

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 109

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to correct a drafting error in the *Charter of the United Nations (Sanctions – Iran) Regulations 2008* (the Principal Regulations) by including goods referred to in sub-regulation 5(2) of the Principal Regulations as “permissible goods” under regulation 9.

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 the Security Council has made under Chapter VII of the Charter of the United Nations, and that 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 Principal Regulations currently implement Australia’s obligations under United Nations Security Council Resolutions 1737 (2006), 1747 (2007) and 1803 (2008) (the Resolutions) in relation to Iran. The Resolutions require Australia to prevent the supply, sale or transfer of nuclear and missile related equipment, goods and technology (“export sanctioned goods”) which could contribute to Iran’s proliferation sensitive nuclear activities.

The Resolutions identify three categories of export sanctioned goods, with each category subject to differing degrees of control. The first category requires the prior consent of the Committee of the United Nations Security Council established under Resolution 1737 (2006) (“the 1737 Committee”), in addition to other, strict conditions, before a State can authorise its supply to Iran. The second category is only prohibited if a State determines that the goods, if supplied to Iran, would contribute to Iran’s sanctioned nuclear and missile program.

Regulation 9 of the Principal Regulations defines goods in this second category as “permissible goods”. Regulation 11 of the Principal Regulations allows the Minister for Foreign Affairs to authorise the supply of “permissible goods” to Iran if the supply meets certain conditions, but does not require the prior approval of the 1737 Committee. All other “export sanctioned goods” may only be authorised for transfer to Iran with the prior approval of the 1737 Committee (amongst other preconditions).

The Resolutions themselves specify which goods are included in the first two categories. The third category comes under a “catch-all” clause, under which a State is required to prohibit the supply to Iran of goods not specified in the first two categories that the State itself nevertheless determines would contribute to Iran’s sanctioned nuclear or missile programs. Under the Principal Regulations, this third category of goods is determined pursuant to sub-regulation 5(2), under which the Minister for Foreign Affairs has the authority to determine the goods that fall within this “catch-all” clause.

At present, goods determined under sub-regulation 5(2) of the Principal Regulations are not “permissible goods” under regulation 9, with the effect that the Minister for Foreign Affairs may only authorise their transfer to Iran with the prior approval of the 1737 Committee. This

is inconsistent with the terms of the Resolutions, which specify that it is up to each State, and not the 1737 Committee, to determine whether such goods should or should not be transferred to Iran.

To bring the Principal Regulations into line with the Resolutions, the Regulations amend the Principal Regulations to provide that goods determined under sub-regulation 5(2) are included as “permissible goods” under regulation 9

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).

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. Travel restrictions are implemented under the *Migration Act 1956* and associated regulations, administered by the Department of Immigration and Citizenship.

No public consultation was undertaken under section 17 of the *Legislative Instruments Act 2003* before this instrument was made as this instrument is of a minor machinery nature and does not substantially alter existing arrangements.

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

Annex

Charter of the United Nations (Sanctions – Iran) 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 – Iran) 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 (Sanctions – Iran) Regulations 2008*.

Schedule 1 Amendments of *Charter of the United Nations (Sanctions – Iran) Regulations 2008*

Item [1] substitutes “1737;” for “1737.” at the end of subparagraph 9(c)(ii) to provide for the insertion of a new paragraph 9(d).

Item [2] inserts a new paragraph 9(d) to include, as permissible goods, goods determined by the Minister for Foreign Affairs under sub-regulation 5(2) to be export sanctioned goods.