

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Listed Entities) Amendment (No. 1) Instrument 2022

The purpose of the *Charter of the United Nations (Listed Entities) Amendment (No. 1) Instrument 2022* (the Instrument) is to list the entities known as Hay'at Tahrir al-Sham (HTS), Hurras al-Din (HaD) and Jabhat Fatah al-Sham (JFS) for counter-terrorism financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act).

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 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.

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This regime 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 Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions, if the Minister is satisfied on reasonable grounds 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. 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 Instrument advances human rights by preventing and suppressing terrorist acts by ensuring that the entities listed 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 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

A Statement of Compatibility with human rights is at Attachment A.

Effect of the Instrument

The effect of the Instrument is that the entities set out in Schedule 1 of the Instrument are subject to targeted financial sanctions under section 15 of the Act. The listing of HTS, HaD and JFS were made under section 15 of the Act on the basis that the Minister was satisfied the entities meet the listing criteria set out in subregulation 20(1) of the Dealing with Assets Regulations. That is, the entities are entities mentioned in paragraph 1(c) of UNSCR 1373.

The effect of targeted financial sanctions under the Act is to:

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

Listings under section 15 of the Act cease to have effect after three years, unless declared by the Minister to continue in effect under subsection 15A(2) of the Act. Listings may be revoked under section 16 of the Act at the Minister's own instigation or on application by the listed person or entity.

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

This Instrument is registered on the Federal Register of Legislation as a legislative instrument and is stated to commence the day after the Instrument is registered.

Consultation

The measures 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 with respect to HTS and HaD, 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.

In accordance with standard practice, the Department of Foreign Affairs and Trade also invited submissions from JFS or their legal representatives relevant to the Minister's consideration of its listing under Part 4 of the Act. The invitation was posted on the DFAT website. The consultation period opened on 11 February 2022 and closed at 5.00pm AEST on 25 February 2022. No submissions were received.

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 Entities) Amendment (No. 1) Instrument 2022

This Disallowable 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 Disallowable Legislative Instrument

The purpose of the *Charter of the United Nations (Listed Entities) Amendment (No. 1) Instrument 2022* (the Instrument) is to list the entities known as Hay'at Tahrir al-Sham (HTS), Hurras al-Din (HaD) and Jabhat Fatah al-Sham (JFS) for counter-terrorism financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act).

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 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.

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This regime 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 Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions if the Minister is satisfied on reasonable grounds 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. 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.

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

This 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 this 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 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 Instrument's effect is the prevention and suppression of terrorist acts. Targeted financial sanctions imposed in this 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 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 individuals or 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 declared that the listing continues to have effect. This provision ensures the listing remains current and appropriate.

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. 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 their authorised representative, with an unclassified statement of reasons for the listing, upon written request.

The measures in the 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 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.

Details of the *Charter of the United Nations (Listed Entities) Amendment (No. 1) Instrument 2022*

Section 1 – Name

1. This section provides that the title of the instrument is the *Charter of the United Nations (Listed Entities) Amendment (No.1) Instrument 2022* (the Instrument).

Section 2 – Commencement

2. This section provides for the commencement of the Instrument the day after the Instrument is registered on the Federal Register of Legislation.

Section 3 - Authority

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

Section 4 - Schedules

4. 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, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 - Amendments

5. Schedule 1 inserts new clauses, specifying the entities that are listed for targeted financial sanctions under section 15 of the Act.