



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09762

Date and time of decision: 19 October 2021 11:18:00

R Mikhail, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 28 September 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection).
2. On 28 May 2021, the applicant was interviewed by telephone with a delegate of the Minister for Immigration (the delegate) regarding his application for protection (PV interview).
3. On 24 August 2021 the delegate refused the grant of the visa.

### Information before the IAA

4. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. This is subject to other provisions of Part 7AA. Pursuant to s.473DC the IAA may get, request or accept 'new information' but is under no duty to do so whether requested to do so by a referred applicant, by any other person, or in any other circumstances. This discretionary power must be exercised reasonably having regard to the IAA's statutory framework and all the circumstances of each case. If the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances.
6. The applicant provided a submission to the IAA by way of number of emails received between the 22 and 24 September 2021.
7. During the PV interview the applicant claimed that he expressed his political and religious opinion against Islam and the Iranian government on social media. In his submissions to the IAA he made some references about his activity on [Social Media 1] and [Social Media 2] and, in that sense, I do not regard these references to be new information.
8. In his submissions to the IAA, the applicant has provided new information to the IAA regarding his claims for protection.
9. In his submissions to the IAA, the applicant claims that he made a mistake not using an interpreter during the PV interview. He says the interview started and finished with him speaking in English. He claims that he has been living in Australia for nine years and is comfortable speaking English but that when he speaks English, he finds it difficult to access his memories in detail as he does not have the emotions that are created when he is speaking Farsi and that these emotions help him to better access his memory and remember what he experienced in more detail. I note that the applicant spoke fluent English during the PV interview. At the beginning of that interview the delegate asked if he was comfortable continuing the interview in English and he said he was, but he would like to later answer in Farsi to which the delegate agreed. A Farsi interpreter was available to the applicant throughout the PV interview and the delegate advised the applicant that he could use the interpreter at any time. The applicant proceeded to begin the interview in English but at one point decided to use the interpreter to discuss an aspect of his claims and then eventually

reverted back to speaking in English. In the circumstances, I am satisfied the applicant was given an opportunity to use a Farsi interpreter and he was aware of that opportunity as evidenced by the fact that he took advantage of that on one occasion. I am not satisfied the applicant was prevented from putting forward all of his claims for protection during the PV interview because he chose to speak in English the majority of the time. The applicant also had the opportunity to provide any further details he wished after the PV interview and I note he did that by sending further information to the delegate in an email. I am not satisfied he could not have provided any new information he has given to the IAA, that pre-dates the delegate's decision, for this reason.

10. In his submissions to the IAA, the applicant also claims that at the PV interview, the delegate indicated that she believed what he was saying. He said that for that reason he did not provide the delegate with more information in respect of his claims. I have listened to the recording of the PV interview and observed that at the end of that interview, the delegate thanked the applicant for participating in the interview and told him he did well, complimented his English and expressed himself well. Given this and that the applicant speaks fluent English, I am not satisfied what the delegate expressed was an acceptance of the applicant's claims or that is how the applicant interpreted it, such that he did not think he needed to provide any further information about his claims. This is evidenced by the fact that, after the PV interview, the applicant sent an email to the delegate on 6 June 2021 providing further information about his claims. I do not accept the applicant could not have provided further information to the delegate about his claims before her decision because he thought she had accepted all his claims during the PV interview. I do not accept this as explanation for any new information he has provided to the IAA that pre-dated the delegate's decision, as outlined below and I am not satisfied he could not have provided this information before the delegate's decision for this reason.
11. The applicant newly claims that his sister hates him because she thinks he is a "Kafir" because of his religious opinion against Islam and she does not want him to "infect" her children. He claims that, last year, her daughter won a prize for reading the Quran and she posted it in [Social Media 1]. He commented on the post under her video, saying congratulations but advised her to try to win a prize in science. He claims his sister got mad at him and blocked him on [Social Media 1]. During the PV interview the delegate asked the applicant if his immediate family in Iran were religious and he said that they were not that religious, but they still pray sometimes. He also noted that he had been trying to convince family members that Islam is not right and some of them hate him now but he did not refer to his sister was one of his family members that now hate him. Given these issues were discussed during the PV interview, and my findings above in paragraphs 8 and 9, I am not satisfied this new claim could not have been provided to the delegate before her decision. Section 473DD(b)(i) of the Act is not met. The fact that the religiosity of the applicant's family was discussed during the PV interview and that the above new claims refer to events that happened a year ago, and the applicant did not mention it during his PV interview, causes me to doubt the genuineness of these claims. The applicant has also not provided evidence of the relevant [Social Media 1] posts. In the circumstances, I am not satisfied these new claims are capable of being believed. I am not satisfied it is credible personal information that may have affected consideration of the applicant's claims. Section 473DD(b)(ii) of the Act is also not met. In light of these matters, I am also not satisfied there are exceptional circumstances to justify considering this new information.
12. The applicant newly claims that, because of his social media activity on [Social Media 1] where he expressed his religious/political opinion against Islam and the Iranian government, he became enemies with his cousin who he found out has been working with Sepah for the past

few years. He claims his cousin called him and abused him and told him not to return to Iran. The applicant has not indicated when this occurred and, as the applicant discussed his social media activity during the PV interview, in and conjunction with my other findings above as outlined in paragraphs 8 and 9, I am not satisfied this new claim could not have been raised before the delegate made her decision and s.473DD(b)(i) is not met. The applicant has provided little detail in regard to this new claim about his cousin nor any evidence of his social media activity. I also find that, if this claim were true, he would have raised such a claim before the delegate. Taking all of this into account, I am not satisfied this claim is capable of being believed. I am not satisfied it is credible personal information that may have affected consideration of the applicant's claims. Section 473DD(b)(ii) of the Act is not met. I am also not satisfied there are exceptional circumstances to justify considering this new information.

13. The applicant also newly claims that, on one occasion, when he was nine or ten years old, his aunt's husband (his uncle) "smashed" his female cousin and broke her ribs and also beat the applicant because they were watching a wrestling match on Iran's national television. In his evidence before the delegate the applicant claimed he left Iran because the same uncle had threatened the applicant because of the applicant's disbelief in Islam so his claims about this uncle formed a significant part of his claims for protection. This new claim also purportedly refers to events that occurred many years ago when the applicant was a child. In the circumstances, and in conjunction with my findings in paragraphs 8 and 9 above, I am not satisfied this new claim could not have been raised before the delegate made her decision and I am not satisfied s.473DD(b)(i) of the Act is met. During the PV interview the delegate asked the applicant if he feared violence from his uncle and, despite his claim that his uncle threatened him, he said he did not think so but that his uncle had a lot of connections to other people who could harm the applicant. In his new claim the applicant is now indicating that his uncle is physically violent and was very violent towards the applicant when he was a young child. Given the centrality of the applicant's uncle to his claims for protection, I find that if this incident had happened when he was young, he would have raised it in his evidence before the delegate. I am not satisfied this new claim is capable of being believed. I am not satisfied it is credible personal information that may have affected consideration of the applicant's claims. I am not satisfied s.473DD(b)(ii) is met. I am also not satisfied there are exceptional circumstances to justify considering this new information.
14. The applicant claimed before the delegate that he was punished for having rubbing alcohol in his possession during his military service. He claimed he was detained for three weeks and punished with 80 lashes, but he paid a fine instead of the lashes. In her decision the delegate accepted this claim but noted it did not result in a criminal conviction. The applicant newly claims that he was charged for possessing alcohol on this occasion and went to court and it is now on his criminal record. Given the applicant discussed this incident in his application for protection and during the PV interview, in and conjunction with my other findings above as outlined in paragraphs 8 and 9, I am not satisfied it could not have been raised before the delegate made her decision and I am not satisfied s.473DD(b)(i) of the Act is met. As the applicant initially claimed that he was detained and punished for this offence, I consider his new claim that he was charged, attended court and now has a criminal record in this regard, capable of being believed and may have affected consideration of his claims. I am satisfied s.473DD(b)(ii) of the Act is met. Given the significance of the applicant's new claim that he has a criminal record in relation to this offence, I am satisfied there are exceptional circumstances to justify considering this new claim.
15. The applicant also raised a new claim that in 2018 he joined a protest [in Australia] against the Iranian regime. During the PV interview the delegate asked the applicant if he had expressed his political/religious opinion in Australia and he only referred to his social media activity and

talking to people in the community. Given this, and my findings in paragraphs 8 and 9, I am not satisfied this new claim could not have been provided to the delegate before her decision and s.473DD(b)(i) is not met. Again, the fact that the applicant did not raise such a claim previously and purportedly refers to events that occurred in 2018 prior to his PV interview and that he has not provided any supporting evidence of having attended this protest or that such a protest occurred, I am not satisfied this new claim is capable of being believed. I am not satisfied it is credible personal information that may have affected consideration of the applicant's claims. Section 473DD(b)(ii) of the Act is not met. I am also not satisfied there are exceptional circumstances to justify considering this new claim.

16. The applicant also newly claims that he is now a Christian and has been a Christian for over a year. He claims he did not say anything about his new religion at the PV interview because he did not want to use religion to get a visa but now his life is on the line and he has real faith (in Christianity) so that is why he is raising this now. In support of this new claim the applicant has provided a new letter from the Pastor of [Church 1] dated 14 September 2021.
17. As the applicant has claimed that he converted to Christianity over a year ago and his main claims before the delegate was that he feared harm in Iran as someone who no longer believed in Islam, I do not accept his explanation that he did not raise this new claim at his PV interview because he did not want to use religion to get a visa. Given this and my findings in paragraphs 8 and 9, I am not satisfied this claim could not have been raised before the delegate made her decision. Although the Pastor's letter post-dates the delegate's decision, given it has been provided in regards to the applicant's new purported Christian conversion which occurred a year ago, I am also not satisfied it could not have been obtained earlier and provided to the delegate before her decision. I am not satisfied s.473DD(b)(i) of the Act is met. I have considered the information in the letter from the Pastor which I note is corroborative of the applicant's new claims and on this basis, I consider his new claims capable of being believed. I am satisfied it is credible personal information that may have affected consideration of the applicant's claims, had these new claims been known. I am satisfied s.473DD(b)(ii) of the Act is met. Given these new claims reflect a material addition to the applicant's claims for protection, and s.473DD(b)(ii) is met, I am satisfied there are exceptional circumstances to justify considering this new information.
18. The applicant also provided a number of new documents in Farsi to the IAA which he claims is evidence in support of a claim he raised before the delegate that he was in a car accident shortly before departing Iran. He claimed that even though he was advised to stay in hospital for several days, he left Iran because he was afraid his uncle would report him to the Iranian authorities. He claims he is unable to translate the documents because he cannot afford it. He also claims he did not think he needed to provide these documents to the delegate because the way the delegate interviewed him made him think that the documents he had already provided were enough and he wrote to the Department about the accident straight after his interview. The current IAA Practice Direction states that documents provided to the IAA that are not in English and are not accompanied by a translation may not be accepted. As I cannot read the information in these documents, I have decided not to accept them. Even if I were to accept them, I do not accept his explanation for why he did not provide them to the delegate. The only documents the applicant provided to the delegate were his Iranian identity documents and he did not provide any other documents in support of his claims and he only provided information about this claim to the delegate after the PV interview. These new documents purport to relate to events that occurred nearly ten years ago. Given this and my findings in paragraphs 8 and 9, I am not satisfied these documents could not have been provided to the delegate before her decision. Moreover, in the absence of translations, I cannot ascertain if the documents corroborate his claims. I am not satisfied they are credible

personal information that may have affected considerations of his claims. Section 473DD(b) is not met. I accept, for the reasons given below, that the applicant was in a car accident shortly before he left Iran and it is not evident this new information would address anything additional to these claims. I am also not satisfied there are exceptional circumstances to justify considering this new information.

19. I am satisfied the applicant had an opportunity to present his claims orally at the PV interview and had the opportunity to use a Farsi interpreter and to provide further information to the delegate after the PV interview, which he did. Although he claims his memory recall in Farsi is better than in English, he has provided numerous emails to the IAA in comprehensible English where he has responded to the delegate's decision and provided new information to the IAA, which I have assessed under s.473DD. I am satisfied the applicant has had an opportunity to provide his response to the delegate's decision to the IAA. In the circumstances, I am not satisfied an interview is warranted in this matter.

### **Applicant's claims for protection**

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20. The applicant's claims can be summarised as follows:

- He was born in [year] in Tehran where he resided with his parents and siblings.
- He was forced to be a Muslim in Iran, but he did not believe in it and he was against the Iranian government and their religious law. This made his life hard.
- He was detained three times because of the way he dressed.
- During his military service he was also caught with alcohol and detained and punished.
- He was also hit by the Basij for talking to a girl.
- Just prior to leaving Iran he got into an argument over Islam with his uncle who is a Mullah and his uncle threatened him and he became afraid and left Iran in May 2013.
- When he was departing from the airport in Tehran he was stopped by someone from the government who told him that they knew where the applicant was going and the applicant was made to sign a statement that states that, if he is returned to Iran from Australia, he can be charged and sent to jail for one year.
- Since being in Australia he has converted to Christianity and he fears harm in Iran for this reason.

### **Refugee assessment**

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21. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

22. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
23. The applicant provided a copy of his national identity card and translation which confirms his claimed identity and that he is a citizen of Iran. I am satisfied that Iran is the receiving country for the purpose of this assessment.
24. In his application for protection the applicant claimed that he was forced to be a Muslim in Iran and live by Islamic law, but he does not believe in religion. During the PV interview he explained that since he was a child, he could not accept Islam. He claimed that his family were not that religious, and they had a satellite dish in their home since he was a child. He said sometimes his parents would pray and go to the mosque but no one in his home was very religious and he was not forced to pray at home.
25. The applicant further claimed that, when he was in school, he used to get in trouble for not attending mosque and would also get in trouble during his Arabic/Islamic classes. Country information that was before the delegate confirms that all school curricula in Iran must include a course on Shia Islam and all students, regardless of their religion, must take and pass this course.<sup>1</sup>
26. During the applicant's Irregular Maritime Arrival and Induction Interview held on 5 July 2013 whilst he was in Australian immigration detention (arrival interview) he also indicated he had no religion, so I give weight to his consistency in this regard.
27. The applicant also gave a convincing account of his non-belief in Islam during his PV interview.
28. I accept that the applicant's immediate family were not very religious, and I accept he did not believe in or practise Islam since he was young in Iran. I also accept he may have experienced problems in school for this reason.
29. In his written application, the applicant claims his aunt's husband (his uncle) is a "Mullah" in Qom and works for the Iranian government. He claims his uncle called him a "kafir" (infidel) and said that killing the applicant is fine and his family need to hand the applicant over to the government or his uncle "will do what God told him to do". Two days later his aunt told his family to send the applicant out of Iran because his uncle was starting to talk to others about the applicant. He fears his uncle will kill him.
30. During the PV interview the applicant referred to this claim and explained that he and uncle got into an argument over Islam where the applicant told his uncle he did not believe in Islam.

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<sup>1</sup> Australian Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 14 April 2020, 20200414083132

He said that his uncle knew he was not practising Islam but until that argument the applicant had not disrespected him in that regard in front of people. He said his uncle was very angry and was swearing at him and saying that he had to fix the applicant and make him a good Muslim. He said four days after the argument, his aunt called his parents and told them to send the applicant to another city as her husband was angry but the applicant could return after a while, however the applicant claims this event triggered his departure from Iran two weeks after the argument.

31. I note that when the applicant was asked why he left Iran during his arrival interview, he referred to the above claims. That is, that he was threatened by his aunt's husband two weeks before he left Iran in May 2013 and gave a generally consistent account of these claims.
32. Nonetheless, I have several concerns with this claim.
33. In an email the applicant sent to the delegate after the PV interview, he claimed that he had an accident in Tehran a day before he flew out of Iran to come to Australia. He was taken to hospital and advised to stay at least four days as he had a cracked rib and bruises on his chest and a sore hand and was having trouble breathing. However, he was afraid his uncle had already reported him to the Iranian authorities, so he wanted to leave and left Iran the next day. When he arrived in Christmas Island he was still in pain and has bruises on his chest. During the applicant's arrival interview, he also referred to being in a car accident in 2013 and having left Iran shortly after the accident with a broken chest and hand. I accept that this applicant was in a car accident just prior to leaving Iran and it is plausible he left the hospital against medical advice to depart Iran. Although this supports his claim that he departed Iran quickly and against medical advice, I do not find it necessarily corroborative of his claimed reasons for leaving Iran at that time.
34. I also find it difficult to believe the applicant decided to leave Iran for fear of his uncle when his aunt advised his parents that he could just move to another city for a while and then return. Her advice reflects that the danger to the applicant from the uncle at that time was not real or significant and that his uncle's anger would not be long-lasting. During the PV interview the applicant claimed that everything happened so fast and he had no plan to leave Iran at that time. If that was the case, I question why he did not just move to another city as suggested by his aunt. He claims he did not go to another city because they are worse than Tehran which is more open-minded, however I am not convinced of this reason, given the applicant claimed he feared for his life from his uncle. Further, his claim that he had no plan to leave Iran at that time is somewhat at odds with his other statement during the PV interview that he had wanted to leave Iran for some time and prior to conducting his military service and he only conducted his compulsory military service in order to obtain a passport and he obtained the passport around one year before he departed Iran, indicating he had been preparing to leave Iran prior to the above alleged incident with his uncle.
35. Even if the applicant had an uncle that was a Mullah and they had an argument and he was angered by the applicant's non-belief in Islam, the applicant has not given convincing or credible evidence that his uncle would go so far as to report a family member to the Iranian authorities because of their religious opinion against Islam. The applicant has also not provided any supporting evidence that he has an uncle who is a Mullah, such as family photos of gatherings or any other documentary evidence of his uncle's profile.
36. I do not accept the applicant's claims regarding his uncle in their entirety and that this was the reason for applicant's departure from Iran in 2013.



37. Even if I were to accept this claim, the applicant claims he departed Iran quickly because he feared his uncle would report him to the authorities but there is no evidence his uncle did so at that time or after the applicant departed Iran. When asked by the delegate if he feared violence from his uncle on return to Iran, the applicant said he did not think so but that his uncle had a lot of connections and could ask someone to force the applicant to be a Muslim or beat him up or find a legal reason to lock him up, but again, there is no evidence the uncle acted in such a way. During the PV interview, the applicant said his uncle had not been in contact with his family since he left Iran but noted his uncle was in contact with his aunts and his aunt once told his mother that his uncle may have forgotten about the incident but two years ago his uncle asked where the applicant was and he was told the applicant had left the country and he said “yeh he belongs in hell”. Even if this still reflects some anger on the uncle’s part it is not credible evidence to indicate he would report the applicant to the authorities or otherwise seek to harm him if he returned to Iran many years later. When the delegate asked what the applicant thought would happen to him now if he returns to Iran, he said he was not sure and said that maybe his uncle had changed his mind. Given there is no evidence the uncle reported the applicant to the authorities and the applicant’s uncertainty as to what this uncle would do if he were to return to Iran and the many years that have now passed since this alleged incident occurred, even if I were to accept this claim, I am not satisfied the applicant would face a real chance of harm from his uncle if he were to return to Iran.
38. In his application for protection the applicant also claims that he was sent to jail on two occasions by the *Gasht-e Ershad* because of the way he dressed. During the PV interview he claimed he had been arrested three times for his clothing. He said he loved fashion at the time. One time, when he was on his way to school, he was taken in a van to the police station and he was released when they gave him his birth certificate. The second time he was caught outside his house and detained in a basement and he was released after handing over his driver’s licence. On the third occasion he was caught he did not have any identification to give so he was told that he had to complete his compulsory military service. He also claims he was warned that if he was caught a fourth time, he would go to court. He said this all occurred within one year after he finished school (in 2008) and before he attended his military service and at the time it was common to get arrested for one’s clothing. He does not think he was charged with an offence, but they did not tell him anything.
39. During the applicant’s arrival interview, he also referred to being arrested on three occasions by the *Gasht-e Ershad* because of his appearance in generally consistent detail. He also said he had to go to military service because of these incidents.
40. It is not apparent from the applicant’s evidence what sort of clothing the applicant wore such that he came to the attention of the authorities but country information that was before the delegate confirms that since shortly after the 1979 Iranian revolution, men and women of all religions have been required to adhere in public to conservative dress codes. Men are only required to cover their ‘private areas’, although social norms dictate wearing long trousers rather than shorts. There have also been older reports of men being stopped by the morality police for haircuts that may be seen as “Western”. Morality Patrols (*Gasht-e Ershad*) patrol the streets to monitor and issue warnings about ‘un-Islamic’ dress and conduct. Enforcement can be unpredictable and may be related to the prevailing political atmosphere of the time.<sup>2</sup>

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<sup>2</sup> DFAT, “Country Information Report – Iran”, 14 April 2020, 20200414083132; DFAT, “DFAT Country Information Report— Iran”, 29 November 2013, CIS26780; Immigration and Refugee Board of Canada, “IRN200129.E - Iran: Dress codes, including enforcement (2016-February 2020)”, 21 February 2020, 20200316121334; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran - COI Compilation”, 1 July 2018, 20190326122102

41. Although the majority of the country information sources on this topic that were before the delegate concur that the monitoring of the dress code primarily impacts women and their requirement to wear a hijab (the generic term for the proper Islamic dress for women) in public, it is also plausible, according to the country information, that there was also some targeting of men's appearance during the year in which the applicant was arrested as enforcement can relate to the prevailing political atmosphere at the time. Given this and the applicant's consistent evidence in regard to this claim, I accept he was detained on three occasions due to his appearance/clothing. The applicant has not claimed, and I am not satisfied his clothing was an expression of his religious/political opinion, as I note he indicated he dressed a certain way because he loved fashion.
42. Country information also indicates that military service is compulsory in Iran for men aged between 18 and 40, and usually lasts between 18 and 24 months.<sup>3</sup> I also accept that, as plausible, that as a result of the applicant coming to the attention of the authorities for his clothing on the third occasion, that he was required to complete his compulsory military service as he would have been 18 or 19 years old and, therefore, subject to completing his military service.
43. In his application for protection, the applicant also claims that the Basij (a voluntary force under the command of the Revolutionary Guard) hit him on one occasion when he was talking to a girl. I accept this is occurred as country information before the delegate confirms that the Iranian authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including public displays of affection with non-family members of the opposite sex.<sup>4</sup> There is no evidence he remained of adverse interest to the authorities because of this incident.
44. I am not satisfied on the evidence the applicant was charged on these occasions (three arrests for his appearance and being hit by the Basij for talking to a girl). I note the applicant has not claimed he came to the adverse attention of the authorities again because of his previous interactions with the *Gasht-e Ershad* and Basij or his appearance after he completed his military service (in late 2010) and before he departed Iran in mid-2013 and he has not claimed he adjusted his clothing/appearance since completing his military service such that he would not be arrested again.
45. In its most recent report on Iran published in 2020 report, the Australian Department of Foreign Affairs and Trade (DFAT), noted that penalties for dress code violations are rare and it noted international and domestic observers agree that men are subject to less strict controls on personal appearance than women. DFAT is aware that some men have claimed to have been harassed or discriminated against on the basis of their appearance — for example, for having 'Western-style' hairstyles (including through use of hair gel) or clothing styles (including long hair and ripped jeans). Notwithstanding such reports, it is common to see young men fitting all of these descriptions on Iranian streets, particularly in larger cities such as Tehran. DFAT assesses that authorities are far more likely to target women than men for dress code violations. Where there have been incidents of harassment of men for violating the dress code, DFAT assesses these were most likely the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities) or because the individual had come to the attention of the authorities for other activities, particularly political activism. DFAT is not aware of the authorities targeting people on the basis of a 'Western' appearance or for having visible tattoos. While such appearances may be

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<sup>3</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

<sup>4</sup> DFAT, "DFAT Country Information Report—Iran", 21 April 2016, CIS38A8012677

frowned upon by more conservative Iranians, DFAT assesses that people of 'Western' appearance, face a low risk of official and societal discrimination.

46. Having considered the evidence before me, I am not satisfied the applicant will face a real chance of harm from the Iranian authorities because of these past incidents or that he will face a real chance of harm from the Iranian authorities or any other group or person because of his appearance if he were to return to Iran.
47. During the PV interview the applicant said his military service was extended several weeks because he was caught not attending prayers in the mosque. He also referred to this claim during his arrival interview and I accept this occurred. The applicant has not claimed, and I am not satisfied on the evidence, that he was charged with any offence regarding this incident or remained of adverse interest to the authorities once he completed his service. I am not satisfied he will face a real chance of harm in Iran from any group or person in relation to this incident.
48. In his application for protection the applicant also claimed that, during his military service, he was lashed 80 times because he was found with alcohol on him which he said he used kill bed bugs. During the PV interview he referred to this claim and said his service was extended for three months because he was punished when found with wiping alcohol to treat bed bugs. He further explained that, as punishment, he was detained for three weeks and punished with 80 lashes, but he paid a fine instead of the lashes.
49. In new information provided to the IAA the applicant claims that he was charged for possessing alcohol on this occasion and went to court and it is now on his criminal record.
50. Country information that was before the delegate confirms that alcohol is forbidden in Iran. Article 265 of the Penal Code penalises the use of alcohol with 80 lashes, regardless of whether the consumption caused drunkenness or not. Where enforced, the punishment for alcohol consumption is normally a fine, usually paid on the spot. Floggings may be imposed periodically but are rare.<sup>5</sup>
51. I am willing to accept that the applicant was punished during his military service for possessing wiping alcohol to treat bed bugs and that he was detained for three weeks and paid a fine in lieu of lashes.
52. The applicant has not provided any supporting of evidence of being charged and having this offence recorded on his criminal record, but I consider it plausible.
53. Even if the applicant now has a criminal record in regards to this offence, he claims that the alcohol was not for consumption and he has not claimed he drank alcohol in Iran for pleasure or will drink alcohol if he were to return and I am not satisfied he will. This appears to have been an isolated incident. I note that he lived in Iran for several years after this incident and there is no credible evidence he remained of adverse interest to the authorities because of this offence. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person because of this past offence.
54. The applicant has newly claimed before the IAA he converted to Christianity in 2020. He claims had been living a hard life and dealing with depression particularly after witnessing a man die in public. He did not feel alive and his new faith saved him. He has been trying to get baptised but because of the COVID-19 pandemic he was unable to. He did not say anything at the PV

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<sup>5</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

interview about his new religion because he did not want to use religion to get a visa but now his life is on the line and he has real faith (in Christianity) so that is why he is raising this claim now.

55. In support of this new claim the applicant provided a new unsigned letter from [Pastor A] of the [Church 1] dated 14 September 2021. It says she has known the applicant since July 2020 when he started attending their church in [Suburb 1] and the applicant decided to re-dedicate his life to Jesus Christ during this time. He also volunteered translating into Farsi at home Bible studies. She states they have discussed his baptism but have been prevented from doing this due to COVID-19 restrictions. She notes that recently, during lockdown, the applicant has joined their Persian Bible studies on Zoom and notes the applicant needs to develop in his study further, but she would characterise his decision to follow Jesus Christ as genuine.
56. I have significant concerns about the credibility of the applicant's recent claim to have converted to Christianity.
57. The applicant claims that he did not raise this new claim at his PV interview because he did not want to use religion to get a visa. However, the applicant's original claims for protection centred around his non-belief in Islam. It is plausible that someone may not want to use their religious opinion to seek a visa but the difficulty in this case is that the applicant initially sought protection in Australia on this basis.
58. During the PV interview the applicant said to the delegate that he had always been honest and that has gotten himself in trouble even in Australia for his honesty. When the delegate asked him for an example, he said that people had told him that his claims for protection will not be accepted by the Department and he should just go and be a Christian and change his religion. He then told the delegate that he "would rather be sent to Papua New Guinea than turn to Christianity for a visa", strongly indicating that he had no interest in Christianity and was very much aware that applicants for protection may disingenuously seek to convert to Christianity for the purpose of their application for protection.
59. The applicant has provided little evidence as to what motivated him to explore Christianity. He referred to witnessing a man die in a mall and depression, but he has not provided any supporting evidence regarding these claims nor when this occurred. The Pastor's letter, which was relatively brief, indicates he approached their church in July 2020, but the applicant has not provided any explanation as to why he approached this church at this time nor has the Pastor indicated this in her letter. Both the applicant and the Pastor have not provided any information as to how regularly the applicant has attended that church since then. The Pastor had noted that the applicant has volunteered translating into Farsi at home Bible studies but that he has only recently joined their Persian Bible study classes online this year and he needs to develop his study further. This seems to reflect some concern that he needs to develop his knowledge about Christianity and I note that in his submissions to the IAA, the applicant has not provided any information that reflects any knowledge of the principles of Christianity. In her letter, the Pastor has also not provided any detailed reasons for why she assessed that his decision to become a Christian was genuine particularly considering her statement that he needs to develop his Bible Studies further.
60. Although the applicant only raised this new claim before the IAA, this claim is significant in light of his previous claims before the delegate that he "would rather be sent to Papua New Guinea than turn to Christianity for a visa". Despite having the opportunity to provide further information in support of this claim to the IAA, the information and evidence he provided to

the IAA was brief and superficial. In the circumstances, I have decided not to seek further information from him in relation to this claim.

61. I accept that the applicant has attended the [Church 1] and some of its activities like Bible Study, as evidenced by the Pastor's letter. However, having considered all the evidence before me, I am not satisfied the applicant has done so due to a genuine interest in Christianity. I am not satisfied the applicant has engaged in these activities otherwise than for the purpose of strengthening his claims to be a refugee. I have disregarded the above conduct in Australia in assessing whether he has a well-founded fear of persecution under s.5J(6) of the Act.
62. In his application for protection the applicant claims he was against the Iranian government because it was too much of a "dictator" and he had a different opinion to the government. He claims the Basij know him and are waiting for him to return as the government perceives him as the enemy.
63. I accept that the applicant has a political opinion against the Iranian regime.
64. For reasons already noted, I am not satisfied the applicant remained of adverse interest to the Basij or other Iranian authorities because his previous interactions with the authorities in regard to his appearance and behaviour and due to problems he incurred during his military service. He has not claimed to have had any other adverse interactions with the authorities since completing his military service several years before departing Iran and I note he was able to complete his service and obtain a passport. I have not accepted his claims regarding his uncle or that his uncle reported him to the authorities due to his non-belief in Islam. I do not accept the Basij or any other Iranian authority is waiting for him to return because they perceive him as the enemy because of these incidents.
65. During the PV interview the applicant said he attended protests in respect of elections that were held in Iran when he was conducting his military service (between 2008 and 2010). He claims he attended protests four times and on the fourth time he was nearly caught by the authorities but managed to escape. He was never arrested. I note that during his arrival interview he also referred to attending protests during election time but managed to run away from the Basij who were attacking the protestors.
66. Country information that was before the delegate indicates that following the June 2009 presidential election, up to 3 million supporters of reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had been re-elected in a landslide, in what became known as the 'Green Movement'. Green Movement protesters used public holidays and national commemorations as opportunities to rally, chanting slogans that challenged both the system and the Supreme Leader himself. In response, the government despatched security forces, including the Basij units and plain-clothed paramilitary forces. These forces beat thousands of protesters and arrested hundreds, while snipers killed dozens.<sup>6</sup> I consider it more than likely that the applicant was referring to attending the Green Movement protests.
67. DFAT in its 2020 report, had noted that the Green Movement has little profile in Iran today. Neither the movement nor its supporter base played a significant role in the 2017-18 or 2019 protests. Local sources told DFAT that ordinary participants in the Green Movement are not of

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<sup>6</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; Immigration and Refugee Board of Canada, "IRN104338.E - Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009-March 2013)", 1 March 2013, CIS27383

interest to the authorities. It assessed that assesses that ordinary participants who avoided arrest face a low risk of official discrimination.

68. I accept that the applicant attended these protests but I am not satisfied he was identified and was of adverse interest to the Iranian authorities because of his participation in these protests and I am not satisfied he will face a real chance of harm in Iran from the Iranian authorities or any other group or person for this reason.
69. The applicant claims he knows his rights after residing in Australia and he will not accept the behaviour of the authorities towards him in Iran and he will get himself into trouble because of the way he now thinks and he will not keep his mouth shut. During the PV interview he said he changed since he came to Australia and if he openly talks against the Iranian government and Islam he will be “gone” and he has been telling his family that Islam is not the truth. He says some family hate him for this and call him a “kafir”, but he has been like this since he was a kid.
70. In DFAT’s 2020 report, it noted that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, although this freedom is not unlimited — a number of well-established ‘red line’ topics are off-limits and critical commentary may lead to prosecution under national security legislation. Social media accounts of well-known figures and celebrities attract particular scrutiny. Authorities are more likely to crack down on dissent during times of political uncertainty, such as during ongoing political demonstrations, and may restrict the ability of individuals to comment or communicate online at such times. Local sources told DFAT that it is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. However, people remain cautious about crossing well-understood ‘red lines’, like insulting the Supreme Leader, in their public interactions beyond close family and friends.
71. When the delegate asked the applicant if he expressed this opinion in Australia, he referred to the Iranian community here but claimed he found they are still in the “bubble” from Iran and as a result he does not have any Iranian friends. He also claimed that he has expressed his political opinion through social media, including his [Social Media 2] account and the authorities would be aware of that. He claims when he came to Australia, he posted something to “Khomeini” because he was so angry, and he sent a message directly to him in his real name. He claims, however, that he was not that active on [Social Media 2] except for a few pictures for fear for his family and he did not want to let his family down as they think it is a shameful if he posts something against Islam online and some of their relatives see the posts. He has not provided any supporting evidence of the message he purportedly sent to “Khomeini” nor any other posts he has made on his [Social Media 2] account. I do not accept he sent a message directly to “Khomeini” or posted any other pictures expressing his opinion against Islam or the Iranian government on his [Social Media 2] page.
72. The applicant claims he was active in [Social Media 1] and is still active but again, he has not provided any evidence of this or even whether his [Social Media 1] account is publicly accessible.
73. The applicant’s claim that he expressed his opinion on [Social Media 1] is also somewhat at odds with his claim that he does not do so on his [Social Media 2] account for fear for his family and embarrassing them and he has not provided any explanation for why has continued to do so on [Social Media 1]. I do not accept he has not posted such material on his [Social Media 2] page for the reasons he has given. I also do not accept he has expressed his political/religious opinion on [Social Media 1].

74. I accept the applicant attended some protests against the Iranian government in 2009 like millions of other Iranians at the time but he has otherwise not provided any other credible evidence of speaking publicly against the Iranian regime online or in public in Iran or Australia. His behaviour is not reflective of someone committed to publicly speaking out against the Iranian government and I am not satisfied he has refrained from doing so on [Social Media 2] for the reasons he has claimed. If he were to return to Iran, I am not satisfied there is a real chance he will publicly promote his political opinion and I am not satisfied this will be due to a fear of persecution. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person for reasons of his political opinion.
75. I accept that the applicant does not believe in Islam.
76. Country information that was before the delegate indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Shia Islam is the official state religion. A Muslim who renounces Islam and becomes atheist is considered an apostate and risks state persecution and, potentially, the death penalty but death sentences in apostasy are rare. In DFAT's 2020 report on Iran, and in other sources that were before the delegate, it notes a significant proportion of the Iranian population does not attend mosque or pray on a regular basis, and alcohol consumption is common. Many Iranians do not attend mosque regularly and do not perform their daily prayers and, for this reason, not attending mosque would not necessarily arouse any suspicion. A large part of Iran's population has a secular lifestyle. There is also a growing number of atheists in Iran and that this is becoming more accepted among some Iranians. Official sources told DFAT that religion was a private matter — that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state.<sup>7</sup> In DFAT's 2020 report it also states that, unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. Atheists from conservative families might face familial pressure and potential ostracism if their atheism were revealed but would generally not be subjected to physical harm and DFAT is unaware of individuals being prosecuted for atheism. It also assessed that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. Atheists who are open about their non-belief face a moderate level of official and societal discrimination.
77. I accept the applicant faced some problems in school because of his non-belief in Islam and I accept that he was also punished for not attending prayers and possessing alcohol during his military service. Bu these were government-controlled institutions in which the applicant was forced to abide by Islamic rules. I do not accept he got into an argument with his uncle about Islam and he was subsequently threatened by his uncle. He has otherwise not provided any other credible evidence of coming to the adverse attention of the Iranian authorities or community because for reasons of his religious opinion. He has claimed he has been trying to convince his family regarding his opinion against Islam, but he has not provided any credible evidence of that. He has also noted that his own immediate family were not that religious, and he was never forced to pray by his parents. I do not accept he has expressed his religious opinion through social media and that he has not done so due to a fear of persecution as I am not satisfied, he has a genuine desire to publicly promote his religious opinion. I am also not

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<sup>7</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", 1 June 2014, CIS28931, "Iran's Other Religion", *Boston Review*, 1 June 2003, CX82EDE9415499; Pejman Abdolmohammadi, "The Revival of Nationalism and Secularism in Modern Iran", LSE Middle East Centre, 1 November 2015, CISEC96CF14725; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

satisfied there is a real chance he will publicly promote his religious opinion in Iran, and I am not satisfied this will be due to a fear of persecution.

78. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person for reasons of his religious opinion.
79. In his decision the delegate also assessed whether the applicant would face a real chance of harm in Iran as a failed asylum seeker returning from a western country. During the PV interview the applicant also claimed the Iranian authorities will perceive him to be westernised or have an opinion against the Iranian regime because he has lived in Australia for eight years.
80. In his application for protection the applicant claimed that when he was about to leave Iran he was made to sign a paper that states that he agrees that if he tries to run away from Iran and Australia returns him to Iran, he can be charged and placed in jail for one year. The applicant referred to these claims in his PV interview and said a man, who was not uniform, approached him at the international airport in Tehran and said he was from the Iranian government and told him that he had to sign the statement. There is no country information before the delegate that the Iranian authorities require those who they suspect of travelling to Australia, and/or seeking asylum outside Iran, to sign such a statement. The country information outlined below about the treatment of failed asylum seekers by the Iranian authorities also does not support this claim. I do not accept this occurred.
81. The applicant claims, and I accept, that he departed Iran legally on his own passport. He claims, and I accept, that he disposed of that passport when he was on the boat travelling to Australia.
82. Country information that was before the delegate notes that Iran has a longstanding policy of not accepting involuntary returns. Nevertheless, in March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters which includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018. The applicant does not fall within that category and as such I am satisfied that if the applicant were to return to Iran, it will only be on a voluntary basis.
83. There are few recent reports of returnees being mistreated on the basis of being failed asylum seekers returning from a western country before the delegate. A 2019 article claims that an Iranian convert to Christianity who was refused asylum in Germany and deported back to Iran was arrested “immediately” upon her arrival in Tehran, but it is unclear from the report why she was arrested. A small number of older articles, including those cited in a written submission provide to the Department in support of this application, refer to the arrest of people with a particular existing profile such as political activists or their families, artists, PHD students, and journalists.
84. In DFAT’s more recent 2020 report on Iran, it notes that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran and they have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person’s imminent return. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. The treatment of returnees, including failed asylum seekers,



depends on the returnees' profile before departing Iran and their actions on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination. Other recent sources claim the same. I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or Islam or are negatively perceived to be westernised.

85. Should the applicant return on a *laissez-passer*, I accept he will very likely face a brief period of questioning on return to Iran. I do not accept the applicant was of adverse interest to the Iranian authorities when he departed Iran. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on return, including because of his previous alcohol conviction or other previous interactions with the authorities for his behaviour and appearance. I am not satisfied there is a real chance the applicant will be subject to prolonged questioning for any reason. I am not satisfied the applicant will face a real chance of harm during such questioning for any reason. I also do not consider being questioned for a short period in these circumstances amounts to harm.
86. I am not satisfied the applicant will face a real chance of harm from any group or person in Iran as a failed asylum seeker from a western country who resided in Australia for an extended period.

#### **Refugee: conclusion**

87. The applicant does not meet the requirements of the definition of refugee in s.5H(1). applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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88. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

89. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

90. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

91. I do not accept the applicant has an uncle who was a Mullah and this uncle threatened the applicant after having an argument in regard to the applicant's non-belief in Islam. I am not satisfied the applicant will face a real risk of significant harm in Iran from any group or person in relation to this claim.
92. I do not accept the applicant has genuinely converted to Christianity in Australia. I am not satisfied there is a real risk he will practise Christianity, attend church, proselytise or identify as a Christian if he were to return to Iran. I accept that the applicant has attended church in Australia, but I am not satisfied, on the evidence, that the Iranian authorities, his family or general community in Iran are aware of this. I am not satisfied there is a real risk they will become aware of the applicant's church attendance in Australia in the reasonably foreseeable future. I am not satisfied the applicant will face a real risk of significant harm in Iran from the Iranian authorities, the community, or his family as a result of his church attendance. Even if his family were aware, I am not satisfied on the evidence he will face a real risk of significant harm from them for these reasons.
93. I have found the applicant will not face a real chance of any harm in relation to his other claims. Consequently, he will also not face a real risk of any harm in Iran in relation to those claims.<sup>8</sup> I am not satisfied the applicant will face a real risk of significant harm in Iran.

#### **Complementary protection: conclusion**

94. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

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<sup>8</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

**bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

**cruel or inhuman treatment or punishment** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally 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;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**degrading treatment or punishment** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**receiving country**, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

**torture** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but 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 Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), 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.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person 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.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) 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; or
  - (b) 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
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.