

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) Instrument 2017*

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 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 United Nations Security Council Security Council 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 United Nations Security Council Resolution 1718 (2006) provides that Member States must prohibit the procurement of all 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) Instrument 2017 (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*. It lists documents specified by the Minister with reference to decisions of the United Nations Security Council Committee Established Pursuant to Resolution 1718 (2006) (**the Committee**) and resolutions of the United Nations Security Council. The documents referred to in the DPRK Instrument list certain goods decided by the Committee and the United Nations Security Council to be goods prohibited for export to, and import from, the DPRK.

The DPRK Instrument repeals the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Document List 2014*. It contains the same list of documents as the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Document List 2014* and adds two more documents (S/2016/308 and S/2016/1069) listing goods that the Committee has decided should not be exported to, or imported from, the DPRK. It also deletes two documents (INFCIRC/254/Rev.8/Part 2 and INFCIRC/254/Rev.11/Part 1) that were superseded by two other documents on the list (INFCIRC/254/Rev.9/Part 2 and INFCIRC/254/Rev.12/Part 1, respectively).

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*.

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.

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.

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) Instrument 2017

The *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) (Documents) Instrument 2017 (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 creates a list of documents, as specified by the Minister pursuant to the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008*, that reference 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. These exports or imports 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.