

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 41

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolutions 1735 (22 December 2006), 1390 (16 January 2002) and 1267 (15 October 1999) (the Resolutions), and to accommodate amendments made to the Act by the *International Trade Integrity Act 2007*. The Regulations also repeal the *Charter of the United Nations (Sanctions – Afghanistan) Regulations 2001*, which currently implement Australia's obligations under the Resolutions, and update the Regulations to also implement asset freeze obligations contained within Resolution 1267, which were previously implemented under the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002* (repealed on 24 March 2008).

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.

The Resolutions require Australia to prevent the supply, sale or transfer, directly or indirectly, to Al-Qaida, Usama bin Laden, the Taliban, or other individuals, groups undertakings and entities associated with them (as referred to in the list of designated persons and entities created pursuant to Resolutions 1267 and 1333), of arms and related matériel of all types. Australia is required to prevent this supply, sale or transfer from Australian territory, by Australian nationals, by persons using Australian flag vessels, and by persons using Australian flag aircraft.

The Resolutions also require Australia to prevent the supply, sale or transfer to the designated persons and entities, of technical advice, assistance, or training related to military activities. Australia is required to prevent this supply, sale or transfer from Australian territory, by Australian nationals, by persons using Australian flag vessels, and by persons using Australian flag aircraft.

The Resolutions additionally require that Australia freeze the funds, other financial assets and economic resources on Australian territory that are owned or controlled by the designated persons or entities. The Resolutions also oblige Australia to ensure that any funds, financial assets or economic resources are prevented from being made available by Australian nationals or by any persons or entities within Australian territory to, or for the benefit of, the designated persons or entities. The Resolutions provide narrow exceptions to these obligations.

Finally, the Resolutions require Australia to prevent the designated persons from entering into, or transiting through, Australian territory.

The 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).

The Regulations ensure that those aspects of all sanctions imposed in relation to Afghanistan by the Resolutions that cannot be implemented under existing legislation are adequately implemented into domestic law.

Australia generally implements territorial aspects of trade sanctions via specific regulations under the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*, and the *Customs Regulations 1926*, which are administered by the Australian Customs Service. Travel restrictions are implemented under the *Migration Act 1956* and associated regulations, administered by the Department of Immigration and Citizenship.

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, were consulted during the drafting of the Regulations.

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

Charter of the United Nations (Sanctions — Afghanistan) Regulations 2008

Details of the Regulations are as follows:

Part 1 Preliminary

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

Regulation 2 provides that the Regulations commence on the day after they are registered.

Regulation 3 repeals the *Charter of the United Nations (Sanctions — Afghanistan) Regulations 2001*. The Regulations replace the *Charter of the United Nations (Sanctions — Afghanistan) Regulations 2001* in order to accommodate changes made to the Act by the *International Trade Integrity Act 2007*.

Regulation 4 provides for the definition of certain terms used in the Regulations, including “arms or related matériel”, “controlled asset”, “designated person or entity”, “export sanctioned goods”, “sanctioned service” and “sanctioned supply”. “Designated person or entity” is defined as Al-Qaida, Usama bin Laden, the Taliban, or a person or entity designated by the Committee or by the Security Council for paragraph 1 of Resolution 1735. This definition has the effect of incorporating by reference persons or entities on a list maintained from time to time by the Committee established by United Nations Security Council Resolution 1267.

Regulation 5 provides that “export sanctioned goods” means arms or related matériel.

Regulation 6 provides that a person who supplies, sells or transfers export sanctioned goods to another person, with the direct or indirect result that the goods are transferred to a designated person or entity, makes a “sanctioned supply”.

Regulation 7 provides that the provision of technical advice, assistance or training related to military activities to a designated person or entity is a “sanctioned service”.

Part 2 UN sanction enforcement laws

Regulation 8 prohibits the making of a sanctioned supply. This regulation will be specified by the Minister for Foreign Affairs in the *Charter of the United Nations (UN Sanctions Enforcement Law) Declaration 2008* as a “UN sanction enforcement law” pursuant to section 2B of the *Charter of the United Nations Act* (the Act). This will have the effect of making contravention of regulation 8 an offence under section 27 of the Act. Regulation 8 provides that section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 8, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 8 also applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to make a sanctioned supply. Similarly, the prohibition in regulation 8 applies to a body corporate in relation to a sanctioned supply made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 9 prohibits the provision of a sanctioned service. This regulation will be specified

by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 9 an offence under section 27 of the Act.

Regulation 9 provides that section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 9, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 9 also applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to provide a sanctioned service. Similarly, the prohibition in regulation 9 applies to a body corporate in relation to a sanctioned service provided by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 10 prohibits making an asset available to, or for the benefit of a designated person or entity without authorisation of a permit issued by the Minister for Foreign Affairs under regulation 12. This regulation will be specified by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 10 an offence under section 27 of the Act. Regulation 10 provides that section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 10, thus giving the offence extraterritorial operation.

Regulation 11 freezes controlled assets, by prohibiting a person who holds a controlled asset from using or dealing with the asset, or allowing the asset to be used or dealt with, or facilitating the use of the asset or dealing with the asset, unless the use or dealing is authorised by a permit under regulation 12. This regulation will be specified by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 11 an offence under section 27 of the Act. Regulation 11 provides that section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 11, thus giving the offence extraterritorial operation.

Regulation 12 provides that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the regulation, grant a person a permit authorising the making available of an asset to a person or entity that would otherwise contravene regulation 10, or a use of, or dealing with, a controlled asset. An application must be for a basic expense dealing, a contractual dealing or an extraordinary expense dealing, as those terms are defined in regulation 5 of the *Charter of the United Nations (Dealings with Assets) Regulations 2008*, and must specify for which kind of dealing the application is.