



Charter of the United Nations (Sanctions — Iraq) Regulations 2008¹

Select Legislative Instrument 2008 No. 45

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Charter of the United Nations Act 1945*.

Dated 10 April 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

STEPHEN SMITH
Minister for Foreign Affairs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Charter of the United Nations (Sanctions — Iraq) Regulations 2008*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Repeal

The *Charter of the United Nations (Sanctions — Iraq) Regulations 2006* are repealed.

4 Definitions

In these Regulations:

Act means the *Charter of the United Nations Act 1945*.

arms or related matériel includes:

- (a) weapons; and
- (b) ammunition; and
- (c) military vehicles and equipment; and
- (d) spare parts and accessories for the things mentioned in paragraphs (a) to (c); and
- (e) paramilitary equipment.

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

Committee means the committee established under paragraph 1 of Resolution 1518.

controlled asset means the following assets:

- (a) an asset of the previous government of Iraq that was located in Australia on 22 May 2003;

Regulation 4

- (b) an asset that has been removed from Iraq, or acquired, by a designated person or entity.

designated person or entity means a person or entity designated by the Committee or by the Security Council for paragraph 19 of Resolution 1483.

Development Fund for Iraq means the Development Fund for Iraq referred to in paragraph 12 of Resolution 1483.

export sanctioned goods has the meaning given by regulation 5.

illegally removed cultural property means Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance that has been illegally removed from the Iraq National Museum, the Iraq National Library and other locations in Iraq since 6 August 1990.

multinational force means the multinational force described in Resolution 1511.

paramilitary equipment means any of the following:

- (a) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes;
- (b) body armour, including:
 - (i) bullet-resistant apparel; and
 - (ii) bullet-resistant pads; and
 - (iii) protective helmets;
- (c) handcuffs, leg irons and other devices used for restraining prisoners;
- (d) riot protection shields;
- (e) whips;
- (f) parts and accessories designed or adapted for use in, or with, equipment mentioned in paragraphs (a) to (e).

previous government of Iraq means:

- (a) the government or governments of Iraq led by former President Saddam Hussein; and
- (b) a state body, corporation or other body or agency in relation to that government.

Resolution 1483 means Resolution 1483 (2003) of the Security Council, adopted on 22 May 2003.

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Resolution 1511 means Resolution 1511 (2003) of the Security Council, adopted on 16 October 2003.

Resolution 1518 means Resolution 1518 (2003) of the Security Council, adopted on 24 November 2003.

Resolution 1546 means Resolution 1546 (2004) of the Security Council, adopted on 8 June 2004.

sanctioned supply has the meaning given in regulation 6.

Security Council means the United Nations Security Council.

Note In these Regulations:

- (a) the **Department** is the Department of Foreign Affairs and Trade; and
- (b) the **Minister** is the Minister for Foreign Affairs; and
- (c) **asset** has the meaning given in section 2 of the Act.

5 Export sanctioned goods

For these Regulations, **export sanctioned goods** means arms or related matériel.

6 Sanctioned supply

A person makes a **sanctioned supply** if:

- (a) the person supplies, sells or transfers goods to another person; and
- (b) the goods are export sanctioned goods; and
- (c) as a direct or indirect result of the supply, sale or transfer the goods are transferred to Iraq.

Regulation 7

Part 2 UN sanction enforcement laws**7 Prohibitions relating to a sanctioned supply**

- (1) A person contravenes this regulation if:
 - (a) the person makes a sanctioned supply; and
 - (b) the sanctioned supply is not an authorised supply.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note This has the effect that the offence has extraterritorial operation.

- (3) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if the person uses 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.
- (4) A body corporate contravenes this regulation if:
 - (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity makes a sanctioned supply; and
 - (c) the sanctioned supply is not an authorised supply.
- (5) For this regulation:

authorised supply means a sanctioned supply that is authorised by:

 - (a) a permit under regulation 8; or
 - (b) if the supply, sale or transfer takes place in or from a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1518.

Regulation 9

- (6) A defendant, to a charge under section 27 of the Act that relates to subregulation (1), (3) or (4), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (5).
- (7) For paragraph (b) of the definition of authorised supply in subregulation (5), a permit is taken not to have been properly granted if the prosecution shows that the permit was granted on the basis of false or misleading information provided by any person, or of corrupt conduct by any person.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

8 Permit to make a sanctioned supply

- (1) The Minister may, on application, grant a person a permit authorising the making of a sanctioned supply.

Note Section 13A of the Act applies to a permit granted by the Minister under this subregulation.

- (2) The Minister may grant a permit only if the sanctioned supply is required by the Government of Iraq or the multinational force to serve the purposes of Resolution 1546.
- (3) A permit is subject to any conditions specified in the permit.

9 Return of illegally removed cultural property of Iraq

- (1) A person who suspects that the person or another person is in possession of illegally removed cultural property must, as soon as practicable, inform:
- (a) the Secretary of the Department; or
 - (b) the Australian Federal Police, or a police force of a State or Territory.
- (2) If the Department confirms that the person is in possession of illegally removed cultural property the person must comply with any reasonable arrangements specified by the Department for the return of the property to the Department.

Regulation 10

Note The Department in possession of illegally removed cultural property will arrange for the safe return of the property to an appropriate institution in Iraq.

10 Dealing with illegally removed cultural property

- (1) A person contravenes this regulation if, otherwise than in accordance with arrangements specified under regulation 9, the person:
 - (a) gives illegally removed cultural property to another person; or
 - (b) trades in illegally removed cultural property; or
 - (c) transfers the title of illegally removed cultural property.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note This has the effect that the offence has extraterritorial operation.

- (3) A body corporate contravenes this regulation if:
 - (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity gives, trades in or transfers the title of illegally removed cultural property.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

11 Certain controlled assets must be transferred to Development Fund for Iraq

- (1) 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:
 - (a) the Secretary of the Department; or
 - (b) the Australian Federal Police, or a police force of a State or Territory.

Regulation 12

- (2) 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.

Note 1 Claims made by individuals or non-government entities on controlled assets transferred to the Development Fund for Iraq may be presented to the Government of Iraq.

Note 2 Controlled assets enjoy the same privileges, immunities and protections as provided under paragraph 22 of Resolution 1483.

12 Prohibition relating to controlled assets

- (1) A person contravenes this regulation if:
- (a) the person holds a controlled asset ; and
 - (b) the person, otherwise than in accordance with arrangements under regulation 11:
 - (i) uses or deals with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of, or the dealing with, the asset.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note 1 Subregulation (2) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.