

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 326

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions — Sudan) Amendment Regulations 2010 (No. 1)

The purpose of the Regulations is to amend the *Charter of the United Nations (Sanctions — Sudan) Regulations 2008* (the Principal Regulations), which were made on 10 April 2008 (repealing the *Charter of the United Nations (Sanctions – Sudan) Regulations 2005*) to implement United Nations Security Council (UNSC) sanctions in relation to Sudan.

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides, in part, that the Governor-General may make regulations for, and in relation to, giving effect to decisions that the UNSC has made under Chapter VII of the Charter of the United Nations (the Charter) that 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.

UNSC resolutions 1556 (2004) and 1591 (2005) prohibit the unauthorised supply, sale or transfer of arms and related materiel (paragraph 7 of resolution 1556) and the provision of related technical training or assistance (paragraph 8 of resolution 1556) to all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur, a party to the N'djamena Ceasefire Agreement or a belligerent in the states of North Darfur, South Darfur and West Darfur.

Resolutions 1556 (paragraph 9) and 1591 (paragraph 7) provide that the arms embargo described above does not apply to:

- assistance and supplies to monitoring, verification or peace support operations, including such operations led by regional organizations, that are authorized by the United Nations or are operating with the consent of the relevant parties;
- assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement;
- supplies of non-lethal military equipment (and related assistance) intended solely for humanitarian, human rights monitoring or protective use;
- supplies of protective clothing, including flak jackets and military helmets, for the personal use of United Nations personnel, human rights monitors, representatives of the media and humanitarian and development workers and associated personnel; and
- movements of military equipment and supplies into the Darfur region that are approved in advance by the Committee established by paragraph 3 of UNSC resolution 1591 (the Committee) upon a request by the Government of Sudan.

The Principal Regulations gave effect to these obligations in Australia by prohibiting the supply of all arms and related materiel (regulation 9), and the provision of associated services (regulation 11), to any person in Sudan. The Principal Regulations then authorised the

Minister for Foreign Affairs (the Minister) to permit the supply of such goods (regulation 10) or the provision of such service (regulation 12) in circumstances that fall within the categories of exception provided for in resolutions 1556 and 1591. The Minister was not authorised to grant such a permit to any of the prohibited categories of persons or entities.

On 15 October 2010, the UNSC adopted resolution 1945 (2010), which amended the conditions associated with the exceptions to the arms embargo in two ways. First, paragraph 9 of resolution 1945 (2010) provides that all states must notify the Committee in advance of providing assistance and supplies in support of the implementation of the Comprehensive Peace Agreement. Second, paragraph 10 requires all States to ensure that any sale or supply of arms and related materiel to Sudan not prohibited by resolutions 1556 and 1591 are made conditional upon the necessary end user documentation to enable them to ascertain that any such sale or supply is conducted consistent with the measures imposed by those resolutions.

Accordingly, the Regulations implement the new requirements contained in paragraphs 9 and 10 of resolution 1945 by:

- providing that the Committee be notified in advance of the Minister granting a permit to provide assistance and supplies in support of the implementation of the Comprehensive Peace Agreement; and
- requiring the Minister, prior to granting any permit under Regulation 10, obtain sufficient end user documentation to ascertain that the supply would be conducted in a manner consistent with the measures imposed by resolutions 1556 and 1591.

In addition to these amendments, the Regulations also amend the way the Principal Regulations give effect to the arms embargo more generally. The Principal Regulations continue to require authorisation for the supply of arms and related materiel, and the provision of associated services, to any person in Sudan, to ensure end use verification as required by paragraph 10 of resolution 1945. The Regulations, however, amend the Principal Regulations so as to clarify that the specified categories of exceptions to the arms embargo set out in resolutions 1556 and 1591 apply only to supplies of arms and related materiel, and the provision of associated services, intended for persons and entities specified in resolutions 1556 and 1591 as being subject to the arms embargo.

The Attorney-General's Department was consulted during the preparation of the Regulations. Interdepartmental and industry consultations were undertaken during the preparation of the Principal Regulations. Public consultations on the implementation of regulations made under the *Charter of the United Nations Act 1945* are conducted annually. No specific public consultation was undertaken in relation to the Regulations and the Principal Regulations as they implement Australia's international legal obligations arising from decisions of the UNSC.

Resolutions 1556, 1591 and 1945 were adopted under Article 41 of Chapter VII of the Charter and the measures are binding on Australia pursuant to Article 25 of that Charter. The relevant UNSC resolutions can be found on the UN website (www.un.org).

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

Attachment**Details of the *Charter of the United Nations (Sanctions — Sudan) Amendment Regulations 2010 (No. 1)*****Regulation 1 – Name of the Regulations**

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions — Sudan) Amendment Regulations 2010 (No. 1)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of *Charter of the United Nations (Sanctions — Sudan) Regulations 2008*

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions — Sudan) Regulations 2008*.

Schedule 1 – Amendments**[1] Subregulation 9 (2)**

Item [1] replaces the existing subregulation 9 (2) with a new subregulation 9 (2) to provide that the Minister may only grant a permit authorising the making of a sanctioned supply to any non-governmental entity or individual operating in the states of North Darfur, South Darfur or West Darfur, a party to the N'djamena Ceasefire Agreement, or a belligerent in the states of North Darfur, South Darfur or West Darfur, if the sanctioned supply falls within an exception referred to in subregulation 9 (3). The effect of this amendment is to make only the grant of a permit conditional on the sanctioned supply to which it relates meeting one of the exceptions when the sanctioned supply is to the specific categories of persons and entities identified in resolutions 1556 and 1591 as being subject to the arms embargo.

[2] Subregulation 9 (3), first occurring

Item [2] replaces the existing, first occurring subregulation 9 (3) with new subregulations 9 (3) and 9 (4). The new subregulation 9 (3) provides that the Minister may only grant a permit referred to in new subregulation 9 (2) if the sanctioned supply to which the permit relates is mentioned in the table included in new subregulation 9 (3). The items in the table correspond to paragraphs 9 (2) (a) to (e) of the existing subregulation 9 (2). Item 4 of the table (corresponding to existing paragraph 9 (2) (d)) includes the new requirement in paragraph 9 of resolution 1945 that the Committee established by resolution 1591 be notified in advance of a permit for a sanctioned supply provided in support of the implementation of the Comprehensive Peace Agreement.

The new subregulation 9 (4) provides that the Minister must not grant a permit authorising any sanctioned supply unless the Minister has obtained sufficient end user documentation to ascertain that the supply will be conducted consistent with Resolutions 1556 and 1591. This gives effect to the requirement in paragraph 10 of resolution 1945.

[3] Subregulation 9 (3), second occurring

Item [3] rennumbers subregulation 9 (3), second occurring, as subregulation 9 (5).

[4] Subregulation 10 (1)

Item [4] adds clarity to the prohibition on sanctioned service by substituting “sanctioned service” instead of “it” in both paragraphs 10 (1) (b) and 10 (1) (c).

[5] Subregulations 11 (2), (3) and (4)

Item [5] replaces existing subregulations 11 (2), (3) and (4). New subregulation 11 (2) provides that the Minister may only grant a permit authorising the provision of a sanctioned service to any non-governmental entity or individual operating in the states of North Darfur, South Darfur or West Darfur, a party to the N’djamena Ceasefire Agreement, or a belligerent in the states of North Darfur, South Darfur or West Darfur, if the sanctioned service falls within an exception referred to in subregulation 11 (3). The effect of this amendment is to make only the grant of a permit conditional on the sanctioned service to which it relates meeting one of the exceptions when the sanctioned service is to the specific categories of persons and entities identified in resolutions 1556 and 1591 as being subject to the arms embargo.

The new subregulation 11 (3) provides that the Minister may only grant a permit referred to in new subregulation 11 (2) if the sanctioned service to which the permit relates is mentioned in the table included in new subregulation 11 (3). The items in the table correspond to paragraphs 11 (2) (a) to (c) of the existing subregulation 11 (2). Item 3 of the table (corresponding to existing paragraph 11 (2) (c)) includes the new requirement in paragraph 9 of resolution 1945 that the Committee established by resolution 1591 be notified in advance of a permit for a sanctioned service provided in support of the implementation of the Comprehensive Peace Agreement.

New subregulation 11 (4) replicates existing subregulation 11 (4) in providing that a permit is subject to any conditions specified in the permit.

[6] Paragraph 13 (1) (c)

Item [6] substitutes a new paragraph 13 (1) (c) to correct a typographical error in existing paragraph 13 (1) (c), inserting “is” after “the use or dealing”.

[7] Subregulation 14 (1)

Item [7] substitutes a new subregulation 14 (1), which has the effect of replacing the phrase “the making available of an asset” in existing subregulation 14 (1) with the phrase “a making available of an asset” for the purposes of drafting clarity. It also adds the phrase “that would otherwise contravene subregulation 13 (1)” at the end of paragraph 14 (1) (b) for drafting clarity.

[8] Subregulation 14 (6)

Item [8] corrects a typographical error in subregulation 14 (6) by replacing “applications” with “application”.