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Charter of the United Nations (Anti-terrorism Measures) Regulations 2001

Statutory Rules 2001 No. 1

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Charter of the United Nations Act 1945*.

Dated 2001

Governor-General

By His Excellency's Command

ALEXANDER DOWNER
Minister for Foreign Affairs

1 **Name of Regulations**

These Regulations are the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2001*.

2 **Commencement**

These Regulations commence on 15 October 2001.

3 **Object**

The object of these Regulations is to assist in giving effect to Resolution 1373 (2001) of the Security Council of the United Nations, concerning measures for the suppression of terrorism by preventing a person in Australia, or a citizen of Australia, from dealing with financial assets of persons or entities that engage in or support terrorism, or are under the direct or indirect control of such persons or entities.

4 **Extra-territorial operation of Regulations**

These Regulations have extra-territorial operation according to their terms.

5 **Application of *Criminal Code***

Chapter 2 of the *Criminal Code* applies on and from 15 October 2001 to all offences created by these Regulations.

Note 1 Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2 For the meaning of *strict liability*, see section 6.1 of the *Criminal Code*.

6 **Definitions**

Resolution 1373 means Resolution 1373 (2001) of the Security Council of the United Nations.

asset includes the following:

- (a) funds;
- (b) financial assets;

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- (c) tangible and intangible assets;
 - (d) property rights;
 - (e) publicly and privately traded securities;
 - (f) publicly and privately traded debt instruments;
 - (g) income from, or proceeds from the sale of, assets mentioned in paragraphs (a) to (f).

freezable asset means an asset that:

- (a) is owned or controlled by a proscribed person or entity; or
- (b) is an asset listed under subregulation 7(3); or
- (c) is derived or generated from assets mentioned in paragraph (a) or (b).

proscribed has the meaning given by subregulation 7(2).

entity has the same meaning as in paragraph 1(c) of Resolution 1373.

7 **Gazettal of persons, entities and assets**

- (1) If the Minister is satisfied that a person or entity is a person or entity mentioned in paragraph 1(c) of Resolution 1373, the Minister must list the name, or names, of the person or entity in the *Gazette*.
- (2) A person or entity so listed is a *proscribed* person or entity for these Regulations.
- (3) The Minister may also list assets, or classes of assets, that the Minister is satisfied are owned or controlled by a person or entity mentioned in paragraph 1(c) of Resolution 1373.

Note Paragraph 1(c) of Resolution 1373 requires States to:

“Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;”.

8 Authorisation of dealings

- (1) The Minister, or a person authorised by the Minister, may, by written notice:
- (a) permit a freezable asset to be used or dealt with in a specified way; or
 - (b) permit an asset to be made available to a proscribed person or entity.
- (2) A notice under this regulation may be subject to conditions.

9 Persons must not deal with freezable assets

- (1) A person who holds a freezable asset commits an offence if:
- (a) the person:
 - (i) uses or deals with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of the asset or dealing with the asset; and
 - (b) the person is reckless as to whether the asset is a freezable asset; and
 - (c) the use or dealing is not in accordance with a notice under regulation 8.

Penalty: 50 penalty units.

- (2) Strict liability applies to paragraph (1) (c).
- (3) It is a defence if the person proves that the use or dealing was solely for the purpose of preserving the value of the asset.
- (4) In this regulation:
- person* means:
- (a) a person (including a body corporate) in Australia; or
 - (b) an Australian citizen outside Australia.

10 Persons must not give assets to proscribed persons or entities

- (1) A person commits an offence if:
- (a) the person, directly or indirectly, makes an asset available to a proscribed person or entity; and
 - (b) the person is reckless as to whether the person or entity is a proscribed person or entity; and
 - (c) the making available of the asset is not in accordance with a notice under regulation 8.

Penalty: 50 penalty units.

(2) Strict liability applies to paragraph (1) (c).

(3) In this regulation:

person means:

- (a) a person (including a body corporate) in Australia; or
- (b) an Australian citizen outside Australia.

11 Indemnity for holder of assets

A person is not liable to suit for anything done in good faith, and without negligence, in purported compliance with these Regulations.

12 Compensation for persons wrongly affected

If:

- (a) an asset was not used or dealt with by the holder in accordance with the instructions of the owner or controller of the asset; and
- (b) the holder was acting in good faith, and without negligence, in purported compliance with these regulations; and
- (c) the asset was not a freezable asset;

the owner of the asset is entitled to be compensated by the Commonwealth for any loss resulting from the application of these Regulations.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 2001.