

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 31

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Iran) Regulations 2008

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolutions 1737 (23 December 2006), 1747 (24 March 2007) and 1803 (3 March 2008), and to accommodate amendments made to the Act by the *International Trade Integrity Act 2007*. The Regulations will also repeal the *Charter of the United Nations (Sanctions – Iran) Regulations 2007*, which currently implement Australia's obligations under Resolutions 1737 and 1747.

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

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

Resolution 1737 requires Australia to prevent the supply, sale or transfer of nuclear and missile related materials which could contribute to Iran's proliferation sensitive nuclear activities as well as related technical assistance, training and financial assistance. The Resolution also requires Australia to prohibit the procurement of specified items from Iran, and to impose financial sanctions against persons and entities designated in the Resolution.

Resolution 1747 requires Australia to prohibit the procurement by its nationals, directly or indirectly, or using its flag vessels or aircraft, of any arms or related matériel from Iran, whether or not originating in the territory of Iran. Resolution 1747 also expanded the list of persons and entities subject to financial sanctions imposed originally under Resolution 1737.

The recently adopted Resolution 1803 requires Australia to prohibit the supply, sale or transfer to Iran of a broader range of goods than previously under Resolutions 1737 and 1747, and expanded the list of persons and entities subject to financial sanctions beyond that under Resolution 1737. Specifically, Resolution 1803 designated an additional twelve entities and thirteen persons as being subject to asset freezing measures established under Resolution 1737, and additional items on United Nations Security Council documents S/2006/814 and S/2006/815 were identified as being the subject of supply restrictions from Australia.

These Resolutions were adopted under Article 41 of Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to Article 25 of that Charter. The relevant United Nations Security Council Resolutions can be found on the UN website (www.un.org).

Australia generally implements territorial aspects of trade sanctions via specific regulations

under the *Customs (Prohibited Imports) Regulations 1956*, the *Customs (Prohibited Exports) Regulations 1958*, and the *Customs Regulations 1926*, which are administered by the Australian Customs Service.

The Regulations will ensure that those aspects of all sanctions imposed against Iran by Resolutions 1737, 1747 and 1803 which cannot be implemented under existing legislation are adequately implemented into domestic law.

Interdepartmental and public consultation was undertaken during the preparation of the Regulations. The Department of Foreign Affairs and Trade conducted briefing sessions on the *International Trade Integrity Act 2007*, including the consequential amendments that would be required for each of the regulations made under the Act, in each State and Territory capital between September and November 2007. In addition, the Department gave industry-specific briefings to peak industry bodies assessed as most likely to be affected (the Australian Bankers Association, the Customs National Consultative Group and the Association of Minerals and Petroleum Lawyers). Finally, from August 2007 the Department posted notices on its website and on the business.gov.au consultation site inviting interested parties to provide written comments on a revised regulatory regime under the Act as amended. Other Commonwealth agencies, including the Attorney-General's Department, the Australian Customs Service and the Department of Defence, were consulted during the drafting of the Regulations.

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

Details of the Regulations *Charter of the United Nations (Sanctions – Iran) Regulations 2008*

Part 1: Preliminary

Regulation 1 states that the name of the Regulations is the *Charter of the United Nations (Sanctions – Iran) Regulations 2008*.

Regulation 2 provides that the Regulations commence immediately after the commencement of Schedule 1 to the *International Trade Integrity Act 2007*. This is because the Regulations accommodate amendments made by the *International Trade Integrity Act 2007* to the Act.

Regulation 3 provides that the *Charter of the United Nations (Sanctions – Iran) Regulations 2007* are repealed. This is because the *Charter of the United Nations (Sanctions – Iran) Regulations 2007* currently implement Australia's obligations under Resolutions 1737 and 1747, which have now been supplemented by Resolution 1803.

Regulation 4 provides for the definition of certain terms used in the Regulations, including 'controlled asset' and 'designated person or entity'. 'Controlled asset' means an asset that is owned or controlled by a designated person or entity or by a person or entity acting on behalf of or at the direction of such a person. 'Controlled assets' are also those assets owned or controlled by an entity that is owned or controlled by a designated person or entity, including through illicit means. 'Asset' is defined in section 2 of the Act. 'Designated person or entity' means a person or entity designated in the Annex to Resolution 1737, or designated subsequently by the Security Council or by the Committee established pursuant to Resolution 1737. The effect of the meaning of 'designated person or entity' is to incorporate by reference persons or entities on a list maintained from time to time by the Committee established pursuant to Resolution 1737.

Regulation 5 provides that, for the Regulations, certain goods are export sanctioned goods. 'Export sanctioned goods' are goods mentioned in United Nations Security Council documents S/2006/814 and S/2006/815, as well as goods determined by the Security Council or by the Committee established pursuant to Resolution 1737 for operative paragraph 3(d) of Resolution 1737. 'Export controlled goods' are also goods specified in any determination made under regulation 5. 'Goods' include items, materials, equipment and technology. Sub-regulation 5(2) provides the Minister for Foreign Affairs may, by legislative instrument, make such a determination that the goods are export sanctioned goods, if he or she is satisfied of certain matters.

Regulation 6 provides that, for the Regulations, certain goods are import sanctioned goods. 'Import sanctioned goods' are goods mentioned in United Nations Security Council documents S/2006/814 and S/2006/815, and arms and related matériel. The goods defined in regulation 6 are import sanctioned goods regardless of whether those goods originate in Iran. Regulation 6 also defines 'arms or related matériel' and 'paramilitary equipment'.

Regulation 7 provides that, for the Regulations, a person makes a sanctioned supply if a person supplies, sells or transfers goods to another person, the goods are 'export sanctioned goods', and if, as a direct or indirect result of the supply, sale or transfer, the goods are transferred to Iran, or are incorporated into goods that are transferred to Iran.

Regulation 8 provides that, for the Regulations, certain prescribed activities constitute the provision of a sanctioned service. This includes the provision to any person of technical assistance or training, financial assistance, or investment, brokering or other financial services, if any of these assists with, or is provided in relation to, a sanctioned supply. Sanctioned services also include the transportation of goods that are the subject of a sanctioned supply, or that are import sanctioned goods in the course of being procured from Iran or from a person or entity in Iran.

Regulation 9 provides that, for the Regulations, certain goods are permissible goods. Under paragraph 11(1)(a), the Minister for Foreign Affairs has the power to, on application, grant a person a permit authorising the making of a sanctioned supply of goods if the goods are permissible goods. 'Permissible goods' include, among others, low-enriched uranium mentioned in A.1.2 of INFCIRC/254/Rev.8/Part 1 in Security Council document S/2006/814, provided that the low-enriched uranium is incorporated in assembled nuclear fuel elements for light water reactors. The range of permissible goods is narrow, reflecting limited exceptions within Resolutions 1373, 1747 and 1803.

Part 2: UN Sanction Enforcement Laws

Regulation 10 provides for certain prohibitions relating to a sanctioned supply. Regulation 10 is a UN sanction enforcement law, meaning a contravention of a provision of regulation 10 is an offence under section 27 of the Act. As a consequence of the *International Trade Integrity Act 2007*, section 27 of the Act will introduce a new offence of contravening a UN sanction enforcement law. For bodies corporate, this will be a strict liability offence. Regulation 10 provides that an offence under section 27 of the Act has extraterritorial effect, which gives effect to the requirement in Resolution 1737 that measures apply to Australian nationals as well as to conduct within Australian territory. This extraterritorial application extends to bodies corporate, who will contravene regulation 10 if they had effective control over the actions of another body corporate or entity (wherever incorporated or situated), if that other body corporate or entity made a sanctioned supply that was not an authorised supply.

Regulation 10 also covers non-Australian persons outside Australia, if such persons were to use the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply that is not an authorised supply. 'Authorised supply' is defined in regulation 10.

Regulation 10 provides additionally that a defendant, to a charge of contravening a UN sanction enforcement law under sub-regulations 10(2), (4) or (5), bears the evidentiary burden of proof in establishing that, if the supply, sale or transfer took place in or from a foreign country, a permit was granted by a foreign country.

In cases where the supply, sale or transfer took place in or from a foreign country, sub-regulation 10(6) provides that an otherwise sanctioned supply will be authorised – and will consequently not contravene sub-regulation 10(2) – by a permit granted properly by a foreign country in a way that accorded with that foreign country's obligations under Resolution 1737. (Such an otherwise sanctioned supply, sale or transfer could also be authorised by a permit under regulation 11). A defendant charged for contravening a UN sanction enforcement law under section 27 of the Act that relates to sub-regulations 10(2), (4) and (5) must establish that such a permit was in fact granted by a foreign government in relation to the otherwise sanctioned supply, sale or transfer in or from a foreign country. In other respects, for the purpose of regulation 10, the evidentiary burden remains with the prosecution.

Regulation 11 provides for permits to make a sanctioned supply. A person may apply to the Minister for Foreign Affairs for a permit to make a sanctioned supply. If the Minister were to grant a permit under regulation 11, the Minister must be satisfied stringent conditions precedent were met. In accordance with Resolutions 1737, 1747 and 1803, the Minister must take steps to make certain notifications to the Sanctions Committee established pursuant to Resolution 1737, and, in certain cases, the International Atomic Energy Agency.

Regulation 12 provides for prohibitions relating to import sanctioned goods. As with regulation 10, this regulation is a UN sanction enforcement law. A person contravenes regulation 12 if a person procures import sanctioned goods from Iran or from a person or entity in Iran. Again, as with regulation 10, this offence has extraterritorial application, complying with the scope of relevant United Nations Security Council resolutions. Bodies corporate are liable, as is similarly the case in relation to the comparable offence in regulation 10, for certain actions of entities with which they have the requisite relationship, whether or not the other body corporate was incorporated or is located in Australia.

Regulation 12 also provides that a person (whether or not in Australia and whether or not an Australian citizen) contravenes regulation 12 if that person uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, procuring the goods from Iran or from a person or entity in Iran.

Regulation 13 provides for prohibitions in relation to the provision of sanctioned services. Regulation 13 is also a UN sanction enforcement law. A person contravenes this regulation if that person provides a sanctioned service that is not an authorised service. The offence also applies extraterritorially. Similar evidentiary burdens apply as in regulation 10.

Regulation 14 provides for permits to provide a sanctioned service. The Minister for Foreign Affairs may grant an application to a person to provide a sanctioned service under narrow circumstances.

Regulation 15 provides for prohibitions in relation to certain dealings with designated persons or entities. Again, regulation 15 operates extraterritorially and is a UN sanction enforcement law.

Regulation 16 provides for a prohibition relating to controlled assets. A controlled asset is an asset controlled or owned by a designated person or entity, a person or entity acting on behalf of or at the direction of a designated person or entity, or an entity owned or controlled by a designated person or entity, including through illicit means. Again, regulation 16 operates extraterritorially and is a UN sanction enforcement law.

Regulation 17 provides that the Minister for Foreign Affairs has the power to grant, on application, a permit authorising that an asset be made available to a person or entity that will otherwise contravene the offence in sub-regulation 15(2), and a permit authorising the use of, or dealing with, a controlled asset. Again, such a permit will only be issued in a narrow range of circumstances, as provided in regulation 17. The Minister must also notify the Sanctions Committee established pursuant to Resolution 1737 in certain circumstances.

Part 3: Miscellaneous

Regulation 18 provides that the Minister for Foreign Affairs may delegate his or her powers and functions under these Regulations, other than the power of delegation under regulation 18, to certain officers of the Department. Any such delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.