

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations Legislation Amendment (2018 Measures No. 1) Regulations 2018

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. Section 6 of the Act provides that the Governor-General may make regulations to give effect to decisions of the United Nations Security Council (UNSC) under Chapter VII of the Charter that Article 25 of the Charter requires Australia to carry out, insofar as those decisions require Australia to apply measures not involving the use of armed force.

The *Charter of the United Nations Legislation Amendment (2018 Measures No. 1) Regulations 2018* (the Amendment Regulations) updates the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with the following United Nations Security Council Resolutions (UNSCRs):

- UNSCR 2374 (2017) imposing financial transaction sanctions in Mali;
- UNSCR 2231 (2016) responding to the proliferation of nuclear weapons in Iran;
- UNSCR 2362 (2017) reaffirming financial transaction sanctions in Libya;
- UNSCR 2283 (2016) terminating sanctions in relation to Côte d'Ivoire; and
- UNSCR 2288 (2016) terminating sanctions in relation to Liberia.

The preambles to the abovementioned UNSCRs note that the Security Council was acting under Chapter VII of the Charter. Decisions of the Security Council contained in the UNSCRs are therefore binding on Australia.

The Principal Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons and entities designated by the UNSC as being subject to such measures. Regulation 4 of the Principal Regulations includes a definition of "Sanctions Regulations" which lists all relevant regulations made under the Act to which the Principal Regulations are to apply. The Principal Regulations define various permissible dealings for the "Sanctions Regulations" listed at regulation 4.

The Amendment Regulations aim to ensure the "Sanctions Regulations" definition in the Principal Regulations applies to the *Charter of the United Nations (Sanctions - Mali) Regulations 2018*, *Charter of the United Nations (Sanctions – Iran) Regulation 2016*, and *Charter of the United Nations (Sanctions – Libya) Regulations 2011*, by including these regulations in those listed at regulation 4 of the Principal Regulations. The Principal Regulations define various permissible dealings for "Sanctions Regulations" listed at regulation 4.

The Amendment Regulations aim to ensure the "Sanctions Regulations" definition in the Principal Regulations is repealed in relation to the *Charter of the United Nations (Sanctions — Côte d'Ivoire) Regulations 2008* and the *Charter of the United Nations (Sanctions – Liberia) Regulations 2008* as these regulations are no longer in force.

United Nations Security Council Resolutions, including those referred to in the Amendment Regulations, can be found on the United Nations website.

No public consultation was undertaken in relation to the Regulations under section 17 of the *Legislation Act 2003* because the instrument 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 sanction laws implementing UNSC sanctions.

Details of the Amendment Regulations are set out in [Attachment A](#).

The Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purpose of the *Legislation Act 2003*.

The Amendment Regulations commence the later of: the day the Amendment Regulations are registered; and the commencement of the *Charter of the United Nations (Sanctions – Mali) Regulations 2018*.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required when implementing a decision of the UNSC concerning sanctions (OBPR reference: 21407).

The Amendment Regulations are 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* as set out in [Attachment B](#).

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

ATTACHMENT A

Details of the Charter of the United Nations Legislation Amendment (2018 Measures No. 1) Regulations 2018

Section 1 – Name

Section 1 provides that the name of the Amendment Regulations is the *Charter of the United Nations Legislation Amendment (2018 Measures No. 1) Regulations 2018*.

Section 2 – Commencement

Section 2 provides that the Amendment Regulations commence the later of: the day they are registered; or the commencement of the *Charter of the United Nations (Sanctions – Mali) Regulations 2018*.

Section 3 – Authority

Section 3 provides that the Amendment Regulations are made under the *Charter of the United Nations Act 1945*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Charter of the United Nations (Dealing with Assets) Regulations 2008

Item [1] - Regulation 4 (paragraph (b) of the definition of “Sanctions Regulations”)

Item [1] repeals paragraph (b) of the definition of “Sanctions Regulations”.

Item [2] – Regulation 4 (paragraph (f) of the definition of “Sanctions Regulations”)

Item [2] repeals paragraph (f) and substitutes a reference to the *Charter of the United Nations (Sanctions – Iran) Regulation 2016*.

Item [3] – Regulation 4 (paragraphs (i) and (j) of the definition of “Sanctions Regulations”)

Item [3] repeals paragraphs (i) and (j) and substitutes a reference to the *Charter of the United Nations (Sanctions – Libya) Regulations 2011* and the *Charter of the United Nations (Sanctions – Mali) Regulations 2018* respectively.

Schedule 2 – Repeals

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

Item [1] – Repeals the *Charter of the United Nations (Sanctions — Côte d'Ivoire) Regulations 2008*.

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

Item [2] – Repeals the *Charter of the United Nations (Sanctions – Liberia) Regulations 2008*.

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 (2018 Measures No. 1) Regulations 2018

The *Charter of the United Nations Legislation Amendment (2018 Measures No. 1) Regulations 2018* (the Amendment Regulations) 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 Regulations update the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with the following United Nations Security Council Resolutions (UNSCRs): UNSCR 2374 (2017) imposing financial transaction sanctions in relation to Mali; UNSCR 2231 (2015) responding to the proliferation of nuclear weapons in Iran; UNSCR 2362 (2017) reaffirming financial transaction sanctions in relation to Libya; UNSCR 2283 (2016) terminating sanctions in relation to Côte d'Ivoire; and UNSCR 2288 (2016) terminating sanctions in relation to Liberia.

The Principal Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons and entities designated by the UNSC as being subject to such measures. Regulation 4 of the Principal Regulations includes a definition of "Sanctions Regulations" which lists all relevant regulations made under the Act to which the Principal Regulations are to apply. The Principal Regulations define various permissible dealings for the "Sanctions Regulations" listed at regulation 4.

Human rights compatibility

The Amendment Regulations ensure that persons and entities who act in a way that threatens the peace, security or stability of Mali or Libya, or who do not respect the restrictions on the proliferation of nuclear weapons in Iran, will be subject to UNSC sanctions measures.

The Parliamentary Joint Committee on Human Rights (Committee) has accepted that the use of sanctions to apply pressure to regimes and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law. It has also expressed concern that Australia's sanctions regimes may not be proportionate to their stated objective.

The human rights compatibility of the Regulations is addressed by reference to each of the human rights engaged below.

Right to privacy

Right

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The use of the term 'arbitrary' in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the individual circumstances. Arbitrariness connotes elements of injustice, unpredictability, unreasonableness, capriciousness and 'unproportionality'.¹

Reports

The Committee has noted that the designation of a person engages the right to privacy under Article 17 of the ICCPR, including on the basis that the freezing of a person's assets impacts their individual autonomy. In the context of Australia's autonomous sanctions regime, the Committee expressed the view that the designation and declaration of a person is a 'significant incursion into a person's right to personal autonomy in one's private life'. It noted in particular the freezing of a person's assets, and the requirement for a permit to access their funds for basic expenses. It further noted that it may be difficult for family members to access their own funds for basic expenses (such as household goods), without having to account for the expenditure.

Permissible limitations

The Amendment Regulations are not an unlawful interference with an individual's right to privacy. The Amendment Regulations are made pursuant to section 6 of the *Charter of the United Nations Act 1945*, which states that the Governor-General may make regulations for and in relation to giving effect to decisions that the Security Council makes under Chapter VII of the Charter of the United Nations and Article 25 of the Charter requires Australia to carry out.

The measures contained in the Amendment Regulations are not an arbitrary interference with an individual's right to privacy. An interference with privacy will not be arbitrary where it is reasonable, necessary and proportionate in the individual circumstances.

Targeted financial sanctions in relation to Mali, Iran and Libya constitute a reasonable limitation on the right to privacy. The United Nations Security Council Committees, or relevant committees, use predictable, publicly available criteria when designating a person as being subjected to such measures. These criteria capture only those persons who the UNSC or relevant UNSC committee is satisfied act in a way that threatens the international peace, security or stability in Mali, Libya, or Iran.

¹ Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 1993) 178.

Targeted financial sanctions are necessary and proportionate for Mali, Iran and Libya. They are only imposed, pursuant to the Charter, to address the following legitimate objectives: with respect to Mali, to respond to threats to the security, peace and stability of Mali; with respect to Iran, to respond to the proliferation of nuclear weapons in Iran; and with respect to Libya, to respond to acts that threaten Libya's peace, stability and security, and which obstruct or undermine its successful political transition. Noting the seriousness of these situations, which includes serious human rights abuses and violations of international humanitarian law, the Government considers that the targeting of specific individuals for financial sanctions is the least rights-restrictive way to respond.

The Government's position is therefore that any interference with the right to privacy as a consequence of the operation of the Regulations is not arbitrary or unlawful.

Right to an adequate standard of living

Right

The right to an adequate standard of living is contained in Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right, namely food, water, and housing.

Article 4 of ICESCR provides that this right may be subject to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'. To be consistent with the ICESCR, limitations must be proportionate.

Report

The Committee has noted that economic sanctions (generally) engage and limit Article 11(1) of the ICESCR, as persons subject to such sanctions will have their assets effectively frozen and may therefore have difficulty paying for basic expenses.

Permissible limitations

The Government considers any limitation on the enjoyment of Article 11(1), to the extent that it occurs, is justified. The Regulations allow for any adverse impacts on family members as a consequence of targeted financial sanctions to be mitigated. The Amendment Regulations provide for the payment of basic expenses (among others) in certain circumstances. The objective of the basic expenses exemption is, in part, to enable the Australian Government to administer the sanctions regime in a manner compatible with relevant human rights standards.

The Government considers that the permit process is a flexible and effective safeguard on any limitation to the enjoyment of Article 11(1).

Right to equality and non-discrimination

The right to equality and non-discrimination under Article 26 of the ICCPR provides that everyone is entitled to enjoy their rights without discrimination of any kind, and

that people are equal before the law and are entitled without discrimination to the equal and non-discriminatory protection of the law.

Differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria, serves a legitimate objective, and is a proportionate means of achieving that objective.

Report

The Committee has taken the view that Australia's autonomous sanctions regime engages Article 26 of the ICCPR to the extent that the designation or declaration of a person may result in the indirect discrimination on the basis of national origin or nationality. The Committee expressed the view that designation or declarations in relation to specified countries appeared to have a disproportionate impact on persons on the basis of national origin or nationality.

Permissible limitations

The Government's position is that any differential treatment of people as a consequence of the application of the Amendment Regulations does not amount to discrimination pursuant to Article 26 of the ICCPR.

The objective of the Amendment Regulations is to ensure that persons and entities in Mali, Libya or Iran, who act in a way that threatens international peace, security or stability, will be subject to UNSC sanctions measures.

On the basis that the Amendment Regulations relate to actions and policies which threaten international peace, security or stability, it is possible that the UNSC or relevant UNSC committee may be more likely to designate people with Malian, Libyan or Iranian nationality/national origin, respectively. Any such difference in treatment on the basis of nationality or national origin would have an objective and justifiable basis and would be reasonable and proportionate in the circumstances of each case.

The designation criteria contained in paragraph 8 of UNSCR 2374 (with respect to Mali), paragraph 6(c) & (d) of Annex B of UNSCR 2231 (with respect to Iran) and paragraph 11 of UNSCR 2362 (with respect to Libya), are reasonable and objective. They are reasonable insofar as they relate only to the situations in Mali, Iran and Libya respectively, and to actions and policies in Mali, Iran and Libya which the UNSC has specifically determined threaten international peace, security, or stability (including serious human rights abuses, violations of international humanitarian law and proliferation of nuclear weapons). The criteria are also objective, as they provide a clear, consistent and objectively-verifiable reference point by which the UNSC is able to make a designation. The Amendment Regulations serve a legitimate objective, as discussed above.

Finally, the Regulations are proportionate. As discussed above, the Government's view is that the imposition of targeted financial sanctions is a justified and less rights-restrictive means of achieving the aims of the Regulations. The Government does not

have information that supports the view that affected groups are vulnerable; rather, they are people the Committee has specifically determined, on the basis of the criteria established by the UNSC, are involved in actions and policies that threaten international peace, security, or stability. Further, there are several safeguards, such as the availability of judicial review, in place to ensure that any limitation is proportionate to the objective being sought.

The Government notes that it keeps its sanctions regimes under regular review, and will continue to consider issues such as human rights compatibility going forward.