

# Exposure Draft Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

## Autonomous Sanctions Regulations 2011

*This is an excerpt of the Autonomous Sanctions Amendment (Afghanistan) Regulations 2025 for amendments pertaining to Afghanistan*

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.

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.

In accordance with regulation 18 of the Regulations, the Minister for Foreign Affairs (the Foreign Minister) may grant a permit authorising conduct that is prohibited by the Regulations. Any permit granted by the Foreign Minister must be in the national interest.

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.

The purpose of the proposed *Autonomous Sanctions Amendment (Afghanistan) Regulations 2025* (the amendment Regulation) is to introduce:

- a prohibition on the export of arms and related matériel to Afghanistan, along with related services; and
- new sanctions listing criteria specific to Afghanistan, that would allow the Foreign Minister to impose targeted financial sanctions and travel bans on individuals and entities.

Specifically, the Foreign Minister would be able to impose targeted financial sanctions and travel bans against persons or entities who are engaging in, responsible for, or complicit in:

- the oppression of women and girls in Afghanistan;
- the oppression of minority groups in Afghanistan;
- the general oppression of people in Afghanistan; or
- undermining of good governance and the rule of law in Afghanistan.

#### *Imposing an arms embargo and prohibition on related services*

The amendment Regulation would introduce a prohibition on supplying arms or related materiel to Afghanistan, as well as services related to arms and related materiel. The embargo aims to prevent arms and related materiel being supplied to Afghanistan that may exacerbate the grave situation of international concern in Afghanistan.

#### *Imposing targeted financial sanctions and travel bans*

The Regulations enable, among other things, the Foreign Minister to designate a person or entity for targeted financial sanctions, and declare a person for a travel ban, if the Foreign 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 Foreign Minister must make listings by legislative instrument.

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 sections of the *Autonomous Sanctions Amendment (Afghanistan) Regulations 2025* 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: [to be inserted]). 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**.

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Relevant sections of the Autonomous Sanctions Amendment (Afghanistan) Regulations 2025

Section 1

The title of the instrument is the Autonomous Sanctions Amendment (Afghanistan) Regulations 2025.

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 – Amendments to the Autonomous Sanctions Regulation – Afghanistan

Item 1

Regulation 4 of the Regulations sets out the goods that are prohibited from being supplied to certain countries, or parts of countries. Item 1 introduces a new item in the table of reg 4(2) to introduce an arms embargo on Afghanistan.

The arms embargo prohibits any Australian person or business, wherever located, to supply, sell or transfer arms and related materiel to Afghanistan.

As a consequence of the introduction of the prohibition on supplying arms or related materiel to Afghanistan, it would also become prohibited to provide certain services to a person if it assists with, or is provided in relation to, supplying Afghanistan with arms and related materiel. The prohibited services include:

- technical advice, assistance or training; or
- financial assistance; or
- a financial service; or
- another service.

## Item 2

Regulation 5 of the Regulations sets out the services that are prohibited from being provided to certain countries, or parts of countries.

Item 2 introduces a new item in the table of reg 5(4) to ban the provision of certain services to Afghanistan that relate to a particular activity.

The ban on providing certain services prohibits the provision of:

- technical advice, assistance or training; or
- financial assistance; or
- a financial service; or
- another service

where the provision of those services assists with, or is provided in relation to, a military activity in Afghanistan, or the manufacture, maintenance or use of arms or related materiel for Afghanistan.

## Item 3

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 3 introduces a new Afghanistan-specific listing criteria into table item 1A of regulation 6 to enable the Foreign Minister to impose targeted financial sanctions and travel bans based on the Afghanistan criteria (below).

Schedule 1 of this instrument would amend the Regulations to add new listing criteria for Afghanistan to enable the Foreign Minister to list, by legislative instrument, 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:

- (a) the oppression of women and girls in Afghanistan;
- (b) the oppression of minority groups in Afghanistan;
- (c) the general oppression of people in Afghanistan;
- (d) undermining good governance or the rule of law in Afghanistan.

Under proposed paragraph (a) of item 1A of the table in regulation 6, the Foreign Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Foreign 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 in Afghanistan.

Proposed paragraph (a) is intended to capture situations where a person or entity has been involved in the oppression of women and girls. Examples of the oppression of women and girls may include where women and girls are restricted from accessing education, engaging in employment, participating in elections, entering Afghanistan for the purpose of carrying out matters of the United Nations such as providing humanitarian and development aid, arbitrary detention and arrests of women and girls, harassment and intimidation of women and girls, as well as laws and policies either designed to oppress women and girls or operating with such effect.

Some of the rights that may be impacted by the oppression of women and girls in Afghanistan may include the violation or abuse of human rights such as the right to equality and non-discrimination, right to liberty and security of person, right to education, right to work and to gain a living by freely chosen or accepted work, right to just and favourable conditions of work, including remuneration and fair wages, the right to vote and participate in public life, the right to enjoy the highest attainable standard of physical and mental health, the right to take part in cultural life, the right to marry with the free and full consent of the intending spouses and the rights to freedom of peaceful assembly (protest), the right to freedom of movement, freedoms of opinion and expression, freedom of association, and freedom of religion.

Under proposed paragraph (b) of item 1A of the table in regulation 6, the Foreign Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Foreign 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 minority groups in Afghanistan.

Proposed paragraph (b) is intended to capture situations where a person or entity has been involved in the oppression of members of vulnerable minority groups in Afghanistan. Examples of vulnerable groups in Afghanistan may include religious groups in Afghanistan who do not identify or follow the Sunni interpretation of Islam, members of ethnic groups such as the Hazara, and persons who belong the LGBTQIA+ community in Afghanistan.

Examples of the oppression of minority groups in Afghanistan may include physical injury or mental harm to members of minority groups, instances of corporal punishment, persecution, violence, threats, harassment, discrimination and intimidation, arbitrary arrests or arbitrary detention of members of minority groups. Other examples are where a person or entity has

been involved in the violation or abuse of human rights of members of minority groups in Afghanistan. Examples of the human rights covered by this criteria are the right to liberty and security of person, the right to freedom of religion or belief, the rights to freedom of peaceful assembly, freedom of association, and freedoms of opinion and expression, of members of minority groups in Afghanistan.

Under proposed paragraph (c) of item 1A of the table in regulation 6, the Foreign Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Foreign 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 Afghanistan.

Proposed paragraph (c) is intended to capture situations where a person or entity has been involved in causing physical or mental harm to the people of Afghanistan, or specific groups of people in Afghanistan, including those who may not identify as a member of a vulnerable group in Afghan society. This limb of the criteria is broadly defined and is intended to apply to a range of persons, or specific groups, including journalists, human rights defenders, civil society, former government officials. Examples of the type of conduct targeted by this criteria could include the violation or abuse of the human rights of the people of Afghanistan. Examples of the rights that may be covered by this criteria are the right to freedom of expression, freedom of association, and freedom of movement. For example, public floggings, targeting of activists, forced conversions and blasphemy convictions, arbitrary arrests and arbitrary detention, as well as instances of threats, harassment, and intimidation against the people of Afghanistan.

Under proposed paragraph (d) of item 1A of the table in regulation 6, the Foreign Minister would be able to list, by legislative instrument, persons and entities for targeted financial sanctions and/or travel bans that the Foreign 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 Afghanistan.

Examples of the situations that proposed paragraph (d) is intended to capture may include 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 legal representation of one's own choosing, the right to appeal and have decisions reviewed, the right to be tried without undue delay, right to a fair trial and the right not to be detained arbitrarily, and other similar civil and political rights. Extrajudicial killings are also intended to be captured by this criteria. It also extends to other conduct that undermines good governance, such as corruption.

Proposed paragraphs (a) to (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 (AFGHANISTAN) REGULATIONS 2025**

The proposed *Autonomous Sanctions Amendment (Afghanistan) Regulations 2025* (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 Foreign Minister to designate a person or entity for targeted financial sanctions, and declare a person for a travel ban, if the Foreign 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 Foreign Minister must make listings by legislative instrument.



The purpose of the proposed *Autonomous Sanctions Amendment (Afghanistan) Regulations 2025* (the amendment Regulation) is to introduce new trade measures on Afghanistan, as well as a new listing criteria for Afghanistan in response to the oppression of women and girls in Afghanistan, the oppression of minority groups in Afghanistan, the general oppression of the people in Afghanistan, the undermining of good governance and the rule of law of Afghanistan. The reforms expand the application of the Autonomous Sanctions Regulations, and do not change their overarching operation.

The amendment Regulation would introduce a prohibition on supplying arms or related materiel to Afghanistan, as well as services related to arms and related materiel. The embargo aims to prevent arms and materiel being supplied to Afghanistan that may exacerbate the grave situation of international concern in Afghanistan.

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

- (a) the oppression of women and girls in Afghanistan;
- (b) the oppression of minority groups in Afghanistan;
- (c) the general oppression of people in Afghanistan;
- (d) undermining good governance or the rule of law in Afghanistan.

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**

This amendment Regulation promotes human rights by strengthening sanctions imposed upon persons or entities that are engaging in, are responsible for, or are complicit in, or have

engaged in, have been responsible for have been complicit in activities that violate or undermine respect for human rights. The human rights that are promoted include, but are not limited to:

- The right to an effective remedy in article 2(3) of the ICCPR *International Covenant on Civil and Political Rights* (ICCPR);
- The right to life in article 6 of the ICCPR;
- The protection against torture and cruel, inhuman or degrading treatment or punishment in article 2 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT);
- The right to liberty and security of person in article 9 of the ICCPR and article 14 of the CRPD;
- The right to freedom of movement in article 12 of the ICCPR;
- The rights to freedom of opinion and expression in article 19 of the ICCPR;
- The right to education in article 13 of the ICESCR, articles 28 and 29 of the CRC, and article 24 of the CPRD.

The introduction of the new trade measures and the new listing criteria for Afghanistan will enable the Foreign Minister to impose sanctions (in coordination with international partners where appropriate) in a way that promotes human rights. The effect of the amendment Regulations is the prevention and suppression of violations and abuses of the above rights. Targeted financial sanctions imposed under these amendment Regulations will ensure that persons and entities listed are denied access to assets that could be used to carry out or facilitate the proscribed serious human rights violations and abuses.

Australia already imposes targeted financial sanctions and travel bans on a number of persons and entities in response to situations of international concern in Afghanistan, pursuant to the sanctions made by the United Nations Security Council. The amendment regulations would introduce new listing criteria for the Foreign Minister to impose autonomous sanctions on persons and entities, and provide an additional tool to influence change in support of the people in Afghanistan.

The proposed reforms do not change the overarching operation of the existing Regulations. Once these reforms are in force, the Government would be able to impose targeted financial sanctions on persons and entities, and travel bans on persons who meet the new listing criteria for Afghanistan. Each legislative instrument making listings against persons or entities in these additional categories would be accompanied by a separate Statement of Compatibility, which would address human 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 ICESCR);
- 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 made pursuant to the new Afghanistan criteria from impermissibly limiting 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 Foreign Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons the Foreign Minister is satisfied are in the categories of persons or entities, as set out in regulation 6 (table item 1A) of the Regulations.

Once a listing has been made, the Foreign Minister may revoke the listing at any time, upon application or on his or her own initiative. Listed persons and entities have a right to apply to have their listing revoked. When considering whether to revoke a listing, the Foreign Minister may have regard to submissions from the listed person or entity, or their authorised representatives.

The Foreign 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 Foreign Minister.

The Regulations allow the Foreign 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 Foreign 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 Foreign 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 Foreign Minister is satisfied that to do so is in the national interest.

## **Conclusion**

This instrument is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.