

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) (Documents) Amendment Instrument 2018 (No. 1)

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 and 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.

A preamble to United Nations Security Council (UNSC) Resolution 1718 (2006) notes that the Security Council was acting under Chapter VII of the Charter of the United Nations.

Paragraph 8(a)(i) of UNSC Resolution 1718 (2006) requires that Member States prevent the export to the DPRK of “items as determined by the Security Council or the Committee established by paragraph 12 below”.

Paragraph 8(a)(ii) of United Nations Security Council Resolution 1718 (2006) requires that Member States prevent the export to the DPRK of “other items, materials, equipment, goods and technology, determined by the Security Council or the Committee, which could contribute to DPRK’s nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes”.

Paragraph 8(b) of UNSC Resolution 1718 (2006) provides that Member States must prohibit the procurement of all items covered by paragraphs 8(a)(i) and 8(a)(ii).

Paragraph 8(c) of UNSC Resolution 1718 (2006) provides that Member States must prohibit the transfer to or from the DPRK of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of the items covered by paragraphs 8(a)(i) and 8(a)(ii).

Subparagraph 5(1)(c)(i) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* effectively defines “export sanctioned goods” to include goods mentioned in a document specified by the Minister for Foreign Affairs under subregulation 5(3) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*.

Subregulation 5(3) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* provides that the Minister for Foreign Affairs may, by legislative instrument, specify documents for subparagraph 5(1)(c)(i) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*.

Subparagraph 7(1)(b) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* defines “import sanctioned goods” to include goods mentioned in subparagraph 5(1)(c) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*. This effectively means that goods mentioned in a document specified by the Minister for Foreign Affairs under subregulation 5(3) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* are subject to an import ban.

The *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) (Documents) Amendment Instrument 2017 (No. 1) (the DPRK Instrument)* is made under subregulation 5(3) of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*. The DPRK Instrument specifies documents containing goods which the UN Security Council and its Committee established pursuant to Resolution 1718 (2006) (**the Committee**) have decided should be prohibited for export to, or import from, the DPRK, including related services.

The DPRK Instrument repeals Schedule 1 in the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) (Documents) Instrument 2017 (the Documents List)*, and replaces it with a new Schedule 1. The New Schedule 1 contains the same list of documents as in the previous Schedule 1 (note that two of the document references have been updated to reflect revisions to those documents), with the addition of two documents issued by the Committee in September and October 2017. These two new documents were issued pursuant to paragraphs 4 and 5, respectively, of UNSC Resolution 2375 (2017).

The documents specified by the Documents List (and in amendments made to it) are an internationally accepted reference for those industries, persons and companies that trade in such goods.

In addition, the Department of Foreign Affairs and Trade provides a free service to the public (via the Online Sanctions Administration System) where inquiries can be made about whether a proposed transaction (for example, a proposed export to, or import from, North Korea) is subject to Australia’s sanctions laws. This would include an assessment as to whether a good is an import or export sanctioned good under the Documents List (further information is available at <http://dfat.gov.au/international-relations/security/sanctions/Pages/online-sanctions-administration-system.aspx> and <https://sanctions.dfat.gov.au/>).

Australia is under an international legal obligation to implement the decisions of the United Nations Security Council. The DPRK Instrument will facilitate the implementation of this international legal obligation.

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

As at this date, <https://www.un.org/sc/suborg/en/sanctions/1718/prohibited-items>, provides links to the documents set out in Schedule 1 to the DPRK Instrument.

No public consultation was undertaken in relation to the DPRK Instrument, as it implements Australia's international legal obligations arising from decisions of the United Nations Security Council. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UN sanctions.

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) (Documents) Amendment Instrument 2018 (No. 1)

The *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) (Documents) Amendment Instrument 2018 (No. 1)* (**the DPRK Instrument**) 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 DPRK Instrument amends the list of documents that are specified by the Minister in the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) (Documents) Instrument 2017* (**the Documents List**) pursuant to the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*.

The Documents List references goods that the United Nations Security Council Committee Established Pursuant to Resolution 1718 (2006) and the United Nations Security Council have decided should be prohibited for export to, or import from, the DPRK, including related services. These exports, imports or service transfers could otherwise contribute to the DPRK’s nuclear-related, ballistic missile-related, other weapons of mass destruction-related and other military-related programmes.

The DPRK Instrument thus acts to restrict trade in order to limit the proliferation of nuclear-related, ballistic missile-related, other weapons of mass destruction-related and other military-related items in respect of the DPRK in accordance with resolutions of the United Nations Security Council.

The Documents List (and amendments made to it) is compatible with the right to a fair hearing, the right to a fair trial and the right to liberty. It is also compatible with the quality of law test, that is, the requirement that any measures which interfere with human rights must be sufficiently certain and accessible, such that people are able to understand when an interference with their rights will be justified.

The documents specified by the Documents List (and in amendments made to it) are an internationally accepted reference for those industries, persons and companies that trade in such goods.

In addition, the Department of Foreign Affairs and Trade provides a free service to the public (via the Online Sanctions Administration System) where inquiries can be made about whether a proposed transaction (for example, a proposed export to, or import from, North Korea) is subject to Australia's sanctions laws. This would include an assessment as to whether a good is an import or export sanctioned good under the Documents List (further information is available at <http://dfat.gov.au/international-relations/security/sanctions/Pages/online-sanctions-administration-system.aspx> and <https://sanctions.dfat.gov.au/>).

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