

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

### *Charter of the United Nations Act 1945*

#### Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2025

The purpose of the *Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2025* (the 2025 Instrument) is to amend the *Charter of the United Nations (Listed Persons and Entities) Instrument 2022* (the 2022 Instrument) to list one person and one entity, and relist one person and eight entities for targeted financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act). The 2025 Instrument also repeals the listing of one entity. Targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by, or making an asset available directly or indirectly to, a listed person or entity.

The Act provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. Part 4 of the Act gives effect to United Nations Security Council (UNSC) decisions that relate to terrorism and dealing with assets, made under Chapter VII of the Charter. Australia is required under Article 25 of the Charter to carry out such UNSC decisions, and the Act provides for this in relation to certain measures not involving the use of armed force.

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This sanctions framework implements Australia's international obligation to cooperate on the prevention of terrorist financing.

Section 15 of the Act, read in conjunction with subregulation 20(1) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Dealing with Assets Regulations), obliges the Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions, if the Minister is satisfied on reasonable grounds that they are a person or entity mentioned in paragraph 1(c) of UNSC Resolution 1373 (2001) (UNSCR 1373). That is, that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

UNSCR 1373 is published on the following website ([www.undocs.org/S/RES/1373\(2001\)](http://www.undocs.org/S/RES/1373(2001))) and can be freely accessed and used by members of the public.

The 2022 Instrument comprises the consolidated list of persons and entities that are designated persons or entities under Part 4 of the Act, for the purposes of regulation 40 of the Dealing with Assets Regulations and is available to the public on the [Federal Register of Legislation](#).

### *Consideration of human rights*

The 2025 Instrument advances human rights of individuals broadly by restricting the access of persons and entities listed to assets that could be used to commit or facilitate terrorist acts. Australia endeavours to comply with its obligations under international human rights laws, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

### *Effect of the 2025 Instrument*

The effect of the 2025 Instrument is to subject, or continue to subject the persons and entities set out in Schedule 1 of the 2025 Instrument to targeted financial sanctions. The listings are made under section 15 of the Act on the basis that the Minister is satisfied that the persons and entities meet the listing criteria set out in subregulation 20(1) of the Dealing with Assets Regulations. That is, that they are a person or entity mentioned in paragraph 1(c) of UNSCR 1373.

Broadly, the effect of targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) is to:

- prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by a listed person or entity, unless the Minister has granted a permit authorising them to do so; and
- prohibit individuals and bodies corporate from making an asset available directly or indirectly to a listed person or entity, unless the Minister has granted a permit authorising them to do so.

Listings under section 15 of the Act cease to have effect after three years (subsection 15A(1) of the Act), unless the Minister declares that a listing continues to have effect (subsection 15A(2) of the Act).

Listings may be revoked under section 16 of the Act either at the Minister's own instigation or on application by the listed person or entity.

On this occasion, the Minister made new listings for one person and one entity under section 15 of the Act. The listings of one person and eight entities were also continued, through the making of a new listing that is the same in substance as an earlier listing (see paragraph 15(6)(c) of the Act).

The listing of Jabhat Fatah al-Sham (JFS) will be allowed to lapse on 5 March 2025, the third anniversary of the latest listing, as JFS is no longer operational. The 2025 Instrument will repeal the listing consistent with it having lapsed.

Further details of the 2025 Instrument are set out in [Attachment A](#).

The 2025 Instrument is exempt from sunseting under paragraph 54(2)(b) of the *Legislation Act 2003* and table item 1 of regulation 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* on the basis that the Instrument's sole or primary purpose is to give effect to an international obligation of Australia. The 2025 Instrument amends the 2022 Instrument which is itself exempt from sunseting for the same reason.

The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required for listing instruments of this nature (OIA reference: OBPR22-01748).

### *Consultation*

The measures imposed through the 2025 Instrument were subject to thorough vetting by Australian Government agencies as well as consultation with relevant international partners.

In accordance with standard practice, DFAT also invited submissions from listed persons and entities or an authorised representative relevant to the Minister's consideration of their listing under Part 4 of the Act. The invitation was posted on the DFAT website. The consultation period opened on

22 November 2024 and closed at 5.00pm AEST on 20 December 2024. No submissions were received.

**Details of the Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2025**

**Section 1 – Name**

This section provides that the title of the instrument is the *Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2025* (the 2025 Instrument).

**Section 2 – Commencement**

This section provides for commencement the day after the 2025 Instrument is registered for sections 1 to 4 and Part 1 of Schedule 1 of the 2025 Instrument.

This section also provides for the commencement of Part 2 of Schedule 1 for 5 March 2025. This commencement date effects the expiry of the listing being allowed to lapse.

**Section 3 – Authority**

This section provides that the 2025 Instrument is made under section 15 of the *Charter of the United Nations Act 1945* (the Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the 2025 Instrument has effect according to its terms.

**Schedule 1 Part 1 – Amendments**

*Charter of the United Nations (Listed Persons and Entities) Instrument 2022* (the Principal Instrument)

**Items 1 and 2**

Schedule 1 of the Principal Instrument sets out entities that, by operation of subsection 15(1) of the Act and section 5 of the Principal Instrument, are listed by the Minister for counter-terrorism financing sanctions.

Items 1 and 2 repeal and substitute eight entities listed in the table at clause 1 of Schedule 1 of the Principal Instrument. The purpose of these items is to make new listings that are the same in substance as the earlier listing of these entities as contemplated by s 15A(6)(c) of the Act.

These entities are listed for targeted financial sanctions on the basis that the Minister is satisfied on reasonable grounds that they are: an entity owned or controlled directly or indirectly by a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; or an entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

**Item 3**

This item adds one entity to the table at clause 1 of Schedule 1 of the Principal Instrument.

This entity is listed for targeted financial sanctions as the Minister is satisfied on reasonable grounds that they are: an entity owned or controlled directly or indirectly by a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; or an entity acting on behalf of, or at the direction of, such persons and associated person and entities.

#### Item 4

Schedule 2 of the Principal Instrument sets out persons that, by operation of subsection 15(1) of the Act and section 6 of the Principal Instrument, are listed by the Minister for targeted financial sanctions.

This item repeals and substitutes one person listed in the table at clause 1 of Schedule 2 of the Principal Instrument. The purpose of this item is to make a new listing that is the same in substance as the earlier listing of this person.

This person is listed for targeted financial sanctions as the Minister is satisfied on reasonable grounds that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

#### Item 5

This item adds one person to the table at clause 1 of Schedule 2 of the Principal Instrument.

This person is listed for targeted financial sanctions as the Minister is satisfied on reasonable grounds that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

### Schedule 1 Part 2 – Repeal of spent provisions

#### *Charter of the United Nations (Listed Persons and Entities) Instrument 2022*

#### Item 6

Schedule 1 of the Principal Instrument sets out entities that, by operation of subsection 15(1) of the Act and section 5 of the Principal Instrument, are listed by the Minister for targeted financial sanctions.

Item 6 repeals the listing of one entity (Jabhat Fatah al-Sham) listed in Schedule 1 of the Principal Instrument, on the basis that the listing ceased to have effect on 5 March 2025 in accordance with s 15A(1) of the Act and the entity is no longer operational.

## 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 (Listed Persons and Entities) Amendment (No. 1) Instrument 2025

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 of the Legislative Instrument

The purpose of the Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2025 (the 2025 Instrument) is to amend the *Charter of the United Nations (Listed Persons and Entities) Instrument 2022* (the 2022 Instrument) to list one person and one entity, and relist one person and eight entities for targeted financial sanctions under Part 4 of the *Charter of the United Nations Act 1945* (the Act). The 2025 Instrument also repeals the listing of one entity. Targeted financial sanctions under the Act (also known as counter-terrorism financing sanctions) prohibit individuals and bodies corporate from using or dealing with assets owned or controlled by, or making an asset available directly or indirectly to, a listed person or entity.

The Act provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. Part 4 of the Act gives effect to United Nations Security Council (UNSC) decisions that relate to terrorism and dealing with assets, made under Chapter VII of the Charter. Australia is required under Article 25 of the Charter to carry out such UNSC decisions, and the Act provides for this in relation to certain measures not involving the use of armed force.

The Act makes provision for, among other things, the listing of persons or entities involved in the commission of terrorist acts. This sanctions framework implements Australia's international obligation to cooperate on the prevention of terrorist financing.

Section 15 of the Act, read in conjunction with subregulation 20(1) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Dealing with Assets Regulations), obliges the Minister for Foreign Affairs (the Minister) to list a person or entity for targeted financial sanctions, if the Minister is satisfied on reasonable grounds that they are a person or entity mentioned in paragraph 1(c) of UNSC Resolution 1373 (2001) (UNSCR 1373). That is, that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

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Under section 17 of the Act, a listed person or entity, or their authorised representative, may apply in writing to the Minister at any time to have the listing revoked.

The human rights compatibility of the 2025 Instrument is addressed by reference to each of the human rights engaged below.

## Human rights implications

The 2025 Instrument engages the following human rights and freedoms contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- the right to life (Article 6 of the ICCPR);
- the right to freedom of thought, conscience and religion (Article 18 of the ICCPR);
- the prohibition on the advocacy of national, racial or religious hatred (Article 20 of the ICCPR);
- the right to self-determination, including to freely dispose of natural wealth and resources (Article 1 of the ICCPR and Article 1 of the ICESCR);
- the right to an adequate standard of living (Article 11(1) of the ICESCR); and
- the right to privacy (Article 17 of the ICCPR).

It is well accepted that international human rights law obligations are owed to individuals only, and are not owed to non-natural persons, such as bodies corporate or bodies politic. This statement considers the extent to which the measures in Part 4 of the Act impact on the human rights of individuals located in Australia.

### *The right to life; to freedom of thought, conscience and religion; and to freedom from the advocacy of national, racial or religious hatred*

The targeted financial sanctions imposed in the 2025 Instrument will restrict the access of listed persons and entities to assets that could be used to carry out or facilitate terrorist acts. Terrorist acts may take lives, use acts of violence to promote a particular way of thought, belief or religion (thereby limiting the rights of others) or advocate for national, racial or religious hatred. Counter-terrorism financing sanctions are therefore intended to promote human rights by reducing the threat of terrorist acts.

### *The right to self-determination, including to freely dispose of natural wealth and resources*

Article 1 of the ICCPR and Article 1 of the ICESCR provide a right to self-determination, including to freely dispose of natural wealth, resources, and assets.

The effect of targeted financial sanctions is that individuals and bodies corporate are unable to make assets available to those listed under section 15 of the Act. It also means that an individual or body corporate (including a listed person) who holds an asset owned or controlled by a listed person or entity is unable to use, or deal with, that asset.

The objective of the 2025 Instrument is to give effect to Australia's international obligation to suppress terrorist financing. The imposition of targeted financial sanctions through the listing of persons and entities which participate in or facilitate terrorist acts helps achieve this objective by restricting the access of such persons or entities to the financial means necessary to undertake terrorist activities.

Listed persons and entities may apply for their designation to be revoked under section 17 of the Act. The application must set out the circumstances relied upon to justify the application. To assist with an application, the Department of Foreign Affairs and Trade will provide a listed person or entity, or their authorised representative, with an unclassified statement of reasons for the listing upon written request.

Australia's counter-terrorism financing sanctions listings are also subject to periodic review. Listings under section 15 of the Act cease to have effect after three years (subsection 15A(1) of the Act), unless the Minister declares that a listing continues to have effect (subsection 15A(2) of the Act). Rather than make such a declaration, the Minister may alternatively make a new listing that is the same in substance as another listing (paragraph 15A(6)(c)). These provisions ensure the listings remain current and appropriate.

The measures in the 2025 Instrument which may limit a right to self-determination are reasonable, necessary and proportionate in achieving the objectives of suppressing terrorism financing and complying with Australia's international obligations.

#### *The right to an adequate standard of living*

The right to an adequate standard of living is contained in Article 11(1) of ICESCR and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right, including adequate food, clothing, and housing. Article 4 of the ICESCR provides that this right may be subject to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'.

Any limitation on the enjoyment of Article 11(1) of the ICESCR (i.e. where a listed person's ability to obtain food, clothing and housing are limited by targeted financial sanctions), to the extent that it occurs, is justified in view of the objective of suppressing terrorism financing. In any case, under subsections 22(3) and 22(3A) of the Act, the Minister may, on application from the owner or holder of a freezable asset (as defined in section 14 of the Act), or on the Minister's own initiative, permit an asset to be made available to a specific person or entity, or authorise a 'freezable asset' to be used or dealt with in a specified way.

Under subsection 22(1) of the Act and regulation 31 of the Dealing with Assets Regulations, the Minister may, upon application by a listed person, permit the use or dealing with a freezable asset where the use or dealing is a 'basic expense dealing', a 'contractual dealing' or an 'extraordinary expense dealing'. These dealings may also be authorised by the Minister on their own initiative. Regulation 30 of the Dealing with Assets Regulations defines the sorts of dealings with freezable assets that the Minister may permit in accordance with regulation 31, including a basic expense dealing, which is defined as a dealing 'necessary for basic expenses'. 'Basic expenses' are defined to include foodstuffs, rent or mortgage payments, and medicines or medical treatment. Such authorisations reflect the permitted dealings in relation to listed persons and their assets that are allowed under UNSC Resolution 1452 (2002).

In the event that a listed person has family members in Australia who may be indirectly adversely affected by the imposition of targeted financial sanctions, such consequences could be mitigated by the Minister authorising dealings between them and the listed person.

This process is a flexible and effective safeguard on any limitation to the enjoyment of Article 11(1) of ICESCR.

#### *The right to privacy*

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. The use of the term 'arbitrary' in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should



be reasonable in the individual circumstances. Arbitrariness connotes elements of injustice, unpredictability, unreasonableness, capriciousness and ‘unproportionality’.<sup>1</sup>

Listing a person for targeted financial sanctions involves the publication of personal details (such as their date of birth and / or citizenship) on a consolidated list, which may be considered an interference with an individual’s right to privacy.

The 2025 Instrument is not an unlawful interference with an individual’s right to privacy as the listings are required by section 15 of the Act, which provides that the Minister must list a person or entity if satisfied on reasonable grounds that they are a person or entity mentioned in paragraph 1(c) of UNSCR 1373. That is, that they are: a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; an entity owned or controlled directly or indirectly by such persons; or a person or entity acting on behalf of, or at the direction of, such persons and associated persons and entities.

The listings also do not represent an arbitrary interference with an individual’s right to privacy. In listing a person under section 15 of the Act for counter-terrorism financing sanctions, the Minister uses predictable, publicly available criteria that are codified in legislation and reflect UNSCR 1373.

Accordingly, targeted financial sanctions imposed by the Minister through the listing of specific persons and entities under section 15 of the Act are reasonable, necessary and proportionate to the international obligation to prevent the financing of terrorists and terrorist entities. Any interference with the right to privacy created by the operation of the 2025 Instrument is not arbitrary or unlawful and, therefore, is consistent with Australia’s obligations under Article 17 of the ICCPR.

## **Conclusion**

The 2025 Instrument is compatible with human rights because targeted financial sanctions which aim to prevent and suppress terrorism financing promote the rights to life, freedom of thought, conscience and religion, and freedom from national, racial or religious hatred. To the extent that the Instrument may limit human rights, such limitations are reasonable, necessary and proportionate.

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<sup>1</sup> Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 1993) 178.