

EXPLANATORY STATEMENT
Select Legislative Instrument No. 234, 2015

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions-Yemen) Amendment Regulation 2015 (No. 1)

Charter of the United Nations (Sanctions-Yemen) Regulation 2014

The purpose of the *Charter of the United Nations (Sanctions-Yemen) Amendment Regulation 2015 (No 1.)* (the **Amendment Regulation**) is to amend the *Charter of the United Nations (Sanctions-Yemen) Regulations 2014* in order to implement Resolution 2216 (2015) of the United Nations Security Council (UNSC).

Section 6 of the *Charter of the United Nations Act 1945* (the **Act**) provides that the Governor-General may make regulations for, an 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 Amendment Regulation gives effect in Australia to sanctions obligations arising from UNSC resolution 2216 (2015). Resolution 2216 (2015) concerning Yemen was adopted under Chapter VII of the Charter on 14 April 2015 and the measures are binding on Australia pursuant to Article 25 of the Charter. Paragraphs 14-17 require United Nations member states to implement an arms embargo in order to prevent the direct or indirect supply, sale or transfer to, or for the benefit of Ali Abdullah Saleh, Abdullah Yahya al Hakim, Abd al-Khaliq al-Huthi, and the individuals and entities designated by the Yemen Sanctions Committee. States are required to monitor cargo being sent to Yemen, destroy or seize weapons being sent there and report back to the UNSC on seizures.

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.

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.

Resolution 2216 (2015) was 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 resolution 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 (Sanctions-Yemen) Amendment Regulation 2015

Charter of the United Nations (Sanctions-Yemen) Regulations 2014

The *Charter of the United Nations (Sanctions-Yemen) Amendment Regulation 2015* (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 United Nations Security Council (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 is made pursuant to section 6 of the Charter of the United Nations Act 1945, which provides that the Governor-General may make regulations giving effect to such decisions.

In summary, paragraphs 14-17 imposes an arms embargo on designated individuals and entities and those acting on their behalf or under their direction, who have allegedly engaged in acts that threaten the peace, security and stability of Yemen. In particular, the arms embargo authorises all UN Member States to take all necessary measures to prevent the direct or indirect supply, sale or transfer to, arms and related materiel of all types to the named individuals including:

- weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned;
- technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel;
- inspecting all cargo to Yemen in accordance with international and domestic laws, where there are reasonable grounds to believe the cargo contains items where the supply, sale, or transfer of which is prohibited under Resolution 2216.

Practically, this Amendment Regulation amends the Charter of the United Nations (Sanctions-Yemen) Regulation 2015 to align with Resolution 2216.

The Amendment Regulation does not engage any of Australia's international human rights obligations as persons in Yemen are outside of Australia's territory and jurisdiction. Accordingly, this Amendment Regulation is consistent with Australia's international human rights obligations and has no adverse implications for Australia's compliance with such obligations.

The Amendment Regulation gives effect to paragraphs 14-17 of resolution 2216 (2015) in relation to Yemen, by imposing an arms embargo that prohibits the supply

of sanctioned goods and services to Yemen in the *Charter of the United Nations (Sanctions-Yemen) Regulation 2015* to align with resolution 2216.

We understand that there is no change to the monitoring of cargo or need to provide personal information to the government that would be imposed by this Regulation. The only impact on persons in Australia would be the expansion of the category of sanctions offences created under the Charter of the United Nations Act to include the Yemen arms embargo.

This Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

Details of Charter of the United Nations Legislation (Sanctions—Yemen)
Amendment Regulation 2015

Section 1 – Name of Regulation

Section 1 would provide that the name of the regulation is the *Charter of the United Nations Legislation Amendment (Sanctions—Yemen) Regulation 2015*.

Section 2 – Commencement

Section 2 would provide that the regulation commences the day after the instrument is registered.

Section 3 – Authority

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

Section 4 – Schedule(s)

Section 4 would provide that each instrument that is specified in a Schedule to the regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Charter of the United Nations (Sanctions – Yemen) Regulation 2014

Item [1] – Regulation 4, insert new definition

Item [1] would insert the text '*arms or related materiel* includes the following:

- (a) *Weapons;*
- (b) *Ammunition;*
- (c) *Military vehicles and equipment;*
- (d) *Paramilitary equipment;*
- (e) *spare parts for things not mentioned in paragraphs (a) to (d).*

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

Item [2] – Regulation 4, repeal and insert new definition

Item [2] would repeal the definition and substitute:

designated person or entity means a person or entity:

- (a) designated by the Committee for paragraph 11 of Resolution 2140; or
- (b) that the Security Council decides is subject to the measures imposed by paragraph 11 of Resolution 2140.

Item [3] – Regulation 4, insert new text

Item [3] would insert the text:

export sanctioned goods has the meaning given by section 4A.

paragraph 14 person or entity means a person or entity:

- (a) named in paragraph 14 of Resolution 2216; or
- (b) listed in the annex of Resolution 2216; or
- (c) designated by the Committee in accordance with paragraph 20 (d) of Resolution 2216; or
- (d) acting on behalf of, or at the direction of, in Yemen, a person mentioned in paragraph (a), (b) or (c).

paramilitary equipment means any of the following:

- (a) batons, clubs, riot sticks or similar devices of a kind used for law enforcement purposes;
- (b) body armour, including:
 - (i.) bullet-resistant apparel; and
 - (ii.) bullet-resistant pads; and
 - (iii.) protective helmets;
- (c) handcuffs, leg-irons or other devices used for restraining prisoners;
- (d) riot protection shields;
- (e) whips.

Resolution 2216 means Resolution 2216 (205) of the Security Council, adopted on 14 April 2015.

sanctioned service has the meaning given by section 4B.

sanctioned supply has the meaning given by section 4C.

Item [4] – At the end of Part 1, insert new subparagraphs

Item [4] would add a new subparagraph 4A: ‘*export sanctioned goods* means arms or related materiel’.

It would add subparagraph 4B defining *sanctioned service* as

‘(a) the provision to a paragraph 14 person or entity of technical assistance, training, financial or other assistance, related to:

- (i) military activities; or
 - (ii) the provision, maintenance or use of any arms or related materiel; and
- (b) includes the provision to a paragraph 14 person or entity of armed mercenary personnel whether or not originating in Australia.’

It would also add subparagraph 4C, defining *sanctioned supply* as where

- (a) the person supplies, sells or transfers goods to another person; and
- (b) the goods are export sanctioned goods; and
- (c) as a direct or indirect result of the supply, sale or transfer, the goods are transferred to a paragraph 14 person or entity.’

Item [3] – Before section 5, insert new subparagraphs

Item [3] would insert a new subparagraph 4D ‘Prohibitions relating to a sanctioned supply’ which would set out:

- (1) a person contravenes this subsection if the person makes a sanctioned supply.
- (2) a person contravenes this subsection if the person (whether or not in Australia, and whether or not an Australian citizen) uses the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply.
- (3) a body corporate contravenes this subsection if:
 - a. the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - b. the other body corporate or entity makes the sanctioned supply.
- (4) Section 15.1 of the *Criminal Code* (Extended geographical jurisdiction – category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).

Note 1: Subsection (4) has the effect that the offence has extraterritorial operation.

It would also add subparagraph 4E, ‘Prohibitions relating to a sanctioned service’, which would set out:

- (1) A person contravenes this subsection if the person provides a sanctioned service.
- (2) A person contravenes this subsection if the person (whether or not in Australia, and whether or not an Australian citizen) uses the services of an Australian ship or an Australian aircraft in the course of, or for the purpose of, providing a sanctioned service.
- (3) A body corporate contravenes this subsection if:
 - a. the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situation; and
 - b. the other body corporate or entity provides a sanctioned service.
- (4) Section 15.1 of the *Criminal Code* (Extended geographical jurisdiction – category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).