

## **EXPLANATORY STATEMENT**

### *Migration (United Nations Security Council Resolutions) Regulations 2007*

#### **SPECIFICATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS (REGULATION 4 DEFINITION OF ‘RESOLUTION’)**

1. This Instrument is made under Regulation 4 of the *Migration (United Nations Security Council Resolutions) Regulations 2007* (‘the Regulations’). The Instrument revokes Instrument IMMI 13/091, (F2013L01686), signed on 2 September 2013.
2. Regulation 4 of the Regulations provides that **resolution** means a United Nations Security Council Resolution specified by the Minister, by legislative instrument.
3. The purpose of the Instrument is to specify relevant United Nations Security Council resolutions that prohibit specified individuals and entities from entering Australia. Resolution 2134 (2014) regarding the Central African Republic (CAR), adopted on 28 January 2014 and Resolution 2140 (2014) regarding Yemen, adopted on 26 February 2014, are being added to the list of resolutions appearing in the Instrument.
4. Consultation was undertaken with the Department of Foreign Affairs and Trade.
5. The Office of Best Practice Regulation has granted a standing exemption for Legislative Instruments which give legal effect to changes to the United Nations Security Council’s consolidated travel ban lists. (OBPR Reference 14721).
6. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
7. The Instrument, IMMI 14/034, commences on the day after Registration on the Federal Register of Legislative Instruments.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Regulation 4 of the *Migration (United Nations Security Council Resolutions) Regulations 2007***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to give effect under Australian law to United Nations travel sanctions specified in UNSC Resolutions 2134 (2014) and 2140 (2014).

Some resolutions passed by the United Nations Security Council (UNSC) require United Nations (UN) member states, including Australia, to impose travel sanctions against certain individuals, or members of a group, undertaking or entity. Australia meets these obligations through the *Migration (United Nations Security Council Resolutions) Regulations 2007* (UNSCR Regulations).

In accordance with the UNSCR Regulations, the Minister specifies UNSC Resolutions through a Legislative Instrument (LI). The LI is revised each time a resolution is passed imposing new travel sanctions or terminating existing travel sanctions.

#### **UNSC Resolution 2134 (2014)**

On 28 January 2014, the Security Council adopted Resolution 2134, which, in paragraphs 30 through 42, provides UN member states the necessary legal provisions with which to impose travel sanctions against individuals, as well as financial sanctions against commercial entities or individuals specified by the relevant Security Council Committee under this Resolution. Paragraph 30 (subject to exceptions listed in paragraph 31) of the Resolution enjoins member states to:

*‘... take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee established pursuant to paragraph 57 of resolution 2127 (2013), provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory’*

## **UNSC Resolution 2140 (2014)**

On 26 February 2014, the Security Council adopted Resolution 2140, which, in paragraphs 10 through 20, provides UN member states the necessary legal provisions with which to impose travel sanctions against individuals, as well as financial sanctions against commercial entities or individuals specified by the relevant Security Council Committee under this Resolution for the initial period of one year. Paragraph 15 (subject to exceptions listed in paragraph 16) of the Resolution enjoins member states to:

*‘...take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee established pursuant to paragraph 19 below, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory’*

As these Resolutions give the UN Security Council power to impose travel sanctions on individuals, there is potential for a Legislative Instrument incorporating them to infringe on human rights.

### **Human rights implications**

This Legislative Instrument does not engage any of the relevant rights or freedoms.

#### **Right to freedom of movement**

The right to freedom of movement in Article 12 of the ICCPR applies, relevantly, to the right to move freely *within a country* for those who are *lawfully within the country*, and the *right to leave any country*.

The travel sanctions to which the Instrument gives effect operate in relation to entry into and transit through Australia. They do not operate in relation to movement within, and departure from, Australia.

The Instrument does not affect the right of an Australian citizen to enter Australia. Therefore, the part of Article 12 of the ICCPR dealing with the right of a citizen to enter his or her own country is not engaged.

In the extremely remote event of it applying, the right to freedom of movement in Article 10 of the CRC obliges the State Party to merely deal with an application to enter in a positive, humane, and expeditious manner. It does not confer a right to enter Australia that is inconsistent with the travel sanction.

The Instrument does not affect the variations on the right to freedom of movement appearing in Article 10 of the CRPD, Article 5 of the CERD or Article 15 of the CEDAW.

**Conclusion**

The Instrument is compatible with human rights as it does not raise any human rights issues.

**The Minister for Immigration and Border Protection, the Hon. Scott Morrison MP**