

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations Act 1945 List 2003 (No 2)

Charter of the United Nations Act 1945 List 2003 (No 3)

Charter of the United Nations Act 1945 List 2004 (No 2)

The *Charter of the United Nations Act 1945* (COTUNA) provides legislative approval for the *Charter of the United Nations* (the Charter) in Australian law. Part 4 of COTUNA gives effect to United Nations Security Council (UNSC) decisions made under Chapter VII of the Charter that relate to terrorism and dealing with assets in relation to terrorists. Australia is required under Article 25 of the Charter to carry out such UNSC decisions, insofar as those decisions require Australia to apply measures not involving the use of armed force.

COTUNA makes provision for, amongst other things, the listing of persons or entities involved in the commission of terrorist acts. This regime is an important tool which implements Australia's international obligation to cooperate on the prevention of terrorist financing. Section 15 of COTUNA, read in conjunction with subregulation 6(1) of the *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002* (Terrorism and Dealing with Assets Regulations), obliges the person holding the position of Minister for Foreign Affairs (the Minister) to list a person or entity for counter-terrorism financial sanctions, if the Minister is satisfied that they are a person or entity mentioned in paragraph 1(c) of the UNSC Resolution 1373 (2001) (UNSCR 1373). That is, that they are: a person who commits, attempts to commit, or participates in or facilitates the commission of, terrorist acts; an entity owned or controlled by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and entities.

The purpose of a listing under section 15 of COTUNA is to subject the listed person or entity to counter-terrorism financial sanctions. There are two components to counter-terrorism financial sanctions under COTUNA:

- prohibiting persons from using or dealing with assets owned or controlled by a listed person or entity unless they have authorisation to do so;
- prohibiting persons from making an asset available to a listed person or entity unless they have authorisation to do so.

Persons or entities listed for counter-terrorism financial sanctions are set out in Schedule 1 of this instrument. The listing of each person or entity was made under section 15 of COTUNA on the basis that the Minister was satisfied they met the listing criteria set out in subregulation 6(1) of the *Terrorism and Dealing with Assets Regulations*. That is, they are a person or entity mentioned in paragraph 1(c) of UNSCR 1373. Paragraph 1(c) of UNSCR 1373 is set out in a note to section 3 of this instrument. The full resolution is published on the UNSC website ([www.undocs.org/S/RES/1373\(2001\)](http://www.undocs.org/S/RES/1373(2001))) and can be freely accessed and used by members of the public.

Australia's counter-terrorism financial sanctions listings are subject to periodic review. Consequently, some persons and entities listed in Schedule 1 of this instrument may no longer be subject to sanctions. All persons and entities who remain subject to financial sanctions under Australian sanctions law are set out in a document maintained by the Department of Foreign Affairs and Trade pursuant to regulation 40 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Consolidated List). The Consolidated List is available on the Department of

Foreign Affairs and Trade website: www.dfat.gov.au/international-relations/security/sanctions/consolidated-list.

This instrument was published in the Commonwealth Gazette on making and is stated to commence on gazettal. However, in accordance with subsection 12(2) of the *Legislation Act 2003* (the Act), to the extent that it disadvantages or imposes liabilities on a person, a listing instrument only applies in relation to a person (other than the Commonwealth or an authority of the Commonwealth) once registered on the Federal Register of Legislation.

In accordance with subsection 44(1) of the Act, instruments made under section 15 of COTUNA are not subject to the disallowance provisions of the Act. This reflects the policy intention of subsection 44(1) of the Act, as it would be inappropriate for the Commonwealth to unilaterally disallow instruments made to facilitate the operation of the UNSC and which are authorised for the purposes of an intergovernmental scheme. Doing so would frustrate the purpose of the Charter. The Attorney-General's Department, which has policy responsibility for the Act, was consulted in relation to the application of subsection 44(1) of the Act to instruments listing persons and entities subject to counter-terrorism financial sanctions.

This instrument advances human rights by preventing and suppressing terrorist acts by ensuring that persons and entities listed in those instruments are denied access to assets that could be used to carry out or facilitate terrorist acts. Australia complies with its obligations under international human rights laws, including the right to an adequate standard of living in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which 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. In implementing UNSC sanctions, the Minister can still comply with ICESCR obligations by authorising the making available of assets to listed persons or entities, or the use or dealing with their assets.

The sanctions imposed through this instrument were subject to thorough vetting by Australian Government agencies as well as consultation with relevant international partners. This is the appropriate level of consultation as anything further would risk alerting persons and entities to the impending sanctions and enable them to make arrangements to avoid the immediate effect of the measures. Additional consultation beyond this would not be reasonably practicable as it would inevitably frustrate Australia's obligation at international law to prohibit unauthorised financial transactions to individual terrorists or terrorist entities.