

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 45

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolution 661 (6 August 1990) and subsequent relevant Resolutions, including 778 (2 October 1992), 1483 (22 May 2003) and 1546 (8 June 2004) (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 – Iraq) Regulations 2006*, which currently implement Australia's obligations under the Resolutions.

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 Iraq of arms or any related matériel, except if required by the Government of Iraq or the multilateral force referred to in Resolution 1483 to serve the purposes of Resolution 1546. Australia is required to prevent such 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 freeze any funds or other financial assets or economic resources of the previous Government of Iraq located in Australia as of 22 May 2003, as well as any funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members. The Resolutions further require Australia to transfer such funds or other financial assets or economic resources to the Development Fund for Iraq, unless they are already the subject of a prior judicial, administrative, or arbitral lien or judgement.

The Resolutions also require Australia to take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since 6 August 1990. The Resolutions require Australia to establish a prohibition on the trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed.

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 the sanctions imposed by the Resolutions that cannot be implemented under existing regulations are adequately implemented into domestic law.

Australia generally implements territorial aspects of trade sanctions via specific regulation 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.

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 — Iraq) 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 — Iraq) 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 — Iraq) Regulations 2006*. The Regulations replace the *Charter of the United Nations (Sanctions — Iraq) Regulations 2006* 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”, “illegally removed cultural property”, “multinational force”, “sanctioned service” and “sanctioned supply”. “Designated person or entity” is defined as a person or entity designated by the Committee for paragraph 19 of United Nations Security Council Resolution 1483. 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 1483.

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 Iraq, makes a “sanctioned supply”.

Part 2 UN sanction enforcement laws

Regulation 7 prohibits the making of a sanctioned supply without authorisation. Regulation 7 defines “authorised supply” as a sanctioned supply authorised by a permit issued under regulation 8 or, if the supply takes place in a foreign country, by a permit properly issued by that country in accordance with its obligations under United Nations Security Council Resolution 1518. Regulation 7 will be specified by the Minister for Foreign Affairs in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* as a “UN sanction enforcement law” pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 8 an offence under section 27 of the Act.

Regulation 7 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 7, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 7 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 an unauthorised supply. Similarly, the prohibition in regulation 7 applies to a body corporate in relation to an unauthorised supply made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 7 also provides that a defendant charged with contravening a UN sanction enforcement law under section 27 of the Act in relation to conduct prohibited by regulation 7 must establish that a permit was in fact granted by a foreign government in relation to the sanctioned supply in or from a foreign country. In other respects, for the purpose of regulation 7, the evidentiary burden remains with the prosecution.

Regulation 8 provides that the Minister for Foreign Affairs may, on application, grant a person a permit authorising the making of a sanctioned supply, but only if the sanctioned supply is required by the Government of Iraq or the multinational force to serve the purposes of United Nations Security Council Resolution 1546.

Regulation 9 provides that a person who suspects that they or another person is in possession of illegally removed cultural property must, as soon as practicable, inform the Secretary of the Department of Foreign Affairs and Trade, the Australian Federal Police, or a police force of a State or Territory. Regulation 9 provides further that, if the Department confirms that the person is in possession of illegally removed cultural property, the person must then comply with any reasonable arrangements specified by the Department for the return of the property to the Department (which will then arrange for the safe return of the property to an appropriate institution in Iraq).

Regulation 10 prohibits any transaction involving illegally removed cultural property (giving such property to another person, trading in such property or transferring the title to such property) other than in accordance with arrangements specified under regulation 9. 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. In addition, the prohibition in regulation 10 applies to a body corporate in relation to any prohibited transactions involving illegally removed cultural property made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 11 provides that a person who holds a controlled asset that is not subject to a judicial, administrative or arbitral lien or judgement must, as soon as practicable, inform the Secretary of the Department of Foreign Affairs and Trade, the Australian Federal Police, or a police force of a State or Territory. If the Department confirms that the person holds a controlled asset the person must comply with any reasonable arrangements specified by the Department for the transfer of the controlled asset to the Development Fund for Iraq.

Regulation 12 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, otherwise than in accordance with arrangements under regulation 11. 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 12 an offence under section 27 of the Act. Regulation 12 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 12, thus giving the offence extraterritorial operation.