

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 65

Charter of the United Nations Act 1945

Charter of the United Nations Legislation Amendment Regulations 2011 (No. 1)

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 United Nations Security Council (UNSC) has made under Chapter VII of the Charter of the United Nations (UN) 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. Section 39 of the Act provides, in part, that the Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations amend nine sets of Principal Regulations made under the Act to authorise the Minister for Foreign Affairs (Minister) to delegate certain powers and functions (other than the power of delegation) to either the Secretary of the Department of Foreign Affairs and Trade (DFAT) or a Senior Executive Service (SES) employee, or acting SES employee, in DFAT.

The Regulations amend the:

- (1) *Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008*;
- (2) *Charter of the United Nations (Sanctions – Cote d’Ivoire) Regulations 2008*;
- (3) *Charter of the United Nations (Sanctions – Democratic Republic of the Congo) Regulations 2008*;
- (4) *Charter of the United Nations (Sanctions - Eritrea) Regulations 2010*;
- (5) *Charter of the United Nations (Sanctions - Iraq) Regulations 2008*;
- (6) *Charter of the United Nations (Sanctions - Lebanon) Regulations 2008*;
- (7) *Charter of the United Nations (Sanctions - Liberia) Regulations 2008*;
- (8) *Charter of the United Nations (Sanctions - Somalia) Regulations 2008*; and
- (9) *Charter of the United Nations (Sanctions - Sudan) Regulations 2008*.

The Regulations expedite the process of assessing applications for permits authorising what would otherwise be unlawful activity. Such permits were previously granted by the Minister after consideration of criteria specified in relevant UNSC resolutions. As the process of determining compliance with UNSC resolutions involves a legal rather than political assessment, the process is optimised if it is delegated to the Secretary of DFAT or an SES, or acting SES, DFAT officer.

No public consultation was undertaken in relation to the Regulations as they implement Australia’s international legal obligations arising from decisions of the UNSC.

UN resolutions adopted under Article 41 of Chapter VII of the Charter are binding on Australia pursuant to Article 25 of that Charter. The relevant UNSC resolutions can be found on the UN website (www.un.org).

Details of the Amendment Regulations are set out in the Attachment.

Details of the *Charter of the United Nations Legislation Amendment Regulations 2011* (No. 1)

Regulation 1 – Name of Regulations

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations Legislation Amendment Regulations 2011* (No. 1).

Regulation 2 – Commencement

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

Regulation 3 – Amendment of the *Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008*

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008*.

Regulation 4 – Amendment of the *Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2008*

Regulation 4 provides that Schedule 2 amends the *Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2008*.

Regulation 5 – Amendment of the *Charter of the United Nations (Sanctions – Democratic Republic of the Congo) Regulations 2008*

Regulation 5 provides that Schedule 3 amends the *Charter of the United Nations (Sanctions – Democratic Republic of the Congo) Regulations 2008*.

Regulation 6 – Amendment of the *Charter of the United Nations (Sanctions – Eritrea) Regulations 2010*

Regulation 6 provides that Schedule 4 amends the *Charter of the United Nations (Sanctions – Eritrea) Regulations 2010*.

Regulation 7 – Amendment of the *Charter of the United Nations (Sanctions – Iraq) Regulations 2008*

Regulation 7 provides that Schedule 5 amends the *Charter of the United Nations (Sanctions – Iraq) Regulations 2008*.

Regulation 8 – Amendment of the *Charter of the United Nations (Sanctions – Lebanon) Regulations 2008*

Regulation 8 provides that Schedule 6 amends the *Charter of the United Nations (Sanctions – Lebanon) Regulations 2008*.

Regulation 9 – Amendment of the *Charter of the United Nations (Sanctions – Liberia) Regulations 2008*

Regulation 9 provides that Schedule 7 amends the *Charter of the United Nations (Sanctions – Liberia) Regulations 2008*.

Regulation 10 – Amendment of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*

Regulation 10 provides that Schedule 8 amends the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*.

Regulation 11 – Amendment of the *Charter of the United Nations (Sanctions – Sudan) Regulations 2008*

Regulation 11 provides that Schedule 9 amends the *Charter of the United Nations (Sanctions – Sudan) Regulations 2008*.

Schedule 1 – Amendment of the *Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 12. Part 3 comprises a new regulation 13 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 2 - Amendment of the *Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 16. Part 3 comprises a new regulation 17 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 3 – Amendment of the *Charter of the United Nations (Sanctions – Democratic Republic of the Congo) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 14. Part 3 comprises a new regulation 15 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 4 – Amendment of the *Charter of the United Nations (Sanctions – Eritrea) Regulations 2010*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 14. Part 3 comprises a new regulation 15 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 5 – Amendment of the *Charter of the United Nations (Sanctions – Iraq) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 12. Part 3 comprises a new regulation 13 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 6 – Amendment of the *Charter of the United Nations (Sanctions – Lebanon) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 13. Part 3 comprises a new regulation 14 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 7 – Amendment of the *Charter of the United Nations (Sanctions – Liberia) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 14. Part 3 comprises a new regulation 15 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 8 – Amendment of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 15. Part 3 comprises a new regulation 16 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 9 – Amendment of the *Charter of the United Nations (Sanctions – Sudan) Regulations 2008*

[1] Part 3

Item [1] inserts a new Part 3 following regulation 14. Part 3 comprises a new regulation 15 which provides for the Minister to delegate the Minister's powers and functions, other than the power of delegation, to the Secretary of DFAT or an SES employee, or acting SES employee, in DFAT. The new regulation requires both the delegation to be in writing, and the delegate to comply with any directions of the Minister in exercising powers or functions under the delegation.