

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 26

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council (UNSC) Resolution 1970 (26 February 2011) (the Resolution), imposing sanctions against Libyan Arab Jamahiriya (Libya). Resolution 1970 was adopted in response to the gross and systematic violation of the human rights of the people of Libya and serious violations of international humanitarian law by the highest level of the Libyan government, which the UNSC determined constituted a threat to international peace and security.

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides, in part, 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 (the Charter) 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.

Paragraph 9 of the resolution obliges UN Member States to prohibit the direct or indirect supply, sale or transfer to Libya, by their nationals or from or through their territories or using their flag vessels or aircraft, of arms and related materiel of all types, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories. Paragraph 9 of the Resolution goes on to exclude from this prohibition certain non-lethal military equipment or services or related services intended for humanitarian, civilian or United Nations use, as well as other sales or supply of arms and related materiel, services or personnel, as approved in advance by the Committee established pursuant to paragraph 24 of the Resolution (the Committee).

Regulation 6 of the Regulations prohibits the making of a "sanctioned supply", which is defined by regulation 4 as the direct or indirect supply, sale or transfer of arms or related materiel to Libya. Regulation 7 of the Regulations then permits the Minister for Foreign Affairs (the Minister) to authorise the provision of certain supplies in accordance with the exceptions in paragraph 9 of the Resolution.

Regulation 9 of the Regulations prohibits the provision of a "sanctioned service" to Libya. Regulation 5 defines "sanctioned service" as technical assistance or training, or financial or other assistance, including investment, brokering or other financial services, related to military activities or the supply, sale, transfer, manufacture, maintenance or use of export sanctioned goods. Regulation 10 of the Regulations then permits the Minister to authorise the provision of certain services in accordance with the exceptions in paragraph 9 of the Resolution.

Paragraph 10 of the Resolution obliges UN Member States to prohibit the procurement of arms or related materiel from Libya by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory Libya. No provision is made for

exceptions to this obligation. Regulation 8 of the Regulations consequently prohibits the procurement of arms or related materiel from Libya, or from a person or entity in Libya, without exception.

Paragraph 17 of the Resolution obliges UN Member States to freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities listed in Annex II of resolution 1970 or designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them. It further obliges UN Member States to ensure that no funds, financial assets or economic resources are made available by their nationals or by any individuals or entities within their territories, to or for the benefit of such individuals or entities.

Paragraphs 19, 20 and 21 of the resolution allow UN Member States to authorise dealing with assets contrary to paragraph 17 where the Member State has determined that the dealing is either a basic expense dealing, an extraordinary expense dealing, a legally required dealing, a contractual dealing, or a required payment dealing, as those terms are defined in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.

The obligation to freeze assets in paragraph 17 of the Resolution is implemented by regulation 12 of the Regulations, which prohibit a person who holds an asset that is owned or controlled by a person mentioned in paragraph 17 from using or dealing with that asset, or from allowing the asset to be used or dealt with, or facilitating the use of or dealing with the asset. Regulation 11 of the Regulations implements the second obligation in paragraph 17 of the Resolution by prohibiting a person from making an asset available to a person mentioned in paragraph 17. Regulation 13 of the Regulations then allows the Minister to authorise a dealing in assets otherwise prohibited by regulation 11 and 12 in accordance with the terms of paragraphs 19, 20 and 21 of the Resolution.

Regulations 6, 8, 9, 11 and 12 of the Regulations are specified by the Minister 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*.

The Attorney-General's Department was consulted during the preparation of the 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 Regulations as they implement Australia's international legal obligations arising from decisions of the UNSC.

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

Details of the *Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011*

Part 1 – Preliminary

Regulation 1 – Name of the Regulations

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions — Libyan Arab Jamahiriya) Regulations 2011*.

Regulation 2 – Commencement

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

Regulation 3 - Definitions

Regulation 3 provides for the definition of certain terms used in the Regulations, including “arms or related materiel”, “controlled asset”, “designated person or entity”, “export sanctioned goods”, “import sanctioned goods”, “sanctioned service” and “sanctioned supply”.

Regulation 4 – Sanctioned supply

Regulation 4 provides that a person makes a “sanctioned supply” if that person supplies, sells or transfers export sanctioned goods to another person, and as a direct or indirect result of the supply, sale or transfer, the goods are transferred to Libya.

Regulation 5 – Sanctioned service

Regulation 5 provides that a “sanctioned service” is technical assistance or training or financial or other assistance, including the provision of armed mercenary personnel, related to military activities, or the supply, sale, transfer, manufacture or use of export sanctioned goods.

Part 2 – UN sanction enforcement laws

Regulation 6 – Prohibition of sanctioned supply

Regulation 6 prohibits the making of a sanctioned supply. The prohibition applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to make an unauthorised supply. Similarly, the prohibition in Regulation 6 applies to a body corporate in relation to an unauthorised supply made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 7 – Permit to make sanctioned supply

Regulation 7 allows the Minister to grant, upon application and upon notifying the Committee, a person a permit authorising the making of a sanctioned supply, if the sanctioned supply consists of: supplies of non-lethal military equipment intended solely

for humanitarian or protective use; or protective clothing, temporarily exported to Libya by United Nations personnel, representatives of the media and humanitarian and development works and associated personnel, for their personal use only; or other sales or supply of arms or related materiel.

Regulation 8 – Prohibition of procuring import sanctioned goods

Regulation 8 prohibits the procurement of import sanctioned goods from Libya or from a person or entity in Libya. The prohibition in regulation 8 also applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, making a sanctioned supply. Similarly, the prohibition in regulation 8 applies to a body corporate if the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated and the other body corporate or entity procures import sanctioned goods from Libya or from a person or entity in Libya.

Regulation 9 – Prohibition of providing sanctioned service

Regulation 9 prohibits the provision of a sanctioned service. The prohibition applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to provide a sanctioned service. Similarly, the prohibition in Regulation 9 applies to a body corporate if the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated, and the other body corporate or entity provides a sanctioned service.

Regulation 10 – Permit to provide sanctioned service

Regulation 10 allows the Minister to grant, upon application and notification of the Committee, a person a permit authorising the provision of technical assistance and training in relation to the supply of non-lethal military equipment intended solely for humanitarian or protective use as described in paragraph 7(2)(a); or assistance or personnel in relation to the supply of arms or related materiel as described in paragraph 7(2)(c).

Regulation 11 – Prohibition of making asset available to designated person or entity

Regulation 11 prohibits a person, without authorisation, from directly or indirectly, making an asset available to, or for the benefit of: a designated person or entity; or a person acting on behalf of or at the direction of a designated person or entity; or an entity owned or controlled by a designated person or entity.

Regulation 12 – Prohibition of use or dealing with controlled asset

Regulation 12 prohibits a person who holds a controlled asset, without authorisation, from using or dealing with the controlled asset; or allowing the controlled asset to be used or dealt with; or facilitating the use of, or the dealing with, the controlled asset.

Regulation 13 – Permit for assets or controlled assets

Regulation 13 allows the Minister to grant, on application, a person a permit authorising: the making available of an asset to a person or entity that would otherwise contravene subregulation 10(1); or a use or, or dealing with, a controlled asset. The application must be for a dealing, described in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, as a basic expense dealing, a legally required dealing, a contractual dealing, a required payment dealing, or an extraordinary expense dealing.

Regulations 6, 8, 9, 11 and 12 of the Regulations are specified by the Minister 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*. This has the effect of making contravention of these regulations an offence under section 27 of the Act. Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of regulations 6, 8, 9, 11 and 12 thus giving the offence extraterritorial operation.

Part 3 – Miscellaneous

Regulation 14 – Delegations by Minister

Regulation 14 allows the Minister to delegate the Minister's powers and functions under the Regulations (other than this power of delegation) to the Secretary of the Department; or an SES employee, or acting SES employee, in the Department. The delegation must be in writing and the delegation must comply with any directions of the Minister in exercising powers or functions under the delegation.