

## Fact Sheet: Legal definitions of 'refugee' and 'complementary protection'

In order to be granted a temporary or permanent protection visa, the Australian government must assess your case and decide that you meet the legal definition of a refugee or that you are eligible for 'complementary protection'. This fact sheet explains the law that applies to visa applications made on or after 16 December 2014. It only explains some parts of the law, not all parts. If you have questions about any of this information, you should get advice from a Registered Migration Agent.

### Definition of a 'refugee'

**Australian law says that a refugee is a person who has a real chance of being seriously harmed in their country of nationality because of their ethnicity, religion, political opinion, nationality or membership of a particular social group.**

For people who are stateless and do not have a country of nationality, the relevant country is a country of former habitual residence.

#### What is the country or countries relevant to your case?

- If you have a nationality, it is your country of nationality.
- Do you have two nationalities? Get advice from a migration agent.
- If you are stateless, in most cases, it is a country where you have lived in the past.

#### What do you fear will happen to you if you go back to that country in the future?

It is important to describe every different type of harm that could happen to you in the future, who would do it to you, and what would be the reason for the harm. Often it is difficult to know what will happen in the future, but it is important that you give as many details as possible about what you think might happen and why. If you fear more than one type of harm and you should describe all types of harm.

**Family groups** – If you are applying as a family, you should describe all the different types of harm that could happen to each individual family member, including children. Different family members can have different fears of harm.

#### Who will harm you?

Give specific details of all the people who you think will harm you. For example, if you fear harm from the government, specify which sections of the government. If you fear harm from a militant or religious group, specify the name of the group. If you fear harm from individual people, specify their names. If you fear more several different groups or individuals, you should mention all of them.

#### What is the reason for the harm?

The harm you might suffer must be directed at you for one of 5 reasons:

- Your nationality

- Your ethnicity
- Your religion
- Your political opinion
- Your membership of a 'particular social group'.

The law says that a 'particular social group' is two or more people who have a shared characteristic, and that characteristic is something that can't be changed, or something that is fundamental to their identity or conscience, or something that distinguishes the group from other people in society.

### **Is it 'serious harm'?**

Serious harm may include:

- Significant physical harm or physical harassment
- A threat to your life or freedom
- Your capacity to subsist is threatened because of significant economic hardship, or denial of access to basic services, or denial of the ability to earn a livelihood of any kind
- Serious psychological harm.

To meet the definition of refugee, the harm must also involve conduct that is systematic and discriminatory, rather than random or accidental.

### **Is there a 'real chance' that the harm will happen to you?**

There must be good reasons for believing that the harm will happen to you in the future.

#### **How likely is it that the harm will happen to you in the future? How do you know that it will happen to you?**

- Has it happened to you in the past?
- Have you seen or heard of it happening to someone else like you?
- Do you have any evidence that it will happen to you?
- Are there any news or research reports which support what you say?
- Was there a period of time that you lived at home and weren't harmed? If so, why weren't you harmed during that time?

### **Can anyone in your country protect you against this harm? If not, why not?**

If the authorities in your home country, or another organisation or group, could provide you with protection against harm, then you may not be eligible for protection.

### **Would you be safe in any other part of your country?**

The definition of a refugee says that the risk of harm must exist in all parts of your country, not just your home area or areas where you lived before coming to Australia. If there is another part of your country that you could safely move to where you would not be harmed, then you may not meet the definition of refugee.

### **Is there something that you could do or change to avoid harm?**

If you could take reasonable steps to modify your behaviour to avoid persecution, then you may not be eligible for protection. You are not expected to change things that are

fundamental to your identity or conscience, such as your religious or political beliefs, or to stop practising your religion, or to hide your sexual orientation.

### **Do you fear harm because of things that you have done in Australia?**

If you fear harm in your country because of things that you have done in Australia, and the Australian government thinks that you did these things for the purpose of strengthening your claims to be a refugee, then those things that you have done will be disregarded or ignored in your application for protection.

### **Definition of 'complementary protection'**

If the Australian government decides that you do not meet the legal definition of a refugee, then they will assess whether you meet the definition of complementary protection.

### **Is there a real risk that you will suffer 'significant harm' if you are returned to your country of nationality (or if stateless, your country of former habitual residence)?**

Significant harm includes:

- the death penalty
- being killed or murdered
- torture
- cruel and inhuman treatment or punishment
- degrading treatment or punishment.

The reasons why the harm is directed at you could include reasons *other than* the 5 reasons under the refugee definition.

### **Could you move to another part of your country to avoid this harm?**

If it is reasonable for you to move to another part of your country where you could avoid the harm, then you may not be eligible for protection.

### **Could the authorities in your country protect you against this harm?**

If the government authorities in your country could protect you, then you may not be eligible for protection.

### **Other issues**

### **Do you have a right to visit or stay in another country? Would you face any risk of harm in that country?**

If you have a right to visit another country, you may not be entitled to protection in Australia unless you can show that you would also meet the definition of refugee or be eligible for complementary protection in relation to that country. The Australian government may contact other countries to find out whether you have a right to go there or whether you have previously lived there or applied for visas to go there.

**Please note:** This fact sheet contains general information only. If you would like more detailed information on any aspect, please refer to RACS fact sheets available at [www.racs.org.au](http://www.racs.org.au). RACS is independent of the Department of Immigration. All assistance is free. It does not constitute legal or migration advice. This factsheet was prepared in June 2015.