

*Last updated 4 July 2022*

**COMPLEMENTARY PROTECTION IN AUSTRALIA**

**ADMINISTRATIVE APPEALS TRIBUNAL**

*This table is current to 31 August 2021*

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



Case	Decision date	Relevant paras	Comments
<a href="#">Maryvan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2502</a> (Unsuccessful)	26 July 2021	133–173	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant’s Child (Permanent) visa. In doing so, however, the Tribunal considered in detail the ‘other consideration’ of whether Australia’s international non-refoulement obligations arose in this case. The Tribunal analysed the present state of the law, the evolution of the issue of non-refoulement through this matter, the applicant’s claims about returning to Laos, the comparative state of the evidence between the first and second Tribunal hearings, and the consequences of non-revocation. The Tribunal found, however, that the applicant’s articulated and propounded claims to fear harm upon a return to Laos were not sufficiently advanced to reach the threshold of engaging whatever non-refoulement obligations Australia might owe him. The Tribunal also found that, to the extent that prolonged detention may be a possibility for the applicant, this would result in a measure of harm or hardship for him. Overall, the Tribunal found that the actual or possible hardship or harm the applicant may experience from (1) certain of his claimed fear(s) of harm upon a return to Laos and (2) possible prolonged detention were factors that attracted a certain, but not determinative, level of weight in favour of revocation. This weight, however, was outweighed by the combined weight attributed to two primary considerations.</p>
<a href="#">KMJM and Minister for Immigration, Citizenship, Migrant Services and</a>	7 July 2021	80–110	<p>The Tribunal set aside the delegate’s decision and substituted a decision revoking the mandatory cancellation of the applicant’s Global Special</p>

<p><a href="#">Multicultural Affairs (Migration) [2021] AATA 2232</a> (Successful)</p>			<p>Humanitarian (Permanent) visa. Relevantly, there was no dispute that the applicant suffered from mental illness, having been diagnosed some years ago as suffering from schizophrenia and more recently with post-traumatic stress disorder. He would, if returned to South Sudan, be returning from overseas. He also carried with him his own ethnicity. It followed, in the Tribunal’s view, that, if forced to relocate back to South Sudan, the applicant would be exposed to a very real risk of harm, whether by arbitrary detention or by being subject to other forms of violence and inhumane treatment, because he was a person who was identified as someone returning from overseas or because he was a person who suffered from mental illness or both. In addition, the ethnic group with which he identified and perceptions about that group’s political position were a possible source of risk of harm to the applicant. In the Tribunal’s view, therefore, the applicant was a person to whom non-refoulement obligations were owed.</p> <p>It was submitted for the Minister that because the ‘limitation on access to mental health treatment in South Sudan is clearly a situation that is faced by the population generally and is not one of the types of harm encompassed by Australia’s interpretation of its non-refoulement obligations as enunciated in the [<i>Migration Act</i>], the Tribunal should not have regard to it. The Tribunal responded that, aside from the fact that Australia’s international obligations are set out in the <i>Refugee Convention</i>, the CAT, and the ICCPR and are wider than the criteria in the Act, the issue was not whether access to health care was a problem faced by the</p>
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			<p>population generally. The issue instead was whether people who suffered from mental illness were treated less favourably than the population more generally, because they suffered from or had the attributes of a mentally ill person and, more significantly, whether they were subject to harm, because they were people who were suffering from mental illness. In the Tribunal's view, it was clear that, once the matter was viewed that way, there existed non-refoulement obligations under each of the <i>Refugee Convention</i>, the ICCPR, and the CAT.</p> <p>The Tribunal was satisfied that the applicant was a person who was likely to suffer harm if returned to South Sudan, such that Australia had non-refoulement obligations.</p>
<a href="#">RDHX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2095</a> (Unsuccessful)	5 July 2021	91–119	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant's Partner visa. In doing so, however, the Tribunal considered in some detail the 'other consideration' of whether Australia's international non-refoulement obligations arose in this case. The Tribunal was referred to the decision of <i>Iyer v Minister for Immigration and Multicultural Affairs</i> [2000] FCA 1788 for the proposition that a well-founded fear of persecution under the <i>Refugee Convention</i> contains a subjective element which, if not satisfied, means that there was no obligation to go on to consider whether a non-existent fear was well-founded (at [29]). The Tribunal explained that the principle cited from this decision deals with satisfying the test of a well-founded fear of persecution only. The non-refoulement consideration, however, embraces two differently expressed categories of harm, arising from the twin components of protection obligations, as defined. The</p>

			<p>complementary protection obligations are expressed as a state of satisfaction as to the existence of a real risk of significant harm. The Tribunal then observed that the argument arising from this submission, however, raised an important practical consideration about the nature of the harm in question. The principal issue here was really one of what has been described as the ‘threshold of seriousness’ (<i>Ezegbe v Minister for Immigration and Border Protection</i> [2019] FCA 216, at [37]). That is, for the purposes of this consideration, whether the harm said to arise from the applicant’s return to Malaysia rose to a relevant level, in the context of the tests set out. In the present case, the Tribunal accepted the evidence about the nature and extent of past experiences of harassment, and as to the fear of such harm should the applicant return. The Tribunal also accepted, based on country information, that there was a moderate risk of societal and possibly official discrimination, which arose from the applicant’s sexual orientation. However, the Tribunal did not accept the nature and extent of this risk to rise to the threshold of harm contemplated by the tests found in the <i>Migration Act</i>. Further, the choice made by the applicant to return to Malaysia on a number of occasions, and to plan another return trip prior to her arrest, ran contrary to the claims made under this consideration. Accordingly, the Tribunal found that this consideration was of neutral weight.</p>
<a href="#">Deng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</a>	5 July 2021	179–198	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant’s Woman at Risk visa. Relevantly, in the Tribunal’s view, given the applicant could settle elsewhere in South Sudan (Juba), it was not satisfied that there was more than a remote chance that</p>

<p><a href="#">(Migration) [2021] AATA 2097</a> (Unsuccessful)</p>			<p>the applicant would suffer serious harm on the basis of his ethnicity or for any other reason personal to him, or that he would face a real risk of significant harm within the meaning of section 36(2A) of the <i>Migration Act</i> that was not one faced by the general population. The Tribunal was not satisfied that the applicant engaged Australia’s non-refoulement obligations for any reason put forward by him or that arose on the evidence. Nonetheless, on the basis that the applicant would be at risk of generalised violence and crime in South Sudan, this ‘other consideration’ of Australia’s international non-refoulement obligations weighed to a limited extent in favour of revocation.</p>
<p><a href="#">1835719 (Refugee) [2021] AATA 3073</a> (Unsuccessful)</p>	<p>2 July 2021</p>	<p>64</p>	<p>The AAT affirmed a decision not to grant the applicants protection visas. Relevantly, the Tribunal found that ‘Mrs B’ would not return to a rural or conservative area of Egypt if she returned there since, when pressed, ‘Mr A’ said they would live with their son. The Tribunal did not accept, given its earlier findings about Coptic Christians in Cairo and Giza, that ‘Mrs B’ would need to cover her hair to avoid being attacked or, even if she did consider it was necessary to cover her hair, that this would amount to significant harm as defined in the <i>Migration Act</i>.</p>
<p><a href="#">Li (Migration) [2021] AATA 2695</a> (Unsuccessful)</p>	<p>1 July 2021</p>	<p>67–75</p>	<p>The Tribunal affirmed a decision to cancel the applicant’s Five Year Resident Return visa. In the course of doing so, the Tribunal considered whether the cancellation would lead to the applicant’s removal from Australia in breach of Australia’s non-refoulement obligations. The Tribunal observed that the phrase ‘non-refoulement obligations’ is not confined to the protection obligations to which section 36(2) of the <i>Migration Act</i> refers (citing <i>Ibrahim v MHA</i> [2019] FCAFC 89 at [103]). It is defined</p>

			<p>in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind.</p> <p>Here, the applicant relevantly referred to COVID-19 and stated that the Chinese authorities would monitor returnees and she and her child may have to quarantine. The Tribunal noted that, if that was the case, it would be a common practice of general application, applicable in many countries and applicable equally to all arrivals. The Tribunal did not consider that being required to complete quarantine amounted to any form of serious or significant harm giving rise to Australia's non-refoulement obligations.</p>
<a href="#">1710853 (Refugee) [2021] AATA 3076</a> (Successful)	30 June 2021	108, 128, 129–137	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i>. Relevantly, however, the Tribunal also noted that the applicant was of Amhara ethnicity and that he was registered as living in, and would return to, Addis Ababa where most of his family resides. The Tribunal found that, in Addis Ababa, Amhara made up a majority of the population and Amharic was spoken by a large majority of the city's population. The Tribunal further found that official discrimination against Amhara was rare and did not reach the level of a real chance of serious harm or a real risk of significant harm.</p>



			<p>The Tribunal also noted that, to the extent the applicant claimed his wife and children would suffer discrimination in Australia due to his HIV status becoming known through his return to Ethiopia, such discrimination, were it to arise, would be outside the definition of significant harm under the <i>Migration Act</i> and was not contemplated as giving rise to a claim for protection in Australia. In any event, his wife and children were citizens of Australia and therefore not contemplated to be owed refugee or complementary protection in Australia, by Australia.</p> <p>The Tribunal found that there was no real chance of persecution being faced by the applicant for the essential and significant reason of any ground in section 5J(1) arising from harm caused to him by his separation from his wife and children if he was returned to Ethiopia, for the purposes of section 36(2)(a) of the Act. The Tribunal also noted that, in <i>SZRSN v MIAC</i>, it was claimed significant harm would arise from separating the applicant from his Australian children. The Federal Court (agreeing with the Federal Circuit Court) found that harm arising from the act of removal itself will not meet the definitions of ‘significant harm’ in section 36(2A). The Tribunal here noted that that decision turned on the relationship between various aspects of complementary protection provisions. Firstly, the Court had regard to the reference in section 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</p>
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			<p>the qualifications in section 36(2B) expressly refer to harm ‘in a country’ which is necessarily the receiving country if the circumstances of section 36(2B)(a) (relocation) and section 36(2B)(b) (protection from an authority) are to have any application. Further, the Court noted the circularity in the operation of section 36(2)(aa) requires that the real risk of significant harm must arise ‘as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country’. The Court stated that the fact that the significant harm must be a consequence of removal strongly suggests that the removal itself cannot be the significant harm. Lastly, the Court in <i>SZRSN</i> had regard to the ‘intention’ requirements in the section 5(1) definition of ‘degrading treatment or punishment’. The Court reasoned that separation from family (in that case, children) is the consequence of removal, and a consequence cannot be said to have an ‘intention’, so the act of removal itself cannot be said to be perpetrated by the State with the intention of causing ‘extreme humiliation that is unreasonable’.</p> <p>As such, it appeared to the Tribunal here that, although the risk of significant harm envisaged by section 36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, section 36(2)(aa) will not be engaged by harm inflicted by the act of removal itself. Further, in <i>CSV15 v MIBP</i> [2018] FCA 699 and <i>CHB16 v MIBP</i> [2019] FCA 1089, the Federal Court held that the requisite harm must be caused or inflicted by another person. This does not include self-harm.</p>
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			<p>For these reasons, while the Tribunal accepted the applicant did not wish to be separated from his wife and children and would suffer emotionally as a result of any increased separation from them, it did not accept that he would be significantly harmed on this basis. It followed that the Tribunal was not satisfied that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Ethiopia, there was a real risk that the applicant would suffer significant harm for the purposes of section 36(2)(aa) of the Act due to being separated from his wife and children.</p>
<p><a href="#">1711935 (Refugee) [2021] AATA 3082</a> (Unsuccessful)</p>	30 June 2021	105–110	<p>The AAT affirmed a decision not to grant the applicants protection visas, principally due to credibility concerns. In the context of complementary protection, one applicant claimed that a church was blown up by the Taliban a few metres from his house and his cousin was killed by a mob. The Tribunal accepted that there existed generalised violence in Pakistan. DFAT country information regarding generalised violence in Pakistan stated that the security situation in Pakistan was complex, volatile, and affected by domestic politics, politically motivated violence, ethnic conflicts, sectarian violence, and international disputes with India and Afghanistan. The applicant did not claim, nor did the evidence suggest, that these incidents of violence were directed at the applicant, nor did the evidence suggest the applicant was a Christian. The Tribunal noted that not all persons have a real risk of suffering harm, merely for reason of their residence in Pakistan. Therefore, it was not satisfied that the applicants' individual circumstances were such that</p>

			<p>they would face a real risk of significant harm should they return to generalised violence.</p> <p>The applicant also claimed that ‘if you do not have money you cannot live in Pakistan’. He had no university education and would not be able to find a job. The Tribunal was not satisfied that the applicant would be destitute if he returned to Pakistan. It also was not satisfied that he would not be able to secure some form of employment and family support if he returned to Pakistan. It was satisfied that he, his wife, and his child would be able to subsist. The applicant had lived and worked in Australia. He had also worked in Pakistan, albeit he did not believe his salary was adequate. He claimed to have been supported by family for 1.5 years prior to coming to Australia. Therefore, the Tribunal was not satisfied that the applicants’ circumstances were such that there was a real risk they would face significant harm on their return for a lack of university education and/or employment by the applicant.</p> <p>The Tribunal also considered whether one applicant, a child who may need medical attention in the future, would suffer significant harm on his return to Pakistan. Based on the available evidence, the Tribunal found that the inadequacies of the Pakistani health care system or the inability to access medical treatment in Pakistan that the child may face on his return to Pakistan did not amount to significant harm as defined in section 36(2A) of the <i>Migration Act</i>. The country information indicated that any failure to provide the child with relevant and appropriate health care treatment or support would be due</p>
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			<p>to the Pakistan economy rather than any intentional act or omission. The Tribunal also found that the risk of harm due to inadequate health care services in Pakistan was one faced by the population of Pakistan generally and not faced just by the child only (apparently referring to, and relying on, section 36(2B)(c)).</p> <p>Having considered the applicants' evidence singularly and cumulatively, the Tribunal concluded that they did not satisfy the complementary protection criterion in section 36(2)(aa).</p>
<p><a href="#">1716082 (Refugee) [2021] AATA 3070</a> (Unsuccessful)</p>	30 June 2021	48–51	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns.</p> <p>In the context of complementary protection, the applicant claimed that he would be harmed by his girlfriend's parents or residents in Henan, China, where he lived. The Tribunal was satisfied, however, that the applicant's fears from his girlfriend's family were localised to where he lived and there was no evidence to suggest that the girl's family were able to locate him in other parts of China. When put to the applicant he could go elsewhere in China, Guangdong or Shanghai in light of his work history, he indicated he could not go to Guangdong due to its weather and the effects of the weather on his medical problem. He did not have the complained symptoms in Sydney or in Shanghai. The Tribunal observed, however, that there was no information to suggest that the applicant had a medical condition that prevented him returning to Henan or anywhere else in China. When put to the applicant that he could return to Shanghai, he said that he was only there for 3 months. He provided no other</p>

			<p>reasons for being unable to relocate to Shanghai. The Tribunal was satisfied that the applicant was able to return to a place in China where he did not fear harm, namely Shanghai (in an apparent reference to section 36(2B)(a) of the <i>Migration Act</i>). The Tribunal found to be remote the risk that the applicant would suffer significant harm on his return to China at the hands of his girlfriend's parents or relatives.</p> <p>Further, the Tribunal did not accept that the applicant would practise Yiguangdao (YGD) on his return to China. It did not accept that the applicant had an adverse profile in China or an adverse imputed profile in China or that he would be imputed with an adverse profile on his return to China for practise of YGD.</p> <p>Accordingly, the Tribunal found that the applicant did not satisfy the requirements of section 36(2)(aa) of the Act.</p>
<a href="#">1713029 (Refugee) [2021] AATA 2813</a> (Unsuccessful)	29 June 2021	31–36	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the context of complementary protection, the Tribunal referred to section 36(2A) of the <i>Migration Act</i> and noted that, when discussing these definitions with the applicant at the hearing, she claimed that the harm that she feared in Serbia would constitute cruel and inhuman treatment or punishment to her children or degrading treatment or punishment to her children. The applicant did not claim that the conduct would be directed towards her, but rather towards her children at school. The Tribunal observed that definitions of these types of serious harm are further set out in section 5(1) of the Act. These definitions provide that the</p>

			<p>acts are required to be intentionally inflicted on the applicant or intended to cause the applicant extreme humiliation which is unreasonable. On the basis of her evidence, the Tribunal considered that there existed a lack of any intention to cause harm directly or even indirectly to the applicant from the conduct that she claimed her children would experience at school. The Tribunal therefore did not accept that the applicant would experience cruel or inhuman treatment or punishment or degrading treatment or punishment as a consequence of any bullying or harassment directed at her children. For completeness, the Tribunal also found that the applicant would likewise not be arbitrarily deprived of her life, have the death penalty carried out on her, or be subjected to torture within the meaning of the Act for this reason. Further, the applicant also acknowledged that her children would not be compelled to return to Serbia if the visa application was refused, but she would choose to have them return with her. As such, the concerns that the applicant had for her children in Serbia were not a necessary consequence of the applicant being removed from Australia to her receiving country.</p> <p>The Tribunal considered any implied claims that may have arisen from the applicant being perceived as a single mother or a divorced mother, and whether she would experience significant harm for this reason. The Tribunal was unable to locate any country information, and the applicant did not present any material, to indicate that single mothers or divorced women did experience any harm in Serbia for this reason. The Tribunal was also satisfied that the applicant would not be without support</p>
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			<p>if she were to return to Serbia. She had her parents, with whom she could live, and her husband would continue to support her and their children. Even if the applicant were to experience some stigma, the Tribunal did not accept that this would be greater than verbal comments or ostracism. The Tribunal was not satisfied that any stigma would amount to significant harm. That is, the Tribunal was not satisfied that the stigma would lead to the arbitrary deprivation of the applicant's life, the death penalty being carried out, that she would be subjected to torture or cruel or inhuman treatment or punishment or degrading treatment or punishment.</p> <p>Finally, the Tribunal considered the risk of harm to the applicant if removed from Australia to Serbia on the basis that she would be separated, at least temporarily, from her husband. On this issue, the Tribunal also had regard to <i>SZRSN v MIAC</i>, where it was claimed significant harm would arise from separating the applicant from his Australian children. The Federal Court there found that harm arising from the act of removal itself would not meet the definitions of 'significant harm' in section 36(2A). Australia's obligations to afford protection referred to in section 36(2)(aa) arise from the harm faced by a non-citizen in the receiving country, rather than the country in which protection is sought. As the harm under section 36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, section 36(2)(aa) will not be engaged by harm inflicted by the act of removal itself. Accordingly, the Tribunal found that section 36(2)(aa) was not engaged in this case, a</p>
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			consequence of the applicant being separated from her husband, by the act of being removed from Australia to Serbia.
<a href="#">Bakhsh (Migration) [2021] AATA 2981</a> (Successful)	29 June 2021	66–83	The AAT set aside the decision under review and substituted a decision not to cancel the applicant’s Global Special Humanitarian Visa. Relevantly, considering the anticipated deterioration of the security situation in Afghanistan and the already precarious situation for Hazara, the Tribunal found that, if the applicant’s visa was to be cancelled, there were international obligations including those pertaining to personal security (Article 9 ICCPR), protection against cruel, inhuman or degrading treatment (Article 16 CAT) and liberty to movement (Article 12 ICCPR) that would be breached. For this reason, the Tribunal gave this considerable weight against cancelling the visa.
<a href="#">1713285 (Refugee) [2021] AATA 2952</a> (Successful)	25 June 2021	30–32	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i> . Relevantly, however, the Tribunal also noted that the applicant claimed that she had experienced official and societal discrimination as a Muslim in Myanmar. For instance, she had had to pay higher school fees and employers declined to offer her work after finding out about her faith. She also had difficulties obtaining an ID card after she turned 18. At hearing, she gave other instances of discrimination, such as once being denied service at a medical clinic, and enrolling her daughters in private school because the public school did not want to enrol them. While the Tribunal accepted that the applicant

			might have experienced some degree of discrimination, it was not satisfied that this amounted to significant harm for the purpose of the complementary protection criterion.
<a href="#">1932265 (Migration) [2021] AATA 2615</a> (Successful)	24 June 2021	83–90	The AAT set aside the decision under review and substituted a decision not to cancel the applicant’s Five Year Resident Return visa. Relevantly, the Tribunal appeared to give some weight to the ‘other consideration’ of Australia’s international non-refoulement obligations. The Tribunal referred to country information highlighting the ongoing insecurity in Iraq and the particular vulnerability of women such as the applicant, with no male guardian, a politicised past public profile, and mental illness. Given the applicant’s political background in Iraq, her former connection to the US forces, her perceived tribal transgression in leaving or ‘running away’ without male or tribal permission and accompaniment, her status as a single divorced woman, and her poor mental and physical health, the Tribunal considered it likely she would face serious harm, in the form of severe discrimination and physical violence, if required to live in Iraq permanently. While the Tribunal’s language here of ‘serious harm’ (cf ‘significant harm’) suggests that the Tribunal may have been referring to, and relying on, Australia’s non-refoulement obligations under the <i>Refugee Convention</i> rather than the ICCPR and/or CAT, for completeness, this decision is nonetheless included in this list of case summaries.
<a href="#">1920622 (Refugee) [2021] AATA 2924</a> (Unsuccessful)	23 June 2021	41–45	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Additionally, in the context of complementary protection, and with respect to the applicant’s fear of

			<p>financial hardship if he returned to Malaysia, the Tribunal was not satisfied that the applicant's worries about financial matters amounted to a real risk he would suffer significant harm if he was removed from Australia to Malaysia. According to his evidence, the applicant had experience in three different sectors in his home country and had acquired agricultural work skills in Australia. The Tribunal noted that this would be of benefit to the applicant's home state of Perlis, which was based on the forestry, agriculture, and fishing industries. The Tribunal recognised that the applicant may also have to broaden his employment search criteria in Malaysia and consider other regions of the country.</p>
<p><a href="#">1701688 (Refugee) [2021] AATA 3023</a> (Unsuccessful)</p>	21 June 2021	104–121	<p>The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in China on account of:</p> <ul style="list-style-type: none"> <li>• having to attend smaller Roman Catholic church services in China with fewer numbers of believers;</li> <li>• participating in the Chinese underground church;</li> <li>• enjoying a lesser degree of religious freedom in China than that which would be available to him in Australia; or</li> </ul> <p>the inability of the applicants' children to attend Catholic schools in China.</p>
<p><a href="#">1917948 (Refugee) [2021] AATA 3022</a> (Successful)</p>	18 June 2021	68–73, 75–99, 101	<p>The AAT set aside a decision to refuse to grant the applicant a protection visa. The Tribunal found that the applicant was a refugee under Article 1A(2) of the <i>Refugee Convention</i> and that, if he were to be removed from Australia, this would breach Australia's non-refoulement obligations. Relevantly, however, the</p>

			Tribunal also discussed the effect of new amendments to the <i>Migration Act</i> that significantly restrict the circumstances in which a protected person can be removed from Australia under sections 197C and 198 of the Act (see <i>Migration Amendment (Clarifying International Obligations for Removal) Bill 2021 (Cth)</i> ).
<a href="#">1726365 (Refugee) [2021] AATA 3075</a> (Unsuccessful)	8 June 2021	67–111	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the context of complementary protection, the Tribunal did not accept that the applicant faced a real risk of significant harm in Pakistan on account of:</p> <ul style="list-style-type: none"> <li>• the applicant’s anti-sectarian activities, as a Sunni Muslim assisting Christians and anti-sectarian community leaders;</li> <li>• the applicant belonging to the Barelvi wing of Sunni Islam;</li> <li>• the applicant’s imputed religious beliefs as a person who had previously associated with Christian Pakistanis; or</li> <li>• the applicant’s physical and mental health state and the impact of the COVID-19 pandemic on him.</li> </ul> <p>In connection with this last point, the Tribunal accepted that the applicant would face a real risk of harm whereby his health, both physically and mentally, would deteriorate, as a necessary and foreseeable consequence of returning to Pakistan. However, the Tribunal considered that the harm did not amount to significant harm for the purpose of section 36(2A) of the <i>Migration Act</i>. In the course of reaching this conclusion, the Tribunal discussed the meaning of, and relationship</p>

			between, each of the statutory types of ‘significant harm’ identified in section 36(2A).
<a href="#">1710719 (Refugee) [2021] AATA 3025</a> (Unsuccessful)	7 June 2021	38–82	<p>The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in Pakistan on account of:</p> <ul style="list-style-type: none"> <li>• returning as failed asylum seekers/protection visa applicants/ involuntary returnees/returnees;</li> <li>• the Pakistani authorities believing they or their parents held protection visas;</li> <li>• being placed in institutional care due to their parents being detained;</li> <li>• having to return on Australian travel documents;</li> <li>• being unaccompanied minors with no legal guardians and being placed in institutional care, being abandoned or having no one to look after them, or having nowhere to live;</li> <li>• any of the difficulties they claimed their father and mother would face in Pakistan which would render them unable to look after the applicants; or</li> <li>• generalised violence in Pakistan, the impact of the COVID-19 pandemic in Pakistan, poor education in Pakistan, and adjustment difficulties (eg language barriers and the first applicant’s developmental difficulty).</li> </ul> <p>In connection with this last point, the Tribunal observed that the situation the applicants would face on account of generalised violence did not constitute significant harm under section 36(2B)(c) of the <i>Migration Act</i> as the real risk was one faced by the population of Pakistan</p>

			generally and was not faced by the applicants personally. The Tribunal reached the same conclusion with respect to the impact of the COVID-19 pandemic.
<a href="#">1726911 (Refugee) [2021]</a> <a href="#">ATA 2927</a> (Successful)	4 June 2021	56–73	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the <i>Migration Act</i> . The Tribunal concluded that the possibility the applicant would be arbitrarily deprived of his life or subjected to other significant harm if he returned to Kunduz city due to an armed insurgency and as a Western returnee was not high. However, when considered cumulatively, the risk was more than remote, insubstantial, or a far-fetched possibility. The Tribunal was thus satisfied that the applicant faced a real risk of significant harm as defined in section 36(2A) if he returned to Kunduz city. Further, the Tribunal concluded that it would not be reasonable for the applicant to relocate to another area in Afghanistan (cf section 36(2B)(a)), that the applicant would not be able to obtain adequate protection from the Afghan authorities (cf section 36(2B)(b)), and that the real risk of significant harm the applicant would face as a resident of Kunduz city due to the armed conflict and as a returnee from the West was one he would face personally and was not one faced by the population of Afghanistan generally (cf section 36(2B)(c)).
<a href="#">1912576 (Refugee) [2021]</a> <a href="#">ATA 3083</a> (Successful)	4 June 2021	97–103	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary

			<p>protection criterion in section 36(2)(aa) of the <i>Migration Act</i>. The Tribunal concluded that the applicant faced a real risk of significant harm arising from cruel or inhuman treatment or punishment, torture and degrading treatment or punishment from ‘Mr A’. The Tribunal then considered whether it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that he would suffer significant harm. Under section 36(2B)(a) of the <i>Migration Act</i>, there is taken not to be a real risk that an applicant will suffer significant harm in a country if it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm. The Tribunal here drew guidance from the judgments of the High Court in <i>SZATV v MIAC</i> and <i>SZFDV v MIAC</i>, which held that whether relocation is reasonable, in the sense of ‘practicable’, must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country: <i>SZATV v MIAC</i> [2007] HCA 40; (2007) 233 CLR 18 and <i>SZFDV v MIAC</i> [2007] HCA 41; (2007) 233 CLR 51, per Gummow, Hayne and Crennan JJ, Callinan J agreeing.</p> <p>The Tribunal observed that, while the applicant could move to other parts of Afghanistan where he would be out of the reach of ‘Mr A’, the circumstances of a deteriorating security situation made such a move difficult. In addition, the Tribunal repeated that what is reasonable, in the sense of practicable, must depend upon the particular circumstances of the applicant and the</p>
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			<p>impact upon that person of relocating within their country.</p> <p>The applicant here had a degree of mental health challenges. He was on prescription medication. He believed that alcohol helped him deal with challenges. He had been in Australia for eight years. The Tribunal noted that Afghanistan was a community and tribal society in which strangers or new comers would be easily identified. All of this, in the context of a deteriorating security situation in which the Taliban had a grudge against Tajiks and would be suspicious of people who may have worked for the Afghan government or foreign forces or those who are somehow associated with the West, the Tribunal found, made relocation unreasonable.</p> <p>The Tribunal found that the applicant could not obtain state protection from ‘Mr A’ for the reasons noted above, namely that during times when the security situation was deteriorating and the government’s security forces were preoccupied with an insurgency, the ability of the police to provide protection would be greatly diminished.</p> <p>The Tribunal also found that the threat the applicant faced was not one faced by the population of the country generally, although the general situation exacerbated the situation. The threat the applicant faced was specific to the applicant due to having crossed ‘Mr A’.</p> <p>Having concluded that the applicant did not meet the refugee criterion in section 36(2)(a), the Tribunal considered the alternative criterion in section 36(2)(aa).</p>
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			The Tribunal was satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa).
<a href="#">BHHX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1574</a> (Successful)	2 June 2021	14–16, 101–157	The AAT set aside a decision to refuse to grant the applicant a temporary protection visa. The Tribunal noted that the applicant had not requested voluntary return to Iran. The Minister also confirmed that the applicant was a person to whom non-refoulement obligations were owed in respect of Iran. Relevantly, however, the Tribunal discussed in detail the effect of new amendments to the <i>Migration Act</i> that significantly restrict the circumstances in which a protected person can be removed from Australia under sections 197C and 198 of the Act (see <i>Migration Amendment (Clarifying International Obligations for Removal) Bill 2021 (Cth)</i> ).
<a href="#">1717387 (Refugee) [2021] AATA 2608</a> (Unsuccessful)	1 June 2021	57–60	The AAT affirmed a decision not to grant the applicant a protection visa. In the specific context of complementary protection, the Tribunal noted that it had discussed with the applicant country information indicating that Pashtuns ran businesses in Lahore, and observed that the applicant indicated he would not have the money to set up a business. He raised his concern that his employment as a seaman had finished and he feared returning to Pakistan because of the COVID-19 pandemic and his employment situation. The Tribunal was of the view, however, that issues with securing employment, and health risks related to the COVID-19 pandemic, were faced by the Pakistani population generally and not by the applicant personally (apparently referring to, and relying on, section 36(2B)(c) of the <i>Migration Act</i> ). There was no suggestion that he would be denied employment or medical treatment for any reason other

			<p>than a general lack of medical facilities or employment opportunities. The Tribunal was not satisfied that there existed a real risk that the applicant would suffer significant harm in Pakistan for these reasons. The Tribunal noted the applicant had work experience on ships as a stockman and in Australia in a [workplace] and [on farms] (redacted). He also indicated he had some savings and a car worth about \$5000. The Tribunal was satisfied that the applicant would be able to return to his family in Swat Valley and secure some form of employment such that he would be able to subsist. Given these findings and its earlier findings in relation to the refugee criterion, the Tribunal was not satisfied there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there was a real risk that he would suffer significant harm.</p>
<p><a href="#">1710134 (Refugee) [2021]</a>  <a href="#">AATA 2784</a>  (Unsuccessful)</p>	28 May 2021	77–80	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the specific context of complementary protection, the Tribunal was satisfied that if the applicant returned to Lebanon he might suffer some low-level official and societal discrimination. The Tribunal noted that the UN Special Rapporteur on Freedom of Religion or Belief reported that Jehovah’s Witnesses faced problems when attempting to build infrastructure. The European Association of Jehovah’s Witnesses sought the full enjoyment of their rights in a non-discriminatory way. The Tribunal was not satisfied that these limitations amounted to significant harm as it was not satisfied that it amounted to torture, cruel and inhuman treatment or punishment, or degrading treatment or punishment.</p>

			<p>The Tribunal noted that the European Association of Jehovah’s Witnesses had reported that Jehovah’s Witnesses must meet covertly in their homes and there were restrictions on importing religious literature and publicly sharing beliefs, but that Jehovah’s Witnesses in Lebanon had expressed their gratitude for the generally reasonable treatment shown to Jehovah’s Witnesses by the authorities. The Tribunal was not satisfied that those restrictions amounted to torture, cruel and inhuman treatment or punishment, or degrading treatment or punishment. The Tribunal was not satisfied that the discrimination the applicant might face if he returned to Lebanon and practised his faith would amount to being arbitrarily deprived of life, or that the death penalty would be carried out, or that he would be subjected to torture or cruel or inhuman treatment or punishment, or degrading treatment or punishment.</p> <p>The Tribunal was not satisfied there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, there was a real risk that the applicant would suffer significant harm. It was not satisfied that the applicant met the complementary protection criterion set out in section 36(2)(aa) of the <i>Migration Act</i>.</p>
<a href="#">1706301 (Refugee) [2021] AATA 2245</a> (Unsuccessful)	28 May 2021	49	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Additionally, the Tribunal noted—and accepted—that the applicant was taking medication to manage stress and high blood pressure. However, the Tribunal was not satisfied on the limited evidence before it that any harm</p>

			<p>in Egypt that the applicant might suffer as a result of his stress and high blood pressure would be intentional, which the Tribunal observed is required to satisfy the definition of torture, inhuman treatment and degrading treatment in the <i>Migration Act</i>. Further, as the Tribunal was satisfied that the applicant would be able to access medication if required for his health problems, including high blood pressure, in Egypt, it was not satisfied that he faced a real risk of the other forms of significant harm, being deprivation of life and the death penalty.</p>
<p><a href="#">1835594 (Refugee) [2021] AATA 2449</a> (Successful)</p>	28 May 2021	35–36	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicants protection visas and remitted the matter for reconsideration with the direction that the applicants satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i>. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met, the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Venezuela, that there was a real risk they would suffer significant harm in the form of cruel and degrading treatment and possibly even arbitrary deprivation of life (section 5(1) of the Act).</p>
<p><a href="#">RNVF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</a></p>	28 May 2021	191–206	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant’s Transitional (Permanent) visa. In doing so, however, the Tribunal considered in some detail the ‘other consideration’ of whether Australia’s international non-refoulement obligations</p>

<p><a href="#">(Migration) [2021] AATA 1522</a> (Unsuccessful)</p>			<p>arose in this case. The Tribunal noted that an International Treaties Obligations Assessment (ITOA) had been conducted in relation to the applicant, and that the assessor had found that the applicant had a well-founded fear of persecution in Somalia for the purposes of the <i>Refugee Convention</i> and that, additionally, and in respect of Australia's non-refoulement obligations as a signatory to the CAT and the ICCPR, there were substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Somalia, there was a real risk he would suffer significant harm.</p> <p>The Tribunal considered that, as a person with a chronic mental health condition, the applicant would be especially vulnerable to personal harm if repatriated; it did not seem on the authoritative material before the Tribunal that any adequate support would be available to him in Somalia. Consequently, the likelihood of his PTSD symptoms resurfacing seemed to the Tribunal to be real. The Tribunal noted that this would be with a backdrop of no family support and with a history of torture and trauma. Although the Tribunal was somewhat sceptical about some of the claims that the applicant made in his evidence (particularly his claim of jumping off a five-storey building as a child as a suicide attempt, which he reiterated in his evidence), the Tribunal observed that there was sufficient consistency in his life story over various interviews with Department officers and health professionals for the Tribunal to be satisfied that he faced significantly traumatic experiences as a child in both Somalia and in camp in Kenya, and that</p>
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			<p>these had etched onto his consciousness and affected his subsequent conduct, including as one of the drivers of his criminal offending.</p> <p>The Tribunal found that this consideration weighed heavily in favour of revoking the mandatory cancellation of the visa.</p>
<a href="#">2003268 (Refugee) [2021]</a> <a href="#">ATA 3029</a> (Unsuccessful)	27 May 2021	30–55	<p>The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, in relation to the overall effectiveness of authorities in Malaysia, the Tribunal noted that measures had been put in place to combat illegal money lending. The country information and media reports indicated that the government had taken this issue seriously and had committed extensive resources to do so. In the Tribunal’s view, this demonstrated that effective protection measures were available, namely that protection against significant harm could be provided to the applicant by the Malaysian State and that the Malaysian State was willing and able to offer such protection (in an apparent reference to, and an example of reliance on, section 36(2B)(b) of the <i>Migration Act</i>).</p>
<a href="#">1712719 (Refugee) [2021]</a> <a href="#">ATA 2243</a> (Successful)	27 May 2021	27–28	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicants protection visas and remitted the matter for reconsideration with the direction that the applicants satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i>. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met, the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied</p>

			that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Venezuela, there was a real risk they would suffer significant harm in the form of cruel and degrading treatment and possibly even arbitrary deprivation of life (section 5(1) of the Act).
<a href="#">1719040 (Refugee) [2021] AATA 2070</a> (Unsuccessful)	27 May 2021	97, 102, 108, 113, 115, 116	<p>The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in South Africa on account of:</p> <ul style="list-style-type: none"> <li>• xenophobia or because they may be perceived to look and speak differently than native South Africans or because they may have different surnames to South African-born people;</li> <li>• the applicants' father having being an informer to the 'Office' (redacted) in South Africa and a claimed physical attack on the applicants' mother in connection with her husband's past role as an informer;</li> <li>• financial hardship and unemployment;</li> <li>• a fear of the second applicant suffering sexual assault;</li> <li>• the applicants' claimed inability to adapt to their new surroundings in South Africa; or</li> <li>• a fear of being seriously harmed due to high levels of criminal violence generally.</li> </ul> <p>In connection with this last point, the Tribunal accepted that the crime rate in South Africa was indisputably high but noted that there is also taken not to be a real risk that an applicant would suffer significant harm where the real risk is one faced by the population of the country</p>

			generally and not by the applicant personally (apparently referring to <i>Migration Act</i> section 36(2B)(c)).
<a href="#">VZWF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1876</a> (Unsuccessful)	27 May 2021	95–101	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant’s Global Special Humanitarian visa. In doing so, however, the Tribunal considered in some detail the ‘other consideration’ of whether Australia’s international non-refoulement obligations arose in this case. The Tribunal noted that, in this case:</p> <ul style="list-style-type: none"> <li>(a) Failure to revoke the determination would mean that the applicant would be removed to India as soon as practicable. This may have meant that there would be considerable time before it was considered reasonable to remove the applicant to India, which meant he would spend a significant amount of time in detention.</li> <li>(b) It was well-known and conceded by the respondent that the risk of contracting COVID-19 was far greater in India than in Australia.</li> <li>(c) Because of the applicant’s history of heart disease, he may have been even more vulnerable than average members of the population.</li> </ul> <p>The Tribunal, however, concluded that there did not exist any relevant non-refoulement obligations to be considered here.</p>
<a href="#">MJMG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1486</a> (Unsuccessful)	26 May 2021	162–181	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant’s Global Special Humanitarian visa. In doing so, however, the Tribunal considered in some detail the ‘other consideration’ of whether Australia’s international non-refoulement obligations arose in this case. The Tribunal concluded that, taking all the evidence into account, this</p>



			<p>consideration weighed very slightly in favour of revoking the mandatory cancellation of the visa, because of the applicant's late father's active military service, which might have been known and which might have led to a perception of an imputed political opinion on the applicant. In the Tribunal's view, that could amount to a personal risk of harm. (Note that the language of the Tribunal's reasons here, especially the reference to 'imputed political opinion', suggests that the Tribunal was referring to, and relying on, Australia's international non-refoulement obligations under the <i>Refugee Convention</i>. For completeness, however, the decision is included here in this list of case summaries.)</p>
<p><a href="#">Jabari and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1492</a> (Unsuccessful)</p>	26 May 2021	187–212	<p>The AAT affirmed a decision not to revoke the cancellation of the applicant's Resident Return visa. In doing so, however, the Tribunal considered in detail whether Australia's international non-refoulement obligations arose on any of the submissions, materials, or evidence before the Tribunal. The Tribunal analysed, among other things, the <i>Migration Amendment (Clarifying International Obligations for Removal) Act 2021</i> (Cth), Ministerial Directions Nos 79 and 90, and case law explaining the relationship between the <i>Migration Act</i> and Australia's international non-refoulement obligations. The Tribunal also explained the difference in the level of analysis required between (a) assessing whether any international non-refoulement obligations arose as 'another reason' why the cancellation of a person's visa should be revoked and (b) assessing whether a person is owed non-refoulement obligations in the context of an application for a protection visa. In this case, the Tribunal was not</p>

			satisfied on the evidence that an issue of non-refoulement obligations arose with respect to the applicant's return to Iraq in the event that the cancellation decision was not revoked. Accordingly, the Tribunal found that this consideration was neutral in the applicant's circumstances.
<a href="#">SBMZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1409</a> (Unsuccessful)	19 May 2021	114–176, 197–202	The Tribunal affirmed a decision not to revoke the applicant's visa cancellation. Relevantly, however, the Tribunal gave 'very substantial weight' to the existence of non-refoulement obligations and, in particular, non-refoulement obligations owed under the complementary protection criterion in section 36(2)(aa) of the <i>Migration Act</i> . The Tribunal considered that there existed a real risk that the applicant would suffer significant harm, including being arbitrarily deprived of his life, as a necessary and foreseeable consequence of him being removed from Australia to South Sudan, because he would hold particular characteristics (eg a lack of connections, resources, or language skills) that would expose him as being particularly vulnerable to significant harm, characteristics that were not held by the population generally. (The Tribunal also considered under the complementary protection criterion the applicant's claims regarding his mental health condition. In that regard, however, the Tribunal considered that the limitations on access to mental health treatment in South Sudan clearly gave rise to a situation that was faced by the population generally rather than the applicant personally and, as such, did not amount to 'significant harm'.)

<p><a href="#">1705555 (Refugee) [2021]</a>  <a href="#">ATA 2829</a>  (Unsuccessful)</p>	<p>17 May 2021</p>	<p>56–73</p>	<p>The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal considered a submission by the applicant on the issue of internal relocation in the following terms ([57]):</p> <p>32. It is acknowledged that it may be reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution: <i>Randhawa v MILGEA</i> [1994] FCA 1253.</p> <p>33. A person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of ‘practicable’, to expect him or her to seek refuge in another part of the same country, with what is reasonable depending on the particular circumstances of the applicant and the impact upon that person of relocation: <i>1611949 (Refugee)</i> [2020] ATA 318 at [106].</p> <p>34. It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the Alado boys, it is submitted that his profile is such that there is a real chance he would be targeted in other areas of Nigeria should he attempt to relocate.</p> <p>The Tribunal addressed this submission in the following terms ([59]–[63]; citations omitted and original emphases in Tribunal’s decision):</p>
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			<p>The Tribunal decision referred to in the above extract involved a single Nigerian woman with two infant female children. While the relevant legal principle appears to be appropriate to the present review, it is not apparent that the factual circumstances of the Tribunal decision relied upon [] in any sense recommends the previous decision as a relevant or appropriate comparator for the present application.</p> <p>I also note that the submission appears to misstate the statutory relevance of ‘relocation’ for the purposes of the present review in terms of whether [it] is ‘reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution’.</p> <p>Firstly, the analysis of relevant law contained within the 18 January 2021 submissions at [11]–[14] and [27]–[31], such as it is, describes the statutory formulation of a well-founded fear of persecution (or ‘real chance of serious harm’) in terms of a claim based on the refugee criterion at s.36(2)(a) of the Act. However, in discussing the question of relocation or effective protection, the submission reverts to the ‘real risk’ vocabulary and the decision making matrix of complementary protection in the context of an assessment of ‘significant harm’ under s.36(2)(aa) of the Act.</p>
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			<p>This unhelpfully conflates the two alternative statutory criteria (ie: ‘refugee criterion’ at s.36(2)(a) and the ‘complementary protection criteria’ at s.36(2)(aa) of the Act).</p> <p>The reason for this misstatement may be that the representative has relied upon a review decision which applied the former, Convention-based, applicable legal framework. As the present review relates to an application made after 14 December 2014, it is the present statutory legal framework that must be applied.</p> <p>I further note that the assessment of a real chance of serious harm for the purposes of determining the objective well-foundedness of a given fear of persecution at s.36(2)(a) of the Act requires a finding at s.5(J)(1)(c) of the Act that:</p> <p style="padding-left: 40px;">the real chance of persecution relates to all areas of a receiving country.</p> <p>The Tribunal then went on to explain ([64]–[73]; citations omitted and original emphases in Tribunal’s decision):</p> <p>There is also no well-founded fear of persecution ‘if effective protection measures are available to the person in a receiving country’ (ss.5J(2) and 5LA). In this respect, I note that the question of effective state protection does arise at s.5LA of the Act, however, this may be taken to be the case if:</p>
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			<p>(a) the person can access the protection; and  (b) the protection is durable; and  (c) in the case of protection provided by the relevant State--the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.</p> <p>It is well-settled that under s.5J(1) of the Act (and the previous Convention provisions from which the definition is drawn), while there can be no <i>legal</i> presumption of state protection, there is some authority for the proposition that an asylum seeker in Australia will bear a practical burden of establishing that protection is lacking. I further note that the Supreme Court of Canada stated in <i>Canada (Attorney-General) v Ward (Ward)</i> that in the absence of a state admission as to its inability to protect its nationals, clear and convincing evidence of a state's inability to protect must be provided. The Court continued:</p> <p>Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of State apparatus ... it should be assumed that the State is capable of protecting a claimant.</p> <p>In <i>MIMA v Khawar</i>, Kirby J referred to <i>Ward</i> in support of the broad proposition that as a practical</p>
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			<p>matter in most cases, save those involving a complete breakdown of the agencies of the state, decision makers are entitled to assume (unless the contrary is proved) that the state is capable within its jurisdiction of protecting an applicant. Accordingly, I have proceeded on the basis that the Nigerian state ‘is capable within its jurisdiction of protecting [the] applicant’. In making this assessment, I note that the applicant himself has provided evidence that he was able to make a police complaint about the very harm that he has identified as fearing in Nigeria and that this complaint was investigated by Nigerian Police.</p> <p>It is noted that the relevant assessment of state protection in relation to complementary protection assessment for the purposes of s.36(2B)(b) is differently framed and the assessment of the available standard of protection in a receiving country is on the basis of ‘international standards’.</p> <p>It will be appreciated that the submissions of 18 January 2021 do not provide anything more than a bare statement of unsupported opinion based on a confused articulation of the relevant statutory formulation as follows:</p> <p>It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the</p>
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			<p>Alado boys, it is submitted that his profile is such that there is a real chance he would be targeted in other areas of Nigeria should he attempt to relocate.</p> <p>Even if the applicant's contention that he continues to be the target of animosity from 'Baba Alado' and criminal thugs associated with this person of influence is accepted, there is nothing to suggest necessarily, or even probably, that the threat posed by such individuals has the sanction or condonation of the Nigerian state, or that the reach of these potential agents of harm extends throughout the country of Nigeria. Certainly, the bare assertion made in the submissions above does not meet the probative challenge.</p> <p>Accordingly, to the extent that the applicant's claims can be characterised as being based on a well-founded fear of harm in Nigeria for the essential and significant reason of his former [Title 1] social activism targeted by agents of harm including, but not limited to, criminal thugs and other non-state actors, they do not give rise to protection obligations in Australia under s.36(2)(a) of the Act.</p> <p>As far as the possible application of s.36(2)(aa) of the Act to the applicant's circumstances, once again, by virtue of s.36(2)(2B)(b) I note that there will not be a real risk that the applicant will suffer significant harm if:</p>
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			<p>the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or</p> <p>For the reasons articulated above, a decisionmaker is entitled to assume (unless the contrary is proved) that the Nigerian state is capable within its jurisdiction of protecting an applicant. Accordingly, as above, I have proceeded on the basis that the Nigerian state ‘is capable within its jurisdiction of protecting [the] applicant’, noting that the applicant himself has provided evidence that he was able to make a police complaint about the very harm that he has identified as fearing in Nigeria and that this complaint was investigated by Nigerian Police.</p> <p>Accordingly, I am not satisfied that there are substantial grounds to believe that the applicant is a person in respect of whom Australia has protection obligations because, as a necessary and foreseeable consequence of him being removed from Australia to the receiving country, there is a real risk that the applicant will suffer significant harm, for the purposes of s.36(2)(aa) of the Act.</p>
<a href="#">1732703 (Refugee) [2021] AATA 3072</a> (Unsuccessful)	14 May 2021	140, 145, 151–158, 167–172	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, in the context of complementary protection, the Tribunal concluded that:

			<ul style="list-style-type: none"> <li>• there was no information to suggest that the spread of sexually transmitted diseases in Zambia amounted to an intentional act or omission; and</li> <li>• the COVID-19 pandemic, and whatever measures may be applicable to the population of Zambia generally in response to it, did not, in the absence of additional considerations, amount to an intentional act or omission.</li> </ul> <p>The Tribunal also considered the applicant’s claim of harm that would be caused to her by her separation from her child if returned to Zambia. It reasoned as follows ([151]–[158]; citations omitted and original emphases in Tribunal’s reasons):</p> <p>With respect to complementary protection the Tribunal notes that, in <i>SZRSN v MIAC (SZRSN)</i>, it was claimed significant harm would arise from separating the applicant from his Australian children. The Federal Court (agreeing with the (then) Federal Magistrates Court) found in this case that harm arising from the act of removal itself will not meet the definitions of ‘significant harm’ in s.36(2)(aa). The reasoning applied by his Honour has recently been upheld by the Full Court of the Federal Court.</p> <p>The decision turned on the relationship between various aspects of complementary protection provisions. Firstly, the Court had regard to the reference in s.36(2)(aa) to Australia’s ‘protection obligations’ as referring to the</p>
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			<p>obligation to afford protection to a non-citizen where the harm faced arises in the receiving country, rather than in the State where protection is sought. Secondly, the Court reasoned that the qualifications in s.36(2B) expressly refer to harm ‘in a country’ which is necessarily the receiving country if the circumstances of s.36(2B)(a) (relocation) and s.36(2B)(b) (protection from an authority) are to have any application.</p> <p>Further, the Court noted the circularity in the operation of s.36(2)(aa) requires that the real risk of significant harm must arise ‘<i>as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country</i>’. The Court stated that the fact that the significant harm must be a consequence of removal strongly suggests that the removal itself cannot be the significant harm. The Federal Court also noted that being separated from one’s children is not an ‘act or omission’ as required by the relevant definitions of significant harm, but a consequence of an act. The relevant act is the act of removal from Australia.</p> <p>Lastly, the Court in <i>SZRSN</i> had regard to the ‘intention’ requirements in the s.5(1) definition of ‘degrading treatment or punishment’. The Court reasoned that separation from family (in that case, children) is the consequence of removal, and a consequence cannot be said to have an ‘intention’, so the act of removal itself cannot be said to be</p>
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			<p>perpetrated by the State with the intention of causing ‘<i>extreme humiliation that is unreasonable</i>’.</p> <p>As such it appears that although the risk of significant harm envisaged by s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, s.36(2)(aa) will not be engaged by harm inflicted by the act of removal itself.</p> <p>Further, in <i>GLD v Minister for Home Affairs</i>, the Full Court confirmed the principles in <i>CSV15 v MIBP</i> [2018] FCA 699 and <i>CHB16 v MIBP</i> [2019] FCA 1089 that ‘significant harm’ does not include self-harm or harm the applicant suffers arising from mental illness where such harm arises by reason of the applicant’s removal to their home country and not due to harm intentionally inflicted on an applicant by ‘others’.</p> <p>As noted by the Full Court in <i>GLD v Minister for Home Affairs</i>:</p> <p>The complementary protection criterion is not intended to be used to address the many and varied circumstances in which – in the framework of ordinary human experience – it may seem to be unfair, immoral, deeply upsetting or disturbing for a person to be removed from Australia against her or his will.</p>
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			<p>For the reasons set out above, whilst the Tribunal accepts the applicant does not wish to be separated from her partner and son it does not accept that she is owed complementary protection on this basis.</p> <p>The Tribunal was not satisfied that the applicant was a person to whom Australia owed protection obligations under section 36(2)(aa) of the <i>Migration Act</i>.</p>
<a href="#">1711984 (Refugee) [2021] AATA 2383</a> (Unsuccessful)	14 May 2021	39	<p>The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal accepted that in China the applicant would be unable to attend and socialise at the ‘Temple 1’/monastery and in China he might be unable to locate a temple in his home area. The Tribunal explained, however, that the inability to attend and socialise at a particular venue does not constitute significant harm for the purpose of the complementary protection criterion.</p>
<a href="#">2104739 (Refugee) [2021] AATA 2175</a> (Unsuccessful)	13 May 2021	45 (refugee-specific analysis of effective state protection), 62–68 (complementary protection)	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the context of complementary protection, the Tribunal accepted that, if the applicant returned to Vietnam, the applicant would return as an individual who was arrested in 2016 due to protest activity, who travelled to Australia to make a better life for his family, as an individual who owed money from a private loan, and as a returnee and failed asylum seeker. The Tribunal explained, however, that financial institutions were reportedly stepping up to help borrowers, including finance firms who were able to offer unsecured loans and banks providing loan packages to help poor customers in emergencies. The Tribunal observed that the applicant may be able to access such assistance such that he would not face serious harm or</p>

			<p>significant harm in Vietnam. The applicant stated in response that he could not borrow from a bank because he had nothing to use as a mortgage.</p> <p>The Tribunal found that the applicant would return to live with his parents, wife and children and that he would be able to find employment upon return, given his qualifications and employment history in Vietnam. The Tribunal found that the applicant could obtain an unsecured loan from a financial institution or bank in Vietnam that would not require him to use a house or other assets as security for the loan. While the Tribunal accepted the applicant faced threats from ‘Mrs A’ prior to leaving Vietnam, the Tribunal found that the applicant’s ability to access an unsecured loan would enable him to repay the money borrowed from ‘Mrs A’ and would mean that he would face less than a real risk of significant harm from ‘Mrs A’ and her associates. The Tribunal did not accept that the applicant would face attention by the police because of defaulting on a private loan with ‘Mrs A’. The Tribunal found that any financial hardship faced by the applicant in obtaining a loan to repay ‘Mrs A’ did not amount to significant harm as defined in section 36(2A) of the <i>Migration Act</i>.</p> <p>The Tribunal was not satisfied that the applicant faced a real risk of arbitrary deprivation of his life, imposition of the death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, if he returned to Vietnam because he was arrested from protest activity in 2016, because he travelled to Australia to make a better life for his family, because he owed money</p>
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			<p>from a private loan, because he would be a failed asylum seeker, or for all of these reasons considered cumulatively.</p> <p>Finally, and specifically in the context of the refugee criterion, the Tribunal concluded that there existed an appropriate criminal law in place in Vietnam that allowed police to investigate and prosecute lenders. The Tribunal observed that, despite systemic limitations in the police system, the police had been willing and able to act on behalf of borrowers against lenders. Similarly, while the judicial system was described as having limited capacity, this appeared to impact, in particular, politically sensitive cases. The Tribunal found that, with respect to criminal cases against lenders in Vietnam, there existed an appropriate criminal law, a reasonably effective police force, and an impartial judicial system. Given the media reports outlining that police had taken action against lenders over a number of years, the Tribunal found that the applicant could access protection and that the protection was durable. The Tribunal found that effective protection measures were available to the applicant in Vietnam and, for this reason, the Tribunal was not satisfied the applicant faced a real chance of persecution if he returned to Vietnam because he owed money to a lender in Vietnam. (This reasoning may be of indirect interest to understanding the exception to complementary protection of state protection in section 36(2B)(b).)</p>
<a href="#">1811082 (Refugee) [2021]</a> <a href="#">ATA 2667</a> (Successful)	12 May 2021	60–86	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary

			<p>protection criterion in section 36(2)(aa) of the <i>Migration Act</i>. The Tribunal found that the applicant had established the existence of a real risk that her former husband would inflict significant harm on her if she were removed to Ethiopia. More specifically, the Tribunal was satisfied there existed a real risk that the applicant would be subjected to degrading treatment or punishment by her former husband if she were returned to Ethiopia.</p>
<p><a href="#">1610543 (Refugee) [2021] AATA 2351</a> (Successful)</p>	<p>11 May 2021</p>	<p>137</p>	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i>. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met (assuming it could not be satisfied there was a real chance of persecution in all areas of Pakistan), the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, that there was a real risk he would suffer significant harm. Those substantial grounds were based on the Tribunal's findings reached under the refugee criterion. The Tribunal noted that section 36(2B)(a) provides that there is taken not to be a real risk if it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm. In this case, the Tribunal observed that it would not be reasonable to require the applicant to relocate to another</p>



			<p>city, such as, for instance, Islamabad, even though he had previously lived there. Firstly, it would not be reasonable to require the applicant to move away from his family, particularly when there was evidence that it was important for Turis to live in a supported community environment or enclave. Secondly, there was evidence from DFAT that Turis faced difficulties finding employment outside of Parachinar due to ‘ethnic and religious profiling’ and they were ‘generally discriminated against in employment selection processes’. Thirdly, there were the practical issues relating to the need for the applicant to return to Parachinar to obtain a smart national identity card (SNIC), which itself raised further concerns about the applicant being exposed to a real risk of significant harm on his return to Parachinar.</p>
<p><a href="#">2007537 (Refugee) [2021] AATA 2452</a> (Unsuccessful)</p>	7 May 2021	158, 162, 168	<p>The AAT affirmed a decision not to grant the applicant a protection visa. The Tribunal found that the applicant had a right to enter and reside in a third country, namely Nepal (see <i>Migration Act</i> section 36(3)). The Tribunal found that the applicant did not have a well-founded fear of being persecuted for a Convention reason in Nepal and that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant availing herself of the right in section 36(3), there would be a real risk of the applicant suffering significant harm in Nepal. The Tribunal further found that the applicant did not have a well-founded fear of being returned by Nepal to India. Accordingly, Australia did not have protection obligations in respect of the applicant.</p>

			<p>Relevantly, however, in the course of reaching these conclusions, the Tribunal considered that the following would not constitute ‘significant harm’ for the purpose of section 36(2A):</p> <ul style="list-style-type: none"> <li>• discrimination, harassment, and negative attitudes of the community in Nepal arising from the applicant’s status as an openly homosexual woman;</li> <li>• social stigma and discrimination in Nepal arising from the applicant’s status as a single woman; and transition difficulties for the applicant in integrating into Nepalese culture, including language difficulties and education and employment prospects.</li> </ul>
<p><a href="#">Ahmed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1185</a> (Unsuccessful)</p>	7 May 2021	114–137	<p>The AAT affirmed a decision not to revoke the mandatory cancellation of the applicant’s refugee visa. Relevantly, however, the Tribunal was satisfied that non-refoulement obligations were owed to the applicant and that this was a consideration which weighed in favour of revocation. In the Tribunal’s view, if the cancellation of the applicant’s visa was not revoked, there was a risk that the applicant would be deported to Somalia and exposed to a risk of harm identified in the DFAT country information. There was also a risk that the applicant would be subject to a long period of detention while his protection visa application was considered and potentially while other executive actions were taken. In the Tribunal’s view, these factors taken together required that non-refoulement obligations be given significant weight. The Tribunal, however, did not appear to identify precisely on what basis non-refoulement obligations might be owed; the Tribunal referred to both refugee protection and complementary protection and made specific reference to the exception to complementary</p>

			protection contained in section 36(2B)(c) of the <i>Migration Act</i> , but the language of its reasoning and conclusions do not indicate which basis or bases it was relying on. For completeness, however, the decision is included in this list of case summaries.
<a href="#">2010831 (Refugee) [2021] AATA 2129</a> (Successful)	6 May 2021	44–54	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the <i>Migration Act</i> . The Tribunal was satisfied that there existed substantial grounds for believing that the applicant’s participation in the Viet Tan protests on two occasions in late September 2019 might well have come to the attention of the Vietnamese government authorities as a result of posts to social media platforms made by the applicant, or might come to their attention in the future on his return to Vietnam. If his participation had come, or came in the future, to the attention of the Vietnamese Government authorities, a real risk existed that the applicant would suffer significant harm, as defined in section 36(2A), in Vietnam. The Tribunal accepted that the brutality used in Vietnam by government authorities extended to inflicting torture, or cruel, inhuman, or degrading treatment or punishment upon suspected dissidents (citing the definition of ‘significant harm’ in section 36(2A)). The risk of such harm to the applicant would arise as a necessary and foreseeable consequence of his removal from Australia to Vietnam. Further, in the Tribunal’s view, section 36(2B) did not apply in this case.

			<p>The Tribunal noted that the applicant might seek to persuade the authorities in Vietnam that he only attended the protests in Sydney as a means of bolstering his claim for a protection visa. On the Tribunal's review of the applicant's application, the Tribunal considered that that would be, in fact, the truth. The Tribunal observed that denial of genuine association is, however, an obvious defence to an allegation of sympathy with a terrorist organisation, and the Tribunal was not satisfied that the Vietnamese authorities would accept that explanation of the applicant's attendance at the protests. The Tribunal doubted they would. In any event, the applicant might well suffer significant harm before his explanation was accepted and he was released.</p>
<p><a href="#">1605338 (Refugee) [2021] AATA 2930</a> (Successful)</p>	6 May 2021	60	<p>The AAT set aside a decision refusing to grant the applicant a protection visa and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the <i>Migration Act</i> on the basis that, if returned to Myanmar, the applicant would face a real chance of serious harm on account of: his cumulative profile, being a family member of political dissidents; his imputed political opinion (anti-military/pro-democracy due to his family connections); together with being a failed asylum seeker.</p> <p>Relevantly, however, while the Tribunal accepted that there had been some political activity by the applicant in Australia which might now have drawn the Myanmar military's attention to the applicant, the Tribunal noted that section 36(2)(a) is subject to section 5J(6), which requires that in determining whether a person has a well-founded fear of persecution, any conduct engaged in by</p>

			<p>the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee. As the Tribunal had rejected the claim that the applicant had ever engaged in political activities in Myanmar prior to his departure to Australia, the Tribunal found that any conduct he had engaged in in Australia via his social media postings had been done so with a view to enhancing his protection claims. Having failed under the refugee criterion in section 36(2)(a), the Tribunal nonetheless suggested that the applicant might satisfy section 36(2)(aa), which does not exclude an applicant from meeting the complementary protection criterion even if actions in Australia were undertaken in bad faith.</p>
<p><a href="#">1700704 (Refugee) [2021] AATA 1579</a> (Unsuccessful)</p>	30 April 2021	78	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. In the context of the applicant's claim to fear harm as a result of his conversion from Islam to Christianity, the Tribunal accepted that religious conversion is a sensitive matter and that the applicant attending church in 'Country' (name redacted) and Nigeria may have resulted in him being ostracised by his parents and other family members, Muslim friends and his local Islamic community. The Tribunal, however, did not accept that this amounted to significant harm for the purpose of the complementary protection criterion.</p>
<p><a href="#">Ngatoko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</a></p>	28 April 2021	74–86	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the New Zealander applicant's Class TY Subclass 444 Special Category (Temporary) visa. In the Tribunal's view, the applicant's expressed concerns did not provide a serious</p>

<p><a href="#">(Migration) [2021] AATA 1039</a> (Unsuccessful)</p>			<p>and substantive factual basis for engaging Australia’s international obligations, and thus it was not necessary to consider whether the applicant’s concerns were capable of characterisation as a non-refoulement claim. However, the Tribunal accepted in principle that ‘[i]t is not inconceivable that a high degree of lawlessness together with a well-founded fear of gang related violence, based on a specific and identifiable threat, may support a non-refoulement claim under the ICCPR or the CAT’ (at [82], footnotes omitted). Nonetheless, the applicant’s claim here was based on the fact of a single murder, together with an association with the murdered victim, in what was otherwise a peaceful society.</p>
<p><a href="#">BQNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1186</a> (Unsuccessful)</p>	<p>27 April 2021</p>	<p>159–233</p>	<p>The AAT affirmed a decision not to revoke the mandatory cancellation of the applicant’s protection visa. Relevantly, in considering the ‘other consideration’ of Australia’s international non-refoulement obligations, the Tribunal considered in detail the applicant’s claims that he would face harm if removed to Iraq and that he would not voluntarily return there. The Tribunal found, however, that the applicant did not satisfy the criteria in subsections 36(2)(a) or 36(2)(aa) of the <i>Migration Act</i>. The Tribunal was not satisfied that returning the applicant to Iraq would breach Australia’s international non-refoulement obligations. The Tribunal, nonetheless, was satisfied that the applicant was likely to experience hardship in Iraq, and concluded that the ‘other consideration’ of Australia’s international non-refoulement obligations weighed moderately in favour of revocation of the visa cancellation.</p>

<a href="#">2015286 (Refugee) [2021]</a> <a href="#">ATA 1606</a> (Unsuccessful)	27 April 2021	52–59	The AAT affirmed a decision to cancel the applicant’s Safe Haven Enterprise visa. Relevantly, however, the Tribunal noted that the applicant had been granted the SHEV and that he continued to engage Australia’s non-refoulement obligations based on his protection claims, including the conversion to Christianity. On the evidence, the Tribunal was satisfied that, in case of cancellation, there would be a breach of Australia’s international obligations, including non-refoulement. The Tribunal, however, did not identify precisely on what basis such obligations might be owed, although the Tribunal observed (at [26]) that the applicant gave evidence to the effect that he feared persecution on the basis of his Christian conversion, suggesting that the Tribunal may have been referring to Australia’s international non-refoulement obligations under the <i>Refugee Convention</i> . For completeness, however, the decision is included in this list of case summaries.
<a href="#">1837574 (Refugee) [2021]</a> <a href="#">ATA 1231</a> (Unsuccessful)	27 April 2021	47–96	The AAT affirmed a decision to cancel the applicant’s temporary protection visa. Relevantly, however, in the Tribunal’s view, Australia owed the applicant non-refoulement obligations under the <i>Refugee Convention</i> , the CAT, and the ICCPR. Specifically, the Tribunal found that the applicant faced a real chance of being subjected to serious harm in Afghanistan and, as such, the Tribunal found that Australia may be in breach of its international obligations under the <i>Refugee Convention</i> if the applicant was removed to Afghanistan as a consequence of the cancellation of his visa. Further, for the same reasons outlined in relation to the applicant’s real chance of facing persecution in Afghanistan, the Tribunal found that there existed a real risk that the

			<p>applicant would be subjected to harm amounting to torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment as defined in section 5(1) of the <i>Migration Act</i>.</p> <p>The Tribunal emphasised, however, that the cancellation of the applicant’s visa in itself would not be in breach of any of Australia’s non-refoulement obligations, since these obligations may be breached only if the applicant was forcibly removed from Australia. While the Tribunal could not rule out the possibility of the applicant being unwittingly removed in breach of Australia’s non-refoulement obligations, the Tribunal found that this was unlikely and that there was only a low risk that the cancellation of the applicant’s visa would result in his removal to Afghanistan in breach of Australia’s non-refoulement obligations. The Tribunal, therefore, gave non-refoulement obligations little weight in favour of not cancelling the visa.</p>
<a href="#">2013444 (Refugee) [2021] AATA 2451</a> (Unsuccessful)	23 April 2021	123–124	<p>The AAT affirmed a decision not to grant the applicant a protection visa. On the basis of the Tribunal’s earlier findings in the context of the refugee criterion regarding the applicant’s background and profile, and its finding that he would not participate in political activities or activism upon return to Vietnam, the Tribunal was not satisfied there were substantial grounds for believing there existed a real risk he would suffer significant harm, within the meaning of section 36(2A) of the <i>Migration Act</i>. Even if he were to experience difficulties establishing himself and settling in after his long period of absence, the Tribunal was not satisfied that financial hardship or other challenges settling in constituted</p>



			significant harm as contemplated by section 36(2A). The Tribunal considered the claim arising on the material before it of psychological harm to the applicant as a result of being separated from his spouse and children, and acknowledged that separation would be difficult for him and his family, but nonetheless found that mental harm resulting from the separation of a family member arising <i>solely</i> from the act of removal of an applicant from Australia to his receiving country does not constitute significant harm.
<a href="#">CJQP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2116</a> (Successful)	23 April 2021	201–226	The AAT set aside the decision under review and substituted a decision not to cancel the applicant’s Five Year Resident Return visa. Relevantly, the Tribunal appeared to conclude that the applicant’s return to Iraq would be in breach of Australia’s non-refoulment obligations, although it is unclear precisely on what legal basis such obligations would be owed. The Tribunal was reasonably satisfied that, although the applicant’s uncle was assassinated 14 years ago, the uncle was a high-profile member of the community. The assassins remained at large, and the Tribunal accepted the evidence of the applicant’s father that one of the assassins continued to reside in the applicant’s home province. Should it be known that the applicant, who could identify the offenders, had returned to Iraq, he would be at risk of serious harm and potentially death. Accordingly, in the Tribunal’s view, this consideration weighed heavily in favour of the applicant and the revocation of his visa cancellation.
<a href="#">1721096 (Refugee) [2021] AATA 1819</a> (Unsuccessful)	22 April 2021	82–90	The AAT affirmed a decision not to grant the applicants protection visas. In considering whether it was reasonable for the applicants to relocate within Jordan

			(see <i>Migration Act</i> section 36(2B)(a)), the Tribunal referred to country information and accepted that significant human rights issues had been identified in Jordan. However, the applicant son's mother, sister and brother-in-law (amongst other relatives) were all said to reside there without any claimed problems. Further, the Tribunal was not satisfied that the applicant son had any interest in becoming an 'activist' for any reason. Accordingly, the Tribunal was satisfied that it was reasonable for the applicant son to relocate to Aqaba.
<a href="#">1700680 (Refugee) [2021] AATA 1788</a> (Unsuccessful)	21 April 2021	234–235	The AAT affirmed a decision not to grant the applicant a protection visa, including due to credibility concerns. The Tribunal also noted, however, that it was not satisfied that the applicants were at risk of significant harm if returned to India due to their inter-caste marriage. In reaching this conclusion, the Tribunal considered, among other things, the millions of couples in India in inter-caste marriages. The Tribunal accepted the assessment of DFAT that, in most cases, couples in mixed unions would experience some form of societal and official discrimination. However, the Tribunal did not consider such discrimination to amount to significant harm. The Tribunal made this finding on the basis that discrimination is not included in the statutory definition of significant harm in the <i>Migration Act</i> . In coming to this view, the Tribunal also took into consideration the fact that the applicants spoke English, Punjabi, and Hindi, were well educated, and did not come from a rural area. Further, country information indicated that 22.5 percent of marriages in their home state of Punjab were inter-caste marriages.

<a href="#">2012904 (Refugee) [2021]</a> <a href="#">ATA 2130</a> (Successful)	21 April 2021	109–119	<p>The AAT set aside the decision under review and substituted a decision not to cancel the applicant’s protection visa. Relevantly, the Tribunal appeared to conclude that the applicant’s return to either Afghanistan or Iran would be in breach of Australia’s non-refoulement obligations, although it is unclear precisely on what legal basis such obligations would be owed. The applicant was a single and divorced woman. The Tribunal had grave concerns about the applicant’s safety in circumstances where the applicant’s estranged husband had been deported to Iran. The Tribunal considered the risk of the estranged husband being deported to Iran to be a real risk, and the risks of harm to the applicant from him or his family as just as real a risk. The Tribunal referred to country information and noted that it was particularly mindful that the applicant had no family connections at all in either of Afghanistan or Iran—both countries that country information suggested were important for the protection of women.</p>
<a href="#">1722396 (Refugee) [2021]</a> <a href="#">ATA 1401</a> (Unsuccessful)	21 April 2021	55–81	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. The Tribunal also noted that it was not satisfied that the applicant would face a real risk of significant harm as a result of:</p> <ul style="list-style-type: none"> <li>• having participated in protests in Iran 10–15 years ago, since the applicant was neither identified at the time as a participant in the protests nor detained by the authorities subsequent to the protests at the time (and since the applicant left Iran on a passport in his own name);</li> <li>• having participated in protests in Australia against the Iranian regime, since country information</li> </ul>

			<p>specifically stated that the Iranian authorities had little interest in returnees who had been protesting outside Iranian diplomatic missions and since the Tribunal found earlier that the applicant did not have a background of interest to the authorities;</p> <ul style="list-style-type: none"> <li>• the city of Ahwaz’s lagging economic development and the presence of excessive smoke or a lack of adequate storm drainage;</li> <li>• cultural and/or employment discrimination; or extortion by government security forces.</li> </ul>
<a href="#">1717702 (Refugee) [2021] AATA 1425</a> (Unsuccessful)	19 April 2021	107–116	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the context of the complementary protection criterion, the Tribunal accepted that the applicant was sexually assaulted on a number of occasions while living in Ghana. However, the Tribunal was not satisfied that there existed a real chance of serious harm in the form of sexual assault or on the basis of being unable to subsist, for reasons set out in the context of the refugee criterion. For the same reasons, the Tribunal was not satisfied that there existed a real risk of any of the kinds of significant harm set out in the <i>Migration Act</i>.</p> <p>The Tribunal was satisfied that the applicant would face stigma and ostracism as a victim of sexual assault, and as a person who had had children out of wedlock. The Tribunal was not satisfied, however, that the stigma and ostracism would reach the level of significant harm envisaged by the legislation. It would not amount to torture, arbitrary deprivation of life, or torture. ‘Cruel or inhuman treatment or punishment’ for the purposes of section 36(2A)(d) is exhaustively defined in section 5(1)</p>

		<p>of the Act to mean an act or omission by which severe pain or suffering, whether physical or mental, is inflicted on a person, or pain or suffering, whether physical or mental, is inflicted on a person, so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature. The Tribunal noted that the Explanatory Memorandum stated that the first type of cruel or inhuman treatment or punishment—an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—refers to an act or omission which would normally constitute torture, but which is not inflicted for one of the purposes or reasons under the definition of ‘torture’. In the Tribunal’s view, the structure of the definition suggests that the requirement of severity is linked to the pain or suffering, rather than the nature of the act or omission which causes it. Consistently with this, the Complementary Protection Guidelines state that the assessment is subjective, in that it depends on the characteristics of the victim (such as gender, age and state of health). The Complementary Protection Guidelines also provide examples of treatment which are ‘very likely’ to constitute breaches of ICCPR Article 7, including rape, female genital mutilation, forced abortion and forced sterilisation and, in some cases, circumstances arising from a forced marriage and domestic violence.</p> <p>The Tribunal took into consideration the fact that the applicant was a victim of sexual assault, and had four children, including two very young children. The Tribunal was not satisfied, however, that the acts of stigma would reach the level of severe pain or suffering</p>
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			<p>or pain, or suffering which was cruel or inhuman, given the requirements of significant harm. Further, it had been a long time since she had been in the country when the crimes took place, such that it was far less likely that people would take interest in her past. The applicant was now married to the father of her two young children and she had family in Ghana with whom she could live.</p> <p>The Tribunal noted that the definition of degrading treatment or punishment in section 5(1) is specific as to the level of humiliation which must be evoked by the particular act or omission. It requires ‘extreme humiliation which is unreasonable’. Drawing upon international jurisprudence, the Complementary Protection Guidelines, which provide some guidance, state:</p> <p style="padding-left: 40px;">Treatment may be degrading if it ‘humiliates or debases an individual, showing a lack of respect for, or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance’. In this regard, humiliation may be in either the eyes of others, or the eyes of the victim themselves. Treatment may also be said to be degrading if it grossly humiliates a person in front of others, or drives the person to act against their will or conscience...</p> <p>The Tribunal observed that the assessment of the minimum level of severity necessary to constitute ‘extreme humiliation’ will depend on all the</p>
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			<p>circumstances of the case, including the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the gender, age, state of health or other status of the victim. In this case, the Tribunal took into consideration the length of time since the sexual assaults (which would mean that it could be assumed that there would be less interest in the events than if they were recent), the fact that the applicant was older now and likely to have more resistance, and the fact that she was currently married and had family with whom she could live.</p> <p>In the Tribunal’s view, while ostracism or stigma at any level can be particularly unpleasant, the Tribunal was not satisfied that it would reach the level of ‘cruel or inhuman’ or that it would cause extreme humiliation which was unreasonable. The Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Ghana, there was a real risk of significant harm.</p>
<a href="#">1611148 (Refugee) [2021] AATA 1230</a> (Unsuccessful)	19 April 2021	21–26	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In the context of the complementary protection criterion, the Tribunal accepted the applicant’s evidence that he no longer had grounds to fear harm in Ghana for any reason related to the concerns he expressed in his 2014 written protection claims. The Tribunal found, based on that evidence, that there were no grounds for believing that there existed a real risk that the applicant would suffer significant harm at the hands of any person, company or authority in Ghana (including the Government of Ghana) due to his father’s 2014</p>

			<p>dispute over local mining concerns or for any other reason related thereto.</p> <p>The Tribunal accepted that the applicant would potentially suffer distress and potential deterioration of mental health due to his being physically and practically separated from his children if he returned to Ghana. However, the Tribunal considered that the emotional distress caused by separation—even if it were to develop after his removal from Australia and the applicant was formally diagnosed at some point with depression or other mental illness—would not involve the applicant suffering ‘significant harm’ as defined in section 36(2A) of the <i>Migration Act</i> for the purposes of considering the complementary protection provisions. Any potential emotional distress arising from his separation from his children would arise from the act of removal itself and not be due to any act or omission by any person in Ghana which intentionally inflicts severe pain or suffering or which is intended to cause extreme humiliation on or to the applicant.</p> <p>The Tribunal also noted the comments and conclusions of Collier J in <i>CSV15 v MIBP</i>, where Collier J reasoned that the definitions of each of the harms described in section 36(2A) referred to ‘acts perpetrated <i>by others</i> which cause[d] the non-citizen to suffer harm’ (emphasis appears to have been added by present Tribunal). The Tribunal considered that the deterioration of a person’s existing mental health condition and the practical limitations and consequences of that deterioration are not</p>
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			<p>due to ‘acts perpetrated by others’ and do not meet the definition of ‘significant harm’.</p> <p>The Tribunal concluded that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia, the applicant would suffer significant harm. The Tribunal therefore was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa).</p>
<a href="#">1907109 (Refugee) [2021]</a> <a href="#">ATA 1530</a> (Unsuccessful)	16 April 2021	54–56	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. The Tribunal, however, also noted that, under the complementary protection criterion, a person is taken not to be at real risk of significant harm if the risk is one faced by the population generally and not by the applicant personally (see section 36(2B)(c) of the <i>Migration Act</i>). The Tribunal was satisfied that the political instability, economic hardship, unemployment, and health risks related to the COVID-19 pandemic—which the applicant claimed to fear—were faced by the population of Lebanon generally and not by him personally. Therefore, the Tribunal found that there was no real risk that the applicant would suffer significant harm in Lebanon for these reasons. The Tribunal further observed that, with his experience in working in the construction industry both in Beirut and Australia, the applicant was better placed than most to find work, including in the reconstruction of the Beirut port and environs.</p>
<a href="#">1701200 (Refugee) [2021]</a> <a href="#">ATA 1604</a> (Unsuccessful)	16 April 2021	41–50	<p>The AAT affirmed a decision not to grant the applicant a protection visa. The Tribunal was not satisfied that the</p>

			<p>applicant faced a real chance of serious or significant harm as a result of:</p> <ul style="list-style-type: none"> <li>• having had involvement in Australia in either the Pacific Indigenous Association Inc or the Fiji Native Government in Exile, or otherwise because of having been associated with Oni Kirwin;</li> <li>• being an ordinary member of SODELPA, which the Tribunal accepted that the applicant would be, and being politically involved in this way;</li> <li>• his whole family being black-listed because a relative of the applicant who was a public office bearer refused a specific request of the government when asked; or</li> </ul> <p>financial problems, lack of family support, or other difficulties in reintegrating into Fiji.</p>
<p><a href="#">CRBC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 863</a> (Successful)</p>	14 April 2021	81–98	<p>The Tribunal set aside the decision under review not to revoke the mandatory cancellation of the applicant’s Offshore Humanitarian (Subclass 200) visa. In substitution, the Tribunal revoked the cancellation of the applicant’s visa. Despite the applicant’s eligibility for a Subclass 202 visa at the time of grant, the interviewer made an active choice to grant a Subclass 200 visa in recognition of an element of persecution facing the applicant, and the Tribunal considered that the Minister had not proven that the actual risk of persecution had ceased. In this regard, the Tribunal noted that the comments of Allsop J in <i>NBGM v Minister for Immigration &amp; Multicultural &amp; Indigenous Affairs</i> [2006] FCAFC 60 at [172] were relevant, namely that a determination of the cessation of refugee status be evidenced with a demonstration that any change in circumstances in the applicant’s home country is ‘clear</p>

			<p>and lasting’. DFAT information indicated that Dinkas living in conflict-related areas faced a high risk of societal discrimination and violence. Further, DFAT also assessed that Dinka were one of ‘three prominent ethnic groups who are most at risk, owing to their active involvement in the conflict between the Government and SPLM-IO’. The UNHCR also reported in 2019 that ‘sustainable conditions are not in place for the safe and dignified return of refugees and IDPs in South Sudan’.</p> <p>The evidence presented to the Tribunal demonstrated that South Sudan remained a violent and volatile country, wracked by conflict and without strong or established institutions to protect the population. Sudan and South Sudan continued to be wrecked by Civil War and societal breakdown which was continuing.</p> <p>The applicant had left Sudan at the age of 4 and lived in Uganda. He had no memory of South Sudan and no knowledge of that country. He spoke Dinka with a foreign accent and had no familiarity with local customs or idiom. Therefore, in the Tribunal’s view, he would be clearly identified as someone who was returning from the West because of the following traits:</p> <ul style="list-style-type: none"><li>(a) a lack of awareness of the political tensions in the country and how to avoid running afoul of them;</li><li>(b) he spoke Dinka with a foreign accent;</li><li>(c) he spoke English with an accent that South Sudanese, who were taught English in school, would recognise as foreign;</li></ul>
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			<p>(d) he did not know the common practices or mannerisms that would identify him as a local;</p> <p>(e) he did not know anyone in South Sudan and would not have a local guide in any part of the country;</p> <p>(f) he did not know the usual local lifestyle or ways to find work in any part of the country; and</p> <p>(g) he did not have the facial scarification common to Dinka males that would allow other Dinkas to claim him as one of their own and support him accordingly.</p> <p>In a country where it appeared that literally no one was really safe, the fact that the applicant would stand out as someone who was not a local, who was a Dinka man and a Christian, in the Tribunal’s view, placed him at risk of serious harm in all areas of the country. The risk may have been somewhat mitigated in Juba, but even there, the applicant would stand out as a returned westerner and not a local. The applicant would be entirely alone, even in Juba, without any social or family connections, no one to protect him or help him to orient himself in an unfamiliar environment, no work, and effectively nowhere to live.</p> <p>The Tribunal noted the conclusions of the UNHCR that “returned refugees” had faced difficulties when applying for citizenship, and that applicants had been requested to bring a residency certificate and information on blood group. There was no evidence that the applicant ever had any form of South Sudanese identification or was ever registered as a national prior</p>
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			<p>to leaving the country. There was evidence that he did not even have proper Australian identity documents.</p> <p>In the Tribunal’s view, the applicant faced a serious risk of harm if he were to be returned to South Sudan. This conclusion was strongly supported by the evidence made available to the Tribunal. The applicant’s fear of serious harm was well-founded, and there was no evidence to indicate the contrary.</p> <p>It was also of concern to the Tribunal that the applicant could face an indefinite period of detention in Australia. It was highly unlikely he would be able to be returned to South Sudan at any time in the foreseeable future. Nor was it likely that any third country would accept him.</p> <p>Although not conceded by the Minister’s representative, the clear weight of the evidence strongly supported the contention that Australia had ongoing humanitarian obligations in relation to the applicant. The Tribunal accepted that the applicant also had a well-founded fear of persecution in relation to any return to South Sudan because of his race, religion, and membership of a social group, perhaps best identified as “western returnees”.</p> <p>Based on the available evidence, the Tribunal found that it would contravene Australia’s international non-refoulement obligations for the applicant to return to Sudan or South Sudan. There was a real prospect that the applicant would suffer serious harm on return to his home country. The alternative was that the applicant</p>
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			<p>may face indefinite detention in Australia, which at the very least would seem harsh and punitive, particularly in circumstances where the applicant had already completed the sentence he received in the criminal courts and had now spent further time incarcerated in immigration detention. Ultimately, the Tribunal gave this consideration very heavy weight in favour of revocation.</p>
<p><a href="#">NKHH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1033</a> (Successful)</p>	14 April 2021	47–67	<p>The Tribunal set aside the decision under review and substituted a decision revoking the mandatory cancellation of the South Sudanese applicant’s Global Special Humanitarian (subclass 202) visa. At the outset, the Minister conceded that the applicant may face a risk of harm if returned to South Sudan and that that risk ought to weigh heavily in favour of revoking the cancellation decision. The Tribunal accepted that the applicant’s life would be threatened if removed to South Sudan as a result of his Dinka ethnicity, his relationship with his father and his status as a returnee from a western country in the context of the deteriorating security situation and ongoing civil war. The Tribunal found that this risk of harm gave rise to a non-refoulement obligation such that Australia would be in breach of that obligation if the applicant were to be returned to South Sudan.</p> <p>Further, given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant would be returned to South Sudan, the Tribunal considered (for the reasons set out above) that there existed a very real risk that the applicant would suffer significant harm if the cancellation decision was</p>

			<p>not revoked. The consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation.</p> <p>The Tribunal also noted that the consequence of non-compliance with Australia’s treaty obligations would not only impact the applicant, but it also would impact negatively upon Australia’s reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation.</p> <p>Finally, the Tribunal accepted that regardless of whether the applicant’s claims were such as to engage non-refoulement obligations, the applicant would face significant hardship including violence and a lack of support in the event that he were to return to South Sudan.</p>
<a href="#">SFPH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 874 (Unsuccessful)</a>	14 April 2021	175–235	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the Afghani applicant’s Global Special Humanitarian (Class BA) (Subclass 202) visa. In this proceeding, the applicant sought to rely principally on non-refoulement obligations owed under the ICCPR, although it was submitted that such obligations in respect of the applicant were also owed under Article 33 of the Refugees Convention. The Tribunal noted that, under the ICCPR, non-refoulement obligations arise by implication. In the High Court’s decision in <i>CRI026 v The Republic of Nauru</i>, it was said that (emphasis added by the Tribunal):</p>

			<p>... those provisions of the ICCPR do not expressly impose a non-refoulement obligation on States Parties. Rather, it is accepted as a matter of international law that Art 2 impliedly obligates States Parties not to remove a person from their territory where there are “substantial grounds” for believing that there is a real risk of irreparable harm of the kind contemplated by Arts 6 and 7 in the country to which such removal is to be effected. “Substantial grounds” means, however, that it must be a necessary and foreseeable consequence of refoulement that the person would suffer the kind of harm identified in Arts 6 and 7. As Perram J observed in <i>Minister for Immigration and Citizenship v Anochie</i> that is a high hurdle for the applicant to meet. <u>The risk of harm must be both necessary and foreseeable...</u></p> <p>The Tribunal further noted that the harm, the risk of which must be both necessary and foreseeable as a consequence of refoulement, includes that identified in ICCPR Articles 6 and 7. Those Articles address harm to the inherent right to life and harm by way of torture, by way of cruel, inhuman or degrading treatment or punishment or by way of non-consensual medical or scientific experimentation. However, ‘the question is whether a necessary and foreseeable consequence of deportation would be a real risk of irreparable harm. The kinds of harm in Arts 6 and 7 may serve as a guide to the severity of what is required without being an exhaustive statement of the quality of that harm’ (<i>Minister for Immigration and Citizenship v Anochie</i></p>
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			<p>[2012] FCA 144, [67] (Perram J)). Hence, in order for the non-refoulement obligations implied under the ICCPR to be engaged, there must be both a necessary and foreseeable risk of irreparable harm as a consequence of refoulement.</p> <p>As submitted by the applicant, the Tribunal found that the ICCPR's non-refoulement obligations would be engaged were the applicant to be refouled to Afghanistan. The risk of irreparable harm was both a necessary and foreseeable consequence of such a refoulement. As put on behalf of the Applicant, and as the Tribunal accepted, were the applicant to be refouled to Afghanistan:</p> <ul style="list-style-type: none"> <li>(a) It was likely that he would be located in Kabul. That was where the applicant was born and it offered relatively more opportunities for employment than were offered elsewhere in Afghanistan. Moreover, returnees from western countries almost exclusively return to Kabul.</li> <li>(b) He would not have the benefit of any family support network. The applicant had repeatedly asserted that he had no family in Afghanistan. Absent a familial network, the applicant would be unable to rely upon one of the two traditional structures offering the main protection and coping mechanism in Afghan society (the other being tribal community structures).</li> <li>(c) He could communicate orally in one of the principal languages used in Afghanistan, Dari,</li> </ul>
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			<p>but would do so with an accent, betraying his upbringing in the West.</p> <p>(d) He would have difficulties in understanding and communicating in writing. The Applicant could neither read nor write in Dari.</p> <p>(e) He would have great difficulty in obtaining any treatment for his PTSD and other mental disorders. This was a particular concern given that, absent treatment, there was a significant risk of deterioration in the applicant's mental health.</p> <p>The Tribunal also identified sources of harm facing the applicant arising from the extremely dangerous security situation, the very high threat of terrorist attack, violence against civilians, the health risks arising from the COVID-19 pandemic, limited government capacity to address the reception and reintegration of returnees, poverty, unemployment and underemployment, the lack of adequate access to essential services, an inability to access health care, and inadequate housing. The Tribunal noted that while a returnee might not face a significantly higher risk of violence or discrimination than other Afghans, this did not mean that a returnee does not confront a necessary and foreseeable risk of irreparable harm. The risks identified above faced Afghans generally but those risks were exacerbated in the case of the applicant. The applicant's circumstances on return to Afghanistan would be unlike those of most other Afghans. Ultimately the Tribunal found that the bleak outlook confronting the applicant should he return to Afghanistan was such as to constitute a risk of</p>
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		<p>irreparable harm which was both a necessary and foreseeable consequence of him being refouled to Afghanistan.</p> <p>At the same time, the Tribunal noted that there existed the possibility that the applicant would face other risks because of his particular circumstances. Many of them did not, however, constitute what the Tribunal would have considered to be risks that were both a necessary and foreseeable consequence of refoulement. What the Tribunal had in mind here were risks such as, first, that which might arise by reason of the applicant being a person whose accent would make it apparent that he spent time in the West. He might, as a result, be perceived as a person who supports or associates with the Government or members of the international community. As such, he may face a high risk of violence. Further, with a “western accent” the applicant might be perceived to be wealthy or, at least, have access to foreign wealth. In this regard, kidnapping was a major concern for many Kabul citizens. Foreigners and wealthy Afghans were indicated as the main targets. Second, it was put at the hearing of this proceeding that there existed a risk that the applicant would be murdered in jail, where he would end up as a result of resorting to criminality due to his untreated PTSD and dire financial circumstances. However, in the Tribunal’s view, such a risk was not a necessary and foreseeable consequence of refoulement. Rather, it seemed to be more speculative than a “necessary” risk.</p>
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			<p>The Tribunal then observed that it did not consider the applicant’s removal from Australia and return to Afghanistan to be a likely consequence of a non-revocation decision. Instead, the more likely consequence of such a decision was that he would remain in detention. While that detention would not be indefinite, it would nevertheless carry with it a number of adverse consequences for the applicant. While adverse consequences would flow from a decision not to revoke the applicant’s visa cancellation decision, therefore, it was not presently likely that his refoulement to Afghanistan would be one of them (as submitted by the applicant). In the result, the consideration of Australia’s international non-refoulement obligations weighed in favour of there being another reason to revoke the applicant’s visa cancellation decision, but did so to a moderate extent.</p>
<p><a href="#">YNQY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 881</a> (Successful)</p>	14 April 2021	32–40	<p>The Tribunal set aside the decision under review and substituted a decision revoking the mandatory cancellation of the applicant’s Class XB Subclass 202 Global Special Humanitarian visa. Relevantly, the applicant submitted that he would suffer personal harm if returned to Sudan or South Sudan, or if his detention — itself a source of his depression and anguish at isolation from his family and girlfriend — was prolonged. The Tribunal noted that, as the law stood, the operation of s 197C of the Migration Act mandated removal to Sudan or South Sudan even if the removal put Australia into breach of its international obligations, a very serious consideration in itself. The Tribunal observed that the law might change in future insofar as s 197C was concerned, because of the introduction into</p>

			<p>the House of Representatives of a bill to amend the provision. The Tribunal reasoned that, even if non-refoulement obligations were not owed in respect of the applicant, the passage of that bill might remove a legal impediment to the government following a policy of detaining non-citizens rather than putting Australia into breach of its international obligations. The Tribunal pointed out that such detention might be prolonged, even indefinite, depending on future governmental policies. In the Tribunal's view, bringing about either a breach of international treaties or prolonged or indefinite detention would not, in the particular circumstances of this case, be consistent with the dictates of good government. Those dictates were particularly important in the exercise of the discretion or evaluative task involved in ascertaining whether there existed 'another reason' why the cancellation should be revoked.</p> <p>Moreover, even if refoulement was not involved, the Tribunal considered that sending the applicant back to Sudan or South Sudan would, as was conceded by the Minister, involve harm to him. That is, at the time of the Tribunal's decision, he was taking medication (both methadone as required, and medication for hepatitis B) that would likely be unavailable to him in Sudan or South Sudan; he would risk serious injury or death in tribal conflict; he may not obtain employment; he had no family support in Sudan or South Sudan; and he was not likely to receive any financial support from a government source. The Tribunal added that he had</p>
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		<p>previously contemplated suicide and that prospect would exist if he was deported.</p> <p>The Tribunal considered that there was a likelihood that non-refoulement obligations were owed in respect of the applicant. While the Minister had submitted to the contrary, in the Tribunal's view, it was not necessary in the circumstances of this case to finally resolve the question of whether non-refoulement obligations were owed. If non-refoulement obligations were not owed, the humanitarian reasons not to deport the applicant were strong enough in themselves, having regard to the above, to justify his release.</p> <p>Similarly, further prolonged or indefinite detention was not, in the circumstances of this case, an exercise of discretion or evaluation consistent with good administration. The applicant had suffered mental harm as a result of his detention to date, and the causes of that mental harm might be expected to continue, absent release or the granting of some other visa by the Minister. There was no evidence before the Tribunal of any such intention. The Tribunal stressed that it must also be borne in mind that when the applicant's offending was dealt with in the criminal courts, he was given a lengthy sentence with a non-parole period which might have seen him released after three years and four months, but as a result of the mandatory cancellation of his visa, he was denied the possibility of parole. Since then, he had spent further years in detention. The Tribunal noted that the failure to release the applicant (whether by prolonging his detention or by deporting</p>
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			him) would cause injury not only to the applicant but also to his family and his girlfriend, who were anxiously awaiting his release at the time of the Tribunal's decision.
<a href="#">HWLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 860</a> (Unsuccessful)	13 April 2021	66, 67–69, 70–73, 74–80	<p>This hearing arose from orders made by the Federal Court on 22 July 2020 which set aside and remitted a decision of the Tribunal made on 21 October 2019 not to revoke the mandatory cancellation of the Sierra Leonian applicant's visa under s 501(3A) of the Migration Act. In the immediate proceedings, the Tribunal affirmed the decision under review.</p> <p>Relevantly, the Tribunal accepted that the applicant held a genuine fear that he would be at risk of harm because of his past criminal convictions for sexual offences against minors and because of his bisexuality. Given that homosexuality was a crime in Sierra Leone and that homosexuals faced violence, harassment and discrimination, the Tribunal considered that there existed a real risk that the applicant would face harm if he was returned to Sierra Leone. The Tribunal considered that the applicant's life or freedom would be threatened on account of his sexuality or label of being a homosexual and child sex offender. In addition, he would face discrimination because mental health was a 'taboo' in Sierra Leone. As such, the Tribunal considered that Australia owed the applicant non-refoulement obligations and that, if he were to be returned, Australia would be in breach of those obligations.</p> <p>Given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant</p>

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



			<p>arbitrarily deprived of the right to enter his own country’, and, further, ‘No one shall be subjected to arbitrary or unlawful interference with his... family...’ The resulting contention seemed to be that the Tribunal should accept that Australia’s international obligations under the ICCPR may be relevant to determining whether there exists ‘another reason’ to revoke a mandatory cancellation.</p> <p>The Tribunal’s initial approach to this submission was predicated on the basis that even if there was a demonstrated breach of ICCPR Articles 12(4) and 17(1), it would be unsafe to allocate anything other than little or insignificant weight to this, because these Articles were not mandatory considerations under Ministerial Direction No 79 and, in particular, Article 12(4) did not constitute a non-refoulement obligation. At a more fundamental level, the Tribunal considered that neither of ICCPR Articles 12(4) nor 17(1) were actually engaged in the instant facts.</p> <p>In the Tribunal’s view, the applicant’s reliance on <i>Clegg v MICMSMA</i> [2020] AATA 3383 was misplaced. In its response to the decision of the Human Rights Committee (HRC) in <i>Nystrom v Australia</i>, UN Doc CCPR/C/102/D/1557/2007 (18 August 2011), the Australian Government viewed as correct previous decisions of the HRC which said that a person who enters a state under a state’s immigration laws cannot regard the state as his ‘own country’ when he has not acquired the nationality of that state and continues to retain the nationality of his country of origin.</p>
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			<p>The Tribunal disagreed with the contention put on behalf of the applicant that any removal of her to New Zealand (together with the resulting consequences thereof) would somehow be arbitrary. Thus, the Tribunal did not consider that the provisions of either ICCPR Article 12(4) or 17(1) were engaged on this basis. The applicant’s removal from Australia would occur pursuant to Australian law and procedure involving a contested determination during which the Applicant would have been offered appropriate procedural fairness.</p> <p>For the foregoing reasons, the Tribunal was not of the view that this novel contention was of any utility in allocating weight to any of the extant five Other Considerations, nor was it of any such value in terms of doing so as a ‘standalone’ factor or other consideration beyond those stipulated in paragraphs 14(1) of the Direction.</p>
<a href="#">XMBQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 853 (Successful)</a>	13 April 2021	43–47, 48–55	<p>The immediate proceedings arose from orders made by the Federal Court on 9 December 2019 which quashed a decision of the AAT made on 9 April 2019 not to revoke a mandatory cancellation of the Somalian applicant’s Class XB (Subclass 200) (Refugee) visa under s 501(3A) of the Migration Act. Here, the Tribunal set aside the decision under review and substituted a decision revoking the decision of the delegate of the Minister dated 15 December 2017 refusing to revoke the mandatory cancellation of the applicant’s visa.</p>

			<p>The Minister accepted that the applicant was owed non-refoulement obligations. There was no dispute that the country information filed indicated that the applicant might suffer harm if he were to be returned to Somalia. The Tribunal considered that it was likely that the applicant would suffer harm if returned because of the prevailing situation in Somalia, which showed that the Islamist terrorist group Al-Shabaab continued to operate as a ‘powerful hybrid organisation: governing rural areas in Somalia, terrorising Somali cities... and running a massive extortion ring that keeps the group well financed.’ In 2019, there were over 1200 murders attributed to the group. As a Christian convert with mental illness and no clan affiliations or personal connections in Somalia, the applicant would be in the highest possible category of risk if returned.</p> <p>The AAT was satisfied that non-refoulement obligations were owed. It accepted the claims of the applicant that he would be subjected to serious harm, including threats to his life or liberty and ill treatment, by Somali authorities, local Somali people, Al-Shabaab or other extremist groups or clan militias, because he had no ties or support in Somalia and because he had converted from Islam to Christianity and was a person with severe mental health issues and cognitive impairments. Consequently, the AAT considered that Australia owed the applicant non-refoulement obligations and that, if he were to be returned, Australia would breach of those obligations.</p>
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			<p>Given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant would be returned to Somalia, the Tribunal considered that there was a very real risk that the applicant would suffer significant harm if the cancellation decision was not revoked. The consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation.</p> <p>Further, the consequence of non-compliance with Australia's treaty obligations not only would impact the applicant, but it also would impact negatively upon Australia's reputation and standing in the global community. The AAT considered that this added further weight in favour of revoking the cancellation decision.</p> <p>Finally, the Tribunal accepted that, regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship including deprivation of his freedom, violence, a deterioration in his mental health condition and a lack of support if he were to return to Somalia.</p>
<a href="#">1714406 (Refugee) [2021] AATA 1862</a> (Unsuccessful)	13 April 2021	73–87, 88–89	<p>The AAT affirmed a decision not to grant the applicant a protection visa. In summary, the Tribunal considered the applicant's express claims for protection under the refugee criterion, individually and then cumulatively as far as they related to the activities of 'Organisation 1', and found that the applicant did not face a real chance of serious harm in Pakistan from any agent of harm for this essential and significant reason. The Tribunal accepted aspects of the applicant's mental and physical health</p>

			<p>related claims and it considered the implied claim that the applicant had a well-founded fear of persecution in Pakistan for the essential and significant reason of his mental and physical health condition under the refugee criterion. The Tribunal found that the applicant did not face a real chance of serious harm in Pakistan from any agent of harm for that essential or significant reason. The Tribunal further found that the available professional medical evidence did not support an inference that the applicant's return to Pakistan engaged Australia's complementary protection obligations for that essential or significant reason. Based on these findings, the Tribunal was not satisfied that the applicant was a person to whom Australia owed protection obligations under the <i>Migration Act</i>.</p> <p>Significantly, however, the Tribunal analysed the exceptions to the complementary protection criterion in section 36(2B)(b) and (c) of the Act. After referring to relevant country information, the Tribunal explained ([73]–[83]; citations omitted and emphases in original):</p> <p>Two things emerge from an assessment of this and other comprehensive country information about the general security situation in Pakistan, namely that there is a generalised experience of religious, sectional and other forms of violence that is difficult for members of the Australian community to comprehend. The agents of harm perpetrating this generalised criminal violence include (but are not limited to): the Taliban in Pakistan; both Sunni and Shia extremists; various non-ideological</p>
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			<p>criminal thugs; and, other non-state actors. Second, security operations conducted by agencies of the Pakistan state have had measurable success in addressing this environment of generalised criminal violence.</p> <p>I acknowledge that the applicant stipulated at the second hearing that he did not accept the country information reports which suggested a demonstrable decline in generalised violence in Pakistan generally or Khyber Pakhtunkhwa in particular. I also acknowledge the applicant's submissions about specific incidents of terrorist atrocities over time in Pakistan. These atrocities are accounted for appropriately in the country information to which I have referred above, and which were discussed with the applicant personally at the second hearing. On balance, persuaded that the country information showing a demonstrable decline in secular violence and terrorist outrages should be preferred to the applicant's subjective assessments [sic].</p> <p>Regardless, I note that under s.5J(1) of the Act (and the previous Convention provisions from which the definition is drawn), while there can be no <i>legal</i> presumption of state protection, there is some authority for the proposition that an asylum seeker in Australia will bear a practical burden of establishing that protection is lacking. I further note that the Supreme Court of Canada stated in <i>Canada (Attorney-General) v Ward (Ward)</i> that in the</p>
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			<p>absence of a state admission as to its inability to protect its nationals, clear and convincing evidence of a state's inability to protect must be provided. The Court continued:</p> <p>Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of State apparatus ... it should be assumed that the State is capable of protecting a claimant.</p> <p>In <i>MIMA v Khawar</i>, Kirby J referred to <i>Ward</i> in support of the broad proposition that as a practical matter in most cases, save those involving a complete breakdown of the agencies of the state, decision makers are entitled to assume (unless the contrary is proved) that the state is capable within its jurisdiction of protecting an applicant. Accordingly, I have proceeded on the basis that the Pakistan state 'is capable within its jurisdiction of protecting [the] applicant'.</p> <p>The relevant assessment of state protection in relation to a complementary protection assessment for the purposes of s.36(2B)(b) is differently framed and the assessment of the available standard of protection in a receiving country is on the basis of 'international standards'.</p>
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			<p>Nevertheless, the dispositive consideration relating to this aspect of the applicant’s claims is not the adequacy of state protection with respect to generalised violence within Pakistan. What appears to be dispositive in this instance is the reference to ‘systematic... conduct’, which reflects the jurisprudence about the meaning of persecution. For example, in <i>Chan v MIEA</i>, McHugh J, in the context of the previous legislative framework, stated:</p> <p>The notion of persecution involves selective harassment ... [It is not] a necessary element of “persecution” that the individual should be the victim of a series of acts. A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as <b>part of a course of systematic conduct</b> directed for a Convention reason against that person as an individual or as a member of a class, she is “being persecuted” for the purposes of the Convention. [Emphasis added by present Tribunal.]</p> <p>The body of case law that has subsequently developed around his Honour’s use of the expression ‘systematic conduct’ in that case is instructive.</p> <p>In <i>MIMA v Haji Ibrahim</i>, McHugh J explained that his use of the expression ‘systematic conduct’ in <i>Chan</i> was not intended to mean that there can be no</p>
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			<p>persecution for the purposes of the Convention unless there is a systematic course of conduct by the oppressor; rather it was used as a synonym for non-random. His Honour held that:</p> <p>It is an error to suggest that the use of the expression “systematic conduct” in either <i>Murugasu</i> or <i>Chan</i> was intended to require, as a matter of law, that an applicant had to fear organised or methodical conduct, akin to the atrocities committed by the Nazis in the Second World War. Selective harassment, which discriminates against a person for a Convention reason, is inherent in the notion of persecution. Unsystematic or random acts are non-selective. It is therefore not a prerequisite to obtaining refugee status that a person fears being persecuted on a number of occasions or “must show a series of coordinated acts directed at him or her which can be said to be not isolated but systematic”.</p> <p>The question of whether certain conduct is ‘systematic’ is distinct from the qualitative assessment which is required to determine whether conduct amounts to ‘serious harm’. In <i>VSAI v MIMIA</i>, Crennan J stated that where conduct shown to be serious harm falls to be assessed as to whether it is ‘systematic conduct’ (in that case by reference to the former legislative framework), it would be wrong to require the applicant to show anything more than that it is deliberate or pre-</p>
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			<p>meditated, that is, motivated. It would not be necessary to show that the conduct is widespread or frequently recurring. However, her Honour observed that frequency or regularity may be relevant to determining whether conduct amounts to ‘serious harm’ if the isolated incidents can be described as involving minimal or low level harm. Similarly, also with reference to the previous legislative framework, the Full Federal Court observed in <i>SZTEQ v MIBP</i> that ‘systematic’ is used in the same way that ‘discriminatory’ is used – to direct the decision-maker’s attention to the motivation of the alleged persecutor. It conveys deliberate behaviour on the part of the persecutor, rather than behaviour that is random or accidental.</p> <p>The statutory test does not displace the general proposition that a single act may suffice, as long as it is part of a course of systematic (in the sense of non-random) conduct. While <i>Haji Ibrahim</i> relates to an earlier legislative formulation, it remains law insofar as the meaning of ‘systematic’ is concerned. The term ‘systematic’ should, therefore, be taken to mean ‘non-random’ in the sense of being deliberate, pre-meditated or intended. It is not necessary that conduct be regular, organised or methodical.</p> <p>Given that generalised violence evident in Pakistan is by definition random and perpetrated by unrelated criminal organisations, it lacks the</p>
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			<p>requisite systematic quality that gives rise to protection obligations under the Act.</p> <p>The Tribunal then analysed section 36(2B)(c) in the following terms ([84]–[87]; citations omitted):</p> <p>With reference to the complementary protection assessment at s.36(2(aa) of the Act, the qualification at s.36(2B)(c) provides that there is taken not to be a real risk that an applicant will suffer significant harm in a country if ‘the real risk is one faced by the population generally and is not faced by the applicant personally’. Although differently framed, this qualification bears some similarity to considerations relating to assessing whether the harm feared in a country is systematic and discriminatory.</p> <p>The Federal Court’s view is that the natural and ordinary meaning of s.36(2B)(c) requires the decision-maker to determine whether the risk is faced by the population of a country generally as opposed to the individual claiming complementary protection based on his or her individual exposure to that risk. In <i>SZSPT v MIBP</i> the Court held that, while every citizen who broke a law of general application would necessarily face a risk of punishment personally, s.36(2B)(c) applied because it was no different from the risk faced by the population generally.</p>
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			<p>The Court’s reasoning suggests that the ‘faced personally’ element of this qualification requires the individual to face a risk of differential treatment, or because of characteristics that distinguish them from the general populace. This approach was also taken in <i>MZAAJ v MIBP</i> to the risk of harm from inadequate medical treatment. Similarly, in <i>SZTES v MIBP</i>, the Court held that a risk faced ‘personally’ is one that is particular to the individual and is not attributable to his or her membership of the population of the country, or shared by that population group in general. In <i>BBK15 v MIBP</i> the Court held that the ‘population of the country generally’ refers to the commonly understood concept of the general population, such that there is no requirement that the risk be faced by all members or every citizen of a country’s population for s.36(2B)(c) to apply. These cases make it apparent that where a real risk is faced by an individual applicant, but is the same as the risk faced by the general population, s.36(2B)(c) applies.</p> <p>Accordingly, to the extent that the applicant’s claims can be characterised as being based on a well-founded fear of harm in Pakistan for the essential and significant reason of generalised acts of violence perpetrated by agents of harm including, but not limited to the TTP, various non-ideological criminal thugs and other non-state actors, they do not give rise to protection obligations in Australia under either s.36(a) or</p>
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			<p>s.36(aa) [sic] of the Act due to the lack of particularity of the harm that is required by these statutory provisions.</p> <p>Finally, and separately, the Tribunal found that whatever measures might be applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions. Accordingly, circumstances in Pakistan arising due to the COVID-19 pandemic did not give rise to protection obligations in Australia under either section 36(2)(a) or (aa) of the Act due to the lack of particularity of the harm required by these statutory provisions.</p>
<a href="#">2010668 (Refugee) [2021] AATA 1455</a> (Unsuccessful)	13 April 2021	103	The AAT affirmed a decision not to grant the applicant a protection visa. The Tribunal accepted, however, that the applicant had a real chance of encountering social discrimination towards him in Vietnam on the basis that he suffered from a mental disorder. Nonetheless, in circumstances where the applicant would be able to access treatment for his mental condition and would be able obtain household registration giving him access to health and social services, the Tribunal did not accept that the discrimination outlined in the country information would amount to serious or significant harm.
<a href="#">2013370 (Refugee) [2021] AATA 1607</a> (Unsuccessful)	12 April 2021	161 and 170 (references to significant harm in context of refugee criterion), 175–185 (analysis of	The AAT affirmed a decision not to grant the applicant a protection visa. In the context of the refugee criterion, the Tribunal acknowledged that it was possible that South Sudanese authorities might become aware of the applicant’s crimes committed in Australia and he may be questioned on his return by the South Sudanese

		<p>complementary protection criterion)</p>	<p>authorities, particularly if he was returned on an involuntary basis. The Tribunal was satisfied, however, that even if the applicant was detained and questioned by the South Sudanese government authorities on his arrival over the offences committed in Australia, the applicant would not face a real chance of serious harm or a real risk of significant harm, since the South Sudanese government had no adverse interest in him. His crimes were committed abroad and double jeopardy laws would operate to protect him from further punishment. Further, and also in the context of the refugee criterion, the Tribunal accepted that the applicant might experience some financial hardship on his immediate return to South Sudan. It found, however, that he had skills to find employment and that, in any event, the financial hardship he might experience would not be significant such that it would amount to serious harm or significant harm.</p> <p>In the specific context of the complementary protection criterion, the Tribunal did not accept that the applicant feared he would suffer significant harm as a consequence of his Dinka ethnicity, his long-term absence from South Sudan, his speaking Arabic, his Christianity, his criminal record, being a returnee, the general situation in South Sudan, or any other reason. The Tribunal found that the applicant would not be faced with unreasonable difficulties finding accommodation or employment in South Sudan if returned. Further, the South Sudan government would be relying on returning nationals with skills and education to assist with its economic recovery. Additionally, the applicant would be in a position to</p>
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			<p>afford medical treatment if required and the medications he relied upon.</p> <p>The Tribunal also referred to section 36(2B)(c) of the <i>Migration Act</i> and accepted that there existed widespread poverty and violence in parts of South Sudan, but concluded that the applicant was exposed to the same risk that all other South Sudanese were exposed to. Neither the applicant nor his witnesses were able to identify any particular personal risk of harm to the applicant.</p> <p>The Tribunal further noted that the applicant made a vague claim as to concerns of being separated from his partner and her children and his mother, brothers and sisters and cousins. While noting the vague nature of the claim, the Tribunal considered the possibility that there might be psychological harm suffered by the applicant. It explained (at [182]–[183]; citations omitted):</p> <p>In <i>SZRSN v MIAC</i> [2013] FCA 751 the Federal Court found that separation of family members could not amount to ‘significant harm’ as defined in s.36(2A) because it is harm arising from the act of removal itself, and also because it would not meet the ‘intention’ requirement. The Tribunal notes that this case involved the separation of the applicant from his children in Australia, but the Tribunal is satisfied that it is indistinguishable from the present case of an applicant being separated from a partner as well as “step” children, mothers, brothers and sisters and cousins.</p>
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			<p>The fact that a person may enjoy less favourable social, economic or cultural rights in another country does not, of itself, give rise to a non-refoulement obligation. It may lead to a degrading condition of existence, but that does not constitute degrading treatment for the purposes of the Act. ‘Treatment’ does not cover degrading situations arising from socio-economic conditions. ‘Treatment’ must represent an act or an omission of an individual or one that can at least be attributed to him or her. Further, the absence or inadequacy of medical treatment is not considered to be a basis for non-refoulement obligation in its own right.</p> <p>In view of the above findings, the Tribunal was not satisfied that there was a real risk that the applicant would suffer significant harm for any of the reasons claimed if he returned to South Sudan.</p>
<a href="#">1713360 (Refugee) [2021] AATA 1440</a> (Unsuccessful)	8 April 2021	46–47	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Relevantly, however, in considering the applicant’s claim that her second husband said he had diabetes and would not be able to protect the applicant in Jordan, the Tribunal also was not satisfied that the applicant had a real chance of suffering serious or significant harm in Jordan. The Tribunal noted that health treatment was available to all Jordanian citizens and would be available to the applicant and her second husband in Jordan, even though better treatment would be available to them if they held medical insurance. There was no material evidence before the Tribunal that the second husband would be denied health services that are available to all Jordanian citizens, or that</p>



			he would have only limited access to those health services.
<a href="#">1704387 (Refugee) [2021]</a> <a href="#">AATA 1507</a> (Successful)	8 April 2021	57–62	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary protection criterion in section 36(2)(aa) of the <i>Migration Act</i>. In the context of the refugee criterion, the Tribunal had accepted that there was a real chance that the applicant would face harm from ‘Mr B’ and his associates if he returned to his home area of Hue in Vietnam. The Tribunal accepted that such harm might include the intentional infliction of severe pain or suffering on the applicant, whether physical or mental, such as would constitute cruel or inhuman treatment or punishment for the purposes of section 36(2A) of the <i>Migration Act</i>. As such, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there was a real risk that he would suffer significant harm.</p> <p>The Tribunal considered whether the applicant could obtain protection from the Vietnamese authorities such that there would not be a real risk that he would suffer significant harm (see section 36(2B)(b)). It explained (at [59]; citations omitted):</p> <p style="padding-left: 40px;">In <i>MIAC v MZYLL</i> the Full Federal Court held that, to satisfy s.36(2B)(b), the level of protection offered by the receiving country must reduce the risk of significant harm to something less than a</p>

			<p>real one. DFAT reports that the People’s Public Security Forces of Vietnam (PPSFV) is the country’s main police and security force and it operates at the national, provincial, district and commune levels. International observers report that corruption is highly prevalent within police ranks. DFAT assesses that police have limited ability to provide protection to civilians and are vulnerable to corruption and typically act with impunity. In these circumstances, I am not satisfied that the applicant could obtain protection from an authority in Vietnam, such that there would not be a real risk that he will suffer significant harm.</p> <p>The Tribunal also considered whether it would be reasonable for the applicant to relocate to another part of Vietnam, outside his home in Hue city, where there would not be a real risk that he would suffer significant harm from ‘Mr G’ and his associates. However, the combination of the applicant’s mental health and cognitive issues—which rendered him unable to work—together with his lack of financial resources or family support caused the Tribunal to consider that relocation was not reasonable in his particular circumstances.</p> <p>The Tribunal further considered that the significant harm the applicant faced was one faced by him personally, not by the population generally, and that the applicant was not precluded from being owed protection by the operation of section 36(2B)(a), (b), or (c) of the Act. Finally, there was no evidence to indicate that the applicant had a right to enter and reside in any third</p>
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			<p>country for the purposes of section 36(3) of the Act, and the Tribunal found that he was not excluded from Australia’s protection by this provision.</p> <p>For these reasons, the Tribunal was satisfied the applicant was a person to whom Australia had protection obligations under section 36(2)(aa) of the Act.</p>
<a href="#">GYTW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 792 (Unsuccessful)</a>	8 April 2021	44–48, 49–57	<p>This hearing arose from orders made by the Federal Court on 17 July 2020 which set aside and remitted a decision of the Tribunal made on 9 October 2019 not to revoke the mandatory cancellation of the Iraqi applicant’s Protection (Class XA) (Subclass 866) visa under s 501(3A) of the Migration Act. In the immediate proceedings, the Tribunal ultimately affirmed the decision under review. Relevantly, however, the Tribunal accepted the available country information and concluded that the applicant had a well-founded fear of being persecuted in Iraq because he was a bisexual; he came from a Sunni family; he and his family had a historical connection with the United States of America and he now had western cultural views. The Tribunal concluded that Australia owed him non-refoulement obligations.</p> <p>Further, given that the legal consequence of affirming the mandatory cancellation of the applicant’s visa was that the applicant would be returned to Iraq, the Tribunal considered that there was a very real risk that the applicant would suffer significant harm if the cancellation decision was not revoked. There was also a risk of harm from the applicant’s ongoing detention, albeit that his detention would come to an end upon his</p>

			<p>removal. The Tribunal accepted that the applicant was at risk of adverse mental health outcomes the longer he was held in detention. In the Tribunal's view, the consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation.</p> <p>Additionally, the Tribunal noted that the consequence of non-compliance with Australia's treaty obligations not only impacted the applicant, but it also impacted negatively upon Australia's reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation.</p> <p>Finally, the Tribunal accepted that regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship, including violence and a lack of support, if he were to return to Iraq.</p>
<p><a href="#">1702769 (Refugee) [2021] AATA 1187</a> (Unsuccessful)</p>	7 April 2021	40–52	<p>The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal noted that:</p> <ul style="list-style-type: none"> <li>the applicant could take steps to avoid the burden and responsibility of inheriting her mother's 'legal debts' after her mother's death, due to a change in inheritance laws allowing children to do so where the debts exceed the assets of an estate, such that there was not a real risk that the applicant would suffer significant harm due to inheriting her mother's legal debts;</li> </ul>

			<ul style="list-style-type: none"><li>• there was not a real risk that the applicant would be discriminated against (due to her lack of references) in finding employment or that she would be unable to find employment to support herself if she was returned to Taiwan, and even allowing for some initial difficulty in finding well-paid employment, the Tribunal did not consider that difficulty finding work or referees for future employment would involve causing the applicant ‘significant harm’;</li><li>• while there existed a real risk that the applicant might be questioned by police about her mother’s whereabouts and that she might suffer some emotional distress if that occurred, given that the Tribunal had accepted that the applicant’s mother was on a police watchlist for fraud matters, the Tribunal did not consider that the applicant would suffer significant harm from that process, if it occurred; and</li><li>• in relation to the applicant’s fear that she might have a poor credit rating due to her mother’s conduct, the Tribunal had accepted her evidence that she was notified by a bank that ‘someone’ had opened a credit account in her name and defaulted on it while she was in Australia (which she assumed was her mother, using the applicant’s identification documents), and considered it plausible that the applicant might have a poor credit reputation as a consequence, but even if she returned to a ruined personal credit history, the Tribunal was not satisfied that being unable to borrow money would cause the applicant any of the statutory types of significant harm.</li></ul>
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			For these reasons, the Tribunal was not satisfied that the applicant would have to live in hiding if she returned to Taiwan; rather, it considered that she could re-establish her life there without facing a real risk of significant harm for any reason.
<a href="#">1707502 (Refugee) [2021] AATA 1541</a> (Unsuccessful)	7 April 2021	42	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Relevantly, however, the Tribunal also noted that ‘generalised concerns about economic political disadvantage in and of themselves are not recognised grounds to support a well-founded fear of persecution for the purposes of a protection visa in Australia under either the refugee grounds or the alternative complementary protection grounds, in the absence of other considerations’ ([42]).
<a href="#">1923588 (Refugee) [2021] AATA 1864</a> (Successful)	7 April 2021	65–86	The Tribunal set aside the decision under review and substituted a decision not to cancel the applicant’s protection visa. Relevantly, in considering whether any international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal was satisfied that there existed a real chance that the applicant would suffer serious harm if returned to Iran on the grounds of his religious conversion and his familial relationship with his father and ‘Mr A’ (his uncle) who founded the Shia Ibrahimi faith, which was perceived to be challenging the legitimacy of the Iranian regime. He would therefore be perceived as being anti-Islam and anti-Iranian regime. The Tribunal found that non-refoulement obligations were owed and it gave this aspect significant weight in favour of the applicant. (Note that the language used in the Tribunal’s reasons suggests that the Tribunal was referring to, and relying on,

			international non-refoulement obligations arising only under the <i>Refugee Convention</i> . Nonetheless, for completeness, the decision is included in this list of case summaries.)
<a href="#">1931013 (Refugee) [2021] AATA 1608</a> (Successful)	7 April 2021	88–95	The AAT set aside the decision under review and substituted a decision not to cancel the applicant’s protection visa. Relevantly, the Tribunal appeared to conclude that, if the applicant were removed from Australia to Iran, Australia would be in breach of its non-refoulement obligations, although it is unclear precisely on what legal basis the Tribunal considered such obligations to be owed. The Tribunal found that the applicant had an adverse profile in Iran as a consequence of his profession as [an Occupation 1] (redacted) and him being accused by the authorities as having engaged in an extramarital affair with a customer of his business, ‘Ms B’. The applicant provided a significant amount of evidence which indicated that he had an active social media profile in Iran and that his profile and associations with other [occupations] (redacted) brought him to the adverse attention of the authorities in Iran. The applicant also provided evidence that, as a consequence of the profile attributed to him in Iran, he spent two periods in prison, during which time he was subjected to torture and other cruel and degrading treatment, including being sexually assaulted multiple times. Medical evidence corroborated this component of the applicant’s claims. It indicated that the applicant, as a consequence of his period of incarceration, and as consequence of him being raped, suffered a range of adverse mental health symptoms. These included depression, PTSD, anxiety and panic attacks.

<p><a href="#">LRMM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 923</a> (Unsuccessful)</p>	<p>7 April 2021</p>	<p>146–173, 198</p>	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the Ethiopian applicant’s Refugee (Class XB) (Subclass 200) visa under s 501(3A) of the Migration Act. Relevantly, the Tribunal was not satisfied that there was more than a remote risk that the applicant would be caught up in the ethnic violence in Addis Ababa due to his Oromo/Somali ethnicity. No reason was put forward as to why the Applicant could not live in Addis Ababa. On the basis that the applicant could live in Addis Ababa, the Tribunal was not satisfied that there was a real chance of serious harm on the basis of his ethnicity or for any other Convention reasons, or that there was a real risk of significant harm of the kind covered under complementary protection in domestic law. The Tribunal concluded that the applicant was not owed non-refoulement obligations.</p> <p>However, the Tribunal noted that if the applicant was not granted a protection visa, he was liable to be held in immigration detention until it was reasonably practicable to remove him from Australia. The applicant contended that it was unlikely that he could establish his Ethiopian nationality, meaning he would not be accepted by Ethiopia. Accordingly, the practical effect of non-revocation was that the applicant would face a prolonged period in immigration detention or indefinite detention. Nonetheless, the Tribunal accepted the Minister’s contention that it would be premature for the Tribunal to make a finding about the likelihood that the applicant would not be able to prove his citizenship, and what may flow from that, as the Australian government</p>
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			<p>had not yet attempted to facilitate his removal to Ethiopia. Yet the Tribunal also accepted the applicant’s contention that prolonged detention would be likely while those efforts were made. The applicant indicated that he did not like being in immigration detention. Professor James Freeman had diagnosed an adjustment disorder which he thought was a result of the applicant’s unhappiness with being in detention and stress at the prospect of being deported. The Tribunal accepted that this was likely to continue, and possibly become worse, while the applicant remained in detention. On the other hand, being in a structured environment that did not permit alcohol consumption had benefitted the applicant: he achieved sobriety in prison, he had maintained it in detention and he had generally stayed out of trouble. The evidence did not indicate that he was at risk of harm or hardship in detention apart from the prospect of his adjustment disorder worsening. He had not sought treatment for his mental health but help remained available in detention.</p> <p>On balance, this other consideration (“(a) International non-refoulement obligations”) weighed in favour of revocation to a limited extent.</p>
<a href="#">2017189 (Refugee) [2021] AATA 2020</a> (Successful)	1 April 2021	66–81	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the applicant’s temporary protection visa. Relevantly, in considering whether any international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal considered there existed substantial reasons for believing that the applicant had a real risk of significant harm (section 36(2)(aa) of the <i>Migration Act</i>) if returned</p>

			to Pakistan and that his mental health condition would deteriorate for a range of reasons, not least due to inconsistent and irregular medical treatment by himself and/or the mental health system. Accordingly, the Tribunal placed significant weight on its analysis of the complementary protection criterion in favour of the visa not remaining cancelled. The Tribunal also placed significant weight on the likelihood that the applicant faced a real risk of significant harm arising from a psychotic episode leading to him being detained in such a manner that he would be subjected to cruel and inhuman treatment or punishment.
<a href="#">1708175 (Refugee) [2021] AATA 1004</a> (Unsuccessful)	30 March 2021	48–49 (COVID-19), 52–54 (complementary protection)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, the Tribunal observed that ‘whatever measures may be applicable to the population of Malaysia generally, in response to the present COVID-19 crisis do not, in the absence of additional considerations, constitute an intentional act or omission for the purposes of the refugee or complimentary Findings [sic] as to claims considered in this review’ ([49]).
<a href="#">1704152 (Refugee) [2021] AATA 1529</a> (Unsuccessful)	29 March 2021	133	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. In the context of the complementary protection criterion, the Tribunal accepted that the applicant might encounter some low-level discriminatory treatment on account of

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

			In the present case, the Tribunal addressed four categories of claim. The Tribunal found that it was reasonable to find that the applicant was likely to face risk if returned to South Sudan, on the basis of his ethnicity, and also due to the general instability prevalent there. Accordingly, the Tribunal found that the consideration of international non-refoulement obligations weighed in favour of revocation.
<a href="#">2018081 (Refugee) [2021] AATA 1518</a> (Unsuccessful)	24 March 2021	109–110	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. In the context of the complementary protection criterion, the Tribunal noted that the applicant claimed both that he risked being caned if returned to Singapore and that this punishment was inhuman treatment. The Tribunal accepted that, in principle, caning could be seen as cruel or inhuman treatment or punishment. Information provided indicated that when it is carried out in Singapore it is done under medical supervision and medical treatment and pain relief is swiftly provided. However, the Tribunal—after considering all the evidence before it—did not accept, due to the inconsistent and lack of credible evidence, that there was an outstanding warrant in Singapore relating to the applicant which would result in the applicant being caned.
<a href="#">QJTT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 609</a> (Successful)	23 March 2021	125–152	The Tribunal set aside the decision under review and substituted a decision that the cancellation of the Afghani applicant’s visa pursuant to s 501(3A) of the Migration Act be revoked under s 501CA(4)(b)(ii). Relevantly, in analysing Australia’s international non-refoulement obligations, the Tribunal readily found that Australia owed protection obligations to the applicant.

		<p>This also had been conceded by the Minister. An International Treaties Obligations Assessment (ITOA) dated 6 October 2016 found that Australia owed non-refoulement obligations to the applicant on the basis of his Hazara race and Shia Muslim religion, and it found that he had a real chance of being subject to significant harm should he be returned to Afghanistan.</p> <p>Further, after discussing in detail the relevant authorities, the Tribunal observed that it was required to approach this consideration on the basis that the consequence of a decision not to revoke the cancellation of the applicant's visa would be that he would be liable, pursuant to s 198, to be removed from Australia as soon as it was reasonably practicable; that the Minister might consider alternative management options, such as the possibility of granting a visa under s 195A; and that, in the meantime, the applicant would be held in detention. The Tribunal noted that, although the duration of that detention could not be determined at the time of the Tribunal's decision, it would not be indefinite, although given prevailing global conditions and the time that it would take the Minister to consider alternative management options, it was likely to be not insignificant. The Tribunal was satisfied that the applicant remaining in immigration detention would have a significantly adverse impact on his mental health.</p> <p>The Tribunal also noted that this consideration called for consideration of the consequences of the applicant being returned to Afghanistan by operation of s 198 of</p>
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			<p>the Act. The ITOA had concluded that there were substantial grounds for believing that, if the applicant were to be returned to Afghanistan, “there [was] a real risk that [the applicant] [would] suffer significant harm”. The prospect of the applicant suffering that significant harm weighed in favour of revocation of the cancellation of the applicant’s visa. The Minister conceded that this consideration weighed in favour of revoking the decision to cancel that applicant’s visa but said that it did not outweigh the other relevant considerations. The Tribunal observed that such a view does not reflect the balancing exercise to be undertaken by the decision maker. The exercise is not to determine whether any one consideration is outweighed by or outweighs any other consideration or considerations. The exercise is to give appropriate weight to each relevant consideration, primary and “other”, and then to make an assessment of whether the considerations which weigh in favour of revocation of the cancellation outweigh those which weigh against revocation. In the present case the consideration of Australia’s non-refoulement obligations weighed in favour of revocation of the cancellation of the applicant’s visa. Because of the serious adverse consequences to the applicant’s mental health of continued detention indicated by the expert medical evidence and the likelihood of the applicant suffering significant harm if he were returned to Afghanistan, the Tribunal considered that moderate to high weight should be given to this consideration.</p>
<a href="#">1710838 (Refugee) [2021] AATA 2009</a> (Unsuccessful)	19 March 2021	88	<p>The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. In the context of the complementary protection criterion,</p>

			<p>however, the Tribunal accepted that the applicant might be perceived as a single, divorced woman in Lebanon, although the Tribunal nonetheless was satisfied that the applicant had family support and accommodation, qualifications and employment experience such that she would be able to subsist in Lebanon and would not suffer cruel, inhuman or degrading treatment or punishment.</p>
<p><a href="#">2015540 (Refugee) [2021] AATA 1022</a> (Successful)</p>	<p>17 March 2021</p>	<p>97, 99</p>	<p>The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Nigerian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Relevantly, however, the Tribunal noted ([97]):</p> <p style="padding-left: 40px;">As discussed with the applicant, fear of harm by way of being unable to access medical treatment is not persecution for one of the reasons set out in the legislation. In regard to the complementary protection criteria, there does not appear to be any intention by the government or community to harm persons with mental health conditions.</p> <p>Further, the Tribunal explained ([99]):</p> <p>The Tribunal also discussed with the applicant his fears of returning due to the COVID-19 pandemic. As the Tribunal discussed with the applicant, the harm suffered would not be for one of the reasons set out in the legislation. The Tribunal also said that given the government response to the pandemic, there did not appear to be any intention to harm.</p>

<p><a href="#">PNCV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 529</a> (Successful)</p>	<p>17 March 2021</p>	<p>191–210</p>	<p>The Tribunal set aside the decision under review and substituted a decision that the mandatory cancellation of the South Sudanese applicant’s Refugee (Subclass 200) visa be revoked under section 501CA(4)(b)(ii) of the Migration Act. Relevantly, the Tribunal was satisfied that the applicant would be exposed to a significantly heightened risk of personal harm and possible persecution, because of his amputation, if returned to South Sudan, and that this would be exacerbated because of the paucity of available health services in that country. His recent injury (a fall while in Australia) was a direct result of an unsuited prosthetic leg (fitted in Australia) and had caused significant health setbacks for him, including ongoing pain requiring analgesia, despite occurring in Australia, a country with well-equipped and available specialist medical support. The Tribunal was satisfied that the applicant had articulated to the Tribunal a well-founded fear of potential discrimination against him, and significant adverse personal consequences, because of his disability. The Tribunal was further satisfied that objective sources corroborated the stigmatisation and poor treatment of persons in South Sudan with the disability that the applicant suffered from, and that his fears in relation to that were not fanciful or far-fetched. The overall conclusion of the Tribunal was that this consideration weighed heavily in favour of revoking the mandatory cancellation of the visa.</p>
<p><a href="#">1707097 (Refugee) [2021] AATA 1222</a> (Successful)</p>	<p>15 March 2021</p>	<p>62–87 (consideration of refugee claims), 88–90 (consideration of</p>	<p>The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the complementary</p>



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

			unable to make a reliable finding about whether the Applicant was owed non-refoulement obligations. On an admittedly speculative reading of the available evidence, the Tribunal concluded that this consideration weighed somewhat in favour of revocation.
<a href="#">1706687 (Refugee) [2021] AATA 617</a> (Unsuccessful)	10 March 2021	86–97	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, however, the Tribunal referred expressly to ICCPR Article 7 and repeated the established proposition that Article 7’s definition of torture and cruel, inhuman or degrading treatment or punishment requires an intention to inflict harm by some act or omission.
<a href="#">1714037 (Refugee) [2021] AATA 883</a> (Unsuccessful)	8 March 2021	142–156	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Brazilian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa).  First, the Tribunal was satisfied that if the applicant were to return to Brazil, he might well be unable to find a job and may become homeless, which would make him more vulnerable to crime. The Tribunal was not satisfied, however, that the applicant would be arbitrarily deprived of life from criminal activity (s

			<p>36(2A)(a)), as there was not a real risk that he would lose his life. While there was a high murder rate, the Tribunal was not satisfied that the risk would be substantial and non-remote as the murders only impacted on a small number of the population. Further, the US Department of State report stated that most unlawful killings had been in the favelas against narcotics trafficking gangs, young Afro-Brazilian men, victims of police violence or political activists. The applicant did not fall into these categories.</p> <p>Second, the Tribunal was not satisfied that the applicant would arbitrarily be deprived of life because of worsening health due to homelessness and lack of access to health services. The Tribunal noted that, while there is no definition in the Migration Act of ‘arbitrary deprivation of life’, on the basis of the ordinary meaning of the words, ‘arbitrary’ can mean ‘subject to individual will or judgment, discretionary’. There is no requirement for intention, however the word ‘deprived’ may import an element of deliberateness, some form of positive act, rather than general conditions of poverty or lack of facilities. The Complementary Protection Guidelines refer to arbitrary deprivation of life as involving elements of injustice, lack of predictability, or lack of proportionality. Further, judicial comments have suggested that this kind of harm involves such matters as extrajudicial killing or excessive use of force rather than the consequences of scarce medical resources. In this respect, the Tribunal cited with apparent approval the Federal Court’s decision in <i>MZAAJ v MIBP</i> and the Federal Circuit Court’s decision in <i>SZDSD v Minister</i></p>
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		<p><i>for Immigration</i>. Further, the Tribunal discussed a division of judicial opinion about whether an arbitrary deprivation of life, for the purposes of ‘significant harm’, requires an intentional element, and concluded that such a deprivation of life must arise from an intentional act or omission.</p> <p>Considering the ordinary meaning of the words ‘arbitrary deprivation of life’ in light of these judgments, the Tribunal was not satisfied that the applicant would — as a necessary and foreseeable consequence of being removed from Australia to Brazil — be arbitrarily deprived of life, in the sense that there would be some discretionary positive act to so take away his life. Instead, were such a result to ensue, it would be the result of economic conditions in the country generally. The Tribunal noted that it is no doubt that homeless people are generally more socially vulnerable, and have less support and ability to access health systems, and are more susceptible to infection. However, there did not seem to be positive action of the relevant governments to arbitrarily deprive homeless persons of services, thus leading to adverse outcomes including death. The Tribunal noted that the Brazilian health system is generally regarded as better than in many other South American countries, referred to by the World Health Organisation as an outstanding success. Although the COVID-19 pandemic had created enormous difficulties, there was a nationally funded health system with universal access, called the Unified Health System (SUS). During the centre-left presidencies, from 2003 to 2014, there was an</p>
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			<p>expansion of access to SUS services, coupled with important advances in social cash transfer programs such as Bolsa Familia, rural retirement and rising wages, which contributed to the improvement of the health status of the population. However, more recent cuts in funding were impacting universal access. Mental health facilities were available across the country, and although some reports referred to it as ‘chaotic and disorganised’ with limited community places, other sources called it outstanding, with its system of community-based services replacing hospital-placed services, widely acknowledged at the international level. Considering these sources, the Tribunal was not satisfied that there was a real risk of arbitrary deprivation of life as a result of withholding access to health services, or the standard of services provided. Any such outcome would be the result of under-resourcing rather than an act or omission of government.</p> <p>Third, while the Tribunal was satisfied that the applicant might be unable to find a job and might become homeless in Brazil, and that he might be more vulnerable to crime and might suffer worsening health as a result, which could lead to severe pain or suffering, the Tribunal was not satisfied that such an outcome would be intentional, as the legislation requires. Sources indicated that the authorities in Brazil were trying to overcome poverty, homelessness and crime, which were the result of complex economic and social conditions, such that there was no intention by authorities to harm. Further, the response by authorities to the COVID-19</p>
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			<p>crisis indicated that there was no intentional act or omission to harm. The Tribunal noted that the relevant statutory provisions require actual, subjective intention on the part of a person to bring about suffering rather than mere knowledge or negligence.</p> <p>Finally, in relation to the risks of worsening health, crime or contracting coronavirus, and in an apparent reference to s 36(2B)(c), the Tribunal noted it was satisfied that the real risk, if any, faced by the applicant was one faced by the population of Brazil generally and not faced by the applicant personally.</p>
<a href="#">1903213 (Refugee) [2021] AATA 936</a> (Successful)	5 March 2021	57–60	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Iraqi applicant’s Subclass 790 (Safe Haven Enterprise) visa. Relevantly, the Tribunal noted that the applicant was granted a SHEV and remained a person in respect of whom Australia had non-refoulement obligations. The cancellation of the applicant's visa and his possible removal from Australia would potentially be in breach of Australia's non-refoulement obligations. The Tribunal found that the effect of the relevant statutory provisions was that the applicant would not be able to make any valid visa application while in Australia, unless the Minister intervened and lifted the decision bars. Further, there was the possibility of indefinite detention, particularly following the cancellation of a SHEV visa, given the potential existence of non--refoulement obligations, together with the requirements to detain or remove unlawful non-citizens. The Tribunal understood that the Minister had personal powers to move people to community detention and to grant visas to enable non-</p>

			<p>citizens to be released from immigration detention. The Bridging R visa allowed the release from detention of persons who had been ‘cooperating fully with efforts to remove them’, but for whom removal was not reasonably practicable. However, there was no certainty that the applicant would be granted these visas. Subject to a few exceptions, an applicant whose visa was cancelled and who became an unlawful non-citizen was liable to be removed from Australia as soon as practicable, including to Iraq, as required by s 198 of the Act. The Tribunal gave these factors significant weight in favour of not cancelling the visa. While it is unclear from the Tribunal’s reasons precisely on what basis international non-refoulement obligations were owed to the applicant, for completeness, the decision is nonetheless included here in this list of case summaries.</p>
<p><a href="#">1827424 (Refugee) [2021]</a> <a href="#">ATA 584</a> (Successful)</p>	<p>4 March 2021</p>	<p>74–83</p>	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Subclass 866 (Protection) visa of the first applicant, an Iranian citizen. The Tribunal was not persuaded that the first applicant would suffer serious harm amounting to persecution for any of the reasons claimed. Relevantly, however, the Tribunal did accept that the third applicant (a child of the first applicant who had disability and care needs) would suffer exclusion and discrimination. The Tribunal was satisfied that there were substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of ill-treatment, cruel inhuman and degrading treatment in the form of social exclusion, active or passive denial of education, and denial or discrimination in health care. In this regard, the Tribunal also noted that there existed a</p>

			<p>principle that heightened consideration should be given to children in the context of non-refoulement, and that the third applicant, as a child, would suffer and experience such harm as was likely in Iran in a more profound manner than an adult. The Tribunal found that such treatment as the third applicant was likely to experience meant he should be extended the protection of non-refoulement to protect him against the real risk of cruel, inhuman or degrading treatment as contemplated under the ICCPR Article 7 and CAT Article 16, and of the potential violation of his rights to a full and decent life as a disabled child, education and health care under the CROC (Articles 23, 28 and 24 respectively). As the third applicant's visa would remain cancelled as a necessary and foreseeable consequence of the first applicant's visa remaining cancelled, the Tribunal considered this a relevant consideration in addressing the cancellation and gave this very significant weight towards the visa not being cancelled.</p>
<p><a href="#">1710906 (Refugee) [2021] AATA 873</a> (Unsuccessful)</p>	<p>4 March 2021</p>	<p>82 (findings about state protection and relocation in the context of the refugee criterion), 85–97 (complementary protection)</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. Due to credibility concerns, the Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, the Tribunal did not consider it necessary to make findings about effective state protection or relocation. In the earlier context of the refugee criterion, the Tribunal indicated that it was not satisfied on the evidence that the applicants faced a real chance of being persecuted in</p>



			<p>Karachi in the reasonably foreseeable future. However, for completeness, the Tribunal found on the independent country information that if the applicants chose to reside in Karachi, they would be able to avail themselves of effective state protection there, the authorities having demonstrated willingness and much capacity to decimate the influence of criminal gangs such as those that existed in Lyari back in 2011-12. Further, the Tribunal observed that should the applicants prefer not to reside in Karachi, the Tribunal was satisfied on the evidence that it would be safe, reasonable and practicable to relocate back to Rawalpindi. The Tribunal appeared to rely on these findings in the context of considering the complementary protection criterion to support its conclusion that the applicants did not satisfy s 36(2)(aa) ([95]). This suggests that the Tribunal applied the exceptions set out in s 36(2B)(a) and (b) to the definition of ‘significant harm’ in s 36(2A).</p>
<p><a href="#">1700087 (Refugee) [2021] AATA 843</a> (Unsuccessful)</p>	<p>4 March 2021</p>	<p>55–61</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Taiwanese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at these conclusions, the Tribunal accepted that the applicant owed business debts to a design company relating to a failed venture to open a business in Taiwan. The Tribunal also found that there was not a real risk that he would face any harm from that creditor but that he might face demands for payment, civil litigation and</p>

			<p>possible bankruptcy from the design company if he returned to Taiwan.</p> <p>The Tribunal considered the real risk of harm facing the applicant from his business creditors (that is, the design company) against the exclusive definition of what constitutes ‘significant harm’ in s 36(2A). The Tribunal found that there was not a real risk that the applicant would be subjected to the death penalty, that he would be arbitrarily deprived of his life or that he would be tortured for any reason. The Tribunal considered the definitions of ‘cruel and inhuman treatment or punishment’ and of ‘degrading treatment or punishment’ in s 5, and was not satisfied that verbal harassment and demands for payment or civil litigation which the applicant potentially faced on his return (even if the conduct were to include threats to seize property in payment of debts and bankruptcy) would amount to causing him severe pain or suffering (whether physical or mental) or that such demands and harassment as he might face (demands and civil litigation or the threat to seize property and bankruptcy) would ever be reasonably regarded as ‘cruel or inhuman’ in nature. Similarly, the Tribunal was not satisfied that demands and verbal harassment for payment or litigation would reasonably cause or be intended to cause the applicant extreme humiliation which was unreasonable, even if it occurred on his return, or that it would be reasonably considered to be degrading treatment or punishment. Based on the available information and evidence, the harm feared by the applicant from the design company or people associated with them and of which the</p>
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			<p>Tribunal had found he was at real risk did not satisfy the definition of significant harm in s 36(2A).</p> <p>In relation to the applicant’s claim to fear harm from a moneylender or gangsters related to them, the Tribunal earlier found, in relation to the refugee criterion, that there was not a real chance that he would suffer serious harm due to the loan he guaranteed on behalf of his business partner. Bearing in mind the earlier findings and the settled proposition that the real risk test is the same as the real chance test, the Tribunal found that there was not a real risk that the applicant would suffer any harm (significant or otherwise) from the moneylender or from gangsters associated with them as a necessary or foreseeable consequence of him being returned to Taiwan. Relevantly, in reaching this conclusion, the Tribunal had earlier referred to country information in support of the conclusion that the Taiwanese government and police had made significant inroads into violent crime in Taiwan over the past several years, arresting and prosecuting members of gangs and violent criminals — even including corrupt police who worked with them — in the period since the applicant departed the country. When adopted in relation to the complementary protection criterion ([58]), such a finding appears to refer implicitly to, and to rely on, the exception set out in s 36(2B)(b) to the definition of ‘significant harm’.</p>
<a href="#">1900684 (Refugee) [2021] AATA 805</a> (Unsuccessful)	4 March 2021	107–119	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Italian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had

		<p>protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at this conclusion, the Tribunal accepted that the applicant would need ongoing psychiatric care and that even with such ongoing treatment, he might still experience a relapse of his schizophrenia and require more acute emergency treatment, including hospitalisation. The Tribunal accepted that the applicant would be expected to need ongoing support and assistance with his daily activities including attending appointments and administering medication. The Tribunal further accepted that the applicant may be unable to obtain employment in Italy and his remaining relatives there were extremely limited in the care they could give him, and that he may need housing assistance or even residential care in the foreseeable future.</p> <p>After referring to the statutory types of ‘significant harm’ set out in s 36(2A)(a)–(e), the Tribunal found that public health care in Italy was guaranteed by the National Health Service and was administered by multidisciplinary teams of medical professionals and auxiliary staff across inpatient and outpatient services, coordinated by the department of mental health. The National Health Service provided a full range of psychiatric care, from acute emergency treatment to long-term rehabilitation and available anti-psychotic medication included clozapine, with which the applicant was being treated in Australia. The Italian authorities also provided public welfare measures including pensions as well as home assistance and care, stays in</p>
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		<p>care facilities or residential facilities and support for education and training.</p> <p>In relation to a person being ‘arbitrarily deprived of their life’, the Tribunal noted that Australian courts have held that s 36(2A)(a) is restricted to the risk of being deprived of life by the intentional or deliberate act or omission of a third person or persons. The definitions of ‘cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’ and ‘torture’ contained in s 5(1) each concern harm resulting from an act or omission where that harm is intentionally inflicted by other persons. Here, it was not suggested that the Italian authorities would intentionally deprive the applicant of his life for any reason, and the Tribunal did not accept there to be a real risk that this would occur. Nor did it accept there to be a real risk that the Italian authorities or any other person or group would intentionally harm the applicant for reasons of his mental health conditions and cognitive impairment, such as might constitute torture, cruel or inhuman treatment or punishment or degrading treatment or punishment for the purposes of s 36(2A). Further, the Tribunal did not accept there to be a real risk that the applicant would be harmed or killed by the mafia or other criminal groups for reasons of his father’s experiences with the mafia or the applicant’s own criminal activities.</p> <p>The Tribunal also noted, with reference to relevant authority, that Australian courts have held that the definition of ‘significant harm’ is directed towards harm suffered because of the acts of other persons. The</p>
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		<p>Tribunal found that harm from alcohol abuse and/or gambling would arise as a natural consequence of the applicant's illness or from his own actions. In the context of the refugee criterion, the Tribunal earlier did not accept there to be a real chance that the applicant would be subjected to harm <i>by others</i> as a result of any future reversion to gambling or alcohol abuse. Since the 'real risk' test for complementary protection is the same as the 'real chance' test for refugee protection, the Tribunal did not accept there to be a real risk that the applicant would be subjected to harm <i>by others</i> as a result of any future reversion to gambling or alcohol abuse. As such, the Tribunal did not accept that any harm the applicant would experience if he were to revert to gambling or alcohol abuse on return to Italy fell within the definition of significant harm contained in s 36(2A).</p> <p>The Tribunal accepted that, if the applicant engaged in criminal conduct after being returned to Italy, there was a real chance he would come to the adverse attention of Italian law enforcement authorities and he might face arrest, prosecution and/or imprisonment. However, in considering whether any future arrest, prosecution and/or imprisonment could constitute 'torture', 'cruel and inhuman treatment or punishment' or 'degrading treatment or punishment', the Tribunal noted that the definitions of those terms contained in s 5(1) exclude any act or omission arising from lawful sanctions that are not inconsistent with ICCPR Article 7. At hearing, the Tribunal discussed with the applicant and his mother country information to the effect that Italy would appear</p>
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			<p>to have an appropriate criminal law, a sophisticated law enforcement system and a well-trained and visible police force. There was nothing in the available material to suggest that Italy's criminal laws were inconsistent with the ICCPR.</p> <p>In summary, the Tribunal did not accept there to be a real risk that as a result of the applicant's potential future criminal activities, the applicant would be arbitrarily deprived of his life by the Italian authorities or any other person or group. It was not suggested that the death penalty would be carried out on the applicant by the Italian authorities for any reason if he were returned to Italy. For these reasons, the Tribunal did not accept there to be a real risk that the applicant would be subjected to 'significant harm', as that term is exclusively defined in s 36(2A), as a necessary and foreseeable consequence of the applicant being removed from Australia to Italy.</p>
<a href="#">1916932 (Refugee) [2021] AATA 838</a> (Successful)	3 March 2021	42–49	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Iranian applicant's Subclass 790 (Safe Haven Enterprise Visa) visa. Relevantly, the applicant had been granted the SHEV on the basis that he was a person to whom Australia owed protection obligations, although it is unclear on precisely which basis such protection obligations were owed. The Tribunal considered these protection obligations to be serious and in line with Australia's international commitments. However, the Tribunal only dealt with the matter of non-refoulement in a cursory manner and instead considered in substantially more detail Australia's obligations under</p>

			the CROC, concluding on the evidence before it that if the applicant's visa remained cancelled, there would be a breach of Australia's international obligations arising under the CROC. The Tribunal gave this aspect significant weight in the applicant's favour.
<a href="#">1710245 (Refugee) [2021] AATA 1391</a> (Successful)	2 March 2021	88–95	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's protection visa. Relevantly, in the Tribunal's view, the applicant's return to Indonesia would be in breach of Australia's non-refoulment obligations under the <i>Refugee Convention</i> , the CAT, and the ICCPR. The Tribunal added that the return also potentially would be in breach of family unity obligations under the ICCPR. The Tribunal gave these factors significant weight towards the visa not being cancelled.
<a href="#">2007811 (Refugee) [2021] AATA 1356</a> (Unsuccessful)	2 March 2021	37–41	The Tribunal affirmed a decision not to grant the applicant a protection visa. Relevantly, in the context of the complementary protection criterion, the Tribunal accepted that the applicant might face demands for repayment of monies owed upon her return to Malaysia and that this might cause some stress. However, the Tribunal did not accept that the applicant had established that there were any grounds for believing that there was a real risk that she would suffer significant harm from her creditors. Based on the evidence and information before the Tribunal as a whole, it did not accept that, on her return, there was a real risk that the applicant would be arbitrarily deprived of her life, that she would be subjected to the death penalty, to torture, to cruel or inhuman treatment or punishment, or to degrading treatment or punishment. The Tribunal concluded that



			she did not meet the criterion in section 36(2)(aa) of the <i>Migration Act</i> .
<a href="#">BNGP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 374 (Successful)</a>	2 March 2021	36–38, 40	The Tribunal set aside the decision under review and substituted a decision not to cancel the South Sudanese applicant’s Class XB Subclass 202 Global Special Humanitarian visa. It was conceded by the Minister that if the applicant were deported to South Sudan, Australia would be in breach of its international treaty obligations. Despite those obligations, the Minister submitted that the effect of s 197C of the Migration Act is that there would be an obligation to refoul the applicant, absent the grant of another visa by the Minister personally. There was no evidence available to the Tribunal of any proposal of the Minister to do so. As was held in <i>NBMZ v Minister for Immigration and Border Protection</i> [2014] FCAFC 38, there was no basis for any assumption that the Minister’s personal non-compellable power to issue another visa would be exercised. Such an assumption would be a matter of speculation. There was also another matter. The harm that the applicant would likely suffer if returned to South Sudan, where he was not likely to be able to access needed medical assistance for his mental health and physical disabilities, and where he might suffer injury or death, represented a strong discretionary reason not to return him to South Sudan. On balance, the Tribunal concluded that the correct or preferable exercise of its discretion was that the discretion in s 501(1) should be exercised in favour of the applicant.
<a href="#">Shoul and Minister for Immigration, Citizenship, Migrant Services and</a>	1 March 2021	202, 204	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the South Sudanese applicant’s Class BC Subclass 100 spouse visa.

<p><a href="#">Multicultural Affairs (Migration) [2021] AATA 364</a> (Unsuccessful)</p>			<p>Relevantly, as to the consideration of Australia’s international non-refoulement obligations, the Tribunal briefly noted that the lack of familial support and some language challenges facing the applicant did not by themselves rise to the level that complementary protection considerations might be relevant in terms of ‘another reason’ why the applicant’s visa should be restored. What was relevant, given that the applicant was from a smaller village away from Juba, was that he may be exposed to treaty-related harm were he not to settle in the capital. In the final analysis, the Tribunal found that this consideration weighed, on balance, in favour of restoring the visa.</p>
<p><a href="#">1724111 (Refugee) [2021] AATA 684</a> (Successful)</p>	<p>26 February 2021</p>	<p>63</p>	<p>The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. The Tribunal was satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). However, the Tribunal also briefly considered a concern raised by the applicant about COVID-19. He said that he feared the virus if he were to return to Pakistan. The Tribunal asked whether the applicant thought that healthcare in Pakistan would be withheld from him, to which he said that it would not, noting that the health system is in a bad situation for everyone. As the harm the applicant feared was from a virus that does not discriminate, there being no evidence that the health system would discriminate in providing support, the Tribunal found that the applicant was not a person in respect of whom Australia has protection obligations under s 36(2)(a) or s 36(2)(aa) for reasons of the coronavirus. Insofar as this conclusion relates to the complementary protection</p>

			<p>criterion in s 36(2)(aa), it appears to refer implicitly to, and to rely on, the exception set out in s 36(2B)(c).</p>
<p><a href="#">1730799 (Refugee) [2021] AATA 1543</a> (Unsuccessful)</p>	<p>22 February 2021</p>	<p>93–94, 95–97, 98–100, 101–106, 107–110</p>	<p>The Tribunal affirmed a decision not to grant the applicant a protection visa. Relevantly, the Tribunal concluded that the applicant did not satisfy the complementary protection criterion in section 36(2)(aa) of the <i>Migration Act</i>. First, the Tribunal was not satisfied that the applicant’s family’s hostility towards him—due to the applicant’s religious conversion in order to remarry—amounted to significant harm, as that term is defined in section 36(2A) of the Act. Second, the Tribunal was not satisfied that the applicant’s claims about his son being stateless in relation to Malaysia—based on the applicant’s wife’s experience of being rebuffed when trying to register him as a citizen with the Malaysian Consulate in Australia—gave rise to any fear of significant harm in relation to the applicant in Indonesia. Third, the Tribunal was not satisfied that the applicant would be at risk of significant harm on account of the applicant potentially having difficulty contributing to the support of his family due to low wages in Indonesia. Fourth, the Tribunal was not satisfied that the applicant would be at risk of significant harm due to his claimed harm arising from still owing a debt to a loan shark (his father-in-law) and from not paying his ex-wife child support in relation to their two sons. Fifth, in relation to the applicant’s emotional connection to Australia due to his stillborn son being buried in Melbourne and the resultant hardship that he would experience if obliged to leave Australia, the Tribunal had regard to relevant case law on this issue, notably <i>GLD18 v Minister for Home Affairs</i> [2020] FCAFC 2. This</p>

			<p>judgment confirmed existing authority in <i>SZRSN v MIAC</i> [2013] FCA 751, which provided that, in the context of claims of harm arising from separation from family members, the act of removal of an applicant from Australia cannot itself be characterised as significant harm under section 36(2)(aa). The Tribunal noted that it is now settled that, regardless of the location or visa status of other family members (including deceased members), any claim of harm arising from family separation resulting purely from an applicant’s removal from Australia will not satisfy section 36(2)(aa). The Court in <i>GLD18</i> reached its view after considering the text of section 36(2)(aa), the definitions of ‘significant harm’ and the exceptions in section 36(2B), and the purpose of the complementary protection criterion as explained in previous authorities and the explanatory memorandum to the bill that introduced it. Moreover, the Tribunal considered that the complementary protection criterion requires some element of intentionality or motivation before significant harm can be demonstrated, which was absent in the above circumstances.</p>
<p><a href="#">PJSH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 273</a> (Unsuccessful)</p>	19 February 2021	33–45, 56, 60–61	<p>The Tribunal affirmed a decision not to revoke the cancellation of the stateless applicant’s Class XA (Subclass 866) Protection visa. Relevantly, however, the Minister accepted that the applicant was a stateless Rohingya refugee whose country of origin was Myanmar; and that he was a person to whom Australia owed non-refoulement obligations. This was supported by the findings in the International Treaties Obligation Assessment dated 8 September 2020, which the Tribunal accepted. Further, the Tribunal found there was at least a real possibility that the applicant’s</p>

			<p>removal would not be reasonably practicable, with the consequence that the applicant faced the prospect of indefinite detention by operation of ss 189, 196 and 198 of the Migration Act. Indefinite detention was likely to have an adverse impact on the applicant’s mental and physical health, which would likely further deteriorate if he were held in detention for a long time. The Tribunal concluded that, given that the applicant faced indefinite detention and was owed non-refoulement obligations, these were factors that weighed very heavily in favour of revocation of the cancellation decision. While it is unclear from the Tribunal’s reasons precisely on what basis international non-refoulement obligations were owed to the applicant, for completeness, the decision is nonetheless included here in this list of case summaries.</p>
<p><a href="#">1912725 (Migration) [2021] AATA 1025</a> (Successful)</p>	18 February 2021	61–64, 75–103	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Afghani applicant’s Subclass (155) (Five Year Resident Return) visa. Relevantly, the Tribunal accepted there to be a real chance the applicant would face serious harm if returned to Kabul, for the essential and significant reasons of his Hazara race, his Shia religion and his imputed political opinion.</p> <p>Additionally, DFAT reports indicated that the continuing armed conflict had significantly challenged the Afghan government’s ability to exercise effective control over large parts of the country. The Tribunal also noted that the increase in the number and impact of large-scale attacks that had taken place in Kabul since the beginning of 2016 demonstrated the limits of the Afghan government’s ability to protect its citizens, even</p>

			<p>where its security infrastructure was strongest. In such circumstances, the Tribunal found that the level of protection available to the applicant from the Afghan government did not meet the level of state protection which citizens were entitled to expect.</p> <p>Further, the Tribunal accepted that the applicant was identifiable as a Hazara Shia from his physical appearance, his practise of the Shia religion and his language, Hazaragi. The applicant had not lived in Afghanistan for many years and had no family members remaining there with whom he was in contact. Given DFAT's advice that no part of Afghanistan was free of conflict-related violence and the Internal Displacement Monitoring Centre's research indicating that 90 per cent of returnees struggle with food security and subsistence, the Tribunal accepted that relocation outside of Kabul was not reasonable in the particular circumstances of the applicant.</p> <p>For these reasons, it followed that the applicant came within Article 1A(2) of the Refugee Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia's international non-refoulement obligations. While the language of the Tribunal's reasoning here and the express reliance on Article 33 of the Refugee Convention suggest that the issue of non-refoulement was decided on the basis of refugee status, for completeness, the decision is nonetheless included here in this list of case summaries.</p>
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<p><a href="#">LDDW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 255</a> (Unsuccessful)</p>	<p>18 February 2021</p>	<p>129–131</p>	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the El Salvadorian applicant’s Class BF Transitional (Permanent) visa. Relevantly, on the evidence currently before the Tribunal, the Applicant’s claims were insufficiently advanced to establish that non-refoulement obligations were owed to him either as a refugee or under complementary protection criteria. His evidence did not meet the statutory tests of serious harm and significant harm. There were no substantial grounds for believing there was a real risk he might be arbitrarily deprived of his life or suffer other persecution or harm as a necessary and foreseeable consequence of removal; nor that such consequences might arise from the deliberate act, omission, or other conduct by authorities or others in El Salvador. The Tribunal affirmed the proposition that arbitrary deprivation of life does not concern the availability of comparatively lesser medical resources or access to mental health services, or work opportunities in El Salvador. These problems confronted the El Salvadorian population generally rather than the applicant personally: s 36(2B)(c).</p> <p>As to the applicant’s reliance on the ICCPR, there was no evidence to suggest he would be subjected to torture or cruel, inhuman or degrading treatment or punishment, or that any pain or suffering he might experience would be ‘intentionally inflicted’ as the result of any act or omission by El Salvadorian authorities or service providers. Further, lawful removal from Australia, if that were to be the outcome, could not of itself amount to cruel or inhuman treatment. Nor</p>
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			<p>could the visa cancellation process or consequences arising from that process constitute an extension of judicial penalty.</p> <p>It follows that the Tribunal was not satisfied that the applicant's evidence enlivened Australia's non-refoulement obligations, and this consideration carried neutral weight.</p>
<p><a href="#">1709126 (Refugee) [2021] AATA 781</a> (Successful)</p>	<p>18 February 2021</p>	<p>67–78 (first applicant), 86–95 (second applicant)</p>	<p>The Tribunal set aside a decision of a delegate of the Minister refusing to grant the two applicants protection visas. The Tribunal remitted the matter for reconsideration with the following directions: (i) that the second applicant satisfied s 36(2)(aa) of the Migration Act; and (ii) that the first applicant satisfied s 36(2)(c)(i) on the basis of membership of the same family unit as the second applicant.</p> <p><i>First applicant</i></p> <p>As to the first applicant, a citizen of El Salvador, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the first applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Section 36(2B) aside, however, the Tribunal was satisfied that the applicant faced a real risk of the harm that amounts to significant harm by being subjected to cruel and inhuman treatment and punishment, as defined in s 36(2A)(d). The Tribunal accepted that the harm faced by the first applicant amounted to being significant through frequent psychological harassment and the infliction of severe pain</p>



			<p>and suffering, both mental and physical, through extortion, theft and threats of physical harm and kidnapping by criminal gangs for ransom.</p> <p>Further, the Tribunal accepted that it would not be reasonable for the applicant to relocate to a different area of El Salvador, as the appreciable risk of significant harm of generalised violence persisted throughout El Salvador (cf s 36(2B)(a)). Additionally, based on the country information, which indicated that El Salvador was beset with unacceptable levels of violence and life-threatening insecurity, the Tribunal found that the first applicant could not obtain from an authority of the country sufficient protection from generalised violence if the applicant returned to any area of El Salvador, including her home area (cf s 36(2B)(b)). Importantly, however, based on the Tribunal’s assessment of the country information and the applicant’s accepted personal circumstances, none of these risk factors, either specifically or cumulatively, substantially elevated or heightened the applicant’s risk of significant harm arising from gang related generalised violence over and above the general population (cf s 36(2B)(c)).</p> <p><i>Second applicant</i></p> <p>As to the second applicant, also a citizen of El Salvador, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). However, the second applicant did satisfy the complementary protection criterion in s 36(2)(aa). As with the first applicant, the</p>
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			<p>Tribunal accepted that it would not be reasonable to relocate the second applicant to a different area of El Salvador, as the appreciable risk of significant harm of generalised violence persisted throughout El Salvador (cf s 36(2B)(a)). Further, based on the country information, which indicated that El Salvador was beset with unacceptable levels of violence and life-threatening insecurity, the Tribunal found that, as with the first applicant, the second applicant could not obtain from an authority of the country sufficient protection from generalised violence if the second applicant returned to any area of El Salvador, including his home area (cf s 36(2B)(b)). Significantly, however, the Tribunal was not satisfied that the real risk faced by the second applicant was one faced by the population of the country generally and was not faced by him personally (cf s 36(2B)(c)). The Tribunal cited with approval the observation of Rares J in <i>SZSPT v MIBP</i> about the qualification in s 36(2B)(c) to the definition of significant harm:</p> <p style="padding-left: 40px;">In my opinion, the natural and ordinary meaning of the exception in s 36(2B)(c) is that, if the Minister, or decision-maker, was satisfied that the risk was faced by the population of the country generally, as opposed to the individual claiming complementary protection based on his or her individual exposure to that risk, the provisions of s 36(2)(aa) were deemed not to be engaged.</p> <p>Adopting the terminology of Rares J, the Tribunal considered that its task was to assess the risk faced by</p>
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			<p>the population of El Salvador generally, as established in the country information, as opposed to the second applicant’s claim for complementary protection based on his individual exposure to that risk. Having regard to the evidence before it, the Tribunal concluded that the second applicant’s individual exposure to the risk met the statutory threshold. In arriving at this conclusion, the Tribunal placed weight upon the following factors:</p> <ul style="list-style-type: none"> <li>• The second applicant was born in, and had only ever lived in, Australia.</li> <li>• He would turn [age] years old in 2021 – credible country information placed him in the middle of the age range of targets for recruitment by the maras.</li> <li>• The second applicant had not been raised in an environment equipping him to be situationally aware of, or to successfully avoid or resist, the maras – to adopt a colloquial submission made on his behalf, he was not ‘street smart’ in the manner of his peers in El Salvador.</li> <li>• He spoke little Spanish, and what little he did speak was spoken with an Australian accent, immediately marking him as a ‘foreigner’ or ‘outsider and therefore an ‘easy target’.</li> </ul> <p>The cumulative effect of these factors, when taken with the whole of the evidence before the Tribunal, including the country information, placed the second applicant at risk of differential treatment because of characteristics that distinguished him from the general populace.</p>
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<p><a href="#">MCVN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 589</a> (Successful)</p>	<p>16 February 2021</p>	<p>76–79</p>	<p>The Tribunal affirmed a decision not to revoke the cancellation of the Eritrean applicant’s Refugee (Subclass 200) visa. The Tribunal concluded that a strong measure of evidential primacy needed to be given to the official country information reports prepared by DFAT, particularly in circumstances where DFAT did go to efforts to confirm the provenance and reliability of factual matters, before these were included in the country information reports. The Tribunal noted that it needed to be shown compelling contrary evidence before it would depart from different views that had been expressed in the DFAT country information reports. That was not the case in this matter. On the available evidence, the applicant was at risk of being required to undertake compulsory national service in Eritrea, yet the risk of the applicant suffering actual harm in consequence of that, or of his being forced to undergo an indeterminate period of conscription, were not concerns that could be sufficiently demonstrated on the available evidence. The Tribunal concluded therefore that some weight in favour of revocation attached to this consideration, but it was not enough to outweigh the very heavy weight attached by the Tribunal to Primary Considerations A (protection of the Australian community from criminal and other serious conduct) and C (the expectations of the Australian community).</p>
<p><a href="#">1910122 (Refugee) [2021] AATA 780</a> (Successful)</p>	<p>15 February 2021</p>	<p>142–168</p>	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Afghani applicant’s Subclass 866 (Protection) visa. Relevantly, the Tribunal accepted that the applicant had a well-founded fear of persecution for the essential and</p>

			<p>significant reasons of his Shia religion and Hazara ethnicity if he were returned to Afghanistan, whether at the time of the Tribunal’s decision or in the reasonably foreseeable future. The Tribunal found expressly that the applicant came within Article 1A(2) of the Refugee Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia’s <i>non-refoulement</i> obligations. However, the Tribunal only made one general passing reference to the CAT at the outside of its reasons. Nonetheless, for completeness, the decision is included here in this list of case summaries.</p>
<p><a href="#">1621151 (Refugee) [2021] AATA 593</a> (Unsuccessful)</p>	<p>15 February 2021</p>	<p>38–46</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa).</p> <p>First, as to the applicant’s claim that she would face demands and possible harassment and civil litigation by business creditors if she returned to Indonesia, the Tribunal found that there was not a real risk that she would be subjected to the death penalty, that she would be arbitrarily deprived of her life, or that she would be tortured for any reason. The Tribunal noted that it had considered the definition of ‘cruel and inhuman’ and of ‘degrading’ treatment or conduct in s 5 of the Migration Act. The Tribunal was not satisfied that the verbal harassment and civil litigation which the applicant potentially faced on her return if the creditors resumed</p>

			<p>their demands for payment (even if it were to include threats to seize property in payment of debts) would amount to causing her severe pain or suffering (whether physical or mental) or that such demands and harassment as she might face (demands and civil litigation or the threat to seize property) would ever be reasonably regarded as ‘cruel or inhuman’ in nature. The Tribunal considered that the civil contract dispute and enforcement of credit agreements was a part of everyday human interaction. Similarly, the Tribunal was not satisfied that demands and verbal harassment for payment would reasonably cause or be intended to cause the applicant extreme humiliation which was unreasonable, even if it occurred on her return. Based on the available information and evidence, the harm feared by the applicant from her creditors did not satisfy the definition of significant harm in s 36(2A).</p> <p>Second, as to the applicant’s claim that she would experience financial hardship due to the lower standard of living in Indonesia and low paid work and conditions, the Tribunal found that even if the applicant were to experience such conditions, this harm did not satisfy the definition of ‘significant harm’ in s 36(2A). The Tribunal found that the harm she feared of economic hardship did not involve her being deprived of her life, subjected to the death penalty or to torture. It did not involve any person ‘intentionally inflicting’ such harm on her as required by s 5 in considering whether it amounted to ‘cruel or inhuman treatment or punishment’. Nor would it involve any act or omission which would cause and would be intended to cause the</p>
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			<p>applicant extreme humiliation which was unreasonable. This harm, should it have occurred in future, would be due to the prevailing economic conditions and the applicant's own work and education skills and not due to an act or omission by any party.</p> <p>Third, and also in relation to the applicant's claim to fear economic hardship due to the low wages and poor living conditions in Indonesia, the Tribunal considered that this claim represented a risk to the society of Indonesia generally and not to the applicant personally. Applying s 36(2B)(c), there was taken not to be a real risk of significant harm to the applicant in Indonesia for that reason.</p>
<a href="#">2016932 (Migration)</a> <a href="#">[2021] AATA 835</a> (Unsuccessful)	12 February 2021	30–40	<p>The Tribunal affirmed a decision to not revoke the cancellation of the Malaysian applicant's Class WC Subclass 030 (Bridging C) visa. Relevantly, the Tribunal expressed concerns about the applicant's credibility and was not satisfied that there was a real chance that the applicant would face serious harm or a real risk that he would face significant harm if removed from Australia to Malaysia. The Tribunal also explained that any general violence or criminal activity in Malaysia that the applicant may have been concerned about was faced by the population generally and not by him personally (in an apparent reference to s 36(2B)(c)). The Tribunal found that there were no obligations under relevant international agreements which would be breached if the applicant's visa were cancelled.</p>
<a href="#">1907357 (Refugee)</a> [2021] <a href="#">AATA 680</a> (Unsuccessful)	12 February 2021	38–42	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. Due to credibility concerns, the</p>

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



			claims to his brother-in-law. Further, the Tribunal observed that random acts of violence and malicious claims based on jealousy were risks faced by the population of Sri Lanka generally, and the applicant had not persuaded the Tribunal that the risk faced was one faced by him personally. This last finding appears to refer implicitly to, and to rely on, the exception contained in s 36(2B)(c) to the definition of ‘significant harm’.
<a href="#">1711245 (Refugee) [2021] AATA 636</a> (Unsuccessful)	10 February 2021	35–52	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Moroccan applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at this conclusion, the Tribunal not only concluded that the applicant’s claims of harm were not substantiated by the available material, but the Tribunal also referred in detail to the adequacy of Morocco’s judicial and law enforcement systems and noted that the independent country information indicated that the government of Morocco was strengthening its justice institutions and citizen rights and improving access to justice through effective and accountable justice service delivery. The Tribunal was not satisfied that the applicant could not obtain, from the government of Morocco, protection such that there would be a real risk that the applicant would suffer significant harm from non-state actors. This finding appears to refer implicitly to, and to rely on, the exception contained in s 36(2B)(b) to the definition of ‘significant harm’.

<p><a href="#">LGLH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 179</a> (Unsuccessful)</p>	<p>10 February 2021</p>	<p>172–187</p>	<p>The Tribunal affirmed a decision to not revoke the cancellation of the South Sudanese applicant’s Class XB Subclass 200 (Global Special Humanitarian) visa. Relevantly, the Tribunal considered a series of contentions set out in an annexure to the applicant’s submissions that related to the question of Australia’s international non-refoulement obligations. While the Tribunal concluded that some of the contents of the annexure were generic and unparticularised, there were some characteristics of the applicant, having spent the majority of his school years in Australia and, while being able to speak, to some extent, three of the locally used languages, that could mark him out as a newcomer, noting especially that the applicant had never lived in Juba or anywhere in what was now South Sudan. Further, the annexure referred to DFAT travel advice in relation to South Sudan and to a curfew imposed by the South Sudanese authorities in order to enforce coronavirus social distancing, and the applicant submitted that there were ‘reports of violent threats against UN personnel on social media and an increase in anti-foreigner sentiment’ due to the COVID-19 pandemic. The Tribunal considered that this was a special factor that may potentially increase the potential of harm to the applicant, as someone newly arrived from abroad. Additionally, although the applicant’s mother had travelled to South Sudan and been there for several months apparently without incident, the applicant was a young male and if he were returned he would be seeking out work and accommodation on a permanent basis. The Tribunal was satisfied that this might raise the risk of the applicant being specifically targeted as a newcomer,</p>
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			by persons who might want to do him harm, and it was a risk that was not fanciful or remote. In the final analysis, the Tribunal found that this consideration (Australia's international non-refoulement obligations) weighed, on balance, in favour of the applicant, although it is unclear precisely on which basis such obligations might have been owed to the applicant.
<a href="#">KMWC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 168</a> (Successful)	9 February 2021	93–101, 108	The Tribunal set aside the decision under review and substituted a decision revoking the mandatory cancellation of the Iranian applicant's Class XE Subclass 790 Safe Haven Enterprise Visa. In September 2017, a delegate of the Minister had recognised the applicant as a refugee on the basis of his sexuality and his Christian faith. The applicant was therefore granted a Class XE Subclass 790 Safe Haven Enterprise Visa. In the immediate proceedings, based on the available evidence, the Tribunal found that it would be a contravention of Australia's international non-refoulement obligations for the applicant to return to Iran. There was the real prospect that the applicant would suffer serious harm on return to his home country. The alternative was that the applicant may face indefinite detention in Australia, which at the very least would seem harsh and punitive, particularly in circumstances where the applicant had already completed his sentence he received in the criminal courts and had now spent further time incarcerated in immigration detention. The Tribunal therefore gave this consideration very heavy weight in favour of revocation of the delegate's decision to cancel the applicant's visa. While the language of the Tribunal's reasoning here ('serious harm on return to his home country') suggests

			that the issue of non-refoulement was decided on the basis of refugee status, for completeness, the decision is nonetheless included here in this list of case summaries.
<a href="#">Hussain (Migration) [2021] AATA 817</a> (Successful)	9 February 2021	38–39, 50	The Tribunal set aside the decision under review and substituted a decision not to cancel the Afghani applicant’s Subclass 100 (Spouse) visa. In her submission to the Tribunal, the applicant referred to her Shia ethnicity and stated she would be targeted by Sunni Muslims in Afghanistan, such as ISIS and the Taliban. The applicant referred to the Shia Muslims being targeted, killed and women raped. The applicant stated she was a female with no family connections. She submitted that she could be forced to get married to someone from her deceased husband’s family and she explained the harm that her children could suffer. The applicant stated that she would be targeted as a single woman. The applicant also stated that her Australian citizen child would not have any documents in Afghanistan and would not be accepted. The applicant stated that her children may be taken away from her and she may be forced to marry someone else, which she did not want to do. The applicant stated that children are abused or even killed and her daughter, who was an Australian citizen, may be targeted. The Tribunal acknowledged that, on the face of it, such claims may give rise to Australia’s non-refoulement obligations. To give the applicant the benefit of the doubt, and without undertaking a full assessment, the Tribunal accepted, for the benefit of this application only, that Australia’s protection obligations may arise in this case. In the particular circumstances of this case, the Tribunal found that the hardship that would be caused to the applicant,

			the best interests of her children and potential non-refoulement obligations outweighed other considerations, although it is unclear precisely on what basis international non-refoulement obligations may be owed.
<a href="#">1704840 (Refugee) [2021] AATA 679</a> (Unsuccessful)	9 February 2021	55–64	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at this conclusion, the Tribunal reiterated that the definitions of torture, cruel or inhuman treatment or punishment and degrading treatment or punishment in s 5(1) of the Act require an element of intent. There must be an act or omission by which severe pain or suffering, or extreme humiliation, ‘is <i>intentionally</i> inflicted on a person’ (emphasis in original). In the Tribunal’s view, the general economic situation and the financial impact of loans taken out by the applicant were not circumstances that were intentionally designed by an individual or the state to cause significant harm to the applicant. There was no intent on behalf of Malaysian society or the authorities to prevent the applicant from gaining employment or accessing social services that were available to other citizens. While the applicant might not earn a wage comparable to that which he would earn in Australia, he would not face extreme humiliation and he was not in a position of vulnerability vis-à-vis the State. Further, the applicant gave evidence that he was under no obligation to repay his government loan while

			<p>he was not earning a wage and the Malaysian Government had appointed a lawyer to assist with the management of the applicant's debt.</p> <p>Referring to the Explanatory Memorandum to the Migration Act, the Tribunal concluded that, when considering the absence of threats or physical harm in the past when the applicant was unable to pay his debt, the ability of the applicant to gain employment and make repayments, and the provision of assistance with the management of the debt incurred from licensed lenders by the state, there were no substantial grounds for considering that there existed a real risk that the applicant would suffer significant harm. While the Tribunal accepted that unlicensed lenders in Malaysia had engaged in threatening and sometimes physically harmful activity generally, it did not accept that there was a real risk that this would happen to the applicant personally. This last finding appears to refer implicitly to, and to rely on, the exception contained in s 36(2B)(c) to the definition of 'significant harm'.</p>
<a href="#">1804941 (Refugee) [2021] AATA 633</a> (Unsuccessful)	9 February 2021	46–51	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal also noted that complementary protection obligations are concerned with acts or omissions occurring in the relevant country and how a visa applicant might be</p>

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

			applicant being subjected to significant harm in Indonesia as a result of the virus.
<a href="#">1708133 (Refugee) [2021] AATA 704</a> (Unsuccessful)	5 February 2021	77, 80	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at these conclusions, the Tribunal had regard to the materials provided by the applicant concerning the COVID-19 pandemic in the Philippines. At the hearing, the applicant advanced a generalised concern that he would not be safe anywhere there on account of the ‘invisible enemy’, clarified by the Tribunal to be a reference to COVID-19. However, to the extent that the applicant advanced a generalised concern for his safety in respect of COVID-19 in the Philippines, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations on this account under s 36(2)(a) or (aa). To the extent that this conclusion relates to s 36(2)(aa), it appears to refer implicitly to, and to rely on, the exception contained in s 36(2B)(c) to the definition of ‘significant harm’.
<a href="#">1704872 (Refugee) [2021] AATA 1103</a> (Unsuccessful)	1 February 2021	85–89	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, after considering the applicant’s circumstances individually and cumulatively, and the relevant country information, and having regard to the findings of fact reached with respect to the refugee criterion, the Tribunal found that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed



		<p>from Australia to Thailand, there was a real risk that she would suffer significant harm as set out in s 36(2A) of the <i>Migration Act</i>, whether from her ex-husband or anyone else.</p> <p>The Tribunal was satisfied that, if any risk from her ex-husband existed, it would be reasonable for the applicant to relocate to an area of the country (such as Bangkok) where there would not be a real risk that she would suffer significant harm. In concluding that relocation was reasonable, the Tribunal took into account the applicant's ability to relocate and adapt in Australia, including her work history here. It considered that her older son in Thailand was now independent, while there appeared no reason that her younger son could not continue to reside with her ex-sister-in-law, as he had done for the previous 6 years.</p> <p>Additionally, the Tribunal found that the applicant could obtain protection from the Thai authorities such that there would not be a real risk that she would suffer significant harm. The Tribunal noted that, under the complementary protection criteria, section 36(2B)(b) provides that the level of protection offered by the receiving country must reduce the risk of significant harm to something less than a real one to remove the risk (citing <i>MIAC v MZYLL</i> [2012] FCAFC 147; (2012) 207 FCR 211 at [40]). In essence, the Tribunal must be satisfied that the protection available is more than 'reasonable' protection. Having regard to the available country information, the Tribunal was satisfied that it supported the fact that the protection available from the Thai authorities was more than</p>
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			<p>‘reasonable’ and removed the real risk; in particular, since the legal reforms of August 2019 referred to in the context of the refugee criterion. In this regard, the Tribunal noted that the protection offered by the authorities in a given country is not required to be absolute or infallible.</p> <p>Accordingly, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa).</p>
<a href="#">2017721 (Refugee) [2021]</a> <a href="#">ATA 630</a> (Unsuccessful)	1 February 2021	63–76	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the South Korean applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal referred expressly to ICCPR Article 7 and repeated the established proposition that Article 7’s definition of torture and cruel, inhuman or degrading treatment or punishment requires an intention to inflict harm by some act or omission. Further, for the sake of completeness, even if the Tribunal accepted the applicant’s late claim about the South Korean police seeking to investigate the applicant over any connection he might have with the crimes of “Mr B” or some other drug dealer, the harm he claimed to fear here was a lawful sanction that was not inconsistent with the Articles of the ICCPR.</p>
<a href="#">JCCY and Minister for Immigration, Citizenship,</a>	29 January 2021	113–126	<p>The Tribunal affirmed a decision to not revoke the decision made under s 501(3A) of the Migration Act to</p>

<p><a href="#">Migrant Services and Multicultural Affairs (Migration) [2021] AATA 66</a> (Unsuccessful)</p>			<p>cancel the Iraqi applicant’s Class XB Subclass 202 (Global Special Humanitarian) visa. Relevantly, however, the Tribunal noted that Christians, such as the applicant, in Iraq continued to be the subject of harassment and discrimination, with the situation in the applicant’s home town of Mosul being less safe than other parts of the country. Nonetheless, based on the evidence before the Tribunal, the general and non-specific nature of the applicant’s claims in relation to non-refoulement and the risk should he be returned, the Tribunal was not satisfied that the risk of potential harm was such that it would invoke Australia’s international non-refoulment obligations or that Australia was in breach of those obligations should the applicant be returned, although — owing to the increased risk of harm — the Tribunal did find that this consideration weighed in favour of revoking the cancellation decision.</p>
<p><a href="#">1724793 (Refugee) [2021] AATA 581</a> (Unsuccessful)</p>	<p>28 January 2021</p>	<p>43–48</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the applicant’s worries about financial matters and about not being able to support his family amounted to a real risk he would suffer significant harm if he were removed from Australia. According to his evidence, the applicant sought employment in the agricultural and manufacturing (factory) sectors in his home country. The Tribunal observed that it may be the case that the applicant would have to search other sectors such as</p>

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

			<p>applicants satisfied the criterion in section 36(2)(aa) of the Act.</p> <p>In considering whether or not the applicants would have access to effective and durable state protection and the availability of relocation within Myanmar, having had regard to the country information and the evidence of the applicants, the Tribunal was satisfied that the principal agent of harm feared by the applicants was the Myanmar state and agencies thereof. The Tribunal found, therefore, that effective and durable state protection was not available to the applicants if they were returned to Myanmar.</p>
<a href="#">2018493 (Refugee) [2021] AATA 440</a> (Unsuccessful)	25 January 2021	64–76	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal referred expressly to ICCPR Article 7 and repeated the established proposition that Article 7’s definition of torture and cruel, inhuman or degrading treatment or punishment requires an intention to inflict harm by some act or omission. In any event, in the circumstances, the Tribunal found that the applicant would be caught by the exceptions set out in s 36(2B)(a) and (b). The applicant explicitly denied suggesting that the police would not try to help him, and the reason he gave for not wishing to relocate within India was</p>

			unsatisfactory in that it was evidently something he could reasonably discuss with his family.
<a href="#">2008406 (Refugee) [2021]</a> <a href="#">AATA 623</a> (Unsuccessful)	18 January 2021	47–52	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal accepted that, in principle, arrest, torture and detention for indefinite or lengthy jail terms, without access to a fair trial and proper representation, would satisfy the definition of ‘significant harm’ in s 36(2A). However, as the Tribunal did not accept that the applicant’s claims were made out on the evidence, this observation was expressed only as obiter.
<a href="#">1713060 (Refugee) [2021]</a> <a href="#">AATA 567</a> (Successful)	13 January 2021	44–54	The Tribunal set aside the decision under review and substituted a decision not to cancel the Pakistani applicant’s Subclass 866 (Protection) visa. Relevantly, in considering the existence of (and weight to be given to) any international non-refoulement obligations owed by Australia to the applicant, the Tribunal concluded that it was not legally, logically or ethically plausible to maintain that cancellation of his visa would not lead to the applicant being removed from Australia and Australia potentially therefore being in breach of its non-refoulement obligations to the international community. In the Tribunal’s view, taking account of the applicant’s claims and the country information, this consideration alone militated very highly against cancellation of the visa. As a Hazara Shia, there was a strong basis to conclude that the applicant faced

			persecutory conduct if returned to Pakistan, which was not displaced by his brief return previously, for a compelling reason (the serious illness of his mother, who had passed away by the time of the Tribunal's decision).
<a href="#">1810295 (Refugee) [2021]</a> <a href="#">AATA 214</a> (Unsuccessful)	12 January 2021	66–67	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indonesian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal considered the applicant's claims of fears about how she would raise her children if she had to return to Indonesia, and although the Tribunal accepted that she might face financial or economic difficulties after a long absence from the country, with or without her children, such hardships or difficulties did not constitute significant harm as defined in the Act.
<a href="#">Romha (Migration) [2021]</a> <a href="#">AATA 132</a> (Successful)	12 January 2021	49–50, 56	The Tribunal set aside the decision under review and substituted a decision not to cancel the Ethiopian applicant's Subclass 100 (Spouse) visa. In doing so, the Tribunal briefly acknowledged (as a factor against cancelling the applicant's visa) the applicant's evidence concerning the situation in her home country and that she would be subjected to harm if she was required to leave Australia, although the Tribunal was mindful that these matters may best be considered through a different visa process. For the purpose of this application, the Tribunal simply acknowledged that the applicant was fearful of harm and that country information supported

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



			applicant, who had an additional profile of being a young male returnee from abroad, could avail himself of state protection in the event that he was targeted by members of his ex-partner’s family, particularly given the motivation behind the intent to harm. Finally, the Tribunal considered that it would be potentially unsafe and unreasonable to expect the applicant to relocate away from the capital city of Burundi in order to avoid harm from his ex-partner’s family in Bujumbura. In view of these findings, the Tribunal concluded that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Burundi, there was a real risk that he would suffer significant harm.
<a href="#">RJFB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 40</a> (Unsuccessful)	7 January 2021	140–169 (general observations about Australia’s international non-refoulement obligations), 179–183 (conclusion about whether Australia owed international non-refoulement obligations to the applicant), 184–192 (weight to be given to Australia’s international non-refoulement obligations)	The Tribunal affirmed the delegate’s decision not to revoke the visa cancellation decision made with respect to the Afghani applicant under s 501(3A) of the Migration Act. Relevantly, however, the Tribunal considered in detail the relevance of Australia’s international non-refoulement obligations ([140]–[169]) and found that such obligations were owed to the applicant ([179]–[183]), though a question arose as to what significance that finding carried ([184]–[192]). In the final analysis, the Tribunal did not consider that the criterion of Australia’s international non-refoulement obligations weighed much in favour of revoking the applicant’s visa cancellation. The Tribunal was satisfied that Australia would not remove the applicant to Afghanistan while he remained at risk by reason of his religion and membership of a particular social group.
<a href="#">1934366 (Refugee) [2021] AATA 365</a> (Unsuccessful)	7 January 2021	98–100	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a

			<p>protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, however, the Tribunal did observe that whatever measures may have been applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions.</p>
<p><a href="#">1908915 (Migration) [2020] AATA 5619</a> (Successful)</p>	22 December 2020	64–67, 68–86, 90	<p>The Tribunal set aside the decision under review and substituted a decision not to cancel the Afghani applicant’s Subclass (155) (Five Year Resident Return) visa. Relevantly, the Tribunal concluded that, as a result of the applicant’s race, religion and being a member of a particular social group of returnees from the West, he had a well-founded fear of persecution if returned to Afghanistan, at the time of the Tribunal’s decision or in the reasonably foreseeable future. The Tribunal found that the State was unable to provide him with protection. The Tribunal concluded that the applicant fell within Article 1A(2) of the Refugee Convention and his removal from Australia would be in breach of Australia’s non-refoulement obligations in Art 33 of the Convention. While the Tribunal’s analysis appears to be confined to reliance on non-refoulement under the Refugee Convention, the Tribunal did briefly refer to the existence generally of non-refoulement obligations under the ICCPR (including its Second Optional</p>

			Protocol) and the CAT. For completeness, this decision is included here in these case summaries.
<a href="#">2011614 (Refugee) [2020]</a> <a href="#">AATA 5560</a> (Unsuccessful)	18 December 2020	55–56	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Guinean applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, however, the Tribunal referred expressly to ICCPR Article 7 and repeated the established proposition that Article 7’s definition of torture and cruel, inhuman or degrading treatment or punishment requires an intention to inflict harm by some act or omission.
<a href="#">1932525 (Refugee) [2020]</a> <a href="#">AATA 5544</a> (Successful)	18 December 2020	86–92	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Lebanese applicant a protection visa. The Tribunal was satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal noted that s 36(2)(aa) required that the risk of harm to the applicant be a necessary and foreseeable consequence of the applicant being removed from Australia to Lebanon, and that the necessary and foreseeable consequence element of s 36(2)(aa) attaches to the risk of harm rather than the actual occurrence of harm. In this case, the applicant remained the subject of an order for the death penalty. The Tribunal was satisfied that the order was legitimate and that the applicant would be subjected to the death penalty, torture and cruel and inhuman punishment if he was returned to Lebanon. While, at the time of the Tribunal’s decision, there existed a moratorium on

			<p>carrying out the death penalty in Lebanon, the Tribunal was satisfied that, in the event the applicant was returned to Lebanon, there would be reasonable grounds for believing that, as a necessary and foreseeable consequence of being removed for Australia to Lebanon, the applicant would suffer significant harm. That is, he would be detained (in which there was a real risk he would be tortured and subjected to cruel and inhuman behaviour) and subjected to the death penalty.</p> <p>In reaching these conclusions, the Tribunal reiterated that the definition of ‘significant harm’ in the complementary protection context requires an element of intent. That is, an act or omission by which the significant harm (deprivation of life, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment) is intentionally inflicted upon a person for a specified purpose or reason. That is, intent requires an actual, subjective intention on the part of a person to bring about the applicant’s suffering by their conduct. Here, the Tribunal was satisfied that the order by the Judicial Council of Lebanon satisfied the necessary intent to cause the applicant significant harm.</p>
<a href="#">1702283 (Refugee) [2020] AATA 5965</a> (Unsuccessful)	18 December 2020	89–94	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, the Tribunal accepted independent country information to the effect</p>

			that India is a functioning democracy with an independent judiciary. The Tribunal accepted that while there existed challenges with its institutions, where there was unrest the authorities in India moved to restore order, prosecute unlawful behaviour and protect its citizens. These observations appear to refer implicitly to, and to rely on, the exception of state protection in s 36(2B)(b).
<a href="#">Dan Granxxa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 5760</a> (Successful)	17 December 2020	173–176, 177	<p>The Tribunal set aside the decision under review and substituted a decision that the cancellation of the Spanish applicant’s visa be revoked under s 501CA(4)(b)(ii) of the Migration Act. However, in doing so, the Tribunal did not give any weight to the consideration of Australia’s international non-refoulement obligations. Nonetheless, the Tribunal dealt in some detail with a miscellaneous submission advanced by the applicant about the relevance of Australia’s international non-refoulement obligations. The Tribunal explained (footnotes omitted; italics in original):</p> <p>[173] The further miscellaneous contention put on behalf of the Applicant is that if the Applicant is removed from Australia to Spain, Australia will be in contravention of Articles 12(4) and 17(1) of the <i>International Covenant on Civil and Political Rights</i>, (ICCPR) which relevantly stipulate that “<i>No one shall be arbitrarily deprived of the right to enter his own country</i>”, and, further, “<i>No one shall be subjected to arbitrary or unlawful interference with his...family...</i>” The resulting contention is that the Tribunal “...should accept that Australia’s</p>

			<p><i>international obligations under the ICCPR may be relevant to determining whether there is ‘another reason’ to revoke a mandatory cancellation.”</i></p> <p>[174] Our initial approach to this submission is predicated on the basis that even if there was a demonstrated breach of Articles 12(4) and 17(1) of the ICCPR, it would be unsafe to allocate anything other than little or insignificant weight to this, because these Articles are not mandatory considerations under the Direction, and, in particular, Article 12(4) does not constitute a non-refoulement obligation. At a more fundamental level, we are of the view that neither of the Articles 12(4) nor 17(1) of the ICCPR are actually engaged. The Applicant’s reliance on <i>Clegg v MICMSMA [2020] AATA 3383</i> at [105] is, in our view and with respect, misplaced. In its response to the decision of the Human Rights Committee in <i>Nystrom v Australia, UN Doc CCPR/C/102/D/1557/2007 (18 August 2011)</i>, the Government views as correct previous decisions of the HRC which said that a person who enters a state under a state’s immigration laws cannot regard the state as his “<i>own country</i>” when he has not acquired the nationality and continues to retain the nationality of his country of origin.</p> <p>[175] We disagree with the contention put on behalf of the Applicant that any removal of him to Spain (together with the resulting consequences thereof) would be arbitrary. Thus, we do not consider that the</p>
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			provisions of either Article 12(4) or 17(1) of the ICCPR are engaged. His removal from Australia would occur pursuant to Australian law and procedure involving a contested determination during which the Applicant would have been offered appropriate procedural fairness.
<a href="#">1807693 (Refugee) [2020] AATA 6149</a> (Unsuccessful)	17 December 2020	65–67	The AAT affirmed a decision refusing to grant the applicant a protection visa. The Tribunal reiterated its findings reached with respect to the refugee criterion and was not satisfied that there was a real risk that the applicant would suffer significant harm for any of the reasons claimed if he returned to India. The Tribunal was satisfied there was no real risk that the applicant would be subjected to any form of harm which would be the result of an act or omission by which severe pain or suffering, whether physical or mental, would be intentionally inflicted on the applicant, such as to meet the definition of torture; or the definition of cruel or inhuman treatment or punishment; or the definition of degrading treatment or punishment. The Tribunal also was not satisfied that there was a real risk he would suffer arbitrary deprivation of his life or the death penalty. The Tribunal found no grounds that suggested the applicant would be subject to significant harm for any reason if he returned to India, as there was taken not to be a real risk of significant harm since the ‘real risk’ was one faced by the sons of indebted fathers in India generally and was not faced by the applicant personally (section 36(2B)(c) of the <i>Migration Act</i> ). Therefore, the Tribunal found that the applicant did not satisfy the criterion in section 36(2)(aa) of the Act.

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



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

			applicants would be at risk of suffering significant harm due to their daughter's health needs.
<a href="#">1920271 (Migration) [2020] AATA 6042</a> (Successful)	14 December 2020	72–75, 76–88, 99	The Tribunal sets aside the decision under review and substitutes a decision not to cancel the Afghani applicant's Subclass 155 (Five Year Resident Return) visa. Relevantly, the Tribunal considered that being a returnee from the West would mean that the applicant would face a real chance of serious harm if he were to be returned to Afghanistan as a member of a particular social group, and there would also be a real chance of serious harm due to his Hazara race and Shia religion. The risk of harm was amplified by the lack of safety when travelling domestically for people who are Hazara. As a result, the Tribunal considered removal of the applicant from Australia would be in breach of Australia's international obligations relating to non-refoulement.
<a href="#">1620623 (Refugee) [2020] AATA 5819</a> (Unsuccessful)	14 December 2020	62–63	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal was not satisfied there existed substantial grounds for believing there was a real risk she would suffer significant harm within the meaning of s 36(2A). Even if she were to experience difficulties establishing herself and settling in after her long period of absence from Vietnam, the Tribunal was not satisfied that financial hardship or other challenges settling in constituted significant harm as contemplated by s

			36(2A). The Tribunal also considered the applicant's claim of mental harm to her as a result of being separated from her son. However, while acknowledging that separation would be difficult for her and her son, the Tribunal found that mental harm resulting from the separation of a family member arising <i>solely</i> from the act of removal of an applicant from Australia to her receiving country did not constitute significant harm.
<a href="#">2013022 (Refugee) [2020]</a> <a href="#">ATA 5966</a> (Unsuccessful)	11 December 2020	211–223	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Iranian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal similarly noted issues with the applicant's credibility. Relevantly, however, the Tribunal also was not satisfied that the applicant personally had suffered significant harm as a result of Iran's political and religious make-up, its socio-economic conditions and its governance, and the relative disadvantage in south-western Iran, and the Tribunal did not accept that there were substantial grounds for believing that he would in the future, as a necessary and foreseeable consequence of being removed from Australia to Iran. This appears to refer implicitly to, and to rely on, the exception in s 36(2B)(c).
<a href="#">1619584 (Refugee) [2020]</a> <a href="#">ATA 5581</a> (Unsuccessful)	10 December 2020	155–186	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the South African applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had

			<p>protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa).</p> <p>First, the Tribunal was not satisfied that there was a real risk of significant harm in the form of torture, cruel or inhuman treatment or punishment, degrading treatment or punishment or arbitrary deprivation of life arising from the applicant's claimed inability to obtain employment or to access treatment for his diabetes ([158]–[179]). Specifically, the Tribunal was not satisfied that there was a real risk of significant harm in the form of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment because of inability to access jobs, services or treatment because there was no intention by the state to cause such harm. Nor was the Tribunal satisfied that there was a real risk of significant harm in the form of arbitrary deprivation of life due to unavailability of jobs, services or treatment. Referring to the relevant line of judicial authority, the history of the legislative scheme of complementary protection in Australia, the Oxford English Dictionary, other international human rights instruments, the jurisprudence of the UN Human Rights Committee, the Tribunal engaged in a detailed analysis of the meaning of the expression 'arbitrary deprivation of life'. In the final analysis, the Tribunal was not satisfied that the applicant would be capriciously denied a job, social service, or medical treatment, but rather — if these were not available — it would be due to underfunding and resource constraints.</p>
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			<p>Second, the Tribunal was not satisfied that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to South Africa, there was a real risk that he would be arbitrarily deprived of his life due to crime or withholding of protection ([180]–[185]). In this respect, the Tribunal referred expressly to, and applied, the exception in s 36(2B)(c) (a risk faced by a population generally rather than the applicant personally).</p>
<p><a href="#">2008193 (Refugee) [2020] AATA 5518</a> (Unsuccessful)</p>	4 December 2020	21–27, 28–29	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). After setting out the definition of ‘significant harm’ in s 36(2A), the Tribunal observed (at [23], citation omitted):</p> <p>... the Australian courts have held that complementary protection obligations are concerned with intentional acts or omissions occurring in the relevant country and how a visa applicant might be treated by another person or persons. Further, the risk to the applicant because of the state of the Malaysian economy would appear to be one faced by the population of the country generally and not faced by the applicant personally.</p> <p>The applicant did not suggest that any economic harm he might suffer in Malaysia would arise from the intentional</p>

			<p>or deliberate act or omission of a third person or persons such as could constitute arbitrary deprivation of life, cruel or inhuman treatment or punishment, degrading treatment or punishment or torture. As such, the Tribunal did not accept that any economic harm to which the applicant may be subjected if returned to Malaysia would meet the definition of ‘significant harm’, as that term is exclusively defined in s 36(2A).</p> <p>Additionally, the Tribunal considered that the risk of harm to the applicant arising out of the state of the Malaysian economy was one faced by the population of Malaysia generally, rather than by the applicant personally. In such circumstances s 36(2B)(c) had the effect that there was taken not to be a real risk that the applicant would suffer significant harm.</p>
<p><a href="#">2007574 (Refugee) [2020] AATA 5739</a> (Unsuccessful)</p>	4 December 2020	84–93, 94–95	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Portuguese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). While the Tribunal accepted that mental health care was not at an entirely satisfactory level in Portugal as compared to Australia, care nonetheless was available. In any event, the Tribunal noted that the definition of ‘significant harm’ in the context of complementary protection requires an element of intent. The Tribunal explained (at [86], citation omitted):</p> <p>That is an act or omission by which the significant harm as defined in s.36(2A) of the Act (arbitrary</p>

			<p>deprived of his life, death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment) is intentionally inflicted upon a person for a specified purpose or reason. Therefore intent, in this context, requires an actual, subjective, intention on the part of a person to bring about the applicant's suffering by their conduct.</p> <p>The Tribunal applied this reasoning to conclude that the applicant did not face any real risk of significant harm on this basis (at [86], continued):</p> <p>Notwithstanding the fact that Tribunal has accepted that the applicant suffers for a mental health condition, there is no actual, subjective, intention on the part of the Portuguese government to cause him significant harm by denying him mental health care reason upon his return to Pakistan [sic]. The Tribunal therefore finds that there is no real risk that the applicant's mental condition will cause him significant harm upon his return to Portugal.</p> <p>At no stage did the applicant advance any other reason, such as his race, nationality or religion, in his written or oral claims that the applicant was owed Australia's protection obligations. The Tribunal therefore found that there were no more residual claims, including based on the applicant's accepted circumstances, to be considered. For completeness, however, the Tribunal noted that there was no evidence of intent by the Portuguese government or any other institution or</p>
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			person to cause the applicant significant harm as a result of the COVID-19 pandemic.
<a href="#">GCRM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)</a> (Successful)	2 December 2020	75-95	The Tribunal substituted a decision revoking the mandatory cancellation of the applicant’s visa, finding that non-refoulement obligations were a relevant consideration if the applicant were returned to South Sudan.
<a href="#">1705443 (Refugee) [2020] AATA 5728</a> (Unsuccessful)	30 November 2020	64–74	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, due to credibility concerns, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). However, in the course of considering the application of s 36(2)(aa), the Tribunal briefly referred to Article 7 of the ICCPR and the definitions of ‘cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’ as those terms are used in the Migration Act. After referring to these definitions, the Tribunal explained (at [69], emphasis in original):</p> <p>Essentially, all three of these definitions require that there be <i>an intention to inflict harm</i> by some act or omission. Torture does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. “Cruel or inhuman treatment or punishment” does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and</p>



			<p>Political Rights (the ICCPR), nor one arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the ICCPR. “Degrading treatment or punishment” does not include an act or omission which is not inconsistent with Article 7 of the International Covenant on Civil and Political Rights (the ICCPR), nor one 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 ICCPR.</p>
<p><a href="#">1620694 (Refugee) [2020] AATA 5616</a> (Successful)</p>	<p>25 November 2020</p>	<p>54–82</p>	<p>The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Bangladeshi applicant a protection visa. While the applicant did not satisfy the refugee criterion in s 36(2)(a), the Tribunal remitted the delegate’s decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(aa).</p> <p>The Tribunal was satisfied that the applicant faced a real risk of significant harm in his home area based on the practice of his Hinduism, as a result of him and his family having been targeted by local Muslims over a significant period. However, the Tribunal was not satisfied that the applicant faced a real risk of significant harm in all parts of Bangladesh based on his Hinduism. That then required the Tribunal to determine whether it would be reasonable for the applicant to relocate. In determining the question of reasonableness, the Tribunal explained ([76]):</p> <p>Significant for the Tribunal in the determination of reasonableness is the fact that the applicant felt that he could not previously relocate within Bangladesh</p>

			<p>to escape the problems he had faced in his home area as a result of his practice of Hinduism. As indicated, the Tribunal accepts that the significant motivation of the applicant in relocating to India was to avoid the problems he had faced as a Hindu in his local area. The fact of the applicant not relocating within Bangladesh demonstrates to the Tribunal a combination of a continuing subjective belief of harm based on being Hindu in all parts of Bangladesh, combined with practical impediments to relocation. The latter would include hurdles in settling as a minority group (being Hindu) integrating into a new community and finding suitable employment. Such hurdles would potentially be minimised in India, given its majority Hindu population. The Tribunal considers that it would be a significant struggle for the applicant to integrate and make a life for himself somewhere away from his close and supportive family, who the Tribunal accepts have been core to providing emotional support for the applicant. Cumulatively considered with these factors are current difficulties that the applicant would face in resettling somewhere new in Bangladesh due to the COVID-19 pandemic. Evidence has been provided on behalf of the applicant of increases in attacks on minorities as a result of the pandemic, which the Tribunal accepts as plausible. In the Tribunal's assessment, the pandemic would make the applicant the subject of greater scrutiny, attention and potential suspicion as an outsider. This is one factor that goes to the reasonableness of relocation.</p>
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			In the final analysis, while the competing considerations were finely balanced, the cumulative impact of all of the above matters resulted in the Tribunal forming the view that it would not be reasonable for the applicant to relocate within Bangladesh. Given these findings, the Tribunal was satisfied that the applicant met the complementary protection criterion.
<a href="#">1907872 (Refugee) [2020] AATA 5521</a> (Successful)	24 November 2020	44–55, 67	The Tribunal set aside the decision under review and substitutes a decision not to cancel the Afghani applicant’s Subclass 866 (Protection) visa. In considering whether Australia’s international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal considered that there was a real risk that the applicant’s life and freedom would be threatened due to his Hazara race and Shi’a religion if he were returned to Afghanistan. The Tribunal was not satisfied there were current protection measures available to the applicant in Afghanistan. It followed that returning him to Afghanistan would be a breach of Australia’s non-refoulement obligations.
<a href="#">1703524 (Refugee) [2020] AATA 5515</a> (Unsuccessful)	24 November 2020	75–80	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa) because there did not exist substantial grounds for believing that he faced a real risk of suffering significant harm at the hands of members of Congress, AIMIM parties or any political connections they may have. In

			<p>arriving at this conclusion, the Tribunal accepted independent country information that India is a functioning democracy with an independent judiciary, and that while there are challenges with its institutions, where there is unrest the authorities in India move to restore order, prosecute unlawful behaviour and protect its citizens ([77]). This observation appears to rely implicitly on the exception of state protection recognised in s 36(2B)(b).</p>
<p><a href="#">1838191 (Refugee) [2020] AATA 5517</a> (Unsuccessful)</p>	24 November 2020	80–88	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal concluded that the applicant’s fears of persecution were not well-founded for any of the reasons mentioned in s 5J(1)(a),(b) or (c) if he was returned to Malaysia and, as such, he did not satisfy the criterion in s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal reiterated that it was not satisfied that the applicant faced a real chance of serious harm from domestic violence by his father. As a result, for the reasons expressed under the applicant’s refugee claim, the Tribunal found that there was no real risk he would be significantly harmed as a result of domestic violence if he returned to Malaysia. In arriving at this conclusion, the Tribunal discussed the meaning and scope of s 36(2B)(b) and its exception of state protection in the following terms (at [82], citations omitted):</p> <p>To satisfy s.36(2B)(b), the level of protection offered by the receiving country must reduce the risk of significant harm to something less than a real one. In that sense, there is some overlap</p>

			<p>between this qualification and the assessment of ‘real risk’ under s.36(2)(aa), which necessarily involves consideration of a range of matters, including the availability of protection from the authorities. However, the test in s.36(2B)(b) is differently expressed to the effective protection measures test as understood in Australian refugee law, where the relevant standard is an adequate or effective, rather than perfect, level of protection. That is, section 36(2B)(b) requires the Tribunal to be satisfied that the protection available would remove the real risk of significant harm.</p> <p>The Tribunal then concluded that, having considered the country information and the accepted circumstances of the applicant as discussed under the Tribunal’s effective protection findings for s 36(2)(a), the level of protection from state and other authorities available to the applicant if removed from Australia to anywhere within Malaysia would remove the real risk of significant harm.</p> <p>Additionally, for the reasons expressed under the applicant’s refugee claim, the Tribunal found that there was no real risk he would be significantly harmed as a result of being perceived as having a disability if he returned to Malaysia, as claimed.</p> <p>Finally, the Tribunal did not accept that the applicant would not be able to gain employment and, as a result, suffer economic harm to the extent that would constitute significant harm. As such, the Tribunal did not accept that the applicant had a real risk of significant harm as</p>
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			outlined in s 36(2A)(c) and (d). Accordingly, the Tribunal found that there was no real risk that the applicant would be significantly harmed by reason of not being able to access paid employment as claimed or as a result of the Malaysian economy more generally.
<a href="#">KCCD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 5145</a> (Successful)	20 November 2020	116-153	The Tribunal revoked the cancellation of the humanitarian visa of a Dinka applicant from South Sudan, finding he was owed non-refoulement obligations including under the ICCPR.
<a href="#">1801951 (Migration) [2020] AATA 5179</a> (Successful)	19 November 2020	59-69	The Tribunal substituted a decision not to cancel an Afghan, Shia, Hazara applicant's resident visa, finding that as a returnee from the west, with little family support or network, he would be at risk of serious harm if returned to Afghanistan, and therefore cancellation may put Australia in breach if its non-refoulement obligations.
<a href="#">1707006 (Refugee) [2020] AATA 5436</a> (Unsuccessful)	17 November 2020	55–65 (first applicant), 66–71 (second applicant), 72–77 (applicants' children), 78–89 (consequential considerations)	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicants protection visas. The Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa).</p> <p>With respect to the first applicant, the Tribunal was prepared to assume that a gang connected to illegal moneylending still existed, that members of the gang remembered the first applicant, and that they had reach into Terengganu (where the first applicant indicated he and his family would return to). However, the Tribunal</p>

			<p>noted that the first applicant had a number of options available to reduce the risk of harm he faced to less than a real risk, beginning with repaying the loan. Further, the Tribunal observed that the Malaysian Muslim Consumers Association had support services dedicated to resolving loan shark debt by renegotiating terms, if necessary, with the relevant loan shark. The first and second applicants had the option of seeking out the loan sharks from the safety of Australia or, alternatively, using the assistance of the Malaysian Muslim Consumer Association, who would contact the loan sharks on the applicants' behalf without the applicants having to risk their safety. The Tribunal also considered that the first applicant would be able to find employment such that he could meet his, and contribute to his family's, needs. The Tribunal concluded that the first applicant did not face a real risk of significant harm arising from the economic circumstances he faced upon return to Malaysia.</p> <p>With respect to the second applicant, the Tribunal concluded that she did not face a real risk of significant harm arising from her participation in political rallies in the past or from her possible future participation. Further, there being no claim or evidence to indicate that a partner who was not involved in political activities faced a higher level of harm, the Tribunal found that the second applicant did not face a real risk of significant harm. Finally, the Tribunal found that the second applicant did not face a real risk of significant harm arising from the economic circumstances she faced upon return to Malaysia.</p>
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			<p>With respect to the first and second applicants' children, the Tribunal considered a number of claims individually and cumulatively, including that they would face bullying in their school at the same time (a) their father would need to negotiate through an intermediary the repayment of the loan he took out and (b) their mother would be participating in peaceful protests while collectively the family would be working hard to make ends meet. Despite there being a considerable number of issues impacting the applicants that the family would be dealing with concurrently, the Tribunal found that none of the applicants faced a real risk of significant harm.</p>
<p><a href="#">1617684 (Refugee) [2020] AATA 5310</a> (Unsuccessful)</p>	<p>17 November 2020</p>	<p>136–145 (general findings), 146–152 (state protection), 153 (COVID-19)</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Kenyan applicants protection visas. Due to credibility concerns, the Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). The Tribunal found that the applicants did not have a well-founded fear of persecution in Kenya arising from historic and ongoing inter-tribal and sectarian violence in Kenya (election-related and other) and from the applicants being members of the particular social group of persons who are in either or both love marriages and inter-tribal relationships and who face implacable opposition from their families of birth. Further, the applicants did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the applicants would face family or societal stigmatisation, ostracisation, or dislocation if returned to Kenya such as to engage the complementary protection criterion.</p>



			<p>In arriving at its conclusions with respect to s 36(2)(a) and (aa), the Tribunal was satisfied that, according to international standards, the Kenyan state provided an adequate level of state protection for the purposes of s 5J(2) of the Act, as set out in s 5LA. Regarding complementary protection, the Tribunal referred to s 36(2B)(b) but noted that ‘the relevant assessment of state protection in relation to complementary protection assessment for the purposes of s.36(2B)(b) is differently framed and the assessment of the available standard of protection in a receiving country is on the basis of “international standards”’ ([151]).</p> <p>Finally, the Tribunal found that whatever measures may have been applicable to the population of Kenya generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the refugee or complementary protection provisions.</p>
<a href="#">1821641 (Refugee) [2020] AATA 5493</a> (Unsuccessful)	13 November 2020	49–53	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal found that any economic hardship the applicant might experience if removed to Thailand, including feelings of emotional distress/stress and/or humiliation due to her economic circumstances, would not amount to significant harm for the purposes of the Act, because the harm would not be</p>

			as a result of any deliberate act or omission by any group or person done with the intention of causing her to suffer significant harm ([53]).
<a href="#">1617394 (Refugee) [2020]</a> <a href="#">ATA 5435</a> (Successful)	12 November 2020	65–78	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. The Tribunal remitted the delegate’s decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(aa). The Tribunal accepted that the applicant faced a real risk of assault, physical or sexual abuse and/or other manifestations of homophobia in India and that this would amount to significant harm for the purposes of s 36(2A). Further, the Tribunal was not satisfied there was anywhere in India where the applicant could relocate and not be at such risk. It also was not satisfied that the applicant would be able to obtain protection from an authority in India, such that there would not be a real risk that she would suffer significant harm. Additionally, the Tribunal found that the risk faced by the applicant was not one faced by the population generally but, rather, was faced by her personally because of her sexual orientation.
<a href="#">Ghebre (Migration) [2020]</a> <a href="#">ATA 5665</a> (Successful)	11 November 2020	45	The Tribunal set aside the decision under review and substitutes a decision not to cancel the Eritrean applicant’s Subclass 202 (Global Special Humanitarian) visa. In considering whether Australia’s international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal explained ([45]):  The applicant submits that she is a practising JW [Jehovah’s Witness] and would be subjected to persecution or discrimination in her home country. The

			<p>applicant provided to the delegate [below] a number of country reports, indicating that under a presidential decree [sic] of October 1994, those who practise JW religious [sic] have their Eritrean citizenship revoked. The applicant states that she cannot return to Eritrea where she could face persecution, and has no right to live in Sudan or any other country, so she may become stateless and subject to indefinite detention. The Tribunal accepts that on the face of it, the applicant's claims may give rise to Australia's protection obligations, although the Tribunal is mindful that the applicant may be eligible to seek protection in Australia.</p>
<p><a href="#">2004284 (Refugee) [2020]</a>  <a href="#">ATA 5505</a>  (Unsuccessful)</p>	<p>9 November 2020</p>	<p>108–137, 138–140</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the El Salvadorian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal considered whether there were substantial grounds for considering that the applicant faced a real risk of significant harm from gangs and, if so, whether that risk was faced by him personally as a result of the applicant's heightened risk of harm arising from his personal circumstances, including his extended absence from El Salvador, his status as a deportee, his age, his lack of family connection, and his lack of ability to establish himself or subsist. The Tribunal also considered whether the applicant would be arbitrarily deprived of his life, due to his health and practical circumstances, particularly in the context of the COVID-19 pandemic. In the course of considering harm in the context of the</p>

			applicant's ill health, purported inability to subsist, and family circumstances, the Tribunal concluded that any inability to access medical treatment would not have the required intentional or deliberate act or omission, or some form of deliberate conduct that would result in the applicant being deprived of his life or suffering another form of significant harm ([131]).
<a href="#">GNLS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4418 (Successful)</a>	4 November 2020	154-190	The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the applicant's Five Year Resident Return (Class BB) (Subclass 155) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal re-iterated the settled propositions that the Migration Act is not an exhaustive expression of Australia's non-refoulement obligations and that a decision-maker must consider whether non-refoulement claims made by an applicant constitute another reason for revocation of the cancellation decision. After a detailed analysis of the case law, and an assessment of the available material, the Tribunal concluded that it was not satisfied that the issue of non-refoulement obligations arose with respect to the applicant's return to Myanmar. The Tribunal found that this consideration weighed slightly in favour of revoking the mandatory cancellation of the visa, but that that weight was not substantial considering the applicant's voluntary return to Myanmar since coming to Australia and the country information provided, and because there was insufficient material to support elements of the applicant's claims.
<a href="#">GZTC and Minister for Immigration, Citizenship,</a>	4 November 2020	84-97	The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the applicant's

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

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

			<p>The Tribunal also considered whether effective protection measures were available to the applicant in Lebanon as required by s 5LA. Given the harm that the applicant feared as a gay or bisexual man was from the state (among others) and the country information indicated that sometimes state apparatus were the perpetrators of harm against LGBTI individuals in Lebanon, the Tribunal was not satisfied that the state, party or organisation was willing and able to offer protection. The Tribunal was not satisfied that effective protection measures as per s 5LA were available to the applicant by the state, party or organisation. The Tribunal found that the applicant would not be able to access effective protection if returned to Lebanon for the purposes of s 5LA(2). Finally, the Tribunal was satisfied that the applicant did not have the right to enter and reside in any third country.</p>
<p><a href="#">1707500 (Refugee) [2020] AATA 6119</a> (Unsuccessful)</p>	28 October 2020	45–59	<p>The AAT affirmed a decision refusing to grant the applicant a protection visa. The Tribunal noted that economic circumstances are of general application in a country and lack the degree of particularity required to give rise to protection obligations under either the refugee or complementary protection provisions of the <i>Migration Act</i>. Further, the Tribunal explained that effective state protection was available in Malaysia for persons in the position of the applicant. As such, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa) of the Act.</p>
<p><a href="#">WQWS and Minister for Immigration, Citizenship, Migrant Services and</a></p>	26 October 2020	8, 48-55, 59	<p>The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the Syrian applicant’s Global Special Humanitarian (Class XB)</p>

<p><a href="#">Multicultural Affairs (Migration) [2020] AATA 4254</a> (Successful)</p>			<p>(Subclass 202) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal concluded that the applicant had a well-founded fear of persecution by reason of his membership of the following groups: Assyrian Christians; returnees; and deserting members of the armed forces. Moreover, he had no family left in Syria who could assist with his employment, accommodation or sustenance. Any need he may have for medical assistance was likely to be unmet. In these circumstances, the Tribunal concluded that non-refoulement obligations arose in relation to the applicant and that his removal to Syria would put Australia in breach of its international treaties, which was a powerful discretionary reason to revoke the cancellation of his visa.</p>
<p><a href="#">2011033 (Refugee) [2020] AATA 6125</a> (Unsuccessful)</p>	<p>23 October 2020</p>	<p>52 (apparent application of section 36(2B)(c)), 58 (apparent non-satisfaction of section 36(2A))</p>	<p>The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, in considering the applicant's claims of serious harm in the refugee context, the Tribunal noted that there are some circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in their home country (including where the real risk is one faced by the population of the country generally and is not faced by the applicant personally), and found that although economic conditions were severe in Liberia, and there was high crime, this was a risk faced by the population generally and not by the applicant personally. Further, the Tribunal was not satisfied that the government would intentionally withhold mental health services from the applicant, and any difficulties with availability were due to funding only. The Tribunal was not satisfied therefore</p>



			that there was a real risk of arbitrary deprivation of life or of cruel or inhuman treatment or punishment; or of degrading treatment or punishment, which require intention on behalf of the government, or of the other kinds of significant harm.
<a href="#">1828635 (Refugee) [2020] AATA 5366</a> (Unsuccessful)	21 October 2020	46–50	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal appeared to refer to s 36(2A) and observed that ‘any economic hardship the applicant might experience if removed to Malaysia, including feelings of emotional distress and/or humiliation due to his economic circumstances, would not amount to significant harm for the purposes of the Act, because the harm would not be as a result of any deliberate act or omission by any group or person done with the intention of causing him to suffer significant harm’ ([50]).
<a href="#">ZMBZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4185</a> (Successful)	19 October 2020	22-28 (international non-refoulement obligations), 29-30 (conclusions)	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the applicant a Safe Haven Enterprise (Class XE) visa. In reaching its decision, the Tribunal took into account Australia’s international non-refoulement obligations. The Tribunal noted that international non-refoulement obligations already had been determined to be owed in respect of the applicant. The Immigration Assessment Authority had found him to be a refugee within the meaning of s 5H(1). The IAA found that if the applicant returned to Myanmar, he would have a well-founded fear of persecution from

			Myanmar authorities due to his membership of the particular social group of people who are HIV-positive. The IAA, having consulted Australian and US country information concerning Myanmar, concluded that the applicant would face a real chance of serious harm from Myanmar authorities and society, including serious unreasonable harassment, serious physical assault, serious psychological harm and/or loss of life. The Tribunal concluded that this circumstance was of great weight in favouring a decision to set aside the delegate's decision to refuse the applicant a SHEV.
<a href="#">2013579 (Refugee) [2020]</a> <a href="#">AATA 4984</a> (Unsuccessful)	16 October 2020	47-60	The Tribunal affirmed a decision not to grant a protection visa to an Indian applicant who feared harm from the parents of his former roommate who committed suicide, finding that the applicant had a real risk of significant harm in the vicinity of his home areas, but it was reasonable for him to relocate.
<a href="#">1707488 (Refugee) [2020]</a> <a href="#">AATA 4367</a> (Unsuccessful)	12 October 2020	64-75	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the South Korean applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In the course of arriving at its conclusion with respect to complementary protection, the Tribunal made express reference to, and discussed, the relationship between ss 5(1) and 36(2A)–(2B) of the Migration Act and Article 7 of the ICCPR. In the final analysis, however, the Tribunal concluded that, as was the case with the applicant's refugee claims, his

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

			impact on non-fulfillment of the obligations on Australia's international reputation need to be considered. (Footnotes omitted.)
<a href="#">XBYC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4426 (Successful)</a>	7 October 2020	51-73	The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the Iraqi applicant's protection visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal noted that decision-makers, when dealing with the revocation of the cancellation of a protection visa, are expressly required by Direction No 79 to seek an assessment of Australia's international treaty obligations. This assessment was not complete at the time of the delegate's decision even though the applicant had been in detention for some considerable time at that stage. Additionally, no such assessment was provided to the Tribunal and there had been no adequate explanation for that failure. The Tribunal observed that the absence of this assessment made its task especially difficult and that the delegate and the Tribunal would have been greatly assisted by an assessment of Australia's international treaty obligations. Nonetheless, based on the available material, the Tribunal concluded that the situation in Sri Lanka was deteriorating so far as democracy and respect for fundamental human rights were concerned and that the applicant held a legitimate fear of returning to Sri Lanka. It would have been clear to the authorities on the applicant's return to Sri Lanka that he had been away for some years, and the authorities might well have guessed that the applicant, as a Tamil, must have benefited from some sort of protection visa to have remained out of the country for such a long time. They might have concluded,

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

			<p>obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal found: that there was no real risk that the applicant would suffer significant harm from the robber who attacked her in 2016; that the risk that the applicant would be harmed in a random act of violence in her workplace or because she was a woman was a remote and not a real risk; and that the feared harm of an act of generalised or criminal violence was a risk faced by the population of Thailand generally and not the applicant personally (see s 36(2B)(c)). Further, as to the applicant's desire not to be separated from her Australian family members and to remain in Australia to enjoy the lifestyle and her NSW property, the Tribunal found that any harm caused by such separation occurring, including potential distress and emotional harm, was not due to any of the acts or omissions which could constitute 'significant harm' in s 36(2A).</p>
<p><a href="#">2010168 (Refugee) [2020] AATA 4634</a> (Unsuccessful)</p>	16 September 2020	179-187	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Liberian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). For the same reasons provided in the context of discussing refugee protection, the Tribunal did not accept that there was a real risk of significant harm facing the applicant if returned to Liberia arising from former enemies of the rebels fighting under Charles Taylor, or persons who would know that he lived with or killed a member of a rebel group, or persons who disliked his father as a Krahn who worked for a leader of the rebel</p>

			group. Further, the Tribunal declined to find that there was a real chance of serious harm due to a lack of access to mental health services in Liberia. Nor was the Tribunal satisfied that the applicant faced a real risk of significant harm due to ostracism or discrimination as a result of his mental health issues, as the Tribunal considered that this did not rise to the statutory threshold of ‘significant harm’. Additionally, although economic conditions were dire in Liberia, and there were high rates of crime, this was a risk faced by the population generally and not by the applicant personally (see s 36(2B)(c)). Finally, the Tribunal was not satisfied that there was a real risk of significant harm arising from family separation or future self-harm if the applicant were removed to Liberia.
<a href="#">RRFM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3602</a> (Successful)	15 September 2020	155-183	The Tribunal affirmed a decision not to revoke the mandatory cancellation of a visa of an applicant from Afghanistan and discussed the duty to consider <i>non-refoulement</i> obligation, finding that the applicant was owed such obligations.
<a href="#">2010800 (Refugee) [2020] AATA 3832</a> (Successful)	11 September 2020	26-28	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal remitted the decision for redetermination with the direction that the applicant was a person who satisfied s 36(2)(aa). Although the Tribunal did not find the applicant to be at any risk as a result of any conflict, tribal or otherwise in Sudan, the Tribunal did accept that the applicant lacked any connections, let alone support network in Sudan, and that he had been brought up as a teenager and young adult in Australia and therefore had built roots in Australia, notwithstanding his criminal

			<p>record. The applicant had no real social or familial links with Sudan that could help him navigate what was by the time of the Tribunal's decision an alien landscape to him. He also had few skills that would allow him to survive, let alone prosper in Sudan. Given these circumstances, the Tribunal concluded that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Sudan, there was a real risk that the applicant would suffer significant harm such as to engage s 36(2)(aa).</p>
<p><a href="#">1823470 (Refugee) [2020] AATA 3825</a> (Successful)</p>	10 September 2020	72-77	<p>The Tribunal set aside a decision of a delegate of the Minister not to revoke the cancellation of the Iraqi applicant's Subclass 866 (Protection) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. While an International Treaties Obligations Assessment had not been completed in relation to the applicant, the Tribunal rejected the respondent's submission that the Tribunal could not proceed with its review without waiting for an ITOA assessment to be completed by the Department. With regard to non-refoulement obligations in relation to Iraq, the Tribunal accepted that a single woman living alone in Iraq without male or family protection would be at risk of harassment and violence, and the applicant's circumstances were likely to be even more vulnerable as a member of a Christian minority. The Tribunal accepted that it was highly likely that Australia's non-refoulement obligations would be breached if the applicant were returned to Iraq as a result of a decision to cancel her visa. The Tribunal gave this factor substantial weight in favour of not cancelling the applicant's visa.</p>



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

			being a member of “Organisation 1” or a Shia Muslim. Nor was the Tribunal satisfied that the applicant had received threatening calls from LeJ members. Further, the Tribunal did not consider that there was a real risk that the applicant would suffer significant harm as a result of the general state of violence in Pakistan or arising from the applicant’s mental health conditions. As to the risk of generalised violence, the Tribunal noted that this was not a risk faced by the applicant personally but rather by the Pakistani population generally (see s 36(2B)(c)). As to the risk of harm connected to the applicant’s poor mental health, the Tribunal noted that while mental health care in Pakistan was not at an entirely satisfactory level, care nonetheless was available both privately and via the public health system. As such, the Tribunal was not satisfied that there were substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being returned to Pakistan there was a real risk that he would suffer significant harm.
<a href="#">1820632 (Refugee) [2020] AATA 3477</a> (Unsuccessful)	3 September 2020	47-59	The Tribunal affirmed a decision not to grant a protection visa to a Malaysian applicant who claimed to fear harm from loan sharks if he returned because his sister owes money to a loan shark that she is unable to repay and he guaranteed the debt. In doing so, the Tribunal considered whether the harm’s could support a claim under complementary protection criteria. This claim is connected to the below claim (1816541 (Refugee) [2020] AATA 3476 (Unsuccessful)).
<a href="#">1816541 (Refugee) [2020] AATA 3476</a> (Unsuccessful)	3 September 2020	53-62	The Tribunal affirmed a decision not to grant a protection visa to a Malaysian applicant who claimed to fear physical and emotional harm from loan sharks if

			she returns to Malaysia because she owes money that she says she cannot repay. In doing so, The Tribunal considered whether the harm's could support a claim under complementary protection criteria. (1820632 (Refugee) [2020] AATA 3477 (Unsuccessful).
<a href="#">1807750 (Refugee) [2020] AATA 3830</a> (Unsuccessful)	3 September 2020	96-103, 105	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal did not accept that the applicant faced violence or threats of violence from loan sharks or criminal gangs before she left Malaysia or that the applicant had attempted to reduce the risk she faced including reporting the threats to police, seeking support from debt support services, including the government's Credit Counselling and Debt Management Agency, the non-government Malaysian Muslim Consumer's Association, and the NGO Malaysian Chinese Association. The Tribunal also considered that effective protection measures against significant harm could be provided to the applicant by Malaysian authorities and that these authorities were willing and able to offer such protection. In the context of complementary protection, this finding appeared to correspond implicitly to the exception of state protection in s 36(2B)(b).
<a href="#">2000791 (Refugee) [2020] AATA 4187</a> (Unsuccessful)	27 August 2020	63-68 (credibility concerns), 66-67 (effective state	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The Tribunal was not satisfied that the applicant was

		<p>protection), 69  (conclusion on refugee  protection), 70-71  (complementary  protection)</p>	<p>a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal did not accept: that the applicant was under an obligation to make any repayments to a financial institution for moneys borrowed and provided to his ‘friend’ who transferred them to an unnamed ‘influential person’ and to a ‘government authority’; that the applicant had been threatened for seeking the loan’s repayment from his friend; or that he was unable to seek the protection of the Thai police or the judicial system. As such, the Tribunal declined to find that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant’s removal from Australia to Thailand, there was a real risk that he would suffer significant harm due to being unable to repay a significant debt owed to a financial institution. The Tribunal considered that the applicant would have protection against threats – legal and non-legal — from Thai police or the Thai state and its administration of the rule of law. In the context of complementary protection, this finding appeared to correspond implicitly to the exception of state protection in s 36(2B)(b).</p>
<p><a href="#">1910364 (Refugee) [2020] AATA 4489</a>  (Unsuccessful)</p>	<p>27 August 2020</p>	<p>50-52 (effective,  accessible, and durable  state protection), 55-58  (complementary  protection)</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Taiwanese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal did not consider the applicant to be a credible witness and considered that he</p>

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

			would face any continuing threat of harm from any person for any reason in Uganda. Additionally, while the Tribunal noted that the international public health crisis arising from the COVID-19 pandemic is a factor weighing heavily on decisions for visa applicants in Australia, the Tribunal found that whatever restrictive measures may have been applicable to the population of Uganda generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the refugee or complementary protection provisions.
<a href="#">2001814 (Refugee) [2020] AATA 4531</a> (Successful)	25 August 2020	113-121	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the South Sudanese applicant a protection visa. The Tribunal remitted the decision for redetermination with the direction that the third applicant was a person who satisfied both ss 36(2)(a) (the refugee criterion) and (aa) (the complementary protection criterion). The Tribunal declined to find that there was a real risk of the applicant being significantly harmed by reason of his claim of his father's involvement with a militia fighting against the Sudan government or in relation to his claims as to his mental and physical health. However, the Tribunal relied on its earlier findings reached with respect to the refugee criterion to conclude that there was a real risk that the applicant would suffer significant harm in South Sudan by reason of him being an ethnic Dinka.
<a href="#">1807658 (Refugee) [2020] AATA 3190</a> (Successful)	20 August 2020	56-69	The Tribunal set aside a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Indian applicant a protection visa. The Tribunal was precluded from again considering whether the applicant was a person in respect of whom Australia

			had protection obligations under s 36(2)(a). However, the Tribunal found that the applicant satisfied the complementary protection criterion in s 36(2)(aa) because the applicant faced a real risk of assault, physical abuse and other manifestations of homophobia in India and this would amount to significant harm for the purposes of s 36(2A). The Tribunal was not satisfied that there was any area of India where the applicant could relocate where there would not be such a risk (cf s 36(2B)(a)) or that the applicant could not obtain, from an authority in India, protection such that there would not be a real risk that he will suffer significant harm (cf s 36(2B)(b)). Additionally, the Tribunal found that the risk faced by the applicant was not one faced by the Indian population generally but, rather, was faced by him personally (cf s 36(2B)(c)).
<a href="#">MPRP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3004 (Successful)</a>	18 August 2020	93-96, 107	The Tribunal set aside a decision not to revoke the cancellation of the applicant's protection visa. The applicant here was an Iranian citizen. The Minister did not contest that Australia owed the applicant non-refoulement obligations. Overall, the Tribunal concluded that the circumstance that non-refoulement obligations arose in respect of the applicant favoured the revocation of the cancellation decision but, ultimately, in this case their existence did not affect the decision reached ([96]). It is unclear on what specific basis these non-refoulement obligations were owed but, for completeness, this case is included in this list of complementary protection cases.
<a href="#">1809032 (Refugee) [2020] AATA 4206 (Unsuccessful)</a>	18 August 2020	121-132	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the

			<p>applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the applicant would be arbitrarily deprived of life, the death penalty would be carried out on him, he would be subjected to cruel or inhuman treatment or punishment, or he would be subjected to degrading treatment or punishment if he returned to Malaysia. The Tribunal found that effective protection measures were available to the applicant to deal with threats of harm from illegal money-lenders and criminal gangs. Protection against serious or significant harm could be provided to the applicant by the Malaysian authorities and the Malaysian authorities were willing and able to offer such protection. The Tribunal was satisfied that the applicant had not attempted any genuine contact with the Malaysian police about his true position. Had the applicant pursued these options genuinely, in the Tribunal's view, the Malaysian authorities would have acted to provide protection measures to the applicant.</p>
<p><a href="#">DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3523</a> (Unsuccessful)</p>	17 August 2020	135-159	<p>The Tribunal affirmed the decision of a delegate of the Minister not to revoke the mandatory cancellation of the South Sudanese applicant's Refugee and Humanitarian (Class XB) Subclass 202 (Global Special Humanitarian) visa. In the course of reaching its decision, the Tribunal considered in detail Australia's international non-refoulement obligations and referred expressly to the Refugees Convention, the ICCPR (including Article 6, relating to the prohibition on the arbitrary deprivation of life), and the CAT. The Tribunal recognised the difficulty in assessing the applicant's fate if returned to South</p>



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

			not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the harm claimed by the applicants — that is, harm due to COVID-19 and the economic and political situation in Thailand — amounted to significant harm as defined in s 36(2A), whether considered individually or cumulatively.
<a href="#">1731540 (Refugee) [2020] AATA 4173</a> (Unsuccessful)	11 August 2020	46-70	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The applicant’s claim that he would not be able to make as much money in Malaysia as he did in Australia did not meet the definition of significant harm as set out in s 36(2A). Further, as to the applicant’s claimed risk of harm arising from his mother’s borrowing money from a loan shark, the Tribunal found that the applicant could obtain protection from the authorities in Malaysia such that there would not be a real risk that he would suffer significant harm if he returned to Malaysia (see the exception of state protection in s 36(2B)(b)).
<a href="#">1614144 (Refugee) [2020] AATA 4348</a> (Unsuccessful)	10 August 2020	152-157 (summary of findings of fact), 158-179 (assessment of future risk of harm in Bangladesh), 180-181 (overall conclusion)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Bangladeshi applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal found that it would be reasonable for the applicant to relocate to an urban area of Bangladesh outside the Chittagong Hill Tracts

			where there would not be a real risk that he would suffer significant harm (see s 36(2B)(a)). As such, the Tribunal found that there did not exist substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Bangladesh, there was a real risk that the applicant would suffer significant harm.
<a href="#">2007266 (Refugee) [2020] AATA 4150</a> (Unsuccessful)	7 August 2020	28-49	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the British applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the consequences of the UK Government's response to the COVID-19 pandemic could be characterised as an act or omission that was intended to cause the applicant pain/suffering/extreme humiliation, or a deliberate act or omission leading to the arbitrary deprivation of the applicant's life. The Tribunal also considered the exception under s 36(2B)(c) and found the real risk of the applicant contracting the virus was one that was faced by the UK population generally, and not just the applicant personally.
<a href="#">Toto and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3382</a> (Successful)	6 August 2020	94-114	The Tribunal substituted a decision to revoke the mandatory cancellation of an originally Sudanese applicant's visa and in doing so discussed the duty to consider Australia's <i>non-refoulement</i> obligations.

<p><a href="#">1800172 (Refugee) [2020]</a>  <a href="#">ATA 3298</a>  (Unsuccessful)</p>	<p>2 August 2020</p>	<p>19-36</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Chinese applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal declined to find that the applicant would be physically attacked and his life threatened by an unidentified person, or that he would be persecuted by his fellow countrymen or suffer persecution by the police, go to prison and suffer mental and physical persecution, as claimed. As to the applicant's fear of contracting COVID-19 if returned to China, the Tribunal found that the risk of contracting the illness would be faced by the Chinese population generally and not the applicant personally (see s 36(2B)(c)). Nor would it be intentionally inflicted on him, nor intended to cause extreme humiliation, which is unreasonable, as required under the complementary protection guidelines to constitute significant harm.</p>
<p><a href="#">1803255 (Refugee) [2020]</a>  <a href="#">ATA 3833</a>  (Unsuccessful)</p>	<p>31 July 2020</p>	<p>280-300</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Sri Lankan applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In reaching its decision, the Tribunal considered a number of possibilities of harm facing the applicant if removed to Sri Lanka, including: whether the applicant would suffer the death penalty or the arbitrary deprivation of his life; whether the applicant</p>

			would face torture or cruel, inhuman or degrading punishment or treatment; whether the applicant would face discrimination as a result of his Tamil ethnicity and his Hindu religion; and whether the applicant's freedom of expression would be curtailed.
<a href="#">BVLD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2582</a> (Unsuccessful)	29 July 2020	158-207, 233	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the applicant's protection visa. The applicant here was a Sri Lankan citizen.</p> <p>It was not contested that Australia owed the applicant non-refoulement obligations as the applicant had been granted a protection visa in Australia in 2012. In the immediate context of the visa cancellation issue, the Tribunal considered four categories of harm to which the applicant claimed he was at risk of exposure if returned to Sri Lanka.</p> <p>First, the Tribunal gave 'only limited weight' to the fact that there existed 'some limited risk' to the applicant by reason of potential imputed support for the Liberation Tigers of Tamil Eelam (LTTE) ([171]). Second, the Tribunal acknowledged that there was some risk of harm from the applicant's ex-wife's family, whom the applicant alleged were influential and well-connected, but the Tribunal placed 'only limited weight' on this factor ([184]). Third, the Tribunal considered that 'only limited weight' could be placed on the fact that there was some risk of harm to the applicant arising from his being a Tamil of Muslim faith, and the Tribunal noted the difficulty, if not impossibility, of assessing the likelihood of this risk coming to fruition ([186]). Fourth, due to credibility concerns, the Tribunal had difficulty</p>

			<p>accepting that the applicant was exposed to a risk of arbitrary harassment, detention, and potential violence from both civilians and the Sri Lankan police and security agencies ([205]). Nonetheless, the Tribunal considered that there did exist ‘some risk of [such] harm’ to the applicant, but ultimately placed ‘only... limited weight’ on this factor.</p> <p>Overall, the Tribunal concluded that the finding that non-refoulement obligations arose in respect of the applicant was ‘of limited weight’ in the applicant’s favour ([207]). It is unclear on what specific basis these non-refoulement obligations were owed but, for completeness, this case is included in this list of complementary protection cases.</p>
<a href="#">1729603 (Refugee) [2020] AATA 4026</a> (Unsuccessful)	28 July 2020	42-62	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In reaching its decision, the Tribunal considered potential harm facing the applicant on a number of different grounds, including: harm arising from the applicant being a witness to torture; harm connected to the forced demolition of his house and related complaints to the national authorities; and the prospect of being placed in forced quarantine together with individuals infected with COVID-19. In the context of the third category of potential harm (COVID-19), the Tribunal noted that the applicant would be treated no differently than any other Chinese citizen returning home</p>

			during the pandemic. This may be an implicit reference to, and appears to suggest reliance on, s 36(2B)(c) of the Act, which negates a finding of a real risk of significant harm if a risk is faced by a population generally rather than by the applicant personally.
<a href="#">1821208 (Refugee) [2020] AATA 3189</a> (Unsuccessful)	23 July 2020	33-48	The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The applicant had (and would continue to have if returned to Malaysia) various options to resolve the harassment he faced by lenders for the repayment of money owed to them. There also was no evidence that the applicant would be physically harmed or would face cruel or inhuman or degrading treatment or punishment by the lenders. In any event, the Tribunal found that it would be reasonable for the applicant to relocate from his former residence in Kuala Lumpur to his hometown elsewhere in Malaysia. He gave evidence, and there was no evidence to suggest the contrary, that he would not be harmed by lenders if he relocated to a regional area. See section 36(2B)(a).
<a href="#">1811497 (Refugee) [2020] AATA 3810</a> (Successful)	23 July 2020	70-74	The Tribunal set aside a decision of a delegate of the Minister to cancel the applicant's Subclass 866 (Protection) visa. In doing so, the Tribunal had regard to Australia's international non-refoulement obligations. The Tribunal made express reference to the 1951 Refugees Convention, the ICCPR, the CROC, and the CAT (specifically, Article 3). The Tribunal noted that the applicant was found to be a refugee in initially granting

			<p>him the visa. While the applicant failed to provide a name by which he had previously been known, the facts that underpinned the finding that he was a refugee remained, and it had not been established that these were incorrect. It followed that if cancelling the applicant's visa resulted in him being liable to detention and removed from Australia, this would breach Australia's non-refoulement obligations.</p>
<p><a href="#">2006126 (Refugee) [2020] AATA 3809</a> (Unsuccessful)</p>	21 July 2020	54-104	<p>The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Nigerian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In reaching its decision, the Tribunal considered potential harm facing the applicant on a number of different grounds, including: harm arising from the applicant's state of mental health and his anxiety and depressive symptoms; harm relating to the applicant's past employment at the Nigerian Ministry of Youth; harm from a relative due to the applicant exposing the relative's alleged embezzlement; harm for reasons of the applicant's non-return to Nigeria after a conference; harm connected with the applicant's criminal convictions in Australia; harm from individuals who owned drugs that the applicant was supposed to have been picking up at the time of his arrest; harm arising from the applicant's removal from his Australian family; and harm arising from the Nigerian authorities' and/or community's mistreatment of people with mental illness (e.g. being shackled in iron chains).</p>



<a href="#">1617561 (Refugee) [2020]</a> <a href="#">ATA 3526</a> (unsuccessful)	17 July 2020	241-280	<p>The Tribunal affirmed the decision not to grant a protection visa to a Sri Lankan applicant and in doing so considered whether the applicant was owed protection under the complementary protection grounds.</p> <p>“The issue in the review is whether the applicant has a well-founded fear of persecution due to his political association with members of the Sri Lankan Freedom Party (SLFP), the United People’s Freedom Alliance (UPFA) and from the members of the United National Party (UNP); because the Sri Lankan authorities will identify him as a ‘Skipper’ if he returns to Sri Lanka and he will be imprisoned or fined for his suspected people smuggling activities; because the Sri Lankan authorities will identify him as having left Sri Lanka illegally on two occasions and he will be imprisoned or fined as a result; because his personal details were released in a breach of the Department’s data in 2014 and the Sri Lankan authorities will know where he is and the nature of his claims, or for any other reason, or whether complementary protection provisions otherwise apply.” (Para 13)</p> <p>“The Tribunal has accepted above that there is a real chance of the Sri Lankan authorities detaining the applicant on his arrival at the airport for several hours and then detaining him on remand pending bail or fines. The Tribunal has accepted he could be held for several days. The Tribunal has also found that the conditions in detention are overcrowded and unsanitary; and that he may be fined, and/or subject to lengthy court processes.” (Para 270)</p>
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			<p>“As noted above, the ‘real risk’ test imposes the same standard as the ‘real chance’ test. For the reasons that follow, the Tribunal is not satisfied that such treatment, individually or cumulatively, amounts to significant harm anywhere in Sri Lanka.” (Para 271)</p>
<p><a href="#">2001388 (Refugee) [2020] AATA 4529</a> (Successful)</p>	16 July 2020	13-33	<p>The Tribunal set aside a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal remitted the decision for redetermination with the direction that the applicant was a person who satisfied s 36(2)(aa). The applicant, who was born in Australia to Kenyan born parents, claimed that she would be a victim of violence against women and girls if she was forced to return to Kenya. The applicant also claimed that she would be a victim of violence because of her family background and because the tribe she belonged to culturally accepted violence against women. The Tribunal concluded that, considered cumulatively, the applicant’s particular vulnerabilities and risk profiles meant that she would face a real risk of significant harm at the time of the Tribunal’s decision and in the reasonably foreseeable future if returned to Kenya. Further, effective and durable state protection was not, and would not reasonably be, available in Kenya.</p>
<p><a href="#">CHJK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2330</a> (Successful)</p>	16 July 2020	35, 65-69, 78	<p>The Tribunal substituted a decision revoking the cancellation of a South Sudanese applicant’s protection visa. It was not contested that Australia owed the applicant non-refoulement obligations, and the Tribunal noted that the UNHCR had updated its position about South Sudan at the end of 2019 to the effect that no one should be returned to the country given the grave</p>

			security and humanitarian situation there. The Tribunal gave this consideration ‘very significant weight’ ([78]) in favour of revoking the visa cancellation. It is unclear on what specific basis these non-refoulement obligations were owed but, for completeness, this case is included in this list of complementary protection cases.
<a href="#">JHZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2165</a> (Unsuccessful)	9 July 2020	183-241, 257	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of the applicant’s Resident Return visa. The applicant here was an Iraqi citizen.</p> <p>Note that international non-refoulement obligations do not appear to be a relevant consideration in this case as the Tribunal made an express finding to this effect ([234]). Confusingly, however, the Tribunal also noted, under the heading of “(a) International non-refoulement obligations”, that the circumstances that</p> <ul style="list-style-type: none"> <li>• the risk of violence facing the applicant in Iraq would be higher than that faced in Australia (but seemingly still too random and remote to enliven international non-refoulement obligations), and</li> <li>• the possibility that the limited mental health services available in Iraq could result in psychological hardship to the applicant</li> </ul> <p>both “weigh[ed] heavily” ([241], [257]) in the applicant’s favour when examining the consideration of “(a) International non-refoulement obligations”. Nonetheless, for completeness, this case is included in this list of complementary protection cases.</p>
<a href="#">1807055 (Refugee) [2020] AATA 6035</a> (Successful)	8 July 2020	11	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Zimbabwean applicant a

			<p>protection visa. The Tribunal remitted the delegate's decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). On the other hand, in discussing the complementary protection criterion in s 36(2)(aa), the Tribunal appeared to refer to the exception in s 36(2B)(c) and noted that 'whatever measures may be applicable to the population of Zimbabwe generally in response to the present COVID-19 crisis, do not in the absence of additional considerations, amount to an intentional act or omission for the purposes of complementary protection provisions' ([11]).</p>
<p><a href="#">1714497 (Refugee) [2020]</a>  <a href="#">AATA 3301</a>  (Unsuccessful)</p>	<p>1 July 2020</p>	<p>114-125 (refugee status), 126-131 (complementary protection)</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Iraqi applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that there was a real risk that the applicant would suffer significant harm after having made a complaint to Iraq's Integrity Commission or due to his role in the Electoral Commission or because he disclosed corruption, assisted the new manager of elections in a particular governorate in his complaint to the Integrity Commission, or because the Islamic Supreme Council had the upper hand in Iraq at the time.</p> <p>In any event, the Tribunal specifically found that the country information supported the conclusion that Iraqi militias attacked elections randomly, entitling a view to</p>

			<p>be drawn that fears of the militia were fears shared by the Iraqi population generally. The Tribunal reached this finding in the context of considering refugee status, but its wider significance is that it appears also to relate to the exception to complementary protection of harm suffered by a population generally rather than an applicant specifically (see s 36(2B)(c)). Similarly, the Tribunal found that the applicant would not be faced with unreasonable difficulties finding accommodation or employment in Iraq if he was required to return as the government would offer inducements for students and academics to return to Iraq and, importantly, would relocate returning scholarship students to safer areas should they have concerns regarding security. This appears to relate to the exception of relocation (s 36(2B)(a)).</p>
<p><a href="#">1905904 (Refugee) [2020]</a>  <a href="#">ATA 2921</a>  (Unsuccessful)</p>	<p>26 June 2020</p>	<p>45-53 (loan sharks and refugee status), 59-62 (complementary protection)</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). It was implausible that the applicant would face harm from loan sharks some 4.5 years after he left Malaysia (despite not having repaid the entirety of the loan). Nor would the loan sharks know if the applicant had returned to Malaysia or be able to locate him there if he returned.</p> <p>In any event, the Tribunal specifically found that the applicant would be able to access effective state protection measures should he return and receive</p>

			<p>threats. There was no indication that assistance would have been withheld from the applicant by the Royal Malaysia Police prior to his leaving Malaysia, had the applicant disclosed his true situation to the police. The RMP had in fact taken action against loan sharks, including fining and prosecuting them. The Tribunal considered that this met the requirements of s 5LA(2) in the context of considering refugee status, but the Tribunal adopted this finding when determining the complementary protection claim, and its significance appears to relate to the exception to complementary protection of state protection (see s 36(2B)(b)). Similarly, it was open to the applicant to relocate to another part of Malaysia on his return to avoid the harm he feared. The applicant had demonstrated, through his travel to Australia and his finding work and accommodation in Australia that he was adaptable and resourceful (see exception of relocation in s 36(2B)(a)).</p>
<p><a href="#">1732882 (Refugee) [2020] AATA 2315</a> (Unsuccessful)</p>	<p>24 June 2020</p>	<p>24-39, 40-41, 42-45</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal did not find the applicant's evidence regarding his claimed experience with a loan shark to be credible. In any event, however, and citing country information, the Tribunal made specific findings that: generally, there exists effective protection (as defined in s 5LA) available to persons in Malaysia suffering harassment by loan sharks over unpaid debts; such protection can be accessed through</p>

			<p>the wide network of police stations in Malaysia and is durable, and consists of an appropriate criminal law, a reasonably effective police force, and an impartial judicial system; and effective protection would be available to the applicant in Malaysia against harassment by loan sharks and their agents in his claimed circumstances, if he required it. The Tribunal cited these findings in the context of considering refugee status in support of the conclusion that effective protection measures as defined in s 5LA were available to the applicant in Malaysia, but these findings also appear implicitly to refer to, and rely upon, the exception to complementary protection of state protection (see s 36(2B)(b)).</p>
<p><a href="#">2002833 (Refugee) [2020] AATA 3186</a> (Unsuccessful)</p>	23 June 2020	17-24	<p>The Tribunal affirmed a decision of a delegate of the Minister for Home Affairs refusing to grant the Thai applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). There was not a real risk that the applicant would suffer significant harm if returned to Thailand resulting from an act or omission by which severe pain or suffering, whether physical or mental, were to be intentionally inflicted on the applicant (s 5(1)(a)–(e), definition of ‘torture’); involving the intentional infliction of severe pain or suffering, either physical or mental, such as to meet the definition of ‘cruel or inhuman treatment or punishment’ in s 5(1); meeting the definition of ‘degrading treatment or punishment’ in s 5(1); or involving the arbitrary deprivation of his life or the</p>

			death penalty. Further, the Tribunal specifically found that the applicant's fears relating to the lack of economic certainty, the lack of general security, political instability, and the spread of COVID-19 were faced by the Thai population generally (see exception in s 36(2B)(c)).
<a href="#">1704758 (Refugee) [2020] AATA 2915</a> (Unsuccessful)	19 June 2020	103-108, 110	The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the South Korean applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). There was not a real risk that the applicant would suffer significant harm if returned to South Korea due to: his conscientious objection to military service; his being LGBTI and completing military service; his being ordered to complete alternative service in a correctional facility; his evasion of military service; his treatment in the military or at the correctional facility as an LGBTI man; the COVID-19 pandemic; or any other reason. As to the COVID-19 pandemic, the Tribunal specifically found that the risk of contracting COVID-19 was one which was faced by the South Korean community generally. This appears to relate to the exception of harm that is faced by a population generally and that is not applicant-specific (see s 36(2B)(c)). The Tribunal also found that the applicant would not be faced with unreasonable difficulties finding accommodation or employment in South Korea if he was required to return as he had family members still living in South Korea.



<p><a href="#">1619231 (Refugee) [2020]</a>  <a href="#">ATA 3203</a>  (Unsuccessful)</p>	<p>17 June 2020</p>	<p>29-41 (refugee status),  42-51 (complementary protection)</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). There was not a real risk that the applicant would suffer significant harm in Indonesia due to: her relationship with (and/or marriage to) a non-Muslim; the disapproval of her family (and including due to her refusing to marry in accordance with their wishes and to her ‘caste’); intrusiveness, social disapproval, and rejection by members of the Indonesian community due to her interfaith marriage and her potential incapacity to have children; or having to obtain treatment and negotiate the Indonesian health system (even if it required or involved some financial cost). Additionally, while there was a real risk that the applicant might contract COVID-19 in Indonesia if she returned, the contraction of the virus would not be due to any act or omission by any person or authority in Indonesia whereby severe pain or suffering (or extreme humiliation) was <i>intentionally inflicted</i> on the applicant. The real risk of contracting COVID-19 was also one which was faced by the Indonesian community generally. This relates to the exception of harm that is faced by a population generally and that is not applicant-specific (see s 36(2B)(c)).</p>
<p><a href="#">1620413 (Refugee) [2020]</a>  <a href="#">ATA 2872</a>  (Unsuccessful)</p>	<p>16 June 2020</p>	<p>54-60</p>	<p>The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Thai applicants protection visas. The</p>

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

			<p>such, this finding appears implicitly to refer to, and rely upon, the exception to complementary protection of relocation (see s 36(2B)(a)).</p> <p>Additionally, the headnote to the case refers to ‘state protection’. While there does not appear to be any substantive or detailed analysis of this issue in the Tribunal’s reasons, it would seem to be referring to the exception to complementary protection of state protection being available to the applicant (see s 36(2B)(b)).</p>
<p><a href="#">1703058 (Refugee) [2020] AATA 2625</a> (Unsuccessful)</p>	11 June 2020	56-60, 61-62, 63-64	<p>The Tribunal affirmed a decision not to grant a protection visa to the Thai applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Thailand, there was a real risk that the applicant would suffer significant harm. The Tribunal made specific findings that: the applicant did not present any sufficient reasons why her family could not have sought the assistance of the local police in order to provide themselves with protection when threatened (if they were threatened) by criminals demanding money; and, based on the country information, the Thai military authorities – including the armed forces, police and the courts – were reasonably effective in combating local crime and protecting persons within their jurisdiction, and despite some systemic corruption existing in part</p>

			<p>from criminals and criminal harm. The Tribunal cited these findings in the context of considering refugee status in support of the conclusion that effective protection measures as defined in s 5LA were available to the applicant in Thailand, but these findings also appear implicitly to refer to, and rely upon, the exception to complementary protection of state protection (see s 36(2B)(b)).</p>
<p><a href="#">1710637 (Migration) [2020] AATA 3045</a> (Successful)</p>	<p>10 June 2020</p>	<p>48-81, 84</p>	<p>The Tribunal set aside a decision to cancel the Afghani applicant’s Five Year Resident Return visa. The Tribunal considered that removal of the applicant from Australia would be in breach of Australia’s international obligations relating to non-refoulment. However, these obligations appear to have been owed only under the Refugee Convention (the ICCPR and CAT are briefly mentioned once each but are not discussed):</p> <p>“[81] For these reasons I accept the applicant has a well-founded fear of persecution in Afghanistan for reasons of his Shia religion, his Hazara ethnicity and his imputed political opinion. It follows that he comes within Article 1A(2) of the Refugees Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia’s <i>non-refoulement</i> obligations. It is therefore not necessary for me to go on and consider the applicant’s other claims to protection.”</p> <p>For completeness, however, this decision is included in this list of complementary protection cases.</p>

<p><a href="#">1903766 (Refugee) [2020] AATA 2247</a> (Successful)</p>	<p>9 June 2020</p>	<p>54-87, 88-91, 93-97</p>	<p>The Tribunal remitted this matter to a delegate of the Minister for Immigration and Border Protection with the directions that: (1) the first applicant satisfied ss 36(2)(a) and (aa); and (2) the second and third applicants satisfied s 36(2) because they were members of the same family unit as the first applicant. The three applicants were Chinese.</p> <p>As to refugee status, and having considered the applicants' claims singularly and cumulatively, the Tribunal found that there were substantial grounds for believing that, as a consequence of being removed from Australia to China, there was a real chance that the first applicant would suffer serious harm by reason of her religion as claimed.</p> <p>As to complementary protection, and having considered the applicants' claims singularly and cumulatively, the Tribunal found that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the first applicant being removed from Australia to China, there was a real risk she would suffer significant harm within s 36(2)(aa). Specifically, having considered the evidence provided by the first applicant and the available country information, the Tribunal found that there was a real risk she would suffer significant harm as a result of religion that would constitute degrading treatment or punishment pursuant to s 36(2A). At the same time, however, the Tribunal declined to find that the second and third applicants would suffer harm as result of being in breach of the</p>
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			Chinese Family Planning Laws to the extent that it would constitute significant harm pursuant to s 36(2A).
<a href="#">1619741 (Refugee) [2020]</a> <a href="#">AATA 2917</a> (Unsuccessful)	1 June 2020	42-51	The Tribunal affirmed a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Indonesian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal did not accept that the applicant would face a real risk of significant harm on the basis that he may have mental health issues because the country information was clear that mental health services were available in Indonesia. This seems to be an implicit reference to, and suggests reliance upon, the exception of state protection in s 36(2B)(b). Additionally, the Tribunal did not accept that the applicant faced a real risk of significant harm based on (1) his Christian faith, (2) instability and riots in Indonesia, or (3) adverse economic or employment prospects caused by the COVID-19 pandemic.
<a href="#">1818850 (Refugee) [2020]</a> <a href="#">AATA 2574</a> (Unsuccessful)	28 May 2020	44-50, 51-54	The Tribunal affirmed a decision not to grant a protection visa to the Malaysian applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Malaysia, there was a real risk that the applicant would suffer significant harm. The Tribunal

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

			<p>[the applicant]’s atheism and his profile as an [Occupation 1] would mean that he would face a real chance of serious harm if he were to be returned to Afghanistan on the basis of his religion and as a member of a particular social group.</p> <p>[94] As a result, the Tribunal considers removal of [the applicant] from Australia would be in breach of its international obligations relating to non-refoulment. This weighs heavily in favour of not cancelling his visa.”</p> <p>The language of “real chance” here corresponds to that used in assessing refugee protection (cf “real risk” for complementary protection). Also, having a well-founded fear of persecution due to religion and membership of a particular social group are two of the five grounds for being recognised as a refugee under the Refugee Convention. For completeness, however, this decision is included in this list of complementary protection cases.</p>
<a href="#">1715530 (Refugee) [2020] AATA 6089</a> (Unsuccessful)	20 May 2020	42–44, 46	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal applied the exception in s 36(2B)(c) and observed that any ‘real risk’ faced by the applicant was one faced by the sons of indebted fathers in China



			generally and was not one faced by the applicant personally.
<a href="#">STZS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2504</a> (Unsuccessful)	20 May 2020	226-273	<p>The Tribunal affirmed a decision to mandatorily cancel the applicant’s Refugee Class XB (Subclass 200) visa. In analysing the “other consideration” of whether cancellation would lead to the applicant’s removal in breach of Australia’s non-refoulement obligations, the Tribunal found that there was no real chance that the applicant would suffer harm owing to any Refugee Convention-related ground, and that there was no real risk that the applicant would suffer significant harm, if returned to Ethiopia. The Tribunal made four findings.</p> <ul style="list-style-type: none"> <li>• First, there was no more than a remote risk that the applicant would suffer harm, much less significant harm within the meaning of s 36(2)(aa), on the basis of having an actual or perceived mental illness if he was returned to Ethiopia.</li> <li>• Second, in light of ‘many unknown factors’ ([235]), the applicant’s risk of harm and/or hardship on the basis of drug-taking could not be assessed as being greater than a real, and not remote, risk. There was no evidence that the risk of suffering harm as a result of being found in possession of drugs was specific to the applicant and not one that was faced by the population of Ethiopia generally. Further, in terms of harm or hardship (falling short of giving rise to non-refoulement obligations) that could arise from drug use, it was unclear, for example, what sort of punishment would be likely if the applicant were caught with drugs, although the Tribunal noted that imprisonment was possible.</li> </ul>

			<ul style="list-style-type: none"> <li>• Third, there was no more than a remote possibility that a person such as the applicant would be harassed, detained, tortured or killed by the Ethiopian authorities solely for being of Oromo ethnicity or living in Oromia. While there existed instability and ethnic violence in Ethiopia, the Tribunal was not satisfied that there was more than a remote risk that the applicant personally would become a target of ethnic violence.</li> <li>• Fourth, there did not exist a real risk of harm to the applicant, should he be returned to Ethiopia, on the basis that he was a returnee from a western country and/or because he did not know his heritage or ethnicity (note: the Tribunal found that he did know his heritage and ethnicity).</li> </ul> <p>The additional observations relating to the second and third findings seem to be implicit references to, and suggest reliance upon, the exception of harm that is faced by a population generally and that is not applicant-specific (see s 36(2B)(c)).</p>
<a href="#">1705805 (Refugee) [2020] AATA 2148</a> (Unsuccessful)	15 May 2020	54-76	<p>The Tribunal affirmed a decision not to grant protection visas to the Malaysian applicants. The Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Malaysia, there was a real risk that the applicants would suffer significant harm. The Tribunal made specific findings that: the applicants would</p>

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

<p><a href="#">1711974 (Refugee) [2020]</a>  <a href="#">ATA 2056</a>  (Unsuccessful)</p>	<p>5 May 2020</p>	<p>75, 78-82</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Vietnamese applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Vietnam, there was a real risk that the applicant would suffer significant harm. The Tribunal adopted its earlier finding (made in the context of considering refugee status) that the available country information was insufficient for the Tribunal to find that the applicant would not have access to the Vietnamese police should she require it in her circumstances. This seems to be an implicit reference to, and suggests reliance upon, the exception of state protection in s 36(2B)(b).</p>
<p><a href="#">1831953 (Refugee) [2020]</a>  <a href="#">ATA 1495</a>  (Unsuccessful)</p>	<p>1 May 2020</p>	<p>41, 61-65</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to a Turi, Shia Muslim applicant from Pakistan recognizing that he faced a real risk of harm from the Taliban, yet finding he could relocate.</p> <p>“The applicant made extensive claims concerning the security situation in Parachinar and the former Kurram Agency. His evidence was that he observed first-hand the aftermath of terrorist attacks and that he considered that he and his family were being targeted by the Taliban. The delegate accepted the applicant’s assertion that Turi Shias are targeted with harm by the Taliban and other armed Islamic extremist groups in Parachinar.</p>

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

			<p>applicant’s visa. The Tribunal referred briefly to the Refugee Convention, the CAT, and the ICCPR, and affirmed the settled proposition that ‘non-refoulement obligations’ in the visa cancellation context are not confined to the protection obligations to which s 36(2) refers. Additionally, the language of the Tribunal’s conclusion (‘removal of the applicant from Australia would breach Australia’s non-refoulement obligations and would lead to him being arbitrarily deprived of his life or subjected to serious harm’) seems to be referring to more than one international non-refoulement obligation. Indeed, the reference to the arbitrary deprivation of the applicant’s life seems to be an implicit reference to ICCPR Article 6. As such, the Tribunal does not appear to be confining the basis of its decision exclusively to the Refugee Convention. Accordingly, this case is included in this list of complementary protection cases.</p>
<p><a href="#">1801325 (Refugee) [2020] AATA 2006</a> (Unsuccessful)</p>	<p>24 April 2020</p>	<p>55-61, 62-64</p>	<p>The Tribunal affirmed a decision not to grant a protection visa to the Pakistani applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). However, in analysing complementary protection under s 36(2)(aa), the Tribunal found that there was a real risk that in the regions of Parachinar and Kurram Agency, the applicant would face significant harm including arbitrary deprivation of life, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. Nonetheless, the Tribunal found that it was reasonable for the applicant to relocate to areas such as Islamabad and Rawalpindi</p>

			where there was not a real risk that he would suffer significant harm (see s 36(2B)(a)).
<a href="#">1716847 (Refugee) [2020]</a> <a href="#">AATA 1545</a> (Successful)	22 April 2020	108-112	The Tribunal set aside a decision refusing to grant a Chinese, minor applicant a protection visa and remitted the matter with the direction that the applicant satisfies s.36(2)(a) and s.36(2)(aa), accepting a real risk of significant harm as a result of being born out of wedlock in breach of the Chinese Family Planning Laws.
<a href="#">1619513 (Refugee) [2020]</a> <a href="#">AATA 1543</a> (Unsuccessful)	20 April 2020	35-51	The Tribunal affirmed a decision not to grant protection visas to Indian applicants. The Tribunal accepted there was a real risk of significant harm to the applicants from family members related to an ongoing property dispute, however, found the risk was localized and that it was possible for the applicants to relocate.
<a href="#">1817855 (Refugee) [2020]</a> <a href="#">AATA 3124</a> (Successful)	11 April 2020	60-62 (real risk of harm arising from applicant being a Hazara Shia Muslim, considered in the context of considering refugee status), 63-69 (complementary protection)	The Tribunal set aside a decision of a delegate of the Minister for Immigration and Border Protection refusing to grant the Afghani applicant a protection visa. The Tribunal was satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant satisfied the complementary protection criterion in s 36(2)(aa) because there was a real risk that the applicant would suffer significant harm in Afghanistan by reason of him being a Hazara Shia Muslim.
<a href="#">1826312 (Refugee) [2020]</a> <a href="#">AATA 2015</a> (Unsuccessful)	8 April 2020	33, 51, 57, 68, 69, 71	The Tribunal affirmed a decision not to grant the Pakistani applicants' protection visas. The Tribunal was not satisfied that the applicants were persons in respect of whom Australia had protection obligations under s 36(2)(a). Further, in analysing complementary protection under s 36(2)(aa), the Tribunal found that there was no real risk the applicants would suffer

			<p>significant harm if they were removed from Australia to Pakistan, whether at the time of the Tribunal’s decision or in the reasonably foreseeable future. The Tribunal discussed the possibilities of harm on the basis of the applicants’ long-term residence in Australia; harm to the children; harm to the first-named applicant on the basis of her name; and harm due to the general security situation in Pakistan. In relation to this last possibility, the Tribunal noted, somewhat tentatively, that this claim of harm was difficult to accept because such concerns were shared, and suffered, by the Pakistan population generally (in an apparent reference to s 36(2B)(c)). The Tribunal preferred to reject this particular claim on the basis of country information indicating that the security situation in Pakistan generally, and in Karachi specifically, had improved very significantly. The Tribunal also rejected the applicants’ claims of harm on a cumulative basis.</p>
<p><a href="#">1912689 (Refugee) [2020] AATA 3121</a> (Successful)</p>	<p>6 April 2020</p>	<p>124-129 (relocation), 130-134 (complementary protection), 135-136 (overall conclusions)</p>	<p>The Tribunal set aside a decision of the Minister for Immigration and Border Protection refusing to grant the Chinese applicants protection visas. The Tribunal was satisfied that the second applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a).</p> <p>Further, in analysing complementary protection under s 36(2)(aa), the Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the second applicant being removed from Australia to China, there was a real risk that the applicant would suffer significant harm due to being born out of wedlock in breach of the Chinese</p>



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

			foreseeable consequence of him being removed from Australia to Malaysia. The Tribunal accepted the applicant’s concern that he may face some difficulty finding suitable employment because of the poor economic circumstances in Malaysia. The Tribunal found, however, that these circumstances were faced by the Malaysian population generally and not just by the applicant personally (see s 36(2B)(c)).
<a href="#">1713094 (Refugee) [2020] AATA 990</a> (Successful)	27 March 2020	80-83	In substituting a decision not to cancel a Christian Iraqi applicant’s protection visa, the Tribunal found that Australia’s <i>non-refoulement</i> obligations were a relevant consideration.
<a href="#">CYNQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 545</a> (Successful)	13 March 2020	148-172	In substituting a decision to revoke the cancellation of a Kenyan applicant’s Class XB Subclass 202 protection visa, including because there would be a real possibility that the applicant would suffer significant harm or hardship, the Tribunal also discussed conflicting authorities in the Federal Court on <i>non-refoulement</i> .  “As matters stand, there are currently conflicting authorities in the Federal Court as to whether it will be an error for a decision-maker not to make an assessment as to whether an Applicant is a person in respect of whom Australia has non-refoulement obligations in circumstances where it is open for an Applicant to apply for a Protection visa. It was thought that this issue would be settled by a five-member bench of the appellate jurisdiction of the Federal Court in <i>Minister for Home Affairs v Omar</i> [2019] FCAFC 188 (“Omar”).” (Para 149)

			<p>“Prolonged detention is however a real possibility for the current Applicant, and this would obviously result in significant harm or hardship to him. The Tribunal considers that that possible prolonged detention of the the Applicant, along with the other hardships that have been already identified in these reasons weigh significantly in the Applicant’s favour.” (Para 172)</p>
<p><a href="#">1816263 (Migration) [2020] AATA 2158</a> (Successful)</p>	11 March 2020	87-116	<p>The Tribunal substituted a decision revoking the cancellation of an Afghan applicant’s Five Year Resident Return visa. The Tribunal found that the applicant’s removal from Australia to Afghanistan would be in breach of Australia’s international non-refoulement obligations. However, the Tribunal appears to base its decision principally — if not exclusively — on the conclusion that the applicant came within Article 1A(2) of the Refugee Convention and, as such, his removal from Australia would breach Article 33 of the Convention. Nonetheless, for completeness, this case is included in this list of complementary protection cases because the Tribunal also refers briefly to the CAT and because the language of the Tribunal’s conclusion (‘removal... would be... contrary to Australia’s non-refoulement obligations’) seems to be referring to more than one international non-refoulement obligation.</p>
<p><a href="#">1726514 (Refugee) [2020] AATA 2429</a> (Unsuccessful)</p>	3 March 2020	73-83	<p>The Tribunal affirmed a decision to cancel the Iraqi applicant’s protection visa. In analysing the “other consideration” of whether Australia has obligations under relevant international agreements that would or may be breached as a result of the visa cancellation (including whether cancellation would lead to the applicant’s removal in breach of Australia’s non-</p>

			<p>refoulement obligations), the Tribunal found that there was no real risk that the applicant would suffer significant harm in Iraq. The Tribunal was satisfied that the current civil unrest, lack of general security and the instability the applicant may fear in Iraq are faced by the population generally and not by him personally (see s 36(2B)(c)).</p>
<p><a href="#">MCCN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 930</a> (Unsuccessful)</p>	3 March 2020	135-166	<p>The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Iraqi applicant’s visa but accepted that there is a real risk of serious harm to the applicant that rises to a level to trigger non-refoulement obligations.</p> <p>“More particularly, the Tribunal is satisfied that the applicant’s stated claims of harm relating to his membership of the Christian minority and as a consequence of the potential for him to be associated with perceived wealth, represent a risk of harm to a level covered by the Refugees Convention, the CAT and the ICCPR. The Tribunal is satisfied that these risks are substantial at the hands of criminal gangs, Islamic extremists and other non-state actors.” (Para 161)</p>
<p><a href="#">1711438 (Refugee) [2020] AATA 789</a> (Successful)</p>	27 February 2020	62-80	<p>The Tribunal remitted the application of an HIV-positive homosexual man from Fiji finding that the cumulative effects of envisaged harm satisfies the complementary protection criterion.</p> <p>“The Tribunal finds that the applicant and as a consequence of his current medical condition – being a</p>

			<p>person who is HIV positive, if he were returned to Fiji in the reasonably foreseeable future will fall victim either to being subjected to cruel or inhuman treatment or punishment or be subject to degrading treatment or punishment committed upon him because he would be unable to receive, the proper counselling care and medical treatment he requires as a person having been diagnosed as HIV positive.” (Para 66)</p> <p>“The Tribunal finds that the applicant if he was returned to Fiji in the reasonably foreseeable future will fall victim to either arbitrarily being deprived of his life or subjected to cruel and inhuman treatment being committed upon him by the reality of the situation he would find himself in – in Fiji, where he would be singled out and mistreated by the general community because of his HIV positive chronic illness. He would not be able (due to the lack of) to engage with a range of support services to assist him in continuously dealing with his chronic illness and its changing challenges.” (Para 70)</p> <p>“It is clear to the Tribunal those members of the LGBTI community in Fiji if they are diagnosed as HIV positive there is some societal discrimination. It was noted by the Tribunal upon review of the available information on HIV treatment in Fiji, that though societal discrimination was not systemic, it was present and persons like the applicant face societal discrimination and are viewed differently and have very little support within Fijian society and this ‘HIV-positive stigma’ would in the Tribunal’s opinion amount to inhuman</p>
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			treatment or punishment, where acts or omissions by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant.” (Para 75)
<a href="#">FRVT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 294</a> (Successful)	25 February 2020	244-313	<p>The Tribunal substituted a decision to revoke the cancellation of a Chinese applicant’s protection visa and in doing extensively discussed non-refoulement obligations and authority, and considered there was a real risk that the applicant will be returned to China in breach of Australia’s international non-refoulement obligations. The Tribunal also considered claims relating to coronavirus.</p> <p>“First, the Tribunal considers that there is a real chance that the Applicant would be excluded from protection under the Refugees Convention at international law on account of Article 33(2) of the Refugees Convention (which, as mentioned previously is now mirrored in section 36(1C) of the Act). However this is uncertain as, while the Applicant has been convicted of a particularly serious crime, because the Tribunal has found that there is a low risk that he will reoffend, he may not present a danger to the Australian community.” (Para 288)</p> <p>“In any event, unlike the situation in the Refugees Convention, the non-refoulement obligation under the ICCPR and the CAT are absolute and without exception.” (Para 289)</p> <p>“While the Tribunal does not consider that the Applicant’s claims in relation to the coronavirus invoke</p>

			<p>Australia’s international non-refoulement obligations, they still present risks of harm and hardship which the Tribunal has taken into account and ultimately weigh in the Applicant’s favour.” (Para 300)</p> <p>“In those circumstances, the Tribunal considers that, in addition to a risk that he will be re-prosecuted for his Australian offences, there is a heightened and real risk that the Applicant will be prosecuted in China for serious drug related offences that relate to the territorial jurisdiction of China. From the material available, it appears that there is a real risk that the Applicant could receive the death sentence for such offences.” (Para 308)</p> <p>“As the Applicant cannot apply for another substantive visa in Australia, and it is highly unlikely that the Minister will exercise any discretion to allow him to remain here, the Tribunal considers that there is a real risk that the Applicant will be returned to China in breach of Australia’s international non-refoulement obligations.” (Para 312)</p>
<p><a href="#">Hanna and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 293</a> (Unsuccessful)</p>	25 February 2020	146-165	<p>In affirming a decision not to revoke the mandatory cancellation of an Iraqi applicant’s Class XB Subclass 200 Refugee visa, the Tribunal discussed authority on non-refoulement.</p> <p>“While I am satisfied that returning to Iraq would be difficult, and that Mr Hanna is factually in a category of persons who face more violence and discrimination, I accept the submissions of both Mr Aleksov and Mr</p>

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



			time. Accordingly, the hardship suffered by the loss of his liberty for an extended period of time far outweighs the consideration in relation to the risk to the Australian community under on <a href="#">s.116(1)(e)</a> of the ACT.” (Para 78)
<a href="#">HSKJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 176</a> (Successful)	12 February 2020	56-75	The Tribunal substituted a decision to revoke the cancellation of an Iraqi homosexual applicant’s Class XB Subclass 200 (Refugee) visa.  “Given that the legal consequence is that the applicant would be returned to Iraq, it is my assessment for the reasons set out above that there is a very real risk the applicant will suffer significant harm if the cancellation decision is not revoked. This factor weighs heavily in favour of revoking the cancellation decision. I accept that regardless of whether the applicant’s claims are such as to engage non-refoulement obligations, the applicant would face significant hardship including a risk of violence in the event he were to return to Iraq.” (Para 75)
<a href="#">GQVS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 178</a> (Successful)	11 February 2020	113-170, 186-190	The Tribunal substituted a decision to revoke the cancellation of a South Sudanese applicant’s Class BA Subclass 200 Refugee visa and in doing so discussed authority on the duty to consider <i>non-refoulement</i> obligations.
<a href="#">QDQY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</a>	31 January 2020	45-55	The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Iraqi applicant’s visa,

<p><a href="#">(Migration) [2020] AATA 125</a> (Unsuccessful)</p>			<p>notwithstanding the finding that the applicant was owed <i>non-refoulement</i> obligations.</p> <p>“Given that the legal consequence is that the applicant would be returned to Iraq, it is my assessment for the reasons set out above that there is a very real risk that the applicant will suffer significant harm if the cancellation decision is not revoked. This factor weighs heavily in favour of revoking the cancellation decision. I accept that regardless of whether the applicant’s claims are such as to engage non-refoulement obligations, the applicant would face significant hardship including a risk of violence in the event that he were to return to Iraq.” (Para 55)</p>
<p><a href="#">1703365 (Refugee) [2020] AATA 1354</a> (Successful)</p>	<p>21 January 2020</p>	<p>60-69</p>	<p>The Tribunal recognized the complementary protection claim of a Japanese mixed marriage victim of violence with mental illness who had been disowned by her family.</p>
<p><a href="#">TNJG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 10</a> (Successful)</p>	<p>9 January 2020</p>	<p>64-77</p>	<p>The Tribunal substituted a decision to revoke the mandatory cancellation of a Filipino applicant’s Class BB (Subclass 155) Five Year Resident Return visa. The applicant was refused a protection visa based on character grounds, but it was accepted that the applicant was owed protection obligations under the relevant international instruments to which Australia is a party.</p> <p>“In light of the operation of the Act as detailed above along with relevant authorities, I consider it likely that the Applicant faces a prolonged period of detention whilst the Minister considers any “alternative management options”. If the Minister decides to either</p>

			<p>not consider those options, or decides not to exercise those powers, then the Applicant faces the prospect of removal to the Philippines where he would be in grave danger of being harmed or killed due to his previous drug addiction. The Respondent agreed that he would be at such risk if he were to return.” (Para 74)</p> <p>“If the Applicant was required to remain in “indefinite” detention (in the sense described above by Gleeson J in <i>CWGF</i>), this would clearly be of concern. The Applicant has served periods of imprisonment and if his evidence is to be accepted is now committed to turning his life around. The Respondent’s representative submitted that the “alternative management options” available to the Minister would mean that the Applicant would not be kept permanently in immigration detention, but rather would be detained while those options were being considered, when and if the Minister chose to do so. In other words, none of the Minister’s powers in this regard are compellable and lie entirely within the Minister’s discretion.” (Para 75)</p> <p>“The fact that if the Applicant were removed to the Philippines this would result in breach of Australia’s non-refoulement obligations is also a matter to which I give significant weight.” (Para 76)</p>
<a href="#">1713001 (Refugee) [2019] AATA 6855</a> (Unsuccessful)	13 December 2019	57-64	The Tribunal affirmed a decision to refuse a protection visa to a Malaysian applicant, but in doing so accepted that there is a risk of significant harm to the applicant based on threats of harm by members of criminal organisations to whom the applicant owes money.

			However, the Tribunal found that the level of protection from State authorities would be adequate and effective.
<a href="#">HPZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2019] AATA 5402</a> (Successful)	13 December 2019	113-116, 133	The Tribunal remitted an Afghan claimant's application with the direction that a temporary protection visa not be refused, including because the applicant is owed <i>non-refoulement</i> obligations.
<a href="#">1715048 (Refugee) [2019] AATA 6684</a>	9 December 2019	94-102	The Tribunal remitted the application of an Iranian applicant with the direction that the applicant satisfies s.36(2)(a) and s.36(2)(aa) and found in particular that there are substantial grounds for believing that, there is a real risk that the applicant will suffer significant harm from the Iranian authorities as a Christian convert from Islam.
<a href="#">SBTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2019] AATA 5609</a> (Successful)	6 December 2019	109-133	<p>The Tribunal substituted a decision to revoke the mandatory cancellation of an Alevi Kurdish applicant's visa noting that Australia's non-refoulement obligations are engaged and that the claims of harm extend to harm covered by the Refugees Convention and also, potentially, the CAT and the ICCPR.</p> <p>"On the basis of the evidence before it the Tribunal is satisfied the applicant is a member of the Alevi Kurdish minority and that as such if the applicant were to return to Turkey:</p> <p>(a) there is a real chance the applicant would be subjected to state sanctioned discrimination which could</p>

			<p>extend to attempts to suppress his Kurdish identity or suppress Kurdish identity generally or other limitations on his rights as a Turkish citizen including severe restrictions on freedom of expression and freedom of movement. This could also extend to arbitrary arrest and detention or other forms of legal harassment;</p> <p>(b) there is a real chance the applicant would be exposed to state sanctioned harm including potentially life-threatening harm, torture, excessive use of force, destruction of housing and prevention of access to emergency medical care and safe water; the Tribunal is satisfied that the risk of harm of this nature is heavily dependent on the specific circumstances and location within Turkey. The Tribunal is satisfied that the risk of this type of harm would be less should the applicant relocate to his home city in Aldana Province than if he were to relocate to a higher conflict zone in south-east Turkey. The risk would be less still if the applicant were to relocate into the western part of Turkey. In assessing this risk the Tribunal has been mindful of the applicant's evidence where he stated that he is less concerned about harm from the Turkish Government and more concerned about harm at the hands of local youth militants in his home Province;</p> <p>(c) there is a real chance the applicant would be subjected to serious physical harm and potentially life-threatening harm by members from the local youth militants associated with the PKK in retribution for his refusal to take up arms with the PKK when he last visited Turkey. The Tribunal acknowledges the</p>
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		<p>respondent's submission that the risk of this type of harm should be considered to be less given that the applicant, having refused previously to take up arms with the PKK, continued to live in his home city for an extended period of time without any serious consequence. However, the Tribunal found the applicant's evidence in relation to this risk being ongoing to be consistent and compelling and is satisfied that it was truthful;</p> <p>(d) there is a real chance the applicant would be subjected to pressure from local youth militants associated with the PKK to take up arms with the PKK again in the future, and should he refuse to do so, be subjected to serious physical harm and potentially life-threatening harm from such groups in retribution for such refusal. The Tribunal recognises that this risk is particularly heightened in certain parts of Turkey including the area surrounding the applicant's home town. The Tribunal is also mindful of the fact that given the volatility in relation to the conflict between the Turkish government and the PKK, a scenario where the applicant again comes under significant pressure to take up arms with the PKK is not mere speculation but rather has a real and substantive basis;</p> <p>(e) there is a real chance the applicant would be subjected to discrimination in the practice of his religion in Adana Province. In reaching this conclusion the Tribunal notes that the applicant's evidence was somewhat in conflict with the evidence in the DFAT Country Report in relation to this issue which suggested</p>
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			<p>that the Alevi religion was now freely practised across Turkey. The Tribunal accepts that the level of discrimination in this respect may vary significantly depending on the location within the country;</p> <p>(f) there is a real chance the applicant would be subjected to discrimination in seeking to obtain employment opportunities in Turkey; and</p> <p>(g) there is a real chance the applicant would be subjected to potential harm due to the general security situation in Turkey.” (Para 126)</p> <p>“The Tribunal is otherwise satisfied that on the basis of the Tribunal’s findings with respect to the applicant’s claims of harm set out above, Australia’s non-refoulement obligations are engaged in respect of the applicant. In particular, the Tribunal is satisfied that the applicant’s claims of harm extend to harm covered by the Refugees Convention and also, potentially, the CAT and the ICCPR.” (Para 130)</p>
<a href="#">ZKFQ and Minister for Home Affairs (Migration)</a> <a href="#">[2019] AATA 5168</a> (Successful)	3 December 2019	52-55, 64	The tribunal set aside a decision not to revoke the mandatory cancellation of an Iranian applicant’s protection visa, including because he is owed <i>non-refoulement</i> obligations. He had made anti-Iran statements and a summons had been issued in his name.
<a href="#">CQBW and Minister for Home Affairs (Migration)</a> <a href="#">[2019] AATA 5177</a> (Unsuccessful)	28 November 2019	190-224	The Tribunal affirmed a decision to refuse a bridging visa to a Vietnamese applicant, but in doing so discussed the law on consideration of <i>non-refoulement</i> obligations.

<a href="#">KYMM and Minister for Home Affairs (Migration) [2019] AATA 5174</a> (Unsuccessful)	28 November 2019	114-160	The Tribunal affirmed a decision not to revoke the cancellation of a South Sudanese applicant’s refugee and humanitarian visa. While <i>non-refoulement</i> obligations weighed in favour of revocation, it was open to the applicant to apply for a protection visa.
<a href="#">1928362 (Refugee) [2019] AATA 6213</a> (Unsuccessful)	22 November 2019	44-51	<p>The Tribunal affirmed a decision not to grant a Fijian applicant a protection visa, but in doing so considered whether lack of medical care resulting in could be considered an arbitrary deprivation of life.</p> <p>“The Tribunal, having considered the country information about the medical and welfare systems in Fiji, is not satisfied that the applicant would be arbitrarily deprived of his life if he returned to Fiji because the Tribunal is satisfied that the applicant would receive reasonable medical treatment and assistance for his myriad health problems. Further, even if the applicant’s medical conditions, particularly the [Physical health condition 1] was to result in [cancer] and result in his death (as claimed in the applicant’s written submission), the applicant’s death would in no sense be the type of arbitrary deprivation of life envisaged by the legislation.” (Para 50)</p>
<a href="#">1906027 (Refugee) [2019] AATA 6729</a> (Successful)	14 November 2019	172-187	The Tribunal remitted the application of a victim of trafficking from Vietnam finding that there is “a real risk that the applicant may be arbitrarily deprived of life at the hands of those who trafficked him, he will be subjected to cruel or inhuman treatment or punishment by those who trafficked him by reason of retribution or



			he will be subjected to degrading treatment or punishment by society or the authorities by reason of failure to support him as a victim of trafficking, if he returns to Vietnam now or in the reasonably foreseeable future.” (Para 186)
<a href="#">1806813 (Refugee) [2019] AATA 6786</a> (Successful)	12 November 2019	26-38	The Tribunal remitted the application of an Indian female divorcee from an inter-caste marriage finding that she “faces the real risk of significant harm personally from her ex-husband and his family (or people associated with them).” (Para 33)
<a href="#">QDWQ and Minister for Home Affairs (Migration) [2019] AATA 4622</a> (Unsuccessful)	12 November 2019	84-103, 127-131	The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Afghan, Shia applicant of Hazara ethnicity. While Australia’s <i>non-refoulement</i> obligations were engaged, they did not outweigh primary considerations.
<a href="#">1605495 (Refugee) [2019] AATA 6815</a> (Successful)	30 October 2019	55-75	The Tribunal recognised the complementary protection claim of a divorced, female Kurdish applicant of Alevi Christian faith from Turkey.  “‘ <i>Significant harm</i> ’ for these purposes is exhaustively defined in <a href="#">s.36</a> (2A): <a href="#">s.5</a> (1) of the Act. It includes a situation where a person will suffer significant harm if he or she will be subjected to inhuman treatment. The Tribunal finds that this provision is applicable here. The type of criminality and harm described above would be intentional and aimed at the applicant should it occur. It is sufficiently prevalent in Turkey to pose a real risk and risk is exacerbated by the applicant’s lack of societal influence, position and funds. The applicant’s position

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

			<p>obligations to the Applicant under the ICCPR and the CAT.” (Para 256)</p> <p>“This is because, the Tribunal has found that there is a real risk that the Applicant will suffer significant harm if he is returned to South Sudan. As such, the Tribunal considers that the Applicant is likely to meet the complementary protection criteria in section 36(2)(aa).” (Para 257)</p> <p>“However, the Tribunal considers that it is likely that the Applicant will be refused a Protection visa on the basis of complementary protection as he is unlikely to meet the criteria for a Protection visa under sections 36(1C) and 36(2C). As mentioned above, it is possible for a person to meet the criteria in section 36(2)(aa) and therefore be a person in respect of whom Australia owes international non-refoulement obligations, and yet be refused a Protection visa on the basis of failing to meet the criteria in 36(1C) and 36(2C) of the Act.” (Para 258)</p>
<a href="#">1604355 (Refugee) [2019] AATA 6804</a> (Unsuccessful)	24 September 2019	235-344	<p>In affirming a decision not to grant a South-African family a protection visa, the Tribunal discusses complementary protection extensively and considered claims relating to the father’s (principal applicant) business, the high rates of crime and violence in South Africa and other claims, including those concerning the daughter’s former partner, the mother’s mental health and the impact of the potential separation of the principal applicant and his wife on the daughter. The Tribunal also found that the applicants would not face a real change of harm on the bases of being white,</p>

			Afrikaner, Christians, and membership of the particular social groups of a white male or white female facing workplace discrimination and of a white female facing sexualised violence
<a href="#">DFNM and Minister for Home Affairs (Migration) [2019] AATA 3769</a> (Successful)	24 September 2019	83-138	The Tribunal revoked the cancellation of a Lebanese applicant's partner residence visa. The Tribunal discussed whether and how Australia's <i>non-refoulement</i> obligations needed to be considered, recognizing that consideration of whether or not a person meets all the criteria for a protection visa does not extinguish separate <i>non-refoulement</i> obligations but was unsatisfied that <i>non-refoulement obligations</i> would arise under the ICCPR or CAT.
<a href="#">1613414 (Refugee) [2019] AATA 6738</a> (Successful)	20 September 2019	57-60, 62-62	The Tribunal remitted the application of a Pakistani male applicant (and his partner) finding that there "is a real risk that the applicants will suffer significant harm as a result of identifying as a homosexual people and who are in a homosexual relationship to the extent that it constitutes degrading treatment or punishment pursuant to section 36(2A) of the Act." (Para 58)
<a href="#">1613766 (Refugee) [2019] AATA 6379</a> (Successful)	9 September 2019	39-64	The Tribunal remitted the application of a Ugandan lesbian applicant with the direction that she satisfies s.36(2)(aa).  "The Tribunal therefore accepts that if the applicant returns to Uganda and lives openly as a lesbian, there is a real risk she will be subjected to serious physical violence and high levels of discrimination which may

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

			<p>has now spent over four years in detention. There is evidence that the applicant’s mental health issues will be exacerbated by returning to Fiji and that the facilities available may be inadequate. His family, who are permanent Australian residents, will face hardship. These are matters that may make the applicant’s case unique and may raise compassionate and compelling reasons for intervention in accordance with the Guidelines.’ (Para 134)</p> <p>‘We accept the applicant’s evidence that he was threatened. We accept the threat was open-ended and could have been construed to be continuing. We also accept the applicant has a long held and fear of returning to Fiji and he may face further psychological harm if he returns. There is evidence the applicant, who was young and inexperienced, was understandably traumatised by the incident and, critically, did not obtain any treatment or counselling for this until later in his later years. We accept this as had an impact on his return to Fiji is likely to have a further impact on his mental health.’ (Para 94).</p> <p>‘The difficult question is whether previous threats and trauma which manifest in psychological harm both in Australia and, more particularly, in the receiving country engages complementary protection.’ (Para 95)</p> <p>‘The harm that must be suffered is “significant harm” which, as her Honour recognises, requires that a claimant “will be subjected to... an act or omission”:</p> <p>refer at [30] – [32]. Psychological harm which is a</p>
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			<p>consequence of a previous act cannot be an “act or omission” as contemplated by s.36(2A) because the definition requires that the act or omission take place in the future. In our view the words in s.36(2A), as informed by the definitions in s.5(1), are clear.’ (Para 99)</p> <p>‘Thus, as Riley J observes in CKX16 the question is whether a person will be subjected to an act in the future if the person suffers the consequences of the act in the future, even if the act itself is in the past. While her Honour concludes that this would engage s.36(2A) and therefore s.36(2)(aa), we prefer the authority of Mansfield J in SZSRN where his Honour made an important distinction between an act and the consequence of an act: at [47]. We also note that when s.36(2A) is read with s.5(1) the clear meaning is that the non-citizen will be subjected to an act where suffering is intentionally inflicted. This is inconsistent with suffering harm from a previous act.’ (Para 110)</p> <p>‘We also reject any suggestion that the principles in Project Blue Sky would be authority for such a broad interpretation. The process of construing s.36(2)(aa) begins with the statutory text and the text must be considered in its context. Objective discernment of the context may be made through extrinsic material, the legislative history and the purpose and policy of the legislation. However, extrinsic material cannot be relied upon to displace the clear meaning of the text. In our view, ss.36(2A) and 5(1) are clear in their terms. To engage s.36(2)(aa) an applicant must satisfy the</p>
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			<p>Tribunal that there is a real risk he or she will suffer significant harm in the receiving country and this means an act or omission taking place in the receiving country. This cannot be constituted by an act in the past or the future consequence of an act in the past. Psychological harm is a mental state and is not an “act” but rather an illness which is manifest, in this case, by reason of a previous act.’ (Para 111)</p> <p>‘The contention that the threat made to the applicant 17 years ago is a continuing act which, in effect, will come to fruition when the applicant returns to the place of the original trauma, is novel. The act must be the physical act, in this case being the threat made 17 years ago. In our view, the mental health issues that arise from the threat are a consequence of the act. Any harm arising in Fiji is a consequence of the trauma from the act. A psychological response to being returned to the location where the traumatic event occurred is not an act in itself. As stated by Reeves J in CHB16 (agreeing with Collier J in CSV15 v Minister for Immigration and Border Protection [2018] FCA 699) at [65] to [68], the harm described in s.36(2A) is a harm perpetrated “by others”.’ (Para 112)</p> <p>‘Accordingly, we reject the submission that the psychological harm, which we accept may be suffered by the applicant because of his subjective fear of returning to Fiji, engages s.36(2)(aa) of the Act.’ (Para 113)</p>
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<a href="#">1619551 (Refugee) [2019] AATA 5306</a> (Successful)	5 September 2019	59-62	The Tribunal remitted a Pakistani, homosexual applicant’s claim for reconsideration with the direction that the applicant satisfies both the refugee and complementary protection criteria.
<a href="#">DARYAB (Migration) [2019] AATA 4492</a> (Unsuccessful)	4 September 2019	56-60	<p>The Tribunal affirmed a decision to cancel a Hazara applicant’s Subclass 202 (Global Special Humanitarian) visa, while recognizing that Australia may owe protection obligations towards the applicant and that Australia’s international obligations may be engaged.</p> <p>“The Tribunal is prepared to accept, for the purpose of this review only, that it would be difficult for the applicant to live on her own in Pakistan without much family support. The Tribunal accepts that the situation in Pakistan may be unsafe and that the applicant would be recognised as a Hazara and a single woman. Although the Tribunal is mindful that the applicant is eligible to seek a protection visa in the future, for the purpose of this review, the Tribunal accepts that Australia may owe protection obligations towards the applicant and that Australia’s international obligations may be engaged in relation to the applicant.” (Para 60)</p>
<a href="#">1729652 (Refugee) [2019] AATA 6484</a> (Successful)	12 August 2019	96-119	<p>The Tribunal remitted the application of a Nigerian child applicant with the direction that the applicant satisfies s.36(2)(aa) and family members satisfy s.36(2)(c)(i).</p> <p>“The types of harm that will amount to ‘significant harm’ are exhaustively defined in <a href="#">ss.36(2A)</a> and <a href="#">5(1)</a> of the Act. Although each form of harm has a discrete</p>

			identity, there may be some overlap between the different types of significant harm such that some forms of ill-treatment may fall within more than one of these definitions. I consider that kidnapping of children would constitute cruel or inhuman treatment or punishment and in some circumstances may lead to the arbitrary deprivation of life.” (Para 106)
<a href="#">1725683 (Refugee) [2019] AATA 6214</a> (Successful)	12 August 2019	51-59	<p>The Tribunal sets aside the decision under review and substitutes a decision not to cancel A Pakistani Hazara applicant’s Subclass 866 (Protection) visa finding <i>non-refoulement</i> obligations would be breached if compelled to return.</p> <p>“Under these circumstances, the Tribunal accepts that the life of the visa holder would be considerably diminished were he to return to Pakistan, so much so that there is a real chance he may face serious harm due to the targeting of Hazaras in Pakistan over the years, and the limitations on their freedom of movement. The Tribunal places significant weight on the circumstances the visa holder would face on return to Pakistan and considers that such circumstances would mean that Australia’s <i>non-refoulement</i> obligations would be breached if the visa holder were compelled to return there. It is not fanciful or remote that the visa holder and his family could be subject of acts of terror or other attacks on the basis of his ethnicity and that he is particularly vulnerable given his profile as an older, unwell man.” (Para 57)</p>

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

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

			members of the community who have lived here for a significant period and returning them to a country (Pakistan) where they would essentially be required to live in segregation and under constant threat of attack by extremists; an action that would be in breach of Australia's <i>non-refoulement</i> obligations." (Para 57)
<a href="#">1729305 (Refugee) [2019] AATA 6331</a> (Successful)	31 July 2019	47-61	<p>The Tribunal remitted a Sri Lankan Tamil applicant's application with remits with the direction that the applicant satisfies s.36(2)(aa).</p> <p>"On the evidence before it, the Tribunal is satisfied that although the applicant has a limited adverse profile, his own personal circumstances namely his psychological vulnerabilities mean that there is a real risk of significant harm occurring to the applicant if he were to be returned to Sri Lanka. The Tribunal is satisfied on the evidence that the applicant will suffer significant harm as defined in s.36(2A). The Tribunal is satisfied that in the applicant's case and because of his psychological vulnerabilities, being questioned, interviewed, or detained, or imprisoned by the Sri Lankan authorities amounts to significant harm as contemplated by the Act. The Tribunal is persuaded by the submissions that as the perpetrators of the harm feared by the applicant are the Sri Lankan authorities, the Tribunal finds that state protection would not be available to the applicant and relocating internally within Sri Lanka would not remove the threat of harm." (Para 59)</p>

<p><a href="#">1811868 (Refugee) [2019]</a>  <a href="#">ATA 6013</a>  (Successful)</p>	<p>23 July 2019</p>	<p>70-75</p>	<p>The Tribunal substituted a decision not to cancel an Iraqi applicant’s Subclass 866 (Protection) visa and found he was owed <i>non-refoulement</i> obligations.</p> <p>“An International Treaties Obligations Assessment (ITOA) was undertaken by the ITOA delegate on 9 August 2017. It noted that despite earlier reports suggesting Sunnis could return to Iraq, the ITOA delegate gave significant weight to the current DFAT report that indicated that conditions for Sunnis had deteriorated since the applicant’s return to Iraq in 2013, particularly in non-Sunni dominated areas like Southern Iraq. The ITOA delegate also noted that as a [age]-year-old male of fighting age, he would be at risk of being imputed with Islamic State sympathies if he came into contact with the Iraqi Security Forces (ISF) or Popular Mobilisation Units (PSU). The ITOA delegate accepted that relocation was not reasonable for the applicant and the ITOA delegate was not satisfied he could safely return to central or northern Iraq. He concluded that there was a real chance that if returned to Iraq, the applicant would face persecution for reasons of his religion. He also found there to be substantial grounds for believing that as a necessary and foreseeable consequence of the applicant’s removal from Australia to Iraq, the applicant faced a real risk of significant harm. The ITOA delegate concluded that the applicant is a person to whom Australia has <i>non-refoulement</i> obligations.” (Para 71)</p> <p>“In light of the above information, I see no reason to depart from the ITOA’s conclusion that the applicant</p>
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			faces a real chance of serious harm and a real risk of significant harm if returned to Iraq, now or in the reasonably foreseeable future.” (Para 75)
<a href="#">1731415 (Refugee) [2019]</a> <a href="#">ATA 5962</a> (Successful)	26 June 2019	108-121	<p>The Tribunal substituted a decision not to revoke an Iraqi applicant’s Subclass 866 (Protection) visa and gave weight to <i>non-refoulement</i> obligations.</p> <p>“Considering this information collectively, the Tribunal notes that the threat to the applicant as a person who worked with coalition forces is far less than it once was, however significant anti-American sentiment exists, particularly in Basra. The Tribunal is satisfied, on the basis of the IPAO decision, his evidence to the Tribunal and country information on anti-Western sentiment, that he may still be known to extremists in his area as claimed and there are those who blame him for going to prison, and that the chance of serious harm may still exist. There is also the risk of moderate discrimination for reasons of his Sunni religion and Bidoon origins which could exacerbate the chance of harm. There is no doubt that sectarian tensions persist in Iraq, and that Sunnis continue to face a degree of harassment and discrimination.<sup>[22]</sup> In this regard, the Tribunal has taken into account the fact that, notwithstanding his visits to Iraq, he attempted to relocate his family to [Country 1] as he was concerned for their safety. The security situation in general is identified as precarious and the crime rate high.” (Para 117)</p>
<a href="#">1613224 (Refugee) [2019]</a> <a href="#">ATA 5826</a>	24 June 2019	30-37	The Tribunal remitted the application of a Filipino woman who feared serious physical harm from her

(Successful)			<p>former de facto partner with the direction that she (and her children) satisfies the criterion set out in s.36(2)(aa).</p> <p>“However, I am satisfied that there is a real risk that she would suffer cruel or inhuman treatment in the form of serious physical harm intentionally inflicted by her husband or people associated with him. Furthermore, while it appears that the authorities in the Philippines seek to provide some degree of assistance to victims of domestic violence, this appears to be relatively limited and in my view the applicant would not be able to obtain protection from the authorities such that there would not be a real risk that she would suffer that harm. I am therefore satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to the Philippines, there is a real risk that she will suffer significant harm.” (Para 37)</p>
<a href="#">1606188 (Refugee) [2019] AATA 5876</a> (Successful)	20 June 2019	117-135	<p>The Tribunal remitted the application of a ex-Gazan Palestinian from Jordan finding that the applicant and as a consequence <i>his family</i> will fall victim to either being arbitrarily deprived of their life, subjected to torture, cruel and inhuman punishment committed upon them by the applicant’s estrange father-in-law and father of his Jordanian wife.</p> <p>“‘Significant harm’ for these purposes is exhaustively defined in s.36(2A): s.5(1) of the Act. It includes a situation where a person will suffer significant harm if he or she will be subjected to inhuman treatment. I find</p>



			<p>that provision applies here. The type of criminality and harm, described above would be intentional and aimed at the applicant and his family should it occur. It is sufficiently prevalent in Jordan to pose a real risk and the risk is exacerbated by the applicants' lack of societal influence position and funds. The applicant's situation is further exacerbated and made difficult by the fact that his father-in-law has the means, societal influences, criminal connections and monetary resources to locate and inflict his will upon the applicant, his wife and children. Kidnapping of children and of other family members are one form of serious crime. These are all crimes or harms intended to cause severe pain and suffering to the victim. Serious assaults including grievous bodily harm are another possibility. The applicants might well – in a personal sense – be vulnerable to some or all of these crimes, and there is a real risk that they will suffer significant harm. This risk would exist in all the various areas of the country and because of the issues with the police and authorities the Tribunal outlined that the applicants could not obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm. The real risk is one faced by the applicants personally. The Tribunal also does not find that there is a possibility of avoiding the harm described by depending on family assistance.” (Para 134)</p>
<a href="#">1610842 (Refugee) [2019]</a> <a href="#">ATA 1418</a> (Unsuccessful)	12 June 2019	6, 42-45	In this case the Tribunal considered the claims of a man from Mauritius with mental health issues. His claim that

			<p>a lack of treatment for his condition amounted to cruel treatment was rejected.</p> <p>‘In his Protection visa application form, the applicant made the following claims:</p> <ul style="list-style-type: none"> <li>i. He nearly lost his life in Mauritius in [year]; he started getting depressed as he missed his parents in Australia. He tried to commit suicide by taking an overdose of medication, and his condition became worse due to a lack of proper mental care. When he arrived in Australia his condition escalated and he became violent with his parents. Australian medical intervention has been of great help and he is obtaining continuous medical and social support which could never be found in Mauritius.</li> <li>ii. If he returns to Mauritius the change in environment and degrading treatment will cause a great impact on his life. He did not want to be locked up in a small room in a mental hospital. Mental illness is treated poorly by the medical system in Mauritius and his uncle experienced this, as he was locked up on and off since he was [age] years old. His uncle lost his life in 2013. Going back may cause another serious episode of his illness which might damage his brain.</li> <li>iii. Mentally ill people were not welcomed in society in Mauritius. He will suffer harm</li> </ul>
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			<p>because of lack of community support and poor medical treatment.’ (Para 6).</p> <p>‘The Tribunal has also considered the claims of the applicant under the complementary protection provisions of the Act. The definition in s.36(2A) is framed in terms of harm suffered because of the acts of other persons. As discussed above, the Tribunal accepts that the mental health care available in Mauritius is not the same standard as in Australia, but finds that care is available via the public system and privately. Additionally, the Tribunal is satisfied that the applicant will not be without a means of support as he can return to the family home, will be supported by his family and he is able to access social security.’ (Para 42).</p> <p>‘The Tribunal accepts the submission of the applicant representative that the applicant has had a difficult journey with his mental health. It is not accepted that societal discrimination in Mauritius will impact upon the applicant seeking treatment if he was to return or that for this reason the applicant will be subject to significant harm. It is also not accepted that the government of Mauritius is culpable if the applicant could not obtain appropriate treatment. There is nothing in the evidence to suggest that the government of Mauritius has limited treatment for people with mental health conditions, such as the applicant, to the extent that it could be said that there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Mauritius, there is a real risk that he will be arbitrarily</p>
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			<p>deprived of his life. The definitions of torture, cruel or inhuman treatment or punishment in the Act require that pain or suffering be ‘intentionally inflicted’ on a person and the definition of degrading treatment or punishment requires that the relevant act or omission be ‘intended to cause’ extreme humiliation. As discussed with the applicant and his representative at the hearing, the Tribunal is not satisfied on the evidence before it that there is an intention to inflict pain or suffering or to cause extreme humiliation to people suffering the sort of health problems it is accepted that the applicant has.’ (Para 43).</p> <p>‘The Tribunal has also considered the submission that it will be Australia who will be intending to inflicting cruel or inhuman treatment or punishment or degrading treatment or punishment, if the application is refused and he is required to return to Mauritius. In <i>SZRSN v MIAC</i>, where it was claimed significant harm would arise from separating the applicant from his Australian children, the Federal Court found that harm arising from the act of removal itself will not meet the definitions of ‘significant harm’ in s.36(2A).<sup>[20]</sup> Australia’s obligations to afford protection referred to in s.36(2)(aa) arise from the harm faced by a non-citizen in the receiving country, rather than the country in which protection is sought.<sup>[21]</sup> As the harm under s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, s.36(2)(aa) will not be engaged by harm inflicted by the act of removal itself.’ (Para 44).</p>
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			<p>‘The Tribunal does not accept on the evidence before it, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Mauritius, there is a real risk that he will suffer significant harm, as defined, as a result of his mental health condition.’ (Para 45).</p>
<p><a href="#">1515288 (Refugee) [2019] AATA 4066</a> (Successful)</p>	9 June 2019	107-129, 131	<p>The Tribunal remitted the matter with the direction that the applicant, a Nepali, divorced single female with a child satisfied the complementary protection. The Tribunal accepted that “she will be perceived as a divorced single female with a child and that there is some stigma associated with this. It is when considering a combination of the applicant’s profile with her current vulnerabilities that the Tribunal cannot discount that the applicant may face a small but real risk of degrading treatment in Nepal in the reasonably foreseeable future.” (Para 114)</p> <p>“The Tribunal notes that there remains systemic discrimination in employment against women, but that the applicant will need to find employment. When her vulnerabilities are taken into account the Tribunal considers it unlikely that she will obtain work in the formal sector; the Tribunal notes that the current DFAT Report states that women who work in the informal sector are particularly vulnerable to sexual harassment, and the Tribunal cannot discount that the applicant, in a more vulnerable situation because of her experiences with her third husband and a need to obtain employment in order to provide for her traumatised child, may face a</p>

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

<p><a href="#">MBJY and Minister for Home Affairs (Migration) [2019] AATA 4055</a> (Unsuccessful)</p>	<p>7 June 2019</p>	<p>171-197</p>	<p>The Tribunal affirms a decision not to revoke the mandatory cancellation of an Indian applicant’s partner visa. In doing so, the Tribunal considers Australia’s non-refoulement obligations noting that “the Tribunal did not accept the Respondent’s submission that it was sufficient for the Tribunal to find that it was unnecessary to determine whether non-refoulement obligations were owed because the Applicant has the ability to make a valid application for a protection visa, the Tribunal accepts the Respondent’s submission that the evidence provided to support the claim that a non-refoulement obligations arise with respect to the Applicant was not sufficiently probative for the Tribunal to make a finding in the Applicant’s favour.” (Para 192)</p>
<p><a href="#">1606699 (Refugee) [2019] AATA 5839</a> (Successful)</p>	<p>9 May 2019</p>	<p>21-42, 45-48</p>	<p>The Tribunal remitted the application from a Bangladeshi applicant from who regarded himself as a “Christian Humanist” with the direction that the applicant satisfies s.36(2)(aa) as there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm because of his on line blogging in Australia.</p> <p>“The Tribunal has found above that the applicant started and operated a blog in Australia from around the time of his application for protection visa, that is from January 2014, and that the applicant’s blog contains material that is critical of, and at times ridicules, Islamic beliefs. The Tribunal accepts that the applicant’s blog has been publicly available on line from around January 2014, although it is clear that the applicant has</p>

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



<p><a href="#">1616860 (Refugee) [2019]</a>  <a href="#">ATA 3417</a>  (Unsuccessful)</p>	<p>4 March 2019</p>	<p>51-73, 75</p>	<p>The Tribunal accepted that there is a real risk that an Indian applicant will suffer significant harm in India by reason that he will be the victim of an honour killing, but affirmed the decision to refuse the applicant a protection visa because it was reasonable for him to relocate to another area within India.</p>
<p><a href="#">1602065 (Refugee) [2019]</a>  <a href="#">ATA 3430</a>  (Successful)</p>	<p>22 February 2019</p>	<p>33-35, 38-44, 48</p>	<p>The Tribunal remitted for reconsideration a Mongolian homosexual applicant’s application for review with the direction that he satisfies s.36(2)(aa) as he faces a real risk of significant harm in Mongolia for reasons of his homosexuality.</p> <p>‘The Tribunal takes into account the applicant’s oral evidence to both the delegate and in the Tribunal hearing in relation to claims of harm in Mongolia. Notwithstanding the fact of the applicant providing fraudulent documents to support his claims, based on the applicant’s oral evidence, the Tribunal is satisfied that there have been at least some occasions on which the applicant has been harassed and physically assaulted in Mongolia based on his sexuality. The Tribunal is also satisfied that vindictive individuals utilised information on the applicant’s smart phone relating to his sexuality which they posted on social media to embarrass the applicant. The Tribunal also accepts that there were instances where police acted in an unhelpful and intimidating way towards the applicant.’ (Para 33).</p> <p>‘Whilst the Tribunal is not satisfied as to the extent of attacks and physical harm against the applicant as he has detailed in his written claims and indicated in</p>

			<p>supporting documents, the Tribunal accepts that there have been at least some instances of intimidation and physical harm suffered by the applicant as a result of his sexuality.’ (Para 34).</p> <p>‘The Tribunal notes that a negative attitude by authorities in Mongolia to the applicant’s sexuality and intimidation and physical harm from society in general is not inconsistent with independent information as to the treatment of homosexuals in Mongolia, albeit that there have been some steps by the government to improve the situation for homosexuals.’ (Para 35)</p> <p>‘Given the negative attitudes towards homosexuality in Mongolia, the Tribunal is satisfied that the applicant faces a real chance of both serious and significant harm, as defined in the Act. Harm would include the real chance of physical harm, as the Tribunal accepts that he has in the past.’ (Para 38)</p> <p>‘In terms of considering the applicability of the refugee criterion, the Tribunal notes s.5J(2) of the Act indicating that a person does not have a well-founded fear of persecution if effective protection measures are available to the person in the relevant country. Section 5LA further defines ‘effective protection measures’. The Tribunal notes that the independent information contained in this decision could suggest that the legal framework recently introduced in Mongolia in relation to homosexuality offers adequate protection to the LGBTI community.’ (Para 39)</p>
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		<p>‘Given the existence of these laws, for the purpose of this decision only, and acknowledging that the extent to which there is practical adequate enforcement of those laws is not yet clear, the Tribunal would find that there are effective protection measures available to the applicant in relation to his sexuality and therefore he is not taken to have a well-founded fear of persecution. The Tribunal notes that under the definition of effective protection measures, police need to provide, not perfect protection, but reasonably effective protection.’ (Para 40)</p> <p>‘This is not a finding that is determinative of the outcome in this matter because, in any event, the applicant would satisfy the complementary protection criterion, in the Tribunal’s view. This is because a different and stricter test applies in relation to effective protection as set out in s.36(2B)(b) of the Act. Under that section, protection must reduce the risk of harm to less than a real risk for the purpose of the complementary protection criterion. This is a more stringent test than s.5LA(2)(c)’ (Para 41)</p> <p>‘The Tribunal is not satisfied on the evidence, given attitudes towards homosexuality in Mongolia, consistent with the applicant’s past experiences as accepted by the Tribunal, that the legal framework and police protection would reduce the risk of significant harm to the applicant based on his sexuality to less than a real risk. This is because there is the potential for the applicant to face physical harm before the involvement of police, who would be likely involved after the harm has</p>
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			<p>occurred, or due to the operation of the legal system, which would not operate until after the harm had occurred. The Tribunal finds that the applicant would face a real risk of degrading treatment or punishment as well as cruel or inhuman treatment or punishment within the terms in s.36(2A) of the Act.’ (Para 42)</p> <p>‘The Tribunal does not consider that the applicant can escape a real risk of harm by relocating because the risk of harm would be prevalent throughout Mongolia, and therefore s.36(2B)(a) does not apply.’ (Para 43)</p> <p>‘The Tribunal considers that the risk to the applicant is based on a particular characteristic, his homosexuality, and therefore the risk to him is not a risk faced by the population generally rather than the applicant personally, and therefore s.36(2B)(c) does not apply.’ (Para 44)</p> <p>‘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 satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).’ (Para 48)</p>
<a href="#">1800173 (Refugee) [2019] AATA 2122</a> (Unsuccessful)	5 February 2019	47-48, 51-53	The Tribunal considered the claims of a Pakistani man, whose feared deterioration of mental health was not regarded as inflicted and whose fears of falling victim to a general act of terrorism throughout Pakistan due to the general security situation was considered to be one faced by the population of the country generally.

			<p>‘The applicant fears that he will suffer deterioration in his mental health of a severe nature as a necessary and foreseeable consequence of his being returned to Pakistan. The applicant also fears that he will be killed or assaulted by extremists who will target him because he is opposed to their ideology, or that he will be killed or assaulted in a general act of terrorism if he is returned to Pakistan’ (Para 47).</p> <p>‘Based on the applicant’s past experience of suffering a psychosis and requiring hospitalisation in [State 1], I accept that the applicant is potentially vulnerable to a relapse or worsening of his mental health condition if he is returned to Pakistan, particularly given his experience on his return in 2014, where he immediately felt ‘watched’ after he was attacked.’ (Para 48).</p> <p>‘In relation to his fear of mental health deterioration, whilst there <i>is</i> such a risk of that deterioration, and that it may be severe, the information and evidence before me does not suggest that any severe deterioration in his mental health would be inflicted on the applicant by any person or group. S.5(1) of the act provides definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. In each case, the elements of the definitions require an act or omission by which severe pain, pain or suffering or extreme humiliation is <i>intentionally inflicted</i> on the person. In the applicant’s case, deterioration of his mental health may arise due to the change in his environment and any potential lapse in treatment, but the applicant’s evidence</p>
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			<p>does not suggest intentional infliction of such (nor indeed, the intentional withholding of treatment for any reason by any person). I consider that the possible deterioration in the applicant's mental health does not meet the necessary criteria within the definitions of 'significant harm' outlined in s.5(1) for each of 'torture', 'cruel or inhuman treatment or punishment' or 'degrading treatment or punishment.' That harm would not be 'inflicted' or 'caused' by any act or omission of any person which intended to cause that harm.' (Para 51).</p> <p>'The applicant also fears falling victim to a general act or terrorism throughout Pakistan due to the general security situation. The country information discussed above generally acknowledges that such attacks can and do happen without warning throughout Pakistan, targeting various groups or persons in authority, despite some reduction in the number of attacks over recent years. There is some risk therefore, that the the applicant may fall victim to a random attack as an innocent bystander, wherever he is in Pakistan. However, I consider that any such risk is not one faced by the applicant personally but is one faced by the population of the country generally. Applying s.36(2B)(c), there is therefore taken not to be a real risk that the applicant will suffer significant harm from falling victim to a general act of terrorism.' (Para 52).</p> <p>'The evidence before me did not raise any other grounds for believing that the applicant would suffer harm (significant or otherwise) as a necessary and foreseeable</p>
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			<p>consequence of his returning to Pakistan. After weighing my findings, I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that the applicant will suffer significant harm.’ (Para 53).</p>
<p><a href="#">1820814 (Refugee) [2019] AATA 1632</a> (Unsuccessful)</p>	<p>29 January 2019</p>	<p>10, 14, 57-58,</p>	<p>The Tribunal considered the claims of a Pakistani man who feared societal discrimination on the basis of his Ahmadi faith. The treatment he feared, including harassment and vilification and sporadic incidents of hate speech and abusive writing on external walls of his home did not reach the threshold for ‘severe pain or suffering’ or ‘extreme humiliation’.</p> <p>‘The issues in this case are whether the applicant has a well-founded fear of being persecuted for one or more of the five reasons set out in s.5J(1) and if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm.’ (Para 10).</p> <p>‘The applicant’s claims are that in Golarchi, he and his children have faced constant insults, social exclusion, threats of harm and death and abuse (including throughout the education system), simply due to their Ahmadi religion over many years. At hearing, the applicant described delays in registering his children for school, teachers who openly viewed Ahmadi students as inferior, throwing of rubbish at their home, and bullying</p>

			<p>of his children by other school children. The applicant also described abusive messages written on the walls of their home, calling them Kafirs, and calling for them to be killed. He said that there have been occasions when members of the Sunni community have gathered outside Ahmadi homes in their town and hurled abuse and stones. He said this had happened a number times over the years. He also said that in the past on one occasion in Golarchi, water rights to one property they were farming had been impeded, causing them hardship. The applicant gave evidence that when that happened, he was helped by members of his community to resolve the problem.’ (Para 14).</p> <p>‘I refer to my findings above in considering the real chance test. I am not satisfied that the applicant has established that there is a real risk that he will arbitrarily deprived of his life as a necessary and foreseeable consequence of him being returned to Pakistan. I have found that the applicant has established that he has experienced and would continue to face some entrenched discrimination, harassment and societal vilification if he was to return to Pakistan. However, as noted above, in the particular circumstances of this applicant’s long term and accepted experience in Golarchi, I consider that the level of discrimination, harassment and vilification he has faced and would be likely to face if he returns to his home is moderate, in the form of some social discrimination, harassment and vilification and sporadic incidents of hate speech and abusive writing on external walls of his home. I have considered the applicant’s evidence and my findings,</p>
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			<p>and I do not consider that the level of discrimination, harassment and vilification which he will encounter in the future is properly considered as causing and intending to cause the applicant 'severe' pain or suffering, whether physical or mental, that will be intentionally inflicted on the applicant, or that they are at a level such that they cause him extreme humiliation. I acknowledge that the experiences of discrimination, vilification and harassment have caused and will cause the applicant some mental and physical distress and humiliation. I consider that the moderate discrimination, harassment and vilification faced by the applicant if he is returned to Pakistan would be at a level which he has faced throughout his life, and despite which he has prospered. Bearing in mind his own evidence, and taking into account his physical location in Pakistan, his established standing within his community and his lifetime experience, I am not satisfied that the level of pain or suffering the applicant will face (as he has in the past) is at a level which could be regarded as cruel or inhuman in nature, or as cruel or inhuman or degrading treatment or punishment causing or intended to cause severe pain or suffering or extreme humiliation, even when considered cumulatively.' (Para 57).</p> <p>'I am not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm (including being arbitrarily deprived of his life or subjected to cruel or inhuman or degrading treatment or punishment), as a necessary and</p>
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			foreseeable consequence of him being returned to Pakistan.’ (Para 58).
<a href="#">1712068 (Refugee) [2019] AATA 223</a> (Unsuccessful)	25 January 2019	21, 86, 140-143, 173, 175	<p>In this case the Tribunal considered the claims of an Iranian man who, inter alia, feared being punished for transgressions of the dress code. The Tribunal found that he was at risk of reprimands, fines and warnings and that this did not amount to significant harm.</p> <p><i>‘Summary of claims:</i> The applicant claims that he and his family were discriminated against in Iran due to their association with, and assistance provided to, the applicant’s [relative] who was executed for being a follower of the Baha’i faith. He claims that he was subjected to abuse while serving in the military because he openly supported Mousavi and the Green Movement and due to his Baha’i association. He claims that he has been caught breaking strict morality codes including for transporting alcohol, not complying with Islamic dress codes, and walking with a girlfriend in public. He claims that he was wrongly accused in Iran of [a crime]. For these reasons he claims that he has an adverse profile and the Basij have a file on him. He claims that he and his mother were beaten by the authorities during Iranian New Year festivities. He claims that while living in Australia he has converted to the Christian faith and has attended four to five events in support of refugees and one protest opposing the Iranian government. He claims to drink beer and wine. The applicant claims to have a well-founded fear of harm on the basis of his Christian beliefs and being an apostate and infidel, his family connection to the Baha’i faith, returning to Iran</p>

			<p>as a failed asylum seeker, being a returnee from Australia, being a Westernised Iranian, being a suspected spy for Western governments, being against the Iranian moral codes and anti-Sharia law, being a supporter of Mousavi and the Green Movement, and because he has an adverse political profile with the Iranian government.’ (Para 21).</p> <p>‘I accept that the applicant was detained and fined by the Basij for violating Islamic dress code, detained, fined and had his motorbike confiscated for transporting alcohol and fined and warned for walking in public with his girlfriend as these claims have been consistent across the years of engagement with the Australian government and they are consistent with country information. As for the applicant’s narrative at the hearing about being beaten, kicked and spat at during his detention, it is new information that has not been provided before and I have serious concerns about the applicant’s credibility, in particular his willingness to amend his narrative. As such I do not accept that he was treated in the way he claimed at the hearing to have been treated.’ (Para 86).</p> <p>‘I accept that the applicant having done so in the past would once again in the reasonably foreseeable future find himself in some manner transgressing the moral code in Iranian society. Specifically I accept that the situation the applicant would return to is culturally different to Australia with a different emphasis on the type of music someone can listen to or the dress men wear and that this would lead to the applicant being</p>
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			<p>stopped and reprimanded but based upon country information I do not accept that such harassment amounts to serious or significant harm. I note also the country information on the extent of alcohol being procured in Iran. Despite the applicant having once been stopped randomly and found to be transporting alcohol and as a result had his motorbike detained I find that he does not face a real chance or a real risk of it occurring again in the reasonably foreseeable future.’ (Para 140).</p> <p>‘Even taking his past transgressions into account which I find would not increase his risk of being caught but may increase the severity of his punishment I find that was the applicant to return to Iran and dress in a Western manner, seek to procure and drink alcohol and listen to Western music he would not face a real chance of serious harm or a real risk of significant harm.’ (Para 141).</p> <p>‘I note that the applicant had in the past been harassed for walking with his then girlfriend in public. The applicant has an Australian girlfriend. Was the applicant’s girlfriend to visit him in Iran and were they found to be walking in public together he would face a real chance of being approached by the authorities. If that were to occur I find that he would face the same harm as he experienced before, namely being fined and warned. I find that such action would not amount to serious or significant harm.’ (Para 142).</p> <p>‘I accept that the applicant had been detained wrongly for [a crime] and then released. I find that this would not</p>
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			<p>compound his circumstances nor is there a real chance of serious harm or a real risk of significant harm arising from this past experience.’ (Para 143).</p> <p>‘In <i>MILGEA v Che Guang Xiang</i> the Court required that to establish a real chance of serious harm it is necessary to look at the totality of circumstances.<sup>[25]</sup> As such I turn my mind to considering the cumulative impact upon the applicant’s profile. The applicant’s fears are detailed above and based upon my findings of fact the harm he faces can be summarised as arising from being a Mousavi supporter in the past with Western habits including dressing in Western clothes, drinking alcohol and singing and dancing to Western music, opposing the regime in the future at moments of widespread general uprisings, being a failed asylum seeker, showing public affection to his girlfriend and having nominally converted to Christianity while in Australia but remaining a non-practising Muslim as described above along with other particular circumstances as noted under the heading ‘Other Circumstances’. In addition the applicant has PTSD and would have some access to psychological treatment. I have considered how each of the circumstances discussed above could impact collectively other elements such as whether having converted nominally to Christianity would raise the risk of being harassed for wearing Western clothes, or if he were to participate in a mass protest whether his prior support for Mousavi would make him face an increased amount of harm. In all permutations I find that considered cumulatively the applicant does not face a</p>
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			<p>real chance of serious harm or a real risk of significant harm.’ (Para 173).</p> <p>‘Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa) of the Act. The Tribunal <b>is not</b> satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).’ (Para 175).</p>
<p><a href="#">1704947 (Refugee) [2019] AATA 1349</a> (Unsuccessful)</p>	<p>11 January 2019</p>	<p>13, 96-102</p>	<p>In considering the claims of a Sri Lankan Tamil, the Tribunal held that the questioning he would face on return for his unlawful departure from Sri Lanka would not amount to ‘significant harm’, even taking into account his particular circumstances, including blood pressure issues.</p> <p>‘The applicant – a [age] year old married man from Batticaloa district in eastern Sri Lanka – claims to fear serious harm from the authorities on return to Sri Lanka on imputed (pro-Liberation Tigers of Tamil Eelam (LTTE)/anti-government) political opinion grounds and as a young Tamil. He also fears serious harm as a failed asylum seeker, as a Christian and because he departed Sri Lanka illegally.’ (Para 13).</p> <p>‘Furthermore, based on the country information and the Tribunal’s earlier reasoning, the Tribunal does not accept that the process of questioning amounts to arbitrary deprivation of life, being subject to the death penalty, torture, cruel or inhuman treatment or</p>

			<p>punishment or degrading treatment or punishment. The Tribunal also is not satisfied the process of questioning itself would constitute significant harm, even when taking into account the applicant's blood pressure issues. The Tribunal is therefore not satisfied that as a necessary and foreseeable consequence of the applicant's return to Sri Lanka, there is a real risk he would suffer significant harm at the hands of the Sri Lankan authorities as part of a process of questioning to which he may be subject.' (Para 96).</p> <p>'For the reasons set out above, the Tribunal has accepted that the applicant will be questioned at the airport upon his return to Sri Lanka, that he will likely be charged with departing Sri Lanka illegally and that he could be held on remand for a brief period while awaiting a bail hearing. The Tribunal does not accept that the applicant is of ongoing adverse interest to the authorities. Based on the Tribunal's earlier reasoning on this matter, it does not accept on the information before it there to be a real risk that the applicant will face torture, or other types of significant harm as set out in s.36(2A) of the Act, either during his questioning at the airport or during any period he spends on remand. The Tribunal considers, if convicted of charges under Sri Lanka's <i>I&amp;E Act</i>, he will likely face a fine and if a family member is required to act as a guarantor, accepts on his evidence that his wife will be able to help him out in this regard. The Tribunal does not accept on the evidence before it that there is a real risk the applicant would be subjected to treatment constituting significant harm as that term is exhaustively defined in section</p>
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			<p>36(2A), either during his questioning at the airport or during the short period that he may spend on remand awaiting a bail hearing, or when he returns to his home area.’ (Para 97).</p> <p>‘In regard to the penalty the applicant may face, based on the information cited above, the Tribunal does not accept that this will manifest itself in the mandatory imposition of a term of imprisonment or that the applicant would not be able to pay any fine that may be imposed on him as he would have the assistance of his wife – who is financially supported by her wealthy brother – in Sri Lanka to meet such a financial penalty.’ (Para 98).</p> <p>‘The Tribunal accepts that prison conditions in Sri Lanka are generally poor and do not meet international standards. However, if the applicant is remanded in prison for a short period, the evidence does not support that any pain or suffering as a consequence would be by an intentionally inflicted act or omission, as the poor prison conditions are due to a lack of resources (as indicated in the DFAT report, cited above) rather than any intention on the Sri Lankan government to inflict such harm,<sup>[30]</sup> and therefore do not amount to significant harm.’ (Para 99).</p> <p>‘Similarly the Tribunal is not satisfied on the evidence before it that the process of questioning, the imposition of a fine as punishment and the applicant’s charge and conviction under the <i>I&amp;E Act</i> amounts to significant harm because there is no intention on the part of the Sri</p>
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			<p>Lankan authorities to inflict pain, suffering or extreme humiliation in relation to these matters, but to provide a modest punishment and possible deterrence for departing the country illegally.’ (Para 100).</p> <p>‘For the reasons above, the Tribunal does not accept that the applicant was of any adverse interest to the Sri Lankan authorities in the past for any reason and would not be on return. Further, the Tribunal finds on the country information cited above, that any treatment the applicant may face upon return to Sri Lanka, including questioning, a fine and detention and poor prison conditions, would not amount to significant harm as this would apply to every person in Sri Lanka who breached the illegal departure law. As this is a real risk faced by the population generally and not the applicant personally, under s.36(2B)(c) there is taken not to be a real risk that the applicant will suffer significant harm.’ (Para 101).</p> <p>‘Having considered the applicant’s claims individually and cumulatively, for these reasons the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant’s removal from Australia to Sri Lanka, there is a real risk that he will suffer significant harm. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa).’ (Para 102).</p>
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