

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Classes of Sanctioned Vessels - Democratic People's Republic of Korea) Designation 2017

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. Subregulation 8(1) of the Regulations authorises the Minister for Foreign Affairs, by legislative instrument, to designate a vessel as a sanctioned vessel for a country mentioned in the designation, or to designate each vessel in a class of vessels as a sanctioned vessel for a country mentioned in the designation.

Subregulation 8(4) of the Regulations authorises the Minister for Foreign Affairs to direct a sanctioned vessel to leave Australia, including by a particular route, or to not enter a particular port or place, or any port or place, in Australia. The purpose of the authority provided by section 8 of the Regulations is to allow the Minister to restrict or prevent the use of, dealing with, or making available of, assets, as provided for in subsection 10(1)(b) of the *Autonomous Sanctions Act 2011*.

Regulation 16 of the Regulations prohibits engaging in conduct that causes a sanctioned vessel to contravene a direction that has been given by the Minister of Foreign Affairs under subregulation 8(4) of the Regulations. Regulation 16 of the Regulations is specified as a sanction law by the *Autonomous Sanctions (Sanction Law) Declaration 2012*. This means that a person who contravenes Regulation 16 of the Regulations commits an offence under section 16 of the *Autonomous Sanctions Act 2011*. Furthermore, Regulation 17 of the Regulations provides that where a direction is given to a sanctioned vessel under subregulation 8(4), and the vessel contravenes that direction, the vessel is forfeited to the Commonwealth.

The *Autonomous Sanctions (Classes of Sanctioned Vessels - Democratic People's Republic of Korea) Designation 2017* (the Instrument) defines the 'DPRK vessel class', and designates each vessel that comes within the 'DPRK vessel class' as a 'sanctioned vessel' under paragraph 8(1)(b) of the Regulations.

The Instrument does not affect the operation of the *Autonomous Sanctions (Sanctioned Vessels - Democratic People's Republic of Korea) Designation 2015*, which remains in effect.

The three categories of individuals referred to in item 7 of the table in section 4 of the Instrument are not intended to be mutually exclusive. For example, an individual could be a resident of the DPRK and a citizen of the DPRK.

The imposition of sanctions, including through the designation of vessels, is designed to increase pressure on the DPRK to comply with its non-proliferation obligations consistent with United Nations Security Council resolutions, and to engage in serious negotiations on its nuclear and missile programs.

On 28 February 2017, an exposure draft of an instrument to similarly designate such vessels was made available for public comment as part of the public consultation process over a proposed expansion of Australia's autonomous sanctions against North Korea. Public consultations closed on 17 March 2017, with no specific submissions received concerning the exposure draft. Relevant Government agencies were also consulted on the exposure draft, and their input was considered in preparing the Instrument.

Statement of Compatibility with Human Rights

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

Autonomous Sanctions (Classes of Sanctioned Vessels - Democratic People's Republic of Korea) Designation 2017

The *Autonomous Sanctions (Classes of Sanctioned Vessels - Democratic People's Republic of Korea) Designation 2017* (the 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 Instrument defines the 'DPRK vessel class', and designates each vessel that comes within the 'DPRK vessel class' as a 'sanctioned vessel' under paragraph 8(1)(b) of the Regulations. Under subregulation 8(4) of the Regulations, the Minister for Foreign Affairs can direct a sanctioned vessel to leave Australia, including by a particular route, or to not enter a particular port or place, or any port or place, in Australia.

Such a direction does not affect title to the designated vessel or to cargo that it is carrying. Subregulation 8(5) of the Regulations provides that before giving such a direction, the Minister must have regard to Australia's obligations at international law. Subregulation 11(1) of the Regulations provides for the owner of a sanctioned vessel, or the person who controls a sanctioned vessel, to apply to the Minister for Foreign Affairs to revoke that vessel's designation.

Subregulation 16(3) of the Regulations provides that the prohibition on conduct that causes a sanctioned vessel to contravene a direction given by the Minister for Foreign Affairs under subregulation 8(4) does not apply if the conduct is necessary to secure the safety of the sanctioned vessel or human life. Subregulation 17(2) of the Regulations provides that forfeiture of a sanctioned vessel to the Commonwealth for contravention of a direction under subregulation 8(4) does not apply if the contravention is necessary to secure the safety of the sanctioned vessel or human life.

The Department of Foreign Affairs and Trade (DFAT) conducted a public consultation process and consulted relevant Commonwealth Government departments.

The Instrument is compatible with human rights because the limitations on conduct that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.