

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions-Iran) Regulation 2016

The *Charter of the United Nations Act 1945* provides legislative approval for the Charter of the United Nations in Australian law. 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 United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations (the Charter) that Australia is required to carry out under Article 25 of the Charter in so far as those decisions require Australia to apply measures not involving the use of armed force. Section 6(2)(g) of the Act also allows the regulations to authorise the making of legislative instruments.

The purpose of the *Charter of the United Nations (Sanctions-Iran) Regulation 2016* (the Regulation) is to repeal and replace the *Charter of the United Nations (Sanctions-Iran) Regulations 2008* in order to implement recent decisions of the UN Security Council that amend UN sanctions in relation to Iran.

On 20 July 2015, the United Nations Security Council adopted Resolution 2231 (2015) (UNSCR 2231) which conditionally amended sanctions related to Iran, subject to confirmation by the International Atomic Energy Agency that Iran had made changes to its nuclear program (the announcement of these changes were made on Implementation Day, 16 January 2016). UNSCR 2231 did not substantially change the categories of nuclear materials that were prohibited exports to Iran but altered how the approvals process through the UN and its member states for these exports would function. UNSCR 2231 also terminated and superseded resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015).

The Regulation implements the changes to the Iran sanctions regime as set out in resolution 2231 (2015), including removing references to the 1737 Iran Sanctions Committee established pursuant to Resolution 1737 (2006) which monitored the implementation of Resolution 1737 and subsequent UNSC resolutions related to Iran. As requested by Resolution 2231, the Regulation also updates a range of nuclear and ballistic missile-related goods and technologies which the UN has determined should be incorporated into the definition of export sanctioned goods for Iran.

The documents INFCIRC/254/Part 1 (as revised), INFCIRC/254/Part 2 (as revised) can be found on the International Atomic Energy Agency website at www.iaea.org and the document S/2015/546 can be found on the United Nations website at www.disarmament-library.un.org

No public consultation was undertaken in relation to the Regulation under section 17 of the *Legislation Act 2003* as the instrument makes minor changes to the obligations imposed by the *Charter of the United Nations (Sanctions-Iran) Regulations 2008* on

the Australian community and implements Australia's international legal obligations arising from the decisions of the UN Security Council. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR reference: 20857).

Details of the Legislative Instrument 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-Iran) Regulation 2016

The *Charter of the United Nations (Sanctions-Iran) Regulation 2016* (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*.

This is because the Regulation makes minor amendments to the range of prohibited exports to and from Iran and how the approvals process through the UN and its member states for these exports would function. The Regulation also changes the manner in which certain prohibited exports may be authorised for export to Iran. It does not impose additional obligations on Australian citizens beyond those contained within the *Charter of the United Nations (Sanctions-Iran) Regulations 2008*, which this Regulation replaces. Accordingly, this Regulation is consistent with Australia's international human rights obligations and has no adverse implications for Australia's compliance with such obligations.

Details of the *Charter of the United Nations (Sanctions Iran) Regulation 2016*

Part 1: Preliminary

Section 1

Section 1 states that the name of the Regulation is the *Charter of the United Nations (Sanctions- Iran) Regulations 2016*.

Section 2

Section 2 provides that the whole of the instrument commences the day after the instrument is registered.

Section 3

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

Section 4

Section 4 provides that each instrument specified in a schedule to the instrument is amended or repealed as set out in the applicable items in the schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Section 5

Section 5 sets out the definitions used in the instrument.

Section 6 subsections (1) and (2)

Section 6 provides that, for the instrument, certain goods are export sanctioned goods. 'Export sanctioned goods' are goods set out in International Atomic Energy Agency documents INFCIRC/254/Part 1, INFCIRC/254/Part2, in United Nations Security Council document S/2015/546, certain heavy weaponry such as battle tanks, and any goods specified in any determination made under subsection 2. 'Goods' include items, materials, equipment and technology. Sub-section 6(2) provides the Minister for Foreign Affairs may, by legislative instrument, make such a determination that the goods are export sanctioned goods, if he or she is satisfied of certain matters.

Section 7

Section 7 provides that, for the instrument, certain goods are import sanctioned goods. 'Import sanctioned goods' are arms and related matériel. The goods defined in section 7 are import sanctioned goods regardless of whether those goods originate in Iran.

Section 8 (a), (b) and (c)

Section 8 provides that, for the instrument, a person makes a sanctioned supply if a person supplies, sells or transfers goods to another person, the goods are 'export sanctioned goods', and if, as a direct or indirect result of the supply, sale or transfer, the goods are transferred to Iran, or are incorporated into goods that are transferred to Iran.

Section 9 (a), (b) and (c)

Section 9 provides that, for the instrument, certain prescribed activities constitute the provision of a sanctioned service. This includes the provision to any person of technical assistance or training, financial assistance, or investment, brokering or other financial services, if any of these assists with, or is provided in relation to the supply, sale, transfer, manufacture or use of export sanctioned goods. Sanctioned services also include the transfer of financial resources in certain circumstances and the provision of technology related to certain goods.

Part 2: UN Sanction Enforcement Laws

Section 10, subsections (1), (2) and (4)

Section 10 provides for certain prohibitions relating to a sanctioned supply. Section 10 will be a UN sanction enforcement law, meaning a contravention of a provision of section 10 will be an offence under section 27 of the Act. Section 10 provides that an offence under section 27 of the Act has extraterritorial effect. This extraterritorial application extends to bodies corporate, who will contravene section 10 if they had effective control over the actions of another body corporate or entity (wherever incorporated or situated), if that other body corporate or entity made a sanctioned supply that was not an authorised supply.

Section 10, subsection (3)

Section 10 also covers non-Australian persons outside Australia, if such persons were to use the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply that is not an authorised supply. 'Authorised supply' is defined in section 10.

Section 10, subsections (6) and (7)

Section 10 provides additionally that a defendant, to a charge of contravening a UN sanction enforcement law under subsection 10(1), (3) or (4), bears the evidentiary burden of proof in establishing that, if the supply, sale or transfer took place in or from a foreign country, a permit was granted by a foreign country. In other respects, for the purpose of section 10, the evidentiary burden remains with the prosecution.

Section 11 subsections (1), (2) and (3)

Section 11 provides for permits to make a sanctioned supply. The Minister for Foreign Affairs may grant a permit authorising the making of a sanctioned supply. If the Minister were to grant a permit under section 11, the Minister must be satisfied certain conditions were met. In accordance with United Nations Security Council resolution 2231 the Minister must take steps to make certain notifications to the Security Council, and, in certain cases, the International Atomic Energy Agency.

Section 12, subsections (1), (2) and (4)

Section 12 provides for prohibitions relating to import sanctioned goods and will be a UN sanction enforcement law. A person contravenes section 12 if a person procures import sanctioned goods from Iran or from a person or entity in Iran. This offence has extraterritorial application, complying with the scope of United Nations Security Council resolution 2231. Bodies corporate are liable, as is similarly the case in relation to the comparable offence in section 10, for certain actions of entities with which they have the

requisite relationship, whether or not the other body corporate was incorporated or is located in Australia.

Section 12, subsection (3)

Section 12 also provides that a person (whether or not in Australia and whether or not an Australian citizen) contravenes section 12 if that person uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, procuring the goods from Iran or from a person or entity in Iran.

Section 13, subsections (1) and (2)

Section 13 provides for permits to procure an import sanctioned good. The Minister for Foreign Affairs may grant a permit authorising the procurement of import sanctioned goods with the approval of the Security Council, which may be subject to any conditions.

Section 14, subsections (1), (2), (3), (4), (5) and (6)

Section 14 provides for prohibitions in relation to the provision of sanctioned services. Section 14 will also be a UN sanction enforcement law. A person contravenes this section if that person provides a sanctioned service that is not an authorised service. The offence also applies extraterritorially. Similar evidentiary burdens apply as in section 10.

Section 15, subsections (1), (2) and (3)

Section 15 provides for permits to provide a sanctioned service. The Minister for Foreign Affairs may grant an application to a person to provide a sanctioned service under narrow circumstances including whether the requirements of the guidelines set out in INFCIRC/254/Part 1 or INFCIRC/254/Part 2, as appropriate, have been met.

Section 16, subsections (1) and (2)

Section 16 provides for prohibitions in relation to certain dealings with designated persons or entities. Again, section 16 operates extraterritorially and will be a UN sanction enforcement law.

Section 17, subsections (1) and (2)

Section 17 provides for a prohibition relating to controlled assets. A controlled asset is an asset controlled or owned by a designated person or entity, a person or entity acting on behalf of or at the direction of a designated person or entity, or an entity owned or controlled by a designated person or entity, including through illicit means. Again, section 17 operates extraterritorially and will be a UN sanction enforcement law.

Section 18, subsections (1), (2), (3), (4), (5), (6) and (7)

Section 18 provides that the Minister for Foreign Affairs has the power to grant a permit authorising that an asset be made available to a person or entity that will otherwise contravene the offence in section 16, and a permit authorising the use of, or dealing with, a controlled asset. Again, such a permit will only be issued in a narrow range of circumstances, as provided in section 18. The Minister must also seek the approval of the Security Council in certain circumstances.

Section 19, subsections (1) and (2)

Section 19 provides for a prohibition related to selling or making available an interest in sensitive commercial activities, including uranium mining, uranium production and activities involving the use of certain nuclear and ballistic missile related materials. Section 19 will also be a UN sanction enforcement law.

Section 20, subsections (1) and (2)

Section 20 provides that the Minister for Foreign Affairs has the power to grant a permit authorising the sale or making available of an interest in a sensitive commercial activity. The Minister must also seek the approval of the Security Council to grant a permit and may grant a permit subject to any conditions.

Part 3: Miscellaneous

Section 21, subsections (1) and (2)

Section 21 provides that the Government of Iran and others shall have no claim, action or demand against a person for breach of contract or failure to perform a transaction if the performance of the contract was prevented by reasons of the measures imposed by certain United Nations Security Council Resolutions.

Section 22, subsections (1), (2) and (3)

Section 22 provides that the Minister for Foreign Affairs may delegate his or her powers and functions under the instrument, other than the power of delegation under the instrument, to certain officers of the Department. Any such delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

Schedule 1 – Repeals

Schedule 1 – Part 1 – Repeals

Section 1 repeals the *Charter of the United Nations (Sanctions-Iran) Regulations 2008*.