



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

Select Legislative Instrument 2008 No. 50

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

Contents

Part 1

Preliminary

1	Name of Regulations	3
2	Commencement	3
3	Repeal	3
4	Definitions	3
5	Export sanctioned goods	4
6	Sanctioned supply	4
7	Sanctioned service	5

Part 2

UN sanction enforcement laws

8	Prohibitions relating to a sanctioned supply	6
9	Permit to make a sanctioned supply	7
10	Prohibitions relating to the provision of sanctioned services	8
11	Permit to provide a sanctioned service	9

Part 1 Preliminary

1 Name of Regulations

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

2 Commencement

These Regulations commence on the day after they are registered.

3 Repeal

The *Charter of the United Nations (Sanctions — Somalia) Regulations 2006* are repealed.

4 Definitions

In these Regulations:

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

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 11 of Resolution 751.

export sanctioned goods has the meaning given by regulation 5.

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;

Regulation 5

- (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).

protective clothing includes flak jackets and military helmets.

Resolution 733 means Resolution 733 (1992) of the Security Council of the United Nations, adopted on 23 January 1992.

Resolution 751 means Resolution 751 (1992) of the Security Council of the United Nations, adopted on 24 April 1992.

Resolution 1356 means Resolution 1356 (2001) of the Security Council of the United Nations, adopted on 19 June 2001.

Resolution 1425 means Resolution 1425 (2002) of the Security Council of the United Nations, adopted on 22 July 2002.

Resolution 1744 means Resolution 1744 (2007) of the Security Council of the United Nations, adopted on 20 February 2007.

sanctioned service has the meaning given in regulation 7.

sanctioned supply has the meaning given in regulation 6.

weapons and military equipment 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.

5 Export sanctioned goods

For these Regulations, *export sanctioned goods* means weapons and military equipment.

6 Sanctioned supply

A person makes a *sanctioned supply* if:

- (a) the person supplies, sells or transfers goods to another person; and

Regulation 7

- (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 Somalia.

7 Sanctioned service

For these Regulations, *sanctioned service* means the direct or indirect provision to Somalia of:

- (a) financing for the acquisition or delivery of export sanctioned goods; or
- (b) technical advice or training, or financial or other assistance, related to military activities.

Regulation 8

Part 2 UN sanction enforcement laws**8 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 9; 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

Regulation 9

- (iii) granted in a way that accords with the foreign country's obligations under Resolution 733, Resolution 1356, Resolution 1425 and Resolution 1744.
- (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*.

9 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:
 - (a) 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
 - (b) is solely for the purpose of helping develop security sector institutions consistent with the process set out in paragraphs 1, 2 and 3 of Resolution 1744; or
 - (c) is a supply of protective clothing that is temporarily exported to Somalia for the personal use of:
 - (i) a member of the personnel of the United Nations; or
 - (ii) a representative of the media; or
 - (iii) a humanitarian or development worker or an associated person; or

Regulation 10

- (d) is a supply of non-lethal military equipment that:
 - (i) is intended solely for humanitarian or protective use; and
 - (ii) is approved in advance by the Committee.
- (3) The Minister must not grant a permit for the purposes of paragraph (2) (b) unless:
 - (a) the Minister has notified the Committee in advance of the Minister's intention to grant the permit; and
 - (b) a period of 5 working days has passed since the notification and the Committee has not advised against granting the permit.
- (4) A permit is subject to any conditions specified in the permit.

10 Prohibitions relating to the provision of sanctioned services

- (1) A person contravenes this regulation if:
 - (a) the person provides a sanctioned service; and
 - (b) it is not an authorised service.
- (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 provides a sanctioned service; and
 - (c) the sanctioned service is not an authorised service.
- (4) For this regulation:

authorised service means a sanctioned service that is authorised by:

 - (a) a permit under regulation 11; or

Regulation 11

- (b) if the service is provided in 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 733, Resolution 1356, Resolution 1425 and Resolution 1744.
- (5) A defendant, to a charge under section 27 of the Act that relates to subregulation (1) or (3), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised service in subregulation (4); and
- (6) For paragraph (b) of the definition of authorised service in subregulation (4), 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*.

11 Permit to provide a sanctioned service

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

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 service:
 - (a) 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
 - (b) is solely for the purpose of helping develop security sector institutions consistent with the process set out in paragraphs 1, 2 and 3 of Resolution 1744.
- (3) The Minister must not grant a permit for the purposes of paragraph (2) (b) unless :
 - (a) the Minister has notified the Committee in advance of the Minister's intention to grant the permit; and

Regulation 11

- (b) a period of 5 working days has passed since the notification and the Committee has not advised against granting the permit.
- (4) A permit is subject to any conditions specified in the permit.

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>.