

Explanatory Statement

Select Legislative Instrument No. 49, 2014

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Yemen) Regulation 2014

The purpose of the *Charter of the United Nations (Sanctions – Yemen) Regulation 2014* (the Regulation) is to implement the decision of the United Nations Security Council (UNSC) to impose sanctions in relation to Yemen.

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.

Resolution 2140 was adopted under Chapter VII of the Charter on 26 February 2014 and the measures are binding on Australia pursuant to Article 25 of the Charter. Resolution 2140 (2014) imposes targeted financial sanctions on any persons and entities designated by the Yemen Sanctions Committee. Paragraph 11 of resolution 2140 (2014) 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. Paragraph 11 also requires Australia to prevent any funds, financial assets or economic resources 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 12, 13 and 14 of the resolution outline several exemptions to the paragraph 11 measures.

The Regulation implements the decision of the UNSC in resolution 2140 (2014) to impose targeted financial sanctions with limited exemptions.

The Regulation provides in sections 5(2) and 6(2) that strict liability applies to the circumstance that the making available of the asset, or the use of, or dealing with, the asset, is not authorised by a permit under section 7. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will continue not to 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.

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

No public consultation was undertaken in relation to the Regulation because 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.

Resolution 2140 (2014) was adopted under Article 41 of Chapter VII of the Charter and the decisions therein are binding on Australia pursuant to Article 25 of that Charter. The relevant UNSC resolution can be found on the United Nations website (www.un.org).

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 (Sanctions – Yemen) Regulation 2014

The *Charter of the United Nations (Sanctions – Yemen) Regulation 2014* (the 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 Regulation gives effect to decisions that the United Nations Security Council (UNSC) has made under Chapter VII of the United Nations Charter. Article 25 of the Charter requires Australia to carry out such decisions, in so far as they require Australia to apply measures not involving the use of armed force.

The Regulation gives effect to resolution 2140 (2014), which provides for the imposition of targeted financial sanctions on persons and entities to be designated by a Committee established under paragraph 19 of the resolution.

The targeted financial sanctions will be imposed on persons or entities designated by the Committee as engaging in, or providing support for, acts that threaten the peace, security or stability of Yemen. These acts include: a) obstructing or undermining the successful completion of the political transition in Yemen; b) violence or attacks on essential infrastructure; and c) planning, directing or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Yemen. Thus the financial sanctions will be targeted at persons and entities perpetrating human rights violations.

Australia's human rights obligation that might be affected by the Regulation is the presumption of innocence. 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 Regulation provides in sections 5(2) and 6(2) that strict liability applies to the circumstance that the making available of the asset, or the use of or dealing with the asset, is not authorised by a permit under section 7. In effect, this means that strict liability applies to the existence or otherwise of a permit. For an individual, strict liability will continue not to 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 1945*. Either the permit exists or it does not exist.

The Regulation provides that 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 5(1), or a use of, or dealing with, a controlled asset that would otherwise contravene subsection 6(1) The application for a permit must be for a basic expense, legally required, contractual, required payment or extraordinary expense dealing. These permissible dealings are defined in the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.

Authority: Section 6 of the *Charter of the United Nations Act 1945*

ATTACHMENT

Details of the Charter of the United Nations (Sanctions – Yemen) Regulation 2014

Section 1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Charter of the United Nations (Sanctions – 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 – Definitions

Section 4 provides for the definition of certain terms used in the Regulation, including “Act”, “Committee”, “controlled asset”, “designated person or entity” and “Resolution 2140”.

Section 5 – Prohibition relating to dealings with designated persons or entities

Section 5 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 7. Section 5 provides that strict liability applies to the circumstance that the making available of the asset is not authorised by a permit under section 7.

Section 6 – Prohibition relating to controlled assets

Section 6 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 7. Section 6 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 7.

Section 7 – Permit for assets and controlled assets

Section 7 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 5(1); or (b) a use of, or dealing with, a controlled asset that would otherwise contravene subsection 6(1). 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 8 – Delegations by the Minister

Section 8 allows the Minister to delegate the Minister’s powers and functions under the Regulation (other than the power of delegation) to the Secretary of the Department or an SES employee, or acting SES employee, in the Department.