

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 59

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 2009 (No. 1)

The purpose of the Regulations is to ensure that only goods specified expressly for control by the United Nations Security Council (UNSC) are subject to the pre- and post-permit conditions specified in UNSC Resolution 1737 (2006) in relation to Iran.

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 *Charter of the United Nations (Sanctions – Iran) Regulations 2008* (the Principal Regulations) currently implement Australia's obligations under United Nations Security Council (UNSC) Resolutions 1737 (2006), 1747 (2007) and 1803 (2008) (the Resolutions) in relation to Iran. The Resolutions require Australia to prohibit, subject to exceptions and conditions set out in the Resolutions, 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 or missile activities.

The Resolutions impose obligations in relation to three categories of export sanctioned goods. The first category is all goods mentioned in UNSC documents S/2006/814 (relating to nuclear-related goods, with some specific exceptions as discussed below) and S/2006/815 (relating to missile-related goods). The Resolutions prohibit the supply, sale or transfer of such goods without the prior consent of the Committee of the United Nations Security Council established under Resolution 1737 (2006) ("the 1737 Committee"), in addition to other conditions specified in the Resolutions. These conditions are set out in subregulation 11 (1), paragraph (b) and sub-regulation 11 (4) of the Principal Regulations.

The second category is goods mentioned in specified sections of S/2006/814 if destined for use in light water reactors. The Resolutions prohibit the supply, sale or transfer of such goods unless the supply, sale or transfer meets specific conditions specified in the Resolutions. These conditions are set out in subregulations 11 (2) and 11 (4) of the Principal Regulations.

The third category is any goods not specified in the first two categories that the State itself nevertheless determines would contribute to Iran's proliferation-sensitive nuclear or missile programs. There are no conditions for the supply, sale or transfer to Iran of such goods under the Resolutions, merely an obligation to prohibit their supply, sale or transfer if the State makes the determination that their supply to Iran would contribute to Iran's proliferation-sensitive nuclear or missile programs.

The Principal Regulations originally gave effect to controls on this third category of goods by authorising the Minister, pursuant to sub-regulation 5(2), to determine, by legislative instrument, that specified goods are export sanctioned goods, if he was satisfied that the goods

would, if supplied to Iran, contribute to enrichment-related, reprocessing or heavy water-related activities; or the development of nuclear weapon delivery systems; or the pursuit of activities about which the International Atomic Energy Agency has expressed concern or identified as outstanding. The goods so determined are then subjected to the same measures of control that apply to the second category of goods (that is, the conditions set out in subregulations 11 (2) and 11 (4) of the Principal Regulations must be met).

It has become clear that this means of implementing controls in relation to the third category of goods was deficient in two respects. First, a decision that goods *would* contribute to the activities set out in subregulation 5 (2) (that is, that they fall within the third category of goods, and are therefore subject to the prohibition in the Resolutions) is a two stage process: identifying goods that *could* so contribute; followed by an assessment of whether those goods, if supplied to a particular end user or for a particular end use, *would* in fact so contribute. The Principal Regulations follow this logic, by providing for the Minister to determine a list of goods and then allowing him to authorise their supply, sale or transfer to Iran subject to certain conditions. The terminology used in subregulation 5 (2), however, is that the list of goods are goods that the Minister has determined *would* contribute to the activities set out in subregulation 5 (2), which implies that a decision on the application to those goods of the prohibition in the Resolutions has already been made.

Second, the supply, sale or transfer to Iran of goods that fall within the third category of goods are prohibited outright by the Resolutions. They are therefore not subject to the pre- and post-supply conditions provided for by the Resolutions in relation to the second category of goods.

The purpose of the Regulations is to ensure that Australian laws implementing controls required by the Resolutions in relation to the third category of goods precisely align with Australia's obligations under the Resolutions. The Regulations do this by amending subregulation 5 (2) of the Principal Regulations to clarify that goods determined by the Minister pursuant to subregulation 5 (2) are goods that *could potentially* contribute to the activities mentioned in paragraph 5 (2) (a), (b) or (c) if supplied, sold or transferred to Iran, rather than goods that *would* in fact so contribute. The Regulations then amend subregulation 11 (2) and 11 (4) of the Principal Regulations to ensure that permits for the supply, sale or transfer of goods determined pursuant to subregulation 5 (2) are not subject to the pre- and post-supply conditions required by the Resolutions in relation to goods specified by the Resolutions as being subject to control. Finally, the Regulations insert a new subregulation 11 (2A) in the Principal Regulations to provide that the Minister must not grant a permit for the supply, sale or transfer to Iran of goods determined by the Minister pursuant to subregulation 5 (2) unless he or she is satisfied that the supply, sale, or transfer of the goods would not contribute to Iran's proliferation-sensitive nuclear or missile programs.

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).

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](#).

Charter of the United Nations (Sanctions – Iran) Amendment Regulations 2009 (No. 1)

Details of the Regulations are as follows:

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions – Iran) Amendment Regulations 2009 (No. 1)*.

Regulation 2 provides for the commencement of the Regulations 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

Item [1] amends subregulation 5 (2) by replacing the word “would” with the word “could”, in order to clarify that goods determined by the Minister pursuant to subregulation 5 (2) are goods that could potentially contribute to the activities mentioned in paragraph 5 (2) (a), (b) or (c) if supplied, sold or transferred to Iran, rather than goods that would in fact so contribute.

Item [2] amends subregulation 11 (2) to replace the text: “The Minister must not grant a permit unless satisfied that:” with the text: “If the goods are permissible goods mentioned in paragraph 9 (a), (b) or (c), the Minister must not grant a permit unless satisfied that:”, in order to specify that the conditions for the grant of a permit set out in subregulation 11(2), paragraphs (a) to (e) apply only to goods specified by the relevant Resolutions of the United Nations Security Council as being conditionally permissible for supply, sale or transfer to Iran.

Item [3] inserts a new subregulation 11 (2A) after subregulation 11 (2) to provide that, for goods mentioned in paragraph 9 (d), the Minister must not grant a permit unless satisfied that the supply, sale, or transfer of the goods would not contribute to the activities mentioned in paragraph 5 (2) (a), (b) or (c), in fulfilment of Australia’s obligation in subparagraphs 4 (b) and (c) of United Nations Security Council Resolution 1737 of 23 December 2006.

Item [4] amends subregulation 11 (4) by replacing the text: “The Minister must take steps to ensure that,” with the text: “If the Minister grants a permit under subregulation (2), he or she must take steps to ensure that,” , in order to specify that the post-authorisation conditions set out in subregulation 11(4) apply only to goods specified by the relevant Resolutions of the United Nations Security Council as being conditionally permissible for supply, sale or transfer to Iran.