

**1111169 [2012] RRTA 777 (8 October 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1111169
<b>DIAC REFERENCE(S):</b>	CLF2011/110063
<b>COUNTRY OF REFERENCE:</b>	Solomon Islands
<b>TRIBUNAL MEMBER:</b>	Mary Urquhart
<b>DATE:</b>	8 October 2012
<b>PLACE OF DECISION:</b>	Melbourne
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Solomon Islands, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2011.
3. The delegate refused to grant the visa [in] September 2011, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

16. 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 a protection visa if he or she is a non-citizen in Australia to 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 applicant 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').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

#### **The Primary application**

20. The department file reveals and the applicant confirms that he is a [age deleted: s.431(2)] year old Malaitan, born in [Village 1], Malaita Province in the Solomon Islands.
21. The applicant arrived in Australia [in] October 2009 holding a visitor visa and remained in Australia unlawfully after his visa ceased [in] January 2010.
22. The applicant lodged his application for a Protection visa [in] July 2011 after he was located and detained by Compliance Officers of the department.
23. The applicant claims that he lived in the Solomon Islands capital Honiara, Guadalcanal Island from the date of his birth until the date of his departure to Australia in October 2009. He claims that he was a police officer in Honiara from [period of service deleted: s.431(2)].

24. The applicant claims that during the Ethnic conflict on the Solomon Islands in 1999 he was employed as a police officer who helped protect the local Malaitan community in Honiara and he supported the police and Malaitan rebels with food supplies brought in from the Malaitan.

25. The applicant claimed that due to his support of the Malaitans he received some verbal threats from Guadalcanalians in Honiara after the end of the conflict in 2003. The applicant claimed that Guadalcanalians would drive by in cars and verbally abuse and threaten him.

26. A statement by the applicant dated [July] 2011 sets out the following:

*Background*

My name is [name] and I am a [age] year old male born in [Village 1], Malaita Province, Solomon Island. My ethnicity is Malaitan and my religion is Anglican. I have been [married]. I have 2 sons who reside in Solomon Island. I have 8 [siblings].

*Why I left my country*

In my country there has been an ethnic war since 1999. I am Malaitan and we have had a long history of ethnic struggle with the Guadalcanalians. The Guadalcanalians are traditional owners of the land. The Malaitians moves in to and began to take over the land causing strong ethnic tensions. Many killings began to occur and areas were burnt out. The Malaitians protected the government. In my role as a police officer for the Solomon Island police force, I was involved in the struggles between the 2 ethnicities. Both sides sat in bunkers and tried to kill each other. As a police officer, I was required to monitor the situation and try to assist to curb the tensions but the violence could not be stopped. In 2002, my uncles and my brother's family were killed in the ethnic war. They were trying to flee from harm by boat and they were killed by the Guadalcanalians.

I used my position as a police officer to assist Malaitan rebels. I assisted to arrange a process whereby food was taken from the Malaitan region and brought down to Honiara to provide to and support to the Malaitan rebels. I arranged for the food to be brought to a specific area and then assisted in it being distributed to different bunkers.

I fear if I was to return, I would be harmed by the Guadalcanalians for the role I played in assisting the Malaitan rebels. Despite the presence of the Australian authorities in the Solomon Island, ethnic tensions continue to exist and I believe I will be harmed by the Guadalcanalians.

What I fear if I go back to my country. If I was forced to return to my country, I fear that I would be seriously harmed, if not killed by the Guadalcanalians.

*Why I think they will harm or mistreat me if I go back.*

I believe that I would be harmed by the Guadalcanalians.

*Why I believe they will harm is mistreat me if I go back.*

I believe that the Guadalcanalians would harm me to do the fact I use my role in the police force to bring resources to support the Malaitians.

*Why I believe that the authorities in my country will not protect me if I go back.*

The authorities in my country are unable to prevent the strong tensions that exist in my country. The tensions are too strong for the authorities to overcome. Even with the assistance of the Australian government they are unable to curb the tensions.

27. The delegate was not satisfied that the applicant was owed Protection obligations by Australia and accordingly refused the application.

### **The review**

28. Documentary evidence submitted on behalf of the applicant also includes articles indicating the tension and conflict between the people of Guadalcanal and those of Malaita.

29. The applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pidgin (PNG) and English languages.

30. The applicant was represented in relation to the review by his registered migration agent.

### *Summary of evidence at the hearing*

31. The applicant stated his full name and gave his date of birth as [date of birth deleted: s.431(2)]. He said he was aged [age deleted: s.431(2)] years. He confirmed he was born in [Village 1]. He said his family [remain in the Solomon Islands]. [Family details deleted: s.431(2)].

32. The applicant stated that his religion was Anglican and that his ethnicity was Malaitan.

33. The Tribunal asked the applicant if he was given any assistance in the preparation of his application. He replied he was not. He confirmed the contents were true and correct and did not wish to make any changes.

34. The applicant said he last came to Australia in 2009. He had previously come to Australia when his child required treatment [details deleted: s.431(2)].

35. The applicant presented his second passport; he could not remember when he applied for his first passport, saying it was too long ago to remember. The Tribunal asked the applicant why he had obtained a passport in 2009. He replied it was because he had family in Australia. He explained he had 2 nieces [living in Australia]. It was his evidence he renewed his passport in Honiara without any difficulty. He obtained it just before coming to Australia in October 2009. The passport indicates it was issued [in] September 2009.

36. The Tribunal asked the applicant what he did when his 3 month Visitor visa in Australia expired. He replied that he travelled around Australia. He said that he did not work. He then corrected this evidence saying he did some part time jobs for rent. He said his aim was to work from time to time. He cleaned kitchens and toilets. He met up with friends and travelled with them. He kept going and helped them.

37. The Tribunal asked the applicant when he last spoke with his [wife]. He replied that he speaks to her every week and that he last spoke to her last week. He said he maintained good contact with her, mainly to find out about the grandchildren. In response to Tribunal questioning, the applicant said sometimes he sends money home. He added he obtained that money from his niece. The Tribunal asked how he supported himself financially. He replied that he [lives with his niece and her husband]. He said both his nieces had homes in [in the same town] and both were married with husbands [additional family details deleted: s.431(2)].
38. The applicant told the Tribunal he was found by compliance in Adelaide in 2011. He had gone to Adelaide with a [friend] who is also from the Solomon Islands. He went to Adelaide to try and get a job. He said it was difficult for him to get work.
39. The Tribunal asked the applicant why he left the Solomon Islands in 2009. He replied it was because the Guadalcanalian revolutionary army were swearing at him and warning him that they would get him and were making threats to him. The Tribunal asked if this was happening after the Civil War ended. He replied “yes” In response to Tribunal discussion he agreed that the war had ended in 2003 but said that there were still criminal gangs on the streets that continued. The applicant said the Australian army came some 9 years ago in 2003 and were still there but nevertheless there were still criminal groups continuing.
40. The Tribunal asked the applicant about his occupation. He said he was a police officer. He told the Tribunal that he had joined the force [year deleted: s.431(2)]. He had trained as a police officer in various capacities in the Solomon Islands and had retired [year deleted: s.431(2)]. When he retired, he continued to live in the city. He gave evidence that he received a pension and took it as a lump sum.
41. The Tribunal asked the applicant if he ever reported the threats made to him by the people on the streets to the authorities. He replied that he should have. He said “actually” if he had caught them, he would call the police because he would have good evidence in his hands. He said however, they stop and threaten him and then they move away and sometimes move away in cars. He said it is hard to report them because he doesn’t know their names.
42. The applicant said he believed the threat makers knew him because he was in the police force. He said when he was in the police he was involved in the ethnic conflict. The applicant said because he had family in Australia, he came here. He said he wanted to escape. The Tribunal asked who he was escaping from. He said he was escaping from the Guadalcanalian revolutionary army. The Tribunal asked if he had any friends in the police force. He said he did and that he also had friends in the government and that he could report what was happening but the Guadalcanalians couldn’t care about what he might tell the police or government.
43. The Tribunal asked the applicant if he had any difficulties leaving the Solomon Islands. He replied he did not.
44. The Tribunal asked the applicant why if the revolutionary army were trying to kill him, they would let him leave the country. He replied this was because they didn’t see him go.
45. The Tribunal asked the applicant where he had been living in the Solomon Islands. He replied he was living in the city and stated his address. He said he had lived at the same

address since 1969 and was living there when he left for Australia. The Tribunal suggested to the applicant if someone from the revolutionary army wanted to harm him, they could have simply gone to his house and done so. The Tribunal then asked if this had ever happened; that is, if anyone had ever come to his house to threaten or harm him. He replied “no” The applicant added that in the Solomon Islands that if you wanted to harm somebody, then it is possible to pay money for this. If an enemy paid money, it can happen that you might be killed. The applicant then gave further evidence that he had not been harmed. It was his evidence that he only suspected that this might happen to him.

46. The Tribunal asked the applicant if he had ever been harmed in any way at all. The applicant replied “no” but said he “had been sworn at and threatened and they had threatened to kill”.
47. The Tribunal asked the applicant if he knew which Guadalcanalian rebels in particular or which people were making the threats. He replied the people from the Guadalcanalian revolutionary army. The Tribunal asked the applicant how he knew these were the people making the threats. In response he said it was because during the conflict, he had worked at the cross roads between the Malaits and the Guadalcanalian rebels.
48. The Tribunal asked the applicant if any harm had happened to him at that time. He replied that at that time, nothing happened. He added however, that the rebels all had guns and they were bombarded.
49. The applicant produced his police ID.
50. The Tribunal indicated to the applicant that it understood and accepted that during the ethnic conflict between 1999 and 2003 there had been a breakdown of law and order. The Tribunal indicated it accepted that this happened and asked the applicant why he believed he was being targeted in 2009 as an individual. The applicant replied they may have also targeted others but he was only concerned for himself.
51. The Tribunal asked the applicant why if he was concerned that he was being targeted he waited until 2009 to leave the country. The applicant replied he was trying to make up his mind if he should go to his village or not. He explained that he would need to rebuild his home if he went there. He was retired and had no home to go to in the village so he stayed in the city. The Tribunal asked if he would have been safer in the village if he had been threatened and abused in the city. The applicant explained that the Solomon Islands are very small and everyone is inter-married which means that you may have Guadalcanalians who are relatives and everyone everywhere knows everyone. He said it was hard to escape; he said the war had been all around or so it seemed to him. The Tribunal suggested to the applicant that nevertheless, nobody had harmed him. The applicant reiterated that he suspected one day he would be killed.
52. The Tribunal asked the applicant again what his reasons for leaving the Solomon Islands were in 2009. The applicant replied he left because of threats. He said he had to leave so they wouldn't see him.
53. The Tribunal asked the applicant if it was the case that he left the Solomon Islands because of the threats, why did he not seek Protection in Australia straight away rather than delaying in doing so. The applicant said he delayed because he didn't know who to go to or what to do.



54. The Tribunal reminded the applicant of his evidence that he had come to Australia and lived with his nieces and asked why he did not ask them to assist him to obtain Protection. The applicant said he told them but they wouldn't do that for him. The Tribunal asked why not. The applicant said the first time they tried to do it, they tried to get him a multiple visa but after that he got the 3 month visa and 2 weeks before it expired, they were trying to get him another visa but he took off to Queensland. The Tribunal asked the applicant if his nieces were married to Australian citizens, he said they were. The Tribunal asked why he had not sought assistance from their husbands in relation to his situation. In response, the applicant said one husband had left and had gone [overseas]; he was in the [military] and lived in Sydney. The applicant said his nieces got angry and didn't contact him when he left and didn't contact him again. He reiterated that he didn't know about Protection visas, he disobeyed his nieces and so they wouldn't help him and he escaped.
55. The Tribunal asked the applicant what he feared would happen to him if he were to return to the Solomon Islands. He replied "same reasons still exist, threatening". The Tribunal asked the applicant why he would not go to the police he was threatened. The applicant said he would tell them but he would have no evidence. He said the police won't protect him. He said he never believes police officers. He added in other circumstances they could protect him. He said, it's hard if someone means to kill you.
56. The Tribunal asked the applicant when the last time he was threatened was. He replied September 2009. He said this happened on the street in the city where he was selling cakes and ice blocks. The Tribunal asked the applicant why if he was being threatened, he was working on the streets selling cakes and ice blocks. He replied he felt safe because in the city there are not as many Guadalcanalian rebels. The Tribunal asked the applicant if he told anyone about the threats. He replied he told his relatives and they said to let them do it, that they'd fight again. He said people like to fight.
57. The Tribunal asked the applicant if that was the only time he was threatened. He replied "yes", adding that they sometimes swear when he goes past. He said they might be swearing at others but they refer to him and call him a "bald head". He gave evidence that they swore at him and threatened him saying that he would have his "beautiful day" some time. It was his evidence that he asked them what they meant by this and they said he must be careful. He said the beautiful day refers to his death.
58. The Tribunal again asked the applicant if he had ever been persecuted by such people or harmed in any way. He replied "no", they had only spoken to him.
59. The Tribunal asked the applicant if he had ever been persecuted because of his Malaitan ethnicity. He replied "no".
60. The Tribunal asked if he had ever been persecuted because he is a policeman, he replied "no", adding there had been swearing. The Tribunal asked the applicant if he had ever been harmed in any way as a policeman. He replied he was shot at during the ethnic tensions but was safe in the bunkers. The Tribunal asked if following or after the ethnic violence, he had ever been harmed in any way as a policeman, he said "no". He reiterated he had only received threatening words. The applicant said he was threatened because he was recognised. He couldn't say who was recognising him but he believed it was the rebels. He said this was because they were there at the bunkers and they would shoot at them and they would shoot back.

61. The Tribunal asked if the applicant was saying he was recognised from the time of the ethnic conflict, the applicant replied “yes”. The Tribunal asked the applicant if he recognised any of the people using threatening words against him, he replied “not really”. The Tribunal asked if he could name anyone, he said “no”, he didn’t know. The Tribunal asked if they were individuals or from the government. The applicant said they were not from the government.
62. The Tribunal put country information to the applicant which suggested a lessening of ethnic tensions. The applicant said he had noticed this.

### **Country information**

63. US Department of State Reports 2011 *Human Rights Reports*: Solomon Islands state:

#### **National/Racial/Ethnic Minorities**

The country comprises more than 27 islands with approximately 70 language groups. Many islanders see themselves first as members of a clan, next as inhabitants of their natal island, and only third as citizens of their nation. Tensions and resentment between the Guadalcanalese and the Malaitans on Guadalcanal culminated in violence beginning in 1998. The presence of RAMSI greatly reduced ethnic tension between the two groups, and in previous years the Peace and Reconciliation Ministry organized reconciliation ceremonies. However, underlying problems between the two groups remained, including issues related to jobs and land rights.

#### **Role of the Police and Security Apparatus**

Civilian authorities maintained effective control over the Royal Solomon Islands Police (RSIP), and the government has effective mechanisms to investigate and punish corruption. There were no reports of impunity involving the security forces during the year. A commissioner, who reports to the minister of police, heads the RSIP force of 1,134 members, including 159 women. The RSIP force is unarmed and had no access to weapons or non-lethal means of coercive force during the year.

This force was supported by 250 RAMSI Participating Police Force officers, who served in line positions and in logistical and financial support. The RAMSI Participating Police Force and the RAMSI Military Contingent were the only armed security forces in the country. Peter Marshall, a New Zealander, who was appointed police commissioner in 2008, ended his secondment in February to return to New Zealand. Walter Kola, a local, was appointed acting police commissioner on February 7 and continued in that position at year’s end.

While police were more effective under RAMSI, the RSIP continued to be weak in investigation and reporting. The police service has an inspection unit to monitor police discipline and performance. Officials found to have violated civil liberties are subject to fines and jail sentences.

64. Country information indicates that during the 1999 ethnic conflict on the Solomon Islands workers from the Red Cross witnessed the breakdown of law and order in the Solomon Islands:

"All the police officers absorbed within the community, take sides with whatever groups they want and then because of the raid at the armoury it means all the guns were taken, not only by the Malaita Eagles force but also by the other police officers

and they sold them out in exchange for money and in exchange for other things to the Guadalcanal militants."

## **FINDINGS AND REASONS**

65. The applicant claimed in his oral evidence to be a national of the Solomon Islands. He travelled to Australia on a Solomon Islands passport. He produced his passport at the hearing. For the purposes of the Convention, the Tribunal has therefore assessed his claims against the Solomon Islands as his country of nationality.
66. In order to be a refugee under the Convention, it is necessary for the applicant to hold a well-founded fear of persecution for reasons of at least one of the five grounds listed in the International Convention on refugee status as set out above.
67. In *Chan v MIEA* (1989) 169 CLR 379 the High Court of Australia established in Australian law that a fear of persecution will be well-founded if there is a "real chance" that it will occur. This is the objective component of the requirement that an applicant must have a 'well-founded fear'. A person holds a 'well-founded fear' of persecution under the Refugee Convention if they have a genuine fear that is based on a "real chance" of persecution on a Convention ground. A "real chance" excludes a remote or insubstantial or far-fetched possibility. It also means that a person may have a 'well-founded fear' of persecution even where the possibility of persecution is below 50 per cent.
68. The Tribunal accepts that the applicant is of Malaitan ethnicity and that he has lived in the Solomon Islands capital Honiara, Guadalcanal Island since at least 1969. It accepts he is of the Anglican faith. The Tribunal accepts the applicant's family- his two sons, two remaining brothers and [his wife], live in the Solomon Islands.
69. On the basis of his oral evidence and documentation produced at the review hearing, the Tribunal accepts the applicant was a police officer in Honiara from about [year deleted: s.431(2)] until his [retirement] and that during this time and until his departure for Australia, he lived in Honiara.
70. The essence of the applicant's claims given in his oral evidence, his personal statements and submissions on his behalf, is that he will be physically harmed and killed in the Solomon Islands because of his ethnicity as an ethnic Malaitian and a policeman who assisted the Malaitians against the Guadalcanalians during the period of ethnic violence from 1999 to 2003.
71. The applicant has claimed that in September 2009 whilst working on the street in Honiara he was threatened by people he variously referred to as criminal gangs and Guadalcanalian Rebels. He was not able to give any specific details as to who such people were. He claims they recognised him from the days when he was a policeman during the ethnic violence and unrest. The Tribunal has carefully considered the applicant's claims of verbal threats from unidentified persons who he says are Guadalcanalian revolutionaries still roaming about the streets of Honiara. The Tribunal has considered that the applicant makes no claims that he was attacked physically. He agrees the "threats" were only "words" but says he "suspects there will be more". The applicant's evidence was vague lacked detail and was not convincing. Whilst the Tribunal accepts he may have been teased or called an old "bald head", the Tribunal does not accept that the applicant has been threatened with serious harm as claimed.

72. Furthermore when asked directly if he had ever suffered any harm because of his ethnicity the applicant replied “no”. Whilst the Tribunal accepts that the applicant assisted the Malaitian side during the outbreak in ethnic violence on the Solomon Islands in 1999. It notes and gives weight to his clear evidence that he has suffered no serious harm because of his ethnicity and finds he is not at risk of serious harm from Guadalcanalian revolutionaries or anyone else.
73. The Tribunal questioned the applicant carefully about his home address and the length of time he resided at the one premises. The applicant’s evidence is that he remained at the same address from the time he joined the police force until he left for Australia. In other evidence the applicant maintained the Islands are small, there is much intermarriage and people know each other and that for this reason he is at risk everywhere. As the applicant continued to reside at the same address from the time of the conflict in 1999 until 2009 without harm, it is reasonable to imply that he is not at risk of serious harm as claimed.
74. The Tribunal finds it is reasonable to assume that if the applicant were at risk of serious harm from the Guadalcanalian Rebel Army, because he assisted the Malaitian people they could have sought him out at his place of residence where he has lived continually since the time of the conflict. The Tribunal further notes and gives consideration to the evidence that the applicant, having retired from the police force, whilst claiming to fear harm, worked selling goods on the streets of Honiara. This evidence coupled with him remaining at the same address, from the time of conflict in 1999 until 2009, when he left for Australia leads the Tribunal to find that the applicant was not of any interest to any group of Guadalcanalians or anybody else as claimed. The Tribunal finds the applicant is not a truthful or credible witness and that he has fabricated and exaggerated his evidence for his own purposes.
75. The Tribunal finds the applicant is not a credible witness and does not accept that he has a well-founded fear of serious harm should he return to the Solomon Islands now or in the reasonably foreseeable future for because of his ethnicity or because he is recognised as a policeman who helped the Malaitians during the period of ethnic conflict as claimed.
76. Furthermore, the Tribunal finds the applicant did not have a strong fear for his personal safety or future well-being in Honiara as he could have sought the safety of his village. In so finding the Tribunal taking into account the applicant’s evidence set out above that the Islands are small and intermarriage with Guadalcanalians means they are everywhere however, it notes and accepts the applicant’s evidence that he did not return to the village as he did not have a house there and would need to rebuild one. For this reason he decided to remain in Honiara. On the basis of this evidence the Tribunal finds the applicant did not have a strong fear for his personal safety or future well-being in Honiara as claimed.
77. The applicant claims that he is a member of a particular social group, namely “police officers in the Solomon Islands” The applicant claims that he faces persecution because of his past career working with the police force.
78. The definition of “particular social group” has been the subject of much judicial consideration. The meaning of the expression “for reasons of...membership of a particular social group” was considered by the High Court in *Applicant A's* case and also in *Applicant S*.
79. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

...First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group"...

80. In *Applicant S* the High Court emphasized the relevance of cultural, social, religious and legal factors or norms in a particular society in determining whether a posited group is a particular social group in the society.
81. Therefore whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However, it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.
82. The Tribunal accepts that "Police in the Solomon Islands" or perhaps "Former Police in the Solomon Islands" may be a particular social group. However, it is not enough to belong to a particular social group. It is necessary that the member of such a group must also have a well-founded fear of persecution for reason of their membership of the particular social group.
83. The Tribunal accepts there is evidence that ethnic conflict in the Solomon Islands erupted in about 1998 and continued until 2003 and that during this time the applicant was employed as a police officer. The Tribunal accepts that as a police officer the applicant may have been caught in the crossfire between ethnic groups; the Tribunal accepts that his natural allegiance was to the ethnic Malaitians of whom he is one and is prepared to accept that he supported the ethnic Malaitians against the Guadalcanalian Rebel Army in 1999.
84. The Tribunal accepts that during the civil unrest Malaitians suffered discrimination and harassment based on ethnicity. It also notes the Guadalcanalians also suffered discrimination and harassment based on their ethnicity, the conflict being in the nature of a civil war.
85. The visa applicant claims that he fears persecution because during the ethnic violence in 1999 he used his position as a police officer to assist Malaitian rebels. He claims he arranged for food to be taken from the Malaitian region and brought down to Honiara to then be distributed to different bunkers.
86. The Tribunal finds the applicant's claims of harm resulting from this past police role was vague and lacked detail. In particular the Tribunal takes into account the applicant's response to direct questions from the Tribunal where he said he had never been harmed at that time or since in his role as a policeman. For this reason, the Tribunal finds that the visa applicant on return to the Solomon Islands will not be targeted due to any assistance he gave during the time of the ethnic unrest in the Solomon Islands. Again the Tribunal notes the applicant could easily have been sought out and harmed if indeed he was of any interest as claimed.

87. The applicant last arrived in Australia [in] October 2009 and lodged his application for a Protection visa almost two years later [in] July 2011. The Tribunal notes he had at the time been found by Compliance officers of the department in Adelaide and that it was then that he lodged this application
88. The Tribunal questioned the applicant carefully about the delay in applying for protection given his claim to have fled the Solomon Islands under fear of threats and, given, he resided with two nieces married to Australians in the first two months after his arrival here. The applicant explained he did not know who to ask, or what to do about obtaining protection and he did not know about protection visas. His evidence was vague and evasive and lacked any convincing detail.
89. The Tribunal finds that the applicant's delay raises serious concerns about the immediacy, gravity and credibility of his claims to fear serious harm in the Solomon Islands immediately before his departure to Australia in October 2011.
90. The Tribunal is of the view that the applicant may prefer to live in Australia rather than in the Solomon Islands but does not accept the reasons he gives for leaving the Solomon Islands or for not wishing to return there.
91. The Tribunal finds that there is no plausible evidence to indicate any circumstance which would have prevented the applicant from seeking protection immediately or soon after his arrival in Australia if his claimed fears were genuine.
92. The Tribunal finds that the applicant's delay indicates that at the time of his arrival and for a year after, he did not have a strong fear for his personal safety or future well-being in the Solomon Islands and on the basis of the evidence before it the Tribunal does not accept the applicant's explanations for his delay in making a protection visa application.
93. The Tribunal notes the applicant agreed he had seen a lessening of ethnic tensions in recent times and that he was last there in 2009. Based on country information, set out above, the Tribunal does not accept the applicant's claim that the authorities in the Solomon Islands are unable to assist him.
94. Having considered the applicants claims singularly and cumulatively the Tribunal finds that the applicant does not have a well-founded fear of persecution for any Convention reasons in the Solomon Islands and would not face a real chance of serious harm should he return to the Solomon Islands now or in the reasonably foreseeable future.
95. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion under Complimentary Protection legislation in s.36(2)(aa) of the *Act* On the basis of the evidence before it the Tribunal is not satisfied that there is a real risk that the applicant will suffer significant harm if he returns to the Solomon Islands and finds the applicant is not a person to whom Australia has protection obligations under s.36(2)(aa).

## **CONCLUSIONS**

96. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).

97. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under s.36(2)(aa).

## **DECISION**

98. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.