

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020

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.

Autonomous sanctions are measures not involving the use of armed force which a government imposes as a matter of foreign policy—as opposed to an international obligation under a United Nations Security Council decision—in response to situations of international concern. Such situations include the threats to regional peace and stability posed by the Democratic People’s Republic of Korea’s (DPRK) nuclear, other weapons of mass destruction and ballistic missile programs, and related proliferation activities.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provisions relating to, amongst other things, the proscription of persons or entities for autonomous sanctions. The Regulations enable the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions and/or declare a person for the purposes of a travel ban, if they satisfy a range of criteria, as set out in regulation 6.

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two types of targeted financial sanctions under the Regulations:

- the designated person or entity becomes the object of the prohibition in regulation 14 (which prohibits directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, other than as authorised by a permit granted under regulation 18); and
- any asset owned or controlled by a designated person or entity is a “controlled asset” and subject to the prohibition in regulation 15 (which requires a person who holds a controlled asset to freeze that asset, by prohibiting that person from either using or dealing with that asset, or allowing it to be used or dealt with, or facilitating the use of or dealing with it, other than as authorised by a permit granted under regulation 18).

The purpose of a declaration is to prevent a person from travelling to, entering or remaining in Australia.

Designated and declared persons, and designated entities, in respect of the DPRK are listed in the *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) List 2012*.

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020* (the Instrument) gives effect to a review of the designations and, where relevant, declarations of 41 persons entities that were either made or continued in effect by the Minister in December 2017 and January 2018. Under subregulation 9(1) of the Regulations, these designations and declarations cease to have effect three years after the date on which they took effect or were renewed, unless the Minister declares they are to continue pursuant to subregulation 9(3).

The Instrument continues under subregulation 9(3) of the Regulations the designations and declarations from 2017 and 2018. The Minister made the Instrument being satisfied that each of the persons and entities meets the current criteria set out in item 1 of the table in subregulation 6(1) and is a person or entity that:

- a) is, or has been, associated with the DPRK’s weapons of mass destruction program or missiles program; or
- b) is assisting, or has assisted, in the violation, or evasion, by the DPRK of UN Security Council Resolutions 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321, or a subsequent resolution with respect to the DPRK.

The Instrument also declares Jacob Steiger for purposes of paragraph 6(1)(b) of the Regulations as being subject to a travel ban and designates the Songhwa Joint Bank as a designated entity for the purposes of paragraph 6(1)(a) of the Regulations, on the basis that the Minister is satisfied that the criteria set out in item 1 of the table in subregulation 6(1) of the Regulations is met.

Details of the Instrument are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the Instrument are part, was the subject of extensive consultation with governmental and non-governmental stakeholders. The Department of Foreign Affairs and Trade (DFAT) undertook public consultation through its website in relation to whether the designations and declarations contained in the Instrument should continue in effect, seeking submissions from relevant parties. Persons and entities who subscribe to DFAT’s sanctions email updates list were also notified of the consultation process. The public consultation process ran for 4 weeks and no submissions were received. The consultation period closed on 1 July 2020.

The Office of Best Practice Regulation advised that a regulation impact statement is not required (OBPR Reference: 26252).

Attachment A

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020

Section 1

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020*.

Section 2

The Instrument commences the day after it is registered.

Section 3

The Instrument is made under paragraphs 6(1)(a) and (b) and subregulation 9(3) of the *Autonomous Sanctions Regulations 2011* (the Regulations).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. Subsection 33(3) of the *Acts Interpretation Act 1901* has been relied on, in conjunction with regulation 6 of the Regulations, to:

- move the existing designation of Jacob Steiger from Part 1 of Schedule 1 of the 2012 List to Part 2 of Schedule 1 of that List; and
- update the information of some of the designated and declared persons and designated entities in the 2012 List that are continued in effect by the Instrument.

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 this instrument has effect according to its terms.

Schedule 1

Item 1

Item 1 is a technical amendment to insert Part 1 as a new heading and is necessary because there are now multiple parts to the 2012 List.

Item 2

Item 2 is a technical amendment to amend the name of the 2012 List and is necessary so that the name of the 2012 List better reflects what the instrument deals with.

Item 3

Item 3 is a technical amendment to insert Part 2 as a new heading and is necessary because there are now multiple parts to the 2012 List.

Item 4

Item 4 is a technical amendment necessary so the heading to section 3 refers to designations of entities as well as the designation and declaration of persons, given that section 3 of the 2012 List deals with both.

Item 5

Item 5 inserts Part 3 as a new heading, as well as new sections 4 and 5.

The new section 4 of the 2012 List is declaratory in nature and makes it clear that Part 3 is made for the purposes of subregulation 9(3) of the Regulations. Under subregulation 9(3), the Minister may continue in effect the designation and, where relevant, declaration, of a person or entity for the purposes of imposing targeted financial sanctions or travel bans. Under subregulation 9(1) of the Regulations, designations and declarations cease to have effect three years after the date on which they took effect or were renewed, unless the Minister declares they are to continue pursuant to subregulation 9(3).

The new subsections 5(1) to (3) of the 2012 List set out the designations and declarations of persons for targeted financial sanctions and travel bans that continue to have effect. The note to subsection 5(1) has been inserted as a consequence of the amendment made by item 7, which moves the entry of Jacob Steiger from Part 1 of the 2012 List to Part 2.

The designations and declarations of the following people are continued on the basis that they meet the criteria in paragraph (a) of item 1 of the table in subregulation 6(1); that is, they are a person that the Minister is satisfied is, or has been, associated with the DPRK's weapons of mass destruction program or missiles program:

- Jacob Steiger (*designated person status continued; see also item 7 below*)
- Kil Jong Hun
- Kim Kwang Yon
- Jang Song Chol
- Yu Kwang Ho
- Kim Yong Chol
- Jang Yong Son
- Kim Kyu
- Ryu Jin
- Kang Ryong
- Kim Kwang Chun

The designations and declarations of the following people are continued on the basis that they meet the criteria in paragraph (b) of item 1 of the table in subregulation 6(1); that is, they are a person that the Minister is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of UN Security Council Resolutions with respect to the DPRK:

- Ch'oe So'k-min
- Mun Kyong Hwan
- Kim Tong-chol
- Ruben Ruslanovich Kirakosyan
- Kim Kwang-myong

- Kim Tong Chol
- Ko Chol Man
- Ri Chun Song
- Ji Sang Jun
- Chu Hyo'k

The declaration and designation of Kang Chun Il is continued on the basis that he meets the criteria in both paragraphs (a) and (b) of item 1 of the table in subregulation 6(1).

The new subsection 5(4) sets out the designations of entities for targeted financial sanctions that continue to have effect. The designations of the following entities are continued in effect on the basis that they meet the criteria mentioned in paragraph (a) of item 1 of the table in subregulation 6(1); that is, they are an entity that the Minister is satisfied is, or has been, associated with the DPRK's weapons of mass destruction program or missiles program:

- Hesong Trading Corporation
- Kohas AG
- Korea Complex Equipment Import Corporation
- Korea International Chemical Joint Venture
- Korea Kwangsong Trading Corporation
- Korea Pugang Trading Corporation
- Korea Ryongwang Trading Corporation
- Korea Ryonha Machinery Joint Venture Corporation
- Tosong Technology Trading Corporation
- Chongchongang Shipping Company
- Paeksol Trading Corporation

The designation of the following entities are continued in effect on the basis that they meet the criteria in paragraph (b) of item 1 of the table in subregulation 6(1); that is, they are a person that the Minister is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of UN Security Council Resolutions with respect to the DPRK:

- Cheil Credit Bank
- Jinsong Joint Bank
- Dandong Zhicheng Metallic Materials Company Limited
- Dalian Global Unity Shipping Company Ltd

The designation of the following entities are continued in effect on the basis that they meet the criteria in paragraphs (a) and (b) of item 1 of the table in subregulation 6(1):

- Taeryonggang Trading Corporation
- Agricultural Development Bank
- Hana Banking Corporation Limited
- Gefest-M LLC

Item 6

Item 6 is a technical amendment that repeals Part 1 of Schedule 1 of the 2012 List.

The amendment is consequential to item 7 and means that once the Instrument is in effect, all persons in the 2012 List will be set out in Part 2 of Schedule 1.

Item 7

Item 7 moves the listing for Jacob Steiger into Part 2 of Schedule 1 of the 2012 List. This reflects the Minister's decision, in accordance with paragraph 6(1)(b) of the Regulations, to reinstate a travel ban on Jacob Steiger that inadvertently lapsed in 2018 due to a drafting oversight. The declaration is made on the basis that the Minister is satisfied that he is a person who has been associated with the DPRK's weapons of mass destruction program or missiles program. Jacob Steiger's status as a designated person is continued in effect by item 5.

Item 8

Item 8 amends Part 2 of Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities—Democratic People's Republic of Korea) List 2012* to update the entry of persons listed in table items 11 to 20 whose designations and declarations are continued in effect by this Instrument by:

- inserting the details of the instrument of first designation and declaration
- inserting the nationality of persons listed in table items 11 to 20; and
- updating passport information for persons listed in table items 11, 12, 14 and 16 to 19.

Item 9

Item 9 amends Part 2 of Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities—Democratic People's Republic of Korea) List 2012* to update the entry of persons listed in table items 37 to 47 whose designations and declarations are continued in effect by this Instrument by:

- inserting the details of the instrument of first designation and declaration;
- inserting aliases for persons listed in items 37, 38, 40, 42 and 47; and
- updating passport information for persons listed in items 37, 39 and 40.

Item 10

Item 10 amends Part 3 of Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities—Democratic People's Republic of Korea) List 2012* to update the entry of entities listed in table items 1 to 9 whose designations are continued in effect by this Instrument by:

- inserting the details of the instrument of first designation;
- inserting an alias for the entity listed in item 1; and
- inserting the name of the country to which each entity is associated.

Item 11

Item 11 amends Part 3 of Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities—Democratic People's Republic of Korea) List 2012* to update the entry of the entity listed in table item 18 whose designation is continued in effect by this Instrument by:

- inserting the details of the instrument of first designation;
- updating the address details;
- inserting the name of the country to which the entity is associated.

Item 12

Item 12 amends Part 3 of Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities—Democratic People’s Republic of Korea) List 2012* to update the entry of entities listed in table items 32 to 40 whose designations are continued in effect by this Instrument by:

- inserting the details of the instrument of first designation;
- inserting aliases for entities listed in table items 33, 34, 37, 38 and 39;
- inserting SWIFT reference for the entities listed in table item 33 and 39;
- inserting address details for the entities listed in table items 37 and 38;
- inserting the name of the country to which the entity is associated for the entity listed in table item 40.

Item 13

Pursuant to paragraph 6(1)(a) of the Regulations, item 13 designates Songhwa Joint Bank as a designated entity. Songhwa Joint Bank is the new name of designated entity Jinsong Joint Bank (see table item 34 of Part 3 of Schedule 1 of the 2012 List). This reflects the Minister’s decision to impose targeted financial sanctions on the basis that the Bank has assisted, in the violation, or evasion, by the DPRK of UN Security Council Resolutions with respect to the DPRK.

Statement of Compatibility with Human Rights

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

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020* (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*.

Modern sanctions regimes impose highly targeted measures in response to situations of international concern. This includes threats to regional peace and stability posed by the Democratic People’s Republic of Korea’s (DPRK) nuclear, other weapons of mass destruction and ballistic missile programs, and related proliferation activities. Autonomous sanctions pursue legitimate objectives, and have appropriate safeguards in place to ensure that any limitation on human rights engaged by the imposition of sanctions is justified and a proportionate response to the situation of international concern. The Government keeps its sanctions regimes under regular review, including in relation to whether more effective, less rights-restrictive means are available to achieve similar foreign policy objectives.

The Instrument continues under subregulation 9(3) of the Regulations the designations and declarations that were last made or continued in effect in December 2017 and January 2018. The Minister made the Instrument being satisfied that each of the persons and entities meets the current criteria set out in item 1 of the table in subregulation 6(1) and is a person or entity that:

- a) is, or has been, associated with the DPRK’s weapons of mass destruction program or missiles program; or
- b) is assisting, or has assisted, in the violation, or evasion, by the DPRK of UN Security Council Resolutions 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321, or a subsequent resolution with respect to the DPRK.

The Instrument also declares Jacob Steiger for purposes of paragraph 6(1)(b) of the Regulations as being subject to a travel ban and designates the Songhwa Joint Bank as a designated entity for the purposes of paragraph 6(1)(a) of the Regulations, on the basis that the Minister is satisfied that the criteria set out in item 1 of the table in subregulation 6(1) of the Regulations are met.

The human rights compatibility of the Instrument is addressed by reference to each of the human rights engaged below.

Right to privacy

Right

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The use of the term 'arbitrary' in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the individual circumstances. Arbitrariness connotes elements of injustice, unpredictability, unreasonableness, capriciousness and 'unproportionality'.¹

Permissible limitations

The Instrument is not an unlawful interference with an individual's right to privacy. Section 10 of the *Autonomous Sanctions Act 2011* (the Act) permits regulations relating to, among other things: 'proscription of persons or entities (for specified purposes or more generally)'; and 'restriction or prevention of uses of, dealings with, and making available of, assets'. The designations and declarations contained in the Instrument were made pursuant to regulation 6 of the Regulations, which provides that the Minister may, by legislative instrument, designate and/or declare a person for targeted financial sanctions and/or travel bans. The Instrument continues in effect these designations and declarations.

The measures contained in the Instrument are not an arbitrary interference with an individual's right to privacy. An interference with privacy will not be arbitrary where it is reasonable, necessary and proportionate in the individual circumstances.

In designating an individual under the Regulations for targeted financial sanctions and/or travel bans, the Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons the Minister is satisfied are involved in situations of international concern, as set out in regulation 6 of the Regulations.

Targeted financial sanctions and travel bans under the autonomous sanctions regime are imposed in response to situations of international concern, including where there are, or have been, egregious human rights abuses, weapons proliferation (in defiance of UN Security Council resolutions), indictment in international criminal tribunals, undemocratic systems of government, and threats to the sovereignty and territorial integrity of a State. Given the seriousness of the threats posed by the DPRK's nuclear, other weapons of mass destruction and missile programs and related proliferation activities, targeted financial sanctions and travel bans are the least rights-restrictive way to achieve the legitimate foreign policy objective of signalling Australia's concerns about the situation in the DPRK.

Accordingly, targeted financial sanctions and travel bans imposed by the Minister through the designation of specific individuals under the Regulations are reasonable, necessary and proportionate to the individual circumstances the sanctions are seeking

¹ Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 1993) 178.

to address. Therefore, any interference with the right to privacy created by the operation of the Instrument is not arbitrary or unlawful and, therefore, is consistent with Australia's obligations under Article 17 of the ICCPR.

Right to respect for the family

Right

The right to respect for the family is protected by Articles 17 and 23 of the ICCPR. It covers, among other things, the separation of family members under migration laws, and arbitrary or unlawful interferences with the family.

Limitations on the right to respect for the family under Articles 17 and 23 of the ICCPR will not violate those articles if the measures in question are lawful and non-arbitrary. An interference with respect for the family will be consistent with the ICCPR where it is necessary and proportionate, in accordance with the provisions, aims and objectives of the ICCPR, and is reasonable in the individual circumstances.

Permissible limitations

As set out above, the autonomous sanctions regime is authorised by domestic law and is not unlawful.

As the listing criteria in regulation 6 are drafted by reference to specific foreign countries, it is highly unlikely, as a practical matter, that a person declared for a travel ban will hold an Australian visa, usually reside in Australia and have immediate family also in Australia.

The Department of Foreign Affairs and Trade (DFAT) consults relevant agencies as appropriate in advance of a designation and declaration of a person with known connections to Australia to determine the possible impacts of the designation and declaration on any family members in Australia.

To the extent that the travel bans imposed pursuant to the Instrument engage and limit the right to respect for the family in a particular case, the Regulations allow the Minister to waive the operation of a travel ban on the grounds that it would be either: (a) in the national interest; or (b) on humanitarian grounds. This provides a mechanism to address circumstances in which issues such as the possible separation of family members in Australia are involved. In addition, this decision may be judicially reviewed. Finally, were such a separation to take place, for the reasons outlined in relation to Article 17 above, such a separation would be justified in the circumstances.

Accordingly, any interference with the right to respect for the family created by the operation of the Instrument is not unlawful or arbitrary and, therefore, consistent with Australia's obligations under Articles 17 and 23 of the ICCPR.

Right to an adequate standard of living

Right

The right to an adequate standard of living is contained in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and

requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right: namely, food, water, and housing.

Article 4 of the ICESCR provides that this right may be subject to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. To be consistent with the ICESCR, limitations must be proportionate.

Permissible limitations

Any limitation on the enjoyment of Article 11(1), to the extent that it occurs, is justified. The Regulations allow for any adverse impacts on family members as a consequence of targeted financial sanctions to be mitigated. The Regulations also provide for the payment of basic expenses (among others) in certain circumstances. The objective of ‘basic expenses exemption’ in regulation 20 is, in part, to enable the Australian Government to administer the sanctions regime in a manner compatible with relevant human rights standards.

The permit process is a flexible and effective safeguard on any limitation to the enjoyment of Article 11(1).

Right to freedom of movement

Right

Article 12 of the ICCPR protects the right to freedom of movement, which includes a right to leave Australia, as well as the right to enter, remain, or return to one’s ‘own country’.

The right to freedom of movement may be restricted under domestic law on any of the grounds in Article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others. Any limitation on the enjoyment of the right also needs to be reasonable, necessary and proportionate.

Permissible limitations

As the listing criteria in regulation 6 are drafted by reference to specific foreign countries, it is highly unlikely, as a practical matter, that a person declared for a travel ban would be an Australian citizen, or have spent such lengths of time in Australia, such that Australia could be considered their ‘own country’. Furthermore, travel bans – which are a power to refuse a visa and to cancel a visa – do not apply to Australian citizens.

To the extent that Article 12(4) is engaged in an individual case, such that a person listed in the Instrument is prevented from entering Australia as their ‘own country’, the imposition of the travel ban would be justified. As set out above in relation to Article 17 of the ICCPR, travel bans are a reasonable and proportionate means of achieving the legitimate objectives of Australia’s autonomous sanctions regime. Travel bans are reasonable because they are only imposed on persons who the Minister is satisfied are responsible for giving rise to situations of international concern. Thus, preventing a person who is, for example, known to have undertaken activities linked to the DPRK’s nuclear or other weapons of mass destruction

programs, from travelling to, entering or remaining in Australia through operation of the Instrument, is a reasonable means to achieve the legitimate foreign policy objective of signalling Australia's concerns about the DPRK weapons of mass destruction and missiles programs. Australia's practice in this respect is consistent with that of other countries such as the United States, the European Union, and the United Kingdom.

The Minister may also waive the operation of a declaration that was made for the purpose of preventing a person from travelling to, entering or remaining in Australia, on the grounds that it would be in the national interest, or on humanitarian grounds. This decision is subject to natural justice requirements, and may be judicially reviewed.

Non-refoulement

Right

The obligations relating to the prohibition on torture and other cruel, inhuman or degrading treatment or punishment under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT) and Article 7 of the ICCPR, as well as Article 6 of the ICCPR on the right to life and prohibition on arbitrary deprivation of life, are engaged by the travel restrictions in the Instrument. There is no permissible derogation from these implied or express non-refoulement obligations.

Permissible limitations

To the extent that the travel bans imposed pursuant to the Instrument engage Australia's non-refoulement obligations, the Regulations allow the Minister to waive the operation of a travel ban on the grounds that it would be either: (a) in the national interest; or (b) on humanitarian grounds. A travel ban may lead to the cancellation of a visa held by a non-citizen lawfully in Australia, which can lead to removal under section 198 of the *Migration Act 1958*. Australia will continue to meet its non-refoulement obligations through mechanisms prior to the person becoming available for removal under the *Migration Act 1958*, including through the protection visa application process, and through the use of the Minister for Home Affairs' personal powers in the *Migration Act 1958*.

The Instrument is consistent with Australia's international non-refoulement obligations as, together with the Foreign Minister's powers to revoke a declaration or waive its operation in an individual case, non-refoulement obligations are considered prior to a person becoming available for removal under the *Migration Act 1958*. A person must not be removed from Australia to another country if there is a real risk that the person may be subjected to arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment.

Right to equality and non-discrimination

Right

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.

Permissible limitations

Any differential treatment of people as a consequence of the application of the Instrument does not amount to discrimination pursuant to Article 26 of the ICCPR.

The criteria set out in regulation 6 of the Regulations are reasonable and objective. They are reasonable insofar as they list only those States and activities which the Government has specifically determined give rise to situations of international concern. They are objective, as they provide a clear, consistent and objectively-verifiable reference point by which the Minister is able to make a designation or declaration. The Regulations serve a legitimate objective, as discussed above.

To the extent that the measures result in a differential impact on persons from particular countries, this is both proportionate and justifiable. Country-specific sanctions will inevitably impact persons from certain countries more than others, as they are used as a tool of foreign diplomacy to facilitate the conduct of Australia's international relations with particular countries. In this case, the measures will predominately impact persons of DPRK nationality due to the location of the situation of international concern to which the measures respond.

Denying access to international travel and the international financial system to certain designated individuals is a highly targeted, justified and less rights-restrictive means of achieving the aims of the Regulations, including in a context where other conventional mechanisms are unavailable. While these measures may impact individuals of certain nationalities and national origins more than others, there is no information to support the view that affected groups are vulnerable. Rather, the individuals designated in the Instrument are persons the Minister is satisfied are involved in activities that give rise to situations of international concern. Further, there are several safeguards, such as the availability of judicial review and regular review processes in place, to ensure that any limitation is proportionate to the objective being sought.