

EXPLANATORY STATEMENT

Select Legislative Instrument No. 162, 2015

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions-Syria) Regulation 2015

The purpose of the *Charter of the United Nations (Sanctions-Syria) Regulation 2015* (the **Syria Regulation**) is to implement Resolution 2199 (2015) of the United Nations Security Council (UNSC).

Section 6 of the *Charter of the United Nations Act 1945* (the **Act**) provides that the Governor-General may make regulations for, in relation to, giving effect to decisions that the UNSC has made under Chapter VII of the Charter of the United Nations (the **Charter**) which 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 Syria Regulation gives effect in Australia to sanctions obligations arising from UNSC resolution 2199 (2015). Resolution 2199 (2015) concerning Syria and Iraq was adopted under Chapter VII of the Charter on 12 February 2015 and the measures are binding on Australia pursuant to Article 25 of the Charter. Paragraph 17 requires United Nations member states to take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011.

The term ‘illegally removed’ is drawn directly from the terms of UNSCR 2199 (2015) and as such, Australia is under an international obligation to implement the terms of the UNSCR into Australian law. We consider that the term ‘illegally removed’ refers to property that has been removed from Syria or Iraq without the consent of the legitimate owner, or in breach of Syrian, or international law.

The Regulations criminalise the present trade in illegally removed cultural property rather than their past removal and an offence does not arise unless a direction is issued. The Regulations do not change the status of legally removed property and only apply where no good title has been obtained by the fact that the goods were illegally removed.

The Syria Regulation creates a strict liability offence, which is appropriate as the offence is only triggered if a person does not comply with the written directions regarding illegally removed cultural property issued by the Secretary of the Department of Foreign Affairs and Trade. There is no offence if no directions are issued. A person who has been correctly issued with a direction to return the illegally removed cultural property is effectively put ‘on notice’ by the issuing of that direction to return the item. As a result they have received sufficient notice of their obligations under the Regulations and have the opportunity to avoid unintentional contravention.

It would be therefore unnecessary to impose a requirement to prove the individual's intention not to comply with the notice.

Further, strict liability is appropriate for these offences as the offences are not punishable by imprisonment, the offences are punishable only by a fine of below 60 penalty units and because a requirement to prove fault would reduce the effectiveness of the enforcement regime in deterring the trade in illegally removed Syrian and Iraqi cultural property. Honest and reasonable mistake of fact is available as a defence to strict liability offences under s9.2 of the Criminal Code.

No public consultation was undertaken in relation to the Syria Regulation, as it implements Australia's international legal obligations arising from decisions of the UNSC.

Resolution 2199 (2015) was 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 resolution can be found on the UN website (www.un.org).

Details of the Syria 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 (Sanctions-Syria) Regulation 2015

The *Charter of the United Nations (Sanctions-Syria) Regulation 2015* (the Syria 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 Syria Regulation gives 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 Syria Regulation gives effect to paragraph 17 of resolution 2199 (2015) in relation to Syria, by prohibiting the trade in illegally removed Syrian cultural property.

The Syria Regulation engages human rights by assisting with international efforts to deprive terrorist organisations such as Da'esh/Islamic State/ISIL/ISIS from funding human rights violations in Syria and Iraq by trading in illegally removed cultural property.

This Legislative Instrument is compatible with human rights because it advances the protection of human rights in Syria.

ATTACHMENT

Details of *Charter of the United Nations (Sanctions—Syria) Regulation 2015*

Section 1 – Name of Regulation

Section 1 would provide that the name of the regulation is the *Charter of the United Nations Legislation Amendment (Sanctions—Syria) Regulation 2015*.

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Definitions

Section 4 would insert definitions for ‘Act’, ‘Arts Department’ and ‘illegally removed cultural property’.

Section 5 – Return of illegally removed cultural property of Syria

Section 5 would provide that a person who suspects that an item in the possession or control of a person is illegally removed cultural property must notify the Secretary of the Department of Foreign Affairs and Trade, the Secretary of the Arts Department or a member of the Australian Federal Police or a state or territory police force. The section would also provide that the Secretary of the Department of Foreign Affairs and Trade may direct the person to comply with arrangements for the delivery of the item to the Department of Foreign Affairs and Trade.

Section 6 – Dealing with illegally removed cultural property of Syria

Section 6 would provide that it is an offence if a person gives, trades or transfers illegally removed Syrian cultural property to another person.

Section 7 – Compensation for acquisition of property

Section 7 would provide (1) if the operation of that instrument would result in the acquisition of property otherwise than on just terms, the Commonwealth would be liable to pay a reasonable amount of compensation and (2) if no agreement is reached, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.