

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

*Charter of the United Nations Legislation Amendment
(2019 Measures No. 1) Regulations 2019*

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. United Nations Security Council (UNSC) decisions made under Chapter VII of the Charter relate to action with respect to threats to the peace, breaches of the peace, and acts of aggression. Article 25 of the Charter requires United Nations Member States to accept and carry out the decisions of the UNSC.

Section 6 of the Act therefore provides that the Governor-General may make regulations to give effect to decisions of the UNSC under Chapter VII of the Charter, that Article 25 of the Charter requires Australia to carry out, insofar as those decisions require Australia to apply measures not involving the use of armed force.

The *Charter of the United Nations Legislation Amendment (2019 Measures No. 1) Regulations 2019* (the Regulations) amend the *Charter of the United Nations (Sanctions—Eritrea) Regulations 2010* (the Principal Eritrea Regulations) and the *Charter of the United Nations (Sanctions—Somalia) Regulations 2008* (the Principal Somalia Regulations) to implement UNSC Resolution 2444 (2018) (UNSCR 2444) to lift sanctions in relation to Eritrea, and to update references in relation to the Somalia sanctions regime, consistent with Australia's international obligations.

The preamble to UNSCR 2444 notes that the Security Council was acting under Chapter VII of the Charter. Decisions of the Security Council contained in UNSCR 2444 are binding on Australia.

UNSCR 2444 was adopted on 14 November 2018 in the context of positive developments towards peace, stability and reconciliation in the region. It requires all Member States to lift UN-mandated sanctions in relation to Eritrea.

Section 8 of the Act provides that regulations giving effect to a particular decision of the UNSC cease to have effect when Article 25 of the Charter ceases to require Australia to carry out that decision. Consequently, the Principal Eritrea Regulations expired on 14 November 2018.

The Regulations repeal the expired Principal Eritrea Regulations, and effect a consequential amendment to the *Charter of the United Nations (Dealing with Assets) Regulations 2008* to remove reference to Eritrea.

The Regulations amend the Principal Somalia Regulations to update the reference to the United Nations Consolidated Appeal for Somalia, to reflect paragraph 48 of UNSCR 2444, which instead refers to the United Nations Humanitarian Response

Plan for Somalia. The Regulations also remove outdated and unnecessary notes from the Principal Somalia Regulations.

UNSC Resolutions, including those referred to in the Regulations, can be found on the United Nations website.

No public consultation was undertaken in relation to the proposed Regulations under section 17 of the *Legislation Act 2003* as the instrument 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 sanction laws implementing UNSC sanctions.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purpose of the *Legislation Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislation.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required when implementing a decision of the UNSC concerning sanctions (OBPR reference: 21407).

The Regulations are 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* as set out in Attachment B.

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

ATTACHMENT A

Details of the proposed *Charter of the United Nations Legislation Amendment (2019 Measures No. 1) Regulations 2019*

Section 1 – Name

Section 1 provides that the title of the instrument is the *Charter of the United Nations Legislation Amendment (2019 Measures No. 1) Regulations 2019*.

Section 2 – Commencement

Section 2 provides that all provisions of the instrument commence the day after the instrument is registered.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1—Repeals and amendments

Part 1—Repeals

Charter of the United Nations (Sanctions—Eritrea) Regulations 2010

Item 1

Item 1 repeals the whole of the Principal Eritrea Regulations.

Schedule 1—Repeals and amendments

Part 1—Amendments

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

Item 2

Item 2 repeals paragraph (e) of the definition of ‘Sanctions Regulations’ in regulation 4.

Charter of the United Nations (Sanctions—Somalia) Regulations 2008

Item 3

Item 3 replaces reference to the ‘United Nations Consolidated Appeal for Somalia’ with reference to the ‘United Nations Humanitarian Response Plan for Somalia’ in subparagraph 13(2)(b)(iii).

Item 4

Item 4 repeals the note to subregulation 13(2).

Item 5

Item 5 replaces reference to the ‘United Nations Consolidated Appeal for Somalia’ with reference to the ‘United Nations Humanitarian Response Plan for Somalia’ in subparagraph 14(2)(b)(iii).

Item 6

Item 6 repeals the note to subregulation 14(2).

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
(2019 Measures No. 1) Regulations 2019
(the Regulations)*

This Legislative Instrument 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*.

Overview

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. United Nations Security Council (UNSC) decisions made under Chapter VII of the Charter relate to action with respect to threats to the peace, breaches of the peace, and acts of aggression. Article 25 of the Charter requires United Nations Member States to accept and carry out the decisions of the UNSC.

Section 6 of the Act therefore provides that the Governor-General may make regulations to give effect to decisions of the UNSC under Chapter VII of the Charter, that Article 25 of the Charter requires Australia to carry out, insofar as those decisions require Australia to apply measures not involving the use of armed force.

This Legislative Instrument amends the *Charter of the United Nations (Sanctions—Eritrea) Regulations 2010* (the Principal Eritrea Regulations) and the *Charter of the United Nations (Sanctions—Somalia) Regulations 2008* (the Principal Somalia Regulations) under the Act.

This Legislative Instrument implements the decisions of the United Nations Security Council (UNSC) in Resolution 2444 (2018) (UNSCR 2444) to lift UN-mandated sanctions in relation to Eritrea, and to update references in relation to Somalia, consistent with Australia's international obligations.

The preamble to UNSCR 2444 notes that the Security Council was acting under Chapter VII of the Charter. Decisions of the Security Council contained in UNSCR 2444 are binding on Australia.

Human rights compatibility

Given its primary purpose is to lift sanctions on Eritrea, this Legislative Instrument does not engage any of the applicable rights or freedoms.

Section 8 of the Act provides that regulations giving effect to a particular decision of the UNSC cease to have effect when Article 25 of the Charter ceases to require Australia to carry out that decision. Consequently, the Principal Eritrea Regulations expired on 14 November 2018 when UNSCR 2444 was adopted, and this Legislative Instrument serves to explicitly remove them from Australia's legislative sanctions framework. The Legislative Instrument also effects a consequential amendment to the *Charter of the United Nations (Dealing with Assets) Regulations 2008* to remove reference to Eritrea. These amendments do not engage human rights issues.

Other minor amendments to the Principal Somalia Regulations update references in the Regulations to reflect UNSCR 2444 but do not change the effect of those Regulations, and therefore do not engage additional rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.