

# **Charter of the United Nations (Terrorism and Sanctions Legislation) Amendment Regulations 2003 (No. 1) 2003 No. 168**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2003 No. 168**

Issued by the Authority of the Minister for Foreign Affairs

*Charter of the United Nations Act 1945*

*Charter of the United Nations (Terrorism and Sanctions Legislation) Amendment Regulations 2003 (No. 1)*

Section 6 of the *Charter of the United Nations Act 1945* ("the Act") provides that the Governor-General may make regulations for, and in relation to, giving effect to decisions that:

- (a) the Security Council has made under Chapter VII of the Charter of the United Nations; and
- (b) Article 25 of the Charter requires Australia to carry out;

insofar as those decisions require Australia to apply measures not involving the use of armed force.

Subsection 18(1) of the Act provides that the Governor-General may make regulations proscribing persons or entities under this section. Subsection 18(2) of the Act provides that a person or entity must not be proscribed under subsection (1) unless the proscription would give effect to a decision:

- (a) that the Security Council has made under Chapter VII of the Charter of the United Nations; and
- (b) that Article 25 of the Charter requires Australia to carry out; and
- (c) that relates to terrorism and dealings with assets; and
- (d) under which the person or entity is identified (whether in the decision or using a mechanism established under the decision) as a person or entity to which the decision relates.

Pursuant to paragraph 4(b) of United Nations Security Council Resolution 1267, paragraph 8(c) of United Nations Security Council Resolution 1333 and paragraph 2 of United Nations Security Council Resolution 1390, Australia has an international obligation to impose financial sanctions against persons and entities associated with the Taliban and Al Qaida as listed by the UN Committee established by Security Council Resolution 1267 (1999) ("the UN 1267 List"). Up until now, this obligation had been implemented domestically by Part 4 of the *Charter of the United Nations (Sanctions Afghanistan) Regulations 2001* ("the Afghanistan Regulations"). The UN 1267 List was effectively incorporated into Part 4 of the Afghanistan Regulations as an obligation to freeze the assets of these persons and entities and was automatically activated once they are named on the UN 1267 List.

The purpose of the regulations is to transfer the implementation of the financial sanctions against persons and entities named on the UN 1267 list from Part 4 of the Afghanistan Regulations to Part 4 of the Act. Part 4 of the Act, read together with regulation 6(1) of the *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002*, implements financial sanctions against a person or entity if the Minister for Foreign Affairs

is satisfied that the person or entity is mentioned in paragraph 1(c) of United Nations Security Resolution 1373. A person mentioned in paragraph 1(c) of UN Security Council Resolution 1373 is a person who:

- (1) commits or attempts to commit terrorist acts; or
- (2) participates in or facilitates the commission of terrorist acts.

An entity mentioned in paragraph 1(c) of UN Security Council Resolution 1373 is an entity:

- (3) owned or controlled directly or indirectly by a person referred to in (1) or (2) above; or (4) acting on behalf of or at the direction of a person referred to in (1) or (2) above or an entity referred to in (3) above.

Persons and entities qualifying for inclusion in the UN 1267 List also meet the definition of persons and entities mentioned in paragraph 1(c) of UN Security Council Resolution 1373. Thus persons and entities coming under the financial sanctions of the Afghanistan Regulations will always be a subset of persons and entities coming under Part 4 of the Act, by virtue of regulation 6(1) of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*. Maintaining separate measures under both the Afghanistan Regulations and Part 4 of the Act is therefore duplicative. The regulations remove this duplication by making persons and entities on the UN 1267 List subject to the financial sanctions under Part 4 of the Act and by repealing Part 4 of the Afghanistan Regulations. A new regulation 6A to the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* provides that persons and entities named on the UN 1267 List are proscribed by regulation under subsection 18(1) of the Act.

The regulations also make technical amendments to introduce a new four-part structure to the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*.

The regulations commence on gazettal.

## ATTACHMENT

### *Charter of the United Nations (Terrorism and Sanctions Legislation) Amendment Regulations 2003 (No. 1)*

Details of the proposed Regulations are as follows:

Regulation 1 states the name of the Regulations;

Regulation 2 states that the Regulations commence on gazettal;

Regulation 3 states that Schedule 1 amends the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Regulation 4 states that Schedule 2 amends the *Charter of the United Nations (Sanctions Afghanistan) Regulations 2001*;

Item 1 of Schedule 1 inserts a heading for Part 1 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 2 of Schedule 1 inserts a definition of Committee into Regulation 5 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 3 of Schedule 1 inserts definitions of Resolutions 1267 and Resolution 1333 into Regulation 5 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Items 4 of Schedule 1 inserts a definition of Resolution 1390 into Regulation 5 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 5 of Schedule 1 inserts a heading for Part 2 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 6 of Schedule 1 substitutes a new heading for Regulation 6 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 7 of Schedule 1 inserts a new heading for Part 3 and a new regulation 6A into the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* which provides that the Taliban, Usama bin Laden, a member of the Al-Qaida organisation and a person or entity named in the list of the Committee established under paragraph 6 of Resolution 1267 (1999) of the Security Council of the United Nations are proscribed persons or entities for subsection 18(1) of the *Charter of the United Nations Act 1945*;

Item 8 of Schedule 1 inserts a heading for Part 4 of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*;

Item 1 of Schedule 2 amends regulation 3(b) of the *Charter of the United Nations (Sanctions - Afghanistan) Regulations 2001*;

Item 2 of Schedule 2 omits regulation 3(c) of the *Charter of the United Nations (Sanctions Afghanistan) Regulations 2001*;

Item 3 of Schedule 2 omits the definitions of asset, bin Laden asset and Taliban asset in regulation 6 of the *Charter of the United Nations (Sanctions - Afghanistan) Regulations 2001*;

Item 4 of Schedule 2 substitutes a new definition of bin Laden entity into regulation 6 of the *Charter of the United Nations (Sanctions - Afghanistan) Regulations 2001*;

Item 5 of Schedule 2 substitutes a definition of Taliban entity into regulation 6 of the *Charter of the United Nations (Sanctions - Afghanistan) Regulations 2001*; and

Item 6 of Schedule 2 omits Part 4 of the *Charter of the United Nations (Sanctions Afghanistan) Regulations 2001*.