

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 228

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 2010 (No. 1)

The purpose of the Regulations is to amend the *Charter of the United Nations (Sanctions – Iran) Regulations 2008* (the Principal Regulations) to implement obligations of the United Nations Security Council (UNSC) that have arisen since the Principal Regulations were last amended in April 2009.

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 UNSC has made under Chapter VII of the Charter of the United Nations and those 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 UNSC resolutions 1737 (23 December 2006), 1747 (24 March 2007) and 1803 (3 March 2008). Pursuant to these resolutions, Australia is obliged 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. Since the Principal Regulations were last amended, Australia's obligations have been modified by resolution 1929 (9 June 2010) which updates and supplements earlier resolutions imposing sanctions against Iran.

Resolution 1929 updates and expands the range of items that must not be supplied to Iran. Paragraph 8 of resolution 1929 adds a new category of items – heavy military equipment and associated technical training, financial resources or services, advice, other services or assistance – to the items prohibited for supply to Iran. Paragraph 13 of resolution 1929 replaces the reference lists which have hitherto defined the items prohibited by resolution 1737 for supply to Iran because of their potential to contribute to Iran's proliferation-sensitive nuclear and missile activities with updated versions of those lists. Paragraph 13 of resolution 1929 also lowers the threshold for the "catch-all" obligation in resolution 1737 (whereby States must prevent the supply to Iran of items not on those reference lists) from items the State determines *would* contribute to Iran's proliferation sensitive activities to items the State determines *could* so contribute.

The Regulations amend the Principal Regulations as necessary to give effect to the changes in paragraphs 8 and 13 of resolution 1929. The Regulations also provide for a more comprehensive implementation of the "catch-all" obligation generally by inserting a new regulation 5A to the Principal Regulations authorising the Minister for Foreign Affairs (the Minister) to prevent the imminent sale, supply or transfer to Iran of any item not otherwise subject to the Principal Regulations, where the Minister is satisfied, on reasonable grounds, that the item could, if sold, supplied or transferred to Iran, contribute to Iran's proliferation-sensitive nuclear and missile activities.

The Regulations also amend the Principal Regulations as follows, to give effect to a range of new obligations imposed by resolution 1929 to restrict Iran's capacity to further develop its programs of proliferation concern:

- insert a new regulation 17A in the Principal Regulations to prohibit Iranian foreign investment in any commercial activity involving uranium mining or proliferation sensitive nuclear or missile technology, giving effect to paragraph 7 of resolution 1929;
- insert a new regulation 17B in the Principal Regulations to prohibit the transfer of technology or technical assistance to Iran related to ballistic missiles capable of delivering nuclear weapons, giving effect to paragraph 9 of resolution 1929;
- insert new regulations 17C and 17D in the Principal Regulations to prohibit the provision of bunkering services, such as provision of fuel or supplies, or other servicing of vessels, to Iranian-owned or -contracted vessels that has not been authorised by the Minister, to ensure no such vessels carrying items prohibited by sanctions receive such services. This gives effect to paragraph 18 of resolution 1929; and
- insert new regulations 17E and 17F in the Principal Regulations which first require the Minister to designate Iranian entities where the Minister believes there is a risk that doing business with such entities could contribute to Iran's proliferation-sensitive nuclear or missile activities or to violations of sanctions, and then prohibit any person doing business with such entities without the Minister's authorisation. This gives effect to paragraph 22 of resolution 1929.

Finally, the Regulations insert a new regulation 17G in the Principal Regulations to provide that no person or entity in, or affiliated with, Iran may bring a claim in connection with any contract or other transaction where its performance was prevented by reason of the measures imposed by resolutions 1737, 1747, 1803 and resolution 1929. This gives effect to paragraph 35 of resolution 1929.

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. Public consultations on the implementation of regulations made under the *Charter of the United Nations Act 1945* are conducted annually. No specific public consultation was undertaken in relation to the present Regulations as they implement Australia's international legal obligations arising from decisions of the United Nations Security Council.

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 [Attachment](#).

Attachment**Details of the *Charter of the United Nations (Sanctions – Iran) Amendment Regulations 2010 (No. 1)*****Regulation 1 - Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions — Iran) Amendment Regulations 2010 (No. 1)*.

Regulation 2 - Commencement

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

Regulation 3 - Amendment of *Charter of the United Nations (Sanctions – Iran) Regulations 2008*

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions - Iran) Regulations 2008*.

Schedule 1 Amendments**[1] Regulation 4, after definition of *Act***

Item [1] inserts a definition of “arms or related matériel” into regulation 4, as this term has been removed from regulation 6.

[2] Regulation 4, after definition of *Australian ship*

Item [2] inserts a definition of “bunkering service” into regulation 4, as this term appears in new regulations 17C and 17D.

[3] Regulation 4, after definition of *import sanctioned goods*

Item [3] inserts a definition of “Iranian vessel” into regulation 4, as this term appears in new regulations 17C and 17D.

Item [3] also inserts a definition of “paramilitary equipment” into regulation 4, as this term has been removed from regulation 6.

[4] Regulation 4, after definition of *permissible goods*

Item [4] inserts a definition of “prohibition notice”, as this term appears in new regulations 5A and 11A.

[5] Regulation 4, after definition of *Resolution 1737*

Item [5] inserts a definition of “Resolution 1747”, “Resolution 1803” and “Resolution 1929”, as these terms appear in regulations 5, 17E and 17G.

[6] Subregulation 5(1)

Item [6] substitutes a new subregulation 5(1) to give effect to a number of decisions in resolution 1929 expanding the scope of “export sanctioned goods”.

Paragraph 13 of resolution 1929 replaces reference to items mentioned in UNSC document S/2006/814 with reference to items mentioned in International Atomic Energy Agency (IAEA) documents INFCIRC/254/Rev.9/Part 1 and INFCIRC/254/Rev.7/Part 2. Paragraph 13 of resolution 1929 further replaces reference to items mentioned in UNSC document S/2006/815 with reference to items mentioned in UNSC document S/2010/263. This is reflected in new paragraph 5(1)(a), which provides that goods mentioned in INFCIRC/254/Rev.9/Part 1, INFCIRC/254/Rev.7/Part 2 or UNSC document S/2010/263 are export sanctioned goods.

Paragraph 8 of resolution 1929 prohibits the supply to Iran of the following items: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations (UN) Register on Conventional Arms, or related matériel, including spare parts, or items as determined by the UNSC or the Committee established pursuant to resolution 1737. This is reflected in:

- new paragraph 5(1)(b), which provides that goods that have been determined by the UNSC or the Committee for paragraph 3(d) of Resolution 1737 or paragraph 8 of Resolution 1929 are export sanctioned goods; and
- new paragraph 5(1)(c), which provides that arms and related matériel described in the annex to the UN General Assembly Resolution A/RES/46/36 L dated 6 December 1991 (for the purpose of the UN Register of Conventional Arms), are export sanctioned goods.

New paragraphs 5(1)(d) and 5(1)(e) refer to goods specified in a determination under subregulation 5(2) of the Principal Regulations. New paragraph 5(1)(d) provides that goods specified in a determination under this regulation are export sanctioned goods. New paragraph 5(1)(e) provides that goods that are, or are capable of being, key components, or a subassembly, of goods mentioned in paragraph (d) are export sanctioned goods. The insertion of new paragraph 5(1)(e) clarifies that key components and subassembly of export controlled goods are treated identically to the complete export controlled good.

[7] After subregulation 5(2)

Item [7] inserts a new paragraph 5(3) which defines key components, or a subassembly, of other goods in paragraph 5(1)(e) to mean goods that: (a) are an integral part of the other goods; and (b) are not goods of a kind that are used extensively for ordinary purposes.

[8] After regulation 5

5A Prohibition notices

Item [8] inserts a new regulation 5A which allows the Minister for Foreign Affairs (the Minister) to prohibit a person from supplying, selling or transferring goods if: (a) the goods are not export sanctioned goods; and (b) the Minister is satisfied on reasonable grounds that, if the goods were sold, supplied or transferred, the goods could: (i) directly or indirectly, be supplied to Iran, or be supplied for the use in or benefit of Iran; or (ii) be incorporated into goods that could be supplied to Iran, or be supplied for the use in or benefit of Iran; and (c) the Minister is satisfied on reasonable grounds that the goods could, if supplied to Iran, or if supplied for the use in or benefit of Iran, contribute to: (i) enrichment-related, reprocessing or heavy water-related activities; or (ii) the development of nuclear weapon delivery systems; or (iii) the pursuit of activities about which the IAEA has expressed concern or identified as outstanding.

[9] Regulation 6

Item [9] substitutes a new regulation 6 to give effect to the obligation in paragraph 13 of resolution 1929 as outlined in item [6]. Consequently, paragraph 6(a) would provide that goods mentioned in INFCIRC/254/Rev.9/Part 1, INFCIRC/254/Rev.7/Part 2 or UNSC document S/2010/263 are import sanctioned goods. Paragraph 6(b) provides that arms and related matériel are import sanctioned goods.

[10] Regulation 9

9 Permissible goods

Item [9] substitutes a new regulation 9 to give effect to the replacement of references to two documents relevant to the scope of goods subject to sanctions required by paragraph 13 of resolution 1929, as discussed for item [6] above.

New paragraph 9(a) thus provides that goods mentioned in B.1 of INFCIRC/254/Rev.9/Part 1 - provided that the goods are for light water reactors - are permissible goods.

Similarly, new paragraph 9(b) provides that low-enriched uranium mentioned in A.1.2 of INFCIRC/254/Rev.9/Part 1 - provided that the low-enriched uranium is incorporated in assembled nuclear fuel elements for light water reactors - are permissible goods.

Finally, new paragraph 9(c) provides that goods mentioned in the Annex to INFCIRC/254/Rev.7/Part 2 - provided that the goods are: (i) for exclusive use in light water reactors; and (ii) necessary for technical cooperation provided to Iran by the IAEA or under the IAEA's auspices as mentioned in paragraph 16 of Resolution 1737 - are permissible goods - which affects the scope of goods which may be supplied to Iran without reference to the Committee established by resolution 1737.

Prior to resolution 1929, resolution 1737 provided for a "catch-all" obligation, whereby a State was obliged to prevent the supply to Iran of any items not listed in documents S/2006/814 or S/2006/815 that the State determined *would* contribute to enrichment-related,

reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems or to the pursuit of activities related to other topics about which the IAEA has expressed concerns or identified as outstanding (the proscribed activities).

Regulation 5 of the Principal Regulations gave effect to this obligation by providing for the Minister to determine a list of goods that could contribute to the proscribed activities (the Minister's List). Regulation 9 of the Principal Regulations then provided that goods on the Minister's List were "permissible goods" (that is, goods for which the Minister may provide an authorisation for supply to Iran under regulation 11 of the Principal Regulations without reference to the UNSC Iran Sanctions Committee). Subregulation 11(2A) then provided that the Minister must not grant a permit to supply goods on the Minister's List to Iran unless satisfied that the goods would not contribute to the proscribed activities.

Paragraph 13 of resolution 1929 retains provision for such a "catch-all" obligation, but lowers the threshold such that it applies to any items the State determines *could* contribute to the proscribed activities. As all goods on the Minister's List by definition come within this threshold, they can no longer be treated as "permissible goods". Consequently, the Regulations remove reference to the Minister's List from regulations 9 and 11 of the Principal Regulations.

[11] Subregulation 11(2)

Item [11] omits from subregulation 11(2) the phrase "mentioned in paragraph 9(a), (b) or (c)", to ensure regulation 11 applies uniformly to all permissible goods.

[12] Paragraph 11(2)(a)

Item [12] substitutes a new paragraph 11(2)(a) to reflect the decision in paragraph 13 of resolution 1929 outlined in item [6] above. Consequently, new paragraph 11(2)(a) provides that the Minister must not grant a permit unless satisfied that, *inter alia*, the requirements of the guidelines in INFCIRC/254/Rev.9/Part 1, INFCIRC/254/Rev.7/Part 2 and UNSC document S/2006/985 have been met.

[13] Paragraph 11(2)(e)

Item [13] substitutes a new paragraph 11(2)(e) to reflect the decision in paragraph 13 of resolution 1929 as outlined in item [6] above. Consequently, new paragraph 11(2)(e) provides that the Minister must not grant a permit for goods mentioned in section 3 to 6 of the Annex to INFCIRC/254/Rev. 7/Part 2 unless satisfied that, *inter alia*, the Minister has notified the Committee of the supply in advance.

[14] Subregulation 11(2A)

Item [14] omits subregulation 11(2A) given that goods determined by the Minister under subregulation 5(2) to be export sanctioned goods (on the basis that they could contribute to Iran's proliferation sensitive nuclear or missile activities) are no longer "permissible goods".

[15] Paragraph 11(4)(b)

Item [15] substitutes a new paragraph 11(4)(b) to reflect the decision in paragraph 13 of resolution 1929 as outlined in item [6] above. Consequently, new paragraph 11(4)(b) provides that, if the Minister grants a permit under subregulation 11(2) for goods mentioned in INFCIRC/254/Rev.9/part 1 and INFCIRC/254/Rev.7/Part 2, he or she must notify the IAEA within 10 days of the supply, sale or transfer taking place.

[16] After regulation 11

11A Contravention of a prohibition notice

Item [16] inserts a new regulation 11A to provide that a person contravenes regulation 11A if: (a) the Minister has given the person a prohibition notice under regulation 5A; and (b) the person supplies, sells, or transfers goods that are the subject of the prohibition notice; and (c) the prohibition notice has not been revoked. A body corporate contravenes regulation 11A if: (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and (b) the person supplies, sells or transfers goods that are the subject of a prohibition notice given to the person under regulation 5A; and (c) the prohibition notice has not been revoked.

[17] Subregulation 14(2)

Item [17] amends subregulation 14(2) to reflect the decision in paragraph 13 of resolution 1929 as outlined in item [6] above by replacing the text: “Security Council documents S/2006/814 and S/2006/985” with the text: “INFCIRC/254/Rev.9/Part 1, INFCIRC/254/Rev.7/Part 2, and Security Council document S/2006/985”.

[18] After regulation 17

Item [18] would insert new regulations 17A to 17F into the Principal Regulations.

17A Prohibition relating to selling or making available an interest in sensitive commercial activities

Item [18] gives effect to the obligation in paragraph 7 of resolution 1929 by inserting a new regulation 17A prohibiting any person in Australia from selling, or otherwise making available, an interest in any commercial activity involving uranium mining, production or use of nuclear materials and technology as listed in INFCIRC/254/Rev.9/Part 1, in particular uranium-enrichment and reprocessing activities, all heavy-water activities or technology-related to ballistic missiles capable of delivering nuclear weapons, to: (a) Iran; (b) an Iranian national; (c) an entity incorporated in Iran; (d) an entity subject to Iran’s jurisdiction; (e) any person or entity acting on behalf or at the direction of (a) to (d); (f) any entity owned or controlled by (a) to (d).

17B Prohibition relating to transferring technology or technical assistance about ballistic missiles

Item [18] gives effect to the obligation in paragraph 9 of resolution 1929 by inserting new regulation 17B prohibiting the transfer of technology or technical assistance to Iran related to activities related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology.

17C Prohibition relating to bunkering service

Item [18] gives effect to the obligation in paragraph 18 of resolution 1929 by inserting new regulation 17C prohibiting the unauthorised provision of bunkering services from Australia or by an Australian anywhere in the world to Iranian owned or contracted (including chartered) vessels without authorisation from the Minister.

17D Permit to provide a bunkering service

Item [18] gives effect to the obligation in paragraph 18 of resolution 1929 by inserting a new regulation 17D allowing the Minister to authorise the provision of bunkering services, but preventing the Minister from doing so if he or she has reasonable grounds to believe that the vessel is carrying export sanctioned goods, unless provision of such services is necessary for humanitarian purposes or until such time as the cargo has been inspected, and seized and disposed of if necessary.

17E Prohibition relating to conduct of unauthorised business with specified entity

Item [18] gives effect to the obligation in paragraph 22 of resolution 1929 by inserting new regulation 17E prohibiting an Australian national, a person subject to Australian jurisdiction and firms incorporated in Australia or subject to Australian jurisdiction from doing unauthorised business with: (a) an entity designated by the Minister; or (b) any individual or entity acting on behalf or at the direction of an entity referred to in (a); or (c) any entity owned or controlled by an entity referred to in (a), including through illicit means. New regulation 17E requires the Minister to designate, by legislative instrument, an entity incorporated in Iran or subject to Iran's jurisdiction, if he or she has reasonable grounds to believe that business with such an entity could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems or to violations of resolutions 1737, 1747, 1803 or 1929.

17F Permit to conduct business with a specified entity

Item [18] gives effect to the obligation in paragraph 22 of resolution 1929 by inserting new regulation 17F allowing the Minister, on application, to grant a person a permit authorising the conduct of business with an individual or entity designated by the Minister in regulation 17E. The Minister must not, however, grant such a permit if he or she has reasonable grounds to believe that the business may contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems or to violations of resolutions 1737, 1747, 1803 or 1929.

[19] After Part 2**Part 2A Other matters****17G No claim for breach of contract or failure to perform transaction**

Item [19] gives effect to the obligation in paragraph 22 of resolution 1929 by inserting new regulation 17G providing that, despite any provision of a law of the Commonwealth, or of a

state or territory, neither the Government of Iran, nor any person or entity in Iran, nor a designated person or entity as defined in the Principal Regulations, nor any person claiming through or for the benefit of any of the above, may make or take any claim, action or demand against a person for a breach of contract or a failure to perform a transaction if the performance of the contract was prevented by reason of the measures imposed by resolutions 1737, 1747, 1803 and 1929.