

Decision and Reasons for Decision



Applicant: Mr Marwan Jubraeel

Respondent: Minister for Immigration and Citizenship

Tribunal Number: 2502888

Tribunal: General Member R Mikhail

Date: 14 July 2026

Place: Sydney

Country of reference: Iraq

Decision: The Tribunal affirms the decision under review.

General Member R. Mikhail
Statement made on 14 July 2026 at 1:18pm

Statement of reasons

BACKGROUND TO REVIEW

1. This is an application for review of a decision made by a delegate of the Minister refuse to grant the applicant a protection visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant, who claims to be a national of Iraq, applied for the visa on 2 August 2023.
3. On 4 July 2024, the delegate refused the visa.
4. On 4 July 2024, the applicant lodged an application for review of that decision with the former Administrative Appeals Tribunal (AAT).
5. On 13 September 2024, the AAT affirmed the decision.
6. On 16 October 2024, the applicant filed an application with the Federal Circuit and Family Court of Australia in respect of the AAT's decision.
7. On 21 January 2025, the Federal Circuit Court remitted, by consent, the Tribunal's decision for the following reasons:

The Minister accepts that the decision of the Tribunal is affected by jurisdictional error on the basis that the Tribunal misapplied s 36(2)(aa) of the *Migration Act 1958* (Cth) (Act). In its assessment of s 36(2)(a), the Tribunal at [59]-[60] identified that "unfortunately Christians are collateral damage" in bombardments by Turkey in the north of Iraq. However, it found that these bombardments did not amount to persecution as the applicant would not be targeted for a reason in s 5J of the Act. In its assessment of the application against the criterion in s 36(2)(aa) at [102]-[104], the Tribunal relied on its anterior assessment under s 36(2)(a) that there was no real chance of serious harm, in finding that there was no real risk of significant harm. However, the Tribunal did not consider whether there was a real risk of significant harm as a result of the bombardments, given its earlier finding as to that possible harm and where s 5J does not apply to s 36(2)(aa). Accordingly, the Tribunal failed to correctly apply the test in s 36(2)(aa).

The Minister also accepts that the error was material, because had the Tribunal applied s 36(2)(aa) correctly, there is a realistic possibility that it may have reached a different conclusion on whether s 36(2)(aa) of the Act was satisfied: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12 at [7]-[16].

8. The matter is now before this Tribunal pursuant to an order of the Court.
9. The issue in this case is whether the applicant meets the refugee criterion and, if not, whether they are entitled to complementary protection. The relevant law and mandatory considerations are set out in the attachments.
10. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

APPLICANT'S CLAIMS FOR PROTECTION AND EVIDENCE

Before the Department

11. In the delegate's decision, it summarised the applicant's migration history as follows:

Date	Event details
30/10/2003	Applied for a Global Special Humanitarian visa (subclass 202)
27/05/2004	Subclass 202 visa granted
09/07/2004	Arrived in Australia and immigration cleared
03/05/2007	Applied for conferral of Australian citizenship
21/08/2007	Application for conferral of Australia citizenship refused as applicant was subject to criminal proceedings
25/09/2009	Notice of Intent to Consider Cancellation of his visa sent to the applicant
07/08/2009	Decision not to cancel and warning letter sent to the applicant
18/09/2018	Subclass 202 visa cancelled under s501 of the Act
31/10/2018	Application for revocation of visa cancellation received
07/10/2022	Decision not to revoke visa cancellation
20/10/2022	Application for review of decision not to revoke visa cancellation lodged with the AAT
04/01/2023	Decision not to revoke visa cancellation affirmed by the AAT
02/08/2023	Protection visa application lodged
23/08/2023	Protection visa interview conducted

12. In his application for protection, which was prepared with the assistance of a legal representative, the applicant raised the following claims:

- He was born in 1988 in Iraq.
- He arrived in Australia on 9 July 2004, when he was 16 years old, on a humanitarian visa after fleeing Iraq and subsequently living in Jordan and Lebanon. His family fled Iraq due to concerns for their safety due to hostilities.
- He fears being targeted for harm in Iraq because he is a practising Assyrian Christian and cannot be expected to abandon his religious beliefs. He will be considered an infidel by Muslim extremists who have the active and passive support of the Iraqi authorities.
- He fears that he will be targeted for harm because his father served in the Iraqi army for thirteen years during the regime of Saddam Hussein, and the authorities wanted to conscript his brother.
- He will be targeted for harm in Iraq as a returnee from a western country because Australia is considered a country of infidels. He will also be considered wealthy or that he comes from a wealthy family.
- He fears that he will be targeted for harm in Iraq as a failed asylum seeker and will be considered a traitor for providing adverse information against the Iraqi government.
- On 12 February 2008, he was convicted of robbery for which he was sentenced to two years' imprisonment, suspended, on entering a bond with conditions. On 23 June 2014, he was convicted of murder and sentenced to seventeen years' imprisonment. On 18 September 2018, his visa was cancelled under s 501(3A) of the Act as a delegate was satisfied he did not pass the character test because of the operation of s 501(6)(a) (substantial criminal record) on the basis of s 501(7)(c) and because he was serving a sentence of imprisonment for an offence against a law in Australia.

- He fears that he will be targeted for harm in Iraq due to his criminal conviction in Australia as he will be considered to have brought shame on the country. He will face intimidation, bullying and harassment which will create a situation where he will be punished for the same offence by Iraqi society, effectively creating a double jeopardy situation.
- He suffers from an intellectual disability.
- He has mental health issues and fears he will be unable to receive adequate mental health treatment in Iraq.
- He has aged parents and three siblings and other close relatives in Australia, who are Australian citizens, and who will face hardship if the applicant returns to Iraq.
- He does not have any family in Iraq and will not be able to survive.
- He will not receive effective protection in Iraq because the government in Iraq is either unable or unwilling to protect people like him. They are unwilling to protect him as an Assyrian Christian and as a person who was convicted and spent time in jail in a foreign country. The authorities are also unable to protect him because they have less manpower.
- Internal relocation is not a reasonable option due to his religion and mental health issues.

13. Attached to the application for protection were a number of identity documents.
14. On 18 August 2023, the Department of Home Affairs (the Department) sent the applicant's representative correspondence inviting the applicant to provide additional information in relation to this application at an interview, including details of the town of birth for himself and his parents, and details of his employment and educational history. It also requested information relevant to whether he is a danger to the Australian community under s 36(1C) of the Act, such as reports on his conduct in prison, evidence of any educational courses or employment undertaken, including in prison, medical reports and letters from psychologists or psychiatrists in relation to the applicant's treatment for any mental health conditions and his prognosis for the future, including in relation to his offending. It also requested reports on any treatment in relation to the abuse of alcohol and other drugs and reports from family members, and other people in the community, regarding any job offers or support that can be provided in the community that may reduce his risk of offending.
15. On 22 August 2023, the applicant's representative submitted a number of documents to the Department in response to the above request. This included documents regarding program and courses he had undertaken in prison and his behaviour in prison. It also included statutory declarations from the applicant's sister [A] and her husband, his brother [J], his other sister [V], and his mother, all dated on 22 August 2023.
16. On 23 August 2023, the applicant attended an interview with a delegate by telephone.
17. After the interview, on 23 August 2023, the Department sent an email to the applicant's representative which outlined concerns that were raised with the applicant during that interview. It stated the concerns relevant to his protection claims were that:
 - Country information indicated that it is relatively safe in the Kurdistan Region of Iraq (KRI) and, although the applicant was born in Baghdad, his Global

Special Humanitarian visa application indicated that his father was born in Duhok, which is within Iraqi Kurdistan. The city of Erbil, which is within this region contains a large number Christians and an Assyrian majority suburb. The city also has access to mental health services. If it is found that it is not safe for applicant to return to Baghdad, a decision maker may find that he is able to safely relocate to Erbil or Duhok.

- The applicant is young, of working age and speaks English, Arabic and Assyrian, which may be of assistance in finding employment in Iraq to support himself. The AAT decision record also showed that his brother-in-law indicated he was willing to employ the applicant in his company. Country information also indicates that it is common for people who have departed Iraq and sought asylum, to return to Iraq once conditions permit. The Department of Foreign Affairs and Trade (DFAT) had also assessed that it is 'highly unlikely a failed asylum seeker would face mistreatment on return to Iraq solely on the basis of his or her having sought asylum overseas.' A decision maker may find, that if applicant is removed to Iraq, that his family may be able to provide him with financial support while he settles into the country and that he will not be targeted for harm if he is returned to the country.
- The delegate had also requested letters from his church and the chaplain at the prison providing details of his religious activities, medical reports regarding the applicant's mental health, treatment and prognosis and any information the applicant may wish to provide in support of his claims to protection or that he is no longer a danger to the Australian community.

18. In that correspondence, the delegate attached an 'Onshore police check' regarding the applicant and a report from NSW Corrective Services and extracts from his family's humanitarian visa application. It noted the applicant was invited to provide further documentary evidence, information, and comments in relation to this matter within seven days of the date of this interview.
19. After that interview, the applicant submitted the following documents:
 - A written statement by the applicant which repeated his claims for protection and addressed concerns regarding his Australian offending (September 2023 statement).
 - Letters of support from two churches in Australia.
 - A statement addressing incidents that had occurred while the applicant was in prison.
 - Psychological report for the applicant, dated 14 September 2023.
 - Medical reports for the applicant's mother.
 - Country information reports.
20. In their decision, the delegate accepted that the applicant was born in Baghdad and lived in that city throughout his time in Iraq. However, his place of registration on his Iraqi identity card is Sersink in Duhok Governorate. They found, given the length of time since the applicant last lived in Baghdad and that he is not aware of any extended family in Iraq, he found that Baghdad is not the applicant's home area in Iraq but that the KRI is the

applicant's home area in Iraq as Sersink, in Duhok Governorate, is his place of registration on his Iraqi identity card and is also where his extended family originated. The delegate accepted that the applicant is a practising Assyrian Christian. They accepted that the applicant required ongoing treatment for his mental health. They were satisfied that the applicant had been convicted of a number of offences in Australia for which he was imprisoned. They accepted that the applicant's father did serve in the Iraqi army during Saddam Hussein's regime. They accepted that the applicant's brother avoided conscription in Iraq. Whilst they had concerns about some parts of his claims, such as whether he was shot while he was in Iraq, they accepted that the applicant and his family were targeted for harm by their Muslim neighbours in Iraq because they were Assyrian Christians.

21. The delegate considered country information, but found it indicated that failed asylum seekers or those that had spent a considerable period of time in a western country were not being targeted for harm in Iraq. It also showed that people in Iraq are not being targeted for harm on the basis of having a family member who served in the Iraqi armed forces during the rule of Saddam Hussein or who avoided conscription during this period. They were therefore satisfied that the applicant was not at risk of being persecuted in Iraq on the basis of the above reasons. They noted there was no information before them to suggest that a person who had been convicted and served their sentence for a crime committed outside of Iraq faced persecution in Iraq and was satisfied that the applicant was not at risk of being persecuted in Iraq due to his criminal convictions in Australia. They found that there was no indication that Christians in the KRI were targeted for religiously based violence, although they acknowledged that there is some discrimination, particularly in relation to property disputes. However, they found the country information did not suggest that the discrimination is at such a level that it involved the denial of basic services, the capacity to earn a livelihood or significant hardship that would threaten the person's capacity to subsist or amounted to significant harm. Whilst they accepted that the applicant may experience some difficulties finding employment on return to the KRI, they noted he is relatively young and of working age and has English language skills that may be in demand in the KRI and found that he is more likely to be able to support himself in the KRI than the majority of returnees and consequently not likely to be denied the capacity to subsist. They were also not satisfied that any difficulty in the applicant supporting himself in Iraq amounted to significant harm. Whilst they accepted that social stigma in relation to mental health issues exist in Iraq, there is nothing to suggest that it approaches a level of serious harm or significant harm. They also noted there were no reports suggesting that Christians in the KRI are denied access to mental health treatment due to their religion.
22. The delegate further noted that there is an international airport in Erbil which meant that the applicant would not have to transit through other areas of Iraq to access the KRI. They noted country information indicated that there is conflict between Turkish forces and the Kurdistan Workers' Party (PKK) in parts of the KRI, including in the Duhok and Erbil governates. However, the available country information indicated that most of these incidents took place in areas closer to the Turkish border and there is no real risk of civilians being personally affected by the conflict in areas away from the border. In any event, they found, as an Assyrian Christian who is not a member of any group or political organisation, the applicant is not a person who is likely to be personally targeted by participants in the conflict due to his profile.

Before the AAT

23. In pre-hearing submissions, the applicant submitted the following documents to the AAT in August 2024:

- Psychological Assessment Report by NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), dated 30 March 2024.
 - Other reports from STARTTS in relation to the applicant, dated in 2024.
 - Photos of the applicant with his family members.
 - Phone records from the applicant's brother-in-law as evidence of the applicant's frequent contact with sister [A] and brother-in-law.
 - Copies of emails between the applicant and a psychologist, seeking assistance to write an apology letter to the victim's family, dated in June 2024.
 - Phone records between the applicant and his mother.
 - Record of immigration detention visit approvals.
 - Evidence of courses completed by the applicant in 2023 and 2024.
 - Medical records for the applicant's mother, dated 22 May 2024, and his father, dated in July 2024.
 - Evidence of approved visits to the applicant in immigration detention by a friend.
 - Urine test results for the applicant, dated in 2024.
 - Statutory declaration from a friend of the applicant, dated 8 August 2024.
24. The AAT hearing was held on 8 August 2024 (2024 AAT protection hearing), where the applicant gave evidence. Oral evidence was also obtained from the applicant's sister, [A], the husband of [A], the applicant's mother and his brother, [J].
25. After the hearing, the applicant's representative submitted two sentencing court judgements by the Supreme Court of NSW and the Supreme Court of NSW - Court of Criminal Appeal relevant to his criminal conviction and the AAT decision in relation to the cancellation of his humanitarian visa, dated 4 January 2023 (AAT cancellation decision). It also requested that the Tribunal provide the applicant a copy of the humanitarian visa (subclass 202) that was approved in 2004 for the applicant and his family members.
26. The AAT then summoned the humanitarian visa application file from the Department. On 21 August 2024, it wrote to the applicant's representative advising that there was no written decision contained within the files, however the Tribunal thought that a document, it had attached, may be of some assistance. It noted the remainder of the file did not provide any insight to the reasons for the visa being granted. Attached was a document from that file which appeared to be notes by an immigration officer in relation to an interview held with the primary applicant (the mother) at the Australian Embassy in Beirut.
27. The AAT subsequently received a legal submission dated 6 September 2024 (AAT post-hearing submission), country information, and statutory declarations from the applicant's sister, [V], and his father, dated in August 2024.

Before this Tribunal

28. On 30 September 2025, submissions were provided to this Tribunal in support of this review. This included a legal submission (ART September 2025 legal submissions) and country information reports. The applicant's representative subsequently submitted a number of other documents, which had already been provided to the Department and the AAT in support of this application.
29. On 1 May 2026, the applicant appeared before the Tribunal via videoconference to give evidence and present arguments (ART Hearing). The applicant did not request, nor require, the assistance of an interpreter as he spoke fluent English. The representative attended the Tribunal hearing.
30. The Tribunal exercised its discretion to hold the hearing by video using Microsoft Teams. The Tribunal determined it was reasonable to hold a hearing by video using Microsoft Teams, having regard to the nature of this matter and the individual circumstances of the applicant. The Tribunal also had regard to the Tribunal's objective of providing a mechanism of review that is fair, just, economical, and quick, and the delay to the matter if the hearing was not to be conducted by video. The Tribunal is satisfied that the applicant was given a fair opportunity to give evidence and present arguments.
31. At the conclusion of the hearing, the applicant was given until 8 May 2026 to provide any further evidence or submissions to the Tribunal.
32. On 8 May 2026, the Tribunal received a letter from a psychologist from the NSW Violent Offender Therapeutic Program (VOTP), dated 6 May 2026. It did not receive any other evidence or submissions.

CONSIDERATION OF CLAIMS AND EVIDENCE

REASONS AND FINDINGS

Mental Health and capacity to give evidence

33. In the application for protection, the applicant claimed he had mental health issues and suffered from an intellectual disability. In that application, he requested that the Department consider his mental health when assessing his application. The ART September 2025 legal submission also stated that the applicant reported longstanding mental-health issues and an intellectual disability and requested that those be considered when assessing his protection claims.
34. The August 2023 statutory declaration from the applicant's sister, [A], referred to the applicant's 'limitations from a young age' but did not elaborate further.
35. The psychologist report, dated 14 September 2023, stated the applicant displayed above average cognitive abilities. It noted he presented with normal range psychological symptoms but showed 'reactive anxiety' related to his remorse for his actions and the present court case and recommended cognitive behavioural therapy every month for 12 months. It further stated that remaining in Australia would significantly aid recovery, whereas an inability to reside in Australia would be detrimental to his psychological stability. The ART September 2025 legal submission also referred to this report as stating that he showed 'reactive anxiety,' with mild depression and anxiety on DASS-42 and he did not meet DSM-5 diagnostic thresholds, and his mental-status examination was within normal limits. Further, that he is drug-free, monitored, and on prescribed injectable medication as replacement therapy.

36. In the Psychological Assessment Report by STARTTS, dated 30 March 2024, it noted the applicant had not engaged in any counselling in the past but had requested counselling support from STARTTS. It also noted that his reported symptoms of depression and anxiety and post-traumatic stress disorder (PTSD) were currently not clinically significant but said his ambivalence and reluctance to acknowledge the true depth of his feelings and symptoms could be a coping strategy which masks the precariousness of his current emotional and mental health and thought there would be benefits to specialist trauma counselling when he was ready and willing to process his difficult past experiences. Subsequent reports by STARTTS indicated he engaged in counselling sessions in 2024 whilst in immigration detention.
37. According to the AAT cancellation decision, during the 2022 AAT cancellation hearing, the applicant said the courses he undertook whilst in prison had resolved his past learning issues, which were language-based, rather than an inability to learn. When the Member in that hearing asked him about his past claim to have an intellectual disability, he disagreed and said he was 'past all that.'
38. During the 2024 AAT protection hearing, the applicant said that he had been speaking to a psychologist who told him he had mental health issues and he was in treatment, but he was not sure if he did, but he believed what they had told him.
39. During the ART hearing, I asked the applicant if he had an intellectual disability. He said he did and that sometimes he missed hearing things and could not understand the meaning of things. I asked him if he had been diagnosed with a particular disability and he said he had not. I then asked him how he knew he had a disability. He said people had told him that he did, such as psychologists, and when a psychologist prepared a report for his trial, they told him that in 2014. I then noted to the applicant that, in the AAT cancellation decision, it noted that he had told that Tribunal that these were past issues and were language-based rather than an inability to learn and he had said that he was past all that. I also noted to him that the psychologist report, dated 14 September 2023, also indicated that he had displayed above average cognitive abilities. He said, 'Okay so I am good.' I noted to him that is what the recent evidence suggested and that is what he had said to the AAT in his cancellation hearing. He then said, from his recollection, he did not have an intellectual disability, but other people had told him that and he believed it. I noted to him that he did not appear to believe that when he was before the AAT in his cancellation matter. He agreed, but said he was a slow learner, so he was not sure if it was a disability or not. I put to him that the most recent medical evidence before me does not indicate he has such a disability. He said 'Okay.'
40. Having considered the evidence before me, I do not accept that the applicant has an intellectual disability.
41. During the ART hearing, I also asked the applicant if he currently suffered from any mental health issues and he said he did and was suffering from depression in immigration detention, and anxiety and stress. I noted to him that the last report before me about his psychological health was dated 25 June 2024 by STARTTS and a STARTTS assessment of his psychological symptoms, in March 2024, referred to them as mild or moderate. I also noted him that another psychologist report, dated in March 2024, also noted that his symptoms were not clinically significant. I asked him if he was still being treated by any mental health professional whilst in immigration detention. He said a psychologist calls him 'here and there' every three months or month and sometimes weekly, but he had not seen them. I asked him if he was still consulting with STARTTS. He said he was not and they had stopped calling him. He said he had previously been seeing three of them at once, two on the phone and one in person, and it was too much for him and he stopped in 2024/2025. He said the psychologist he speaks to currently is part of his parole, so he had to speak to her. I asked

him if these phone calls were counselling or checkups. He said she sees how he is doing and coping in his routine. He said she was from VOTP maintenance, and he had been speaking to her for four years. I asked him if he was receiving regular counselling currently in immigration detention and he said he was not. I asked him if he was currently receiving any other treatment for his mental health and he said he was not. I asked him if anybody had given him a report indicating his current mental health diagnosis. He said they had not and that 'they' keep it. I asked him if he was currently on medication and he referred to medication for opioid addiction but said he was cutting it down to stop taking it and will stop taking it shortly.

42. At the end of the ART hearing, I noted to the applicant's representative that they had not submitted any more recent medical evidence in relation to the applicant's mental health and asked them to provide that after the hearing.
43. After the ART hearing, the applicant submitted a letter from a psychologist from the NSW VOTP, dated 6 May 2026. It stated that the applicant successfully completed the VOTP in custody on 1 February 2023. It noted this intensive treatment program works with offenders to address the thinking patterns and risk factors that lead to offending using violence. It noted he had been participating in AVL-based VOTP Maintenance sessions since commencing with this service on 10 March 2023 while in custody. He had consistently engaged well in, initially fortnightly, to now monthly VOTP Maintenance sessions whilst in immigration detention. These sessions had focused on supporting his use of his coping skills in this environment, which he has used to good effect, while also focusing on current and future goals and managing potential risk factors. VOTP Maintenance sessions were currently being performed as check-ins due to the applicant maintaining stability in his current environment and the current environment not being conducive to further therapeutic work. It made no further comment about his current mental health.
44. Given the last comprehensive report, before me, about the applicant's mental health was dated in the March 2024 and noted that his mental health issues were not clinically significant, and the applicant has not provided any more recent evidence to suggest otherwise, I have proceeded on the basis of that assessment and that is still the case with respect to the applicant's mental health.
45. Having considered the evidence before me with respect to the applicant's mental health issues, being clinically not significant, and my own observations during the hearing where the applicant appear to understand most of my questions, I am satisfied the applicant was able to effectively participate in the hearing and I am not satisfied he was adversely impacted by any intellectual disability or his mental health.
46. I have considered, below, whether he will face any harm in Iraq due to his mental health condition.

AAT Cancellation decision

47. In the AAT post-hearing submission, it submitted that the AAT should consider the observations of the Senior Member of the AAT who reviewed the applicant's cancellation of his humanitarian visa, as he noted in his decision that 'Based on the possibility that international non-refoulment obligations may be owed to the applicant'. I have considered this submission, however, the Tribunal member, in their decision, also noted that the available evidence, or lack thereof, is insufficient for reliable judgments to be made about the current treatment of Assyrian Christians in Iraq, including those with the applicant's circumstances and, although he may be owed non-refoulement obligations, it was appropriate to defer consideration and conclusive determination of this to a protection visa

process. In their decision, the Member had also noted that the applicant's non-refoulement claims were made at a high level of generality and contained unresolved inconsistencies.

48. At the ART hearing, I noted to the applicant that I will be considering his claims for protection afresh and was also not bound by the previous decision of the AAT made in respect of his claims for protection (in September 2024).

Identity and country of reference

49. The applicant's Iraqi identity cards and citizenship certificate and, that of his family members, were attached to their humanitarian visa application. The applicant's identity documents confirm he was born in 1988 in Iraq.
50. The delegate's decision also indicated that the applicant's application for Australian citizenship was refused in 2007 as he was subject to criminal proceedings.
51. Although I accept the applicant and his family lived in Lebanon and Jordan for some time after leaving Iraq, there is no evidence before me that he is a national of Lebanon or Jordan.
52. I am satisfied the applicant is a national of Iraq and that Iraq is the receiving country for the purpose of this assessment.
53. During the Departmental interview, the applicant said he belonged to the Ancient Church of the East. He said he used to go to church before he was imprisoned, and an Egyptian priest gave him communion in prison. During the 2024 AAT protection hearing, he said he was a Chaldean Christian of Assyrian ethnicity, which he described as the indigenous people of Iraq. In their humanitarian visa application, his family also claimed to be Chaldean Christian.
54. In the delegate's decision, it also noted that, in the humanitarian visa application, it was claimed that the applicant was a Christian. They noted a copy of the applicant's baptism certificate was also attached to this application and issued by the Chaldean Patriarchate of Babylon. I also note his Iraqi identity card, which was also provided with that application, also denotes that he is Christian, as do other identity documents for his family members attached to that application. I also note the baptism certificates for his other family members were also attached to that application, as was the marriage certificate of his parents, also issued by the Chaldean Patriarchate of Babylon. As noted, the applicant also provided two letters from Parish Priests in Sydney, one from the Christ Good Shepherd Church and the other from Saint Zaia Cathedral. Publicly available information indicates the Christ Good Shepherd Church is an Assyrian church.¹ Further that the St Zaia Cathedral serves as a worship centre for The Holy Apostolic Catholic Church of The East.²
55. During the ART hearing, the applicant indicated he spoke fluent Assyrian and indicated he same in his application for protection.
56. I accept the applicant, and his family, are Assyrian Christians..

Area to which the applicant will return

57. In his application for protection, the applicant indicated that he and his parents and siblings were born in Iraq but did not specify where in Iraq. He indicated other extended relatives were born in Baghdad or 'Darruk.'

¹ 'Our Church,' website of the Christ the Good Shepherd Church, undated, at <https://cgsc.org.au/our-church/>

² 'St Zaia Cathedral,' Churches Australia, 3 November 2020, at <https://www.churchesaustralia.org/list-of-churches/locations/new-south-wales/all-towns/directory/7071-st-zaia-cathedral>

58. In the delegate's decision, it noted that, in the humanitarian visa application, it indicated that the applicant's mother was born in Kirkuk, Iraq, and her parents were also born in Duhok, Iraq. They also stated that this application indicated the applicant's father was born in Sersink, Duhok, and his parents were also born in Duhok. Further, that a copy of the applicant's Iraqi identity card was also provided with that application, and indicated that the applicant was born in Baghdad, but that his place of registration was in Sersink.
59. The delegate's decision also noted that, when asked at the Departmental interview, the applicant claimed that he was born in Baghdad and lived there until he left Iraq when he was about 10 years old. He also initially claimed that his parents were born in Baghdad. However, when it was put to him that the humanitarian visa application indicated that his father was born in Duhok and that, although his mother was born in Kirkuk, his maternal grandparents were also born in Duhok, the applicant agreed that was the case. The applicant then explained that he originally answered Baghdad because he had never asked his parents where they were born and because he had lived in Baghdad throughout his time in Iraq.
60. During the 2024 AAT protection hearing, the applicant said he thought that he had been born in Baghdad but recently found out he was born in the KRI. He said he spent much of his childhood in Baghdad. He also said his home area was Baghdad.
61. During the ART Hearing, the applicant said he was born in Baghdad. When I put to him that he has previously stated in the 2024 AAT protection hearing that he was born in the KRI, he said he did not really know but, from his recollection, he was born in Baghdad. I asked him what his understanding was now in this regard. He said his parents had told him that he was born in KRI and they took him to Baghdad. He said did not know where he was born in the KRI and could not recall when they told him as he did not have a good memory. I asked him why his Iraqi documents, which were attached to the humanitarian visa application, indicate he was born in Baghdad. He said he was not sure and he had not spoken to his parents about it as he was a child when he left Iraq. I noted to him that he had indicated that he had spoken to them in recent years, and they told him he was born in the KRI. He said his mother told him this, but she had a stroke in 2021/2022 and cannot remember things and maybe she made a mistake. I note the applicant has provided medical evidence to indicate his mother had a stroke in the past.
62. In his oral submissions at the end of the hearing, the applicant's representative stated that, unless I were to find that the documentary evidence provided with the humanitarian visa application was fraudulent, I should be more guided by this evidence about the applicant's place of birth, rather than his recollection.
63. Although I found the applicant's oral evidence of concern, I have decided to give more weight to the Iraqi identity documents provided with the humanitarian visa application which indicate he was born in Baghdad and I accept that he was.
64. During the ART Hearing, the applicant said his parents were born in 'North Iraq' in the KRI. I accept this given the documentary evidence provided with the humanitarian visa application. He also said he and siblings were raised in Baghdad, although he said he was not sure.
65. I asked the applicant where he would return to if he had to return to Iraq. He said he was not sure and he did not have anyone living there and if he had relatives here, he would go to the north or south or Baghdad. I repeated my question and he said he would not go to Baghdad or anywhere and he never imagined himself living there. He said he would not return to Baghdad because of the incident that occurred when he was a child and he was afraid the militia would find him there.

66. I noted to the applicant that both the delegate and the previous AAT Tribunal Member found that his home area, or the place he would return to, is Duhok, where he is registered and where his family originated from and, in the recent written submissions to this Tribunal, it had not disputed that. He had no comment but then later said that he would not say he would, and he never imagined living there, and he did not know how to answer that and he did not know. I noted to him that recent country information indicated that the Iraqi government had issued new identity cards to replace the one he had and both cards can only be issued in the district where the family was registered which means he would have to return to Duhok to renew his ID card.³ He acknowledged what I said and had no comment.
67. I asked the applicant if he had any concerns about returning to Duhok. He said he needed to find work and Kurds and Assyrians do not get along there and they do not give Assyrians work and questioned how he could survive there. He also said they will think his family is rich as he is from Australia, and he will be targeted there, and he does not speak the language and questioned how he could find a place to live and medical care. He also said he does not have family there and does not know anyone.
68. I noted to the applicant that he claimed he would not return to Baghdad, which is the only place he claims to have lived and, as noted to him, the recent written submissions to this Tribunal had not disputed previous findings that he will return to Duhok, so I may find that is where he will return to. In response, he said it looks like he would return there. But then questioned what he would do there and said it did not mean he would not face serious harm there. In his oral submissions addressing concerns I had raised with the applicant at the end of the hearing, the applicant's representative did not address this issue. I noted to the representative that he had not made any comment in this regard. In response, he said the applicant's views about this were guarded and it seems he did not know where he would return to as he wants to stay in Australia and he had not turned his mind to this and he had claimed that he was born in Duhok but raised in Baghdad. However, given the decision of the delegate, who found the applicant would return to Duhok, the applicant had sufficient time to put his mind to this, and I give weight to the fact that this was not disputed in the written submissions to this Tribunal. In his oral evidence at the ART hearing, the applicant appeared to ultimately agree that he would return to Duhok. Further, the applicant was given further time after the ART hearing to provide any further submissions or evidence, and he did not provide any further submissions addressing this issue.
69. On the evidence before me, having considered the applicant's family originated from KRI, that he is registered in that area, country information before me, and the applicant's own evidence, I am satisfied he will return to Duhok in the KRI, if he were to return to Iraq.

Fear of harm from people who shot him in Iraq

70. In the application for protection, the applicant claimed that he fled Iraq with his family (parents and three siblings) because of concerns for their safety and because of hostilities. He also said he was a teenager and his family faced issues as Assyrian Christians.
71. According to AAT cancellation decision, in the 2022 AAT cancellation hearing, the applicant also claimed his family left Iraq because he had been shot in the leg by an Islamic militia when he was a child and his brother wanted to avoid mandatory conscription. He said his sister was being harassed which led to a confrontation between this militia and his father and someone came out and started shooting and he was shot in the leg.

³ European Asylum Support Office (EASO), 'Iraq Key Socio-economic Indicators for Baghdad, Basrah, and Sulaymaniyah,' November 2021, at https://www.ecoi.net/en/file/local/2064472/2021_11_EASO_COI_Report_Iraq_Key_socioeconomic_indicators_for_Baghdad_Basrah_and_Sulaymaniyah.pdf

72. During the 2024 AAT protection hearing, the applicant said his family had applied for a humanitarian visa because of general violence and because he had been shot as a child. He said his sister, [V] was coming back from school, and their Muslim neighbour tried to do 'something,' and his father got involved and it escalated and the neighbour started shooting at his father and the applicant was playing in the yard and got shot. In her oral witness evidence, the applicant's mother said the neighbours and Muslims came to her home and wanted to kill everyone and someone shot her son's leg. In his witness evidence during that hearing, the applicant's brother also referred to this incident whereby the applicant was shot by accident, when a neighbour was trying to shoot their father because they were Christian and wanted to do 'something' to his sister. He also referred to revenge in their culture and that their name is well known and targeted, although he then said this incident happened a long time ago.
73. During the ART hearing, the applicant said that his family left Iraq in part because their neighbour and militia were after his sister and his father spoke to them and they threatened his father and insulted their religion and came with guns and shot a gun in front of the applicant's house and a bullet hit his leg as he was playing in front of their house. He said he still feared harm from the people who shot him as they know his last name and family and have connections. I asked him which militia he was referring to, and he responded that he did not know their name, but they are a big family. He explained the dispute was about his sister and they had been harassing her. They had also been giving his family a hard time before that because of their religion and culture. He said he left Iraq in 1998 with his mother and brother, and they went to Jordan where they stayed for six months and then went to Lebanon and his father and sisters joined them in Lebanon.
74. I asked the applicant why this militia would still seek to harm him after all these years. He said because his family escaped, they are Assyrian Christians, and they hated his family. I asked him how he knew this militia still intended to harm him after all these years. He said because of his last name, and that they do not forget because of revenge. I asked him what they needed to revenge. He then referred to himself and his family and said he did not know, and they came there to kill them and, because his family ran away, they did not get to kill them, and he did not know what his father said to them. I asked him how even knew that this militia were still in Baghdad. He said they are a big family, and their children will take over. I noted to him this did not suggest that he knew. He said he had not been there, but he just knows from what his family told him and that it is dangerous. I noted him that he also told me earlier in the hearing that his family had not returned to Iraq since they came to Australia so it did not appear to me that they would know. He said they grew up with these neighbours, and they know how they operate. I noted him that these people are in Baghdad, and he had told me earlier that he would not return to Baghdad, so I asked him again why he still feared harm from them. He said he feared harm in Iraq in general as an Assyrian and he knows he will not be welcome there and they faced persecution there for a long time.
75. In the delegate's decision, it noted that, in the humanitarian visa application, the applicant's family claimed that the applicant's family were targeted for harm in Iraq because they were Christian. In their decision, the delegate noted the protection claims made in that application do not mention the applicant being shot but does indicate being harassed by a neighbouring Muslim family (in Baghdad). This is incorrect. I note in this application, the family referred to a dispute with neighbour whose sons used to steal from them and, when they confronted his family, one of these men shot a gun and a bullet hit the applicant in his leg. The applicant's father then reported this to the police, and this person was then jailed for eight years and his family then demanded regular payments from the applicant's father as compensation, which they paid. They then heard the perpetrator, and his other brothers, would be released from jail and they feared revenge. They also referred to harassment they experienced from their neighbours because of their Christian identity.

76. As noted, the AAT obtained the humanitarian visa application file from the Department. In a note on the file that was sent to the applicant's representative on 21 August 2024, an immigration officer referred to an interview held with the primary applicant (which appears to be the mother) at the Australian Embassy in Beirut. It noted they found this applicant to be credible at interview and considered their claim to be consistent with available country information and was satisfied they were subject to substantial discrimination amounting to a gross violation of their human rights in their home country.
77. In a report provided to the Department on 22 August 2023, from a psychologist regarding a treatment report related to the VOTP, dated 9 March 2023, it stated that the applicant had disclosed that he was exposed to violence in Iraq due to civil unrest and left Iraq when he was ten years old with his mother and brother and his family were separated for two years with the applicant spending time in Jordan and Lebanon before his father and sisters were able to join them in Lebanon. In the psychologist report, dated 14 September 2023, provided to the Department, it also noted that the applicant was compelled to leave Iraq along with his mother and brother and this marked the beginning of a two-year period during which the family was separated. They spent time in Jordan and Lebanon before being reunited with his father and sisters in Lebanon.
78. In his sisters' and brother's [J] statutory declarations of 22 August 2023, they referred to the applicant being shot at in Iraq. [J] claimed this incident made them flee Iraq. The mother's statutory declaration of 2023 also said they left Iraq because of problems they experienced there as Assyrian Christians. The father's statutory declaration from 2024 also claimed the applicant was shot.
79. In the Psychological Assessment Report by STARTTS, in relation to the applicant, dated 30 March 2024, it noted the applicant had said that he was shot in the leg by the militia when he was only nine years old and, following this incident, his family felt threatened, and feeling unsafe, they were forced to flee to Lebanon in search of safety. Further, his family and he were persecuted in their home country Iraq due to their Christian background. He had told this psychologist that something happened with his sister, but he could not remember and his father tried to tell men to keep away from his sister. Further, his father was running away from the men, who had opened fire and were shouting at him, calling him a non-believer because they are Christian. He was in the front yard when he got shot in the leg. He remembered being taken to a clinic where the bullet was removed, and his bullet wound was dressed. Not long after this incident, he said his family decided they had to leave their home and fled to Lebanon.
80. According to the AAT Cancellation decision, during the 2022 AAT cancellation hearing, the applicant's father gave oral evidence and said they left Iraq because of problems being Christian and there had been an incident, somebody had been injured and the applicant had been shot in the leg. When asked if anything had happened to the daughter when this incident happened, the father said nothing had happened and the Tribunal member noted this contradicted the father's written witness statement before them about this incident. Further, the applicant was also asked about a report prepared by a psychologist in November 2018, which noted he was shot in the leg whilst in a crowd in Jordan during celebratory shooting at a soccer game. The psychologist had said this conflicted with other information about him being shot by a neighbour in Iraq. According to this AAT decision, when this information was put to the applicant, he became agitated and said he could not recall how old he was and that psychologist hated him, and he did not know why. It noted, when he was asked if he was suggesting that some information in that psychologist report was fabricated, he said he was not saying that, and said he believed he was shot in Iraq. In that AAT decision, the Tribunal member noted with concern other unexplained inconsistencies relating to the circumstances of the family's departure from Iraq. It noted the applicant claimed, at the hearing, that the shooting incident was a catalyst for his family to

flee Iraq nearly straight away, but in the above psychologist report, it noted that the applicant had claimed that his mother and older brother left Iraq first to avoid his brother being conscripted, then the applicant and his mother moved to Lebanon where they worked to send money to his brother in Jordan, and then his father and sisters relocated to Lebanon when the applicant was twelve years old.

81. I noted to the applicant that the AAT Cancellation decision referred to report by a psychologist who noted he claimed that his mother and older brother left Iraq first to avoid his brother being conscripted, then he and his mother moved to Lebanon where they worked to send money to his brother who was then living in Jordan, then his father and sisters relocated to Lebanon when the applicant was twelve, where the family reunited. I noted to him that this was somewhat different to what he was telling me now. In response, he said they left Jordan about six months later and his family followed shortly after.
82. I also noted to the applicant that in the AAT Cancellation decision it also referred to a report prepared by a psychologist in November 2018, which noted that the applicant claimed that he had been shot in the leg whilst in a crowd in Jordan during celebratory shooting at a soccer game, rather than as a child in Iraq, and that this decision also noted concerns with his father's evidence about this incident. In response, he said this was discussed with him in the previous hearing and that psychologist misunderstood the situation and there was a crowd and shooting in Jordan, but he was not shot there, and she must have misheard it. I asked him why he would have been discussing another shooting in Jordan with that psychologist. He said she asked if he had seen other violent acts, so he told her about that.
83. I noted to the applicant that I may have concerns with the credibility of his claim that he was shot as a child in Iraq due to a dispute with the neighbours due to discrepancies in the evidence that I discussed with him. I also noted to him that, even if I accept this incident occurred, it happened many years ago and it was not evident to me, on the evidence before me, that the people his family had a dispute with, were still present in Baghdad and continue to wish to target his family and the applicant also indicated he would not return to Baghdad. I noted to him that I may not be satisfied he will face a real chance of harm in Duhok in relation to this incident. In response, the applicant said he did not know what else to say but that I know best, but that he will face serious harm in Iraq.
84. On the evidence before me, I do not accept the applicant was shot in Iraq for the reasons he has claimed. Even if I were to accept that his family fled Iraq due to a dispute with their Muslim neighbours in Baghdad, I am not satisfied on the evidence before me, that these people remain in Baghdad and wish to harm the applicant's family. I am not satisfied the applicant will face a real chance of any harm from any group or person in relation to these events if he were to return to Iraq. Consequently, I am also not satisfied he will face a real risk of significant harm in relation to these claims.

Fear of harm due to father's service in the army and brother's conscription

85. In the application for protection, the applicant claimed he feared harm from Muslim extremists from both Sunni and Shia militias and the conservative Muslim society, due to his father's profile as a person who served thirteen years in Saddam Hussein's army, and because they wanted to conscript his brother. During the Departmental interview, the applicant explained that his brother was meant to serve in the army but did not and, 'they' may take it out on the applicant if he returns.
86. In the delegate's decision, it noted that, in the humanitarian visa application, it indicated that the applicant's father worked in the Iraqi army, but the claim was not made, in that application, that the applicant's brother fled Iraq at the age of eighteen years old to avoid conscription.

87. In the Psychological Assessment Report by STARTTS, dated 30 March 2024, it noted the applicant had declared, in their session, that his father served in the Iraqi army for around thirteen years. Country information confirms Saddam Hussein was the president of Iraq between 1979 and 2003.⁴ I accept his father served in the Iraqi army during the regime of Saddam Hussein.
88. During the ART hearing, the applicant said that his family left Iraq, in part, because they did not want his brother to enter the army at the age of eighteen. It appears, from the evidence before me, that the applicant's brother was seventeen years old when they left Iraq in 1998. I accept the applicant's family left Iraq, in part, so his brother could avoid mandatory military service.
89. I noted to the applicant that he had not provided any country information to support his claimed fear in relation to his father's previous service in the army and the fact that his brother left Iraq before being conscripted. I also noted to him that his family were previously in Iraq when there was mandatory military service under a different regime, but country information before me indicated military conscription in Iraq was suspended in 2003.⁵ I also noted to him that, in its 2023 report on Iraq, the Australian Department of Foreign Affairs and Trade (DFAT 2023 report) also stated that many Iraqi military records were destroyed in 2003, and there was no way of checking records before this date.⁶ I also noted to him that there was no country information before me to indicate any current interest by the current Iraqi government towards Iraqis who did or did not serve their mandatory military service under Saddam Hussein's previous regime. I noted to him that I may not find he will face a real chance of harm due to his father's previous army service during that regime and the fact that his brother left Iraq before serving in the military. He had no comment in response.
90. Given the country information before me, as discussed with the applicant, I am not satisfied he will face a real chance of any harm from any group or person in relation to these claims. Consequently, I am not satisfied he will face a real risk of significant harm in Iraq on the basis of these claims.

Fear of harm as an Assyrian Christian

91. In the application for protection, the applicant claimed that he actively follows and practises his religion, and prior to his detention, he frequently went to Church and engaged in religious activities and community activities. In the detention centre, he continued to practise his religion. He claimed he will be considered an infidel by Muslim extremists who have passive and active support from the Iraqi authorities. He claims he will not be able to survive as Assyrian Christians are not safe. He fears harm from Muslim extremists from both Sunni and Shia militias and the conservative Muslim society. He will face harm in Iraq, including rape, torture, enslavement and possibly death, on account of his religious beliefs as an Assyrian Christian. In his September 2023 statement, he said the Iraqi government wanted to kill his family. He also submitted that Erbil and other places in Iraq, where minority Christians live, are not safe and it will be difficult to get medical care as an Assyrian Christian. In their statutory declarations, the applicant's family members in Australia have also claimed he will be harmed in Iraq as a Christian.

⁴ 'Saddam Hussein,' Encyclopedia Britannica, 21 June 2026, at <https://www.britannica.com/biography/Saddam-Hussein>

⁵ J. Arraf, 'U.S. dissolves Iraqi army, Defense and Information ministries', CNN, 23 May 2003, at <https://edition.cnn.com/2003/WORLD/meast/05/23/sprj.nitop.army.dissolve/>; War Resister's International, 'Country report and updates: Iraq', 2 October 2022, at https://wri-irg.org/en/programmes/world_survey/country_report/de/Iraq

⁶ Australian Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iraq,' 16 January 2023, at <https://www.dfat.gov.au/sites/default/files/country-information-report-iraq.pdf> (DFAT 2023 Report)

92. During the 2024 AAT protection hearing, when asked why he could not live safely in KRI, the applicant said he had heard the Turkish army, and Iranian militia had been bombing the area, and the Kurds are against the Assyrians. He said he did not think they are targeting Assyrians, but they are trying to take over that land, and the Assyrians are falling under the fire. He said all his family left the KRI because it was not safe and he had no family there and that many Christians had left the area. In her oral evidence during that hearing, his sister, [A], also said their cousin had left recently as it was not safe for Christians.
93. The ART September 2025 legal submissions also stated the applicant's core claim is that he will face serious and significant harm in Iraq on account of his religion. Further, persecution against Christians continues and that, as an Assyrian Christian who actively practises, he would be regarded as an infidel by Muslim extremists from both Sunni and Shia militias and by conservative elements of Iraqi society. It further noted his mental-health issues and intellectual disability increase his vulnerability to such treatment and heightens the likelihood of serious harm in circumstances where he would be without family support, housing, or social networks. I have not accepted he has an intellectual disability.
94. During the ART hearing, I asked applicant if he was currently practising his religion. He said he did and that he goes to church and attends Bible study and prays on his own. I accept this.
95. During the ART hearing, I asked the applicant what he thought would happen to him in Iraq as an Assyrian Christian. He said persecution. I then asked him what he meant by that and he said kidnapping, bashing, that the Iraqi government does not like them, it is easy to be bought there and they are not protected. I asked him who would harm him. He said everyone and he is not welcome anywhere. I noted to him that when I asked him earlier about what concerns he had about living in Duhok, he said Assyrians and Kurds did not get along and he may not find work and may be targeted because they will perceive him to be rich and that he did not raise any other claims in relation to persecution as an Assyrian Christian. In response, he said that he had claimed that Kurds do not like them.
96. The ART September 2025 legal submissions cited country information indicating Assyrian Christians had been persecuted by extremist groups such as the Islamic State of Iraq and Syria (ISIS) between 2014 and 2017, and that many Christians fled during this period. Although I note one report it cited also stated that some of Iraq's Christians, who include Catholics and Orthodox, had moved back to homes they fled during the upheaval of the last two decades.⁷ The submission also referred to reports that Iraq's President revoked recognition of Cardinal Louis Sako (patriarch of the Chaldean Church), prompting Sako to leave Baghdad for the Kurdistan region amid harassment by an Iran-backed militia leader and how Iraq's Christian population has plummeted to the 'low hundreds of thousands' from about 1.5 million two decades ago. That they blame not only past ISIS atrocities but also current factors such as high unemployment and the difficulty of returning to historical Christian areas, some of which remain controlled by militias.
97. The above submission also cited a 2024 report by Open Doors, an international non-government organisation (NGO), that monitors Christian persecution, that it submitted stated different Christian denominations, such as the Assyrian and Chaldean churches, are all seriously affected by discrimination and violence from militant groups and government authorities. It reported many Christians in central and southern Iraq hide their religious identity for fear of harassment. This report also noted that most Christians in Iraq reside in the northern provinces such as Nineveh, Erbil, Sulaymaniyah, Dohuk and northern Kirkuk

⁷ C. Bruneau. 'Iraqi Christians, decimated by Islamist violence, prepare for pope's visit,' *Reuters*, 25 February 2021, at <https://www.reuters.com/article/world/iraqi-christians-decimated-by-islamist-violence-prepare-for-popes-visit-idUSKBN2AO1V5/>

but few remain in Baghdad and Basra, and the situation is particularly challenging for Christians in the south and centre, where most had left. It also noted that, while Kurdish regions were once more tolerant of non-Muslims, this tolerance is decreasing due to the growing influence of conservative Islam, leading to increased pressure on converts from Islam. It stated the pressure on Christians remained at an extreme level – and the score for violence continues to be very high. However, I note this report did not refer to any specific examples in support of these assertions. It also noted widespread corruption and lack of real protection continue to undermine their rights and stability and there seems to be less tolerance for Christians even in areas where they were previously more welcome, such as in the Kurdistan region but, again, did not provide any examples or further detail.

98. The submission also cited a Dutch Ministry of Foreign Affairs country report from November 2023 (a government source) which it submitted highlighted the heightened risks for Assyrian Christians where it found that Christians in Iraq are disproportionately targeted for crimes like abduction for ransom by militias and criminal groups, who view them as ‘prosperous and vulnerable’. I note this was directly cited from the DFAT 2023 report. It submitted the report noted instances of Iran-aligned Popular Mobilization Forces (PMF) militias extorting and kidnapping Christians in the Nineveh Plain. It also described how some Christian women feel pressure to adopt Muslim customs (like wearing a headscarf) to avoid intimidation.
99. The above submission also cited the United States Department of State Country Report on Human Rights Practices for 2022, which reported that many displaced Christian families refused to return to certain towns (such as Tal Kayf in Ninevah) due to fear of local PMF militia brigades occupying those areas. It also noted the US Commission on International Religious Freedom (USCIRF), reported in 2023 that religious freedom conditions in Iraq had ‘continued to deteriorate.’ It found that Iran-backed Shia militias (PMF units) routinely engaged in extortion, abductions, and physical violence targeting minorities, including Christians. It did not provide any further detail other than to note that, in the Nineveh Plains, these militias aggressively used checkpoints, seized Christian-owned lands and businesses, and harassed remaining Christians, which ‘deterred displaced Christians’ return to the area and fuelled further emigration. This report also noted the Kurdistan Regional Government (KRG) continued to promote religious coexistence and its status as a refuge for over two million religiously diverse Iraqis and Syrians displaced to the KRI by years of conflict and the threat of ISIS. In October, the KRG, along with religious minority stakeholders, participated in a series of United Nations workshops analysing the KRG’s laws, mechanisms, policies, and programs with the goal of strengthening its protection of minority groups’ rights. However, some Christian groups indigenous to the Nineveh Plains raised concerns over the KRG’s failure to resolve longstanding grievances such as lack of KRG funding and other support for Assyrian-run schools, discrimination in employment and municipal services, and unresolved KRG-tolerated or-initiated misappropriation of Christian land, businesses, and other property.
100. It further cited a UK Home Office Country Policy and Information Note on religious minorities in Iraq published in September 2024 which it submitted confirms institutional and societal discrimination against groups like Assyrian Christians and that if a person does face persecution by state or militia (“hybrid”) actors, effective protection is unlikely and internal relocation may not be reasonable or safe in such cases. I have read this report which made a general conclusion that members of religious minority groups are subject to various forms of discrimination and mistreatment from state authorities, hybrid actors, society and – in the cases of converts and atheists– their own families and tribes and referred to institutional and societal discrimination against groups like Assyrian Christians. However, it also stated that the scale and extent of the treatment varies, with discrimination more prevalent, than severe abuses such as violent attacks. Further that, in general, the treatment of religious minorities by state actors, hybrid actors and non-state actors is not sufficiently serious by its nature and/or repetition that it amounts to persecution or serious harm. It further stated the situation

for religious minorities is generally better in the KRI than in federal Iraq. However, that state and societal discrimination still occurs in the KRI. With respect to Christians, it stated that the main locations for Christians are in the KRI, Baghdad and Ninevah governorate. Chaldeans are the most numerous of Iraq's Christians, up to 80% of the group. There are 110 Chaldean churches across Iraq. It referred to assertions made in reports by Open Doors in 2024, which often used words like 'frequently', 'regularly', 'seriously' and 'most' without clearly defining what these words mean in terms of the actual number of reported incidents of mistreatment of Christians or the proportion of Christians who face a certain type of mistreatment and this makes it difficult to judge the scale and extent of the mistreatment of Christians. This report also cited an interview with *Agence France-Presse* (AFP), where the head of the Chaldean Catholic Church stated that, while Christians are not subject to 'direct pressure' from the society in the present, they face 'day-to-day discrimination' as they remain outside state institutions. He added that this is mainly due to corruption and is one of the reasons why Christians continue to emigrate. In addition to land-grabbing claims in the KRI, sources in this report also referred to Christian villages often having bad roads and no streetlights and a lack of funding of Christian schools.

101. It also cited a May 2025 submission to the UN Special Rapporteur on minority issues by the European Centre for Law and Justice (ECLJ, an NGO) which it submitted underscored Iraq's failure to protect its religious minorities and detailed how Assyrian and other Christian communities face exclusion in many areas of life, targeted violence, and impunity for perpetrators. It noted Christian minorities are particularly exposed to exactions perpetrated by the Shiite militias that are proliferating in Iraq, around Bartella (Ninevah), for example. It also stated the socio-political context of an Islamic society, marked by the influence of political leaders with sometimes radical rhetoric, creates a climate of constant threat for Christian minorities, which was particularly pronounced in federal Iraq compared to the Kurdistan region. It also noted, in both federal Iraq and Iraqi Kurdistan, social dynamics are largely structured by a system of sectarian patronage system (clientelism). These practices, based on ethno-confessional affiliation, tend to marginalise religious minorities, whose limited demographic weight and lack of powerful relays place them in a vulnerable position vis-à-vis the majority Arab-Muslim and Kurdish communities. Thus, discrimination against Christian individuals manifests itself in the professional, educational, institutional, judicial, and other spheres. They face discrimination in hiring, particularly for public service positions, where Christian Assyrians are often relegated to informal, low-paid jobs, such as sales positions in liquor stores, or jobs in the private sector. It noted the education sector is also where people from Christian communities are marginalised.
102. It also cited the United States Department's report on Iraq's human rights situation for 2020 (published March 2021) which observed that government-affiliated armed groups were among the perpetrators of abuse against minorities. For instance, Shia militia factions in the Nineveh region were reported to arbitrarily detain Kurds, Turkmen, and Christians. It also cited the US State Department's International Religious Freedom Report for 2021 (released June 2022) which described persistent harassment of Christians at militia checkpoints. Christian leaders in Iraq reported that, in minority areas like the Nineveh Plain, the Shabak 30th Brigade of the PMF and similar units continued to subject Christians to 'abuse, harassment, and delays at numerous checkpoints', impeding their travel and daily life. It noted the 2022 US International Religious Freedom Report on Iraq (published May 2023) also recounted how Iran-backed militias have entrenched themselves in traditionally Christian towns, where they have expropriated land and demanded 'protection' payments.
103. I have considered this country information, but I note much of it does not relate to the situation in Duhok and was often concerned with the situation of Christians in Ninevah or central and south Iraq and Christian converts, which does not apply to the applicant's circumstances. Some assertions made in these reports, such as those from Open Doors are overly general and does not provide any supporting examples.

104. I have also considered DFAT's 2023 report. This report stated that it is estimated that there were more than a million Christians in Iraq before the March 2003 US-led military action. Subsequent waves of violence, including sectarian conflict in 2004 and during the reign of Da'esh (ISIS) in 2014-17, killed an estimated 1,200 Christians and displaced many thousands more. As a result, large numbers of Christians left Iraq. There are now thought to be fewer than 300,000 remaining in the country. Most live in the Ninevah Plain and the KRI. Approximately 67 per cent are Chaldean Catholics (an Eastern Rite of the Roman Catholic Church), and nearly 20 per cent are members of the Assyrian Church of the East. Others include Syriac Orthodox, Syriac Catholic, Armenian Catholic, Armenian Apostolic, and Anglican and other Protestants. There are approximately 2,000 registered members of evangelical Christian churches in the KRI and an unknown number (mostly converts from Islam) who practise the religion secretly. Like other religious minority communities, Christians suffered greatly during the ISIS occupation in northern Iraq, with many forcibly converted to Islam, abducted, raped, or killed. ISIS also destroyed many Christian religious sites. Once ISIS were defeated, displaced Christians attempting to return to their homes frequently found Peshmerga, PMF groups and other security forces had taken over their properties. Christians have generally been unsuccessful in reclaiming their former homes from these groups, and the state response has been inadequate. Sources told DFAT the Christian population in Mosul had dropped from 5,000 families to seventy because of this violence and subsequent displacement. According to the US Department of State, PMF groups carried out a series of attacks on minority-owned businesses in Baghdad in 2020-21, including against Christian and Yazidi-owned alcohol shops. Christians were disproportionately targeted for kidnap-for-ransom and other violent crimes, including by PMF and tribal groups. Sources told DFAT this was because Christians were perceived as both wealthy and vulnerable. DFAT spoke to several Christians whose relatives had been kidnapped for ransom, in one case twice. DFAT assessed that Christians belonging to recognised denominations face a low risk of official discrimination. Like other minorities, Christians face a moderate risk of societal discrimination and violence in areas where they are a minority, including as targets of violent crime, kidnapping, and extortion.
105. I discussed below other country information with the applicant during the hearing with respect to the situation of Christians in the KRI and Duhok.
106. I noted to the applicant that country information indicated his church is recognised by the Iraqi government and the KRG had registered an additional 15 evangelical Christian and other Protestant churches.⁸ Country information indicated there is a significant community of Christians in Duhok who are able to openly practise their Christian faith and the situation in the KRI is stable and that Christians are better protected by legal provisions.⁹ Further, about 99 percent of the Christian communities in the KRI live in Erbil and Duhok provinces.¹⁰ Followers of recognised religious groups, reported the KRG allowed them to observe their religious holidays and festivals without interference or intimidation. Provincial and local governments in the KRI continued to designate some Christian, religious feasts as local

⁸ US Department of State, 'International Religious Freedom Report for 2023 - Iraq', 26 June 2024, at <https://www.state.gov/wp-content/uploads/2024/04/547499-IRAQ-2023-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

⁹ Immigration and Refugee Board of Canada (IRB), 'IRQ200350.E - Iraq: Situation and treatment of Christians, particularly in the north, the Kurdistan region, and Baghdad; government protection and support programs (2017-September 2020)', 9 October 2020, at <https://www.ecoi.net/en/document/2039971.html>; European Union Agency for Asylum (EUAA), 'Country Guidance: Iraq', November 2024, at https://www.euaa.europa.eu/sites/default/files/publications/2024-11/20241113.CG_Iraq.pdf; 'Kurdistan Region Has Become a Safe Haven for the Christians of Iraq', *Kurdistan24*, 15 October 2025, at <https://www.kurdistan24.net/en/story/869496/kurdistan-region-has-become-a-safe-haven-for-the-christians-of-iraq>; 'Christians in Duhok Are Concerned; They Have Fears, Anxieties, and Questions', *Peregraf*, 24 April 2025, <https://peregraf.com/en/report/8838>

¹⁰ '99 percent of Christian communities live in Erbil, Duhok, says KRG minister', *Kurdistan24*, 9 December 2023, at <https://www.kurdistan24.net/en/story/393391/99-percent-of-Christian-communities-live-in-Erbil,-Duhok,-says-KRG-minister>

holidays.¹¹ Most of the Christians in the KRI usually display Christian symbols without any problems.¹² In 2023, the KRG MERA's Directorate of Coexistence held in October a meeting with religious leaders, syndicates, and political parties to discuss peace building and diversity and assess how to overcome the barriers and challenges to peaceful coexistence in the region.¹³ Although there have been reports of citizens illegally taking Christian properties this does not appear to apply to his circumstances. Further, in 2015, the Kurdistan Parliament passed a law to address this issue. Further, that in its most recent report on Iraq, DFAT assessed that Christians belonging to recognised denominations face a low risk of official discrimination.¹⁴

107. In response, the applicant said, leaving aside everything else that is good, there is the one problem of them taking the property of Christians and questioned why they would only be taking the property of Christians and indicated it is because they have a problem against them and they do not like them. He also said this do not reflect the Christians that are coming from Australia, who would be perceived to be rich, and the media will not show what is happening behind closed doors and they will only show positive things so tourists can travel to Iraq. He said, from what he had heard, it is bad for Christians in Iraq, and they are trying to leave. I noted to the applicant that the country information does confirm that many Christians had left Iraq, but this occurred after particular events such as the American invasion of Iraq in 2003 and the conflict with ISIS, but that ISIS had been defeated by the Iraqi authorities in 2017.¹⁵ He said ISIS still remain in Iraq without anyone knowing and without it being reported on the news and that they kidnap and steal. I noted him that there are publicly available reports of battles with remaining members of ISIS in Iraq. He said recently thousands of them had escaped from a prison.
108. I also noted to the applicant that country information indicates, in April 2025, an attack was carried out by a man in Duhok during an Assyrian New Year parade, injuring two Christians but that this appeared to have been an isolated incident. Further, this Akitu festival, celebrated for nearly 30 years in Duhok, had never before faced such an attack.¹⁶ Further, that hundreds of Assyrians from abroad, namely the United States, Canada, and Australia, had come to the KRI that year to take part in these festivities.¹⁷ I also noted to him that, although there are reports of political marginalisation and societal discrimination such as in public sector employment against Christians, I may not find that amounts to serious or significant harm. I noted to him that he is young and of working age, which he also acknowledged, and speaks English, so I may not be satisfied he will face serious harm or his capacity to subsist will be threatened. In response, the applicant said that speaking English would not save him from his culture and religion and the attack, that I just referred to involved a Kurdish man attacking Assyrians and that was only in front of the media, but it is a daily routine where Assyrians are being persecuted by Kurds and other nationalities. He said some rich Assyrians might live in peace but those who do not have anything may face persecution and he did not think that he would find work there. I noted to the applicant that the man who was involved in that attack was Syrian refugee (not a Kurd), according to reports.¹⁸

¹¹ US Department of State, 'International Religious Freedom Report for 2023 - Iraq', 26 June 2024

¹² UK Home Office, 'Country policy and information note: religious minorities, Iraq, September 2024', September 2024, at <https://www.gov.uk/government/publications/iraq-country-policy-and-information-notes/country-policy-and-information-note-religious-minorities-iraq-september-2024-accessible>

¹³ Ibid.

¹⁴ DFAT Report 2023; IRB, IRQ200350.E - Iraq: Situation and treatment of Christians, particularly in the north, the Kurdistan region, and Baghdad; government protection and support programs (2017-September 2020)', 19 October 2020

¹⁵ DFAT Report 2023

¹⁶ 'Christians in Duhok Are Concerned; They Have Fears, Anxieties, and Questions,' *Peregraf*, 24 April 2025

¹⁷ J. Bechocha, 'Two injured in axe attack during Akitu celebrations in Duhok,' *Rudaw* (Iraq), 2 April 2025, at <https://www.rudaw.net/english/kurdistan/010420253>

¹⁸ Ibid.

109. I also discussed with the applicant the issue of land appropriation. I noted to him that the US Department of State recently reported that it was not aware of any reported cases of land expropriation by the KRG since 2022.¹⁹ Further, in 2021, the KRG established a commission that was working to collect and verify information on illegally expropriated properties in the KRI, although I note it states progress had been slow.²⁰ Further, I noted to him that I may find this does not apply to his circumstances personally (given he has not claimed to own any property in Iraq).
110. I also noted to the applicant that the country information before me did not indicate he would be unable to access medical care due to his religion and/or ethnicity in Duhok.
111. I also noted to him that one of the letters he provided from one of the Priests in Sydney in 2023, stated that he would be at risk in Iraq, but this assertion was vague and was only based on their knowledge and understanding of the current state of a Iraq, so I may not give it much weight.
112. I noted to the applicant that, on the basis of the country information before me, I may not be satisfied he will face a real chance of serious or significant harm as an Assyrian Christian in Duhok.
113. In response, he said no one is living there and they are safe in Australia and what we see in the news is not really what happens and even the Iraqi government does not know. The government had been bought, and the Christians cannot even see what others have done. I asked him how he knew what was happening in Iraq at the moment. He said from the Christians that were leaving and questioned why they would leave if they were happy there. I asked him what Christians he had spoken to recently that had left Iraq. He said he had not spoken to any, but he had heard it from the news. I find this at odds with his previous assertion that such issues were not reported in the media.
114. In his oral submissions at the end of the hearing, the applicant's representative stated that DFAT and other material does say Christians in Iraq have suffered extensive violence and displacement during ISIS' period. Further, DFAT had assessed Christians face a moderate risk of societal discrimination and violence where they are a minority, including violent crime, kidnapping, and extortion, partly because Christian are perceived as both wealthy and vulnerable. He said, while it is accepted Duhok and KRI are generally safer for Christians than federal Iraq, they are not risk free and the UK home office report, I cited, recognised religious minorities face less mistreatment in KRI but discrimination and mistreatment still occur including obstacles in services and harassment and restrictions on movement and property-related mistreatment claims. He said Christians in the KRI have reported unresolved confiscated property claims which are tolerated and misappropriation of land and property, and workplace and housing exploitation and threats concerning blasphemy, complained against a clergy member in Duhok. He also referred to the 2025 April attack in Duhok which he submitted showed anti-Christian violence can occur even in Duhok itself.
115. I note the applicant has claimed that less wealthy Christians are at risk of persecution, including kidnapping, including those who have returned from Australia and/or who have family in Australia, but the country information before me does not support that this is the case in Duhok which has a significant Christian community and where Christians from western countries travel to, to attend Assyrian festivals. I am not satisfied he will face a real chance of kidnapping or any other harm amounting to serious or significant harm, due to his lack of, or perceived wealth, as a Christian from Australia and/or with family in Australia in

¹⁹ US Department of State, 'Report to Congress on The Status of Land Seizures in Iraq Targeting Minority Communities,' 2025, at <https://www.state.gov/wp-content/uploads/2025/08/Report-Status-of-Land-Seizures-in-Iraq-006176-HRC1161039-Accessible-7.22.2025.pdf>

²⁰ Ibid.

Duhok. Nor does the country information indicate any harm he may face reaches the level of serious or significant harm due to other aspects of his profile.

116. As discussed with the applicant at the hearing, I am not satisfied the current disputes over Christianity property are relevant to his circumstances as he has not claimed to have any property in Iraq. Although it may be the case there have been threats of blasphemy against clergy, country information provided by the applicant's representative indicated this referred to one incident relating to a Bishop and the Bishop was acquitted and it is not evident how this relates to the applicant's particular circumstances. Although country information before me refers to the growing influence of conservative Islam in Kurdish regions, it mostly refers to the impact on converts to Islam and the Chaldean Catholic Church has stated that Christians are not subject to 'direct pressure' from the society. As noted, although the April 2025 attack in Duhok is a relatively recent incident, it appears to have been an isolated incident by a lone Syrian refugee who injured two people. Given this, and other country information before me about the general situation of Christians in the KRI and Duhok, I am not satisfied the applicant will face a real chance of similar harm in the reasonably foreseeable future.
117. I have considered DFAT's assessment, but I note that it was expressed in general terms and does not directly address the situation of Christians in Duhok and I have considered other country information specific to the situation of Christians in the KRI and Duhok. Although I accept there is a real chance the applicant may face discrimination with respect to public sector employment and Christians are politically marginalised in Iraq, I am not satisfied this amounts to serious harm or significant harm, individually or cumulatively. I am not satisfied that discrimination in public sector employment and political marginalisation amounts to a threat to his life or liberty, significant physical harassment or significant physical ill-treatment, that his capacity to subsist will be threatened because of significant economic hardship or being denied access to basic services or the capacity to earn a livelihood of any kind, or any other harm that could be considered serious harm. I am also not satisfied this harm amounts to the applicant being arbitrarily deprived of his life, the death penalty being carried out on him, torture, or cruel or inhuman treatment or punishment or degrading treatment or punishment as defined in the Act.
118. In his oral submissions, the applicant's representative stated that, although country information may not support a proposition that every Christian or most Christians in Duhok face persecution, or every Iraqi returnee from Australia, faces a real risk of persecution, the applicant's risk is materially heightened by the intersection of his Christian identity, his long absence from Iraq, lack of family or tribal protection in Duhok, lack of family, housing and employment networks and perceived westernisation, living in Australia for two decades, stigma or suspicion arising from serious criminality and forced return from Australia to Iraq. He submitted those features in totality make him more exposed than a locally connected Christian resident of Duhok and more vulnerable than a returnee who has family, property, work, and community support awaiting him. He said he will face significant harm such as death, serious violent attacks from people on the street, kidnapping, and violent crime, particularly given the Australian government has claimed the security situation in the KRI is volatile and advises against travel.
119. I have considered the applicant has not resided in Iraq since he was a child and resided in Australia, does not speak Kurdish and will not have any known contacts in Duhok and Christians are a minority in Duhok and has clinically insignificant mental health issues, his criminal history and has had limited skills due to his time spent in prison and detention in Australia. However, there is a significant population of Christians in Duhok, he is young and of working age, physically healthy and speaks English and Assyrian. Given this and the country information before me, as outlined in this assessment, although he may face discrimination in public sector employment and political marginalisation as a Christian, the

country information does not support the claim that he will face a real chance of harm amounting to serious or significant harm, individually or cumulatively, as an Assyrian Christian in combination with other aspects of his profile in Duhok or that other aspects of his profile elevate the harm he may face as a Christian to serious or significant harm. I am not satisfied he will face a real chance of a threat to his life or liberty, significant physical harassment, or significant physical ill-treatment. I am also not satisfied there is a real chance that his capacity to subsist will be threatened because of significant economic hardship or because he will be denied access to basic services or the capacity to earn a livelihood of any kind, or that he will face any other harm that could be considered serious harm. I am also not satisfied he will face a real risk of being arbitrarily deprived of his life, the death penalty being carried out on him, torture, or that he will face cruel or inhuman treatment or punishment or degrading treatment or punishment as defined in the Act.

Fear of harm due to mental health

120. In the application for protection, the applicant claimed he had mental health issues and will not be able to get adequate medical treatment in Iraq. During the 2024 AAT protection hearing, the applicant said he was not sure if he could get treatment in the KRI as he had not thought about it as he was more concerned with his safety. The AAT post-hearing submission submitted the applicant suffered from anxiety and depression which will escalate if the applicant is removed from Australia. Further that the DFAT 2023 report noted that mental health services were inadequate in Iraq. Further, there is a possibility that, due to applicant's Assyrian Christian background, he will not be able to get adequate mental health services in Iraq.
121. The ART September 2025 legal submissions also stated the applicant's return to Iraq would seriously compromise his physical and mental wellbeing. It cited country information which indicated the country's severely deficient mental health infrastructure. That there are 'only six specialised psychiatric hospitals in Iraq... which do not even meet the bare minimum of the demand.' The report added that Iraq had approximately 0.34 psychiatrists per 100,000 people, an extremely low ratio. That Iraq cannot adequately treat people with serious mental health needs. It cited information that this gap stems from 'a lack of public investment in mental health services and qualified professionals,' compounded by stigma around mental illness.
122. As noted, I have not accepted that the applicant has an intellectual disability.
123. Although I have accepted that the applicant has previously accessed counselling sessions with STARTTS whilst in immigration detention, more recently he has been accessing monthly 'maintenance sessions' through the NSW VOTP.
124. During the hearing, I discussed country information with the applicant as follows. In DFAT's 2023 it noted the overall quality and availability of healthcare in Iraq is low. Further, the quality and availability of healthcare is slightly better in the KRI. It noted, in Iraq, mental health services are inadequate. There are psychiatric wards in some general hospitals, as well as some out-patient clinics, often run by international non-government organisations (NGOs) such as *Medicins sans Frontieres*. The absence of community-based mental health care means that often the only care available is family-based or in psychiatric institutions, which have been linked to inhumane treatment and degrading conditions. I noted to the applicant that the country information provided in the written submission to the ART also indicated this. I also noted country information indicated that, because there is no public health insurance system to cover the entire population, the Iraqi people rely on the central government-run public health-care system. There is a severe scarcity of mental health experts, and the Iraqi health-care system is still trying to keep up with population needs. Furthermore, many people in Iraq still do not have access to mental health services because

of a scarcity of funding for such programmes.²¹ There are only six specialised psychiatric hospitals in Iraq (two in Baghdad and four in the Kurdistan region), which do not even meet the bare minimum of the demand.²² Faruk Medical City (FMC), built in 2014 in Sulaymaniyah (a city in the KRI), is the first and only state of the art private hospital complex in Iraq.²³ However, there are mental health services in Duhok and drug addiction treatment is available in Erbil.²⁴ I noted to him that this information did not indicate he will struggle to access such care in KRI because he is an Assyrian Christian or due to any other aspect of his profile, but that it is due to lack of resources. I noted to him that I may not be satisfied he will be unable to access mental health services due to one of the grounds stipulated in s 5J(1)(a) of the Act and I may not be satisfied it involves systematic and discriminatory conduct but rather the lack of adequate health care in Iraq is due to a lack of resources. I also may not find that any struggles he may face accessing care amounts to significant harm. He did not have any comment.

125. I am not satisfied that any struggles the applicant may have accessing mental health care in Iraq amounts to a well-founded fear of persecution as I am not satisfied it involves systematic and discriminatory conduct due to one of the grounds stipulated in s 5J(1)(a) of the Act. I am also not satisfied it amounts to significant harm as it does not amount to the applicant being arbitrarily deprived of his life, the death penalty being carried out on him, or torture as defined in the Act. Nor does it amount to cruel or inhuman treatment or punishment as it does not involve the intentional infliction of pain or suffering or severe pain or suffering. Nor does it amount to degrading treatment or punishment as it is not intended to cause extreme humiliation which is unreasonable.
126. I also noted to the applicant that in DFAT's 2023 report, it noted there is significant societal stigma against people with mental illness. People with mental illness are often perceived as dangerous and unable to work, and some Iraqis blame mental illness on personal weakness or divine retribution. These attitudes result in under-reporting of mental illness and underutilisation of the services that are available. However an October 2023 source in the 2024 UK Home Office report on healthcare in Iraq, that had been cited in the written submissions to the ART,²⁵ it noted that there has been a gradual reduction in the stigma associated with mental health issues, leading more people to seek treatment and I noted to the applicant that he had sought treatment in the past. I noted to him that this information did not suggest the stigma reaches the threshold of serious or significant harm. He had no comment.
127. On the evidence before me, having considered the above country information and the applicant's mental health condition is not clinically significant, and even considering other aspects of his profile, I am not satisfied the applicant will face a real chance of serious harm on the basis of his mental health. I am not satisfied he will face a real chance of a threat to his life or liberty, significant physical harassment or significant physical ill-treatment, that his capacity to subsist will be threatened because of significant economic hardship or being denied access to basic services or the capacity to earn a livelihood of any kind, or any other

²¹ UK Home Office, 'Country policy and information note: medical and healthcare issues, Iraq, August 2024', August 2024, at <https://www.gov.uk/government/publications/iraq-country-policy-and-information-notes/country-policy-and-information-note-medical-and-healthcare-issues-iraq-august-2024-accessible>

²² Ibid.

²³ Ibid.

²⁴ DFAT Report 2023; N, Ramadhan, 'Duhok clinic offers mental health services for victims of trauma', *Rudaw* (Iraq), 17 June 2021, at <https://www.rudaw.net/english/categories/kurdistan/1058830>; United Nations High Commissioner for Refugees, 'Duhok Health Information', 2020, at <https://help.unhcr.org/iraq/wp-content/uploads/sites/58/2020/04/Duhok-Health-Info-English.pdf>; UK Home Office, 'Country Policy and Information Note - Iraq: Medical and healthcare provision', 19 January 2021, at <https://ifos.migrationsverket.se/dokument?documentAttachmentId=48877>

²⁵ UK Home Office, 'Country policy and information note: medical and healthcare issues, Iraq, August 2024', August 2024

harm that could be considered serious harm. I am also not satisfied he will face a real risk of harm amounting to significant harm for these reasons. I am not satisfied there is a real risk the applicant will be arbitrarily deprived of his life, the death penalty will be carried out on him, he will be subject to torture, or cruel or inhuman treatment or punishment or degrading treatment or punishment as defined in the Act.

128. I also noted to the applicant that, even if his potential return to Iraq may exacerbate his mental and physical health condition, I may not be satisfied this amounts to persecution as it does not involve an act perpetrated by a third party nor does it involve systematic or discriminatory conduct. It also does not involve the conduct of a third party as required by the definition of significant harm in the Act.²⁶ It also does not entail the requisite intention requirements in the s 5(1) definition of cruel or inhuman or degrading treatment or punishment in the Act, nor does it amount to torture or the arbitrary deprivation of his life or the death penalty. He had no comment. I am not satisfied the applicant has a well-founded fear of persecution in Iraq on the basis of this claim. Nor am I satisfied he will face a real risk of significant harm in Iraq in relation to this claim. I am not satisfied there is a real risk the applicant will be arbitrarily deprived of his life, the death penalty will be carried out on him, he will be subject to torture, or cruel or inhuman treatment or punishment or degrading treatment or punishment as defined in the Act.
129. In his oral submissions at the end of the hearing, in response to my concerns raised about this claim, the applicant's representative stated that the applicant gave evidence of ongoing drug treatment, and the 2023 DFAT report stated that there is shortage available of drug treatment facilities and drug users are placed in jail because of insufficient resources. He submitted that is a problem for the applicant, because if he does not obtain ongoing sufficient treatment, this will create a vulnerability for him. However, I note the ART September 2025 legal submission also referred to the 14 September 2023 psychologist report which noted he was drug-free and on prescribed injectable medication as replacement therapy. Further, as noted above, the applicant said that he will shortly complete his drug treatment during the ART hearing. The applicant has not submitted any other evidence in support of this claim that he will be unable to access the same medication he currently takes, in Iraq. I am not satisfied, on the evidence, there is a real chance he will require further drug treatment if he were to return to Iraq or that he will face a real chance of being detained or face any other harm because he cannot access similar drug treatment. Consequently, I am also not satisfied he will face a real risk of significant harm on the basis of this claim.

Fear of harm due to Australian criminal conviction

130. In his application for protection, the applicant claimed that he feared harm from Muslim extremists, from both Sunni and Shia militias, and the conservative Muslim society and he will be considered as someone who brought a bad name or defamed Iraq due to his criminal conviction in Australia and may face serious harassment and intimidation or bullying and will create a situation where he will be punished for the same offence twice by the Iraqi society (double jeopardy). The ART September 2025 legal submission also stated that his Australian conviction would mark him as someone who brought shame upon Iraq, exposing him to harassment, intimidation, and bullying—amounting to being punished again for the same conduct. It cited a January 2022 United Kingdom Upper Tribunal country guidance decision (*YMKA and Others v. SSHD*) in support, submitting that this decision concluded that an Iraqi returnee unable to mask a criminal past might attract persecutory attention. As discussed below, I do not find this decision relates to this issue but was concerned with the treatment of the applicants, with respect to their atheism and feminist beliefs if they were to return to Iraq.

²⁶ *GLD18 v MHA* [2020] FCAFC 2

131. Despite the applicant's written submissions in relation to this claim, during the 2024 AAT protection hearing, when asked by the Tribunal member if his criminal record would place him at risk in Iraq, the applicant said he did not think so but then said he was not sure. When that Tribunal Member then discussed country information with him that indicated he would not be at risk of double jeopardy, he said she was right. In her oral witness evidence, the mother also said no one knows about this and people in Iraq would not know the applicant had been in jail.
132. During the ART hearing, I noted to the applicant that he had not provided any evidence to indicate how any group or person in Iraq will come to know of his criminal history in Australia and, even if they did, he had not provided any country information to support his claimed fear in this regard. I also noted to him that in the 2024 AAT hearing, he claimed he could not say if this would place him at risk in Iraq. I also noted to him that country information indicated double jeopardy is prohibited in federal Iraqi and KRI law, although both also outline limited circumstances in which a person may be retried for the same offence but these relate to offences that affect the security of the State; are against the Republican regime or its legally issued bonds or stamps; involve the forgery, counterfeiting and imitation of currency; or involve public officials or agents of the Republic of Iraq committing a felony or misdemeanour abroad and these do not appear to apply to his circumstances.²⁷ Further, when this information was discussed with him in the 2024 AAT hearing, he agreed. I noted to him that I may not satisfied there is a real chance he will be retried or punished for the same offence or will face any other harm due to his criminal history in Australia. In response, he said he would not face re-prosecution, but he meant that he would be harmed by people on the street.
133. In his oral submissions, the applicant's representative stated that the applicant's criminal record heightens his risk factor. He said it does not itself establishes a convention reason which they accept, and Tribunal may say it is relevant to his exclusionary character; however, it may expose him to adverse official attention, suspicion, stigma, extortion or exploitation if his return is known to be involuntary or connected to criminal deportation. He noted that in its 2023 report, DFAT records diplomatic missions issuing *laissez passer* documents to returnees to verify identity and check for outstanding criminal records against their records and record their entry, but he would need to explain his lack of employment history in Australia and that he spent many years in jail for a serious offence and spent time in immigration detention, this may count against him in combination with the other matters. He stated that, when the applicant seeks employment, he would need to explain his employment history and skills, and it is reasonable to assume he would need to explain his life. He said he had no real connections or contacts in Duhok and lived in Australia for twenty years. If he cannot explain why he does not have substantial work history, then it would be a problem for him, and he may explain he was deported or removed because of his criminal history in Australia. He said that places him at heightened risk in Duhok and distinguishes him from a local resident in Duhok. He said he could face significant harm which included potential death, serious violent attacks from people on the streets, kidnapping, and violent crime and particularly where the Australian government had said, in its 'Smart Traveller' advice, that the security situation in the KRI is volatile and advised against travel there.

²⁷ DFAT, 'DFAT Country Information Report Iraq', 17 August 2020, at <https://www.ecoi.net/en/file/local/2036511/country-information-report-iraq.pdf>; Kurdistan Regional Government, 'Criminal Procedure Code 23 of 1971 Kurdistan Region of Iraq (as amended to 14 February 2010)', 14 February 2010, at <https://www.gjpi.org/kurdistan-region/amendments-to-criminal-procedure-code-no-23-of-1971-in-the-kurdistan-region-of-iraq/>; Republic of Iraq, 'Iraq Penal Code No. 111 of 1969 (amended March 2010)', 14 March 2010, at https://menarights.org/sites/default/files/2016-11/IRQ_Penal%20Code%201969%20as%20amended_eng.pdf

134. However, the country information before me does not support the claims that he will attract official attention from the authorities due to his criminal record, and the applicant has said he fears the community. Further, no other country information has been provided to support the claim that he will face a real chance of extortion, exploitation, death, serious violence, kidnapping, or other harm that could be considered serious or significant harm for these reasons. I am not satisfied there is a real chance he will face such harm.
135. Although I accept the applicant's criminal history may impact his ability to find work in some instances. Even in combination with other aspects of his profile and his inability to find public sector work as a Christian, the evidence before me does not indicate he will face a real chance of being unable to find any work or will face any harm amounting to serious or significant harm. I am not satisfied he will face a real chance of a threat to his life or liberty, significant physical harassment or significant physical ill-treatment, that his capacity to subsist will be threatened because of significant economic hardship or being denied access to basic services or the capacity to earn a livelihood of any kind, or any other harm that could be considered serious harm. I am also not satisfied there is a real risk of the applicant being arbitrarily deprived of his life, the death penalty being carried out on him, being subject to torture, or that he will face cruel or inhuman treatment or punishment or degrading treatment or punishment as defined in the Act.
136. I am not satisfied the applicant will face a real chance of serious harm or a real risk of significant harm due to his criminal history, or in combination with other aspects of his profile.

Fear of harm due to residence in Australia and lack of support in Iraq

137. In his application for protection, the applicant claimed that he feared harm from Muslim extremists from both Sunni and Shia militias and the conservative Muslim society, due to his stay in Australia, a western country, he will be considered as a person lived in a country of infidels. He will be considered as a person with wealth or a member of a family unit who are wealthy living in Australia. He will be considered a failed asylum seeker and will be considered a traitor for providing adverse information against the Iraqi government. The ART September 2025 legal submission also stated his long residence in Australia would cause him to be perceived as associated with infidels, as wealthy or connected to wealth, and as a failed asylum seeker or traitor for seeking protection and providing adverse information against the Iraqi government. During the 2024 AAT protection hearing, the applicant claimed he will be at risk of kidnapping for ransom as someone returning from Australia without family but said he did not have country information in that regard. He also said he will struggle to get a job as people will know where he is from and will also know when he speaks and he will be kidnapped and killed. The AAT post-hearing submission submitted the applicant, who lived in Australia for a prolonged time and integrated into Australian values, will be perceived as an outsider which will further aggravate his fear of harm. The ART September 2025 legal submission also cited a January 2022 the UK Upper Tribunal country guidance decision (*YMKA and Others v. SSHD*) which submitted addressed westernisation in Iraqi asylum cases. It submitted this Tribunal affirmed that adopting a westernised lifestyle or values can put Iraqis at risk. It cited expert evidence that Iraq is an 'overwhelmingly religiously observant society' where those seen as secular, westernised, or deviating from conservative norms may be perceived as 'outsiders' and face harm. The judgment noted, for example, that westernised women who defy traditional codes have been violently targeted – including cases of a fashion model and female activists in Baghdad who were assassinated for their modern, liberal image.
138. In his application for protection, the applicant stated that he left Iraq as a child and does not have family in Iraq and will not be able to survive. In his September 2023 statement he also said he will not survive in Iraq due to an absence of social and familial support. The ART September 2025 legal submissions also stated he fears an inability to survive without any

family or support network in Iraq and he has documented mental-health and cognitive vulnerabilities that would make survival without support precarious. In the statutory declarations of some of his family members, dated 22 August 2023, they also said they had no family in Iraq. The father's 2024 statutory declaration also claimed the same. During the 2024 AAT protection hearing, the applicant said he had no family in the KRI. When asked if he could work in the KRI, he said he was young and could work but questioned whether there would be work available. In her oral evidence during that hearing, his sister, [A], also said they do not have anyone in the KRI, and he had no place to stay, and no one will give him a job, and it is a difficult place to live.

139. During the ART hearing, the applicant also said he had no family remaining in Iraq. During the hearing, I noted to the applicant that I may not find he will face systematic and discriminatory treatment based on his race, religion, nationality, political opinion or because he is a member of a particular social group, with respect to this claim. I also noted that he is of working age and can work and I may also not find he will face serious or significant harm on the basis. He had no comment.
140. I noted to the applicant that, regarding his fears of being perceived wealthy and an infidel because he was returning from a western country, he had not provided country information support of these claims. Other than the reference in the DFAT 2023 report that Christians are perceived as prosperous, I also could not locate country information from reliable sources to support this claim. I noted to him that the 2022 UK Upper Tribunal decision that was cited in the recent submissions to the ART, found the applicants were owed protection on the basis of their atheism and feminism and, further, I am also not bound by this decision. I noted to him that I may not find he will face a real chance of harm in relation to this claim. He said a lot of people in Iraq do not have money to survive and, coming from Australia, he will stand out as someone who is perceived as rich and as a Christian Assyrian, with no support in Iraq, he will become a target, and he cannot prove that on paper.
141. I also noted to the applicant that, with regard to his fear of returning as a failed asylum seeker and being considered a traitor for providing adverse information against the Iraqi government, I noted to him that, in DFAT's 2023 report, it stated that returning Iraqis who are not in possession of an Iraqi passport must apply for a *laissez passer* at an Iraqi embassy or consulate abroad. *Laissez passers* are common and individuals who enter on *laissez passers* are not questioned about how they exited Iraq, nor asked to explain why they do not have other forms of documentation. The practice of seeking asylum and then returning to Iraq once conditions permit is well accepted among Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. There is considerable evidence that Iraqis who are granted protection by western countries often return to Iraq, sometimes only months after securing residency abroad, to reunite with families, establish and manage businesses or take up or resume employment. Based on discussion with multiple sources, DFAT assessed it was highly unlikely a failed asylum seekers would face mistreatment on return to Iraq solely on the basis of his or her having sought asylum overseas. I also noted to him that he had not provided any other country information in support of this claim, and I may not find he will face a real chance of harm in relation to this claim. He had no comment in response.
142. In his oral submissions at the end of the hearing, the applicant's representative stated that the applicant's long absence from Iraq places him at heightened practical and social risk and DFAT had said return to Iraq, after seeking protection, is not by itself enough to create a risk of mistreatment and many Iraqis from western countries return to reunite with family. He said they accept that, but the important distinction is the applicant will not be returning to reunite with close family and resume local employment or rely on established community networks in Duhok after two decades in Australia. He said he lacked current knowledge of Duhok and referred to the lack of family mediation and tribal protection, housing connections and

employment pathways and informal protection mechanisms. He submitted this can impact his economic situation and residence and occupation and capacity to be informed about risk factors in areas affected by violence. He said the absence of close family links on Duhok is highly significant because in Iraq, and KRI, family and ethnic and tribal connections are central to relocation, protection, and survival. He submitted DFAT had stated the ability to relocate to area, such as in KRI, depends on factors such as wealth and family and tribal connections and it may be difficult for people without relevant connections to establish themselves. Further, the UK Home Office stated access to effective protection in Iraq and the KRI depends on factors such as socioeconomic status, family support and religion or ethnic identity and political affiliation and profile of the actor feared. He also noted that the Kurdistan security apparatus is better resourced, which they accept, but can be compromised by corruption and party politics.

143. Having considered the evidence before me, whilst I accept the applicant may face challenges in resettling in Iraq, due to not having lived in Iraq for many years, not having resided in Duhok and not have immediate connections in Iraq, and even taking into account other aspects of his profile, the applicant's representative has referred to information relevant to relocation and state protection, but the evidence before me does not indicate he will face a real chance serious harm or significant harm from any group or person for these reasons. DFAT's assessment does not suggest it is only those who have family or other established connections in Iraq who will not be harmed when they return as failed asylum seekers. The applicant is still of working age and has said he can work and speaks English. Further, I am not satisfied there is a real chance he will be imputed with a political opinion as a traitor and/or associated with infidels for having resided in a western country and/or because he will be returning as a failed asylum seeker from a western country or in combination with other aspects of his profile.
144. I am not satisfied the applicant will face a real chance of a threat to his life or liberty, or significant physical harassment or ill-treatment, or that he will face significant economic hardship that will threaten his capacity to subsist, or will be denied access to basic services that threatens his capacity to subsist or that he will be denied the capacity to earn a livelihood of any kind such that his capacity to subsist will be threatened or that he face any other harm that can be considered serious harm on the basis of this claim or in combination with other aspects of his profile.
145. I am also not satisfied there is a real risk the applicant will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, or cruel or inhuman treatment or punishment or degrading treatment or punishment, as defined in the Act.

Fear of harm due to Turkish military strikes

146. During the hearing, I also noted to the applicant that he had previously raised concerns about Turkish attacks in that region, but recent country information indicated that, in May 2025, the Kurdistan Workers' Party (PKK) announced it would disband and end its armed struggle. Further, as of June 2025, the number of Turkish military strikes notably decreased following the disarmament ceremony held by PKK members in July 2025 and the PKK had withdrawn from mountains areas in Duhok in November 2025.²⁸ In response, he said previously he knew there was a war happening, but recently he had not heard anything.

²⁸ EUAA, 'Iraq: Country Focus,' October 2025, at https://www.euaa.europa.eu/sites/default/files/publications/2025-10/2025_10_EUAA_COI_Report_Iraq_Country_Focus.pdf

147. In the evidence before me, I am not satisfied the applicant will face a real chance any harm in relation to this conflict. Consequently, I am also not satisfied he will face a real risk of significant harm in relation to this conflict.

Hardship to Australian family

148. In the application for protection, the applicant claimed his parents and siblings are Australian citizens, and he also has other close relatives in Australia. He claimed his parents are aged and his family will face serious hardship and their physical and mental health wellbeing will be seriously compromised if he is removed from Australia. As noted, the applicant provided medical reports in respect of his mother to the Department.
149. The ART September 2025 legal submission also stated his parents are elderly and, together with his Australian-citizen siblings and other close relatives, would suffer hardship if he were removed to Iraq.
150. During the hearing, I noted to the applicant that my assessment is primarily concerned with harm to the applicant in Iraq and I may not consider harm to his family in Australia relevant and I may find that it does not amount to a well-founded fear of persecution or significant harm to the applicant. In response, he said his family will face harm, particularly his parents.
151. Although I accept the applicant's family in Australia will be adversely impacted by his return to Iraq, I am not satisfied this amounts to the applicant having a well-founded fear of persecution in Iraq, nor does it amount to the applicant facing a real risk of significant harm in Iraq, as defined in the Act.

Safety of return to Duhok

152. During the hearing, I also noted to the applicant that I may also find that he can safely and legally access Duhok through the international airport in Erbil.²⁹ I noted to him that, due to the recent conflict between Iran and the US, the airports in Iraq had been affected and the airspace in Iraq was closed for a short time but the airports had reopened on 8 April 2026.³⁰ He would then have to drive several hours to Duhok. I noted to him that recent country information in relation to security in that area, between August 2024 and 1 August 2025, recorded only four civilian casualties in Erbil. This did not indicate it would be unsafe for him to travel from Erbil to Duhok. I also noted to him that, during the recent crisis between the US and Iran, airstrikes and drone attacks had been reported in Iraq, but they had primarily been aimed at military targets, though there were some strikes on hotels in Erbil, and on oil infrastructure in Dohuk and Erbil Governorates. Further, there had been only isolated incidents of falling debris from interceptions which caused injuries among civilians and damage to civilian properties.³¹ I noted to him that, in the circumstances, I may not find he will face a real chance of harm on his return to Duhok.
153. In response, the applicant said the war had not even begun and was only just starting and, although it was currently in the air, when it gets on the ground in Iraq, they will use the border between Iraq and Iran to enter Iran. I asked him how this would impact him, he said as a civilian, he will be impacted in northern Iraq and there will be a war. I then noted to the applicant that I may find his claim to be speculative. Further, I may find he would not be harmed in that conflict nor harmed on the basis of his race, religion, nationality, political

²⁹ DFAT Report 2023

³⁰ 'Iraq Reopens Airspace, All Airports Starting Today,' *Qatar News Agency*, 8 April 2026, at <https://qna.org.qa/en/news/news-details?id=iraq-reopens-airspace-all-airports-starting-today&date=8/04/2026>

³¹ International Organisation for Migration, 'Update on cross-border mobility and internal displacement in Iraq: situation as at 16 March 2026', March 2026, at https://iraq.iom.int/sites/g/files/tmzbd11316/files/documents/2026-03/update-on-cross-border-mobility_situation-as-of-16-march-v02.pdf

opinion, or because he is a member of a particular social group. I also noted to him that, even if that conflict escalated, given his claims are speculative in relation to a potential escalation of the war, I may not be satisfied it would impact him in Duhok. In response, he said it would not impact him personally, but rather as a civilian living there. I found the applicant's claims about the potential escalation of this conflict to be speculative, and he has not provided any supporting evidence in regard, even when given the opportunity after the hearing.

154. In his oral submission, the applicant's representative stated that it was incorrect to say it is safe to return to KRI because, as recently as today, the Australian government advised not to not travel to Iraq, including the KRI, due to the volatile security situation and a threat of terrorism and armed conflict and kidnapping and violent crime. He noted this was a 'Smart Traveller' report. He acknowledged this was advice directed to Australian citizens and permanent residents and that the applicant is not either, but he submitted he is a person who fits that description as he lived in Australia for two decades, has an Australian criminal history and Australian connections and a lack of knowledge of what happened in Iraq, and in the Duhok region.
155. As the representative acknowledged, the above 'Smart Traveller' advice he referred to by the Australian government is directed to Australian citizens and permanent residents, and although the applicant has resided in Australia for most of his life, he is a national of Iraq and the representative has not claimed this advice is also directed to returning Iraqis who will be permanently resettling in Iraq. Further, the advice he outlined is of a general nature and does not directly address the situation in Duhok or Erbil. For this reason, I give more weight to the other country information I put to the applicant at hearing, as discussed above.
156. On the evidence before me, I am satisfied the applicant will be able to safely and legally access Duhok and I am not satisfied he will face a real chance of harm on his return to Duhok for any reason.
157. At the end of the hearing, after discussing the above claims, I asked the applicant if he had any other reasons for fearing return to Iraq, and he said he did not.
158. I am not satisfied that, even on the entirety of the applicant's circumstances, there is a real chance of the applicant suffering serious harm in the reasonably foreseeable future on return to Iraq.
159. Considering the applicant's circumstances and profile as a whole, I am also not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned to Iraq, there is a real risk of him suffering significant harm.

Conclusion

160. I am not satisfied the applicant has a well-founded fear of persecution in Iraq. Nor am I satisfied he will face a real risk of significant harm in Iraq.
161. For the reasons given above, I am not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s 36(2)(a) or s 36(2)(aa).
162. There is no suggestion that the applicant satisfies s 36(2) on the basis of being a member of the same family unit as a person who satisfies s 36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s 36(2).

DECISION

163. The Tribunal affirms the decision not to grant the applicant a protection visa.

Dates of hearing(s): 1 May 2026

Representative for the Applicant: Mr Jason Donnelly

ATTACHMENT A - CRITERIA FOR A PROTECTION VISA

1. The criteria for a protection visa are set out in s 36 of the Act and Schedule 2 to the *Migration Regulations 1994* (Cth). An applicant for the visa must meet one of the alternative criteria in s 36(2)(a), (aa), (b), or (c). That is, he or she is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
2. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee.
3. A person is a refugee if, in the case of a person who has a nationality, they are outside the country of their nationality and, owing to a well-founded fear of persecution, are unable or unwilling to avail themselves of the protection of that country: s 5H(1)(a). In the case of a person without a nationality, they are a refugee if they are outside the country of their former habitual residence and, owing to a well-founded fear of persecution, are unable or unwilling to return to that country: s 5H(1)(b).
4. Under s 5J(1), a person has a well-founded fear of persecution if they fear being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, there is a real chance they would be persecuted for one or more of those reasons, and the real chance of persecution relates to all areas of the relevant country. Additional requirements relating to a 'well-founded fear of persecution' and circumstances in which a person will be taken not to have such a fear are set out in ss 5J(2)-(6) and ss 5K-LA, which are extracted in Attachment B.
5. If a person is found not to meet the refugee criterion in s 36(2)(a), he or she may nevertheless meet the criteria for the grant of the visa if he or she is a non-citizen in Australia 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 being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s 36(2)(aa) ('the complementary protection criterion'). The meaning of significant harm, and the circumstances in which a person will be taken not to face a real risk of significant harm, are set out in ss 36(2A) and (2B), which are extracted in Attachment B.

Mandatory considerations

In accordance with Ministerial Direction No.113, made under s 499 of the Act, the Tribunal has taken account of the 'Refugee Law Guidelines' and 'Complementary Protection Guidelines' prepared by the Department of Home Affairs, and relevant country information made available by the Department of Foreign Affairs and Trade for the purposes of protection obligations assessments.

ATTACHMENT B- Extract from *Migration Act 1958*

5 (1) Interpretation

...

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.

...

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.

...

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.

...

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 is:
 - (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.

...