

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Sanctioned Vessels – Democratic People’s Republic of Korea) Designation 2015

The *Autonomous Sanctions Regulations 2011* (the Regulations) commenced on 15 December 2011. The purpose of the Regulations is to facilitate the conduct of Australia’s relations with certain countries, and with specific entities or persons outside Australia, through the imposition of autonomous sanctions in relation to those countries, or targeting those entities or persons.

Paragraph 8 (1) (a) of the Regulations authorises the Minister for Foreign Affairs (the Minister), by legislative instrument, to designate a vessel as a sanctioned vessel for a country mentioned in the designation. Paragraph 8 (4) of the Regulations authorises the Foreign Minister to direct a sanctioned vessel to leave Australia, including by a particular route; or not enter a particular port or place, or any port or place, in Australia. The Foreign Minister must have regard to Australia’s obligations at international law in giving the direction. Paragraph 17 of the Regulations authorises the forfeiture of the sanctioned vessel if a direction is given to the sanctioned vessel under subregulation 8(4) and the sanctioned vessel contravenes the direction.

Each vessel listed in Schedule 1 of the *Autonomous Sanctions (Sanctioned Vessels – Democratic People’s Republic of Korea) Designation 2015* (the DPRK Sanctioned Vessel List) is designated by the Minister for the purposes of paragraph 8 (1) (a) of the Regulations. The Democratic People’s Republic of Korea (DPRK) is a country mentioned in an item of the table in regulation 6, and each vessel listed in Schedule 1 of the DPRK Sanctioned Vessels List is owned, controlled or managed by a designated entity that the Minister is satisfied is associated with the DPRK’s weapons of mass destruction program or missiles program.

The corresponding authority for the Minister to revoke designations made under regulation 8 is found in paragraph 10 (1) (a) of the Regulations. Sub-regulations 10 (2) and (5) provides that the Minister may revoke a designation on the Minister’s initiative, or on application.

The imposition of further Australian autonomous sanctions is designed to increase pressure on the DPRK to comply with its nuclear non-proliferation and missile program consistent with United Nations Security Council resolutions, and to engage in serious negotiations on its nuclear and missile programs. The new sanctions allow the Foreign Minister to give directions to 18 sanctioned vessels, owned or controlled by a DPRK company that is a designated entity under the Regulations or the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* and which is associated with the DPRK’s missile proliferation activities.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the DPRK Sanctioned Vessels List are part, has been the subject of extensive consultation with governmental and non-governmental stakeholders since May 2010.

The Department of Foreign Affairs and Trade (the Department) conducts ongoing public consultations, including with the Australian business community, in relation to these types of measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument.

In order to meet the policy objective of prohibiting unauthorised entry into Australian ports of the vessels specified in the DPRK Sanctioned Vessels List, the Department is satisfied that wider consultations beyond those it has already undertaken would be inappropriate (sub-sections 18 (1) and (2) (e) of the *Legislative Instruments Act 2003*).

Statement of Compatibility with Human Rights

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

Autonomous Sanctions (Sanctioned Vessels – Democratic People’s Republic of Korea) List 2015 (No 1)

The *Autonomous Sanctions (Sanctioned Vessels – Democratic People’s Republic of Korea) List 2015 (No 1)* (the Sanctioned Vessels List) 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 owner of a sanctioned vessel, or the person who controls a sanctioned vessel, may apply to the Minister for the revocation of the designation under paragraph 11 (1) (d) and (e) of the Regulations. Decisions under both paragraphs 8 and 11 of the Regulations are judicially reviewable.

The designation of a vessel under paragraph 8 (1) (a) of the Regulations does not affect title to the vessel by its owner, or the person under whose control it is. A sanctioned vessel can however be forfeited to the Commonwealth under paragraph 17 of the Regulations if a direction is given to the vessel pursuant to paragraph 8 (4), and the vessel contravenes the direction. This paragraph does not apply if the contravention is necessary to secure the safety of the vessel or human life, or is authorised or required under Part IIIAAA of the *Defence Act 1903*.