

Explanatory Statement

Issued by the Authority of the Assistant Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024

The purpose of the *Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024* (the 2024 Instrument) is to list two entities for targeted financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act). Targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by, or making an asset available directly or indirectly to, a listed person or entity.

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

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This sanctions framework implements Australia's international obligation to cooperate on the prevention of terrorist financing.

Section 15 of the Act, read in conjunction with subregulation 20(1) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Dealing with Assets Regulations), obliges the Assistant Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions, if the Minister is satisfied on reasonable grounds that they are a person or entity mentioned in paragraph 1(c) of UNSC Resolution 1373 (2001) (UNSCR 1373). That is, that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

UNSCR 1373 is published on the following 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.

Consideration of human rights

The 2024 Instrument advances human rights by restricting the access of listed entities to assets that could be used to commit or facilitate terrorist acts. Australia endeavours to comply with its obligations under international human rights laws, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Effect of the 2024 Instrument

The effect of the 2024 Instrument is to subject the entities set out in Schedule 1 of the Instrument to targeted financial sanctions. The listings are made under section 15 of the Act on the basis that the Minister is satisfied that the entities meet the listing criteria set out in subregulation 20(1) of the

Dealing with Assets Regulations. That is, that they are an entity mentioned in paragraph 1(c) of UNSCR 1373.

Broadly, the effect of targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) is to:

- prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by a listed person or entity, unless the Minister has granted a permit authorising them to do so; and
- prohibit individuals and bodies corporate from making an asset available directly or indirectly to a listed person or entity, unless the Minister has granted a permit authorising them to do so.

Listings under section 15 of the Act cease to have effect after three years (subsection 15A(1) of the Act), unless the Minister declares that a listing continues to have effect (subsection 15A(2) of the Act). Rather than make such a declaration, the Minister may alternatively make a new listing that is the same in substance as another listing (paragraph 15A(6)(c) of the Act).

On this occasion, the Minister decided to make a new listing under section 15 of the Act to enable the listing of these entities to be included in a single compilation instrument of listed persons and entities under Part 4 of the Act. While listings under Part 4 of the Act have historically appeared across multiple instruments, the Department of Foreign Affairs and Trade (DFAT) intends to consolidate listings under Part 4 of the Act into one instrument over time. This will assist the public in accessing information on listings under Part 4 of the Act.

Listings may be revoked under section 16 of the Act either at the Minister's own instigation or on application by the listed person or entity.

Further details of the 2024 Instrument are set out in [Attachment A](#).

The 2024 Instrument is exempt from sunseting under table item 1 of regulation 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* on the basis that the Instrument's sole or primary purpose is to give effect to an international obligation of Australia.

The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required for listing instruments of this nature (OIA reference: OBPR22-01748).

Consultation

The measures imposed through the 2024 Instrument were subject to thorough vetting by Australian Government agencies as well as consultation with relevant international partners.

In accordance with standard practice, DFAT also invited submissions from the public, including listed entities or their authorised representatives, relevant to the Minister's consideration of their listing under Part 4 of the Act. The consultation period opened on 25 January 2024 and closed at 5.00pm AEST on 15 February 2024. No submissions were received.

Details of the Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024

Section 1 – Name

This section provides that the title of the instrument is the *Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024* (the 2024 Instrument).

Section 2 – Commencement

This section provides for commencement the day after the 2024 Instrument is registered.

Section 3 – Authority

This section provides that the 2024 Instrument is made under section 15 of the *Charter of the United Nations Act 1945*.

Listings for the entities proposed to be listed were previously made in gazette notices. The 2024 Instrument provides for the listings to be made as new listings under section 15 of the *Charter of the United Nations Act 1945*, rather than having them continue to have effect under section 15A of that Act.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the 2024 Instrument has effect according to its terms.

Schedule 1 – Amendments

Charter of the United Nations (Listed Persons and Entities) Instrument 2022

Item 1 – Clause 1 of Schedule 1 (at the end of the table)

Schedule 1 of the *Charter of the United Nations (Listed Persons and Entities) Instrument 2022* (the Principal Instrument) sets out entities that, by operation of section 5 of the Principal Instrument, are listed by the Assistant Minister for Foreign Affairs (the Minister) for targeted financial sanctions (also known as counter-terrorism financing sanctions), which prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by, or making an asset available directly or indirectly to, a listed person or entity.

This Item adds two entities to Schedule 1 of the Principal Instrument.

These entities are listed for targeted financial sanctions as the Minister is satisfied on reasonable grounds that each is: an entity owned or controlled directly or indirectly by a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity acting on behalf of, or at the direction of, such an entity; or an entity acting on behalf of, or at the direction of, a person who commits, attempts to commit, or participates in or facilitates the commission of, terrorist acts.

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 (Listed Persons and Entities) Amendment (No. 2) Instrument 2024

This Legislative Instrument 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*.

Overview of the Legislative Instrument

The purpose of the Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024 (the 2024 Instrument) is to list two entities for targeted financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act). Targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by, or making an asset available directly or indirectly to, a listed person or entity.

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

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This sanctions framework implements Australia's international obligation to cooperate on the prevention of terrorist financing.

Section 15 of the Act, read in conjunction with subregulation 20(1) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Dealing with Assets Regulations), obliges the Assistant Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions, if the Minister is satisfied on reasonable grounds that they are a person or entity mentioned in paragraph 1(c) of UNSC Resolution 1373 (2001) (UNSCR 1373). That is, that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

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Under section 17 of the Act, a listed person or entity, or their authorised representative, may apply in writing to the Minister at any time to have the listing revoked.

Human rights implications

The 2024 Instrument engages the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- the right to life (Article 6 of the ICCPR);
- the right to freedom of thought, conscience and religion (Article 18 of the ICCPR);
- the right to freedom from the advocacy of national, racial or religious hatred (Article 20 of the ICCPR); and
- the right to self-determination, including to freely dispose of natural wealth and resources (Article 1 of the ICCPR and Article 1 of the ICESCR).

It is well accepted that international human rights law obligations are owed to individuals only, and are not owed to non-natural persons, such as bodies corporate or bodies politic. The rights considered below are those of individuals which may be affected by the listing of the entities named in the 2024 Instrument.

The right to life (Article 6 of the ICCPR); to freedom of thought, conscience and religion (Article 18 of the ICCPR); and to freedom from the advocacy of national, racial or religious hatred (Article 20 of the ICCPR)

The 2024 Instrument promotes the right to life; to freedom of thought, conscience and religion; and to freedom from the advocacy of national, racial or religious hatred.

The 2024 Instrument's effect is the prevention and suppression of terrorist acts. Targeted financial sanctions imposed in the 2024 Instrument will ensure that the entities listed are denied access to assets that could be used to carry out or facilitate terrorist acts. Terrorist acts are calculated to provoke a state of terror in the general public. They may result in death or injury to individuals and are designed to promote a particular thought, conscience or religion, or advocate for national, racial or religious hatred.

Targeted financial sanctions therefore promote human rights in this case by reducing the threat of terrorist acts which, by their nature, impact on the enjoyment of human rights and freedoms.

The right to self-determination, including to freely dispose of natural wealth and resources (Article 1 of the ICCPR and Article 1 of the ICESCR)

Article 1 of the ICCPR and Article 1 of the ICESCR provides a right to self-determination, including to freely dispose of natural wealth, resources, and assets.

The effect of targeted financial sanctions on entities is that members of the public are unable to provide assets to those listed under the Act.

The objective of this 2024 Instrument is to give effect to Australia's international obligation to suppress terrorist financing. The imposition of targeted financial sanctions through the listing of entities which participate in or facilitate terrorist acts help to achieve this objective by denying such entities the financial means to undertake terrorist activities.

Listed entities may apply for their designation to be revoked. Australia's counter-terrorism financing sanctions listings are also subject to periodic review. Section 15A of the Act provides that a listing ceases to have effect after three years, unless the Minister declares that the listing continues to have effect. This provision ensures the listing remains current and appropriate.

Under section 17 of the Act, a listed entity, or its authorised representative, may apply in writing to the Minister at any time to have the listing revoked. The application must set out the circumstances relied upon to justify the application. To assist with an application, the Department of Foreign Affairs and Trade will provide a listed entity, or its authorised representative, with an unclassified statement of reasons for the listing, upon written request.

The measures in the 2024 Instrument which may limit a right to self-determination are reasonable, necessary and proportionate in achieving the objective of suppressing terrorism financing, and complying with Australia's international obligations.

Conclusion

The 2024 Instrument is compatible with human rights because targeted financial sanctions preventing and suppressing terrorism financing promote the right to life, to freedom of thought, conscience and religion, and to freedom from the advocacy of national, racial or religious hatred. To the extent that it may limit human rights, such limitations are reasonable, necessary and proportionate.