COMPLEMENTARY PROTECTION IN AUSTRALIA

ADMINISTRATIVE APPEALS TRIBUNAL

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

Case	Decision date	Relevant paras	Comments
2008759 (Refugee) [2022] AATA 2025 (23 May 2022) (Successful)	23 May 2022	30–33	Having considered an application for review of a decision of a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfied s 36(2)(a) of the Migration Act. While the applicant was found to satisfy the refugee criterion, certain findings are also potentially relevant to the complementary protection context. In particular, part of the applicant's claims related to the effects of the 2016 Formosa chemical spill in central Vietnam. The Tribunal accepted that the applicant's daughter developed a terminal disease and that the applicant held a genuine belief that it was caused by the chemical spill. The Tribunal accepted that the applicant had attended protests regarding the Formosa spill, and that after one of those protests, he was detained for two days along with other protesters. The Tribunal also accepted that as a result of the applicant's involvement in the protests, the local authorities in the applicant's home province had refused to sign the paperwork that would allow his family to access basic services including healthcare, education and the right to relocate temporarily in order to work. On the basis of these findings, the Tribunal was satisfied that the applicant had experienced serious harm as a result of his actual and imputed political opinion arising out of his participation in the Formosa protests. In assessing the future risk of harm to the applicant, the Tribunal accepted that there was a real chance that if the applicant returned to his home area, he would again be denied access to

			basic services by the local authorities including health care, welfare and permission to register even temporarily in other areas for the purpose of work. The Tribunal further accepted that the discriminatory denial of these services would threaten the applicant's 'capacity to subsist'. On this basis, the Tribunal accepted that there was a real chance the applicant would face serious harm if he returned to Vietnam now or in the foreseeable future.
Akon Mabuoc and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 1780 (20 May 2022) (Successful)	20 May 2022	101–105	The Tribunal set aside the decision made by a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa and substituted a decision to revoke the cancellation of the applicant's visa. The Tribunal accepted the applicant's submissions that he was a person who engaged Australia's international non-refoulement obligations, both as a refugee and under the ICCPR. On the basis of country information about the situation in South Sudan, the Tribunal was satisfied that 'violent crime such as kidnapping, murder, shootings, home invasions, armed robbery and carjacking continue[] to be widespread, including in the capital city of Juba'. The Tribunal was satisfied that if the applicant were forced to relocate to South Sudan he would be exposed to these risks, as well as risks of arbitrary arrest, detention and other human rights abuses and as a consequence, there would be a real chance that he would suffer serious harm, including serious physical harm and possibly death. The Tribunal concluded that the risk that the applicant would face was greater than that faced by the general population of South Sudan as a consequence of his lack of familiarity with the country and a reduced level of awareness of local

			customs and social norms, a lack of familial or social connections and a reduced level of fluency in the local language. The Tribunal also noted that while the applicant's Dinka ethnicity placed him within the largest ethnic group in South Sudan, it was nonetheless satisfied that the applicant would continue to be exposed to a significant risk due to his Dinka ethnicity as a consequence of the high levels of intercommunal violence that continue to exist in the country.
1727372 (Refugee) [2022] AATA 1974 (10 May 2022) (Successful)	10 May 2022	55–69	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicants protection visas, the Tribunal remitted the matter for reconsideration with (relevantly) a direction that the first named applicant satisfied s 36(2)(aa) of the Migration Act. The tribunal was satisfied that the first applicant faced a risk of being threatened, assaulted or killed by her brother if she returned to Pakistan, because of her conversion to Shia Islam. The Tribunal accepted that the harm feared involved severe physical or mental pain or suffering or both, which would be intentionally inflicted on the applicant wife. The Tribunal was satisfied that the harm the applicant wife would be subjected to amounted to cruel or inhuman treatment or punishment. As to whether the first applicant could obtain protection from Pakistani authorities, the Tribunal observed that state protection is in practice limited, and noted further that Pakistan has one of the worst records for gender equality in the world. The Tribunal concluded in this regard that given the position of women in Pakistan, the level of discrimination and violence they face, and the lack of state protection available, the first applicant could not obtain protection

			from the authorities in Pakistan such that there would not be a real risk that she would suffer significant harm. The Tribunal further found that it would not be reasonable for the first applicant to relocate to another area of the country where there would not be a real risk she would suffer significant harm, noting in particular her caring responsibilities for her first child, who has autism, and the presently dire economic situation in Pakistan.
BQGB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 1049 (4 May 2022) (Successful)	4 May 2022	40–41	The Tribunal set aside a decision of a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa, and in substitution made a decision to revoke the mandatory cancellation of the applicant's visa. Relevantly, in considering Australia's international non-refoulement obligations, the Tribunal observed that the applicant may face harm in a relevant sense if returned to Iraq, due to being an Assyrian Christian, and also as a person with an untreated addition to ice. The Tribunal observed that updated information from the post in Baghdad might be necessary before a final view could be reached about either of these matters.
2009411 (Refugee) [2022] AATA 1719 (29 April 2022) (Unsuccessful)	29 April 2022	27–32	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The applicant claimed that the Formosa toxic waste spill in 2016 put he and his family (who are all fishermen) out of work, and that he was involved in protests relating to the spill. The applicant said that while some people were compensated for the spill his family was not. In considering the applicant's claims, the Tribunal noted DFAT country information indicating that:

			the 2016 'Formosa' chemical spill was Vietnam's worst-ever environmental disaster. Chemicals from the Formosa Plastic Corporation spilled into the sea, killed marine organisms and ended the livelihood of fisheries workers. Protests demanding more compensation led to arrests of both street protesters and online activists, notably including Catholic clergy and their followers. DFAT understands that Formosa protests are no longer occurring, at least on a large scale. This is in part because of a deal made with the company to provide compensation to victims. Other sources told DFAT that some remain dissatisfied and have launched legal appeals against compensation, which they consider inadequate. While the Tribunal accepted that the applicant's family was inadequately compensated for the effects of the spill, it did not accept that they were denied compensation for political reasons because they did not have a good relationship with the government, but rather that the compensation scheme favoured those with more influence. Further the Tribunal was not satisfied that the applicant's claims regarding interference from the local authorities in running his family's business reflected 'anything more than the normal application of regulations in a country where official corruption is quite high'. The Tribunal observed that the Formosa spill occurred nearly six years ago and the applicant had not had further confrontations with the authorities in relation to it. On these bases, the Tribunal was not satisfied that the applicant met the refugee or complementary protection criteria.

1716821 (Refugee) [2022] AATA 1774 (29 April 2022) (Unsuccessful)	29 April 2022	51–54	The Tribunal affirmed the decision of a delegate of the Minister refusing to grant the applicants protection visas. The primary applicant's claim for protection related to a fear of harm arising from an ongoing financial property dispute if he were to return to Vietnam. The Tribunal found that there was no evidence to support a finding that the purchaser or any other person intended to deprive the primary applicant of his life, or otherwise inflict harm on him in a manner that would fall within the definition of 'significant harm' for the purpose of s 36(2)(aa).
2118373 (Refugee) [2022] AATA 1741 (28 April 2022) (Successful)	28 April 2022	145–149	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for consideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The applicant claimed that due to his denouncing his Sunni Muslim faith, his drug usage, criminality and history of incarceration, his father and other family members had threatened to kill and or seriously harm him if he were to return to Lebanon. The Tribunal was satisfied that if the applicant were to return to his home town, there would be a real risk that he would suffer serious physical harm or even death at the hands of his family. The Tribunal considered that this harm would amount to significant harm in the form of cruel or inhuman treatment or punishment. Owing to the severe political and financial crisis in Lebanon, the Tribunal was not satisfied that the applicant could obtain effective state protection against the harm he feared. In respect of the possibility of relocation, the Tribunal observed that if the applicant were required to return to Lebanon he would do so without any financial reserves and as a person reliant

			on an opioid substitution program which he would need to pay for in Lebanon. Given the applicant's particular vulnerability, the Tribunal considered that he would have little to no prospects of securing employment and would be left with no other means of support. The Tribunal was satisfied that the applicant would be unable to subsist and would be rendered destitute and homeless.
1927379 (Refugee) [2022] AATA 1694 (26 April 2022) (Successful)	26 April 2022	32–34	Upon consideration of an application for review of a decision of a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The Tribunal accepted that the applicant breached the right of cousin marriage by marrying his ex-wife and that the applicant's ex-wife's family were very hostile towards him. The Tribunal accepted that the male members of the family in Melbourne did not accept the marriage and had been verbally and physically abusive towards the applicant resulting in him requiring psychological support. The Tribunal observed that if the applicant were to return to Iraq, the members of his ex-wife's family residing there would be able to target him with 'impunity that is not available to the Melbourne side'. Based on the evidence as a whole, the Tribunal was satisfied that as a necessary and foreseeable consequence of being removed from Australia to Iraq, the applicant would face a real risk of significant harm in the form of arbitrary deprivation of life, the carrying out of the death penalty, torture, or cruel, inhuman or degrading treatment or punishment.

1711727 (Refugee) [2022] AATA 1769 (21 April 2022) (Successful)	21 April 2022	51–52	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfied s 36(2)(a) of the Migration Act. While the matter was decided on the basis of the refugee criterion, the Tribunal's observations regarding the possibility of relocation for the applicant are also relevant to the complementary protection context. Relevantly, in considering the applicant's circumstances and the reasonableness of him relocating within Pakistan, the Tribunal considered advice in the DFAT Country Information Report that while many Pashtuns have migrated to urban areas including Islamabad and Lahore, and community leaders had told DFAT that Lahore in particular is a safer place for Pashtuns than other parts of the country, DFAT is also aware that members of the Pashtun community, particularly in Lahore, have claimed to have been harassed by police and security forces and to have had difficulty in obtaining identification, and that since the commencement of *Operation Zarb-e-Azb* and the NAP, large numbers of Pashtuns have been arrested across the country on suspicion of terrorism activities – due largely to the fact that the TTP's support base is primarily Pashtun. For these reasons, the Tribunal concluded that it would not be reasonable to expect [the applicant] to relocate himself to another part of Pakistan where he had no family or social supports, to escape the real risk of significant harm he faced in his province.
Mursal and Minister for Immigration, Citizenship, Migrant Services and	19 April 2022	230	The Tribunal affirmed a decision of a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa. Relevantly, the Tribunal was not

Multicultural Affairs (Migration) [2022] AATA 1164 (19 April 2022) (Unsuccessful)			satisfied that Australia owed the applicant non-refoulement obligations, observing that while there is tribal violence and instability in South Sudan, and bribery may be endemic, the applicant (who identified as a member of the Nyefo tribe) had not put forward any evidence that he would be at risk of being the target of tribal violence in South Sudan or that he would be at risk of harm because of any other matter personal to him.
1908055 (Refugee) [2022] AATA 1665 (14 April 2022) (Successful)	14 April 2022	88–95	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfies s 36(2)(aa) of the Migration Act. The Tribunal was satisfied that the applicant faced a real risk of being forcibly recruited into the Syrian army and deployed into conflict with one of the adversaries of the Syrian authorities. The Tribunal was satisfied that the real risk of significant harm to be faced by the applicant was not one faced by the general population, finding that theA applicant faced a particular risk as a forcible recruit who would be considered an able-bodied male of military age. The Tribunal considered that the applicant also faced a particular risk as he could be targeted for abduction, torture and/or killing as an Alawite soldier, by Islamic fundamentalists opposing the Syrian authorities. The Tribunal concluded that these kinds of significant harm, which involve the arbitrary deprivation of life, being tortured and being subjected to degrading treatment, were faced by forcible military conscripts and not applicable to the wider civilian population.
PKZM and Minister for Immigration, Citizenship,	14 April 2022	273, 278–279, 282, 286, 310	The Tribunal set aside the mandatory revocation of applicant's visa under s 501(3A) of the Migration Act.

Migrant Services and Multicultural Affairs (Migration) [2022] AATA 768 (14 April 2022) (Successful)			Specifically, the Tribunal found that it was likely that there was a real risk of "significant harm or persecution such as harassment, assault, arbitrary detention, forced recruitment into militia, torture or death" if the applicant was returned to South Sudan, due to a lack of understanding of the local customs and language and risk of being perceived as a foreigner (at [273]). These factors, combined with his "limited work experience, a limited education, [inability to] read or write" (at [286]) meant that it would be difficult or impossible for him to find work and support himself. While there was discussion of whether he was a member of a particular social group, there was no finding of refugee status. The Tribunal also made findings regarding the applicant's mental health, despite not being presented with any evidence on that point. Specifically, it found that he likely had underlying mental health condition from his traumatic upbringing that would be exacerbated if returned to South Sudan where he had no support network. Given the mental health treatment gap in South Sudan, it was anticipated that being returned to South Sudan would lead to deterioration of his mental health. The Tribunal accordingly set aside the original decision and substituted it with a decision to revoke the cancellation of the applicant's visa.
2113820 (Refugee) [2022] AATA 1500 (13 April 2022) (Unsuccessful)	13 April 2022	18–20	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The applicant did not appear for his hearing before the Tribunal. Relevantly, however, the applicant's claims for protection involved claims that pollution of food and air, as well as 'gutter oil' issues in China are getting worse.

			The applicant claimed that many of his family and friends had been diagnosed with cancer and other diseases because of this pollution, and that he had complained numerous times to the environmental administration department about these issues. While the extent to which these claims were considered was limited in circumstances where the applicant did not appear at the hearing, the Tribunal member indicated that had the applicant attended the hearing, the member would have asked him more questions about his claims of health concerns and diseases, how the claimed pollution of food and air in China is getting worse, and how these issues affected him. The Tribunal member indicated that he would also have asked for more information about the applicant's complaints to the environmental administration department, and country information about the situation in China, including the attitude of the authorities towards environmental and health issues.
1721688 (Refugee) [2022] AATA 1668 (8 April 2022) (Unsuccessful)	8 April 2022	112	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in respect of the complementary protection criterion, the Tribunal observed that the applicant departed Sri Lanka legally in September 2009 and therefore would not be detained under the Immigrants and Emigrants Act (1948) for illegal departure on his return. The Tribunal also found that any hardship or harm the applicant might experience if removed to Sri Lanka, including feelings of emotional distress, due to his medical conditions and the lower standard of available health care in Sri Lanka compared with Australia, 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.
1727960 (Refugee) [2022] AATA 1473 (8 April 2022) (Unsuccessful)	8 April 2022	53	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the Tribunal observed that having regard to country information, it was clear that security in Iraq varies by location, and that, as the applicant conceded, safety is largely location based, and as a Shi'a family in the Shi'a areas of Baghdad, there was no real risk the applicant or his family would face significant harm for sectarian reasons. While the Tribunal accepted that there was a level of generalised violence, it concluded that the chance of the applicant and his family being caught up in generalised violence in Baghdad, as opposed to a rural area, the Kurdish governorate or former Daesh areas of control was much lower and below the level of a real risk.
2118733 (Migration) [2022] AATA 1256 (7 April 2022) (Successful)	7 April 2022	107, 109, 112	The Tribunal set aside a decision of a delegate of the Minister cancelling the applicant's visa and substituted a decision not to cancel the visa. Relevantly, in considering whether the cancellation would lead to the applicant's removal in breach of Australia's non-refoulement obligations, the Tribunal considered the applicant's claims that as a Hazara, he would not be safe in Afghanistan or Pakistan (in circumstances where the applicant might be a national of both countries). Having regard to country information, the Tribunal accepted that the applicant would face a risk of harm as a Shia Hazara in Afghanistan and Pakistan. The Tribunal observed that these claims would give rise to protection obligations under the Refugee Convention and to complementary protection obligations under international law.

2008268 (Refugee) [2022] AATA 1541 (7 April 2022) (Unsuccessful)	7 April 2022	63	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in respect of the complementary protection criterion the Tribunal considered the applicant's claims that he would be unable to secure employment in Thailand due to the circumstances of the COVID-19 pandemic. The Tribunal accepted that given the period of the applicant's absence, and economic difficulties that Thailand had experienced as a result of the pandemic, the applicant may experience some difficulty securing employment upon return. Nonetheless the Tribunal noted that the applicant had parents and siblings in Thailand who could provide him accommodation, and observed that in any event, financial hardship of itself does not constitute significant harm within the meaning of s 36(2)(aa).
1620444 (Refugee) [2022] AATA 1382 (6 April 2022) (Unsuccessful)	6 April 2022	137	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in considering the applicant's claims with regard to complementary protection the Tribunal observed that while the applicant's concerns about Bangladesh's governance, human rights records and political and security environment may have influenced his decision to leave Bangladesh in 2010, and his resolve to remain in Australia, such general conditions affect all Bangladesh citizens and, even to the extent that they may have a slightly greater impact on members of the Buddhist minority (such as the applicant), they did not involve significant harm as defined in s 36(2A) and s 5(1).

1729793 (Refugee) [2022] AATA 1540 (4 April 2022) (Unsuccessful)	4 April 2022	30	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in considering the applicant's claims in respect of complementary protection, the Tribunal observed that any 'social pressure or enticement' to join a pro-Islamic group that the applicant may face if returned to Indonesia would not involve significant harm in the relevant sense.
1707501 (Refugee) [2022] AATA 1667 (3 April 2022) (Unsuccessful)	3 April 2022	46–50, 63–64	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa., While the Tribunal accepted the applicant's claims that while living in Malaysia he had been visited on several occasions by persons claiming to be government officers who presented him with documents claiming that he had unpaid tax liabilities and threatened him – and that country information showed that fraud of this kind was common – these circumstances did not enliven non-refoulement obligations. Relevantly in respect of the application of the complementary protection criterion, the Tribunal was satisfied that the authorities would be able to provide the applicant with effective protection form physical harm, and observed that there were mechanisms for the applicant to test the veracity of claims of unpaid tax. Additionally, the Tribunal found that any economic hardship the applicant might experience if removed to Malaysia 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 of any group or person done with the intention of causing him to suffer significant harm.

2012718 (Refugee) [2022] AATA 1543 (31 March 2022) (Unsuccessful)	31 March 2022	161–174	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in the context of considering the application of the complementary protection criterion, the Tribunal considered the applicant's submission that he did not want to be separated from his wife and children in Australia. The Tribunal acknowledged Art 3.1 of the CROC and Art 23.1 of the ICCPR, and agreed that it would be preferable for the family to remain as a unit. The Tribunal considered whether a claim of significant harm (potentially including psychological harm) might arise as a consequence of the applicant's separation from his family, however concluded that the consequences of the separation would not constitute significant harm in the necessary sense.
2016302 (Refugee) [2022] AATA 1263 (30 March 2022) (Successful)	30 March 2022	78–80	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The applicant, a citizen of Chile, claimed to fear that he would be harmed by a Colombian drug syndicate if he returned to Chile because of his co-operation with the AFP (in Australia) following being charged and convicted of drug importation offences associated with that syndicate. The applicant gave evidence that the Colombian syndicate had great influence in Chile, and in and around the area where he lived in the north of Chile. The Tribunal accepted that there was a real risk the applicant would be significantly harmed by members of

			the drug syndicate upon his return to Chile. Country information considered by the Tribunal suggested that there had been an increase in drug-related crime in Chile, and that there were significant institutional imbalances in the police force in Chile which had resulted in the police committing human rights abuses. The Tribunal noted that while the country information suggests that individuals in Chile would not be ignored by the police if they reported being targeted by an organization, there was no witness protection program or other government organization that could offer long-term protection. In addition, the Tribunal noted reports of increasing evidence of interaction between police officers and local criminal organizations. On the basis of this country information, the Tribunal was satisfied that the applicant could not obtain protection from the authorities in Chile.
1723229 (Refugee) [2022] AATA 1547 (29 March 2022) (Successful)	29 March 2022	63–70, 102	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfies s 36(2)(aa) of the Migration Act. The Tribunal accepted the claims of the applicant – a Tamil man – that he had been arrested and tortured in Sri Lanka by state actors who sought to force him to disclose information about a friend's involvement in the LTTE (the applicant said that he himself was not a member of the LTTE or involved in Tamil separatism). Relevantly, the Tribunal considered country information to the following effect (68–70): 68. … DFAT assesses that progress on accountability for war-era violations is unlikely in the near-term.

			DFAT further assesses that Sri Lankan journalists, investigators, activists, and former police officers probing historical abuses face a high risk of official harassment and a moderate risk of violence. This assessment, combined with the forgoing DFAT country information, indicates the current government and political administration may be actively working pre-emptively to ensure that persons who may expose atrocities allegedly committed against civilians, and by necessary implication, against themselves during the defeat of the LTTE separatists are at significant risk of harassment and violence. 69. The forgoing country information considered cumulative, indicates that a Tamil who was not believed on any reasonable basis to be a member of LTTE, or affiliated with the LTTE or sympathetic to the separatist ambitions of the LTTE, who was tortured in the hope that he may inform on members of the LTTE, may be regarded within the ranks of the government and the security apparatus, a potential source of embarrassment. 70. More specifically, a Tamil returnee who escaped from the place where he was being tortured, who may be able to provide cogent evidence of torture and atrocities linked to the present administrative apparatus, may be viewed as a potential embarrassment to members of the present government and the reputation of existing state agencies. It is reasonable to expect that a Tamil returnee who fitted this profile would face a risk that is not of a lessor nature than the nature of the risk of harm currently faced by journalists, investigators, activists and former

			police officers who probe historical abuses of human rights. On the basis of the applicant's evidence, considered in conjunction with the information in the DFAT report, the Tribunal was satisfied that there was a real risk the applicant would suffer significant harm if returned to Sri Lanka.
2002545 (Refugee) [2022] AATA 1350 (23 March 2022) (Unsuccessful)	23 March 2022	61, 66	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, while the Tribunal accepted that the applicant's inability to change his sex marker on official documents such as his passport in Thailand was a form of discrimination, the Tribunal found that this discrimination did not amount to 'significant harm' as defined in s 36(2A).
1931654 (Refugee) [2022] AATA 1000 (23 March 2022) (Unsuccessful)	23 March 2022	78–81	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in considering the application of the complementary protection criterion, the Tribunal observed that while the applicant may have a lower living standard in Thailand than in Australia, this was a product of conditions in Thailand that affected all Thai residents, and did not involve significant harm as defined in s 362A) and s 5(1).
2119220 (Refugee) [2022] AATA 1544 (20 March 2022) (Successful)	20 March 2022	58–63	Upon consideration of an application for review of a decision made by a delegate of the Minister refusing to grant the applicant a protection visa, the Tribunal remitted the matter for reconsideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The Tribunal accepted that the applicant would face significant harm if he returned to Uganda,

			and that this risk of harm was faced by him personally. In arriving at this conclusion, the Tribunal placed weight upon the following factors (at [62]): a. the applicant has not lived in Uganda since he was [age] years old, and has lived in Australia since he was [age] years old; b. the applicant would relate information to the security or immigration services in Uganda that is consistent with the evidence he provided to the Tribunal, specifically that he believes that his parents were killed in 1981 for their political affiliations with the UPC; c. it is more than mere speculation that this information would exacerbate the risks already faced by the applicant as a returning "deportee"; d. the applicant has not been raised in an environment equipping him to be situationally aware of, or to successfully avoid or resist, the exercise of arbitrary power in Uganda; and e. he speaks no Ugandan dialect, immediately marking him as a "foreigner" or "outsider" and therefore an "easy target". The Tribunal concluded that the cumulative effect of these factors, when taken with the whole of the evidence before the Tribunal, including the country information cited, placed the applicant at risk of differential treatment because of characteristics that distinguished him from the general populace in Uganda.

1721861 (Refugee) [2022] AATA 1340 (18 March 2022) (Unsuccessful)	18 March 2022	62–72	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal found that there was no evidence that the applicant, if charged under the *Immigrants and Emigrants Act (*1948) on his return to Sri Lanka, as a Hindu Tamil, would be arbitrarily deprived of his life, that he would receive the death penalty, that he would be subjected to torture or that he would be subjected to cruel or inhuman or degrading treatment or punishment. The Tribunal did not accept that questioning at the airport or a short detention in the airport's holding cells or at the Magistrate's Court would amount to significant harm, observing that 'there is no material before me to suggest the treatment of detainees at the airport through overcrowding or poor conditions is anything other than the result of insufficient resources' (at [64]).
1711051 (Refugee) [2022] AATA 1310 (16 March 2022) (Unsuccessful)	16 March 2022	45	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in the context of considering the application of the complementary protection criterion, the Tribunal observed that while it accepted the applicant was concerned about being separated from his daughter if he had to return to Egypt, and that this may cause the applicant some hardship and emotional distress, it did not consider that there was any intention in the act of the applicant's separation from his daughter to cause any significant harm to the applicant. The Tribunal observed that there is established authority to the effect that separation from one's family members in Australia or another country, where the claimed harm arises from the

			act of removal itself, will not meet the definitions of 'significant harm' in s 36(2A).
1834018 (Refugee) [2022] AATA 1276 (11 March 2022) (Unsuccessful)	11 March 2022	111	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal did not accept that the applicant was harmed in the past in Taiwan, or that he faced a real risk of significant harm if he were to return. Further, the Tribunal observed that in circumstances where an applicant could obtain protection from an authority of the country such that there would not be a real risk that the applicant will suffer significant harm, the complementary protection criterion will not be made out. The Tribunal observed that Taiwan has low crime, an effective police force and an impartial judicial system. Therefore, even if the applicant were to be targeted, the Tribunal was satisfied that he could obtain protection from the authorities such that there would not be a real risk of significant harm.
2013037 (Refugee) [2022] AATA 1131 (10 March 2022) (Unsuccessful)	10 March 2022	32–34	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal accepted that there was a real risk the applicant would suffer significant harm (in the form of domestic violence) from her ex-fiancé, and that such harm would constitute degrading treatment or punishment within the meaning of s 36(2A). However, the Tribunal observed that country information indicated that there was effective protection available to the applicant in Malaysia, including appropriate criminal law addressing harassment in the context of domestic violence, a reasonably effective police force, and an impartial judicial system. The Tribunal concluded that the availability of this protection meant that that there

			was not a real risk that the applicant would suffer significant harm in Malaysia.
1730415 (Refugee) [2022] AATA 1377 (8 March 2022) (Unsuccessful)	8 March 2022	87	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a temporary protection visa. While the Tribunal accepted that the applicant may suffer some social, financial and vocational hardship if he returned to Sri Lanka, the Tribunal was not satisfied that this hardship would amount to significant harm for the purpose of s 36(2)(aa).
1919221 (Refugee) [2022] AATA 1196 (7 March 2022) (Unsuccessful)	7 March 2022	25	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicants protection visas. In respect of the application of s 36(2)(aa), the Tribunal observed that economic conditions do not generally enliven Australia's complementary protection obligations, which are concerned with intentional or deliberate acts resulting in a real risk of harm.
1715239 (Refugee) [2022] AATA 1348 (4 March 2022) (Unsuccessful)	4 March 2022	108, 113–114, 129–138	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicants protection visas. Relevantly, in the context of complementary protection, the Tribunal rejected the applicants' claim that the first applicant or her children, as ethnic Pashtuns, would suffer significant harm on return to Pakistan. The Tribunal also rejected various other claims that were submitted to enliven Australia's complementary protection obligations. The Tribunal accepted that if the applicants were removed from Australia to Pakistan, the children would face uncertainty about attending a girl's school in [Area 1]. The Tribunal accepted that militant groups such as the TTP had attacked female teachers and school students due to their ideological opposition to female

			education in the past. However, the Tribunal was not satisfied that the children's uncertainty about attending girls' schools in [Area 1] amounted to severe pain or suffering, or pain or suffering that could reasonably be regarded as cruel or inhuman in nature, or amount to extreme humiliation which is unreasonable. The Tribunal also considered the first applicant's depression and the fact that her mental health was deteriorating due to pressures surrounding her visa. The Tribunal accepted that basic health care in Pakistan is free, but due to limited capacity, lack of funding, corruption, slow economic growth and overarching governance challenges these combine to reduce quality and accessibility. The Tribunal further accepted that rural areas have poorer access to health care services, compounded by a lack of infrastructure and transport facilities. Islamic religious practices, such as observation of the *purdah*, also restrict women's activities outside the home and therefore create additional access barriers to health care for women and girls. However, the Tribunal was not satisfied that the applicants would suffer serious or significant harm in Pakistan in provision of health care services, within the reasonably foreseeable future.
1720380 (Refugee) [2022] AATA 1313 (4 March 2022) (Unsuccessful)	4 March 2022	96–103	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicants protection visas. In respect of the application of the complementary protection provisions, the Tribunal concluded that there was not a real risk that the first applicant would suffer significant harm from any person, group, authority or organisation, as a necessary and foreseeable consequence of being returned to the Bahamas. While the Tribunal

			accepted that the relevant country information indicated that there is a higher risk of significant harm due to generalised violence in The Bahamas, in the form of violent crime and homicide, than in many other countries, the Tribunal did not accept that the first applicant had been or would be specifically targeted for violent crime. The risk the applicant faced was one faced by the population generally and not him personally.
1724639 (Refugee) [2022] AATA 5154 (3 March 2022) (Successful)	3 March 2022	32, 36, 37	The Tribunal considered that the applicant, a separated child with USA citizenship was entitled to protection under s36(2)(aa). The Tribunal considered article 37(a) of the Convention on the Rights of the Child (CROC), which, other than its focus on children, mirrors article 7 of the ICCPR. Holding that it was relevant to consider this obligation in determining whether treatment would amount to "significant harm" (at [32]), the Tribunal went on to consider the Committee on the Rights of the Child's General Comment No. 6 regarding unaccompanied and separated children. Of particular relevance in determining whether the applicant was at risk of serious harm were the lack of viable care arrangements in the USA, his preference to remain in the care of relatives in Australia and his integration into the Australian community, including school, social and sporting ties. The Tribunal accepted a submission that the applicant would suffer "emotional and psychological harm… amounting to 'a real risk of irreparable harm contrary to article 37(a) of the CROC and article 7 of the ICCPR; and that this is consistent with the statutory definition of the Act and therefore constitutes significant harm", (at [37]).

1717217 (Refugee) [2022] AATA 1521 (2 March 2022) (Unsuccessful)	2 March 2022	118–121	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in considering whether the applicant met the complementary protection criterion, while the Tribunal accepted that the applicant suffered from PTSD, it was not satisfied that the applicant would suffer as a result of his mental health condition if he returned to Pakistan. The Tribunal observed that the definition of 'significant harm' requires an element of intent, being 'an actual, subjective, intention on the part of a person to bring about the applicant's suffering by their conduct' ([119]). In this case, the Tribunal found that there was no actual, subjective intention on the part of any person to cause the applicant significant harm.
1929933 (Refugee) [2022] AATA 1260 (2 March 2022) (Unsuccessful)	2 March 2022	71, 75, 86, 88	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicants protection visas. One of the applicants' claims was that India's economy has been impacted by the COVID-19 pandemic. While the Tribunal acknowledged that COVID-19 had had an adverse impact in India, it observed that country information indicated that economic recovery was gaining pace. The Tribunal also took into account that the first and second applicants were well educated and have work experience – on this basis, the Tribunal was satisfied that the applicants would obtain employment on return to India. With respect to a claim by one of the applicants that the medication that he required in India was expensive, the Tribunal concluded that it was satisfied that the applicants would not face financial hardship on return to India and on the evidence before it, it was satisfied that the applicant's medication would not be inaccessible to him on account of cost or for any other

			reason. The Tribunal also considered the applicants' claim that the third applicant, a child, would struggle to adapt to life in India. While the Tribunal acknowledged that the third applicant may experience 'short-term' challenges associated with adapting to life in India, and initial difficulties communicating in Punjabi, the Tribunal concluded that the third applicant, with the support of her family, would quickly learn to communicate in Punjabi and adapt to the new cultural, social and physical environment. On this basis, the Tribunal was satisfied that there was not a real risk that the third applicant would suffer significant harm. The Tribunal also rejected a claim by the applicants that they would face a real risk of significant harm on return to India arising from COVID-19, concluding that the risk of contracting COVID is one faced by the population generally and not faced by any of the applicants personally.
1713152 (Refugee) [2022] AATA 1123 (25 February 2022) (Successful)	25 February 2022	65–69	The Tribunal remitted the applicants' matter for reconsideration with directions that the fifth named applicant satisfied s 36(2)(a) of the Migration Act. The Tribunal was satisfied that the fifth named applicant had a well-founded fear of persecution in Jordan on the basis of her sexuality. The Tribunal was not satisfied that the first to fourth named applicants were refugees and went on to consider their claims by reference to the complementary protection criterion. In response to one of the applicant's claims that he would suffer deterioration of his mental health if he returned to Jordan, the Tribunal concluded that this would not satisfy the definition of significant harm because of a lack of any element of infliction of that harm by any person or authority in

			Jordan. The Tribunal also did not accept that a risk of generalised and extremist violence in Jordan gave rise to a real risk of significant harm in the requisite sense.
1721311 (Refugee) [2022] AATA 1134 (24 February 2022) (Successful)	24 February 2022	80–84, 129–134	The Tribunal remitted the applicant's matter for reconsideration with the direction that the applicant satisfied s 36(2)(aa) of the Migration Act. The Tribunal considered evidence that the applicant had used social media to repost anti-Communist views of the Viet Tan and that the applicant's husband was a member of the Viet Tan and had interacted with the Viet Tan official website. Having regard to extensive country information, the Tribunal concluded that it was satisfied that there was a real risk that the applicant's husband would face significant harm if he were returned to Vietnam. The Tribunal was further satisfied that the applicant would be targeted by reason of her association with a member of the Viet Tan. The Tribunal observed that since State of Vietnam would be the perpetrator of the potential harm to the applicant, she would not be able to relocate, nor to seek state protection.
2118018 (Refugee) [2022] AATA 1132 (18 February 2022) (Unsuccessful)	18 February 2022	16, 28	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The applicant submitted that he feared that if he returned to India, he would be unable to afford the expensive medical treatment that he required. The Tribunal member observed that (at [16]): To the extent possible, I endeavoured to explore with [the applicant] and [Representative A] whether any detriment that [the applicant] might suffer in India might meet the definition of significant harm as exhaustively defined in the Act. Given that the

			evolved position in this case is that [the applicant] fears being unable to afford in India the expensive treatment he requires, we were unable to identify any element of intention to harm [the applicant]; the position is that he simply would not be able to access treatment and support because payments of his medical bills by his insurer would cease upon his departure from Australia. Whereas this would have a devastating effect on his health, life expectancy and dignity, and thus activate consideration of the adjectives in some of the definitions of "significant harm", such as "cruel or inhuman treatment or punishment" or "degrading treatment or punishment," we could not find the essential element of intention that might help to establish "significant harm" for the purposes of the Act, notwithstanding that, in the event of removal to India, [the applicant] evidently faces a real risk of not being able to afford the medical and psychological treatment and care he has been receiving. The Tribunal concluded that it was 'unable to identify the essential element of *intention* to harm, explicitly applicable in relation to "torture," "cruel or inhuman treatment or punishment" and "degrading treatment or punishment," and implicit in the act of arbitrarily *depriving* life ([28]).
2015161 (Refugee) [2022] AATA 1129 (18 February 2022) (Successful)	18 February 2022	145, 150	The Tribunal set aside the decision under review and substituted a decision not to cancel the applicant's protection visa. Relevantly, in considering whether cancellation would lead to removal in breach of Australia's non-refoulement obligations, the Tribunal

			observed that the decision in which a protection finding had been made in favour of the applicant had not been quashed or set aside. A decision had not been made that the applicant was no longer a person in respect of whom a protecting finding applied, nor was there any evidence before the Tribunal that the Minister was considering making such a decision. The applicant had not requested removal to Iraq; on the contrary, his position was that if he were removed to Iraq, he would face persecution for the reasons given in his protection visa application. The Tribunal observed that if the Minister were to make a decision under s 197D of the Migration Act that the applicant no longer engaged protection obligations, then he would be entitled to seek review of that decision. However, no such decision had been made. The Tribunal concluded that the mandatory consequences of visa cancellation in circumstances where the applicant could not be removed from Australia weighed strongly in favour of not cancelling the visa.
1617797 (Refugee) [2022] AATA 1067 (17 February 2022) (Unsuccessful)	17 February 2022	35, 38–43	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The applicant submitted that the Romanian healthcare is systematically corrupt and requires bribes to obtain proper medical care, which the applicant's pension would not cover. He submitted that Art 7 of the ICCPR may be violated where an exacerbation of medical conditions could amount to torture or cruel, inhuman or degrading treatment. While the Tribunal accepted that the applicant had very serious physical and mental health issues, and that he would face a lower standard of care in Romania than in Australia, the Tribunal did not accept that his situation would constitute the absence or denial of

			medical services. On the basis of recent country information, the Tribunal did not accept that bribes were as expensive or as entrenched as they were previously, noting that the health system in Romania had seen reforms to the social health insurance scheme and the method of payments. Further, while the Tribunal accepted that COVID had put enormous pressure on the health system of Romania, and that Romania continued to have a low vaccination rate compared to Australia and the EU as a whole, it concluded that these are issues that confront all Romanians needing healthcare. The Tribunal concluded that the applicant would not suffer significant harm in the requisite sense. In reaching this conclusion the Tribunal had regard to the Complementary Protection Guidelines, which set out circumstances generally not considered to be inconsistent with Art 7 of the ICCPR. The Tribunal observed that the Guidelines state that circumstances not inconsistent may include general socio-economic conditions, breach of social and economic rights, absence or inadequacy of medical treatment or imposition of treatment without consent, where that treatment is a medical or therapeutic necessity.
2104299 (Refugee) [2022] AATA 983 (17 February 2022) (Successful)	17 February 2022	94	The Tribunal remitted the applicant's matter for reconsideration on the basis that he satisfied s 36(2)(a) of the Migration Act. While the Tribunal found that the applicant had a well-founded fear of persecution for the purpose of the refugee criterion, the Tribunal's findings might also have relevance for complementary protection cases – the Tribunal concluded that 'in light of the February 2021 military coup in Myanmar, and the significant political and human rights deterioration there,

			and taking into account the applicant's personal circumstances (as a long-term resident abroad, his lack of current documents, and his religious and ethnic background), the Tribunal finds that he has a well-founded fear of persecution for a Convention reason, now or in the reasonably foreseeable future, if he returns to Myanmar.' ([94]).
1829436 (Refugee) [2022] AATA 981 (10 February 2022) (Successful)	10 February 2022	85–94, 109 – 114	The Tribunal remitted the matter for reconsideration with a direction that the applicants satisfied s 36(2)(aa) of the Migration Act. The Tribunal accepted that the family were of Hindu faith, and of the Oadh scheduled caste in Pakistan. The Tribunal accepted the applicants' claim that they would face discrimination in Pakistan as a Hindu family living in Karachi and as members of a scheduled caste. On the basis of country information, the Tribunal found that the discrimination that the applicants would face by other members of the Hindu community, as well as from Muslims in the community and the government was systematic. The Tribunal observed that the applicants could not be expected to modify their behaviour so as not to be the target of discrimination, since the discrimination would be for reasons of their faith and for being scheduled caste within that faith. The Tribunal observed that for the purposes of s 36(2)(aa), the harm that the applicants would face as a result of discrimination would be 'degrading treatment' within the meaning of s 36(2A)(e). The Tribunal further accepted that relocation within Pakistan was not reasonable for each of the applicants, finding that the harm the applicants faced in the form of discrimination and physical harm was pervasive, deeply ingrained in society and could not be avoided. The Tribunal observed that

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

			standards to be applied by courts and administrative authorities in dealing with basic human rights ... Rather, ***ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention***. [emphasis added] Toohey J further remarked: *For, by ratifying the Convention Australia has given a solemn undertaking to the world at large ...* 139. Recently, the Full Federal Court in *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CWY20* identified Australia's obligations in accordance with international law. Allsop CJ relevantly stated: ***International law is comprised of, inter alia, treaties: international conventions, whether general or particular, establishing rules expressly recognised by the contesting states, and customary law****: international custom, as evidence of a general practice accepted as law: Art 38(1)(a) and (b) of the Statute of the International Court of Justice. ...* ***Indeed, Australia has always*** *(by its conduct, and by express statements)* ***accepted that international law is law****...* *Article 26 of the Vienna Convention on the Law of Treaties, opened for signature 23 May 1969,*

			*1155 UNTS 331 (entered into force 27 January 1980), and the principle of pacta sunt servanda, impose upon the Australian Government an obligation to observe and perform, in good faith, those treaties to which it is a party. Failure to do so exposes the nation to responsibility for internationally wrongful acts under the Draft Articles on Responsibility of States for Internationally Wrongful Acts, commended by the General Assembly on 28 January 2002, A/RES/56/83 and on 8 January 2008, A/RES/62/61, in which case Australia may face legal consequences (Art 28), including, but not limited to: cessation and non-repetition (Art 30), reparation (Art 31) in the form of restitution (Art 35), compensation (Art 36) and satisfaction (Art 37), in addition to countermeasures (Art 49**). Whether or not these legal consequences in fact arise, a breach of a treaty is a breach of international law, which is a breach of law nonetheless***. [emphasis added] The Tribunal went on to state that, considering all the evidence, it was satisfied that Australia could be in breach of its obligations under international law if the applicant's visa were refused and he continued to be held in detention on an indefinite basis. In this regard the Tribunal cited Art 9 of the ICCPR ('right to liberty and security of person') and (at [142]) the decision of Kenny and Mortimer JJ in *WKMZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCAFC 55, that 'the continued deprivation of a person's liberty by reason of the operation of the statutory scheme remains a matter a

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

			returned to the wider community or removed to a third country' ([142]). The Tribunal considered that if the applicant's visa was not returned to him, the applicant would be detained indefinitely, suffering continued loss of liberty and uncertainty about his future, as well as emotional hardship by virtue of being unable to provide financial assistance to his family. The AAT concluded that these considerations, grouped under the 'non-refoulement obligations' consideration, weighed 'heavily in favour' of revocation of the visa cancellation ([146]).
Morales Alvarado and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 269 (Successful)	7 February 2022	123–129	The AAT set aside the Minister's decision not to revoke a decision to cancel the applicant's visa, instead substituting the Minister's decision with a decision to revoke the cancellation of the applicant's visa. In making this decision, the Tribunal considered whether Australia's international non-refoulement obligations were engaged in respect of the applicant, but gave this consideration little weight. Relevantly, however, the Tribunal noted the effect of the decision in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v FAK* 19 (2021) FCAFC 153, to the effect that the Tribunal must grapple with and decide the question of whether breach by Australia of its international law obligations is a reason to revoke the cancellation decision. The Tribunal further noted that 'the provisions of non-refoulement must be considered both with respect to the interests of the applicant and also the interests of Australia, namely its obligations in abiding by the Convention' ([124]). In this instance, the Tribunal found no evidence that there was any valid basis

			to consider that the applicant may be at risk for any Convention reason if he returned to Nicaragua.
QDWQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 226 (4 February 2022) (Unsuccessful)	4 February 2022	136, 142, 143, 145, 146, 163	The applicant was a Hazara Afghani who had never lived in Afghanistan but was born and raised in Iran. He had been in Australia since 2011, when he was 21, initially on a Class XB Subclass 202 Global Special Humanitarian Visa, which was converted to a Class BB Subclass 155 Five Year Resident Return Visa in November 2016. The latter visa was cancelled mandatorily under s501(3A) of the Migration Act on character grounds. He was convicted of multiple, serious family violence offences both prior to and after being granted the visa in November 2016. The Commonwealth did not dispute that the applicant was owed non-refoulement obligations (at [133]). Among other bases for this finding, the Tribunal considered that the applicant "would struggle to access medical treatment for any existing or emergent conditions, which may constitute a basis of complementary protection: s 36(2)(aa) of the Act" (at [136]). The applicant had detailed relevant medical concerns but failed to provide adequate medical evidence. In response to the applicant's arguments regarding Australia' potentially breaching international law and any reputational damage if the cancellation was not revoked, the Tribunal found that this did "not constitute a reason for revocation in the Tribunal's exercise of the discretionary power conferred by s 501(CA(4) of the

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

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

			question'" before protection obligations will be found (at [90]). It was found that such a risk existed in this case. There was no possibility of protection elsewhere in Syria where government forces were not in control, due to the risk that the applicant would be considered pro-Assad which could lead to significant harm (at [91]). Thus the application was remitted for reconsideration.
1715542 (Refugee) [2022] AATA 648 (17 January 2022) (Successful)	17 January 2022	2730, 3436	The AAT found that the applicant's claim for refugee status based on fear of violence from a money lender was not substantiated as it did not fit within one of the Convention reasons. It went on to find that the applicant would be at risk of cruel, inhuman or degrading treatment at the hands of the money lender, but that the Taiwanese government actively arrest, prosecution and jail violent organized crime figures, including money lenders. Generally violent crime rates in Taiwan are some of the lowest in the world.
KWBF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 132 (Successful)	5 January 2022	102–103, 110	The AAT set aside a decision of a delegate of the Minister refusing to grant the applicant a Bridging E visa under s 501 of the *Migration Act*, and in substitution decided not to exercise the discretion under s 501(1) to refuse to grant the applicant a Bridging E visa. International non-refoulement obligations were not, however, a factor that weighted in the applicant's favour. While the Tribunal accepted that there remained an ongoing threat to the applicant's personal safety should he return to the area surrounding his home village in Papua New Guinea, as a result of the ongoing presence of both intertribal and politically-motivated violence, the Tribunal was not satisfied that there was any reasonable basis for suggesting that the applicant was unable to live in Port Moresby should he be returned to Papua New Guinea.

			Accordingly, the Tribunal was not satisfied that Australia owed international protection obligations in respect of the applicant. The applicant's concerns regarding his safety in PNG were, however, taken into account by the Tribunal in considering the 'extent of impediments' to the applicant if removed. The Tribunal concluded that this consideration weighed slightly against a decision to refuse to grant the applicant the visa.
1714256 (Refugee) [2022] AATA 513 (4 January 2022) (Unsuccessful)	4 January 2022	116-122	The AAT did not accept that the applicant was entitled to refugee protection based on his religion, ethnicity or other claimed reasons. The Tribunal then went on to examine whether a complementary protection claim was available. The fact that the applicant would not be likely to practice or profess Islamic beliefs was not considered to give rise to a real risk of significant harm, as a large proportion of Iranians are similarly not religiously observant (at [119]). It accepted that he engaged in some Christian practices while in Australia, but not that he had converted to Christianity. The Tribunal also did not accept that the applicant would be at risk of persecution due to having claimed asylum or prosecution for his activities outside of Iran, including "social media comments critical of the government" (at [121]).
1801813 (Refugee) [2022] AATA 67 (Unsuccessful)	4 January 2022	36–38	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the Tribunal was not satisfied that the applicant would suffer significant harm on return to China because of being unable to obtain medical treatment or find employment, noting that there was nothing to indicate that the applicant's condition could not be resolved, or that treatment for her condition would not be available in China.

1919762 (Refugee) [2021] AATA 5256 (Unsuccessful)	20 December 2021	55–56	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in considering whether the applicant met the complementary protection criterion under s 36(2)(aa), the Tribunal observed ([55]): > … 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 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. In this case the Tribunal found that the level of protection from state authorities available to the applicant, if removed from Australia to anywhere within the applicant's country of reference (Thailand), would remove the real risk of significant harm.
Binti Mustaffa (Migration) [2021] AATA 5451 (17 December 2021) (Successful)	17 December 2021	4043	The Tribunal reversed a decision of the Minister's delegate to cancel the applicant's Subclass 482 – Temporary Skill Shortage visa. The applicant had left her position of employment that she was required to retain under the visa, to find employment elsewhere due to financial pressure. As a result of the cancellation of the applicant's visa, her children's visas were also cancelled

			consequentially upon the applicant's visa being cancelled. In determining whether the cancellation decision should be overturned, the Tribunal considered obligations under the ICCPR and the CRC, noting "[t]he applicant's eldest dependent … is an adult and cannot be considered under the CRC, however his circumstances need to be assessed under the ICCPR regarding maintaining family unity" (at [40]). The applicant argued that her children could not return to Malaysia, even though they all had citizenship there, as they do not have the requisite language skills to attend university in Malay language. They have also become a part of a blended family due to the applicant's recent re-marriage. Accordingly, the Tribunal found that "a visa cancellation decision would lead in these familial circumstances to a breach of Australia's international obligations. The Tribunal finds that (under the rubric in Wan) the best interests of the applicant's children would plainly be to remain in Australia in their new blended family arrangement." It therefore set aside the delegate's decision and substituted a decision not to cancel the applicant's visa.
2000642 (Migration) [2021] AATA 5332 (15 December 2021) (Successful)	15 December 2021	129, 131, 134, 135, 140, 154	The AAT set aside a decision to cancel a Subclass 155 visa of a Pakistani Hazara woman despite making adverse credibility findings against her (at [154]), due to Australia's *non-refoulement* obligations under the Refugee Convention, ICCPR and CAT and the best interests of the applicant's Australian citizen children. The adverse findings related to incorrect answers being provided on her visa application, specifically that she held Afghan citizenship, that her parents were deceased

			when her father was in fact alive, that she was married to a man other than her husband, and provision of a bogus document confirming her parents' death. The AAT held that the applicant would face a real risk to her life if removed to Pakistan, but noted that s197C(3) does not prevent removal of the applicant "as there is no suggestion that a previous protection finding … has been made" (at [134]). As a Hazara who would be returned to Pakistan, there was a "real chance her life will be at risk if she returns to Pakistan due to her race and her religion", and thus "cancellation of her visa may lead to a breach of Australia's international obligations" (at [140]). When considering the best interests of the applicant's children, who are Australian citizens, the AAT noted that, while the applicant could apply for a protection visa, the outcome of this could be uncertain due to the fact that she is "a citizen of Pakistan rather than a citizen of Afghanistan as she claims" (at [148]). It cannot be guaranteed that she would receive a protection visa and so if her current visa were cancelled she could be deported and her children could be separated from her, which would not be in their best interests. Accordingly, the cancellation decision was set aside and substituted it for a decision not to cancel the applicant's visa.
2000639 (Migration) [2021] AATA 5156 (Successful)	15 December 2021	95–96, 99–110, 124	The AAT set aside a decision of a delegate of the Minister cancelling the applicant's Subclass 155 visa and substituted a decision not to cancel the applicant's visa. In deciding whether to exercise the power to cancel the applicant's visa under s 109(1), the Tribunal considered (among other things) international obligations in respect of the applicant. In this context, the Tribunal considered

			the extent to which the requirements for the grant of a protection visa in s 36 of the Act reflect Australia's international obligations, noting the finding in *Minister for Immigration, Citizenship and Multicultural Affairs v FAK19* [2021] FCAFC 153 (***FAK19***) that '… there is a demonstrated intention in enacting a statutory framework to move away from the international framework, including by removing reference to the Refugee Convention, but that the only location for assessment of non-refoulement obligations is the terms of the Refugee Convention' ([100]). The Tribunal noted that the distinction between the ability to apply for a protection visa and international non-refoulement obligations might be resolved in current matters before the High Court (including *Plaintiff M1/2021 v Minister for Home Affairs*). In the absence of a High Court decision, however, the Tribunal followed the decision in *FAK19* and considered the applicant's arguments regarding non-refoulement. The Tribunal found that there was a real risk the applicant's life would be at risk if she returned to Pakistan, due to her race and religion. Given the applicant would be detained as an unlawful non-citizen and removed from Australia if she did not apply for a protection visa, the Tribunal found that the cancellation of the applicant's visa may lead to a breach of Australia's international obligations. Having regard to all relevant circumstances, including non-refoulement obligations owed in respect of the applicant, the Tribunal concluded that the applicant's visa should not be cancelled.

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

			the provisions of s 197C. This may result in prolonged detention with no fixed chronological end point. 139. As I am required to do by para 9.1(2) of Direction 90, I weigh the consequence described in [138] above against the seriousness of the Applicant's criminal offending and other serious conduct. As noted above, the Applicant has, and concedes that he has, a serious criminal record, and has engaged in other serious conduct, being family violence. I find that in weighing the non-refoulement obligation (or more accurately, the practical and legal consequences of not granting the Applicant the visa) against the seriousness of the Applicant's offending and other conduct, this consideration weighs marginally in favour of the grant of the visa.
YYZQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4647 (Unsuccessful)	15 December 2021	109–123	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Indian applicant's bridging visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained ([109]–[110]; emphasis in original): 109. [Ministerial] Direction [No 90] explains that a non-refoulement obligation is an obligation not to forcibly return, deport or expel a person to a place where they fear a specific type of harm, citing the Refugees Convention (the 1951 Convention as amended by the 1967 Protocol), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil, and Political Rights and its Second Optional Protocol (paragraph 9.1(1)). It states further:

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

			'other consideration' weighed neutrally in the Tribunal's decision.
1931197 (Refugee) [2021] AATA 5074 (Unsuccessful)	10 December 2021	31–32	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, having concluded that the s 36(2)(a) criterion was not satisfied, the Tribunal stated that for the same reasons it had found there was no *real chance* of serious harm, it considered that the *real risk* element of the test in s 36(2)(aa) had not been met. The Tribunal further observed that ([32]): > To the extent that that the definitions of 'serious harm' and 'significant harm' differ, I am satisfied that economic hardship falling short of denial of the ability to subsist and/or employment discrimination in some workplaces or [Industry 1] sectors where Bumiputera may be the subject of affirmative action policies, where the applicant is an Indian-Tamil, do not constitute 'significant harm' of the kind contemplated by ss 36(2A) and 5(1).
Omoregie and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4590 (Successful)	10 December 2021	90–98	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Nigerian applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal rejected the applicant's claims of feared harm based on both the effect of him being in an interfaith relationship and the dangers he might face as a 'western returnee' (including dangers arising from the applicant being perceived as wealthy and threats of kidnapping, robbery, and extortion). The Tribunal also noted that it was open to the applicant to make an application for a protection

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

			requires an inquiry as to whether one or more of the other considerations should be treated as being a primary consideration or the consideration to be afforded greatest weight in the particular circumstances of the case because it is outside the circumstances that generally apply. In respect of the consideration of international non-refoulement obligations, the respondent accepted, and the Tribunal found, that Australia had non-refoulement obligations in respect of the applicant. The evidence supported a finding that there was a likelihood that the applicant would face a real risk of suffering harm in Iran, which might include religious persecution, if he presented himself as an apostate from Islam. Relevantly, the Tribunal found that as a consequence of the operation of s 501E (refusal or cancellation of visa – prohibition on applying for other visas) and s 48A (no further applications for protection visa after refusal or cancellation), the applicant was unlikely to be permitted to make any further substantive visa applications, including for a protection visa, whilst he was in the migration zone, and if such an application were made, it would be highly likely to be refused. The Tribunal found that it must therefore consider and engage with the immediate legal consequences of a decision not to revoke the Mandatory Visa Cancellation Decision in circumstances where the applicant would be unable to make an application for a substantive visa. The Tribunal went on to find that because the applicant had not applied for a protection visa, the provisions of s 197C which related to circumstances where there has

			been a 'protection finding' with respect to a non-citizen did not apply. The Tribunal therefore observed that while in practice a decision may be taken not to remove an individual such as the applicant about whom the Tribunal has made a finding that they engage Australia's non-refoulement obligations, pursuant to s 198 they would remain liable to be removed as soon as reasonably practicable. The Tribunal concluded that it must therefore consider the consequences of the applicant's removal to Iran pursuant to s 198, and the prospect that he may be held in ongoing immigration detention. The Tribunal concluded that the legal and practical consequences of a decision not to revoke the Mandatory Visa Cancellation Decision were the prospect of the applicant's ongoing immigration detention with no chronologically fixed endpoint or his removal to Iran contrary to Australia's non-refoulement obligations. The Tribunal found that these consequences both weighed very heavily in favour of revocation.
Ozerski and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4775 (Unsuccessful)	6 December 2021	104–135	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Polish applicant's permanent visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal discussed in detail the *Omar* line of authority and regarded the Full Federal Court's decision in that case to be the source of '[t]he present state of the law' on a decision-maker's obligation to consider representations raising non-refoulement obligations. The Tribunal interpreted *Omar* as follows ([108]; footnote omitted):

			> We comprehend the Full Court's decision in *Omar* to mean: (1) it is not sufficient for a decision-maker to merely "*have regard to*" only some of the significant matters raised in the representations; and (2) deficiencies in the decision-making process are not overcome by the adoption of a broad statement such as "*I have considered all relevant matters...*" and "*Having given full consideration to all of these matters [...]*". The Full Court's decision in *Omar* gives rise to a requirement for a decision-maker to engage meaningfully with the significant representations which have been clearly expressed on the risk of harm. [W]e acknowledge that this obligation is not discharged by the generalised statements as quoted in this paragraph of our Reasons. The Tribunal then referred to High Court authority and explained ([109]): > As recently as 2020, the High Court appeared to confirm the position that while there is nothing in the text of s 501CA requiring the Minister to take account of any non-refoulement obligations, if not expressly raised by an Applicant [sic]. As a matter of logic, it follows that where the matter is squarely raised by an Applicant, it is safest to address the issue of non-refoulement. The Tribunal also commented on recent amendments to the *Migration Act* and on the use of protection assessments ([110]; footnote omitted): > I include, for completeness, a reference to the recently passed *Migration Amendment (Clarifying International*

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

			adaptation of the definition of "torture" in s 5(1), which is clearly enough derived from the definition of "torture" in Art 1 of the CAT, which, in turn, speaks of "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for certain purposes such as obtaining information or a confession, or intimidating or coercing the person or a third person. [Tribunal emphasis] 121. Later, the majority wrote: ***The reference in the Act*** *to "intentionally inflicting" and "intentionally causing" is to the natural and ordinary meaning of the word "intends" and therefore to actual, subjective, intent. As Zaburoni confirms, a person intends a result when they have the result in question as their purpose.* [Tribunal emphasis; internal citations omitted] 122. It is clear from these passages that the requirement for *"intention"* is a feature of Australian domestic law, which is not a feature of relevant conventions. 123. I note that in *NQKB*, the Tribunal explained the reasons in *Omar* as follows: *129. Sections 36(2)(a) and 36(2)(aa) of the Act provide the tests for the grant of protection visas on the basis of refugee status and for complementary grounds for protection. Those tests contain exclusions that are not contained in the CAT or ICCPR. Accordingly, a person who could not satisfy the criteria for a protection visa*

			under the Act may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. As Mortimer J said in Minister for Home Affairs v Omar: *Critically, what matters for the exercise of the s 501CA(4) discretion is not the consideration of a visa criterion which might have similar content (in some respects) to Australia's non-refoulement obligations: it is whether Australia's non-refoulement obligations are engaged in respect of a particular individual.* 124. Reading *SZTAL* and *NQKB* together, even though the tests in the Act would be unlikely to capture the Applicant's claims, they may still fall within the ICCPR definitions which are not as limited as the Act definitions. The upshot of all this is that we must consider the Applicant's ICCPR-related claims, even though there is no evidence that Poland intends for there to be adverse outcomes for the Applicant in that country. Within the immediate compass of the present case, the Tribunal concluded ([134]–[135]): 134. We have identified the specific areas or categories referable to the Applicant's stated fear(s) of degrading treatment upon a return to Poland. They comprise (1) uncertainty as to accommodation; (2) uncertainty as to known contacts and support; and (3) uncertainty as to mental health care and treatment.

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

			practice, the Department would conduct an ITOA before the time of removal. Having regard to country information in a DFAT Report on Pakistan in relation to Hazaras and Shia Muslims, the Tribunal accepted that there was a real risk that if the applicant returned to Pakistan, he would be seriously harmed for reasons for his religion and ethnicity. The Tribunal further accepted that the government of Pakistan had shown itself unable or unwilling to protect the applicant and other Hazara against the harm feared. Accordingly, the Tribunal found that Australia's protection obligations wee invoked by the applicant's circumstances and that, as a result, a decision to cancel his visa would place Australia in breach of its non-refoulement obligations. Weighing the discretionary factors, the Tribunal gave this effect 'by far the greatest weight' ([89]).
1827090 (Refugee) [2021] AATA 5171 (Unsuccessful)	30 November 2021	52–59	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Having found that the applicant did not satisfy the s 36(2)(a) criterion, the Tribunal observed that as the 'real risk' test is the same as the 'real chance' standard, it followed that the Tribunal did not accept that there were substantial grounds for believing, as a necessary and foreseeable consequence of the applicant being removed from Australia, that the applicant faced a real risk of significant harm for reasons based on the applicant's economic circumstances. The Tribunal relevantly observed (at [56]): The Tribunal finds there is no intention on the part of the Malaysian Government in its role of managing the

			economy in combination with market forces to inflict significant harm, including subjecting the applicant to cruel or inhuman or degrading treatment or punishment, as a necessary and foreseeable consequence of being removed from Australia to Malaysia. The Tribunal, accordingly, does not accept that the applicant faces a real risk of significant harm, as a necessary and foreseeable consequence of being removed from Australia to Malaysia, based on his economic circumstances, that will amount to significant harm, including being subjected to cruel or inhuman treatment or punishment or being subject to degrading treatment or punishment.
GHSS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4811 (Unsuccessful)	29 November 2021	332–359	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the South Sudanese applicant's Global Special Humanitarian visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained at the outset that ([333]–[334]): 333. Under s197C(3) of the Act, an unlawful non-citizen will not be removed to a country if they have made a valid application for a protection visa that has been finally determined, and in the course of considering that application a "*protection finding*" was made and none of the qualifications apply. One qualification is that the person has asked the Minister in writing to be removed to the country 334. Under 197C(4) a "*protection finding*" includes a finding that a person satisfied the criteria in s 36(2)(a) and 36(1C) of the Act. That is the case here, and none of the qualifications apply. Therefore, Australia will not remove the Applicant to South Sudan.

			As such ([335]): > … rather than taking into account the risk that Australia will breach the obligations it owes to the international community by removing the Applicant to South Sudan, I take into account the legal consequence of Australia upholding its non-refoulement obligations by refraining from removing him to South Sudan. Those consequences are that the Applicant will remain in detention unless: > • he requests removal to South Sudan in writing; > • he is removed to another country; or > • the Min[i]ster exercises his personal powers under sections 195A or 197AB. The Tribunal observed that there was 'no indication that removal to another country is feasible or has even been considered' and '[n]or is there any indication that the Applicant will request removal to South Sudan' ([336]). As to the remaining consequence, the Tribunal concluded ([352]): > I am satisfied that it is possible that the Applicant could meet the criteria for the Minister to make a Residence Determination under s 197AB of the Act or grant a visa under s 195A of the Act at some future time if some dynamic factors change in his favour. I will proceed on the basis that those outcomes are only possibilities at this stage. Since the Tribunal considered the exercise of the Minister's powers under ss 197AB or 195A to be mere possibilities only, the Tribunal regarded the most likely

			consequence of Australia upholding its international non-refoulement obligations to be the applicant's indefinite detention. The Tribunal ultimately gave 'heavy weight' to this other consideration ([359]).
PYCS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4405 (Unsuccessful)	25 November 2021	112–120	The AAT affirmed a decision of a delegate of the Minister to cancel the Afghani applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal reasoned as follows ([116]–[120]) 116. Any assessment of [the applicant's] claim [of feared harm at] the present time is complicated by the dynamic nature of recent events in Afghanistan. The Tribunal is not in a position to make a conclusive finding about whether non-refoulement obligations are in fact owed to the Applicant. That said, it is possible that the Applicant may suffer harm or persecution at the hands of the Taliban or some other group, because of his religion. His name alone is sufficient to identify him as a Shi'a. It is possible that his removal to Afghanistan would therefore breach these obligations. 117. This of course is not necessarily the end of the matter, if the decision to cancel the Applicant's Visa is not revoked, he could still seek to obtain a different visa, for example a Protection Visa. A Protection Visa is specifically intended to apply in circumstances where an Applicant might face persecution. This Tribunal is not in possession of the detailed specific information that might be available in consideration of an application for a Protection Visa.

			118. There is also the question as to whether the Applicant would be able to go somewhere other than Afghanistan. There is presently no evidence before the Tribunal to suggest that he can. 119. There were questions raised prior to the hearing as to whether it was an open possibility for the Applicant to be returned to Iran, pending the ascertainment of whether he is eligible to hold Iranian citizenship. It is agreed by the Applicant and the Respondent that the Applicant has no right to return to Iran, or to obtain Iranian citizenship. It is agreed that the only relevant country for the purposes of this other consideration is Afghanistan. 120. I am particularly mindful of Paragraph 9.1(6) of [Ministerial] Direction [No 90]. Having regard to all of the above, and the dynamic and unpredictable course of events that may unfold over the weeks, months, and years ahead in Afghanistan, I am of the view that this Other Consideration (a), although not clearly established, may be assumed. This weighs in favour of revocation of the cancellation of the Visa. It is not entirely clear precisely on what basis Australia's international non-refoulement obligations might have been owed with respect to the applicant but, for completeness, the decision has been included in this table of case summaries.
SXNC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	25 November 2021	195–248	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Iraqi applicant's Global Special Humanitarian visa. In the context of considering the relevance of Australia's

(Migration) [2021] AATA 4510 (Unsuccessful)			international non-refoulement obligations, the Tribunal explained ([198]): > Sections 36(2)(a) and 36(2)(aa) of the [*Migration Act*] provide the tests for protection on the basis of refugee status and complementary protection. Those tests contain exclusions that are not contained in the CAT or ICCPR. Accordingly, a person who could not satisfy the criteria for a Protection visa may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. After referring to Article 3(1) of the CAT and Articles 2, 6, and 7 of the ICCPR and the express and implied non-refoulement obligations they contain, the Tribunal discussed available country information about Iraq and rejected three of the applicant's claims of feared harm ([206]–[210]; footnotes omitted): > 206. First, the Applicant claims that Mr A's family have arranged for their relatives in Iraq to harm him because he co-operated with the police. The Applicant also claimed that from 2014 Mr A's family had threatened to harm him and his family in Australia. However, there is no evidence that Mr A or anyone on his behalf ever harmed the Applicant or his family, indicating that any threats made were hollow. Additionally, the Applicant said the threats stopped after Mr A was convicted and Mr T gave similar evidence. Accordingly, I am not satisfied that there is any real possibility that the Applicant would be harmed in Iraq for any reason relating to his assistance to the police concerning Mr A.

			207. Second, the Applicant claims that he will be subjected to cruel, inhumane and degrading treatment because of his mental illness. According to a country information report on Iraq, dated August 2020, by the Department of Foreign Affairs and Trade ("the DFAT report"), a significant proportion of Iraq's population suffers from a mental health or psychological disability. There is significant societal stigma attached to mental health issues which discourages some from seeking treatment. I am not satisfied that the Applicant suffers from a mental illness, but I accept that he experiences symptoms of depression and/or anxiety in times of stress. There is no evidence that the Applicant would tell people in Iraq that he has a mental illness or that, if he obtained anti-depressant medication or other medication to help him sleep, anyone other than those prescribing or dispensing it would know about it. There is no evidence that when the Applicant experiences symptoms of anxiety or depression, it results in conspicuously abnormal behaviour or impairs his ability to perform ordinary functions such that he would be seen to have a mental illness or disability. I am therefore not satisfied that there is a real possibility that the Applicant would be subjected to cruel, inhumane and degrading treatment, or any other kind of serious or significant harm, for reasons relating to his mental health. 208. Third, the Applicant claims there is a risk that he will be kidnapped due to his lengthy stay in the West. The DFAT report indicates that the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted among Iraqis, as evidenced by the large numbers of dual nationals from the United States ("US"), Western Europe and Australia who

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

			risk to a returnee in Baghdad on this ground alone." (Underlining added [by Tribunal.]) 210. These findings are speculative at best and they expressly indicate that having lived in the West, of itself, is not considered a risk factor. The Applicant did not put forward any other risk factors that, together, with having lived in the West, would put him at real risk of being kidnapped. The applicant's remaining claims 'relate[d] to his connection with his father and his employment with his father when they lived in Iraq' ([211]). After referring to available country information, the Tribunal ultimately concluded ([245]–[248]; footnote omitted): 245. I have considered the Applicant's claims individually and cumulatively, and I am not satisfied that he engages Australia's non-refoulement obligations. Nor am I satisfied that the fears he claims to hold are genuinely held. He may apply for a protection visa, however it seems unlikely that he would succeed given his criminal history and risk of re-offending. The legal consequence of a non-revocation decision is therefore likely to be deportation. 246. I am satisfied that security in Iraq is very unstable and that the general population faces a risk of serious injury or death due to terrorist and militia activity. This risk would be faced by the Applicant if he were removed there.

			247. The DFAT report mentions that returning Iraqis who are not in possession of an Iraqi passport must apply for a laissez passer. The Applicant does not have a passport. The Iraqi diplomatic mission will verify that the person is returning voluntarily before issuing a laissez passer. Accordingly, in the event of a non-revocation decision, the Applicant will have a choice between voluntarily returning to Iraq or remaining in immigration detention while the Australian government seeks to make arrangements with the Iraqi government for his removal to Iraq if he does not go voluntarily. I do not allocate any weight in favour of revocation because of the possibility of prolonged detention given that any prolonged detention would be of the Applicant's own making, i.e. his refusal to return to Iraq in circumstances where he is not a refugee or entitled to complimentary protection. 248. This Other Consideration (a) weighs moderately in favour of revocation of the mandatory cancellation.
2109426 (Refugee) [2021] AATA 4890 (Unsuccessful)	23 November 2021	45, 52, 64–65	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. In respect of the application of the complementary protection criterion, among other matters, the Tribunal did not accept that the applicant's former membership of the AVRN was, or would be in the reasonably foreseeable future, of any interest to the Vietnamese authorities. Nor did it accept that the applicant would face harm upon return to Vietnam as a failed asylum seeker. The Tribunal gave weight to the applicant's many arrivals in, and departures from, Vietnam without being the subject of any adverse attention.

SRKB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4390 (Successful)	18 November 2021	119–135	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Afghani (or Pakistani) applicant's protection visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained that ([123]) > given the applicant's personal circumstances, the applicant will not be removed to Pakistan or Afghanistan in the event that the original [cancellation] decision is not revoked: the applicant has been granted his current visa following an assessment of the applicant's own protection obligations (as per section 197C(3)(a) – (b) of the Act). Accordingly, mandatory cancellation will not deprive section 197C(3) of its effect until the applicant formally request to be removed to Pakistan or to Afghanistan; or if the applicant is found to no longer engage Australia's non-refoulement obligations. Here, the Tribunal concluded ([131]–[135]): > 131. The Respondent, and the Tribunal, accepts that the applicant is owed non-refoulement obligations. The Tribunal also accepts that the applicant has had a protection finding made in his favour, and is owed protection obligations. > 132. By practical exercise of s 197C and 189, as expanded on by the Explanatory Memorandum [to the 2021 amendments to the *Migration Act* dealing with international non-refoulement obligations in the context of removal], it now becomes a distinct and possible consequence of the decision in this matter that the

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

			As the 'real chance' standard for the Convention is the same as the 'real risk' test under the complementary protection provisions, given the Tribunal has already made findings that the applicant, who is ethnically Tutsi, faces only a remote and far-fetched chance of serious harm arising from any prospective tension or strife between Hutus and Tutsi, if returned to Rwanda, then it follows that the applicant only has a remote and far-fetched risk – and not a real risk – of significant harm, if returned to Rwanda, based on assessment of the country information, and does not satisfy s 36(2)(aa) in this regard.
2010472 (Refugee) [2021] AATA 5018 (Unsuccessful)	16 November 2021	10	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the AAT observed ([10]): It remains for the applicant to satisfy the Tribunal that all of the statutory elements for the grant of protection are made out (*MIEA v Guo & Anor* (1997) 144 ALR 567 p.596); and although the concept of the onus of proof is not appropriate to administrative inquiries and decision making (*Yao-Jing Li v MIMA* [1997] FCA 289; (1997) 74 FCR 275 p.288), the relevant facts of the individual case will have to be supplied by the applicant themselves, in as much detail as is necessary to enable the decision maker to establish the facts. A decision maker is not required to make the applicant's case for him or her (*Prasad v MIEA* (1985) 6 FCR 155 pp.169-70; *Luu & Anor v Renevier*[1989] FCA 518; (1989) 91 ALR 39 p.45). The Tribunal acknowledges this guidance had been developed for the purposes of considering refugee protection claims, however, I am satisfied it is materially applicable to the assessment of complementary protection claims.

BLSL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4177 (Successful)	15 November 2021	89–101	The AAT affirmed a decision of a delegate of the Minister to refuse to grant the Indian applicant a protection visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal commented on recent amendments to the *Migration Act* concerning the removal from Australia of unlawful non-citizens to whom protection obligations are owed ([90]): > The effect of ss 197C and 198 of the Act was recently amended by the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (Cth). The amendments modified s 197C of the Act so as not to require the removal of unlawful non-citizens to whom protection obligations are owed unless these have been set aside, or the Minister is satisfied they are no longer engaged, or the non-citizen requests voluntary removal. Unlawful non-citizens will not be removed under s 198 of the Act while merits review remains in process. In this case, the Migration and Refugee Division (MRD) of the AAT previously had found that the applicant had a well-founded fear of persecution for a Convention reason and that, as such, he was a person to whom Australia owed protection obligations ([91]). The Tribunal in the present proceedings concluded ([101]): > The Applicant is owed non-refoulement obligations and confronted by a continuation of his immigration

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

			> Sections 36(2)(a) and 36(2)(aa) of the [*Migration Act*] provide the tests for protection on the basis of refugee status and complementary protection. Those tests contain exclusions that are not contained in the CAT or ICCPR. Accordingly, a person who could not satisfy the criteria for a protection visa may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. After setting out the applicant's claims of feared harm, the Tribunal referred to Article 3(1) of the CAT and Articles 2, 6, and 7 of the ICCPR and the express and implied non-refoulement obligations they contain. The Tribunal then discussed available country information about Burundi and reasoned (footnotes omitted): > 179. The Applicant's evidence about threats that he might be unaware of and grievances due to wrongdoings by other family members is speculative and I am not satisfied that there is a real possibility of those fears materialising. His claim that he would face harm because he does not know the culture and is not equipped with the knowledge to survive is so vague, I cannot meaningfully assess it in terms of non-refoulement. > 180. In the absence of a proper diagnosis, it is not apparent exactly what the Applicant's mental health needs are. He is not currently taking medication for his mental health, although he sometimes takes medication to help him sleep. He is managing his mood and wellbeing with exercise, attending church, and

			practicing mindfulness. The counselling he attends relates to alcohol, not anxiety or depression. While he currently exercises at the gym, he said he could exercise without a gym. There is no evidence that he could not attend church, exercise and practice mindfulness in Burundi. I accept that the Applicant's separation from his family could impact on his emotional and psychological wellbeing, and he might not have access to sleeping tablets, but I am not satisfied that this would be deliberate and due to anything personal to him or that it would amount to serious or significant harm. … 182. … I am satisfied that if the Applicant were removed to Burundi, he would face a real risk of societal violence and crime. However, that risk is one faced by the general population and not personal to him, so I am not satisfied that it engages Australia's non-refoulement obligations. 183. I am satisfied that, should the Applicant appear to be a visitor, he could be a target of kidnapping. However, he would not be a visitor: he would be a Burundian national settling in Burundi. … 186. … I accept that the Applicant could face discrimination and harassment because he is a returnee, although there is nothing to support a finding that it would be of a kind that would amount to serious or significant harm. Nor does the country information before me support the Applicant's claim that he would be targeted specifically because he is from a Western

			country as opposed to somewhere else or because he would be seen as having a wealthy family. … 188. … I accept that Burundians who live in regions bordering DRC, and who travel to and from DRC or otherwise engage in activities that could raise suspicions that they are aligned with any anti-government groups, are at risk of arbitrary detention, torture or death. There is no evidence before me of where the Applicant's parents are from and he did not indicate any preference for, or aversion to, particular regions in Burundi in the event that he is deported. He did not indicate an intention to live in any region that borders the DRC, to have anything to do with DRC or to engage in any activity that could be perceived as anti-government. … 191. … While I accept that [the applicant] does not speak [the national language of Burundi] perfectly, and he may well speak with an accent that is unfamiliar in Burundi, there is nothing in the country information to suggest that those things would expose him to harm. Since 2017, more than 120,000 Burundians have returned from other countries, presumably including people who do not speak Kirundi perfectly or who speak with an accent, and the country information does not contain any reports of those people being at risk of harm from the government. Indeed, the government is encouraging them to return and assisting them to re-settle.

			The Tribunal concluded ([192]): > On the evidence before me, I am not satisfied that the Applicant engages Australia's non-refoulement obligations. However, in terms of harm and hardship, I am satisfied that Burundi is a dangerous place and that the danger comes from society and the authorities. I am also satisfied, for reasons given under Other Consideration (b) that the Applicant is likely to experience significant hardship in Burundi. The Tribunal concluded that 'Other Consideration (a)' (non-refoulement) weighed 'heavily in favour of revocation' ([197]).
Eid and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4155 (Successful)	11 November 2021	71–84	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Lebanese applicant's permanent visa. In the context of considering the relevance of Australia's international non-refoulement obligations, although the Tribunal held some credibility concerns about the veracity of the applicant's claims of feared harm, the Tribunal nonetheless concluded ([75]): > … not only does the Tribunal accept that the Applicant has a subjective and genuinely-held concern for his own safety should he be returned to Lebanon but furthermore, that concern has objectively, a satisfactory evidentiary foundation. That objective concern, expressed by the Applicant, is accepted as being an appropriate concern and foundation for engaging this consideration by the Respondent. The Tribunal is satisfied that although large parts of the Applicant's evidence maybe properly be disregarded [sic] for lack of credibility, in the case of the Applicant's assertions

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

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

1710050 (Refugee) [2021] AATA 5090 (Unsuccessful)	2 November 2021	75	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in respect of the application of the complementary protection criterion, the Tribunal observed that while there was some ongoing activity by armed groups in Colombia ([75]): '…none of the applicant's family have left the country which, given the ease with which Colombian citizens can move to neighbouring countries I am satisfied that this is because they feel safe where they are and the applicant would also be able to feel similarly safe.'
1808200 (Refugee) [2021] AATA 4970 (Unsuccessful)	1 November 2021	14	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the Tribunal observed ([14]): It remains for the applicant to satisfy the Tribunal that all of the statutory elements for the grant of protection are made out (*MIEA v Guo & Anor* (1997) 144 ALR 567 p.596); and although the concept of the onus of proof is not appropriate to administrative inquiries and decision making (*Yao-Jing Li v MIMA* [1997] FCA 289; (1997) 74 FCR 275 p.288), the relevant facts of the individual case will have to be supplied by the applicant themselves, in as much detail as is necessary to enable the decision maker to establish the facts. A decision maker is not required to make the applicant's case for him or her (*Prasad v MIEA* (1985) 6 FCR 155 pp.169-70; L*uu & Anor v Renevier* [1989] FCA 518; (1989) 91 ALR 39 p.45). The Tribunal acknowledges this guidance had been developed for the purposes of considering refugee protection claims, however, I am satisfied it is materially applicable to the assessment of complementary protection claims.

2006884 (Refugee) [2021] AATA 5199 (Unsuccessful)	1 November 2021	103, 105–117, 130, 132	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the Tribunal observed ([103]): > … 'Cruel or inhuman treatment or punishment' for the purposes of s 36(2A)(d) is exhaustively defined in s 5(1) 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 pain or suffering must be intentionally inflicted. According to the High Court in *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34 the meaning of intentionally inflicted and intentionally causing in the context of s 5(1) of the Act requires an actual, subjective intention on the part of a person to bring about the suffering by their conduct. Degrading treatment or punishment as set out in s 5(1) involves extreme humiliation which is unreasonable. The applicant claimed that her family would insult her if she were to return to Scotland. In this regard the Tribunal was not satisfied that this 'would reach the level of significant harm envisaged by the legislators' ([114]). The Tribunal observed: > It would not amount to cruel or inhuman treatment or punishment. The structure of the definition of cruel or inhuman treatment or punishment 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 art 7, including rape, female genital mutilation, forced abortion and forced sterilisation and, in some cases, circumstances arising from a forced marriage and domestic violence. These cases do suggest a severity which is greater than insults, even taking into account the applicant's poor mental health, although, of course, insults are unpleasant. The Tribunal is not satisfied therefore that there is a real risk of the applicant suffering cruel or inhuman treatment or punishment through insults or psychological ill-treatment. Further, the Tribunal was also not satisfied that insults or psychological ill-treatment would amount to degrading treatment or punishment as defined in s 5(1). In this regard the Tribunal quoted the following guidance from the Complementary Protection Guidelines ([115]): Treatment may be degrading if it 'humiliates or debases an individual, showing a lack of respect for, or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance'. In this regard, humiliation may be in either the eyes of others, or the eyes of the victim themselves. Treatment may also be said to be degrading if it grossly humiliates a person in front of others, or drives the person to act against their will or conscience...

			The Tribunal observed that ([116]): 'The assessment of the minimum level of severity necessary to constitute 'extreme humiliation' will depend on all the circumstances of the case, including the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the gender, age, state of health or other status of the victim…' In respect of a separate claim by the applicant that she would be homeless if she returned to Scotland, the Tribunal observed that homelessness would not amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, as all of these categories require intentional infliction of harm under the legislation. There would be no intention by any party to cause homelessness. Similarly, the Tribunal was not satisfied that the applicant would face a real risk of significant harm through worsening mental health on the basis that there would be no intentional infliction of harm by any party.
2008506 (Refugee) [2021] AATA 4447 (Unsuccessful)	1 November 2021	11–12	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. The AAT concluded, principally due to the applicant's failure to attend a hearing, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, the Tribunal observed ([11]):

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

			state actors, their family and the wider Muslim community for their conversion to the Catholic religion. The Tribunal noted ([61]): > The Department's Complementary Protection Guidelines state that there must be a real and personal risk to the individual, saying that where the threat is from non-state actors, decision-makers should be satisfied that there are 'extremely widespread conditions of violence, coupled with a particular risk to the individual in question before reaching a conclusion that there is a real risk that an applicant will be arbitrarily deprived of his or her life. In this regard the AAT observed that there was no evidence of widespread conditions of violence in Kosovo. Further, while the Tribunal accepted that there is a risk of harm associated with the lack of protection by law from gun-owners, it observed that this risk of harm is faced by the whole population.
1932468 (Refugee) [2021] AATA 4382 (Unsuccessful)	27 October 2021	37	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Nepalese applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, in the context of the latter criterion, the Tribunal explained ([37]): > In considering whether there would be a real risk that the applicant will suffer significant harm in Nepal for economic reasons, the Tribunal has considered whether there is a real risk that the applicant will be arbitrarily deprived of life, the death penalty will be carried out on

			him, he will be subjected to torture or cruel or inhuman treatment or punishment or he will be subjected to degrading treatment or punishment if he returns to Nepal. As discussed above, the Tribunal considers that on the accepted facts, the applicant has some experience and skills in hospitality and strong English language skills, and he will gain some level of employment on this basis. The Tribunal has also found above that the applicant has access to some family support in Nepal, such as support from his [siblings]. The Tribunal is satisfied that his economic circumstances in Nepal will enable the applicant to support himself and have access to basic medical services. Considering all the evidence before it, the Tribunal is satisfied that there is not a real risk the applicant will suffer significant harm as defined at s 36(2A) in Nepal arising from his economic circumstances. Accordingly, the Tribunal is satisfied the applicant does not have a real risk of significant harm in Nepal on this basis.
1935245 (Refugee) [2021] AATA 4152 (Unsuccessful)	26 October 2021	131, 151, 157, 164	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Iranian applicant a protection visa. The AAT concluded, including due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, the Tribunal also rejected various categories of claimed harm on the basis that they did not amount to 'significant harm' within the meaning of section 36(2A) of the *Migration Act* (or 'serious harm' for the purpose of the refugee criterion). In the context of claimed state discrimination and general environmental concerns in Iran, the Tribunal explained ([131]; footnote omitted):

			The country information alongside the applicant's experiences indicate some degree of state discrimination including in finding employment in the shipbuilding, manufacturing and petrochemical industries and from working in local government, but considering the applicant's past employment and skill set alongside country information that suggests there is limited discrimination I find that exclusion from those industries and sectors would not lead to him facing a real chance of serious harm or a real risk of significant harm. Other negative circumstances arise as a result of Tehran's policy towards Khuzestan. While I accept that poor air quality due to the petrochemical industries, poor water quality and other circumstances may impact the applicant I note that no evidence was provided nor has been found to suggest that the harm the applicant would face as a result of these general environmental concerns would lead in his specific circumstances to serious or significant harm that is discriminatory for refugee reasons or that there is an intentionality to it for complementary protection. Overall, I find that the applicant does not face a real chance of serious harm or a real risk of significant harm based upon being an Ahwaz Arab who lives in Khuzestan Province. In the context of claimed dating difficulties in Iran, the Tribunal explained ([151]): The applicant mentioned that he is dating women in Australia and noted that this is different to the situation he would find himself in Iran where girls wear a hijab and they can't go on a date in Iran. I do not accept that he would be unable to date women, but instead find that the norms of dating are different in the context of Iranian culture to that of Australian culture. I do not

			accept that the applicant having to once again adopt Iranian cultural norms in his effort to date women would amount to serious or significant harm. In the context of claimed inferior medical treatment in Iran, the Tribunal explained ([157]): The Department's PAM 3 Protection visas - Complementary Protection Guidelines provides international case law which supports a view that neither an exacerbation of a medical condition through the act of returning a person or an inability to access medical treatment in the country of return would normally amount to significant harm. The circumstances of this case have not presented me with evidence to suggest that his situation is an exception. As such I find that the applicant will not face a real risk of significant harm based upon the feared claim of inferior medical treatment. In the context of claimed difficulties with finding employment and the general situation in Khuzestan (the Iranian province that the applicant was from), the Tribunal explained ([164]): While I accept that there is discriminatory treatment in some instances the result, though, is not such that the Arab population, which comprises 75% of the province's population, faces serious or significant harm. I accept that water and power are shut down sometimes, from the country information provided to the Tribunal there is no credible information to suggest that this is intentional and the intent being to harm the population (as opposed to load shedding or for repairs for instance).

			The applicant was able to find employment in the past and as noted in the country information referenced by the representative, unemployment was at 14% in 2019, a figure that I find does not indicate the applicant will be unable to find work such that he can't sustain himself. The applicant has wealthy uncles which shows that Arabs can succeed and to whom he can turn to and seek support. For these reasons I find that the applicant does not face a real chance of serious harm or a real risk of significant harm arising from employment opportunities or the general situation in Khuzestan.
Ndirangu (Migration) [2021] AATA 4344 (Unsuccessful)	25 October 2021	45–47	The AAT affirmed a decision of a delegate of the Minister to cancel the Kenyan applicant's student visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained ([45]–[47]; footnotes omitted): 45. In *COT15 v MIBP* (No 1) the Full Federal Court upheld a Tribunal decision affirming the cancellation of a Subclass 101 (Child) visa in which the Tribunal dealt with claims relating to non-refoulement obligations by referring to the fact that such claims could be canvassed in an application for a protection visa. The Full Court noted that the Act contemplates that those obligations will be considered in the context of a protection visa application. 46. In *MIBP v Le* the Full Federal Court, agreeing with *COT15 v MIBP (No 1)*, held that an assessment of Australia's non-refoulement obligations is not a mandatory consideration where it is open for the visa holder to apply in Australia for a protection visa, even if the visa holder had previously been recognised as a

			refugee for the purposes of the Refugees Convention. However, it may be necessary to consider any harm claimed by an applicant which may not engage Australia's international non-refoulement obligations. 47. Mr Ndirangu's claims to fear being killed because of his ethnicity, his association with a particular group, or because the community had assisted him financially can be considered in a claim for a protection visa.
1822391 (Refugee) [2021] AATA 4547 (Unsuccessful)	24 October 2021	90	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded, including due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal dismissed the applicant's concerns about the impact of the COVID-19 pandemic for the following reason (at [90], apparently referring to, and relying on, the exception to accessing complementary protection set out in section 36(2B)(c) of the *Migration Act*): The Tribunal acknowledges the applicants expressed concerns in regard to the COVID situation in Malaysia and accepts that this is a contributing factor to their reluctance to return home. However, as discussed with the applicants during the hearing any difficulties they might encounter as a result of COVID will be difficulties faced by the general population in Malaysia and will not be the result of any systematic or discriminatory treatment aimed at them personally. The applicants did not object to the Tribunal's observation. The Tribunal is satisfied that there is not a real chance

			or a real risk that they will suffer serious or significant harm, for the purposes of the Act, if they return to Malaysia for this reason.
1721917 (Refugee) [2021] AATA 5224 (Unsuccessful)	22 October 2021	72	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. In respect of the complementary protection criterion, the Tribunal considered the applicant's claims that there are a lot of killings by organised crime in Albania and people can be killed in crossfire as well as vendettas. While the Tribunal accepted that organised crime is an issue in Albania, it did not accept that the applicant was a target of organised crime or the focus of a vendetta that put him at a real risk of suffering significant harm should he return. In respect of the risk of being killed in cross-fire, the Tribunal stated that no evidence had been provided to indicate or suggest that there was a real risk that this would occur, and further found that any such risk would be a risk faced by the population of Albania generally, rather than by the applicant personally.
1837470 (Refugee) [2021] AATA 5119 (Unsuccessful)	22 October 2021	78–82	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Albanian applicant a protection visa. In respect of the complementary protection criterion, while the Tribunal accepted that organized crime and government corruption are issues in Albania, it did not accept that the applicant would be a target of organized crime or corrupt politicians or officials such that he would be at a real risk of suffering significant harm should he return to Albania. In relation to the applicant's claim that he risked being murdered in a non-targeted incident, the Tribunal noted information that the homicide rate in Albania in 2019 was 2.3 cases per 100,000 people and has tended to decrease since 2000.
1717022 (Refugee) [2021] AATA 5120 (Unsuccessful)	22 October 2021	57	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection

			visa. Among other claims, the AAT considered the applicant's claim to fear harm on the basis of his relationship with 'Ms A', who belonged to a different caste to the applicant. While the AAT accepted that, as a Punjabi man in an inter-caste relationship, there was a risk the applicant could face harm on his return to Pakistan, the AAT concluded that the likelihood of harm to the applicant in these circumstances was low, noting that the country information in the DFAT report, as well as in the submissions, indicated that it is women who are predominantly the recipients of such violence in Pakistan.
JLJF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3888 (Unsuccessful)	22 October 2021	26, 121	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal found that the applicant could not satisfy the refugee or complementary protection criteria on the basis of ss 36(1C) and 36(2C)(b) respectively. Relevantly, the Tribunal observed that the meaning of 'danger' in the context of these provisions must contemplate both the probability of a thing occurring and the harm that will result from its occurrence – it should not be understood to refer only to probability.
1723343 (Refugee) [2021] AATA 4546 (Unsuccessful)	22 October 2021	171–179	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The AAT concluded, including due to credibility concerns, that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal explained that 'there is generalised violence in parts of Pakistan but … the applicant is exposed to the same risk that all other Pakistanis are exposed to, especially in relation to the activities of

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

			complementary protection criterion, however, the Tribunal found that there existed 'a real risk (not being a remote or insubstantial one) that [the applicants] would be physically injured or even killed by members of the Asa'ib Ahl al-Haq militia' ([46]) and that this amounted to a real risk of significant harm for the purpose of section 36(2A) ([52]). The Tribunal further found that none of the exceptions set out in section 36(2B)(a)–(c) applied to deny the applicants complementary protection.
2107567 (Refugee) [2021] AATA 5052 (Unsuccessful)	14 October 2021	58, 62–64	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Fijian applicant a protection visa. The AAT did not accept the applicant's claims that he was a member of the Fijian military who refused to carry out 'illegal' orders. Separately, in respect of the applicant's diagnosis of schizophrenia, the AAT observed that: 'the Tribunal recognises that the applicant may require psychiatric and/or psychological care and support in the future which engages his right to access the highest attainable standard of health as contained in Article 12(1) of the 1966 *International Covenant on Economic, Social and Cultural Rights*. Article 12(1) recognises the right of all persons to the "enjoyment of the highest attainable standard of physical and mental health". Attributes of the minimum core content of the right include the availability, in sufficient quantity, of public health and health care facilities, goods, services and programmes, accessible without discrimination, and cultural and ethical acceptability and quality'. The Tribunal concluded that it was satisfied that the applicant

			would have access, free from discrimination, to any mental health services he may require in Fiji. On the basis of these findings, in respect of the complementary protection criterion, the AAT concluded that it was satisfied there was 'no real risk that the applicant will 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, is intentionally inflected 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'. It similarly concluded that it was not satisfied that there was a real risk the applicant would suffer arbitrary deprivation of his life or the death penalty.
1828862 (Refugee) [2021] AATA 4931 (Unsuccessful)	14 October 2021	44, 47–52	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. In respect of the complementary protection criterion, the AAT was not satisfied that there were substantial grounds for believing that, as a necessarily and foreseeable consequence of the applicant being removed from Australia to India, there was a real risk that he would suffer significant harm on the basis of being a Sikh and a member of Dera Sacha Sauda (DSS). While the AAT was prepared to accept that in the past the applicant had experienced some problems in his village, perhaps due to being a Sikh who was also a member of DSS, country information indicated that the situation for DSS supporters had improved since that time, a fact that was

			consistent with the applicant's evidence that the situation had changed for the better. The AAT also concluded that there was not a real risk that the applicant would suffer significant harm as a result of his medical condition, finding that the applicant would have access to adequate medical treatment in India.
1707410 (Refugee) [2021] AATA 4864 (Unsuccessful)	13 October 2021	38–45	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. While the AAT accepted that the applicant's claims that he would be arrested and subjected to imprisonment and possible torture by the Indonesian Government or its agents would involve 'significant harm', the AAT concluded that the applicant had not established that there was a 'real risk' that he would be subjected to this type of harm. Similarly, while the applicant's fear that he would be arbitrarily killed or seriously harmed at the hands of his ex-girlfriend's family or Muslim extremists if he returned to Indonesia would also constitute 'significant harm', the AAT was not satisfied that there was a 'real risk' that the applicant would face this harm. In this regard the AAT referred to its reasoning in respect of the refugee criterion, noting that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition: *MIAC v SZQRB* [2013] FCAFC 33.

1810602 (Refugee) [2021] AATA 4635 (Unsuccessful)	12 October 2021	41	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal explained ([41]): > The initial, or even subsequent, financial difficulties the applicant may encounter in China are also not attributable to a reason set out in s5J of the Act. That is, they would not be for reason of the applicant's race, nationality, religion, membership of a particular social group, or political opinion. Further, his financial circumstances and potential difficulties do not amount to any of the categories of significant harm defined in the Act.
WWMD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3630 (Successful)	11 October 2021	286–298	The AAT set aside a decision of a delegate of the Minister not to revoke mandatory cancellation of the applicant's visa and substituted it with a decision revoking cancellation of the applicant's visa. Relevantly, the Tribunal found that the consideration of Australia's non-refoulement obligations weighed somewhat in favour of revoking the mandatory cancellation. The Tribunal considered country information regarding the approach to mental health as well as substance abuse and treatment in Iraq. The Tribunal concluded that given the applicant had long-standing diagnosed mental health conditions and had had a major drug addiction, he was in a category of persons who might attract social stigma if returned to

			Iraq. The Tribunal observed that the applicant might also be imprisoned because of his drug addiction.
NVTN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3989 (Unsuccessful)	11 October 2021	145–173	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Democratic Republic of the Congo applicant's Women at Risk visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained ([148]): > Sections 36(2)(a) and 36(2)(aa) of the [*Migration Act*] provide the tests for protection on the basis of refugee status and complementary protection. Those tests contain exclusions that are not contained in the CAT, or ICCPR. Accordingly, a person who could not satisfy the criteria for a Protection visa may still engage Australia's non-refoulement obligations as a matter of fact despite the Government's interpretation of the scope of its obligations. Within the immediate factual compass of the present case, the Tribunal observed ([158]; footnote omitted): > The Applicant has been convicted by of a particularly serious crime. Given the seriousness of his offending and the risk of re-offending, and having regard to Article 33(2) [of the *Refugee Convention*], it is unlikely that he would engage Australia's non-refoulement obligation as a refugee. There are no such exclusions in the complimentary protections in the CAT and ICCPR. The Tribunal then referred to Article 3(1) of the CAT and Articles 2, 6, and 7 of the ICCPR and the express and implied non-refoulement obligations they contain. After

			referring to available country information, the Tribunal then concluded ([170]–[171]): 170. There is insufficient evidence before me to support a finding that the Applicant engages Australia's non-refoulement obligations. However, it is readily apparent that he will be at considerable risk of generalised crime and violence in his daily life if he is removed to the DRC. 171. In the event of a non-revocation decision, it is open to the Applicant to apply for a Protection visa where his claims can be more extensively articulated and considered. However, given the exclusions in subsections 36(1C)(b) and (2C)(b) of the Act that reflect Article 33(2) of the Refugees Convention, it seems unlikely that such an application would succeed. Nor is there any suggestion that the Minister would use any of his discretionary powers to allow the Applicant to re-enter the wider community. The likely legal consequence of a non-revocation decision is therefore that the Applicant would be removed to the DRC as soon as practicable. The Tribunal concluded that this 'Other Consideration (a)' weighed 'heavily in favour of revocation' ([173]).
NQKB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 4054 (Successful)	8 October 2021	126–165	The AAT affirmed a decision of a delegate of the Minister not to revoke the mandatory cancellation of the Ethiopian applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal explained ([129]):

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

			There is no evidence of a current conflict between Eritrea and either Ethiopia or Tigray State. Nonetheless, the Tribunal concluded that 'Other Consideration (a)' (non-refoulement) weighed 'heavily in favour of revocation' ([165]), apparently due to the possible consequences of non-revocation (including the indefinite detention).
1702978 (Refugee) [2021] AATA 4521 (Unsuccessful)	8 October 2021	194	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Sri Lankan applicant a protection visa. The AAT concluded, including due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal observed ([194]): I do not accept that questioning at the airport or a short detention in the airport's holding cells or at the [local] Magistrate's Court [in Sri Lanka] amounts to significant harm. There is no material before me to suggest[] the treatment of detainees at the airport through overcrowding or poor conditions is anything other than the result of insufficient resources.
1819418 (Refugee) [2021] AATA 4481 (Unsuccessful)	8 October 2021	143–145	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Indian applicants protection visas. The AAT concluded, principally due to credibility concerns, that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, however, in the context of the latter criterion, the Tribunal explained ([143]):

			I do accept … that the applicants' daughter and son would have to readjust to life in India and this would cause them some difficulty in learning Punjabi and making friends and going to a different school. I do not accept that these adjustments to life in a different country constitute any of the defined forms of significant harm [in section 36(2A) of the *Migration Act*], they will not have the effect of nor are they intended to cause degrading treatment or any other form of significant harm. Additionally, the Tribunal observed ([144]–[145]; footnote omitted): 144. I have carefully considered the claims that there is a level of violence in India, that there is a level of violence against women especially rapes, and that the second named applicant feared for her daughter in particular in this regard. 145. The country information indicates that much of the violence perpetrated against women and girls is from their family members. This is not the violence that the second named applicant claimed to fear for her or her daughter. I accept that there is violence in Indian society against women and children. But I do not accept on the evidence before me that there is a real risk that either the second named applicant, or the two children, face a real risk of being harmed in the reasonably foreseeable future because of this violence. This is because the violence the second named applicant claimed to fear and that would occur is that outside the home and family unit. I have found however that the applicants will return to their home village, where they have protection and support of their family members. I find that such

			family support ameliorates the chance of harm outside the family home to the second named applicant and to their daughter. I note in making this finding that the daughter lived in [Village 1] for some months as a baby in 2010 – 2011. In making this finding I have considered the effect that any harm would have on the second applicant given I have accepted she suffers symptoms of anxiety and depression. But I do not accept that there is a real risk of her suffering the harm she claims will occur to her or her daughter, and therefore I do not accept that she will suffer harm which may, even with the impact of her mental health, amount to significant harm.
1715742 (Refugee) [2021] AATA 4826 (Unsuccessful)	6 October 2021	51–56	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The AAT accepted that the applicant was from Bangladesh, that he was of Hindu religion, and that he was a low level past supporter of the Chattra Dal and BNP up until 2008 and then transferred his support to the Awami League and Jubo League. The AAT found that the applicant's claims of politically motivated attacks on him were not credible and on this basis, was not satisfied that the applicant faced a real risk of harm as a result of his political opinion. In respect of the applicant's claims to fear harm as a Hindu in Bangladesh, the AAT noted that country information highlights the targeting of Hindus in Bangladesh, in particular situations and from time to time, as well as the authorities' actions to combat the

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

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

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

			The AAT accepted that the applicant was of Western Highlander ethnicity and the Assembly of God denomination of Christian faith. The AAT accepted that the applicant had been married to a Western Highlander man between 2008 to 2013, and that the marriage had become abusive after her husband became aware that she was not able to have children following a physical assault in 2001 by male members from a rival tribal group. The Tribunal accepted that the applicant's husband and in-laws were angry with her about this as they had paid a 'bride price' to the applicant's family on the condition that the applicant had not been defiled and was fertile. The Tribunal further accepted that the applicant's husband's physical, financial and other forms of domestic abuse continued to be directed at her while they were in Australia, that their relationship had ended in 2013, and that her husband had conveyed threats to significantly harm the applicant if she returned to PNG (where he had returned to). The AAT concluded that while it accepted the applicant's claims in relation to the abusive nature of her relationship, there was little persuasive evidence that the applicant's former husband was strongly motivated to seek out and harm the applicant, should she return to PNG. Nonetheless, the AAT separately found that the applicant faced a real risk of significant harm, in the sense of being subjected to cruel or inhuman or degrading treatment or punishment, arising from the applicant being forced into marriage, as a necessary and foreseeable consequence of being returned to her home area. The Tribunal considered country information from PNG

			which strongly indicated that, should the applicant return to her home city, there would be a real risk that the applicant would be subjected to 'degrading and grim practices associated with forced marriages and bride price'. The AAT considered this risk to be heightened by the applicant's limited economic opportunity outside accepting familial support to avoid significant economic hardship. The AAT accepted that this real risk of significant harm would not be mitigated by the available protections from the state, noting that effective state protection 'is largely absent'. The AAT further observed that the 'wantok' system of social kinship, welfare and mutual obligation derived from PNG's traditional tribal-based society would not provide the applicant with protection. Rather, the wantok system would require her family to repay her bride price, in turn meaning that they would need to force the applicant into another marriage that would entail a bride price. The AAT also accepted that the applicant could not reasonably relocate to another part of PNG, on the basis that she would face a similar appreciable risk of significant harm regarding her marital status and her unresolved bride price in Port Moresby as she would in her home area. The AAT took into account that the applicant would be returning to resettle in Port Moresby without any male companion or immediate family support, and would not be provided with adequate protection by the authorities as a single woman.

1731739 (Refugee) [2021] AATA 4519 (Unsuccessful)	29 September 2021	14–16	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of the latter criterion, however, the Tribunal did identify some basic principles about the exceptions to accessing complementary protection set out in section 36(2B)(a)–(c) of the *Migration Act*. The Tribunal explained ([14]–[16]): 14. Pursuant to s 36(2B)(a) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm in a country if the Tribunal is satisfied that 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 draws guidance from the judgements of the High Court in *SZATV v MIAC* and *SZFDV v MIAC* which held that whether relocation is reasonable, in the sense of 'practicable', must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country: *SZATV v MIAC* [2007] HCA 40; (2007) 233 CLR 18 and *SZFDV v MIAC* [2007] HCA 41; (2007) 233 CLR 51, per Gummow, Hayne and Crennan JJ, Callinan J agreeing. 15. Pursuant to s 36(2B)(b) of the Act there is taken not to be a real risk that an applicant will suffer significant harm in a country if the Tribunal is satisfied that the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm. That is, the level of protection must be such to reduce the risk of the

			applicant being significantly harmed to something less than a 'real risk': *MIAC v MZYYL* [2012] FCAFC 147. 16. Pursuant to s 36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally.
2109841 (Refugee) [2021] AATA 4640 (Unsuccessful)	24 September 2021	56–60	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Solomon Islander applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of the latter criterion, the Tribunal considered the applicant's claim of feared harm arising from being harmed or killed by his cousins over a land dispute. The Tribunal considered this risk of harm to be remote and, additionally, the Tribunal was satisfied that, 'to the extent that he faces the risk of a criminal assault or attack from his cousin or anyone else, the applicant has access to effective state protection from the police or village council, such that the risk of the applicant facing significant harm (within the meaning of this term under the Act) is less than a real risk (s36(2B))' ([57]). Separately, the Tribunal rejected the applicant's claim of feared harm of financial hardship in the Solomon Islands if he were removed from Australia. The Tribunal considered that any such hardship in this case would not rise to the threshold of 'significant harm' for the purpose of section 36(2A) of the *Migration Act*.

1731277 (Refugee) [2021] AATA 4213 (Unsuccessful)	24 September 2021	68–69	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal rejected a claim that 'requisite harm would be caused to the applicant in China as a result of the potential to be indoctrinated in his education in the Chinese Communist system, the lack of free speech in China, and not having the freedoms of a Western country' ([68]), reasoning that ([69]) > such harm applies to the whole Chinese population and would not constitute discriminatory conduct for the purpose of the refugee criterion (s.5J(4)(c)). In relation to the complementary protection criterion, such harm would not meet the criteria because it is a risk faced by the population of the country generally, rather than by the applicant personally (s.36(2B)(c)).
2016248 (Migration) [2021] AATA 4157 (Successful)	22 September 2021	41, 43–60	The AAT set aside a decision of a delegate of the Minister to cancel the Afghani (or Pakistani) applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal commented on recent amendments to the *Migration Act* and acknowledged that ([41]) > under s.197C(1), Australia's non-refoulement obligations are irrelevant to the removal of a person under s.198, and the duty to remove arises irrespective of whether there has been an assessment of

			Australia's non-refoulement obligations: s.197C(2). However, the effect of the recent amendment to s 197(3) is that despite these provisions, s 198 does not require an officer to remove an unlawful non-citizen where a person has been found to be owed protection obligations, regardless of whether the grant of a protection visa is prevented because of other visa criteria or provisions. As a result of these amendments, the duty to remove the applicant under s.198(5) 'should not be enlivened where to do so would breach non-refoulement obligations'. However, the s 197D process may extend the period in detention. As noted above, the applicant as an unlawful non-citizen will be subject to mandatory immigration detention. As the Minister's statutory powers to grant the applicant a visa (s.195A of the Act) or move a non-citizen into 'community detention' (s.197AB of the Act) are non-compellable and discretionary, it is uncertain whether the applicant would be granted a visa or whether she would be eligible for community detention. Therefore, if the applicant were not removed pursuant to s.198(5), the consequence of the cancellation is that there is a prospect of ongoing and possibly indefinite detention. This majority judgment in *Commonwealth of Australia v AJL20* [2021] HCA 21 considered the interpretation and effect of ss.189, 196, 197C and 198 and confirmed the lawfulness of detention of an unlawful non-citizen, even if the Executive has not been taking steps to remove a detainee as soon as reasonably practicable. The Tribunal acknowledges that a lengthy or indefinite detention will cause significant hardship to the applicant. The Tribunal also observed ([42]):

			The phrase 'non-refoulement obligations' is not confined to the protection obligations to which s.36(2) of the Act refers: see *Ibrahim v MHA* [2019] FCAFC 89 at [103]. It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind. After discussing available country information, the Tribunal accepted that 'there is a risk of harm that the applicant may experience in Afghanistan, being a Shia Hazara' ([57]). In a similar vein, the Tribunal later noted that 'the nature of the claims are such that these would give rise to protection obligations under the Refugee Convention or the complementary protection' ([60]). The Tribunal, however, recognised that Australia's executive policy meant that it was unlikely that the applicant would be removed to Afghanistan. As such, the Tribunal considered that Australia's non-refoulement obligations would not be breached as a result of the applicant's visa remaining cancelled.
2016243 (Migration) [2021] AATA 4158 (Successful)	22 September 2021	44, 45–66	The AAT set aside a decision of a delegate of the Minister to cancel the Afghani (or Pakistani) applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal commented on recent amendments to the *Migration Act* and acknowledged that ([44]) under s.197C(1), Australia's non-refoulement obligations are irrelevant to the removal of a person under s.198, and the duty to remove arises

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

			The phrase 'non-refoulement obligations' is not confined to the protection obligations to which s.36(2) of the Act refers: see *Ibrahim v MHA* [2019] FCAFC 89 at [103]. It is defined in the Act to include non-refoulement obligations that may arise because Australia is a party to one of the instruments, or any obligations accorded by customary international law that are of a similar kind. After discussing available country information, the Tribunal accepted that 'there is a risk of harm that the applicant may experience in Afghanistan, being a Shia Hazara and a woman' ([59]). In a similar vein, the Tribunal later noted that 'the nature of her claims are such that these would give rise to protection obligations under the Refugee Convention or the complementary protection' ([63]). The Tribunal, however, recognised that Australia's executive policy meant that it was unlikely that the applicant would be removed to Afghanistan. Additionally, the applicant had made a protection visa application in Australia, which remained pending at the time of the Tribunal's decision. As such, the Tribunal considered that Australia's non-refoulement obligations would not be breached as a result of the applicant's visa remaining cancelled.
1614931 (Refugee) [2021] AATA 4375 (Unsuccessful)	22 September 2021	148–149	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The AAT concluded that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, in the context of the latter criterion, the Tribunal referred to High Court authority explaining the meaning of

			'significant harm' in section 36(2A) of the *Migration Act* and the requirement of an intentional act or omission. Here, insofar as the applicants' claims were based on the prospect of facing societal discrimination in Pakistan if removed from Australia, the Tribunal reasoned ([149]): > Nor am I satisfied that societal discrimination falls within the definition of 'significant harm'. This is because I am not satisfied in a case such as this … that societal discrimination would fall within the exhaustive definition [in section 36(2A)]. In other words, I am not satisfied that any societal discrimination would involve arbitrary deprivation of life, torture, or cruel or inhuman treatment or punishment or degrading treatment or punishment in a case such as this.
1810829 (Refugee) [2021] AATA 4673 (Successful)	21 September 2021	66, 67–83	The Tribunal remitted this matter to a delegate of the Minister with a direction that the Iraqi applicant satisfied the complementary protection criterion (section 36(2)(aa) of the *Migration Act*). The applicant did not satisfy the refugee criterion (s 36(2)(a)) because the real chance of persecution that he faced in Iraq as a member of a particular social group (namely, his family, including his brother and father who faced a real chance of serious harm from Shia militia on imputed political opinion grounds) did not relate to all areas of Iraq as required by section 5J(1)(c). The Tribunal, however, was satisfied that ([68]; footnote omitted) > … there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to southern Iraqi governorates, there is a real risk that he will suffer significant harm at the hands of Shia militia groups. The

			Tribunal is satisfied that the harm involves severe physical or mental pain or suffering or both, which is intentionally inflicted on the applicant. The Tribunal is satisfied that the harm also involves an act that causes, and is intended to cause, extreme humiliation which is unreasonable. The Tribunal is therefore satisfied that the treatment that the applicant will be subjected to amounts to cruel or inhuman treatment or punishment, or degrading treatment or punishment, as defined in the Act. The Tribunal also concluded that none of the exceptions set out in section 36(2B) applied to deny the applicant complementary protection.
1904644 (Refugee) [2021] AATA 4668 (Unsuccessful)	21 September 2021	52	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Zimbabwean applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Relevantly, in the context of the latter criterion, the Tribunal 'note[d] and accept[ed] the applicant's concern that he will face hardship returning to Zimbabwe because of the poor economic circumstances of Zimbabwe and general crime related violence. However, the Tribunal finds that these circumstances are circumstances faced by the population of the country generally and not faced by the applicant personally. As such, in accordance with s 36(2B)(c), there is taken not to be a real risk that the applicant will suffer significant harm on his return to Zimbabwe' ([52]).
2105530 (Migration) [2021] AATA 4146 (Unsuccessful)	21 September 2021	49	The AAT affirmed a decision of a delegate of the Minister to cancel the Malaysian applicant's bridging visa. In the context of considering the relevance of Australia's international non-refoulement obligations,

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

			concluded that it did not have sufficient country information concerning the extent of disadvantage that the applicant would face on the basis of his mental health and HIV status, in the context of a poor economy with high levels of poverty and no social support, to make a finding that the applicant's capacity to subsist would be threatened or that he would be at a real risk of the other kinds of harm that engage non-refoulement obligations. The Tribunal observed that it was possible that, in the context of a protection visa application with more detailed, reliable country information, such a finding could be made (although that was speculative at this stage). The Tribunal concluded that there was insufficient evidence before it to find a likelihood that the applicant engaged Australia's non-refoulement obligations. Nonetheless, the Tribunal considered that this consideration overlapped with another consideration ('extent of impediments if removed') and that weight should be allocated on the basis of these two considerations combined. The Tribunal found that the hardship and risk of harm that the applicant would face in Ethiopia, including a likelihood that he would struggle to meet his basic needs, weighed heavily in favour of revocation of the mandatory cancellation of the applicant's visa. This was the only matter that weighed in the applicant's favour, however, and the Tribunal ultimately concluded that the cancellation of the applicant's visa should not be revoked.
XTRG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	20 September 2021	112–123, 150	The AAT set aside a decision of a delegate of the Minister not to revoke mandatory cancellation of the applicant's visa and substituted it with a decision revoking cancellation of the applicant's visa.

(Migration) [2021] AATA 3378 (Successful)			Relevantly, the Tribunal found that Australia's non-refoulement obligations weighed very strongly in favour of revocation of the visa cancellation. The Tribunal accepted that the applicant was likely to suffer harm if he returned to South Sudan on account of his Dinka ethnicity. In this regard, the Tribunal noted country information indicating that conflict, crime and poverty are the prevailing features of life in South Sudan, and that the security situation is 'extremely volatile'. The Tribunal further noted DFAT's assessment that 'ethnicity is the most significant determinant of an individual's risk of experiencing official and social discrimination and violence in South Sudan' and that three prominent ethnic groups, including Dinka, are said to be most at risk. The Tribunal further found that the applicant faced an even greater risk of harm because of his mental illness. In this regard, the Tribunal noted country information to the effect that mental health facilities in South Sudan remain practically non-existent, and there is a dire shortage of trained mental health professionals. The Tribunal also noted reports that it is routine to use prisons to house individuals with mental health conditions; that there is insufficient, if any, medical care provided to people in prison; that inmates with mental conditions are often kept naked, chained, or held in solitary confinement; and reports of deaths of inmates in a prison in Juba due to insufficient food and treatable illnesses such as malaria and diarrhea. The Tribunal accepted that if the applicant were returned to South

			Sudan, there was a risk that he would be unable to obtain ongoing treatment for his mental illness and may face discrimination or mistreatment because of his mental illness.
2010265 (Refugee) [2021] AATA 4555 (Successful)	20 September 2021	12, 64–65, 66–74, 75–85	The Tribunal remitted this matter to a delegate of the Minister with a direction that the Papua New Guinean applicant satisfied the complementary protection criterion (section 36(2)(aa) of the *Migration Act*). The applicant previously had been refused a protection visa on the basis that she did not satisfy the refugee criterion, although that adverse decision was made before the introduction in 2012 of Australia's legislative complementary protection regime. The Tribunal referred to Federal Court authority explaining that it is permissible in such circumstances for the Tribunal on review to consider, and to confine its consideration of the applicant's new protection visa application to, the complementary protection criterion ([12]). Here, the Tribunal rejected the applicant's claim of significant harm based on a fear of gender-based violence from a former intimate partner. The Tribunal accepted, however, the applicant's claim of significant harm based on her being forced into marriage and the existence of coercive practices against women and girls. In particular, the Tribunal 'found a strong thread of credible and persuasive evidence that the applicant faces a real risk of significant harm, in the sense of being subjected to cruel or inhuman treatment or extreme humiliation, arising from the applicant being forced into marriage, as a necessary and foreseeable consequence of being returned to the applicant's home area' ([66]). The Tribunal concluded that 'the significant harm that the applicant has

			a real risk of encountering amounts to being subjected to cruel and inhuman treatment or punishment and subjected to degrading treatment or punishment as required by s.36(2A)(d) and (e)' ([83]). The Tribunal also concluded that none of the exceptions set out in section 36(2B)(a)–(c) of the Act applied to deny the applicant complementary protection.
2109066 (Refugee) [2021] AATA 4222 (Unsuccessful)	20 September 2021	15–16, 60	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal set out, with reference to High Court and Full Federal Court authority, some general principles about the exceptions to accessing complementary protection set out in section 36(2B)(a)–(b) of the *Migration Act* ([15]–[16]): *Relocation* 15. Under s.36(2B)(a) of the Act, there is taken not to be a real risk that an applicant will suffer significant harm in a country if the Tribunal is satisfied that 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. That relocation must be 'reasonable' is also a requirement when considering the definition of 'refugee' and the Tribunal draws guidance from the judgments of the High Court in SZATV v MIAC and SZFDV v MIAC which held that whether relocation is reasonable, in the

			sense of 'practicable', must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country: SZATV v MIAC [2007] HCA 40; (2007) 233 CLR 18 and SZFDV v MIAC [2007] HCA 41; (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing. *State protection* 16. Under s.36(2B)(b) of the Act there is taken not to be a real risk that an applicant will suffer significant harm in a country if the Tribunal is satisfied that the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm. That is, the level of protection must be such to reduce the risk of the applicant being significantly harmed to something less than a 'real risk': MIAC v MZYYL [2012] FCAFC 147. The Tribunal later appeared to apply both of these exceptions to the present case. It observed ([60]): … the Tribunal has further considered the country information relating to State protection, which is referred to above, and finds that the applicant would be able to avail himself of protection from the Malaysian authorities if he returned to that country. Additionally, the Tribunal has considered the country information regarding internal relocation and finds that it would be reasonable for the applicant to relocate within Malaysia to avoid those he purportedly fears might cause him harm, noting he has demonstrated versatility in being able to travel to Singapore, [Country 1] and Australia,

			finding employment in these countries. It follows that even if the Tribunal accepted the veracity of his claims that he faced harm from loan sharks, which it does not, the applicant would not be entitled to protection.
1708370 (Refugee) [2021] AATA 4404 (Unsuccessful)	20 September 2021	45	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal observed (at [45] and apparently relying on the exception to accessing complementary protection set out in section 36(2B)(c) of the *Migration Act*): … no one has an adverse interest in the applicant, or any intention of inflicting significant harm on him, including arising from his or any relatives' preference for the Red Shirts. The Tribunal accepts that the applicant has some broad concerns about Thai politics, and perhaps other aspects of life there. However, these are general conditions that affect all Thai residents, and do not involve significant harm as defined in s.36(2A) …
2108056 (Refugee) [2021] AATA 4645 (Unsuccessful)	15 September 2021	155	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Sudanese applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal observed (at [155] and apparently relying on the exception to accessing complementary

			protection set out in section 36(2B)(c) of the *Migration Act*): > There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These include where the real risk is one faced by the population of the country generally and is not faced by the applicant personally. The Tribunal is satisfied that the risk from crime or general lawlessness or civil conflict is a risk faced by the population of [Sudan] generally and not by the applicant personally.
2002224 (Refugee) [2021] AATA 4303 (Unsuccessful)	15 September 2021	95–106	The AAT affirmed a decision of a delegate of the Minister refusing to grant the British applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal discussed, with reference to High Court authority, the requirement that the statutory types of 'significant harm' in section 36(2A) of the *Migration Act* arise from an intentional act or omission ([95]–[97]). The Tribunal also affirmed the settled propositions that the statutory types of significant harm cannot arise in instances of self-harm or simply from the act of removal from Australia itself ([103]–[104]). In the immediate factual context of the present case, the Tribunal found that 'the applicant's mental health is not of itself grounds for granting complementary protection' and, additionally, that 'there would [not] be any intention on the part of another person or the UK authorities to cause him significant harm because of any underlying mental health issues' ([105]).

1704976 (Refugee) [2021] AATA 4466 (Unsuccessful)	14 September 2021	49	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, in the context of the latter criterion, the Tribunal reasoned ([49]): > Taken at its broadest, the applicant appears to have sought education and employment opportunities in [Country 1] and Australia; to have established herself in Australia; and to be worried about her prospects if she goes back to Thailand. These concerns relate to her personal and family circumstances, and general socio-economic and political conditions in Thailand, compared to Australia. These do not involve significant harm as defined exhaustively in s.36(2A).
1705697 (Refugee) [2021] AATA 4409 (Unsuccessful)	13 September 2021	98	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded, principally due to credibility concerns, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, the Tribunal observed that 'seeking economic benefits in another country, in and of itself, does not give rise to an objectively well-founded fear of harm for the purposes of the refugee criterion, nor does it give rise to reasonable apprehension of harm under the complementary protection assessments, and given the evidence before the Tribunal, the Tribunal so finds' ([98]).
1704366 (Refugee) [2021] AATA 4370 (Unsuccessful)	10 September 2021	48–49	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Taiwanese applicant a protection visa. The AAT concluded, principally due to

			credibility concerns and the applicant's decision not to attend the hearing, that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. Additionally, however, in the context of the latter criterion, the Tribunal additionally considered, and rejected, claimed fears of harm arising from the potential for a China–Taiwan conflict and from the impact of the COVID-19 pandemic. In relation to the first claimed fear, the Tribunal reasoned ([48]): … even if it were accepted for the purposes of this review that there is a real risk that a conflict may occur and that the applicant will suffer harm due to such conflict, as noted above, the limited information before the Tribunal does not suggest that the applicant faces any risk of harm which is specific to himself or greater than that faced by the population generally. In those circumstances, the provisions of s.36(2B)(c) apply – namely the real risk is one which is faced by the population of the country generally and not by the applicant personally and therefore there is taken not to be a real risk that the applicant will suffer significant harm for that reason in Taiwan. In relation to the second claimed fear, the Tribunal reasoned ([49]): … the Tribunal accepts that there is a real risk that the applicant could contract the virus in Taiwan if he returns, particularly given current information about the ongoing spread of the virus and attempts to manage it. However, the contraction of the virus would not be due to any act or omission by any person or authority in Taiwan whereby that harm was *intentionally inflicted*

			on the applicant. The harm from contracting the virus cannot meet the definition, in the Tribunal's view, of 'significant harm' for the purposes of considering the application of the criteria in s.36(2)(aa). The Tribunal also considers that the real risk of contraction of COVID19 faced by the applicant is one which is faced by the Taiwanese community generally and not by the applicant personally (s.36(2B)(c)).
1901883 (Refugee) [2021] AATA 3216 (Successful)	7 September 2021	112–141, 147	The AAT set aside a decision of the Minister to cancel the applicant's protection visa and substituted a decision not to cancel the applicant's visa. In its reasoning, the Tribunal found the matter of whether removal would breach Australia's international non-refoulement obligations to be a 'neutral' consideration which did not weigh against or in favour of cancellation. The Tribunal observed that the cancellation of the applicant's visa would make him an unlawful non-citizen and would result in him being liable to detention under s 189 of the Act unless he agreed to return to Iran and make a written request that he be removed. The Tribunal observed that s 198 was now subject to the provisions of the new ss 197C(3) and 197D of the Act. It observed that broadly speaking, the new subs (3) provides that s 197C does not require or authorise removal of an unlawful non-citizen who has been found to engage protection obligations through the protection visa process unless the decision finding that the non-citizen engages protection obligations has been quashed or set aside, the Minister is satisfied the non-citizen no longer engages protection obligations under the new provision set out in s 197D, or the non-citizen requests removal. For this reason, the Tribunal observed that

			removal under s 198 does not inevitably follow from a person becoming an unlawful non-citizen where there has been a previous protection finding made in respect of that person. There is now a procedure contemplated under ss 197C(3) and 197D which provides for a further decision to be made about Australia's international obligations at the time of consideration of removal. The Tribunal observed that subss 197C(4) to (6) contain provisions which set out when there will be a 'protection finding' for the purposes of s 197C(3). The Tribunal observed 197C(5)(a) states that a "protection finding" is made if the Minister was satisfied of any of the matters specified, however expressed and including impliedly. The matters specified then speak of satisfaction about the criterion in ss 36(2)(a) and 36(1C), rather than satisfaction with the provisions simpliciter. The Tribunal determined that when read as a whole, it is apparent that this paragraph (and the subsequent paragraphs) direct attention to the essence of the provisions. The Tribunal members concluded that in their view, s 197C(5)(a) has the effect of defining a 'protection finding' as one where a finding has been made about the protection obligations arising under the refugee criterion, either under the Refugee Convention or under the statutory definition for a 'refugee' which is based on the Refugee Convention. It does not require that the 'protection finding' be in precisely the same terms as the current provisions in s 36. The Tribunal considered that this conclusion was reinforced by the outline of the scope of s 197C(5) set out in the Explanatory Memorandum.

			The Tribunal observed that in this case, a delegate of the Minister had made a finding on 30 November 2009 that the applicant 'has been found to be owed protection obligations under the Refugees Convention, as set out in the attached Refugee Status Assessment record'. The Tribunal considered this to be a finding of 'similar effect' to the present s 36(2)(a) of the Act. The delegate had also made a finding about Art 33(2) of the Refugee Convention which the Tribunal observed was almost in the same terms to the present s 36(1C) of the Act. Accordingly, the Tribunal found that there was a 'protection finding' previously made in respect of the applicant within the meaning of s 197C(5)(a) of the Act. This being the case, the Tribunal observed that pursuant to s 197C(3) the applicant's removal was not required or authorised unless one of the exceptions applied, one of those exceptions being a determination under s 197D(2) of the Act. The Tribunal observed that if there was no determination under s 197D(2), the existing protection finding would ensure that the applicant was not removed in potential breach of those obligations. If a determination *was* made by the Minister that protection obligations were no longer owed based on an assessment of those obligations, any removal would not give rise to such a breach. The Tribunal found that the cancellation of the applicant's protection visa would therefore not, of itself, lead to removal in breach of Australia's international obligations on non-refoulement. For this reason, the Tribunal concluded that it was unnecessary to make an assessment about protection obligations when

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

DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3228 (Unsuccessful)	6 September 2021	154–157, 171–173	The AAT affirmed a decision of a delegate of the Minister refusing to revoke the mandatory cancellation of the applicant's visa. Relevantly, the Tribunal noted that in light of the decision in *Ali v Minister for Home Affairs* [2020] FCAFC 109, it must consider whether Australia owes non-refoulement obligations to the applicant; it could not defer such consideration until the lodgement of any protection visa application. The Tribunal found that the applicant's claims did not engage Australia's non-refoulement obligations and accordingly this consideration did not weigh in favour of revocation of the mandatory visa cancellation decision. In respect of non-refoulement obligations arising under the CAT and ICCPR, while the Tribunal accepted that country information indicates that 'the peace process in South Sudan remains fragile after seven years of war', the Tribunal found that it could not be satisfied on the grounds of this information that there was a real risk the applicant would suffer significant harm of the necessary kind if returned to South Sudan. The Tribunal noted that while inter-ethnic conflicts continue in many parts of the country, there appears not to be such conflict currently occurring in Western Equatoria (where the applicant's family was from). The Tribunal further noted that while country information indicates that forced recruitments do occur, this appears not to be prevalent in Western Equatoria.
2107520 (Refugee) [2021] AATA 4081 (Unsuccessful)	6 September 2021	46–52	The AAT affirmed a decision of a delegate of the Minister refusing to grant the British applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. With respect to the

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

			complementary protection criterion. In the context of complementary protection, however, the Tribunal did appear to refer to, and rely on, the exception to accessing complementary protection set out in section 36(2B)(c) of the *Migration Act*. The Tribunal explained ([93]): … the Tribunal is not satisfied that there is a real risk of significant harm from village chiefs or villagers because of [the applicant's Pentecostal] religion, or on the basis of her status as a single woman. The Tribunal is satisfied that the risk of crime is one faced by the population generally and not the applicant personally.
1823125 (Refugee) [2021] AATA 4156 (Successful)	1 September 2021	51, 52–61	The Tribunal remitted this matter to a delegate of the Minister with a direction that the Ghanian applicant satisfied the complementary protection criterion (section 36(2)(aa) of the *Migration Act*). The applicant did not satisfy the refugee criterion (s 36(2)(a)) because the persecution that he feared in Ghana was not for a Convention reason. The Tribunal, however, found that 'there is a real risk that the applicant will be harassed, beaten, or killed by members of his tribal community (including his extended family) if he is returned to Ghana because of the tribal dispute he has been involved in' ([54]). In particularly, the Tribunal found that 'the harms feared by the applicant (and of which he faces a real risk) includes him being arbitrarily deprived of his life or subjected to cruel or inhuman treatment or punishment (such as being beaten, harassed and subjected to tribal punishments)' ([56]). The Tribunal also concluded that none of the exceptions set out in section 36(2B) applied to deny the applicant complementary protection.

1731205 (Refugee) [2021] AATA 4316 (Unsuccessful)	31 August 2021	39–41	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of complementary protection, the Tribunal considered the applicant's claimed fear of harm based on the impact of the COVID-19 pandemic. The Tribunal found that, while 'country information … indicates [Malaysia] continues to experience high level of infections and ongoing restrictions' and '[m]anagement of the country's response to the pandemic is also complicated by political instability', 'Malaysia has a high level of vaccination rates which is likely to be of benefit in controlling the health crisis' and, additionally, 'if he returns to Malaysia, the applicant will be in the same position as the rest of his family and the Malaysian population in general' ([41]; apparently referring to and relying on the exception to accessing complementary protection set out in section 36(2B)(c) of the *Migration Act*).
1714751 (Refugee) [2021] AATA 4215 (Unsuccessful)	24 August 2021	99, 100–119	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Pakistani applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. In the context of complementary protection, due to credibility concerns, the Tribunal found that there did not exist substantial grounds for believing that the applicant faced a real risk of significant harm in Pakistan but, additionally, the Tribunal found (based on country information) that relocation to Karachi was reasonable in the circumstances (apparently relying on section 36(2B)(a)

			of the *Migration Act* insofar as the Tribunal's findings on relocation relate to complementary protection).
1823563 (Refugee) [2021] AATA 4317 (Unsuccessful)	23 August 2021	44	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Nepalese applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. The Tribunal, however, explained in some detail why it rejected the applicant's claimed fear of significant harm based on his expected economic circumstances if returned ([44]): In considering whether there would be a real risk that the applicant will suffer significant harm in Nepal for economic reasons, the Tribunal has considered whether there is a real risk that the applicant will be arbitrarily deprived of life, the death penalty will be carried out on him, he will be subjected to torture or cruel or inhuman treatment or punishment or he will be subjected to degrading treatment or punishment if he returns to Nepal. … [T]he Tribunal considers that on the accepted facts, the applicant has considerable experience and skills in hospitality, and he will gain some level of employment on this basis. The Tribunal has also accepted above that the applicant has access to some resources in Nepal, such as his remaining property and run-down house in the village, and that he does not face harm for any reason in the event he returns to his village. The Tribunal also takes into account the applicant's wife's poor health and his children's education, and is satisfied that his economic circumstances in Nepal will enable the applicant and his family to have access to basic medical and education services. Considering all the evidence before it, the Tribunal is satisfied that there is not a real risk the applicant will suffer significant

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

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

1700583 (Refugee) [2021] AATA 4082 (Unsuccessful)	20 August 2021	40	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Taiwanese applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. The Tribunal held various credibility concerns about the applicant's claims but, additionally, in the context of complementary protection, it found that 'the applicant would not be denied relevant medical treatment in Taiwan through any act or omission that causes, and is intended to cause her to suffer significant harm' (at [40], in an apparent reference to, and application of, the requirement that the statutory types of 'significant harm' in section 36(2A) of the *Migration Act* require an element of intention).
1712252 (Refugee) [2021] AATA 4374 (Unsuccessful)	18 August 2021	61–90	The AAT affirmed a decision of a delegate of the Minister refusing to grant the South Korean applicants protection visas. The AAT concluded that the applicants satisfied neither the refugee criterion nor the complementary protection criterion. The applicants claimed, and the Tribunal accepted, that there were 'difficulties and challenges in meeting repayments of debts that the applicants owe while seeking to re-establish themselves [in South Korea] to mitigate against and avoid significant financial hardship and mental health conditions' ([62]). The Tribunal, however, after analysing the meaning and types of 'significant harm' in section 36(2A)(a)–(e) of the *Migration Act*, observed that ([67]): While the Tribunal acknowledges the applicants will face difficulties and challenges arising from finding work to support themselves and be required to pay down

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

			claimed that he faced a real risk of significant harm including deprivation of life, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment as a result of him being punished for not having completed his military service and as a result of being required to complete his military service if he returned to Thailand. The Tribunal found that the risk for the first applicant of being eligible for military service if he returned to Thailand was a risk faced by the population generally and not specific to the applicant's particular circumstances. Further, the consequences of the applicant having evaded the military draft also constituted a risk faced by the population generally. In the absence of any evidence to support his claims, the Tribunal also found that the risk to of the applicant being subjected to physical, mental and sexual abuse during military service in Thailand was very low so as not to constitute a real risk. The second applicant claimed that she did not want to return to Thailand because the economy in Thailand was bad. She gave evidence that she and the applicant had no work in Thailand and no money, and that she feared having to fend for herself if the first applicant was detained or arrested upon being returned to Thailand. The Tribunal did not accept that there was a real risk that the applicant or the second applicant would be significantly harmed if returned to Thailand on the basis that both applicants were youthful, fit, and motivated and had been able enough to find work in Australia on a

			permanent basis, indicating that they had a good work ethic and would be able to find work in Thailand. The Tribunal placed 'considerable weight' on country information that the Thailand economy is growing, is a sophisticated economy and that the official unemployment rate is low. For these reasons, the prospects of finding work in Thailand based on the applicant's and the second applicant's circumstances did not amount to significant harm.
1711073 (Refugee) [2021] AATA 4216 (Successful)	11 August 2021	69–91	The Tribunal remitted this matter to a delegate of the Minister with a direction that the Samoa applicants (a mother and her two children) satisfied the complementary protection criterion (section 36(2)(aa) of the *Migration Act*). The applicants did not satisfy the refugee criterion (s 36(2)(a)) because the persecution that the applicants feared in Samoa was not due to a Convention reason. The Tribunal, however, was satisfied that 'there is a real risk of significant harm, in the form of cruel or inhuman treatment or punishment or degrading treatment or punishment, were the applicants to be removed from Australia to Samoa' ([73]). Specifically, after referring to the various statutory types of 'significant harm', the Tribunal concluded ([78]): The Tribunal is satisfied that there is a real risk of these kinds of significant harm if the applicants were to be removed from Australia to Samoa, on the basis of the extensive violence suffered by the first and second named applicants in the past, the perpetrator's recurrent behaviour, his ongoing threats to family members, and country sources which indicate widespread domestic violence in Samoa. The Tribunal is satisfied that this harm could involve threats, violence and sexual abuse,

			which would amount to cruel or inhuman treatment or punishment and degrading treatment or punishment. The Tribunal is satisfied that there is a real risk of significant harm to the second and third named applicants as well as the first named applicant. The perpetrator was prepared to punch the first named applicant in the stomach during pregnancy causing premature labour. He also threatened to kill the second named applicant who was only a young child at the time, and inflicted physical and psychological violence on him, including slapping him so hard he fell over and then mocking him while crying, hitting him with a shoe and stick and pinching him until he cried. Due to his recurrent violent behaviour, the Tribunal is satisfied that there is a real risk of significant harm to the children as well as their mother. The Tribunal also analysed whether any of the three exceptions to accessing complementary protection set out in section 36(2B) applied. In particular, the Tribunal analysed in detail whether 'the applicants could obtain from an authority of the country protection such that there would not be a real risk that the applicants would suffer significant harm' ([83]). The Tribunal concluded that such protection was not available and that neither of the two other exceptions applied.
Bacaj (Migration) [2021] AATA 4134 (Unsuccessful)	10 August 2021	80–83	The AAT affirmed a decision of a delegate of the Minister to cancel the Italian applicant's bridging visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal reasoned as follows ([80]–[83]; emphasis in original): 80. In submissions to the Department, it was stated cancellation of Mr Bacaj's visa would be a breach of

			Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR) as he would be subject to arbitrary detention if his visa is cancelled. 81. Article 9 states, among other things: *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.* 82. Detention of a person who is a non-citizen who does not have a visa is liable to be detained under s.189 of the Act. This is a ground established by law, and does not infringe Art. 9 of the ICCPR. 83. It was also submitted removal of Mr Bacaj would be a breach of Australia's non-refoulement obligation because Italy had found him to be a refugee. Mr Bacaj is a citizen of Italy. It is not suggested he would return to Albania, or that he could not enter and reside in Italy as a citizen of Italy. The Tribunal did not appear to give this 'other consideration' any weight other than to the slight extent that family unity considerations weighed in favour of revocation.
Bibi (Migration) [2021] AATA 4135 (Successful)	10 August 2021	44–64	The AAT set aside a decision of a delegate of the Minister to cancel the Afghani (or Pakistani) applicant's Five Year Resident Return visa. In the context of considering the relevance of Australia's international non-refoulement obligations, the Tribunal observed ([46]):

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

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

			contracting COVID, it rejected the applicant's claim on the basis that it did not amount to arbitrary deprivation of life under the Act. Further, the Tribunal was not satisfied that the applicant's circumstances meant that he would face a greater risk of contracting the virus than other members of the population in Zimbabwe; the risk faced by the applicant was a risk faced by the general population of Zimbabwe.
Maryvan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2502 (Unsuccessful)	26 July 2021	133–173	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.
2004950 (Refugee) [2021] AATA 4055 (Unsuccessful)	23 July 2021	58	The AAT affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The AAT concluded that the applicant satisfied neither the refugee criterion nor the complementary protection criterion. The Tribunal held various credibility concerns about the applicant's claims but, additionally, in the context of complementary protection, it reasoned (at [58], in an apparent reference to the exceptions set out in s 36(2B)(b) and (a) respectively of the *Migration Act*): The Tribunal has found that the applicant's relationship with her husband ended several years ago, that she has not suffered harm since the relationship ended and that she has no intention of reconciling with him. The Tribunal also does not accept that the applicant's children or family are at risk of harm, or that he will use the children or her family to harm the applicant. The Tribunal is further satisfied that the applicant can take steps to divorce her husband if she requires and finds that the applicant could obtained from the authorities in her country, protection such that there is not a real risk that she would suffer significant harm. Furthermore, the applicant's fear of harm is located to the area in which her husband is located, and it would be reasonable for the applicant to relocate to an area of Malaysia, away from Negeri Sembilan, where there would not be a real risk that she would suffer significant harm.
1704030 (Refugee) [2021] AATA 3557 (Successful)	23 July 2021	52–53 (claims), 54–56 (refugee criterion), 60–	The AAT remitted for consideration a decision of a delegate of the Minister refusing to grant the applicant a

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

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

			situation in Karachi, (b) the applicants' wealth or perceived wealth, (c) the applicants' Hazara ethnicity and Sunni religion, (c) the third applicant's disability (autism or ASD), (d) discrimination towards autistic children, (e) the applicants' mental health status (particularly the first applicant), and (f) the applicants' economic circumstances. In the context of category (d), the Tribunal observed ([173]; emphasis in original and footnote omitted): > With regard to facing a real risk of significant harm arising from discrimination and stigma towards the applicants, the Tribunal accepts there is a real risk of such harm. *Significant harm* is different from the concept of *serious harm* as required by 91R(1)(b) in the context of s.36(2)(a). On this occasion, the Tribunal does not have substantial reasons to believe it will amount to significant harm as required by s.36(2A). The Tribunal does not accept such treatments or punishments amount to cruel or inhuman treatment or punishment whereby the circumstances engage a non-refoulment obligation under s.36(2A)(d) and s.5(1). Nor is it satisfied that harm amounts to degrading treatment or punishment as intended by s.36(2A)(e) and s.5(1) as the harm does not amount to extreme humiliation which is unreasonable. In the context of category (e), the Tribunal noted that ([180]; footnotes omitted): > … the Tribunal does not accept the applicant's risk of harm from suicidal ideation amounts to significant harm as there is no targeted capriciousness directed at her by any state or non-state persecutor. The Federal Court has

			confirmed that the definition in s 36(2A) is framed in terms of harm suffered because of the acts of other persons. It does not encompass self-harm, harm arising from mental illness or harm that a non-citizen would suffer as a result of any other illnesses arising on return to a receiving country. Accordingly, the applicants do not satisfy s.36(2)(aa) in this regard. The Tribunal further explained ([184]): With regard to complementary protection provisions, the Tribunal accepts that the applicants will suffer real risk of harm, but the harm will not amount to significant harm in the context of availability of mental health services and stigma and discrimination based on mental health status. There is no suggestion any harm intentionally inflicted is due to denying the applicants services at the same standard as it is provided in Australia by the authorities in Pakistan that would amount to torture, to being subjected to cruel or inhuman treatment or punishment or to being subjected to degrading treatment or punishment. The Tribunal does not accept the real chances of stigma and discrimination in Pakistan arising from mental health problems to be faced by the applicants, amounts to serious harm. Then Tribunal then observed ([185]): The Tribunal notes suicidal ideation in the first applicant has been identified as a mental health symptom. With regard to the first applicant having her life arbitrarily deprived though suicide, the Tribunal also notes the recent Federal Court findings in *CHB16 v Minister for Immigration and Border Protection*

			[2019] FCA 1089 which upheld the Tribunal's decision that self-inflicted harm does not fall within the concept of harm to which s.36(2A) is directed, principally because the language used in s.36(2A) of depriving or subjecting points to the involvement of other persons, usually the government or somebody with sufficient power or authority to perpetrate such acts. With this case law in mind, the Tribunal finds that there is no substantial reason to believe that the applicants, as a necessary and foreseeable consequence of their removal from Australia to Pakistan, will suffer a real risk of significant harm arising from their overall mental health. There is, of course, no suggestion of capital punishment, in this matter. In the context of category (f), the Tribunal reasoned ([190]; emphasis in original): With regard to the complementary protection provision, the Tribunal similarly accepts there is a real risk the applicants will face economic challenges and difficulties if they were to return to return to Pakistan. As mentioned above, *significant harm* is different from the concept of *serious harm* as required by s.91R(1)(b) in the context of s.36(2)(a). With this in mind and taking their economic circumstances outlined above, it does not accept the applicants will face harm that will amount to any significant harm, including being subjected to torture, being subjected to cruel or inhuman treatment or punishment or degrading treatment or punishment as required by s.36(2A). The Tribunal accordingly does not have substantial reasons for believing the applicants, cumulatively considered, will suffer a real risk of significant harm, as a necessary and foreseeable consequence of being removed from Australia to their

			home area within Pakistan, based on the applicants' economic circumstances, broadly considered, under s.36(2)(aa).
1804704 (Refugee) [2021] AATA 3883 (Unsuccessful)	14 July 2021	78–89	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The AAT was not satisfied that the applicant satisfied the refugee criterion on the basis that the applicant's claims did not meet the 'real chance' test – the Tribunal did not accept that the applicant faced a real chance of being persecuted in Pakistan. The Tribunal similarly found that the applicant did not satisfy the 'real risk' test for the complementary protection criterion (which imposes the same standard). In respect of the complementary protection criterion, the AAT also noted that the definitions for each of the kinds of 'significant harm' require that there be an *intention* to inflict harm by some act or omission.
2104473 (Refugee) [2021] AATA 3499 (Unsuccessful)	14 July 2021	52–65	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, the Tribunal did not accept that the harm that the applicant claimed he would suffer – destitution and illness as a result of inability to find a job and/or lack of access to medical services – would amount to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. The Tribunal referred to country information to reject the applicant's submission that white people face specific challenges or threats or lack of access to employment, education, health or housing in South Africa. Further, the Tribunal observed that although hospitals and public clinics are overcrowded in South Africa, this is not

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

			forced to relocate back to South Sudan, the applicant would be exposed to a very real risk of harm, whether by arbitrary detention or by being subject to other forms of violence and inhumane treatment, because he was a person who was identified as someone returning from overseas or because he was a person who suffered from mental illness or both. In addition, the ethic 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. 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-refoulment obligations as enunciated in the [*Migration Act*]', 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 *Refugee Convention*, 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 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-refoulment obligations under each of the *Refugee Convention*, the ICCPR, and the CAT. The Tribunal was satisfied that the applicant was a person who was likely to suffer harm if returned to South Sudan, such that Australia had non-refoulement obligations.
Vasquez (Migration) [2021] AATA 3433 (Unsuccessful)	5 July 2021	125–133	The AAT affirmed a decision of a delegate of the Minister cancelling the applicant's visa. Relevantly, the Tribunal considered whether cancellation would lead to the applicant's removal in breach of Australia's non-refoulement or family unity obligations. The applicant claimed that his life would be in danger should he return to Peru on the basis that the Peruvian death rate from COVID-19 per capita was the highest in the world. The Tribunal did not consider that this claim enlivened Australia's non-refoulement obligations. The Tribunal also rejected the applicant's claim that returning him to Peru would cause a great deal of pain and suffering to his family and would be in breach of Arts 17 and 24 of the ICCPR. The Tribunal did not accept that cancellation of the applicant's visa would result in a breach of Australia's international obligations under the ICCPR. Further, the Tribunal observed that the exercise of the Tribunal's discretion in cancelling the applicant's bridging visa was not bound by considerations under un-enacted international law. The Tribunal found that this consideration weighed neither in favour nor against cancellation of the applicant's visa.
RDHX and Minister for Immigration, Citizenship, Migrant Services and	5 July 2021	91–119	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

Multicultural Affairs (Migration) [2021] AATA 2095 (Unsuccessful)			'other consideration' of whether Australia's international non-refoulement obligations arose in this case. The Tribunal was referred to the decision of *Iyer v Minister for Immigration and Multicultural Affairs* [2000] FCA 1788 for the proposition that a well-founded fear of persecution under the *Refugee Convention* 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 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' (*Ezegbe v Minister for Immigration and Border Protection* [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 *Migration Act*. Further, the choice made by the applicant to return to Malaysia on a number of occasions, and to plan another return trip prior to her arrest, ran contrary to the claims made under this consideration. Accordingly, the Tribunal found that this consideration was of neutral weight.
Deng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2097 (Unsuccessful)	5 July 2021	179–198	The AAT affirmed a decision not to revoke the cancellation of the applicant's Woman at Risk visa. Relevantly, in the Tribunal's view, given the applicant could settle elsewhere in South Sudan (Juba), it was not satisfied that there was more than a remote chance that the applicant would suffer serious harm on the basis of his ethnicity or for any other reason personal to him, or that he would face a real risk of significant harm within the meaning of section 36(2A) of the *Migration Act* that was not one faced by the general population. The Tribunal was not satisfied that the applicant engaged Australia's non-refoulement obligations for any reason put forward by him or that arose on the evidence. Nonetheless, on the basis that the applicant would be at risk of generalised violence and crime in South Sudan, this 'other consideration' of Australia's international non-refoulement obligations weighed to a limited extent in favour of revocation.
1835719 (Refugee) [2021] AATA 3073 (Unsuccessful)	2 July 2021	64	The AAT affirmed a decision not to grant the applicants protection visas. Relevantly, the Tribunal found that 'Mrs B' would not return to a rural or conservative area of Egypt if she returned there since, when pressed, 'Mr A'

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

1721007 (Refugee) [2021] AATA 3310 (Unsuccessful)	30 June 2021	160–176, 187	The AAT affirmed a decision of a delegate of the Minister refusing to grant the applicant a protection visa. Relevantly, in respect of the complementary protection criterion, the Tribunal did not accept that there was a real risk the applicant would face significant harm in Sudan from the former or current members of the Muslim Brotherhood on account of her Coptic Christian religion. The Tribunal further observed that while the applicant had major health issues and would have 'extreme difficulties' in accessing medicine and medical services in Sudan for her multiple medical conditions, this harm did not amount to cruel or inhuman treatment or punishment, or degrading treatment or punishment because it would not be intentionally inflicted. The Tribunal observed that the inadequacies in the health system in Sudan correlate to the poor state of the economy, and years of war. If the applicant were to be unable to access services or medicine it would be due to underfunding and lack of resources, rather than the intentional infliction of harm. The Tribunal was also not satisfied that the applicant faced a real risk of 'arbitrary deprivation of life'. The Tribunal observed that this category of harm corresponds with Art 6 of the ICCPR, which provides that every human being has an inherent 'right to life' and that no-one shall be arbitrarily deprived of life (citing the Explanatory Memorandum to the *Migration Amendment (Complementary Protection) Act 2011*). The Tribunal went on to observe that there is no definition in the Act of 'arbitrary deprivation of life' but given its ordinary meaning, 'arbitrary' can mean

			'subject to individual will or judgment, discretionary'. The Tribunal observed that there is no express requirement for intention in this category of harm, however the word 'deprived' may import an element of deliberateness or some form of positive act, rather than general conditions of poverty or lack of facilities. The Tribunal noted that the Complementary Protection Guidelines refer to arbitrary deprivation of life as also involving elements of injustice, lack of predictability, or lack of proportionality, and also suggest that in order to establish a risk of arbitrary deprivation of life from a non-state actor, there must be extremely widespread conditions of violence and systemic breakdown of law enforcement, coupled with a particular risk to the individual. It further noted that the courts have also suggested that this kind of harm involves such matters as extrajudicial killing and excessive use of force rather than the consequences of scarce medical resources. The Tribunal considered a European Court of Human Rights case (*D v the United Kingdom* [1997] ECHR 25; (1997) 24 EHRR 423) in which the Court found that the removal of D, who was HIV-positive and in the final stages of illness, to his home country would violate the prohibition of 'inhuman and degrading treatment' in Art 3 of the European Convention on Human Rights (which, the Tribunal observed, has similar provisions to the complementary protection provisions). The Tribunal distinguished that case from the present case, finding that the applicant was not at an advanced or terminal stage of illness, and that she had family support in Sudan. The Tribunal concluded that it was not satisfied

			that there was a real risk of significant harm in the form of arbitrary deprivation of life, 'because of inadequate health or other services or provision of drugs, as there is no positive act resulting in death, and [the applicant] does not fall into the category of exceptional circumstances found in the case of *D v the United Kingdom*'. The Tribunal considered that the other categories of harm (torture and the death penalty) were not relevant in this case. Finally, it found that it was not satisfied that the applicant would be at a real risk of significant harm due to crime or civil disturbance, as these are risks faced by the population of Sudan generally and not faced by the applicant personally. The Tribunal referred the case to the Minister for consideration on the basis that it appeared from the medical reports that the applicant's conditions, if not recognised would result in serious ongoing and irreversible harm and continuing hardship to her. The Tribunal stated that given that the applicant had suffered significant trauma in Sudan, her psychological state was likely to deteriorate significantly if she were to return, and it was unlikely that the health system in Sudan could provide the kind of care and monitoring needed for her serious conditions.
1710853 (Refugee) [2021] AATA 3076 (Successful)	30 June 2021	108, 128, 129–137	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act*. Relevantly,

			however, the Tribunal also noted that the applicant 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. 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 *Migration Act* 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. 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 *SZRSN v MIAC*, 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 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 *SZRSN* 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'.

			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 *CSV15 v MIBP* [2018] FCA 699 and *CHB16 v MIBP* [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. 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.
1711935 (Refugee) [2021] AATA 3082 (Unsuccessful)	30 June 2021	105–110	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 they would face a real risk of significant harm should they return to generalised violence. 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.

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

			When put to the applicant he could go elsewhere in China, Guandong or Shanghai in light of his work history, he indicated he could not go to Guandong due to its weather and the effects of the weather on his medical problem. He did not have the complained symptoms in Sydney or in Shanghai. The Tribunal observed, however, that there was no information to suggest that the applicant had a medical condition that prevented him returning to Henan or anywhere else in China. When put to the applicant that he could return to Shanghai, he said that he was only there for 3 months. He provided no other reasons for being unable to relocate to Shanghai. The Tribunal was satisfied that the applicant was able to return to a place in China where he did not fear harm, namely Shanghai (in an apparent reference to section 36(2B)(a) of the *Migration Act*). 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. 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. Accordingly, the Tribunal found that the applicant did not satisfy the requirements of section 36(2)(aa) of the Act.
2010856 (Refugee) [2021] AATA 3311 (Successful)	29 June 2021	194–243	The AAT remitted for consideration a decision of a delegate of the Minister refusing to grant the applicant a

			protection visa with a direction that the applicant satisfies s 36(2)(aa) of the Act. The AAT found that the applicant's claims did not satisfy the refugee criterion and further found that there was not a real chance that the applicant would suffer significant harm if he were to return to Sri Lanka on the basis of any of the claims made in his application (see [196]). The AAT went on to consider, however, evidence that had been provided by the applicant in a previous Tribunal hearing (the decision of which had been set aside by the Federal Circuit Court) regarding his marriage to, and children with, a woman who had been granted a SHEV. The applicant had claimed that these matters had made his position more vulnerable in relation to him ever returning to and living in Sri Lanka, however the previously constituted Tribunal had not considered this claim. The AAT went on to consider and summarise the substance of the applicant's wife's claims for her SHEV, which had been accepted by the Department. The Tribunal accepted that given the applicant had departed Sri Lanka illegally, and given the claims of his wife which had been accepted by the department in giving her a SHEV – that the Sri Lankan authorities were still pursuing his wife and had been prepared to harm her mother, sister, and now his own parents – there was an increased risk of him being targeted upon return. The AAT concluded that because of the personal circumstances of the applicant (including his mental health conditions), and in the circumstances of his relationship to his wife and the claims made by her that

			resulted in the grant of a protection visa, there was a risk that the applicant would be subjected to cruel or inhuman treatment or punishment or degrading treatment or punishment if he returned to Sri Lanka. Importantly, the Tribunal noted the applicant's concerns about being questioned and detained upon his return to Sri Lanka, and his belief that he would be a target for detention because of his identity as the husband of his wife. In this regard the Tribunal concluded that although it had found that the applicant has no adverse profile, his psychological vulnerabilities meant that in his case, being interviewed and questioned by the Sri Lankan authorities and/or detained created a real risk of significant harm (see [223]-[234]). (The Tribunal noted that there was no suggestion that the applicant satisfied s 36(2) on the basis of being a member of the same family unit as his wife, who held a protection visa – see [247]).
1713029 (Refugee) [2021] AATA 2813 (Unsuccessful)	29 June 2021	31–36	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 *Migration Act* 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

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

			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. 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 *SZRSN v MIAC*, 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

			consequence of the applicant being separated from her husband, by the act of being removed from Australia to Serbia.
Bakhsh (Migration) [2021] AATA 2981 (Successful)	29 June 2021	66–83	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Global Special Humanitarian Visa. Relevantly, considering the anticipated deterioration of the security situation in Afghanistan and the already precarious situation for Hazara, the Tribunal found that, if the applicant's visa was to be cancelled, there were international obligations including those pertaining to personal security (Article 9 ICCPR), protection against cruel, inhuman or degrading treatment (Article 16 CAT) and liberty to movement (Article 12 ICCPR) that would be breached. For this reason, the Tribunal gave this considerable weight against cancelling the visa.
1713285 (Refugee) [2021] AATA 2952 (Successful)	25 June 2021	30–32	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act*. Relevantly, however, the Tribunal also noted that the applicant claimed that she had experienced official and societal discrimination as a Muslim in Myanmar. For instance, she had had to pay higher school fees and employers declined to offer her work after finding out about her faith. She also had difficulties obtaining an ID card after she turned 18. At hearing, she gave other instances of discrimination, such as once being denied service at a medical clinic, and enrolling her daughters in private school because the public school did not want to enrol 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.
1932265 (Migration) [2021] AATA 2615 (Successful)	24 June 2021	83–90	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Five Year Resident Return visa. Relevantly, the Tribunal appeared to give some weight to the 'other consideration' of Australia's international non-refoulement obligations. The Tribunal referred to country information highlighting the ongoing insecurity in Iraq and the particular vulnerability of women such as the applicant, with no male guardian, a politicised past public profile, and mental illness. Given the applicant's political background in Iraq, her former connection to the US forces, her perceived tribal transgression in leaving or 'running away' without male or tribal permission and accompaniment, her status as a single divorced woman, and her poor mental and physical health, the Tribunal considered it likely she would face serious harm, in the form of severe discrimination and physical violence, if required to live in Iraq permanently. While the Tribunal's language here of 'serious harm' (cf 'significant harm') suggests that the Tribunal may have been referring to, and relying on, Australia's non-refoulement obligations under the *Refugee Convention* rather than the ICCPR and/or CAT, for completeness, this decision is nonetheless included in this list of case summaries.
2103931 (Refugee) [2021] AATA 3247 (Unsuccessful)	23 June 2021	90–99	The AAT affirmed a decision of a delegate of the Minister not to grant the applicant a protection visa. Relevantly, in respect of the application of the complementary protection criterion, the Tribunal

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

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

1917948 (Refugee) [2021] AATA 3022 (Successful)	18 June 2021	68–73, 75–99, 101	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 *Refugee Convention* and that, if he were to be removed from Australia, this would breach Australia's non-refoulement obligations. Relevantly, however, the Tribunal also discussed the effect of new amendments to the *Migration Act* that significantly restrict the circumstances in which a protected person can be removed from Australia under sections 197C and 198 of the Act (see *Migration Amendment (Clarifying International Obligations for Removal) Bill 2021* (Cth)).
1700966 (Refugee) [2021] AATA 3194 (Successful)	9 June 2021	43–53	The AAT remitted for reconsideration a decision made by a delegate of the Minister refusing to grant the applicants protection visas with directions that the first applicant satisfied s 36(2)(aa) and that the other applicants (her husband and child) satisfied s 36(2)(c)(i) on the basis of membership of the same family unit. The AAT did not accept that the first applicant satisfied the refugee criterion (in part owing to credibility concerns). It found, however, that should the applicant return to Zimbabwe, she would do so as a member of a family with former close links to Robert Mugabe, and as a close family member of 'Mr B' who had lost his position in the new government and had been subsequently arrested and charged with corruption (suggesting that he had been caught up in politically motivated targeting). The Tribunal considered this matter even though the applicant did not raise this issue as a claim with respect to fearing harm. On this basis, and in light of country information regarding the current

			political situation in Zimbabwe (including information of widespread and significant human rights abuses), the AAT considered that there was a not insignificant risk that the applicant would be targeted by the current regime by reason of these personal family connections. The Tribunal concluded that there was a real risk that the applicant would suffer significant harm in the form of torture and arbitrary killing by the authorities. It further found that relocation was not an option as the authorities were the agents of the harm; that the applicant would be unable to obtain sufficient protection; and that the harm was one specific to the applicant's circumstances, being her family connections and history.
1726365 (Refugee) [2021] AATA 3075 (Unsuccessful)	8 June 2021	67–111	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: • the applicant's anti-sectarian activities, as a Sunni Muslim assisting Christians and anti-sectarian community leaders; • the applicant belonging to the Barelavi wing of Sunni Islam; • the applicant's imputed religious beliefs as a person who had previously associated with Christian Pakistanis; or • the applicant's physical and mental health state and the impact of the COVID-19 pandemic on him. 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 retuning to Pakistan. However, the Tribunal considered that the harm did not amount to significant harm for the purpose of section 36(2A) of the *Migration Act*. In the course of reaching this conclusion, the Tribunal discussed the meaning of, and relationship between, each of the statutory types of 'significant harm' identified in section 36(2A).
1710719 (Refugee) [2021] AATA 3025 (Unsuccessful)	7 June 2021	38–82	The AAT affirmed a decision not to grant the applicants protection visas. In the context of complementary protection, the Tribunal did not accept that the applicants faced a real risk of significant harm in Pakistan on account of: • returning as failed asylum seekers/protection visa applicants/ involuntary returnees/returnees; • the Pakistani authorities believing they or their parents held protection visas; • being placed in institutional care due to their parents being detained; • having to return on Australian travel documents; • 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; • 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 • generalised violence in Pakistan, the impact of the COVID-19 pandemic in Pakistan, poor education in Pakistan, and adjustment difficulties (eg language barriers and the first applicant's developmental difficulty).

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

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

			out of the reach of 'Mr A', the circumstances of a deteriorating security situation made such a move difficult. In addition, the Tribunal repeated that what is reasonable, in the sense of practicable, must depend upon the particular circumstances of the applicant and the impact upon that person of relocating within their country. The applicant here had a degree of mental health challenges. He was on prescription medication. He believed that alcohol helped him deal with challenges. He 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. 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. 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'. 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). The Tribunal was satisfied that the applicant was a person in respect of whom Australia had protection obligations under section 36(2)(aa).
BHHX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1574 (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 *Migration Act* that significantly restrict the circumstances in which a protected person can be removed from Australia under sections 197C and 198 of the Act (see *Migration Amendment (Clarifying International Obligations for Removal) Bill 2021* (Cth)).
1717387 (Refugee) [2021] AATA 2608 (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 *Migration Act*). There was no suggestion that he would be denied employment or medical treatment for any reason other 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.
1710134 (Refugee) [2021] AATA 2784 (Unsuccessful)	28 May 2021	77–80	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. 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. 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 *Migration Act*.

1706301 (Refugee) [2021] AATA 2245 (Unsuccessful)	28 May 2021	49	The AAT affirmed a decision not to grant the applicant a protection visa, principally due to credibility concerns. Additionally, the Tribunal noted—and accepted—that the applicant was taking medication to manage stress and high blood pressure. However, the Tribunal was not satisfied on the limited evidence before it that any harm in Egypt that the applicant might suffer as a result of his stress and high blood pressure would be intentional, which the Tribunal observed is required to satisfy the definition of torture, inhuman treatment and degrading treatment in the *Migration Act*. 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.
1835594 (Refugee) [2021] AATA 2449 (Successful)	28 May 2021	35–36	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 refugee criterion in section 36(2)(a) of the *Migration Act*. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met, the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Venezuela, 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).
RNVF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1522 (Unsuccessful)	28 May 2021	191–206	The AAT affirmed a decision not to revoke the cancellation of the applicant's Transitional (Permanent) visa. In doing so, however, the Tribunal considered in some detail the 'other consideration' of whether Australia's international non-refoulement obligations arose in this case. The Tribunal noted that an International Treaties Obligations Assessment (ITOA) had been conducted in relation to the applicant, and that the assessor had found that the applicant had a well-founded fear of persecution in Somalia for the purposes of the *Refugee Convention* and that, additionally, and in respect of Australia's non-refoulement obligations as a signatory to the CAT and the ICCPR, there were substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Somalia, there was a real risk he would suffer significant harm. The Tribunal considered that, as a person with a chronic mental health condition, the applicant would be especially vulnerable to personal harm if repatriated; it did not seem on the authoritative material before the Tribunal that any adequate support would be available to him in Somalia. Consequently, the likelihood of his PTSD symptoms resurfacing seemed to the Tribunal to be real. The Tribunal noted that this would be with a backdrop of no family support and with a history of torture and trauma. Although the Tribunal was somewhat sceptical about some of the claims that the applicant made in his evidence (particularly his claim of jumping

			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 these had etched onto his consciousness and affected his subsequent conduct, including as one of the drivers of his criminal offending. The Tribunal found that this consideration weighed heavily in favour of revoking the mandatory cancellation of the visa.
2003268 (Refugee) [2021] AATA 3029 (Unsuccessful)	27 May 2021	30–55	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 *Migration Act*).
1712719 (Refugee) [2021] AATA 2243 (Successful)	27 May 2021	27–28	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 *Migration Act*. For completeness, however, the Tribunal noted that if it had not been satisfied that the criterion under section 36(2)(a) was met, the Tribunal would have been nonetheless satisfied that the grounds for complementary protection were established. The Tribunal was satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Venezuela, there was a real risk they would suffer significant harm in the form of cruel and degrading treatment and possibly even arbitrary deprivation of life (section 5(1) of the Act).
1719040 (Refugee) [2021] AATA 2070 (Unsuccessful)	27 May 2021	97, 102, 108, 113, 115, 116	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: • 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; • 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; • financial hardship and unemployment; • a fear of the second applicant suffering sexual assault; • the applicants' claimed inability to adapt to their new surroundings in South Africa; or

			• a fear of being seriously harmed due to high levels of criminal violence generally. 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 generally and not by the applicant personally (apparently referring to *Migration Act* section 36(2B)(c)).
VZWF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1876 (Unsuccessful)	27 May 2021	95–101	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: (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. (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. (c) Because of the applicant's history of heart disease, he may have been even more vulnerable than average members of the population. The Tribunal, however, concluded that there did not exist any relevant non-refoulement obligations to be considered here.

MJMG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1486 (Unsuccessful)	26 May 2021	162–181	The AAT affirmed a decision not to revoke the cancellation of the applicant's Global Special Humanitarian visa. In doing so, however, the Tribunal 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 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 *Refugee Convention*. For completeness, however, the decision is included here in this list of case summaries.)
Jabari and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1492 (Unsuccessful)	26 May 2021	187–212	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 *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (Cth), Ministerial Directions Nos 79 and 90, and case law explaining the relationship between the *Migration Act* 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 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.
SBMZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1409 (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 *Migration Act*. 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'.)
1705555 (Refugee) [2021] AATA 2829 (Unsuccessful)	17 May 2021	56–73	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal considered a submission by the applicant on the issue of internal relocation in the following terms ([57]): 32. It is acknowledged that it may be reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrent of the feared persecution: *Randhawa v MILGEA* [1994] FCA 1253. 33. A person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country, with what is reasonable depending on the particular circumstances of the applicant and the impact upon that person of relocation: *1611949* (Refugee) [2020] AATA 318 at [106]. 34. It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the Alado boys, it is submitted that his profile is such that there is a real chance he

			would be targeted in other areas of Nigeria should he attempt to relocate. The Tribunal addressed this submission in the following terms ([59]–[63]; citations omitted and original emphases in Tribunal's decision): The Tribunal decision referred to in the above extract involved a single Nigerian woman with two infant female children. While the relevant legal principle appears to be appropriate to the present review, it is not apparent that the factual circumstances of the Tribunal decision relied upon [] in any sense recommends the previous decision as a relevant or appropriate comparator for the present application. I also note that the submission appears to misstate the statutory relevance of 'relocation' for the purposes of the present review in terms of whether [it] is 'reasonable for persons to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrent of the feared persecution'. Firstly, the analysis of relevant law contained within the 18 January 2021 submissions at [11]–[14] and [27]–[31], such as it is, describes the statutory formulation of a well-founded fear of persecution (or 'real chance of serious harm') in terms of a claim based on the refugee criterion at

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

			There is also no well-founded fear of persecution 'if effective protection measures are available to the person in a receiving country' (ss.5J(2) and 5LA). In this respect, I note that the question of effective state protection does arise at s.5LA of the Act, however, this may be taken to be the case if: (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. 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 *legal* 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 *Canada (Attorney-General) v Ward* (*Ward*) 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: Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty.

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

			confused articulation of the relevant statutory formulation as follows: > It is submitted that the applicant cannot safely relocate to another part of Nigeria to mitigate his risks of persecution. Given his vocal opposition to Baba Alado and the Alado boys, it is submitted that his profile is such that there is a real chance he would be targeted in other areas of Nigeria should he attempt to relocate. Even if the applicant's contention that he continues to be the target of animosity from 'Baba Alado' and 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. 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. 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: > 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 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. 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.
1732703 (Refugee) [2021] AATA 3072 (Unsuccessful)	14 May 2021	140, 145, 151–158, 167–172	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, in the context of complementary protection, the Tribunal concluded that: • there was no information to suggest that the spread of sexually transmitted diseases in Zambia amounted to an intentional act or omission; and • the COVID-19 pandemic, and whatever measures may be applicable to the population of Zambia generally in response to it, did not, in the absence of additional considerations, amount to an intentional act or omission. The Tribunal also considered the applicant's claim of harm that would be caused to her by her separation from her child if returned to Zambia. It reasoned as follows ([151]–[158]; citations omitted and original emphases in Tribunal's reasons): With respect to complementary protection the Tribunal notes that, in *SZRSN v MIAC (**SZRSN**)*, 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. The decision turned on the relationship between various aspects of complementary protection provisions. Firstly, the Court had regard to the reference in s.36(2)(aa) to Australia's 'protection obligations' as referring to the obligation to afford protection to a non-citizen where the harm faced arises in the receiving country, rather than in the State where protection is sought. Secondly, the Court reasoned that the qualifications in s.36(2B) expressly refer to harm 'in a country' which is necessarily the receiving country if the circumstances of s.36(2B)(a) (relocation) and s.36(2B)(b) (protection from an authority) are to have any application. Further, the Court noted the circularity in the operation of s.36(2)(aa) requires that the real risk of significant harm must arise '*as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country'*. The Court stated that the fact that the significant harm must be a consequence of removal strongly suggests that the removal itself cannot be the significant harm. The Federal Court also noted that being separated from one's children is not an 'act or omission' as required by the relevant definitions of significant harm, but a consequence of an act. The relevant act is the act of removal from Australia.

			Lastly, the Court in *SZRSN* had regard to the 'intention' requirements in the s.5(1) definition of 'degrading treatment or punishment'. The Court reasoned that separation from family (in that case, children) is the consequence of removal, and a consequence cannot be said to have an 'intention', so the act of removal itself cannot be said to be perpetrated by the State with the intention of causing '*extreme humiliation that is unreasonable'*. As such it appears that although the risk of significant harm envisaged by s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, s.36(2)(aa) will not be engaged by harm inflicted by the act of removal itself. Further, in *GLD v Minister for Home Affairs*, the Full Court confirmed the principles in *CSV15 v MIBP* [2018] FCA 699 and *CHB16 v MIBP* [2019] FCA 1089 that 'significant harm' does not include self-harm or harm the applicant suffers arising from 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'. As noted by the Full Court in *GLD v Minister for Home Affairs*:

			The complementary protection criterion is not intended to be used to address the many and varied circumstances in which – in the framework of ordinary human experience – it may seem to be unfair, immoral, deeply upsetting or disturbing for a person to be removed from Australia against her or his will. For the reasons set out above, whilst the Tribunal accepts the applicant does not wish to be separated from her partner and son it does not accept that she is owed complementary protection on this basis. The Tribunal was not satisfied that the applicant was a person to whom Australia owed protection obligations under section 36(2)(aa) of the *Migration Act*.
1711984 (Refugee) [2021] AATA 2383 (Unsuccessful)	14 May 2021	39	The AAT affirmed a decision not to grant the applicant a protection visa. 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.
2104739 (Refugee) [2021] AATA 2175 (Unsuccessful)	13 May 2021	45 (refugee-specific analysis of effective state protection), 62–68 (complementary protection)	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 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. 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 *Migration Act*.

			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 from a private loan, because he would be a failed asylum seeker, or for all of these reasons considered cumulatively. 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).)
1811082 (Refugee) [2021] AATA 2667 (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 protection criterion in section 36(2)(aa) of the *Migration Act*. 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.
1610543 (Refugee) [2021] AATA 2351 (Successful)	11 May 2021	137	The Tribunal allowed an application for merits review of a decision refusing to grant the applicant a protection visa, and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act*. 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 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.
2007537 (Refugee) [2021] AATA 2452 (Unsuccessful)	7 May 2021	158, 162, 168	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 *Migration Act* 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. 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): • discrimination, harassment, and negative attitudes of the community in Nepal arising from the applicant's status as an openly homosexual woman; • 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.
Ahmed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1185 (Unsuccessful)	7 May 2021	114–137	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-refoulment 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 protection contained in section 36(2B)(c) of the *Migration Act*, but the language of its reasoning and conclusions do not indicate which basis or bases it was relying on. For completeness, however, the decision is included in this list of case summaries.
2010831 (Refugee) [2021] AATA 2129 (Successful)	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 *Migration Act*. 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. The Tribunal noted that the applicant might seek to persuade the authorities in Vietnam that he only attended the protests in Sydney as a means of bolstering his claim for a protection visa. On the Tribunal's review of the applicant's application, the Tribunal considered that that would be, in fact, the truth. The Tribunal observed that denial of genuine association is, however, an obvious defence to an allegation of sympathy with a terrorist organisation, and the Tribunal was not satisfied that the Vietnamese authorities would accept that explanation of the applicant's attendance at the protests. The Tribunal doubted they would. In any event, the applicant might well suffer significant harm before his explanation was accepted and he was released.
1605338 (Refugee) [2021] AATA 2930 (Successful)	6 May 2021	60	The AAT set aside a decision refusing to grant the applicant a protection visa and remitted the matter for reconsideration with the direction that the applicant satisfied the refugee criterion in section 36(2)(a) of the *Migration Act* on the basis that, if returned to Myanmar, the applicant would face a real chance of serious harm on account of: his cumulative profile, being a family member of political dissidents; his imputed political opinion (anti-military/pro-democracy due to his family connections); together with being a failed asylum seeker.

			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 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.
1700704 (Refugee) [2021] AATA 1579 (Unsuccessful)	30 April 2021	78	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.
Ngatoko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1039 (Unsuccessful)	28 April 2021	74–86	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the New Zealander applicant's Class TY Subclass 444 Special Category (Temporary) visa. In the Tribunal's view, the applicant's expressed concerns did not provide a serious and substantive factual basis for engaging Australia's international obligations, and thus it was not necessary to consider whether the applicant's concerns were capable of characterisation as a non-refoulement claim. However, the Tribunal accepted in principle that '[i]t is not inconceivable that a high degree of lawlessness together with a well-founded fear of gang related violence, based on a specific and identifiable threat, may support a non-refoulement claim under the ICCPR or the CAT' (at [82], footnotes omitted). Nonetheless, the applicant's claim here was based on the fact of a single murder, together with an association with the murdered victim, in what was otherwise a peaceful society.
BQNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1186 (Unsuccessful)	27 April 2021	159–233	The AAT affirmed a decision not to revoke the mandatory cancellation of the applicant's protection visa. Relevantly, in considering the 'other consideration' of Australia's international non-refoulement obligations, the Tribunal considered in detail the applicant's claims that he would face harm if removed to Iraq and that he would not voluntarily return there. The Tribunal found, however, that the applicant did not satisfy the criteria in subsections 36(2)(a) or 36(2)(aa) of the *Migration Act*. The Tribunal was not satisfied that returning the

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

			Tribunal found that Australia may be in breach of its international obligations under the *Refugee Convention* if the applicant was removed to Afghanistan as a consequence of the cancellation of his visa. Further, for the same reasons outlined in relation to the applicant's real chance of facing persecution in Afghanistan, the Tribunal found that there existed a real risk that the applicant would be subjected to harm amounting to torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment as defined in section 5(1) of the *Migration Act*. The Tribunal emphasised, however, that the cancellation of the applicant's visa in itself would not be in breach of any of Australia's non-refoulement obligations, since these obligations may be breached only if the applicant was forcibly removed from Australia. While the Tribunal could not rule out the possibility of the applicant being unwittingly removed in breach of Australia's non-refoulement obligations, the Tribunal found that this was unlikely and that there was only a low risk that the cancellation of the applicant's visa would result in his removal to Afghanistan in breach of Australia's non-refoulement obligations. The Tribunal, therefore, gave non-refoulement obligations little weight in favour of not cancelling the visa.
2013444 (Refugee) [2021] AATA 2451 (Unsuccessful)	23 April 2021	123–124	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 *Migration Act*. Even if he were to experience difficulties establishing himself and settling in after his long period of absence, the Tribunal was not satisfied that financial hardship or other challenges settling in constituted significant harm as contemplated by section 36(2A). The Tribunal considered the claim arising on the material before it of psychological harm to the applicant as a result of being separated from his spouse and children, and acknowledged that separation would be difficult for him and his family, but nonetheless found that mental harm resulting from the separation of a family member arising *solely* from the act of removal of an applicant from Australia to his receiving country does not constitute significant harm.
CJQP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2116 (Successful)	23 April 2021	201–226	The AAT set aside the decision under review and substituted a decision not to cancel the applicant's Five Year Resident Return visa. Relevantly, the Tribunal appeared to conclude that the applicant's return to Iraq would be in breach of Australia's non-refoulment obligations, although it is unclear precisely on what legal basis such obligations would be owed. The Tribunal was reasonably satisfied that, although the applicant's uncle was assassinated 14 years ago, the uncle was a high-profile member of the community. The assassins remained at large, and the Tribunal accepted the evidence of the applicant's father that one of the assassins continued to reside in the applicant's home province. Should it be known that the applicant, who could identify the offenders, had returned to Iraq, he would be at risk of

			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.
1721096 (Refugee) [2021] AATA 1819 (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 *Migration Act* 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.
1700680 (Refugee) [2021] AATA 1788 (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 *Migration Act*. 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.
2012904 (Refugee) [2021] AATA 2130 (Successful)	21 April 2021	109–119	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-refoulment 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.
1722396 (Refugee) [2021] AATA 1401 (Unsuccessful)	21 April 2021	55–81	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: • 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); • having participated in protests in Australia against the Iranian regime, since country information specifically stated that the Iranian authorities had little interest in returnees who had been protesting outside Iranian diplomatic missions and since the Tribunal found earlier that the applicant did not have a background of interest to the authorities; • the city of Ahwaz's lagging economic development and the presence of excessive smoke or a lack of adequate storm drainage; • cultural and/or employment discrimination; or extortion by government security forces.
1717702 (Refugee) [2021] AATA 1425 (Unsuccessful)	19 April 2021	107–116	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 *Migration Act*. 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) 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.

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

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

			in his 2014 written protection claims. The Tribunal found, based on that evidence, that there were no grounds for believing that there existed a real risk that the applicant would suffer significant harm at the hands of any person, company or authority in Ghana (including the Government of Ghana) due to his father's 2014 dispute over local mining concerns or for any other reason related thereto. The Tribunal accepted that the applicant would potentially suffer distress and potential deterioration of mental health due to his being physically and practically separated from his children if he returned to Ghana. However, the Tribunal considered that the emotional distress caused by separation—even if it were to develop after his removal from Australia and the applicant was formally diagnosed at some point with depression or other mental illness—would not involve the applicant suffering 'significant harm' as defined in section 36(2A) of the *Migration Act* for the purposes of considering the complementary protection provisions. Any potential emotional distress arising from his separation from his children would arise from the act of removal itself and 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. The Tribunal also noted the comments and conclusions of Collier J in *CSV15 v MIBP*, where Collier J reasoned that the definitions of each of the harms described in section 36(2A) referred to 'acts perpetrated *by others*

			which cause[d] the non-citizen to suffer harm' (emphasis appears to have been added by present Tribunal). The Tribunal considered that the deterioration of a person's existing mental health condition and the practical limitations and consequences of that deterioration are not due to 'acts perpetrated by others' and do not meet the definition of 'significant harm'. 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).
1907109 (Refugee) [2021] AATA 1530 (Unsuccessful)	16 April 2021	54–56	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 *Migration Act*). 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.
1701200 (Refugee) [2021] AATA 1604 (Unsuccessful)	16 April 2021	41–50	The AAT affirmed a decision not to grant the applicant a protection visa. The Tribunal was not satisfied that the applicant faced a real chance of serious or significant harm as a result of: • 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; • being an ordinary member of SODELPA, which the Tribunal accepted that the applicant would be, and being politically involved in this way; • his whole family being black-listed because a relative of the applicant who was a public office bearer refused a specific request of the government when asked; or financial problems, lack of family support, or other difficulties in reintegrating into Fiji.
CRBC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 863 (Successful)	14 April 2021	81–98	The Tribunal set aside the decision under review not to revoke the mandatory cancellation of the applicant's Offshore Humanitarian (Subclass 200) visa. In substitution, the Tribunal revoked the cancellation of the applicant's visa. Despite the applicant's eligibility for a Subclass 202 visa at the time of grant, the interviewer made an active choice to grant a Subclass 200 visa in recognition of an element of persecution facing the applicant, and the Tribunal considered that the Minister had not proven that the actual risk of persecution had ceased. In this regard, the Tribunal noted that the comments of Allsop J in *NBGM v Minister for Immigration & Multicultural & Indigenous Affairs*

			[2006] FCAFC 60 at [172] were relevant, namely that a determination of the cessation of refugee status be evidenced with a demonstration that any change in circumstances in the applicant's home country is 'clear and lasting'. DFAT information indicated that Dinkas living in conflict-related areas faced a high risk of societal discrimination and violence. Further, DFAT also assessed that Dinka were one of 'three prominent ethnic groups who are most at risk, owing to their active involvement in the conflict between the Government and SPLM-IO'. The UNHCR also reported in 2019 that 'sustainable conditions are not in place for the safe and dignified return of refugees and IDPs in South Sudan'. The evidence presented to the Tribunal demonstrated that South Sudan remained a violent and volatile country, wracked by conflict and without strong or established institutions to protect the population. Sudan and South Sudan continued to be wrecked by Civil War and societal breakdown which was continuing. The applicant had left Sudan at the age of 4 and lived in Uganda. He had no memory of South Sudan and no knowledge of that country. He spoke Dinka with a foreign accent and had no familiarity with local customs or idiom. Therefore, in the Tribunal's view, he would be clearly identified as someone who was returning from the West because of the following traits: (a) a lack of awareness of the political tensions in the country and how to avoid running afoul of them;

			(b) he spoke Dinka with a foreign accent; (c) he spoke English with an accent that South Sudanese, who were taught English in school, would recognise as foreign; (d) he did not know the common practices or mannerisms that would identify him as a local; (e) he did not know anyone in South Sudan and would not have a local guide in any part of the country; (f) he did not know the usual local lifestyle or ways to find work in any part of the country; and (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. 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. 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 to leaving the country. There was evidence that he did not even have proper Australian identity documents. 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. 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. 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". 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 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.
NKHH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 1033 (Successful)	14 April 2021	47–67	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. 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 not revoked. The consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation. The Tribunal also noted that the consequence of non-compliance with Australia's treaty obligations would not only impact the applicant, but it also would impact negatively upon Australia's reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation. Finally, the Tribunal accepted that regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship including violence and a lack of support in the event that he were to return to South Sudan.
SFPH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 874 (Unsuccessful)	14 April 2021	175–235	The Tribunal affirmed a decision not to revoke the mandatory cancellation of the Afghani applicant's Global Special Humanitarian (Class BA) (Subclass 202) visa. In this proceeding, the applicant sought to rely principally on non-refoulement obligations owed under the ICCPR, although it was submitted that such obligations in respect of the applicant were also owed under Article 33 of the Refugees Convention. The Tribunal noted that, under the ICCPR, non-refoulement obligations arise by implication. In the High Court's

			decision in *CRI026 v The Republic of Nauru*, it was said that (emphasis added by the Tribunal): … those provisions of the ICCPR do not 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 *Minister for Immigration and Citizenship v Anochie* that is a high hurdle for the applicant to meet. <u>The risk of harm must be both necessary and foreseeable</u>…' 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' (*Minister for Immigration and Citizenship v Anochie* [2012] FCA 144, [67] (Perram J)). Hence, in order for the non-refoulement obligations implied under the ICCPR to be engaged, there must be both a necessary and foreseeable risk of irreparable harm as a consequence of refoulement. As submitted by the applicant, the Tribunal found that the ICCPR's non-refoulement obligations would be engaged were the applicant to be refouled to Afghanistan. The risk of irreparable harm was both a necessary and foreseeable consequence of such a refoulement. As put on behalf of the Applicant, and as the Tribunal accepted, were the applicant to be refouled to Afghanistan: (a) It was likely that he would be located in Kabul. That was where the applicant was born and it offered relatively more opportunities for employment than were offered elsewhere in Afghanistan. Moreover, returnees from western countries almost exclusively return to Kabul. (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).

			(c) He could communicate orally in one of the principal languages used in Afghanistan, Dari, but would do so with an accent, betraying his upbringing in the West. (d) He would have difficulties in understanding and communicating in writing. The Applicant could neither read nor write in Dari. (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. 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 irreparable harm which was both a necessary and foreseeable consequence of him being refouled to Afghanistan. At the same time, the Tribunal noted that there existed the possibility that the applicant would face other risks because of his particular circumstances. Many of them did not, however, constitute what the Tribunal would have considered to be risks that were both a necessary and foreseeable consequence of refoulement. What the Tribunal had in mind here were risks such as, first, that which might arise by reason of the applicant being a person whose accent would make it apparent that he spent time in the West. He might, as a result, be perceived as a person who supports or associates with the Government or members of the international community. As such, he may face a high risk of violence. Further, with a "western accent" the applicant might be perceived to be wealthy or, at least, have access to foreign wealth. In this regard, kidnapping was a major concern for many Kabul citizens. Foreigners and wealthy Afghans were indicated as the main targets. Second, it was put at the hearing of this proceeding that there existed a risk that the applicant would be murdered in jail, where he would end up as a result of resorting to criminality due to his untreated PTSD and dire financial circumstances. However, in the Tribunal's view, such a risk was not a necessary and foreseeable consequence of refoulement. Rather, it seemed to be more speculative than a "necessary" risk.

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

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

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

			him) would cause injury not only to the applicant but also to his family and his girlfriend, who were anxiously awaiting his release at the time of the Tribunal's decision.
HWLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 860 (Unsuccessful)	13 April 2021	66, 67–69, 70–73, 74–80	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. 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. Given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant

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

			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. 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. In the Tribunal's view, the applicant's reliance on *Clegg v MICMSMA* [2020] AATA 3383 was misplaced. In its response to the decision of the Human Rights Committee (HRC) in *Nystrom v Australia*, 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.

			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. 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.
XMBQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 853 (Successful)	13 April 2021	43–47, 48–55	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.

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

			Given that the legal consequence of not revoking the mandatory visa cancellation was that the applicant 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. 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. 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.
1714406 (Refugee) [2021] AATA 1862 (Unsuccessful)	13 April 2021	73–87, 88–89	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

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

			criminal thugs; and, other non-state actors. Second, security operations conducted by agencies of the Pakistan state have had measurable success in addressing this environment of generalised criminal violence. I acknowledge that the applicant stipulated at the second hearing that he did not accept the country information reports which suggested a demonstrable decline in generalised violence in Pakistan generally or Khyber Pakhtunkhwa in particular. I also acknowledge the applicant's submissions about specific incidents of terrorist atrocities over time in Pakistan. These atrocities are accounted for appropriately in the country information to which I have referred above, and which were discussed with the applicant personally at the second hearing. On balance, persuaded that the country information showing a demonstrable decline in secular violence and terrorist outrages should be preferred to the applicant's subjective assessments [sic]. Regardless, I note that under s.5J(1) of the Act (and the previous Convention provisions from which the definition is drawn), while there can be no *legal* 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 *Canada (Attorney-General) v Ward* (*Ward*) 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: > Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of State apparatus ... it should be assumed that the State is capable of protecting a claimant. In *MIMA v Khawar*, Kirby J referred to *Ward* in support of the broad proposition that as a practical matter in most cases, save those involving a complete breakdown of the agencies of the state, decision makers are entitled to assume (unless the contrary is proved) that the state is capable within its jurisdiction of protecting an applicant. Accordingly, I have proceeded on the basis that the Pakistan state 'is capable within its jurisdiction of protecting [the] applicant'. The relevant assessment 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'.

			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 *Chan v MIEA*, McHugh J, in the context of the previous legislative framework, stated: > 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 **part of a course of systematic conduct** 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.] The body of case law that has subsequently developed around his Honour's use of the expression 'systematic conduct' in that case is instructive. In *MIMA v Haji Ibrahim*, McHugh J explained that his use of the expression 'systematic conduct' in *Chan* was not intended to mean that there can be no

			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: > It is an error to suggest that the use of the expression "systematic conduct" in either *Murugasu* or *Chan* 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". 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 *VSAI v MIMIA*, 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-

			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 *SZTEQ v MIBP* 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. 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 *Haji Ibrahim* 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. Given that generalised violence evident in Pakistan is by definition random and perpetrated by unrelated criminal organisations, it lacks the

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

			The Court's reasoning suggests that the 'faced personally' element of this qualification requires the individual to face a risk of differential treatment, or because of characteristics that distinguish them from the general populace. This approach was also taken in *MZAAJ v MIBP* to the risk of harm from inadequate medical treatment. Similarly, in *SZTES v MIBP*, the Court held that a risk faced 'personally' is one that is particular to the individual and is not attributable to his or her membership of the population of the country, or shared by that population group in general. In *BBK15 v MIBP* 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. 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

			s.36(aa) [sic] of the Act due to the lack of particularity of the harm that is required by these statutory provisions. Finally, and separately, the Tribunal found that whatever measures might be applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions. Accordingly, circumstances in Pakistan arising due to the COVID-19 pandemic 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.
2010668 (Refugee) [2021] AATA 1455 (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.
2013370 (Refugee) [2021] AATA 1607 (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

		complementary protection criterion)	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. 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

			afford medical treatment if required and the medications he relied upon. The Tribunal also referred to section 36(2B)(c) of the *Migration Act* and accepted that there existed widespread 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. 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): > In *SZRSN v MIAC* [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.

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

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

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

			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. 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.
GYTW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 792 (Unsuccessful)	8 April 2021	44–48, 49–57	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. 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

			removal. The Tribunal accepted that the applicant was at risk of adverse mental health outcomes the longer he was held in detention. In the Tribunal's view, the consideration of non-refoulement obligations and risk of harm weighed heavily in favour of revoking the cancellation. Additionally, the Tribunal noted that the consequence of non-compliance with Australia's treaty obligations not only impacted the applicant, but it also impacted negatively upon Australia's reputation and standing in the global community. The Tribunal considered that this added further weight in favour of revoking the cancellation. Finally, the Tribunal accepted that regardless of whether the applicant's claims were such as to engage non-refoulement obligations, the applicant would face significant hardship, including violence and a lack of support, if he were to return to Iraq.
1702769 (Refugee) [2021] AATA 1187 (Unsuccessful)	7 April 2021	40–52	The AAT affirmed a decision not to grant the applicant a protection visa. Relevantly, however, the Tribunal noted that: • 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;

			• 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'; • 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 • in relation to the applicant's fear that she might have a poor credit rating due to her mother's conduct, the Tribunal had accepted her evidence that she was notified by a bank that 'someone' had opened a credit account in her name and defaulted on it while she was in Australia (which she assumed was her mother, using the applicant's identification documents), and considered it plausible that the applicant might have a poor credit reputation as a consequence, but even if she returned to a ruined personal credit history, the Tribunal was not satisfied that being unable to borrow money would cause the applicant any of the statutory types of significant harm.

			For these reasons, the Tribunal was not satisfied that the applicant would have to live in hiding if she returned to Taiwan; rather, it considered that she could re-establish her life there without facing a real risk of significant harm for any reason.
1707502 (Refugee) [2021] AATA 1541 (Unsuccessful)	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]).
1923588 (Refugee) [2021] AATA 1864 (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 *Refugee Convention*. Nonetheless, for completeness, the decision is included in this list of case summaries.)
1931013 (Refugee) [2021] AATA 1608 (Successful)	7 April 2021	88–95	The AAT set 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-refoulment 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.

LRMM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 923 (Unsuccessful)	7 April 2021	146–173, 198	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. 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

			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. On balance, this other consideration ("(a) International non-refoulement obligations") weighed in favour of revocation to a limited extent.
2017189 (Refugee) [2021] AATA 2020 (Successful)	1 April 2021	66–81	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 *Migration Act*) if returned

			to Pakistan and that his mental health condition would deteriorate for a range of reasons, not least due to inconsistent and irregular medical treatment by himself and/or the mental health system. Accordingly, the Tribunal placed significant weight on its analysis of the complementary protection criterion in favour of the visa not remaining cancelled. The Tribunal also placed significant weight on the likelihood that the applicant faced a real risk of significant harm arising from a psychotic episode leading to him being detained in such a manner that he would be subjected to cruel and inhuman treatment or punishment.
1708175 (Refugee) [2021] AATA 1004 (Unsuccessful)	30 March 2021	48–49 (COVID-19), 52–54 (complementary protection)	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. Due to credibility concerns, the Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at these conclusions, the Tribunal observed that '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]).
1704152 (Refugee) [2021] AATA 1529 (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

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

			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.
2018081 (Refugee) [2021] AATA 1518 (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.
QJTT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 609 (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.

			This also had been conceded by the Minister. An International Treaties Obligations Assessment (ITOA) dated 6 October 2016 found that Australia owed non-refoulement obligations to the applicant on the basis of his Hazara race and Shia Muslim religion, and it found that he had a real chance of being subject to significant harm should he be returned to Afghanistan. Further, after discussing in detail the relevant authorities, the Tribunal observed that it was required to approach this consideration on the basis that the consequence of a decision not to revoke the cancellation of the applicant's visa would be that he would be liable, pursuant to s 198, to be removed from Australia as soon as it was reasonably practicable; that the Minister might consider alternative management options, such as the possibility of granting a visa under s 195A; and that, in the meantime, the applicant would be held in detention. The Tribunal noted that, although the duration of that detention could not be determined at the time of the Tribunal's decision, it would not be indefinite, although given prevailing global conditions and the time that it would take the Minister to consider alternative management options, it was likely to be not insignificant. The Tribunal was satisfied that the applicant remaining in immigration detention would have a significantly adverse impact on his mental health. The Tribunal also noted that this consideration called for consideration of the consequences of the applicant being returned to Afghanistan by operation of s 198 of

			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.
1710838 (Refugee) [2021] AATA 2009 (Unsuccessful)	19 March 2021	88	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,

			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.
2015540 (Refugee) [2021] AATA 1022 (Successful)	17 March 2021	97, 99	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]): > 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. Further, the Tribunal explained ([99]): 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.

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

		complementary protection claims)	protection criterion in section 36(2)(aa) of the *Migration Act*. The Tribunal had found that the applicant was not truthful to the Tribunal and had largely fabricated his claims for protection, and as a consequence it did not accept that the applicant would be forcibly recruited into a Yemen-based militia, that he would be targeted as the family member of a deserted soldier (because he supported civilian rule or had lived in a foreign country and spoke a foreign language), or that he was on a Houthi Movement wanted list. The Tribunal did accept, however, that the security and general humanitarian situation within Yemen had deteriorated significantly since the applicant submitted his application for a protection visa, and it was therefore satisfied that there existed substantial grounds for believing that there was a real risk that the applicant would suffer significant harm if returned to Yemen.
Chol and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 505 (Unsuccessful)	15 March 2021	159–195	The Tribunal affirmed a decision to not revoke the mandatory cancellation of the South Sudanese applicant's Class XB Subclass 202 Global Special Humanitarian (Permanent) Visa. During the hearing, the Applicant did not elaborate in his oral evidence on several of the comprehensive claims made on his behalf by the Refugee and Immigration Legal Centre (RILC) — who did not represent the applicant at the hearing — on the matter of non-refoulement, and given the applicant's submission that several of his past claims in evidence resulted from him being misunderstood by the RILC and others, the Tribunal had some concerns about the extent to which he understood and adopted the comprehensive non-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.
1706687 (Refugee) [2021] AATA 617 (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.
1714037 (Refugee) [2021] AATA 883 (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

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

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

			expansion of access to SUS services, coupled with important advances in social cash transfer programs such as Bolsa Familia, rural retirement and rising wages, which contributed to the improvement of the health status of the population. However, more recent cuts in funding were impacting universal access. Mental health facilities were available across the country, and although some reports referred to it as 'chaotic and disorganised' with limited community places, other sources called it outstanding, with its system of community-based services replacing hospital-placed services, widely acknowledged at the international level. Considering these sources, the Tribunal was not satisfied that there was a real risk of arbitrary deprivation of life as a result of withholding access to health services, or the standard of services provided. Any such outcome would be the result of under-resourcing rather than an act or omission of government. Third, while the Tribunal was satisfied that the applicant might be unable to find a job and might become homeless in Brazil, and that he might be more vulnerable to crime and might suffer worsening health as a result, which could lead to severe pain or suffering, the Tribunal was not satisfied that such an outcome would be intentional, as the legislation requires. Sources 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

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

			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.
1827424 (Refugee) [2021] AATA 584 (Successful)	4 March 2021	74–83	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

			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.
1710906 (Refugee) [2021] AATA 873 (Unsuccessful)	4 March 2021	82 (findings about state protection and relocation in the context of the refugee criterion), 85–97 (complementary protection)	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

			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).
1700087 (Refugee) [2021] AATA 843 (Unsuccessful)	4 March 2021	55–61	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

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

			Tribunal had found he was at real risk did not satisfy the definition of significant harm in s 36(2A). 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'.
1900684 (Refugee) [2021] AATA 805 (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

			protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Relevantly, in arriving at this conclusion, the Tribunal accepted that the applicant would need ongoing psychiatric care and that even with such ongoing treatment, he might still experience a relapse of his schizophrenia and require more acute emergency treatment, including hospitalisation. The Tribunal accepted the that the applicant would be expected to need ongoing support and assistance with his daily activities including attending appointments and administering medication. The Tribunal further accepted that the applicant may be unable to obtain employment in Italy and his remaining relatives there were extremely limited in the care they could give him, and that he may need housing assistance or even residential care in the foreseeable future. After referring to the statutory types of 'significant harm' set out in s 36(2A)(a)–(e), the Tribunal found that public health care in Italy was guaranteed by the National Health Service and was administered by multidisciplinary teams of medical professionals and auxiliary staff across inpatient and outpatient services, coordinated by the department of mental health. The National Health Service provided a full range of psychiatric care, from acute emergency treatment to long-term rehabilitation and available anti-psychotic medication included clozapine, with which the applicant was being treated in Australia. The Italian authorities also provided public welfare measures including pensions as well as home assistance and care, stays in

			care facilities or residential facilities and support for education and training. 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. 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

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

			to have an appropriate criminal law, a sophisticated law enforcement system and a well-trained and visible police force. There was nothing in the available material to suggest that Italy's criminal laws were inconsistent with the ICCPR. In summary, the Tribunal did not accept there to be a real risk that as a result of the applicant's potential future criminal activities, the applicant would be arbitrarily deprived of his life by the Italian authorities or any other person or group. It was not suggested that the death penalty would be carried out on the applicant by the Italian authorities for any reason if he were 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.
1916932 (Refugee) [2021] AATA 838 (Successful)	3 March 2021	42–49	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

			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.
1710245 (Refugee) [2021] AATA 1391 (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 *Refugee Convention*, 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.
2007811 (Refugee) [2021] AATA 1356 (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 *Migration Act*.
BNGP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 374 (Successful)	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 *NBMZ v Minister for Immigration and Border Protection* [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.
Shoul and Minister for Immigration, Citizenship, Migrant Services and	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.

Multicultural Affairs (Migration) [2021] AATA 364 (Unsuccessful)			Relevantly, as to the consideration of Australia's international non-refoulement obligations, the Tribunal briefly noted that the lack of familial support and some language challenges facing the applicant did not by themselves rise to the level that complementary protection considerations might be relevant in terms of 'another reason' why the applicant's visa 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.
1724111 (Refugee) [2021] AATA 684 (Successful)	26 February 2021	63	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

			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).
1730799 (Refugee) [2021] AATA 1543 (Unsuccessful)	22 February 2021	93–94, 95–97, 98–100, 101–106, 107–110	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 *Migration Act*. 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 *GLD18 v Minister for Home Affairs* [2020] FCAFC 2. This

			judgment confirmed existing authority in *SZRSN v MIAC* [2013] FCA 751, which provided that, in the context of claims of harm arising from separation from family members, the act of removal of an applicant from Australia cannot itself be characterised as significant harm under section 36(2)(aa). The Tribunal noted that it is now settled that, 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 *GLD18* 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.
PJSH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 273 (Unsuccessful)	19 February 2021	33–45, 56, 60–61	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 Rohingyan 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

			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.
1912725 (Migration) [2021] AATA 1025 (Successful)	18 February 2021	61–64, 75–103	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. 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

			where its security infrastructure was strongest. In such circumstances, the Tribunal found that the level of protection available to the applicant from the Afghan government did not meet the level of state protection which citizens were entitled to expect. Further, the Tribunal accepted that the applicant was identifiable as a Hazara Shia from his physical appearance, his practise of the Shia religion and his language, Hazaragi. The applicant had not lived in Afghanistan for many years and had no family members remaining there with whom he was in contact. Given DFAT's advice that no part of Afghanistan was free of conflict-related violence and the Internal Displacement Monitoring Centre's research indicating that 90 per cent of returnees struggle with food security and subsistence, the Tribunal accepted that relocation outside of Kabul was not reasonable in the particular circumstances of the applicant. For these reasons, it followed that the applicant came within Article 1A(2) of the Refugee Convention and his removal from Australia to Afghanistan would be in breach of Article 33 and contrary to Australia's 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.

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

			could the visa cancellation process or consequences arising from that process constitute an extension of judicial penalty. It follows that the Tribunal was not satisfied that the applicant's evidence enlivened Australia's non-refoulement obligations, and this consideration carried neutral weight.
1709126 (Refugee) [2021] AATA 781 (Successful)	18 February 2021	67–78 (first applicant), 86–95 (second applicant)	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. *First applicant* 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 psychical harassment and the infliction of severe pain

			and suffering, both mental and physical, through extortion, theft and threats of physical harm and kidnapping by criminal gangs for ransom. Further, the Tribunal accepted that it would not be reasonable for the applicant to relocate to a different area of El Salvador, as the appreciable risk of significant harm of generalised violence persisted throughout El Salvador (cf 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)). *Second applicant* 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

			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 *SZSPT v MIBP* about the qualification in s 36(2B)(c) to the definition of significant harm: 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. Adopting the terminology of Rares J, the Tribunal considered that its task was to assess the risk faced by

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

MCVN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 589 (Successful)	16 February 2021	76–79	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).
1910122 (Refugee) [2021] AATA 780 (Successful)	15 February 2021	142–168	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

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

			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). 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

			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. 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.
2016932 (Migration) [2021] AATA 835 (Unsuccessful)	12 February 2021	30–40	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 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.
1907357 (Refugee) [2021] AATA 680 (Unsuccessful)	12 February 2021	38–42	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

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

			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'.
1711245 (Refugee) [2021] AATA 636 (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'.

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

			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.
KMWC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 168 (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.
Hussain (Migration) [2021] AATA 817 (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.
1704840 (Refugee) [2021] AATA 679 (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 *intentionally* 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

			he was not earning a wage and the Malaysian Government had appointed a lawyer to assist with the management of the applicant's debt. 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'.
1804941 (Refugee) [2021] AATA 633 (Unsuccessful)	9 February 2021	46–51	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

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

			applicant being subjected to significant harm in Indonesia as a result of the virus.
1708133 (Refugee) [2021] AATA 704 (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'.
1704872 (Refugee) [2021] AATA 1103 (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

			from Australia to Thailand, there was a real risk that she would suffer significant harm as set out in s 36(2A) of the *Migration Act*, whether from her ex-husband or anyone else. 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. 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 *MIAC v MZYYL* [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

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

Migrant Services and Multicultural Affairs (Migration) [2021] AATA 66 (Unsuccessful)			cancel the Iraqi applicant's Class XB Subclass 202 (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.
1724793 (Refugee) [2021] AATA 581 (Unsuccessful)	28 January 2021	43–48	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

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

			applicants satisfied the criterion in section 36(2)(aa) of the Act. In considering whether or not the applicants would have access to effective and durable state protection and the availability of relocation within Myanmar, having had regard to the country information and the evidence of the applicants, the Tribunal was satisfied that the principal agent of harm feared by the applicants was the Myanmar state and agencies thereof. The Tribunal found, therefore, that effective and durable state protection was not available to the applicants if they were returned to Myanmar.
2018493 (Refugee) [2021] AATA 440 (Unsuccessful)	25 January 2021	64–76	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

			unsatisfactory in that it was evidently something he could reasonably discuss with his family.
2008406 (Refugee) [2021] AATA 623 (Unsuccessful)	18 January 2021	47–52	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Vietnamese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Similarly, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In arriving at this conclusion, the Tribunal accepted that, in principle, arrest, torture and detention for indefinite or lengthy jail terms, without access to a fair trial and proper representation, would satisfy the definition of 'significant harm' in s 36(2A). However, as the Tribunal did not accept that the applicant's claims were made out on the evidence, this observation was expressed only as obiter.
1713060 (Refugee) [2021] AATA 567 (Successful)	13 January 2021	44–54	The Tribunal set aside the decision under review and substituted a decision not to cancel the Pakistani applicant's Subclass 866 (Protection) visa. Relevantly, in considering the existence of (and weight to be given to) any international 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).
1810295 (Refugee) [2021] AATA 214 (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.
Romha (Migration) [2021] AATA 132 (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.
1620393 (Refugee) [2021] AATA 1043 (Successful)	12 January 2021	58	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Pakistani applicants protection visas. The Tribunal was satisfied that the first applicant met the refugee criterion in s 36(2)(a) and that the other applicants satisfied s 36(2)(b)(i) on the basis of membership of the same family unit as the first applicant. Relevantly, however, the Tribunal also observed that whatever measures may have been applicable to the population of Pakistan generally in response to the COVID-19 crisis did not, in the absence of additional considerations, amount to an intentional act or omission for the purposes of the complementary protection provisions.
2007184 (Refugee) [2021] AATA 313 (Successful)	11 January 2021	40–54	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Burundian applicant a protection visa. The Tribunal was satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). The Tribunal was satisfied that the applicant's ex-partner's family would intentionally seek to exact mob revenge on the applicant and that such treatment could result in arbitrary loss of life or cruel and inhumane treatment and/or torture. The Tribunal was satisfied that such treatment amounts to significant harm as defined in s 36(2A). Further, given the reportedly widespread impunity which the police and other arms of the security forces reportedly enjoyed in Burundi, the Tribunal was not satisfied that the

			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.
RJFB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 40 (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.
1934366 (Refugee) [2021] AATA 365 (Unsuccessful)	7 January 2021	98–100	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 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.
1908915 (Migration) [2020] AATA 5619 (Successful)	22 December 2020	64–67, 68–86, 90	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-refoulment 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

			Protocol) and the CAT. For completeness, this decision is included here in these case summaries.
2011614 (Refugee) [2020] AATA 5560 (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.
1932525 (Refugee) [2020] AATA 5544 (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

			carrying out the death penalty in Lebanon, the Tribunal was satisfied that, in the event the applicant was returned to Lebanon, there would be reasonable grounds for believing that, as a necessary and foreseeable consequence of being removed for Australia to Lebanon, the applicant would suffer significant harm. That is, he would be detained (in which there was a real risk he would be tortured and subjected to cruel and inhuman behaviour) and subjected to the death penalty. In reaching these conclusions, the Tribunal reiterated that the definition of 'significant harm' in the complementary protection context requires an element of intent. That is, an act or omission by which the significant harm (deprivation of life, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment) is intentionally inflicted upon a person for a specified purpose or reason. That is, 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.
1702283 (Refugee) [2020] AATA 5965 (Unsuccessful)	18 December 2020	89–94	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

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

			international obligations under the ICCPR may be relevant to determining whether there is 'another reason' to revoke a mandatory cancellation." [174] Our initial approach to this submission is 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 *Clegg v MICMSMA [2020] AATA 3383* at [105] is, in our view and with respect, misplaced. In its response to the decision of the Human Rights Committee in *Nystrom v Australia, UN Doc CCPR/C/102/D/1557/2007 (18 August 2011),* 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 "*own country"* when he has not acquired the nationality and continues to retain the nationality of his country of origin. [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

			provisions of either Article 12(4) or 17(1) of the ICCPR are engaged. His removal from Australia would occur pursuant to Australian law and procedure involving a contested determination during which the Applicant would have been offered appropriate procedural fairness.
1807693 (Refugee) [2020] AATA 6149 (Unsuccessful)	17 December 2020	65–67	The AAT affirmed a decision refusing to grant the applicant a protection visa. The Tribunal reiterated its findings reached with respect to the refugee criterion and was not satisfied that there was a real risk that the applicant would suffer significant harm for any of the reasons claimed if he returned to India. 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 inflected 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 *Migration Act*). Therefore, the Tribunal found that the applicant did not satisfy the criterion in section 36(2)(aa) of the Act.

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

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

			applicants would be at risk of suffering significant harm due to their daughter's health needs.
1920271 (Migration) [2020] AATA 6042 (Successful)	14 December 2020	72–75, 76–88, 99	The Tribunal sets aside the decision under review and substitutes a decision not to cancel the Afghani applicant's Subclass 155 (Five Year Resident Return) 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.
1620623 (Refugee) [2020] AATA 5819 (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 *solely* from the act of removal of an applicant from Australia to her receiving country did not constitute significant harm.
2013022 (Refugee) [2020] AATA 5966 (Unsuccessful)	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).
1619584 (Refugee) [2020] AATA 5581 (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

			protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). 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.

			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).
2008193 (Refugee) [2020] AATA 5518 (Unsuccessful)	4 December 2020	21–27, 28–29	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): … 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. The applicant did not suggest that any economic harm he might suffer in Malaysia would arise from the intentional

			or deliberate act or omission of a third person or persons such as could constitute arbitrary deprivation of life, cruel or inhuman treatment or punishment, degrading treatment or punishment or torture. As such, the Tribunal did not accept that any economic harm to which the applicant may be subjected if returned to Malaysia would meet the definition of 'significant harm', as that term is exclusively defined in s 36(2A). Additionally, the Tribunal considered that the risk of harm to the applicant arising out of the state of the 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.
2007574 (Refugee) [2020] AATA 5739 (Unsuccessful)	4 December 2020	84–93, 94–95	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): That is an act or omission by which the significant harm as defined in s.36(2A) of the Act (arbitrary

			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. 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): 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. 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

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

			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.
1620694 (Refugee) [2020] AATA 5616 (Successful)	25 November 2020	54–82	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). 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]): Significant for the Tribunal in the determination of reasonableness is the fact that the applicant felt that he could not previously relocate within Bangladesh

			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.

			In the final analysis, while the competing considerations were finely balanced, the cumulative impact of all of the above matters resulted in the Tribunal forming the view that it would not be reasonable for the applicant to relocate within Bangladesh. Given these findings, the Tribunal was satisfied that the applicant met the complementary protection criterion.
1907872 (Refugee) [2020] AATA 5521 (Successful)	24 November 2020	44–55, 67	The Tribunal set aside the decision under review and substitutes a decision not to cancel the Afghani applicant's Subclass 866 (Protection) visa. In considering whether Australia's international non-refoulement obligations would be breached as a result of the cancellation, the Tribunal considered that there was a real risk that the applicant's life and freedom would be threatened due to his Hazara race and Shi'a religion if he were returned to Afghanistan. The Tribunal was not satisfied there were current protection measures available to the applicant in Afghanistan. It followed that returning him to Afghanistan would be a breach of Australia's non-refoulment obligations.
1703524 (Refugee) [2020] AATA 5515 (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

			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).
1838191 (Refugee) [2020] AATA 5517 (Unsuccessful)	24 November 2020	80–88	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): 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

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

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

			noted that the first applicant had a number of options 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. 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.

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

			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]). 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.
1821641 (Refugee) [2020] AATA 5493 (Unsuccessful)	13 November 2020	49–53	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

			as a result of any deliberate act or omission by any group or person done with the intention of causing her to suffer significant harm ([53]).
1617394 (Refugee) [2020] AATA 5435 (Successful)	12 November 2020	65–78	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Indian applicant a protection visa. The Tribunal remitted the delegate's decision with the direction that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(aa). The Tribunal accepted that the applicant faced a real risk of assault, physical or sexual 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.
Ghebre (Migration) [2020] AATA 5665 (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

			applicant provided to the delegate [below] a number of country reports, indicating that under a presidential degree [sic] of October 1994, those who practise JW religious [sic] have their Eritrean citizenship revoked. The applicant states that she cannot return to Eritrea where she could face persecution, and has no right to live 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.
2004284 (Refugee) [2020] AATA 5505 (Unsuccessful)	9 November 2020	108–137, 138–140	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

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

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

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

			The Tribunal also considered whether effective protection measures were available to the applicant in Lebanon as required by s 5LA. Given the harm that the applicant feared as a gay or bisexual man was from the 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.
1707500 (Refugee) [2020] AATA 6119 (Unsuccessful)	28 October 2020	45–59	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 *Migration Act*. 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.
WQWS and Minister for Immigration, Citizenship, Migrant Services and	26 October 2020	8, 48-55, 59	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)

Multicultural Affairs (Migration) [2020] AATA 4254 (Successful)			(Subclass 202) visa. In reaching its decision, the Tribunal took into account Australia's international non-refoulement obligations. The Tribunal concluded that the applicant had a well-founded fear of persecution by reason of his membership of the following groups: Assyrian Christians; returnees; and deserting members of the armed forces. Moreover, he had no family left in Syria who could assist with his employment, accommodation or sustenance. Any need he may have for medical assistance was likely to be unmet. In these circumstances, the Tribunal concluded that non-refoulement obligations arose in relation to the applicant and that his removal to Syria would put Australia in breach of its international treaties, which was a powerful discretionary reason to revoke the cancellation of his visa.
2011033 (Refugee) [2020] AATA 6125 (Unsuccessful)	23 October 2020	52 (apparent application of section 36(2B)(c)), 58 (apparent non-satisfaction of section 36(2A))	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

			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.
1828635 (Refugee) [2020] AATA 5366 (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]).
ZMBZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4185 (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.
2013579 (Refugee) [2020] AATA 4984 (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.
1707488 (Refugee) [2020] AATA 4367 (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.
1825299 (Migration) [2020] AATA 4234 (Successful)	9 October 2020	67-87	This case is concerned with review of a decision to cancel the applicant's Subclass 202 (Global Special Humanitarian) visa rather than with a claim of complementary protection. Relevantly, however, it provides an analysis of the internal relocation principle in the context of Australia's international non-refoulement obligations and makes reference to s 36(2B)(a). For example, Member Millar explains (at [69]): In particular, the internal relocation principle has been noted in cases such as *Ali v Minister for Home Affairs* (*Ali*) to be broader in international obligations than in the criteria in s.36(2)(a) of the Act. This is because under the Act a person will not have a well-founded fear of persecution if the person can reasonably relocate to an area where they do not have a well-founded fear of persecution, whereas under the Act, a person who can reasonably relocate will not have a well-founded fear of persecution [sic]. This principle also applies to complementary protection in s.36(2B)(a). This is of particular relevance in this case due to differences in the situation in [the applicant]'s home area of [Location 3] compared with the situation in Somaliland. It is also noted in case [sic] such as *Ali* and *Hernandez* that there is a consideration of the

			impact on non-fulfillment of the obligations on Australia's international reputation need to be considered. (Footnotes omitted.)
XBYC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 4426 (Successful)	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.
1702979 (Refugee) [2020] AATA 4723 (Unsuccessful)	6 October 2020	30-41	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Chinese applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). In the course of arriving at its conclusion with respect to complementary protection, the Tribunal made express reference to, and discussed, the relationship between ss 5(1) and 36(2A)–(2B) of the Migration Act and Article 7 of the ICCPR. In the final analysis, however, the Tribunal concluded that, as was the case with the applicant's refugee claims, his complementary protection claims failed due to a lack of consistency and reliability. As such, the Tribunal was not satisfied that there existed substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to China, there was a real risk that the applicant would suffer significant harm.
1916411 (Refugee) [2020] AATA 4703 (Unsuccessful)	5 October 2020	32-37	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Thai applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection

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

			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.
RRFM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3602 (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 *non-refoulement* obligation, finding that the applicant was owed such obligations.
2010800 (Refugee) [2020] AATA 3832 (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

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

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

			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.
1820632 (Refugee) [2020] AATA 3477 (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)).
1816541 (Refugee) [2020] AATA 3476 (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).
1807750 (Refugee) [2020] AATA 3830 (Unsuccessful)	3 September 2020	96-103, 105	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal did not accept that the applicant faced violence or threats of violence 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).
2000791 (Refugee) [2020] AATA 4187 (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

		protection), 69 (conclusion on refugee protection), 70-71 (complementary protection)	a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did 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).
1910364 (Refugee) [2020] AATA 4489 (Unsuccessful)	27 August 2020	50-52 (effective, accessible, and durable state protection), 55-58 (complementary protection)	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

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

			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.
2001814 (Refugee) [2020] AATA 4531 (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.
1807658 (Refugee) [2020] AATA 3190 (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)).
MPRP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3004 (Successful)	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-refoulment 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.
1809032 (Refugee) [2020] AATA 4206 (Unsuccessful)	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

			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.
DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3523 (Unsuccessful)	17 August 2020	135-159	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

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

			not satisfy the complementary protection criterion in s 36(2)(aa). The Tribunal was not satisfied that the harm claimed by the applicants — that is, harm due to COVID-19 and the economic and political situation in Thailand — amounted to significant harm as defined in s 36(2A), whether considered individually or cumulatively.
1731540 (Refugee) [2020] AATA 4173 (Unsuccessful)	11 August 2020	46-70	The Tribunal affirmed a decision of a delegate of the Minister refusing to grant the Malaysian applicant a protection visa. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the applicant did not satisfy the 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)).
1614144 (Refugee) [2020] AATA 4348 (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.
2007266 (Refugee) [2020] AATA 4150 (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.
Toto and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 3382 (Successful)	6 August 2020	94-114	The Tribunal substitution 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 *non-refoulement* obligations.

1800172 (Refugee) [2020] AATA 3298 (Unsuccessful)	2 August 2020	19-36	The Tribunal affirmed a decision not to grant a protection visa to the Chinese applicant. The Tribunal was not satisfied that the applicant was a person in respect of whom Australia had protection obligations under s 36(2)(a). Further, the Tribunal was not satisfied that the applicant met the complementary protection criterion in s 36(2)(aa). Due to credibility concerns, the Tribunal declined to find that the applicant would be physically attacked and his life threatened by an unidentified person, or that he would be persecuted by his fellow countrymen or suffer persecution by the police, go to prison and suffer mental and physical persecution, as claimed. As to the applicant's fear of contracting COVID-19 if returned to China, the Tribunal found that the risk of contracting the illness would be faced by the Chinese population generally and not the applicant personally (see s 36(2B)(c)). Nor would it be intentionally inflicted on him, nor intended to cause extreme humiliation, which is unreasonable, as required under the complementary protection guidelines to constitute significant harm.
1803255 (Refugee) [2020] AATA 3833 (Unsuccessful)	31 July 2020	280-300	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

			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.
BVLD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2582 (Unsuccessful)	29 July 2020	158-207, 233	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. 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. 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

			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. Overall, the Tribunal concluded that the finding that non-refoulment 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.
1729603 (Refugee) [2020] AATA 4026 (Unsuccessful)	28 July 2020	42-62	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

			during the pandemic. This may be an implicit reference to, and appears to suggest reliance on, s 36(2B)(c) of the Act, which negates a finding of a real risk of significant harm if a risk is faced by a population generally rather than by the applicant personally.
1821208 (Refugee) [2020] AATA 3189 (Unsuccessful)	23 July 2020	33-48	The Tribunal affirmed a decision not to grant a 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).
1811497 (Refugee) [2020] AATA 3810 (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

			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.
2006126 (Refugee) [2020] AATA 3809 (Unsuccessful)	21 July 2020	54-104	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).

1617561 (Refugee) [2020] AATA 3526 (unsuccessful)	17 July 2020	241-280	The Tribunal affirmed the decision not to grant a protection visa to a Sri Lankan applicant and in doing so considered whether the applicant was owed protection under the complementary protection grounds. "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) "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)

			"As noted above, the 'real risk' test imposes the same standard as the 'real chance' test. For the reasons that follow, the Tribunal is not satisfied that such treatment, individually or cumulatively, amounts to significant harm anywhere in Sri Lanka." (Para 271)
2001388 (Refugee) [2020] AATA 4529 (Successful)	16 July 2020	13-33	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the applicant a protection visa. The Tribunal remitted the decision for redetermination with the direction that the applicant was a person who satisfied s 36(2)(aa). The applicant, who was born in Australia to Kenyan born parents, claimed that she would be a victim of violence against women and girls if she was forced to return to Kenya. The applicant also claimed that she would be a victim of violence because of her family background and because the tribe she belonged to 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.
CHJK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2330 (Successful)	16 July 2020	35, 65-69, 78	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

			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.
JHZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2165 (Unsuccessful)	9 July 2020	183-241, 257	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. 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 • 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 • the possibility that the limited mental health services available in Iraq could result in psychological hardship to the applicant 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.
1807055 (Refugee) [2020] AATA 6035 (Successful)	8 July 2020	11	The Tribunal set aside a decision of a delegate of the Minister refusing to grant the Zimbabwean 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). On the other hand, in discussing the complementary protection criterion in s 36(2)(aa), the Tribunal appeared to refer to the exception in s 36(2B)(c) and noted that 'whatever measures may be applicable to the population of Zimbabwe generally in response to the present COVID-19 crisis, do not in the absence of additional considerations, amount to an intentional act or omission for the purposes of complementary protection provisions' ([11]).
1714497 (Refugee) [2020] AATA 3301 (Unsuccessful)	1 July 2020	114-125 (refugee status), 126-131 (complementary protection)	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. In any event, the Tribunal specifically found that the country information supported the conclusion that Iraqi militias attacked elections randomly, entitling a view to

			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)).
1905904 (Refugee) [2020] AATA 2921 (Unsuccessful)	26 June 2020	45-53 (loan sharks and refugee status), 59-62 (complementary protection)	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. In any event, the Tribunal specifically found that the applicant would be able to access effective state protection measures should he return and receive

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

			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)).
2002833 (Refugee) [2020] AATA 3186 (Unsuccessful)	23 June 2020	17-24	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

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

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

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

			such, this finding appears implicitly to refer to, and rely upon, the exception to complementary protection of relocation (see s 36(2B)(a)). 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)).
1703058 (Refugee) [2020] AATA 2625 (Unsuccessful)	11 June 2020	56-60, 61-62, 63-64	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

			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)).
1710637 (Migration) [2020] AATA 3045 (Successful)	10 June 2020	48-81, 84	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): "[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 *non-refoulement* obligations. It is therefore not necessary for me to go on and consider the applicant's other claims to protection." For completeness, however, this decision is included in this list of complementary protection cases.

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

			Chinese Family Planning Laws to the extent that it would constitute significant harm pursuant to s 36(2A).
1619741 (Refugee) [2020] AATA 2917 (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.
1818850 (Refugee) [2020] AATA 2574 (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

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

			[the applicant]'s atheism and his profile as an [Occupation 1] would mean that he would face a real chance of serious harm if he were to be returned to Afghanistan on the basis of his religion and as a member of a particular social group. [94] As a result, the Tribunal considers removal of [the applicant] from Australia would be in breach of its international obligations relating to non-refoulment. This weighs heavily in favour of not cancelling his visa." The language of "real chance" here corresponds to that used in assessing refugee protection (cf "real risk" for complementary protection). Also, having a well-founded fear of persecution due to religion and membership of a particular social group are two of the five grounds for being recognised as a refugee under the Refugee Convention. For completeness, however, this decision is included in this list of complementary protection cases.
1715530 (Refugee) [2020] AATA 6089 (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.
STZS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 2504 (Unsuccessful)	20 May 2020	226-273	The Tribunal affirmed a decision to mandatorily cancel the applicant's Refugee Class XB (Subclass 200) visa. In analysing the "other consideration" of whether cancellation would lead to the applicant's removal in breach of Australia's non-refoulement obligations, the Tribunal found that there was no real chance that the applicant would suffer harm owing to any Refugee Convention-related ground, and that there was no real risk that the applicant would suffer significant harm, if returned to Ethiopia. The Tribunal made four findings. • 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. • Second, in light of 'many unknown factors' ([235]), the applicant's risk of harm and/or hardship on the basis of drug-taking could not be assessed as being greater than a real, and not remote, risk. There was no evidence that the risk of suffering harm as a result of being found in possession of drugs was specific to the applicant and not one that was faced by the population of Ethiopia generally. Further, in terms of harm or hardship (falling short of giving rise to non-refoulement obligations) that could arise from drug use, it was unclear, for example, what sort of punishment would be likely if the applicant were caught with drugs, although the Tribunal noted that imprisonment was possible.

			• Third, there was no more than a remote possibility that a person such as the applicant would be harassed, detained, tortured or killed by the Ethiopian authorities solely for being of Oromo 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. • 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). 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)).
1705805 (Refugee) [2020] AATA 2148 (Unsuccessful)	15 May 2020	54-76	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

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

1711974 (Refugee) [2020] AATA 2056 (Unsuccessful)	5 May 2020	75, 78-82	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).
1831953 (Refugee) [2020] AATA 1495 (Unsuccessful)	1 May 2020	41, 61-65	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. “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.

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

			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.
1801325 (Refugee) [2020] AATA 2006 (Unsuccessful)	24 April 2020	55-61, 62-64	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

			where there was not a real risk that he would suffer significant harm (see s 36(2B)(a)).
1716847 (Refugee) [2020] AATA 1545 (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.
1619513 (Refugee) [2020] AATA 1543 (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.
1817855 (Refugee) [2020] AATA 3124 (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.
1826312 (Refugee) [2020] AATA 2015 (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

			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.
1912689 (Refugee) [2020] AATA 3121 (Successful)	6 April 2020	124-129 (relocation), 130-134 (complementary protection), 135-136 (overall conclusions)	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). 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

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

			foreseeable consequence of him being removed from Australia to Malaysia. The Tribunal accepted the applicant's concern that he may face some difficulty finding suitable employment because of the poor economic circumstances in Malaysia. The Tribunal found, however, that these circumstances were faced by the Malaysian population generally and not just by the applicant personally (see s 36(2B)(c)).
1713094 (Refugee) [2020] AATA 990 (Successful)	27 March 2020	80-83	In substituting a decision not to cancel a Christian Iraqi applicant's protection visa, the Tribunal found that Australia's *non-refoulement* obligations were a relevant consideration.
CYNQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 545 (Successful)	13 March 2020	148-172	In substituting a decision to revoke the cancellation of a Kenyan applicant's Class XB Subclass 202 protection visa, including because there would be a real possibility that the applicant would suffer significant harm or hardship, the Tribunal also discussed conflicting authorities in the Federal Court on *non-refoulement*. "As matters stand, there are currently conflicting authorities in the Federal Court as 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 *Minister for Home Affairs v Omar* [2019] FCAFC 188 ("*Omar*")." (Para 149)

			"Prolonged detention is however a real possibility for the current Applicant, and this would obviously result in significant harm or hardship to him. The Tribunal considers that that possible prolonged detention of the the Applicant, along with the other hardships that have been already identified in these reasons weigh significantly in the Applicant's favour." (Para 172)
1816263 (Migration) [2020] AATA 2158 (Successful)	11 March 2020	87-116	The Tribunal substituted a decision revoking the cancellation of an Afghan applicant's Five Year Resident Return visa. The Tribunal found that the applicant's removal from Australia to Afghanistan would be in breach of Australia's international non-refoulement obligations. However, the Tribunal appears to base its decision principally — if not exclusively — on the conclusion that the applicant came within Article 1A(2) of the Refugee Convention and, as such, his removal from Australia would breach Article 33 of the Convention. Nonetheless, for completeness, this case is included in this list of complementary protection cases 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.
1726514 (Refugee) [2020] AATA 2429 (Unsuccessful)	3 March 2020	73-83	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-

			refoulement obligations), the Tribunal found that there was no real risk that the applicant would suffer significant harm in Iraq. The Tribunal was satisfied that the current civil unrest, lack of general security and the instability the applicant may fear in Iraq are faced by the population generally and not by him personally (see s 36(2B)(c)).
MCCN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 930 (Unsuccessful)	3 March 2020	135-166	The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Iraqi applicant's visa but accepted that there is a real risk of serious harm to the applicant that rises to a level to trigger non-refoulement obligations. "More particularly, the Tribunal is satisfied that the applicant's stated claims of harm relating to his membership of the Christian minority and as a consequence of the potential for him to be associated with perceived wealth, represent a risk of harm to a 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)
1711438 (Refugee) [2020] AATA 789 (Successful)	27 February 2020	62-80	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. "The Tribunal finds that the applicant and as a consequence of his current medical condition – being a

			person who is HIV positive, if he were returned to Fiji in the reasonably foreseeable future will fall victim either to being subjected to cruel or inhuman treatment or punishment or be subject to degrading treatment or punishment committed upon him because he would be unable to receive, the proper counselling care and medical treatment he requires as a person having been diagnosed as HIV positive." (Para 66) "The Tribunal finds that the applicant if he was returned to Fiji in the reasonably foreseeable future will fall victim to either arbitrarily being deprived of his life or subjected to cruel and inhuman treatment being committed upon him by the reality of the situation he would find himself in – in Fiji, where he would be singled out and mistreated by the general community because of his HIV positive chronic illness. He would not be able (due to the lack of) to engage with a range of support services to assist him in continuously dealing with his chronic illness and it changing challenges." (Para 70) "It is clear 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

			treatment or punishment, where acts or omissions by which severe pain or suffering, whether physical or mental, is intentionally inflicted on the applicant." (Para 75)
FRVT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 294 (Successful)	25 February 2020	244-313	The Tribunal substituted a decision to revoke the cancellation of a Chinese applicant's protection visa and in doing extensively discussed non-refoulment 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. "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) "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) "While the Tribunal does not consider that the Applicant's claims in relation to the coronavirus invoke

			Australia's international non-refoulement obligations, they still present risks of harm and hardship which the Tribunal has taken into account and ultimately weigh in the Applicant's favour." (Para 300) "In those circumstances, the Tribunal considers that, in addition to a risk that he will be re-prosecuted for his Australian offences, there is a heightened and real risk that the Applicant will be prosecuted in China for serious drug related offences that relate to the territorial jurisdiction of China. From the material available, it appears that there is a real risk that the Applicant could receive the death sentence for such offences." (Para 308) "As the Applicant cannot apply for another substantive visa in Australia, and it is highly unlikely that the Minister will exercise any discretion to allow him to remain here, the Tribunal considers that there is a real risk that the Applicant will be returned to China in breach of Australia's international non-refoulement obligations." (Para 312)
Hanna and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 293 (Unsuccessful)	25 February 2020	146-165	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. "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

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

			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 s.116(1)(e) of the ACT." (Para 78)
HSKJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 176 (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)
GQVS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 178 (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 *non-refoulement* obligations.
QDQY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	31 January 2020	45-55	The Tribunal affirmed a decision not to revoke the mandatory cancellation of an Iraqi applicant's visa,

(Migration) [2020] AATA 125 (Unsuccessful)			notwithstanding the finding that the applicant was owed *non-refoulement* obligations. "Given that the legal consequence is that the applicant would be returned to Iraq, it is my assessment for the reasons set out above that there is a very real risk that the applicant will suffer significant harm if the cancellation decision is not revoked. This factor weighs heavily in favour of revoking the cancellation decision. I accept that regardless of whether the applicant's claims are such as to engage non-refoulement obligations, the applicant would face significant hardship including a risk of violence in the event that he were to return to Iraq." (Para 55)
1703365 (Refugee) [2020] AATA 1354 (Successful)	21 January 2020	60-69	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.
TNJG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 10 (Successful)	9 January 2020	64-77	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. "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

			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) "If the Applicant was required to remain in "indefinite" detention (in the sense described above by Gleeson J in *CWGF*), 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) "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)
1713001 (Refugee) [2019] AATA 6855 (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.
HPZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2019] AATA 5402 (Successful)	13 December 2019	113-116, 133	The Tribunal remitted an Afghan claimant's application with the direction that a temporary protection visa not be refused, including because the applicant is owed *non-refoulement* obligations.
1715048 (Refugee) [2019] AATA 6684	9 December 2019	94-102	The Tribunal remitted the application of an Iranian applicant with the direction that the applicant satisfies 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.
SBTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2019] AATA 5609 (Successful)	6 December 2019	109-133	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. "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: (a) there is a real chance the applicant would be subjected to state sanctioned discrimination which could

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

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

			that the Alevi religion was now freely practised across Turkey. The Tribunal accepts that the level of discrimination in this respect may vary significantly depending on the location within the country; (f) there is a real chance the applicant would be subjected to discrimination in seeking to obtain employment opportunities in Turkey; and (g) there is a real chance the applicant would be subjected to potential harm due to the general security situation in Turkey." (Para 126) "The Tribunal is otherwise satisfied that on the basis of the Tribunal's findings with respect to the 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)
ZKFQ and Minister for Home Affairs (Migration) [2019] AATA 5168 (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 *non-refoulement* obligations. He had made anti-Iran statements and a summons had been issued in his name.
CQBW and Minister for Home Affairs (Migration) [2019] AATA 5177 (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 *non-refoulment* obligations.

KYMM and Minister for Home Affairs (Migration) [2019] AATA 5174 (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 *non-refoulement* obligations weighed in favour of revocation, it was open to the applicant to apply for a protection visa.
1928362 (Refugee) [2019] AATA 6213 (Unsuccessful)	22 November 2019	44-51	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. "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)
1906027 (Refugee) [2019] AATA 6729 (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)
1806813 (Refugee) [2019] AATA 6786 (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)
QDWQ and Minister for Home Affairs (Migration) [2019] AATA 4622 (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 *non-refoulement* obligations were engaged, they did not outweigh primary considerations.
1605495 (Refugee) [2019] AATA 6815 (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. "'*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. 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

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

			obligations to the Applicant under the ICCPR and the CAT." (Para 256) "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) "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)
1604355 (Refugee) [2019] AATA 6804 (Unsuccessful)	24 September 2019	235-344	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,

			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
DFNM and Minister for Home Affairs (Migration) [2019] AATA 3769 (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 *non-refoulement* 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 *non-refoulement* obligations but was unsatisfied that *non-refoulement obligations* would arise under the ICCPR or CAT.
1613414 (Refugee) [2019] AATA 6738 (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)
1613766 (Refugee) [2019] AATA 6379 (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

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

			has now spent over four years in detention. There is evidence that the applicant's mental health issues will be exacerbated by returning to Fiji and that the facilities available may be inadequate. His family, who are permanent Australian residents, will face hardship. These are matters that may make the applicant's case unique and may raise compassionate and compelling reasons for intervention in accordance with the Guidelines.' (Para 134) 'We accept the applicant's evidence that he was threatened. We accept the threat was open-ended and could have been construed to be continuing. We also accept the applicant has a long held and fear of returning to Fiji and he may face further psychological harm if he returns. There is evidence the applicant, who was young and inexperienced, was understandably traumatised by the incident and, critically, did not obtain any treatment or counselling for this until later in his later years. We accept this as had an impact on his return to Fiji is likely to have a further impact on his mental health.' (Para 94). 'The difficult question is whether previous threats and trauma which manifest in psychological harm both in Australia and, more particularly, in the receiving country engages complementary protection.' (Para 95) 'The harm that must be suffered is "significant harm" which, as her Honour recognises, requires that a claimant "will be subjected to... an act or omission": refer at [30] – [32]. Psychological harm which is a

			consequence of a previous act cannot be an "act or omission" as contemplated by s.36(2A) because the definition requires that the act or omission take place in the future. In our view the words in s.36(2A), as informed by the definitions in s.5(1), are clear.' (Para 99) 'Thus, as Riley J observes in CKX16 the question is whether a person will be subjected to an act in the future if the person suffers the consequences of the act in the future, even if the act itself is in the past. While her Honour concludes that this would engage s.36(2A) and therefore s.36(2)(aa), we prefer the authority of Mansfield J in SZSRN where his Honour made an important distinction between an act and the consequence of an act: at [47]. We also note that when s.36(2A) is read with s.5(1) the clear meaning is that the non-citizen will be subjected to an act where suffering is intentionally inflicted. This is inconsistent with suffering harm from a previous act.' (Para 110) 'We also reject any suggestion that the principles in Project Blue Sky would be authority for such a broad interpretation. The process of construing s.36(2)(aa) begins with the statutory text and the text must be considered in its context. Objective discernment of the context may be made through extrinsic material, the legislative history and the purpose and policy of the legislation However, extrinsic material cannot be relied upon to displace the clear meaning of the text. In our view, ss.36(2A) and 5(1) are clear in their terms. To engage s.36(2)(aa) an applicant must satisfy the

			Tribunal that there is a real risk he or she will suffer significant harm in the receiving country and this means an act or omission taking place in the receiving country. This cannot be constituted by an act in the past or the future consequence of an act in the past. Psychological harm is a mental state and is not an "act" but rather an illness which is manifest, in this case, by reason of a previous act.' (Para 111) 'The contention that the threat made to the applicant 17 years ago is a continuing act which, in effect, will come to fruition when the applicant returns to the place of the 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) '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)

1619551 (Refugee) [2019] AATA 5306 (Successful)	5 September 2019	59-62	The Tribunal remitted a Pakistani, homosexual applicant's claim for reconsideration with the direction that the applicant satisfies both the refugee and complementary protection criteria.
DARYAB (Migration) [2019] AATA 4492 (Unsuccessful)	4 September 2019	56-60	The Tribunal affirmed a decision to cancel a Hazara applicant's Subclass 202 (Global Special Humanitarian) visa, while recognizing that Australia may owe protection obligations towards the applicant and that Australia's international obligations may be engaged. "The Tribunal is prepared to accept, for the purpose of this review only, that it would be difficult for the applicant to live on her own in Pakistan without much family support. The Tribunal accepts that the situation in Pakistan may be 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)
1729652 (Refugee) [2019] AATA 6484 (Successful)	12 August 2019	96-119	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). "The types of harm that will amount to 'significant harm' are exhaustively defined in ss.36(2A) and 5(1) of the Act. Although each form of harm has a discrete

			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)
1725683 (Refugee) [2019] AATA 6214 (Successful)	12 August 2019	51-59	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 *non-refoulement* obligations would be breached if compelled to return. "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 *non-refoulement* 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)

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

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

			members of the community who have lived here for a significant period and returning them to a country (Pakistan) where they would essentially be required to live in segregation and under constant threat of attack by extremists; an action that would be in breach of Australia's *non-refoulement* obligations." (Para 57)
1729305 (Refugee) [2019] AATA 6331 (Successful)	31 July 2019	47-61	The Tribunal remitted a Sri Lankan Tamil applicant's application with remits with the direction that the applicant satisfies s.36(2)(aa). "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)

1811868 (Refugee) [2019] AATA 6013 (Successful)	23 July 2019	70-75	The Tribunal substituted a decision not to cancel an Iraqi applicant's Subclass 866 (Protection) visa and found he was owed *non-refoulement* obligations. "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 has Australia has *non-refoulement* obligations." (Para 71) "In light of the above information, I see no reason to depart from the ITOA's conclusion that the applicant

			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)
1731415 (Refugee) [2019] AATA 5962 (Successful)	26 June 2019	108-121	The Tribunal substituted a decision not to revoke an Iraqi applicant's Subclass 866 (Protection) visa and gave weight to *non-refoulement* obligations. "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.[22] 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)
1613224 (Refugee) [2019] AATA 5826	24 June 2019	30-37	The Tribunal remitted the application of a Filipino woman who feared serious physical harm from her

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

			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)
1610842 (Refugee) [2019] AATA 1418 (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

			a lack of treatment for his condition amounted to cruel treatment was rejected. 'In his Protection visa application form, the applicant made the following claims: 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. 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. iii. Mentally ill people were not welcomed in society in Mauritius. He will suffer harm

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

			deprived of his life. The definitions of torture, cruel or inhuman treatment or punishment in the Act require that pain or suffering be 'intentionally inflicted' on a person and the definition of degrading treatment or punishment requires that the relevant act or omission be 'intended to cause' extreme humiliation. As discussed with the applicant and his representative at the hearing, the Tribunal is not satisfied on the evidence before it that there is an intention to inflict pain or suffering or to cause extreme humiliation to people suffering the sort of health problems it is accepted that the applicant has.' (Para 43). 'The Tribunal has also considered the submission that it will be Australia who will be intending to inflicting cruel or inhuman treatment or punishment or degrading treatment or punishment, if the application is refused and he is required to return to Mauritius. In *SZRSN v MIAC,* where it was claimed significant harm would arise from separating the applicant from his Australian children, the Federal Court found that harm arising from the act of removal itself will not meet the definitions of 'significant harm' in s.36(2A).[20]Australia's obligations to afford protection referred to in s.36(2)(aa) arise from the harm faced by a non-citizen in the receiving country, rather than the country in which protection is sought.[21] As the harm under s.36(2)(aa) must arise as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, s.36(2)(aa) will not be engaged by harm inflicted by the act of removal itself.' (Para 44).

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

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

MBJY and Minister for Home Affairs (Migration) [2019] AATA 4055 (Unsuccessful)	7 June 2019	171-197	The Tribunal affirms a decision not to revoke the mandatory cancellation of an Indian applicant's partner visa. In doing so, the Tribunal considers Australia's non-refoulement obligations noting that "the Tribunal did not accept the Respondent's submission that it was sufficient for the Tribunal to find that it was unnecessary to determine whether non-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)
1606699 (Refugee) [2019] AATA 5839 (Successful)	9 May 2019	21-42, 45-48	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. "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

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

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

			supporting documents, the Tribunal accepts that there have been at least some instances of intimidation and physical harm suffered by the applicant as a result of his sexuality.' (Para 34). 'The Tribunal notes that a negative attitude by authorities in Mongolia to the applicant's sexuality and intimidation and physical harm from society in general is not inconsistent with independent information as to the treatment of homosexuals in Mongolia, albeit that there have been some steps by the government to improve the situation for homosexuals.' (Para 35) 'Given the negative attitudes towards homosexuality in Mongolia, the Tribunal is satisfied that the applicant faces a real chance of both 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) '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)

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

			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) '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) '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) '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)
1800173 (Refugee) [2019] AATA 2122 (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.

			‘The applicant fears that he will suffer deterioration in his mental health of a severe nature as a necessary and foreseeable consequence of his being returned to Pakistan. The applicant also fears that he will be killed or assaulted by extremists who will target him because he is opposed to their ideology, or that he will be killed or assaulted in a general act of terrorism if he is returned to Pakistan’ (Para 47). ‘Based on the applicant’s past experience of suffering a psychosis and requiring hospitalisation in [State 1], I accept that the applicant is potentially vulnerable to a relapse or worsening of his mental health condition if he is returned to Pakistan, particularly given his experience on his return in 2014, where he immediately felt ‘watched’ after he was attacked.’ (Para 48). ‘In relation to his fear of mental health deterioration, whilst there *is* such a risk of that deterioration, and that it may be severe, the information and evidence before me does not suggest that any severe deterioration in his mental health would be inflicted on the applicant by any person or group. S.5(1) of the act provides definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. In each case, the elements of the definitions require an act or omission by which severe pain, pain or suffering or extreme humiliation is *intentionally inflicted* 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

			does not suggest intentional infliction of such (nor indeed, the intentional withholding of treatment for any reason by any person). I consider that the possible deterioration in the applicant's mental health does not meet the necessary criteria within the definitions of 'significant harm' outlined in s.5(1) for each of 'torture', 'cruel or inhuman treatment or punishment' or 'degrading treatment or punishment.' That harm would not be 'inflicted' or 'caused' by any act or omission of any person which intended to cause that harm.' (Para 51). 'The applicant also fears falling victim to a general act or terrorism throughout Pakistan due to the general security situation. The country information discussed above generally acknowledges that such attacks can and do happen without warning throughout Pakistan, targeting various groups or persons in authority, despite some reduction in the number of attacks over recent years. There is some risk therefore, 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). '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

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

			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). '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,

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

			foreseeable consequence of him being returned to Pakistan.' (Para 58).
1712068 (Refugee) [2019] AATA 223 (Unsuccessful)	25 January 2019	21, 86, 140-143, 173, 175	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. '*Summary of claims:* 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

			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). '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). '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

			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). '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). '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). 'I accept that the applicant had been detained wrongly for [a crime] and then released. I find that this would not

			compound his circumstances nor is there a real chance of serious harm or a real risk of significant harm arising from this past experience.' (Para 143). 'In *MILGEA v Che Guang Xiang* the Court required that to establish a real chance of serious harm it is necessary to look at the totality of circumstances.[25] 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

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

			punishment or degrading treatment or punishment. The Tribunal also is not satisfied the process of questioning itself would constitute significant harm, even when taking into account the applicant's blood pressure issues. The Tribunal is therefore not satisfied that as a necessary and foreseeable consequence of the applicant's return to Sri Lanka, there is a real risk he would suffer significant harm at the hands of the Sri Lankan authorities as part of a process of questioning to which he may be subject.' (Para 96). 'For the reasons set out above, the Tribunal has accepted that the applicant will be questioned at the airport upon his return to Sri Lanka, that he will likely be charged with departing Sri Lanka illegally and that he could be held on remand for a brief period while awaiting a bail hearing. The Tribunal does not accept that the applicant is of ongoing adverse interest to the authorities. Based on the Tribunal's earlier reasoning on this matter, it does not accept on the information before it there to be a real risk that the applicant will face torture, or other types of significant harm as set out in s.36(2A) of the Act, either during his questioning at the airport or during any period he spends on remand. The Tribunal considers, if convicted of charges under Sri Lanka's *I&E Act*, 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

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

			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). '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). '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).