

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 (2017 Measures No. 2) Regulations 2017

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* 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.

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 2) Regulations 2017* (the Regulation) would amend the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008* (the 2008 Regulation) in order to give effect to provisions of United Nations Security Council Resolution 2371 (2017) (UNSCR 2371), UNSCR 2375 (2017), UNSCR 2270 (2016) and UNSCR 2321 (2016).

UNSCRs 2371, 2375, 2270 and 2321 were adopted by the Security Council on 5 August 2017, 11 September 2017, 2 March 2016 and 30 November 2016, respectively. They tightened sanctions on the DPRK in an attempt to modify its behaviour (including in respect of its weapons of mass-destruction and missile programs), and to demonstrate the international community's condemnation of the DPRK's actions. UNSCRs 2371, 2375, 2270 and 2321 are decisions under Chapter VII of the Charter, and Australia is required to carry them out under Article 25 of the Charter.

The Regulation implements certain measures imposed by UNSCRs 2371 and 2375 into Australian law, including by: (a) prohibiting the import of coal, iron, iron ore, lead, lead ore, seafood and textiles from the DPRK; (b) prohibiting the export of condensates and natural gas liquids to the DPRK; (c) limiting the export of refined petroleum products to the DPRK and prohibiting the export of crude oil to the DPRK; (d) prohibiting the chartering of a DPRK flagged or registered vessel; (e) prohibiting certain vessels from entering any port in Australia; (f) prohibiting ship-to-ship transfers involving DPRK flagged vessels and prohibiting facilitating such transfers; and (g) prohibiting the establishment, maintenance or operation of joint ventures or cooperative entities with DPRK entities or individuals.

The Regulation also establishes certain exceptions to the measures and a power to issue permits to allow certain activities that would otherwise be prohibited.

Complete details of the Regulation are contained in the [Attachment](#).

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. The Civil Aviation Safety Authority was consulted during the drafting of the Regulation.

Subsection 6(3) of the Charter of the United Nations Act 1945 provides that, despite subsection 14(2) of the Legislation Act 2003, regulations made for the purposes of subsection 6(1) of the Charter of the United Nations Act 1945 may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing in force or existing from time to time.

United Nations Security Council Resolutions, including those referred to in the Regulation, can be accessed free of charge at <http://www.un.org/en/sc/documents/resolutions/>.

United Nations Security Council Resolutions do not operate in the same manner as Acts and legislative instruments. That is, subsequent resolutions in respect of a matter or issue do not always state that they are amending or replacing previous resolutions on that matter or issue. Rather, the resolutions need to be read in conjunction with one another.

The Regulation is a legislative instrument for the purpose of the *Legislation Act 2003*.

The provisions of the Regulation commence in accordance with the table in section 2 of the Regulation.

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](#).

ATTACHMENT

Details of the Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 2) Regulations 2017 (the Regulation)

Section 1

Section 1 provides that the title of the instrument is the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 2) Regulations 2017*.

Section 2

Section 2 provides that all of the provisions in the instrument commence on the day after the instrument is registered.

Section 3

Section 3 provides that the instrument is made 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 has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 sets out the changes that the Regulation makes to the *Charter of the United Nations (Sanctions - Democratic People's Republic of Korea) Regulations 2008* (“2008 Regulation”).

Item 1

Item 1 adds a definition of “Australian flagged vessel,” meaning a vessel entitled to fly the flag of Australia. This provides a definition for the purposes of the new subregulation 11H (see Item 21 below).

Item 2

Item 2 replaces paragraph (c) of the definition of “controlled asset” to state that a “controlled asset” includes a vessel that is, as a result of being designated by the Committee established by paragraph 12 of United Nations Security Council Resolution 1718 (“Committee”), subject to an asset freeze. This reflects operative paragraph 12(d) of United Nations Security Council Resolution 2321 (“Resolution 2321”) and operative paragraph 8 of United Nations Security Council Resolution 2375 (“Resolution 2375”). Vessels so designated will be listed on the website of the Committee.

Item 3

Item 3 adds a definition of “DPRK person or entity”, which would be used in the list of “sanctioned commercial activities” in the new subregulation 8A(3) (see Item 9 below).

Item 4

Item 4 adds a reference to the new Regulations 14D and 14DA to the definition of “import authorised goods.” The new Regulations 14D and 14DA provide for the grant of permits to authorise the procurement, receipt or transport from the DPRK of coal, and the procurement, receipt or transport from the DPRK of statues and textiles, respectively (see Items 24 and 25 below).

Item 5

Item 5 inserts a definition of “Resolution 2356”, of “Resolution 2371”, and of “Resolution 2375”.

Item 6

Item 6 adds condensates and natural gas liquids, refined petroleum products and crude oil to the list of “export sanctioned goods” in subregulation 5(1). This reflects the controls on the export to North Korea of condensates and natural gas liquids, refined petroleum products and crude oil imposed by operative paragraphs 13, 14 and 15 of Resolution 2375.

Item 7

Item 7 adds coal, iron, iron ore, lead, lead ore, and seafood (including fish, crustaceans, molluscs and other aquatic invertebrates) to the list of “import sanctioned goods”, reflecting the prohibitions imposed by operative paragraphs 8, 9 and 10 of United Nations Security Council Resolution 2371 (“Resolution 2371”). Item 7 would also add textiles (including fabrics and partially or fully completed apparel products) to the list of “import sanctioned goods”, reflecting the prohibition on the import from North Korea of these items imposed by operative paragraph 16 of Resolution 2375.

Item 8

Item 8 clarifies that the reference to “sanctioned commercial activity” in subregulation 8(1B) only includes the activities listed in subregulations 8A(1) and 8A(2).

Item 9

Item 9 adds to the list of activities that constitute a “sanctioned commercial activity” the establishment, maintenance or operation of a joint venture of cooperative entity with a DPRK person or entity, with a person or entity acting on behalf of (or at the direction of) a DPRK person or entity, and with an entity owned or controlled by a DPRK person or entity.

Item 9 also provides that the maintenance or operation of a joint venture or cooperative entity established before the commencement of subregulation 8A(3) does not constitute a “sanctioned commercial activity” until 10 January 2018 or, if a request has been made before 10 January 2018 to the Committee for approval of the joint venture or cooperative entity, until 120 days after the Committee makes a decision on the request.

Item 9 reflects operative paragraph 18 of Resolution 2375.

Item 10

Item 10 amends subparagraph 8D(1)(b)(ii) in accordance with the repeal of subparagraph 8D(1)(b)(iii) (see Item 11 below).

Item 11

Item 11 repeals subparagraph 8D(1)(b)(iii) because, under the Regulation, coal, iron and iron ore would become “import sanctioned goods” (see Item 7 above).

Item 12

Item 12 amends subparagraph 8D(3)(b)(ii) in accordance with the repeal of subparagraph 8D(3)(b)(iii) (see Item 13 below).

Item 13

Item 13 repeals subparagraph 8D(3)(b)(iii), which applies in cases where an Australian ship or aircraft has been used to import coal, iron or iron ore because, under the Regulation, these items have become “import sanctioned goods” (see Item 7 above) and subregulation 10(4) would apply.

Item 14

Item 14 would amend subparagraph 8D(4)(c)(ii) in accordance with the repeal of subparagraph 8D(4)(c)(iii) (see Item 15 below).

Item 15

Item 15 repeals subparagraph 8D(4)(c)(iii), which applies in cases where the import of coal, iron or iron ore has been conducted by a body corporate through effective control over the actions of another body corporate or entity because, under the Regulation, these items have become “import sanctioned goods” (see Item 7 above) and subregulations 10(5) or 10(6) apply.

Item 16

Item 16 repeals Regulation 8E, which creates an offence for procuring coal, iron or iron ore. Under the Regulation, coal, iron and iron ore have been added to the list of “import sanctioned goods” (see Item 7 above) and the offence provisions in respect of “import sanctioned goods” apply.

Item 17

Item 17 adds a note that Regulation 11A is specified as a UN sanction enforcement law by the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

Item 18

Item 18 creates a prohibition on transferring, or facilitating the transfer of, goods between a vessel and a DPRK flagged or registered vessel, where the goods are being exported from or imported into the DPRK. This reflects operative paragraph 11 of Resolution 2375.

Item 19

Item 19 creates a prohibition on chartering a DPRK flagged or registered vessel. This reflects the clarification in operative paragraph 7 of UNSC Resolution 2371 that the measures in operative paragraph 20 of United Nations Security Council Resolution 2270 (“Resolution 2270”) and operative paragraph 9 of Resolution 2321 apply to chartering vessels flagged by the DPRK.

Item 20

Item 20 creates a prohibition on chartering a DPRK flagged or registered vessel, in cases where the chartering has been conducted by a body corporate through effective control over the actions of another body corporate or entity. This reflects the clarification in operative paragraph 7 of UNSC Resolution 2371 that the measures in operative paragraph 20 of Resolution 2270 and operative paragraph 9 of Resolution 2321 apply to chartering vessels flagged by the DPRK.

Item 21

Item 21 replaces the existing Regulations 11F and 11G.

The new regulation 11F would effectively change the previous subregulations 11F(1) and 11F(5) by adding a power for the Minister for Foreign Affairs to revoke a direction.

The new subregulation 11G(1) effectively changes the operation of the previous subregulation 11F(3), subregulation 11F(4) and regulation 11G by stating that the relevant person will contravene regulation 11G if the relevant vessel is subject to a direction under regulation 11F or has been designated by the Committee for the purposes of operative paragraph 12(c) of Resolution 2321, operative paragraph 6 of Resolution 2371 or operative paragraph 6 of Resolution 2375 and the vessel enters a port in Australia. Vessels so designated by the Committee will be listed on the website of the Committee.

The new subregulation 11G(2) effectively changes the operation of the previous subregulations 11F(3) and 11F(4) by effectively providing that there is no contravention of regulation 11G if the relevant vessel enters a port because of an

emergency, to return to its port of origination, for inspection (in the case of a vessel in relation to which a direction under the proposed Regulation 11F has been given), in accordance with a determination in advance by the Committee, or in accordance with a direction by the Committee.

The above reflects operative paragraph 6 of Resolution 2371, operative paragraph 6 of Resolution 2375, operative paragraph 12(c) of Resolution 2321 and operative paragraph 22 of Resolution 2270.

The new subregulations 11H(1) and 11H(2) require the Minister for Foreign Affairs to direct an Australian flagged vessel designated by the Committee for the purposes of operative paragraph 12(b) of Resolution 2321 to a port identified by the Committee, unless the Minister for Foreign Affairs is satisfied that the direction would be inconsistent with Australia's obligations under international law. The new regulation 11J provides that a person contravenes regulation 11J if the person owns a vessel (in whole or in part) and the vessel does not, within a reasonable period of time, enter the port it has been directed to. This reflects operative paragraph 12(b) of Resolution 2321. Vessels so designated by the Committee will be listed on the website of the Committee.

The new subregulations 11H(3) and 11H(4) allow the Minister for Foreign Affairs to direct an Australian flagged vessel to enter an appropriate and convenient port for the purpose of cooperating with an inspection in accordance with operative paragraph 8 of Resolution 2375 and operative paragraph 18 of Resolution 2270.

The new regulation 11K requires the Minister for Foreign Affairs to direct an aircraft not to take off from, land in or overfly Australia if the Minister has reasonable grounds to believe that the aircraft contains certain items, unless the Minister for Foreign Affairs is satisfied that the direction would be inconsistent with Australia's obligations under international law. It also provides a power for the Minister for Foreign Affairs to revoke such a direction. The new regulation 11L provides that a person contravenes the regulation if the person has command or charge of an aircraft and the aircraft takes off from, lands in, or overflies Australia when such a direction has been given. The new regulation 11L also provides that there is no contravention of the regulation if the aircraft lands in Australia or overflies Australia for the purposes of landing because of an emergency or for an inspection. This reflects operative paragraph 21 of Resolution 2270.

Item 22

Item 22 amends Regulation 14 to effectively provide that in the case of applications for a permit to use or deal with a controlled asset, or to make an asset available to a designated person or entity, subregulations 14(2), 14(5), 14(6) and 14(7) do not apply in relation to an application for a permit authorising a financial transaction with the Foreign Trade Bank of the Democratic People's Republic of Korea or the Korea National Insurance Corporation (being two entities listed in Annex II of Resolution 2371), if the transaction is solely for the purposes of the operation of a diplomatic or consular mission in the DPRK, or for the delivery of humanitarian assistance by, or in coordination with, the United Nations. This reflects operative paragraph 26 of Resolution 2371.

Item 23

Item 23 replaces the existing subregulations 14B(2) and 14B(3), which concern permits to export certain items to the DPRK, so as to add provisions on crude oil and refined petroleum products. Concerning refined petroleum products, the new provisions allow the Minister to grant a permit in certain circumstances, except in the following cases: during the period between 1 October 2017 and 31 December 2017, the total amount of refined petroleum products supplied, sold or transferred to the DPRK from all countries is more than 500,000 barrels; or in 2018 or a later year, Australia has been notified under operative paragraph 14 of Resolution 2375 that the supply, sale and transfer of refined petroleum products must cease for the remainder of the year. Concerning crude oil, the new provisions allow the Minister for Foreign Affairs to grant a permit if the Committee has approved the export in advance.

For the purposes of new paragraph 14B(3)(c) an individual or entity associated with the nuclear or ballistic missile programs of the DPRK or other entities prohibited by the listed resolutions would include a designated person or entity, persons or entities acting on their behalf or at their direction, entities owned or controlled by them (directly or indirectly) and persons and entities assisting in the evasion of sanctions.

The above reflects operative paragraphs 14 and 15 of Resolution 2375.

Item 24

Item 24 repeals the existing Regulation 14D, which concerns a permit to procure coal, iron or iron ore from the DPRK, and substitute new provisions that reflect operative paragraph 8 of Resolution 2371. This means that the Minister can only grant a permit for import from the DPRK of coal, and not for import of iron or iron ore, as is provided for by the existing Regulation 14D.

Reflecting operative paragraph 8 of Resolution 2371, Regulation 14 now provides that a permit for the procurement, receipt or transport of coal is only able to be granted if the Minister for Foreign Affairs 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), provided that Australia notified the Committee in advance and that the procurement, receipt or transport of the coal was unrelated to generating revenue for the DPRK's nuclear or ballistic missile programs or other activities prohibited by certain United Nations Security Council resolutions.

Item 25

Item 25 inserts a new paragraph 14DA providing the Minister for Foreign Affairs with the power to grant a permit to procure, receive or transport a specified statue or shipment of textiles from the DPRK, subject to the restrictions imposed by operative paragraph 16 of Resolution 2375 in the case of textiles.

Item 26

Item 26 repeals the existing paragraph 14HC, which provides for the grant of a permit to procure, receive or transport a statue, in accordance with the proposed re-location of this permit granting authority to new paragraph 14DA (see Item 25 above).

Item 27

Item 27 replaces the heading of Regulation 14J (see Item 28 below).

Item 28

Item 28 amends subregulation 14J(2) so that it provides that the Minister for Foreign Affairs may grant a permit authorising a person to engage in a specified activity if the Committee has exempted the activity in advance under paragraph 46 of Resolution 2321, paragraph 26 of Resolution 2371 or paragraph 26 of Resolution 2375.

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 (2017 Measures No. 2) Regulations 2017

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 2) Regulations 2017* (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 amends the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008* (the 2008 Regulation) in order to give effect to provisions of United Nations Security Council Resolution 2371 (2017) (UNSCR 2371), UNSCR 2375 (2017), UNSCR 2270 (2016) and UNSCR 2321 (2016).

UNSCRs 2371 and 2375 were adopted by the Security Council on 5 August and 11 September 2017 respectively. They tightened sanctions on the DPRK in an attempt to modify its behaviour (including in respect of its weapons of mass-destruction and missile programs), and to demonstrate the international community's condemnation of the DPRK's actions. UNSCRs 2371, 2375, 2270 and 2321 are decisions under Chapter VII of the Charter of the United Nations (the Charter), and Australia is required to carry them out under Article 25 of the Charter.

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