

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

### *Charter of the United Nations Act 1945*

#### *Charter of the United Nations (Designated Commonwealth Entity) Amendment Declaration 2008 (No. 1)*

Section 2A of the *Charter of the United Nations Act 1945* provides that the Minister for Foreign Affairs may, by legislative instrument, specify a Commonwealth entity as a “designated Commonwealth entity”. Such a specification confers certain powers upon the designated entity in relation to the administration of UN sanction enforcement laws. They are set out in sections 29, 30, 34 and 35 of the Act.

This instrument amends the *Charter of the United Nations (Designated Commonwealth Entity) Declaration 2008* to specify, in addition to the Department of Foreign Affairs and Trade, the Australian Customs Service, the Australian Transaction Reports and Analysis Centre, and the Department of Defence as being designated Commonwealth entities for the purposes of the Act. Further Commonwealth entities specified by the Minister for Foreign Affairs as being designated Commonwealth entities under section 2A of the Act will be included in Schedule 1 to the instrument.

Section 29 provides that the CEO of a designated Commonwealth entity may be given any information or document by the CEO of a Commonwealth entity, despite any contrary law of the Commonwealth, State or Territory, for a purpose in connection with the administration of a UN sanction enforcement law.

Section 30 provides that the CEO of a designated Commonwealth entity may issue a written notice compelling a person, despite any contrary law of the Commonwealth, State or Territory, to give the CEO information or documents of the kind, by the time and in any manner or form, specified in the notice, for the purpose of determining whether a UN sanction enforcement law has been, or is being, complied with. Failure to comply with a section 30 notice may result in a penalty of 12 months imprisonment. A section 30 notice overrides a person’s privilege against self incrimination, but any information obtained may only be admissible as evidence in limited circumstances related to offences under the Act (specifically, the offence of providing false or misleading information in connection with a UN sanction enforcement law, or failure to comply with a section 30 notice).

Section 34 provides that the CEO of a designated Commonwealth entity may take and keep a copy of a document given to the CEO under section 30, but must return the document within a reasonable time.

Section 35 provides that an officer of a designated Commonwealth entity may, despite any contrary law of the Commonwealth, State or Territory, copy, make a record of or use, any information or document, or disclose any information, or give any document, to another officer of that entity, for a purpose in connection with the administration of a UN sanction enforcement law or compliance with a binding decision of the UN Security Council.

Finally, section 35 also provides that a CEO of a designated Commonwealth entity may, despite any contrary law of the Commonwealth, State or Territory, disclose any information or give any document to a Commonwealth, State or Territory Minister, to the CEO of another Commonwealth entity, to a State or Territory entity, to a foreign government entity, to a public international organisation or to a person specified by the Minister for Foreign Affairs in a legislative instrument, for a purpose in connection with the administration of a UN sanction enforcement law or compliance with a binding decision of the UN Security Council.

The Australian Customs Service, the Australian Transaction Reports and Analysis Centre, and the Department of Defence were consulted before the making of this instrument. Broader public consultation was not undertaken as the specification designating Commonwealth entities does not have an impact on the application of existing regulations.