

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Dealing with Assets) Amendment (Haiti) Regulations 2025

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.

Section 6 of 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 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 (Dealing with Assets) Amendment (Haiti) Regulations 2025* (the Amendment Regulations) amend the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with the decisions of the UNSC as set out in UNSC Resolution 2653 (2022) (UNSCR 2653), as extended by subsequent relevant resolutions, imposing financial transaction sanctions in relation to Haiti.

The preamble to UNSCR 2653 notes that the UNSC was acting under Chapter VII of the Charter. Decisions of the UNSC contained in UNSCR 2653 are therefore binding on Australia.

The Principal Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons and entities designated by the UNSC as being subject to such measures. Regulation 4 of the Principal Regulations includes a definition of "Sanctions Regulations" which lists all relevant regulations made under the Act to which the Principal Regulations apply. The Principal Regulations define various permissible dealings for the "Sanctions Regulations" listed at regulation 4.

The Amendment Regulations ensure the "Sanctions Regulations" definition in the Principal Regulations applies to the *Charter of the United Nations (Sanctions—Haiti) Regulations 2025*, by including these regulations in those listed at regulation 4 of the Principal Regulations.

UNSC resolutions, including those of relevance to the Amendment Regulations, can be found on the United Nations website.

No public consultation was undertaken in relation to the Amendment Regulations under section 17 of the *Legislation Act 2003* because 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.

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

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

The Amendment Regulations commence on the day after registration.

Details of the Amendment Regulations are set out in Attachment A.

The Amendment 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.

ATTACHMENT A

Details of the Charter of the United Nations (Dealing with Assets) Amendment (Haiti) Regulations 2025

Section 1 – Name

Section 1 provides that the name of the instrument is the *Charter of the United Nations (Dealing with Assets) Amendment (Haiti) Regulations 2025* (the Amendment Regulations).

Section 2 – Commencement

Section 2 provides that the Amendment Regulations commence the day after they are registered.

Section 3 – Authority

Section 3 provides that the Amendment Regulations are made under the *Charter of the United Nations Act 1945*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments

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

Item 1 – Regulation 4 (after paragraph (d) of the definition of Sanctions Regulations)

Item 1 inserts paragraph (e) in the definition of “Sanctions Regulations” in regulation 4 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*, adding a reference to the *Charter of the United Nations (Sanctions—Haiti) Regulations 2025*.

ATTACHMENT B

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 (Dealing with Assets) Amendment (Haiti) Regulations 2025

The *Charter of the United Nations (Dealing with Assets) Amendment (Haiti) Regulations 2025* (the Amendment 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*.

The Amendment Regulations amend the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with the decisions of the United Nations Security Council (UNSC) as set out in UNSC Resolution 2653 (2022) (UNSCR 2653), as extended by subsequent relevant resolutions, imposing financial transaction sanctions in relation to Haiti.

The Principal Regulations implement Australia's obligations to freeze assets and prevent assets being made available to all persons and entities designated by the UNSC as being subject to such measures. Regulation 4 of the Principal Regulations includes a definition of "Sanctions Regulations" which lists all relevant regulations made under the Act to which the Principal Regulations are to apply. The Principal Regulations define various permissible dealings for the "Sanctions Regulations" listed at regulation 4.

Human rights compatibility

The Amendment Regulations ensure that persons and entities who are responsible for, or complicit in, or who have directly or indirectly engaged in actions that threaten the peace, security or stability of Haiti, will be subject to UNSC sanctions measures.

The Parliamentary Joint Committee on Human Rights (PJCHR) has accepted that the use of sanctions to apply pressure to regimes and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law. It has also expressed concern that Australia's sanctions frameworks may not be proportionate to their stated objective.

The human rights compatibility of the Amendment Regulations is addressed by reference to each of the human rights engaged below.

Right to privacy

Right

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence and unlawful attacks on a person's honour and reputation.

The use of the term 'arbitrary' in the ICCPR indicates that circumstances may justify interference, where necessary, reasonable and proportionate with a person's right to privacy. Any interferences with privacy must therefore be consistent with the provisions, aims and objectives of the ICCPR and should be reasonable, proportionate and necessary in the individual circumstances. Arbitrariness connotes elements of injustice, unpredictability, unreasonableness, capriciousness and 'unproportionality'.¹

Permissible limitations

The Amendment Regulations are not an unlawful interference with an individual's right to privacy. The Amendment Regulations are made pursuant to section 6 of the *Charter of the United Nations Act 1945* (the Act), which states that the Governor-General may make regulations for and in relation to giving effect to decisions that the Security Council makes under Chapter VII of the Charter of the United Nations and Article 25 of the Charter requires Australia to carry out.

The measures contained in the Amendment Regulations are not an arbitrary interference with an individual's right to privacy. An interference with privacy will not be arbitrary where it is reasonable, necessary and proportionate in the individual circumstances.

To the extent it is limited, the imposition of targeted financial sanctions in relation to Haiti constitutes a reasonable limitation on the right to privacy. Pursuant to section 4 of the *Charter of the United Nations (Sanctions—Haiti) Regulations 2025*, the United Nations Committee established under paragraph 19 of UNSCR 2653 (the Haiti Sanctions Committee) is responsible for designating people for the imposition of targeted financial sanctions. The Haiti Sanctions Committee uses predictable, publicly available criteria when designating a person as being subjected to such measures. These criteria capture only those persons who the Haiti Sanctions Committee is satisfied are responsible for, or complicit in, or have directly or indirectly engaged in actions that threaten the peace, security, and stability of Haiti.

The imposition of targeted financial sanctions in relation to Haiti is necessary and proportionate. They are only imposed, pursuant to the Charter, in response to actions that threaten Haiti's peace, security, and stability, as outlined in UNSCR 2653. Noting the seriousness of this situation, which includes high levels of gang violence, human rights abuses and other criminal activity, the targeting of specific individuals for financial sanctions is the least rights-restrictive way to respond.

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

Accordingly, the imposition of targeted financial sanctions in relation to Haiti is reasonable, necessary and proportionate to the individual circumstances that the sanctions seek to address. Any interference with the right to privacy as a consequence of the operation of the Amendment Regulations is not arbitrary or unlawful and is consistent with Australia's obligations under Article 17 of the ICCPR.

Right to an adequate standard of living

Right

The right to an adequate standard of living is contained in Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right, including food, water, clothing and housing. Under article 2(1) of the ICESCR, a State is required to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation' of the rights recognised in ICESCR.

Article 4 of 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'. The limitations must be proportionate and must be the least restrictive alternative where several types of limitations are available.

Permissible limitations

Any limitation on the enjoyment of the right in Article 11(1), to the extent that it occurs, is reasonable and necessary to achieve the objective sought and is proportionate due to the targeted nature of the financial sanctions imposed. The Amendment Regulations also provide sufficient flexibility to allow for any adverse impacts on family members as a consequence of targeted financial sanctions to be mitigated. The Amendment Regulations provide for the payment of basic expenses (among others) in certain circumstances, notably where the Minister grants a permit on application under the *Charter of the United Nations (Sanctions—Haiti) Regulations 2025*. The objective of the provisions allowing for the payment of basic expenses in certain circumstances is, in part, to enable the Australian Government to administer its sanctions frameworks in a manner compatible with relevant human rights standards.

The permit process is a flexible and effective safeguard on any limitation to the enjoyment of the right in Article 11(1).

Rights of equality and non-discrimination

Right

The right to equality and non-discrimination under Articles 2, 16 and 26 of the ICCPR provide that everyone is entitled to enjoy their rights without discrimination on any grounds, and that people are equal before the law and are entitled to the equal and non-discriminate protection of the law.

Discrimination is impermissible differential treatment among persons or groups that results in a person or a group being treated less favourably than others, based on one of the prohibited grounds for discrimination. However, differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria, serves a legitimate purpose, and is a proportionate means of achieving that purpose.

Permissible limitations

Any differential treatment of people as a consequence of the application of the Amendment Regulations does not amount to discrimination pursuant to Article 26 of the ICCPR.

The objective of the Amendment Regulations is to give effect to sanctions-related decisions of the UNSC in response to high levels of gang violence, human rights abuses and other criminal activities, undermining the peace, stability and security of Haiti and its region.

On the basis that the Amendment Regulations relate to actions which threaten Haiti's peace, security, and stability, it is possible that the Haiti Sanctions Committee may be more likely to designate people with Haitian nationality or of Haitian national origin. Any such difference in treatment on the basis of nationality or national origin would have an objective and justifiable basis and would be reasonable and proportionate in the circumstances of each case.

The designation criteria contained in paragraph 15 of UNSCR 2653 are reasonable and objective. They are reasonable in that they relate only to the situation in Haiti, and apply notably in relation to actions which the UNSC has specifically determined threaten Haiti's peace, security, and stability. The criteria are also objective, as they provide a clear, consistent and objectively verifiable reference point by which the UNSC is able to make a designation. The Amendment Regulations serve a legitimate objective, as discussed above.

Finally, the Amendment Regulations are necessary and proportionate. The imposition of financial sanctions is a highly targeted, justified and minimally rights-restrictive means of achieving the aims of the Amendment Regulations.

The Government does not have information that supports the view that affected groups are vulnerable. Rather, those subject to targeted financial sanctions are persons the Haiti Sanctions Committee has specifically determined, on the basis of the criteria established by the UNSC, are involved in actions that threaten Haiti's peace, security, and stability. Further, there are several safeguards, such as the availability of judicial review, in place to ensure that any limitation is proportionate to the objective being sought.