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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 are in a separate Tribunal table archived on the Kaldor Centre website).

not one faced

			day.' (para 2). 'Although the parties have relied on only the one authority, I have also looked at the earlier authorities. The starting point is the concept of Australia's *non-refoulement* obligations. Paragraph 12.1(1) describes the a *non-refoulement* obligation as an obligation not to forcibly return, deport or expel a person to a place where he or she will be at risk of a specific type of harm. It sets out three international conventions under which Australia's *non-refoulement* obligations arise. Australia has ratified each of those conventions but ratification itself does not mean that the *non-refoulement* obligations they include are incorporated into Australia domestic law. Ratification is a matter for the Executive government and the content of the domestic law a matter for Parliament. Therefore, the conventions themselves cannot operate as a source of an individual's rights and cannot describe an administrative decision-maker's obligations.' (para 110). 'Ratification does, however, have significance in two ways. One is summarised in the joint judgment of Mason CJ and Deane J in *Minister for Immigration and Ethnic Affairs v Teoh*[79] (*Teoh*): "*... If the language of the legislation is susceptible of a construction which is consistent with the terms of the international instrument and the obligations which it*

imposes on Australia, then that construction should prevail. So expressed, the canon is no more than a canon of construction and does not import the terms of the treaty or convention into our municipal law as a source of individual rights and obligations ...".' (para 111).

'The other significance of ratification is that it gives rise to a legitimate expectation that a decision-maker will take the convention into account when exercising a discretion in the course of making an administrative decision. That is so even though the terms of the convention have not been incorporated in Australian domestic law.' (para 112)

'Where Parliament does incorporate into Australia's domestic law an international obligation that the Executive government has adopted by ratifying an international convention, the scope and nature of that

			so as not to exceed the Minister's power.' (para 153). 'This is not a provision that authorises an instrument to be read as if it were rewritten with other words. It provides that, to the extent that it is not in excess of power, the instrument is to be taken as a valid instrument. This is consistent with the approach taken by the Full Court of the Federal Court in *Tervonen*.[116] The two sentences can be excised from paragraph 12.1 of Direction No. 65 leaving statements that are within power.' (para 155). In this case, the RRT has already decided that Australia has *non-refoulement* obligations in respect of PRHR in the context of his application for a protection visa. The claims that PRHR now makes in relation to his return to Sri Lanka are consistent with those on which the RRT found that Australia owed those obligations i.e. that the Sri Lankan authorities will consider that PRHR has knowledge about people smuggling because he initially acted a guard and was then represented to the Sri Lankan Navy as a crew member on the vessel that brought Tamil asylum seekers to Australia and will torture him to extract information from him.' (para 156). 'Australia's *non-refoulement* obligations to PRHR arise because they have been incorporated into its domestic

factual context of PRHR's circumstances.' (para 159).

'Australia has protection obligations to PRHR on the basis that there is a real risk he will suffer significant harm in the form of torture by Sri Lankan authorities when they seek information from his regarding those engaged in people smuggling. Torture in any circumstances is abhorrent to the Australian community but the risk to PRHR from torture is outweighed in this matter by the risk that he presents to the Australian community and to its members should he be permitted to remain. PRHR has also expressed concern about danger he might face from others with whom he has engaged in the past. That is of lesser concern for two reasons. One is that he told the RRT that he had previously returned to the area in Sri Lanka on a number of occasions after 2006 and had done so without incident and without feeling threatened.[117] The other is that the threat of which he speaks is expressed in nebulous terms and I cannot identify it with any specificity.' (para 167).

'Having regard to all of the matters that I have

501 refusal, the Court found (at [28]):
An exercise of the statutory power conferred by s 501 of the Migration Act does not require the same analysis to be undertaken as would be required if an application for a protection visa is made and s 36 is invoked. Nor is that analysis to be undertaken even where the Minister -refoulement obligations.

'On the evidence, the Tribunal finds that MBQX has not provided sufficient evidence to satisfy the Tribunal that he faces a real risk of harm such that Australia's non-refoulement obligations would be triggered, other than to say he is 'fearful' of returning to Zimbabwe.' (para 106).

'This, as rightly noted by Mr Blades, is a consideration that the Tribunal can assess elsewhere (and does so below under the heading "impediments upon return"). Overall, however, the Tribunal considers MBQX's 'fears' at being returned to Zimbabwe to be in relation to the extent of impediments which he may face if

means that it is difficult to know, precisely, what that situation is from day to day. The Tribunal has no reason to doubt this submission. While this Tribunal can only deal with the limited evidence it is noted (and agreed by the parties) that MBQX has not previously had a visa refused or cancelled under section 501, 501A or 501B of the Migration Act. He is, accordingly, able to apply for a Protection visa in accordance with s 501E(2) of the Migration Act. It is at that time that a thorough analysis of the current state of daily life in Zimbabwe will be undertaken. Mr Rothstein advised the Tribunal that his client would consider this option if not successful here. It is noted in this context that any character findings made in relation to MBQX in these proceedings would not negate any protection claims he may have from being assessed. This is so because of the operation of *Direction No. 75 Refusal of Protection Visas Relying on Section 36(1C) and Section 36(2C)(b)* Part 2, which specifically precludes character findings arising from a criminal deportation finding being assessed first (and instead requires any protection claims to be assessed first).' (para 108).

'On the limited evidence before it, the Tribunal finds that no non-refoulement obligations arise in relation to MBQX.' (para 109)0%4;Aä

because of the emotional side of her feelings. She explained convincingly in the context of her realisation, that she had no real definition for her feelings. Her evidence about the way she came to terms with her

pain or suffering which could reasonably be regarded as "cruel or inhuman". Given this wording, as well as country sources set out above, which indicate wider acceptance of LGBTI people, the fact that an LGBTI organisation and LGBTI events operate openly, and that articles have suggested that gays and lesbians are announcing their sexual preferences publicly with support from some public figures, the Tribunal is not satisfied that there is a real risk (more than a remote or insubstantial risk) of cruel or inhuman treatment or punishment. While there may be some social ostracism, discrimination or insults directed at her as she is outspoken, sometimes people do not know if she is a boy or girl, and she is openly lesbian, the Tribunal is not satisfied that such behaviour would reach the level

Federal Circuit Court considered that exposure to pollution does not of itself amount to ‘degrading treatment’ for the purposes of s.36(2)(aa) of the Migration Act.[26] That Court has also rejected that a fine and brief period of detention pending bail could amount to ‘extreme humiliation’.[27] In light of these cases, and the country information referred to earlier in

purposes. He and his business partner borrowed '[a substantial amount of money] from loan sharks'. In September 2016, 'policies adverse to the real estate market were released'. His 'project' could not be 'sold' within a short period and he could not repay his debts. He was 'falsely imprisoned' and [he was] 'severely injured'. The 'gang members' also threated members of his family. He called the police and they said that they would investigate. However, he 'did not get any response'. He was 'hunted' by gang members and had to leave Taiwan in order to survive.' (para 5).

He stated that, in January or February 2012, five people were dispatched from Taiwan to claim the money. These people went to his house and asked for money. When he told them that he did not have any money, they slapped him and threatened his family. One month later, these people returned to his house. This time they punched and kicked him, causing him to bleed from the nose. They threatened him again and told him that this would be his final warning. They returned 20 days later and asked the applicant for money. He pleaded and told them that he would be prepared to do anything. They left, but returned two weeks later. This time they attacked him with a knife and 'cut' [him]. As a consequence, he was hospitalised and required surgery. He called the police but the police said they could not find those who had attacked him. He remained in hospital for two months. Following thi

			knew he did not have the money to repay his debts. However, they asked him to do something which would help him to repay his debt. They also told him that they would pay all his living expenses if he accepted to assist them. In September 2012, the applicant was asked to take [illegal goods] to another country. He initially refused, but he accepted after they threatened his wife and children.' (para 13). 'He was arrested immediately after arriving in Australia. He was subsequently convicted and sentenced to [a term of] imprisonment. He told the police everything. He also contacted the police in Taiwan and told them that these people were going to hurt him. He also called [Mr B] and told him that he was in jail. While he was in prison, his wife and children moved to a different address in Zhuhai, but the debt collectors found his parents. They found out that he was being released from prison, so they sent him a threatening letter to the prison from Taiwan.' (para 14). As it was put to the applicant at the hearing, there is no evidence before the Tribunal to suggest that the relevant criminal laws under which he is likely to be charged, prosecuted and, possibly, sentenced, are discriminatory or that they will be enforced against him in a discriminatory manner. The Tribunal finds that charging and prosecuting the applicant, as well as any penalties that may be imposed on him, are the result of the non-discriminatory enforcement of laws of general

			there are no reports of political prisoners or incidents of torture by authorities and that Taiwan allows independent observers to inspect prison conditions.' (para 60). 'On the basis of the evidence before it, the Tribunal does not accept that there is a real chance that the applicant would face serious harm amounting to persecution if he were to face further imprisonment in Taiwan for the offences he was convicted of and served a prison sentence in Australia. The applicant did not claim, and the Tribunal does not accept, that there is a real chance that the applicant would face serious harm amounting to persecution for any reason whilst serving a prison sentence in Taiwan.' (para 61). 'With regard to complementary protection, the Tribunal accepts that, if convicted of the [other] charges [and] if he were to face further punishment for the [offences] committed in Australia, the applicant is likely to face imprisonment for a number of years.' (para 62). 'Under the definitions in s.5(1) of the Act, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment do 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 Covenant.' As such, an act or omission that arises from, is inherent in or incidental to a lawful sanction, where that sanction itself does not breach the

Articles of the International Covenant on Civil and Political Rights (ICCPR), will not amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, even if it inflicts (severe) pain or suffering or extreme humiliation.' (para 63).

'The Tribunal is satisfied that any imprisonment the applicant is likely to face in Taiwan is an act arising only from lawful sanctions. The issue is whether these sanctions are inconsistent with the Articles of the ICCPR. In making its assessment, the Tribunal has considered the applicant's likely re-prosecution in Taiwan for offences he was convicted of in Australia, as well as any consequential imprisonment in relation to both the re-prosecution and prosecution in connection with the [other] [charges].' (para 64).

'Article 14(7) of the ICCPR states:

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.' (para 65).

'The language of the provision appears to suggest that the prohibition on double jeopardy applies only within

to multiple prosecutions by one state.' (para 66).

'In A.P. v. Italy,[6] the Committee expressed the view that 'article 14, paragraph 7, of the Covenant... does not guarantee *non bis in indem* with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State.' Subsequently, the Human Rights Committee affirmed this interpretation in A.R.J. v. Australia, stating:

The author has claimed a violation of article 14, paragraph 7, because he considers that a retrial in Iran in the event of

Australia to Taiwan and faced prosecution for the offences he was convicted of in Australia, this does not breach Article 14(7) or any other Articles of the ICCPR.' (para 68).

'The Tribunal accepts that the applicant is likely to face a relatively lengthy prison sentence in Taiwan as a consequence of any re-prosecution and any conviction in relation to the [other] [charges].' (para 69).

'The Department's PAM3 Refugee and Humanitarian - Complementary Protection Guidelines in relation to imprisonment/prison conditions note that detention itself is not a breach of Article 7. However, particularly harsh treatment in detention may constitute a violation of Article 7.[8] The Guidelines noted that 'prison conditions may constitute cruel, inhuman or degrading treatment or punishment if they seriously or systematically deprive a detainee of human dignity'. It was further stated that in certain circumstances it may be approp0 4sly

subsection 5(1) of the Act requires that pain or suffering be ‘intentionally inflicted’ on a person and that the definition of ‘degrading treatment or punishment’ requires that the relevant act or omission be ‘intended to cause’ extreme humiliation. Intent, in this context, requires an actual, subjective, intention on the part of a person to bring about the suffering by their conduct.[11] In *SZTAL v MIBP*, a majority of the High Court rejected the contention that knowledge or foresight of a result establishes the necessary intention element of the definitions of torture, cruel or inhuman treatment or punishment and degrading treatment or punishment.’ (para 73).

‘The Tribunal, on the evidence before it, does not not accept that the pain or suffering caused by any overcrowding and other problems in Taiwan prisons, combined with any term of imprisonment the applicant might face, is ‘intentionally inflicted’ on prisoners as required by the definition of ‘cruel or inhuman treatment or punishment’ in subsection 5(1)

			are not inconsistent with the ICCPR.' (para 33). 'Having considered all of the applicant's claims and having regard to its findings of fact, the Tribunal is not satisfied that there is a real risk that the applicant will be arbitrarily deprived of life, or the death penalty will be carried out on him, or he will be subjected to cruel or inhuman treatment or punishment or he will be subjected to degrading treatment or punishment if he returns to Malaysia now or in the reasonably foreseeable future. Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there is a real risk that he will suffer significant harm as defined in s.36(2A) and s 5(1) of the Act. Therefore, the Tribunal finds that he does not satisfy the criterion in s.36(2)(aa) of the Act.' (para 34).
1516186 (Refugee) [2017] AATA 2086 (Unsuccessful)	1 November 2017	14-15, 47-49	This case involved a consideration of workplace harassment and denial of opportunity to upskill and found that this did not amount to significant harm. Nor did difficulty in finding future employment in the context of the slow Fijian economy. In a statement made in his support of his application for protection visa the applicant repeats his background details including the details of his education and his religion. He outlines his political affiliation to the political party Fiji First led by Hon Bainimarama who

has been elected Prime Minister. He essentially states that after coming to Australia he was amazed at the difference between his country and [Australia] and decided to seek protection from the abuse and harassment and discrimination he suffered at his workplace and elsewhere in Fiji. He mentions that he was not given the chance to [be promoted] at his work. He states that there was “gross discrimination targeted [redacted] cannot help him as they do not have the resources to [redacted] with.’ (para 14).

‘The applicant claims that if he is returned to Fiji he

consistently made these claims. The Tribunal also accepts that the applicant suffered some societal discrimination against him outside of his work place including because he is Indo Fijian. This is supported by the DFAT country information available to the Tribunal (cited above). In his initial application for protection visa the applicant said that the national employment centre did not call him back after he did a

			hardship so that his capacity to subsist will be threatened or that he will be denied the capacity to earn a livelihood of any kind. The Tribunal finds that the applicant's difficulty finding work in Fiji does not amount to serious harm for the purpose of the refugee criterion. The Tribunal also does not consider that the applicant's difficulty finding employment amounts to significant harm for the purposes of the complementary protection criterion. The applicant said that he himself worked [with his] family's [business] in [Town 1] before he came to Australia as well as working at [Workplace 1]. While he mentioned before the delegate that his uncle might take back his share of the [business] he told the Tribunal that his family with whom he had always lived in [Town 1] was still living on the [family's] [property], that his father was [in a certain role] and that his [sibling] was living there with his family and [works in a certain role]. The Tribunal finds that if the applicant is returned to Fiji he can return to live with his family who are still living and working there and he will have access to work [in] his family's [business] as he did before he left Fiji.' (para 48). 'For the reasons given above the Tribunal does not accept the applicant's general claims that that he will be ill treated and suffer physical abuse in Fiji and that if he is returned to Fiji he will be significantly harmed and arbitrarily deprived of his life and subjected to inhuman

			treatment.' (para 49).
1508305 (Refugee) [2017] AATA 2387 (Successful)	27 October 2017	43-45, 48, 52-53	In this case the Tribunal considered that forced prostitution and family violence amounted to significant harm and that, in the applicant's particular circumstances, there was no state protection available to her. 'Based on her evidence, the Tribunal is satisfied and finds that [Ms A] has a genuine fear of being persecuted if she returns to Thailand with the harm feared being domestic violence at the hands of her brother and forced prostitution by her brother.' (para 43). 'The Tribunal is satisfied that [Ms A]'s brother has previously imposed similar harm upon [Ms A] in the past, as is supported by the circumstances of [Ms A]'s and [Mr B]'s meeting. The Tribunal is further satisfied that without continued financial support from [Mr B] to a necessary level, there is a real chance and real risk that if [Ms A] returns to The Tribunal in the reasonably foreseeable future, her brother will again force her to work in a brothel. The Tribunal is also satisfied that [Mr B's] finances are such that if [Ms A] were to return to Thailand with [Master E], [Mr B] will not have sufficient finances to gift to [Ms A]'s brother. Further, the Tribunal is satisfied that it is not practical for [Master E] to remain in Australia without [Ms A] given [Mr B's] medical issues and his inability to care for

their wealth" is consistent with what is not an

Unaccompanied and Separated Children or Unaccompanied Child not in the Care of Parents Subject to Institutionalisation, if he returned to Thailand, the Tribunal considered whether the other harm feared by [Master A] upon return to Thailand is significant harm.' (para 55).

'Firstly, as already noted as regards [Master A]'s initial claim of fearing family violence at the hands of his father, the Tribunal is satisfied that there are no grounds for believing that, as a necessary and foreseeable consequence of [Master A] being removed from Australia to Thailand, that there is a real risk that he will suffer significant harm on this basis. It is not in dispute that [Master A]'s father passed away in [2016] and that no claim in this regard any longer exists. The Tribunal finds accordingly.' (para 56).

'It is also submitted that [Master A] will suffer harm because he will find it difficult to assimilate back into the Thai community and/or a Thai school and might also be bullied or teased because he does not speak Thai.' (para 57).

'The Tribunal accepts that [Master A] may experience teasing or some level of bullying if he returned to Thailand, either in the community or at school, and might find it difficult to assimilate and relearn the Thai language. The Tribunal accepts that this would be an

uncomfortable and undesirable experience.' (para 58).

'The Tribunal has also considered [Master A]'s claim, that a [age] year old, having lived in Australia for nearly four years, he is used to life in Australia and it will be difficult for him to assimilate back in to Thailand. The Tribunal accepts that [Master A] is settled into his life in Australia and that living in Thailand would cause disruption for him. However, as already discussed, the Tribunal is satisfied that he would have the support of [Mr B], [Ms C] and [Mr D], in relation to any return to Thailand. The first [number] years of his life were in Thailand, and his sister [Ms G] is also in Thailand. Whilst it might at first be difficult to reassimilate, or relearn the Thai language, the Tribunal considers that he will be in a position to change, if necessary, albeit not desirably.' (para 59).

'Having regard to the definition of significant harm in ss.5 and 36(2A) of the Act, the Tribunal does not accept that any of the above matters give rise to significant harm as defined in s.36(2A). as defined

assessments.

Regarding the applicant's country of reference, the delegate referred to *Tjhe Kwet Koe v MIEA*[1] in which it was determined that the wording, 'country of his

			(para 2). 'The applicant fears being identified as gay because they are harmed by religious fanatics and any action against them is met with silence by the authorities. He claims that there are no protections for gay people.' (para 60). 'There remains a live question as to whether the principle discussed in the Refugees Convention context in *Appellant S395/2002 v MIMA*, namely, that a person should not be expected to modify certain kinds of conduct to avoid persecutory harm, extends to the assessment of complementary protection. In *SZSWB v MIBP*, the Federal Circuit Court held that the Tribunal was required to consider whether the applicant's modified conduct was influenced by the threat of harm he faced, which was inconsistent with the International Covenant on Civil and Political Rights, before finding that he did not face a real risk of significant harm.[18] This was on the basis that there is no reason why the principle in *S395* should not apply to the Conventions which support the complementary protection provisions of the Act in the same way as it applies in the Refugees Convention context.[19] This reasoning was subsequently adopted in *MZAIV v MIBP*.[20] However both of these judgments were overturned on appeal on different reasons without further consideration of this issue. Most recently in *BBS16 v MIBP* the judge found that the decision-

reinforced in his preference firstly for a female interpreter and secondly by his request for his name to be withheld from the phone interpreter. While I accept that the applicant's behaviour is influenced by fear of harm I also note that he has repeatedly been advised that he has nothing to fear in Australia. When I put to him DFAT information his response was dismissive of its accuracy and persisted to believe that all gay people

sufficiently expansive to allow someone to overcome their fear, change their behaviour and pursue a new

			he had been in the past when he was a minor.' (para 81). 'I have also considered whether the Israeli authorities would identify him as a homosexual and be able to leverage this in such a way so as to use him as a spy. While there are reports of this occurring there is limited information as to the extent. Based upon the applicant's private lifestyle I find that the applicant will not be identified as homosexual by Israeli authorities. For this reason I find that the applicant does not face a real risk of significant harm for the reason of being blackmailed into acting as an Israeli spy.' (para 82).
QGMJ and Minister for			

			Protection visa.' (para 92). 'Until recently, the Tribunal would have found that, because of his ability to apply for a Protection visa, the Tribunal was not *required* to assess any non-refoulement obligations owed to QGMJ. It was generally accepted that because Direction 65 specifically states that it is not necessary to determine a non-refoulement issue in circumstances where an applicant can apply for a Protection visa, the Tribunal would normally rely on any non-refoulement assessment being made by another body specifically charged with determining the validity of a Protection visa claim.' (para 93). 'That position is now disputed, however, because of the recent decision of the Federal Court in *BCR16 v Minister for Immigration and Border Protection* [2017] FCAFC 96 ("BCR16"). Following BCR16 (now on appeal to the High Court) the Tribunal is required to assess *any type of harm* that might arise should QGMJ be deported to Kenya. This is so regardless of whether an applicant specifically frames his risk of harm as a non-refoulement issue.' (para 94). 'Here, QGMJ makes three claims in relation to the harms he believes he will face if he is returned to Kenya: 1. QGMJ claims that he converted from

Christianity to Islam. As a result, he claims, he fears for his life if he is required to return to Kenya. In evidence before the Tribunal, QGMJ noted that he feared harm from his uncles who live in the Mombasa area (a pri109.U50ETQtQ5

In the circumstances, the Tribunal finds that that QGMJ risks facing harm if returned to Kenya because of his mental health condition. It is not disputed that QGMJ is a diagnosed paranoid schizophrenic whose health deteriorates rapidly without counseling and medication. On the evidence, neither will be readily available to him if he is deported to Kenya. This, in turn, places him at risk of harm – arguably even death given the consequences that flow from this mental disability if left untreated.' (para 104).

'This finding weighs in favour of revoking the decision to cancel QGMJ's visa. The question the Tribunal needs to ask, however, is whether this finding in relation to what is an "other" or secondary consideration outweighs the Tribunal's findings in relation to the primary considerations detailed above. The Tribunal

			‘The applicant is a [age] year old woman from [City 1] Fiji. She is an ethnic Fijian (‘South Pacific Islander’), speaks Fijian and English, and gives her religion as Pentecostal Christian.’ (para 8). ‘The applicant has lived in various addresses in [City 1], prior to her most recent trip to Australia. In about 2004, she and her husband bought a duplex in [a town], just outside [City 1]. It was severely damaged during Tropical Cyclone Winston in early 2016, and her husband is trying to complete repairs.’ (para 9). In the present case, the applicant has indicated her overriding concerns about her family’s economic welfare in Fiji, particularly in the wake of Tropical Cyclone Winston and her husband’s unemployment. However, this does not necessarily rule out her need for Australia’s protection, so the Tribunal proceeds to assess this below.’ (para 20). The applicant’s evident concerns about her and her family’s welfare in Fiji relate in part to the country’s economy, the political environment and the impact that Tropical Storm Winston had in the local area. Unders.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. The Tribunal is satisfied that these

			general conditions affect all Fijians, and not the applicant personally. Accordingly, the Tribunal finds that there is no real risk that the applicant will suffer significant harm in Fiji as a result of general political or economic conditions, or the impact of natural disasters.' (para 46) 'Accordingly the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Fiji, there is a real risk that she will suffer significant harm: s.36(2)(aa).' (para 47).
1705774 (Refugee) [2017] AATA 1443 (Unsuccessful)	25 August 2017	22-23, 51, 54,	This case concerned a Malaysian national who feared gang violence. The Tribunal gave some content to the definition of state protection in s 36(2B)(b) of the Act. 'According to the applicant, he had experienced while in Malaysia serious "...family problems". He had a number of "disputes" with his family and in particular with his now former wife. This whole upset to the applicant's life commenced with his wife having a relationship with a "...third party..." (description was provided by the applicant). The Tribunal was told that the "third party" was having a 'long affair' with the applicant's wife.' (para 22). 'This 'third party' the Tribunal was told was a "...gangster" and hence, the applicant had "...nowhere to

			go but to come to Australia" to be safe.' (para 23). In relation to the overall effectiveness of the authorities in Malaysia, as noted earlier, the Tribunal has relied on the *country information* showing that Malaysia's protection system consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system and measures have been put in place to address corruption. Police and indeed, the government, have been making a concerted effort since at least 2013 to combat organised gangs and crime syndicates and there is no evidence that the police would refuse the applicant any assistance, if he were to request it. The country information and media reports indicate the government has taken this issue seriously and has committed extensive resources to do so. This in the Tribunal's view demonstrates that effective protection measures are available, namely that protection against serious or significant harm could be provided to the applicant by the Malaysian State, that protection is durable and the Malaysian State is willing and able to offer such protection.' (para 51). Overall the Tribunal is satisfied that if in the future, the *gang members* threaten or attempt to harm the applicant, there are mechanisms in the Malaysian legal system, including a reasonably effective State police force (that country information demonstrates is active and committed to taking action in relation to the claimed fear) that means the applicant could obtain

			protection sufficient to reduce the likelihood of harm to something less than a real risk in accordance with s.36(2B)(b). Therefore, the Tribunal finds that there are no substantial reasons for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there is a real risk he will suffer significant harm. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa) of the Act.' (para 54).
Bui and Minister for Immigration and Border Protection (Migration) [2017] AATA 1330 (Unsuccessful)	23 August 2017	1, 3, 8, 67-70, 89-90	The Tribunal revoked the mandatory cancellation of Mr Bui's visa. Non-refoulement obligations were considered though the case was not successful on those grounds. Mr Bui is a citizen of Vietnam. He was granted a Class CA Subclass 143 Contributory Parent (Migrant) visa on 30 April 2012. On 20 July 2016 a delegate of the Minister for Immigration and Border Protection (the Minister) informed Mr Bui that his visa had been cancelled under s. 501(3A) of the *Migration Act 1958* (the Migration Act).' (para 1). 'On 12 November 2015 Mr Bui was sentenced to a term of imprisonment for a period of two and a half years, with a minimum term of 15 months. He did not pass the character test.' (para 3). 'On 15 May 2015 Mr Bui was charged with two

			Australian community would be prepared to give Mr Bui a second chance.' (para 89). 'Mr Bui's strong ties to his family in Australia also support my finding that the Minister's decision to cancel Mr Bui's visa should be revoked. Those strong ties also go to supporting my finding regarding Mr Bui's risk of recidivism.' (para 90).
1502530 (Refugee) [2017] AATA 1832 (Unsuccessful)	23 August 2017	16-17, 52-53, 55-56	This case concerned Sri Lankan nationals and the meaning of 'extreme humiliation' in section 5 of the Act. The applicant who was born in [year] in [City 1], Sri Lanka, is now [age] years old, Singhalese and claims to have a real risk of significant harm from community discrimination and violence, and violence perpetrated by the military and police, on return to Sri Lanka because she is a single Singhalese woman without male protection, and a convert from Buddhism to Islam.' (para 16). 'The applicant's son, who is [age] years old, makes no claims to have a real risk of significant harm on return to Sri Lanka. However, the applicant noted that he has been in Australia many years, speaks English and little Singhalese or Tamil, and commented that adjustment to life in Sri Lanka would be difficult for him.' (para 17). The Tribunal has considered the applicant's claim at

hearing that her major fear on return to Sri Lanka is living as a single woman. It was submitted that the applicant has a real risk of being subject to societal discrimination, harassment and violence, and that this risk is heightened because she will be identified as a convert to Islam. On the accepted circumstances above, the Tribunal accepts the applicant will live as a single woman separated from her husband with her [son] in Sri Lanka. The Tribunal also accepts the applicant is a convert to Islam and that there is a possibility that she will be identifiable in the community as a Muslim convert because she speaks Sinhalese but has a Muslim name and, as disced below, may be attired in dress typically associated with Muslims in Sri Lanka.' (para 52).

'The applicant told the Tribunal that most people in Sri Lanka, even men, do not live single lives, and she believes that the community will regard her as strange and will not accept her when she is known to be a single parent living with her son. At hearing, the applicant

			six years.' (para 1). The Tribunal infers that decision-makers found that the applicant was a refugee when he was granted the two TPVs in 2002 and 2006. He was born in Kurdistan in northern Iraq. The applicant claims that he will be killed by the family of his deceased fiancée (**the family**) who murdered her after the applicant and his fiancée "eloped" to Iran. They returned when reassured by the family that they could marry. He claimed that his parents, four sisters and two brothers had also fled Iraq because of that circumstance and now live in four different European countries. Further, he claimed that the authorities would not protect him.' (para 64). 'During the hearing, the applicant said that that "all" of the family would kill him – her brother, her dad – he does not know who. He said that all the family lived in the one city in Kurdistan. When asked if he could relocate in Iraq, the applicant said that he cannot even go to Europe because it is too close to Iraq. He said that you never know these days who is going to tell who. It is easy for "them" to drive a couple of hours to find out where you are and kill you. He was going to go to Europe but his mother said to send him far away where people will not know where he is. There are too many refugees in Europe. They can find him there.' (para 65). 'The applicant accepted that "technically" he may apply for a protection visa. That is, because neither of his

			TPVs was cancelled. They both ceased.' (para 66). 'In such a case it would appear that paragraph 14.1(4) would apply, that is, "it is unnecessary to determine whether non-refoulement obligations are owed to the non-citizen for the purpose of determining whether the cancellation of their visa should be revoked".' (para 67). 'The respondent provided comprehensive submissions on this issue addressing the recent Full Federal Court decision in *BCR16 v Minister for Immigration and Border Protection* [2017] FCAFC 96 (***BCR16***). On 11 July 2017, the respondent filed a special leave application in the High Court challenging that decision. The respondent submitted that for the present, *BCR16* must be followed and the Tribunal must consider the applicant's claim summarised above.' (para 68). 'The decision considered in *BCR16* was made by the Assistant Minister and Direction 65 did not apply. The majority of the court held that the Assistant Minister had erred in finding that it was unnecessary to determine whether non-refoulement obligations were owed to the appellant because he was not prevented from applying for a protection visa. The majority of the court held that the Assistant Minister had failed to carry out the task required by s 501CA(4) of the Act in relation to the reasons for revocation that was included

in the applicant's representations submitted pursuant to s s501CA(3)(b) of the Act.' (para 69).

'The Tribunal will not rely on paragraph 14.1(4) of Direction 65, and will consider Australia's international non-refoulement obligations in respect of the applicant. The Tribunal accepts that the level of analysis required in assessing Australia's non-refoulement obligations is less than would be required in assessing a claim for a protection visa.[1]' (para 70).

'There is no corroborative or probative evidence before the Tribunal to support the applicant's claims for protection, including where the members of the family are currently or whether they are alive. The Tribunal takes into account that two decision-makers have previously been satisfied that the applicant was a refugee and since those decisions, the Act has been extended in scope to include the complementary protection criterion (s 36(2)(aa)). Those decisions are not before the Tribunal. It does not know what claims were made or the reasons for those decisions. In any event, this Tribunal is not bound by the earlier decisions and must consider the claims itself. More than 10 years have elapsed since the second of those decisions was made and it is more than 15 years since the applicant left Iraq. Further, the Tribunal found the applicant's evidence unreliable.' (para 71).

probative evidence that there is a real chance that he

			establishing the claim: s.5AAA. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* [1992] FCA 470; (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)' (para 74). 'The Tribunal is not satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Nor is the Tribunal satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that the applicant will suffer significant harm.' (para 75). 'Given those findings and the fact that the applicant does have the right to apply for a protection visa, the Tribunal does not accept that the applicant will be exposed to indefinite administrative detention. In making that finding it has taken into account the submission that it is unclear whether the Act extends him a right to a bridging visa if he did lodge a protection application. That submission is unhelpful. It is a conclusion which was not supported by reference to relevant provisions of the Act or analysis. The Tribunal gives that submission no weight. Further, it is a matter for the applicant whether or not he lodges an application for a protection visa. Whether he will be

			granted a bridging visa may be a matter he considers before making the application.' (para 76). 'For the reasons set out above, the Tribunal finds that the considerations favouring revocation of the visa cancellation are strongly outweighed by the considerations against revocation of the visa cancellation. There is not another reason why the original decision should be revoked.' (para 92). See also other cases where the Tribunal also makes assessments of non-refoulement obligations due to the *BCR* judgment: *Bristowe and Minister for Immigration and Border Protection (Migration)* [2017] AATA 1092 (14 July 2017) and *Deng Mabior and Minister for Immigration and Border Protection (Migration)* [2017] AATA 1155 (26 July 2017).
1516302 (Refugee) [2017] AATA 1381 (Unsuccessful)	25 July 2017	9, 14, 16-17, 62-65	This case related to the consideration of generalized conditions under s36(2B)(c) of the Migration Act in relation to crime in South Africa. In this case, the Tribunal found that the applicants had no 'distinguishing characteristic' from the general population. 'The issue in this case is whether the applicants meet the refugee or complementary protection criteria because of:

real risk of *significant harm* arising from the applicant's economic and personal circumstances as contemplated by s.36(2)(aa). *Significant harm* is different from the concept of *serious harm* as required by 91R(1)(b) in the context of s.36(2)(a).

			By email sent to the Tribunal after the hearing on 14 June 2017, the Applicant's solicitor asked the Tribunal, in making its decision in the present application, to consider, the Full Federal Court's in *BCR16 v Minister for Immigration and Border Protection* [2017] FCAFC 96 (*BCR16*) which had been delivered the previous day. The Respondent sought the opportunity to make urgent written submissions, and both parties were afforded this opportunity, although no further submissions were received on the Applicant's behalf, apparently relying on the extensive earlier submissions.' (para 62). The Minister submitted that *BCR16* was wrongly decided and informed the Tribunal that an application for special leave to appeal to the High Court of Australia is being considered. In the meantime, the Minster accepted that decision-makers, including the Tribunal, are bound by the decision.' (para 64). 'For the purpose of the present matter, the Minister conceded that, in light of *BCR16*, the Tribunal is required to turn its mind to the claims made by the Applicant regarding the risk of harm to the Applicant in Sudan, both in written and oral submissions, and to give them such weight as the Tribunal considers appropriate. It was conceded that the Tribunal cannot decline to consider whether the Applicant's claims about what would happen to him if sent back to Sudan would constitute "another reason" why the decision to cancel

his visa should be revoked: *BCR16* at [73].' (para 65).

'It was submitted on the Applicant's behalf that Australia's non-refoulment obligations flow from various international conventions and covenants such as the United Nations High Commissioner for Refugees (UNHCR) *1951 Refugee Convention* and its Protocol, *International Covenant on Civil and Political Rights* (ICCPR), as well as *Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* (CAT). It was submitted that removing the Applicant to Sudan will return him to a place where he faces real and sigR es real and siand m It

under s. 501 on character grounds without having first had their protection claims assessed against the criteria in s. 36of the Act. So it remains the case that the Tribunal can legitimately take the view that a full assessment of whether protection obligations are owed to the applicant would take place were he to make an application for a protection visa in the future.' (para 68).

he would now face similar or other harm in Sudan, or indeed harm at all, other than the deprivation reportedly experienced by some of the population. Furthermore,

			her plans for the Applicant to travel there to marry a Sudanese woman significantly detract from his claim that he would be harmed if he returned there. A full assessment of whether protection obligations are owed to the Applicant will be undertaken if he were to make an application for a protection visa.' (para 74). 'A decision under s 501CA(4) of the Act involves an assessment and evaluation of the factors for and against revoking the cancellation: *Gaspar v MIBP* [2016] FCA 1166.' (para 97). 'I have already explained the first primary consideration weighs heavily against the Applicant, while the second primary consideration counts to some extent in his favour. The third primary consideration counts firmly against him. The other considerations, when taken together, do not weigh in the Applicant's favour. Having regard to the considerations in the Direction, and weighing up those that point in favour of visa cancellation against those that point in the opposite direction, I conclude that the Applicant's application should be refused. As a consequence, I affirm the decision under review.' (para 98).
1621961 (Refugee) [2017] AATA 1143 (Unsuccessful)	21 June 2017	15, 84-85	This case concerns whether being homeless and having financial difficulties amounts to 'significant harm' in relation to a Fijian applicant whose refugee claim was rejected due to lack of current well-founded fear.

‘The applicant claimed he was sexually abused as a child in Fiji by two former military officers and three current military officers. The applicant claimed that the

			s.5J(1)(a) for the purposes of s.36(2)(a). Nor is the Tribunal satisfied that there is a real risk that the applicant would experience any difficulties amounting to significant harm as defined for the purposes of s.36(2)(aa).' (para 84). 'In his protection visa application, the applicant also asserted generally there was no safety in Fiji and that anarchy and restlessness were on the rise. The applicant said that the state did not have sufficient resources to cope with these problems. The applicant has not submitted independent country information in support of this claim and it does not find support in the country information generally available to the Tribunal and discussed with the applicant at hearing. In any event, the Tribunal is not satisfied on the evidence that any harm of this kind would involve systematic and discriminatory conduct in accordance with s.5J(4) for the purposes of s.36(2)(a). Nor is the Tribunal satisfied on the evidence that the applicant faces a real risk of criminal attack or violence that is not faced by the population of Fiji generally as required by s.36(2B)(c) for the purposes of s.36(2)(aa).' (para 85).

The applicant claims she fears to return to India as:

- Society in India will tease her because she is divorced and as she had had a live-in relationship with a Muslim in Australia.
- The parents will pressure her to have another arranged marriage.
- If she goes to live away from the parents to another place in India she will appear to be a single woman living alone and so vulnerable to predatory men.' (para 13).

			The applicant who claims to be a citizen of Nigeria, applied for the visa [in] July 2013 and the delegate refused to grant the visa [in] September 2014.' (para 2) 'A differently constituted Tribunal made a purported decision on 5 April 2016 affirming the decision of the delegate. [In] November 2016 the Federal Circuit Court of Australia remitted the case on the basis that the Tribunal had failed to properly consider the applicant's claim to fear harm in Ghana for reasons of his religion by reference to the relevant country information applicable to Ghana in the circumstances where it had accepted that the applicant will continue to practice and promote Christianity in Ghana.' (para 3). At the hearing before this Tribunal the applicant was asked about his mental health. He said that he has been on medication for high blood pressure since February 2014 and he continues to take [medication] (he pulled out a small plastic bottle from his pocket).' (para 67). 'When he went to the GP and was first prescribed blood pressure medication, he was referred to a psychologist for his mental health. Some months later he saw a mental health specialist and was prescribed [medication]. He said he did not remember the name of it. It has changed since 2014 when he obtained a letter which mentioned the medication he was on.' (para 68). 'The applicant argued that high blood medication would

			not be available in Ghana. The representative suggested that sending the applicant to Ghana would be a death sentence. The Tribunal suggested that [the] medication is available in Ghana. The representative made some rather confusing submissions in response. It seems that he was using the expression "death sentence" figuratively and not referring to an actual death sentence, nor to a likelihood that the applicant will die as a result of the lack of treatment. The representative also noted that fake medication is frequently sold in Africa. But ultimately he conceded that he was *not* submitting that the unavailability of quality health care in Ghana would amount to serious harm or significant harm.' (para 69). 'The Tribunal suggested that even if the applicant is not able to access the same level of care as in Australia, Australia would still *not* have protection obligations unless there is a real chance of persecution for a Convention reason (i.e. the requisite Convention nexus would not be there). In so far as complementary protection and significant harm is concerned the Tribunal pointed out that torture, as well as cruel, inhuman and degrading treatment or punishment require an element of intent (intentional withholding of treatment).' (para 70). 'In relation to medical treatment, the Tribunal has accessed Ghana's "Standard Treatment Guidelines" and lists 8 categories of drugs prescribed for hypertension

			(high blood pressure).[15] The Tribunal accepts that the applicant may not receive the same standard of treatment for his health problems in Ghana as he would continue to receive in Australia. He would also need to be careful when purchasing medication not to buy fake drugs. However, the lower standard of health services in Ghana compared to Australia does not constitute serious harm for a Convention reason, nor significant harm as defined in the Act.' (para 90). 'Further, the Tribunal is not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant availing himself of the right to enter and reside in Ghana, there would be a real risk that he will suffer significant harm in relation to that country.' (para 92).
QKJY and Minister for Immigration and Border Protection (Migration) [2017] AATA 820 (Unsuccessful) See also similar rulings in *Al Mansori and Minister for Immigration and Border Protection (Migration)* [2017] AATA 713 (19 May 2017); *BNVM and Minister for*	8 June 2017	1-4, 63-65,	This case applies *Minister for Immigration and Border protection v Le* [2016] FCAFC 120 in finding that *non-refoulement* obligations do not need to be considered in visa cancellation cases of this type because an applicant may still apply for a protection visa under s 501 of the Migration Act. [But see *BCR16 v Minister for Immigration and Border Protection* [2017] FCAFC 96 in the Kaldor Centre table of Federal Court cases for a more recent decision distinguishing *Le* in the revocation context – the effect of which is yet to be considered by the AAT.] 'This is an application for review of the decision of a

Immigration and Border Protection (Migration) [2017] AATA 621 (5 May 2017); *Dong (Migration)* [2017] AATA 668 (4 May 2017).			delegate of the Minister for Immigration and Border Protection ("the Minister" or "the Respondent") not to revoke the mandatory cancellation (by virtue of s 501(3A) of the Migration Act (Cth) ("the Act")) of the visa of the Applicant[1] pursuant to s 501CA(4) of the Act. Under s 500(1)(ba) of the Act, this Tribunal has jurisdiction to review the decision of the delegate.' (para 1). 'The Applicant entered Australia as a UNHCR mandated refugee. He has remained in Australia on a Class XB Subclass 202 Global Special Humanitarian Visa.' (para 2). 'This matter concerns the circumstances surrounding the cancellation of that visa on 1 May 2015, and the refusal of the Minister to revoke that cancellation.' (para 3). 'The Applicant has a lengthy criminal history for offences committed in this jurisdiction since 2006…' (para 4). 'The Applicant contends he is likely to be the subject of international non-refoulement obligations owed by Australia, should his visa not be reinstated. The Respondent drew my attention to paragraph 14.1(4) of the Direction. This paragraph is to the effect that, if the Applicant is able to make a valid application for another kind of visa should his current visa be revoked, then the

			non-refoulement obligations are not to be considered in determining whether to revoke his visa.' (para 63). 'The Applicant currently possesses a Class XB Subclass Global Special Humanitarian Visa. Section 501E(2) of the Act provides that someone whose visa has been cancelled under s 501 of the Act may still make a claim for a protection visa. These two visas are clearly different. Consequently, he will be able to make a valid claim for 'a visa' should his current one be revoked. I therefore consider that paragraph 14.1(4) of the Direction applies, and I do not need to further consider any non-refoulement obligations Australia may owe to him.' (para 64). 'I respectfully note with approval that the reasoning for this provision has been previously explained by respective Deputy Presidents of the Tribunal in *NSWQ and Minister for Immigration and Border Protection* [2016] AATA 373, and *MKKR and Minister for Immigration and Border Protection* [2016] AATA 458. I further respectfully note with approval the recent decision of the Full Federal Court in this regard: *Minister for Immigration and Border Protection v Le* [2016] FCAFC 120.' (para 65).

affecting non-refoulement and the meaning of indefinite detention. This results from the decision of North ACJ in *DMH16 v Minister for Immigration and Border Protection* [2017] FCA 448 (DMH16), and His Honour's treatment of the meaning of section 197C of the Act. DMH16 has a number of features common to NDFN's case as follows:

(a) The applicant is someone in respect of whom Australia owes protection obligations;

(b) The applicant will have no1 q444.29 108.74 280. ant v

Convention. In general terms, as noted in the explanatory memorandum to the Explanatory memoranc Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, s197C was inserted into the Migration Act with the intention of making it clear that the removal powers under s198 are separate from, unrelated and completely independent of, any provisions in the Migration Act which might be interpret -

’ (para 82).

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			‘In essence, His Honour held that section 197C of the Act has the consequence of enlivening the obligation at section 198 to remove an unlawful citizen ‘*as soon as reasonably practicable*,’ regardless of Australia’s non-refoulement obligations. A decision by me, therefore, to affirm the refusal of NDFN’s visa would, unless the Minister had made a preliminary decision to consider the exercise of his non-compellable discretion, enliven the obligation to remove NDFN as soon as reasonably practicable. As Counsel for the Respondent pointed out during opening submissions, the legal consequences are potentially significant: *country to which the person can be removed, then the obligation would be to remove the person to the country* ’ (para 84). ‘Counsel for the Respondent submits that the prospect of such an outcome is remote and a decision to affirm the refusal of NDFN’s visa does ‘*...not necessarily mean that Australia will...breach its non-refoulement obligations...*’ But that submission rests on an alternative management option being exercised by the Minister personally, particularly his power to grant a visa of any class under section 195A of the Act, if he ‘*thinks that it is in the public interest to do so*.’ I am further invited to accept that while the Minister’s power to issue a visa in these circumstances is non-compellable, ‘*the Tribunal should assume that it will be*

public interest to do so. In the exercise of this power the Minister is not bound by the provisions of the Migration Act or Migration Regulations governing application and grant requirements. The Minister has the flexibility

circumstances. In these circumstances, if the Minister thinks that it is in the public interest to do so, the Minister may grant a visa to a person to ensure that the

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refoulement obligations.

...

[1146] The above mechanisms enable non-refoulement obligations to be addressed before a person becomes ready for removal. At the removal stage, an officer will not be bound to check whether or not the Minister has considered exercising his or her personal powers when

			take [NDFN's] *case out of the space of an obligation to remove*.' On that basis I gave leave for written closing submissions to be provided by no later than 5pm on 7 June 2017. No advice was provided to me by that time, regarding any preliminary decision taken by the Minister in relation to NDFN, given the implications of North ACJ's judgment in DMH16.' (para 89). 'I accept that the Australian Government's stated policy, as detailed in the relevant legislation, makes it a remote possibility at best that Australia's non-refoulement obligations would be breached, or that NDFN would be detained indefinitely if the decision of the Minister's delegate to refuse his Protection Visa was affirmed. But in the absence of specific evidence that the Minister intends to exercise his non-compellable discretion in that eventuality, I must afford greater weight to non-refoulement considerations when applied to the specific circumstances of NDFN's case. I therefore find that Australia's international non-refoulement obligations weigh in favour of not refusing NDFN's visa application.' (para 90). After weighing up all of the evidence and the applicable law, I find that NDFN does not pass the character test as defined at section 501(6) of the Act. In making a supervening determination regarding the discretion granted by section 501(1) of the Act, I have had regard to the relevant considerations in the Direction and applied them to the specific

‘NKWF is a 34 year old male citizen of Afghanistan (G11 at 42). He arrived in Australia on 1 November 2012 as an Illegal Maritime Arrival (G15 at 82). On 25 June 2014 the Applicant was granted a Bridging

refusing their visa return a non-citizen to a country in circumstances where a non-refoulement obligation is owed. This is not withstanding the provisions of section 197C of the Migration Act which provides that, for the purposes of section 198 of the Migration Act, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen and that an offic

Migration Act to grant a temporary visa. In this instance, the applicant would be detained for a definite period, namely, until the Minister considered whether to exercise the power under section 195A; or

(c) Make a residency determination under section 197AB of the Migration Act.' (para 87).

'The DMH16 decision gives an explanation of these non-conventional personal interventional powers of the Minister:
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			consistent with the approach identified in the DMH16 decision.' (para 89). 'The Minister also submitted (and the Tribunal finds, in light of the DMH16 decision) that it is the three options outlined in the DMH16 decision that must be weighed against the seriousness of NKWF's conduct in considering the international non-refoulement obligations owed to him in the context of the legal consequences of making a decision on whether to refuse NKWF's visa.' (para 90). 'The Tribunal accepts that there are non-refoulement obligations owed to NKWF. The Tribunal has carefully weighed those obligations and the prospects set out in the three management options identified in the DMH16 decision against the seriousness of the NKWF's offending.' (para 91). 'The Tribunal considers that NKWF's offence of armed robbery involved a serious offence against a particularly vulnerable member of the community, which was punishable by a maximum term of life imprisonment. NKWF was sentenced to 2 years and 3 months imprisonment, which reflects the sentencing Judge's remarks that armed robbery is a most serious offence, with a term of imprisonment ordinarily being the only appropriate sentence.' (para 92). 'The Tribunal has expressed its concerns regarding

			NKWF's risk of reoffending, which arise from having no reassurance that NKWF has taken any steps to address his frustrations or any of the underlying factors which may have contributed to his offending behaviour. The Tribunal has also noted the difficulties it has accepting NKWF's evidence regarding his failure to understand the nature and seriousness of his offence and his inability, even at hearing, to recognise the seriousness of his offending conduct.' (para 93). 'After weighing all of these factors, the Tribunal considers that the seriousness of NKWF's offending outweigh Australia's non-refoulement obligations owed to him, including the prospects outlined in the DMH16 decision.' (para 94).
1511530 (Refugee) [2017] AATA 1009 (Unsuccessful)	6 June 2017	7, 71-73	This case related to the consideration of generalized conditions under s36(2B)(c) of the Migration Act. The applicant claims to a supporter of the opposition Bangladesh Nationalist Party (BNP) who operated a successful retail business. Members and supporters of the ruling Awami League (AL) tried to extort money from him. When he refused, they arranged for false criminal charges to be brought against him. The applicant fears that the Bangladesh authorities will arrest him on his return to Bangladesh (most likely at the airport), and imprison him and torture him, at the behest of his political enemies. He implicitly also claims that AL cadres will continue to target him, due

			faced by the applicant personally. The Tribunal is satisfied that the applicant's concerns relating to the general political and security environment, and general living conditions in Bangladesh, involve real risks that the population generally faces, rather than the applicant personally.' (para 72) 'Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm: s.36(2)(aa).' (para 73).
1509131 (Refugee) [2017] AATA 989 (Unsuccessful)	29 May 2017	1, 58-61	This case also related to the consideration of generalized conditions under s36(2B)(c) of the Migration Act. [The applicant] is a citizen of Lebanon. He arrived in Australia as a student in October 2009 and as referred to in the decision under review (a copy of which he provided to the Tribunal along with his application for review) he first applied for a protection visa [in]

			parents and the authorities in Lebanon. [The applicant]'s first application was refused by a delegate of the Minister and the Refugee Review Tribunal affirmed that decision. [In] November 2013 [the applicant] lodged his current application for a protection visa, saying that he relied on the complementary protection provisions. He also said that he feared suffering significant harm on the basis of the current political, economic, and social situation in Lebanon and that he feared Hezbollah and pro-Syrian forces because he was a Sunni Muslim.' (para 1). Having regard to the problems which I have with the evidence of [the applicant] and [Mr A] about their relationship as outlined above, I do not accept that they are homosexual as they claim, nor that they are in a homosexual relationship with each other. I consider that they are simply two young men sharing a room. I do not accept that they have ever been regarded by their families or the wider community in Lebanon (or indeed the Lebanese community in Australia) as being homosexual or in a homosexual relationship with each other. I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Lebanon, there is a real risk that he will be killed or that he will otherwise suffer significant harm because of his claimed homosexuality or because of any suspicion that he and [Mr A] are in a homosexual relationship with

each other.' (para 58).

'As referred to above, in his current application [the applicant] said that he feared suffering significant harm on the basis of the current political, economic, and social situation in Lebanon and that he feared Hezbollah and pro-Syrian forces because he was a Sunni Muslim. When he was interviewed by the primary decision-maker [the applicant] said that Lebanon was a war zone, there was no work and all the Syrians were in Lebanon now. He said that people coming from Syria were getting the jobs because they were cheap labour. He said that his family's situation was very difficult because of the arrival of the Syrians and the presence of Hezbollah. At the hearing before me, when I referred to the claims which [the applicant] had made about his fear of Hezbollah and the pro-Syrian forces, he said that the trouble had been going on at the same time as he had made his application. When I referred to his claims about the current political, economic, and social situation in Lebanon he said that Lebanon was a poor place but he emphasised that he was applying for protection on the basis that ha ה ו כ D A m

			grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm because he is a Sunni Muslim if he returns to his home in [Village 1] in Akkar. So far as the current political, economic, and social situation in Lebanon (and in particular the influx of people from Syria) is concerned, I consider that the risks to [the applicant] in this context are risks faced by the population of Lebanon generally and not risks faced by him personally and that they are therefore excluded from consideration under the complementary protection criterion in accordance with paragraph 36(2B)(c) of the Migration Act.' (para 60). 'Both when he was interviewed by the primary decision-maker and at the hearing before me [the applicant] referred to the fact that his family had paid a lot of money for him to come here to study and that he had not been up to it. While I accept that his family will be disappointed in him, he did not suggest that this circumstance gave rise to any risk that something would happen to him if he went back to Lebanon. He referred once again to his fear based on his claim to be homosexual. Having regard to my findings of fact above, therefore, I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Lebanon, there is a real risk that he will suffer 'significant harm'

as defined in subsection 36(2A) of the

to get to. However, as I put to him, the fact that there is no equivalent of Medicare in Lebanon is not the issue for the purposes of the complementary protection criterion. I do not accept on the evidence before me that the Government of Lebanon will arbitrarily refuse [the applicant] medical care nor that it has arbitrarily restricted care for people in his situation such 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 Lebanon, there is a real risk that he will be arbitrarily deprived of his life. The definitions of 'torture' and 'cruel or inhuman treatment or punishment' in subsection 5(1) of the *Migration Act 1958* 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. I do not accept on the evidence before me that there is the requisite intention to inflict pain or suffering or to cause extreme humiliation to people in [the applicant]'s situation. I do not accept on the evidence before me, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act as a result of his medical problems.' (para 50).

'At the hearing before the Refugee Review Tribunal in

July 2011 [the applicant] said that the political and social situation in Lebanon was confused and at the hearing before me he said that at the time he had completed his studies in Australia in 2010 there had been lots of trouble and friction in Lebanon. He said that the situation in Lebanon, politically and socially, had not encouraged him to go back. He said that it had not been safe for him to go back: it had not been safe for the normal people there. He said subsequently that back in Lebanon it was not as easy as you might think. There were lots of issues going on, especially in the government. He said that just the day before the hearing a problem had arisen in his area of Lebanon and three people had been killed. He said that the cause had been hunting. He said that if he had been there he would have been killed as well and they would have said that he had been in that conflict. He said that there were many people dying in Lebanon and nobody cared. I consider that the risks associated with the general situation in Lebanon are ones faced by the population of the country generally and not by [the applicant] personally and that they are therefore excluded from the complementary protection criterion in accordance with paragraph 36(2B)(c) of the Migration Act.' (para 51).

'Having regard to my findings of fact above, therefore, I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Lebanon, there is a real risk

... There were problems with nutrition, medicines and the winter uniform. Patriotism is falling.... Poroshenko's government has also taken steps to improve conditions for those sent to the front. Last year it spent 5 percent of Ukraine's gross domestic product on the military, enabling the army to revamp its creaking Soviet-era hardware...Scandals over corruption and incompetence in the military are now less frequently splashed across the media, but have not disappeared."' (para 49).

'The US Department of State country report on human rights practice Ukraine covering events in 2016, stated that:

'There were reports of hazing in the military. On August 4 [2016], the country's human rights ombudsman sent a letter to the Prosecutor General's Office and the Ministry of Defense expressing concern about military hazing following the suicide of Vlad Khaisuk, a young soldier serving in a unit stationed in Stanytsia Luhanska. After Khaisuk's suicide, his parents found videos on Khaisuk's smar

military and that an incident of hazing occurred which is being investigated. The constitution provides for a human rights ombudsman, officially designated as parliamentary commissioner on human rights. A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views. The Human Rights Ombudsman's Office frequently collaborated with NGOs through civic advisory councils on various projects for monitoring human rights practices in prisons and other government institutions[8]. On the evidence before me and having regard to the available country information, I find remote the risk that the applicant as a military conscript will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or he will be subjected to degrading

			grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Ukraine, that there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment. The applicant does not satisfy the criteria in s.36(2)(aa).' (para 52).
1605592 (Refugee) [2017] AATA 914 (Unsuccessful)	8 May 2017	5, 96, 133, 154-155, 157, 161-165	The Tribunal considered whether psychological harm, including psychological harm attendant upon the separation of the applicant from family members, amounted to 'significant harm'. The case contains detailed analysis of higher court cases on psychological harm accompanying family separation, see paras 146-153. 'In summary, the applicant claims Australia has protection obligations to him as a refugee under the Refugee Convention or, alternatively, under the complementary protection grounds set out in the Act. He claims he has a well-founded fear of persecution because of his religion as a Catholic, his impute( )] TJET(

> applicant is suffering [a specified condition], and the prospect of indefinite separation from his wife and child will contribute to further serious psychological harm and that this is a necessary and foreseeable consequence of the applicant being removed to Vietnam…' (para 96).

'As already noted, we accept that the applicant has anxiety and depression and this may be exacerbated if

			36(2A) as further informed by the relevant definitions in s 5(1). As observed by Driver FM, as he then was, and accepted by Mansfield J in *SZRSN*, separation from one's family is a consequence of the removal and while this may lead to psychological harm this is not a consequence of the removal *to the receiving country* nor, relevantly, does this constitute "degrading treatment" or "cruel and inhuman treatment". If removal of itself by the Australian government was sufficient to engage the complementary protection provisions of the Act, every time a failed asylum seeker was refused protection and thereby removed from Australia to their country of nationality, there would be the potential for Australia to have protection obligations. The potential for psychological harm, especially if the visa applicant had spent many years in Australia and established significant community connections and lifestyle opportunities that were more favourable than the environment in their country of origin, would be significant.' (para 154). 'We therefore reject the applicant's submissions on the meaning and scope of s 36(2)(aa) in respect of the potential separation of the applicant from his family and do not accept that this of itself would be capable of satisfying the complementary protection criteria.' (para 155). A further issue to consider, accepting the applicant's mental health issues, is whether he will face significant

			However, the critical issue is that there is no evidence that any inadequacy in mental health care services, which has not been particularised or established by the applicant in any event, could be characterised as an intentional act of omission.' (para 164). 'The Tribunal is therefore not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).' (para 165).
1505506 (Refugee) [2017] AATA 795 (Successful)	26 April 2017	14, 49-54,	This case related to s 36(2B)(b) of the Migration Act (state protection) and demonstrates that the state protection must be such that it reduces the applicant's individual risk in *their particular circumstances* below that of a real risk. The applicants' claims for protection, as detailed in the principal applicant's Form 866C[4], are summarised as follows: ¶ They left Malaysia due to a family problem because of their love marriage. ¶ After their marriage was registered, his

laws and standard protections in place that are available to the general community is one element that may be taken into account in determining whether a person faces a real and personal risk of significant harm. Nevertheless, an individual may still face a real risk of significant harm even where a receiving state has a functional system of state protection in place.[20]' (para 50).

'In this regard DFAT notes in its report that whilst credible local and international sources consider the Royal Malaysian Police (RMP) to be a professional and effective police force, the quality of their responses varies depending on levels of training, capacity or engagement in corruption. It is also noted that RMP officers receive limited training, particularly on domestic violence; police officers are paid one of the lowest wages in the Malaysian civil service; and corruption has been recognised as a concern.[21] In relation to domestic violence the report indicates that while Malaysian law prohibits domestic violence and conviction rates have increased over the past decade, domestic violence against woman is a serious problem in Malaysia. The report comments that overall DFAT assesses that women in Malaysia face a high risk of societal and official discrimination and violence, particularly domestic or intimate partner violence. While DFAT indicates that it cannot confirm if 'honour killings' performed to punish individuals who are perceived to have brought shame upon their family

			deaths related to domestic violence do occur in Malaysia. DFAT assesses that while the situation is improving, confusion between federal and state laws and a lack of capacity within the police and judiciary, make it difficult for women to gain adequate state protection and to safely leave violent relationships[22].' (para 51). 'Freedom House also reported in 2015 that government and law enforcement bodies in Malaysia have suffered a series of corruption scandals in recent years.[23] According to a 2012 Freedom House report, 'Malaysia's police effectiveness has been compromised by low salaries and endemic corruption'[24].' (para 52). 'On the basis of this country information, in particular the concerns in relation to corruption, the involvement of the secondary applicant's father with a notorious and violent criminal gang, and the relationship between the secondary applicant's father and a local police [senior officer], the Tribunal is not satisfied that the general measure of state protection in Malaysia is sufficient in the applicants' particular circumstances to remove the real risk of significant harm that they face. The Tribunal finds that, for the purposes of s.36(2B)(b) of the Act, the applicants could not obtain, from an authority in Malaysia, protection such that there would not be a real risk that they will suffer significant harm.' (para 53). 'The Tribunal finds therefore that there are substantial

			grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Malaysia, there is a real risk that they will suffer significant harm.' (para 54).
1619684 (Refugee) [2017] AATA 681 (Unsuccessful)	26 April 2017	24, 32, 109-112	The Tribunal considered China's family planning laws and found that the imposition of a social compensation fee did not amount to 'significant harm'. See also *1504818 (Refugee)* [2017] AATA 278 below. The applicant and the applicant wife came to Australia in July 2008. They were practitioners of Falun Gong who were persecuted, intimidated and discriminated against. Their land was taken away by the government. Since arrival in Australia they have continued to study and practice Falun Gong.' (para 24). 'In the Tribunal hearing held on 5 November 2015, in respect of the first Tribunal decision, claims were made by virtue of the fact that the applicant and the applicant wife have two children and the implications of that, given family planning laws in China. It was indicated that they had not been given permission to give birth and that they would become a 'black houmO ň

Tribunal also made reference to the fact that there had been a relaxation in China recently allowing couples to have two children. The applicant indicated that they would not be given permission to have two children because of the association of he and his wife with Falun Gong.' (para 32).

'For those reasons, in relation to the applicant wife, the Tribunal is not satisfied that any such fine would involve discriminatory conduct and therefore does not satisfy s.91R(1)(c) of the Act as a requirement of persecution for the purpose of the Refugees Conventin criterion.' (sic) (para 109).

'In relation to the applicant and the applicant wife, the social compensation fee is linked to average income and can be paid in instalments. The Tribunal has no evidence before it that the fines are so exorbitant that they would fall within any definition of significant harm, such as cruel or inhuman treatment or punishment or degrading treatment or punishment.' (para 110).

'The Tribunal is not satisfied that any fine that the applicant and the applicant wife may need to pay for breaching family planning laws in China would constitute significant harm for the purpose of the complementary protection criterion.' (para 111).

wife would not be given permission to have two children because of their involvement with Falun Gong. There is no independent evidence before the Tribunal to indicate any link between family planning laws and

			about her whereabouts, and she believes he remains angry and jealous and will harm her if she returns.' (para 33). 'While the Tribunal accepts the applicant's former husband may have abused a number of his partners, and the Tribunal accepts there is a real chance the applicant's former husband will try to harm her again in the future, the Tribunal is not satisfied the applicant's former husband's reason for wanting to harming the applicant are for the reasons of race, nationality, membership of a particular social group or political opinion. Therefore the Tribunal is not satisfied there is a real chance that if the applicant returned to Fiji, she would be persecuted for one of more of the reasons mentioned in s.5J(1)(a) of the Act.' (para 50). 'While the Tribunal accepts the occurrences of physical abuse lessened over time, especially after the applicant separated from her former husband, the Tribunal also accepts the abuse did not cease and the applicant's former husband continued to telephone her and harass her and threaten her with harm. The Tribunal also accepts the applicant's former husband continues to contact family members and friends seeking the applicant's whereabouts.' (para 55). 'Given the Tribunal accepts the applicant's former husband has abused and assaulted and threatened the applicant over a number of years, and continues to seek

not have any family connections outside that city. The Tribunal also accepts the applicant's children live with their [relative] in Suva and have some contact with their father. The Tribunal also accepts the authorities in Fiji have failed to protect the applicant from her former husband in the past.' (para 60).

'As noted above, the Tribunal accepts the applicant's former husband continues to seek information about her whereabouts, and the Tribunal accepts there is a real risk the applicant's former husband will

			there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that she will suffer significant harm.' (para 65).
1504584 (Refugee) [2017] AATA 650 (Unsuccessful)	4 April 2017	24, 31-32, 62-65	This case is an example of the application of s 36(2B)(c), that a risk faced by the population generally and not by a non-citizen personally is taken not to be a real risk. 'The Tribunal finds that the applicant is a stateless person, and that his country of former habitual residence is the OPT (West Bank). The OPT is therefore the country of reference for the purpose of assessing his refugee claims, and the receiving country for the purpose of assessing his eligibility for complementary protection.' (para 24). 'The applicant description of his life in [Town 1] and [Location 1] suggested that he experienced the kind of problems facing West Bank residents, such as restrictions on movement (including into Israel and Israeli-controlled areas, as well as [Country 1]), and some ongoing security concerns. He intimated that

‘The Tribunal accepts that the applicant is concerned about the West Bank’s security environment, in particular due to sporadic violence carried out by Palestinian militants and Israeli settlers, and the uncertain political outlook. Under 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. As noted above, the Tribunal accepts that the applicant may personally face some additional risk factors – as a Palestinian male, and a former (and perhaps future) employee of an Israeli [settlement]. However, the Tribunal is not satisfied that these factors, even cumulatively, establish a real risk of the applicant being subject to significant harm if he returns.’ (para 63).

‘Looking ahead to the reasonably foreseeable future, the Tribunal is not satisfied that that there are substantial

			and foreseeable consequence of the applicant being removed from Australia to the OPT, there is a real risk that he will suffer significant harm: s.36(2)(aa).' (para 65).
1505502 (Refugee) [2017] AATA 800 (Unsuccessful)	31 March 2017	1, 38-41	This case related to the definition of 'significant harm'. The Tribunal found that the definition is not satisfied by a level of medical care of a lesser standard than that of Australia and nor is it satisfied by harm arising from the

they will not receive the treatment which they are receiving here if they return to Sri Lanka.' (para 1).

'Having regard to my findings of fact above I do not accept on the evidence before me that that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant wife being removed from Australia to Sri Lanka, there is a real risk that she will be [assaulted] or troubled or that she will otherwise suffer significant harm at the hands of [Mr A] and his friends or associates. Having regard to my findings of fact above I do not accept on the evidence before me that that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Sri Lanka, there is a real risk that they will suffer significant harm because the applicant husband will come to know that [Mr A] [assaulted] the applicant wife while her husband was working overseas.' (para 38).

'I accept that the applicant wife is suffering from [medica

			treatment or that it has arbitrarily limited treatment for people with the sort of problems which they have such that it could be said that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Sri Lanka, there is a real risk that they will be arbitrarily deprived of their lives.' (para 39). 'The definitions of 'torture' and 'cruel or inhuman treatment or punishment' in subsection 5(1) of the Migration 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. I do not accept on the evidence before me that there is the requisite intention to inflict pain or suffering or to cause extreme humiliation to people suffering from the sort of medical problems which the applicants have. I do not accept on the evidence before me, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Sri Lanka, there is a real risk that they will suffer significant harm as defined as a result of their medical problems.' (para 40). 'In her statutory declaration made on 12 October 2016 the applicant wife said that she would not be able to cope with the fear and pressure if she had to return to Sri Lanka. However I do not accept that the fear and

(para 2).

‘The Tribunal finds that the applicant has manufactured his evidence in relation to why he had departed Lebanon. The Tribunal, therefore, does not accept that the applicant was a member of the [Organisation 1]. The Tribunal does not accept that he had worked with the [Organisation 1] in any capacity. The Tribunal does not accept that he was a member or supporter of the Future Movement. The Tribunal does not accept that he was a member of any council or committee associated with the Future Movement. The Tribunal does not accept that he had carried out any activities for or on behalf of the [Organisation 1] or the Future Movement. The Tribunal does not accept that he had provided any form of assistance to Syrian refugees in Lebanon or to children of Palestinian refuge493604C0590.83 Tm0 g0 G

regime opinion. The Tribunal does not accept that the

[sibling] was [shot]' (para 63).

'The Tribunal does not accept that the applicant has been harmed in the past by anyone or that there is a real chance that he will be subjected to serious harm for the

			harm in Lebanon as a result of lack of general security and instability.' (para 66).
Saleh and Minister for Immigration and Border Protection (Migration) [2017] AATA 367 (Unsuccessful)	24 March 2017	2, 3, 8, 10, 93-97, 99	This case related to the Tribunal's decision whether to exercise its discretion under section 501CA(4) of the [redacted] visa. The applicant was owed *non-refoulement* obligations and challenged previous case authority that the Minister was not bound to consider those or the prospect of indefinite detention because the applicant could apply for a protection visa (see eg *Minister for Immigration and Border protection v Le* [2016] FCAFC 120). He argued that the Tribunal was bound to consider Australia's [illegible] -

			violence.' (para 3). 'Mr Saleh converted to Christianity in mid-2012.' (para 8). 'In February 2014, Mr Saleh pleaded guilty to and was convicted of a series of criminal charges including: ¶ Make Threat to Kill (2 charges); ¶ Threat to Destroy/Damage Property (3 charges); ¶ Burglary (three counts); ¶ Theft (2 charges); and ¶ Intentionally Damage Property; and ¶ Intentionally Destroy Property (ST5 at 204).' (para 10). Applicant's argument: 'With consideration to all of the above we reiterate that the Applicant cannot be returned to Lebanon without breach of Australia's non-refoulement obligations and without engendering serious harm to the Applicant. We submit that the Tribunal has the discretion to consider non-refoulement and, in light of the Applicant's circumstances, ought to do so, particularly having regard to the Tribunal's objectives set out at s.2A of the Administrative Appeals Tribunal Act 1975 of providing a mechanism of review that is fair, just and proportionate.' (para 93). 'In oral submissions counsel for Mr Saleh further argued that, in effect, the language in Direction 65 does

			not preclude the Tribunal from making an assessment of any non-refoulement obligations owed to Mr Saleh. Rather, it is permissive and, in the circumstances of this case, the Tribunal is morally obliged to do so, despite any protection visa protections that might arise at a later date and as assessed elsewhere. In effect, counsel contended that the Tribunal was *required* to assess any non-refoulement obligations that arise in relation to Mr Saleh because Mr Saleh had specifically raised this as an issue and risked permanent detention. Hence, a failure to address this would amount to jurisdictional error on the part of the Tribunal and a failure to provide natural justice (citing *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389 at [94]).' (para 94). 'In analysing this issue, the Tribunal pays particular attention to and is guided by the decision of the Full Federal Court in *Minister of Immigration and Border Protection v Le* [2016] FCAFC 12 (Allsop CJ, Griffiths and Wigney JJ).' (para 95). 'The central issue on appeal in *Le* was whether the primary judge erred in finding that Australia's non-refoulement obligations to Mrs Le were a mandatory consideration in exercising the Minister's power under s 501(2) of the Migration Act to cancel her visa.' (para 96). […] [Quoting Le]: *For these reasons, the primary judge*

conducted. An assessment of that sort will be conducted if Mr Saleh applies for a protection visa. He is entitled

			‘The primary issue in this case is whether Australia does not owe protection obligations to the applicant because he has a right to enter and reside in India within the meaning of s.36(3).There is no suggestion that the applicant has a right to enter and reside in a third country other than India.’ (para 62). ‘The matters which must be considered by the Tribunal in determining whether third country protection is available to the applicant are: o whether the applicant, a citizen of Nepal, has a right to enter and reside in India (s.36(3)); o whether he is at risk of Convention-related persecution or ‘significant harm’ in India (s.36(4)); o whether the Indian authorities might return him to Nepal or another country where he is at risk of Convention-related persecution or ‘significant harm’ (s.36(5) and s.36(5A)); and o if he has a right to enter and reside in India, whether he has taken all possible steps to avail himself of that right.’ (para 63). ‘The applicant also claimed that he would not have ‘his people’ in India, he would find it difficult to get work,

Indians would dominate and disc

			experience in India amounts to a real chance of significant economic hardship that threatens a person's capacity to subsist or a denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist. In addition, the Tribunal is not satisfied that any reduced income the applicant may comparatively experience in India amounts to a real risk of cruel or inhuman treatment or punishment.' (81).
1513679 (Refugee) [2017] AATA 543 (Unsuccessful)	21 March 2017	2-3, 31-33	

illegal activities’. He fears being hunted down and killed by these groups.’ (para 3).

‘The applicant also referred to the sectarian conflict between Sunnis and Alawis in the Tripoli suburbs of Tabbaneh and Jabal Mohsen, stating that, when travelling sometimes, he was unable to ‘pass’. In her post- hearing submission, the applicant’s representative conti ®M m x ɻ m M the conf^ i~ t ml tweÂ n

[number] years education and has a [qualification] which she completed in [year]. She is fluent in Urdu and English. The applicant described her occupation before coming to Australia as [occupation 1]. She worked at [an employer] in Nowsehra from [year] to July 2014. The applicant departed Pakistan legally [in] July 2014. Present in Australia and included in the application are the applicant's spouse, [children] and her mother.' (para 22).

'The applicant claimed in her protection visa application that her [Relative A, named], was brutally

not want to see more of her children and grandchildren murdered by those who hate them for being more affluent and different.' (para 27).

'Having regard to the definition of significant harm in s.36(2A) of the Act as set out under the heading 'relevant law' above, and the findings of the Tribunal above, the Tribunal does not accept that what the applicants might experience upon return to their home in Pakistan will involve a real risk of being arbitrarily deprived of their life; having the death penalty carried

family members to bring about the harm by their conduct, which in this case is to cause her a [medical episode] which may be fatal to her. The Tribunal has

applicant will suffer psychologically if he is disrobed and stood down even if this is only on a temporary basis, and that this would be humiliating for him.' (para 117).

'S.5(1) defines degrading treatment or punishment as follows:
degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

(a) that is not inconsistent with Article 7 of the Covenant; or

(b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.' (para 119).

'Based on the above evidence, the Tribunal is not satisfied that the applicant will suffer significant physical harm or arbitrary deprivation of his life or torture, or cruel or inhuman treatment or punishment from the police, military or memc1 0 0 1 629.71 2627 reo

emotional/psychological harm to the applicant that may arise as a result of what he considers to be degrading

			the Sangha Council in respect to the allegations against the applicant would be intended to cause exacerbation of his medical conditions. The Tribunal is therefore not satisfied that any exacerbation of the applicant's medical conditions falls within the definition of significant harm, or degrading treatment or punishment as qualified in s.5(1)(b) above.' (para 123). 'The Tribunal is not satisfied that the applicant would be unable to obtain appropriate medical care or prevented from obtaining appropriate medical care for his health conditions in Thailand, should they be exacerbated by the psychological and emotional stress of being disrobed.' (para 124). 'Based on the above findings both individually and cumulatively, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Thailand, there is a real risk the applicant was suffer significant harm (having regard to the exhaustive definitions in s.36(2A) and s.5(1) of the Act).' (para 125).
1701026 (Refugee) [2017] AATA 372 (Successful)	6 March 2017	47, 51-53, 65-68	This case related to the cancellation of a visa under section 116(1AA) of the Migration Act (identity). The Tribunal did not cancel the visa because the applicant was owed *non-refoulement* obligations which his removal from Australia would breach. The Tribunal also commented that the Department of Immigration's

failure to carry out a mandatory International Treaty Obligations Assessment

			visa holder should be entitled to continue to hold that visa, and deliberate breaches of the law should be given significant scrutiny in determining whether the visa should remain.' (para 65). 'However, the Tribunal is conscious that to cancel a visa is also a serious decision to be made and one that is not done without serious consideration of all the factors, as detailed above. As discussed with the applicant, the Tribunal considers the cancellation of a protection visa one of the most serious matters that could come before it, given that it involves the cancellation of a permanent visa and would be returned to the country where he states he will face serious harm. This was originally accepted in a protection assessment, and the applicant and his wife have established their family and settled in Australia.' (para 66). 'The Tribunal has considered the international obligations that arise in this instance, as detailed above. The Tribunal considers in these circumstances to be highly relevant in a consideration of a matter like this, and as detailed, have not been properly considered until this determination. The legal consequences of a decision of this nature are a high priority in matters like this, as rightfully recognised by the drafters of the PAM3. No ITOA has been completed that establishes a contrary position to the applicant's circumstances to that as found by the RSA delegate in the first instance, he is owed protection. From a very preliminary view of

non-refoulement obligations.’ (para 49).

‘The tribunal notes that the ITOA undertaken by the

			department regarding his ITOA (provided by the applicant to the tribunal) advises that the applicant will not be asked to leave Australia and that the department will not make arrangements to remove him while he continues to engage Australia's non-refoulement obligations. It appears from departmental records that the applicant does not currently hold a bridging visa after his protection visa was cancelled. The applicant will then be subject to detention, subject to any arrangements made by the department. As the holder of a visa that has been cancelled, the applicant will be barred from applying for any further visas onshore, apart from a very limited range of visas, by operation of s.48 of the Act. Given that the department has stated it will not make arrangements to remove him while he continues to engage Australia's international obligations, there is a real possibility that the applicant may be subject to detention and that it may be indefinite. The tribunal gives this consideration appropriate weight.' (para 52). 'While the tribunal acknowledges that the applicant knowingly provided incorrect answers in relation to his citizenship status and that of his family members as well as in relation to claims of being unable to obtain identity documents and other rights/services resulting from their statelessness, the decision records before it indicate that the decision to grant the applicant a protection visa was not based wholly or in part on the incorrect information. Moreover, the tribunal places

significant weight on the department's own assessment that the applicant is owed non-refoulement obligations, which his removal from Australia would breach, and on the mandatory legal consequences of potentially

annoying, upsetting and hurtful. However, he was not subjected to any other harm.

			satisfied that the applicant son and the applicant daughter will suffer significant harm arising from any limitations on access to services, restrictions on employment or economic conditions related to their ethnicity or 'status' in Lebanon.' (para 64).
1603185 (Refugee) [2017] AATA 381 (Unsuccessful)	24 February 2017	21, 86, 87	The Tribunal considered whether fear of retribution by someone who had left the Sri Lankan air force would amount to 'significant harm'. 'The applicant made the following claims with his application. He was a deserter from the Sri Lankan air force. He was ordered to do wrong things and did not do what he was told to do. He had no option but to leave the air force. He came to Australia in 2008 as a dependent on his wife's student visa. He returned to Sri Lanka in 2010 but the situation was not good. People who desert the army are taken to prison. There are examples of army deserters who are held in the Welikada prison being harmed. The authorities will put him in prison and there is no control in these prisons, they are controlled by underworld thugs. The authorities are corrupt. His human rights will be violated and he will not get justice.' (para 21). 'The Tribunal noted the country that information the military prosecuted a very small number of deserters, those who had been involved in criminal acts or took weapons, such as rifles, when they deserted. The applicant confirmed he had not been involved in any

criminal acts or taken a weapon when he left. The Tribunal does not accept, based on the country information and the applicant's evidence, that the applicant will be imprisoned for leaving the air force in 2001, on his return to Sri Lanka. The Tribunal noted that the country information demonstrated that those people who had had a significant period of nt p.5e

of intention to harm.

‘The applicant, who the Tribunal accepts is a citizen of China, applied for the visa [in] December 2013 and the delegate refused to grant the visa [in] April 2015.’ (para 2).

‘The applicant claimed that she was born in a small and poor village. Her father died when she was [very young] and her mother remarried. The applicant’s stepfather was very strict and harsh. He verbally and physically abused the applicant, did not allow her to eat, locked her out of the house and deprived her of sleep.’ (para 15).

‘When the applicant was studying in [early] high school, her stepfather raped her. The applicant was afraid to tell anyone or the police. The applicant was also afraid that her stepfather would take revenge against her and her mother. The applicant’s stepfather took the applicant’s silence as encouragement and he would severely beat her if she resisted his advances.’ (para 16).

‘The applicant left home and went out to look for a job b

			(ALP) and its leader, Faisal Karami. He is close to [key party supporters]. This has put his life in danger. The ALP, which is based in Tripoli, is part of the March 8 Coalition and it is opposed to the March 14 Coalition. The party is aligned with Hezbollah and the Free Patriotic Movement (FPM).' (para 8). 'The Tribunal accepts that prison conditions in Lebanon may be poor. However, there is no evidence before the Tribunal to suggest that the applicant would be regarded as an extremist, as a person suspected of involvement in sectarian violence or as a refugee. The evidence before the Tribunal does not establish, and the Tribunal is not satisfied, that the applicant will be singled out for torture or mistreatment, that he will be subjected to excessive punishment or that he will be treated any differently for any Convention reason. The Tribunal finds that the applicant's detention in Lebanon, albeit in poor conditions, is the result of the non-discriminatory enforcement of a law of general application. The Tribunal is not satisfied that there is a real risk that the applicant will be subjected to torture, or any other form of, mistreatment amounting to significant harm as a consequence of being detained or during any period which he may spend in prison upon his return. The Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there is a real risk that he will suffer significant harm during any period

grounds for believing that there is a real risk that the applicant will suffer harm that would involve the intentional infliction of severe pain or suffering or pain or suffering, either physical or mental, such as to meet the definition of cruel or inhuman treatment or punishment in s.5(1). Nor is it satisfied that it has substantial grounds for believing that there is a real risk that he will suffer such harm as to meet the definition of degrading treatment or punishment in s.5(1) which refers to an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is not satisfied that it has substantial grounds for believing that there is a real risk that the applicant will suffer arbitrary deprivation of his life or the death penalty.' (para 53).

'In his evidence, the applicant referred to general
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			the population generally and is not faced by the applicant personally. The Tribunal is satisfied that the tensions, lack of general security and the instability the applicant fears are faced by the population generally and not by him personally. The Tribunal finds that there is no real risk that the applicant will suffer significant harm in Lebanon as a result of lack of general security and instability.' (para 55).
1621213 (Refugee) [2017] AATA 360 (Unsuccessful)	17 February 2017	1, 23, 59-62,	This case involved an application of section 36(2B)(c). The Tribunal found that the enforcement of a prison sentence for violating parole conditions applied to the population generally as a law of general application, and that lack of access to healthcare in the country of origin did not amount to 'significant harm' as defined by section 5 of the Migration Act because it lacked the element of intention. '[The applicant] is a citizen of New Zealand. He is aged in his [age range]. He became involved with gangs from an early age in New Zealand and he has a lengthy criminal record, having been in and out of gaol between [specified year] and [year]. He was the victim of a serious assault [in] November 2005 and he came to Australia in March 2006. His mother and all his [siblings] live in Australia and he has [number of children] here as well as [number] grandchildren. He

‘[The applicant] said that when he had come to Australia he had been on parole in New Zealand and he had breached his parole. He said that he had done a year and he had still had another year to run so if he went back to New Zealand he would be going straight to prison because he had breached his parole. He said that his mother had visited him in hospital after the attack and had told him that he needed to come to Australia. He said that God had given him a second chance when he had come to Australia and he wanted to stay here for his children. He said that he had no family back in New Zealand. He said that if he went back to New Zealand he might end up killing someone or someone might kill him. He said that he faced either death or gaol. He said that relocation was not possible as these gangs ran New Zealand-wide.’ (para 23).

‘

			evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to New Zealand, there is a real risk that he will suffer significant harm because he will end up being homeless or destitute.' (para 60). '[The applicant] also produced evidence that he had been getting some counselling while he had been in [his present location] but, as I put to him, there is nothing in the information available to me to suggest that he will not be able to obtain similar services in New Zealand. As I put to him, as a New Zealand citizen he will be able to access publicly funded health and disability services[10]. [The applicant] agreed but he repeated that he would be watching his back all the time. He said that to this day he was dealing with nightmares and flashbacks and not sleeping well as a result of what had happened to him in 2005. There is nothing in the evidence before me to indicate that the New Zealand Government will arbitrarily refuse [the applicant] medical treatment or that it has arbitrarily limited treatment for people with the sort of problems he has such 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 New Zealand, there is a real risk that he will be arbitrarily deprived of his life.' (para 61). The definitions of 'torture' and 'cruel or inhuman

treatment or punishment' in subsection 5(1) of the Migration 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. I do not accept on the evidence before me that there is the requisite intention to inflict pain or suffering or to cause extreme humiliation to people suffering from the sort of problems which [the applicant] has. I do not accept on the evidence before me, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to New Zealand, there is a real risk that he will suffer

29 (emphasis added)

convicted and punished pursuant to Decree 33.' (para 75).

'The applicant has previously indicated that he could be harmed extra-judicially as a result of his drug conviction in Australia. No independent evidence has been provided to the Tribunal that would suggest that Nigerian authorities act extra-judicially to harm those convicted of drug of

			'The Tribunal accepts that if the applicant is returned to Nigeria then the second named applicant and the two children, who are part of his current family unit, are unlikely to follow. This is because the children face a real chance of serious harm in Nigeria on the basis of their mixed heritage as found by the Tribunal considering [Child 2]'s Protection visa application.' (para 79). 'In *SZRSN v MI*AC the Federal Court confirmed that harm arising from the act of removal itself will not meet the definitions of 'significant harm' in s.36(2A). The Court upheld the reasoning of the Federal Magistrate at first instance, which turned on the relationship between various aspects of the 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 ss.36(2B)(a) (relocation) and 36(2B)(b) (protection from an authority) are to have any application.' (para 87). 'Further, the Court noted the circularity in the operation of s.36(2)(aa) were harm to arise from the actual act of

removal itself. Section 36(2)(aa) requires that the rea

			'In the hearing, the applicant did not take issue with the fact that removal from Australia and the family being split up would not constitute significant harm for the purpose of the complementary protection criterion.' (para 91). 'For the reasons given, the Tribunal is not satisfied that the applicant faces a real risk of significant harm for the purpose of the complementary protection criterion as a result of being separated from his wife and children, if he were to return to Nigeria.' (para 92).
1504818 (Refugee) [2017] AATA 278 (Unsuccessful)	8 February 2017	1, 15, 24-25, 28-29, and 35-36	The Tribunal considered the China family planning laws (including recent softening of the law) and found that the imposition of a social compensation fee did not amount to 'significant harm'. 'The first named applicant (the applicant) is [an age] year old male child, who was born in Australia on [date]. Also included in his application as a member of his family, is his [age] year old mother, the second named applicant, who acts on behalf of the applicant. Both applicants claim to be citizens of China.' (para 1). 'The applicant's written claims, as set out in a statement signed on the applicant's behalf by his mother [in] January 2014, are that he fears persecution, discrimination and the abuse of his human rights if he returns to China due to its one child Family Planning

		Law. As his mother has violated this law, she will face a heavy fine, which as a single mother with three children, she cannot afford to pay. Consequently, the applicant will be unable to be registered for residency and will be a 'black child', ineligible to receive education and social welfare and face discrimination in all aspects of social life. His mother fears forced sterilisation by the government. She claims she was punished by the family planning authority when she gave birth to her [earlier] child; was harmed physically and mentally and had to hide to avoid further persecutions. The applicant's parents are separated. Contact with his father was lost when he disappeared out of fear of being deported after his own refugee application failed.' (para 15). 'The applicants' claims are inconsistent with country information regarding recent changes to China's family planning laws, including implementation of a two-child policy and the cancellation of forced contraception, with effect from 1 January 2016[1], as well as earlier changes to regulations in Fujian province.' (para 24). 'With regard to the claim that he will be a 'black child', unable to obtain a 'hukou' and access to education and social services, it is significant that in August 2015, the Fujian Public Security Department implemented a new 'Household Registration Management System' directing local authorities to not treat the payment of social compensation fees as a prerequisite for accepting

			an application for household registration. The Tribunal has had regard to the applicant's mother's claim at paragraph 11.b and at hearing that she does not believe this will happen and that her father told her she would have to pay at least 100,000 RMB to get a hukou for her son, but does not find this persuasive, especially as Fujian province has long been assessed by DFAT as having one of the least coercive family planning regimes in China. The Tribunal is aware that a child born out of wedlock to a young single mother in China may experience social stigmatisation. As discussed with the applicant's mother at hearing, it does not find that the applicant, a child of married parents, who will be able to obtain a hukou and have access to education and other services, will face a similar situation; and notes that separation and even divorce are increasingly common in China. Even if the applicant were to encounter people in the countryside who might call him 'a wild child' growing up without a father, as his mother claimed at hearing, the Tribunal does not accept that this would amount to significant harm.' (para 25). 'As the applicant's mother has not been living in China since 2006, she has not been served with a notification that she must pay a social compensation fee for allegedly having three children. In light of the above, if the applicant's mother returns to China now, she may have to pay a social compensation fee. However, as discussed at hearing, this would only be for one additional child. As she comes from a rural area, it

			would amount to 2-3 times the average annual net income or her actual income; and be payable in instalments. The applicant's mother has not claimed and, on the evidence before it, the Tribunal does not accept that she will suffer significant harm because she is unable to pay the social compensation fee. While the Tribunal accepts that having to pay a fee may cause the applicant's mother some financial hardship, it is not satisfied that this would amount to significant harm as defined in the Act.' (para 28). 'Nor does the Tribunal accept that, if they returned to China, the applicant would be left without any support to the extent that he would suffer significant harm as defined in the Act, because his mother suffers from [Condition 1]. The Tribunal accepts that payments from [Organisation 1] and other refugee services have assisted the mother in looking after her son in Australia as a young child. However, as her son is now [a specified age range] and will be eligible for free education and other social services in China, the Tribunal does not accept that her alleged [Condition 1] will prevent her from doing any work at all while he is at school. Moreover, by her evidence, her son has both maternal and paternal grandparents in China, who have been supporting his two [siblings] to attend school and university since their parents have been in Australia. While she has claimed that her husband has not provided support for her son, whom he did not want to be born, as discussed at hearing, given her evidence that

her husband threatened to take his son away from her several years ago because she could not look after him, the Tribunal does not accept that he would disregard his

			s36(2A) and s 5(1) of the Migration Act.' (para 35). 'Accordingly, the Tribunal is not satisfied that there is a real risk that either of the applicants will be arbitrarily deprived of their life; the death penalty will be carried out on them; or will be subjected to cruel or inhuman treatment or punishment; or will be subjected to degrading treatment or punishment. The Tribunal finds, therefore, that the applicants do not satisfy the criterion set out in s.36(2)(aa).' (para 36). See also *1619684 (Refugee)* [2017] AATA 681 above.
1606177 (Refugee) [2017] AATA 274 (Unsuccessful)	8 February 2017	1, and 61-64	This case related to the Sri Lankan legislation imposing a period of detention for citizens who left illegally. This penalty did not amount to 'significant harm' because it was a law that applied to the population generally (s 36(2B)(c)). The applicant was a Sri Lankan citizen of Tamil ethnicity (para 1). 'Having regard to my findings of fact above, I do not accept that [the applicant] received weapons training from the LTTE and fought with them for over a year before fleeing a few months before the war ended and joining his family, as he has claimed. I do not accept that, as he has also claimed, one of his [relatives] was a [senior official] in the Sea Tigers nor that [the applicant] himself previously helped the Sea Tigers on a

voluntary basis. I do not accept that [the applicant] was stopped, questioned, required to report to an army camp, accused of being an LTTE member and threatened in the months before he left Sri Lanka in July 2012. I do not accept that whenever he went outside his village he was followed by army soldiers or that he was scared that he would be abducted by the army. I do not accept that on other occasions the authorities came to his home looking for him nor that since he has left Sri Lanka the authorities have asked his parents or his friends where he is, nor that his mother has been required to report to an army camp, nor that his [brother] has left home because the authorities were causing him problems. I do not accept on the evidence before me that either [the applicant] himself or any other member of his family has been of any interest to the Sri Lankan authorities since the end of the civil war.' (para 61).

'I accept that [the applicant's] [Relative 1] was in the LTTE and was killed in 2001, that he himself underwent training with the LTTE for eight to ten days in 2008 and that he and his family lived in an area that

			believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Migration Act.' (para 64).
1504928 (Refugee) [2017] AATA 225 (Unsuccessful)	7 February 2017	19, 25, and 31-35	Consideration of whether threats alone amounts to 'significant harm'; in this case an isolated, single threat did not meet the threshold. ' : The applicant, a [age] Indonesian man, claims to have established a business building houses in the Indonesian province of North Sulawesi. He entered into an agreement with a local businessman to borrow money to fund the construction of up to [number] houses. Following the completion of his first batch of houses he was unable to sell them and as a result he was unable to make repayment on the loan. This led to him being threatened and forced to flee to Jakarta where he received a further threat. As a result he fled to Australia.' (para 19). 'The applicant claims that he was first threatened by the lender in October 2010. At the beginning it was through a number of phone calls that the lender demanded to be repaid and threatened him by saying that he would kill him. As a result the applicant claims that he fled to Jakarta in February 2011. He claims that he received a call threatening him again in March 2011 saying that if

			loan his former wife has not faced any harm even though she continues to live in the same area and noting that once the applicant fled to Jakarta over a period of seven months he received only one phone call from the lender I find that the applicant does not face a real chance of serious harm for Refugee Convention reasons or a real risk of significant harm as a necessary and foreseeable consequence of his return to Indonesia.' (para 33). 'For the reasons given above, the Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant **does not satisfy** the criterion set out in s.36(2)(a).' (para 34). '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). 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 35).
1504204 (Refugee) [2017] AATA 220 (Unsuccessful)	3 February 2017	2, 3, 13-14, 22-23, 30-31, and 35-36	The Tribunal considered a healthcare based complementary protection claim and found that the provision of medical care of a standard below Australia's did not qualify as 'significant harm'. The applicant was a citizen of China (para 2).

‘The applicant claims to fear persecution in China, claiming to have been a Falun Gong follower in China, a Christian who is baptised and a member of [a church] Community in [City 1]. He also claims to be a member of a particular social group, wealthy Chinese businessmen. He claims that he was forced to flee China due to extortion by the police forcing him to sell his [business], for which he owed a significant sum in taxes that he could not pay. The applicant also believes he will not receive adequate psychological and medical care in China. He had [Medical procedure 1] in 2005. He also [had a Medical condition 1] in 2013 and has [Medical condition 2].’ (para 3).

‘The Tribunal has considered all of the applicant’s evidence regarding his Falun Gong claims. It has taken into account the applicant’s medical conditions and the difficulties in giving evidence in a hearing setting. However the Tribunal finds the inconsistencies in the applicant’s evidence regarding his Falun Gong claims to be highly concerning and indicative of fabrication. The applicant’s evidence regarding the frequency of his practice and the location of his arrest, and his
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			Gong practice he had no difficulty in departing China or having his passport renewed. Overall, because of these inconsistencies and the unpersuasive nature of his evidence regarding these claims the Tribunal does not accept the applicant has been a Falun Gong practitioner in the past or currently. It does not accept that he was arrested, detained and tortured for 5 days because of his involvement in Falun Gong. It does not accept that difficulties arising from Falun Gong practice led to his fear and decision to leave China. It has formed the view that he manufactured the claim that, because of his Falun Gong practice, after he arrived in Australia, his wife told him the police were looking for him and warned him not to return or he would be arrested.' (para 13). 'As the Tribunal is not satisfied the applicant has ever practised Falun Gong it is not satisfied he would practise Falun Gong if he were to return to China. In view of these findings, the Tribunal is not satisfied that there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, that there is a real risk he will suffer significant harm as defined in the Act, because of Falun Gong practice.' (para 14). 'Overall the Tribunal is satisfied the applicant has been part of a Christian community in Australia since about 2013. It accepts that he was baptised in 2013. However, while it accepts the applicant may enjoy comfort from

praying, the Tribunal is not satisfied the applicant would continue to be part of a Christian community if he were to return to China. He was given opportunities during the hearing to describe his Christian practice if he were to return to China and essentially he indicated he would continue to pray, even if it was by himself. The Tribunal is not satisfied that such practice would draw the attention of the authorities. The Tribunal is therefore not satisfied that he would come to the adverse attention of the Chinese authorities in China for these reasons.' (para 22).

'In view of these findings, the Tribunal is not satisfied that there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, that there is a real risk he will suffer significant harm, because of his Christian practice.' (para 23).

'Overall the Tribunal is not satisfied the applicant was a failed wealthy businessman in China. It accepts he might have had a [business] which he sold before he departed China but it is not satisfied he came to the attention of the authorities because of any financial difficulties he had. It has formed the view that he has fabricated evidence that he owed a large sum of tax or a debt to a real estate company because he left China without difficulty and it does not accept a travel agency associated with one of his creditors would have facilitated his departure.' (para 30).

‘As the Tribunal does not accept that the applicant suffered harm in China because of financial difficulties, or that he had to pay the police bribes, or that he has significant tax debts it is satisfied he will not suffer any harm because of his financial history if he were to return to China in the reasonably foreseeable future. Given these findings the Tribunal is not satisfied there is a real risk that the applicant will suffer significant harm from creditors, the police or other authorities if he is returned to China because of financial difficulties or debts or tax owed.’ (para 31).

‘The Tribunal accepts that the applicant required [Medical procedure 1] in 2005, and that he had a [Medical condition 1] in 2013. It also accepts he required medical treatment after a fall in June 2016. It accepts he suffers from [Medical condition 2] and has [symptomsSr -3t condition 2]iGn9.45 263.21 Iph al3q0/.a

			services are provided by the public system and that the government was in the process of improving the accessibility, quality and efficiency of the health care system. The applicant has not provided country information demonstrating that he will not have access to medical care if he were to return to China because of his particular conditions. The Tribunal accepts that it may be the case that China's public health care system is not at the same standard as that of Australia. However it is not satisfied that any inadequacy of China's health care system or difficulty in obtaining medication meets the definition of significant harm. There is nothing in the evidence to indicate that the Chinese Government will arbitrarily refuse him medical treatment or that it has arbitrarily limited treatment for people with his medical conditions, such 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 China there is a real risk that he will be arbitrarily deprived of his life. The definitions of 'torture' and 'cruel or inhuman treatment or punishment' in s.5(1) of 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. The Tribunal does not accept on the evidence before it that there is the intention to inflict pain or suffering or to cause extreme humiliation to people suffering from his medical conditions. The Tribunal does not accept on the

evidence before it that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to China, there is a real risk that he will suffer significant harm as defined as a result of his medical conditions.'] ions.']

consequence of her or her family's attendance Christian gatherings. The Tribunal is not satisfied that the applicant has sent Christian materials to China. The Tribunal is not satisfied that there is a real risk that the applicant would attend Christian gatherings should she return to China in the reasonably foreseeable future. Nor is the Tribunal satisfied that there is a real risk that the applicant would be perceived as a Christian or suffer any form of harm as a consequence of such a perception.' (para 64).

'The Tribunal is satisfied that the applicant has now resiled from the claims made in her written application that her family's farmland has been divided and shared amongst villagers, that she would assert her rights to her father's property and may suffer harm as a consequence. The applicant indicated at hearing that she had no awareness of the fact that these claims had been made nor did she have any knowledge about her father's property. The Tribunal is not satisfied that there is a real risk of the applicant suffering any harm re

			compensation fees are able to be paid in instalments and children are not denied household registration in Fujian whilst any fee remains unpaid. The measures used to secure payment include personal pressure through personal phone calls and visits. The country information also suggests that legal proceedings may be implemented in order to secure payment. The DFAT Thematic Report on Fujian specifically indicates that the remedial measures reportedly used under the previous regulations, including forced sterilisation, no longer apply and are unlikely to be used in Fujian province. Accordingly, the Tribunal is not satisfied that there is a real risk of such measures being taken against the applicant.' (para 68). 'The applicants are both of a young age, are educated and have Australian work experience. There is no evidence before the Tribunal to suggest that they would not be able to work and earn an income permitting them to repay any social compensation fee, in instalments, if necessary. The applicant has the support of her mother and her parents-in-law in China. In all the circumstances, the Tribunal is not satisfied that the imposition of a social compensation fee would involve significant harm. Nor is the Tribunal satisfied that there is a real risk of the applicant suffering significant harm as a consequence of any attempt by the authorities to enforce payment of the fee.' (para 69).
1613923 (Refugee) [2017]	22 January 2017	16-18, 22 and 26-27	Consideration of whether societal discrimination

Lanka.' (para 91).

'The Tribunal is not satisfied that the applicant had a profile that was of any interest or that had caused him to be genuinely imputed with LTTE connections at the time he left Sri Lanka. For the reasons given above, the Tribunal is also not satisfied that the applicant has a profile which would give rise to a real chance or a real risk of him being imputed with LTTE connections should he return to Sri Lanka now, or in the reasonably foreseeable future.' (para 105).

'The Tribunal accepts that there is a low, albeit real, chance or risk that the applicant may spend a brief period in remand until a magistrate is available, in prison conditions which may be cramped, uncomfortable and unsanitary[15]. The evidence indicates that this situation applies to all persons who have left Sri Lanka illegally, regardless of their background.' (para 119).

'In considering whether there is a real risk of the applicant experiencing treatment involving "significant harm" for the purposes of s.36(2)(aa), the Tribunal is not satisfied on the evidence in this case that during a brief period in remand there is a real risk that the applicant will suffer intentionally inflicted torture, the death penalty or arbitrary deprivation of life. The Tribunal has carefully considered whether he would experience treatment amounting to cruel or inhuman

treatment or punishment or degrading treatment or punishment. The Tribunal has had regard to the PAM3: Refugee and Humanitarian Complementary Protection Guidelines which state that in certain circumstances it may be appropriate to infer an intention to inflict pain or suffering or to cause extreme humiliation if it is evident that pain or suffering or extreme humiliation was or may be knowingly inflicted. The Tribunal does not accept that such an inference can be drawn in the applicant's circumstances. The Tribunal is not satisfied that any pain or suffering caused by severe overcrowding and poor and unsanitary conditions, should the applicant be remanded in custody, would be intentionally inflicted on the applicant as required by the definition of cruel or inhuman treatment or punishment. Nor does the Tribunal accept that severe overcrowding and poor conditions would be intended to cause extreme humiliation as required by the definition of 'degrading treatment or punishment'. The Tribunal is not satisfied that there is a real risk that any element in the process the applicant is likely to face upon return would involve "significant harm" as defined.' (para 121).

'Having considered the applicant's claims individually and cumulatively, the Tribunal is not satisfied that the applicant has a well-founded fear of being persecuted in Sri Lanka. For this reason, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refuge[(R)

			Convention. The applicant does not satisfy the criterion set out in s.36(2)(a).' (para 122). 'The Tribunal further finds that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sri Lanka, there is a real risk that he will suffer significant harm. 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 123).
1505109 (Refugee) [2017] AATA 157 (Unsuccessful)	12 January 2017	2-3, 34-35 and 65-71	The Tribunal discussed psychological illness and whether any consequences of this (iedisbility discrimination) could amount to qualifying harm. In this case it did not due to lack of intent. 'The second named applicant (the applicant daughter) and the third named applicant (the applicant son) are the children of the first named applicant (the applicant

application was refused by the Department [in] December 2012. The then Refugee Review Tribunal (RRT) affirmed the delegate's decision on 13 September 2013. [Mr A] applied for a review of that decision to the Federal Circuit Court of Australia and the Court remitted the matter to the Tribunal for reconsideration.' (para 3).

'The Tribunal did not find the applicant mother to be a credible and truthful witness and has concluded that the decision under review should be affirmed. In reaching this conclusion, the Tribunal has had regard to the reasons detailed below.' (para 34).
'First, the applicant mother provided inconsistent and unpersuasive evidence in relation to her claimed separation from [Mr A] and the knowledge of other family members about [Mr A]'s alleged homosexuality.' (para 35).

'The applicant son did not attend the Departmental interview or the Tribunal hearing. In his written claims, he stated that he would be seriously harmed by his family and the society. He did not provide any reasons for his claimed fear. In so far as these claims may relate to what has been claimed on his behalf with regard to [Mr A]'s claimed sexuality or sexual orientation, the Tribunal has rejected these claims.' (para 65).

'[Dr D]'s letters were authored in 2013. The letters

no persuasive evidence before the Tribunal to suggest that the lack of general security the applicants may be concerned about or any security related dangers posed by ISIS is faced by each of them personally. Indeed,

			protection visa, they cannot be granted the visa.' (para 71).
LQVM and Minister for Immigration and Border Protection (Migration) [2017] AATA 7 (Successful)	9 January 2017	1, 61, 62, 65, 66 and 71-78	This case involved a discussion of the weight of non-refoulement obligations in visa refusal/cancellation cases. Although they are no longer one of the primary considerations, they are still important and play a particularly important role when the application is for a protection visa. 'LQVM is a citizen of Vietnam. She first arrived in Australia on 25 February 2006 on a tourist visa. Since that first arrival, LQVM has left Australia and re-entered on several occasions. Her most recent arrival in Australia was on 26 July 2012 as the holder of a Student Guardian (Class TU) visa. She remained on that visa until it was cancelled on 8 July 2013 on character grounds following her conviction and imprisonment for drug related crimes.' (para 1). 'LQVM is a citizen of Vietnam who has been found to be a person who merits Australia's protection and therefore meets the relevant criteria, apart from character and any other outstanding criteria, for a protection visa. The Tribunal is bound by the MRD's decision and is not entitled to revisit the decision in order to determine whether it would come to the same conclusion as its colleague. The international non-refoulement obligations are therefore relevant in this case.' (para 61).

‘The MRD’s decision dated 11 January 2016 was worded as follows:
The Tribunal remits the matter for reconsideration and directs that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.’ (para 62).

‘LQVM’s legal team submitted that the most likely outcome of LQVM being refused the protection visa in the circumstances where Australia would not return her to Vietnam was indefinite detention. They pointed to assessments of LQVM’s mental health in the medical records provided to the Tribunal which provided her medical history whilst in detention. They pointed to deterioration in LQVM’s mental state where she was rated as well on a relevant psychological test in the early parts of her stay to being severely affected by mental health issues in December 2016.’ (para 65).

psychologist at Foundation House reported that (po)65qo

has made in Australia leading to her incarceration. She suffers high anxiety about whether she will be returned to Vietnam. Her fear of being significantly harmed is extremely high....
...She shows extreme fear of return to Vietnam because of reprisals from the “black society”.’ (para 66).

‘The primary consideration regarding protection of the [redacted] conduct, which weighs in favour of refusal of the visa, should be given quite a deal of weight due to the nature of LQVM’s offences. The expectations of members of the Australian community, as described in Direction 65, would also weigh in favour of refusing the visa given the crimes of which LQVM has been convicted.’ (para [redacted]

‘On the other hand, the primary consideration regarding LQVM’s grand-ight due to the nature

other type of visa. If the Tribunal was considering a different class of visa, such as a partner visa, skilled visa or indeed a parent guardian visa such as that previously held by LQVM, the Tribunal may well have affirmed the delegate's decision to refuse the visa on character grounds.' (para 74)

'Whilst international non-refoulement obligations are no longer one of the three primary considerations as they had been under previous superseded Ministerial

			likely outcome of a refusal. As stated earlier, the non-refoulement considerations enlivened by the fact that it is a protection visa that is involved in this matter has led to a different outcome to that were a different type of visa under consideration.' (para 77). 'Having regard, in particular, to the principles referred to in Direction 65 and the findings made in relation to those principles, the Tribunal concludes that the preferable decision in this case is that the application for the visa not be refused.' (para 78).
1515645 (Refugee) [2017] AATA 20 (Unsuccessful)	6 January 2017	10, 25, 27, 28, 29, 30, 31, and 32	The Tribunal rejected that the harm of feeling traumatised by being returned to the country where the applicant suffered past harmfellwithin the definition of 'significant harm'. The applicant was a citizen of Vietnam (para 10). 'For these reasons, whilst the Tribunal accepts the applicant is a Catholic who was detained and mistreated by police after attending a protest in 2004, the Tribunal does not accept she has a profile such that she would be

			finding her. The Tribunal finds she does not have a well-founded fear of persecution for reason of her religion or actual or imput [-political opinion, should she return to Vietnam in the reasonably foreseeable future.' (para 25). 'The applicant claimed to fear imprisonment in her written claims. For the reasons given above, the Tribunal does not accept the applicant is of adverse interest to the Vietnamese authorities, and finds the risk of her being imprisoned for protest activity or failing to attend a re-education class in 2004 is too farfetched to amount to a real risk. The Tribunal makes this finding based on the lack of follow up by the authorities when she stopped attending the re-education classes, her ability to relocate in Vietnam when she married without adverse attention from local authorities, her ability to apply for a passport and depart Vietnam, and her having left Vietnam legally such that she will not be under any extra scrutiny upon return.' (para 27). 'The applicant spoke at the hearing of fearing returning to Vietnam not only because she feared being the victim of sexual assault again, but because she feared being traumatised by returning to a country where she had previously suffered assault.' (para 28). 'In relation to the applicant's first fear, of again suffering sexual assault, the Tribunal finds this is mere speculation and finds there are not substantial grounds

			for believing there is a real risk of such harm should the applicant be returned to Vietnam.' (para 29). 'In relation to her second fear, the harm of feeling traumatised by being returned to the country where she suffered past harm, the Tribunal finds such harm does not fall within the definition of 'significant harm'. 'Significant harm' is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act. These definitions include an element of intention: it must be an act or omission which causes and is intended to cause harm,' (para 30). 'The harm the applicant fears is psychological harm caused by being returned from Australia to Vietnam. The Tribunal does not accept the act in returning the applicant to Vietnam will satisfy the definition of 'cruel or inhuman treatment or punishment' or 'degrading treatment or punishment', or 'torture'. 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).[2]' (para 31). 'The Tribunal is not satisfied 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 she will suffer significant harm. The Tribunal finds the applicant does not meet the criterion for complementary protection set out in s.36(2)(aa).' (para 32).
1417564 (Refugee) [2017] AATA 129 (Unsuccessful)	4 January 2017		

			(which share borders with southeast Turkey), as well as internal security threats resulting from the civil conflict between Government forces and the PKK in the southeast. Terrorist threats and attacks, including by the Islamic State of Iraq and the Levant (ISIL aka Daesh) and from the Kurdistan Freedom Falcons (TAK), have also increased. The International Crisis Group has listed Turkey as one of 'Ten Conflicts to watch in 2016'.' (para 99). 'However, as the Tribunal discussed with the applicants, the security situation in Turkey appears to be a problem faced by the population in Turkey generally and not the applicants personally. Furthermore, as I put to the applicants, while the security situation has deteriorated in recent years, the country information does not indicate that there is a real chance that the applicants would be harmed as a result of this situation; while security incidents are more frequent in recent years, I consider that it is speculative to suggest that the applicants, who have identified Istanbul as their home area, will be harmed as a result; that is there is no real chance that the applicants will be harmed as a consequence of security situation in Turkey.' (para 100). 'In any event, with regard to the general issues of the security situation in Turkey, these are problems that affect the entire Turkey population and, on the evidence before it, the Tribunal is not satisfied that any

difficulties the applicants might experience because of the security situation in Turkey would be for the essential and significant reason of one or more of the Convention reasons. Accordingly, with respect any difficulties the applicants may experience because of the incidence of security situation in Turkey generally, the Tribunal is not satisfied that the applicants have a well-founded fear of Convention related persecution if they return to Turkey. N [/Bo7 N [/B0 return to Turkeyth