

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 48

Charter of the United Nations Act 1945

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

The purpose of the Regulations is to implement Australia's obligations under United Nations Security Council Resolutions 1005 (17 July 1995) and 1011 (16 August 1995), 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 – Rwanda) Regulations 2006*, which currently implement Australia's obligations under resolutions 1005 and 1011.

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 1005 and 1011 require Australia to prevent the supply, sale or transfer, directly or indirectly, to Rwanda of arms and related matériel of all types, except for narrow exceptions as provided in Resolutions 1005 and 1011. Australia is required 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.

Similarly, Resolution 1011 requires Australia to prevent the supply, sale or transfer, directly or indirectly, of arms and related matériel of all types, to persons in the States neighbouring Rwanda (Burundi, Democratic Republic of Congo, Tanzania, and Uganda), if the sale or supply is for the purpose of the use of such arms or matériel within Rwanda contrary to Resolutions 1005 and 1011.

Resolutions 1005 and 1011 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 the Resolutions 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.

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 — Rwanda) 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 — Rwanda) Regulations 2008*.

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

Regulation 3 provides that the *Charter of the United Nations (Sanctions — Rwanda) Regulations 2006* are repealed. The Regulations replace the *Charter of the United Nations (Sanctions — Rwanda) Regulations 2006* 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”, “export sanctioned goods” and “sanctioned supply”.

Regulation 5 provides that “export sanctioned good” means arms or related matériel, which includes weapons, ammunition, and military vehicles and equipment.

Regulation 6 provides that a person, who supplies, sells or transfers goods to another person, with the direct or indirect result that the goods are transferred to Rwanda or to persons in Burundi, the Democratic Republic of Congo, Tanzania or Uganda for use in Rwanda makes a “sanctioned supply”.

Part 2 UN sanction enforcement laws

Regulation 7 prohibits the making of a sanctioned supply without authorisation. Regulation 7 defines “authorised supply” as a sanctioned supply authorised by a permit issued under regulation 8, or if the supply takes place in a foreign country, by a permit granted in a way that accords with the foreign country’s obligations under United Nations Security Council resolutions 918 and 1011. Regulation 7 will be specified by the Minister for Foreign Affairs in the *Charter of the United Nations (UN Sanctions 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 to regulation 7 an offence under section 27 of the Act.

Regulation 7 also provides that section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to contravention of regulation 7, thus giving the offence extraterritorial operation. In addition, the prohibition in regulation 7 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 transport an unauthorised supply made by another body corporate, wherever incorporated or situated, over which the first body corporate has effective control

Regulation 7 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 7 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 7, the evidentiary burden remains with the prosecution.

Regulation 8 provides that the Minister for Foreign Affairs may, on application, and subject to conditions specified in the Regulations, grant a person a permit authorising the making of a sanctioned supply of goods to the Government of Rwanda, if the sanctioned supply of goods is to the Government of Rwanda, and the contract for delivery of the goods includes appropriate end-user guarantees to the effect that the goods will not, directly or indirectly, be sold or transferred to, or otherwise made available for use by any State neighbouring Rwanda or a person not in the service of the Government of Rwanda, and the goods are delivered through a point of entry specified on a list supplied by the Government of Rwanda to the Secretary-General of the United Nations.

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.