

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2011 (No. 2)

The purpose of *Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2011 (No. 2)* (**Amendment Declaration**) is to make a consequential amendment to the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* (**Declaration**) to reflect amendments made to the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011*, by the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Amendment Regulations 2011*.

The Amendment Declaration also amends the Declaration to correct the omission of UN sanction enforcement laws under the *Charter of the United Nations (Sanctions – Iran) Regulations 2008* and remove UN sanction enforcement laws no longer in force under the *Charter of the United Nations (Sanctions – Sierra Leone) Regulations 2008* and the *Customs (Prohibited Exports) Regulations 1958*.

‘UN sanction enforcement law’ is defined in section 2 of the *Charter of the United Nations Act 1945* (**Act**) to mean a provision that is specified in an instrument under sub-section 2B(1) of the Act. Section 2B provides that the Minister may, by legislative instrument, specify a provision of a law of the Commonwealth to be a UN sanction enforcement law to the extent that the provision gives effect to decisions that the United Nations 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.

Part 5 of the Act includes criminal offence provisions relating to UN sanctions. Sub-sections 27(1) and (5) of the Act provide respectively that individuals and bodies corporate commit an offence if they engage in conduct that contravenes a UN sanction enforcement law.

Subsection 28(1) of the Act provides that a person commits an offence if that person gives false or misleading information to a Commonwealth entity in connection with the administration of a UN sanction enforcement law. Subsection 28(2) of the Act provides that a person (the *first person*) commits an offence if the first person gives information or a document, that is false or misleading, to another person, and the first person is reckless to whether the other person or someone else will give the information or document to a Commonwealth entity in connection with the administration of a UN sanction enforcement law.

Part 6 of the Act includes provisions regarding information relating to UN sanctions. Section 29 of the Act provides that the CEO of a Commonwealth entity may disclose information to the CEO of a designated Commonwealth entity for a purpose in connection with the administration of a UN sanction enforcement law. Section 30 provides that the CEO of a designated Commonwealth entity (as that term is defined in section 2 of the Act) may give a person a notice requiring the production of information and documents for the purposes of determining whether a UN sanction enforcement law is being complied with.

Section 35 of the Act provides the circumstances in which, and parties to whom, an officer of a designated Commonwealth entity may disclose information in connection with the administration of a UN sanction enforcement law.

Subsection 37(1) of the Act requires a person who applies for a licence or authorisation under a UN sanction enforcement law to retain any records relating to that application for a period of five years. Subsection 37(2) requires a person who is granted a licence or authorisation under a UN sanction enforcement law to retain records relating to the person's compliance with any conditions of that licence for a period of five years.

Item 1 of Schedule 1 of the Amendment Declaration substitutes a new Schedule 1 for the Declaration. Schedule 1 specifies the provisions of laws of the Commonwealth that are UN sanction enforcement laws pursuant to sub-section 2B(1) of the Act.

No public consultation was undertaken under section 17 of the *Legislative Instruments Act 2003* before this instrument was made as the instrument was required as a matter of urgency, in accordance with section 18 of the *Legislative Instruments Act 2003*, to comply with reporting requirements mandated by the United Nations Security Council.

Details of the Legislative Instrument are set out in the Annex.

Details of the Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2011 (No. 2)

Paragraph 1 – Name of Instrument

Paragraph 1 of the Amendment Declaration provides that the name of the Amendment Declaration is the *Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2011 (No. 2)*.

Paragraph 2 - Commencement

Paragraph 2 provides that the Amendment Declaration shall commence on the day after it is registered.

Paragraph 3 – Amendment of the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*

Paragraph 3 provides that Schedule 1 of the Amendment Declaration amends the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Schedule 1 - Amendment

Schedule 1, item 1 substitutes a new Schedule 1 of the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

The substituted Schedule 1 adds new regulations 13A and 13C to item 10, which now provides that Regulations 6, 8, 9, 11, 12, 13A and 13C of the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011* are UN sanction enforcement laws.

The substituted Schedule 1 reinserts regulations 11A, 17A, 17B, 17C and 17E to item 6, which now provides that Regulations 10, 11A, 12, 13, 15, 16, 17A, 17B, 17C and 17E of the *Charter of the United Nations (Sanctions – Iran) Regulations 2008* are UN sanction enforcement laws.

The substituted Schedule 1 removes regulation 7 of the *Charter of the United Nations (Sanctions – Sierra Leone) Regulations 2008* from item 11, as a consequence of United Nations Security Council resolution 1940, 29 September 2010, to terminate, with immediate effect, sanctions measures imposed on Sierra Leone. The items that were numbered 12, 13, 14, 15 and 16 in the previous Schedule 1 are numbered 11, 12, 13, 14 and 15 in the substituted Schedule 1.

The substituted Schedule 1 removes regulations 13CG, 13CH, 13CI and 13CJ of the *Customs (Prohibited Exports) Regulations 1958* from item 13. Regulation 13CG, which implemented Australia's obligations under United Nations Security Council (UNSC) resolution 1011 (1995) prohibiting the export of paramilitary goods to Rwanda, was repealed by the *Customs (Prohibited Exports) Amendment Regulations 2008 (No 2)* following the adoption of UNSC resolution 1823, terminating sanctions measures imposed on Rwanda.

Regulation 13CH, which implemented Australia's obligations under UNSC resolutions 1132 (1997) and 1171 (1998) prohibiting the unauthorised supply, sale or transfer of arms or related materiel to Sierra Leone, was repealed by the *Customs (Prohibited Exports) Amendment Regulations 2010 (No 3)* following the adoption of UNSC resolution 1940 (2010), terminating sanctions measures imposed on Sierra Leone.

Regulations 13CI and 13CJ are no longer UN sanction enforcement laws.