

## **Explanatory Statement**

### **Select Legislative Instrument 2011 No. 50**

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

#### *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Amendment Regulations 2011 (No. 1)*

The purpose of the Regulations is to amend the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011* (the Principal Regulations), which were made on 10 March 2011 to implement United Nations Security Council (UNSC) sanctions in relation to Libya.

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.

The Regulations amend the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011* (the Principal Regulations) to implement UNSC sanctions in relation to Libya.

The Principal Regulations give effect in Australia to obligations arising from UNSC resolution 1970 (26 February 2011). Resolution 1973 was adopted under Chapter VII of the Charter of the UN on 17 March 2011 and the measures contained therein are binding on Australia pursuant to Article 25 of that Charter.

Four paragraphs of resolution 1973 contain obligations requiring amendments to the Principal Regulations. Paragraph 4 provides for a new exception to the arms embargo imposed by paragraph 9 of resolution 1970, namely the UNSC's authorisation of the use of all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya.

Paragraph 17 obliges all States to deny permission to any aircraft registered in the Libyan Arab Jamahiriya, or owned or operated by Libyan nationals or companies, to take off from, land in or overfly their territory unless the particular flight has been approved in advance by the Committee, or in the case of an emergency landing.

Paragraph 18 obliges all States to deny permission to any aircraft to take off from, land in or overfly their territory, if they have information that provides reasonable grounds to believe that the aircraft contains items or personnel prohibited by the arms embargo, except in the case of an emergency landing.

Finally, paragraph 27 obliges all States to take the necessary measures to ensure that no claim lies at the instance of the Libyan authorities, or of any person or body in the Libyan Arab Jamahiriya, or of any person claiming through or for the benefit of any such person or body, in connection with any contract or other transaction where its

performance was affected by reason of the measures taken by the UNSC in resolutions 1970 and 1973 and related resolutions.

In addition to amending the Principal Regulations to give effect to new obligations arising for resolution 1973, the Regulations also amend the existing definition of “designated person or entity” in regulation 3 of the Principal Regulations, to clarify that the term applies to any person or entity designated by the Committee or the UNSC for the purposes of paragraph 17 of resolution 1970.

The Regulations also amend regulation 7 of the Principal Regulations to clarify that an approval to make a sanctioned supply pursuant to paragraph 7 (2) (d) of the Principal Regulations, as amended, is conditional upon such sanctioned supply being approved in advance by the Committee established under resolution 1970 (the Committee). This amendment brings regulation 7 into conformity with subparagraph 9(c) of resolution 1970.

No public consultation was undertaken in relation to the Amendment Regulations and the Principal Regulations as they implement Australia’s international legal obligations arising from decisions of the UNSC.

Resolutions 1970 and 1973 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](http://www.un.org)).

Details of the Amendment Regulations are set out in the Attachment.

**Details of the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Amendment Regulations 2011 (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 – Libyan Arab Jamahiriya) Amendment Regulations 2011 (No. 1)*.

**Regulation 2 – Commencement**

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

**Regulation 3 – Amendment of the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011***

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions – Libyan Arab Jamahiriya) Regulations 2011*.

**Schedule 1 – Amendments**

**[1] Regulation 3, after definition of *Act***

Item [1] inserts in regulation 3 definitions of ‘aircraft’ (as this term appears in regulations 13A, 13B and 13C inserted under item [11]) and ‘Airservices Australia’ (as this term appears in regulations 13B and 13C to be inserted under item [11]).

**[2] Regulation 3, after definition of *Australian ship***

Item [2] inserts in regulation 3 definitions of ‘Australian territory’ (as this term appears in regulations 13A, 13B and 13C inserted under item [11]) and ‘CASA’ (as this term appears in regulations 13B and 13C inserted under item [11]).

**[3] Regulation 3, definition of *controlled asset***

Item [3] substitutes a new definition for the term ‘controlled asset’, to clarify that the term includes assets that are owned or controlled by both a person or entity acting on behalf or at the direction of, as well as an entity owned or controlled by, a designated person or entity.

**[4] Regulation 3, definition of *designated person or entity***

Item [4] substitutes a new definition for the term ‘designated person or entity’, to clarify that the term applies to any person or entity designated by the Committee or the UNSC for the purposes of paragraph 17 of resolution 1970.

**[5] Regulation 3, after definition of *import sanctioned goods***

Item [5] inserts in regulation 3 a definition of ‘Libyan Arab Jamahiriya entity’ as this term appears in regulation 13A inserted under item [11].

**[6] Regulation 3, after definition of *paramilitary equipment***

Item [6] inserts in regulation 3 a definition of ‘pilot in command’ as this term appears in regulations 13A and 13C inserted under item [11].

**[7] Regulation 3, after definition of *Resolution 1970***

Item [7] inserts in regulation 3 a definition of ‘Resolution 1973’ as this term appears in regulation 7 as amended by item [8], regulation 10 as amended by item [10], and regulations 13B and 13D inserted under items [11] and [12].

**[8] Subregulations 7 (2) and (3)**

Item [8] substitutes a new subregulation 7 (2) to clarify the existing grounds under which the Minister is authorised to grant a permit for the supply of goods to Libya that would otherwise contravene regulation 6 of the Principal Regulations (paragraphs 7 (2) (a), (b) and (d) of the Principal Regulations as amended) and to include a new ground for granting a permit deriving from paragraph 4 of resolution 1973 (paragraph 7 (2) (c) of the Principal Regulations as amended).

Paragraph 7 (2) (a) as amended provides that the Minister may grant a permit for the supply of non-lethal military equipment, intended solely for humanitarian or protective use, that has been approved in advance by the Committee.

Paragraph 7 (2) (b) as amended provides that the Minister may grant a permit for the supply of protective clothing temporarily exported to Libya by United Nations personnel, representatives of the media and associated personnel for their personal use.

Paragraph 7 (2) (c) provides that the Minister may grant a permit for the supply of arms or related materiel if the supply gives effect to paragraph 4 of Resolution 1973 and is notified in advance to the Committee.

Paragraph 7 (2) (d) provides that the Minister may grant a permit for the supply of arms or related materiel that is not covered by the preceding paragraphs but that has been approved in advance by the Committee.

**[9] Subregulation 7 (4)**

Item [9] rennumbers the existing subregulation 7 (4) as subregulation 7 (3).

**[10] Subregulations 10 (1) and (2)**

Item [10] substitutes new subregulations 10 (1) and (2) to clarify the existing grounds under which the Minister is authorised to grant a permit for the supply of services to Libya that would otherwise contravene regulation 9 of the Principal Regulations (paragraphs 10 (2) (a) and (c) of the Principal Regulations as amended) and to include a new ground for granting a permit deriving from paragraph 4 of resolution 1973 (paragraph 10 (2) (b) of the Principal Regulations as amended).

Paragraph 10 (2) (a) provides that the Minister may grant a permit for the provision of technical training and assistance related to the supply of non-lethal military equipment, intended solely for humanitarian or protective use, that has been approved in advance by the Committee.

Paragraph 10 (2) (b) provides that the Minister may grant a permit for the provision of technical assistance, personnel and training that is related to the supply of arms or

related materiel to give effect to paragraph 4 of Resolution 1973 and is notified in advance to the Committee.

Paragraph 10 (2) (c) provides that the Minister may grant a permit for the provision of assistance and personnel that is related to the supply of arms or related materiel not otherwise covered by the preceding paragraphs but that has been approved in advance by the Committee.

#### **[11] After regulation 13**

Item [11] inserts three new regulations after regulation 13.

The first, regulation 13A, prohibits a pilot in command of an aircraft registered in Libya, or owned or operated by a Libyan national or entity, from taking off, landing in or overflying Australian territory. Regulation 13A provides for two exceptions to the prohibition: if the Committee has approved in advance the landing, take-off or flyover; or if a landing is made in an emergency.

The second, regulation 13B, requires CASA or Airservices Australia to deny authorisation for an aircraft to take off, land in or flyover Australian territory if either CASA or Airservices Australia has reasonable grounds to believe the aircraft is carrying goods or personnel prohibited by paragraph 9 of resolution 1970 (as mentioned in paragraph 18 of resolution 1973), or are informed by the Chief Executive Officer (CEO) of a designated Commonwealth entity that the CEO has reasonable grounds to believe the aircraft is carrying such goods or personnel.

The third, regulation 13C, prohibits a person in command of an aircraft that has been denied authorisation by CASA or Airservices Australia to land in, take off from or flyover Australian territory, from landing, taking off or overflying Australian territory (except in the case of a landing that is made in an emergency).

#### **[12] Part 2A Other matters**

Item [12] inserts a new Part 2A following regulation 13C of the Principal Regulations as amended. Part 2A comprises a new regulation 13D which disallows the Libyan Government, a Libyan national, a person or entity subject to Libyan jurisdiction, a designated person or entity or any person or entity on their behalf, from making any claim or demand, or taking any action, against another person or entity for breach of contract if performance of the contract was prevented by operation of the regulations or measures imposed under resolutions 1970, 1973 or any other relevant resolution of the UNSC.