

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 42

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions) Amendment Regulations 2008 (No. 1)

The purpose of the Regulations is to amend three sets of Regulations under the Act that give domestic effect to United Nations Security Council Resolutions, to reflect the repeal of a number of Regulations made under the Act and the making of a number of new Regulations under the Act, and to ensure the proper application of section 2B and section 27 of the Act to the Regulations. The Resolutions under consideration were adopted by the Security Council under Article 41 of Chapter VII of the Charter of the United Nations, and the measures are binding on Australia pursuant to Article 25.

Section 6 of 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 Regulations will amend the following Regulations: *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Assets Regulations), *Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008* (the DPRK Regulations), and *Charter of the United Nations (Sanctions — Iran) Regulations 2008* (the Iran Regulations).

The Assets Regulations are amended to substitute a new definition of “Sanctions Regulations” in regulation 4. The definition lists the Regulations under the Act that give domestic effect to United Nations Security Council Resolutions. Separate Minutes recommend that several of these Regulations be repealed and replaced with new Regulations to accommodate amendments made to the Act under the *International Trade Integrity Act 2007*. The new definition includes the names of the new Regulations.

The Assets Regulations are also amended to clarify what is covered by permissible dealings and to update the terminology in those Regulations.

The DPRK Regulations are amended to remove a number of subregulations that currently specify that provisions within the DPRK Regulations are UN sanction enforcement laws. Under the Act, only the Minister for Foreign Affairs, by legislative instrument, may specify that a provision of the law of the Commonwealth is a UN sanction enforcement law. The DPRK Regulations are further amended to insert notes at the foot of the relevant regulations stating that the regulation concerned is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

The Iran Regulations are amended to remove a number of subregulations that currently specify that provisions within the Iran Regulations are UN sanction enforcement laws. Under the Act, only the Minister for Foreign Affairs, by legislative instrument, may specify that a provision of the law of the Commonwealth is a UN sanction enforcement law. The Iran Regulations are further amended to insert notes at the foot of the relevant regulations stating that the regulation concerned is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Details of the Regulations are set out in the [Annex](#).

Charter of the United Nations (Sanctions) Amendment Regulations 2008 (No. 1)

Details of the Regulations are as follows:

Regulation 1 states that the name of the Regulations is the *Charter of the United Nations (Sanctions) Amendment Regulations 2008 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after they are registered.

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.

Regulation 4 provides that Schedule 2 amends the *Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Regulations 2008*.

Regulation 5 provides that Schedule 3 amends the *Charter of the United Nations (Sanctions — Iran) Regulations 2008*.

Schedule 1 Amendments of *Charter of the United Nations (Dealing with Assets) Regulations 2008*

Item [1] substitutes a new definition of “Sanctions Regulations” in regulation 4 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*. The definition lists the Regulations under the Act that give domestic effect to United Nations Security Council Resolutions. The new definition will include the names of Regulations made after *Charter of the United Nations (Dealing with Assets) Regulations 2008* and omit those that have since been repealed.

Item [2] amends subregulation 5 (2) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, by omitting the word “subsections”, which is incorrectly used in this context, and substituting “subregulations”, the correct term in this context.

Item [3] amends paragraphs 5 (2) (a) and (b) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, by omitting the word “subsections” and substituting “subregulations”, for the same reason as in Item [2].

Item [4] substitutes new text for paragraphs 5 (3) (a), (4) (a) and (5) (a), to specify that payments referred to in each paragraph relate to payments to an entity owned or controlled by a designated person or entity, in addition to payments to a designated person or a person or entity acting on behalf of, or at the direction of, a designated person or entity. This is to ensure that all payment types referred to in the relevant resolutions of the United Nations Security Council are covered by the paragraphs.

Item [5], for the same reason as Item [4], substitutes new text for paragraph 5 (6) (a), to specify that payments referred to in each paragraph relate to payments to an entity owned or controlled by a designated person or entity, in addition to payments to a designated person or a person or entity acting on behalf of, or at the direction of, a designated person or entity.

Item [6], for the same reason as Item [4], substitutes new text for paragraph 5 (7) (a), to specify that payments referred to in each paragraph relate to payments to an entity owned or

controlled by a designated person or entity, in addition to payments to a designated person or a person or entity acting on behalf of, or at the direction of, a designated person or entity.

Item [7] amends subregulation 5 (7) to replace the phrase “extraordinary expense dealing” with “extraordinary expense dealing if it is necessary for extraordinary expenses”. As currently drafted, the subregulation is open to the interpretation that any dealing not covered by the previous subregulations is an “extraordinary expense dealing”. This amendment prevents such an interpretation.

Schedule 2 Amendments of *Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Regulations 2008*

Item [1] deletes subregulation 9 (1), including the note. The subregulation being deleted specifies that the regulations is a UN sanction enforcement law. Under the Act, only the Minister for Foreign Affairs, by legislative instrument, may specify that a provision of the law of the Commonwealth is a UN sanction enforcement law.

Item [2] provides for the insertion of a note at the foot of subregulation 9 (5), to the effect that regulation 9 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. This note will assist a reader of the Regulations to identify that this regulation is a UN sanction enforcement law.

Item [3] deletes subregulation 10 (1), including the note, for the same reason as set out in Item [1].

Item [4] provides for the insertion of a note at the foot of subregulation 10 (5), to the effect that regulation 10 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [2].

Item [5] deletes subregulation 11 (1), including the note, for the same reason as set out in Item [1].

Item [6] provides for the insertion of a note at the foot of subregulation 11 (5), to the effect that regulation 11 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [2].

Item [7] deletes subregulation 12 (1), including the note, for the same reason as set out in Item [1].

Item [8] substitutes the note to subregulation 12 (3), with a note specifying that subregulation 12 (3) has the effect that the offence has extraterritorial application, and a second note to the effect that regulation 12 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. The first note will assist a reader of the Regulations to identify that the UN sanction enforcement law in regulation 12 (2) has extraterritorial application. The second note is included for the same reason as set out in Item [2].

Item [9] deletes subregulation 12 (1), including the note, for the same reason as set out in Item [1].

Item [10] substitutes the note to subregulation 13 (3), with a note specifying that subregulation 13 (3) has the effect that the offence has extraterritorial application, and a second note to the effect that regulation 13 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reasons as set out in Item [8].

Schedule 3 Amendments of *Charter of the United Nations (Sanctions — Iran) Regulations 2008*

Item [1] deletes subregulation 10 (1), including the note. The subregulation being deleted specifies that the regulations is a UN sanction enforcement law. Under the Act, only the Minister for Foreign Affairs, by legislative instrument, may specify that a provision of the law of the Commonwealth is a UN sanction enforcement law.

Item [2] provides for the insertion of a note at the foot of subregulation 10 (8), to the effect that regulation 10 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [2]. This note will assist a reader of the Regulations to identify that this regulation is a UN sanction enforcement law.

Item [3] deletes subregulation 12 (1), including the note, for the same reason as set out in Item [1].

Item [4] provides for the insertion of a note at the foot of subregulation 12 (5), to the effect that regulation 12 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [2].

Item [5] deletes subregulation 13 (1), including the note, for the same reason as set out in Item [1].

Item [6] provides for the insertion of a note at the foot of subregulation 13 (7), to the effect that regulation 13 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [2].

Item [7] deletes subregulation 15 (1), including the note, for the same reason as set out in Item [1].

Item [8] substitutes the note to subregulation 15 (3), with a note specifying that subregulation 15 (3) has the effect that the offence has extraterritorial application, and a second note to the effect that regulation 15 is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. The first note will assist a reader of the Regulations to identify that the UN sanction enforcement law in regulation 15 (2) has extraterritorial application. The second note is included for the same reason as set out in Item [2].

Item [9] deletes subregulation 16 (1), including the note, for the same reason as set out in Item [1].

Item [10] substitutes the note to subregulation 16 (3), with a note specifying that subregulation 16 (3) has the effect that the offence has extraterritorial application, and a second note to the effect that regulation 16 is a UN sanction enforcement law as specified by

the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, for the same reason as set out in Item [8].