

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 30

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea)
Regulations 2008

The purpose of the Regulations is to implement Australia’s obligations under United Nations Security Council Resolution 1718 (14 October 2006), and to accommodate amendments made to the *Charter of the United Nations Act 1945* (the Act) by the *International Trade Integrity Act 2007*. The Regulations will also repeal the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2006*, which currently implement Australia’s obligations under Resolution 1718.

Section 6 of the Act provides that the Governor-General may make regulations for, and in relation to, giving effect to decisions that:

- (a) the Security Council has made under Chapter VII of the Charter of the United Nations; and
- (b) Article 25 of the Charter requires Australia to carry out

in so far as those decisions require Australia to apply measures not involving the use of armed force.

Resolution 1718 requires Australia to take necessary measures to prevent the direct or indirect supply, sale or transfer to the Democratic People’s Republic of Korea (DPRK) of certain conventional military goods, items related to the DPRK’s nuclear, weapons of mass destruction or ballistic missile programmes, and luxury goods. Resolution 1718 requires Australia to prevent any transfers to the DPRK of technical training, advice, services or assistance related to specified items. The Resolution also requires Australia to prohibit the procurement of specified items from the DPRK. The prohibitions apply extraterritorially, including to Australian nationals abroad, and to the use of Australian vessels and aircraft.

Resolution 1718 further requires Australia to freeze the funds, other financial assets and economic resources that are owned or controlled by persons or entities designated by the Security Council as providing support for the DPRK’s nuclear, weapons of mass destruction and ballistic missile programmes. The Resolution also requires Australia to prevent the transfer of any funds, financial assets or economic resources to or for the benefit of such designated persons or entities.

This Resolution was adopted under Article 41 of Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to Article 25 of that Charter. Resolution 1718 can be found on the UN website (www.un.org).

The Regulations will ensure that those aspects of the sanctions imposed by Resolution 1718 which cannot be implemented under existing regulations are adequately implemented into domestic law.

Australia generally implements territorial aspects of trade sanctions via specific regulation under the *Customs (Prohibited Imports) Regulations 1956*, the *Customs (Prohibited Exports) Regulations 1958*, and the *Customs Regulations 1926*, which are administered by the Australian Customs Service.

Interdepartmental and public consultation was undertaken during the preparation of the Regulations. The Department of Foreign Affairs and Trade conducted briefing sessions on the *International Trade Integrity Act 2007*, including the consequential amendments that would be required for each of the regulations made under the Act, in each State and Territory capital between September and November 2007. In addition, the Department gave industry-specific briefings to peak industry bodies assessed as most likely to be affected (the Australian Bankers Association, the Customs National Consultative Group and the Association of Minerals and Petroleum Lawyers). Finally, from August 2007 the Department posted notices on its website and on the business.gov.au consultation site inviting interested parties to provide written comments on a revised regulatory regime under the Act as amended. Other Commonwealth agencies, including the Attorney-General's Department, the Australian Customs Service and the Department of Defence, were consulted during the drafting of the Regulations.

Details of the Regulations are set out in the [Annex](#).

Details of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*

Part 1: Preliminary

Regulation 1 states that the name of the Regulations is the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*.

Regulation 2 provides that the Regulations commence immediately after the commencement of Schedule 1 to the *International Trade Integrity Act 2007*. This is because the Regulations accommodate amendments made by the *International Trade Integrity Act 2007* to the Act.

Regulation 3 provides that the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2006* are repealed. The Regulations update the 2006 Regulations by reflecting the requirements of the *International Trade Integrity Act 2007*.

Regulation 4 provides for the definition of certain terms used in the Regulations, including ‘controlled asset’, ‘designated person or entity’, ‘sanctioned service’ and ‘sanctioned supply’. ‘Designated person or entity’ means a person or entity designated by the Committee established by Resolution 1718 or by the United Nations Security Council, pursuant to operative paragraph 8(d) of Resolution 1718. The effect of the meaning of ‘designated person or entity’ is to incorporate by reference persons or entities on a list maintained from time to time by the Committee established pursuant to Resolution 1718.

Regulation 5 provides that certain goods are export sanctioned goods. Export sanctioned goods are military goods, goods mentioned in the luxury goods list, goods mentioned in certain defined Security Council documents, and goods otherwise determined by the relevant Security Council Sanctions Committee pursuant to Resolution 1718, whether or not those goods originate in Australia. This aligns Australian law implementing United Nations Security Council sanctions against the DPRK with Resolution 1718.

Regulation 6 provides that a person makes a sanctioned supply if a person supplies, sells or transfers goods to another person, the goods are export sanctioned goods, and as a direct or indirect result of the supply, sale or transfer the goods are transferred to the DPRK, or are incorporated into goods that are transferred to the DPRK.

Regulation 7 provides that certain goods are import sanctioned goods. Import sanctioned goods are military goods, goods mentioned in certain defined Security Council documents, and goods otherwise determined by the United Nations Security Council Sanctions Committee established under Resolution 1718, whether or not those goods originate in Australia. Again, this aligns Australian law implementing United Nations Security Council sanctions against the DPRK with Resolution 1718.

Regulation 8 provides that sanctioned services relate to technical training, advice, services or assistance. Regulation 8 is relevant to regulation 11, which provides for prohibitions relating to sanctioned services.

Part 2: UN sanction enforcement laws

Regulation 9 provides for certain prohibitions relation to a sanctioned supply. Regulation 9 is a UN sanction enforcement law, meaning a contravention of a provision of regulation 9 is an offence under section 27 of the Act. As a consequence of the *International Trade Integrity Act 2007*, section 27 of the Act will introduce a new offence of contravening a UN sanction enforcement law. For bodies corporate, this will be a strict liability offence.

Regulation 9 also provides that an offence under section 27 of the Act has extraterritorial effect, which gives effect to the requirement in Resolution 1718 that measures apply to Australian nationals as well as to conduct within Australian territory. This extraterritorial application extends to bodies corporate, who will contravene regulation 9 if they had effective control over the actions of another body corporate or entity (wherever incorporated or situated), if that other body corporate or entity made a sanctioned supply that was not an authorised supply.

Regulation 9 also provides that a person (whether or not in Australia or if an Australian citizen) contravenes regulation 9 if they were to use the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply.

Regulation 10 provides for prohibitions relating to import sanctioned goods. As with regulation 9, this regulation is a UN sanction enforcement law. A person contravenes regulation 10 if a person procures import sanctioned goods from the DPRK or from a person or entity in the DPRK. This offence also has extraterritorial application, complying with the scope of relevant Resolution 1718. Bodies corporate are liable, as is similarly the case in relation to the comparable offence in regulation 9, for certain actions of entities with which they have the requisite relationship, whether or not the other body corporate was incorporated or is located in Australia.

Regulation 10 also provides that a person (whether or not in Australia and whether or not an Australian citizen) contravenes regulation 10 if that person uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, procuring the goods from the DPRK or from a person or entity in the DPRK.

Regulation 11 provides for prohibitions in relation to the provision of sanctioned services. Sanctioned services are defined in regulation 8. Regulation 11 is also a UN sanction enforcement law. A person contravenes regulation 11 if they provide a sanctioned service to, or if they procure a sanctioned service, from the DPRK, a person in the DPRK, or a national of the DPRK. The offence also applies extraterritorially. Bodies corporate are liable for the actions of other body corporates or entity over which they have effective control, if that other body corporate or entity provides or procures a sanctioned service from the DPRK, a person in the DPRK, or a national of the DPRK.

Regulation 12 provides for prohibitions relating to dealings with designated persons or entities. A person contravenes regulation 12 if they directly or indirectly make an asset available to, or for the benefit of, a designated person or entity, or a person or entity acting on behalf of or at the direction of a designated person or entity. Regulation 12 is a UN sanction enforcement law and operates extraterritorially.

Regulation 13 provides for a prohibition relating to controlled assets. A controlled asset is an asset controlled or owned by a designated person or entity, a person or entity acting on behalf of or at the direction of a designated person or entity, or an entity owned or controlled by a

designated person or entity. Regulation 13 operates extraterritorially and is a UN sanction enforcement law.

Regulation 14 provides that the Minister for Foreign Affairs has the power to grant, on application, a permit authorising that an asset be made available to a person or entity that will otherwise contravene the offence in sub-regulation 12(2), or a permit authorising the use of, or dealing with, a controlled asset. Such a permit can only be issued for a basic expense dealing, a legally required dealing, or an extraordinary expense dealing as defined in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*. If an application is made under regulation 14, the Minister for Foreign Affairs must notify the United Nations Security Council Sanctions Committee established under Resolution 1718 that the application was made.

Part 3: Miscellaneous

Regulation 15 provides that the Minister for Foreign Affairs may delegate his or her power or functions under the Regulations (but not the power to delegate under regulation 15) to the Secretary of the Department or to an SES employee, or acting SES employee, in the Department. Such a delegate must comply with any directions given by the Minister for Foreign Affairs in exercising powers delegated to them.

Regulation 16 is a transitional provision that provides the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Luxury Goods List 2006* is maintained in existence under the Regulations.