



Australian Government  
Department of Foreign Affairs and Trade

# Issues Paper

## Review of Australia's Autonomous Sanctions Framework

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# Acronyms and Key Terms

<b>ASO</b>	Australian Sanctions Office
<b>Act</b>	<i>Autonomous Sanctions Act 2011</i>
<b>Autonomous Sanctions Framework</b>	Collectively - <i>Autonomous Sanctions Act 2011</i> , Autonomous Sanctions Regulations 2011 and subordinate instruments
<b>Regulations</b>	Autonomous Sanctions Regulations 2011
<b>DFAT Consolidated List</b>	A list of all persons and entities listed under Australian sanctions law (both autonomous and United Nations Security Council frameworks) for targeted financial sanctions and travel bans
<b>COTUNA</b>	<i>Charter of the United Nations Act 1945</i>
<b>COTUNA regulations</b>	Regulations made under the <i>Charter of the United Nations Act 1945</i>
<b>COTUNA Framework</b>	<i>Charter of the United Nations Act 1945</i> , COTUNA Regulations, and subordinate instruments
<b>The department</b>	Department of Foreign Affairs and Trade
<b>Designated person or entity</b>	A person or entity designated under the Autonomous Sanctions Framework and subject to Targeted Financial Sanctions
<b>Listings</b>	Designations of persons and entities for targeted financial sanctions and declarations of persons for travels bans are collectively referred to as 'listings'
<b>Minister for Foreign Affairs and Trade</b>	Minister
<b>NGO</b>	Non-governmental organisation
<b>Pax</b>	The Australian sanctions portal. The public can register as a user of Pax to access a range of ASO services, including to request an indicative assessment and apply for a sanctions permit.
<b>Targeted Financial Sanctions</b>	Sanctions measures which prohibit, directly or indirectly, making an asset available to, or for the benefit of, a designated person or entity; or using or dealing with an asset that is owned or controlled by a designated person or entity

**ToR**

Terms of Reference for the Review of the legal  
framework for Autonomous Sanctions

**UNSC**

United Nations Security Council

# Part 1 – Introduction

1. Sanctions are restrictive measures, such as prohibitions on the trade in goods and services, asset freezes and travel bans, that are imposed in response to situations of international concern and do not involve the use of force. Sanctions are intended to:
  - influence, directly or indirectly, foreign governments or other entities and impose costs on those responsible for situations of international concern (for example, by denying access to international travel or to the international financial system)
  - signal our objection to action that is contrary to international norms and behaviour
  - target specific countries, groups, persons, or entities to limit the adverse consequences of the situation of international concern (for example, by denying access to military goods, or to goods, technologies or funding that enable the pursuit of arms proliferation programs)
  - influence those responsible for the situation of international concern to modify their behaviour and encourage a change in policy.
2. Australia implements two types of sanctions:
  - UNSC sanctions, imposed in accordance with our obligations under COTUNA
  - autonomous sanctions, imposed as a matter of Australian foreign policy.
3. UNSC sanctions are implemented under COTUNA and the COTUNA regulations.
4. Autonomous sanctions are implemented under the Act, the Regulations, and instruments made under the Regulations.

## About this Review

5. The Review, governed by the ToR (**Attachment A**), is being conducted by the department ahead of the sunset (automatic expiry) on 1 April 2024 of the Regulations. It will consider whether the Autonomous Sanctions Framework remains fit for purpose and will seek to identify administrative and regulatory efficiencies for government and the public, with a view to ensuring continued robust sanctions administration, regulation, and compliance.
6. The Review will be informed by the department's ten years' experience administering and regulating the Autonomous Sanctions Framework. It will consider the sanctions frameworks

of other countries, submissions in response to this Issues Paper, targeted discussions with stakeholders on key issues, and publications on sanctions law.

7. The COTUNA Framework is not the subject of the Review. However, given its similarity to the Autonomous Sanctions Framework, it may be appropriate to replicate some proposed amendments to the Autonomous Sanctions Framework in the COTUNA Framework.
8. The Issues Paper does not include consideration of whether Australia should undertake further sanctions measures in response to specific situations of international concern or develop further sanctions frameworks for specific countries or themes. Submissions related to these considerations will not be considered by the department.

## Format of Issues Paper

9. The Issues Paper is divided into three parts:
  - Part 1: Introduction—providing a guide to the Issues Paper
  - Part 2: The Autonomous Sanctions Framework—providing an overview of the framework, including key aspects and provisions
  - Part 3: Issues identified and potential remedial options—outlining aspects of the Autonomous Sanctions Framework that the department has identified for improvement, with proposed reforms (where appropriate) and targeted questions to guide discussion.
10. The matters contained in this Issues Paper are those identified by the department and are not intended to preclude public comment on other matters that are within the Review's ToR. Should you wish to identify further issues and propose reforms within the ToR, the department would be assisted by, for instance, providing details of the issue faced with the Autonomous Sanctions Framework including: (i) specific examples; (ii) the particular legislative provisions that the issue relates to; and (iii) any options to address the issues raised.

## Submissions

11. Submissions are invited in response to the questions raised in this Issues Paper or any other matter relevant to the ToR (**Attachment A**). Submissions may be lodged electronically or by post, however electronic lodgement is preferred.
12. Submissions may be shared with other Commonwealth agencies and Commonwealth Ministers for the purposes of the Review. All information (including name and address details)

contained in submissions may be made publicly available on the department's website unless you expressly indicate you would like all or part of your submission to remain in confidence. Automatically generated statements in emails are not sufficient for this purpose.

13. If you wish only part of your submission to remain confidential, you must provide this information clearly marked as such in a separate attachment. Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

14. The closing date for submissions is **26 February 2023**.

Email: [sanctionsconsultation@dfat.gov.au](mailto:sanctionsconsultation@dfat.gov.au)

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15. If you have any queries about how we manage personal information including any personal information in your submission, please contact our Privacy Team at [privacy@dfat.gov.au](mailto:privacy@dfat.gov.au).

16. Our Privacy Policy, available on [DFAT's website](#), explains:

- how you may access and correct the personal information we hold about you; and
- how you may make a complaint about a breach of privacy and how we will deal with any privacy complaints.

# Part 2 – The Autonomous Sanctions

## Framework

17. The Autonomous Sanctions Framework was introduced in 2011 and consolidated autonomous sanctions measures that existed across various Commonwealth legislation.<sup>1</sup> The Autonomous Sanctions Framework was designed to align with the structure of UNSC sanction measures imposed under COTUNA.

18. ‘Autonomous sanction’ is defined in section 4 of the Act as a sanction that:

*a. is intended to influence, directly or indirectly, one or more of the following in accordance with Australian Government policy:*

- i. a foreign government entity;*
- ii. a member of a foreign government entity;*
- iii. another person or entity outside Australia; or*

*b. involves the prohibition of conduct in or connected with Australia that facilitates, directly or indirectly, the engagement by a person or entity described in subparagraph (a)(i), (ii) or (iii) in action outside Australia that is contrary to Australian Government policy.*

19. The Autonomous Sanctions Framework was intentionally designed to allow Australia to apply sanctions measures efficiently, effectively, and with flexibility, in response to situations of international concern. There are three parts of the Autonomous Sanctions Framework that enable certain sanctions actions to occur. Broadly speaking:

- the Act contains high-level provisions to govern the Autonomous Sanctions Framework including a provision to enable sanctions to be made by regulation, and setting out offence provisions, enforcement, and information-gathering powers
- the Regulations set out what constitutes sanctioned activity in respect of countries and themes, the listing criteria for imposing Targeted Financial Sanctions and travel bans, and the permit granting powers

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<sup>1</sup> *Customs Act 1901* and regulations, *Migration Act 1958* and regulations, and the *Banking Foreign Exchange Regulations 1959* (as they stood prior to the introduction of the Autonomous Sanctions Framework).



- instruments set out listed persons and entities, or further define goods and services subject to prohibition.
20. Australia has imposed autonomous sanctions with respect to eight countries (or parts thereof) and one former country (the Former Federal Republic of Yugoslavia). Of these, four countries – the Democratic People’s Republic of Korea (DPRK), Iran, Libya and Syria – are also the subject of UNSC sanctions.
21. In addition, under the Regulations<sup>2</sup>, persons or entities can be sanctioned in response to the following acts, wherever they occur in the world (thematic sanctions):
- proliferation of weapons of mass destruction
  - significant cyber incidents
  - serious violations or serious abuses of human rights (limited to: the right to life; not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and to be free from slavery, servitude or forced or compulsory labour)
  - serious corruption.
22. Unlike country-based sanctions measures, before imposing thematic sanctions measures, the Act requires that the Minister first obtain the Attorney-General’s agreement (as Australia’s First Law Officer) and consult other appropriate Ministers.<sup>3</sup> Thematic sanctions measures are limited to Targeted Financial Sanctions and travel bans.
23. The following sections outline some of the key provisions provided for under the Autonomous Sanctions Framework.

## Sanctions measures

24. The Regulations set out sanctions measures that the Minister may impose, which include:
- restrictions on trade in goods and services, which typically prohibit the provision of certain goods and/or services to the country (or part of a country) subject to the sanctions measure<sup>4</sup>

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<sup>2</sup> Regulation 6A of the Regulations sets out the listing criteria for each category of thematic sanction.

<sup>3</sup> See subsection 10(4) of the Act.

<sup>4</sup> See regulation 12 (Prohibitions relating to Sanctioned Supply), regulation 12A (Prohibitions relating to Sanctioned Import), regulation 13 (Prohibitions relating to Sanctioned Service).

- often these restrictions implement an arms embargo (restrictions on trade in military goods, and on services related to such goods or a military activity)
- restrictions on commercial activities, which prohibit, for example, the sale or purchase of shares in entities operating in certain industries, or the provision of loans or credit to certain entities<sup>5</sup>
- travel bans, which prevent declared persons from entering into, transiting through, or remaining in Australia<sup>6</sup>
- Targeted Financial Sanctions, which prohibit, directly or indirectly, making an asset available to, or for the benefit of, a designated person or entity; or using or dealing with an asset that is owned or controlled by a designated person or entity<sup>7</sup>
  - unlike trade restrictions, which usually apply to specific goods and services, Targeted Financial Sanctions prohibit the supply of any asset whatsoever to designated persons or entities, and limit designated persons' or entities' access to their existing assets
  - the department publishes persons and entities subject to Targeted Financial Sanctions on the DFAT Consolidated List
- specification of vessels, to enable the Minister to direct a sanctioned vessel to leave Australia or not to enter an Australian port or place.<sup>8</sup>

25. A summary of the sanctions measures that apply under the Autonomous Sanctions Framework in respect of particular countries, themes, and specific goods and activities is set out at Table 1.<sup>9</sup>

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<sup>5</sup> See regulation 13A (Prohibitions relating to engaging in sanctioned commercial activity).

<sup>6</sup> See regulation 6 (Country-specific designation of persons or entities or declaration of persons) and regulation 6A (Thematic designation of persons or entities or declaration of persons).

<sup>7</sup> See regulation 14 (Prohibition on dealing with designated persons or entities), regulation 15 (Prohibition on dealing with controlled assets).

<sup>8</sup> See regulation 8 (Sanctioned vessels) and regulation 16 (Prohibitions related to Sanctioned vessels).

<sup>9</sup> Australia also implements UNSC sanctions in respect of the DPRK, Iran, Syria and Libya.

Table 1 – Restrictive measures that are able to be imposed under the Autonomous Sanctions Framework

Country / Thematic sanctions	Targeted Financial Sanctions / travel bans <sup>10</sup>	Restrictions on trade in military goods <sup>11</sup>	Restrictions on trade in services related to military activities or goods	Restrictions on trade in other goods and related services	Restrictions on other commercial activities
Corruption	√	×	×	×	×
Cyber	√	×	×	×	×
DPRK <sup>12</sup>	√	×	×	√	√
Former Federal Republic of Yugoslavia	√	×	×	×	×
Human Rights	√	×	×	×	×
Iran	√	×	×	√	×
Libya	√	×	×	×	×
Myanmar	√	√	√	×	×
Proliferation of weapons of mass destruction	√	×	×	×	×

<sup>10</sup> Generally prohibiting, without a sanctions permit, the use of or dealing with assets owned or controlled by a designated person or entity; and making any kind of asset available, directly or indirectly, to a designated person or entity.

<sup>11</sup> Generally prohibiting, without a sanctions permit, the supply of ‘arms or related materiel’; the provision of services related to the supply, manufacture, maintenance or use of ‘arms or related materiel’; and in certain circumstances the provision of services related to a ‘military activity’ or the import of ‘arms or related materiel’.

<sup>12</sup> The autonomous sanctions against the DPRK complement a comprehensive UNSC sanctions regime, which includes restrictions on the trade in military goods and services related to military activities or goods. The autonomous and UNSC sanctions frameworks also include measures outside the categories in this table, e.g. restrictions on a range of conduct regarding vessels.

Russia, Ukraine regions	√	√	√	√	√
Syria	√	√	√	√	√
Zimbabwe	√	√	√	×	×

## Offences

26. The Act provides that it is an offence to contravene a sanction law and sets out applicable penalties. The Regulations set out what actions may amount to a contravention.<sup>13</sup>

27. Australian sanctions laws apply extraterritorially. The laws apply to conduct in Australia and conduct overseas of Australian citizens and Australian-registered bodies corporate.

28. Offences for contravention of a sanction law can result in imprisonment and/or fines:

- for persons
  - up to ten years in prison and/or a fine (the greater of \$687,500 or three times the value of the transaction)
- for bodies corporate
  - substantial fines (the greater of \$2.75 million or three times the value of the transaction).<sup>14</sup>

29. The offence provisions do not apply to a body corporate if it proves that it took reasonable precautions and exercised due diligence, to avoid contravening a sanction law. An offence by a body corporate is otherwise an offence of strict liability<sup>15</sup>.

<sup>13</sup> See Part 3 of the Act and Part 3 of the Regulations; pursuant to subsection 6(1) of the Act, the Minister may, via the Autonomous Sanctions (Sanction Law) Declaration 2012, specify provisions of Commonwealth laws to be a 'sanction law'. This legislative mechanism enables sanctions offences to carry criminal penalties commensurate to the seriousness of the offence.

<sup>14</sup>Section 16 of the Act provides that an individual or body corporate will commit a sanctions offence if: the individual or body corporate engages in conduct, and the conduct contravenes a sanctions law (subsections 16(1) and (5)); and the individual or body corporate engages in conduct, and the conduct contravenes a condition of an authorisation (however described) (subsections 16(2) and (6)).

<sup>15</sup> See subsection 16(8) of the Act.

## Ministerial permit-granting powers

30. The Minister has the power to grant a permit authorising otherwise sanctioned activities, if the Minister is satisfied that it is in the national interest to do so. The Minister may grant a permit upon application, or on the Minister's own initiative.<sup>16</sup> Permits granted in response to applications relating to Targeted Financial Sanctions are subject to the additional restrictions in regulation 20 of the Regulations which require that the Minister must also be satisfied that the sanctioned activity is for a 'basic expense dealing', a 'legally required dealing', or 'contractual dealing'.
31. What is in the national interest will depend on the particular circumstances. Relevant factors may include the broader objectives of a particular sanctions regime, whether the activity is in the interests of or would be advantageous to Australia as a whole (which may include economic, security, and any other relevant foreign policy considerations), and any effect on Australia's international reputation or standing or external relations.

## Safeguards

32. There are several existing safeguards for persons and entities subject to, or otherwise affected by, sanctions:
- a listed person or entity may apply to have their listing revoked at any time
  - a listing may also be revoked at the Minister's own initiative at any time, and is reviewed every three years (see below for further discussion on the relisting process)<sup>17</sup>
  - judicial review of a listing decision is available under section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*
  - all legislative instruments made under the Autonomous Sanctions Framework, including listing instruments, are subject to disallowance by the Parliament under the *Legislation Act 2003*.<sup>18</sup>
32. The Minister may also grant a permit authorising otherwise sanctioned activities, if the Minister is satisfied that it is in the national interest to do so.

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<sup>16</sup> See Regulation 18 of the Regulations.

<sup>17</sup> See Regulations 10 and 11 of the Regulations.

<sup>18</sup> See section 42 of the *Legislation Act 2003*.

## Administration of the Autonomous Sanctions Framework

33. The ASO, within the department, is Australia's sanctions regulator. The ASO undertakes a range of activities to support persons and entities to comply with Australian sanctions laws, including:

- providing guidance to the public on Australian sanctions law;
- processing applications for, and making recommendations to the Minister, on whether to issue sanctions permits;
- working with the public to promote compliance and help prevent breaches of the law;
- working in partnership with other government agencies to monitor compliance with sanctions legislation; and
- supporting corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance.

34. In addition to the DFAT Consolidated List and guidance material on the department's website, the ASO maintains a secure portal – Pax – through which persons and entities can request information, seek a non-legally binding indicative assessment, or request a sanctions permit.

## Part 3 – Issues identified and potential remedial options

35. The Review provides an opportunity to consider legislative amendments to further support the operation of autonomous sanctions. The Review will be informed by public consultation and a decade of sanctions administration.
36. Part 3 details the matters identified in the ToR (**Attachment A**). It sets out issues that have been identified through the operation of the Autonomous Sanctions Framework, possible options to address these issues and raises specific questions.
37. The paper covers the key issues likely to be of interest to the public and regulated entities. There are however other technical, stylistic and consistency issues that are not canvassed in this paper that will form part of the department’s review.

### Issue 1: Streamlining the legal framework (ToR 1, 3, 9)

38. Under the Autonomous Sanctions Framework, the public is required to navigate sanctions measures, criteria, and listings that are currently contained across three tiers of legislation including the Act, Regulations, and various different instruments—18 pieces of legislation in total.
39. The practical implication is that the public seeking to understand the different prohibitions and obligations in relation to one situation of concern—for example, sanctions measures imposed in response to Russia’s invasion of Ukraine— must navigate multiple different instruments to ensure compliance with Australian sanctions law.
40. The Autonomous Sanctions Framework could be streamlined to make it easier for the public (including regulated entities) to navigate and comply with their obligations. This could be done by, for example:
  - Establishing a two-tiered, as opposed to the current three-tiered legislative structure:
    - i. moving various provisions currently contained in the Regulations, including the offence prohibitions, to the Act; and

ii. grouping together all the relevant provisions unique to a particular country or thematic sanction into one instrument (eg. definitions for sanctions prohibitions and listing criteria).

- Retaining the existing three-tiered framework: consolidating the multiple legislative instruments that exist on a particular country or theme into one instrument.

41. Any option would include safeguards such as those that exist in respect of the Autonomous Sanctions Framework, namely, that the subordinate legislation (whether regulations or instruments) would remain subject to the requirements of the *Legislation Act 2003* (Legislation Act). The Legislation Act provides that subordinate legislation must be tabled in Parliament and be subject to Parliamentary scrutiny and disallowance.<sup>19</sup> This ensures sanctions can be imposed swiftly in response to matters of international concern, while upholding accountability and safeguarding against abuse of power.

#### Stakeholder questions 1(A)-(C)

- A. How could the Autonomous Sanctions Framework be made more clear and easy to navigate?
- B. What challenges have you experienced in navigating the Autonomous Sanctions Framework? How could these be addressed?
- C. How would reducing the number of pieces of legislation that apply sanctions measures better assist you? Could this help with managing your administrative burden?

## Issue 2: Scope of sanctions measures (ToR 2, 3, 9)

42. The department considers that the sanctions measures under the Autonomous Sanctions Framework (paragraph 24 refers) are largely fit for purpose. The measures prohibit a range of conduct, and align with UNSC sanctions and the autonomous sanctions of other countries with similar sanctions frameworks.

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<sup>19</sup> The Legislation Act 2003 does provide for exemptions from the disallowance and the sunset provisions of the Legislation Act; such exemptions are set out in the Legislation (Exemptions and Other Matters) Regulation 2015.



43. The department has identified certain sanctions measures that could be refined and streamlined to improve clarity and understanding. These are detailed below.

#### *Scope of Targeted Financial Sanctions*

44. The Regulations prohibit, directly or indirectly, making an asset available to, or for the benefit of, a designated person or entity, and using or dealing with their assets.<sup>20</sup>
45. Targeted Financial Sanctions measures are framed with respect to broad concepts that can make their scope difficult to understand. Greater clarification of the scope of these measures could better and more efficiently assist the public to independently assess whether their proposed activity requires a sanctions permit without the need to request an indicative assessment through the Australian Sanctions Portal (Pax).<sup>21</sup> The Targeted Financial Sanctions provisions within the legislation could be expanded to clarify their scope and additional guidance material published to assist the public understand its sanctions obligations.

#### *Meaning of 'asset'*

46. The definition of 'asset' is fundamental to understanding the scope of Targeted Financial Sanctions. 'Asset', for Targeted Financial Sanctions, is defined broadly to include any kind of asset, whether tangible or intangible.<sup>22</sup>
47. The provision of services to a designated person or entity will often breach Targeted Financial Sanctions as it may involve an exchange or use of assets. For example, the provision of computer repair services to a designated entity may involve the technician providing computer parts (assets) to the designated entity. These services may also involve the technician operating the hardware and software on the designated entity's computer (i.e. using and dealing with an asset owned by the designated entity).

#### *Meaning of 'directly' and 'indirectly'*

48. It is prohibited to make an asset available, directly or indirectly, to a designated person or entity.

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<sup>20</sup> Regulation 14 and 15 of the Regulations.

<sup>21</sup> As the sanctions regulator, DFAT undertakes a range of activities to support individuals and entities to comply with Australian sanctions laws. In addition to the Consolidated List and guidance material on the DFAT website, DFAT maintains a secure portal – Pax – through which individuals and entities can request information or seek a non-legally binding indicative assessment where they are engaging in an activity that may contravene sanctions laws.

<sup>22</sup> See section 4 of the Act.

49. While the meaning of 'directly' providing an asset is easily understood, the meaning of 'indirectly' is less clear. It may, for instance, be unclear that the policy intention of the prohibition is to capture the conduct of persons who provide assets to designated persons or entities through the intervening agency of a third-party, rather than to apply to the indirect and unintended results of an individual's or body corporate's conduct.

#### *Sanctioned Commercial Activity*

50. The sanctions measures for 'sanctioned commercial activity' are difficult to navigate. As the Autonomous Sanctions Framework has expanded over the last ten years, various definitions of 'sanctioned commercial activity' have been introduced to restrict certain business arrangements and investments within certain sanctioned countries. For example, sanctions in relation to Syria prohibit a range of commercial activities which predominantly relate to the petrochemical and oil and gas industries and to the financial sector. These restrictions are found across multiple provisions<sup>23</sup> and are framed by reference to dealings with governments of sanctioned countries, with certain persons or entities in sanctioned countries, or in respect of certain sectors in sanctioned countries.

51. There may be merit in having a uniform concept of 'sanctioned commercial activity', that could apply to all sanctioned countries. This would provide drafting uniformity and would be consistent with the format for other definitions in the Regulations including those for 'sanctioned supply', 'sanctioned import', and 'sanctioned service'.

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<sup>23</sup> See regulations 5A, 5B, 5C, 5CA of the Regulations.

## Stakeholder questions 2(A)-(C)

- A. Are the sanctions measures under the Autonomous Sanctions Framework fit-for-purpose? Are there other sanctions measures that would support Australia's foreign policy objectives?
- B. Have the below terms, or any other terms, in the Autonomous Sanctions Framework presented you with any challenges in understanding whether an activity you wish to undertake is sanctioned? For example:
- Directly or indirectly
  - Assets; and
  - Controlled asset.
- C. Would having a uniform concept of sanctioned commercial activity assist you in understanding sanctions obligations for this measure? If not, what might?

## Issue 3: Permit powers (ToR 4, 9)

52. The Minister may grant a permit, upon application or on the Minister's initiative, authorising a sanctioned activity, if the Minister is satisfied it is in the national interest.<sup>24</sup> The permit granting power is an important aspect of the Autonomous Sanctions Framework. There may be situations where it will be in Australia's national interest to authorise sanctioned activities.

53. For example, because of the extraterritorial operation of sanctions offences, an Australian customer of a provider of an essential service, where that provider is a designated entity and therefore subject to Targeted Financial Sanctions, cannot pay for goods and services received from the service provider without authorisation. The Minister may consider it is in Australia's national interest to authorise the Australian customer living in the sanctioned country to pay the service provider, and grant a permit to this effect.

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<sup>24</sup> Regulations 18 and 20 of the Regulations. The requirements in regulation 20 of the Regulations only apply to upon application permits for Targeted Financial Sanctions activities.

54. While permit granting powers are largely fit for purpose, the department has identified potential improvements related to granting of general permits. This could improve regulatory transparency and clarity for the public.
55. The Minister has the power to grant a general permit authorising a particular class of persons to undertake a particular class of sanctioned activities. For example, the Minister could grant a permit to Australian citizens living in a sanctioned country (class of persons) authorising them to pay for essential services, where the service provider is a designated entity subject to Targeted Financial Sanctions (class of sanctioned activities).
56. There may be merit in detailing the Minister’s general permit granting powers in the Regulations. This would increase regulatory transparency and better inform the public about their permit options.

### **Stakeholder questions 3(A)-(B)**

- A. Are there situations which you think would warrant a standing general permit being issued? If so, what is the justification?
- B. Are there other permit-related matters you wish to raise?

## **Issue 4: Humanitarian exemption (ToR 2, 4, 5, 9, 10)**

57. Australia is committed to ensuring that the work of impartial humanitarian actors is not unduly hindered by the imposition of autonomous sanctions. Australia has a long-standing practice of imposing highly targeted sanctions measures that are not intended to have a negative impact on the general population in a sanctioned country. They are directed at restricting specific activities in response to a situation of international concern. In some cases, sanctions measures are imposed to deprive actors – for example entities undertaking proliferation activities – of assets and funds.
58. Sanctions, including Targeted Financial Sanctions which prohibit making an asset directly or indirectly available to a designated person or entity, may have an impact on the delivery of humanitarian assistance. This is because, for example, listed persons and entities may hold positions of power in a sanctioned country and may be involved in distribution chains or need to be engaged to facilitate international diplomatic obligations. For example:

- humanitarian actors may need to engage with these sanctioned persons and entities to distribute aid, thereby providing an asset to a designated person or entity, which would otherwise be prohibited under Australian sanctions law;
- humanitarian actors may need to undertake activities such as detention monitoring or international humanitarian law training.<sup>25</sup>

59. The department acknowledges that the Autonomous Sanctions Framework (and COTUNA Framework) are complex and may be challenging to navigate for humanitarian actors seeking to understand and comply with their obligations. At times, humanitarian organisations may have to navigate ambiguity about whether, or how, their activities interact with Australian sanctions law. We understand from engagement with civil society that humanitarian actors would be assisted by greater clarity on the face of the legislation as to their obligations.

60. The department assists entities to understand their obligations by undertaking indicative assessments and advising applicants whether their activities may be subject to Australian sanctions law. The department also processes permit applications, which can be requested by persons or entities to authorise particular sanctioned activities. In the majority of cases, the permit granting process is an appropriate mechanism as it strikes a balance to:

- facilitate humanitarian activities that are deemed to be in Australia’s national interest; and
- with appropriate oversight, ensure that the provision of humanitarian assistance is not used as a mechanism to evade sanctions.

61. The department acknowledges that other countries have, in varying forms, exemptions for humanitarian actors, enabling them to carry out humanitarian activities without the need to seek an indicative assessment or permit on a case-by-case basis (see case study below) (see case study below) and that in December 2022 the UNSC adopted a standing humanitarian exemption to the asset freeze measures imposed by United Nations sanctions regimes. These exemptions are targeted and have certain safeguards to ensure the policy intention of sanctions is not undermined or that humanitarian assistance is used as a mechanism to evade sanctions.

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<sup>25</sup> The provision of such services in some sanctioned countries may be prohibited on the basis that it assists with, or is provided in relation to, a ‘military activity’.

62. The department considers there may be merit in developing a specific humanitarian exemption, with appropriate safeguards to ensure only legitimate humanitarian activities are captured by the exemption. This could be achieved by limiting the scope of the exemption to particular humanitarian activities that are being carried out by particular organisations.

63. The safeguards could include limiting the exemption to:

- a) a set group of 'humanitarian actors' namely:
  - international organisations with diplomatic status for example, the International Red Cross or Red Crescent;
  - United Nations agencies; or
  - persons or entities accredited by the department under the Australian NGO Cooperation Program with whom the department has entered into a grant or partnership agreement; and
- b) activities carried out by a defined 'humanitarian actor' for the purposes of providing humanitarian assistance for the benefit of the civilian population in a sanctioned country.

### **International approaches to humanitarian exemptions**

The United Kingdom issued a 'General Licence' with respect to its sanctions on Russia. The General Licence covers activity in relation to the conflict in Ukraine, including the non-government controlled regions of the country. The Licence also contains permissions for relevant UK financial institutions to carry out any humanitarian assistance activity to effect the delivery of humanitarian assistance, and other activities that support basic needs in relation to the conflict in Ukraine. Humanitarian assistance activity is defined as including the work of international and non-governmental organisations carrying out relief activities for the benefit of the civilian population of the non-government controlled areas of the Donetsk and Luhansk provinces. See: [The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 13\) Regulations 2022 \(legislation.gov.uk\)](#); [OFSI issues Humanitarian Activity General Licence under Russia sanctions regime - OFSI \(blog.gov.uk\)](#)

## Stakeholder questions 4(A)-(C)

- A. In what circumstance would you support the introduction of a humanitarian exemption for a set group humanitarian actors?
- B. What safeguards would be necessary to ensure such an exemption is not misused, for example to facilitate proliferation financing or sanctions evasion?
- C. If an exemption for 'humanitarian assistance' were to be included in the legislation, what types of activities would it be important to capture?

## Issue 5: Sanctions offences and enforcement (ToR 6)

64. Sanctions offences are criminal offences subject to serious penalties.<sup>26</sup> Serious penalties are a fundamental feature of both the Autonomous Sanctions Framework and the COTUNA Framework. They promote compliance by providing a disincentive to engage in sanctioned activities without authorisation. They reflect the importance Australia places on deterring activities which support situations of international concern, or those responsible for these situations.
65. As a general rule, the department works with the public and regulated entities to ensure compliance and to rectify situations of non-compliance before resorting to criminal prosecution. It is also possible for the Attorney-General to seek an injunction restraining a person from engaging in conduct which contravenes the Regulations.<sup>27</sup>
66. There are currently limited steps the department can take between education and prosecution. Prosecution is a lengthy and resource-intensive process that requires establishing all elements of the offence to a high standard of proof. It is not always the most appropriate option to address non-compliance.
67. There may be merit in broadening sanctions compliance options by introducing a system of civil pecuniary penalties that may be imposed through a court. This would enable sanctions contraventions to be assessed by the Court on a lower standard of proof. This may be appropriate in situations where the circumstances do not warrant a criminal conviction.

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<sup>26</sup> See section 16 of the Act.

<sup>27</sup> See regulation 14 of the Regulations.

## Stakeholder questions 5(A)

A. Would civil penalties be a suitable enforcement tool in the sanctions context?

## Issue 6: Review mechanism for designations and declarations (ToR 4, 8)

68. The Regulations enable 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 the listing criteria specified in the Regulations. Sanctions are intended to be temporary measures and can be lifted when the situation of international concern has improved.
69. Under the Autonomous Sanctions Framework, listings expire after three years unless continued in effect by legislative instrument.<sup>28</sup> The Minister may continue in effect (renew) a listing if satisfied the listed person or entity continues to meet the listing criteria. The administrative and legislative requirements for renewing a listing are the same as those for making a new listing. The renewal process for listings is resource intensive. With more than 1600 persons and entities (as at November 2022) listed on the DFAT Consolidated List under the Autonomous Sanctions Framework, this constitutes a considerable administration burden.
70. There may be merit in replacing the existing relisting mechanism with a more streamlined process. One option might be as follows:
- the Minister, by legislative instrument, designates a person or entity for Targeted Financial Sanctions or declares a person for a travel ban if satisfied they meet the relevant criteria —no expiry date would apply to the listing
  - every five years, the Minister would be required to invite<sup>29</sup> sanctioned persons and entities to make submissions regarding their listing

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<sup>28</sup> See regulation 9 of the Regulations.

<sup>29</sup> This invitation may occur via public notification on the department's website if the location of the person or entity is unknown.



- if no submission is received in relation to a listing the Minister would not need to take any additional legislative action in relation to the listing and this outcome would be reflected on the DFAT Consolidated List.

71. If a submission is received in relation to a listing, the Minister would be required to decide whether to continue or revoke the listing. A revocation would be made by legislative instrument and the listing would be removed from the DFAT Consolidated List. Such a reform would be balanced by existing safeguards under the Autonomous Sanctions Framework, namely:

- as a matter of policy, the government keeps Australia’s sanctions regimes under regular review, including persons listed for Targeted Financial Sanctions and travel bans
- listed persons and entities may, at any time, seek to have their listing revoked by writing to the Minister<sup>30</sup>
- a listing may be revoked on the Minister’s own initiative at any time<sup>31</sup>
- a listed person or entity may seek judicial review of a listing decision under section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*.

72. This approach would safeguard the rights of listed persons and entities while ensuring resources are used to best effect. It would align Australia with the United Kingdom, which similarly removed its relisting requirement in March 2022, following increased sanctions action in response to Russia’s illegal invasion of Ukraine.<sup>32</sup>

#### Stakeholder questions 6(A)

A. What risks or benefits do you see in replacing relisting mechanism with a requirement that every five years the ASO undertakes a public notification process that would provide listees with the opportunity to make submissions that the Minister would be required to consider?

<sup>30</sup> See regulation 11 of the Regulations.

<sup>31</sup> See subregulation 10(2) of the Regulations.

<sup>32</sup> Economic Crime (Transparency and Enforcement) Act 2022 (UK)

## Issue 7: Regulatory functions of the ASO (ToR 7)

73. The ASO, as Australia's sanctions regulator, is responsible for monitoring compliance with Australian sanctions law. The ASO conducts outreach, provides indicative sanctions assessments, and processes permit applications to mitigate the risk of the public breaching sanctions law.
74. The Act sets out a range of powers to provide for the enforcement of sanctions and to facilitate the collection and use of information relevant to the administration of sanction measures. The Act provides for:
- an injunction power (section 14)
  - the power to issue notices to produce information or documents (section 19)
  - the power to require that information be given on oath or affirmation (section 20)
  - criminal liability for non-compliance (section 21)
  - privilege against self-incrimination is not an excuse (section 22).
75. While the ASO's powers are limited to the above, the ASO works with a range of government agencies such as the Department of Defence, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Border Force (ABF), and the Australian Federal Police (AFP) to respond to suspected non-compliance. As such, the existing regulatory powers within the Act, in conjunction with the ASO's ability to refer suspected breaches of sanctions laws to the AFP for investigation, is generally sufficient to enable the ASO to undertake its regulatory sanctions compliance obligations.
76. There may be merit in exploring whether the current injunction power in the Act is sufficient. The Act currently allows a superior court to grant an injunction to restrain a person from engaging in conduct which contravenes a sanctions law, however, this is limited as injunctions can only be granted on application by the Attorney-General. One approach could be to expand the injunction power to allow an authorised person within DFAT (e.g. a member of DFAT's Senior Executive Service) to seek injunctive relief by adopting Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*. This would align the injunction power with standard Commonwealth practice.

### Stakeholder questions 7(A)-(E)

- A. Do you support aligning the existing injunction power with those set out in Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*?
- B. How could changes to the Autonomous Sanctions Framework better assist you in applying for an indicative assessment or a permit through Pax, the Australian Sanctions Portal?
- C. What costs, financial or otherwise, that are outside of ordinary business-as-usual costs, have you incurred in complying with Australian autonomous sanctions (in particular, in seeking an indicative assessment or permit through Pax)? How many times a year do you seek an indicative assessment or permit?
- D. Do you have any suggestions for reducing the costs associated with compliance with autonomous sanctions laws?
- E. What is your experience navigating the DFAT Consolidated List?

# Attachment A

## Terms of Reference—Review of the legal framework for autonomous sanctions

### Context

Sanctions are a tool of foreign policy that are imposed in response to situations of international concern. Australia’s sanctions framework consists of autonomous sanctions (country-based and thematic) and United Nations-mandated sanctions.

The legal framework for autonomous sanctions comprises the *Autonomous Sanctions Act 2011* (the Act), the Autonomous Sanctions Regulations 2011 (the Regulations), and 18 legislative instruments made pursuant to the Act and Regulations. The framework is designed to enable swift implementation of sanctions by government, with high-level machinery provisions contained in the Act, and specific sanctions measures provided for in the Regulations and other delegated legislation.

The Review will consider the legal framework for autonomous sanctions ahead of the sunset (automatic expiry) on 1 April 2024 of the Regulations and associated instruments.

### Purpose of the Review

The Review will examine how the autonomous sanctions framework could better support the government’s foreign policy objectives. In doing so, it will consider whether the Regulations and associated instruments remain fit for purpose and will seek to identify administrative and regulatory efficiencies for government and the public, with a view to ensuring robust sanctions compliance.

### Matters to be considered by the Review

Without limiting its scope, the Review will consider:

1. streamlining the legal framework—to reduce the volume of subordinate legislation dealing with autonomous sanctions and improve the accessibility of the legislation
2. the preconditions for applying sanctions measures—to assess if there should be clearer parameters for imposing sanctions and inform decisions as to the lifting of sanctions measures
3. the existing categories of sanctions measures—to assess if they are fit for purpose
4. refining the authorisation powers—to ensure permit powers are comprehensive, reduce administrative obligations and enable more balanced restrictions on activities
5. the appropriateness and possible scope of a humanitarian exemption—to facilitate legitimate humanitarian activities

6. the existing sanction offences, including the introduction of civil penalties—to enable flexible enforcement options, including non-criminal mechanisms for less serious contraventions of autonomous sanctions
7. the appropriateness of existing regulatory powers—to examine if additional compliance tools are required, including with reference to the *Regulatory Powers (Standard Provisions) Act 2014*
8. the renewal requirement that applies to targeted financial sanction designations and travel ban declarations—to examine the efficacy of this process
9. key concepts, terms and definitions, including the criteria for the imposition of targeted financial sanctions and travel bans—to clarify the operation of sanctions prohibitions
10. any other matters that are relevant to the efficiency and effectiveness of the autonomous sanctions framework.

The autonomous sanctions framework was modelled on the *Charter of the United Nations Act 1945* (COTUNA). Consideration of these issues will extend to whether it would be appropriate for COTUNA to replicate subsequent reforms that may be made to the autonomous sanctions framework.

### **Process**

The Review, led by the Australian Sanctions Office within the Department of Foreign Affairs and Trade, will be informed by responses to an Issues Paper and by consultations with key stakeholders. Submissions from the public, and from within government, will be invited. Public consultation will be confined to the matters contained in these Terms of Reference and not include consideration of whether Australia should undertake further sanctions measures in response to specific situations of international concern or develop further sanctions regimes.

The purpose of the Review is to provide recommendations on possible legislative amendments to government for its consideration.

The Review will be completed by 30 June 2023.

# Attachment B

## Autonomous Sanctions Legislation

*Autonomous Sanctions Act 2011*

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Sanction Law) Declaration 2012

### **Democratic People's Republic of Korea**

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

### **Former Federal Republic of Yugoslavia**

Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) List 2012

### **Iran**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) List 2012

Autonomous Sanctions (Export and Import Sanctioned Goods – Iran) Amendment Specification 2016

### **Libya**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Libya) List 2012

### **Myanmar**

Autonomous Sanctions (Designated and Declared Persons – Myanmar) List 2018

### **Russia / Ukraine**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014

Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015

Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022

Autonomous Sanctions (Import Sanctioned Goods—Russia) Designation 2022

### **Syria**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Syria and Proliferation of Weapons of Mass Destruction) List 2012

Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012

Autonomous Sanctions (Export Sanctioned Goods – Syria) Specification 2012

### **Thematic**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Instrument 2022

### **Zimbabwe**

Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) List 2012