

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2018 (No. 1)

The purpose of the *Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2018 (No. 1)* (the Declaration) is to make a consequential amendment to the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* to reflect the making of the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Amendment (Resolution 2397) Regulations 2018* (the Regulation).

Subsections 27(1) and (5) of the *Charter of the United Nations Act 1945* (the Act) provide respectively that individuals and bodies corporate commit an offence if they engage in conduct that contravenes a UN sanction enforcement law. The term ‘UN sanction enforcement law’ is defined in section 2 of the Act to mean a provision that is specified in an instrument under subsection 2B(1) of the Act. Section 2B provides that the Minister may, by legislative instrument, specify a provision of a law of the Commonwealth to be a UN sanction enforcement law to the extent that the provision gives effect to decisions that the United Nations Security Council has made under Chapter VII of the Charter of the United Nations, which Australia is required to carry out pursuant to Article 25 of the Charter.

The Declaration gives effect to certain provisions of United Nations Security Council Resolution (UNSCR) 2397 (2017), which Australia is required to implement pursuant to Article 25 of the Charter. By Item 1 of Schedule 1 of the Declaration, the Minister substituted the existing Schedule 1 of the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* with a replacement Schedule 1. The replacement Schedule 1 specifies the provisions of Commonwealth laws that are UN sanction enforcement laws pursuant to subsection 2B(1) of the Act for the purposes of section 27 and related provisions of the Act. The substituted Schedule includes references to all of the provisions of the *Charter of the United Nations (Sanctions-Democratic People’s Republic of Korea) Regulations 2008* (as amended by the Regulation) that are declared to be UN sanction enforcement laws. In particular, it adds references to Regulations 9A and 11CA of the *Charter of the United Nations (Sanctions-Democratic People’s Republic of Korea) Regulations 2008* (as amended by the Regulation).

Regulation 9A creates a prohibition on using an Australian pipeline, Australian railway, or a vehicle that is registered or required to be registered under a law of a State or Territory, to transport refined petroleum products, crude oil, industrial machinery, transportation vehicles, and iron steel and other metals (with an exception for the provision of spare parts needed to maintain the safe operation of DPRK commercial civilian passenger aircraft) for the purpose of supplying them to the Democratic People’s Republic of Korea (DPRK).

Regulation 11CA creates a prohibition on procuring fishing rights (directly or indirectly) from the DPRK, a person or entity in the DPRK, or a national of the DPRK.

No public consultation was undertaken under section 17 of the *Legislation Act 2003* before this instrument was made as it represents a minor amendment and does not substantially alter existing arrangements, in accordance with section 17(2) of the *Legislation Act 2003*. In addition, the instrument implements Australia's international legal obligations arising from a decision of the United Nations Security Council.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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By Item 1 of Schedule 1 of the Amendment Declaration, the Minister substituted the existing Schedule 1 of the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* with a replacement Schedule 1. The replacement Schedule 1 specifies the provisions of Commonwealth laws that are UN sanction enforcement laws pursuant to subsection 2B(1) of the Act for the purposes of section 27 and related provisions of the Act. The substituted Schedule includes references to all of the provisions of the *Charter of the United Nations (Sanctions-Democratic People’s Republic of Korea) Regulations 2008* (as amended by the Regulation) that are declared to be UN sanction enforcement laws. In particular, it adds references to Regulations 9A and 11CA of the *Charter of the United Nations (Sanctions-Democratic People’s Republic of Korea) Regulations 2008* (as amended by the Regulation).

Regulation 9A creates a prohibition on using an Australian pipeline, Australian railway, or a vehicle that is registered or required to be registered under a law of a State or Territory, to transport refined petroleum products, crude oil, industrial machinery, transportation vehicles, and iron steel and other metals (with an exception for the provision of spare parts needed to maintain the safe operation of DPRK commercial civilian passenger aircraft) for the purpose of supplying them to the Democratic People’s Republic of Korea (DPRK).

Regulation 11CA creates a prohibition on procuring fishing rights (directly or indirectly) from the DPRK, a person or entity in the DPRK, or a national of the DPRK.

Right to a fair hearing and right to liberty

The Declaration amends Schedule 1 of the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* to add Regulation 9A and Regulation 11CA of the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008*. This has the effect that Regulation 9A and 11CA are declared as 'UN sanction enforcement laws', meaning that contravening these prohibitions may, pursuant to section 27 of the *Charter of the United Nations Act 1945*, result in a penalty of imprisonment.

Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) protects the right to a fair trial and a fair hearing. Article 9 of the ICCPR protects the right to liberty, including the right not to be arbitrarily detained. The notion of arbitrariness incorporates elements of inappropriateness, injustice and lack of predictability.

In its Report No. 11 of 2017, the Parliamentary Joint Committee on Human Rights (the Committee) considered a previous amendment to the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*. The Committee noted that Australia's human rights obligations require that any interferences with a person's human rights must have a clear basis in law, meaning 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 Committee also expressed the view that regulations which are specified as 'UN sanction enforcement laws' by the Declaration may engage and limit the right to liberty, because they may result in a penalty of imprisonment for a person. The Committee expressed concern that the definition of UN sanction enforcement laws lacked sufficient certainty and could, in certain circumstances, result in arbitrary detention.

The Government considers that any limitation on human rights that may arise as a consequence of the inclusion of Regulation 9A and Regulation 11CA in the *Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2018 (No. 1)* is permissible and consistent with Australia's obligations under international human rights law. The new prohibitions in Regulation 9A and Regulation 11CA of the Regulation use clear language and terms, such as 'pipeline in Australia', 'railway in Australia', 'vehicle that is registered, or is required to be registered, under a law of a State or Territory' to delineate their application, and can be readily understood.

In expanding sanctions on the DPRK, the Declaration has the legitimate aim of modifying the DPRK's behaviour and demonstrating the international community's condemnation of the DPRK's actions. The Declaration also implements a binding decision of the United Nations Security Council pursuant to Chapter VII of the Charter, which Australia is required as a matter of international law to implement. The Government believes that the prohibitions in Regulation 9A and Regulation 11CA are a reasonable, necessary and proportionate means of achieving the legitimate and lawful objective of effecting change in the DPRK's behaviour and implementing a binding decision of the United Nations Security Council.

The Government notes that it keeps its sanctions regimes under regular review, and will continue to consider issues such as human rights compatibility going forward.