



Australian Government

Department of Immigration and Citizenship

**Parliamentary Joint Committee on
Intelligence and Security**

**Review of the Power to Proscribe
Organisations as Terrorist Organisations**

**Department of Immigration and Citizenship
Submission**

15 February 2007

The Department of Immigration and Citizenship (the department) does not list terrorist organisations. However, it holds records of individuals who have been identified by the responsible authority to be associated with or a member of a terrorist organisation.

Under the *Migration Act 1958* (Migration Act), the Minister manages the entry and stay of non-citizens in Australia. In this context, the Minister has the right to refuse a visa application or cancel visas upon a range of grounds. Among other reasons, a visa application may be refused or a visa may be cancelled as a result of a non-citizen:

- providing incorrect information in order to enter Australia;
- failing to abide by visa conditions;
- presenting a significant risk to the community; or
- for engaging in substantial criminal conduct.

The Minister takes a number of factors into account when considering the appropriateness of refusing a visa application or cancelling the visa of a non-citizen, including legislative requirements, public interest criteria and any other available and relevant information.

Allegations of terrorist activity are referred regardless of whether the individual is linked to a recognised terrorist organisation or not. The department receives allegations from departmental staff in Australia and at overseas posts directly from the public. The department deals with allegations relating to 'individuals' as opposed to the listing of organisations. [REDACTED]

Although other departments undertake to investigate and prosecute allegations of terrorism under the Criminal Code, the department has refusal and cancellation powers of non-citizens who fail the character test under section 501 of the Migration Act, including concerns relating to national security. The department can, if required, grant the appropriate bridging visa so that non-citizens may be lawfully detained for the purposes of: detention during an investigation; any consequent court proceedings; and, imprisonment if convicted for terrorist activity under the Criminal Code.

Under the Migration Act, the department has a number of responsibilities, including:

- assessment of Public Interest Criterion 4002 (PIC 4002) . This criterion ensures that the applicant is assessed by the competent Australian authority, ASIO, as not being directly or indirectly a risk to security (Attachment A);
- assessment of Public Interest Criterion 4003(b) and 4003A (PIC 4003(b)(A)). These criteria ensure that the applicant is not determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (Attachment A);
- management of the Movement Alert List (MAL); and
- refusal and cancellation powers of non-citizens who do not meet one of the above criteria.

The department has responsibility for PIC 4002 and PIC 4003(b), and through the provision of training and advice to departmental staff promotes the referral of all visa applications to ASIO where there is a security concern. In 2007, the department released an internal Standard Operating Procedure (SOP) to staff outlining the procedures for referring all terrorism related allegations.

Movement Alert List (MAL)

[REDACTED] If an individual is identified to be associated with or a member of an organisation deemed by the appropriate authorities to be a terrorist organisation, then a record would be created [REDACTED] for inclusion on MAL. Persons of interest would be registered on the Person Alert List (PAL) and documents of concern on the Document Alert List (DAL), both of which constitute MAL. As of 31 December 2006 there were just over 550,000 persons on PAL. [REDACTED]

[REDACTED] The department maintains and manages the MAL database and function on behalf of a number of internal and external stakeholders, [REDACTED]

Controversial Visitors

Visa applications are sometimes lodged by people who, because of their activities, reputation, known record, or the cause they promote, may not meet the criteria for grant of a visa. These people could find themselves falling within a category known as a "controversial visitor". When the department becomes aware that a visa applicant may be a "controversial visitor", their application is considered against Public Interest Criteria (PIC) 4001 (s.501 character), PIC 4002 (national security) and PIC 4003(a) (foreign policy interest).

Citizenship

The *Australian Citizenship Act 1948* (the Citizenship Act) provides for revocation of Australian citizenship in very limited circumstances. They relate to actions prior to the acquisition of citizenship.

Circumstances under which Australian citizenship can be revoked:

- if convicted of citizenship fraud: false representation in relation to an application for citizenship*; or
**Application forms for Australian citizenship by grant includes a question about whether the person has been associated with terrorist organisations or been involved in acts of terrorism in Australia or overseas.*
- if convicted of a serious criminal offence committed before approval of the citizenship application: in relation to applications for citizenship on or after 22 November 1984, provided that deprivation would not render the person stateless; or
- if convicted of migration-related fraud: in relation to applications for citizenship on or after 10 April 1997 where the fraud was material to the person becoming a permanent resident; and
- the Minister is satisfied that it would be contrary to the public interest for the person to continue to be an Australian citizen.

Citizenship legislation currently before the Parliament includes the strengthening of these provisions to allow for revocation for serious criminal offences committed at any time prior to the person becoming a citizen. Provision is also being made to allow for the revocation of citizenship acquired as a result of third party fraud. In all cases, the Minister must also decide that it would be contrary to Australia's public interest for a person to remain an Australian citizen.

Adverse Assessments received against Visa Applicants and Holders

Where the holder of a temporary visa has been assessed by ASIO to be a risk to security, cancellation is mandatory, except in the case of the holder of a humanitarian or protection visa where cancellation is discretionary. Notwithstanding this, for any further visa applications by these persons, a prejudicial security assessment means the application must be refused. Should a temporary protection visa holder be the subject of visa cancellation, consequential visa cancellations will apply to their family members who hold their visas because of being a member of the family unit of the person whose visa was cancelled.

Where a prejudicial security assessment has been furnished to the department in respect of a permanent resident non-citizen who is residing in Australia, the Minister's power to cancel their visa is discretionary. Notwithstanding this, where the assessment is an adverse assessment containing a recommendation to cancel, it is probable given the national security implications that the Minister would exercise his or her power to cancel the visa.

When a non-citizen's visa is cancelled and there are no other available visa options, arrangements are made for the immediate removal of the unlawful non-citizen to a country where they may be returned. However there are some impediments to the removal process. The most likely impediment to immediate removal includes the affected individuals seeking to exercise their administrative and judicial review rights, both in relation to prejudicial security assessment and the decision to cancel a visa or refuse a visa application.

Refugee and Humanitarian Program

Australia's humanitarian programme, consisting of both offshore and onshore components, includes character and security requirements in applicable visa criteria including Public Interest Criterion 4001, 4002 and 4003A. In the onshore component, as part of the protection visa determination process, the Refugees Convention allows for the exclusion of persons who do not deserve protection, which may include persons involved in terrorist-related activities. The Refugees Convention also allows refugees to be removed to another country on grounds of risk to national security, and a refugee may be removed from Australia on the basis of having been convicted of a particularly serious crime without Australia being in breach of its international obligations.

MIGRATION REGULATIONS 1994

SCHEDULE 4 - PUBLIC INTEREST CRITERIA AND RELATED PROVISIONS

Part 1 - Public Interest Criteria

Public interest criterion is defined in regulation 1.03 to be 'a criterion set out in Part 1 of Schedule 4, and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Part'.

Schedule 4 public interest criteria ("PICs") are 'time of decision' criteria that apply to nearly all Schedule 2 visa subclasses.

Regulation 1.03

4001

Either:

- (a) the applicant satisfies the Minister that the applicant passes the character test; or
- (b) the Minister is satisfied, after appropriate inquiries, that there is nothing to indicate that the applicant would fail to satisfy the Minister that the person passes the character test; or
- (c) the Minister has decided not to refuse to grant a visa to the applicant despite reasonably suspecting that the applicant does not pass the character test; or
- (d) the Minister has decided not to refuse to grant a visa to the applicant despite not being satisfied that the applicant passes the character test.

4002

The applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*.

4003

The applicant is not determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia:

- (a) is, or would be, contrary to Australia's foreign policy interests; or
- (b) may be directly or indirectly associated with the proliferation of weapons of mass destruction.

4003A

The applicant is not determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction.