

Explanatory Statement

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) Amendment Regulation 2016

The *Charter of the United Nations Act 1945* provides legislative approval for the Charter of the United Nations in Australian law. Section 6 of the *Charter of the United Nations Act 1945* (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 of the United Nations (the Charter) that Australia is required to carry out under Article 25 of the Charter, in so far as those decisions require Australia to apply measures not involving the use of armed force. Section 6(2)(g) of the Act also allows the regulations to authorise the making of legislative instruments.

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment Regulation 2016* (the Regulation) amends the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008* in order to give effect to United Nations Security Council Resolution 2270 (2016) (UNSCR 2270).

UNSCR 2270 was adopted by the Security Council on 2 March 2016 in response to the nuclear test conducted by the Democratic People's Republic of Korea (DPRK) on 6 January 2016 and its launch of 7 February 2016 using ballistic missile technology.

UNSCR 2270 intensified sanctions on the DPRK. The Regulation implements certain of those intensified sanctions into Australian law, including by:

1. extending the goods covered by the trade embargo on the DPRK to include any item (except food or medicine) if such an item could directly contribute to the development of the operational capabilities of the DPRK's armed forces or the armed forces of another Member State outside the DPRK;
2. prohibiting Australia from purchasing coal, iron and iron ore from the DPRK;
3. preventing the provision of technical training, advice, services or assistance if it would contribute to the proliferation of sensitive nuclear activities or the development of nuclear weapons delivery systems in the DPRK;
4. expanding the entities subject to an asset freeze to include entities of the government of the DPRK or the Workers' Party of the DPRK that are designated by the Minister for Foreign Affairs for being associated with WMD or ballistic missile programmes of the DPRK or with activities prohibited by the various United Nations Security Council resolutions with respect to the DPRK;

5. prohibiting certain commercial activities by DPRK financial institutions in Australia, by Australian financial institutions in the DPRK and between Australian and DPRK financial institutions;
6. restricting the services that can be provided to DPRK vessels; and
7. prohibiting the leasing or chartering of Australian ships or aircraft to the DPRK.

The Regulation also establishes certain exceptions to the measures set out above and a power to issue permits to allow certain activities that would otherwise be prohibited, in accordance with UNSCR 2270.

Regulation 14F amends the permit making power in respect of the provision of bunkering services to a DPRK vessel. This obligation arose in the previous UN Security Council resolution 1874 (2009). The amendment provides clarity to the permit making power's meaning.

No public consultation was undertaken in relation to the Regulation under section 17 of the *Legislation Act 2003* as the instrument implements Australia's international legal obligations arising from the decisions of the UN Security Council. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions. Other Commonwealth agencies, including the Treasury, Australian Prudential Regulatory Authority, Civil Aviation Safety Authority, Airservices Australia, Australian Maritime Safety Authority and Australian Border Force were consulted during the drafting of the Regulations.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR reference: 21407).

Full details of the Regulation are set out in the [Attachment](#).

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 (Sanctions-Democratic People's Republic of Korea) Amendment Regulation 2016

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulation 2016* (the Regulation) 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*.

The Regulation gives effect to United Nations Security Council Resolution 2270 (2016) (UNSCR 2270). UNSCR 2270 was adopted by the Security Council on 2 March 2016 in response to the nuclear test conducted by the Democratic People's Republic of Korea (DPRK) on 6 January 2016 and its launch of 7 February 2016 using ballistic missile technology. UNSCR 2270 intensified sanctions on the DPRK in an attempt to modify the behaviour of the DPRK and to illustrate the international community's condemnation of the DPRK's actions. Under Article 25 of the Charter of the United Nations, Australia is required by international law to implement those intensified sanctions.

While those intensified sanctions, and thus the Regulation, impose additional obligations on Australian citizens, those obligations are required for the operation of the intensified sanctions.

The targeted financial sanctions imposed on entities designated by the Minister under new regulation 4A of the Regulations do not affect the title to any asset owned or controlled by the designated entity. A designated entity may apply for a permit to draw on its frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or for extraordinary expenses (regulation 14 of the Regulations).

The Regulation provides for strict liability in new Regulation 11B and new Regulation 11D. However, in effect this means that strict liability applies to the existence or otherwise of a permit or a notice from the Minister, respectively. It does not apply to any other elements of the offences. This is appropriate because either the permit (or notice) exists or it does not exist.

The Regulation is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

ATTACHMENT

Details of the Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment Regulation 2016 ("2016 Regulation")

Section 1

Section 1 provides that the title of the regulation is the *Charter of the United Nations (Sanctions- Democratic People's Republic of Korea) Regulations 2016*.

Section 2

Section 2 provides for the whole of the instrument to commence on the day after the instrument is registered.

Section 3

Section 3 provides that the instrument to be made is under the *Charter of the United Nations Act 1945*.

Section 4

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument effect according to its terms.

Schedule 1

Schedule 1 sets out the changes that the 2016 Regulation makes to the Charter of the *United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008* ("2008 Regulation")

Sections 1 to 10

Section 1 sets out the changes to the definition section in the 2008 Regulation that are made by the 2016 Regulation.

These changes include adding to the definition of "designated person or entity" persons or entities that have been designated by the Minister for Foreign Affairs (see discussion of section 11 below).

These changes also include adding a definition of "aviation fuel" (see discussion of section 12 below).

These changes also include deleting the definitions of "light weapon" and "small arm" as these are no longer required. Previously, financial transactions related to the supply, manufacture, maintenance or use of small arms and light weapons was prohibited. This exemption has been removed (see discussion of section 21 below). The Minister for Foreign Affairs ("Minister") also previously had the power to issue a permit for the supply of small arms and light weapons and for the provision of services in respect of such supply. This power has now been removed.

Section 11

Section 11 permits the Minister to designate an entity of the government of the Democratic People's Republic of Korea (DPRK) or an entity of the Workers' Party of the DPRK if the Minister is satisfied the entity is associated with the nuclear or ballistic missile programs, or other weapons of mass destruction (WMD) programs, of the DPRK; or activities prohibited by relevant United Nations Security Council (UNSC) resolutions in respect of the DPRK.

Sections 12 to 14

Section 12 adds "aviation fuel" to the list of "export sanctioned goods".

Section 13 adds to the list of "export sanctioned goods" those goods that the Minister has determined could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited by relevant DPRK UNSC resolutions in respect of the DPRK.

Section 14 provides the Minister with the power to make the above determination.

Section 15

Section 15 provides that a "sanctioned supply" occurs if a person transfers to another person any financial or other assets or resources (including bulk cash) or gold (including through gold couriers) if the transfer could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited, or the evasion of measures imposed, by relevant UNSC resolutions in respect of the DPRK.

Sections 16 to 18

Sections 17 adds gold, titanium ore, vanadium ore and rare earth minerals to the list of "import sanctioned goods".

Section 18 adds to the list of "import sanctioned goods" goods the Minister has determined could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the Democratic People's Republic of Korea; or (2) activities prohibited by relevant UNSC resolutions in respect of the DPRK.

Section 18 also provides the Minister with the power to make the above determination.

Section 19

Section 19 effectively adds the following as a "sanctioned service": the provision to any person of technical training, advice, services or assistance, if it assists with, or is provided in relation to, a supply of goods the Minister has determined could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited by relevant UNSC resolutions in relation to the DPRK.

Section 20 to 26

Sections 20 adds the following as a “sanctioned service”: the provision to any person of technical training, advice, services or assistance, if it assists with the manufacture, maintenance or use of goods the Minister has determined could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited by relevant UNSC resolutions in respect of the DPRK.

Section 20 also adds the following as a “sanctioned service”: the provision to any person of technical training, advice, services or assistance, if it could contribute to the proliferation of sensitive nuclear activities or the development of nuclear weapons delivery systems in the DPRK.

Section 21 means that a “sanctioned service” now includes a financial transaction related to the supply, manufacture or use of small arms or light weapons.

Section 22 adds the following as a “sanctioned service”: the leasing or chartering of an Australian ship or Australian aircraft to: (1) the DPRK; (2) a person who is a resident or national of the DPRK; (3) a designated person or entity; (4) a person or entity determined by the Minister, by legislative instrument, to have assisted in the evasion of sanctions or in violating relevant UNSC resolutions in respect of the DPRK; or (5) any other person acting on behalf, or at the direction, of a person or entity mentioned above.

Section 26 provides the Minister with the power to make the above determination.

Section 22 also adds the following as a “sanctioned service”: the crewing of a ship or aircraft, used to provide a service in, to or from the DPRK, with Australian citizens or permanent residents.

Section 23 adds the following as a “sanctioned service”: the provision of financial services that could contribute to WMD programs of the DPRK.

Section 24 adds the following as a “sanctioned service”: the provision of financial services that could contribute to activities prohibited, or the evasion of measures imposed, by relevant UNSC resolutions in respect of the DPRK.

Section 25 adds the following as a “sanctioned service”: the provision of public or private financial support for the purposes of trade with the DPRK, if the provision of that financial support could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited by relevant UNSC resolutions in respect of the DPRK.

Section 26 adds the following as a “sanctioned service”: the provision to a person of an investment service if it assists with, or is provided in relation to, a “sanctioned commercial activity” (see discussion of section 27 below).

Section 27

Section 27 defines “sanctioned commercial activity” to mean: (1) the opening in Australia of a representative office of a DPRK financial institution; (2) the establishment in Australia of a branch or subsidiary of a DPRK financial institution; (3) the conclusion by a person of an agreement, for or on behalf of a DPRK financial institution, related to: (a) the opening in Australia of a representative office of that institution; or (b) the establishment in Australia of a branch or subsidiary of that institution; (4) the establishment by a financial institution of a joint venture with a DPRK financial institution; (5) the establishment by a financial institution of a correspondent banking relationship with a DPRK financial institution; (6) the opening by a financial institution of a representative office in the DPRK; (7) the establishment by a financial institution of a branch or subsidiary in the DPRK; (8) the opening by a financial institution of a bank account with a DPRK financial institution; (9) the acquisition or extension of an interest in a DPRK financial institution by an Australian financial institution; (10) the sale by a person of an interest in a DPRK financial institution to an Australian financial institution; and (11) the making available by a person (other than by sale) of an interest in a DPRK financial institution to an Australian financial institution (see discussion of section 35 below regarding offences in relation to a “sanctioned commercial activity”).

Section 27 grants the Minister the power to issue a notice directing a person to close a bank account if the account provider is a DPRK financial institution. The Minister may only issue such a notice under this regulation if the Minister has reasonable grounds to believe that the person’s holding of the bank account could contribute to: (1) the nuclear or ballistic missile programs, or other WMD programs, of the DPRK; or (2) activities prohibited by relevant UNSC resolutions in respect of the DPRK. (see discussion of section 35 below regarding offences in relation to disobeying such a notice).

The Minister need not issue such a notice in respect of a bank account if the UN DPRK Sanctions Committee has determined that the bank account: (1) is used to pay funds to ensure the delivery of humanitarian assistance; (2) involves the activities of a diplomatic mission in the DPRK under the Vienna Convention on Diplomatic Relations; (3) involves the activities of the UN, or a specialised agency or related organisation of the UN; or (4) is for a purpose that is consistent with relevant UNSC resolutions in respect of the DPRK.

Section 27 also effectively provide that a “DPRK financial institution” as used in the paragraphs above means: (1) a financial institution domiciled in the DPRK; (2) a branch or subsidiary, wherever located, of a financial institution domiciled in the DPRK; and (3) a financial institution, wherever domiciled, that is controlled by an entity or person domiciled in the DPRK.

Section 27 also makes it an offence for a person to export an item (other than export sanctioned goods, food or medicine) to the DPRK or to a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units and the offence has extra-territorial operation.

Section 27 further makes it an offence for a person (whether or not in Australia, and whether or not an Australian citizen) to use the services of an Australian ship or an Australian aircraft to export such an item to the DPRK or to a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Section 27 also provides that a body corporate commits an offence if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; (2) the other body corporate or entity exports an item (other than export sanctioned goods, food or medicine) to the DPRK or to a person or entity in the DPRK; and (3) the export of the item is not authorised by a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Section 27 further makes it an offence for a person to import an item (other than import sanctioned goods, food, medicine, coal, iron or iron ore) from the DPRK or from a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units and the offence has extra-territorial operation.

Section 27 also makes it an offence for a person (whether or not in Australia, and whether or not an Australian citizen) to use the services of an Australian ship or an Australian aircraft to import such an item from the DPRK or from a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Section 27 further provides that a body corporate commits an offence if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; (2) the other body corporate or entity imports such an item from the DPRK or from a person or entity in the DPRK; and (3) the import of the item is not authorised by a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Section 27 also makes it an offence for a person to import coal, iron or iron ore from the DPRK or from a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units and the offence has extra-territorial operation.

Section 27 further makes it an offence for a person (whether or not in Australia, and whether or not an Australian citizen) to use the services of an Australian ship or an Australian aircraft to transport such goods in the course of, or for the purpose of, procuring such goods from the DPRK or from a person or entity in the DPRK without a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Section 27 also provides that a body corporate commits an offence if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; (2) the other body corporate or entity procures such goods from the DPRK or from a person or entity in the DPRK; and (3) the procurement of such goods is not authorised by a permit (or not in accordance with a condition in a permit). The penalty for committing this offence is 50 penalty units.

Sections 30 to 33

Section 30 provides that a person contravenes the 2008 Regulation if that person receives “import sanctioned goods” from the DPRK or from a person or entity in the DPRK for the purpose of repair, servicing, refurbishment, testing, reverse-engineering or marketing (whether by the person receiving the goods or another person). This offence has extra-territorial operation (by virtue of section 31).

It is also an offence for a person (whether or not in Australia, and whether or not an Australian citizen) to use the services of an Australian ship or an Australian aircraft to receive such an item from the DPRK (by virtue of section 32).

Section 33 provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; and (2) the other body corporate or entity receives “import sanctioned goods” from the DPRK or from a person or entity in the DPRK for the purpose of repair, servicing, refurbishment, testing, reverse-engineering or marketing (whether by the other body corporate or entity or another person).

Section 34

Section 34 is a cross-referencing amendment.

Section 35

Section 35 provides that a person contravenes the 2008 Regulation if it engages in a “sanctioned commercial activity” without a permit. This offence has extra-territorial operation.

Section 35 also provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; (2) the other body corporate or entity engages in a “sanctioned commercial activity”; and (3) the “sanctioned commercial activity” is not authorised by a permit.

Strict liability applies with respect to the existence of a permit.

Section 35 further provides that a person contravenes the 2008 Regulation if the person does not comply with a direction from the Minister to close a bank account (see discussion of section 27 above). This offence has extra-territorial operation.

Section 35 also provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; and (2) the other body corporate or entity does not comply with a direction from the Minister to close a bank account (see discussion of section 27 above).

Strict liability applies with respect to the existence of a notice from the Minister.

Section 35 also provides that a person contravenes the 2008 Regulation if the person: (1) registers a vessel in the DPRK; (2) obtains an authority that entitles a vessel to fly the flag of the DPRK; (3) provides a classification or certification service, or related service, in respect of a vessel for the purpose of it becoming, or maintaining its registration as, a DPRK vessel; (4) leases or operates a DPRK vessel; or (5) insures a DPRK vessel, where that action is not: (1) authorised by a permit under regulation 14H (see discussion of section 42 below); or (2) an activity covered by subregulation 14H(2) (see discussion of section 42 below). This offence has extra-territorial operation.

Section 35 also provides that a person contravenes the 2008 Regulation if the person owns a DPRK vessel and the ownership is not authorised by a permit under regulation 14H (see discussion of section 42 below). This offence has extra-territorial operation.

Section 35 further provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; and (2) the other body corporate or entity: (a) registers a vessel in the DPRK; (b) obtains an authority that entitles a vessel to fly the flag of the DPRK; (c) provides a classification or certification service, or related service, in respect of a vessel for the purpose of it becoming, or maintaining its registration as, a DPRK vessel; (d) leases or operates a DPRK vessel; or (e) insures a DPRK vessel, where that action is not: (1) authorised by a permit under regulation 14H (see discussion of section 42 below); or (2) an activity covered by subregulation 14H(2) (see discussion of section 42 below).

Section 35 also provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; and (2) the other body corporate or entity owns a DPRK vessel and the ownership is not authorised by a permit under regulation 14H (see discussion of section 42 below).

Section 35 further provides that a person contravenes the 2008 Regulation if the person procures technical training, advice, services or assistance from: (1) the DPRK; (2) a person or entity in the DPRK; or (3) a national of the DPRK, and that procurement could relate to the provision, manufacture, maintenance or use of arms and related materiel. This offence has extra-territorial operation.

Section 35 also provides that a body corporate contravenes the 2008 Regulation if: (1) the body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated; and (2) the other body corporate or entity procures technical training, advice, services or assistance from: (a) the DPRK; (b) a person or entity in the DPRK; or (c) a national of the DPRK, and that procurement could relate to the provision, manufacture, maintenance or use of arms and related materiel.

The changes in the above two paragraphs are intended to include a prohibition on the hosting of DPRK trainers, advisors, or other officials for the purpose of military-, paramilitary- or police related training.

Section 35 also provides that the Minister must direct (in writing) a vessel not to enter a port or place in Australia if the Minister has reasonable grounds to believe that: (1) the vessel is owned or controlled, directly or indirectly, by a person or entity designated by the UN DPRK Sanctions Committee or the Security Council; or (2) the vessel contains cargo and the supply, sale, transfer or export of that cargo is prohibited by relevant UNSC resolutions in respect of the DPRK. Before giving such a direction, the Minister must have regard to Australia's obligations at international law. Further, the Minister must not give such a direction if the vessel needs to enter a port or place in Australia because of an emergency or for inspection, or if the vessel's entry for humanitarian purposes or for any other purposes consistent with the objectives of UNSC Resolution 2270 has been approved in advance by the UN DPRK Sanctions Committee. A person (other than a vessel's pilot) contravenes the 2008 Regulation if that person is in command or charge of a vessel, if the Minister had given a direction, and if the vessel nonetheless enters a port or place in Australia.

Section 36

Section 36 effectively provides that a person does not contravene Regulation 12 of the 2008 Regulations if the person makes an asset available to a designated person or entity in the circumstances mentioned in subregulation 14(8) of the 2008 Regulations (see section [41] below).

Section 37

Section 37 effectively provides that a person does not contravene Regulation 13 of the 2008 Regulations if the person has a permit for the use or dealing with the controlled asset under Regulation 14 of the 2008 Regulations (see discussion of section 40 below) or if the use or dealing is covered by the circumstances mentioned in subregulation 14(8) of the 2008 Regulations (see discussion of section 41 below)

Section 38-39

Section 38 and 39 effectively provides that the Minister may grant a permit on the Minister's initiative or on application by a person and that the permit may be subject to conditions.

Section 40

Section 40 provides that an application for a permit to make an asset available to a designated person or entity or to use or deal with a controlled asset must specify whether the application is 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).

Section 41

Section 41 provides that the Minister need not grant a permit in respect of an asset and a person or entity designated by the Foreign Minister (see section 11 above) if the asset is required to carry out activities of: (1) the DPRK's missions to the United Nations (or a specialised agency or related organisation of the United Nations); or (2) other diplomatic or consular missions of the DPRK.

Section 42

Section 42 provides the permit making power in respect of exports of an item (other than export sanctioned goods, food or medicine) to the DPRK or to a person or entity in the DPRK (see discussion of section 27 above).

The Minister may grant a permit if satisfied that the item is not an item that could directly contribute to the development of the operational capabilities of the armed forces of the DPRK or the armed forces of a Member State outside the DPRK.

If the Minister is not so satisfied then the Minister may grant a permit if: (1) the item is being exported for humanitarian purposes or exclusively for the livelihood of the DPRK; (2) the item will not be used by a person or entity in the DPRK to generate revenue; (3) the item does not relate to any activity prohibited by relevant UNSC resolutions in respect of the DPRK; and (4) the UN DPRK Sanctions Committee has been notified of the proposed export in advance and been informed of measures taken to prevent the diversion of the item for such other purposes, or if the UN DPRK Sanctions Committee has been notified of the proposed export and determined that it would not be contrary to the objectives of relevant UNSC resolutions in respect of the DPRK.

Section 42 provides the permit making power in respect of a “sanctioned supply”. It would provide that the Minister may grant a permit only if the “sanctioned supply” is a supply, sale or transfer of aviation fuel and that the Minister must not grant a permit unless the supply, sale or transfer is to address essential humanitarian needs and the UN DPRK Sanctions Committee has approved its supply.

Section 42 also provides the permit making power in respect of imports of an item (other than export sanctioned goods, food, medicine, coal, iron and iron ore) to the DPRK or to a person or entity in the DPRK (see discussion of section 27 above).

The Minister may grant a permit if satisfied that the item is not an item that could directly contribute to the development of the operational capabilities of the armed forces of the DPRK or the armed forces of a Member State outside the DPRK.

If the Minister is not so satisfied then the Minister may grant a permit if: (1) the item is being imported for humanitarian purposes or exclusively for the livelihood of the DPRK; (2) the item will not be used by a person or entity in the DPRK to generate revenue; (3) the item does not relate to any activity prohibited by relevant UNSC resolutions in respect of the DPRK; and (4) the UN DPRK Sanctions Committee has been notified of the proposed import in advance and been informed of measures taken to prevent the diversion of the item for such other purposes, or if the UN DPRK Sanctions Committee has been notified of the proposed import and determined that it would not be contrary to the objectives of relevant UNSC resolutions in respect of the DPRK

Section 42 also provides the permit making power in respect of the procurement of coal, iron and iron ore (see discussion of section 27 above).

The Minister may grant a permit in respect of coal if: (1) the Minister is able to confirm, on reasonable grounds, that the coal originated outside the DPRK and was transported through the DPRK solely for export from the Port of Rajin (Rason); (2) the procurement was notified to the UN DPRK Sanctions Committee in advance; and (3) the procurement is unrelated to generating revenue for the nuclear or ballistic missile programs, or other WMD programs, of the DPRK or activities prohibited by relevant UNSC resolutions in respect of the DPRK.

The Minister may grant a permit in respect of coal, iron or iron ore if the procurement is: (1) exclusively for the livelihood of the DPRK; and (2) unrelated to generating revenue for the nuclear or ballistic missile programs, or other WMD programs, of the DPRK or activities prohibited by relevant UNSC resolutions in respect of the DPRK.

Section 42 also provides the permit making power in respect of the provision of a “sanctioned service” if the service is: the leasing or chartering of an Australian ship or Australian aircraft to: (1) the DPRK; (2) a person who is a resident or national of the DPRK; (3) a designated person or entity; (4) a person or entity determined by the Minister, by legislative instrument, to have assisted in the evasion of sanctions or in violating relevant UNSC resolutions in respect of the DPRK; or (5) any other person acting on behalf, or at the direction, of a person or entity mentioned above, or the crewing of a ship or aircraft, used to provide a service in, to or from the DPRK, with Australian citizens or permanent residents.

The Minister may only grant a permit in respect of the above services if: (1) the service was notified to the UN DPRK Sanctions Committee in advance; and (2) the notification was accompanied by: (a) information demonstrating that the proposed service is being provided in connection with activities exclusively for the livelihood of the DPRK and is unrelated to generating revenue in the DPRK; and (b) information of measures taken to prevent activities to which the proposed service relates from contributing to violations of relevant UNSC resolutions in respect of the DPRK.

Section 42 also provides the permit making power in respect of the provision of bunkering services to a DPRK vessel.

The Minister must not grant the permit if the Minister has reasonable grounds for believing that the vessel is carrying “export sanctioned goods”, unless the provision of the bunkering service: (1) is for humanitarian purposes; or (2) is necessary to facilitate the inspection, seizure or disposal of such goods (in which case the Minister must only grant a permit for a specified time to enable the inspection, seizure or disposal of such goods to occur).

Section 42 also provides the permit making power in respect of a “sanctioned commercial activity” (see discussion of section 35 above). The Minister must not grant a permit unless the “sanctioned commercial activity” is approved by the UN DPRK Sanctions Committee in advance.

Section 42 also provides the permit making power in respect of ownership of a DPRK vessel, registration of a vessel in the DPRK, the obtaining of an authority that entitles a vessel to fly the flag of the DPRK, the provision of a classification or certification service, or related service, in respect of a vessel for the purpose of it becoming, or maintaining its registration as, a DPRK vessel, the lease or operation of a DPRK vessel, and insuring a DPRK vessel (see discussion of section 35 above).

Section 42 also inserts Regulation 14H(2) which provides that the Minister need not grant a permit in respect of a vessel if the UN DPRK Sanctions Committee is notified in advance of: (1) the activities in which the vessel will be involved; (2) the names of individuals and entities involved in such activities; (3) information demonstrating that: (a) such activities are exclusively for the livelihood of the DPRK; and (b) the vessel is not being used by a person or entity in the DPRK to generate revenue; and (3) measures are being taken to prevent such activities from contributing to violations of relevant UNSC resolutions in respect of the DPRK.

Section 43

Section 43 provides that the: (1) government of the DPRK; (2) a person who is resident or national of the DPRK; (3) a person or entity subject to the jurisdiction of the DPRK; (4) a designated person or entity; and (5) a person or entity able to claim through, or for the benefit of, the aforementioned, must not make a claim or demand, or take any action, against any other person or entity for breach of contract or a failure to perform a transaction if the performance of the contract or transaction was prevented under the 2008 Regulation or because of UNSC resolutions relating to DPRK, as existing from time to time.