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 2026

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes as a matter of foreign policy in response to situations of international concern. Such situations include threats to regional peace and stability posed by the Democratic People's Republic of Korea's (**DPRK**) weapons of mass destruction and ballistic missile programs and related proliferation activities.

The *Autonomous Sanctions Regulations 2011* (**the Regulations**) make provision for, among other things, the proscription of persons or entities for autonomous sanctions in relation to the DPRK. Regulation 6 of the Regulations enables 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 in a range of circumstances, including if the Minister is satisfied that the person or entity is, or has been associated with the DPRK's weapons of mass destruction or missiles program (paragraph (a)) of item 1 of the table at regulation 6 of the Regulations or, if the Minister is satisfied that the person or entity is assisting, or has assisted, in the violation, or evasion of the United Nations Security Council Resolutions (specified in paragraph (b) of item 1 of the table at regulation 6 of the Regulations).

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 that apply to a designated person or entity 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/or
- an asset owned or controlled by a designated person or entity becomes a 'controlled asset', and is subject to the prohibition in regulation 15 (which prohibits a person who holds a controlled asset 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.

Designations and declarations are referred to collectively as 'listings.' Listings in relation to the DPRK are contained in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People's Republic of Korea) List 2012* (**the 2012 List**).

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In accordance with regulation 6 of the Regulations, *the Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People's Republic of Korea) Amendment (No. 1) Instrument 2026* (**the Amending Instrument**) designates and declares **2** persons and **2** entities, comprised of:

- **2** persons for targeted financial sanctions and travel bans under paragraph (b) of item 1 of the table at regulation 6 of the Regulations (**the DPRK listing criteria**);
- **2** entities for targeted financial sanctions under the DPRK listing criteria.

The Minister exercised their discretion to make the listings being satisfied that each of the **2** persons and **2** entities listed in the Amending Instrument:

- is assisting, or has assisted, in the violation, or evasion, by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270, 2321 and any subsequent resolution of the United Nations Security Council.
    - Specifically, that each of the **2** persons and **2** entities listed in the Amending Instrument has assisted the DPRK in evading restrictions imposed under UNSCR 1718, which requires all states to freeze assets directly or indirectly controlled by designated entities, and to ensure that funds are not made available to designated entities.

The resolutions of the United Nations Security Council referred to in the listing criteria form part of the international framework addressing the DPRK's nuclear weapons, ballistic missile and other weapons of mass destruction programs, including measures to prevent proliferation, restrict support for those programs, strengthen export and financial controls and maintain international peace and security.

Details of the Amending Instrument, which amends the 2012 List are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations are part, was the subject of extensive consultation with government and non-government stakeholders when introduced. The new sanctions being imposed through the making of the Amending Instrument were subject to targeted consultation within government and with relevant international partners.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons and entities specified in the Amending Instrument, the Minister is satisfied that wider consultations beyond those already undertaken would not be appropriate or reasonably practicable (subsections 17(1) and (2) of the *Legislation Act 2003*). Consultation would risk alerting persons and entities to the impending sanctions and enabling capital flight before assets can be frozen.

The Amending Instrument is exempt from sunsetting under item 10B of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This was granted on the basis that instruments made under regulation 6 of the Regulations were subject to a more stringent statutory review process than is set out in Part 4 of Chapter 3 of the *Legislation Act 2003*. This review process was contained in regulation 9 of the Regulations, which has subsequently been repealed. While the

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statutory review process has been repealed, it is noted the Regulations themselves are due to sunset on 1 October 2027. Review of these instruments, including sunsetting requirements, will be considered as part of the process to remake or replace the Regulations.

The Office of Impact Analysis has advised that a Regulation Impact Statement is not required for listing instruments of this nature (OBPR22-02078).

A Statement of Compatibility with Human Rights of the Instrument prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

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Attachment A

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People's Republic of Korea) Amendment (No. 1) Instrument 2026

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 2026* (**the Amending Instrument**).

Section 2
The Amending Instrument commences the day after the instrument is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the Amending Instrument and can be inserted or edited at a later date.

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

Section 4
Each instrument that is specified in a Schedule to the Amending Instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amending Instrument has effect according to its terms.

Schedule 1

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People's Republic of Korea) List 2012

Item 1
The persons listed in Item 1 to the Amending Instrument are designated by the Minister for Foreign Affairs (the Minister) for targeted financial sanctions under paragraph 6(a) of the Regulations and declared by the Minister for the purposes of a travel ban under paragraph 6(b) of the Regulations.

The Minister exercised their discretion to make these listings being satisfied that each person:

a) is assisting, or has assisted, in the violation, or evasion, by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the United Nations Security Council or a subsequent resolution relevant to a resolution mentioned in this subparagraph.
    i. Specifically, that each person has assisted the DPRK in evading restrictions imposed under UNSCR 1718, which requires all states to freeze assets directly or indirectly controlled by designated entities, and to ensure that funds are not made available to designated entities.

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Item 2
The entities listed in Item 2 of the Amending Instrument are designated by the Minister for targeted financial sanctions under paragraph 6(a) of the Regulations.

The Minister exercised their discretion to make these listings being satisfied that each entity:

a) is assisting, or has assisted, in the violation, or evasion, by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the United Nations Security Council or a subsequent resolution relevant to a resolution mentioned in this subparagraph.
    i. Specifically, that each entity has assisted the DPRK in evading restrictions imposed under UNSCR 1718, which requires all states to freeze assets directly or indirectly controlled by designated entities, and to ensure that funds are not made available to designated entities.

ATTACHMENT B

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 2026

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People's Republic of Korea) Amendment (No. 1) Instrument 2026* (**the Amending 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.*

Australia's autonomous sanctions framework imposes 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 (**DPRK**) weapons of mass destruction and ballistic missiles programs.

The autonomous sanctions designations and declarations made by the Amending Instrument pursue legitimate objectives and have appropriate safeguards in place to ensure that any limitation on human rights engaged by the imposition of sanctions is a reasonable, necessary and proportionate response to the situation of international concern, and do not affect particularly vulnerable groups. The Government keeps its sanctions frameworks under regular review, including in relation to whether more effective, less rights restrictive means are available to achieve similar foreign policy objectives.

The *Autonomous Sanctions Regulations 2011* (**the Regulations**) make provision for, among other things, the proscription of persons or entities for autonomous sanctions. The Amending Instrument designates **2** persons and **2** entities for targeted financial

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sanctions and declares those persons for the purposes of a travel ban. The Minister for Foreign Affairs (**the Minister**) made the designations and declarations being satisfied that each person or entity has assisted, in the violation, or evasion, by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the United Nations Security Council or a subsequent resolution relevant to a resolution mentioned in this paragraph (paragraph (b) of item 1 of the table at regulation 6 of the Regulations).

The human rights compatibility of the Amending 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 Amending 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)' (s 10(1)(a) of the Act); and 'restriction or prevention of uses of, dealings with, and making available of, assets' (s 10(1)(b) of the Act). The designations and declarations contained in the Amending Instrument were made pursuant to paragraphs 6(a) and 6(b) of the Regulations, which provides that the Minister may, by legislative instrument, designate a person or entity for targeted financial sanctions and/or declare a person for a travel ban.

The measures contained in the Amending 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 persons under the Regulations for targeted financial sanctions and/or declaring persons for a travel ban, 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, consistently with s 3(2) of the Act, and who meet the criteria set out in regulation 6 of the Regulations.

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

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Accordingly, targeted financial sanctions and travel bans imposed by the Minister through the designation and declaration of specific persons under the Regulations are reasonable, necessary and proportionate to the individual circumstances the sanction is seeking to address. Any interference with the right to privacy created by the operation of the Amending Instrument is not arbitrary or unlawful and 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. Any 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 framework is authorised by domestic law and is not unlawful.

As the listing criteria in regulation 6 of the Regulations are drafted by reference to specific foreign countries, it is highly unlikely, as a practical matter, that a person declared for a travel ban holds an Australian visa, usually resides in Australia and/or has immediate family also in Australia.

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

To the extent that the travel ban imposed by the Amending Instrument engages and limits the right to respect for the family in a particular case, the Regulations provide sufficient flexibility to treat each case differently. Under subregulation 19(3) of the Regulations, the Minister may waive the operation of a travel ban either: (a) on the grounds that it would be 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 of the ICCPR (discussed above), such a separation would be reasonable, necessary, proportionate and justified in achieving the objective of the Amending Instrument.

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Accordingly, any interference with the right to respect for the family created by the operation of the Amending Instrument is not unlawful or arbitrary and is 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 (**the ICESCR**) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right, including adequate food, water, clothing, 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) of the ICESCR, to the extent that it occurs, is reasonable and necessary to achieve the objective of the Amending Instrument and is proportionate due to the targeted nature of the listings. The Regulations also provide sufficient flexibility to treat each case differently by allowing for any adverse impacts on family members as a consequence of targeted financial sanctions to be mitigated. The Regulations permit the Minister to grant permits under regulation 18 to enable the payment of basic expenses (among others). The objective of regulation 20, which allows applications to be made to the Minister for permits to pay basic expenses is, in part, to enable the Australian Government to administer the sanctions framework 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) of the ICESCR.

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 needs to be reasonable, necessary and proportionate.

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Permissible limitations

As the listing criteria in regulation 6 of the Regulations 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) of the ICCPR is engaged in an individual case, such that a person listed in the Amending Instrument is prevented from entering Australia and Australia is properly described 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, necessary and proportionate means of achieving the legitimate objectives of Australia's autonomous sanctions framework. Travel bans are reasonable because they are only imposed on persons who the Minister is satisfied contributed to, or are involved in, activities that give rise to situations of international concern.

Preventing a person, who for example is known to have undertaken activities linked to the DPRK's weapons of mass destruction or ballistic missiles programs, from travelling to, entering, or remaining in Australia through the operation of the Amending Instrument is a reasonable means to achieve the legitimate foreign policy objective of signalling Australia's concerns about the DPRK's unlawful 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, Canada, New Zealand and the United Kingdom, and with that of the European Union.

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, either: (a) on the grounds that it would be in the national interest; or (b) on humanitarian grounds. The decision to waive the declaration 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 and Article 7 of the ICCPR, as well as the right to life and prohibition on arbitrary deprivation of life in Article 6 of the ICCPR, are engaged by the travel restrictions in the Amending Instrument.

There is no permissible derogation from these implied or express non-refoulement obligations.

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Permissible limitations

To the extent that the travel bans imposed pursuant to the Amending Instrument engage Australia's non-refoulement obligations, the Regulations allow the Minister to waive the operation of a travel ban either: (a) on the grounds that it would be 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 may result in the non-citizen becoming an unlawful non-citizen liable 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 Amending Instrument is consistent with Australia's international non-refoulement obligations as, together with the 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 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 Amending 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

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designation or declaration. The Regulations serve a legitimate objective, as discussed throughout this Statement.

Denying access to international travel and the international financial system to certain designated persons is a highly targeted, justified and minimally 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 persons of certain nationalities and national origins more than others, there is no information to suggest that affected groups are particularly vulnerable. Rather, the persons and entities listed in the Amending Instrument are a result of the Minister being satisfied that the persons and entities are involved in activities that give rise to situations of international concern. Further, there are several safeguards in place, such as the availability of judicial review, and regular review processes, to ensure that any limitation on rights is proportionate to the Amending Instrument's objective.

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