

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 185

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations Legislation Amendment Regulation 2013 (No. 2)

The purpose of the *Charter of the United Nations Legislation Amendment Regulation 2013 (No. 2)* (the **Amendment Regulation**) is to amend the *Charter of the United Nations (Sanctions – Côte d'Ivoire) Regulations 2008* (the **Côte d'Ivoire Regulations**), the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011* (the **Libya Regulations**), the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* (the **Somalia Regulations**) and the *Charter of the United Nations (Sanctions – Sudan) Regulations 2008* (the **Sudan Regulations**) to implement resolutions of the United Nations Security Council (UNSC) amending the UNSC sanctions measures.

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 UNSC has made under Chapter VII of the Charter of the United Nations (the **Charter**) 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.

The Côte d'Ivoire Regulations give effect in Australia to sanctions obligations arising from UNSC resolution 1572 (2004), which were expanded and renewed by UNSC resolutions 1643 (2005), 1727 (2006), 1893 (2009), 1946 (2010), 1980 (2011) and 2045 (2012). Resolution 2101 (2013) concerning Côte d'Ivoire was adopted under Chapter VII of the Charter on 25 April 2013 and the measures are binding on Australia pursuant to Article 25 of the Charter. Paragraph 4 of resolution 2101 (2013) amends the process by which the supply of non-lethal law enforcement equipment to the Ivorian security forces is notified to the UNSC Côte d'Ivoire Sanctions Committee. The amendment allows the Member State providing the supply, in addition to the Ivorian Government, to notify the Committee.

The Libya Regulations give effect in Australia to sanctions obligations arising from UNSC resolutions 1970 (2011), 1973 (2011), 2009 (2011), 2016 (2011), 2017 (2011), and 2040 (2012). Resolution 2095 concerning Libya was adopted under Chapter VII of the Charter on 14 March 2013 and the measures are binding on Australia pursuant to Article 25 of the Charter. Two paragraphs of resolution 2095 contain obligations requiring amendments to the Libya Regulations. Paragraph 9 provides that supplies of non-lethal military equipment and related technical assistance or training, when intended solely for humanitarian or protective use, shall no longer require the approval of UNSC Libya Sanctions Committee. Paragraph 10 provides that supplies of non-lethal military equipment and any technical assistance, training or financial assistance, when intended solely for security or disarmament assistance to the Libyan

government, shall no longer require notification to, or the absence of a negative decision by, the UNSC Libya 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), 1916 (2010), 2036 (2012) and 2060 (2012). Resolution 2093 was adopted under Chapter VII of the Charter on 6 March 2013 and the measures are binding on Australia pursuant to Article 25 of the Charter. Four paragraphs of resolution 2093 contain obligations requiring amendments to the Somalia Regulations. Paragraphs 33 and 38 provide that the arms embargo imposed by previous resolutions shall not apply to supplies of weapons and military equipment or the provision of advice, assistance or training intended solely for the development of the Security Forces of the Federal Government of Somalia, as notified in advance to the Somalia UNSC Sanctions Committee. Paragraph 36 provides that the arms embargo shall not apply to supplies of weapons or military equipment or the provision of assistance intended solely for the support of or use by the African Union Mission in Somalia's strategic partners. Paragraph 37 provides that the arms embargo shall not apply to supplies of weapons or military equipment or the provision of assistance intended solely for the support of or use by United Nations personnel.

The Sudan Regulations give effect in Australia to sanctions obligations arising from UNSC resolutions 1556 (2004), 1591 (2005), 1945 (2010) and 2035 (2012). Paragraphs 2 and 3 of resolution 2035 contain obligations that have not yet been included in the Sudan Regulations, and accordingly require amendment to the Sudan Regulations. Paragraph 2 notes the creation of two additional states in Darfur, being Eastern and Central Darfur, and clarifies that all previous references to North, South and West Darfur shall apply to the entire territory of Darfur. Paragraph 3 provides that the criteria for listing individuals for the purposes of the travel ban or financial sanctions established pursuant to resolution 1591 (2005), shall apply also to entities.

No public consultation was undertaken in relation to the Amendment Regulation, as it implements Australia's international legal obligations arising from decisions of the UNSC and does not substantially alter existing arrangements under the Côte d'Ivoire Regulations, the Libya Regulations, the Somalia Regulations or the Sudan Regulations.

Resolutions 2035, 2093, 2095 and 2101 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).

Details of the Amendment 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 Legislation Amendment Regulation 2013 (No. 2)

The Charter of the United Nations Legislation Amendment Regulation 2013 (No. 2) (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 4 of resolution 2101 (2013) in relation to Côte d'Ivoire, which makes a technical amendment to the process under the arms embargo by which the supply of non-lethal law enforcement equipment to the Ivorian security forces is notified to the UNSC Côte d'Ivoire Sanctions Committee. Paragraph 4 provides that the Member State providing the supply, in addition to the Ivorian Government, is able to notify the Committee as required.

The Amendment Regulation also gives effect to paragraphs 9 and 10 of resolution 2095 (2012) in relation to the Libya, providing exceptions to arms embargo established pursuant to resolution 1970 (2011). Paragraph 9 provides that supplies of non-lethal military equipment and related technical assistance or training, when intended solely for humanitarian or protective use, shall no longer require the approval of UNSC Libya Sanctions Committee. Paragraph 10 provides that supplies of non-lethal military equipment and any technical assistance, training or financial assistance, when intended solely for security or disarmament assistance to the Libyan government, shall no longer require notification to, or the absence of a negative decision by, the UNSC Libya Sanctions Committee.

The Amendment Regulation also gives effect to paragraphs 33, 36, 37 and 38 of resolution 2093 (2013) in relation to Somalia. Paragraphs 33 and 38 provide that the arms embargo imposed by earlier resolutions shall not apply to supplies of weapons and military equipment or the provision of advice, assistance or training intended solely for the development of the Security Forces of the Federal Government of Somalia, as notified in advance to the Somalia UNSC Sanctions Committee. Paragraph 36 provides that the arms embargo does not apply to supplies of weapons or military equipment or the provision of assistance intended solely for the support of or use by the African Union Mission in Somalia's strategic partners. Paragraph 37 provides that the arms embargo shall not apply to supplies of weapons or military equipment or the provision of assistance intended solely for the support of or use by United Nations personnel.

The Amendment Regulation engages human rights by providing technical amendments and exceptions to the arms embargoes in relation to Côte d'Ivoire, Libya

and Somalia. The respective arms embargoes have been and remain vital in addressing the grave humanitarian situations in those countries and supporting the ongoing peace processes, and help to advance the protection of human rights by preventing the supply of arms or related matériel that could be used to violate human rights.

The Amendment Regulation advances human rights by: simplifying the notification process for the supply of non-lethal military equipment and assistance to strengthen the capacity of the Ivorian security forces to protect the Ivorian people, while maintaining the UNSC's oversight role; facilitating the supply of non-lethal military equipment and assistance for humanitarian or protective use, and for strengthening the security capacity of the Libyan authorities to protect the human rights of the Libyan people, while maintaining the Minister of Foreign Affairs' oversight of such supplies; and providing exceptions to the arms embargo in relation to Somalia to support the Somali security forces, the African Union Mission in Somalia's strategic partners and United Nations personnel, all of which play an important role in safeguarding the human rights of the Somali people.

The Amendment Regulation also gives effect to paragraphs 2 and 3 of resolution 2035 in relation to Sudan, which contain obligations that have not yet been included in the Sudan Regulations. Paragraph 2 notes the creation of two additional states in Darfur, being Eastern and Central Darfur, and clarifies that all previous references to North, South and West Darfur shall apply to the entire territory of Darfur. Paragraph 3 provides that the criteria for listing individuals for the purposes of the travel ban or financial sanctions established pursuant to resolution 1591 (2005) shall apply also to entities.

The Amendment Regulation advances human rights by ensuring that entities who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities or violate other measures imposed by UNSC resolutions to address the situation in Sudan will also be subject to the UNSC sanctions measures.

This Legislative Instrument is compatible with human rights because it advances the protection of human rights in Côte d'Ivoire, Libya, Somalia and Sudan.

ATTACHMENT

Details of the Charter of the United Nations Legislation Amendment Regulation 2013 (No. 2)

Section 1 – Name of Regulation

Section 1 provides that the name of the regulation is the *Charter of the United Nations Legislation Amendment Regulation 2013 (No. 2)*.

Section 2 – Commencement

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

Section 3 – Authority

Section 3 provides that the regulation is made under the *Charter of the United Nations Act 1945*.

Section 4 – Schedule(s)

Section 4 provides that each instrument that is specified in a Schedule to the regulation is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments to the *Charter of the United Nations (Sanctions - Côte d'Ivoire) Regulations 2008*, the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011*, the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* and the *Charter of the United Nations (Sanctions – Sudan) Regulations 2008*

Charter of the United Nations (Sanctions - Côte d'Ivoire) Regulations 2008

Item [1] Regulation 4, new definitions of Resolution 2045 and Resolution 2101

Item [1] inserts a new definition of 'Resolution 2045', being Resolution 2045 (2012) of the Security Council, adopted on 26 April 2012, and 'Resolution 2101', being Resolution 2101 (2013), adopted on 25 April 2013, to give effect to the decisions of the UNSC in resolutions 2045 and 2101.

Item [2] – Subparagraph 9(5)(b)(iii), definition of *authorised supply*

Item [2] amends the definition of 'authorised supply' in subparagraph 9(5)(b)(iii) to include reference to 'Resolution 2045 and Resolution 2101' to incorporate the exceptions to the arms embargo set out in resolutions 2045 and 2101.

Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011

Item [3] - Regulation 3, new definition of Resolution 2095

Item [3] inserts a new definition of 'Resolution 2095', being Resolution 2095 (2013) of the Security Council of the United Nations, adopted on 14 March 2013, to give effect to the decision of the UNSC in resolution 2095.

Item [4] – Subparagraph 6(5)(b)(iii), definition of *authorised supply*

Item [4] amends the definition of ‘authorised supply’ in subparagraph 6(5)(b)(iii) to include reference to ‘Resolution 2095’ to incorporate the exceptions to the arms embargo set out in resolution 2095.

Item [5] - Paragraph 7(2)(a)

Item [5] amends paragraph 7(2)(a) to remove the requirement to notify or seek the approval of the UNSC Libya Sanctions Committee for the supply of non-lethal military equipment intended solely for humanitarian or protective use, or for security or disarmament assistance to the Libyan authorities, to give effect to paragraphs 9 and 10 of resolution 2095.

Item [6] – Subparagraph 9(5)(b)(iii), definition of *authorised service*

Item [6] amends the definition of ‘authorised service’ in subparagraph 9(5)(b)(iii) to include reference to ‘Resolution 2095’ to incorporate the exceptions to the arms embargo set out in resolution 2095.

Item [7] – Paragraph 10(2)(a)

Item [7] amends paragraph 10(2)(a) to remove the requirement to seek the approval of the Committee for the supply of technical assistance and training related to the supply of non-lethal military equipment intended solely for humanitarian or protective use, to give effect to paragraph 9 of resolution 2095.

Item [8] – Subparagraph 10(2)(b)(i)

Item [8] makes a consequential amendment to subparagraph 10(2)(b)(i) to replace the reference to ‘subparagraph (a)(i)’ with a reference to ‘paragraph (a)’, to reflect the amendment to paragraph 10(2)(a).

Item [9] – Paragraph 10(2)(c)

Item [9] amends paragraph 10(2)(c) to remove the requirement to notify the Committee of the supply of technical assistance or training, or financial or other assistance, that is related to the supply of non-lethal military equipment intended solely for security or disarmament assistance to the Libyan authorities, to give effect to paragraph 10 of resolution 2095.

Charter of the United Nations (Sanctions – Somalia) Regulations 2008

Item [10] - Regulation 4, new definition of *Resolution 2093*

Item [10] inserts a new definition of ‘Resolution 2093’, being Resolution 2093 (2013) of the Security Council of the United Nations, adopted on 6 March 2013, to give effect to the decision of the UNSC in resolution 2093.

Item [11] – Subparagraph 8(5)(b)(iii)

Item [11] amends subparagraph 8(5)(b)(iii) to include reference to ‘Resolution 2093’ to incorporate the exceptions to the arms embargo set out in resolution 2093.

Item [12] – Paragraph 9(2)(f)

Item [12] amends paragraph 9(2)(f) and inserts paragraphs 9(2)(g) and 9(2)(h) to provide exceptions to the arms embargo for UN personnel, the security forces of the Federal Government of Somalia and the African Union Mission in Somalia’s strategic partners, to give effect to paragraphs 33, 36, 37 and 38 of resolution 2093.

Item [13] – Subparagraph 10(4)(b)(iii), definition of *authorised service*

Item [13] amends the definition of ‘authorised service’ in subparagraph 10(4)(b)(iii) to include reference to ‘Resolution 2093’ to incorporate the exceptions to the arms embargo set out in resolution 2093.

Item [14] – Paragraph 11(2)(d)

Item [14] amends paragraph 11(2)(d) and inserts paragraphs 11(2)(e) and 11(2)(f) to enable the Minister to authorise the provision of a sanctioned service to UN personnel, the security forces of the Federal Government of Somalia, and the African Union Mission in Somalia’s strategic partners, to give effect to paragraphs 33, 36, 37 and 38 of resolution 2093.

Charter of the United Nations (Sanctions – Sudan) Regulations 2008

Item [15] – Regulation 4, definition of *controlled asset*

Item [15] amends the definition of ‘controlled asset’ to include an asset that is owned or controlled by an ‘entity’, to give effect to paragraph 3 of resolution 2035.

Item [16] – Regulation 4, definition of *designated person*

Item [16] repeals the definition of ‘designated person’.

Item [17] – Regulation 4, definition of *designated person or entity*

Item [17] inserts a new definition of ‘designated person or entity’ to give effect to paragraph 3 of resolution 2035 providing for the designation of entities as well as individuals for the purposes of paragraph 3(c) of resolution 1591 (2005).

Item [18] – Subregulation 9(2)(table)

Item [18] substitutes the table to replace references to ‘North Darfur, South Darfur or West Darfur’ with ‘the territory of Darfur, including the states of North, South, East, West and Central Darfur’, to give effect to paragraph 2 of resolution 2035.

Item [19] – Subregulation 9(3)(table)

Item [19] substitutes the table to replace references to ‘North Darfur, South Darfur or West Darfur’ with ‘the territory of Darfur, including the states of North, South, East, West and Central Darfur’, to give effect to paragraph 2 of resolution 2035.

Item [20] – Subregulation 11(2) (table)

Item [20] substitutes the table to replace references to ‘North Darfur, South Darfur or West Darfur’ with ‘the territory of Darfur, including the states of North, South, East, West and Central Darfur’, to give effect to paragraph 2 of resolution 2035.