



Australian Government
Department of Foreign Affairs and Trade



SANCTIONS REGULATOR PERFORMANCE – SELF-ASSESSMENT REPORT

July 2020

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SANCTIONS REGULATOR PERFORMANCE SELF-ASSESSMENT FOR THE 2019-20 FINANCIAL YEAR

INTRODUCTION

The Australian Sanctions Office (ASO)¹, within the Department of Foreign Affairs and Trade (DFAT), is the sanctions regulator for Australia. The ASO is responsible for implementing and administering Australia's sanctions regimes. Consistent with the requirements of the Australian Government's Regulator Performance Framework,² this report sets out the results of the ASO's self-assessment of its performance during the 2019-20 financial year (Review Period).

The Framework includes six Key Performance Indicators (KPIs) against which all regulators must assess their performance. For each of these KPIs, the ASO has assessed its performance by reference to metrics determined at the start of the Review Period. The ASO's performance metrics were updated in 2019-20 to better reflect the KPIs and align with ASO outputs.

The ASO sought feedback on its performance from the Australian Government agencies with which it works, including the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Border Force (ABF), the Department of Defence (Defence Exports Control (DEC)), the Australian Federal Police (AFP) and industry associations representing Australian business and universities. The ASO has taken this feedback into account in conducting the self-assessment. This report has been externally validated, as required by the Framework.

During the Review Period, the ASO had an average of 9.2 staff, with an average of 4 staff working on regulatory matters. The ASO currently consists of 14 staff, with 7 staff dedicated to regulatory work³

We welcome your feedback on this report. Please send any feedback to sanctions@dfat.gov.au.

SUMMARY FINDINGS

During the Review Period, the ASO worked effectively with its Australian Government partners and supported Australian business to work within Australian sanctions laws.

The ASO provided timely responses to sanctions applications and inquiries. It processed these, on average, within 41 business days of receiving all relevant information. This is outside the target timeframe by only one day. The median processing time—26 business days—was within the target period. The ASO's average processing time increased from 2018-19, but it finalised 21 per cent more permit applications. The ASO remains committed to improving response times in 2020-21.

The ASO's communication was clear, targeted and effective. Its website was kept current and updated within two business days of any regulatory change. A major upgrade of website information was undertaken in the Review Period.

¹ Formerly, the Sanctions Section.

² Accessible at www.pmc.gov.au/regulation.

³ This represents an increase from 2018-19, when 7 staff were responsible for the full spectrum of ASO functions.

The ASO also conducted a range of outreach activities; independently and with other Government agencies. COVID-19 meant a necessary pause to physical outreach, but the ASO is pivoting to deliver virtual outreach. Its first virtual outreach session was in June 2020.

During the Review Period, the ASO worked to institute processes that were more responsive to regulatory risk. This included implementing a risk-based approach to deciding sanction permit applications which takes into account the risk from an activity as well as the applicant's compliance history. While ASO requests for supplementary information were judged reasonable and appropriate, the ASO plans to better triage permit applications and initiate requests for information earlier in 2020-21.

The ASO ensured streamlined compliance and monitoring by coordinating effectively with Government partners, such as the AFP, ABF and AUSTRAC. It also improved the quality and clarity of information publicly available on its website, and continued one-on-one engagement with clients to improve sanctions compliance. The ASO acknowledges the challenge of sanctions regimes to business, and the complexity of managing multiple applicable regimes. It will continue efforts to ensure clarity of sanctions laws, to explain and simplify business engagement with sanctions obligations, and to make clear the basis for decisions on sanctions permit applications.

In the Review Period, COVID-19 responses interrupted regular business flow, as well as the planned delivery of ICT solutions to improve the ASO's client experience. Delivery of 'Pax', the ASO's new online portal for sanction inquiries and applications, in 2020-21 will provide streamlined processes, improved efficiency, and more detailed reporting capability. This will significantly improve client engagement with the ASO.

The ASO is actively reviewing its legislative and administrative practices, including to ensure efficient and effective regulatory processes. The ASO has commenced a review of sanctions laws, as well as a review of sanctions administrative decision making and regulatory and governance frameworks. These reviews will be completed early in 2020-21.

DETAILED FINDINGS

KPI 1: REGULATORS DO NOT UNNECESSARILY IMPEDE THE EFFICIENT OPERATION OF REGULATED ENTITIES

Metric 1: ASO provides timely responses to formal applications and inquiries in the Online Sanctions Administration System (OSAS).

Applications for sanctions permits and formal inquiries as to whether a particular activity requires a sanctions permit are submitted to the ASO through OSAS. In the Review Period, the ASO finalised 102 applications for sanctions permits (see Table 1). It also finalised 39 formal inquiries that resulted in a decision or a recommendation that a decision be made by the Minister for Foreign Affairs. These figures do not include the significant number of informal inquiries received by the ASO from the public and from Government agencies, nor assessments made in response to referrals from the ABF concerning consignments stopped at the border. These figures also do not include applications and inquiries which were withdrawn by clients following initial assessment by the ASO, or applications and inquiries received but not finalised.⁴

To assess the ASO's performance against KPI 1 using Metric 1, the ASO reviewed a sample of 20% of OSAS applications and inquiries finalised during the Review Period. On average, it took the ASO 41 business days to

⁴ These figures are not included as they are not currently tracked given the constraints of the OSAS system.

make a decision or put a recommendation to the Minister for Foreign Affairs from the time the ASO had received all relevant information from the client and Australian Government agencies. This is outside the target of six to eight weeks by one day. The median number of processing days was 26 business days, which is well within the target period. While the ASO's average processing time increased from the previous Review Period (18 business days in 2018–19), the total number of finalised applications increased by 21 per cent (84 applications in 2018–19).

While it took an average of 41 business days to conclude matters once all relevant material was obtained, the ASO acknowledges that total response times can be significantly longer. Complex matters that require consultation outside the ASO can, at times, take several months. The ASO is working to improve its processing times. Lower staffing levels at the start of the Review Period led to a backlog of applications and inquiries. This is likely to have contributed to longer processing times in some instances. In the second half of the Review Period, the ASO gained additional resources, including three contractors and additional short-term secondments, which enabled it to significantly reduce its casework backlog. In the Review Period, COVID-19 responses also interrupted regular business flow.

The ASO is developing a new online portal for sanction inquiries and applications. This new portal, named 'Pax', will provide enhanced case management functions, including streamlined processes and more detailed reporting capability. It should decrease time taken to troubleshoot issues associated with the current OSAS system. Pax is scheduled to become operational early in 2020-21 (its launch was delayed due to diversion of resources associated with the Government response to COVID-19). The introduction of Pax should further assist in improving processing times.

KPI 1: Stakeholder Feedback

One stakeholder provided feedback that its members had reported an improvement in processing times prior to COVID-19, but that that processing times had slowed in the COVID-19 period. It said that permit approvals can take four to five months. Another stakeholder noted that extended timeframes made it difficult to manage its business, and that delays had the potential to disadvantage individuals with a connection to a sanctioned country. The ABF provided feedback that—while it understands the ASO's limitations, including with respect to complex sanction regimes—it would appreciate improved response times, including because ASO delays can generate industry engagement issues and challenges managing the border.

Table 1: Permit applications (where the ASO assessed that it was required to make a decision or put a recommendation to the Minister for Foreign Affairs)

Sanctions Regime	No. of Applications	Sanctions Regime	No. of Applications
Central African Republic	5	Mali	1
Democratic Republic of Congo	5	Russia	50
Democratic People's Republic of Korea	2	Somalia	8
Iran	5	South Sudan	2

Sanctions Regime	No. of Applications	Sanctions Regime	No. of Applications
Iraq	7	Syria	1
Libya	1	Zimbabwe	10
Myanmar	5		
TOTAL		102	

KPI 2: Communication with regulated entities is clear, targeted and effective

The ASO seeks to ensure that communication with clients is clear, targeted and effective.

Communication between the public and ASO is done primarily by email. In addition to the OSAS application system, ASO maintains and monitors a general sanctions inquiry email inbox. Clients submit a formal inquiry through OSAS in order to receive a detailed response to their query. This approach seeks to protect both the regulator and the regulated community by ensuring formal and consistent advice is given in response to inquiries relating to sanction laws. This is especially important given the complex nature of Australia's sanctions laws and the wide variety of goods and services to which sanctions may apply.

To enhance ease of communication, regulated entities are able to subscribe to the ASO's mailing list. Emails are sent to subscribers on regime changes, outreach activities, and other relevant matters.

Metric 2A: DFAT Sanctions website is current and changes made within 2 business days of any regulatory change

The sanctions webpages on DFAT's website⁵ are the primary means by which the ASO provides information to the public about Australia's sanctions regimes. These webpages are current.

During the Review Period, the ASO updated the sanctions information on DFAT's website. In March 2020, the ASO made substantial changes to the DFAT website to make the site easier to navigate. The ASO webpages now contain a series of plain language 'snapshots' which provide the regulated community with easy-to-read information on Australia's sanction regimes. The snapshots were also distributed to Government agency heads, as well as professional and industry associations.

In the Review Period, there were no regulatory changes to sanction regimes under the *Charter of the United Nations Act 1945*. On 12 September 2019, the United Nations Security Council adopted Resolution 2488, which adjusts elements of the arms embargo and sanction measures for the Central African Republic. This change was communicated immediately on the ASO website.

Management of the ASO webpages has improved over the Reporting Period compared to the 2018–19 financial year. The ASO is continuing to focus on enhancing the functionality and usability of its website.

Metric 2B: Regular, targeted outreach conducted with relevant stakeholders

During the Review Period, the ASO undertook outreach in Adelaide (22 July 2019), Darwin (24 July 2019), Brisbane (24 September 2019), Perth (3 October 2019) and Canberra (8 November 2019). On

⁵ Accessible at <https://www.dfat.gov.au/international-relations/security/sanctions/Pages/sanctions>

5 September 2019, Universities Australia facilitated an outreach session in Melbourne, which focused on the application of sanctions laws to areas of academic research.

Travel restrictions and social distancing requirements due to COVID-19 reduced the ability of the ASO to conduct traditional outreach sessions in the Review Period. However, the ASO is now engaging in alternative methods of outreach. For example, on 3 June 2020, ASO delivered a presentation to the Australian mutual banks' Anti-Money Laundering/Counter-Terrorism Financing Best Practice Group (AML/CTF BPG) by videoconference. Despite COVID-19, outreach engagements are trending upwards in number compared to previous years.

Separate from outreach, the ASO meets with clients and stakeholders as needed. During the Review Period, the ASO met with several stakeholders at their request, including members of the banking industry and some mining companies.

KPI 2: Stakeholder Feedback

A stakeholder reported that they had noticed an improvement in the ASO's communications relating to permit matters during the Review Period. However, they still found it challenging to engage with staff members of the ASO. The ABF noted that, while communication with the ASO is generally clear and effective, it has occasionally received inconsistent information from the ASO. It said increased communication would reduce this risk, and expressed an intention to foster more routine engagement.

A stakeholder acknowledged the work the ASO had undertaken to produce plain language 'snapshots' and 'frequently asked questions'. Yet, it found the information was largely of benefit to new and infrequent users of the website, and recommended the ASO also provide more detailed information on its website to assist experienced users with complex matters.

One stakeholder commented in their feedback that the ASO did not complete sufficient outreach work in the Review Period. The ASO recognises that it is vital for regulators to engage effectively with stakeholders, and is working to schedule outreach events for the 2020-21 financial year, with a particular focus on virtual events delivered with Government partners. In addition to addressing COVID-19 restrictions, the ASO anticipates that this may provide opportunities for greater reach, including providing stakeholders with the flexibility to access outreach materials online.

Most of ASO's outreach activities in 2019-20 were delivered jointly with other Government agencies such as DEC and ABF. DEC has noted that joint outreach activities were well received by stakeholders. DEC further noted that outreach is a positive and successful engagement activity, which raises sanctions awareness and increases voluntary compliance. AUSTRAC observed that the ASO is working to improve engagement with regulated entities within the financial sector. The ASO and AUSTRAC have worked in partnership to present information on sanctions laws to industry partners, including through the AUSTRAC Fintel Alliance. AUSTRAC said the ASO's communication to these groups has been clear, targeted and effective.

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

The ASO is actively reviewing its legislative and administrative practices to ensure regulatory processes are risk-based and proportionate. In the Review Period, the ASO commenced a review of sanctions laws, as well as a review of sanctions administrative decision making and regulatory and governance frameworks. The reviews will help ensure the ASO is delivering its priorities in the most effective and efficient manner, commensurate to risk, and that the ASO operates within a clear, consistent and comprehensive legislative framework. Both reviews will be completed early in the 2020-21 financial year.

Metric 3: ASO applies risk-informed processes with a view to reducing regulatory burden, including ensuring requests for supplementary information are reasonable and proportionate to regulatory risk

During the Review Period, the ASO improved its processes to incorporate a risk-based approach to deciding sanction permit applications. Such an approach takes into consideration the risk posed by the particular activity, as well as the compliance history of the applicant.

The ASO requests additional information from its clients when needed to respond to an inquiry or assess an application. For example, the ASO may require further information regarding the goods for which a permit is sought or the end user of the goods. The ASO's review of a sample of OSAS applications and inquiries during the Review Period (refer to Metric 1 above) revealed that requests for supplementary information were reasonable and appropriate.

However, the ASO considers it could do more to initiate requests for information earlier in the assessment phase. During the Review Period, incomplete applications and inquiries were further delayed if the initial assessment of the matter was protracted. The ASO is considering how it can better 'triage' incoming applications to provide for more streamlined examination and prioritisation. Improvements in this area will also be informed by the outcomes of the review of the ASO's administrative and regulatory processes.

The ASO also anticipates that the release of the new Pax system will enhance inquiry and application processes. Notification mechanisms in Pax should facilitate the management of requests for supplementary information and improve processing times.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Metric 4A: ASO coordinates compliance and monitoring activities with other relevant agencies

Unlike some Government regulators, which have a broader mandate to undertake compliance and monitoring, the ASO has a limited role in enforcing and monitoring compliance with Australian sanctions law.

Where the ASO identifies potential non-compliance with Australian sanctions law, the ASO will conduct initial checks in-house, but refer the matter to the AFP or ABF for formal investigation. The ASO works closely with the AFP and ABF in the pre and post referral stage—including by issuing production notices. The ASO also works closely with AUSTRAC to monitor transactions for possible violations of Australian sanctions law.

Likewise, the ASO regularly engages with AUSTRAC on suspected breaches of targeted financial sanctions. Information sharing arrangements between AUSTRAC and the ASO make it possible for both agencies to work actively on suspicious incidents, and also to coordinate routine compliance monitoring activities across various sectors.

The ASO processed 31 ABF referrals during the Review Period. The ABF has noted that the ASO's assessment of consignments is responsive, but cited lengthy timeframes for some assessments. The ABF also commented on the difficulties associated with obtaining information from importers and exporters.

In the Review Period, the ASO prepared a new compliance policy and monitoring strategy, which is planned for adoption in 2020–21. This new framework will provide the ASO with a more targeted compliance monitoring model, which is streamlined in areas of low risk and better coordinated in areas of higher risk. The strategy will be informed by the outcome of the review of the ASO's administrative and regulatory processes currently underway.

Metric 4B: ASO engages with businesses to increase understanding of, and compliance with, Australian sanctions regulations

The ASO works with individual Australian businesses to assist them to understand and comply with Australia's sanction laws. For example, if the ABF stops a shipment at the border, the ASO will work with the affected exporter to determine if the goods require a permit and to explain the permit application process.

As mentioned at KPI 2 above, significant work has been undertaken by the ASO to improve its website and online communications. Regulated entities can apply for a formal assessment of sanctioned activities through OSAS, at no cost. The roll-out of the new Pax system will allow for better communication between the ASO and stakeholders. Increased communication and awareness of sanction laws drives increased voluntary compliance.

KPI 4: Stakeholder Feedback

A stakeholder reported that the whole-of-government approach taken to assessing exports is slow and laborious. The ASO is aware that referrals to external agencies delays outcomes for applications and inquiries. Nonetheless, the ASO is reliant on external agencies for technical advice. The ASO will continue to explore opportunities for streamlining processes where possible.

One stakeholder noted that the ASO's inability to provide non-binding guidance on sanctions matters does little to facilitate compliance. While the ASO acknowledges the efforts of stakeholders to become informed of their sanctions obligations, the nature of sanctions laws is such that specific information on proposed activities is necessary for the ASO to assess whether an activity is subject to sanctions. General guidance to inform a stakeholder's assessment of whether sanctions apply is published and broadly available on the DFAT website.

Another stakeholder commented that, as part of their risk management, they request advice from the ASO to determine if an activity is subject to sanctions. However, as the ASO does not disclose its decision records, the stakeholder is unable to develop a clear understanding of the basis for sanctions decisions. The stakeholder commented that they could seek independent legal advice on the matter rather than seeking a sanctions assessment from the ASO. While the ASO is not able to release decision records, it endeavours to summarise findings in notification letters. The ASO also provides extensive information on the DFAT website on sanctions laws to allow businesses and individuals to self-identify sanction obligations. The ASO acknowledges the complex nature of sanction laws, and recognises that some members of the regulated community would be well-served by seeking independent legal advice on how to meet sanctions obligations.

KPI 5: Regulators are open and transparent in their dealings with regulated entities

Metric 5A: Administrative decisions and responses to formal applications and inquiries clearly outline the legal basis for such decisions

Administrative decisions regarding the application of Australia's sanction laws (such as whether or not a permit can be granted) are made by the Minister for Foreign Affairs or her delegate. In these cases, the ASO makes a recommendation to the decision-maker which sets out the applicable law. Where a formal administrative decision is not required, the ASO responds to formal applications and inquiries by advising that the proposed activity is not prohibited by, or subject to authorisation under, Australian sanctions law.

As part of the review of applications and inquiries referred to in KPI 1 above, the ASO considered whether administrative decisions and the ASO's written responses clearly outlined the legal basis for the decision or

response. The ASO determined that its internal decision documents and its letters to clients did outline clearly the legal basis for its decisions or responses. The relevant legislation is referenced and its application to the specific matter is outlined.

As a matter of course, the ASO seeks to continuously improve its administrative practices. During the Review Period, particular emphasis was placed on improving internal decision-making processes, record keeping and training of case officers. This helps to ensure that the ASO is reasonable, consistent and effective in its decision-making on sanctions applications and inquiries, and in its formulation of recommendations for the Minister or her delegate.

Metric 5B: DFAT sanctions website is kept up-to-date and provides accurate and helpful information

In 2018-19, ASO identified the need to improve the accuracy and completeness of information available on the ASO website, and has actively sought to improve performance against Metric 5B. The ASO provides comprehensive information on each of Australia's sanction regimes and guidance on how to apply for a sanctions permit on the ASO website. The website content is updated as changes to sanctions laws take effect (see Metric 2A above), and is used to enable public consultation on changes to autonomous sanction regimes. Any recent changes to sanctions laws are highlighted on the website. Updates to the DFAT Consolidated List of persons and entities subject to targeted financial sanctions are published on the website as soon as practicable. Members of the public are able to subscribe to the ASO's mailing list to receive updates as made.

The ASO facilitates free access to LinkMatch software, which enables the public to search the DFAT Consolidated List for designated persons and entities. During the Review Period, this software was intermittently offline to users due to technical issues. The ASO recognises the reliance some businesses have on this software, and will endeavour to improve accessibility to the LinkMatch software in the future, subject to resources.

KPI 5: Stakeholder Feedback

The ABF observed that the ASO was open and transparent with regulated entities, as well as with the ABF itself. One stakeholder noted the need for the ASO to enhance transparency in decision-making, especially in respect of assessments of inquiries and applications. Another stakeholder said the ASO's transparency in respect of permit processes was deficient, but recognised the release of Pax would likely improve processing speeds and transparency.

DEC said that, given the frequent changes that occur across sanction regimes, the ASO could do more to formalise notification of legislative changes. This would ensure DEC and other Government agencies are promptly alerted to regulatory changes, which they can then incorporate into their protocols and procedures. ASO is examining options to better entrench systems for providing timely advice to partner agencies on sanctions changes, including regular inter-agency meetings.

Another stakeholder found that, although the ASO's communication was clear and targeted, it lacked transparency. As a result the stakeholder could not use the information provided by the ASO to self-assess future sanction matters. While the ASO will continue to keep its practices under review to ensure it is best meeting the needs of regulated individuals and entities, including making available general information on sanctions laws and decision-making processes; this cannot substitute for client's seeking their own independent legal advice.

KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

The ASO works closely with Australian Government counterparts, including to improve Australia's regulatory framework for sanctions.

The ABF advised in its feedback that ASO had actively engaged on regulatory matters which impact the administration of sanctions and custom laws. Similarly, DEC noted that the ASO actively participates in whole-of-government education on export processes to support Australian industry and academia on the export of military and dual use goods. DEC provides the ASO with formal technical assessments and advice, which enables both to fulfil regulatory obligations. DEC noted the positive and collaborative nature of its relationship with the ASO.

The ASO works with AUSTRAC to promote awareness and compliance with sanction laws in the financial sector. Through this engagement, both agencies have a better understanding of each other's regulatory responsibilities, which has enabled more targeted referrals on financial and trade sanctions.

The ASO also contributes to improvement of Australia's sanctions regulation through its support for Australia's participation in the Financial Action Task Force – the global standard setting body for anti-money laundering, counter-terrorism financing and counter-proliferation financing. The ASO also engages with other countries to discuss best practice in the administration of sanction laws.

Metric 6: Regular review of Australian sanctions processes to ensure efficiency, effectiveness and usability for stakeholders

As mentioned above, the ASO is in the final stages of replacing OSAS with a new system. Pax will be more modern and user-friendly than OSAS, and make it easier for regulated entities to engage with the ASO efficiently. Once Pax is launched, all permit applications, sanctions inquiries and client communications will flow through Pax, making it easier for users to track progress, seek updates and action requests for information. Pax will also enable the ASO to manage workflow in a more efficient and effective manner. As a customised application, Pax will provide clients with a simpler communications interface, as well as better visibility and progress of their matters.

The ASO is actively reviewing its legislative and administrative practices to ensure regulatory processes are risk-based and proportionate. In the Review Period, the ASO commenced a review of sanctions laws, as well as a review of sanctions administrative decision making and regulatory and governance frameworks. The reviews will help ensure the ASO is delivering its priorities in the most effective and efficient manner, commensurate to risk, and that the ASO operates within a clear, consistent and comprehensive legislative framework. Both reviews will be completed early in the 2020–21 financial year.