



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA21/09786

Date and time of decision: 4 November 2021 15:30:00

V Price, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be an ethnic Arab, a Shia Muslim and a national of Iraq. On 16 August 2017 he lodged an application for a protection visa with the Department.
2. On 27 August 2021 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant. The delegate accepted the applicant's claimed identity, ethnicity, and nationality and that he was from a mixed Shia/Sunni family. However, the delegate did not accept that his first wife's family were associated with Shia militia group, the Mahdi Army, that her family threatened the applicant after their marriage breakdown, or that he faced an ongoing risk of harm from her family. It was accepted that the applicant's second marriage to a [Country 1] Christian woman took place in [Country 2] and that they have a son together, but the delegate found he did not face a real chance or risk of harm for reasons pertaining to this marriage on return to Iraq. Nor was the delegate satisfied the applicant faced a real chance or risk of harm as a Shia Muslim in Babylon or as a failed asylum seeker on return to Iraq.

Information before the IAA

3. I have had regard to the material given to the Immigration Assessment Authority (IAA) by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the referred material).
4. The applicant's representative provided a submission to the IAA on 21 September 2021. To the extent it responds to the findings in the decision and discusses matters before the delegate this is not new information for the purpose of the Act, and I have had regard to those aspects of the submission. The representative provided several country reports¹ as part of the submission. These reports constitute new information under s.473DC(1) of the Act.
5. The new reports were provided to counter conclusions and adverse credibility findings of delegate in the decision record and relate to the treatment of individuals involved in inter-sect Sunni Shia marriages in the mid 2000's; the background and operation of the Mahdi Army; and the prevalence of bank accounts in Iraq. The new information is best described as general country information rather than credible personal information in the sense required by s.473DD(b)(ii) and I am not satisfied it meets that provision.
6. The reports date between 2008 and 2018 and all pre-date the delegate's decision. The applicant's representative also acted on his behalf before the Department and there was an advisor present at the protection visa interview. The reports relating to inter-sect marriages pertain to claims in the applicant's written statement and which were discussed at length during the interview: they do not relate to matters arising only after the making of the decision. The delegate explained at interview that it was for the applicant to provide evidence in support of his claims, and that material submitted after the interview (but before

¹ Immigration and Refugee Board of Canada (IRBC), 'IRQ106049.E - Iraq: Inter-sect marriage between Sunni and Shia Muslims, including prevalence; treatment of inter-sect spouses and their children by society and authorities, including in Baghdad; state protection available (2016-January 2018)', 29 January 2018, OG690C1A33 (IRBC 2018 Report); Al Jazeera, 'Profile: The Mahdi Army: Muqtada al-Sadr's armed group remains a formidable force in Iraq despite setbacks', 20 Apr 2008 (Al Jazeera 2008 Article); Stanford University, 'Mahdi Army', 17 January 2017, CISED50AD3957 (Stanford University 2017 Report); and Middle East Monitor, 'Report: 93% of Iraqi adults do not have bank accounts', 22 November 2017 (Middle East Monitor 2017 Article).

a concluded decision) would be considered. The representative was aware of this, and had access to relevant country information, and did in fact provide post-interview submissions referencing country information. I consider that the applicant had a genuine opportunity to submit relevant country information in support of his claims prior to the decision, and in all of the circumstances, I am not satisfied that the reports relating to inter-sect marriages could not have been provided prior to the making of the decision as required by s.473DD(b)(i).

7. Moreover, the delegate considered several reports from credible sources relating to inter-sect marriages in Iraq, the contents of which are broadly consistent with that set out in the new information and these are before me in the referred material. Indeed, the quoted extract from the Canadian Immigration and Refugee Board report set out in the IAA submission, is taken from a 2017 European Asylum Support Office (EASO) Report which is in the referred material. The new information relating to inter-sect marriages adds nothing further to the material already before me (which I have considered), and does not assist my assessment of either the credibility of the applicant's claimed past harm, or his future harm on return to Iraq. I am not satisfied there are exceptional circumstances to justify considering this information, it does not meet s.473DD(a).
8. However, I have formed a different view regarding the report from the Middle East Monitor on Iraqi bank accounts; and the material related to the Mahdi Army. In the decision record, the delegate doubted the credibility of the applicant's claimed harm from his former wife's family, in part because it was determined the Mahdi Army did not have a presence in Babylon, and because his evidence that he did not own a bank account was disbelieved. The delegate did not flag these matters at interview or put country information to the applicant on these matters. In these circumstances, I accept that the applicant was not on notice of these potential concerns until after the decision and that this information was provided to counter express findings of the delegate. I am satisfied that this information could not have been provided prior to the making of the decision. It meets s.473DD(b)(i) of the Act. There is limited information in the reports in the referred material expressly relating to the background, activity and operation of the Mahi Army at the time of the claimed events: one of the few reports referenced by the delegate pertained to Mahdi Army activity in the Bail suburb of Baghdad, rather than in the Governorate of Babylon (which is also known as Babil) and is therefore not relevant to the assessment. Further, there was no reference to any relevant country information on the prevalence or otherwise of bank accounts in Iraq. This information relates to establishing the credibility of the applicant's evidence and of his claims of past harm in Iraq, and in all of the circumstances I am satisfied that there are exceptional circumstances to justify considering this information for s.473DD(a). It meets s.473DD and I have had regard to this material.

Applicant's claims for protection

9. The applicant participated in an Irregular Maritime Arrival and Induction interview (arrival interview) with the Department on 6 July 2013 during which he provided information about his background and circumstances in Iraq. He claimed there was no security for him in Iraq, and that he would face harm on return to the country because he would be perceived to be wealthy.²
10. The applicant's claims as set out in the written statement accompanying his protection visa application can be summarised as follows:

² The audio recordings before the delegate, and which were in the referred material, were not functioning. The delegate relied on the written transcript of the interview.

- He was born in [Year] in Babylon, Iraq. He has [sisters] and [brothers]. His mother was a Sunni Muslim; however, his father was Shia. The children, including the applicant, were raised in the Shia Muslim faith. His family were members of the "Shammary" tribe. His mother died when he was eight, and his father died in 1991, and the applicant left school aged about 14 years and took over the family [business]. He also completed compulsory military training in 1995.
 - After the death of his parents, he became close to his maternal (Sunni) uncles who took care of them. They had a strong influence on the applicant, and he would pray within them and attend their Sunni mosque.
 - The applicant married his first wife in 2000. She was from a devout Shia family, members of the "[Tribe name 1]" or "[Tribe name 2]" who had tribal links to the Mahdi Army. Her family opposed the marriage because they believed he had converted to the Sunni faith due to his close association with his uncles. The family eventually allowed the marriage to proceed. They had a daughter, who sadly died soon after her birth. The death of their child and his wife's accusations that he was Sunni led to the breakdown of their marriage. Her family disagreed with the separation and they blamed him for the death of their child, and the religious feud flared up again. Her father and brothers threatened and beat the applicant on multiple occasions.
 - His former wife's brothers visited his shop. They broke windows, destroyed the shop, and verbally and physically abused the applicant and his brother. His brother's arm was broken, and after this incident and his divorce from his wife, the applicant decided to flee to [Country 2]. When he was in [Country 2], his family advised that further threats against the applicant had been made by his first wife's family and the problems with her family were ongoing.
 - In [Country 2], the applicant met and married his current wife and they have a son. His wife is a national of [Country 1] and is a Christian. He was granted subsidiary protection status in [Country 2], however when his claims were reassessed some years later, he was found to no longer meet the protection requirements. He believes this is because he did not raise claims related to the sectarian feuds because he was concerned the interpreter may relay his location to his persecutors.
11. The applicant stated the problems with his first wife's family will harm him on return to Iraq for divorcing his wife and bringing shame to their family. He also fears that he will be unable to freely practise his religion and will be harmed as an imputed a Sunni Muslim, and because he is married to a non-Muslim, non-Arab woman.
 12. The delegate also considered whether the applicant faced harm on return to Iraq because he is a failed asylum seeker.

Refugee assessment

13. 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

14. 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.
15. The applicant has consistently maintained he is a national of Iraq, born in Babylon Governorate, since his arrival in Australia and his oral evidence regarding his identity, nationality and background in Iraq was detailed and presented in a manner indicative of lived experience. He provided his Iraqi citizenship certificate and nationality identity card to support his claimed identity and nationality. Upon examination by the department it was noted that a conclusive opinion on the genuineness of the later document was hampered by the poor security features but importantly, it was also stated that there was no evidence of fraudulent alteration to the personal data including the photograph.
16. The applicant also provided identity documentation from [Country 2], including: an identity card issued on 15 January 2007; a [Country 2] drivers licence issued on 6 November 2007; exit visa documents; an Alien Registration Certificate issued on 21 August 2009; confirmation of an application for refugee status dated 22 September 2005; and several letters from the Ministry of the Interior (Asylum Unit) dated 22 December 2006, and 9 December 2011. These documents generally support his claimed identity and Iraqi nationality. This material also supports that the applicant applied for protection in [Country 2] in 2005 and that while he did not meet the definition of refugee, he was found to satisfy the requirements for 'subsidiary protection' in 2006. In 2011 changing circumstances in the applicant's country of origin precipitated a reassessment of his ability to meet the protection requirements in [Country 2] and it was ultimately concluded that the subsidiary protection status should cease. He left the country and came to Australia in 2012.
17. During his residence in [Country 2] the applicant was married to his second wife. A copy of their marriage contract dated 2 December 2012 is before me and I accept that he was married in [Country 2] as claimed. The marriage contract and his wife's passport, which was also provided with the visa application, confirm that she is a national of [Country 1]. They have a son together who was born in [Country 2]. The applicant has not claimed, and nor does the evidence before me suggest,³ that he has acquired [Country 1] nationality by marriage.

³ Australian Department of Foreign Affairs and Trade (DFAT), 'Country Information Report [Country 1] ', [Date], [Reference number] (DFAT [Country 1] Report)

18. On the documentary and oral evidence before me, I find that the applicant was born in Babylon Governorate in Iraq in [Year]. I accept he left Iraq in 2005 and was granted protection in [Country 2] in 2006 which ceased in 2012. The evidence does not indicate that he was ever granted citizenship or nationality in [Country 2] or in [Country 1] via his marriage. Not does the evidence indicate he has a current right to enter and reside in either [Country 2] or [Country 1] and I am not satisfied that he does. On the evidence before me, I find that the applicant is a national of Iraq and that this is his receiving country.
19. As noted, the applicant was granted subsidiary protection in [Country 2]. The basis upon which he was granted this protection is unclear: he has not provided a copy of their reasoning, nor of the evidence and claims but forward at that time. The applicant told the Department that he did not give the same account of his protection claims in [Country 2] as that he has now provided. It is unclear whether this was in relation to the initial assessment, or the subsequent re-assessment of his claims, or both. He stated he did not give the correct story because he knew the interpreter at the interview in [Country 2] was affiliated with the Mahdi Army. I am dubious about this explanation and do not accept it: it is entirely unclear how the applicant would be aware that the interpreter in [Country 2] was a member of a militia organisation in Iraq. In any event, on the evidence that is before me, I am not satisfied that the basis upon which he was granted protection in [Country 2] are relevant to my assessment of his current claims.
20. I have considered whether his admission that he deliberately gave the [Country 2] authorities an incorrect account of his circumstances undermines the general credibility of his evidence in this application. This of some concern as it may suggest a willingness to provide false evidence to Australian government departments. However, overall, I am not satisfied that it does undermine his evidence in its entirety: aspects of his oral evidence were persuasive (detailed and presented spontaneously and in a manner indicative of lived experience), and it was also supported by documentary evidence which appears genuine, as well as independent and authoritative country information. With some exceptions, which I have discussed below, I consider that he has generally provided a truthful account of his past in Iraq.
21. The applicant was born in Al-Hillah in Babylon Governorate. He attended primary school in Al-Hillah and worked in the family [store]. Apart from a brief period when stationed in Baghdad and Mosul during compulsory military service, he resided in Al-Hillah until his 2005 departure from Iraq. I accept on his consistent and credible evidence that his parents are deceased. The applicant's oral evidence was that he has [sisters] residing near Baghdad and [others] in Karbala. He also has [brothers] who continue to live in Al-Hillah and run the family [store], and his uncles also continue to reside there. The applicant's current wife and their son reside in [Country 2] and his evidence, which I accept, was that they are safe in [Country 2], and they can travel freely to [Country 1] though his wife would prefer not to return there. He stated that his wife did not want to live in Iraq and that they would not be joining him, and I accept this is the case. Given his past residence in Al-Hillah and that his brothers and uncles continue to reside there, I find it highly likely that he would return to Babylon, in the southern governorates of Iraq, in the future.
22. The applicant stated that his mother was a Sunni and his father a Shia. Inter-sect Shia/Sunni marriages were very common in Iraq until the sectarian tensions that arose after the collapse of Saddam Hussein's regime in 2003.⁴ The applicant has provided consistent, detailed, and

⁴ DFAT, 'Country Information Report Iraq', 17 August 2020, 20200817105936 (DFAT 2020 Report); and United Nations High Commissioner for Refugees (UNHCR) 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913 (UNHCR 2019 Report).

credible evidence regarding his parent's relationship, and I accept they were in an inter-sect couple. The applicant also consistently stated, since his arrival in Australia, that he was raised a Shia and I accept this is the case. However, I also accept as credible that his maternal Sunni uncles, assisted to raise he and his siblings after the death of their parents. I accept that he was close to his uncles and that he attended the Sunni Mosque with them in Iraq. The applicant stated at interview that his current employment prevents him from attending Mosque regularly in Australia, but that he prays at home, and attends the Mosque when he can. He recently attended a birthday celebration at his Mosque. He considers himself to be a Shia Muslim and identifies himself as such. I accept this evidence and find that he is a practising Shia Muslim.

23. He has also claimed to be a member of the Al-Shammary tribe, which was identified by the delegate as part of the Shammar sect. This was not disputed by the applicant in submissions to the IAA. I accept that he is a member of the Al-Shammary Tribe. This tribe is composed by both Sunni's and Shia Muslims, which further supports his claims to have been from a mixed Shia-Sunni family.⁵ However, contrary to his assertion that his is a smaller tribe, information is that this is one of the largest in Iraq.⁶ I am not satisfied as to his claim that his tribe is small.
24. The applicant's claimed first marriage is supported by his national identity card issued in June 2000, which states that he was married. The evidence before me does not identify his wife by name and nor is there evidence of her religion. However, I note that the applicant's evidence on these matters has been broadly consistent throughout his dealings with the Department and his oral evidence at the protection visa interview was detailed and spontaneous. When asked, he stated her name and that those of her family members without any hesitation. I have no reason to doubt this evidence. I accept his claims that he was married to a woman in Iraq, and that her family had a strict adherence to the Shia Muslim faith. There is nothing in the information before me, including that provided by the applicant, regarding the existence of the "[Tribe name 1]" or "[Tribe name 2] tribe. However, I am prepared to accept his evidence and I accept that that she and her family are members of this tribe.
25. The applicant has claimed that his former wife's tribe were and are connected to Shia Militia group, the Mahdi Army. The information before me broadly support that there can be affiliations between tribes and militia groups, with tribes often relying on militias to carry out tribal justice, including in relation to transgressions of family honour linked to breaches of religious and societal norms.⁷ The Mahdi Army have been active since about 2003 and that they operate in central and southern Iraq.⁸ According to a 2012 report, they did not have a stronghold in Babylon at that time.⁹ However, this report also states they were trying to gain a stronghold in that area which supports they had an active presence in Babylon.¹⁰ Information also supports that they were implicated in attacks against Sunnis, including kidnappings, targeted killings, and driving Sunni's out of Shia neighbourhoods in and around central and southern Iraq.¹¹
26. The applicant's marriage to his ex-wife pre-dated the establishment of the Mahdi Army, and as such, I am not satisfied that her family or tribe were affiliated with that organisation at the

⁵ Perspectives on Terrorism - Terrorism Research Institute (TRI), 'The Iraqi Tribal Structure: Background and Influence on Counter-Terrorism', 1 January 2007, CIS1ACBC921052 (TRI 2007 Report).

⁶ Ibid.

⁷ EASO, Country of Origin report, Iraq: Targeting of Individuals', 7 March 2019, 20190308091632 (EASO Targeting of Individuals 2019 Report).

⁸ Sandford Uni 2017 Report; and Al Jazeera 2008 Article.

⁹ The New York Times, 'Calm at the Center of the Storm', 2 May 2006, CX280628.

¹⁰ Ibid.

¹¹ Al Jazeera 2008 Article; Sandford Uni 2017 Report.

time of the marriage. I accept that the Mahdi Army were present in Babylon from about 2003. However, evidence before me regarding the background of the Mahdi Army does not support that her tribe or family had any affiliation with the Mahdi Army from that time onwards,¹² and nor has the applicant provided any information to support this aspect of his claims. I also note that, despite their presence the area, they did not have a significant support base among locals at that time. Further, the applicant was not targeted by any members of the Mahdi Army prior to his departure from Iraq for any reason associated with dishonouring his wife or her family or tribe, as may be expected if they were affiliated. I am not satisfied that his former wife's tribe or family is associated with the Mahdi Army as claimed.

27. The applicant has claimed that his first wife's family were reluctant to accept their marriage based on his association with the Sunni faith through his mother's family. I accept this claim; as noted above inter-sect marriages were not uncommon, and this would have been the case at the time of the applicant's marriage: but that is not to suggest that such marriages were universally accepted. Information is that this was a matter for the family and some did oppose such relationships.¹³ In this context, and noting their strict adherence to the Shia faith, it is plausible that the applicant's ongoing association with his uncles and attendance at the Sunni Mosque may have raised some initial concerns with his wife's family. However, on the applicant's own evidence, they ultimately agreed to their union after consultations with elders to confirm he was Shia. I consider that they overcome their initial hesitancy to the applicant, and I accept the applicant's oral evidence that for a time he had no further issues with her family.
28. The applicant has claimed that in about 2005 his wife and her family renewed their concerns over this association with the Sunni Muslim faith and threatened him in the context of the breakdown of their marriage. Relevantly, the period between 2003 and 2008 saw heightened sectarian tension and a divide between the Shia and Sunni communities.¹⁴ During this time many inter-sect marriages broke down due to familial pressure.¹⁵ In this case, the delegate noted concerns that the applicant did not raise his dispute with his wife's family at the arrival interview. A functioning copy of the audio recording of this interview was not available to the delegate or the IAA. Nonetheless, the written transcript of that interview is before me. The information recorded there in regarding the applicant's familial composition, religion, and his background in Iraq and [Country 2] broadly accords with that he later gave to the Department. His failure to mention that he was threatened by his former wife's family was put to the applicant for comment at the interview, and he did not indicate then, or in subsequent submissions, that this was not an accurate reflection of his evidence at that time. I am not satisfied that the written transcript of the arrival interview is inaccurate in its recording of these matters.
29. I accept that the applicant did not expressly mention that he was threatened by his former wife's family on arrival. During the protection visa interview, he stated that he did not do so because he feared the Iraqi interpreter used at that interview may be with the Mahdi Army and his claims would be reported back to the family (the same explanation he gave for not providing a truthful account in [Country 2]). I am not satisfied as to this explanation; the

¹² Al Jazeera 2008 Article; Sandford Uni 2017 Report; The New York Times, 'Calm at the Center of the Storm', 2 May 2006, CX280628.

¹³ European Asylum Support Office (EASO), EASO COI Meeting Report – Iraq', 11 July 2017, CISED50AD4807 (EASO 2017 Report).

¹⁴ Ibid; DFAT 2020 Report; BBC News 'Sushi' children defy Sunni-Shia divide', 18 June 2016, CX6A26A6E16256 (BBC 2016 Article); and Al Monitor, 'Iraq's Sunni-Shiite Families Fear Renewed Sectarian Violence', 25 March 2013, CX316766.

¹⁵ BBC 2016 Article; UNHCR 2019 Report; Los Angeles Times, 'Iraq marriages are casualties of war', 18 April 2008, CX198503

applicant was otherwise able to freely provide information about himself and his background which undermines his stated fear that he would be identified by the Mahdi Army. However, having said that, the applicant did state broadly that he lacked security in Iraq and could not return, which does not necessarily exclude past threats by his former wife's family. I also note that the purpose of this interview is not necessarily to provide a full account of one's protection claims. The applicant's subsequent written and oral evidence on these matters was detailed and largely consistent. In my view, it was also presented in a manner indicative of lived experience and is consistent with country information on the sectarian tensions occurring that time. While I do have some doubts, in this case I give the applicant the benefit of the doubt, and overall, I have not relied adversely on his failure to raise threats from his wife and her family at the arrival interview.

30. I accept on the applicant's detailed and persuasive oral evidence that his daughter with his first wife died soon after her birth in about 2005 and that his marriage deteriorated to the point where they decided to separate. Noting this, and the increasing sectarian tensions at the time, I accept it is plausible that his former wife and her family renewed their concern about the applicant's ongoing connection to his Sunni family. It is plausible that they accused him of converting to the Sunni faith, irrespective of whether they genuinely believed that he had. I also consider plausible that during this period of heightened tension they also accused him of being responsible for his daughter's death and the breakdown of the marriage. I accept this aspect of his claims.
31. The applicant referred to several incidents in which he and his brother were threatened and assaulted by members of his wife's family and stated this led him to leave Iraq quickly. The delegate had concerns with this claim for several reasons, including because it was not believed that the applicant would be able to liquidate assets in such a short period and leave the country. This was put to him at interview and he explained that he did not hold a bank account and the only other assets belonged to the family (being the family home and the [business]). I accept this evidence on this matter, noting that he has been consistent in his statements regarding the family business and that his brothers still run it. Further, information provided to the IAA states that as at 2014, 89 per cent of Iraqi adults did not have bank accounts but used cash to settle their transactions.¹⁶ The percentage of those with access to bank accounts has continued to decline since that time, such that as of 2017 93 per cent of Iraqis did not have a bank account.¹⁷
32. The applicant was able to describe when and where the incidents with his ex-wife's family occurred and what was said between himself and his wife's brothers on those occasions. I accept that these incidents occurred as claimed. Information indicates that divorces could be obtained (by men) quickly,¹⁸ and I accept that the applicant obtained a divorce from his wife, and that he fled Iraq soon after and travelled to [Country 2]. In his written statement, the applicant indicated that his family were visited several times after his departure from Iraq and that tensions remained between the families. However, at interview he gave different evidence on this point, stating that after his departure the dispute was resolved with the intervention of elders, and that this family no longer experienced any issues with his former wife's family. He gave detailed evidence on this matter, and it was presented in a spontaneous manner. In this case, I accept the account provided at interview is the correct one. I accept that his family had no further issues with either the family or tribe of his ex-wife from the period shortly after his departure from Iraq.

¹⁶ Middle East Monitor 2017 Article.

¹⁷ Ibid.

¹⁸ Institute for War and Peace Reporting (IWPR), 'Secret Divorces Underline Women's Powerlessness', 2 June 2005, CX123198.

33. The applicant has contended he will be killed or harmed on return to Iraq for the dishonour caused to his ex-wife's family. Current information indicates that the most common form of restitution for tribal and honour based feuds is payment of money to the offended party.¹⁹ Honour based killings do still occur in Iraq, though the most recent examples are predominately in the Kurdistan Region of Iraq (KRI) rather than in the central and southern governorates, and more broadly information is that the victims of this type of crime are overwhelmingly women, rather than the men involved.²⁰
34. While I have accepted that the applicant was attacked and threatened by members of his ex-wife's family in the past, I note that they did not take the opportunity to kill him on any of those occasions, which indicates they were not genuinely intending to do so then, and I am not satisfied they would be interested in doing so now. It has been over 16 years since the applicant left Iraq and I am not satisfied that the family would remain interested in either killing or harming him after all this time, particularly in circumstances where they demonstrated a willingness to forgive his family members after discussions with the elders. Noting these matters and information that: tribal/honour issues are now largely resolved through financial transactions; the most recent examples are in the KRI; and that the victims of honour based violence are largely women, I am not satisfied that the applicant faces a real chance of harm from his ex-wife's family or tribe on return to Iraq now or in the reasonably foreseeable future. I have found above that I am not satisfied his former wife's family or tribe are affiliated with the Mahdi Army, and I am not satisfied that he will face harm from the Mahdi Army or other militia for dishonouring her, her family or her tribe. I am also not satisfied there is any ongoing tribal dispute for this reason.
35. The applicant states he will be harmed as an imputed/perceived Sunni Muslim on return to Iraq, that he will not be able to practise his faith, he will be harmed in sectarian violence and/or because he is now married to a non-Iraqi, non-Arab, Christian woman. It is also contended he faces harm as a returned failed asylum seeker from Australia, including because he will be presumed to be wealthy.
36. Information before me is that situation in Iraq has changed since the applicant left the country. In 2017 the government and its associated forces declared victory over Sunni insurgent group, the Islamic State of Iraq and the Levant (ISIL or Daesh) and the Iraqi Security Forces (ISF) have retaken ISL held territory.²¹ The Iraqi government forces are in control of Baghdad and the southern governorates of Iraq, including Babylon. DFAT advise that ISIL remains a security threat to the country, and their targets include electricity and water infrastructure, civilians, and government and security forces.²² However, the information also indicates that their activities are focused in the western, central and northern areas of the country, specifically in the Baghdad belts, the KRI, Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din rather than the southern governorates of Iraq including Babylon.²³ Moreover, information is that general levels of violence perpetrated by ISIL in Iraq have continued to decline since November 2020 and into January 2021, including in Baghdad and Babylon.²⁴ A

¹⁹ EASO Targeting of Individuals 2019 Report; EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507 (EASO 2021 Report); and UNHCR 2019 Report.

²⁰ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and UNHCR 2019 Report.

²¹ DFAT 2020 Report; UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; EASO, 'Country of Origin Information Report, Iraq, Security Situation', March 2019 (EASO Security 2019 Report); EASO 2021 Report; United Kingdom Home Office (UKHO), 'Country Policy and Information Note Iraq: Sunni Arabs', January 2021, 20210112113055 (UKHO Sunni 2021 Report); and Office of the Commission General for Refugees and Stateless Persons (Belgium) (CGVSRA), 'COI Focus - Iraq: Security Situation in Central and Southern Iraq', 20 March 2020 (CGVSRA 2020 Report).

²² DFAT 2020 Report.

²³ Ibid; EASO 2019 Security Report; EASO 2021 Report; CGVSRA 2020 Report; and UNHCR 2019 Report.

²⁴ DFAT 2020; EASO 2019 Security Report; EASO 2021 Report; CGVSRA 2020 Report; and UNHCR 2019 Report.

recent report notes that while the Jurf al-Sakhr area in Babylon has been the target of ISIL threats and attacks, overall, Babylon has not been a priority for the ISIL insurgency in recent years.²⁵ On the information before me, I am not satisfied that ISIL have a significant presence in the southern governorates of Iraq, including Babylon.

37. Shia Muslims are the majority religious sect in the central and southern governorates, including in Babylon.²⁶ DFAT advises that sectarian violence occurs occasionally, but overall, it assesses that there has been a significant reduction in sectarian violence since the mid to late 2000's.²⁷ Information also supports a reduction in the number of general security incidents, including in Baghdad, Babylon and other southern governorates.²⁸ DFAT notes that there has been a conscious effort by political leaders to remove sectarian slogans from public discourse after the military defeat of ISIL and noted that it was common during the lead-up to the May 2018 election to hear politicians and commentators emphasising the need to rise above sectarianism and revenge to stabilise the country. DFAT states that commentators have suggested that the reduction in sectarianism more broadly reflects the Shia majority's increased confidence and sense of security in the wake of victory over ISIL. Moreover, the reduction in sectarian tension, has reportedly seen an increase in inter-sect Sunni/Shia marriages.²⁹
38. Shia militias, including the Mahdi Army, continue to operate in the southern governorates unifying in 2014 to form the Popular Mobilisation Forces (the PMF).³⁰ The PMF was formally bought under centralised control as an independent military organisation in 2018 and they now work alongside the ISF, fighting against the Sunni insurgency, including ISIL. Concerns have been raised that the government's attempt to assert control over the PMF have been unsuccessful and there is evidence that PMF groups continue to commit human rights abuses and engage in other criminal activity.³¹
39. A 2021 report by the United Kingdom Home Office (UKHO) undertook a comprehensive analysis of the risk of harm to Sunni Muslims in Iraq.³² This report, as well as reports from the European Asylum Support Office (EASO) and others, note incidents of human rights abuses by Shia militias, the PMF and ISF against Sunnis, including arbitrary detention, torture, kidnapping, and forced disappearance.³³ However, the UKHO, DFAT, UNHCR, and EASO indicate that the targets of such harm are Sunni Muslims who have been internally displaced from areas formerly held by ISIL, the contested areas and in the northern provinces of the country on the basis of a perceived association with ISIL.³⁴
40. The 2020 DFAT report does not report a high risk of violence to Sunnis in Shia dominated areas, including the southern governorates. The UKHO states that a Sunni may face a risk of harm depending on their personal profile including their age, gender, family connections, profession, past experiences and origin, but ultimately concluded that in general Sunnis do

²⁵ EASO 2021 Report.

²⁶ DFAT 2020 Report; and EASO Security 2019 Report.

²⁷ DFAT 2020 Report.

²⁸ Ibid; EASO 2019 Security Report; EASO 2021 Report; and CGVSRA 2020 Report.

²⁹ DFAT 2020 Report

³⁰ Ibid; EASO 2019 Security Report; EASO 2021 Report; CGVSRA 2020 Report; and UNHCR 2019 Report.

³¹ DFAT 2020; EASO Security 2019 Report; EASO 2021 Report; CGVSRA 2020 Report; and UNHCR 2019 Report; and EASO Targeting of Individuals 2019 Report.

³² UKHO Sunni 2021 Report.

³³ EASO 2019 Security Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; CGVSRA 2020 Report; DFAT 2020 Report; and UNHCR 2019 Report

³⁴ EASO 2019 Security Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; DFAT 2020 Report; UNHCR 2019 Report; and UKHO Sunni 2021 Report.

not face treatment which is sufficiently serious by its nature or repetition such that it constitutes persecution or inhuman or degrading treatment.³⁵ This finds support in a 2021 EASO report which assesses that the mere fact an individual is Sunni would not normally lead to a well-founded fear of persecution.³⁶ The current information before me does not support that Sunnis, including Sunni males, are now being targeted in a systematic manner and I am not satisfied this is the case. I also note that the most recent DFAT report does not indicate that Sunni Muslims otherwise face harm or discrimination in employment or access to services due to their religion.

41. Conversion by a Muslim to another religion is forbidden by personal status laws, though is not prohibited under penal laws.³⁷ Converts to the Christian faith may however be at risk of harm from militias if the conversion becomes known.³⁸ The reports before me do not support that a Shia who has converted or, who is perceived to have converted, to the Sunni faith, would be considered to be an apostate, as they have not moved away from the Muslim faith, and nor does the information indicate that such individuals are of adverse interest to Shia militias for reason of their conversion.³⁹ Moreover, the law expressly permits a Muslim man to marry a non-Muslim woman,⁴⁰ and the information before me does not support that Muslim men who marry a outside the Muslim faith or culture, including to a non-Arab, Christian woman from another country, are targeted for harm by any armed groups.⁴¹ However, Muslims who do convert to another faith and/or marry a person from another ethnicity, religion or culture, could face ostracism and/or violence from their family, community or tribe, for contravening social and religious mores.⁴² However, this appears to be entirely dependent on the particular views within the family/community and/or tribe, as some are more accepting of these matters than others.⁴³
42. Shias are the majority community throughout Baghdad and the southern governorates, with a dominant role in the government.⁴⁴ The reports before me do not support that Shias face official or other forms of discrimination including in relation to access to housing, employment or basic services in areas where they form the majority (including Babylon).⁴⁵ Violence between different Shia armed groups occurs in the southern governorates of Iraq and is mostly related to control of land and oil revenues, but local sources advised that this kind of intra-Shia violence predominately affects those who are actively involved in a militia or tribal group rather than ordinary citizens.⁴⁶ Shia armed groups also engage in organised crime but the information indicates that other Shia's are not generally the targets for such crime.⁴⁷ Shias and Shia places of worship were targeted by ISIL, but as noted above their activities and reach have been significantly limited in recent years, and there has been a decline in the levels of sectarian violence and tensions.

³⁵ UKHO Sunni 2021 Report.

³⁶ EASO 2021 Report.

³⁷ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and United States Department of State, (USDOS), 'International Religious Freedom Report for 2018 - Iraq', 21 June 2019, 20190624141502 (USDOS 2019 Report).

³⁸ USDOS 2019 Report; DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; and EASO 2021 Report.

³⁹ EASO Targeting of Individuals 2019 Report; EASO 2021 Report; DFAT 2020 Report; USDOS 2019 Report; and UNHCR 2019 Report

⁴⁰ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and USDOS 2019 Report.

⁴¹ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and UNHCR 2019 Report.

⁴² DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and UNHCR 2019 Report.

⁴³ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and UNHCR 2019 Report.

⁴⁴ DFAT 2020 Report; and EASO Security 2019 Report.

⁴⁵ DFAT 2020 Report; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; USDOS 2019 Report; and UNHCR 2019 Report.

⁴⁶ EASO Security 2019 Report, citing a 2018 DFAT report.

⁴⁷ Ibid; EASO Targeting of Individuals 2019 Report; EASO 2021 Report; and DFAT 2020 Report.

43. There have been widespread protests over corruption, government neglect, unemployment, and poor services in southern cities, including Babylon, beginning in 2018 and which have continued in recent years.⁴⁸ Some of the protests became violent leading to deaths and injuries among protesters and security forces. Several protest leaders and activists have been threatened and assassinated by members of the PMF, including the Shia militias, and the ISF.⁴⁹ However, reports indicate that the primary targets for the ISF and PMF are well-known activists, organisers, people who play a central role in the protests and who are critical of the authorities/the PMF, and journalists.⁵⁰
44. In December 2019 escalating tension between the United States (US) and Iran, culminated in an attack against the US Embassy in Baghdad by Iranian backed members of the PMF.⁵¹ The US retaliated in January 2020, killing the commander of the Iranian Islamic Revolution Guard Corps (and deputy commander of the Iraqi PMF) in a drone attack near Baghdad International Airport.⁵² Iran then responded with a ground-to-ground missile attack on Iraqi military bases hosting US troops.⁵³ However, these attacks do not appear to have translated into a real chance of harm against civilians in Iraq, as those targeted were US military the Iranian backed militias. EASO recently advised 'indiscriminate violence 'was taking place at such a low level in the southern governorates, including in Babylon, that in general there is taken to be no real risk of harm.⁵⁴ Similarly, levels of indiscriminate violence in Baghdad were not considered to rise to the level of a real risk of serious or significant harm.⁵⁵
45. DFAT states that there is considerable evidence that Iraqis who are granted protection return to Iraq, sometimes only months after securing residency in Australia, to reunite with families, establish and manage businesses or take up or resume employment.⁵⁶ The practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq.⁵⁷ Nor do reports suggest that seeking or being granted in asylum in a country such as [Country 2] would result in a real chance of harm. ⁵⁸ DFAT states it can be difficult if an individual is not returning to their original area, but otherwise assesses there is limited evidence to suggest that returnees face difficulties in assimilating back into their communities.⁵⁹ DFAT advises overall that Iraqis who have sought asylum overseas and returned have done so without significant difficulty. The information before me does not support that returnees or failed asylum seekers are being targeted, including for extortion because they are perceived to be wealthy.⁶⁰
46. The applicant gave evidence that he remains a practising Shia and I find he will continue to follow this faith on return to Iraq. The applicant's uncles, with whom he was close, continue

⁴⁸ DFAT 2020 Report; UNHCR 2019 Report; EASO 2021 Report; CGVSRA 2020 Report; EASO Targeting of Individuals 2019 Report

⁴⁹ DFAT 2020 Report; UNHCR 2019 Report; EASO 2021 Report; CGVSRA 2020 Report; EASO Targeting of Individuals 2019 Report

⁵⁰ EASO Targeting of Individuals 2019 Report; DFAT 2020 Report; EASO 2021 Report; CGVSRA 2020 Report.

⁵¹ DFAT 2020 Report; and US: Office of Inspector General, 'Operation Inherent Resolve - Lead Inspector General Report to the United States Congress October 1, 2019- December 31, 2019', 3 February 2020, 20200213114105 (Operation Inherent Resolve Report).

⁵² DFAT 2010 Report; and Operation Inherent Resolve Report).

⁵³ DFAT 2010 Report; and Operation Inherent Resolve Report).

⁵⁴ EASO 2021 Report.

⁵⁵ Ibid.

⁵⁶ DFAT 2020 Report.

⁵⁷ Ibid.

⁵⁸ Ibid; EASO Targeting of Individuals 2019 Report; and EASO 2021 Report.

⁵⁹ DFAT 2020 Report.

⁶⁰ Ibid; EASO Targeting of Individuals 2019 Report; and EASO 2021 Report.

to reside in Babylon and I accept that he will have contact with them on his return. I also accept that this through his uncles, he may attend a Sunni Mosque. While his ex-wife's family accused him of being a Sunni, I note that he was not identified as such by the broader members of the community in the past, indeed the elders knew him to be a Shia. Noting that the applicant continues to identify as a Shia and that he will do so on return, I am not satisfied that he will be perceived by anyone to be a Sunni or to have converted to that faith or that he faces a real chance of any harm for this reason. However, even if he is, the information does not support that all Sunni Muslims are targeted for harm, and I am not satisfied he has, or will on return have the profile of those that are. Nor does the information indicate that Shia Muslims who are perceived to have converted to the Sunni faith, or who associate with Sunni family members are targeted for that reason. The applicant was not harmed by militia group, members of the community or anyone else for his association with his Sunni uncles, and/or his attendance at the Sunni Mosque in the past, and I give weight to information regarding the reduction in sectarian tension and violence. I am not satisfied that the applicant faces a real chance of any harm as a perceived Sunni, a convert to the Sunni faith, for his associations with Sunni family members and/or attending a Sunni Mosque on return to Babylon, or the southern governorates of Iraq, now or in the reasonably foreseeable future.

47. The information before me indicates that inter-sect Sunni and Shia marriages are now becoming more acceptable, and I am not satisfied that the applicant faces a real chance of harm on return to Iraq due to the inter-set marriage of his parents. I have already found I am not satisfied he faces a real chance of harm due to his previous marriage and dishonouring his former wife and her family. The applicant is currently married to a Christian, [Country 1] woman who is not an Arab. She and their son will not be joining the applicant in Iraq, and in these circumstances the chance of this marriage becoming known by his tribe, members of the community, and militias and him facing harm for this reason, is so remote so as not to be real. However, even if it does become known, I note that he has not converted away from the Islamic faith and will still practising as a Muslim on return to Iraq. I am not satisfied that he will be perceived to be a convert to Christianity, or to be an apostate, merely because of his marriage or that he faces harm from anyone for this reason. Further, as noted above, it is accepted for a Muslim man to marry a Christian woman, and the information before me does not support that Iraqi men who marry women from other countries or ethnicities are targeted by armed groups. The applicant has not claimed that his family, tribe, or members of the community, have any concerns about his current marriage or would harm him for this reason, and I am not satisfied this is the case. On the evidence before me, I am not satisfied that the applicant faces a real chance of harm for any reason associated with his current marriage (including because he married a non-Arab, Christian woman from [Country 1]).
48. The applicant is a Shia Muslim, a member of the majority religious community, and he will be returning to an area where he used to reside and where he still has family. The applicant has been gainfully employed in the past in Iraq, [Country 2] and Australia and his family still operate their [business] in which the applicant used to work. I am not satisfied that he will be unable to find accommodation, employment, that he will not be able to access basic services, or that he will otherwise face discrimination or harm as a Shia Muslim. I am also not satisfied that he will be unable to practise his faith as he has claimed. There is nothing in the applicant's profile or claims to indicate he is interested in engaging in any political or protest activity on return to Iraq in the reasonably foreseeable future and I am not satisfied that he will do or that he faces harm for this reason. The applicant was not in the past an active member of a militia, and he has not claimed he will be so in the future. I am not satisfied that he will be, or that he faces a real chance of harm for that reason. While I have accepted that he was involved with a dispute with his ex-wife's family in the past, I am not satisfied that this

will be ongoing on his return to Iraq, or that he will otherwise be caught up in tribal activities or violence. The information does not support that returned failed asylum seekers are targeted for harm, and I am not satisfied he faces harm, including being extorted, as a returned failed asylum seeker from either Australia or from [Country 2]. Nor am I satisfied that the applicant otherwise has, or will have on return, the profile of individuals currently being targeted for harm.

49. On the totality of the information before me, including the applicant's particular profile and circumstances, and the information regarding the reduction in ISIL activity in Baghdad and southern governorates, the decrease in sectarian violence throughout the country, and the current levels of indiscriminate violence in Baghdad, and Babylon: I am not satisfied that the level of violence in either Baghdad, Babylon and the southern governorates rise to a level amounting to a real chance or risk of harm. I am not satisfied that the applicant faces a real chance of any harm on return because he is a Shia, due to sectarian violence, and/or due to the general security situation now or in the reasonably foreseeable future.
50. The applicant travelled to Australia from [Country 2] rather than Iraq. However, he originally left Iraq legally through Baghdad airport. Information before me advises that he can also access Babylon via Al Najaf International Airport or Basra International Airport, both of which are in the southern governorates.⁶¹ Internally displaced persons may have trouble accessing Babylon, but I am not satisfied this applies to the applicant's in his circumstances as a returnee to his home with family in the area.⁶² Having regard to the independent information cited above regarding the security situation in the southern governorates I am satisfied that he can safely access Babylon, via Najaf or Basra, without facing a real chance of harm.
51. The applicant's evidence was that his wife and child will not be joining him in Iraq, and I accept that he will be separated from them on his return. I note they have been separated for some time since he left [Country 2]. I am sympathetic to this situation and accept that it will be very difficult for the applicant and for his family. However, he has not claimed to fear harm on return to Iraq for this reason and nor am I satisfied that his separation from his wife and his son and any distress arising from this is not for one of the five grounds in s.5J(1)(a) of the Act; and nor am I satisfied that it rises to the level of serious harm, having regard to the non-exhaustive list set out in s.5J(5) of the Act.
52. On the totality of the evidence before me, including the independent information and the applicant's particular circumstances and profile, I am not satisfied that he faces a real chance of harm on return to Babylon or the southern governorates in Iraq, now or in the foreseeable future for any of the reasons he has claimed. He does not have a well-founded fear of persecution.

Refugee: conclusion

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

⁶¹ Information cited by delegate in decision record; DFAT 2020 Report; and EASO, 'Country of Origin Information Report - Iraq Internal mobility', 4 February 2019, 20190205084903 (EASO Mobility 2019 Report).

⁶² DFAT 2020 Report; EASO Mobility 2019 Report; and UKHO, 'Country Policy and Information Note - Iraq: Internal relocation, civil documentation and returns', 27 May 2020, 20200528095042.

Complementary protection assessment

54. 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

55. 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.
56. 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.
57. As noted above, the applicant has advised that his wife and child will not return to Iraq with him. I am sympathetic to this situation and accept that it will be very difficult for him and his family. He has not claimed to fear harm on return to Iraq for this reason and nor am I satisfied that his separation from his wife and son and any distress arising from this falls within the exhaustive definition of significant harm in s.36(2A) of the Act, in that it does not amount to being arbitrarily deprived of life; facing the death penalty; torture; cruel or inhuman treatment or punishment; or degrading treatment or punishment.
58. I have otherwise found above that I am not satisfied the applicant's claims, discussed in detail above, give rise to a real chance of harm on return to Babylon or the southern governorates of Iraq. As 'real chance' and 'real risk' involve the same standard,⁶³ I similarly find that those matters do not give rise to a real risk of harm for the purpose of s.36(2)(aa).
59. The applicant travelled to Australia from [Country 2] rather than Iraq. However, he originally left Iraq legally through Baghdad airport. Information before me advises that he can also access Babylon via Al Najaf International Airport or Basra International Airport, both of which are in the southern governorates.⁶⁴ Internally displaced persons may have trouble accessing Babylon, but I am not satisfied this applies to the applicant's in his circumstances as a returnee to his home with family in the area.⁶⁵ Having regard to the independent information cited above regarding the security situation in the southern governorates I am satisfied that he can safely access Babylon, via Najaf or Basra, without facing a real risk of harm for the purpose of s.36(2)(aa) of the Act.

⁶³ MIAC v SZQRB (2013) 210 FCR 505.

⁶⁴ Information cited by delegate in decision record; DFAT 2020 Report; and EASO, 'Country of Origin Information Report - Iraq Internal mobility', 4 February 2019, 20190205084903 (EASO Mobility 2019 Report).

⁶⁵ DFAT 2020 Report; EASO Mobility 2019 Report; and UKHO, 'Country Policy and Information Note - Iraq: Internal relocation, civil documentation and returns', 27 May 2020, 20200528095042.

60. On the totality of the evidence before me, including the independent information and the applicant's particular circumstances and profile, I am not satisfied he faces a real risk of harm for any reason on return to Iraq, for the purpose of s.36(2)(aa) of the Act.

Complementary protection: conclusion

61. 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

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

Applicable law

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.