

Explanatory Statement

Select Legislative Instrument No. 9, 2014

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014

The purpose of the *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014* (the Regulation) is to implement the decision of the United Nations Security Council (UNSC) to impose sanctions in relation to the Central African Republic (CAR).

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides that the Governor-General may make regulations to give effect to decisions of the UNSC 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.

Resolution 2127 was adopted under Chapter VII of the Charter on 5 December 2013 and the measures are binding on Australia pursuant to Article 25 of the Charter. Resolution 2127 imposes an arms embargo in relation to the CAR. Paragraph 54 of resolution 2127 requires Australia to prohibit the unauthorised direct or indirect supply, sale or transfer to the CAR of arms or related matériel of all types. The arms embargo also covers the unauthorised provision of technical assistance, training, financial or other assistance related to military activities or the provision, manufacture, maintenance or use of arms or related matériel, including the provision of armed mercenary personnel. Resolution 2127 (2013) outlines six limited exemptions to the arms embargo.

The Regulation implements the decision of the UNSC in resolution 2127 to impose an arms embargo with limited exemptions.

The Regulation provides in sections 8(2) and 10(2) that strict liability applies to the circumstance that the sanctioned supply or sanctioned service is not authorised by a permit under sections 9 and 11 respectively. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will continue not to apply to any other element of the offence. The purpose of this provision is to prevent a spurious defence that a statement of the Minister could be taken as de facto authorisation to engage in conduct that is prohibited under the Act. Either the permit exists or it does not exist.

Details of the Regulation are set out in the [Attachment](#).

No public consultation was undertaken in relation to the Regulation because it implements Australia's international legal obligations arising from decisions of the UNSC. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions.

Resolution 2127 was adopted under Article 41 of Chapter VII of the Charter and the decisions therein are binding on Australia pursuant to Article 25 of that Charter. The relevant UNSC resolution can be found on the United Nations website (www.un.org).

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 – Central African Republic) Regulation 2014

The *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014* 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 Regulation gives effect to decisions that the UNSC has made under Chapter VII of 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 Regulation gives effect to resolution 2127, which imposes an arms embargo in relation to the Central African Republic (CAR) with six limited exemptions.

The Regulation engages human rights by imposing an arms embargo in relation to the CAR. The arms embargo is vital in addressing the grave humanitarian situation in the CAR and helps 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 human rights obligation that may possibly be affected by the amendment to the Regulation is the presumption of innocence. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. As strict liability offences allow for the imposition of criminal liability without the need to prove fault, all strict liability offences engage the presumption of innocence in article 14(2) of the ICCPR. A strict liability offence will not necessarily violate the presumption of innocence provided that it is: (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

The Regulation provides in sections 8(2) and 10(2) that strict liability applies to the circumstance that the sanctioned supply or sanctioned service is not authorised by a permit under sections 9 and 11 respectively. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will continue not to apply to any other element of the offence. The purpose of this provision is to prevent a spurious defence that a statement of the Minister could be taken as de facto authorisation to engage in conduct that is prohibited under the Act. Either the permit exists or it does not exist.

The Regulation touches on human rights in another respect. In sections 8(7) and 10(7), the Regulation provides for limited circumstances in which defendants to specific charges bear an evidential burden of proof. By way of example, a defendant to a charge under section 27 of the Act that relates to the offence under section 8(1) of

the Regulation of making a sanctioned supply where the supply was from a foreign country bears an evidential burden to establish that the supply was authorised by a permit granted by the foreign country. The reason for this evidential burden on the defendant is that the defendant is in a uniquely strong position of knowledge of this matter – that is, of the specific fact that the permit was granted by the foreign country.

The Regulation advances human rights by giving effect to limited exemptions to the arms embargo in relation to the CAR, including exemptions based on humanitarian grounds, which play an important role in promoting the human rights of the people of the CAR.

Authority: Section 6 of the *Charter of the United Nations Act 1945*

ATTACHMENT

Details of the Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014

Section 1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014*.

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 – Definitions

Section 4 provides for the definition of certain terms used in the Regulation, including “arms or related matériel”, “BINUCA”, “Committee”, “export sanctioned goods”, “MICOPAX”, “MISCA”, “paramilitary equipment”, “sanctioned service” and “sanctioned supply”.

Section 5 – Definition of export sanctioned goods

Section 5 provides that “export sanctioned goods” means arms or related matériel.

Section 6 – Definition of sanctioned service

Section 6 provides that “sanctioned service” means the provision of technical advice, training, financial or other assistance related to military activities or the provision, maintenance or use of any arms or related matériel, including the provision of armed mercenary personnel.

Section 7 – Definition of sanctioned supply

Section 7 provides that a person makes a “sanctioned supply” if that person supplies, sells or transfers goods to another person, the goods are export sanctioned goods, and as a direct or indirect result of the supply, sale or transfer, the goods are transferred to the CAR.

Section 8 – Prohibitions relating to a sanctioned supply

Section 8 prohibits the making of an unauthorised sanctioned supply by a person. Section 8 provides that strict liability applies to the circumstance that the making of the sanctioned supply is not authorised by a permit under section 9. In addition, section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of Section 8(1), giving the offence extraterritorial operation.

The prohibition relating to a sanctioned supply 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 8 if another body corporate, wherever

incorporated or situated, over which the first body corporate has effective control makes an unauthorised supply.

Section 8 is specified by the Minister as a UN sanction enforcement law pursuant to section 2B of the Act and included in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. This has the effect of making contraventions of this section offences under section 27 of the Act.

Section 9 – Permit to make a sanctioned supply

Section 9 allows the Minister, on application, to grant a person a permit authorising: (a) a supply intended solely for the support of, or use by MICOPAX, MISCA, BINUCA or its guard unit, AU-RTF, or French forces deployed in the CAR; (b) a supply of non-lethal military equipment intended solely for humanitarian or protective use and approved in advance by the Committee; (c) a supply of protective clothing temporarily exported to the CAR by United Nations personnel, representatives of the media and humanitarian and development workers, and associated personnel; (d) a supply of small arms or other related equipment intended solely for use in international patrols providing security in the Sangha River Tri-national Protected Area to defend against poaching, smuggling of ivory or arms, or other activities contrary to the national laws or international legal obligations of the CAR; (e) a supply of arms or other related lethal equipment to the CAR security forces intended solely for the support of the CAR process of security sector reform and approved in advance by the Committee; (f) another supply of arms or related matériel that is approved in advance by the Committee.

Section 10 – Prohibitions relating to a sanctioned service

Section 10 prohibits the provision of an unauthorised sanctioned service. Section 10 provides that strict liability applies to the circumstance that the provision of the sanctioned service is not authorised by a permit under section 11. In addition, section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of Section 10(1), giving the offence extraterritorial operation.

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 10 if a body corporate, wherever incorporated or situated, over which the first body corporate has effective control provides an unauthorised sanctioned service.

Section 10 is specified by the Minister as a UN sanction enforcement law pursuant to section 2B of the Act and included in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. This has the effect of making contraventions of this section offences under section 27 of the Act.

Section 11 – Permit to provide a sanctioned service

Section 11 allows the Minister, on application, to grant a person a permit authorising: (a) the provision of technical assistance or training related to a supply of non-lethal military equipment intended solely for humanitarian or protective use and approved in advance by the Committee; or (b) other provision of assistance or personnel approved in advance by the Committee.

Section 12 – Delegations by the 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.