

Exposure Draft Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions Amendment (Iran) Regulations 2023

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. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

Section 10 of the *Autonomous Sanctions Act 2011* (the Act) enables the Governor-General to make regulations applying sanctions. Paragraph 10(1)(a) of the Act provides that the *Autonomous Sanctions Regulations 2011* (the Regulations) may make provision relating to the proscription of persons or entities for specified purposes or more generally.

When considering whether to apply autonomous sanctions, the Government considers Australia's national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia's economic, security or other interests.

Autonomous sanctions differ from United Nations Security Council sanctions which the United Nations Security Council imposes and which all UN Member States, including Australia, are obliged to implement as a matter of international law.

The *Autonomous Sanctions Regulations 2011* (the Regulations) enable, among other things, the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions, and declare a person for a travel ban, if the Minister is satisfied that the person or entity meets criteria specified in regulation 6 of the Regulations. Designations and declarations are hereafter collectively referred to as 'listings'. The Regulations provide that the Minister must make listings by legislative instrument.

The purpose of the proposed *Autonomous Sanctions Amendment (Iran) Regulations 2023* (the amendment Regulation) is to introduce new listing criteria under the existing autonomous sanctions regime in relation to Iran in response to the general oppression of the Iranian population, in particular women and girls, and the undermining of good governance and the rule of law. The proposed criteria would also allow the listing of Iranian persons and entities or persons and entities backed by Iran, engaging in malign activities which undermine the sovereignty or territorial integrity of a country other than Iran.

Schedule 1 of this instrument would amend the Regulations to expand the existing Iran listing criteria in item 4 of the table in regulation 6 to enable the Foreign Minister to list persons and entities for targeted financial sanctions and/or travel bans if satisfied that:

- A person or entity is engaging in, is responsible for or is complicit in, or has engaged in, been responsible for or been complicit in, any of the following:
 - (i) the oppression of women and girls in Iran;
 - (ii) the general oppression of people in Iran;

(iii) undermining good governance or the rule of law in Iran. (Proposed paragraph (c) of table item 4 in regulation 6)

- A person or entity that the Minister is satisfied is assisting, or has assisted, Iran to threaten or undermine the sovereignty or territorial integrity of another country. (Proposed paragraph (d) of item 4 in regulation 6)

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

- a 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 is a ‘controlled asset’, 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.

Details of the proposed Autonomous Sanctions Amendment (Iran) Regulations 2023 which would amend the Regulations are set out at **Attachment A**.

The Office of Impact Analysis (OIA) has advised that an Impact Analysis is not required (reference: OIA23-04679). OIA's assessment is that this proposed instrument is unlikely to have a more than minor impact, and an Impact Analysis is not required.

The proposed 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*. A statement of compatibility with human rights is at **Attachment B**.

Autonomous Sanctions Amendment (Iran) Regulations 2023

Section 1

The title of the instrument is the Autonomous Sanctions Amendment (Iran) Regulations 2023.

Section 2

Subsection 2(1) provides that the proposed instrument would commence the day after it 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 instrument and can be inserted or edited at a later date.

Section 3

The proposed instrument is made under the *Autonomous Sanctions Act 2011*.

Section 4

Each proposed instrument that is specified in a Schedule to this 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

Regulation 6 of the Regulations sets out the listing criteria for existing sanctions to enable a person or entity to be designated for targeted financial sanctions or for a person to be declared for a travel ban.

Item 1 would introduce additional Iran-specific listing criteria into table item 4 of regulation 6 for imposing sanctions on persons and entities.

Under proposed paragraph (c)(i) of item 4 of the table in regulation 6, the Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Minister is satisfied are engaging in, are responsible for or are complicit in, or have engaged in, been responsible for or been complicit in the oppression of women and girls.

Proposed paragraph (c)(i) is intended to capture situations where a person or entity has been involved in the violation or abuse of human rights such as the right to equality and non-discrimination, right to liberty and security, right to freedom of assembly (protest), the right to hold opinions without interference, and the right to freedom of expression, of women and girls in Iran. Violations or abuses may include cases of arbitrary detention and arrests of women and girls, as well as laws and policies either designed to oppress women and girls or operating with such effect.

Under proposed paragraph (c)(ii) of item 4 of the table in regulation 6, the Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions

and/or travel bans that the Minister is satisfied are engaging in, are responsible for or are complicit in, or have engaged in, been responsible for or been complicit in the general oppression of people in Iran.

Proposed paragraph (c)(ii) is intended to capture situations where a person or entity has been involved in the violation or abuse of human rights, such as the right to liberty and security, the right to freedom of peaceful assembly, the right to hold opinions without interference, and the right to freedom of expression, of people in Iran. Violations and abuses may include cases of arbitrary detention, and arbitrary arrests of protestors, activists, and political opponents, as well as instances of threats, harassment, and intimidation by Iranian authorities. They may also include instances where authorities use or threaten to use, excessive force and violence which risks causing physical injury and mental harm to in their response to protests or unrest. Furthermore, proposed paragraph c(ii) is intended to capture Iran's ongoing and systematic oppression of ethnic minorities including the Kurdish and Baloch peoples, as well as Iran's persecution of religious minorities, including members of the Baha'i faith.

Under proposed paragraph (c)(iii) of item 4 of the table in regulation 6, the Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Minister is satisfied are engaging in, are responsible for or are complicit in, or have engaged in, been responsible for or been complicit in undermining good governance or the rule of law in Iran.

Proposed paragraph (c)(iii) is intended to capture situations where a person or entity has been involved in undermining the principles of good governance and the rule of law, including equality before the law, the presumption of innocence, principles of natural justice including procedural fairness, the right to one's own legal representation, the right to appeal and have decisions reviewed, the right to be tried without undue delay, and other similar civil and political rights.

Under proposed paragraph (d) of item 4 of the table in regulation 6, the Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans, a person or entity that the Minister is satisfied is assisting, or has assisted, Iran to threaten or undermine the sovereignty or territorial integrity of another country.

Proposed paragraph (d) is intended to target Iran's destabilising activities and behaviour abroad. Activities that undermine the sovereignty or territorial integrity of another country may include the use or the threat of the use of force, including against our allies and friends in the region, the support for regional armed groups and militias (including funding of proxy groups), the proliferation of ballistic and cruise missiles, and attacks and disruption against shipping and freedom of navigation.

Proposed paragraphs (c) and (d) provide that sanctions may be imposed as a result of conduct that has occurred, including situations where the conduct is ongoing.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

AUTONOMOUS SANCTIONS AMENDMENT (IRAN) REGULATIONS 2023

The proposed *Autonomous Sanctions Amendment (Iran) Regulations 2023* (the Amendment 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*.

Overview of the Amendment Regulations

Section 10 of the *Autonomous Sanctions Act 2011* (the Act) enables the Governor-General to make regulations applying sanctions. Paragraph 10(1)(a) of the Act provides that the *Autonomous Sanctions Regulations 2011* (the Regulations) may make provision relating to the proscription of persons or entities for specified purposes or more generally. Section 28 of the Act also 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 the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

When considering whether to apply autonomous sanctions, the Government considers Australia's national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia's economic, security or other interests.

Autonomous sanctions differ from United Nations Security Council sanctions which the United Nations Security Council imposes and which all UN Member States, including Australia, are obliged to implement as a matter of international law.

The *Autonomous Sanctions Regulations 2011* (the Regulations) enable, among other things, the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions, and declare a person for a travel ban, if the Minister is satisfied that the person or entity meets criteria specified in the Regulations. Designations and declarations are hereafter collectively referred to as 'listings'. The Regulations provide that the Minister must make listings by legislative instrument.

The purpose of the proposed *Autonomous Sanctions Amendment (Iran) Regulations 2023* (the amendment Regulation) is to introduce new listing criteria under the existing autonomous sanctions regime in relation to Iran in response to the general oppression of the Iranian population, in particular women and girls, and the undermining of good governance and the rule of law. The proposed criteria would also allow the listing of Iranian persons and entities or persons and entities backed by Iran, engaging in malign activities which undermine the sovereignty or territorial integrity of a country other than Iran.

Schedule 1 of this instrument would amend the Regulations to introduce into regulation 6 of the Regulations new Iran-specific listing criteria to enable the Foreign Minister to list persons and entities for targeted financial sanctions and/or travel bans if:

- (c) A person or entity that the Minister is satisfied is engaging in, is responsible for or is complicit in, or has engaged in, been responsible for or been complicit in, any of the following:
 - (i) the oppression of women and girls in Iran;
 - (ii) the general oppression of people in Iran;
 - (iii) undermining good governance or the rule of law in Iran.
- (d) A person or entity that the Minister is satisfied is assisting, or has assisted, Iran to threaten or undermine the sovereignty or territorial integrity of another country.

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

- a 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 is a ‘controlled asset’, 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 travelling to, entering or remaining in Australia.

Human rights implications

Australia already imposes targeted financial sanctions and travel bans on a number of persons and entities in response to situations of international concern carried out by Iran. The amendment regulations would introduce an additional category of persons and entities on whom targeted financial sanctions and travel bans can be imposed and provide an additional tool to influence a change in Iranian state behaviour.

The proposed reforms do not change the overarching operation of the existing Regulations. Once these reforms are in force, the Government will be able to impose targeted financial sanctions on additional categories of persons and entities, and travel bans on additional categories of persons. Each legislative instrument making listings against persons or entities in these additional categories will be accompanied by a separate Statement of Compatibility, which will address rights that are relevant to those particular listings.

These legislative instruments have the potential to impact on the following rights:

- the right to privacy (Article 17 of the ICCPR);
- the right to respect for the family (Articles 17 and 23 of the ICCPR);
- the right to an adequate standard of living (Article 11(1) of the International Covenant on Economic, Social and Cultural Rights);
- the right to freedom of movement (Article 12 of the ICCPR); and

- the right to non-refoulement (which comes from obligations relating to the prohibition on torture and other cruel, inhuman or degrading treatment or punishment under Article 3 of 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).

We consider that the following aspects of the proposed Regulations would prevent legislative instruments listing persons for targeted financial sanctions and travel bans from breaching the rights above.

The proposed Regulations are transparent and targeted. When listing a person under the Regulations for targeted financial sanctions or a travel ban, the Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons the Minister is satisfied are in the categories of persons or entities, as set out in regulation 6 (table item 4) of the Regulations.

Once a listing has been made, the Minister may revoke the listing at any time, upon application or on his or her own initiative. The Regulations provide that listings automatically expire after three years if not otherwise continued in effect by legislative instrument.

When considering whether to continue a listing, the Minister invites submissions from the listed person or entity, or their authorised representatives. The Minister does not consult a person or entity in advance of listing them for the first time, which would put the person or entity on notice that they may be listed, providing an opportunity for them to remove assets from Australian jurisdiction and rendering any listing less effective.

Listing decisions are subject to judicial review but not merits review. In line with the principles developed by the Administrative Review Council, the exclusion of merits review is justified as sanctions listings decisions can affect Australia's relations with other countries and, as such, are decisions of high political content with the decision-making power personally vested in the Minister.

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.

The Regulations also allow the Minister, upon application, to provide for certain payments to be made to a designated person and for a designated person's assets to be dealt with in certain circumstances, including in relation to food, housing, medicine and medical treatment. The Minister may, upon their own initiative, provide for payments to be made to a designated person, or for a designated person's assets to be dealt with, if the Minister is satisfied that to do so is in the national interest.

Conclusion

This instrument is compatible with human rights as the measures in the Regulations do not raise any human rights issues.