

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 50

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolutions 733 (23 January 1992), 1356 (19 June 2001), 1425 (22 July 2002), and 1744 (20 February 2007) (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 – Somalia) 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 Somalia of weapons and military equipment, with narrow exceptions provided in the Resolutions. 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 prevent the provision of financing for the acquisition or delivery of weapons and military equipment to Somalia, with narrow exceptions provided in the Resolutions. Again, the Resolutions require Australia to prevent such provision from Australian territory, by Australian nationals, by persons using Australian flag vessels, and by persons using Australian flag aircraft.

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 — Somalia) 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 — Somalia) 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 — Somalia) Regulations 2006*. The Regulations replace the *Charter of the United Nations (Sanctions — Somalia) 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 “weapons and military equipment”, “sanctioned service” and “sanctioned supply”.

Regulation 5 provides that “export sanctioned goods” means weapons and military equipment.

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 Somalia, makes a “sanctioned supply”.

Regulation 7 provides that the provision, directly or indirectly, to any person in Somalia, of financing for the acquisition or delivery of export sanctioned goods, or technical advice or training, or financial or other assistance, related to military activities, is a “sanctioned service”.

Part 2 UN sanction enforcement laws

Regulation 8 prohibits the making of a sanctioned supply without authorisation. Regulation 8 defines “authorised supply” as a sanctioned supply authorised by a permit issued under regulation 9 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 Resolutions 733, 1356, 1425 and 1744. This regulation 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 *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 an unauthorised supply. Similarly, the

prohibition in regulation 8 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 8 also provides that a defendant charged for contravening a UN sanction enforcement law under section 27 of the Act that relates to a contravention of regulation 8 must establish that 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 8, the evidentiary burden remains with the prosecution.

Regulation 9 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 of a sanctioned supply if the sanctioned supply is solely for the support of, or use by, the mission established by the States of the African Union as authorised by paragraph 4 of resolution 1744, or is otherwise covered by the narrow range of exceptions in sub-regulation 9(2).

Regulation 10 prohibits the provision of a sanctioned service without authorisation. Regulation 10 defines “authorised service” as a sanctioned service authorised by a permit issued under regulation 11 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 Resolutions 733, 1356, 1425 and 1744. 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 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 an unauthorised service. Similarly, the prohibition in regulation 10 applies to a body corporate in relation to an unauthorised service made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 10 also provides that a defendant charged for contravening a UN sanction enforcement law under section 27 of the Act that relates to a contravention of regulation 10 must establish that 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 that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the regulation, grant a person a permit authorising the provision of a sanctioned service which is solely for the support of, or use by, the mission established by the States of the African Union as authorised by paragraph 4 of Resolution 1744. A permit may also be granted if the provision is solely for the purpose of helping develop security sector institutions consistent with the process set out in operative paragraphs 1, 2, and 3 of Resolution 1744.