Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Mali) 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 preamble to UNSCR 2374 notes that the Security Council was acting under Chapter VII of the Charter. Decisions of the Security Council contained in UNSCR 2374 are therefore binding on Australia.

UNSCR 2374 was adopted on 5 September 2017 in the context of a fragile security situation and continued hostilities in Mali in breach of the Agreement on Peace and Reconciliation in Mali. It allows the Mali Sanctions Committee to designate persons or entities who are responsible for, or complicit in, or who have engaged in, actions or policies that threaten the peace, security or stability of Mali.

The Regulations implement the decision of the UNSC in paragraph 4 of UNSCR 2374 to impose targeted financial sanctions in relation to persons or entities designated by the Mali Sanctions Committee. Paragraph 4 of UNSCR 2374 requires Australia to freeze all funds, other financial assets and economic resources on its territory that are owned or controlled by designated persons or entities, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them. Australia is also required to ensure that any funds, financial assets or economic resources are prevented from being made available by Australians, or by any persons or entities within Australia, to or for the benefit of designated persons or entities. Paragraphs 5, 6 and 7 of UNSCR 2374 outline several exemptions to the measures including: funds necessary for basic or extraordinary expenses; funds the subject of a judicial, administrative or arbitral lien or judgment; where the Mali Sanctions Committee determines that an exemption would further the objectives of peace, national reconciliation and stability in Mali; and certain contractual payments.

The proposed Regulations would provide in subsections 5(2) and 6(2) that strict liability applies to the circumstance where the making available of the asset is not
authorised by a permit, or where the use of, or dealing with, the asset is not authorised by a permit. This means it will be a question of fact whether or not a permit has been issued. The application of strict liability to this element of the prohibition means that the prosecution will only need to prove that a permit does not exist. The defendant will not be able to argue that the conduct has been permitted in some other way, for example through a statement by the Minister which could be taken as de facto authorisation to engage in conduct that is prohibited under the Act.

Subsection 6(3) of the Act provides that, despite subsection 14(2) of the Legislation Act 2003, regulations made for the purposes of subsection 6(1) of the Act may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force from time to time, or as existing from time to time.

Subsection 7(2)(a) of the Regulations incorporates the Charter of the United Nations (Dealing with Assets) Regulations 2008 by reference. The reference to these regulations is “as in force from time to time” because the Charter of the United Nations (Dealing with Assets) Regulations 2008 is a Commonwealth disallowable legislative instrument (and so is permitted by section 14 of the Legislation Act 2003 to be incorporated as in force from time to time), and section 10 of the Acts Interpretation Act 1901 (as applied by section 13(1)(a) of the Legislation Act 2003) has the effect that references to Commonwealth disallowable legislative instruments are taken to be references to those instruments as in force from time to time. The Charter of the United Nations (Dealing with Assets) Regulations 2008 is readily and freely available to the public on the Federal Register of Legislation website.

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

The Act does not provide for merits review. Accordingly, decisions by the Minister for Foreign Affairs under the Regulations will not be subject to merits review. The Act has the legitimate objective of giving domestic effect to UNSC resolutions and providing a foreign policy mechanism for the Australian Government to address situations of international concern. The exclusion of merits review in relation to sanctions-related decisions is warranted by the seriousness of the foreign policy and national security considerations involved, as well as the potentially sensitive nature of the evidence relied on in reaching those decisions. Where the UNSC has resolved that there will be limitations on engagement with a sanctioned regime, Australia, as a member of the United Nations, must comply with these international obligations. While merits review is unavailable for a decision by the Minister under the Regulations, an applicant can still seek judicial review of a decision.

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 Regulations are set out in Attachment A.
The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

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 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*
Details of the Charter of the United Nations (Sanctions – Mali) Regulations 2018

Section 1 – Name
Section 1 provides that the title of the instrument is the Charter of the United Nations (Sanctions – Mali) Regulations 2018.

Section 2 – Commencement
Section 2 provides that all provisions of the instrument will commence the day after the instrument is registered.

Section 3 – Authority
Section 3 provides that the instrument is made under the Charter of the United Nations Act 1945.

Section 4 – Definitions
Section 4 sets out the definition of certain terms used in the instrument, including “Act”, “Committee”, “controlled asset”, “designated person or entity” and “Resolution 2374 (2017)”.

Section 5 – Prohibition relating to dealings with designated persons or entities
Subsection 5(1) prohibits a person from directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, unless that is authorised by a permit under section 8. Subsection 5(2) provides that strict liability applies to the circumstance that the making available of the asset is not authorised by a permit under section 8. Subsection 5(3) provides that section 15.1 of the Criminal Code applies to an offence under section 27 of the Act that relates to a contravention of section 5, giving extraterritorial operation.

Section 6 – Prohibition relating to controlled assets
Section 6 prohibits a person who holds a controlled asset from using or dealing with the asset, allowing the asset to be used or dealt with, or facilitating the use of, or the dealing with, the asset, unless that is authorised by a permit under section 8. Subsection 6(1) provides that strict liability applies to the circumstance that the use of or dealing with the asset is not authorised by a permit under section 8. Subsection 6(3) provides that section 15.1 of the Criminal Code applies to an offence under section 27 of the Act that relates to a contravention of section 6, giving extraterritorial operation.

Section 7 – Permit for assets and controlled assets – application for permit
Section 7 allows a person to apply for a permit authorising: (a) the making available of an asset to a person or entity that would otherwise contravene subsection 5(1); or (b) a use of, or dealing with, a controlled asset that would otherwise contravene subsection 6(1). The application must be for a basic expense dealing, contractual dealing, required payment dealing or extraordinary expense dealing as defined in regulation 5 of the Charter of the United Nations (Dealing with Assets) Regulations 2008.
Section 8 – Permit for assets and controlled assets – grant of permit
Section 8 sets out the requirements for the Minister to grant a permit, including notifying the Committee established under paragraph 9 of UNSCR 2374 of an application made under section 8.

Section 9 – Permit for assets and controlled assets – conditions
Section 9 provides that a permit is subject to any conditions specified in the permit.

Section 10 – Delegations by the Minister
Section 10 allows the Minister to delegate the Minister’s powers and functions under the Regulations (other than the power of delegation) to the Secretary of the Department or an SES employee, or acting SES employee, in the Department.
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 – Mali) Regulations 2018

The Charter of the United Nations (Sanctions – Mali) Regulations 2018 (the 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 Regulations establish a sanctions regime for Mali to give effect to United Nations Security Council Resolution 2374 (2017) (UNSCR 2374). UNSCR 2374 was adopted by the Security Council on 5 September 2017. It imposes targeted financial sanctions in relation to Mali, with several limited exemptions, in response to actions and policies arising in Mali which threaten Mali’s peace, security, and stability, and to demonstrate the international community’s condemnation of those involved in such actions and policies. UNSCR 2374 is a decision under Chapter VII of the Charter of the United Nations (the Charter), and Australia is required to carry it out pursuant to Article 25 of the Charter.

The Regulations impose targeted financial sanctions against persons or entities designated by the United Nations Security Council (UNSC) as responsible for, or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security, and stability of Mali, including:

1. Engaging in hostilities in violation of the Agreement on Peace and Reconciliation in Mali (the Agreement).

2. Actions taken that obstruct, or that obstruct by prolonged delay, or that threaten the implementation of the Agreement.

3. Acting for or on behalf of, or at the direction of, or otherwise supporting or financing individuals and entities identified in connection with paragraphs 1 and 2 above, including through the proceeds from organised crime, including the production and trafficking of narcotic drugs and their precursors originating in or transiting through Mali, the trafficking in persons and the smuggling of migrants, the smuggling and trafficking of arms as well as trafficking in cultural property.

4. Involvement in planning, directing, sponsoring, or conducting attacks against: the various entities referenced in the Agreement, including local, regional and state institutions, joint patrols and the Malian Security and Defence forces; MINUSMA peacekeepers and other UN and associated personnel, including the FC-G5S, European Union Missions and French forces.
5. Obstructing the delivery of humanitarian assistance to Mali, or access to, or distribution of, humanitarian assistance in Mali.

6. Planning, directing, or committing acts in Mali that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, including those involving the targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge.

7. The use or recruitment of children by armed groups or armed forces in violation of applicable international law, in the context of the armed conflict in Mali.

**Human rights compatibility**

The Regulations implement a binding decision of the United Nations Security Council pursuant to Chapter VII of the Charter, which Australia is required as a matter of international law to implement.

Consistently with UNSCR 2374, the objective of the Regulations is to respond to actions and policies arising in Mali which threaten Mali’s peace, security, and stability and constitute a threat to international peace and security in the region, and demonstrate the international community’s condemnation of those involved in such actions and policies by enabling the imposition of targeted financial sanctions on them.

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 Regulations are not an unlawful interference with an individual’s right to privacy. The 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 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.

The imposition of targeted financial sanctions under the Regulations constitutes a reasonable limitation on the right to privacy. Pursuant to section 4 of the Regulations, the United Nations Committee established under paragraph 9 of resolution 2374 (the Committee) is responsible for designating people for the imposition of targeted financial sanctions. The Committee uses predictable, publicly available criteria when designating a person as being subjected to such measures. These criteria capture only those persons who the Committee is satisfied are responsible for, or complicit in, or have engaged in, directly or indirectly, actions or policies that threaten the peace, security, and stability of Mali.

The imposition of targeted financial sanctions under the Regulations is necessary and proportionate. They are only imposed, pursuant to the Charter, in response to actions and policies arising in Mali which threaten Mali’s peace, security, and stability, as outlined in UNSCR 2374. Noting the seriousness of this situation, 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.

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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 protection of the family**

**Right**

The right to respect for the family is protected by Articles 17 and 23 of the ICCPR. It covers, among other things, the separation of family members under migration laws, and arbitrary or unlawful interferences with the family.

Limitations on the right to protection of the family under Articles 17 and 23 of the ICCPR will not violate those articles if the measures in question are prescribed by law, aimed at achieving a legitimate objective and are also reasonable, necessary and proportionate.

**Reports**

The Committee has noted that a person who is declared under Australia’s autonomous sanctions regime for the purpose of preventing the person from travelling to, entering or remaining in Australia will have their visa cancelled pursuant to the *Migration Act 1958* (Migration Act). This makes the person liable to deportation which may result in that person being separated from their family, which therefore engages and limits the right to protection of the family.

**Permissible limitations**

The Regulations do not implement the travel ban in UNSCR 2374, which is instead implemented separately through the *Migration (United Nations Security Council Resolutions) Regulations 2007* (Migration Regulations), which operates independently of the Regulations.

The Migration Regulations are authorised by domestic law and are not unlawful.

As designations by the Committee are made only in relation to people in Mali who are responsible for, or complicit in, or have engaged in, directly or indirectly, actions or policies that threaten the peace, security, and stability of Mali, it will be unlikely, as a practical matter, that a person declared for a travel ban will have immediate family in Australia and face deportation from Australia.

To the extent that any travel ban imposed pursuant to the Migration Regulations limits the right to protection of the family in a particular case, the Australian Government considers that any interference with the right to protection of the family is a necessary and proportionate response to the actions and policies arising in Mali which threaten Mali’s peace, security, and stability, on the basis of the justifications outlined in relation to Article 17 above.

Further, the Migration Regulations provide an exemption to the denial of a visa application or cancellation of a visa held by a UNSC-designated person where, among other things, the grant of the visa is justified by ‘compelling circumstances’, or the
decision not to cancel the visa is justified in ‘compelling circumstances’. ‘Compelling circumstances’ may include the fulfilment of an international obligation owed by Australia, including Australia’s non-refoulement obligations, as discussed under the heading of ‘non-refoulement’ below.

Were any separation of the family to take place, the position of the Australian Government is therefore that such a separation would be justified in the circumstances of the individual case.

**Right to the freedom of movement**

Article 12 of the ICCPR protects the right to freedom of movement, which includes the right to move freely within a country for those who are lawfully within the country, the right to leave any country and the right to enter one’s own country.

The right to freedom of movement may be restricted under domestic law on any of the grounds in Article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others. Any limitation on the enjoyment of the right also needs to be reasonable, necessary and proportionate.

**Report**

The Committee has expressed the view that travel bans may in certain circumstances engage Article 12(4) of the ICCPR, concerning the right to enter one’s own country. According to the Committee, this is because a person’s visa may be cancelled (with the result that the person may be deported) in circumstances where that person has a close and enduring connection to Australia such that Australia may be considered their ‘own country’ for the purposes of the ICCPR, even if that person is not a citizen.

**Permissible limitations**

Travel bans pursuant to UNSCR 2374 are implemented through the Migration Regulations.

To the extent that Article 12(4) is engaged in an individual case, such that a person is prevented from entering Australia as their ‘own country’, the Government’s position is that the imposition of the travel ban would be justified. As set out above in relation to Article 17 of the ICCPR, travel bans are a reasonable and proportionate means of achieving the legitimate objectives of the Regulations.

Travel bans pursuant to UNSCR 2374 are reasonable because they are only imposed on persons who the Committee is satisfied are responsible for, or complicit in, or have engaged in actions or policies that threaten the peace, security, and stability of Mali, including by violating international human rights law and international humanitarian law. Preventing such people from travelling to, entering or remaining in Australia, is a reasonable means to achieve the legitimate objectives of the Migration Regulations.

Travel bans are proportionate because while they engage and limit designated individuals’ right to freedom of movement, they are the least restrictive means by which to achieve the legitimate objectives of the Mali sanctions regime. As set out
above, by denying access to international travel, travel bans seek to influence the behaviour of people who contribute to actions and policies arising in Mali which threaten Mali’s peace, security, and stability, and demonstrate the international community’s condemnation of those involved.

**Right to a fair hearing and presumption of innocence**

Article 14(1) of the ICCPR protects the right to a fair trial and a fair hearing. The right concerns procedural fairness, and applies where rights and obligations, such as personal property and other private rights, are to be determined.

**Report**

In the context of Australia’s autonomous sanctions regime, the Committee has taken the view that the relevant regulations engage Article 14 in so far as they limit the avenues available to challenge the designation or declaration of a person for targeted financial sanctions and travel bans. The Committee noted that the process for making designations and declarations limits the right to a fair hearing because it does not provide for merits review.

**Permissible limitations**

The Government’s position is that any limitation on the access to merits review is justified. The Regulations have the legitimate objective of responding to actions and policies arising in Mali which threaten Mali’s peace, security, and stability, and demonstrating the international community’s condemnation of the people involved. The limitation on access to merits review in this context is reasonable as it reflects the seriousness of the international peace and security and foreign policy considerations involved.

Further, while merits review is unavailable for a UNSC decision to designate a person for the purposes of the Regulations, there are clear procedures for requesting the revocation of designations, and judicial review is available under the *Administrative Decisions (Judicial Review) Act 1976* (the ADJR Act).

The Regulations also engage Article 14 through the application of strict liability in certain circumstances. The Regulations provide in subsections 5(2) and 6(2) that strict liability applies to the circumstance that the making available of an asset or the use of, or dealing with, a controlled asset is not authorised by a permit under section 8. In effect, the strict liability does not apply to any other element of the offence. The purpose of this provision is to prevent a spurious defence that a statement of the Minister could be taken as de facto authorisation to engage in conduct that is prohibited under the *Charter of the United Nations Act 1945*; either the permit exists or it does not.

The position of the Government is that the Regulations are consistent with Article 14 as the strict liability is reasonably targeted to achieve the legitimate purpose of preventing a spurious defence that a statement of the Minister could be taken as *de facto* authorisation to engage in conduct that is prohibited under the *Charter of the
United Nations Act 1945, in addition to the overarching objectives of the Mali sanctions regime.

Right to liberty

Article 9 of the ICCPR protects the right to liberty, including the right not to be arbitrarily detained. The notion of arbitrariness incorporates elements of inappropriateness, injustice and lack of predictability.

Report

The Committee has previously expressed the view that Regulations which are specified as ‘UN sanction enforcement laws’ under the Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008 (the Declaration) may engage and limit the right to liberty, because they may result in a penalty of imprisonment for a person. The Committee has expressed concern that the definition of UN sanction enforcement laws lacks sufficient certainty and could, in certain circumstances, result in arbitrary detention.

Permissible limitations

Sections 5 and 6 of the Regulations will be declared as ‘UN sanction enforcement laws’ under the Declaration, meaning that contravening these prohibitions may, pursuant to section 27 of the Act, result in a penalty of imprisonment and engage the right to liberty.

The Government considers that any limitation on human rights that may arise as a consequence of the inclusion of sections 5 and 6 of the Regulations in the Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008 is permissible and consistent with Australia’s obligations under international human rights law. The new prohibitions in sections 5 and 6 of the Regulations use clear language and terms. The Regulations define the phrases ‘designated person or entity’ and ‘controlled asset’ to delineate the application of the prohibitions and to ensure the prohibitions can be readily understood. The Regulations have the legitimate aim of responding to actions and policies that threaten the peace, security, and stability of Mali, and demonstrating the international community’s condemnation of such actions and policies.

The position of the Government is that the prohibitions in sections 5 and 6 are a reasonable, necessary and proportionate means of achieving the legitimate objective of the Regulations, and implementing a binding decision of the UNSC.

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 Regulations state that the Minister may grant a permit 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 its sanctions regimes 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).

Non-refoulement obligations

Australia has obligations under the ICCPR and Convention against Torture not to remove a person to a country where there is a real risk that they would face irreparable harm, such as arbitrary deprivation of life; or cruel, inhuman or degrading treatment or punishment.

Report

In the context of Australia’s autonomous sanctions regime, the Committee has noted that the prohibition against non-refoulement may be engaged as a consequence of the imposition of a travel ban. The Committee raised concerns at the potential for designated persons to be removed from Australia contrary to Australia’s non-refoulement obligations and made comments in relation to section 197C of the Migration Act 1958.

Permissible limitations

Travel bans pursuant to UNSCR 2374 are implemented through the Migration Regulations. Regulations 7 and 8 of the Migration Regulations provide that an application for an Australian visa may be denied or a visa may be cancelled if the applicant is a UNSC-designated person unless, among other things, the grant of the visa to the applicant is justified by ‘compelling circumstances’, or the decision not to cancel a visa is justified by ‘compelling circumstances’. Regulation 5 defines ‘UNSC-designated person’ as a person that Australia is required (under a UNSC resolution) to prevent from entering or transiting through Australia. Regulation 4
defines ‘Resolution’ as a ‘United Nations Security Council Resolution specified by the Minister, by legislative instrument’. ‘Compelling circumstances’ may include the fulfilling of an international obligation owed by Australia (regulations 7(3) and 8(4), Migration Regulations), which would include where there is a real risk that if such persons were returned to a particular country, they would face irreparable harm.

The Government considers that the Regulations and the Migration Regulations are consistent with Australia’s international non-refoulement obligations as these obligations are addressed through regulations 7(2)(d) and 8(c) of the Migration Regulations before a person becomes ready for removal under section 198 of the Migration Act 1958. Australia will continue to meet its non-refoulement obligations through mechanisms other than the removal powers in section 198 of the Migration Act, including through the use of the Minister’s personal powers in the Migration Act. These mechanisms ensure that Australia’s non-refoulement obligations are addressed before a person becomes ready for removal under section 198.

**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 Regulations does not amount to discrimination pursuant to Article 26 of the ICCPR.

The objective of the Regulations is to respond to actions and policies arising in Mali which threaten Mali’s peace, security, and stability and constitute a threat to international peace and security in the region, and demonstrate the international community’s condemnation of those involved in such actions and policies by enabling the imposition of targeted financial sanctions on them.
On the basis that the Regulations relate to actions and policies which threaten Mali’s peace, security, and stability, it is possible that the Committee may be more likely to designate people with Malian nationality or of Malian national origin. 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 are reasonable and objective. They are reasonable insofar as they relate only to the situation in Mali and actions and policies which the UNSC has specifically determined threaten Mali’s peace, security, and stability, including serious human rights abuses and violations of international humanitarian law. 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 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 Mali’s peace, security, and 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.