

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 167

Issued by the Authority of the Minister for Immigration and Citizenship

Migration Act 1958

Migration (United Nations Security Council Resolutions) Regulations 2007

Subsection 504(1) of the *Migration Act 1958* (the Act) provides in part that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- paragraph 116(1)(g) of the Act, which provides that the Minister may cancel a visa if he or she is satisfied that a prescribed ground for cancelling a visa applies to the holder; and
- subsection 116(2) of the Act, which provides that the regulations may prescribe circumstances under which the Minister must not cancel a visa under section 116 of the Act.

The purpose of the Regulations is to repeal the four existing sets of regulations dealing with travel sanctions imposed by various United Nations Security Council Resolutions, and replace them with a single set of regulations. The new regulations will incorporate all the existing travel sanction resolutions, and enable new travel sanction resolutions to be incorporated as required by way of legislative instrument.

Details of the Regulations are set out in the [Attachment](#).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Regulation Review in the Productivity Commission was consulted and advised that the regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition.

Consultation was undertaken with the Attorney-General's Department and the Department of Foreign Affairs and Trade regarding the policy, purpose and wording of the regulations.

The Regulations commenced on 1 July 2007.

ATTACHMENT

Details of the *Migration (United Nations Security Council Resolutions) Regulations 2007*

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Migration (United Nations Security Council Resolutions) Regulations 2007*.

Regulation 2 – Commencement

This regulation provides that these Regulations commence on 1 July 2007. This commencement date is a consequence of various systems requirements necessary to allow for the implementation of the Regulations.

Regulation 3 – Repeal

This regulation repeals the following Regulations:

- (a) *Migration (Sierra Leone – United Nations Security Council Resolution No. 1171) Regulations 1997*;
- (b) *Migration (Liberia – United Nations Security Council Resolutions) Regulations 2001*;
- (c) *Migration (Afghanistan – United Nations Security Council Resolution No. 1390) Regulations 2002*; and
- (d) *Migration (Côte d'Ivoire – United Nations Security Council Resolutions) Regulations 2005*.

Each of the above *Migration (United Nations Security Council Resolution) (UNSCR) Regulations* reflect country specific resolutions. These regulations impose travel sanctions which are established by resolutions made by the United Nations Security Council. Persons subject to travel sanctions may be identified and designated under a UNSCR itself, or by a sanctions committee established under a UNSCR.

The Regulations to be repealed were made on an ad hoc basis and they are all somewhat different from one another. For example, the Sierra Leone regulation did not include a visa cancellation power, and the Afghanistan regulations did not allow the Minister to

grant a visa if there are compelling reasons. Further, the multiple Regulations create administrative complexity as they operate as four separate sets of regulations in addition to the *Migration Regulations 1994*.

This regulation makes a new set of regulations that incorporate all the existing travel sanction resolutions and enable new travel sanction resolutions to be incorporated as required by way of legislative instrument made by the Minister for Immigration and Citizenship. This would enable the incorporation of new UNSC travel sanctions resolutions easily, obviating the need to create new regulations whenever a further relevant UNSCR is made.

Regulation 4 – Definitions

This regulation defines the following terms for the purposes of these Regulations:

Act is defined to mean the *Migration Act 1958*;

committee is defined as meaning a committee established under a United Nations Security Council Resolution;

resolution is defined to mean a United Nations Security Council Resolution specified by the Minister, by legislative instrument; and

UNSC-designated person is defined as having the meaning given by regulation 5.

Regulation 5 – UNSC-designated person

This regulation provides that a person is a **UNSC-designated person** if, under a resolution, Australia is required to prevent the person entering or transiting through Australian territory. The sanction may be imposed on a specified person, or class of persons. The person or classes of persons may be specified either directly in the resolution, or by a committee established under a UNSCR.

Regulation 6 – Application

This regulation provides that these Regulations apply despite any contrary provision in any other regulations under the Act.

The effect of this regulation is that if an applicant for a visa is a UNSC-designated person, the applicant must satisfy the special criterion set out in regulation 7 of these Regulations, in addition to the criteria prescribed in the *Migration Regulations 1994* for the relevant class of visa.

If the special criterion is not satisfied, the applicant must not be granted a visa irrespective of whether the other prescribed criteria are met. Similarly, where a visa holder is a UNSC-designated person, the grounds and circumstances prescribed under regulation 8 of these Regulations in relation to the cancellation of a visa under section 116 of the Act apply in addition to any other grounds and circumstances prescribed in the *Migration Regulations 1994*.

Regulation 7 – Special criterion for grant of visas

This regulation prescribes a special criterion to be satisfied at the time of decision for the grant of a visa of any class to an applicant who is a UNSC-designated person.

Subregulation 7(1) provides that the special criterion applies to all applications for visas made, but not finally determined before 1 July 2007, and all applications made on or after

1 July 2007.

Subregulation 7(2) sets out the special criterion to be satisfied by an applicant at the time of decision. The Minister must be satisfied that the applicant meets either paragraph (a), (b), (c) or (d) of subregulation 7(2).

At paragraph 7(2)(a), the special criterion requires the Minister to be satisfied that the person is not a UNSC-designated person. The term “UNSC-designated person” is defined in regulation 5.

Paragraph 7(2)(b) applies where the person is a UNSC-designated person, but a committee has determined that the person’s travel to or transit through Australia is justified. The term “committee” is defined in regulation 4 as a committee established under a United Nations Security Council Resolution.

Paragraph 7(2)(c) applies where the person is a UNSC-designated person, but a committee has determined that the designated person’s travel to or transit through Australia is authorised.

Paragraph 7(2)(d) applies where the applicant is a UNSC-designated person, but the Minister is satisfied that the grant of the visa is justified by compelling circumstances.

The effect of subregulation 7(2) is that, unless the Minister is satisfied that one of the circumstances in paragraphs (a) to (d) exists, the application for a visa must be refused.

Subregulation 7(3) provides that compelling circumstances referred to in paragraph 7(2)(d) can include, but are not limited to, the fulfilment of an international obligation owed by Australia.

Regulation 8 – Prescribed ground for cancelling visas (Act, s 116)

This regulation prescribes a new ground for the purposes of paragraph 116(1)(g) of the Act, under which the Minister has the discretion to cancel a visa. It also prescribes circumstances in which the Minister must not cancel a visa for the purposes of subsection 116(2). Subsection 116(1) allows the Minister to cancel temporary visas. Permanent visas may also be cancelled, under section 128 of the Act, for a section 116 ground, but only where the holder is outside the migration zone.

Subregulation 8(1) provides that regulation 8 applies to any visa granted on, before or after 1 July 2007.

Subregulation 8(2) sets out that for the purposes of paragraph 116(1)(g) of the Act, the Minister has the discretion to cancel a visa under section 116 if he or she is satisfied that the holder of the visa is a UNSC-designated person. The person may have been a UNSC-designated person when the visa was granted, or may have become a UNSC-designated person sometime after the visa was granted.

Subregulation 8(3) provides that the Minister must not cancel a visa on the ground prescribed in subregulation 8(2) of these Regulations if he or she is satisfied that a committee has determined that the UNSC-designated person's travel to, or transit through Australia is justified (paragraph 8(3)(a)); a committee has authorised the UNSC-designated person's travel to, or transit through Australia (paragraph 8(3)(b)); or a decision not to cancel the visa would be justified by compelling circumstances (paragraph 8(3)(c)).

Subregulation 8(4) provides that compelling circumstances referred to in paragraph 8(3)(c) can include, but are not limited to, the fulfilment of an international obligation owed by Australia.