

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 88

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to implement obligations of the United Nations Security Council (UNSC) that have arisen since the making of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* (the Principal Regulations).

Section 6 of the *Charter of the United Nations Act 1945* provides that the Governor-General may make regulations for, and in relation to, giving effect to decisions that the UNSC has made under Chapter VII of the Charter of the United Nations which 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 UNSC Resolutions 733 (23 January 1992), 1356 (19 June 2001), 1425 (22 July 2002) and 1744 (20 February 2007) to impose an embargo on the supply to Somalia of weapons and military equipment and associated services, subject to limited exceptions. Since the Principal Regulations came into effect on 17 April 2008, Australia's obligations have been extended by three subsequent Resolutions. The Regulations amend the Principal Regulations to implement these new obligations.

Resolution 1844 (20 November 2008) obliges UN Member States to prevent the direct or indirect supply, sale or transfer of weapons and military equipment and the direct or indirect supply of technical assistance or training, financial and other assistance related to military activities or the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee. The Regulations insert new provisions into the Principal Regulations, respectively to define such conduct as a "prohibited supply to a designated person or entity" (new regulation 5A) and a "prohibited service to a designated person or entity" (new regulation 6A). The Regulations then insert a new regulation 12 into the Principal Regulations to provide that such conduct contravenes the regulation.

Resolution 1844 further obliges UN Member States to impose targeted financial sanctions against individuals or entities designated by the UNSC's Somalia Sanctions Committee, as well as against individuals and entities acting on their behalf or at their direction, and against entities owned or controlled by them, as designated by the Committee. The Regulations implement these targeted financial sanctions by inserting a new regulation 13 into the Principal Regulations to prohibit making assets available to designated persons or entities and a new regulation 14 to prohibit the use of or dealing with assets owned or controlled by designated persons or entities (thus freezing such assets). The Regulations insert a new regulation 15 to provide for the Minister to authorise certain transactions involving designated persons or entities, as specifically allowed for in Resolution 1844.

New regulations 12, 13 and 14 will be specified by the Minister for Foreign Affairs as UN sanction enforcement laws pursuant to section 2B of the *Charter of the United Nations Act 1945*, and included in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Resolution 1846 (2 December 2008) provides that the arms embargo imposed by paragraph 5 of Resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of Resolution 1425 (2002) does not apply to supplies of technical assistance to Somalia solely for the purpose of enhancing Somalia's capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines. The Regulations amend existing permit conditions provided by Regulation 11 (2) of the Principal Regulations to include this new exception.

Similarly, Resolution 1851 (16 December 2008) provides that the arms embargo imposed by paragraph 5 of Resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of Resolution 1425 (2002) does not apply to weapons and military equipment destined for the sole use of Member States and regional organizations cooperating with Somalia's Transitional Federal Government in the fight against piracy and armed robbery at sea. The Regulations amend existing permit conditions provided by Regulation 9 (2) of the Principal Regulations to include this new exception.

The Regulations ensure that those aspects of the sanctions imposed by the Resolutions that could not be implemented under the existing regulations are adequately implemented into domestic law.

Interdepartmental and industry consultations were undertaken during the preparations of the Principal Regulations. As the Regulations implement Australia's international obligations, it was not deemed necessary to undertake public consultation prior to the making of the Regulations.

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 the Charter. The relevant United Nations Security Council Resolutions can be found on the UN website (www.un.org.au).

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

Annex

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

Schedule 1 Amendments

Item [1] amends sub-regulation 4 and inserts a definition for “controlled asset” and “designated person or entity”.

Item [2] amends sub-regulation 4 and inserts a definition for “Resolution 1844”, “Resolution 1846” and “Resolution 1851”.

Item [3] amends sub-regulation 4 and inserts definitions for “prohibited service to designated person or entity” and “prohibited supply to designated person or entity”.

Item [4] amends sub-regulation 4 and inserts a definition for “Security Council”.

Item [5] amends sub-regulation 4 and inserts a definition for “working day”.

Item [6] inserts a new regulation 5A which provides that a person makes a ***prohibited supply to a designated person or entity*** if the person supplies, sells or transfers export sanctioned goods to a designated person or entity or to a person who is not a designated person or entity and as a direct or indirect result of that supply, sale or transfer, the goods are transferred to a designated person or entity.

Item [7] inserts a new regulation 6A which defines ***prohibited service to a designated person or entity*** to mean the direct or indirect provision to a designated person or entity of technical assistance or training or financial and other assistance including investment, brokering or other financial services related to military activities or to the supply, sale, transfer manufacture, maintenance or use of export sanctioned goods.

Item [8] divides Part 2 into two Divisions and entitles Division 2.1 **Sanctioned supply and services to Somalia**.

Item [9] omits “Committee” and inserts “Committee; or” to allow for the insertion of item [10] below.

Item [10] inserts a new paragraph, paragraph 9 (2) (e), into sub-regulation 9 (2), to provide that the Minister for Foreign Affairs can authorise the supply, sale or transfer of export sanctioned goods in circumstances where the supply is for the sole use of Member States and regional organisations cooperating with Transitional Federal Government in the fight against piracy and armed robbery at sea in accordance with paragraph 6 of Resolution 1851.

Item [11] omits “Resolution 1744” and inserts “Resolution 1744; or” to allow for the insertion of item [12] below.

Item [12] inserts a new paragraph, paragraph 11 (2) (c), into sub-regulation 11 (2), which provides that the Minister for Foreign Affairs can authorise the provision of sanctioned services, in circumstances where the service is for the sole purpose of enhancing the capacity of Somalia and nearby coastal States in combating piracy and armed robbery at sea as set out in paragraph 5 of Resolution 1846.

Item [13] amends sub-regulation 11(3) by adding that the new paragraph 11 (2) (c) as one of the circumstances in which the Minister for Foreign Affairs must have given prior notice of his intention to grant a permit to the UNSC Somalia Sanctions Committee.

Item [14] inserts a new Division to Part 2, Division 2.2, entitled “Sanctions relating to designated person or entity” into the Principal Regulations after Regulation 11. Division 2.2 is comprised of regulations 12 to 15.

Regulation 12 creates an offence of making a prohibited supply to a designated person or entity or to provide a prohibited service to a designated person or entity (sub-regulation (1)). The offence applies to a body corporate with effective control over the actions of another body corporate or entity, wherever incorporated or situated, where the other body corporate or entity makes a prohibited supply to a designated person or entity (sub-regulation (2)) or provides a prohibited service to a designated person or entity (sub-regulation (3)). Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 12, thus having the effect that the offence has extraterritorial operation (sub-regulation (4)).

Regulation 13 makes it an offence to directly or indirectly make an asset available to, or for the benefit of, a designated person or entity and the making available of the asset is not authorised by a permit under regulation 15. Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 13, thus having the effect that the offence has extraterritorial operation (sub-regulation (2)).

Regulation 14 makes it an offence for a person who holds a controlled asset to use or deal with the asset; or allow the asset to be used or dealt with; or facilitate the use of the asset or dealing with the asset, when such use or dealing is not authorised by a permit under regulation 15 (sub-regulation (1)). Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulation 14, thus having the effect that the offence has extraterritorial operation (sub-regulation (2)).

Regulation 15 provides that the Minister may, on application, grant a person a permit authorising conduct that would otherwise contravene sub-regulation 13 (1) or a use of, or dealing with, a controlled asset (sub-regulation (1)). Such an application must be for a basic expense dealing, an extraordinary expense dealing, a legally required dealing or a contractual dealing, as those terms are defined in regulation 5 of the *Charter of the United Nations (Dealings with Assets) Regulations 2008* (sub-regulation (2)) and must specify which kind of dealing the application is for (sub-regulation (3)). The Minister must notify the UNSC Somalia Sanctions Committee of any application. The Minister may only grant a permit for a basic expense dealing if 3 working days have passed since the notice was given and the Committee has not advised against granting the permit to the applicant (sub-regulation (4)) and for an extraordinary expense dealing and may grant the permit only with the approval of the Committee (sub-regulation (5)). A permit is subject to any conditions specified in the permit (sub-regulation (7)).