

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

*Charter of the United Nations (UN Sanction Enforcement Law) Amendment
Declaration 2008 (No. 1)*

The *International Trade Integrity Act 2007* amended the *Charter of the United Nations Act 1945* (the Act) to introduce a new offence of contravening a United Nations (UN) sanction enforcement law. Provisions relating to this offence commenced on 24 March 2008. This instrument amends the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* by specifying UN sanction enforcement laws for the purposes of this new offence, in light of revised regulations made under the *Charter of the United Nations Act* that came into effect on 11 April.

Section 27(1) of the Act as amended by the *International Trade Integrity Act 2007* provides that an individual commits an offence if that individual engages in conduct that contravenes a UN sanction enforcement law. Subsection 27(2) of the Act provides that an individual commits an offence if that individual engages in conduct and the conduct contravenes a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law. An offence under subsections 27(1) and (2) is punishable on conviction by imprisonment for a maximum of ten (10) years and/or a fine. If the contravention involves a transaction or transactions the value of which the court can determine, such a fine is the greater of either three (3) times the calculable value of the transaction, or 2 500 penalty units. Otherwise, a fine for a contravention of subsections 27(1) and (2) is 2 500 penalty units.

Section 27(5) of the Act as amended by the *International Trade Integrity Act 2007* also provides that bodies corporate commit an offence if a body corporate engages in conduct that contravenes a UN sanction enforcement law, and an offence for bodies corporate engaging in conduct that contravenes a condition of a licence, permission, consent, authorisation or approval under a UN sanction enforcement law (subsection 27(6)). Offences under subsections 27(5) and (6) are strict liability offences, but do not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening either subsection. An offence under subsections 27(5) and (6) is punishable on conviction by a fine. If the contravention involves a transaction or transactions the value of which the court can determine, such a fine is the greater of either three (3) times the calculable value of the transaction, or 10 000 penalty units. Otherwise, a fine for a contravention of subsections 27(5) and (6) is 10 000 penalty units.

‘UN sanction enforcement law’ is defined in section 2 of the Act and means a provision that is specified in an instrument under subsection 2B(1) of the Act. Subsection 2B(1) of the Act provides that the Minister for Foreign Affairs (the Minister) may, by legislative instrument, specify a provision of a Commonwealth law

as being a UN sanction enforcement law. The Minister may only specify a provision as a UN sanction enforcement law in limited circumstances: such a provision must give effect to a decision of the UN Security Council made under Chapter VII of the Charter of the United Nations. Australia has an obligation under Article 25 of the United Nations Charter to implement decisions of the Security Council. Such measures cannot involve the use of armed force.

By this instrument, the Minister has declared provisions of laws of the Commonwealth as UN sanction enforcement laws under subsection 2B(1) of the Act, meaning these laws will be subject to section 27 of the Act as amended by the *International Trade Integrity Act 2007*. As UN sanctions are implemented primarily through regulations made under the Act and the *Customs Act 1901*, this instrument specifies provisions in all twelve country-specific regulations made under the Act, as well as regulations made under the *Customs Act 1901* (the *Customs (Prohibited Exports) Regulations 1958* and the *Customs (Prohibited Imports) Regulations 1956*).

The relevant UN Security Council Resolutions can be found on the UN website (www.un.org). Relevant Commonwealth Government agencies, including the Australian Customs Service and the Defence of Defence, were consulted prior to and during the drafting of this legislative instrument.