

## **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 (Shipping) Regulations 2018*

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. Section 6 of 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 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 (Shipping) Regulations 2018* (the Regulations) amends the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* (the principal Regulations) in order to give effect to certain provisions of United Nations Security Council (UNSC) Resolutions 2397, 2375, 2321 and 2270. These UNSC Resolutions are decisions under Chapter VII of the Charter, and Australia is required to carry them out pursuant to Article 25 of the Charter.

The Regulations implement measures in these UNSC Resolutions that require Australia to not register, or to de-register if already registered in Australia, vessels where:

- i) the Australian Government has reasonable grounds to believe that the vessel was involved in activities, or the transport of items, prohibited by UNSC Resolutions on the Democratic People’s Republic of Korea (DPRK);
- ii) the Australian Government has reasonable grounds to believe that the vessel is owned, controlled or operated by a DPRK person or entity, by a DPRK citizen, or by persons/entities acting on their behalf or controlled by them;
- iii) the vessel has been de-registered by a foreign country in accordance with that country’s obligations under UNSC Resolutions 2270 or 2321;
- iv) the vessel has been de-registered by a foreign country in accordance with that country’s obligations under UNSC Resolution 2397, and an approval from the UNSC’s DPRK sanctions committee (‘1718 Committee’) is not in effect in relation to that vessel;
- v) the vessel has been designated by the 1718 Committee for the asset freeze imposed by paragraph 8(d) of UNSC Resolution 1718; or

vi) the vessel has been designated by the 1718 Committee for the purposes of paragraph 12(a) of UNSC Resolution 2321.

The Regulations also introduce prohibitions on the provision of certain services to vessels as specified by the Minister for Foreign Affairs in accordance with UNSC sanction obligations. The Regulations also expand the existing permit making power in section 14H of the principal Regulations to allow certain activities that would otherwise be prohibited by UNSC Resolution 2397.

The Act does not provide for merits review. Accordingly, decisions by the Minister for Foreign Affairs under the Regulations will not be subject to merits review. The Act has the legitimate objective of giving domestic effect to UNSC resolutions and providing a foreign policy mechanism for the Australian Government to address situations of international concern. The exclusion of merits review in relation to sanctions-related decisions is warranted by the seriousness of the foreign policy and national security considerations involved, as well as the potentially sensitive nature of the evidence relied on in reaching those decisions. Where the UNSC has resolved that there will be limitations on engagement with a sanctioned regime, Australia, as a member of the United Nations, must comply with these international obligations. While merits review is unavailable for a decision by the Minister under the Regulations, an applicant can still seek judicial review of a decision.

Subsection 6(3) of the Act provides that, despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection 6(1) of the Act 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.

UNSC Resolutions, including those referred to in the Regulations, can be accessed free of charge on the internet at <http://www.un.org/en/sc/documents/resolutions/>. UNSC 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.

No public consultation was undertaken in relation to the Regulation under section 17 of the *Legislation Act 2003* because the instrument implements Australia's international legal obligations arising from decisions of the UNSC. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions. The Regulations were drafted in consultation with the Department of Infrastructure, Regional Development and Cities and the Australian Maritime Safety Authority (AMSA). AMSA administers Australia's shipping registers. DFAT will notify AMSA when notifiable instruments are made by the Minister for Foreign Affairs in accordance with the Regulations. Any instrument made would also be publically available on the Federal Register of Legislation.

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

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised. The Regulations are a legislative instrument for the

purpose of the *Legislation Act 2003*. The provisions of the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required when implementing a decision of the UNSC concerning sanctions (OBPR reference: 21407).

The Regulations are 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* as set out in Attachment B.

## ATTACHMENT A

### *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Amendment (Shipping) Regulations 2018*

#### 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 (Shipping) Regulations 2018*.

#### 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 Regulations make to the *Charter of the United Nations (Sanctions - Democratic People’s Republic of Korea) Regulations 2008* (principal Regulations).

#### **Item 1**

Item 1 introduces five new terms into the definitions set out in Regulation 4 of the 2008 Regulation, adopting the definitions contained in the *Shipping Registration Act 1981* (Shipping Registration Act).

#### **Item 2**

This item introduces into Part 1 of the principal Regulations provisions that give the Minister for Foreign Affairs the power to specify vessels for the purpose of giving effect to sanction measures with respect to the DPRK that have been imposed by the UNSC.

Regulation 8C allows the Minister for Foreign Affairs to specify, by notifiable instrument, a vessel for the purpose of cancelling that vessel’s registration under regulation 8G (item 3 below) and subjecting it to prohibitions on providing the vessel with classification, insurance or re-insurance services under regulation 11D (items 4, 6, 7 and 9 below). Under regulation 8C, the Minister may exercise this power if the Minister has reasonable grounds to believe that the vessel was involved in activities

prohibited by the specified UNSC Resolutions. Regulation 8C implements obligations in Operative Paragraph 12 of Resolution 2397.

Regulation 8D governs vessels that have not yet been registered under the Shipping Registration Act and allows the Minister for Foreign Affairs to specify, by notifiable instrument, a vessel for the purpose of prohibiting that vessel from being registered on Australia's General or International shipping registers under regulation 8F (item 3 below). Under subregulation 8D(1), the Minister may only exercise this power in certain instances. The first is where the Minister has reasonable grounds to believe the vessel's ownership, control or operation has a link to a DPRK person, DPRK entity or DPRK citizen of the of the kind specified in subparagraphs 8D(1)(a)(i)-(iv). 'DPRK person or entity' is defined in regulation 4 of the principal Regulations. However, under subregulation 8D(2), the 'ownership or control' threshold in paragraph 8D(1)(a) is not met if the only basis for listing would be that the vessel's captain, master or pilot or crew member is a DPRK resident or citizen. Under paragraphs 8D(1)(b) and 8D(1)(c), the Minister may also specify a vessel that has been de-registered by a foreign country in accordance with its UNSC obligations.

Regulation 8D implements the obligations in Operative Paragraph 19 of Resolution 2270, Operative Paragraph 24 of Resolution 2321, and Operative Paragraph 12 of Resolution 2397.

Regulation 8E allows the Minister for Foreign Affairs to specify, by notifiable instrument, a vessel for the purpose of cancelling that vessel's registration on Australia's General or International shipping registers. Regulation 8E mirrors Regulation 8D and implements the obligations in Operative Paragraph 19 of Resolution 2270, Operative Paragraphs 12(a) and 24 of Resolution 2321 and Operative Paragraph 8 of Resolution 2375.

### **Item 3**

Item 3 inserts a new Part into the principal Regulations that includes new regulations 8F, 8G and 8H.

Regulation 8F provides that a ship specified under new regulation 8D (item 2 above) must not be registered. This is the case notwithstanding provisions in the Shipping Registration Act that would otherwise oblige or permit registration on Australia's General or International shipping registers. Regulation 8F applies despite the provisions of the Shipping Registration Act by virtue of section 9(a) of the Act.

Regulation 8F implements the obligations in Operative Paragraph 19 of Resolution 2270, Operative Paragraph 24 of Resolution 2321, and Operative Paragraph 12 of Resolution 2397.

Regulation 8G provides that a ship that is on Australia's General or International shipping register that is specified under new regulations 8C or 8E (item 2 above) must have its registration cancelled.

In instances where the Registrar has cancelled a ship's registration in accordance with subregulation 8G(3), the ship ceases to be registered for the purposes of the Shipping

Registration Act (subregulation 8G(4)). Subregulations 8G(5)-(7) provide that where a ship's registration has been cancelled under subregulation 8G(3), the ship is no longer required or permitted to be registered in Australia's General or International shipping registers. This is the case even if a future application for registration is made under the Shipping Registration Act.

Regulation 8G thereby implements the obligations in Operative Paragraph 19 of Resolution 2270, Operative Paragraphs 12(a) and 24 of Resolution 2321 and Operative Paragraph 8 of Resolution 2375.

Regulation 8H provides that the definition of 'Australian ship' in the *Criminal Code Act 1995* is not affected by Regulations 8F or 8G.

#### **Item 4**

Regulation 11D of the principal Regulations imposes a number of restrictions on vessel ownership and registration. It is a UN sanction enforcement law as specified under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, meaning that the offence provisions in Part 5 of the Act apply.

Item 4 expands the existing prohibitions set out in subregulation 11D(1) of the principal Regulations. It prohibits, unless a permit has been issued under regulation 14H of the principal Regulations, the provision of a classification service to a vessel specified for the purposes of the new regulation 8C (item 2 above), where that vessel has had its registration cancelled under the new regulation 8G (item 3 above). This implements obligations in Operative Paragraph 12 of Resolution 2397.

#### **Item 5**

Item 5 is a consequential amendment which accounts for the introduction of the new subparagraph 11D(1)(a)(vii) (Item 6 below). It has no substantive effect.

#### **Item 6**

Regulation 11D of the principal Regulations imposes a number of restrictions on vessel ownership and registration. It is a UN sanction enforcement law as specified under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, meaning that the offence provisions in Part 5 of the Act apply.

Item 6 expands the existing prohibitions set out in subregulation 11D(1) of the principal Regulations. It prohibits, unless a permit has been issued under regulation 14H of the principal Regulations, the provision of insurance or reinsurance services to a vessel specified for the purposes of the new regulation 8C (item 2 above). This implements obligations in Operative Paragraph 11 of Resolution 2397.

#### **Item 7**

Regulation 11D of the principal Regulations imposes a number of restrictions on vessel ownership and registration. It is a UN Sanction enforcement law as specified

under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, meaning that the offence provisions in Part 5 of the Act apply.

Subregulation 11D(4) provides that a body corporate will be liable for the actions of another body corporate over which it has effective control, if the other body corporate does any of the prohibited activity set out in paragraph 11D(4)(b).

Item 7 expands the existing prohibitions set out in paragraph 11D(4)(b) of the principal Regulations. It prohibits, unless a permit has been issued under regulation 14H of the principal Regulations, the provision of classification services to vessels specified for the purposes of the new regulation 8C (item 2 above), where that vessel has had its registration cancelled under the new regulation 8G (item 3 above). This implements obligations in Operative Paragraph 12 of Resolution 2397.

### **Item 8**

Item 8 is a consequential amendment to account for the introduction of the new subparagraph 11D(4)(b)(vii) (item 9 below). It has no substantive effect.

### **Item 9**

Regulation 11D of the principal Regulations imposes a number of restrictions on vessel ownership and registration. It is a UN sanction enforcement law as specified under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*, meaning that the offence provisions in Part 5 of the Act apply.

Subregulation 11D(4) provides that a body corporate will be liable for the actions of another body corporate over which it has effective control, if the other body corporate does any of the prohibited activity set out in paragraph 11D(4)(b).

Item 9 expands the existing prohibitions set out in paragraph 11D(4)(b) of the principal Regulations. It prohibits, unless a permit has been issued under regulation 14H of the principal Regulations, the provision of insurance or reinsurance services to a vessel specified for the purposes of the new regulation 8C (item 2 above). This implements obligations in Operative Paragraph 11 of Resolution 2397.

### **Item 10**

Under Regulation 14H of the principal Regulations, the Minister for Foreign Affairs may grant a permit authorising activity in respect of a vessel that would otherwise be prohibited under paragraph 11D(1)(a) or 11D(4)(b). The circumstances under which a permit may be granted reflects the requirements of the relevant UNSC resolutions relating to the DPRK.

Item 10 provides that the Minister may grant a permit authorising the provision of insurance or reinsurance services to a vessel specified by the Minister under regulation 8C despite the new prohibition on such activity (items 6 and 9 above). Under new subregulation 14H(2)(c), a permit may only be granted if the UN Committee established by paragraph 12 of UNSCR 1718 has made a determination that the vessel is engaged in activities exclusively for livelihood purposes which will

not be used by DPRK individuals and entities to generate revenue, or exclusively for humanitarian purposes. This implements obligations in Operative Paragraph 11 of Resolution 2397.



**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 (Shipping) Regulations 2018*

This Legislative 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*.

**Overview**

The Regulations amend the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* (the principal Regulations) in order to give effect to certain provisions of United Nations Security Council (UNSC) Resolutions 2397, 2375, 2321 and 2270. These UNSC Resolutions are decisions under Chapter VII of the Charter of the United Nations (the Charter), and Australia is required to carry them out pursuant to Article 25 of the Charter.

The Regulations implement measures in these UNSC Resolutions that require Australia to not register, or to de-register if already registered in Australia, vessels where:

- i) the Australian Government has reasonable grounds to believe that the vessel was involved in activities, or the transport of items, prohibited by UNSC Resolutions on the Democratic People’s Republic of Korea (DPRK);
- ii) the Australian Government has reasonable grounds to believe that the vessel is owned, controlled or operated by a DPRK person or entity, by a DPRK citizen, or by persons/entities acting on their behalf or controlled by them;
- iii) the vessel has been de-registered by a foreign country in accordance with that country’s obligations under UNSC Resolutions 2270 or 2321;
- iv) the vessel has been de-registered by a foreign country in accordance with that country’s obligations under UNSC Resolution 2397, and an approval from the UNSC’s DPRK sanctions committee (‘1718 Committee’) is not in effect in relation to that vessel;
- v) the vessel has been designated by the 1718 Committee for the asset freeze imposed by paragraph 8(d) of UNSC Resolution 1718; or
- vi) the vessel has been designated by the 1718 Committee for the purposes of paragraph 12(a) of UNSC Resolution 2321.

In addition, the Regulations also introduce prohibitions on the provision of certain services to vessels as specified by the Minister for Foreign Affairs in accordance with UNSC sanction obligations. The Regulations also expand the existing permit making power in section 14H of the principal Regulations to allow certain activities that would otherwise be prohibited by UNSC Resolution 2397.

### **Advancement of Human Rights**

The UNSC in Resolutions 2270, 2321 and 2375 has determined that the DPRK's ongoing nuclear and ballistic missile-related activities continue to present a clear threat to international peace and stability.

The Regulations advance human rights by ensuring that persons and entities who act in a way that undermines international efforts aimed at denuclearizing the Korean Peninsula are subject to UNSC sanction measures. UNSC Resolution 1718 and subsequent supporting resolutions recognise the importance of Member States preventing the direct or indirect supply of arms and sanctioned goods that contribute to the DPRK's nuclear, missile and weapons of mass destruction programmes, including through their flagged vessels.

The Regulations implement a binding decision of the UNSC pursuant to Chapter VII of the Charter, which Australia is required as a matter of international law to implement.

The Parliamentary Joint Committee on Human Rights (PJCHR) has accepted that the use of sanctions to apply pressure to regimes and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law. However, it has emphasised that Australia's sanctions regimes should be proportionate to their stated objective.

The Regulations engage the following human rights:

- the right to security of the person and freedom from arbitrary detention in Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR)
- the right to a fair trial and fair hearing in Article 14 of the ICCPR, and
- the right to equality and non-discrimination in Article 26 of the ICCPR.

### **Right to security of the person and freedom from arbitrary detention**

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.

### Report

The PJCHR has previously expressed the view that Regulations which are specified as 'UN sanctions enforcement laws' under the *Charter of the United Nations* (UN

*Sanction Enforcement Law) Declaration 2008* may engage and limit the right to liberty, because they may result in a penalty of imprisonment for a person.

In its Report No. 11 of 2017, the PJCHR noted that Australia's human rights obligations require that 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 PJCHR further noted that measures limiting the right to liberty must be sufficiently precise such that people who would potentially be subject to them are aware of the consequences of their actions.

### Permissible limitations

The Regulations introduce prohibitions on providing classification and insurance or reinsurance services to a specified vessel through the new subparagraphs 11D(1)(a)(iia), 11D(1)(a)(vii), 11D(4)(b)(iia) and 11D(4)(b)(vii) of regulation 11D of the principal Regulations. Because regulation 11D is specified as a 'UN sanction enforcement law' under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008* (the Declaration), contravening these prohibitions may, under Part 5 of the *Charter of the United Nations Act 1945* (the Act), result in a penalty of imprisonment and, accordingly, engage the right to liberty.

The Government considers that any limitation on human rights that may arise as a consequence of these prohibitions constituting a UN sanction enforcement law is permissible and consistent with Australia's obligations under international human rights law.

The new prohibitions under regulation 11D on providing classification, insurance or reinsurance services apply only to vessels specified under regulation 8C, the identity of which can be determined by reference to any notifiable instrument made under that regulation, as available on the Federal Register of Legislation (<https://www.legislation.gov.au/Home>). Furthermore, regulation 8G provides that where a vessel is specified by the Minister for Foreign Affairs under Regulation 8C or 8E, the Registrar must give written notice of the cancellation of the vessel's registration to each person registered as an owner of the ship, specifying the reason for the cancellation.

The Government considers the additional prohibitions introduced in regulation 11D are a reasonable, necessary and proportionate means of achieving the legitimate objective of the Regulations, and implementing a binding decision of the UNSC.

### **Right to a fair trial and fair hearing: presumption of innocence**

Article 14(1) of the ICCPR protects the right to a fair trial and fair hearing. The right concerns procedural fairness, and applies where rights and obligations, such as personal property and other private rights, are to be determined. Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

## Report

The PJCHR has previously expressed the view, with respect to sanctions designations or declarations made under Australian sanctions law that are not subject to merits review, that Article 14 of the ICCPR is engaged in so far as they limit the avenues available to challenge the decision. The PJCHR *Guidance Note 2: Offence provisions, civil penalties and human rights* notes that, as strict liability offences allow for the imposition of criminal liability without the need to prove fault, strict liability offences interact with the presumption of innocence in Article 14(2) of the ICCPR.

## Permissible limitations

With respect to the right to a fair hearing, the Government's position is that any limitation on the access to merits review is justified. The Regulations have the legitimate objective of complying with international law obligations imposed on Australia as a member of the United Nations. The Act does not provide for merits review. Accordingly, a decision under the Regulations by the Minister for Foreign Affairs to specify a vessel reasonably believed to be involved in activities prohibited by the relevant UNSC Resolutions or to be owned, controlled or operated by the DPRK, is not subject to merits review.

The limitation on access to merits review in this context is reasonable as it reflects the seriousness of the foreign policy and national security considerations involved, as well as the nature of the material relied upon. Further, judicial review is available under the *Administrative Decisions (Judicial Review) Act 1976*.

With respect to the presumption of innocence, the PJCHR Guidance Note acknowledges that a strict liability offence will not necessarily be inconsistent with the presumption of innocence where it is reasonable, necessary and proportionate in pursuit of a legitimate objective.

The UNSC and Australia impose sanctions on the DPRK in an attempt to modify its behaviours with respect to the DPRK's nuclear, weapons of mass-destruction and missile programs. Sanctions impact the DPRK's ability to participate in international trade and the global economy, and as such there is considerable profit in breaching sanction measures.

The new prohibitions that have been incorporated into regulation 11D of the principal Regulations on providing classification, insurance or reinsurance services without a sanctions permit are, by virtue of section 27 of the Act, strict liability offences for bodies corporate. However, the offence does not apply to a body corporate if it proves that it took reasonable precautions and exercised due diligence to avoid contravening the prohibitions set out in regulation 11D.

The origin of the strict liability offences for bodies corporate in the Act is Recommendation 2 of the report, dated 24 November 2006, of the Inquiry into certain Australian companies in relation to the Oil-for-Food Programme conducted by Commissioner the Honourable Terrence RH Cole AO RFD QC (the Cole Inquiry). Commissioner Cole proposed that there be new strict liability criminal offences with severe penalties for acting contrary to Australian law implementing UNSC sanctions

to ensure a sufficient deterrent effect for bodies corporate. The imposition of strict liability on bodies corporate is necessary to preserve the integrity of the sanctions regulatory regime and ensure that Australia complies with its obligations under international law.

Accordingly, the government considers that the imposition of strict liability is reasonable, necessary and proportionate in this context.

### **Right to equality and non-discrimination**

The right to equality and non-discrimination under Article 26 of the ICCPR provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that people are equal before the law and are entitled without discrimination to the equal and non-discriminatory protection of the law.

Differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria, serves a legitimate objective, and is a proportionate means of achieving that objective.

### Report

In a different but related context, the PJCHR considered the extent to which Australia's autonomous sanctions engage Article 26 of the ICCPR. It noted that designating persons for targeted financial sanctions may result in indirect discrimination on the basis of national origin or nationality, expressing the view that designations or declarations in relation to specified countries appeared to have a disproportionate impact on persons on the basis of national origin or nationality.

### Permissible limitations

The Regulations preserve the integrity of Australia's shipping registers to prevent Australian-registered vessels from contributing to the DPRK's nuclear, weapons of mass-destruction and missile programs or assisting in the evasion of UNSC sanctions on the DPRK (including through ship-to ship transfers). The Regulations reflect the specification criteria set out in UNSC Resolutions directed at prohibiting the registration of DPRK owned or controlled vessels, or vessels involved in activities prohibited by UNSC sanction measures.

The UNSC sanction measures—which are designed to impact the DPRK—deliberately focus on DPRK persons and entities. However, the Regulations are reasonable and proportionate in that there is a safeguard to prevent a person's DPRK nationality or residency being the sole factor on which a vessel's specification rests. Subregulations 8D(2) and 8E(2) specifically provide that the ownership or control threshold of which the Minister for Foreign Affairs must be satisfied in order to specify a vessel is not met if the only basis for listing would be that the vessel's captain, mater, pilot or crew member is a DPRK resident or citizen.

The government's position is that the specification of vessels as a consequence of the application of the Regulations does not amount to discrimination pursuant to

Article 26 of the ICCPR. It is an appropriate and necessary measure to give effect to UNSC resolutions which have determined that it is in the interests of international peace and security for DPRK entities and persons to have their access to shipping registers restricted.

### **Summary**

As described above, in expanding sanctions on the DPRK, the Regulations have the legitimate aim of modifying the DPRK's behaviour and demonstrating the international community's condemnation of the DPRK's actions. The Regulations also implement 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. In accordance with the description of the Regulations above, the Government believes that the relevant measures are reasonable, necessary and proportionate in 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.