

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 73**

Issued by the Authority of the Minister for Foreign Affairs

*Charter of the United Nations Act 1945*

*Charter of the United Nations (Sanctions – the Taliban) Regulation 2013*

The purpose of the Regulation is to implement United Nations Security Council (UNSC) sanctions in relation to the Taliban and associated individuals and entities. The Regulation implements a new sanctions regime for the Taliban that has arisen as a result of the adoption of UNSC resolution 1988 (17 June 2011). The Regulation replicates the sanctions regime set out in the *Charter of the United Nations (Sanctions – Al-Qaida and the Taliban) Regulations 2008* as amended by the *Charter of the United Nations Legislation Amendment Regulation 2013 (No. 1)*, except for changes necessary to reflect the Regulation's application to the Taliban and associated individuals and entities pursuant to Resolution 1988 (2011).

Section 6 of the *Charter of the United Nations Act 1945* provides 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 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.

Since the Al-Qaida and the Taliban Regulations were last amended on 18 June 2009, Australia's obligations have been modified by UNSC resolutions 1988 (17 June 2011) and 1989 (17 June 2011). These resolutions separate the Al-Qaida and Taliban sanctions regimes. Resolution 1988 (2011) targets individuals associated with the Taliban who are threats to Afghanistan's stability. Resolution 1989 (2011) refocuses the existing UNSCR 1267 (15 October 1999) sanctions regime on Al-Qaida and its associates. The scope and effect of the sanctions measures have not changed. Both regimes continue to apply targeted financial sanctions, travel bans and an arms embargo against individuals and entities listed.

The Taliban Regulation gives effect in Australia to sanctions obligations arising from UNSC Resolution 1988 (2011). Resolution 1988 (2011) was adopted under Chapter VII of the Charter of the UN on 17 June 2011 and the measures are binding on Australia pursuant to Article 25 of that Charter. Paragraph 1 of resolution 1988 (2011) contains obligations requiring Australia to impose an embargo on the supply, sale or transfer of arms, military equipment and associated services (such as technical advice, assistance or training related to military activities) to the Taliban and other associated individuals and entities, subject to limited exceptions. Paragraph 1 of resolution 1988 (2011) also requires Australia to freeze the funds, other financial assets and economic resources owned or controlled by, and prevent funds, other financial assets and economic resources being made available to, designated individuals and entities. Paragraph 1 of resolution 1988 (2011) additionally requires that Australia prevent the designated individuals or entities from entering into, or transiting through, Australian

territory.

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

Resolutions 1988 (2011) and 1989 (2011) 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 Regulation 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 (Sanctions – the Taliban) Regulation 2013*

The *Charter of the United Nations (Sanctions – the Taliban) Regulation 2013* (the Taliban 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 Taliban 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 Taliban Regulation gives effect to paragraph 1 of UNSC Resolution 1988 (2011), under which the UNSC has implemented a new sanctions regime that targets individuals associated with the Taliban who are threats to Afghanistan's stability. The UNSC expressed its strong concern about the security situation in Afghanistan, in particular the ongoing violent and terrorist activities by the Taliban, Al-Qaida, illegal armed groups, criminals and those involved in the narcotics trade, and the strong links between terrorism activities and illicit drugs, resulting in threats to the local population, including children, national security forces and international military and civilian personnel. The UNSC also recalled that the conditions for reconciliation that are supported by the Government of Afghanistan and the international community, include the renunciation of violence, no links to international terrorist organizations, and respect for the Afghan Constitution, including the rights of women and persons belonging to minorities.

Paragraph 1 of resolution 1988 (2011) contains the following international legal obligations which are implemented by the Taliban Regulation:

- an obligation to impose an embargo on the supply, sale or transfer, directly or indirectly, to the Taliban and other associated individuals and entities, of arms,

- military equipment and associated services such as technical advice or assistance or training related to military activities, subject to limited exceptions;
- . an obligation to freeze the funds, other financial assets and economic resources owned or controlled by, and prevent funds, other financial assets and economic resources being made available to, designated individuals and entities; and
  - . an obligation to prevent the designated individuals or entities from entering into, or transiting through, Australian territory.

This Legislative Instrument does not engage any of the applicable rights or freedoms as it is a procedural amendment splitting one regulation into two, without making any substantive changes.

This Legislative Instrument is compatible with human rights as it does not engage any human rights issues.

**Details of the Charter of the United Nations (Sanctions – the Taliban) Regulation 2013**

**Section 1 – Name of the Regulation**

Section 1 provides that the name of the Regulation is the *Charter of the United Nations (Sanctions – the Taliban) Regulation 2013*.

**Section 2 – Commencement**

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

**Section 3 – Definitions**

Section 3 provides for the definition of certain terms used in the Regulation, including “Act”, “arms or related matériel”, “Australian aircraft”, “Australian ship”, “Committee”, “controlled asset”, “designated person or entity”, “export sanctioned goods”, “paramilitary equipment”, “Resolution 1988”, “sanctioned service”, “sanctioned supply”, “Security Council” and “working day”.

**Section 4 – Export sanctioned goods**

Section 4 provides that “export sanctioned goods” means arms or related matériel.

**Section 5 – Sanctioned supply**

Section 5 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 a designated person or entity.

**Section 6 – Sanctioned service**

Section 6 provides that “sanctioned service” means the provision of technical advice, assistance or training related to military activities to a designated person or entity.

**Section 7 – Prohibitions relating to sanctioned supply**

Section 7 prohibits the making of a sanctioned supply. The prohibition 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 make an unauthorised supply. A body corporate contravenes the prohibition in Section 7 if another body corporate over which it has effective control makes a sanctioned supply.

**Section 8 – Prohibitions relating to sanctioned services**

Section 8 prohibits the provision of a sanctioned service. The prohibition 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 provide a sanctioned service. A body corporate contravenes the prohibition in Section 8 if a body corporate, wherever incorporated or situated, over which the first body corporate has effective control provides a sanctioned service.

**Section 9 – Prohibition relating to dealings with designated persons or entities**

Section 9 prohibits a person from directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, without authorisation by a permit

under section 11. Section 9 provides that strict liability applies to the circumstance that the making available of the asset is not authorised by a permit under section 11.

#### Section 10 – Prohibition relating to controlled assets

Section 10 prohibits a person who holds a controlled asset from using or dealing with the controlled asset, allowing the controlled asset to be used or dealt with or facilitating the use of, or the dealing with, the controlled asset, without authorisation by a permit under section 11. Section 10 provides that strict liability applies to the circumstance that the use of or dealing with the asset is not authorised by a permit under section 11.

#### Section 11 – Permit for assets and controlled assets

Section 11 allows the Minister, on application, to grant a person a permit authorising: (a) the making available of an asset to a person or entity that would otherwise contravene subsection 9(1); or (b) a use of, or dealing with, a controlled asset that would otherwise contravene subsection 10(1). The application must be for a basic expense dealing, contractual dealing or extraordinary expense dealing as defined in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.

Sections 7, 8, 9 and 10 of the Regulation are specified by the Minister as UN sanction enforcement laws pursuant to section 2B of the *Charter of the United Nations Act 1945 (Act)*, and included in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. This has the effect of making contraventions of these regulations offences 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 Sections 7, 8, 9 and 10, giving the offences extraterritorial operation.

#### Section 12 – Delegations by Minister

Section 12 allows the Minister to delegate the Minister's powers and functions under the Regulation (other than the 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 delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.