

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

### *Autonomous Sanctions Act 2011*

### *Autonomous Sanctions Amendment (Democratic People's Republic of Korea) Regulations 2017*

Section 28 of the *Autonomous Sanctions Act 2011* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Autonomous Sanctions Regulations 2011* (the Principal Regulations) facilitate the conduct of Australia's relations with the Democratic People's Republic of Korea (DPRK), and with specific entities or persons outside Australia, through the imposition of autonomous sanctions in relation to the DPRK, and through targeting those entities or persons.

The *Autonomous Sanctions Amendment (Democratic People's Republic of Korea) Regulations 2017* (the Regulations) amend the Principal Regulations by imposing additional sanctions in respect of the DPRK in accordance with the media releases of the Minister for Foreign Affairs dated 2 December 2016 and 28 February 2017.

The Regulations:

- permit the Minister for Foreign Affairs to designate for targeted financial sanctions and/or declare for the purposes of a travel ban, a person or entity:
  - that the Minister is satisfied *has been associated* with the DPRK's weapons of mass-destruction program or missiles program (previously, the criteria required that the Minister for Foreign Affairs be satisfied that the person or entity *is* associated with the DPRK's weapons of mass-destruction program or missiles program); and
  - that the Minister is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of certain United Nations Security Council Resolutions that relate to the DPRK and subsequent resolutions relevant to those resolutions.
- establish each of the following as a service for the DPRK that are prohibited without a permit:
  - the provision of any service to Air Koryo;
  - the provision to any person or entity of any service that assists with, or is provided in relation to, an extractive or related industry in the DRPK;

- the provision to any person or entity of any service that assists with, or is provided in relation to, the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an extractive or related industry in the DPRK; and
- the provision to a DPRK person or entity, a person or entity acting on behalf of (or at the direction of) a DPRK person or entity, or an entity owned or controlled by a DPRK person or entity, of any service that assists with, or is provided in relation to, an extractive or related industry outside the DPRK.
- establish a number of activities that each constitute a commercial activity prohibited without a permit:
  - obtaining of any asset that is a tenement or permission (however described) in relation to an extractive or related industry in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an extractive or related industry in the DPRK;
  - using, dealing with or making available any asset for the purpose of obtaining any tenement or other permission (however described) in relation to an extractive or related industry in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an extractive or related industry in the DPRK;
  - obtaining, directly or indirectly, any tenement or permission (however described) in relation to an extractive or related industry in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an extractive or related industry in the DPRK from a DPRK person or entity, a person or entity acting on behalf of (or at the direction of) a DPRK person or entity, or an entity owned or controlled by a DPRK person or entity;
  - selling or making available (otherwise than by sale) an interest in a commercial activity in an extractive or related industry in Australia to a DPRK person or entity, a person acting on behalf of (or at the direction of) a DPRK person or entity, or an entity owned or controlled by a DPRK person or entity;
  - acquiring or extending an interest in a person or entity mentioned in the table below;
  - establishing or participating in a joint venture, partnership or other business relationship with a person with a person or entity mentioned in the table below; and

- granting a financial loan or credit to a person or entity mentioned in the table below

Item	Person or entity
1	A person or entity, wherever located, that is engaged in an extractive or related industry in the DPRK.
2	A person or entity, wherever located, that is engaged in the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an extractive or related industry in the DPRK.
3	A person or entity acting on behalf of, or at the direction of, a person or entity mentioned in item 1 or 2.
4	An entity owned or controlled by a person or entity mentioned in item 1 or 2.
5	A person or entity, wherever located, that: <ul style="list-style-type: none"> <li>(a) is engaged in an extractive or related industry outside the DPRK; and</li> <li>(b) is any of the following: <ul style="list-style-type: none"> <li>(i) a DPRK person or entity;</li> <li>(ii) a person or entity acting on behalf of, or at the direction of, a DPRK person or entity;</li> <li>(iii) an entity owned or controlled by a DPRK person or entity.</li> </ul> </li> </ul>

On 28 February 2017, an exposure draft of the Regulations was made available for public comment. Public consultations closed on 17 March 2017, and submissions received were considered in preparing the final draft of the Regulation.

Relevant Government agencies were also consulted on the exposure draft, and their input considered in preparing the final draft of the Regulations.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR reference: 22086 ).

Subsection 10(3) of the *Autonomous Sanctions Act 2011* provides that, despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection 10(1) of the *Autonomous Sanctions Act 2011* 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.

The existing United Nations Security Council Resolutions referred to in paragraph (b)(i) of the replacement cell set out in Item 1 can be accessed free of charge at <http://www.un.org/en/sc/documents/resolutions/> and any subsequent resolutions relevant to those resolutions (as set out in paragraph (b)(ii) of the replacement cell set out in Item 1) will also be able to be accessed free of charge at that website.

United Nations Security Council 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.

Further, the reference to current and future United Nations Security Council Resolutions in this instrument relate only to the criteria upon which the Minister for Foreign Affairs can designate persons or entities for targeted financial sanctions and/or declare persons for the purposes of a travel ban. There is no effect on any person or entity until such a designation and/or declaration is made.

Full details of the Regulations are set out in the Attachment.

## **Statement of Compatibility with Human Rights**

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

*Autonomous Sanctions Amendment (Democratic People's Republic of Korea) Regulations 2017*

The *Autonomous Sanctions Amendment (Democratic People's Republic of Korea) Regulations 2017* (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*.

The Regulations expand the grounds upon which the Minister for Foreign Affairs can designate persons/entities for targeted financial sanctions and travel bans. These sanctions do not affect the title to any asset owned or controlled by the designated person or entity. A designated person or entity may apply for a permit to draw on its frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or for fees or service charges that are in accordance with a law in force in Australia for the routine holding or maintenance of frozen assets (Part 4 of the *Autonomous Sanctions Regulations 2011*).

The Minister for Foreign Affairs may also waive the operation of a travel ban on humanitarian grounds (Paragraph 19(3)(b) of the *Autonomous Sanctions Regulations 2011*).

The Department of Foreign Affairs and Trade (DFAT) conducted a public consultation process and consulted relevant Commonwealth Government departments prior to and during the drafting of the Regulations.

While the Regulations impose additional obligations on Australians, those obligations are required for the operation of the intensified sanctions.

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

## ATTACHMENT

### Details of the *Autonomous Sanctions Amendment (Democratic People’s Republic of Korea) Regulations 2017 (the Regulations)*

#### Section 1

Section 1 provides that the title of the instrument is the *Autonomous Sanctions Amendment (Democratic People’s Republic of Korea) Regulations 2017*.

#### Section 2

Section 2 provides for commencement timeframes for the various provisions of the instrument, being either the day after the instrument is registered, or the day after the end of the period of 1 month beginning on the day this instrument is registered.

#### Section 3

Section 3 provides that the instrument is made under the *Autonomous Sanctions Act 2011*.

#### 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**

Schedule 1 sets out the changes that the Regulations make to the *Autonomous Sanctions Regulations 2011*.

#### Item 1

Item 1 replaces the cell at table item 1, column headed “Activity” in subregulation 6(1). Previously, subregulation 6(1) permitted the Minister for Foreign Affairs to designate for targeted financial sanctions and/or declare for the purposes of a travel ban, persons or entities “that the Minister is satisfied is associated with the DPRK’s weapons of mass-destruction program or missiles program”.

The replacement cell effectively means that subregulation 6(1) now additionally permits the designation and/or declaration of persons or entities:

- that the Minister is satisfied *has been associated* with the DPRK’s weapons of mass-destruction program or missiles program; and
- that the Minister is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of: (1) the listed United Nations Security Council

Resolutions (which relate to the DPRK); and (2) subsequent resolutions relevant to those resolutions.

### Item 2

Item 2 adds a definition of “DPRK person or entity” (see discussion of Items 10 and 11 below). The reference to “an individual who is in, or a resident of, the DPRK” in paragraph (g) of this definition includes a national/citizen of the DPRK “who is in, or a resident of, the DPRK”.

Item 2 also adds a definition of “extractive or related industry” (see discussion of Items 10 and 11 below).

### Item 3

Item 3 adds a reference to regulation 5CA to the definition of “sanctioned commercial activity” in Regulation 3 (see discussion of Item 11 below).

### Items 4 to 9

Items 4 to 9 add additional headings.

### Item 10

Item 10 establishes each of the following as a “sanctioned service” for the DPRK:

- The provision of any service to Air Koryo;
- The provision to any person or entity of any service that assists with, or is provided in relation to, an “extractive or related industry” in the DPRK;
- The provision to any person or entity of any service that assists with, or is provided in relation to, the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an “extractive or related industry” in the DPRK; and
- The provision to a “DPRK person or entity”, a person or entity acting on behalf of (or at the direction of) a “DPRK person or entity”, or an entity owned or controlled by a “DPRK person or entity”, of any service that assists with, or is provided in relation to, an “extractive or related industry” outside the DPRK.

### Item 11

Item 11 establishes a number of activities that will each constitute a “sanctioned commercial activity”:

- Acquiring or extending an interest in a person or entity mentioned in the table in subregulation 5CA(1);

- Establishing or participating in a joint venture, partnership or other business relationship with a person with a person or entity mentioned in the table in subregulation 5CA(1);
- Granting a financial loan or credit to a person or entity mentioned in the table in subregulation 5CA(1);
- Selling or making available (otherwise than by sale) an interest in a commercial activity in an “extractive or related industry” in Australia to a person or entity mentioned in the table in subregulation 5CA(2);
- Obtaining of any asset that is a tenement or permission (however described) in relation to an “extractive or related industry” in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an “extractive or related industry” in the DPRK;
- Using, dealing with or making available any asset for the purpose of obtaining any tenement or other permission (however described) in relation to an “extractive or related industry” in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an “extractive or related industry” in the DPRK; and
- Obtaining, directly or indirectly, any tenement or permission (however described) in relation to an “extractive or related industry” in the DPRK or in relation to the creation, construction, installation, development, maintenance or decommissioning of infrastructure associated with an “extractive or related industry” in the DPRK from a person or entity mentioned in the table in subregulation 5CA(2).

### Item 12

Item 12 adds a reference to regulation 5CA to paragraph 5D(d) permitting the Minister to specify that an activity mentioned in regulation 5CA (see discussion of Item 11 above) is not a sanctioned commercial activity.