an intentionality to it for complementary prot (ig)5 3 (o)5.c4Bplemeo.6 (e)9.5 (7005 T9l)-2.7 ( )]TJ

refugee for the purposes of the Refugees Convention.

or a real risk that they will suffer serious or significant harm, for the purposes of the Act, if they return to Malaysia for this reason.

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			criminals and gangs and others purporting to be, or to be affiliated with, the TTP [that is, the Tehrik-i-Taliban Pakistan]' (at [173], apparently relying on the exception in section 36(2B)(c) of the *Migration Act*). Further, the Tribunal explained ([176]; footnote omitted): … the fact that a person may enjoy less favourable social, economic or cultural rights in another country does not, of itself, give rise to a non-refoulement obligation. It may lead to a degrading condition of existence, but that does not constitute degrading treatment for the purposes of the Act. "Treatment" does not cover degrading situations arising from socio-economic conditions. "Treatment" must represent an act or an omission of an individual or one that can at least be attributed to him or her.
1809967 (Refugee) [2021] AATA 4144 (Successful)	17 October 2021	42, 43, 45–52	The Tribunal remitted this matter to a delegate of the Minister with a direction that the Iraqi applicants satisfied the complementary protection criterion (section 36(2)(aa) of the *Migration Act*). The applicants did not satisfy the refugee criterion (s 36(2)(a)) because the real chance of persecution that they faced in Iraq for reasons of their political opinion and membership of a particular social group (namely, their family) did not relate to all areas of Iraq as required by section 5J(1)(c). Additionally, the applicants' claims of persecution on account of one applicant's being an educated 'Occupation 1' (redacted) returning from the West after claiming asylum, and/or on account of the applicants' ethnically mixed (Arab/Kurdish Sunni) marriage with children, were not pressed with any degree of detail during the review process. In the context of the

complementary protection criterion, however, the Tribunal found that there existed ‘a real risk (not being a remote or insubstantial one) that [the applicants] would be physically injured or even killed by members of the Asa’ib Ahl al-Haq militia’ ([46]) a

would have access, free from discrimination, to any mental health services he may require in Fiji.

1810602 (Refugee) [2021] AATA 4635 (Unsuccessful)	12 October 2021	41	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal explained ([41]):

			Iraq. The Tribunal observed that the applicant might also be imprisoned because of his drug addiction.
NVTN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3989 (Unsuccessful)	11 October 2021	145–173	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Democratic Republic of the Congo applicant's Women at Risk visa. In the context of considering the relevance of Australia's international non-refoulement obligations,

referring to available country information, the Tribunal then concluded ([170]–[171]):

> 170. There is insufficient evidence before me to support a finding that the Applicant engages Australia's non-refoulement obligations. However, it is readily apparent that he will be at considerable risk of generalised crime and violence in his daily life if he is removed to the DRC.
>
> 171. In the event of a non-revocation decision, it is open to the Applicant to apply for a Protection visa where his claims can be more extensively articulated and considered. However, given the exclusions in subsections 36(1C)(b) and (2C)(b) of the Act that reflect Article 33(2) of the Refugees Convention, it seems unlikely that such an application would succeed. Nor is there any suggestion that the Minister would use any of his discretionary powers to allow the Applicant to re-enter the wider community. The likely legal consequence of a non-revocation decision is therefore that the Applicant would be removed to the DRC as soon as practicable.

The Tribunal concluded that this 'Other Consideration (a)' weighed 'heavily in favour of revocation' ([173]).

			Sections 36(2)(a) and 36(2)(aa) of the [*Migration Act*] provide the tests for protection on the basis of refugee status and complementary protection. Those tests contain exclusions that are not contained in the CAT or ICCPR. Accordingly, a person who could not satisfy the criteria for a protection visa may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. After referring to Article 3(1) of the CAT and Articles 2, 6, and 7 of the ICCPR and the express and implied non-refoulement obligations they contain, the Tribunal set out the applicant's claims of feared harm and discussed available country information about Ethiopia. The Tribunal concluded ([160]–[162]): 160. I am satisfied that there is a real possibility that the Applicant would be targeted by the government on the basis of his ethnicity if he were outside Tigray, including if he were in Addis Ababa. However, without more comprehensive country information, I am unable to find a real risk that the Applicant would be targeted in a way that involves serious harm. 161. It appears that if the Applicant returns to Tigray, it is likely that he will live in terrible, unsafe conditions and if he relocates to an area outside Tigray he runs a real risk of being discriminated against to an extent that I am unable to gauge on the information before me. 162. I am not satisfied that the Applicant would be at any real risk of harm from the Eritrean army in Ethiopia.

			There is no evidence of a current conflict between Eritrea and either Ethiopia or Tigray State. Nonetheless, the Tribunal concluded that 'Other Consideration (a)' (non-refoulement) weighed 'heavily in favour of revocation' ([165]), apparently due to the possible consequences of non-revocation (including the indefinite detention).
1702978 (Refugee) [2021] AATA 4521 (Unsuccessful)	8 October 2021	194	The A

> I do accept … that the applicants' daughter and son would have to readjust to life in India and this would cause them some difficulty in learning Punjabi and making friends and going to a different school. I do not accept that these adjustments to life in a different country constitute any of the defined forms of significant harm [in section 36(2A) of the *Migration Act*], they will not have the effect of nor are they intended to cause degrading treatment or any other form of significant harm.

Additionally, the Tribunal observed ([144]–[145]; footnote omitted):

> 144. I have carefully considered the claims that there is a level of violence in India, that there is a level of violence against women especially rapes, and that the second named applicant feared for her daughter in particular in this regard.
>
> 145. The country information indicates that much of the violence perpetrated against women and girls is from their family members. This is not the violence that the second named applicant claimed to fear for her or her daughter. I accept that there is violence in Indian society against women and children. But I do not accept on the evidence before me that there is a real risk that either the second named applicant, or the two children, face a real risk of being harmed in the reasonably foreseea/2.8 (ei6 (n)12.8 (g)2 (5(so.294

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			targeting and to take action against perpetrators. The AAT considered that while the country information did disclose a chance of future harm to the applicant (as a Hindu) if he were to return to Bangladesh, the nature, scale and frequency of attacks against Hindus and their property did not support that there was any more than a remote chance that the applicant would be subjected to serious or significant harm as a Hindu on return to Bangladesh. In this regard the AAT considered that the applicant did not have a profile which would make him vulnerable to targeting as a Hindu. On this basis, the AAT was satisfied that the applicant would be able to continue to practice and identify as a Hindu without being subjected to a real chance of serious or significant harm.
1705111 (Refugee) [2021] AATA 4143 (Unsuccessful)	5 October 2021	73	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Nepalese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal explained ([73]): The Tribunal put to the applicant that even if she was suffering a medical condition for which there was inferior treatment in Nepal this would not meet

1724829 (Refugee) [2021] AATA 4522 (Unsuccessful)	1 October 2021	80, 82	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Iraqi applicant a protection visa. The AAT concluded, including due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal observed ([80]): … whilst … there is a level of generalised violence in Iraq (including in the vicinity of Basra [where the applicant's father and other family members resided]), there is no persuasive evidence before [the Tribunal] to indicate that the applicant personally faces a real risk of significant harm on account of such generalised violence in a manner distinct from the Iraqi population generally. Pursuant to s.36(2B)(c) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. On balance, the Tribunal is not satisfied that the applicant is at any risk of harm in Southern Iraq beyond that faced by the population generally.
1813137 (Refugee) [2021] AATA 4742 (Unsuccessful)	1 October 2021	128, 130–137, 143	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The AAT concluded, principally due to credibility concerns, that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal observed that, even if the Tribunal were wrong that the first applicant had not suffered any serious harm in the past, that he had not been or would be

			pursued by members of his wife's family (because his wife inherited land in Pakistan), or that the applicant's wife's brother would not seek to harm him on his return, 'there [was] no information before [the Tribunal] to suggest that protection would be withheld to a Salafi Muslim' such as the applicant ([143]), in an apparent reference to, and application of, the exception to accessing complementary protection set out in section 36(2B)(b) of the *Migration Act*. In this respect, the Tribunal relied on its earlier findings on the availability of state protection made in the context of the refugee criterion ([130]–[137]). Separately, and additionally, the Tribunal noted that ([128]) > any failure to provide the [first] applicant with employment will be due to the Pakistani economy rather than any intentional act or omission. I also find that the risk of harm in Pakistan is one faced by the population of Pakistan generally and not faced just by the applicant personally. I am not satisfied there is a real risk the applicant would suffer serious or significant harm for this reason.
2009630 (Refugee) [2021] AATA 5128 (Successful)	29 September 2021	68–70, 76–77 (risk of gender-based violence from former intimate partner), 78–87 (forced marriage and bride price), 92, 97–102	The applicant, a citizen of Papua New Guinea (PNG) applied for review of a decision made by a delegate of the Minister refusing to grant her a protection visa. The AAT remitted the matter for reconsideration with a direction that the applicant satisfies s 36(2)(aa) of the *Migration Act*.

which strongly indicated that, should the applicant return to her home city, there would be a real risk that the applicant would be subjected to ‘degrading and grim practices associated with forced marriages and bride price’. The AAT considered this risk to be heightened by the applicant’s limited economic opportunity outside accepting familial support to avoid significant economic hardship.

The AAT accepted that this real risk of significant harm would not be mitigated by the available protections from the state, noting that effective state protection ‘is largely absent’. The AAT further observed that the ‘wantok’ system of social kinship, welfare and mutual obligation derived from PNG’s traditional tribal-based society would not provide the applicant with protection. Rather, the wantok system would require her family to repay her bride price, in turn meaning that they would need to force the applicant into another marriage that would entail a bride price.

The AAT also accepted that the applicant could not reasonably relocate to another part of PNG, on the basis that she would face a similar appreciable risk of significant harm regarding her marital status and her unresolved bride price in Port Moresby as she would in her home area. The AAT took into account that the applicant would be returning to resettle in Port Moresby

			applicant being significantly harmed to something less than a 'real risk': *MIAC v MZYYL* [2012] FCAFC 147. 16. Pursuant to s 36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally.
2109841 (Refugee) [2021] AATA 4640 (Unsuccessful)	24 September 2021	56–60	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Solomon Islander applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of the latter criterion, the Tribunal considered the applicant's claim of feared harm arising from being harmed or killed by his cousins over a land dispute. The Tribunal considered this risk of harm to be remote and,

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1731277 (Refugee) [2021] AATA 4213 (Unsuccessful)	24 September 2021	68–69

			irrespective of whether there has been an assessment of Australia's non-refoulement obligations: s.197C(2). However, the effect of the recent amendment to s 197(3) is that despite these provisions, s 198 does not require an officer to remove an unlawful non-citizen where a person has been found to be owed protection obligations, regardless of whether the grant of a protection visa is prevented because of other visa criteria or provisions. As a result of these amendments, the duty to remove the applicant under s.198(5) 'should not be enlivened where to do so would breach non-refoulement obligations'. However, the s 197D process may extend the period in detention. As noted above, the applicant as an unlawful non-citizen will be subject to mandatory immigration detention. As the Minister's statutory powers to grant the applicant a visa (s.195A of the Act) or move a non-citizen into 'community detention' (s.197AB of the Act) are non-compellable and discretionary, it is uncertain whether the applicant would be granted a visa or whether she would be eligible for community detention. Therefore, if the applicant were not removed pursuant to s.198(5), the consequence of the cancellation is that there is a prospect of ongoing and possibly indefinite detention. This majority judgment in *Commonwealth of Australia v AJL20* [2021] HCA 21 considered the interpretation and effect of ss.189, 196, 197C and 198 and confirmed the lawfulness of detention of an unlawful non-citizen, even if the Executive has not been taking steps to remove a detainee as soon as reasonably practicable. The Tribunal acknowledges that a lengthy or indefinite detention will cause significant hardship to the applicant. The Tribunal also observed ([45]):

The phrase ‘non-refoulement obligations’ is not confined to the protection obligations to which s.36(2) of the Act refers: see *Ibrahim v MHA* [2019] FCAFC 89 at [103]. It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind.

			the Tribunal observed (at [49], appearing to refer to, and rely on, the exception in section 36(2B)(c) of the *Migration Act* insofar as this reasoning related to the applicant's eligibility for complementary protection): … the applicant told the Tribunal that if the visa is cancelled, his return to Malaysia would cause hardship because of the COVID-19 pandemic and his likely unemployment. The Tribunal accepts that the applicant may have some concerns about the pandemic in Malaysia and general socio-economic conditions. However, such broad concerns do not generally invoke Australia's protection obligations.
BYMD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3476 (Unsuccessful)	21 September 2021	185, 198, 223–252, 259, 275–277	The AAT affirmed a decision of a delegate of the Minister not to revoke mandatory cancellation of the applicant's visa. Relevantly, in considering Australia's non-refoulement obligations, the Tribunal considered that the applicant's particular mental illness included symptoms that could be conspicuous such that he could be identified as someone with a mental illness and would therefore be at risk of disadvantage in relation to accommodation and employment in Ethiopia, as well as possibly being physically restrained and isolated. The Tribunal also

concluded that it did not have sufficient country information concerning the extent of disadvantage that

(Migration) [2021] AATA 3378 (Successful)

Relevantly, the Tribunal found that Australia's non-refoulement obligations weighed very strongly in favour of revocation of the visa cancellation. The Tribunal accepted that the applicant was likely to suffer harm if he returned to South Sudan on account of his Dinka ethnicity. In this regard, the Tribunal noted country

a real risk of encountering amounts to being subjected to cruel and inhuman treatment or punishment and subjected to degrading treatment or punishment as required by s.36(2A)(d) and (e)' ([83]). The Tribunal also concluded that none of the exceptions set out in section 36(2B)(a)–(c) of the Act applied to deny the applicant

1708370 (Refugee) [2021] AATA 4404			finding employment in these countries. It follows that even if the Tribunal accepted the veracity of his claims that he faced harm from loan sharks, which it does not, the applicant would not be entitled to protection.

protection set out in section 36(2B)(c) of the *Migration Act*):

> There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer

1704976 (Refugee) [2021] AATA 4466 (Unsuccessful)	14 September 2021	49	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal reasoned ([49]): > Taken at its broadest, the applicant appears to have sought education and employment opportunities in [Country 1] and Australia; to have established herself in Australia; and to be worried about her prospects if she goes back to Thailand. These concerns relate to her personal and family circumstances, and general socio-economic and political conditions in Thailand, compared to Australia. These do not involve significant harm as defined exhaustively in s.36(2A).
1705697 (Refugee) [2021] AATA 4409 (Unsuccessful)	13 September 2021	98	

credibility concerns and the applicant's decision not to attend the hearing, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, however, in the context of the latter criterion, the Tribunal

			on the applicant. The harm from contracting the virus cannot meet the definition, in the Tribunal's view, of 'significant harm' for the purposes of considering the application of the criteria in s.36(2)(aa). The Tribunal also considers that the real risk of contraction of COVID19 faced by the applicant is one which is faced by the Taiwanese community generally and not by the applicant personally (s.36(2B)(c)).
1901883 (Refugee) [2021] AATA 3216 (Successful)	7 September 2021		

removal under s 198 does not inevitably follow from a SHUVRQ EHFRPLQJ DQ XQODZIXO QRQ)FLWL has been a previous protection finding made in respect of that person. There is now a procedure contemplated under ss 197C(3) and 197D which provides for a further decision to be made about Australia's international obligations at the time of consideration of removal.

The Tribunal observed that subss 197C(4) to (6) contain provisions which set out when there will be a 'protection finding' for the purposes of s 197C(3). The Tribunal observed 197C(5)(a) states that a "protection finding" is made if the Minister was satisfied of any of the matters specified, however expressed and including impliedly. The matters specified then speak of satisfaction about the criterion in ss 36(2)(a) and 36(1C), rather than satisfaction with the provisions simpliciter. The Tribunal determined that when read as a whole, it is apparent that this paragraph (and the subsequent paragraphs) direct attention to the essence of the provisions. The Tribunal members concluded that in their view, s 197C(5)(a) has the effect of defining a 'protection finding' as one where a finding has been made about the protection obligations arising under the refugee criterion, either under the Refugee Convention or under the statutory definition for a 'refugee' which is based on the Refugee Convention. It does not require that the 'protection finding' be in precisely the same terms as the current provisions in s 36. The Tribunal considered that this conclusion was reinforced by the outline of the scope of s 197C(5) set out in the Explanatory Memorandum.

The Tribunal observed that in this case, a delegate of the Minister had made a finding on 30 November 2009 that the applicant 'has been found to be owed protection obligations under the Refugees Convention, as set out in the attached Refugee Status Assessment record'. The Tribunal considered this to be a finding of 'similar effect' to the present s 36(2)(a) of the Act. The delegate had also made a finding about Art 33(2) of the Refugee Convention which the Tribunal observed was almost in the same terms to the present s 36(1C) of the Act. Accordingly, the Tribunal found that there was a 'protection finding' previously made in respect of the applicant within the meaning of s 197C(5)(a) of the Act. This being the case, the Tribunal observed that pursuant to s 197C(3) the applicant's removal was not required

			considering the exercise of its discretion. However, it considered that cancellation may lead to prolonged detention, a factor that weighed against cancellation.
2104047 (Migration) [2021] AATA 4147 (Successful)	7 September 2021	51–70	The AAT set aside a decision of a delegate of the Minister to cancel the Afghani (or Pakistani) applicant's Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal observed ([51]): > The phrase 'non-refoulement obligations' is not confined to the protection obligations to which s.36(2) of the Act refers: see *Ibrahim v MHA* [2019] FCAFC 89 at [103]. It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind. After discussing available country information, the Tribunal accepted that 'there is a risk of harm that the applicant may experience in Afghanistan, being a Shia Hazara' ([65]). In a similar vein, the Tribunal later noted that '[t]he Tribunal has formed the view that the nature of his claims are such that these would give rise to protection obligations under the Refugee Convention or the complementary protection' ([68]). The Tribunal, however, recognised that Australia's executive policy meant that it was unlikely that the applicant would be removed to Afghanistan. As such, the Tribunal considered that Australia's non-refoulement obligations would not be breached as a result of the applicant's visa remaining cancelled.

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			latter criterion, the Tribunal considered, but ultimately rejected, a constellation of claimed fears of harm alleged to arise from the applicant's economic circumstances, social stigma (including from government service providers) due to the applicant's status as a former criminal, cultural differences between Australia and the United Kingdom, and separation from the applicant's family upon his removal from Australia. The Tribunal specifically found that that the social stigma, cultural differences, and family separation in this case did not amount to significant harm as defined in section 36(2A) of the *Migration Act*, and it appears that the risk of the other types of claimed harm materialising did not rise to the threshold of a 'real risk'.
1722173 (Refugee) [2021] AATA 4372 (Unsuccessful)	3 September 2021	148–149, 152–158	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicants protection visas. The AAT concluded, principally due to credibility concerns, that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, however, in the context of the refugee criterion, the Tribunal reasoned that the applicants could relocate to other parts of China to avoid the claimed fear of harm from money lenders. The Tribunal also relied on this reasoning in the context of complementary protection ([157]) in an apparent reference in this context to the exception to accessing complementary protection set out in section 36(2B)(a) of the *Migration Act*.
1711221 (Refugee) [2021] AATA 4367 (Unsuccessful)	1 September 2021	93	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Samoan applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the

complementary protection criterion. In the context of complementary protection, however, the Tribunal did appear to refer to, and rely on, the exception to accessing complementary protection set out in section 36(2B)(c) of the *Migration Act*. The Tribunal explained ([93]):

> … the Tribunal is not satisfied that there is a real risk of significant harm from village chiefs or villagers because of [the applicant's Pentecostal] religion, or on the basis

1731205 (Refugee) [2021] AATA 4316 (Unsuccessful)	31 August 2021	39–41	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of complementary protection, the Tribunal considered the applicant's claimed fear of harm based on the impact of the COVID-19 pandemic. The Tribunal found that, while 'country information … indicates [Malaysia] continues to experience high level of infections and ongoing restrictions' and '[m]anagement of the country's response to the pandemic is also complicated by political instability', 'Malaysia has a high level of vaccination rates which is likely to be age (a2t)-2 ()-2 (y U-2 (r)3

			harm as defined at s. 36(2A) in Nepal arising from his economic circumstances. Accordingly, the Tribunal is satisfied the applicant does not have a real risk of significant harm in Nepal on this basis.
1809968 (Refugee) [2021] AATA 4173 (Unsuccessful)	23 August 2021	101–104	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Ethiopian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. The Tribunal held various credibility concerns about the applicant's claims but, additionally, in the context of complementary protection, the Tribunal considered and rejected a claimed harm arising from the applicant being separated from his family if removed from Australia. The Tribunal referred to Federal Court authority and noted that 'harm arising from the act of removal itself will not meet the definitions of 'significant harm' in s.36(2A)' ([103]; footnote omitted). The Tribunal also discussed the reasons of principle underlying and justifying this proposition.
1708431 (Refugee) [2021] AATA 3972 (Unsuccessful)	20 August 2021	32–40	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The applicant, a citizen of the Philippines who had two Australian children with an Australian husband (since deceased) had applied for a protection visa on the basis that she would suffer harm as a result of separation from her Australian children if she had to return to the Philippines. In her application to the Tribunal for merits review, the applicant asked the Tribunal to consider her application, although she acknowledged that the application did not satisfy the grounds for approval.

			The Tribunal found that the applicant did not meet the refugee or complementary protection criteria. In considering the application of the s 36(2)(aa) criterion, the Tribunal observed that the Courts have confirmed that separation from one's family members in Australia or another country, where the claimed harm arises from the removal itself, will not meet the definitions of "significant harm", both because s 36(2)(aa) requires that the real risk of significant harm arise as a *consequence* of the removal (suggesting the removal itself cannot be the significant harm) and because of the "intention" requirement in the s 5(1) definitions of significant harm. While the AAT accepted that the applicant would suffer significant emotional stress as a result of separation from her children, it found that this would not invoke Australia's complementary protection obligations for these reasons. Further, in respect of financial concerns raised by the applicant, the AAT noted that cruel or inhuman treatment or punishment does not include an act or omission that is not inconsistent with art 7 of the ICCPR: s 5(1). The Complementary Protection Guidelines refer to certain circumstances which will generally not be considered inconsistent with art 7, including general socio-economic conditions and breach of social and economic rights. The Tribunal indicated that the case should be referred to the Department to be considered for Ministerial intervention.

			debts, the Tribunal assesses the amount not to be at a crippling or considerable level, if removed from Australia to [South Korea]. The Tribunal went on to conclude that this category of claimed harm did not fall within any of the statutory types of 'significant harm'. Additionally, the applicants claimed, and the Tribunal accepted, that the applicants 'have several health challenges that have been diagnosed and treated on an ongoing basis' and that 'they have acquired some debts through credit cards since living in Australia', although the Tribunal noted that 'the diseases mentioned in the submissions are not so serious or debilitating that the daughters of the applicants are unable to work and study' ([81]). The applicants, together with their daughters, claimed that 'the parents will be separated from their children who face the daunting task of taking care of physical health conditions' ([82]). The Tribunal addressed this claim by observing, with reference to Federal Court authority, that 'harm arising from the act of removal itself will not meet the definitions of "significant harm" in s.36(2A)' ([87]), and the Tribunal set out the reasons of principle underlying and justifying this proposition.
1917671 (Refugee) [2021] AATA 3802 (Unsuccessful)	12 August 2021	86–97	The AAT affirmed a decision of a delegate of the Minister not to grant the applicants protection visas. The Tribunal found that the first applicant did not satisfy the refugee criterion. In respect of the complementary protection criterion, the applicant

claimed that he faced a real risk of significant harm including deprivation of life, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment as a result of him being punished for not having completed his military service and as a result of being required to complete his military service if he returned to Thailand.

The Tribunal found that the risk for the first applicant of being eligible for military service if he returned to Thailand was a risk faced by the population generally and not specific to the applicant's particular circumstances. Further, the consequences of the applicant having evaded the military draft also constituted a risk faced by the population generally. In the absence of any evidence to support his claims, the Tribunal also found that the risk to of the applicant being subjected to physical, mental and sexual abuse during military service in Thailand was very low so as not to constitute a real risk.

The second applicant claimed that she did not want to return to Thailand because the economy in Thailand was bad. She gave evidence that she and the applicant had no work in Thailand and no money, and that she feared having to fend for herself if the first applicant was

which would amount to cruel or inhuman treatment or punishment and degrading treatment or punishment.

Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR) as he would be subject to arbitrary detention if his visa is cancelled.

81. Article 9 states, among other things:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

82. Detention of a person who is a non-citizen who does not have a visa is liable to be detained under s.189 of the Act. This is a ground established by law, and does not infringe Art. 9 of the ICCPR.

83. It was also submitted removal of Mr Bacaj would be a breach of Australia's non-refoulement obligation because Italy had found him to be a refugee. Mr Bacaj is a citizen of Italy. It is not suggested he would return to Albania, or that he could not enter and reside in Italy as a citizen of Italy.

			The phrase 'non-refoulement obligations' is not confined to the protection obligations to which s.36(2) of the Act refers: see *Ibrahim v MHA* [2019] FCAFC 89 at [103]. It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind. After discussing available country information, the Tribunal accepted that 'there is a risk of harm that the applicant may experience in Afghanistan, being a Shia Hazara and it is therefore not necessary to assess whether the applicant would also face a risk of harm due to being a woman' ([59]). In a similar vein, the Tribunal later noted that '[t]he Tribunal has formed the view that the nature of his [sic] claims are such that these would give rise to protection obligations under the Refugee Convention or the complementary protection' ([62]). The Tribunal, however, recognised that Australia's executive policy meant that it was unlikely that the applicant would be removed to Afghanistan. Additionally, the Tribunal observed that it was open to the applicant to make an onshore protection visa application. As such, the Tribunal considered that Australia's non-refoulement obligations would not be breached as a result of the applicant's visa remaining cancelled. Finally, for completeness, the Tribunal reasoned that, even if the applicant had Pakistani rather than Afghani citizenship, the Tribunal would make the same findings in relation to Pakistan due to similar country information ([63]).

2107324 (Refugee) [2021] AATA 3959 (Unsuccessful)	8 August 2021	53–55, 66, 68–71	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal did not accept that the applicant satisfied either the refugee criterion or the complementary protection criterion. Relevantly, in respect of the complementary protection criterion, the applicant claimed that he feared being arbitrarily deprived of life and/or being subjected to inhumane and degrading treatment. The Tribunal did not accept that state denial or failure to provide adequate medical assistance amounts to significant harm. Nor did the Tribunal accept that the situation in Zimbabwe with regard to the COVID-19 pandemic might constitute significant harm to the applicant. In this regard the Tribunal observed that it was necessary for the statutory definitions that the harm faced by the applicant be intentionally inflicted. In this regard the Tribunal was not persuaded by the submissions and country information provided in support of the applicant's claim that the Zimbabwean health system had been willfully and intentionally degraded due to the actions of corrupt government officials. The Tribunal also did not accept the applicant's submission that he would face arbitrary deprivation of

contracting COVID, it rejected the applicant's claim on the basis that it did not amount to arbitrary deprivation of life under the Act. Further, the Tribunal was not satisfied that the applicant's circumstances meant that he would face a greater risk of contracting the virus than other members of the population in Zimbabwe; the risk faced by the applicant was a risk faced by the general population of Zimbabwe.

			was outweighed by the combined weight attributed to two primary considerations.
2004950 (Refugee) [2021] AATA 4055 (Unsuccessful)	23 July 2021	58	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. The Tribunal held various credibility concerns about the applicant's claims but, additionally, in the context of complementary protection, it reasoned (at [58], in an apparent reference to the exceptions set out in s 36(2B)(b) and (a) respectively of the *Migration Act*): > The Tribunal has found that the applicant's relationship with her husband ended several years ago, that she has not suffered harm since the relationship ended and that she has no intention of reconciling with him. The Tribunal also does not accept that the applicant's children or family are at risk of harm, or that he will use the children or her family to harm the applicant. The Tribunal is further satisfied that the applicant can take steps to divorce her husband if she requires and finds that the applicant could obtained from the authorities in her country, protection such that there is not a real risk that she would suffer significant harm. Furthermore, the applicant's fear of harm is located to the area in which her husband is located, and it would be reasonable for the applicant to relocate to an area of Malaysia, away from Negeri Sembilan, where there would not be a real risk that she would suffer significant harm.
1704030 (Refugee) [2021] AATA 3557 (Successful)	23 July 2021	52–53 (claims), 54–56 (refugee criterion), 60–	The AAT remitted for consideration a decision of a delegate of the Minister refusing to grant the applicant a

		69 (complementary protection criterion)	protection visa, with a direction that the applicant satisfies s 36(2)(aa) of the Act. The applicant, an Albanian citizen, claimed that while he had not been harmed while in Albania, since he had arrived in Australia he had received information from his father that a blood feud had started because his cousin had killed a member of another family. The applicant claimed to fear that he would be kidnapped, tortured or killed by the people involved in the feud if he returns to Albania. The AAT accepted the applicant's claims, finding that there was a blood feud in existence involving the applicant's family, and that because the other family were not prepared to reconcile, the members of the applicant's extended family were either self-confining or had left Albania. The AAT considered evidence that the applicant's younger brother, who still lives in Albania, secretly enters a neighbouring country at night to have a break from self-confinement. The AAT accepted the applicant's evidence that his younger brother takes risks in doing this, and that the applicant would not be prepared to do this if he were in the same circumstances. The AAT further found that the fact that the applicant's brother does this is indicative of the fact that the applicant's family cannot live a normal life in Albania (working, undertaking education, or socialising outside of their home) due to their fear of harm. The AAT concluded that the applicant would face 'a real risk of serious or significant harm, including being killed, should he return to his home region in Albania'. The AAT found, however, that because the nature of the harm feared by the applicant was due to his relation to a

			person who had been targeted for a non-refugee reason, pursuant to s 91S of the Act the applicant did not satisfy the refugee criterion. The AAT went on to find that the applicant satisfied the requirements of s 36(2)(aa) on the basis that he would face a real risk of significant harm from members of the opposing family, should he be returned to Albania. The AAT considered that the significant number of families self-confining in the applicant's region of Albania indicates that the Albanian authorities are not able to offer sufficient protection to families caught up in blood feuds. In this regard it also took into account country information regarding the effectiveness of police in Albania. In respect of the prospect of relocation, the AAT considered it plausible that members of the other family, with the assistance of criminal elements and/or corrupt officials, could locate the applicant anywhere in Albania, a relatively small country with a population of less than 2.9 million people. The Tribunal further found that it was not reasonable, in the sense of practicable, for the applicant to relocate within Albania, given his mental health issues and lack of family support outside the Shkoder region.
1827157 (Refugee) [2021] AATA 4675 (Unsuccessful)	14 July 2021	90–190	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The AAT was not satisfied that the applicants satisfied either the refugee criterion or the complementary protection criterion. The AAT considered, both individually and cumulatively, a complex constellation of protection claims, including harm alleged to arise from (a) the general security

situation in Karachi, (b) the applicants' wealth or perceived wealth, (c) the applicants' Hazara ethnicity and Sunni religion, (c) the third applicant's disability (autism or ASD), (d) discrimination towards autistic children, (e) the applicants' mental health status (particularly the first applicant), and (f) the applicants' economic circumstances. In the context of category (d), the Tribunal observed ([173]; emphasis in original and footnote omitted):

> With regard to facing a real risk of significant harm arising from discrimination and stigma towards the applicants, the Tribunal accepts there is a real risk of such harm. *Significant harm*

confirmed that the definition in s 36(2A) is framed in terms of harm suffered because of the acts of other persons. It does not encompass self-harm, harm aris1 /Footer /Type /Paginr /gaheror

[2019] FCA 1089 which upheld the Tribunal's decision that self-inflicted harm does not fall within the concept of harm to which s.36(2A) is directed, principally because the language used in s.36(2A) of deprisolf6b. or ectigdcs84.6
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			home area within Pakistan, based on the applicants' economic circumstances, broadly considered, under s.36(2)(aa).
1804704 (Refugee) [2021] AATA 3883 (Unsuccessful)	14 July 2021	78–89	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The AAT was not satisfied that the applicant satisfied the refugee criterion on the basis that the applicant's claims did not meet the 'real chance' test – the Tribunal did not accept that the applicant faced a real chance of being persecuted in Pakistan. The Tribunal similarly found that the applicant did not satisfy the 'real risk' test for the complementary protection criterion (which imposes the same standard). In respect of the complementary protection criterion, the AAT also noted that the definitions for each of the kinds of 'significant harm' require that there be an *intention* to 1(e)-6 (c 326.04 457-2 (c)4 (a)-2 (t)h4 (r)3 (y -2 (e) by)-1

			because of an intention of the government. Rather, services are impacted by the state of the economy, lack of resources and underfunding. The Tribunal also did not accept that there was a real risk of significant harm to the applicant in the form of arbitrary deprivation of life due to unavailability of jobs, services or treatment due to the applicant's status as a sexual offender. The Tribunal considered that while there is no requirement for subjective intent applicable to 'arbitrary deprivation of life', an element of deliberateness can be discerned from the words 'arbitrarily deprive'. The Tribunal found that while there is a high crime rate in South Africa, crime is generally random and based on economic need. It is a risk faced by the population generally. Similarly the Tribunal was not satisfied, based on country information, that the applicant would be intentionally denied state protection. The Tribunal observed that while there are inadequacies in the police service caused by underfunding and a lack of resources, this does not constitute arbitrary deprivation of life by reason of state inaction.
KMJM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2232 (Successful)	7 July 2021	80–110	The Tribunal set aside the delegate's decision and substituted a decision revoking the mandatory cancellation of the applicant's Global Special Humanitarian (Permanent) visa. Relevantly, there was no dispute that the applicant suffered from mental illness, having been diagnosed some years ago as suffering from schizophrenia and more recently with post-traumatic stress disorder. He would, if returned to South Sudan, be returning from overseas. He also carried with him his own ethnicity. It followed, in the Tribunal's view, that, if

forced to relocate back to South Sudan, the applicant would be exposed to a very real risk of harm, whether by arbitrary detention or by being subject to other forms of violence and inhumane treatment, because he was a person who was hatB2 (e)4 (nt)-2 (i)-f(r)3 (i)-1 (e)4 2 (a)4 (s)-13 (s)-12 (n

			was clear that, once the matter was viewed that way, there existed non-refoulment obligations under each of the *Refugee Convention*, the ICCPR, and the CAT. The Tribunal was satisfied that the applicant was a person who was likely to suffer harm if returned to South Sudan, such that Australia had non-refoulement obligations.
Vasquez (Migration) [2021] AATA 3433 (Unsuccessful)	5 July 2021	125–133	The AAT affirmed a decision of a delegate of the Minister cancelling the applicant's visa. Relevantly, the Tribunal considered whether cancellation would lead to the applicant's removal in breach of Australia's non-refoulement or family unity obligations. the ata deci01n. (s)-1 (a)4 (. R)-3 at

			and possibly official discrimination, which arose from the applicant's sexual orientation. However, the Tribunal did not accept the nature and extent of this risk to rise to the threshold of harm contemplated by the tests found in the *Migration Act*. Further, the choice made by the applicant to return to Malaysia on a number of occasions, and to plan another return trip prior to her arrest, ran contrary to the claims made under this consideration. Accordingly, the Tribunal found that this consideration was of neutral weight.
Deng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2097 (Unsuccessful)	5 July 2021	179–198	The AAT affirmed a decision not to revoke the cancellation of the applicant's Woman at Risk visa. Relevantly, in the Tribunal's view, given the applicant could settle elsewhere in South Sudan (Juba), it was not satisfied that there was more than a remote chance that the applicant would suffer serious harm on the basis of his ethnicity or for any other reason personal to him, or that he would face a real risk of significant harm within the meaning of section 36(2A) of the *Migration Act* that was not one faced by the general population. The Tribunal was not satisfied that the applicant engaged Australia's non-refoulement obligations for any reason put forward by him or that arose on the evidence. Nonetheless, on the basis that the applicant would be at risk of generalised violence and crime in South Sudan, this 'other consideration' of Australia's international non-refoulement obligations weighed to a limited extent in favour of revocation.
1835719 (Refugee) [2021] AATA 3073 (Unsuccessful)	2 July 2021	64	The AAT affirmed a decision not to grant the applicants protection visas. Relevantly, the Tribunal found that 'Mrs B' would not return to a rural or conservative area of Egypt if she returned there since, when pressed, 'Mr A'

			said they would live with their son. The Tribunal did not accept, given its earlier findings about Coptic Christians in Cairo and Giza, that 'Mrs B' would need to cover her hair to avoid being attacked or, even if she did consider it was necessary to cover her hair, that this would amount to significant harm as defined in the *Migration Act*.
Li (Migration) [2021] AATA 2695 (Unsuccessful)	1 July 2021	67–75	The Tribunal affirmed a decision to cancel the applicant's Five Year Resident Return visa. In the course of doing so, the Tribunal considered whether the cancellation would lead to the applicant's removal from Australia in breach of Australia's non-refoulement obligations. The Tribunal observed that the phrase 'non-refoulement obligations' is not confined to the protection obligations to which section 36(2) of the *Migration Act* refers (citing *Ibrahim v MHA* [2019] FCAFC 89 at [103]). It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind. Here, the applicant relevantly referred to COVID-19 and

1721007 (Refugee) [2021] AATA 3310	30 June 2021
(Unsuccessful)	

‘subject to individual will or judgment, discretionary’. The Tribunal observed that there is no express requirement for intention in this category of harm, however the word ‘deprived’ may import an element of deliberateness or some form of positive act, rather than general conditions of poverty or lack of facilities. The Tribunal noted that the Complementary Protection Guidelines refer to arbitrary deprivation of life as also involving elements of injustice, lack of predictability, or lack of proportionality, and also suggest that in order to establish a risk of arbitrary deprivation of life from a non-state actor, there must be extremely widespread conditions of violence and systemic breakdown of law enforcement, coupled with a particular risk to the individual. It further noted that the courts have also suggested that this kind of harm involves such matters as extrajudicial killing and excessive use of force rather than the consequences of scarce medical resources.

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			The Tribunal also considered whether one applicant, a child who may need medical attention in the future, would suffer significant harm on his return to Pakistan. Based on the available evidence, the Tribunal found that the inadequacies of the Pakistani health care system or the inability to access medical treatment in Pakistan that the child may face on his return to Pakistan did not amount to significant harm as defined in section 36(2A) of the *Migration Act*. The country information indicated that any failure to provide the child with relevant and appropriate health care treatment or support would be due to the Pakistan economy rather than any intentional act or omission. The Tribunal also found that the risk of harm due to inadequate heath care services in Pakistan was one faced by the population of Pakistan generally and not faced just by the child only (apparently referring to, and relying on, section 36(2B)(c)). Having considered the applicants' evidence singularly and cumulatively, the Tribunal concluded that they did not satisfy the complementary protection criterion in section 36(2)(aa).
1716082 (Refugee) [2021] AATA 3070 (Unsuccessful)	30 June 2021	48–51	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. In the context of complementary protection, the applicant claimed that he would be harmed by his girlfriend's parents or residents in Henan, China, where he lived. The Tribunal was satisfied, however, that the applicant's fears from his girlfriend's family were localised to where he lived and there was no evidence to suggest that the girl's family were able to locate him in other parts of China.

When put to the applicant he could go elsewhere in China, Guandong or Shanghai in light of his work history, he indicated he could not go to Guandong due to its weather and the effects of the weather on his medical problem. He did not have the complained symptoms in Sydney or in Shanghai. The Tribunal observed, however, that there was no information to suggest that the applicant had a medical condition that prevented him returning to Henan or anywhere else in China. When put to the applicant that he could return to Shanghai, he said that he was only there for 3 months. He provided no other reasons for being unable to relocate to Shanghai. The Tribunal was satisfied that the applicant was able to return to a place in China where he did not fear harm,
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protection visa with a direction that the applicant satisfies s 36(2)(aa) of the Act. The AAT found that the applicant's claims did not satisfy the refugee criterion and further found that there was not a real chance that the applicant would suffer significant harm if he were to return to Sri Lanka on the basis of any of the claims

1713029 (Refugee) [2021] AATA 2813 (Unsuccessful)	29 June 2021		resulted in the grant of a protection visa, there was a risk that the applicant would be subjected to cruel or inhuman treatment or punishment or degrading treatment or punishment if he returned to Sri Lanka. Importantly, the Tribunal noted the applicant's concerns about being questioned and detained upon his return to Sri Lanka, and his belief that he would be a target for detention because of his identity as the husband of his wife. In this regard the Tribunal concluded that although it had found that the applicant has no adverse profile, his psychological vulnerabilities meant that in his case, being interviewed and questioned by the Sri Lankan authorities and/or detained created a real risk of significant harm (see [223]-[234]). (The Tribunal noted that there was no suggestion that the applicant satisfied s 36(2) on the basis of being a member of the same family unit as his wife, who held a protection visa – see [247]).

			acts are required to be intentionally inflicted on the applicant or intended to cause the applicant extreme humiliation which is unreasonable. On the basis of her evidence, the Tribunal considered that there existed a lack of any intention to cause harm directly or even indirectly to the applicant from the conduct that she claimed her children would experience at school. The Tribunal therefore did not accept that the applicant would experience cruel or inhuman treatment or punishment or degrading treatment or punishment as a consequence of any bullying or harassment directed at her children. For completeness, the Tribunal also found that the applicant would likewise not be arbitrarily deprived of her life, have the death penalty carried out on her, or be subjected to torture within the meaning of the Act for this reason. Further, the applicant also acknowledged that her children would not be compelled to return to Serbia if the visa application was refused, but she would choose to have them return with her. As such, the concerns that the applicant had for her children in Serbia were not a necessary consequence of the applicant being removed from Australia to her receiving country. The Tribunal considered any implied claims that may have arisen from the applicant being perceived as a single mother or a divorced mother, and whether she would experience significant harm for this reason. The Tribunal was unable to locate any country information, and the applicant did not present any material, to indicate that single mothers or divorced women did experience any harm in Serbia for this reason. The Tribunal was also satisfied that the applicant would not be without support

			consequence of the applicant being separated from her husband, by the act of being removed from Australia to Serbia.
Bakhsh (Migration) [2021] AATA 2981 (Successful)	29 June 2021	66–83	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Global Special Humanitarian Visa. Relevantly, considering the anticipated deterioration of the security situation in Afghanistan and the already precarious situation for Hazara, the Tribunal found that, if the applicant's visa was to be cancelled, there were international obligations including those pertaining to personal security (Article 9 ICCPR), protection against cruel, inhuman or degrading treatment (Article 16 CAT) and liberty to movement (Article 12 ICCPR) that would be breached. For this reason, the Tribunal gave this considerable weight against cancelling the visa.
1713285 (Refugee) [2021] AATA 2952 (Successful)	25 June 2021	30–32	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act*. Relevantly, however, the Tribunal also noted that the applicant claimed that she had experienced official and societal discrimination as a Muslim in Myanmar. For instance, she had had to pay higher school fees and employers declined to offer her work after finding out about her faith. She also had difficulties obtaining an ID card after she turned 18. At hearing, she gave other instances of discrimination, such as once being denied service at a medical clinic, and enrolling her daughters in private school because the public school did not want to enrol

			might have experienced some degree of discrimination, it was not satisfied that this amounted to significant harm for the purpose of the complementary protection criterion.
1932265 (Migration) [2021] AATA 2615 (Successful)	24 June 2021	83–90	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Five Year Resident Return visa. Relevantly, the Tribunal appeared to give some weight to the 'other consideration' of Australia's international non-refoulement obligations. The Tribunal referred to country information highlighting the ongoing insecurity in Iraq and the particular vulnerability of women such as the applicant, with no male guardian, a politicised past public profile, and mental illness. Given the applicant's political background in Iraq, her former connection to the US forces, her perceived tribal transgression in leaving or 'running away' without male or tribal permission and accompaniment, her status as a single divorced woman, and her poor mental and physical health, the Tribunal considered it likely she would face serious harm, in the form of severe discrimination and physical violence, if required to live in Iraq permanently. While the Tribunal's language here of 'serious harm' (cf 'significant harm') suggests that the Tribunal may have been referring to, and relying on, Australia's non-refoulement obligations under the *Refugee Convention* rather than the ICCPR and/or CAT, for completeness, this decision is nonetheless included in this list of case summaries.
2103931 (Refugee) [2021] AATA 3247 (Unsuccessful)	23 June 2021	90–99	The AAT affirmed a decision of a delegate of the Minister not to grant the applicant a protection visa. Relevantly, in respect of the application of the complementary protection criterion, the Tribunal

			considered whether there was a real risk of significant harm to the applicant if he were to return to Thailand because he might become addicted to drugs, and because of the lack of support in Thailand for drug addicts. The Tribunal was not satisfied that the harm caused by drug use would amount to any of the legislated categories of significant harm. It observed that the most relevant categories (cruel or inhuman treatment or punishment/ degrading treatment or punishment) require the treatment or punishment to be intentionally inflicted; taking drugs would be a voluntary action and there would be no intentional infliction of harm. Similarly the Tribunal observed that the word 'deprived' in 'arbitrary deprivation of life' imports an element of deliberateness, which would not be satisfied. Further, the Tribunal was not satisfied that any harm the applicant might suffer through inadequate provision of drug rehabilitation services would amount to significant harm. It observed that while the standards of health and drug rehabilitation services may not be as high in Thailand as in Australia, drug rehabilitation programs are available. The Tribunal was also not satisfied that if the applicant were jailed for drug offences this would amount to significant harm, since the applicant would be subject to laws of general application (applying s 36(2B)(c)). Finally, the Tribunal noted that if the applicant were to choose to embrace the drug culture in Thailand, it was arguable that this would not be a necessary and foreseeable consequence of the applicant being removed from Australia to Thailand, given that taking drugs was not intrinsic to him and could not be said to be a natural consequence of his return to

			Thailand (citing *EJC18 v MICMSMA* [2020] FCCA 3171).
1920622 (Refugee) [2021] AATA 2924 (Unsuccessful)	23 June 2021	41–45	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Additionally, in the context of complementary protection, and with respect to the applicant's fear of financial hardship if he returned to Malaysia, the Tribunal was not satisfied that the applicant's worries about financial matters amounted to a real risk he would suffer significant harm if he was removed from Australia to Malaysia. According to his evidence, the applicant had experience in three different sectors in his home country and had acquired agricultural work skills in Australia. The Tribunal noted that this would be of benefit to the applicant's home state of Perlis, which was based on the forestry, agriculture, and fishing industries. The Tribunal recognised that the applicant may also have to broaden his employment search criteria in Malaysia and consider other regions of the country.
1701688 (Refugee) [2021] AATA 3023 (Unsuccessful)	21 June 2021	104–121	The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in China on account of: x having to attend smaller Roman Catholic church services in China with fewer numbers of believers; x participating in the Chinese underground church; x enjoying a lesser degree of religious freedom in China than that which would be available to him in Australia; or the inability of the applicants' children to attend Catholic schools in China.

1917948 (Refugee) [2021]
AATA 3022 (Successfu.np

			political situation in Zimbabwe (including information of widespread and significant human rights abuses), the AAT considered that there was a not insignificant risk that the applicant would be targeted by the current regime by reason of these personal family connections. The Tribunal concluded that there was a real risk that the applicant would suffer significant harm in the form of torture and arbitrary killing by the authorities. It further found that relocation was not an option as the authorities were the agents of the harm; that the applicant would be unable to obtain sufficient protection; and that the harm was one specific to the applicant's circumstances, being her family connections and history.

			deteriorate, as a necessary and foreseeable consequence of retuning to Pakistan. However, the Tribunal considered that the harm did not amount to significant harm for the purpose of section 36(2A) of the *Migration Act*. In the course of reaching this conclusion, the Tribunal discussed the meaning of, and relationship between, each of the statutory types of 'significant harm' identified in section 36(2A).
1710719 (Refugee) [2021] AATA 3025 (Unsuccessful)	7 June 2021	38–82	The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in Pakistan on account of: x returning as failed asylum seekers/protection visa applicants/ involuntary returnees/returnees; x the Pakistani authorities believing they or their parents held protection visas; x being placed in institutional care due to their parents being detained; x having to return on Australian travel documents; x being unaccompanied minors with no legal guardians and being placed in institutional care, being abandoned or having no one to look after them, or having nowhere to live; x any of the difficulties they claimed their father and mother would face in Pakistan which would render them unable to look after the applicants; or x generalised violence in Pakistan, the impact of the COVID-19 pandemic in Pakistan, poor education in Pakistan, and adjustment difficulties (eg language barriers and the first applicant's developmental difficulty).

			In connection with this last point, the Tribunal observed that the situation the applicants would face on account of generalised violence did not constitute significant harm under section 36(2B)(c) of the *Migration Act* as the real risk was one faced by the population of Pakistan generally and was not faced by the applicants personally. The Tribunal reached the same conclusion with respect to the impact of the COVID-19 pandemic.
1726911 (Refugee) [2021] AATA 2927 (Successful)	4 June 2021	56–73	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the *Migration Act*. The Tribunal concluded that the possibility the applicant would be arbitrarily deprived of his life or subjected to other significant harm if he returned to Kunduz city due to an armed insurgency and as a Western returnee was not high. However, when considered cumulatively, the risk was more than remote, insubstantial, or a far-fetched possibility. The Tribunal was thus satisfied that the applicant faced a real risk of significant harm as defined in section 36(2A) if he returned to Kunduz city. Further, the Tribunal concluded that it would not be reasonable for the applicant to relocate to another area in Afghanistan (cf section 36(2B)(a)), that the applicant would not be able to obtain adequate protection from the Afghan authorities (cf section 36(2B)(b)), and that the real risk of significant harm the applicant would face as a resident of Kunduz city due to the armed conflict and as a returnee from the West was one he would face personally and was not one

			faced by the population of Afghanistan generally (cf section 36(2B)(c)).
1912576 (Refugee) [2021] AATA 3083 (Successful)	4 June 2021	97–103	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the *Migration Act*. The Tribunal concluded that the applicant faced a real risk of significant harm arising from cruel or inhuman treatment or punishment, torture and degrading treatment or punishment from 'Mr A'. The Tribunal then considered whether it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that he would suffer significant harm. Under section 36(2B)(a) of the *Migration Act*, there is taken not to be a real risk that an applicant will suffer significant harm in a country if it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm. The Tribunal here drew guidance from the judgments of the High Court in *SZATV v MIAC* and *SZFDV v MIAC*, which held that whether relocation is reasonable, in the sense of 'practicable', must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country: *SZATV v MIAC* [2007] HCA 40; (2007) 233 CLR 18 and *SZFDV v MIAC* [2007] HCA 41; (2007) 233 CLR 51, per Gummow, Hayne and Crennan JJ, Callinan J agreeing. The Tribunal observed that, while the applicant could move to other parts of Afghanistan where he would be

out of the reach of ‘Mr A’, the circumstances of a deteriorating security situation made such a move difficult. In addition, the Tribunal repeated that what is reasonable, in the sense of practicable, must depend upon the particular circumstances of the applicant and the impact upon that person of relocating within their country.

The applicant here had a degree of mental health challenges. He was on prescription medication. He believed that alcohol helped him deal with challenges. He

situation. The threat the applicant faced was specific to the applicant due to having crossed ‘Mr A’.

health risks related to the COVID-

1706301 (Refugee) [2021] AATA 2245 (Unsuccessful)	28 May 2021	49	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Additionally, the Tribunal noted—and accepted—that the applicant was taking medication to manage stress and high blood pressure. However, the Tribunal was not satisfied on the limited evidence before it that any harm in Egypt that the applicant might suffer as a result of his stress and high blood pressure would be intentional, which the Tribunal observed is required to satisfy the

			possibly even arbitrary deprivation of life (section 5(1) of the Act).
RNVF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1522 (Unsuccessful)	28 May 2021	191–206	The AAT affirmed a decision not to revoke the cancellation of the applicant's Transitional (Permanent) visa. In doing so, however, the Tribunal considered in some detail the 'other consideration' of whether Australia's international non-refoulement obligations arose in this case. The Tribunal noted that an International Treaties Obligations Assessment (ITOA) had been conducted in relation to the applicant, and that the assessor had found that the applicant had a well-founded fear of persecution in Somalia for the purposes of the *Refugee Convention* and that, additionally, and in respect of Australia's non-refoulement obligations as a signatory to the CAT and the ICCPR, there were substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Somalia, there was a real risk he would suffer significant harm. The Tribunal considered that, as a person with a chronic mental health condition, the applicant would be especially vulnerable to personal harm if repatriated; it did not seem on the authoritative material before the Tribunal that any adequate support would be available to him in Somalia. Consequently, the likelihood of his PTSD symptoms resurfacing seemed to the Tribunal to be real. The Tribunal noted that this would be with a backdrop of no family support and with a history of torture and trauma. Although the Tribunal was somewhat sceptical about some of the claims that the applicant made in his evidence (particularly his claim of jumping

direction that the applicants satisfied the refugee criterion in section 36(2)(a) of the *Migration Act*. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met, the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Venezuela, there was a real risk they would suffer significant harm in the form of cruel and degrading treatment and possibly even arbitrary deprivation of life (section 5(1) of the Act).

- a fear of being seriously harmed due to high levels of criminal violence generally.

In connection with this last point, the Tribunal accepted

MJMG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1486 (Unsuccessful)	26 May 2021	162–181	The AAT affirmed a decision not to revoke the cancellation of the applicant's Global Special Humanitarian visa. In doing so, however, the Tribunal consid

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difference in the level of analysis required between (a) assessing whether any international non-refoulement obligations arose as 'another reason' why the cancellation of a person's visa should be revoked and (b) assessing whether a person is owed non-refoulement obligations in the context of an application for a protection visa. In this case, the Tribunal was not satisfied on the evidence that an issue of non-refoulement obligations arose with respect to the applicant's return to Iraq in the event that the cancellation decision was not revoked. Accordingly, the Tribunal found that this consideration was neutral in the applicant's circumstances.

			limitations on access to mental health treatment in South Sudan clearly gave rise to a situation that was faced by the population generally rather than the applicant personally and, as such, did not amount to 'significant harm'.)
1705555 (Refugee) [2021] AATA 2829 (Unsuccessful)	17 May 2021	56–73	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal considered a submission by the applicant on the issue of internal relocation in the following terms ([57]): 32. It is acknowledged that it may be reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrent of the feared persecution: *Randhawa v MILGEA* [1994] FCA 1253. 33. A person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country, with what is reasonable depending on the particular circumstances of the applicant and the impact upon that person of relocation: *1611949* (Refugee) [2020] AATA 318 at [106]. 34. It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the Alado boys, it is submitted that his profile is such that there is a real chance he

would be targeted in other areas of Nigeria should he attempt to relocate.

The Tribunal addressed this submission in the following terms ([59]–[63]; citations omitted and original emphases in Tribunal's decision):

> The Tribunal decision referred to in the above extract involved a single Nigerian woman with two infant female children. While the relevant legal principle appears to be appropriate to the present review, it is not apparent that the factual circumstances of the Tribunal decision relied upon [] in any sense recommends the previous decision as a relevant or appropriate comparator for the present application.
>
> I also note that the submission appears to misstate the statutory relevance of 'relocation' for the purposes of the present review in terms of whether [it] is 'reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrent of the feared persecution'.
>
> Firstly, the analysis of relevant law contained within the 18 January 2021 submissions at [11]–[14] and [27]–[31], such as it is, describes the statutory formulation of a well-founded fear of persecution (or 'real chance of serious harm') in terms of a claim based on the refugee criterion at

			s.36(2)(a) of the Act. However, in discussing the question of relocation or effective protection, the submission reverts to the 'real risk' vocabulary and the decision making matrix of complementary protection in the context of an assessment of 'significant harm' under s.36(2)(aa) of the Act. This unhelpfully conflates the two alternative statutory criteria (ie: 'refugee criterion' at s.36(2)(a) and the 'complementary protection criteria' at s.36(2)(aa) of the Act). The reason for this misstatement may be that the representative has relied upon a review decision which applied the former, Convention-based, applicable legal framework. As the present review relates to an application made after 14 December 2014, it is the present statutory legal framework that must be applied. I further note that the assessment of a real chance of serious harm for the purposes of determining the objective well-foundedness of a given fear of persecution at s.36(2)(a) of the Act requires a finding at s.5(J)(1)(c) of the Act that: > the real chance of persecution relates to all areas of a receiving country. The Tribunal then went on to explain ([64]–[73]; citations omitted and original emphases in Tribunal's decision):

There is also no well-founded fear of persecution ‘if effective protection measures are available to the person in a receiving country’ (ss.5J(2) and 5LA). In this respect, I note that the question of

			Absent a situation of complete breakdown of State apparatus ... it should be assumed that the State is capable of protecting a claimant. In *MIMA v Khawar*, Kirby J referred to *Ward* in support of the broad proposition that as a practical matter in most cases, save those involving a complete breakdown of the agencies of the state, decision makers are entitled to assume (unless the contrary is proved) that the state is capable within its jurisdiction of protecting an applicant. Accordingly, I have proceeded on the basis that the Nigerian state 'is capable within its jurisdiction of protecting [the] applicant'. In making this assessment, I note that the applicant himself has provided evidence that he was able to make a police complaint about the very harm that he has identified as fearing in Nigeria and that this complaint was investigated by Nigerian Police. It is noted that the relevant assessment of state protection in relation to complementary protection assessment for the purposes of s.36(2B)(b) is differently framed and the assessment of the available standard of protection in a receiving country is on the basis of 'international standards'. It will be appreciated that the submissions of 18 January 2021 do not provide anything more than a bare statement of unsupported opinion based on a

confused articulation of the relevant statutory formulation as follows:

> It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the Alado boys, it is submitted that his profile is such that there is a real chance he would be targeted in other areas of Nigeria should he attempt to relocate.

Even if the applicant's contention that he continues to be the target of animosity from 'Baba Alado' and

			from Australia to the receiving country, there is a real risk that the applicant will suffer significant harm, for the purposes of s.36(2)(aa) of the Act.
1732703 (Refugee) [2021] AATA 3072 (Unsuccessful)	14 May 2021	140, 145, 151–158, 167–172	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, in the context of complementary protection, the Tribunal concluded that: x there was no information to suggest that the spread of sexually transmitted diseases in Zambia amounted to an intentional act or omission; and x the COVID-19 pandemic, and whatever measures may be applicable to the population of Zambia generally in response to it, did not, in the absence of additional considerations, amount to an intentional act or omission. The Tribunal also considered the applicant's claim of harm that would be caused to her by her separation from her child if returned to Zambia. It reasoned as follows

has recently been upheld by the Full Court of the Federal Court.

The decision turned on the relationship between various aspects of complementary protection provisions. Firstly, the Court had regard to the reference in s.36(2)(aa) to Australia's 'protection obligations' as referring to the obligation to afford protection to a non-citizen where the harm faced arises in the receiving country, rather than in the State where protection is sought. Secondly, the Court reasoned that the qualifications in s.36(2B) expressly refer to harm 'in a country' which is necessarily the receiving country if the circumstances of s.36(2B)(a) (relocation) and s.36(2B)(b) (protection from an authority) are to have any application.

Further, the Court noted the circularity in the operation of s.36(2)(aa) requires that the real risk of significant harm must arise '*as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country'*. The Court stated that the fact that the significant harm must be a consequence of removal strongly suggests that the removal itself cannot be the significant harm. The Federal Court also noted that being separated from one's children is not an 'act or omission' as required by the relevant definitions of significant harm, but a consequence of an act. The relevant act is the act of removal from Australia.

Lastly, the Court in *SZRSN* had regard to the 'intention' requirements in the s.5(1) definition of 'degrading treatment or punishment'. The Court reasoned that separation from family (in that case, children) is the consequence of removal, and a consequence cannot be said to have an 'intention', so the act of removal itself cannot be said to be perpetrated by the State with the intention of causing '*extreme humiliation that is unreasonable'*.

As such it appears that although the risk of significant harm envisaged by s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, s.36(2)(aa) will not be engaged by harm inflicted by the act of removal itself.

Further, in *GLD v Minister for Home Affairs*, the Full Court confirmed the principles in *CSV15 v MIBP* [2018] FCA 699 and *CHB16 v MIBP* [2019] FCA 1089 that 'significant harm' does not include self-harm or harm the applicant suffers arising from

			The complementary protection criterion is not intended to be used to address the many and varied circumstances in which – in the framework of ordinary human experience – it may seem to be unfair, immoral, deeply upsetting or disturbing for a person to be removed from Australia against her or his will. For the reasons set out above, whilst the Tribunal accepts the applicant does not wish to be separated from her partner and son it does not accept that she is owed complementary protection on this basis. The Tribunal was not satisfied that the applicant was a person to whom Australia owed protection obligations under section 36(2)(aa) of the *Migration Act*.
1711984 (Refugee) [2021] AATA 2383 (Unsuccessful)	14 May 2021	39	The AAT affirmed a decision not to grant the applicant a protection visa.

if he returned to Vietnam because he owed money to a lender in Vietnam. (This reasoning may be of indirect interest to understanding the exception to complementary protection of state protection in section 36(2B)(b).)

based on the Tribunal's findings reached under the refugee criterion. The Tribunal noted that section 36(2B)(a) provides that there is taken not to be a real risk if it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm. In

			potentially while other executive actions were taken. In the Tribunal's view, these factors taken together required that non-refoulement obligations be given significant weight. The Tribunal, however, did not appear to identify precisely on what basis non-refoulement obligations might be owed; the Tribunal referred to both refugee protection and complementary protection and made specific reference to the exception to complementary protection contained in section 36(2B)(c) of the *Migration Act*, but the language of its reasoning and conclusions do not indicate which basis or bases it was relying on. For completeness, however, the decision is included in this list of case summaries.

2010831 (Refugee) [2021] AATA 2129 (Successful)

			degrading treatment or punishment upon suspected dissidents (citing the definition of 'significant harm' in section 36(2A)). The risk of such harm to the applicant would arise as a necessary and foreseeable consequence of his removal from Australia to Vietnam. Further, in the Tribunal's view, section 36(2B) did not apply in this case. The Tribunal noted that the applicant might seek to persuade the authorities in Vietnam that he only attended the protests in Sydney as a means of bolstering his claim for a protection visa. On the Tribunal's review of the applicant's application, the Tribunal considered that that would be, in fact, the truth. The Tribunal observed that denial of genuine association is, however, an obvious defence to an allegation of sympathy with a terrorist organisation, and the Tribunal was not satisfied that the Vietnamese authorities would accept that explanation of the applicant's attendance at the protests. The Tribunal doubted they would. In any event, the applicant might well suffer significant harm before his explanation was accepted and he was released.
1605338 (Refugee) [2021] AATA 2930 (Successful)	6 May 2021	60	The AAT set aside a decision refusing to grant the applicant a protection visa and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act* on the basis that, if returned to Myanmar, the applicant would face a real chance of serious harm on account of: his cumulative profile, being a family member of political dissidents; his imputed political opinion (anti-military/pro-democracy due to his family connections); together with being a failed asylum seeker.

			community. The Tribunal, however, did not accept that this amounted to significant harm for the purpose of the complementary protection criterion.
Ngatoko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1039 (Unsuccessful)	28 April 2021	74–86	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the New Zealander applicant's Class TY Subclass 444 Special Category (Temporary) visa. In the Tribunal's view, the applicant's expressed concerns did not provide a serious and substantive factual basis for engaging Australia's international obligations, and thus it was not necessary to consider whether the applicant's concerns were capable of characterisation as a non-refoulement claim. However, the Tribunal accepted in principle that '[i]t is not inconceivable that a high degree of lawlessness together with a well-founded fear of gang related violence, based on a specific and identifiable threat, may support a non-refoulement claim under the ICCPR or the CAT' (at [82], footnotes omitted). Nonetheless, the applicant's claim here was based on the fact of a single murder, together with an association with the murdered victim, in what was otherwise a peaceful society.
BQNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1186 (Unsuccessful)	27 April 2021	159–233	The AAT affirmed a decision not to revoke the mandatory cancellation of the applicant's protection visa. Relevantly, in considering the 'other consideration' of Australia's international non-refoulement obligations, the Tribunal considered in detail the applicant's claims that he would face harm if removed to Iraq and that he would not voluntarily return there. The Tribunal found, however, that the applicant did not satisfy the criteria in subsections 36(2)(a) or 36(2)(aa) of the *Migration Act*. The Tribunal was not satisfied that returning the

			applicant to Iraq would breach Australia's international non-refoulement obligations. The Tribunal, nonetheless, was satisfied that the applicant was likely to experience hardship in Iraq, and concluded that the 'other consideration' of Australia's international non-refoulement obligations weighed moderately in favour of revocation of the visa cancellation.
2015286 (Refugee) [2021] AATA 1606 (Unsuccessful)	27 April 2021	52–59	The AAT affirmed a decision to cancel the applicant's Safe Haven Enterprise visa. Relevantly, however, the Tribunal noted that the applicant had been granted the SHEV and that he continued to engage Australia's non-refoulement obligations based on his protection claims, including the conversion to Christianity. On the evidence, the Tribunal was satisfied that, in case of cancellation, there would be a breach of Australia's international obligations, including non-refoulement. The Tribunal, however, did not identify precisely on what basis such obligations might be owed, although the Tribunal observed (at [26]) that the applicant gave evidence to the effect that he feared persecution on the basis of his Christian conversion, suggesting that the Tribunal may have been referring to Australia's international non-refoulement obligations under the *Refugee Convention*. For completeness, however, the decision is included in this list of case summaries.
1837574 (Refugee) [2021] AATA 1231 (Unsuccessful)	27 April 2021	47–96	The AAT affirmed a decision to cancel the applicant's temporary protection visa. Relevantly, however, in the Tribunal's view, Australia owed the applicant non-refoulment obligations under the *Refugee Convention*, the CAT, and the ICCPR. Specifically, the Tribunal found that the applicant faced a real chance of being subjected to serious harm in Afghanistan and, as such, the

2013444 (Refugee) [2021] AATA 2451			Tribunal found that Australia may be in breach of its international obligations under the *Refugee Convention* if the applicant was removed to Afghanistan as a consequence of the cancellation of his visa. Further, for the same reasons outlined in relation to the applicant's real chance of facing persecution in Afghanistan, the Tribunal found that there existed a real risk that the applicant would be subjected to harm amounting to torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment as defined in section 5(1) of the *Migration Act*. The Tribunal emphasised, however, that the cancellation of the applicant's visa in itself would not be in breach of any of Australia's non-refoulement obligations, since these obligations may be breached only if the applicant was forcibly removed from Australia. While the Tribunal could not rule out the possibility of the applicant being unwittingly removed in breach of Australia's non-refoulement obligations, the Tribunal found that this was unlikely and that there was only a low risk that the cancellation of the applicant's visa would result in his removal to Afghanistan in breach of Australia's non-refoulement obligations. The Tribunal, therefore, gave non-refoulement obligations little weight in favour of not cancelling the visa.

			satisfied there were substantial grounds for believing there existed a real risk he would suffer significant harm, within the meaning of section 36(2A) of the *Migration Act*. Even if he were to experience difficulties establishing himself and settling in after his long period of absence, the Tribunal was not satisfied that financial hardship or other challenges settling in constituted significant harm as contemplated by section 36(2A). The Tribunal considered the claim arising on the material before it of psychological harm to the applicant as a result of being separated from his spouse and children, and acknowledged that separation would be difficult for him and his family, but nonetheless found that mental harm resulting from the separation of a family member arising *solely* from the act of removal of an applicant from Australia to his receiving country does not constitute significant harm.
CJQP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2116 (Successful)	23 April 2021	201–226	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Five Year Resident Return visa. Relevantly, the Tribunal appeared to conclude that the applicant's return to Iraq would be in breach of Australia's non-refoulment obligations, although it is unclear precisely on what legal basis such obligations would be owed. The Tribunal was reasonably satisfied that, although the applicant's uncle was assassinated 14 years ago, the uncle was a high-profile member of the community. The assassins remained at large, and the Tribunal accepted the evidence of the applicant's father that one of the assassins continued to reside in the applicant's home province. Should it be known that the applicant, who could identify the offenders, had returned to Iraq, he would be at risk of

this view, the Tribunal also took into consideration the fact

			time as a participant in the protests nor detained by the authorities subsequent to the protests at the time (and since the applicant left Iran on a passport in his own name); x having participated in protests in Australia against the Iranian regime, since country information specifically stated that the Iranian authorities had little interest in returnees who had been protesting outside Iranian diplomatic missions and since the Tribunal found earlier that the applicant did not have a background of interest to the authorities; x the city of Ahwaz's lagging economic development and the presence of excessive smoke or a lack of adequate storm drainage; x cultural and/or employment discrimination; or extortion by government security forces.

			The Tribunal took into consideration the fact that the applicant was a victim of sexual assault, and had four children, including two very young children. The Tribunal was not satisfied, however, that the acts of stigma would reach the level of severe pain or suffering or pain, or suffering which was cruel or inhuman, given the requirements of significant harm. Further, it had been a long time since she had been in the country when the crimes took place, such that it was far less likely that people would take interest in her past. The applicant was now married to the father of her two young children and she had family in Ghana with whom she could live. The Tribunal noted that the definition of degrading treatment or punishment in section 5(1) is specific as to the level of humiliation which must be evoked by the particular act or omission. It requires 'extreme humiliation which is unreasonable'. Drawing upon international jurisprudence, the Complementary Protection Guidelines, which provide some guidance, state: Treatment may be degrading if it 'humiliates or debases an individual, showing a lack of respect for, or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance'. In this regard, humiliation may be in either the eyes of others, or the eyes of the victim themselves. Treatment may also be said to be degrading if it grossly humiliates a person in

			front of others, or drives the person to act against their will or conscience... The Tribunal observed that the assessment of the minimum level of severity necessary to constitute 'extreme humiliation' will depend on all the circumstances of the case, including the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the gender, age, state of health or other status of the victim. In this case, the Tribunal took into consideration the length of time since the sexual assaults (which would mean that it could be assumed that there would be less interest in the events than if they were recent), the fact that the applicant was older now and likely to have more resistance, and the fact that she was currently married and had family with whom she could live. In the Tribunal's view, while ostracism or stigma at any level can be particularly unpleasant, the Tribunal was not satisfied that it would reach the level of 'cruel or inhuman' or that it would cause extreme humiliation which was unreasonable. The Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Ghana, there was a real risk of significant harm.
1611148 (Refugee) [2021] AATA 1230 (Unsuccessful)	19 April 2021	21–26	The AAT affirmed a decision not to grant the applicant a protection visa. In the context of the complementary protection criterion, the Tribunal accepted the applicant's evidence that he no longer had grounds to fear harm in Ghana for any reason related to the concerns he expressed

in his 2014 written protection claims. The Tribunal found, based on that evidence, that there were no grounds for believing that there existed a real risk that the applicant would suffer significant harm at the hands of any person, company or authority in Ghana (including the Government of Ghana) due to his father's 2014 dispute over local mining concerns or for any other reason related thereto.

The Tribunal accepted that the applicant would potentially suffer distress and potential deterioration of mental health due to his being physically and practically separated from his children if he returned to Ghana. However, the Tribunal considered that the emotional distress caused by separation—even if it were to develop after his removal from Australia and the applicant was formally diagnosed at some point with depression or other mental illness—would not involve the applicant suffering 'significant harm' as defined in section 36(2A) of the *Migration Act* for the purposes of considering the complementary protection provisions. Any potential emotional distress arising from his separation from his children would arise from the act of removal itself and

which cause[d] the non-citizen to suffer harm' (emphasis appears to have been added by present Tribunal). The Tribunal considered that the deterioration of a person's existing mental health condition and the practical limitations and consequences of that deterioration are not due to 'acts perpetrated by others' and do not meet the definition of 'significant 12 454 tduents

			placed than most to find work, including in the reconstruction of the Beirut port and environs.
1701200 (Refugee) [2021] AATA 1604 (Unsuccessful)	16 April 2021	41–50	The AAT affirmed a decision not to grant the applicant a protection visa. The Tribunal was not satisfied that the applicant faced a real chance of serious or significant harm as a result of: x having had involvement in Australia in either the Pacific Indigenous Association Inc or the Fiji Native Government in Exile, or otherwise because of having been associated with Oni Kirwin; x being an ordinary member of SODELPA, which the Tribunal accepted that the applicant would be, and being politically involved in this way; x his whole family being black-listed because a relative of the applicant who was a public office bearer refused a specific request of the government when asked; or financial problems, lack of family support, or other difficulties in reintegrating into Fiji.
CRBC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 863 (Successful)	14 April 2021	81–98	The Tribunal set aside the decision under review not to revoke the mandatory cancellation of the applicant's Offshore Humanitarian (Subclass 200) visa. In substitution, the Tribunal revoked the cancellation of the applicant's visa. Despite the applicant's eligibility for a Subclass 202 visa at the time of grant, the interviewer made an active choice to grant a Subclass 200 visa in recognition of an element of persecution facing the applicant, and the Tribunal considered that the Minister had not proven that the actual risk of persecution had ceased. In this regard, the Tribunal noted that the comments of Allsop J in *NBGM v Minister for Immigration & Multicultural & Indigenous Afiogrion, t40*

[2006] FCAFC 60 at [172] were relevant, namely that a determination of the cessation of refugee status be evidenced with a demonstration that any change in circumstances in the applicant's home country is 'clear and lasting'. DFAT information indicated that Dinkas living in conflict-related areas faced a high risk of societal discrimination and violence. Further, DFAT also assessed that Dinka were one of 'three prominent ethnic groups who are most at risk, owing to their active involvement in the conflict between the Government and SPLM-IO'. The UNHCR also reported in 2019 that 'sustainable conditions are not in place for the safe and dignified return of refugees and IDPs in South Sudan'.

The evidence presented to the Tribunal demonstrated that South Sudan remained a violent and volatile country, wracked by conflict and without strong or established institutions to protect the population. Sudan and South Sudan continued to be wrecked by Civil War and societal breakdown which was continuing.

The applicant had left Sudan at the age of 4 and lived in Uganda. He had no memory of South Sudan and no knowledge of that country. He spoke Dinka with a foreign accent and had no familiarity with local customs or idiom. Therefore, in the Tribunal's view, he would be clearly identified as someone who was returning from the West because of the following traits:

(a) a lack of awareness of the political tensions in the country and how to avoid running afoul of

(b) he spoke Dinka with a foreign accent;
(c) he spoke English with an accent that South Sudanese, who were taught English in school, would recognise as foreign;
(d) he did not know the common practices or mannerisms that would identify him as a local;
(e) he did not know anyone in South Sudan and would not have a local guide in any part of the country;
(f) he did not know the usual local lifestyle or ɔf aacfcd.r lifE (us)-1y part c

requested to bring a residency certificate and information on blood group. There was no evidence that the applicant ever had any form of South Sudanese

refoulement obligations for the applicant to return to Sudan or South Sudan. There was a real prospect that the applicant would suffer serious harm on return to his home country. The alternative was that the applicant

			applicant would be returned to South Sudan, the Tribunal considered (for the reasons set out above) that there existed a very real risk that the applicant would suffer significant harm if the cancellation decision was not revoked. The consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation. The Tribunal also noted that the consequence of non-compliance with Australia's treaty obligations would not only impact the applicant, but it also would impact negatively upon Australia's reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation. Finally, the Tribunal accepted that regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship including violence and a lack of support in the event that he were to return to South Sudan.
SFPH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 874 (Unsuccessful)	14 April 2021	175–235	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the Afghani applicant's Global Special Humanitarian (Class BA) (Subclass 202) visa. In this proceeding, the applicant sought to rely principally on non-refoulement obligations owed under the ICCPR, although it was submitted that such obligations in respect of the applicant were also owed under Article 33 of the Refugees Convention. The Tribunal noted that, under the ICCPR, non-refoulement obligations arise by implication. In the High Court's

decision in *CRI026 v The Republic of Nauru*, it was said that (emphasis added by the Tribunal):

> … those provisions of the ICCPR do not

to the severity of what is required without being an exhaustive statement of the quality of that harm' (*Minister for Immigration and Citizenship v Anochie* [2012] FCA 144, [67] (Perram J)). Hence, in order for the non-refoulement obligations implied under the ICCPR to be engaged, there must be both a necessary and foreseeable risk of irreparable harm as a consequence of refoulement.

As submitted by the applicant, the Tribunal found that the ICCPR's non-refoulement obligations would be engaged were the applicant to be refouled to Afghanistan. The risk of irreparable harm was both a necessary and foreseeable consequence of such a refoulement. As put on behalf of the Applicant, and as the Tribunal accepted, were the applicant to be refouled to Afghanistan:

(a) It was likely that he would be located in Kabul. That was where the applicant was born and it offered relatively more opportunities for employment than were offered elsewhere in K(w)2 (a)4 (bul)-2(o)]18.19 0 Td( )TjEMTjC /LBody /MC 1. 7 BDC TJ

(c) He could communicate orally in one of the principal languages used in Afghanistan, Dari, but would do so with an accent, betraying his upbringing in the West.

(d)

			bleak outlook confronting the applicant should he return to Afghanistan was such as to constitute a risk of irreparable harm which was both a necessary and foreseeable consequence of him being refouled to Afghanistan. At the same time, the Tribunal noted that there existed the possibility that the applicant would face other risks because of his particular circumstances. Many of them did not, however, constitute what the Tribunal would have considered to be risks that were both a necessary and foreseeable consequence of refoulement. What the Tribunal had in mind here were risks such as, first, that which might arise by reason of the applicant being a person whose accent would make it apparent that he spent time in the West. He might, as a result, be perceived as a person who supports or associates with the Government or members of the international community. As such, he may face a high risk of violence. Further, with a "western accent" the applicant might be perceived to be wealthy or, at least, have access to foreign wealth. In this regard, kidnapping was a major concern for many Kabul citizens. Foreigners and wealthy Afghans were indicated as the main targets. Second, it was put at the hearing of this proceeding that there existed a risk that the applicant would be murdered in jail, where he would end up as a result of resorting to criminality due to his untreated PTSD and dire financial circumstances. However, in the Tribunal's view, such a risk was not a necessary and foreseeable consequence of refoulement. Rather, it seemed to be more speculative than a "necessary" risk.

			The Tribunal then observed that it did not consider the applicant's removal from Australia and return to Afghanistan to be a likely consequence of a non-revocation decision. Instead, the more likely consequence of such a decision was that he would remain in detention. While that detention would not be indefinite, it would nevertheless carry with it a number of adverse consequences for the applicant. While adverse consequences would flow from a decision not to revoke the applicant's visa cancellation decision, therefore, it was not presently likely that his refoulement to Afghanistan would be one of them (as submitted by the applicant). In the result, the consideration of Australia's international non-refoulement obligations weighed in favour of there being another reason to revoke the applicant's visa cancellation decision, but did so to a moderate extent.
YNQY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 881 (Successful)	14 April 2021	32–40	The Tribunal set aside the decision under review and substituted a decision revoking the mandatory cancellation of the applicant's Class XB Subclass 202 Global Special Humanitarian visa. Relevantly, the applicant submitted that he would suffer personal harm if returned to Sudan or South Sudan, or if his detention — itself a source of his depression and anguish at isolation from his family and girlfriend — was prolonged. The Tribunal noted that, as the law stood, the operation of s 197C of the Migration Act mandated removal to Sudan or South Sudan even if the removal put Australia into breach of its international obligations, a very serious consideration in itself. The Tribunal observed that the law might change in future insofar as s

197C was concerned, because of the introduction into the House of Representatives of a bill to amend the provision. The Tribunal reasoned that, even if non-refoulement obligations were not owed in respect of the applicant, the passage of that bill might remove a legal impediment to the government following a policy of detaining non-citizens rather than putting Australia into breach of its international obligations. The Tribunal pointed out that such detention might be prolonged, even indefinite, depending on future governmental policies. In the Tribunal's view, bringing about either a breach of international treaties or prolonged or indefinite detention would not, in the particular circumstances of this case, be consistent with the dictates of goo2

previously contemplated suicide and that prospect would exist if he was deported.

			him) would cause injury not only to the applicant but also to his family and his girlfriend, who were anxiously awaiting his release at the time of the Tribunal's decision.
HWLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 860 (Unsuccessful)			

			would be returned to Sierra Leone, the Tribunal considered that there existed a very real risk that the applicant would suffer significant harm if the cancellation decision was not revoked. The consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation. Further, the consequence of non-compliance with Australia's treaty obligations not only would impact the applicant, but it also would impact negatively upon Australia's reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation. Finally, the Tribunal accepted that regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship including deprivation of his freedom, violence, a deterioration in his mental health condition and a lack of support if he were to return to Sierra Leone.
Fonoti and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 866 (Unsuccessful)	13 April 2021	200–204	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the New Zealander applicant's Class TY Subclass 444 Special Category (Temporary) visa under s 501(3A) of the Migration Act. Interestingly, having earlier noted that neither party contended that the consideration of Australia's international non-refoulement obligations was relevant to the determination of the instant application, the Tribunal proceeded to consider a novel contention advanced by the applicant that if the applicant were removed from Australia to New Zealand, Australia would somehow contravene ICCPR Articles 12(4) and 17(1), which relevantly provide: 'No one shall be

The Tribunal disagreed with the contention put on behalf of the applicant that any removal of her to New Zealand (together with the resulting consequences thereof) would somehow be arbitrary. Thus, the

			The Minister accepted that the applicant was owed non-refoulement obligations. There was no dispute that the country information filed indicated that the applicant might suffer harm if he were to be returned to Somalia. The Tribunal considered that it was likely that the applicant would suffer harm if returned because of the prevailing situation in Somalia, which showed that the Islamist terrorist group Al-Shabaab continued to operate as a 'powerful hybrid organisation: governing rural areas in Somalia, terrorising Somali cities… and running a massive extortion ring that keeps the group well financed.' In 2019, there were over 1200 murders attributed to the group. As a Christian convert with mental illness and no clan affiliations or personal connections in Somalia, the applicant would be in the highest possible category of risk if returned. The AAT was satisfied that non-refoulement obligations were owed. It accepted the claims of the applicant that he would be subjected to serious harm, including threats to his life or liberty and ill treatment, by Somali authorities, local Somali people, Al-Shabaab or other extremist groups or clan militias, because he had no ties or support in Somalia and because he had converted from Islam to Christianity and was a person with severe mental health issues and cognitive impairments. Consequently, the AAT considered that Australia owed the applicant non-refoulement obligations and that, if he were to be returned, Australia would breach of those obligations.

Given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant

			related claims and it considered the implied claim that the applicant had a well-founded fear of persecution in Pakistan for the essential and significant reason of his mental and physical health condition under the refugee criterion. The Tribunal found that the applicant did not face a real chance of serious harm in Pakistan from any agent of harm for that essential or significant reason. The Tribunal further found that the available professional medical evidence did not support an inference that the applicant's return to Pakistan engaged Australia's complementary protection obligations for that essential or significant reason. Based on these findings, the Tribunal was not satisfied that the applicant was a person to whom Australia owed protection obligations under the *Migration Act*. Significantly, however, the Tribunal analysed the exceptions to the complementary protection criterion in section 36(2B)(b) and (c) of the Act. After referring to relevant country information, the Tribunal explained ([73]–[83]; citations omitted and emphases in original): > Two things emerge from an assessment of this and other comprehensive country information about the general security situation in Pakistan, namely that there is a generalised experience of religious, sectional and other forms of violence that is difficult for members of the Australian community to comprehend. The agents of harm perpetrating this generalised criminal violence include (but are not limited to): the Taliban in Pakistan; both Sunni and Shia extremists; various non-ideological

criminal thugs; and, other non-state actors. Second, security operations conducted by agencies of the Pakistan state have had measurable success in addressing this environment of generalised criminal violence.

I acknowledge that the applicant stipulated at the second hearing that he did not accept the country information reports which suggested a demonstrable decline in generalised violence in Pakistan generally or Khyber Pakhtunkhwa in particular. I also acknowledge the applicant's submissions about specific incidents of terrorist atrocities over time in Pakistan. These atrocities are accounted for appropriately in the country information to which I have referred above, and which were discussed with the applicant personally at the second hearing. On balance, persuaded that the country information showing a demonstrable decline in secular violence and terrorist outrages should be preferred to the applicant's subjective assessments [sic].

Regardless, I note that under s.5J(1) of the Act (and the previous Convention provisions from which the definition is drawn), while there can be no *legal*

absence of a state admission as to its inability to protect its nationals, clear and convincing evidence of a state's inability to protect must be provided. The Court continued:

> Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of State apparatus ... it should be assumed that the State is capable of protecting a claimant.

In *MIMA v Khawar*, Kirby J referred to *Ward* in support of the broad proposition that as a practical matter in most cases, save those involving a complete breakdown of the agencies of the state, decision makers are entitled to assume (unless the contrary is proved) that the state is capable within its jurisdiction of protecting an applicant. Accordingly, I have proceeded on the basis that the Pakistan state 'is capable within its jurisdiction of protecting [the] applicant'.

The relevant assessment ohatm'.

			requisite systematic quality that gives rise to protection obligations under the Act. The Tribunal then analysed section 36(2B)(c) in the following terms ([84]–[87]; citations omitted): With reference to the complementary protection assessment at s.36(2(aa) of the Act, the qualification at s.36(2B)(c) provides that there is taken not to be a real risk that an applicant will suffer significant harm in a country if 'the real risk is one faced by the population generally and is not faced by the applicant personally'. Although differently framed, this qualification bears some similarity to considerations relating to assessing whether the harm feared in a country is systematic and discriminatory. The Federal Court's view is that the natural and ordinary meaning of s.36(2B)(c) requires the decision-maker to determine whether the risk is faced by the population of a country generally as opposed to the individual claiming complementary protection based on his or her individual exposure to that risk. In *SZSPT v MIBP* the Court held that, while every citizen who broke a law of general application would necessarily face a risk of punishment personally, s.36(2B)(c) applied because it was no different from the risk faced by the population generally.

The Court's reasoning suggests that the 'faced personally' element of this qualification requires the individual to face a risk of differential treatment, or because of characteristics that distinguish them from the general populace. This approach was also taken in *MZAAJ v MIBP* to the risk of harm from inadequate medical treatment. Similarly, in *SZTES v MIBP*, the Court held that a risk faced 'personally' is one that is particular to the individual and is not attributable to his or her membership of the popu

			s.36(aa) [sic] of the Act due to the lack of particularity of the harm that is required by these statutory provisions. Finally, and separately, the Tribunal found that whatever measures might be applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions. Accordingly, circumstances in Pakistan arising due to the COVID-19 pandemic e to ta rise to protection obligations in Australia under either section 36(2)(a) or (aa) of the Act due to the lack of particularity of the harm required by these statutory provisions.
2010668 (Refugee) [2021] AATA 1455 (Unsuccessful)	13 April 2021	103	

afford medical treatment if required and the medications he relied upon.

The Tribunal also referred to section 36(2B)(c) of the *Migration Act* and accepted that there existed widespread

			The fact that a person may enjoy less favourable social, economic or cultural rights in another country does not, of itself, give rise to a non-refoulement obligation. It may lead to a degrading condition of existence, but that does not constitute degrading treatment for the purposes of the Act. 'Treatment' does not cover degrading situations arising from socio-economic conditions. 'Treatment' must represent an act or an omission of an individual or one that can at least be attributed to him or her. Further, the absence or inadequacy of medical treatment is not considered to be a basis for non-refoulment obligation in its own right. In view of the above findings, the Tribunal was not satisfied that there was a real risk that the applicant would suffer significant harm for any of the reasons claimed if he returned to South Sudan.
1713360 (Refugee) [2021] AATA 1440 (Unsuccessful)	8 April 2021	46–47	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Relevantly, however, in considering the applicant's claim that her second husband said he had diabetes and would not be able to protect the applicant in Jordan, the Tribunal alberdan, tctS-2(ledtttsa4 (s1 (e)t)-uda cht aR 454.2 3 (daofc)4 (ond huur)3 (m)-2

			he would have only limited access to those health services.
1704387 (Refugee) [2021] AATA 1507 (Successful)	8 April 2021	57–62	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the *Migration Act*. In the context of the refugee criterion, the Tribunal had accepted that there was a real chance that the applicant would face harm from 'Mr B' and his associates if he returned to his home area of Hue in Vietnam. The Tribunal accepted that such harm might include the intentional infliction of severe pain or suffering on the applicant, whether physical or mental, such as would constitute cruel or inhuman treatment or punishment for the purposes of section 36(2A) of the *Migration Act*. As such, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there was a real risk that he would suffer significant harm. The Tribunal considered whether the applicant could obtain protection from the Vietnamese authorities such that there would not be a real risk that he would suffer significant harm (see section 36(2B)(b)). It explained (at [59]; citations omitted): In *MIAC v MZYYL* the Full Federal Court held that, to satisfy s.36(2B)(b), the level of protection offered by the receiving country must reduce the risk of significant harm to something less than a

			real one. DFAT reports that the People's Public Security Forces of Vietnam (PPSFV) is the country's main police and security force and it operates at the national, provincial, district and commune levels. International observers report that corruption is highly prevalent within police ranks. DFAT assesses that police have limited ability to provide protection to civilians and are vulnerable to corruption and typically act with impunity. In these circumstances, I am not satisfied that the applicant could obtain protection from an authority in Vietnam, such that there would not be a real risk that he will suffer significant harm. The Tribunal also considered whether it would be reasonable for the applicant to relocate to another part of Vietnam, outside his home in Hue city, where there would not be a real risk that he would suffer significant harm from 'Mr G' and his associates. However, the combination of the applicant's mental health and cognitive issues—which rendered him unable to work—together with his lack of financial resources or family support caused the Tribunal to consider that relocation was not reasonable in his particular circumstances. The Tribunal further considered that the significant harm the applicant faced was one faced by him personally, not by the population generally, and that the applicant was not precluded from being owed protection by the operation of section 36(2B)(a), (b), or (c) of the Act. Finally, there was no evidence to indicate that the applicant had a right to enter and reside in any third

removal. The Tribunal accepted that the applicant was at risk of adverse mental health outcomes the longer he was held in detention. In the Tribunal's view, the consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation.

Additionally, the Tribunal noted that the consequence of non-compliance with Australia's treaty obligations not only impacted the applicant, but it also impacted negatively upon Australia's reputation and standing in
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			x there was not a real risk that the applicant would be discriminated against (due to her lack of references) in finding employment or that she would be unable to find employment to support herself if she was returned to Taiwan, and even allowing for some initial difficulty in finding well-paid employment, the Tribunal did not consider that difficulty finding work or referees for future employment would involve causing the applicant 'significant harm'; x while there existed a real risk that the applicant might be questioned by police about her mother's whereabouts and that she might suffer some emotional distress if that occurred, given that the Tribunal had accepted that the applicant's mother was on a police watchlist for fraud matters, the Tribunal did not consider that the applicant would suffer significant harm from that process, if it occurred; and x in relation to the applicant's fear that she might have a poor credit rating due to her mother's conduct, the Tribunal had accepted her evidence that she was notified by a bank that 'someone' had opened a credit account in her name and defaulted on it while she was in Australia (which she assumed was her mother, using the applicant's identification documents), and considered it plausible that the applicant might have a poor credit reputation as a consequence, but even if she returned to a ruined personal credit history, the Tribunal was not satisfied that being unable to borrow money would cause the applicant any of the statutory types of significant harm.

			For these reasons, the Tribunal was not satisfied that the applicant would have to live in hiding if she returned to Taiwan; rather, it considered that she could re-establish her life there without facing a real risk of significant harm for any reason.
1707502 (Refugee) [2021] AATA 1541 (Unsuccessful) 1923588 (Refugee) [2021] AATA 1864	7 April 2021	42	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Relevantly, however, the Tribunal also noted that 'generalised concerns about economic political disadvantage in and of themselves are not recognised grounds to support a well-founded fear of persecution for the purposes of a protection visa in Australia under either the refugee grounds or the alternative complementary protection grounds, in the absence of other considerations' ([42]).

			international non-refoulement obligations arising only under the *Refugee Convention*. Nonetheless, for completeness, the decision is included in this list of case summaries.)
1931013 (Refugee) [2021] AATA 1608 (Successful)	7 April 2021	88–95	The AAT set athisg 12 221.hthis12 344.04 455.65(

			to Pakistan and that his mental health condition would deteriorate for a range of reasons, not least due to inconsistent and irregular medical treatment by himself and/or the mental health system. Accordingly, the Tribunal placed significant weight on its analysis of the complementary protection criterion in favour of the visa not remaining cancelled. The Tribunal also placed significant weight on the likelihood that the applicant faced a real risk of significant harm arising from a psychotic episode leading to him being detained in such a manner that he would be subjected to cruel and inhuman treatment or punishment.
1708175 (Refugee) [2021] AATA 1004 (Unsuccessful)	30 March 2021	48–49 (COVID-19), 52–54 (complementary protection)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, the Tribunal observed that ‘whateversh.6 (c)6 (tio)p6 (s)0.9a4 (ed)uInedat1(s)1 ap (at)p (at)l. a

			his Buddhist religious practices, including being a monk, if returned to Bangladesh. The Tribunal was not satisfied, however, that this would reach the threshold of cruel or inhumane or degrading treatment or punishment. The Tribunal thus found that there did not exist substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there was a real risk that he would suffer significant harm.
Galuak and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 674 (Unsuccessful)	29 March 2021	132–155	The Tribunal affirmed a decision not to revoke, under s 501CA(4) of the Migration Act, the mandatory cancellation of the applicant's ex-citizen's visa under s 501(3A) of the Act. Relevantly, in addressing the matters raised under the consideration of Australia's international non-refoulement obligations, the Tribunal took account of the fact that the applicant had the option of applying for a protection visa, and that any protection claims might be considered as part of any such application (and in priority to his potential ineligibility), and that there might be a difference in the scope of non-refoulement and protection obligations. The Tribunal also took account of the fact that a non-revocation decision meant that the applicant might be subject to further detention until removal as soon as practicable under s 198 of the Act. The outcome of any further decision-making process, including any exercise of Ministerial power, in the Tribunal's view, was not a factor about which the Tribunal should speculate, nor should it speculate about the length of any further period of detention.

2018081 (Refugee) [2021] AATA 1518 (Unsuccessful)			In the present case, the Tribunal addressed four categories of claim. The Tribunal found that it was reasonable to find that the applicant was likely to face risk if returned to South Sudan, on the basis of his ethnicity, and also due to the general instability prevalent there. Accordingly, the Tribunal found that the consideration of international non-refoulement obligations weighed in favour of revocation.

This also had been conceded by the Minister. An International Treaties Obligations Assessment (ITOA) dated 6 October 2016 found that Australia owed non-refoulement obligations to the applicant on the basis of his Hazara race and Shia Muslim religion, and it found that he had a real chance of being subject to significant harm should he be returned to Afghanistan.

Further, after discussing in detail the relevant authorities, the Tribunal observed that it was required to approach this consideration on the basis that the consequence of a decision not to revoke the cancellation of the applicant's visa would be that he would be liable, pursuant to s 198, to be removed from Australia as soon as it was reasonably practicable; that the Minister might consider alternative management options, such as the possibility of granting a visa under s 195A; and that, in the meantime, the applicant would be held in detention. The Tribunal noted that, although the duration of that detention could not be determined at the time of the Tribunal's decision, it would not be indefinite, although given prevailing global conditions and the time that it would take the Minister to consider alternative management options, it was likely to be not insignificant. The Tribunal was satisfied that the applicant remaining in immigration detention would have a significantly adverse impact on his mental health.

The Tribunal also noted that this consideration called for consideration of the consequences of the applicant

the Act. The ITOA had concluded that there were

however, the Tribunal accepted that the applicant might be perceived as a single, divorced woman in Lebanon, although the Tribunal nonetheless was satisfied that the applicant had family support and accommodation, qualifications and employment experience such that she

PNCV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 529 (Successful)	17 March 2021	191–210	The Tribunal set aside the decision under review and substituted a decision that the mandatory cancellation of the South Sudanese applicant's Refugee (Subclass 200) visa be revoked under section 501CA(4)(b)(ii) of the Migration Act. Relevantly, the Tribunal was satisfied that the applicant would be exposed to a significantly heightened risk of personal harm and possible persecution, because of his amputation, if returned to South Sudan, and that this would be exacerbated because of the paucity of available health services in that country. His recent injury (a fall while in Australia) was a direct result of an unsuited prosthetic leg (fitted in Australia) and had caused significant health setbacks for him, including ongoing pain requiring analgesia, despite occurring in Australia, a country with well-equipped and available specialist medical support. The Tribunal was satisfied that the applicant had articulated to the Tribunal a well-founded fear of potential discrimination against him, and significant adverse personal consequences, because of his disability. The Tribunal was further satisfied that objective sources corroborated the stigmatisation and poor treatment of persons in South Sudan with the disability that the applicant suffered from, and that his fears in relation to that were not fanciful or far-fetched. The overall conclusion of the Tribunal was that this consideration weighed heavily in fav2 (us)- (t)-2 (he) (he)4 ( )]TJy imevokusTr0 (a)4 n wehcoulequin weigh( )]TJ

		complementary protection claims)	protection criterion in section 36(2)(aa) of the *Migration Act*. The Tribunal had found that the applicant was not truthful to the Tribunal and had largely fabricated his claims for protection, and as a consequence it did not accept that the applicant would be forcibly recruited into a Yemen-based militia, that he would be targeted as the family member of a deserted soldier (because he supported civilian rule or had lived in a foreign country and spoke a foreign language), or that he was on a Houthi Movement wanted list. The Tribunal did accept, however, that the security and general humanitarian situation within Yemen had deteriorated significantly since the applicant submitted his application for a protection visa, and it was therefore satisfied that there existed substantial grounds for believing that there was a real risk that the applicant would suffer significant harm if returned to Yemen.
Chol and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 505 (Unsuccessful)	15 March 2021	159–195	The Tribunal affirmed a decision to not revoke the mandatory cancellation of the South Sudanese applicant's Class XB Subclass 202 Global Special Humanitarian (Permanent) Visa. During the hearing, the Applicant did not elaborate in his oral evidence on several of the comprehensive claims made on his behalf by the Refugee and Immigration Legal Centre (RILC) — who did not represent the applicant at the hearing — on the matter of non-refoulement, and given the applicant's submission that several of his past claims in evidence resulted from him being misunderstood by the RILC and others, the Tribunal had some concerns about the extent to which he understood and adopted the comprehensive non-

			36(2A)(a)), as there was not a real risk that he would lose his life. While there was a high murder rate, the Tribunal was not satisfied that the risk would be substantial and non-remote as the murders only impacted on a small number of the population. Further, the US Department of State report stated that most unlawful killings had been in the favelas against narcotics trafficking gangs, young Afro-Brazilian men, victims of police violence or political activists. The applicant did not fall into these categories. Second, the Tribunal was not satisfied that the applicant would arbitrarily be deprived of life because of worsening health due to homelessness and lack of access to health services. The Tribunal noted that, while there is no definition in the Migration Act of 'arbitrary deprivation of life', on the basis of the ordinary meaning of the words, 'arbitrary' can mean 'subject to individual will or judgment, discretionary'. There is no requirement for intention, however the word 'deprived' may import an element of deliberateness, some form of positive act, rather than general conditions of poverty or lack of facilities. The Complementary Protection Guidelines refer to arbitrary deprivation of life as involving elements of injustice, lack of predictability, or lack of proportionality. Further, judicial comments have suggested that this kind of harm involves such matters as extrajudicial killing or excessive use of force rather than the consequences of scarce medical resources. In this respect, the Tribunal cited with apparent approval the Federal Court's decision in *MZAAJ v MIBP* and the Federal Circuit Court's decision in *SZDSD v Minister*

			for Immigration. Further, the Tribunal discussed a division of judicial opinion about whether an arbitrary deprivation of life, for the purposes of 'significant harm', requires an intentional element, and concluded that such a deprivation of life must arise from an intentional act or omission. Considering the ordinary meaning of the words 'arbitrary deprivation of life' in light of these judgments, the Tribunal was not satisfied that the applicant would — as a necessary and foreseeable consequence of being removed from Australia to Brazil — be arbitrarily deprived of life, in the sense that there would be some discretionary positive act to so take away his life. Instead, were such a result to ensue, it would be the result of economic conditions in the country generally. The Tribunal noted that it is no doubt that homeless people are generally more socially vulnerable, and have less support and ability to access health systems, and are more susceptible to infection. However, there did not seem to be positive action of the relevant governments to arbitrarily deprive homeless persons of services, thus leading to adverse outcomes including death. The Tribunal noted that the Brazilian health system is generally regarded as better than in many other South American countries, referred to by the World Health Organisation as an outstanding success. Although the COVID-19 pandemic had created enormous difficulties, there was a nationally funded health system with universal access, called the Unified Health System (SUS). During the centre-left presidencies, from 2003 to 2014, there was an

expansion of access to SUS services, coupled with important advances in social cash transfer programs such as Bolsa Familia, rural retirement and rising wages, which contributed to the improvement of the health status of the population. However, more recent cuts in funding were impacting universal access. Mental health facilities were available across the country, and although some reports referred to it as ‘chaotic and disorganised’ with limited community places, other sources called it outstanding, with its system of community-based services replacing hospital-placed services, widely acknowledged at the international level. Considering these sources, the Tribunal was not satisfied that there was a real risk of arbitrary deprivation of life as a result of withholding access to health services, or the standard of services provided. Any such outcome would be the result of under-resourcing rather than an act or omission of government.

Third, while the Tribunal was satisfied that the applicant might be unable to find a job and might become homeless in Brazil, and that he might be more vulnerable to crime and might suffer worsening health as a result, which could lead to severe pain or suffering, the Tribunal was not satisfied that such an outcome would be intentional, as the legislation requires. Sources

			crisis indicated that there was no intentional act or omission to harm. The Tribunal noted that the relevant statutory provisions require actual, subjective intention on the part of a person to bring about suffering rather than mere knowledge or negligence. Finally, in relation to the risks of worsening health, crime or contracting coronavirus, and in an apparent reference to s 36(2B)(c), the Tribunal noted it was satisfied that the real risk, if any, faced by the applicant was one faced by the population of Brazil generally and not faced by the applicant personally.
1903213 (Refugee) [2021] AATA 936 (Successful)	5 March 2021	57–60	The Tribunal set aside the decision under review and substituted a decision not to cancel the Iraqi applicant's Subclass 790 (Safe Haven Enterprise) visa. Relevantly, the Tribunal noted that the applicant was granted a SHEV and remained a person in respect of whom Australia had non-refoulement obligations. The cancellation of the applicant's visa and his possible removal from Australia would potentially be in breach of Australia's non-refoulement obligations. The Tribunal found that the effect of the relevant statutory provisions was that the applicant would not be able to make any valid visa application while in Australia, unless the Minister intervened and lifted the decision bars. Further, there was the possibility of indefinite detention, particularly following the cancellation of a SHEV visa, given the potential existence of non--

citizens to be released from immigration detention. The Bridging R visa allowed the release from detention of

principle that heightened consideration should be given to children in the context of non-refoulement, and that the third applicant, as a child, would suffer and

Karachi in the reasonably foreseeable future. However, for completeness, the Tribunal found on the independent country information that if the applicants chose to reside

possible bankruptcy from the design company if he returned to Taiwan.

The Tribunal considered the real risk of harm facing the applicant from his business creditors (that is, the design company) against the exclusive definition of what constitutes ‘significant harm’ in s 36(2A). The Tribunal found that there was not a real risk that the applicant would be subjected to the death penalty, that he would be arbitrarily deprived of his life or that he would be tortured for any reason. The Tribunal considered the definitions of ‘cruel and inhuman treatment or punishment’ and of ‘degrading treatment or

protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at this conclusion, the Tribunal accepted that the applicant would need ongoing psychiatric care and that even with such ongoing treatment, he might still experience a relapse of his schizophrenia and require more acute emergency treatment, including hospitalisation. The Tribunal accepted the that the applicant would be expected to need ongoing support and assistance with his daily activities including attending appointments and administering medication. The Tribunal further accepted that the applicant may be unable to obtain employment in Italy and his remaining relatives there were extremely limited in the care they could give him, and that he may need housing assistance or even residential care in the foreseeable future.

After referring to the statutory types of 'significant harm' set out in s 36(2A)(a)–(e), the Tribunal found that public health care in Italy was guaranteed by the National Health Service and was administered by multidisciplinary teams of medical professionals and auxiliary staff across inpatient and outpatient services, coordinated by the department of mental health. The National Health Service provided a full range of psychiatric care, from acute emergency treatment to long-term rehabilitation and available anti-psychotic medication included clozapine, with which the applicant was being treated in Australia. The Italian authorities also provided public welfare measures including pensions as well as home assistance and care, stays in long-

			Tribunal found that harm from alcohol abuse and/or gambling would arise as a natural consequence of the applicant's illness or from his own actions. In the context of the refugee criterion, the Tribunal earlier did not accept there to be a real chance that the applicant would be subjected to harm *by others* as a result of any future reversion to gambling or alcohol abuse. Since the 'real risk' test for complementary protection is the same as the 'real chance' test for refugee protection, the Tribunal did not accept there to be a real risk that the applicant would be subjected to harm *by others* as a result of any future reversion to gambling or alcohol abuse. As such, the Tribunal did not accept that any harm the applicant would experience if he were to revert to gambling or alcohol abuse on return to Italy fell within the definition of significant harm contained in s 36(2A). The Tribunal accepted that, if the applicant engaged in criminal conduct after being returned to Italy, there was a real chance he would come to the adverse attention of Italian law enforcement authorities and he might face arrest, prosecution and/or imprisonment. However, in considering whether any future arrest, prosecution and/or imprisonment could constitute 'torture', 'cruel and inhuman treatment or punishment' or 'degrading treatment or punishment', the Tribunal noted that the definitions of those terms contained in s 5(1) exclude any act or omission arising from lawful sanctions that are not inconsistent with ICCPR Article 7. At hearing, the Tribunal discussed with the applicant and his mother country information to the effect that Italy would appear

to have an appropriate criminal law, a sophisticated law enforcement system and a well-trained and visible police force. There was nothing in the available material to suggest that Italy's criminal laws were inconsistent with the ICCPR.

In summary, the Tribunal did not accept there to be a real risk that as a result of the applicant's potential future criminal activities, the applicant would be arbitrarily deprived of his life by the Italian authorities or any other person or group. It was not suggested that the death penalty would be carried out on the applicant by the Italian authorities for any reason if he were

			the CROC, concluding on the evidence before it that if the applicant's visa remained cancelled, there would be a breach of Australia's international obligations arising under the CROC. The Tribunal gave this aspect significant weight in the applicant's favour.

			she did not meet the criterion in section 36(2)(aa) of the *Migration Act*.

Multicultural Affairs (Migration) [2021] AATA 364 (Unsuccessful)	Relevantly, as to the consideration of Australia's international non-refoulement obligations, the Tribunal briefly noted that the lack of familial support and some language challenges facing the applicant did not by themselves rise to the level that complementary protection considerations might be relevant in terms of 'another reason' why the applicant's visa shaon' 2 (a)4 (ngu15.77 0 Td[(m)-6 (ot

judgment confirmed existing authority in *SZRSN v MIAC* [2013] FCA 751, which provided that, in the context of claims of harm arising from separation from family members, the act of removal of an applicant from Australia cannot itself be characterised as significant harm under section 36(2)(aa). The Tribunal noted that it is now settled that, regardles9ar -4onder(a)6 (mil0d reW nBT0.002 Tc) (d e)4 (xi)

removal would not be reasonably practicable, with the consequence that the applicant faced the prospect of indefinite detention by operation of ss 189, 196 and 198 of the Migration Act. Indefinite detention was likely to have an adverse impact on the applicant's mental and physical health, which would likely further deteriorate if he were held in detention for a long time. The Tribunal concluded that, given that the applicant faced indefinite detention and was owed non-refoulement obligations, these were factors that weighed very heavily in favour of revocation of the cancellation decision. While it is unclear from the Tribunal's reasons precisely on what basis international non-refoulement obligations were owed to the applicant, for completeness, the decision is nonetheless included here in this list of case summaries.

where its security infrastructure was strongest. In such circumstances, the Tribunal found that the level of protection available to the applicant from the Afghan government did not meet the level of state protection which citizens were entitled to expect.

Further, the Tribunal accepted that the applicant was identifiable as a Hazara Shia from his physical appearance, his practise of the Shia religion and his language, Hazaragi. The applicant had not lived in Afghanistan for many years and had no family members remaining there with whom he was in contact. Given DFAT's advice that no part of Afghanistan was free of conflict-related violence and the Internal Displacement Monitoring Centre's research indicating that 90 per cent of returnees struggle with food security and subsistence, the Tribunal accepted that relocation outside of Kabul was not reasonable in the particular circumstances of the applicant.

For these reasons, it followed that the applicant came within Article 1A(2) of the Refugee Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia's

LDDW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 255 (Unsuccessful)	18 February 2021	129–131	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the El Salvadorian applicant's Class BF Transitional (Permanent) visa. Relevantly, on the evidence currently before the Tribunal, the Applicant's claims were insufficiently advanced to establish that non-refoulement obligations were owed to him either as a refugee or under complementary protection criteria. His evidence did not meet the statutory tests of serious harm and significant harm. There were no substantial grounds for believing there was a real risk he might be arbitrarily deprived of his life or suffer other persecution or harm as a necessary and foreseeable consequence of removal; nor that such consequences might arise from the deliberate act, omission, or other conduct by authorities or others in El Salvador. The Tribunal affirmed the proposition that arbitrary deprivation of life does not concern the

1709126 (Refugee) [2021] AATA 781 (Successful)			could the visa cancellation process or consequences arising from that process constitute an extension of judicial penalty. It follows that the Tribunal was not satisfied that the applicant's evidence enlivened Australia's non-refoulement obligations, and this consideration carried neutral weight.

and suffering, both mental and physical, through extortion, theft and threats of physical harm and kidnapping by criminal gangs for ransom.

Further, the Tribunal accepted that it would not be reasonable for the applicant to relocate to a different area of El Salvador, as the appreciable risk of significant harm of generalised violence persisted throughout El Salvador (cf(om)-2 m(oul)]TJT[*(S)-4. gen(E)1rough

the population of El Salvador generally, as established in the country information, as opposed to the second applicant's claim for complementary protection based on his individual exposure to that risk. Having regard to the evidence before it, the Tribunal concluded that the second applicant's individual exposure to the risk met the statutory threshold. In arriving at this conclusion, the Tribunal placed weight upon the following factors:

- The second applicant was born in, and had only

			significant reasons of his Shia religion and Hazara ethnicity if he were returned to Afghanistan, whether at the time of the Tribunal's decision or in the reasonably foreseeable future. The Tribunal found expressly that the applicant came within Article 1A(2) of the Refugee Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia's *non-refoulement* obligations. However, the Tribunal only made one general passing reference to the CAT at the outside of its reasons. Nonetheless, for completeness, the decision is included here in this list of case summaries.
1621151 (Refugee) [2021] AATA 593 (Unsuccessful)	15 February 2021	38–46	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). First, as to the applicant's claim that she would face demands and possible harassment and civil litigation by business creditors if she returned to Indonesia, the Tribunal found that there was not a real risk that she would be subjected to the death penalty, that she would be arbitrarily deprived of her life, or that she would be tortured for any reason. The Tribunal noted that it had

			Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal found that the applicant did not suffer 'significant harm' as defined in s 36(2A) and (2B); that he was not a person of adverse interest to a loan shark or anyone else; and that there was no real risk of underworld figures killing or otherwise punishing him. Further, to the extent that the applicant may have been critical of living conditions in Vietnam, the Tribunal did not accept that these resulted in 'significant harm' and, even if they did, the associated risk was one faced by the Vietnamese population generally and not by the applicant personally (s 36(2B)(c)).
1710842 (Refugee) [2021] AATA 512 (Unsuccessful)	10 February 2021	183–190, 192	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Sri Lankan applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal considered the applicant's claim that he feared the frequency of violence in Sri Lanka and being maliciously reported to the authorities due to many people being jealous of him. The Tribunal noted that the applicant provided no evidence during the hearing or to the delegate as to the nature of the jealousy others had of him. Nor did he articulate the harm he might suffer as a consequence, other than a vague reference in his

LGLH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 179 (Unsuccessful)	10 February 2021	172–187	The Tribunal affirmed a decision to not revoke the cancellation of the South Sudanese applicant's Class XB Subclass 200 (Global Special Humanitarian) visa. Relevantly, the Tribunal considered a series of contentions set out in an annexure to the applicant's submissions that related to the question of Australia's

KMWC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA			by persons who might want to do him harm, and it was a risk that was not fanciful or remote. In the final analysis, the Tribunal found that this consideration (Australia's international non-refoulement obligations) weighed, on balance, in favour of the applicant, although it is unclear precisely on which basis such obligations might have been owed to the applicant.

			treated by another person. The applicant here did not suggest that any person or group would seek to harm him for any reason relating to the economic situation in China. He gave no evidence that he had ever been discriminated against or otherwise prevented from obtaining work. Accordingly, the Tribunal found that any economic hardship the applicant might experience if removed to China would not amount to significant harm for the purposes of the Migration Act because the harm would not be as a result of any deliberate act or omission of any group or person done with the intention of causing him to suffer significant harm.
1611189 (Refugee) [2021] AATA 730 (Unsuccessful)	8 February 2021	88–90, 94	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at these conclusions, the Tribunal noted that there was no information before to support a finding that there was any systematic or discriminatory conduct in Indonesia, attributable to, or arising from, the COVID-19 virus so as to amount to persecution. As such, the Tribunal was not satisfied that the applicant had a well-founded fear of persecution in Indonesia due to the presence of the COVID-19 virus there. Further, there was no information before the Tribunal that the impact of the virus upon the applicant would result in any of the types of significant harm defined by the Migration Act, with any requisite intent from another person or body. The Tribunal thus found that there was no real risk of the

			'reasonable' and removed the real risk; in particular, since the legal reforms of August 2019 referred to in the context of the refugee criterion. In this regard, the Tribunal noted that the protection offered by the authorities in a given country is not required to be absolute or infallible. Accordingly, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa).
2017721 (Refugee) [2021] AATA 630 (Unsuccessful)	1 February 2021	63–76	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the South Korean applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal referred expressly to ICCPR Article 7 and repeated the established proposition that Article 7's definition of torture and cruel, inhuman or degrading treatment or punishment requires an intention to inflict harm by some act or omission. Further, for the sake of completeness, even if the Tribunal accepted the applicant's late claim about the South Korean police seeking to investigate the applicant over any connection he might have with the crimes of "Mr B" or some other drug dealer, the harm he claimed to fear here was a lawful sanction that was not inconsistent with the Articles of the ICCPR.
JCCY and Minister for Immigration, Citizenship,	29 January 2021	113–126	The Tribunal affirmed a decision to not revoke the decision made under s 501(3A) of the Migration Act to

Migrant Services and Multicultural Affairs (Migration) [2021] AATA 66 (Unsuccessful)	cancel the Iraqi applicant's Class XB Subclass 202

			services, hospitality or tourism, and consider other regions of the country.
1608858 (Refugee) [2021] AATA 1211 (Successful)	27 January 2021	28–36	The Tribunal allowed an application for merits review of a decision refusing to grant the applicants protection visas, and remitted the matter for reconsideration with the direction that the applicants satisfied the complementary protection criterion in section 36(2)(aa) of the *Migration Act*. The Tribunal noted that 'significant harm' under section 36(2A) of the Act defines this in a manner that implies a standard of particularly grievous harm. In assessing the potential of the applicants facing a real risk of significant harm on return to Myanmar, the Tribunal first considered the various risks individually. Individually, when considering Applicant 1, and then considering Applicant 2, the Tribunal found that the risks applicable to each aspect of the applicants' various risk profiles did not reach a level that constituted a real risk of significant harm. However, when the cumulative effect of these particular vulnerabilities and risk profiles was considered, particularly if they were to return as a married couple, the Tribunal found that, cumulatively, due to these risks taken globally, there was a real risk that the applicants would be detained at the airport on return to Myanmar. The Tribunal further found that the country information suggested to a satisfactory level that what would result from this detention would be harm amounting to significant harm. This risk applied at the time of the Tribunal's decision and in the reasonably foreseeable future. Given this finding, the Tribunal was satisfied that, on return to Myanmar, the applicants faced a real risk of significant harm. Accordingly, the

			applicants satisfied the criterion in section 36(2)(aa) of the Act. In considering whether or not the applicants would have access to effective and durable state protection and the availability of relocation within Myanmar, having had regard to the country information and the evidence of the applicants, the Tribunal was satisfied that the principal agent of harm feared by the applicants was the Myanmar state and agencies thereof. The Tribunal found, therefore, that effective and durable state protection was not available to the applicants if they were returned to Myanmar.

			unsatisfactory in that it was evidently something he could reasonably discuss with his family.
2008406 (Refugee) [2021] AATA 623 (Unsuccessful)	18 January 2021	47–52	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal accepted that, in principle, arrest, torture and detention for indefinite or lengthy jail terms, without access to a fair trial and proper representation, would satisfy the definition of 'significant harm' in s 36(2A). However, as the Tribunal did not accept that the applicant's claims were made out on the evidence, this observation was expressed only as obiter.
1713060 (Refugee) [2021] AATA 567 (Successful)	13 January 2021	44–54	The Tribunal set aside the decision under review and substituted a decision not to cancel the Pakistani applicant's Subclass 866 (Protection) visa. Relevantly, in considering the existence of (and weight to be given to) any international non7S1o) a.

persecutory conduct if returned to Pakistan, which was not displaced by his brief return previously, for a compelling reason (the serious illness of his mother, who had passed away by the time of the Tribunal's decision).

			the applicant's evidence. However, it is unclear precisely on what basis any international non-refoulement obligations may have been owed to the applicant. For completeness, however, this decision is included here in these case summaries.
1620393 (Refugee) [2021] AATA 1043 (Successful)	12 January 2021	58	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The Tribunal was satisfied that the first applicant met the refugee criterion in s 36(2)(a) and that the other applicants satisfied s 36(2)(b)(i) on the basis of membership of the same family unit as the first applicant. Relevantly, however, the Tribunal also observed that whatever measures may have been applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions.
2007184 (Refugee) [2021] AATA 313 (Successful)	11 January 2021	40–54	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Burundian applicant a protection visa. The Tribunal was satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal was satisfied that the applicant's ex-partner's family would intentionally seek to exact mob revenge on the applicant and that such treatment could result in arbitrary loss of life or cruel and inhumane treatment and/or torture. The Tribunal was satisfied that such treatment amounts to significant harm as defined in s 36(2A). Further, given the reportedly widespread impunity which the police and other arms of the security forces reportedly enjoyed in Burundi, the Tribunal was not satisfied that the

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carrying out the death penalty in Lebanon, the Tribunal was satisfied that, in the event the applicant was returned to Lebanon, there would be reasonable grounds for believing that, as a necessary and foreseeable consequence of being removed for Australia to Lebanon, the applicant would suffer significant harm. That is, he would be detained (in which there was a real risk he would be tortured and subjected to cruel and inhuman behaviour) and subjected to the death penalty.

In reaching these conclusions, the Tribunal reiterated that the definition of ‘significant harm’ in the complementary protection context requires an element of intent. That is, an act or omission by which the significant harm (deprivation of life, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment) is intentionally inflicted upon a person for a specified purpose or reason. That is,

			that India is a functioning democracy with an independent judiciary. The Tribunal accepted that while there existed challenges with its institutions, where there was unrest the authorities in India moved to restore order, prosecute unlawful behaviour and protect its citizens. These observations appear to refer implicitly to, and to rely on, the exception of state protection in s 36(2B)(b).
Dan Granxxa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 5760 (Successful)	17 December 2020	173–176, 177	The Tribunal set aside the decision under review and substituted a decision that the cancellation of the Spanish applicant's visa be revoked under s 501CA(4)(b)(ii) of the Migration Act. However, in doing so, the Tribunal did not give any weight to the consideration of Australia's international non-refoulement obligations. Nonetheless, the Tribunal dealt in some detail with a miscellaneous submission advanced by the applicant about the relevance of Australia's international non-refoulement obligations. The Tribunal explained (footnotes omitted; italics in original): [173] The further miscellaneous contention put on behalf of the Applicant is that if the Applicant is removed from Australia to Spain, Australia will be in contravention of Articles 12(4) and 17(1) of the

international obligations under the ICCPR may be relevant to determining whether there is 'another reason' to revoke a mandatory cancellation."

[174] Our initial approach to this submission is piniiss

			provisions of either Article 12(4) or 17(1) of the ICCPR are engaged. His removal from Australia would occur pursuant to Australian law and procedure involving a contested determination during which the Applicant would have been offered appropriate procedural fairness.
1807693 (Refugee) [2020] AATA 6149 (Unsuccessful)	17 December 2020	65–67	The AAT affirmed a decision refusing to grant the applicant a protection visa. The Tribunal reiterated its findings reached with respect to the refugee criterion and was not satisfied that there was a real risk that the applicant would suffer significant harm for any of the reasons claimed if he returned to India. 94.2 282.48 345 reW nBT0.17 m-10 (9 o (

1700708 (Refugee) [2020] AATA 5362 (Unsuccessful)	17 December 2020	43, 50–52, 53	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Lebanese applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, however, the Tribunal also referred to the exception in s 36(2B)(c) and noted that there was no persuasive information before the Tribunal to suggest that any sectarian tensions or implied concerns harboured on behalf of the applicant by his parents with respect to general violence or lack of security in Lebanon were faced by the applicant personally.
1800082 (Refugee) [2020] AATA 5891 (Unsuccessful)	16 December 2020	102–113	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Papua New Guinean applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal referred expressly to the exception of relocation in s 36(2B)(a) and found that the risk of harm from electoral violence tribal land disputes was localised in a specific province of PNG in which the applicant's tribal lands were located, and that the applicant would not face a real risk of significant harm in Port Moresby. Additionally, the Tribunal was not satisfied that there was a real risk the applicant would face significant harm if he was to relocate to Port Moresby on the basis that he was an

			educated person, who was in a relationship with an Australian citizen with whom he had a young child. In all the circumstances, the Tribunal found it was reasonable and practical for the applicant to relocate to Port Moresby where he could live with his mother, who was working with the PNG government.
1615121 (Refugee) [2020] AATA 5704 (Unsuccessful)	14 December 2020	135–140	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicants protection visas. Due to credibility concerns, the Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, however, the Tribunal did accept as genuine the applicants' evidence about the issues of their daughter's possible autism diagnosis and how she would be perceived if they returned to a rural area of Fujian Province ([127]). Nonetheless, the Tribunal considered that the applicants' daughter's possible autism diagnosis did not put the applicants at risk of being arbitrarily deprived of their lives, suffering the death penalty, being subjected to torture, or to cruel, inhuman or degrading treatment or punishment. Country information indicated that the situation in China for children with autism and their parents was continuously improving, and there was no evidence that treatment or education options would be intentionally withheld from the applicants (in an apparent reference to the basic principle that complementary protection obligations are concerned only with intentional acts or omissions occurring in the relevant country). There was no evidence that the

			applicants would be at risk of suffering significant harm due to their daughter's health needs.
1920271 (Migration) [2020] AATA 6042 (Successful)	14 December 2020	72–75, 76–88, 99	The Tribunal sets aside the decision under review and substitutes a decision not to cancel the Afghani applicant's Subclass 155 (Five Year Resident Return)

			36(2A). The Tribunal also considered the applicant's claim of mental harm to her as a result of being separated from her son. However, while acknowledging that separation would be difficult for her and her son, the Tribunal found that mental harm resulting from the separation of a family member arising *solely* from the act of removal of an applicant from Australia to her receiving country did not constitute significant harm.
2013022 (Refugee) [2020] AATA 5966 (Unsuccessful) 1619584 (Refugee) [2020]	11 December 2020	211–223	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Iranian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal similarly noted issues with the applicant's credibility. Relevantly, however, the Tribunal also was not satisfied that the applicant personally had suffered significant harm as a result of Iran's political and religious make-up, its socio-economic conditions and its governance, and the relative disadvantage in south-western Iran, and the Tribunal did not accept that there were substantial grounds for believing that he would in the future, as a necessary and foreseeable consequence of being removed from Australia to Iran. This appears to refer implicitly to, and to rely on, the exception in s 36(2B)(c).

or deliberate act or omission of a third person or persons such as could constitute arbitrary deprivation of life, cruel or inhuman treatment or punishment, degrading treatment or punishment or torture. As such, the Tribunal did not accept that any economic harm to which the applicant may be subjected if returned to Malaysia would meet the definition of 'significant harm', as that term is exclusively defined in s 36(2A).

Additionally, the Tribunal considered that the risk of harm to the applicant arising out of the state of the

			person to cause the applicant significant harm as a result of the COVID-19 pandemic.
GCRM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) (Successful)	2 December 2020	75-95	The Tribunal substituted a decision revoking the mandatory cancellation of the applicant's visa, finding that non-refoulement obligations were a relevant consideration if the applicant were returned to South Sudan.
1705443 (Refugee) [2020] AATA 5728 (Unsuccessful)	30 November 2020	64–74	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, due to credibility concerns, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). However, in the course of considering the application of s 36(2)(aa), the Tribunal briefly referred to Article 7 of the ICCPR and the definitions of 'cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture' as those terms are used in the Migration Act. After referring to these definitions, the Tribunal explained (at [69], emphasis in original): Essentially, all three of these definitions require that there be *an intention to inflict harm* by some act or omission. Torture does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. "Cruel or inhuman treatment or punishment" does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and

to escape the problems he had faced in his home area as a result of his practice of Hinduism. As indicated, the Tribunal accepts that the significant

			In the final analysis, while the competing considerations were finely balanced, the cumulative impact of all of the above matters resulted in the Tribunal forming the view that it would not be reasonable for the applicant to relocate within Bangladesh. Given these findings, the Tribunal was satisfied that the applicant met the complementary protection criterion.
1907872 (Refugee) [2020] AATA 5521 (Successful)	24 November 2020	44–55, 67	The Tribunal set aside the decision under review and substitutes a decision not to cancel the Afghani applicant's Subclass 866 (Protection) visa. In considering whether Australia's international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal considered that there was a real risk that the applicant's life and freedom would be threatened due to his Hazara race and Shi'a religion if he were returned to Afghanistan. The Tribunal was not satisfied there were current protection m9 (o)-(o)-4.1 (t)-6 1(e)4 (t)-2a449.04 2512

arriving at this conclusion, the Tribunal accepted

			between this qualification and the assessment of 'real risk' under s.36(2)(aa), which necessarily involves consideration of a range of matters, including the availability of protection from the authorities. However, the test in s.36(2B)(b) is differently expressed to the effective protection measures test as understood in Australian refugee law, where the relevant standard is an adequate or effective, rather than perfect, level of protection. That is, section 36(2B)(b) requires the Tribunal to be satisfied that the protection available would remove the real risk of significant harm. The Tribunal then concluded that, having considered the country information and the accepted circumstances of the applicant as discussed under the Tribunal's effective protection findings for s 36(2)(a), the level of protection from state and other authorities available to the applicant if removed from Australia to anywhere within Malaysia would remove the real risk of significant harm. Additionally, for the reasons expressed under the applicant's refugee claim, the Tribunal found that there was no real risk he would be significantly harmed as a result of being perceived as having a disability if he returned to Malaysia, as claimed. Finally, the Tribunal did not accept that the applicant would not be able to gain employment and, as a result, suffer economic harm to the extent that would constitute significant harm. As such, the Tribunal did not accept that the applicant had a real risk of significant harm as

			outlined in s 36(2A)(c) and (d). Accordingly, the Tribunal found that there was no real risk that the applicant would be significantly harmed by reason of not being able to access paid employment as claimed or as a result of the Malaysian economy more generally.
KCCD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 5145 (Successful)	20 November 2020	116-153	The Tribunal revoked the cancellation of the humanitarian visa of a Dinka applicant from South Sudan, finding he was owed non-refoulement obligations including under the ICCPR.
1801951 (Migration) [2020] AATA 5179 (Successful)	19 November 2020	59-69	The Tribunal substituted a decision not to cancel an Afghan, Shia, Hazara applicant's resident visa, finding that as a returnee from the west, with little family support or network, he would be at risk of serious harm if returned to Afghanistan, and therefore cancellation may put Australia in breach if its non-refoulement obligations.
1707006 (Refugee) [2020] AATA 5436 (Unsuccessful)	17 November 2020	55–65 (first applicant), 66–71 (second applicant), 72–77 (applicants' children), 78–89 (consequential considerations)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicants protection visas. The Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa). With respect to the first applicant, the Tribunal was prepared to assume that a gang connected to illegal moneylending still existed, that members of the gang remembered the first applicant, and that they had reach into Terengganu (where the first applicant indicated he and his family would return to). However, the Tribunal

noted that the first applicant had a number of options

			With respect to the first and second applicants' children, the Tribunal considered a number of claims individually and cumulatively, including that they would face bullying in their school at the same time (a) their father would need to negotiate through an intermediary the repayment of the loan he took out and (b) their mother would be participating in peaceful protests while collectively the family would be working hard to make ends meet. Despite there being a considerable number of issues impacting the applicants that the family would be dealing with concurrently, the Tribunal found that none of the applicants faced a real risk of significant harm.
1617684 (Refugee) [2020] AATA 5310 (Unsuccessful)	17 November 2020	136–145 (general findings), 146–152 (state protection), 153 (COVID-19)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Kenyan applicants protection visas. Due to credibility concerns, the Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). The Tribunal found that the applicants did not have a well-founded fear of persecution in Kenya

			as a result of any deliberate act or omission by any group or person done with the intention of causing her to suffer significant harm ([53]).
1617394 (Refugee) [2020] AATA 5435 (Successful)	12 November 2020	65–78	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. The Tribunal remitted the delegate's decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(aa). The Tribunal accepted that the applicant faced a real risk of assault, physical or sexual

applicant provided to the delegate [below] a number of country reports, indicating that under a presidential degree [sic] of October 1994, those who practise JW religious [sic] have their Eritrean citizenship revoked. The applicant states that she cannot return to Eritrea where she could face persecution, and has no right to live

			applicant's ill health, purported inability to subsist, and family circumstances, the Tribunal concluded that any inability to access medical treatment would not have the required intentional or deliberate act or omission, or some form of deliberate conduct that would result in the applicant being deprived of his life or suffering another form of significant harm ([131]).
GNLS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4418 (Successful)	4 November 2020	154-190	The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the applicant's Five Year Resident Return (Class BB) (Subclass 155) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal re-iterated the settled propositions that the Migration Act is not an exhaustive expression of Australia's non-refoulement obligations and that a decision-maker must consider whether non-refoulement claims made by an applicant constitute another reason for revocation of the cancellation

Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4429 (Successful)			Global Special Humanitarian (Class XB) (Subclass 202) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal noted that such obligations 'loomed large' at the hearing ([85]) and concluded that the applicant had a subjective and genuine fear of harm coming to him should he be sent to South Sudan. The Tribunal was satisfied that non-refoulement obligations, on the evidence, were engaged and this consideration weighed strongly in the applicant's favour.
RPQB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4656 (Unsuccessful)	2 November 2020	302-309	This case is concerned with review of a decision to cancel the Somalian applicant's Refugee Class XB Subclass 200 (permanent) visa rather than with an actual claim of complementary protection. Relevantly, however, in the course of affirming the decision of a delegate of the Minister not to revoke the visa cancellation, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal did not consider that the applicant's claim to fear harm in Somalia owing to the armed conflict in that country was likely to give rise to such non-refoulement obligations. To the extent that the applicant claimed to fear generalised violence in Somalia owing to the conflict, such a claim was bound to fail as a claim under the 1951 Refugees Convention because the applicant did not identify a Convention reason for the feared persecution. Additionally, the Tribunal noted that the applicant's claims would fail as complementary protection claims (i.e. as claims giving rise to non-refoulement obligations under the ICCPR or the CAT) because, to the extent that the applicant may have faced any risk(s) of harm of generalised violence as a result of armed conflict in Somalia, any such risk(s)

			were faced by the Somalian population generally and not the applicant personally (see s 36(2B)(c)).
1709883 (Refugee) [2020] AATA 5364 (Successful)	29 October 2020	35–39, 44–45	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Lebanese applicant a protection visa. The Tribunal remitted the delegate's decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Additionally, the Tribunal found that the applicant satisfied the complementary protection criterion in s 36(2)(aa). However, there is little clear, direct, or detailed analysis of the question of complementary protection, and the reasoning behind the Tribunal's conclusion on this point appears to be subsumed within its reasoning with respect to the refugee criterion. The Tribunal was satisfied that the applicant faced a real chance of serious harm in the whole of Lebanon based on being a member of a particular social group, namely gay men. The risk applied to the applicant's home area as well as all parts of Lebanon, including Beirut, even though there was a little more tolerance in Beirut, based on the DFAT assessment and other independent evidence provided. The Tribunal considered that the serious harm that the applicant had a real chance of facing included significant physical harassment and/or significant physical ill-treatment. The Tribunal considered that the reason for the harm, namely the applicant's sexuality, would be the essential and significant reason for the harm. The Tribunal considered that the persecution would be systematic and discriminatory.

The Tribunal also considered whether effective protection measures were available to the applicant in Lebanon as required by s 5LA. Given the harm that the applicant feared as a gay or bisexual man was from the o5d-11 (f)-11 (ect)-6 (i

Multicultural Affairs (Migration) [2020] AATA 4254 (Successful)	(Subclass 202) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal concluded that the applicant had a well-founded fear of persecution by reason of his membership of the following groups: Assyrian Christians; returnees; and deserting members of the armed forces. Moreover, he had no family left in Syria who could assist with his employment, accommodation or sustenance. Any need he may have for medical assistance was likely to be unmet. In these circumstances, the Tribunal concluded that non-refoulement obligations arose in relation to the applicant and that his removal to Syria would put Australia in breach of its international treaties, which was a powerful einaul heini em2 (i)-2 (

			that there was a real risk of arbitrary deprivation of life or of cruel or inhuman treatment or punishment; or of degrading treatment or punishment, which require intention on behalf of the government, or of the other kinds of significant harm.

			complementary protection claims failed due to a lack of consistency and reliability. As such, the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to South Korea, there was a real risk that the applicant would suffer significant harm.
1825299 (Migration) [2020] AATA 4234 (Successful)	9 October 2020	67-87	This case is concerned with review of a decision to cancel the applicant's Subclass 202 (Global Special Humanitarian) visa rather than with a claim of complementary protection. Relevantly, however, it provides an analysis of the internal relocation principle in the context of Australia's international non-refoulement obligations and makes reference to s 36(2B)(a). For example, Member Millar explains (at [69]): In particular, the internal relocation principle has been noted in cases such as *Ali v Minister for Home Affairs* (*Ali*) to be broader in international obligations than in the criteria in s.36(2)(a) of the Act. This is because under the Act a person will not have a well-founded fear of persecution if the person can reasonably relocate to an area where they do not have a well-founded fear of persecution, whereas under the Act, a person who can reasonably relocate will not have a well-founded fear of persecution [sic]. This principle also applies to complementary protection in s.36(2B)(a). This is of particular relevance in this case due to differences in the situation in [the applicant]'s home area of [Location 3] compared with the situation in Somaliland. It is also noted in case [sic] such as *Ali* and *Hernandez* that there is a consideration of the

impact on non-fulfillment of the obligations on

			rightly or wrongly, that the applicant might have been hostile to the regime. In the Tribunal's opinion, the applicant would have faced an appreciable risk of persecution. As such, the Tribunal found that the non-refoulement obligations owed by Australia to the applicant and to the international community (as a matter of international law) weighed very strongly in favour of revoking the visa cancellation.
1702979 (Refugee) [2020] AATA 4723 (Unsuccessful)	6 October 2020	30-41	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In the course of arriving at its conclusion with respect to complementary protection, the Tribunal made express reference to, and discussed, the relationship between ss 5(1) and 36(2A)–(2B) of the Migration Act and Article 7 of the ICCPR. In the final analysis, however, the Tribunal concluded that, as was the case with the applicant's refugee claims, his complementary protection claims failed due to a lack of consistency and reliability. As such, the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to China, there was a real risk that the applicant would suffer significant harm.
1916411 (Refugee) [2020] AATA 4703 (Unsuccessful)	5 October 2020	32-37	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection

			obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal found: that there was no real risk that the applicant would suffer significant harm from the robber who attacked her in 2016; that the risk that the applicant would be harmed in a random act of violence in her workplace or because she was a woman was a remote and not a real risk; and that the feared harm of an act of generalised or criminal violence was a risk faced by the population of Thailand generally and not the applicant personally (see s 36(2B)(c)). Further, as to the applicant's desire not to be separated from her Australian family members and to remain in Australia to enjoy the lifestyle and her NSW property, the Tribunal found that any harm caused by such separation occurring, including potential distress and emotional harm, was not due to any of the acts or omissions which could constitute 'significant harm' in s 36(2A).
2010168 (Refugee) [2020] AATA 4634 (Unsuccessful)	16 September 2020	179-187	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Liberian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). For the same reasons provided in the context of discussing refugee protection, the Tribunal

group. Further, the Tribunal declined to find that there was a real chance of serious harm due to a lack of access to mental health services in Liberia. Nor was the Tribunal satisfied that the applicant faced a real risk of significant harm due to ostracism or discrimination as a result of his mental health issues, as the Tribunal considered that this did not rise to the statutory threshold of 'significant harm'. Additionally, although economic conditions were

			record. The applicant had no real social or familial links with Sudan that could help him navigate what was by the time of the Tribunal's decision an alien landscape to him. He also had few skills that would allow him to survive, let alone prosper in Sudan. Given these circumstances, the Tribunal concluded that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sudan, there was a real risk that the applicant would suffer significant harm such as to engage s 36(2)(aa).
1823470 (Refugee) [2020] AATA 3825 (Successful)	10 September 2020	72-77	The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the Iraqi applicant's Subclass 866 (Protection) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. While an International Treaties Obligations Assessment had not been completed in relation to the applicant, the Tribunal rejected the respondent's submission that the Tribunal could not proceed with its review without waiting for an ITOA assessment to be completed by the Department. With regard to non-refoulement obligations in relation to Iraq, the Tribunal accepted that a single woman living alon3-2 (uep2 (vi)Dok6 (me)6 (r)3 (a)4J-0.01 6147.86 0 TdreW nd0 pt)-12 (e)4

1620482 (Refugee) [2020] AATA 3820 (Unsuccessful)	10 September 2020	97-205 (assessment of claims, including on issues of credibility), 189-201 (generalised violence lacked requisite systemic quality), 202-205 (relevance of s 36(2B)(c))	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under ss 36(2)(a) or (aa). Additionally, the Tribunal noted that the generalised violence evident in Pakistan as described in the country information summary was, by definition, random and perpetrated by unrelated criminal organisations, such that it lacked the requisite systematic quality that gives rise to protection obligations under the Migration Act. The Tribunal also discussed the authorities relating to the exception in s 36(2B)(c) (risks faced by a population generally rather than an applicant personally) and observed that, to the extent that the applicant's claims were based on harm arising from generalised acts of violence in Pakistan perpetrated by agents of harm including, but not limited to the Taliban, various non-ideological criminal thugs, and other non-state actors, it did not give rise to protection obligations in Australia under s 36(2)(aa) due to the lack of particularity of the harm that is required.
1702188 (Refugee) [2020] AATA 4633 (Unsuccessful)	8 September 2020	143-145 (summary of credibility findings and conclusion on refugee protection), 146-157 (complementary protection)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal did not accept that the applicant was the victim of attacks and threats by members of the Lashkar-e-

			she returns to Malaysia because she owes money that she says she cannot repay. In doing so, The Tribunal considered whether the harm's could support a claim under complementary protection criteria. (1820632 (Refugee) [2020] AATA 3477 (Unsuccessful).
1807750 (Refugee) [2020] AATA 3830 (Unsuccessful)	3 September 2020	96-103, 105	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal did not accept that the applicant faced violence or threats of violence f.8 103.4eat vior t7e(t)-2 (i (hr)3vi)-2 (ola)4 (t) A4 ( )]TJ0 (

protection), 69 (conclusion on refugee protection), 70-71 (complementary protection)	a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did

			had concocted his claim that his father took his identity documents and borrowed large sums of money from a bank and a loan shark, leaving the applicant with large debts. As such, the Tribunal found that there did not exist substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Taiwan, there was a real risk that the applicant would suffer significant harm under s 36(2A) from a loan shark and/or their agents, a bank, the Taiwanese authorities or anyone else. Additionally, the Tribunal cited its earlier findings reached with respect to the refugee criterion that the applicant would have been able to obtain effective protection from (and would in the future be able to obtain effective protection from) the Taiwanese police if harassed, threatened and subjected to criminal violence by a loan shark and/or their agents as claimed. The Tribunal considered that the effective protection available in Taiwan was accessible and durable, and consisted of appropriate laws, a reasonably effective police force and an impartial judicial system. In the context of complementary protection, these findings appear to correspond implicitly to the exception of state protection in s 36(2B)(b).
1621210 (Refugee) [2020] AATA 4525 (Unsuccessful)	25 August 2020	53-59 (summary of credibility findings), 62 (analysis of COVID-19), 63-64 (conclusions)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Ugandan applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Taking the applicant's claims at their highest, on the basis of credibility concerns, the Tribunal did not accept that the applicant had been or

applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the applicant would be arbitrarily deprived of life, the death penalty would be carried out on him, he would be subjected to cruel or inhuman treatment or punishment, or he would be subjected to degrading treatment or punishment if he returned to Malaysia. The Tribunal found that effective protection measures were available to the ap(p)2 5l ( )-10 (i)-2 (f)3 (he)4 ( )-iu

			Sudan and noted that, without some sense of what was likely to happen to the applicant if the visa cancellation was maintained, it was not possible to give meaningful consideration to the question of whether there were potentially devastating consequences for the applicant if an unfavourable decision was made. In the final analysis, however, the Tribunal concluded that there was a risk that the applicant could be returned to South Sudan in breach of Australia's non-refoulement obligations but that that risk was extremely low. As such, the Tribunal found that it was unlikely that Australia owed the applicant non-refoulement obligations.
1935655 (Refugee) [2020] AATA 4277 (Successful)	17 August 2020	111-115	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Iranian applicants protection visas. The Tribunal remitted the decision for redetermination with the direction that the third applicant was a person who satisfied both ss 36(2)(a) (the refugee criterion) and (aa) (the complementary protection criterion). The Tribunal also directed that the other applicants satisfied ss 36(2)(b)(i) and (c)(ii) on the basis of membership of the same family unit as the third applicant. Regarding the third applicant and the application of s 36(2)(aa), the Tribunal relied on its earlier findings reached in the context of s 36(2)(a) and concluded that there was a real risk that the third applicant would suffer significant harm if returned to Iran due to her being a Christian convert.
1816711 (Refugee) [2020] AATA 4358 (Unsuccessful)	11 August 2020	48-54	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicants protection visas. The Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicants did

			not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the harm claimed by the applicants — that is, harm due to COVID-19 and the economic and political situation in Thailand — amounted to significant harm as defined in s 36(2A), whether considered individually or cumulatively.
1731540 (Refugee) [2020] AATA 4173 (Unsuccessful)	11 August 2020	46-70	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the co4542 (on obl)-2 (i)-2 (ga)4 (t)-2 (i)-2 (ons)-1 (

where there would not be a real risk that he would suffer

1800172 (Refugee) [2020] AATA 3298 (Unsuccessful)	2 August 2020	19-36	The Tribunal affirmed a decision not to grant a protection visa to the Chinese applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal declined to find that the applicant would be physically attacked and his life threatened by an unidentified person, or that he would be persecuted by his fellow countrymen or suffer persecution by the police, go to prison and suffer mental and physical persecution, as claimed. As to the applicant's fear of contracting COVID-19 if returned to China, the Tribunal found that the risk of contracting the illness would be faced by the Chinese population generally and not the applicant personally (see s 36(2B)(c)). Nor would it be intentionally inflicted on him, nor intended to cause extreme humiliation, which is unreasonable, as required under the complementary protection guidelines to constitute significant harm.

accepting that the applicant was exposed to a risk of

			during the pandemic. This may be an implicit reference to, and appears to suggest reliance on, s 36(2B)(c) of the Act, which negates a finding of a real risk of significant harm if a risk is faced by a population generally rather than by the applicant personally.
1821208 (Refugee) [2020] AATA 3189 (Unsuccessful)	23 July 2020	33-48	The Tribunal affirmed a decision not to grant a

2006126 (Refugee) [2020] AATA 3809 (Unsuccessful)			him the visa. While the applicant failed to provide a name by which he had previously been known, the facts that underpinned the finding that he was a refugee remained, and it had not been established that these were incorrect. It followed that if cancelling the applicant's visa resulted in him being liable to detention and removed from Australia, this would breach Australia's non-refoulement obligations.

1617561 (Refugee) [2020] AATA 3526 (unsuccessful)	17 July 2020	241-280	The Tribunal affirmed the decision not to grant a protection visa to a Sri Lankan applicant and in doing so

			"As noted above, the 'real risk' test imposes the same standard as the 'real chance' test. For the reasons that follow, the Tribunal is not satisfied that such treatment, individually or cumulatively, amounts to significant harm anywhere in Sri Lanka." (Para 271)
2001388 (Refugee) [2020] AATA 4529 (Successful)	16 July 2020	13-33	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal remitted the decision for redetermination with the direction that the applicant was a person who satisfied s 36(2)(aa). The applicant, who was born in Australia to Kenyan born parents, claimed that she would be a victim of violence against women and girls if she was forced to return to Kenya. The applicant also claimed that she would be a victim of violence because of her family background and because the tribe she belonged to
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JHZB and Minister for Immigration, Citizenship, Migrant Services and			security and humanitarian situation there. The Tribunal gave this consideration ‘very significant weight’ ([78]) in favour of revoking the visa cancellation. It is unclear on what specific basis these non-refoulement obligations were owed but, for completeness, this case is included in this list of complementary protection cases.

			protection visa. The Tribunal remitted the delegate's decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). On the other hand, in discussing the complementary protection criterion in s 36(2)(aa), the Tribunal appeared to refer to the exception in s 36(2B)(c) and noted that 'whatever measures may be applicable to the population of Zimbabwe generally in response to the present COVID-19 crisis, do not in the absence of additional considerations, amount to an intentional act or omission for the purposes of complementary protection provisions' ([11]).
1714497 (Refugee) [2020] AATA 3301 (Unsuccessful)	1 July 2020	114-125 (refugee status), 126-131	

be drawn that fears of the militia were fears shared by the Iraqi population generally. The Tribunal reached this finding in the context of considering refugee status, but its wider significance is that it appears also to relate to the exception to complementary protection of harm suffered by a population generally rather than an

			threats. There was no indication that assistance would have been withheld from the applicant by the Royal Malaysia Police prior to his leaving Malaysia, had the applicant disclosed his true situation to the police. The RMP had in fact taken action against loan sharks, including fining and prosecuting them. The Tribunal considered that this met the requirements of s 5LA(2) in the context of considering refugee status, but the Tribunal adopted this finding when determining the complementary protection claim, and its significance appears to relate to the exception to complementary protection of state protection (see s 36(2B)(b)). Similarly, it was open to the applicant to relocate to another part of Malaysia on his return to avoid the harm he feared. The applicant had demonstrated, through his travel to Australia and his finding work and accommodation in Australia that he was adaptable and resourceful (see exception of relocation in s 36(2B)(a)).
1732882 (Refugee) [2020] AATA 2315 (Unsuccessful)	24 June 2020	24-39, 40-41, 42-45	The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal did not find the

the wide network of police stations in Malaysia and is durable, and consists of an appropriate criminal law, a

			death penalty. Further, the Tribunal specifically found that the applicant's fears relating to the lack of economic certainty, the lack of general security, political instability, and the spread of COVID-19 were faced by the Thai population generally (see exception in s 36(2B)(c)).
1704758 (Refugee) [2020] AATA 2915 (Unsuccessful)	19 June 2020	103-108, 110	The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the South Korean applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). There was not a real risk that the applicant would suffer significant harm if returned to South Korea due to: his conscientious obk4 (d t)1 (h)-4 (e ap)1 ob19 J m4 (r)3 ((r)38002 Tw [(

1619231 (Refugee) [2020] AATA 3203 (Unsuccessful)	17 June 2020	29-41 (refugee status), 42-51 (complementary protection)	The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). There was not a real risk that the applicant would suffer significant harm in Indonesia due to: her relationship with (and/or marriage to) a non-Muslim; the disapproval of her family (and including due to her refusing to marry in accordance with their wishes and to her 'caste'); intrusiveness, social disapproval, and rejection by members of the Indonesian community due to her interfaith marriage and her potential incapacity to have children; or having to obtain treatment and negotiate the Indonesian health system (even if it required or involved some financial cost). Additionally, while there was a real risk that the applicant might contract COVID-19 in Indonesia if she returned, the contraction of the virus would not be due to any act or omission by any person or authority in Indonesia whereby severe pain or suffering (or extreme humiliation) was *intentionally inflicted* on the applicant. The real risk of contracting COVID-19 was also one which was faced by the Indonesian community generally. This relates to the exception of harm that is faced by a population generally and that is not applicant-specific (see s 36(2B)(c)).

			Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal declined to find that the applicants were threatened by a loan shark and could not pay a loan they had procured from this individual. In any event, it was not established that the applicants had no protection from the local Thai police. This appears to relate to the exception to complementary protection of state protection (see s 36(2B)(b)).
1708847 (Refugee) [2020] AATA 2626 (Unsuccessful)	16 June 2020	58-63, 64	The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there was a real risk that the applicant would suffer significant harm. The Tribunal cited country information in observing that gay life is more widespread and accepted in urban areas such as Kuala Lumpur than in other areas of Malaysia. The Tribunal cited this finding in the context of considering refugee status to support the conclusion that the applicant did not face a real chance of persecution for one or more of the grounds listed in s 5J(1)(a). However, the Tribunal adopted the same findings in determining the complementary protection claim. As

from criminals and criminal harm. The Tribunal cited these findings in the context of considering refugee status in support of

1903766 (Refugee) [2020] AATA 2247 (Successful)	9 June 2020	54-87, 88-91, 93-97	The Tribunal remitted this matter to a delegate of the Minister for Immigration and Border Protection with the directions that: (1) the first applicant satisfied ss 36(2)(a) and (aa); and (2) the second and third applicants satisfied s 36(2) because they were members of the same family unit as the first applicant. The three applicants were Chinese. As to refugee status, and having considered the applicants' claims singularly and cumulatively, the Tribunal found that there were substantial grounds for believing that, as a consequence of being removed from Australia to China, there was a real chance that the first applicant would suffer serious harm by reason of her religion as claimed. As to complementary protection, and having considered the applicants' claims singularly and cumulatively, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the first applicant being removed from Australia to China, there was a real risk she would suffer significant harm within s 36(2)(aa). Specifically, having considered the evidence provided by the first applicant and the available country information, the Tribunal found that there was a real risk she would suffer significant harm as a result of religion that would constitute degrading treatment or punishment pursuant to s 36(2A). At the same time, however, the Tribunal declined to find that the second and third applicants would suffer harm as result of being in breach of the

Chinese Family Planning Laws to the extent that it would constitute significant harm pursuant to s 36(2A).

			quoted in detail DFAT country information about the possibility of relocation within Malaysia, and the headnote of the case refers expressly to 'internal relocation'. This seems to be an implicit reference to, and suggests reliance upon, the exception of relocation in s 36(2B)(a). Additionally, the Tribunal made specific findings that: the Malaysian authorities, including the Royal Malaysia Police, are reasonably effective in combatting illegal money laundering; there was no indication from the available country information that the applicant would not receive assistance, if requested, from the RMP about any threat (actual or perceived) from his friends and relatives who were threatened by an illegal money launderer; and there was nothing in the available country information to suggest that the Malaysian authorities would be unable or unwilling to protect the applicant in his particular circumstances. These seem to be implicit references to, and suggest reliance upon, the exception of state protection in s 36(2B)(b).
1814873 (Migration) [2020] AATA 3304 (Successful)	27 May 2020	72-94	The Tribunal set aside a decision to cancel the Afghani applicant's Five Year Resident Return visa. The Tribunal considered that removal of the applicant from Australia would be in breach of Australia's international obligations relating to non-refoulment. However, these obligations appear to have been owed only under the Refugee Convention (although the ICCPR and CAT are briefly mentioned once each): "[93] The Tribunal considers that being a returnee from the West with a Pakistani accent in combination with

[the applicant]'s atheism and his profile as an [Occupation 1] would mean that he would face a real chance of serious harm if he were to be returned to Afghanistan on the basis of his religion and as a member of a particular social group.

[94] As a result, the Tribunal considers removal of [the applicant] from Australia would be in breach of its international obligations relating to non-refoulment. This weighs heavily in favour of not cancelling his visa."

The language of "real chance" here corresponds to that used in assessing refugee protection (cf "real risk" for complementary protection). Also, having a well-founded fear of persecution due to religion and membership of a particular social group are two of the five grounds for being recognised as a refugee under the Refugee Convention. For completeness, however, this

			generally and was not one faced by the applicant personally.
STZS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2504 (Unsuccessful)	20 May 2020	226-273	The Tribunal affirmed a decision to mandatorily cancel the applicant's Refugee Class XB (Subclass 200) visa. In analysing the "other consideration" of whether cancellation would lead to the applicant's removal in breach of Australia's non-refoulement obligations, the Tribunal found that there was no real chance that the applicant would suffer harm owing to any Refugee Convention-related ground, and that there was no real risk that the applicant would suffer significant harm, if returned to Ethiopia. The Tribunal made four findings. x First, there was no more than a remote risk that the applicant would suffer harm, much less significant harm within the meaning of s 36(2)(aa), on the basis of having an actual or perceived mental illness if he was returned to Ethiopia. x Second, in light of 'many unknown factors' ([235]), the applicant's risk of harm and/or hardship on the basis of drug-taking could not be assessed as being greater than a real, and not remote, risk. There was no evidence that the risk of suffering harm as a result of being found in possession of drugs was specific to the applicant and not one that was faced by the population of Ethiopia generally. Further, in terms of harm or hardship (falling short of giving rise to non-refoulement obligations) that could arise from drug use, it was unclear, for example, what sort of punishment would be likely if the applicant were caught with drugs, although the Tribunal noted that imprisonment was possible.

- Third, there was no more than a remote possibility that a person such as the applicant would be harassed, detained, tortured or killed by the Ethiopian authorities solely for being of Oromo

			reasonably receive effective assistance from the Royal Malaysia Police against any potential threats of harm from any "*ah longs*" (loan sharks); the applicant's daughter would be able to access support services in Malaysia for hearing impaired children; and the applicant's son would have access to mental health services in Malaysia. These seem to be implicit references to, and suggest reliance upon, the exception of state protection in s 36(2B)(b).
1819862 (Refugee) [2020] AATA 2457 (Unsuccessful)	8 May 2020	47-55, 56-60	The Tribunal affirmed a decision not to grant a protection visa to the Pakistani applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there was a real risk that the applicant would face significant harm if removed from Australia to Pakistan. For completeness, the Tribunal also concluded that, had it found that there did exist substantial grounds for believing that the applicant would face such harm, it was nonetheless reasonable for the applicant to relocate to areas such as Karachi, Quetta, Islamabad and Rawalpindi, where there was not a real risk that he would suffer significant harm (see s 36(2B)(a)).
ZLYD and Minister for Home Affairs (Migration) [2020] AATA 1737 (Successful)	8 May 2020	55-62	The Tribunal substituted a decision that a South-Sudanese applicant's visa not be cancelled, finding that *non-refoulement* obligations were owed to the applicant in respect of the harm that he may suffer as a person

1711974 (Refugee) [2020] AATA 2056

			The delegate therefore found that there was a factual basis to the applicant's fear of being subjected to severe forms of sectarian violence in Parachinar. This is consistent with current country information." (Para 41)
1805041 (Refugee) [2020] AATA 3366 (Successful)	30 April 2020	76-97	The Tribunal substituted a decision not to cancel an Iranian applicant's protection visa, also finding that *non-refoulement* obligations were a relevant consideration.
1709004 (Refugee) [2020] AATA 1536 (Unsuccessful)	28 April 2020	104-115	The Tribunal affirmed a decision not to grant protection visas to Indian applicants. The Tribunal accepted there was a real risk of significant harm from the applicant husband's family, however, found relocation a viable option.
1732410 (Refugee) [2020] AATA 2110 (Successful)	27 April 2020	92-111	The Tribunal substituted a decision revoking the cancellation of an Iraqi applicant's protection visa. The Tribunal found that the applicant's removal from Australia to Iraq would be in breach of Australia's international non-refoulement obligations. Specifically, the Tribunal found that the applicant faced a small but real chance of persecution in all areas of Iraq; effective protection measures were not available to the applicant; it was not reasonable for the applicant and his family to relocate to another part of Iraq; and the applicant could not obtain, from an Iraqi authority, protection such that there would not be a real risk that the applicant would suffer significant harm. The Tribunal considered removal of the applicant to Iraq in breach of Australia's international non-refoulement obligations to be 'a significant matter' against cancellation of the

			Family Planning Laws (which would constitute degrading treatment or punishment pursuant to s 36(2A)). The Tribunal also found that it would not be reasonable for the second applicant and her family to relocate outside the area of her "*hukou*" (household) or outside the province, because of their financial situation, low skills, their liabilities and the second applicant's sibling's disability, as they could not easily afford to move or access basic services for the applicant. The Tribunal further found, by reference to the information about the situation in China, that if the second applicant were to relocate without a change of *hukou*, she would face serious difficulties and precarious uncertainty in her new place of abode, in access to housing, employment, education, and (possibly) health services. While the Tribunal reached these findings in the context of considering refugee status, the Tribunal adopted the same findings in determining the complementary protection claim. As such, these findings appear implicitly to refer to, and rely upon, the exception to complementary protection of relocation (see s 36(2B)(a)).
1706289 (Refugee) [2020] AATA 2456 (Unsuccessful)	2 April 2020	36-42	The Tribunal affirmed a decision not to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there was a real risk that the applicant would suffer significant harm as a necessary and

			foreseeable consequence of him being removed from Australia to Malaysia. The Tribunal accepted the applicant's concern that he may face some difficulty finding suitable employment because of the poor economic circumstances in Malaysia. The Tribunal found, however, that these circumstances were faced by the Malaysian population generally and not just by the applicant personally (see s 36(2B)(c)).
1713094 (Refugee) [2020] AATA 990 (Successful)	27 March 2020	80-83	In substituting a decision not to cancel a Christian Iraqi applicant's protection visa, the Tribunal found that Australia's *non-refoulement* obligations were a relevant consideration.
CYNQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 545 (Successful)	13 March 2020	148-172	In substituting a decision to revoke the cancellation of a Kenyan applicant's Class XB Subclass 202 protection visa, including because there would be a real possibility that the applicant would suffer significant harm or hardship, the Tribunal also discussed conflicting authorities in the Federal Court on *non-refoulement*. "As matters stand, there are currently conflicting authorities in the Federal Court as t0.25 Twos t0.25 Twosuding bec7.64 287s mat

			“Prolonged detention is however a real possibility for the current Applicant, and this would obviously result in significant harm or hardship to him. The Tribunal considers that that possible prolonged detention of the the Applicant, along with the other hardships that have been already identified in these reasons weigh significantly in the Applicant’s favour.” (Para 172)
1816263 (Migration) [2020] AATA 2158 (Successful)	11 March 2020	87-116	The Tribunal substituted a decision revoking the cancellation of an Afghan applicant’s Five Year Resident Return visa. The Tribunal found that the applicant’s removal from Australia to Afghanistan would be in breach of Australia’s international non-refoulement obligations. However, the Tribunal appears to base its decision principally — if not exclusively — on the conclusion that the applicant came within Article 1A(2) of the Refugee Convention and, as such, his removal from Australia would breach Article 33 of the Convention. Nonetheless, for completeness, this case is included in this list of complementary protection cases

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			refoulement obligations), the Tribunal found that there was no real risk that the applicant would suffer significant harm in Iraq. The Tribunal was satisfied that the current civil unrest, lack of general security and the instability the applicant may fear in Iraq are faced by the population generally and not by him personally (see s 36(2B)(c)).
MCCN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 930 (Unsuccessful)	3 March 2020	135-166	The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Iraqi applicant's visa but accepted that there is a real risk of serious harm to the applicant that rises to a level to trigger non-refoulement obligations. "More particularly, the Tribunal is satisfied that the applicant's stated claims of harm relating to his membership of the Christian minority and as a consequence of the potential for him to be associated with perceived wealth, represent a risk of harm to a lev7 of harm to arJT[*(w5)].[*(a10 4i)-2 (c(JT*77.6)-1 (ma 1[*(a6[*(a11*3)9 ()3 (s)-1 (hi)-2 9.616.48

person who is HIV positive, if he were returned to Fiji in the reasonably foreseeable future will fall victim either to being subjected to cruel or inhuman treatment or punishment or be subject to degrading treatment or punishment committed upon him because he would be unable to receive, the proper counselling care and medical treatment he requires as a person having been diagnosed as HIV positive." (Para 66)

"The Tribunal finds that the applicant if he was returned to Fiji in the reasonably foreseeable future will fall victim to either arbitrarily being deprived of his life or subjected to cruel and inhuman treatment being committed upon him by the reality of the situation he would find himself in – in Fiji, where he would be singled out and mistreated by the general community because of his HIV positive chronic illness. He would not be able (due to the lack of) to engage with a range of support services to assist him in continuously dealing with his chronic illness and it changing challenges." (Para 70)

"It is clear he' 4Trnal0.d1 (he)4m (he)mb1he 20c -fheGBTI community in Fiji if they are diagnosed as HIV po('4s)-1 (i)-2 (t)-2 (i)-2 (ve)4 ( ) the Tribunal upon review of the available information on HIV tr-4 (a)hehet in Fiji,0c -0.dgh societal disran wa n1y0c -st (he)mic,0c -0it wa phe (he)nt and persons like the applicant face societal discrimination and are viewed differently and have very little support wi.d1 Fijia(he)n s20c -ci (he)ty a(he-p)1id.d1 heHV0c -ma(he)'

			treatment or punishment, where acts or omissions by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant." (Para 75)
FRVT and Minister for Immigration, Citizenship, Migrant Services and			

Australia's international non-refoulement obligations, they still present risks of harm and hardship which the Tribunal has taken into account and ultimately weigh in the Applicant's favour." (Para 300)

"In those circumstances, the Tribunal considers that, in addition to a risk that he will be re-prosecuted for his Australian offences, there is a heightened and real risk that the Applicant will be prosecuted in China for serious drug related offences that relate to the territorial jurisdiction of China. From the material available, it appears that there is a real risk that the Applicant could receive the death sentence for such offences." (Para 308)

"As the Applicant cannot apply for another substantive visa in Australia, and it is highly unlikely that the Minister will exercise any discretion to allow him to remain here, the Tribunal considers that there is a real risk that the Applicant will be returned to China in breach of Australia's international non-

			Aviram that the Applicant would face a *moderate* risk of harm. While some of the evidence does not rise to the level of a substantial risk of harm which would invoke Australia's non-refoulement obligations, I am satisfied in this case that the Tribunal should, in the circumstances of the Applicant and those of his family who came to Australia, find that a case can be sustained where treaty-related or complementary protection may be owed." (Para 164)
1823104 (Refugee) [2020] AATA 1926 (Unsuccessful)	24 February 2020	56-80	The Tribunal affirmed a decision to not grant protection visas to Pakistani applicants, one of Ahmadi heritage. The Tribunal accepted there was a real risk of significant harm from a criminal family group and associates and also potentially in the form of one applicant suffering deterioration of his mental health, however, the Tribunal found that the harm was localised and relocation was reasonable and practicable.
1927623 (Refugee) [2020] AATA 403 (Successful)	13 February 2020	73-83	The Tribunal substituted a decision not to cancel a stateless Rohingya applicant's Subclass 785 (Temporary Protection) visa as it would breach *non-refoulement* obligations under ICCPR and CAT. "The Tribunal has found that as a stateless Rohingya person there is a real chance the applicant will be seriously harmed in the event he is returned to Myanmar. As such his removal for Australia to Myanmar would be in breach of the Refugee Convention the ICCPR and the CAT. In such circumstances the Tribunal is of the view the applicant would be held in detention for a prolonged period of

(Migration) [2020] AATA 125 (Unsuccessful)			notwithstanding the finding that the applicant was owed *non-refoulement* obligations. "Given that the legal consequence is that the applicant would be returned to Iraq, it is my assessment for the reasons set out above that there is a very real risk that the applicant will suffer significant harm if the cancellation decision is not revoked. This factor weighs heavily in favour of revoking the cancellation decision. I accept that regardless of whether the applicant's claims are such as to engage non-refoulement obligations, the applicant would face significant hardship including a risk of violence in the event that he were to return to Iraq." (Para 55)
1703365 (Refugee) [2020] AATA 1354 (Successful)			

			However, the Tribunal found that the level of protection from State authorities would be adequate and effective.
HPZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2019] AATA 5402 (Successful)	13 December 2019	113-116, 133	The Tribunal remitted an Afghan claimant's application with the direction that a temporary protection visa not be refused, including because the applicant is owed *non-refoulement* obligations.
1715048 (Refugee) [2019] AATA 6684	9 December 2019	94-102	The Tribunal remitted the application of an Iranian applicant with the direction that the applicant satisfies

			extend to attempts to suppress his Kurdish identity or suppress Kurdish identity generally or other limitations on his rights as a Turkish citizen including severe restrictions on freedom of expression and freedom of movement. This could also extend to arbitrary arrest and detention or other forms of legal harassment; (b) there is a real chance the applicant would be exposed to state sanctioned harm including potentially life-threatening harm, torture, excessive use of force, destruction of housing and prevention of access to emergency medical care and safe water; the Tribunal is satisfied that the risk of harm of this nature is heavily dependent on the specific circumstances and location within Turkey. The Tribunal is satisfied that the risk of this type of harm would be less should the applicant relocate to his home city in Aldana Province than if he were to relocate to a higher conflict zone in south-east Turkey. The risk would be less still if the applicant were to relocate into the western part of Turkey. In assessing this risk the Tribunal has been mindful of the applicant's evidence where he stated that he is less concerned about harm from the Turkish Government and more concerned about harm at the hands of local youth militants in his home Province; (c) there is a real chance the applicant would be subjected to serious physical harm and potentially life-threatening harm by members from the local youth militants associated with the PKK in retribution for his refusal to take up arms with the PKK when he last visited Turkey. The Tribunal acknowledges the

			respondent's submission that the risk of this type of harm should be considered to be less given that the applicant, having refused previously to take up arms with the PKK, continued to live in his home city for an extended period of time without any serious consequence. However, the Tribunal found the applicant's evidence in relation to this risk being ongoing to be consistent and compelling and is satisfied that it was truthful; (d) there is a real chance the applicant would be subjected to pressure from local youth militants associated with the PKK to take up arms with the PKK again in the future, and should he refuse to do so, be subjected to serious physical harm and potentially life-threatening harm from such groups in retribution for such refusal. The Tribunal recognises that this risk is particularly heightened in certain parts of Turkey including the area surrounding the applicant's home town. The Tribunal is also mindful of the fact that given the volatility in relation to the conflict between the Turkish government and the PKK, a scenario where the applicant again comes under significant pressure to take up arms with the PKK is not mere speculation but rather has a real and substantive basis; (e) there is a real chance the applicant would be subjected to discrimination in the practice of his religion in Adana Province. In reaching this conclusion the Tribunal notes that the applicant's evidence was somewhat in conflict with the evidence in the DFAT Country Report in relation to this issue which suggested

that the Alevi religion was now freely practised across Turkey. The Tribunal accepts that the level of discrimination in this respect may vary significantly depending on the location within the country;

(f) there is a real chance the applicant would be subjected to discrimination in seeking to obtain employment opportunities in Turkey; and

(g) there is a real chance the applicant would be subjected to potential harm due to the general security situation in Turkey." (Para 126)

"The Tribunal is otherwise satisfied that on the basis of the Tribunal's findings with respect to the applicath-2 (c)4 (a)TJT[(t)itclsis(l)-2 (

KYMM and Minister for Home Affairs (Migration) [2019] AATA 5174 (Unsuccessful) 1928362 (Refugee) [2019] AATA 6213	28 November 2019	114-160	The Tribunal affirmed a decision not to revoke the cancellation of a South Sudanese applicant's refugee and humanitarian visa. While *non-refoulement* obligations weighed in favour of revocation, it was open to the applicant to apply for a protection visa.

			he will be subjected to degrading treatment or punishment by society or the authorities by reason of failure to support him as a victim of trafficking, if he returns to Vietnam now or in the reasonably foreseeable future." (Para 186)
1806813 (Refugee) [2019] AATA 6786 (Successful) QDWQ and Minister for Home Affairs (Migration) [2019] AATA 4622	12 November 2019	26-38	The Tribunal remitted the application of an Indian female divorcee from an inter-caste marriage finding that she "faces the real risk of significant harm personally from her ex-husband and his family (or people associated with them)." (Para 33)

			is further exacerbated and made difficult by the fact that her former husband has the means and his disposal to locate and inflict his will upon the applicant. Serious assaults including grievous bodily harm are a possibility. Kidnapping of the applicant and holding her in captivity against her will is another possibility. The applicant might well – in a personal sense – be vulnerable to some or all of these crimes, and there is a real risk that she will suffer significant harm. This risk would exist in all the various areas of the country and because of the issues with the police, the Tribunal has outlined that the applicant could not obtain, from any authority of the country, protection such that there would not be a real risk that the person will suffer significant harm. The real risk is one faced by the applicant personally. The Tribunal also does not find that there is a possibility of avoiding the harm described by depending on family assistance." (Para 74)
WKMZ and Minister for Home Affairs (Migration) [2019] AATA 4381 (Unsuccessful)	14 October 2019	160-274	The Tribunal affirmed a decision not to revoke the mandatory cancellation of a South Sudanese applicant's visa under s.501(3A), notwithstanding finding that it is likely Australia owes international non-refoulement obligations to the applicant under the ICCPR and the CAT. The decision includes an extensive discussion of decision makers' duty to consider Australia's non-refoulment obligations, conflicting authorities and how the duty relates to *inter alia*, the ability of the applicant to apply for a protection visa. "However, the Tribunal finds that it is likely that Australia owes international non-refoulement

			deprive her of core human rights and deny her access to basic services." (Para 49) "The Tribunal considers that this harm amounts to cruel or inhuman treatment or punishment and that it is significant harm." (Para 50)
1832684 (Refugee) [2019] AATA 3744 (Unsuccessful)	6 September 2019	86-113	The Tribunal affirmed a decision not to grant a Fijian applicant a protection visa, but made a recommendation that consideration be given to referring the case to the Minister for intervention under s.417 on the basis that the case appears to raise unique or exceptional circumstances. The Tribunal considered whether the applicant would satisfy the complementary protection criteria, but found that psychological harm is not an "act" and to engage s.36(2)(aa) requires an act or omission taking place in the receiving country and this cannot be constituted by an act in the past or the future consequences of an act in the past. 'The applicant has lived in Australia since he was 14 years old. He experienced trauma in Fiji and on his return to Australia following this incident, the applicant appears to have gone off the rails. There is evidence that this related to his previous experience of trauma, for which he did not seek or receive treatment. The applicant did not raise these issues at the time his visa was cancelled. It is unclear to us how this matter proceeded as we were not provided with this information but it appears that the applicant lost a vital opportunity, albeit from his own actions, in putting forward his case. His family resides in Australia and he

has now spent over four years in detention. There is evidence that the applicant's mental health issues will be exacerbated by returning to Fiji and that the facilities available may be inadequate. His family, who are permanent Australian residents, will face hardship. These are matters that may make the applicant's case unique and may raise compassionate and compelling reasons for intervention in accordance with the Guidelines.' (Para 134)

'We accept the applicant's evidence that he was threatened. We accept the threat was open-ended and could have been construed to be continuing. We also accept the applicant has a long held and fear of returning to Fiji and he may face further psychological harm if he returns. There is evidence the applicant, who was young and inexperienced, was understandably traumatised by the incident and, critically, did not obtain any treatment or counselling for this until later in his later years. We accept this as had an impact on his return to Fiji is likely to have a further impact on his mental health.' (Para 94).

'The difficult question is whether previous threats and trauma which manifest in psychological harm both in Australia and, more particularly, in the receiving country engages complementary protection.' (Para 95)

'The harm that must be suffered is "significant harm" which, as her Honour recognises, requires that a

consequence of a previous act cannot be an “act or omission” as contemplated by s.36(2A) because the definition requires that the act or omission take place in the future. In our view the words in s.36(2A), as informed by the definitions in s.5(1), are clear.’ (Para 99)

‘Thus, as Riley J observes in CKX16 the question is whether a person will be subjected to an act in the future if the person suffers the consequences of the act in the future, even if the act itself is in the past. While her Honour concludes that this would engage s.36(2A) and therefore s.36(2)(aa), we prefer the authority of Mansfield J in SZSRN where his Honour made an important distinction between an act and the consequence of an act: at [47]. We also note that when s.36(2A) is read with s.5(1) the clear meaning is that the non-citizen will be subjected to an act where suffering is intentionally inflicted. This is inconsistent with suffering harm from a previous act.’ (Para 110)

‘We also reject any suggestion that the principles in Project Blue Sky would be authority for such a broad interpretation. The process of construing s.36(2)(aa) begins with the statutory text and the text must be considered in its context. Objective discernment of the context may be made through extrinsic material, the legislative history and the purpose and policy of the legislation However, extrinsic material cannot be relied upon to displace the clear meaning of the text. In our view, ss.36(2A) and 5(1) are clear in their terms. To

Tribunal that there is a real risk he or she will suffer significant harm in the receiving country and this means an act or omission taking place in the receiving country. This cannot be constituted by an act in the past or the future consequence of an act in the past. Psychological harm is a mental state and is not an “act” but rather an illness which is manifest, in this case, by reason of a previous act.’ (Para 111)

‘The contention that the threat made to the applicant 17 years ago is a continuing act which, in effect, will come to fruition when the applicant returns to the place of the

1619551 (Refugee) [2019] AATA 5306 (Successful)	5 September 2019	59-62	The Tribunal remitted a Pakistani, homosexual applicant's claim for reconsideration with the direction that the applicant satisfies both the refugee and complementary protection criteria.
DARYAB (Migration) [2019] AATA 4492 (Unsuccessful)	4 September 2019	56-60	The Tribunal affirmed a decision to cancel a Hazara applicant's Subclass 202 (Global Special Humanitarian) visa, while recognizing that Australia may owe protection obligations towards the applicant and that Australia's international obligations may be engaged. "The Tribunal is prepared to accept, for the purpose of this review only, that it would be difficult for the applicant to live on her own in Pakistan without much family support. The Tribunal accepts that the situation in Pakistan may be unsafe3 (e)4 (c)4 al ac (u4 (w)2 (onl)-2 (y0 1 4 Tm)-1 (tsb-

			"Even if the Tribunal were to make a finding that he does not meet the relevant criteria for the grant of a protection visa on the basis of his Hazara ethnicity in Pakistan, the Tribunal finds that at its lowest, the visa holder would face danger such that there is a real risk that he will be subjected to degrading treatment or punishment as per Australia's complementary protection regime. The Tribunal considers that this matter is overwhelming in its considerations, above and beyond whether the visa holder intended to mislead the immigration authorities." (Para 58)
1516248 (Refugee) [2019] AATA 4304 (Unsuccessful)	9 August 2019	103-164, 166	The Tribunal affirmed a decision not to grant a Lebanese applicant a protection visa and in doing so considered the meaning of intention in the context of s.5(1). "We accept the contentions of the applicant's representative to the effect that Lebanon lacks suitable qualified mental health specialists; that specialised mental health services are generally very limited; access to mental health services is expensive; and there is societal stigma associated with mental health issues." (135) "First, it is clear from reading the judgment that the High Court considered the definition in its entirety and considered the meaning of intention in the context of s.5(1) and the meaning of *intentionally inflicted* for the purposes of s.36(2A)(d) and "intentionally causing" for the purposes of s.36(2A)(e) of the Act. The plurality

			required to establish significant harm and, in so finding, rejected the notion that foresight of the consequences of an act or omission in the ordinary course of events would be sufficient to establish intention (being the approach that found favour with Gageler J and for which the applicant's representative contends)." (Para 147) "Secondly, the contention that s.5(1)(b) should be construed to provide that pain or suffering is taken to be intentionally inflicted in certain circumstances is not supported by the plain reading of the subsection. It is clear the definition addresses two scenarios. The first is where the applicant has established that there is *serious* pain and suffering that is intentionally inflicted and the second is where the pain and suffering that is intentionally inflicted is not severe but could reasonably be regarded as inhuman or cruel by its nature." (Para 148)
Abas (Migration) [2019] AATA 4505 (Successful) See also related (Sanaee (Migration) [2019] AATA 4502; Sanaee (Migration) [2019] AATA 4504; and Sanaee (Migration) [2019] AATA 4506)	9 August 2019	42-52, 57, 60	The Tribunal substituted a decision not to cancel a Shia Hazara applicant's Subclass (155) (Five Year Resident Return) visa placing weight on Australia's non-refoulement obligations. "The Tribunal has carefully weighed the adverse information against the evidence under r.2.41. The Tribunal has found, however, that in view of members of the Hazara community having a long history of being displaced and subject of war, both in Afghanistan and then Pakistan, the Tribunal has decided that no good purpose would be served by uprooting contributing

members of the community who have lived here for a significant period and returning them to a country (Pakistan) where they would essentially be required to live in segregation and under constant threat of attack

1811868 (Refugee) [2019] AATA 6013 (Successful)	23 July 2019	70-75	The Tribunal substituted a decision not to cancel an

(Successful)			former de facto partner with the direction that she (and her children) satisfies the satisfies the criterion set out in s.36(2)(aa). "However, I am satisfied that there is a real risk that she would suffer cruel or inhuman treatment in the form of serious physical harm intentionally inflicted by her husband or people associated with him. Furthermore, while it appears that the authorities in the Philippines seek to provide some degree of assistance to victims of domestic violence, this appears to be relatively limited and in my view the applicant would not be able to obtain protection from the authorities such that there would not be a real risk that she would suffer that harm. I am therefore satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to the Philippines, there is a real risk that she will suffer significant harm." (Para 37)
1606188 (Refugee) [2019] AATA 5876 (Successful)	20 June 2019	117-135	The Tribunal remitted the application of a ex-Gazan Palestinian from Jordan finding that the applicant and as a consequence *ex*

that provision applies here. The type of criminality and harm, described above would be intentional and aimed at the applicant and his family should it occur. It is sufficiently prevalent in Jordan to pose a real risk and the risk is exacerbated by the applicants' lack of societal

			because of lack of community support and poor medical treatment.' (Para 6). 'The Tribunal has also considered the claims of the applicant under the complementary protection provisions of the Act. The definition in s.36(2A) is framed in terms of harm suffered because of the acts of other persons. As discussed above, the Tribunal accepts that the mental health care available in Mauritius is not the same standard as in Australia, but finds that care is available via the public system and privately. Additionally, the Tribunal is satisfied that the applicant will not be without a means of support as he can return to the family home, will be supported by his family and he is able to access social security.' (Para 42). 'The Tribunal accepts the submission of the applicant representative that the applicant has had a difficult journey with his mental health. It is not accepted that societal discrimination in Mauritius will impact upon the applicant seeking treatment if he was to return or that for this reason the applicant will be subject to significant harm. It is also not accepted that the government of Mauritius is culpable if the applicant could not obtain appropriate treatment. There is nothing in the evidence to suggest that the government of Mauritius has limited treatment for people with mental health conditions, such as the applicant, to the extent that it could be said that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Mauritius, there is a real risk that he will be arbitrarily

deprived of his life. The definitions of torture, cruel or inhuman treatment or punishment in the Act require that pain or suffering be ‘intentionally inflicted’ on a person and the definition of degrading treatment or punishment requires that the relevant act or omission be ‘intended to cause’ extreme humiliation. As discussed with the applicant and his representative at the hearing, the Tribunal is not satisfied on the evidence before it that there is an intention to inflict pain or suffering or to cause extreme humiliation to people suffering the sort of health problems it is accepted that the applicant has.’ (Para 43).

‘The Tribunal has also considered the submission that it will be Australia who will be intending to inflicting cruel or inhuman treatment or punishment or degrading treatment or punishment, if the application is refused and he is required to return to Mauritius. In *SZRSN v MIAC*, where it was claimed significant harm would arise from separating the applicant from his Australian children, the Federal Court found that harm arising from the act of removal itself will not meet the definitions of ‘significant harm’ in s.36(2A).[20]Australia’s obligations to afford protection referred to in s.36(2)(aa) arise from the harm faced by a non-citizen in the receiving country, rather than the country in which protection is sought.[21] As the harm under s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country,

			'The Tribunal does not accept on the evidence before it, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Mauritius, there is a real risk that he will suffer significant harm, as defined, as a result of his mental health condition.' (Para 45).
1515288 (Refugee) [2019] AATA 4066 (Successful)	9 June 2019	107-129, 131	The Tribunal remitted the matter with the direction that the applicant, a Nepali, divorced single female with a child satisfied the complementary protection. The Tribunal accepted that "she will be perceived as a divorced single female with a child and that there is some stigma associated with this. It is when considering

			real risk of degrading treatment in the form of sexual harassment in seeking and/or maintaining employment." (Para 115) "The Tribunal is thus prepared to accept that the applicant in her particular circumstances may face a small but real risk of being subjected to ongoing instances of sexual harassment which could also lead to instances of sexual violence. In all the circumstances the Tribunal considers that this constitutes degrading treatment including extreme humiliation, which is not reasonable and not covered by the lawful sanctions exception. The Tribunal is thus satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Nepal, there is a real risk that she will suffer significant harm." (Para 116)
1910307 (Refugee) [2019] AATA 4673 (Unsuccessful)	8 July 2019	133-143, 145	The Tribunal affirmed a decision not to grant a protection visa to a South Sudanese applicant of Dinka ethnicity, explaining that the "fact that a person may enjoy less favourable social, economic or cultural rights in another country does not, of itself, give rise to a non-refoulement obligation. It may lead to a degrading condition of existence, but that does not constitute degrading treatment for the purposes of the Act. "Treatment" does not cover degrading situations arising from socio-economic conditions. "Treatment" must represent an act or an omission of an individual or one that can at least be attributed to him or her." (Para 141)

MBJY and Minister for Home Affairs (Migration) [2019] AATA 4055 (Unsuccessful)	7 June 2019	171-197	The Tribunal affirms a decision not to revoke the mandatory cancellation of an Indian applicant's partner visa. In doing so, the Tribunal considers Australia's non-refoulement obligations noting that "the Tribunal did not accept the Respondent's submission that it was sufficient for the Tribunal to find that it was unnecessary to determine whether non-refouleme-10 05d[(r)-1 (efA262(Pag(buna

			closed/restricted the blog from general viewing from time to time. The Tribunal must consider this conduct for the purposes of deciding whether the applicant satisfies the complementary protection criterion; it is clear that subsection 91R(3) of the Act does not apply to a consideration of the complementary protection criterion so that the conduct can be disregarded. This is the case even though the Tribunal is satisfied that the applicant's purpose in commencing and operating his blog was to strengthen his claim to be a refugee." (Para 46)
1713572 (Refugee) [2019] AATA 2305 (Unsuccessful)	12 April 2019	23, 40, 62-70	The Tribunal concluded that an Indian applicant might face a real chance of persecution from a specific individual (with whose wife the applicant had had an affair), his family, associates and agents if retuned to Punjab state but found it was reasonable for the applicant to relocate within India and affirmed a decision to not grant a protection visa.
1613287 (Refugee) [2019] AATA 5262	9 April 2019	23-41	The Tribunal remitted an Indian applicant's claim with the direction that she satisfies the complementary protection criteria due to circumstances pertaining to her former relationships, which included domestic violence, divorce and an inter-caste marriage.
1513428 (Refugee) [2019] AATA 5172 (Successful)	31 March 2019	39-54	The Tribunal remitted a Nepali applicant's claim with the direction that she satisfies the complementary protection criteria due to the cumulative effect of factors specific to her, including as a single, uneducated, HIV-affected, inter-caste divorcee.

1616860 (Refugee) [2019] AATA 3417 (Unsuccessful)	4 March 2019	51-73, 75	The Tribunal accepted that there is a real risk that an Indian applicant will suffer significant harm in India by reason that he will be the victim of an honour killing, but affirmed the decision to refuse the applicant a protection visa because it was reasonable for him to relocate to another area within India.
1602065 (Refugee) [2019] AATA 3430 (Successful)	22 February 2019	33-35, 38-44, 48	The Tribunal remitted for reconsideration a Mongolian homosexual applicant's application for review with the direction that he satisfies s.36(2)(aa) as he faces a real risk of significant harm in Mongolia for reasons of his homosexuality. 'The Tribunal takes into account the applicant's oral evidence to both the delegate and in the Tribunal hearing in relation to claims of harm in Mongolia. Notwithstanding the fact of the applicant providing fraudulent documents to support his claims, based on the applicant's oral evidence, the Tribunal is satisfied that there have been at least some occasions on which the applicant has been harassed and physically assaulted in Mongolia based on his sexuality. The Tribunal is also satisfied that vindictive individuals utilised information on the applicant's smart phone relating to his sexuality which they posted on social media to embarrass the applicant. The Tribunal also accepts that there were instances where police acted in an unhelpful and intimidating w

supporting documents, the Tribunal accepts that there have been at least some instances of intimidation and physical harm suffered by the applicant as a result of his sexuality.' (Para 34).

'The Tribunal notes that a negative attitude by authorities in Mongolia to the applicant's sexuality and intimidation and physical harm from society in general is not inconsistent with independent information as to the treatment of homosexuals in Mongolia, albeit that there have been some steps by the government to improve the situation for homosexuals.' (Para 35)

'Given the negative attitudes towards homosexuality in Mongolia, the Tribunal is satisfied that the applicant faces a real chance of both seriouTsatisf(o)-4 (0-2 (lg/MCID6g0TtWr4b9n(e)4 (i

‘Given the existence of these laws, for the purpose of this decision only, and acknowledging that the extent to which there is practical adequate enforcement of those laws is not yet clear, the Tribunal would find that there are effective protection measures available to the applicant in relation to his sexuality and therefore he is not taken to have a well-founded fear of persecution. The Tribunal notes that under the definition of effective protection measures, police need to provide, not perfect protection, but reasonably effective protection.’ (Para 40)

‘This is not a finding that is determinative of the outcome in this matter because, in any event, the applicant would satisfy the complementarhe-4 (a)4 use12 (. (a)4 (e)4 (s(ous)-1

occurred, or due to the operation of the legal system, which would not operate until after the harm had occurred. The Tribunal finds that the applicant would face a real risk of degrading treatment or punishment as well as cruel or inhuman treatment or punishment

‘The applicant fears that he will suffer deterioration in his mental health of a severe nature as a necessary and foreseeable consequence of his being returned to Pakistan. The applicant also fears that he will be killed or assaulted by extremists who will target him because he is opposed to their ideology, or that he will be killed or assaulted in a general act of terrorism if he is returned to Pakistan’ (Para 47).

‘Based on the applicant’s past experience of suffering a psychosis and requiring hospitalisation in [State 1], I accept that the applicant is potentially vulnerable to a relapse or worsening of his mental health condition if he is returned to Pakistan, particularly given his experience on his return in 2014, where he immediately felt ‘watched’ after he was attacked.’ (Para 48).

‘In relation to his fear of mental health deterioration, whilst there *is* such a risk of that deterioration, and that it may be severe, the information and evidence before me does not suggest that any severe deterioration in his mental health would be inflicted on the applicant by any person or group. S.5(1) of the act provides definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. In each case, the elements of the definitions require an act or omissi (n(e)4)3 (t)-2 (he)4 (.e2)-6 n mentalath condition if

does not suggest intentional infliction of such (nor indeed, the intentional withholding of treatment for any reason by any person). I consider that the possible deterioration in the applicant's mental health does not meet the necessary criteria within the definitions of 'significant harm' outlined in s.5(1) for each of 'torture', 'cruel or inhuman treatment or punishment' or 'degrading treatment or punishment.' That harm would not be 'inflicted' or 'caused' by any act or omission of any person which intended to cause that harm.' (Para 51).

'The applicant also fears falling victim to a general act or terrorism throughout Pakistan due to the general security situation. The country information discussed above generally acknowledges that such attacks can and do happen without warning throughout Pakistan, targeting various groups or persons in authority, despite some reduction in the number of attacks over recent years. There is some risk therefore(o.h)-4 (at)p Fhyeat a tsd3

			consequence of his returning to Pakistan. After weighing my findings, I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that the applicant will suffer significant harm.' (Para 53).
1820814 (Refugee) [2019] AATA 1632 (Unsuccessful)	29 January 2019	10, 14, 57-58,	The Tribunal considered the claims of a Pakistani man who feared societal discrimination on the basis of his Ahmadi faith. The treatment he feared, including harassment and vilification and sporadic incidents of hate speech and abusive writing on external walls of his home did not reach the threshold for 'severe pain or suffering' or 'extreme humiliation'. 'The issue (s)-57oAn5 (u)6The issnn e-5 (s)-5 (u)-4 3 (-5 -6 (s)e (nn e320/ (e)-1 c

			and I do not consider that the level of discrimination, harassment and vilification which he will encounter in the future is properly considered as causing and intending to cause the applicant 'severe' pain or suffering, whether physical or mental, that will be intentionally inflicted on the applicant, or that they are at a level such that they cause him extreme humiliation. I acknowledge that the experiences of discrimination, vilification and harassment have caused and will cause the applicant some mental and physical distress and humiliation. I consider that the moderate discrimination, harassment and vilification faced by the applicant if he is returned to Pakistan would be at a level which he has faced throughout his life, and despite which he has prospered. Bearing in mind his own evidence, and taking into account his physical location in Pakistan, his established standing within his community and his lifetime experience, I am not satisfied that the level of pain or suffering the applicant will face (as he has in the past) is at a level which could be regarded as cruel or inhuman in nature, or as cruel or inhuman or degrading treatment or punishment causing or intended to cause severe pain or suffering or extreme humiliation, even when considered cumulatively.' (Para 57). 'I am not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm (including being arbitrarily deprived of his life or subjected to cruel or inhuman or degrading treatment or punishment), as a necessary and

			foreseeable consequence of him being returned to Pakistan.’ (Para 58).

1712068 (Refugee) [2019]

as a failed asylum seeker, being a returnee from Australia, being a Westernised Iranian, being a suspected spy for Western governments, being against the Iranian moral codes and anti-Sharia law, being a supporter of Mousavi and the Green Movement, and beca

stopped and reprimanded but based upon country information I do not accept that such harassment amounts to serious or significant harm. I note also the country information on the extent of alcohol being procured in Iran. Despite the applicant having once been stopped randomly and found to be transporting alcohol and as a result had his motorbike detained I find that he does not face a real chance or a real risk of it occurring again in the reasonably foreseeable future.' (Para 140).ng

compound his circumstances nor is there a real chance of serious harm or a real risk of significant harm arising from this past experience.' (Para 143).

'In *MILGEA v Che Guang Xiang* the Court required that to establish a real chance of serious harm it is necessary

			real chance of serious harm or a real risk of significant harm.' (Para 173). 'Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa) of the Act. The Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).' (Para 175).
1704947 (Refugee) [2019] AATA 1349 (Unsuccessful)	11 January 2019	13, 96-102	In considering the claims of a Sri Lankan Tamil, the Tribunal held that the questioning he would face on return for his unlawful departure from Sri Lanka would not amount to 'significant harm', even taking into account his particular circumstances, including blood pressure issues. 'The applicant – a [age] year old married man from Batticaloa district in eastern Sri Lanka – claims to fear serious harm from the authorities on return to Sri Lanka on imputed (pro-Liberation Tigers of Tamil Eelam (LTTE)/anti-government) political opinion grounds and as a young Tamil. He also fears serious harm as a failed asylum seeker, as a Christian and because he departed Sri Lanka illegally.' (Para 13). 'Furthermore, based on the country information and the Tribunal's earlier reasoning, the Tribunal does not accept that the process of questioning amounts to arbitrary deprivation of life, being subject to the death penalty, torture, cruel or inhuman treatment or

punishment or degrading treatment or punishment. The Tribunal also is not satisfied the process of questioning itself would constitute significant harm, even when taking into account the applicant's blood pressure issues. The Tribunal is therefore not satisfied that as a necessary and foreseeable consequence of the applicant's return to Sri Lanka, there is a real risk he would suffer significant harm at the hands of the Sri Lankan authorities as part of a process of questioning to which he may be subject.' (Para 96).

'For the reasons set out above, the Tribunal has accepted that the applicant will be questioned at the airport upon his return to Sri Lanka, that he will likely be charged with departing Sri Lanka illegally and that he could be held on remand for a brief period while awaiting a bail hearing. The Tribunal does not accept that the applicant is of ongoing adverse interest to the authorities. Based on the Tribunal's earlier reasoning on this matter, it does not accept on the information before it there to be a real risk that the applicant will face torture, or other types of significant harm as set out in s.36(2A) of the Act, either during his questioning at the airport or during any period he spends on remand. The Tribunal considers, if convicted of charges under Sri

			36(2A), either during his questioning at the airport or during the short period that he may spend on remand awaiting a bail hearing, or when he returns to his home area.' (Para 97). 'In regard to the penalty the applicant may face, based on the information cited above, the Tribunal does not accept that this will manifest itself in the mandatory imposition of a term of imprisonment or that the applicant would not be able to pay any fine that may be imposed on him as he would have the assistance of his wife – who is financially supported by her wealthy brother – in Sri Lanka to meet such a financial penalty.' (Para 98). 'The Tribunal accepts that prison conditions in Sri Lanka are generally poor and do not meet international standards. However, if the applicant is remanded in prison for a short period, the evidence does not support that any pain or suffering as a consequence would be by an intentionally inflicted act or omission, as the poor prison conditions are due to a lack of resources (as indicated in the DFAT report, cited above) rather than any intention on the Sri Lankan government to inflict such harm,[30] and therefore do not amount to significant harm.' (Para 99). 'Similarly the Tribunal is not satisfied on the evidence before it that the process of questioning, the imposition of a fine as punishment and the applicant's charge and conviction under the *I&E Act* amounts to significant harm because there is no intention on the part of the Sri