

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 51

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Sudan) Regulations 2008

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolutions 1556 (30 July 2004) and 1591 (29 March 2005), and to accommodate amendments made to the Act by the *International Trade Integrity Act 2007*. The Regulations also repeal the *Charter of the United Nations (Sanctions – Sudan) Regulations 2005*, which currently implement Australia's obligations under Resolutions 1556 and 1591.

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides that the Governor-General may make regulations for, and in relation to, giving effect to decisions that:

- (a) the Security Council has made under Chapter VII of the Charter of the United Nations; and
- (b) Article 25 of the Charter requires Australia to carry out

in so far as those decisions require Australia to apply measures not involving the use of armed force.

Resolutions 1556 and 1591 require Australia to prevent the supply, sale or transfer, directly or indirectly, to Sudan of arms and related matériel of all types, with narrow exceptions provided in Resolutions 1556 and 1591. Resolutions 1556 and 1591 require Australia to prevent such supply, sale or transfer from Australian territory, by Australian nationals, by persons using Australian flag vessels, and by persons using Australian flag aircraft.

Resolution 1556 also requires Australia to prevent the provision to Sudan by an Australian or from Australian territory of technical advice, financial and other assistance, and training related to military activities, with narrow exceptions provided in Resolutions 1556 and 1591.

Resolution 1591 additionally requires that Australia freeze the funds, other financial assets and economic resources on Australian territory that are owned or controlled by the individuals designated by the Committee established by Resolution 1591. The Resolutions also oblige Australia to ensure that any funds, financial assets or economic resources are prevented from being made available by Australian nationals or by any persons or entities within Australian territory to, or for the benefit of, the designated persons or entities. The Resolutions provide narrow exceptions to these obligations.

Resolution 1591 also requires Australia to prevent designated persons from entering into or transiting through Australian territory.

Resolutions 1556 and 1591 were adopted under Article 41 of Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to Article 25 of that Charter. The relevant United Nations Security Council Resolutions can be found on the UN website (www.un.org).

The Regulations ensure that those aspects of the sanctions imposed by resolutions 1556 and 1591 that cannot be implemented under existing regulations are adequately implemented into domestic law.

Australia generally implements territorial aspects of trade sanctions via specific regulation under the *Customs (Prohibited Imports) Regulations 1956*, the *Customs (Prohibited Exports) Regulations 1958*, and the *Customs Regulations 1926*, which are administered by the Australian Customs Service. Travel restrictions are implemented under the *Migration Act 1956* and associated regulations, administered by the Department of Immigration and Citizenship.

Interdepartmental and public consultation was undertaken during the preparation of the Regulations. The Department of Foreign Affairs and Trade conducted briefing sessions on the *International Trade Integrity Act 2007*, including the consequential amendments that would be required for each of the regulations made under the Act, in each State and Territory capital between September and November 2007. In addition, the Department gave industry-specific briefings to peak industry bodies assessed as most likely to be affected (the Australian Bankers Association, the Customs National Consultative Group and the Association of Minerals and Petroleum Lawyers). Finally, from August 2007 the Department posted notices on its website and on the business.gov.au consultation site inviting interested parties to provide written comments on a revised regulatory regime under the Act as amended. Other Commonwealth agencies, including the Attorney-General's Department, were consulted during the drafting of the Regulations.

Details of the Regulations are set out in the [Annex](#).

Charter of the United Nations (Sanctions — Sudan) Regulations 2008

Details of the Regulations are as follows:

Part 1 Preliminary

Regulation 1 states that the name of the Regulations is the *Charter of the United Nations (Sanctions — Sudan) Regulations 2008*.

Regulation 2 provides that the Regulations commence on the day after they are registered.

Regulation 3 repeals the *Charter of the United Nations (Sanctions — Sudan) Regulations 2005*. The Regulations replace the *Charter of the United Nations (Sanctions — Sudan) Regulations 2005* in order to accommodate changes made to the Act by the *International Trade Integrity Act 2007*.

Regulation 4 provides for the definition of certain terms used in the Regulations, including “arms or related matériel”, “controlled asset”, “designated person or entity”, “export sanctioned goods”, “sanctioned service” and “sanctioned supply”. “Designated person or entity” is defined as a person or entity designated by the Committee or the Security Council for the purposes of subparagraph 3(c) of United Nations Security Council Resolution 1591. This definition has the effect of incorporating by reference persons or entities on a list maintained from time to time by the Committee established by United Nations Security Council Resolution 1591.

Regulation 5 provides that “export sanctioned goods” means arms or related matériel.

Regulation 6 provides that a person who supplies, sells or transfers export sanctioned goods to another person, with the direct or indirect result that the goods are transferred to Sudan, makes a “sanctioned supply”.

Regulation 7 provides that the provision, to any person in Sudan, of any technical training or assistance related to the provision, manufacture or use of export sanctioned goods, is a “sanctioned service”.

Part 2 UN sanction enforcement laws

Regulation 8 prohibits the making of a sanctioned supply without authorisation. Regulation 8 defines “authorised supply” as a sanctioned supply authorised by a permit issued under regulation 9 or, if the supply takes place in a foreign country, by a permit properly issued by that country in accordance with its obligations under United Nations Security Council Resolutions 1556 and 1591. This regulation will be specified by the Minister for Foreign Affairs in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* as a “UN sanction enforcement law” pursuant to section 2B of the *Charter of the United Nations Act* (the Act). This will have the effect of making contravention of regulation 8 an offence under section 27 of the Act.

Regulation 8 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 regulation 8, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 8 also applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to make an unauthorised supply. Similarly, the prohibition in regulation 8 applies to a body corporate in relation to an unauthorised supply made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 8 also provides that a defendant charged with contravening a UN sanction enforcement law under section 27 of the Act in relation to conduct prohibited by regulation 8 must establish that a permit was in fact granted by a foreign government in relation to the sanctioned supply in or from a foreign country. In other respects, for the purpose of regulation 8, the evidentiary burden remains with the prosecution.

Regulation 9 provides that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the regulation, grant a person a permit authorising the making of a sanctioned supply. A permit may be granted if the sanctioned supply is for an authorised operation or is a supply of non-lethal military equipment that is intended solely for humanitarian use, human rights monitoring or protective use. A permit may also be granted if the sanctioned supply is a supply of protective clothing that is temporarily exported to Sudan for the personal use of a member of the personnel of the United Nations, a person engaged in human rights monitoring, a representative of the media, or a humanitarian or development worker or an associated person. The Minister for Foreign Affairs may also grant an application if the sanctioned supply is provided in support of the implementation of the Comprehensive Peace Agreement, or is a supply that consists of military equipment and supplies for use in the Darfur region and is approved in advance by the Committee established pursuant to Resolution 1591 in response to a request by the Government of Sudan.

Regulation 10 prohibits the provision of a sanctioned service without authorisation. Regulation 10 defines “authorised service” as a sanctioned service authorised by a permit issued under regulation 11 or, if the supply takes place in a foreign country, by a permit properly issued by that country in accordance with its obligations under United Nations Security Council Resolutions 1566 and 1591. This regulation will be specified by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 10 an offence under section 27 of the Act.

Regulation 10 also 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 regulation 10, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 10 also applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to provide an unauthorised service. Similarly, the prohibition in regulation 10 applies to a body corporate in relation to an unauthorised service made by another body corporate or entity, wherever incorporated or situated, over which the first body corporate has effective control.

Regulation 10 further provides that a defendant charged with contravening a UN sanction enforcement law under section 27 of the Act in relation to conduct prohibited by regulation 10 must establish that a permit was in fact granted by a foreign government in relation to the sanctioned service in or from a foreign country. In other respects, for the purpose of

regulation 10, the evidentiary burden remains with the prosecution.

Regulation 11 provides that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the regulation, grant a person a permit authorising the provision of a sanctioned service if the sanctioned service is for an authorised operation, is provided in relation to a supply is provided in relation to a supply of non-lethal military equipment that is intended solely for humanitarian use, human rights monitoring or protective use, or is provided in support of the implementation of the Comprehensive Peace Agreement.

Regulation 12 prohibits making an asset available to, or for the benefit of a designated person or entity without authorisation of a permit issued by the Minister for Foreign Affairs under regulation 14. This regulation will be specified by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 12 an offence under section 27 of the Act. Regulation 12 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 regulation 12, thus giving the offence extraterritorial operation.

Regulation 13 freezes controlled assets, by prohibiting a person who holds a controlled asset from using or dealing with the asset, or allowing the asset to be used or dealt with, or facilitating the use of the asset or dealing with the asset, unless the use or dealing is authorised by a permit under regulation 14. This regulation will be specified by the Minister for Foreign Affairs as a UN sanction enforcement law pursuant to section 2B of the Act. This will have the effect of making contravention of regulation 12 an offence under section 27 of the Act. Regulation 13 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 regulation 13, thus giving the offence extraterritorial operation.

Regulation 14 provides that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the regulation, grant a person a permit authorising the making available of an asset to a person or entity that would otherwise contravene regulation 12, or a use of, or dealing with, a controlled asset. An application must be for a basic expense dealing, a legally required dealing or an extraordinary expense dealing, as those terms are defined in regulation 5 of the *Charter of the United Nations (Dealings with Assets) Regulations* 2008, and must specify for which kind of dealing the application is.