

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 31

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions - Liberia) Amendment Regulations 2010 (No. 1)

The purpose of the Regulations is to update the *Charter of the United Nations (Sanctions - Liberia) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with decisions of the United Nations Security Council (UNSC) set out in Resolution 1903, adopted 17 December 2009, amending the sanctions in relation to Liberia.

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 Security Council 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 1792 (19 December 2007), 1731 (20 December 2006), 1683 (13 June 2006), 1532 (12 March 2004) and 1521 (22 December 2003) to impose sanctions in relation to Liberia.

Paragraph 2 of Resolution 1521 hitherto obliged UN Member States to prevent the sale or supply to Liberia, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, whether or not originating in their territories, as well as any provision to Liberia by their nationals or from their territories of technical training or assistance related to the provision, manufacture, maintenance or use of such items. Paragraph 2 of Resolution 1521, together with paragraphs 1 and 2 of Resolution 1683 and paragraph 1(b) of Resolution 1731, then apply a range of exceptions to the arms embargo.

Paragraph 4 of Resolution 1903 replaces the arms embargo in paragraph 2 of Resolution 1521 with substantively the same measures, with two key differences. First, it modifies the arms embargo to apply only to non-governmental entities and individuals operating in the territory of Liberia (with exceptions as set out in paragraph 5 of Resolution 1903), and no longer to the geographic entity of Liberia as a whole. Second, it extends the scope of services to be subject to sanctions to include specific reference to financing and financial assistance. Paragraph 3 of Resolution 1903 makes explicit that the embargo does not apply to the Government of Liberia.

Paragraph 5 of Resolution 1903 provides for exceptions to the arms embargo. The principal difference between these exceptions and the ones they replace from Resolutions 1521, 1683 and 1731 reflect the fact that the embargo no longer applies to the Government of Liberia. Resolution 1903 preserves the previous exceptions

applying to the United Nations Mission in Liberia, to protective clothing for United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, as well as other supplies of non-lethal military equipment intended solely for humanitarian or protective use.

The modifications made by Resolution 1903 to the sanctions regime in relation to Liberia require amendments be made to the Principal Regulations. The Regulations include in the Principal Regulations reference to Resolution 1903 where appropriate (in regulation 4 and subregulations 8(5) and 10(4)). The Regulations amend the Principal Regulations to bring the definition of “sanctioned service” in Regulation 7 into line with the services measures as described in paragraph 4 of Resolution 1903. The Regulations also bring the grounds under which the Minister for Foreign Affairs may grant a permit to supply, sell or transfer arms or related materiel to Liberia (subregulations 9(2) to (4)) and to provide sanctioned services to Liberia (subregulations 11(2) and (3)) into conformity with the exceptions in paragraph 3, 5 and 6 of Resolution 1903.

Resolution 1903 was adopted under Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to Article 25 of that Charter.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

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.

Authority:

Section 6 of the
Charter of the United Nations Act 1945

Annex*Charter of the United Nations (Sanctions - Liberia) Amendment Regulations 2010 (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 - Liberia) Amendment Regulations 2010 (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 - Liberia) Regulations 2008*.

Schedule 1 Amendments

Item 1 amends regulation 4 by removing definitions of “Resolution 1683”, “Resolution 1731” and “Resolution 1792”, as they have been superseded by Resolution 1903.

Item 2 amends regulations 4 by inserting Resolution 1903 (2009) into the ‘Definitions’.

Item 3 amends regulation 7 by replacing “technical training or assistance related to the provision, manufacture, maintenance or use of export sanctioned goods” with “any assistance, advice, training, financing or financial assistance related to military activities.”

Item 4 amends subregulation 8(5) by omitting “Resolution 1521, Resolution 1683, Resolution 1731 and Resolution 1792” and inserting “Resolution 1521 and Resolution 1903” into the definition of “authorised supply” in subregulation (b) (iii).

Item 5 amends subregulations 9(2) to (4) by substituting their text for text in conformity with Resolution 1903. The amended subregulation 9(2) provides that the Minister may grant a permit only if the sanctioned supply is: to the Government of Liberia; or intended solely for the support of, or use by, the United Nations Mission in Liberia (UNMIL); or is a supply of non-lethal military equipment that is intended solely for humanitarian or protective use or use in technical assistance or training; or is a supply of protective clothing that is temporarily exported to Liberia for the personal use of a member of the personnel of the United Nations, a representative of the media, or a humanitarian or development worker or an associated person. The amended subregulation 9(3) provides that the Minister must notify the Committee, in advance, of a grant of a permit authorising a sanctioned supply to the Government of Liberia; or of non-lethal military equipment that is intended solely for humanitarian or protective use or use in related technical assistance or training, including in the notification all relevant information in accordance with paragraph 6 of Resolution 1903. The amended subparagraph 9(4) provides that a permit issued by the Minister is subject to any conditions specified in the permit.

Item 6 amends subregulation 10(4) by omitting “Resolution 1521, Resolution 1683, Resolution 1731 and Resolution 1792” and inserting “Resolution 1521 and Resolution 1903” into the definition of “authorised service” in subparagraph (b) (iii).

Item 7 amends subregulation 10(4) by omitting “Resolution 1521, Resolution 1683, Resolution 1731 and Resolution 1792” and inserting “Resolution 1521 and Resolution 1903” into the definition of “authorised supply”.

Item 8 amends subregulation 11(2) and (3) by substituting their text for text in conformity with Resolution 1903. The amended subregulation 11(2) provides that the Minister may grant a permit only if the assistance, advice, training, financing or financial assistance is provided to the Government of Liberia; or is intended solely for the support of, or use by, UNMIL; or is related to a supply of non-lethal military equipment intended solely for humanitarian or protective use. The amended subregulation 11(3) provides that the Minister must notify the Committee, in advance, of a permit authorising the provision of a sanctioned service to the Government of Liberia; or a supply of non-lethal military equipment intended solely for humanitarian or protective use. The amended subparagraph 11(4) provides that a permit issued by the Minister is subject to any conditions specified in the permit.