



Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2006¹

Select Legislative Instrument 2006 No. 283

I, PHILIP MICHAEL JEFFERY, 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 1 November 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

ALEXANDER DOWNER
Minister for Foreign Affairs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2006*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Object

The object of these Regulations is to give effect to Resolution 1718 by:

- (a) restricting the supply of military goods and WMD-related goods, and the provision of related assistance, to the Democratic People's Republic of Korea; and
- (b) restricting the supply of luxury goods to the Democratic People's Republic of Korea; and
- (c) restricting the procurement of military goods and WMD-related goods, and the transfer of related assistance, from the Democratic People's Republic of Korea; and
- (d) preventing a person:
 - (i) from using or dealing with assets owned or controlled by a designated person or entity; and

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- (ii) from making any asset available to a designated person or entity;
otherwise than in accordance with these Regulations.

4 Definitions

In these Regulations:

Act means the *Charter of the United Nations Act 1945*.

asset means an asset described in the definition of **asset** in section 14 of the Act.

Australian aircraft means an aircraft registered in Australia under the *Civil Aviation Act 1988*.

Australian ship means a ship registered in Australia under the *Shipping Registration Act 1981*.

Committee means the Committee established by paragraph 12 of Resolution 1718.

designated entity means:

- (a) an entity designated by the Committee or by the Security Council for the purpose of subparagraph 8 (d) of Resolution 1718; or
- (b) an entity acting on behalf of, or at the direction of, a person or entity designated by the Committee or by the Security Council for the purpose of subparagraph 8 (d) of Resolution 1718.

designated person means:

- (a) a person designated by the Committee or by the Security Council for the purpose of subparagraph 8 (d) of Resolution 1718; or
- (b) a person acting on behalf of, or at the direction of, a person or entity designated by the Committee or by the Security Council for the purpose of subparagraph 8 (d) of Resolution 1718.

engage in conduct means do an act or omit to do an act.

freezable asset means an asset in Australia that is owned or controlled, directly or indirectly, by a designated person or a designated entity.

Regulation 4

luxury goods means goods included on the luxury goods list (if any) determined under regulation 19.

military goods includes:

- (a) any of the following kinds of equipment, as defined for the purposes of the United Nations Register on Conventional Arms:
 - (i) battle tanks;
 - (ii) armoured combat vehicles;
 - (iii) large calibre artillery systems;
 - (iv) combat aircraft;
 - (v) attack helicopters;
 - (vi) warships;
 - (vii) missiles or missile systems; and
- (b) matériel related to any of the things mentioned in paragraph (a), including spare parts; and
- (c) items determined by the Security Council or the Committee for the purpose of subparagraph 8 (a) (i) of Resolution 1718.

Resolution 1718 means Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006.

Security Council means the Security Council of the United Nations.

WMD-related goods means:

- (a) all items, materials, goods and technology mentioned in Security Council documents S/2006/814 and S/2006/815; and
- (b) other items, materials, equipment, goods and technology that:
 - (i) are determined by the Security Council or the Committee for the purpose of subparagraph 8 (a) (ii) of Resolution 1718; and
 - (b) could contribute to the Democratic People's Republic of Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

Note In these Regulations, the **Minister** is the Minister for Foreign Affairs.

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5 Extra-territorial operation of Regulations

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

Part 2 Supply of goods and related assistance

6 Application of Part

This Part applies to a person in Australia or a citizen of Australia who is outside Australia.

7 Restriction on sale or supply of goods

- (1) A person must not engage in conduct that assists, or results in, the sale, supply or transfer of military goods, WMD-related goods or luxury goods to:
 - (a) the Democratic People's Republic of Korea; or
 - (b) any recipient in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply to a sale, supply or transfer that is authorised, in writing, by the Minister before or after the sale, supply or transfer occurs.
- (3) In authorising a sale, supply or transfer, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.
- (4) Subregulation (1) does not apply to a sale, supply or transfer of luxury goods to:
 - (a) a diplomatic agent of the Democratic People's Republic of Korea accredited to Australia; or

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- (b) a citizen of the Democratic People's Republic of Korea who is otherwise entitled to privileges and immunities under the *Diplomatic Privileges and Immunities Act 1967*; if the goods are sold, supplied or transferred for use in Australia.

8 Restriction on provision of technical assistance etc

- (1) A person must not engage in conduct that assists, or results in, the provision or transfer of technical training, advice, services or assistance relating to the provision, manufacture, maintenance or use of military goods or WMD-related goods to:
 - (a) the Democratic People's Republic of Korea; or
 - (b) any recipient in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply to a provision or transfer that is authorised, in writing, by the Minister before or after the provision or transfer occurs.
- (3) In authorising a provision or transfer, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.

Part 3 Procurement of military and WMD-related goods and related assistance

9 Application of Part

This Part applies to a person in Australia or a citizen of Australia who is outside Australia.

10 Restriction on procurement of military and WMD-related goods from the Democratic People's Republic of Korea

- (1) A person must not engage in conduct that assists, or results in, the procurement of military goods or WMD-related goods from:
 - (a) the Democratic People's Republic of Korea; or
 - (b) any person in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) Subregulation (1) applies regardless of whether the goods originated in the Democratic People's Republic of Korea.
- (3) Subregulation (1) does not apply to a procurement that is authorised, in writing, by the Minister before or after the procurement occurs.
- (4) In authorising a procurement, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.

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11 Restriction on transfer of technical assistance etc from the Democratic People's Republic of Korea

- (1) A person must not engage in conduct that assists, or results in, the procurement or transfer of technical training, advice, services or assistance relating to the provision, manufacture, maintenance or use of military goods or WMD-related goods from:
- (a) the Democratic People's Republic of Korea; or
 - (b) any person in the Democratic People's Republic of Korea; or
 - (c) any citizen of the Democratic People's Republic of Korea; or
 - (d) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (e) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) Subregulation (1) does not apply to a procurement or transfer that is authorised, in writing, by the Minister before or after the procurement or transfer occurs.
- (3) In authorising a procurement or transfer, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.

Part 4 Use of Australian aircraft and ships

12 Use of Australian aircraft and ships for supply of goods

- (1) The owner, pilot in command or operator of an Australian aircraft must not allow the aircraft to be used in a way that assists, or results in, the sale, supply or transfer of military goods, WMD-related goods or luxury goods to:
- (a) the Democratic People's Republic of Korea; or
 - (b) any recipient in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) The owner, master or operator of an Australian ship must not allow the ship to be used in a way that assists, or results in, the sale, supply or transfer of military goods, WMD-related goods or luxury goods to:
- (a) the Democratic People's Republic of Korea; or
 - (b) any recipient in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

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- (3) Subregulations (1) and (2) do not apply to a sale, supply or transfer that is authorised, in writing, by the Minister before or after the sale, supply or transfer occurs.
- (4) In authorising a sale, supply or transfer, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.

13 Use of Australian aircraft and ships for procurement of military and WMD-related goods from the Democratic People's Republic of Korea

- (1) The owner, pilot in command or operator of an Australian aircraft must not allow the aircraft to be used in a way that assists, or results in, the procurement of military goods or WMD-related goods from:
 - (a) the Democratic People's Republic of Korea; or
 - (b) any person in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

- (2) The owner, master or operator of an Australian ship must not allow the ship to be used in a way that assists, or results in, the procurement of military goods or WMD-related goods from:
 - (a) the Democratic People's Republic of Korea; or
 - (b) any person in the Democratic People's Republic of Korea; or
 - (c) any entity owned or controlled by the Democratic People's Republic of Korea; or
 - (d) any person acting on behalf of the Democratic People's Republic of Korea or an entity owned or controlled by the Democratic People's Republic of Korea.

Penalty: 50 penalty units.

Regulation 13

- (3) Subregulations (1) and (2) apply regardless of whether the goods originated in the Democratic People's Republic of Korea.
- (4) Subregulations (1) and (2) do not apply to a procurement that is authorised, in writing, by the Minister before or after the procurement occurs.
- (5) In authorising a procurement, the Minister must have regard to Australia's international obligations, including those under Resolution 1718.

Regulation 14

Part 5 **Freezable assets and restriction on movement of assets to designated persons and designated entities****14** **Offence — dealing with freezable assets**

- (1) A person commits an offence if:
- (a) the person holds a freezable asset; and
 - (b) the person:
 - (i) uses or deals with the freezable asset; or
 - (ii) allows the freezable asset to be used or dealt with; or
 - (iii) facilitates the use of the freezable asset or dealing with the freezable asset; and
 - (c) the use or dealing is not in accordance with a notice under regulation 16.

Penalty: 50 penalty units.

- (2) Strict liability applies to the circumstance that the use or dealing is not in accordance with a notice under regulation 16.

Note For *strict liability*, see subsection 6.1 of the *Criminal Code*.

- (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 freezable asset.

Note A defendant bears an evidential burden in relation to the matter set out in subregulation (3) (see section 13.3 of the *Criminal Code*).

- (4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction — category A) applies to an offence against subregulation (1).

15 **Offence — giving an asset to a designated person or designated entity**

Regulation 16

- (1) A person commits an offence if:
 - (a) the person, directly or indirectly, makes an asset available to a designated person or designated entity; and
 - (b) the making available of the asset is not in accordance with a notice under regulation 16.

Penalty: 50 penalty units.

- (2) Strict liability applies to the circumstance that the making available of the asset is not in accordance with a notice under regulation 16

Note For *strict liability*, see subsection 6.1 of the *Criminal Code*.

- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction — category A) applies to an offence against subregulation (1).

16 Authorised dealings

- (1) The owner or holder of a freezable asset may apply in writing to the Minister for permission to use or deal with the freezable asset in a specified way.
- (2) The owner or holder of an asset may apply in writing to the Minister for permission to make the asset available to a designated person or designated entity specified in the application.
- (3) The Minister may, by written notice:
 - (a) permit a freezable asset specified in the notice to be used or dealt with in a specified way; or
 - (b) permit an asset specified in the notice to be made available to a designated person or designated entity specified in the notice.
- (4) The Minister may issue such a notice on his or her own initiative or upon application under subregulation (1) or (2).
- (5) The notice may be subject to conditions.
- (6) The notice must be given to the owner or holder of the asset as soon as practicable after it is made.

Regulation 17

Part 6 Miscellaneous**17 Delegations by Minister**

- (1) The Minister may delegate the Minister's powers and functions under these Regulations (other than this power of delegation) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) The delegation must be in writing.
- (3) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

18 Authorisations by Minister

For regulations 7, 8, 10, 11, 12 and 13:

- (a) an authorisation may be given by the Minister subject to any conditions specified in the authorisation; and
- (b) an authorisation that is given by the Minister on the basis of false or misleading information is taken to have no effect; and
- (c) the Minister may vary, suspend or revoke an authorisation, having regard to the matters specified in the relevant regulation as matters to which the Minister must have regard in giving the authorisation.

19 Luxury goods list

The Minister may, by legislative instrument, determine a list of goods (the *luxury goods list*) that are to be treated as luxury goods for the purposes of these Regulations.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.