



Statutory Rules 1993 No. 279¹

Charter of the United Nations (Sanctions) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,
acting with the advice of the Federal Executive Council, make the
following Regulations under the *Charter of the United Nations Act 1945*.

Dated 28 October 1993.

BILL HAYDEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Minister for Foreign Affairs

Citation

1. These Regulations may be cited as the Charter of the
United Nations (Sanctions) Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

Interpretation

2. In these Regulations, unless the contrary intention appears:

“**Comptroller-General**” means the Comptroller-General of Customs;

“**Customs Officer**” means an Officer of Customs under the *Customs Act 1901*;

“**sanctions resolution**” means the following United Nations Security Council Resolutions:

(a) No. 713 (1991) adopted on 25 November 1991;

(b) No. 757 (1992) adopted on 30 May 1992;

(c) No. 787 (1992) adopted on 16 November 1992;

(d) No. 820 (1993) adopted on 17 April 1993;

“**vehicle**” includes a vessel and an aircraft;

“**Yugoslavia**” means the Federal Republic of Yugoslavia (Serbia and Montenegro).

Application of the Regulations

3. These Regulations have extra-territorial operation according to their terms.

Financial sanctions against Yugoslavia

4. A person in Australia who holds the following funds must not use the funds for any purpose:

(a) funds of an authority that is located in Yugoslavia;

(b) funds that are controlled, directly or indirectly, by an authority that is located in Yugoslavia;

(c) funds that are controlled, directly or indirectly, by an entity, wherever located or organised, that is owned by an authority that is located in Yugoslavia;

(d) funds that are controlled, directly or indirectly, by an entity, wherever located or organised, that is controlled by an authority that is located in Yugoslavia;

(e) funds of a commercial, industrial or public utility undertaking that is located in Yugoslavia;

- (f) funds that are controlled, directly or indirectly, by a commercial, industrial or public utility undertaking that is located in Yugoslavia;
- (g) funds that are controlled, directly or indirectly, by an entity, wherever located or organised, that is owned by a commercial, industrial or public utility undertaking that is located in Yugoslavia;
- (h) funds that are controlled, directly or indirectly, by an entity, wherever located or organised, that is controlled by a commercial, industrial or public utility undertaking that is located in Yugoslavia.

Penalty: 50 penalty units.

Request for the seizure of vehicles and cargo

5. (1) If the Minister for Foreign Affairs believes, on reasonable grounds, that:

- (a) a majority or controlling interest in a vehicle that is located in Australia is held by a person or an undertaking in or operating from Yugoslavia; or
- (b) a vehicle or cargo located in Australia has been used in a manner that violates a sanctions resolution;

the Minister must give a notice in writing to the Comptroller-General as soon as practicable.

(2) The notice must:

- (a) state the Minister's belief; and
- (b) set out the reasons for the Minister's belief; and
- (c) ask the Comptroller-General to seize the vehicle or the cargo.

(3) If a vehicle is to be seized, the Minister may:

- (a) set out in the notice arrangements that the Comptroller-General is to make for:
 - (i) seizing the vehicle; or

- (ii) removing or storing cargo found on the vehicle; or
 - (iii) returning cargo found on the vehicle to the owner of the cargo or to a person responsible for the cargo; or
 - (iv) any other matter that relates to the seizure of the vehicle; and
 - (b) make arrangements with the Minister for Immigration and Ethnic Affairs for:
 - (i) accommodating the crew or the passengers of the vehicle; or
 - (ii) moving the crew or the passengers of the vehicle to a destination in or outside Australia.
- (4) If cargo is to be seized, the Minister may set out in the notice arrangements that the Comptroller-General is to make for:
- (a) seizing the cargo; or
 - (b) moving, parking or docking a vehicle on which the cargo is located; or
 - (c) moving or storing the cargo; or
 - (d) any other matter that relates to the seizure of the cargo.

Seizure of vehicles and cargo

6. (1) The Comptroller-General must arrange for a Customs Officer to seize the vehicle, or the cargo, referred to in a notice from the Minister.

- (2)** The Customs Officer:
- (a) must seize the vehicle or the cargo as soon as practicable; and
 - (b) must act in accordance with the arrangements (if any) set out in the Minister's notice; and
 - (c) may use assistance that is reasonable and necessary to seize the vehicle or the cargo.

Notification of seizure

7. (1) If the Customs Officer is to seize a vessel, he or she must:

- (a) give a copy of the Minister's notice to the master of the vessel, or the person who appears to be in charge of the vessel, before seizing the vessel; or
- (b) if the master or a person in charge cannot be identified at the time that the vessel is seized—give a copy of the Minister's notice to the master, agent or owner of the vessel as soon as practicable after seizing the vessel.

(2) If the Customs Officer is to seize an aircraft, he or she must:

- (a) give a copy of the Minister's notice to the captain of the aircraft, or a person who appears to be in charge of the aircraft, before seizing the aircraft; or
- (b) if the captain or a person in charge cannot be identified at the time that the aircraft is seized—give a copy of the Minister's notice to the captain, operator or owner of the aircraft as soon as practicable after seizing the aircraft.

(3) If the Customs Officer is to seize a vehicle other than a vessel or an aircraft, he or she must:

- (a) give a copy of the Minister's notice to a person who is apparently:
 - (i) over the age of 16 years; and
 - (ii) in charge of the vehicle;before seizing the vehicle; or
- (b) if a person described in paragraph (a) cannot be identified at the time that the vehicle is seized—give a copy of the Minister's notice to the owner of the vehicle as soon as practicable after seizing the vehicle.

(4) If the Customs Officer is to seize cargo, he or she must:

- (a) give a copy of the Minister's notice to a person who appears to be:
 - (i) over the age of 16 years; and

- (ii) in charge of the cargo;
before seizing the cargo; or
- (b) if a person described in paragraph (a) cannot be identified at the time that the cargo is seized—give a copy of the Minister's notice to the owner of the cargo as soon as practicable after seizing the cargo.

(5) The Customs Officer must include with the copy of the Minister's notice a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person affected by the Minister's decision to ask the Comptroller-General to seize the vehicle or the cargo may:

- (a) apply to the Administrative Appeals Tribunal for review of the decision; and
- (b) under section 28 of that Act, request a statement that includes reasons for the decision.

(6) A failure to comply with subregulation (1), (2), (3), (4) or (5) does not affect the validity of the seizure of the vehicle or the cargo.

Enforcement of seizure

8. (1) A Customs Officer:

- (a) is not authorised to seize a vehicle or cargo if he or she fails to produce to the person who appears to be in charge of the vehicle or the cargo written evidence that he or she is a Customs Officer; and
- (b) is not authorised to remain on premises or a ship for the purpose of seizing a vehicle or cargo if he or she fails to produce to the person who appears to be in charge of the premises or the ship written evidence that he or she is a Customs Officer.

(2) A person who appears to be:

- (a) in charge of a vehicle or cargo that is to be seized by a Customs Officer; or

(b) the occupier of premises or a ship entered by a Customs Officer for the purpose of seizing a vehicle or cargo; must not intentionally or recklessly fail to provide the Customs Officer with all reasonable facilities and assistance to allow the Customs Officer to seize the vehicle or the cargo.

Penalty: 10 penalty units.

(3) The Minister for Foreign Affairs may give a direction in writing to:

- (a) the master, agent or owner of a vessel that the Minister has asked the Comptroller-General to seize; or
- (b) the pilot, operator or owner of an aircraft that the Minister has asked the Comptroller-General to seize; or
- (c) the owner, or the person in charge, of any other vehicle that the Minister has asked the Comptroller-General to seize; or

- (d) the owner, or the person in charge, of cargo that the Minister has asked the Comptroller-General to seize;

for the purpose of seizing the vessel or cargo or giving effect to arrangements set out in the Minister's notice under subregulation 5 (1).

(4) A person to whom a direction is given must not intentionally or recklessly fail to comply with the direction.

Penalty for a contravention of this subregulation: 10 penalty units.

Investigation and forfeiture of vehicles or cargo

9. (1) The Minister for Foreign Affairs must investigate whether a vehicle, or cargo, that has been seized under regulation 6 has been used in a manner that violates a sanctions resolution.

(2) The Minister must investigate the vehicle or cargo as soon as practicable after it has been seized.

(3) If, after investigating a vehicle referred to in paragraph 5 (1) (a), the Minister does not believe that the vehicle has been used in a manner that violates a sanctions resolution, control of the vehicle or the cargo must be restored, as soon as practicable after the end of the sanctions period, to the person who controlled it immediately before it was seized.

(4) If, after investigating a vehicle, or cargo, referred to in paragraph 5 (1) (b), the Minister does not believe that the vehicle or the cargo has been used in a manner that violates a sanctions resolution, control of the vehicle or the cargo must be restored, as soon as practicable, to the person who controlled it immediately before it was seized.

(5) In subregulation (3), the sanctions period is the period:

- (a) beginning on 26 April 1993; and
- (b) ending on the day on which Article 25 of the Charter of the United Nations ceases to require Australia to carry out Operative Paragraphs 24 and 25 of United Nations Security Council Resolution No. 820 (1993) adopted on 17 April 1993.

Forfeiture order

10. (1) If, after investigating a vehicle or cargo, the Minister believes, on reasonable grounds, that the vehicle or cargo has been used in a manner that violates a sanctions resolution, the Minister:

- (a) must, as soon as practicable, notify in writing:
 - (i) the Comptroller-General; and
 - (ii) the person who was apparently in control of the vehicle or the cargo when it was seized; and
 - (iii) the owner of the vehicle or the cargo;of the Minister's belief; and
- (b) may, at any time, order in writing that the vehicle is forfeited to the Commonwealth.

(2) If the Minister makes a forfeiture order, he or she must, as soon as practicable, give a copy of the order to:

- (a) the person who was apparently in control of the vehicle when it was seized, or the cargo when it was seized; and
- (b) the owner of the vehicle or the cargo.

(3) The Minister must include with the copy of the order a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person affected by the decision to make the order may:

- (a) apply to the Administrative Appeals Tribunal for review of the decision; and
- (b) under section 28 of that Act, request a statement that includes reasons for the decision.

(4) A failure to comply with subregulation (2) or (3) does not affect the validity of the forfeiture order.

Effect of forfeiture order

11. (1) If the Minister makes a forfeiture order:

- (a) the vehicle or the cargo vests absolutely in the Commonwealth; and
- (b) the costs incurred by the Minister, the Minister for Immigration and Ethnic Affairs and the Comptroller-General in taking possession of the vehicle or cargo:
 - (i) are payable to the Commonwealth by the owner of vehicle or the cargo; and
 - (ii) may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth.

(2) If the Minister makes a forfeiture order, he or she may direct in writing that the vehicle or the cargo be disposed of, or otherwise dealt with, in accordance with the direction.

Review of decisions

12. Application may be made to the Administrative Appeals Tribunal for a review of:

- (a) the Minister's decision under subregulation 5 (1) to ask the Comptroller-General to seize a vehicle or cargo; or
- (b) the Minister's decision under subregulation 10 (1) to make a forfeiture order.

Provision of services to Yugoslavia

13. (1) A person must not intentionally or recklessly provide a service to a person or a body for the purposes of a business carried on in Yugoslavia.

Penalty: 50 penalty units.

(2) Subregulation (1) does not apply to:

- (a) a telecommunications service; or
- (b) a postal service; or
- (c) a legal service that is provided in accordance with United Nations Security Council Resolution No. 757 (1992) adopted on 30 May 1992; or
- (d) a service whose supply:
 - (i) may be necessary for humanitarian or other exceptional purposes; and
 - (ii) is approved by the Committee established by United Nations Security Council Resolution No. 724 (1991) adopted on 15 December 1991.

Access by ship to the territorial sea of Yugoslavia

14. (1) The owner, the master and the operator of a ship registered under the *Shipping Registration Act 1981* must not intentionally or recklessly allow the ship to enter the territorial sea of Yugoslavia.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply if the ship:
 - (a) is subject to *force majeure*; or
 - (b) is authorised to do so by the Committee established by United Nations Security Council Resolution No. 724 (1991) adopted on 15 December 1991.

Delegation

15. (1) The Minister for Foreign Affairs may, in writing, delegate his or her powers under these Regulations (other than this power) to:

- (a) an officer of the Australian Public Service; or
- (b) a member of the Defence Force.

(2) The Comptroller-General of Customs may, in writing, delegate his or her powers under these Regulations (other than this power) to a Customs Officer.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 5 November 1993.