

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 48, 2014**

Issued by the Authority of the Minister for Foreign Affairs

*Charter of the United Nations Act 1945*

*Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014*

The purpose of the *Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014* (the Amendment Regulation) is to amend the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Dealing with Assets Regulations) and the *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014* (the CAR Regulation) to implement decisions of the United Nations Security Council (UNSC) imposing new sanctions and modifying existing sanctions.

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides that the Governor-General may make regulations to give effect to decisions of the UNSC 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 Dealing with Assets Regulations give effect in Australia to decisions of the UNSC to impose targeted financial sanctions under Chapter VII of the Charter. The Amendment Regulation amends the definition of “Sanctions Regulations” in regulation 4 of the Dealing with Assets Regulations to include a reference to the CAR Regulation following the decision of the UNSC to impose a targeted financial sanctions regime pursuant to paragraph 32 of resolution 2134 (2014).

The Amendment Regulation also amends the definition of “Sanctions Regulations” in regulation 4 of the Dealing with Assets Regulations to include a reference to the *Charter of the United Nations (Sanctions – Yemen) Regulation 2014* which implements a targeted financial sanction regime imposed by the UNSC pursuant to paragraph 11 of resolution 2140 (2014).

The CAR Regulation gives effect in Australia to sanctions obligations arising from UNSC resolution 2127 (2013). The Amendment Regulation amends the CAR Regulation, implementing the UNSC decisions in paragraph 40 of resolution 2134 (2014) and paragraph 37 of resolution 2149 (2014) modifying the exemptions to the arms embargo imposed pursuant to paragraph 54 of resolution 2127 (2013). The arms embargo now also exempts supplies intended solely for the benefit and support of or use by the European Union operation in the Central African Republic or the United Nations Multidimensional Stabilization Mission in the Central African Republic respectively.

The Amendment Regulation also amends the CAR Regulation, to implement the UNSC decision in paragraph 32 of resolution 2134 (2014) to impose targeted

financial sanctions in relation to persons or entities designated by the CAR Sanctions Committee. It requires Australia to freeze all funds, other financial assets and economic resources on its territory that are owned or controlled by designated persons or entities, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them. Australia must also prevent any funds, financial assets or economic resources are prevented from being made available by Australians, or by any persons or entities within Australia, to or for the benefit of designated persons or entities. Paragraphs 33 and 34 of resolution 2134 (2014) outline several exemptions to the paragraph 32 measures.

The Amendment Regulation amends the CAR regulation to provide in sections 11A and 11B that strict liability applies to the circumstance that the making available of an asset or the use of, or dealing with, a controlled asset is not authorised by a permit under sections 11A and 11B respectively. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will not apply to any other element of the offence. The purpose of this provision is to prevent a spurious defence that a statement of the Minister could be taken as de facto authorisation to engage in conduct that is prohibited under the Act.

No public consultation was undertaken in relation to the Amendment Regulation, as it implements Australia's international legal obligations arising from decisions of the UNSC. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions.

Resolutions 2134 (2014) and 2149 (2014) 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 Regulation are set out in the [Attachment](#).

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014***

The *Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014* (the Amendment Regulation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The purpose of the Amendment Regulation is to amend the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Dealing with Assets Regulations) and the *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014* (the CAR Regulation) to implement decisions of the United Nations Security Council (UNSC) imposing new sanctions and modifying existing sanctions.

The Amendment Regulation amends the CAR Regulation, implementing decisions of the UNSC in paragraph 40 of resolution 2134 (2014) and paragraph 37 of resolution 2149 (2014) to modify the arms embargo, exempting supplies intended solely for the benefit and support of or use by the European Union operation in the Central African Republic (EUFOR RCA) or the United Nations Multidimensional Stabilization Mission in the Central African Republic (MINUSCA) respectively. The Amendment Regulation advances human rights by implementing these exemptions to the arms embargo, which remains vital to addressing the grave humanitarian situation in the Central African Republic (CAR) and helping to protect the human rights of people in the CAR.

The Amendment Regulation further amends the CAR Regulation, implementing decisions of the UNSC in paragraphs 32, 33 and 34 of resolution 2134 (2014) imposing targeted financial sanctions on persons and entities to be designated by the Committee established pursuant to paragraph 57 of resolution 2127 (2013) (the Committee). The Amendment Regulation implements targeted financial sanctions against persons or entities designated by the Committee as engaging in or providing support for acts that threaten the peace, security or stability of the CAR, including:

- a) violating the arms embargo established by resolution 2127 (2013);
- b) planning, directing or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in the CAR;
- c) recruiting or using children in armed conflict in the CAR, in violation of applicable international law;

- d) providing support for armed groups or criminal networks through illicit exploitation of natural resources, including diamonds and wildlife products, in the CAR;
- e) obstructing the delivery of humanitarian assistance to the CAR, or access to, or distribution of, humanitarian assistance in the CAR;
- f) planning, directing, sponsoring, or conducting attacks against UN missions or international security presences;
- g) being a leader of, or providing support to, or acting on behalf of or at the direction of, an entity that the Committee has designated pursuant to paragraphs 36 or 37 of resolution 2134.

The Amendment Regulation advances human rights by ensuring that persons and entities who violate the arms embargo, commit violations of international humanitarian or human rights law or other atrocities or violate other measures imposed by UNSC resolutions to address the situation in the CAR will be subject to the UNSC sanctions measures.

The Amendment Regulation provides that the Minister for Foreign Affairs (the Minister) may grant a person a permit authorising the making available of an asset to a person or entity that would otherwise contravene subsection 11A, or a use of, or dealing with, a controlled asset that would otherwise contravene subsection 11B. These exemptions, which implement decisions of the UNSC in paragraphs 33 and 34 of resolution 2134 (2014), allow the making available of an asset or the use or dealing with a controlled asset where it is required for the provision of a basic expense, a legally required or contractual payment or extraordinary expense dealing. These permissible dealings are defined in the Dealing with Assets Regulations.

The presumption of innocence is a human right that might be affected by the Amendment Regulation. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. As strict liability offences allow for the imposition of criminal liability without the need to prove fault, all strict liability offences interact with the presumption of innocence in article 14(2) of the ICCPR. A strict liability offence will not necessarily violate the presumption of innocence provided that it is: (i) aimed at achieving a purpose that is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

The Amendment Regulation amends the CAR regulation to provide in sections 11A and 11B that strict liability applies to the circumstance that the making available of an asset or the use of, or dealing with, a controlled asset is not authorised by a permit under sections 11A and 11B respectively. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will not apply to any other element of the offence. The purpose of this provision is to prevent a spurious defence that a statement of the Minister could be taken as de facto authorisation to engage in conduct that is prohibited under the Charter of the United Nations Act. Either the permit exists or it does not exist.

## **ATTACHMENT**

### **Details of the *Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014***

#### **Section 1 – Name of Regulation**

Section 1 provides that the name of the regulation is the *Charter of the United Nations Legislation Amendment (Central African Republic and Yemen) Regulation 2014*.

#### **Section 2 – Commencement**

Section 2 provides that the regulation commences on the day after it is registered.

#### **Section 3 – Authority**

Section 3 provides that the regulation is made under the *Charter of the United Nations Act 1945*.

#### **Section 4 – Schedule(s)**

Section 4 provides that each instrument that is specified in a Schedule to the regulation is amended or repealed as set out in the Schedule.

#### **Schedule 1 – Amendments**

#### ***Charter of the United Nations (Dealing with Assets) Regulations 2008***

##### **Item [1] - Regulation 4, amended definition of *Sanctions Regulations***

Item [1] amends the definition of ‘Sanctions Regulations’ to include reference to the *Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014* to give effect to the decisions of the UNSC in resolutions 2134 and 2127.

##### **Item [2] - Regulation 4, amended definition of *Sanctions Regulations***

Item [2] amends the definition of ‘Sanctions Regulations’ to include reference to the *Charter of the United Nations (Sanctions – Yemen) Regulation 2014* to give effect to the decisions of the UNSC in resolution 2140.

#### ***Charter of the United Nations (Sanctions – Central African Republic) Regulation 2014***

##### **Item [3] - Section 4, new definition of *Controlled Asset***

Item [3] inserts definitions of certain terms used in the Amendment Regulation including: ‘Controlled Asset’; ‘Designated Person or entity’; ‘EUFRO RCA’ being the European Union operation in the Central African Republic; ‘MINUSCA’ being the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic; and ‘Resolution 2134’.

#### **Item [4] – Before section 8**

[Item [4] inserts ‘Division 1—Sanctioned supply and sanctioned services to Central African Republic’ before section 8

#### **Item [5] - Subparagraph 9(2)(a)**

Item [5] amends paragraph 9(2)(a) to insert subparagraphs (vi) and (vii) to provide exceptions to the arms embargo for MINUSCA and UEFOR RCA to give effect to the decision of the UNSC in resolutions 2134 and 2149.

#### **Item [6] – Sections 11A, 11B and 11C**

Item [6] amends the regulation to insert “Division 2—Sanctions relating to designated persons or entities” after the end of Part 2 and inserts sections 11A, 11B and 11C.

Section 11A prohibits a person from directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, unless that is authorised by a permit under Section 11A. Section 11A provides that strict liability applies to the circumstance that the making available of the asset is not authorised by a permit under section 11A.

Section 11 B prohibits a person who holds a controlled asset from using or dealing with the asset, allowing the asset to be used or dealt with, or facilitating the use of, or the dealing with, the asset, unless that is authorised by a permit under section 11B. Section 11B provides that strict liability applies to the circumstance that the use of or dealing with the asset is not authorised by a permit under section 11B.

Section 11C allows the Minister, on application, to grant a person a permit authorising: (a) the making available of an asset to a person or entity that would otherwise contravene subsection 11A; or (b) a use of, or dealing with, a controlled asset that would otherwise contravene subsection 11B. The application must be for a basic expense dealing, contractual dealing, required payment dealing or extraordinary expense dealing as defined in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*. Section 11C sets out the requirements for the Minister for granting permits and notifying the Committee for the different applications made under section 11C.