

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 2012 (No. 1)

The purpose of *Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2012 (No. 1)* (**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 – Cote d’Ivoire) Regulations 2008* and the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* by the *Charter of the United Nations Legislation Amendment Regulation 2012*.

‘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 or a condition in a permit issued by the Minister.

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 in relation to the Amendment Declaration as it implements Australia's international legal obligations arising from decisions of the United Nations Security Council.

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

Statement of Compatibility with Human Rights

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

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The Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2012 (No. 1) does not engage, and is therefore 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.

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 2012 (No. 1)*.

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 removes regulation 12 of the *Charter of the United Nations (Sanctions - Cote d'Ivoire) Regulations 2008* from item 2, as a consequence of United Nations Security Council resolution 2045 (26 April 2012) to terminate, with immediate effect, the prohibition on the provision to Cote d'Ivoire of assistance, training or advice relating to military activities. Regulation 12 was repealed by the *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)*.

The substituted Schedule 1 inserts regulation 15A to item 11, which now provides that regulations 8, 10, 12, 13, 14 and 15A of the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* are UN sanction enforcement laws. Regulation 15A was implemented by the *Charter of the United Nations Legislation Amendment Regulation 2012 (No. 1)* and implements Australia's obligations under UNSC resolution 2036 (22 February 2012) prohibiting the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia.