

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 163**

#### *Charter of the United Nations Act 1945*

#### *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)*

The purpose of the Amendment Regulation is to amend the *Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2008* (the Cote d'Ivoire Regulations) and the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* (the Somalia Regulations) to implement amended United Nations Security Council (UNSC) sanctions in relation to Cote d'Ivoire and Somalia.

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.

The Amendment Regulation amends the *Charter of the United Nations (Sanctions – Cote d'Ivoire) Regulations 2008* (the Cote d'Ivoire Regulations) to implement UNSC sanctions in relation to Cote d'Ivoire. The Amendment Regulation also amends the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* (the Somalia Regulations) to implement UNSC sanctions in relation to Somalia.

The Cote d'Ivoire Regulations give effect in Australia to sanctions obligations arising from UNSC resolution 1572 (2004), obligations which were expanded and renewed by UNSC resolutions 1643 (2005), 1727 (2006), 1893 (2009), 1946 (2010) and 1980 (2011). Resolution 2045 (2012) was adopted under Chapter VII of the Charter of the UN on 26 April 2012 and the measures are binding on Australia pursuant to Article 25 of that Charter.

Two paragraphs of resolution 2045 contain obligations requiring amendments to the Cote d'Ivoire Regulations:

- Paragraph 1 provides for the removal of the prohibition on the supply of civilian vehicles to the Ivorian security forces and the removal of the prohibition on the provision of assistance, training or advice relating to military activities;
- Paragraph 3 amends the exemption procedures to the arms embargo, so that the supply of non-lethal military equipment intended solely for humanitarian or protective use, or that is intended solely to enable Ivorian security forces to use only appropriate and proportionate force while maintaining public order, is notified in advance to the Cote d'Ivoire Sanctions Committee.

The Somalia Regulations give effect in Australia to sanctions obligations arising from UNSC resolutions 733 (1992), 751 (1992), 1356 (2001), 1425 (2002), 1744 (2007), 1844 (2008), 1846 (2008), 1851 (2008) and 1916 (2010). Resolution 2036 (2012) was

adopted under Chapter VII of the Charter of the UN on 22 February 2012 and the measures are binding on Australia pursuant to Article 25 of that Charter.

One paragraph of resolution 2036 contains obligations requiring amendments to the Somalia Regulations. Paragraph 22 prohibits the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia.

No public consultation was undertaken in relation to the Amendment Regulation and the Cote d'Ivoire Regulations and the Somalia Regulations as they implement Australia's international legal obligations arising from decisions of the UNSC.

Resolutions 2036 and 2045 were adopted under Article 41 of Chapter VII of the Charter and the measures 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](http://www.un.org)).

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

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)*

The *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)* (the Amendment Regulation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Amendment Regulation gives 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.

The Amendment Regulation gives effect to paragraph 22 of resolution 2036 (2012), under which the UNSC decided to impose a ban on the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia. The UNSC expressed its concern in resolution 2036 (2012) that charcoal exports from Somalia are a significant source of revenue for the militia organisation Al Shabaab and also exacerbate the current humanitarian crisis.

The Amendment Regulation also gives effect to UNSC resolution 2045 (2012) in relation to Cote d'Ivoire. The UNSC adopted resolution 2045 (2012), furthering the UNSC's support for Cote d'Ivoire's fragile peace process, recognising the contribution to the stability in Cote d'Ivoire of measures adopted by previous UNSC resolutions, and welcoming the steady progress and achievements of Cote d'Ivoire in recent months in returning to stabilisation.

Two paragraphs of resolution 2045 contain international legal obligations which are implemented by the Amendment Regulations:

- . Paragraph 1 provides for the removal of the prohibition on the supply of civilian vehicles to the Ivorian security forces and the removal of the prohibition on the provision of assistance, training or advice relating to military activities;
- . Paragraph 3 amends the exemption procedures to the arms embargo, so that the supply of non-lethal military equipment intended solely for humanitarian or protective use, or that is intended solely to enable Ivorian security forces to use only appropriate and proportionate force while maintaining public order, is notified in advance to the Cote d'Ivoire Sanctions Committee.

## ATTACHMENT

### **Details of the *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)***

#### Section 1 – Name of the Regulations

Section 1 provides that the name of the regulation is the *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)*.

#### Section 2 – Commencement

Regulation 2 provides that the regulation commences on the day after it is registered.

#### Section 3 – Amendment of the *Charter of the United Nations (Sanctions – Cote d’Ivoire) Regulations 2008*

Section 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions – Cote d’Ivoire) Regulations 2008*.

#### Section 4 – Amendment of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*

Section 4 provides that Schedule 2 amends the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*.

#### Schedule 1 – Amendments of the *Charter of the United Nations (Sanctions – Cote d’Ivoire) Regulations 2008*

##### **Item [1] - Regulation 4, definition of *sanctioned service***

Item [1] omits the definition of ‘sanctioned service’, to give effect to the decision of the UNSC in resolution 2045 removing the prohibition on the provision of training, advice and expertise related to security and military activities.

##### **Item [2] - Regulation 5**

Item [2] replaces regulation 5 to limit the description of export sanctioned goods to arms and related materiel, to give effect to the decision of the UNSC in resolution 2045 removing the prohibition on the supply of civilian vehicles to the Ivorian security forces.

##### **Item [3] - Regulation 8**

Item [3] omits Regulation 8 which describes a ‘sanctioned service’, as this term no longer appears in the regulations with the removal of regulation 8.

##### **Item [4] - Subparagraph 10 (2) (b) (ii)**

Item [4] replaces subparagraph 10(2)(b)(ii) to allow the Minister to authorise the supply of non-lethal military equipment that is intended solely for humanitarian or protective use and that is notified in advance to the Cote d’Ivoire Sanctions Committee.

**Item [5] - Subparagraph 10 (2) (e) to (g)**

Item [5] replaces subparagraph 10(2)(e) to allow the Minister for Foreign Affairs to authorise the supply of non-lethal law enforcement equipment that is intended to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order and is notified in advance to the Cote d'Ivoire Sanctions Committee.

Item [5] also replaces subparagraph 10(2)(f) to allow the Minister for Foreign Affairs to authorise the supply of arms or other related lethal equipment to the Ivorian security forces that is intended solely for the support of, or use in, the Ivorian process of security sector reform and is approved in advance by the Cote d'Ivoire Sanctions Committee.

**Item [6] - Regulations 12 and 13**

Item [6] omits regulation 12 (prohibitions relating to sanctioned services) and regulation 13 (permit to provide a sanctioned service).

Schedule 2 – Amendments of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008*

**Item [1] - Regulation 4, after definition of *export sanctioned goods***

Item [1] inserts a definition of 'import sanctioned goods' into regulation 4, providing that the definition has the meaning given by new regulation 7A.

**Item [2] - After regulation 7**

Item [2] inserts a new regulation 7A describing the scope of 'import sanctioned goods' as charcoal.

**Item [3] - After Division 2.2**

Item [3] inserts a new Division 2.3 and regulation 15A setting out the prohibition relating to import sanctioned goods.

Subregulation 15A(1) provides that a person contravenes regulation 15A if the person procures import sanctioned goods from Somalia or from a person or entity in Somalia.

Subregulation 15A(2) provides that a body corporate contravenes regulation 15A 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 Somalia or a person or entity in Somalia.