



# **Charter of the United Nations (Sanctions— Democratic People’s Republic of Korea) Amendment (Resolution 2397) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 29 May 2018

Peter Cosgrove  
Governor-General

By His Excellency’s Command

Julie Bishop  
Minister for Foreign Affairs

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
<i>Charter of the United Nations (Sanctions—Democratic People’s Republic of Korea)</i>		
<i>Regulations 2008</i>		2



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## 1 Name

This instrument is the *Charter of the United Nations (Sanctions—Democratic People’s Republic of Korea) Amendment (Resolution 2397) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	2 June 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Charter of the United Nations Act 1945*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

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

#### **1 Regulation 4 (subparagraph (b)(iii) of the definition of *authorised service*)**

Omit “Resolution 1718 and Resolution 1784”, substitute “resolutions of the Security Council relating to the DPRK”.

#### **2 Regulation 4 (subparagraph (b)(iii) of the definition of *authorised supply*)**

Omit “Resolution 1718 and Resolution 1874”, substitute “resolutions of the Security Council relating to the DPRK”.

#### **3 Regulation 4 (definition of *export sanctioned goods*)**

Omit “regulation 5”, substitute “subregulation 5(1A)”.

#### **4 Regulation 4**

Insert:

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***HS chapter*** means a chapter of the Harmonized Commodity Description and Coding System, as in force from time to time.

#### **5 Regulation 4 (definition of *import authorised goods*)**

Omit “14D or 14DA”, substitute “14D, 14DA or 14DB”.

#### **6 Regulation 4 (definition of *import sanctioned goods*)**

Omit “regulation 7”, substitute “subregulation 7(1A)”.

#### **7 Regulation 4**

Insert:

***Resolution 2397*** means Resolution 2397 (2017) of the Security Council, adopted on 22 December 2017.

***specified export sanctioned goods*** has the meaning given by subregulation 5(1).

***specified import sanctioned goods*** has the meaning given by subregulation 7(1).

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**8 Before subregulation 5(1)**

Insert:

(1A) The following goods are *export sanctioned goods*:

- (a) specified export sanctioned goods;
- (b) goods (whether or not they originate in Australia):
  - (i) that are not specified export sanctioned goods; and
  - (ii) that are not food or medicine.

**9 Subregulation 5(1)**

Omit “For these Regulations, the following, whether or not they originate in Australia, are *export sanctioned goods*.”, substitute “The following goods (whether or not they originate in Australia) are *specified export sanctioned goods*.”.

**10 Paragraph 5(1)(f)**

Repeal the paragraph, substitute:

- (f) new helicopters;
- (g) vessels;
- (h) goods covered by any of HS chapters 72 to 89.

**11 Before subregulation 7(1)**

Insert:

(1A) The following goods are *import sanctioned goods*:

- (a) specified import sanctioned goods;
- (b) goods (whether or not they originate in the DPRK):
  - (i) that are not specified import sanctioned goods; and
  - (ii) that are not food or medicine.

**12 Subregulation 7(1)**

Omit “For these Regulations, the following, whether or not they originate in the Democratic People’s Republic of Korea, are *import sanctioned goods*.”, substitute “The following goods (whether or not they originate in the DPRK) are *specified import sanctioned goods*.”.

**13 At the end of subregulation 7(1)**

Add:

- ; (k) goods covered by HS chapter 07, 08, 12, 25, 44, 84, 85 or 89.

**14 Part 1A**

Repeal the Part.

**15 Paragraph 9(4)(a)**

Omit “transport or export”, substitute “transport export”.

**16 After regulation 9**

Insert:

## **9A Prohibition relating to a sanctioned supply of certain goods—use of Australian pipelines, railways or vehicles**

- (1) This regulation applies to a sanctioned supply that is a supply, sale or transfer of any of the following goods:
  - (a) refined petroleum products;
  - (b) crude oil;
  - (c) goods covered by any of HS chapters 72 to 89.
- (2) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if:
  - (a) in the course of, or for the purpose of, making the sanctioned supply, the person uses any of the following to transport the goods:
    - (i) a pipeline in Australia;
    - (ii) a railway in Australia;
    - (iii) a vehicle that is registered, or is required to be registered, under a law of a State or Territory; and
  - (b) the sanctioned supply is not an authorised supply.

Note: This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

## **17 After regulation 11C**

Insert:

### **11CA Prohibition on procuring fishing rights**

- (1) A person contravenes this regulation if the person procures a fishing right directly or indirectly from:
  - (a) the DPRK; or
  - (b) a person or entity in the DPRK; or
  - (c) a national of the DPRK.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note: This has the effect that the offence has extraterritorial operation.

- (3) A body corporate contravenes this regulation if:
  - (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
  - (b) the other body corporate or entity procures a fishing right directly or indirectly from:
    - (i) the DPRK; or
    - (ii) a person or entity in the DPRK; or
    - (iii) a national of the DPRK.

Note: This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

## **18 Regulation 14A**

Repeal the regulation.



**19 Before subregulation 14B(2)**

Insert:

*Sanctioned supplies requiring approval by the Committee in advance*

**20 Subparagraphs 14B(2)(a)(ii) and (iii)**

Repeal the subparagraphs, substitute:

- (ii) a new helicopter that is not arms or related matériel; or
- (iii) a vessel that is not arms or related matériel; and

**21 After subregulation 14B(2)**

Insert:

*Spare parts for DPRK commercial civilian passenger aircraft*

- (2A) The Minister may grant a permit if the sanctioned supply is a supply, sale or transfer of goods:
- (a) that are covered by any of HS chapters 72 to 89; and
  - (b) that are spare parts needed to maintain the safe operation of a DPRK commercial civilian passenger aircraft.

*Refined petroleum products*

**22 Paragraph 14B(3)(c)**

Omit “or Resolution 2375”, substitute “, Resolution 2375 or Resolution 2397”.

**23 At the end of subregulation 14B(3)**

Add:

- ; and (d) the supply, sale or transfer does not involve any person or entity assisting in activities prohibited, or the evasion of the measures imposed, by:
- (i) Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094, Resolution 2270, Resolution 2321, Resolution 2356, Resolution 2371, Resolution 2375 or Resolution 2397; or
  - (ii) a subsequent resolution of the Security Council relating to the DPRK.

**24 Subregulation 14B(4)**

Repeal the subregulation, substitute:

- (4) However, the Minister must not grant a permit in a calendar year if Australia has been notified under paragraph 5 of Resolution 2397 that supply, sale and transfer of refined petroleum products must cease for the remainder of the year.

*Crude oil*

- (5) The Minister may grant a permit if:
- (a) the sanctioned supply is a supply, sale or transfer of crude oil; and
  - (b) either:
    - (i) since the most recent 23 December, the total amount of crude oil supplied, sold or transferred from all countries to the DPRK is not

- more than the amount mentioned in paragraph 4 of Resolution 2397;  
or  
(ii) the Committee has approved the sanctioned supply in advance.

*Export sanctioned goods that are not specified export sanctioned goods*

- (6) The Minister may grant a permit if:
- (a) the sanctioned supply is a supply, sale or transfer of export sanctioned goods that are not specified export sanctioned goods; and
  - (b) subregulation (7), (8) or (9) applies.
- (7) For the purposes of paragraph (6)(b), this subregulation applies if the Minister is reasonably satisfied that the goods are not goods that could directly contribute to the development of the operational capabilities of:
- (a) the armed forces of the DPRK; or
  - (b) the armed forces of a Member State outside the DPRK.
- (8) For the purposes of paragraph (6)(b), this subregulation applies if:
- (a) the Minister is reasonably satisfied that:
    - (i) the goods are being supplied, sold, or transferred for humanitarian purposes or exclusively for the livelihood of the DPRK; and
    - (ii) the goods will not be used by a person or entity in the DPRK to generate revenue; and
    - (iii) the goods do not relate to any activity prohibited by Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094, Resolution 2270 or any other resolution of the Security Council relating to the DPRK (*a prohibited activity*); and
  - (b) the Committee has been notified of the sanctioned supply in advance; and
  - (c) the Committee has been informed of measures taken to prevent the following:
    - (i) the diversion of the goods for purposes other than the purposes mentioned in subparagraph (a)(i);
    - (ii) the use of the goods by a person or entity in the DPRK to generate revenue;
    - (iii) the use of the goods in relation to a prohibited activity.
- (9) For the purposes of paragraph (6)(b), this subregulation applies if:
- (a) the Committee has been notified of the sanctioned supply; and
  - (b) the Committee has determined that the sanctioned supply would not be contrary to the objectives of Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094, Resolution 2270 or any other resolution of the Security Council relating to the DPRK.

## **25 Regulation 14C**

Repeal the regulation.

## **26 Regulation 14D (heading)**

Repeal the heading, substitute:

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**14D Permit for import sanctioned goods—coal****27 Regulation 14DA (heading)**

Repeal the heading, substitute:

**14DA Permit for import sanctioned goods—statues or textiles****28 After regulation 14DA**

Insert:

**14DB Permit for import sanctioned goods—import sanctioned goods that are not specified import sanctioned goods**

- (1) The Minister may grant a person a permit authorising the procurement, receipt or transport of import sanctioned goods that are not specified import sanctioned goods.

Note: Section 13A of the Act applies to a permit granted by the Minister under this regulation.

- (2) The Minister may grant a permit if subregulation (3), (4) or (5) applies.
- (3) For the purposes of subregulation (2), this subregulation applies if the Minister is reasonably satisfied that the goods are not goods that could directly contribute to the development of the operational capabilities of:
- (a) the armed forces of the DPRK; or
  - (b) the armed forces of a Member State outside the DPRK.
- (4) For the purposes of subregulation (2), this subregulation applies if:
- (a) the Minister is reasonably satisfied that:
    - (i) the goods are being procured, received or transported for humanitarian purposes or exclusively for the livelihood of the DPRK; and
    - (ii) the goods will not be used by a person or entity in the DPRK to generate revenue; and
    - (iii) the goods do not relate to any activity prohibited by Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094, Resolution 2270 or any other resolution of the Security Council relating to the DPRK (*a prohibited activity*); and
  - (b) the Committee has been notified of the procurement, receipt or transport of the goods in advance; and
  - (c) the Committee has been informed of measures taken to prevent the following:
    - (i) the diversion of the goods for purposes other than the purposes mentioned in subparagraph (a)(i);
    - (ii) the use of the goods by a person or entity in the DPRK to generate revenue;
    - (iii) the use of the goods in relation to a prohibited activity.
- (5) For the purposes of subregulation (2), this subregulation applies if:
- (a) the Committee has been notified of the procurement, receipt or transport of the goods; and

- (b) the Committee has determined that it would not be contrary to the objectives of Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094, Resolution 2270 or any other resolution of the Security Council relating to the DPRK.

## 29 Subregulation 14J(2)

Repeal the subregulation, substitute:

- (2) The Minister may grant a permit only if the Committee has exempted the activity in advance under any of the following:
  - (a) paragraph 46 of Resolution 2321;
  - (b) paragraph 26 of Resolution 2371;
  - (c) paragraph 26 of Resolution 2375;
  - (d) paragraph 25 of Resolution 2397.

## 30 Subregulation 14J(3)

Omit “The provisions of Part 1A, and the provisions of Division 1 of this Part, do”, substitute “Division 1 of this Part does”.

## 31 Regulation 16

Repeal the regulation.

## 32 At the end of the instrument

Add:

# Part 4—Application, savings and transitional provisions

## Division 1—Amendments made by the Charter of the United Nations (Sanctions—Democratic People’s Republic of Korea) Amendment (Resolution 2397) Regulations 2018

### 16 Definitions

In this Division:

*commencement day* means the day the *Charter of the United Nations (Sanctions—Democratic People’s Republic of Korea) Amendment (Resolution 2397) Regulations 2018* commence.

### 17 Savings provision—permits in force under regulation 14A

- (1) This regulation applies to a permit that was in force under regulation 14A immediately before the commencement day.
- (2) The permit has effect, on and after the commencement day, as if it were a permit granted under regulation 14B as mentioned in subregulation 14B(6).

**18 Transitional provision—applications for permits under regulation 14A**

- (1) This regulation applies to an application for a permit under regulation 14A that was made before the commencement day and was not finally determined before the commencement day.
- (2) On and after the commencement day, the application is taken to be (and may be dealt with as) an application for the grant of a permit under regulation 14B as mentioned in subregulation 14B(6).