

EXPOSURE DRAFT



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Autonomous Sanctions Amendment (Thematic Sanctions) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Marise Payne [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Foreign Affairs

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1 Name

This instrument is the *Autonomous Sanctions Amendment (Thematic Sanctions) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which the <i>Autonomous Sanctions Amendment (Thematic Sanctions) Act 2021</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Autonomous Sanctions Act 2011*;
- (b) the *Customs Act 1901*;
- (c) the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Autonomous Sanctions Regulations 2011

1 Regulation 3

Insert:

bribery means:

- (a) the promise, offering or giving, to a foreign public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in a particular way in the exercise of the official’s official duties; or
- (b) the solicitation or acceptance by a foreign public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in a particular way in the exercise of the official’s official duties.

corruption means:

- (a) bribery; or
- (b) misappropriation of property.

2 Regulation 3 (definition of ***designated person or entity***)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

3 Regulation 3 (note to the definition of ***designated person or entity***)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

4 Regulation 3

Insert:

foreign public official has the same meaning as in Division 70 of the *Criminal Code*.

misappropriation of property means the misappropriation or other diversion by a foreign public official for the official’s benefit or for the benefit of another person or entity, of any asset entrusted to the official because of the official’s position.

5 Regulation 6 (heading)

Repeal the heading, substitute:

6 Country-specific designation of persons or entities or declaration of persons

6 Subregulation 6(1)

Omit “(1) For”, substitute “For”.

7 Subregulation 6(2)

Repeal the subregulation.

8 After regulation 6

Insert:

6A Thematic designation of persons or entities or declaration of persons

Proliferation of weapons of mass destruction

- (1) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person or entity as a ***designated person or entity*** if the Minister is satisfied that the person or entity is contributing to the proliferation of weapons of mass destruction;
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person is contributing to the proliferation of weapons of mass destruction.

Significant cyber incidents

- (2) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person or entity as a ***designated person or entity*** if the Minister is satisfied that the person or entity:
 - (i) has caused, or attempted to cause, a significant cyber incident; or
 - (ii) has assisted with causing, or with attempting to cause, a significant cyber incident; or
 - (iii) has otherwise been complicit in causing, or in attempting to cause, a significant cyber incident;
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person:
 - (i) has caused, or attempted to cause, a significant cyber incident; or
 - (ii) has assisted with causing, or with attempting to cause, a significant cyber incident; or
 - (iii) has otherwise been complicit in causing, or in attempting to cause, a significant cyber incident.
- (3) For the purposes of this regulation and regulation 9, in deciding whether the Minister is satisfied that a cyber incident was, or would have been, significant, the Minister may have regard to the following matters:
 - (a) whether the conduct of the person or entity was malicious;
 - (b) in the case of a cyber incident that has occurred—whether the incident involved any of the following:
 - (i) actions that destroyed, degraded or rendered unavailable an essential service or critical infrastructure;
 - (ii) actions that resulted in the loss of a person’s life, or caused serious risk of loss of a person’s life;

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Schedule 1 Amendments

- (iii) theft of intellectual property, trade secrets or confidential business information for the purposes of gaining a competitive advantage for an entity or a commercial sector;
- (iv) interference with a political or governmental process, the exercise of a political right or duty, or the functions or operations of a parliament;
- (c) in the case of a cyber incident that has been attempted but has not occurred—whether the Minister is satisfied that, if the incident had occurred, the incident could reasonably be expected to have involved one or more of the matters mentioned in subparagraphs (b)(i) to (iv);
- (d) any other matters the Minister considers relevant.

Serious violations or serious abuses of human rights

- (4) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person or entity as a ***designated person or entity*** if the Minister is satisfied that the person or entity has engaged in, has been responsible for or has been complicit in an act that constitutes a serious violation or serious abuse of a person's:
 - (i) right to life; or
 - (ii) right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; or
 - (iii) right not to be held in slavery or servitude or right not to be required to perform forced or compulsory labour;
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person has engaged in, has been responsible for or has been complicit in an act that constitutes a serious violation or serious abuse of a person's:
 - (i) right to life; or
 - (ii) right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; or
 - (iii) right not to be held in slavery or servitude or right not to be required to perform forced or compulsory labour.

Serious corruption

- (5) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person or entity as a ***designated person or entity*** if the Minister is satisfied that the person or entity has engaged in, has been responsible for or has been complicit in an act of corruption that is serious;
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person has engaged in, has been responsible for or has been complicit in an act of corruption that is serious.
- (6) For the purposes of this regulation and regulation 9, in deciding whether the Minister is satisfied that an act of corruption is serious, the Minister may have regard to the following matters:
 - (a) the status or position of the person or entity;
 - (b) the nature, extent and impact of the conduct of the person or entity;

- (c) the circumstances in which that conduct occurred;
- (d) any other matters the Minister considers relevant.

Conduct in whole or in part outside Australia

- (7) The Minister must not make a designation or a declaration under subregulation (1), (2), (4) or (5) unless the Minister is satisfied that the conduct of the person or entity concerned occurred, in whole or in part, outside Australia.

Immediate family members

- (8) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person as a **designated person or entity** if the Minister is satisfied that the person is an immediate family member of a person who is covered by a designation under paragraph (4)(a) or (5)(a);
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person is an immediate family member of a person who is covered by a declaration under paragraph (4)(b) or (5)(b).

Persons or entities obtaining financial or other benefits

- (9) For the purposes of paragraph 10(1)(a) of the Act, the Minister may, by legislative instrument, do either or both of the following:
 - (a) designate a person or entity as a **designated person or entity** if the Minister is satisfied that the person or entity has obtained a financial or other benefit as a result of the act of another person or entity who is covered by a designation under paragraph (4)(a) or (5)(a), being the act referred to in paragraph (4)(a) or (5)(a);
 - (b) declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia if the Minister is satisfied that the person has obtained a financial or other benefit as a result of the act of another person who is covered by a declaration under paragraph (4)(b) or (5)(b), being the act referred to in paragraph (4)(b) or (5)(b).

9 Regulation 9 (heading)

Repeal the heading, substitute:

9 Duration of designation under regulation 6, 6A, 7 or 8 or declaration under regulation 6 or 6A

10 Subregulation 9(1)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

11 Subregulation 9(2)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

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Schedule 1 Amendments

12 Paragraph 9(4)(a)

Omit “paragraph 6(1)(a)”, substitute “paragraph 6(a)”.

13 Paragraph 9(4)(a)

Omit “subregulation 6(1)”, substitute “regulation 6”.

14 Paragraph 9(4)(b)

Omit “paragraph 6(2)(a)”, substitute “paragraph 6A(1)(a)”.

15 After paragraph 9(4)(b)

Insert:

- (ba) make a declaration under subregulation (3) in relation to a designation made under paragraph 6A(2)(a) unless the Minister is satisfied that the person or entity to which the designation relates:
 - (i) has caused, or attempted to cause, a significant cyber incident; or
 - (ii) has assisted with causing, or with attempting to cause, a significant cyber incident; or
 - (iii) has otherwise been complicit in causing, or in attempting to cause, a significant cyber incident; or
- (bb) make a declaration under subregulation (3) in relation to a designation made under paragraph 6A(4)(a) unless the Minister is satisfied that the person or entity to which the designation relates has engaged in, has been responsible for or has been complicit in an act that constitutes a serious violation or serious abuse of a person’s:
 - (i) right to life; or
 - (ii) right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; or
 - (iii) right not to be held in slavery or servitude or right not to be required to perform forced or compulsory labour; or
- (bc) make a declaration under subregulation (3) in relation to a designation made under paragraph 6A(5)(a) unless the Minister is satisfied that the person or entity to which the designation relates has engaged in, has been responsible for or has been complicit in an act of corruption that is serious; or
- (bd) make a declaration under subregulation (3) in relation to a designation made under paragraph 6A(8)(a) unless the Minister is satisfied that the person to which the designation relates is an immediate family member of a person who is covered by a designation under paragraph 6A(4)(a) or (5)(a); or
- (be) make a declaration under subregulation (3) in relation to a designation made under paragraph 6A(9)(a) unless the Minister is satisfied that the person or entity to which the designation relates has obtained a financial or other benefit as a result of the act of another person or entity who is covered by a designation under paragraph 6A(4)(a) or (5)(a), being the act referred to in paragraph 6A(4)(a) or (5)(a); or

16 Paragraph 9(5)(b)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

17 Paragraph 9(5)(d)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

18 Regulation 10 (heading)

Repeal the heading, substitute:

10 Revocation of designation under regulation 6, 6A, 7 or 8 or declaration under regulation 6 or 6A

19 Paragraph 10(1)(a)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

20 Paragraph 10(1)(b)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

21 Paragraph 10(3)(a)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

22 Paragraph 10(3)(b)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

23 Subregulation 10(3)

Omit “designated person or entity to which the designation relates”, substitute “person or entity to which the designation or declaration relates”.

24 Regulation 11 (heading)

Repeal the heading, substitute:

11 Application for revocation of designation under regulation 6, 6A, 7 or 8 or declaration under regulation 6 or 6A

25 Paragraph 11(1)(b)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

26 Regulation 19 (heading)

Omit “**paragraph 6(1)(b) or (2)(b)**”, substitute “**paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)**”.

27 Paragraph 19(1)(a)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

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28 Subregulation 21(1)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

29 At the end of the instrument

Add:

Part 7—Application, saving and transitional provisions

27 Amendments made by the *Autonomous Sanctions Amendment (Thematic Sanctions) Regulations 2021*

- (1) An instrument in force under subregulation 6(1) immediately before the commencement of this regulation continues in force on and after that commencement as if it were an instrument in force under regulation 6.
- (2) A designation made under paragraph 6(1)(a) before the commencement of this regulation and in force immediately before that commencement has effect on and after that commencement as if it were a designation made under paragraph 6(a).
- (3) A declaration made under paragraph 6(1)(b) before the commencement of this regulation and in force immediately before that commencement has effect on and after that commencement as if it were a declaration made under paragraph 6(b).
- (4) An instrument in force under subregulation 6(2) immediately before the commencement of this regulation continues in force on and after that commencement as if it were an instrument in force under subregulation 6A(1).
- (5) A designation made under paragraph 6(2)(a) before the commencement of this regulation and in force immediately before that commencement has effect on and after that commencement as if it were a designation made under paragraph 6A(1)(a).
- (6) A declaration made under paragraph 6(2)(b) before the commencement of this regulation and in force immediately before that commencement has effect on and after that commencement as if it were a declaration made under paragraph 6A(1)(b).
- (7) An instrument made under subregulation 9(3) before the commencement of this regulation, in relation to a designation or declaration, and in force immediately before that commencement, has effect on and after that commencement as if it were an instrument made under that subregulation in relation to that designation or declaration as affected by the operation of subregulation (2), (3), (5) or (6) of this regulation.
- (8) This regulation does not affect the day on which a designation or declaration took effect.

Customs (Prohibited Exports) Regulations 1958

30 Paragraph 11A(a)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

31 Regulation 11A (note)

Omit “subregulation 6(1)”, substitute “regulation 6”.

32 Regulation 11B (note)

Omit “paragraph 6(1)(a) or (2)(a)”, substitute “paragraph 6(a) or 6A(1)(a), (2)(a), (4)(a), (5)(a), (8)(a) or (9)(a)”.

Migration Regulations 1994

33 Subparagraph 2.43(1)(aa)(i)

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.

34 Subparagraph 4003(c)(i) of Schedule 4

Omit “paragraph 6(1)(b) or (2)(b)”, substitute “paragraph 6(b) or 6A(1)(b), (2)(b), (4)(b), (5)(b), (8)(b) or (9)(b)”.