



Australian Government

Department of Foreign Affairs and Trade

# NAVIGATING AUSTRALIAN SANCTIONS

Presented virtually on 29 April 2021

Disclaimer: The information in this document is a summary only of relevant sanctions laws. It is not intended to be nor should it be relied upon as a substitute for legal advice. It is your responsibility to ensure you do not contravene sanctions laws, including by obtaining your own legal advice.

# WHAT ARE SANCTIONS?

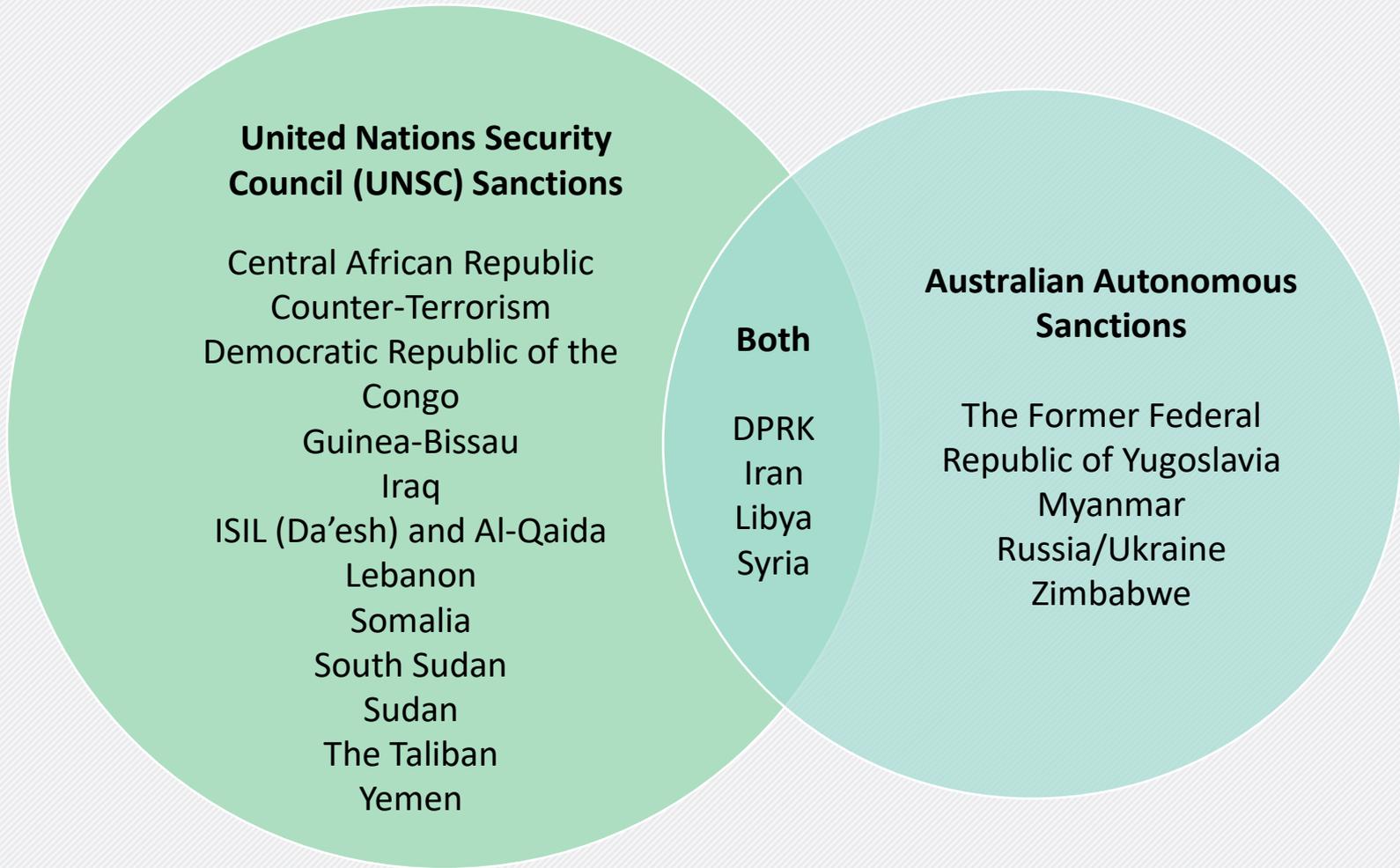
Measures not involving the use of armed force, aiming to:

Limit the adverse consequences of the situation of international concern

Influence those responsible for giving rise to the situation of international concern to modify their behaviour to remove the concern

Penalise those responsible for the situations of international concern

# CURRENT SANCTIONS REGIMES



# TYPES OF SANCTIONS MEASURES

Different sanctions regimes impose different sanctions measures, including:



Restrictions on exporting or importing goods



Restrictions on commercial activities



Restrictions on providing services



Travel bans on persons



Restrictions on dealing with particular persons and entities

# SANCTIONED SUPPLY

A sanctioned supply includes where a person supplies **‘export sanctioned goods’** to a sanctioned country or part of a country.

The prohibition can extend to the indirect supply of **‘export sanctioned goods’**.

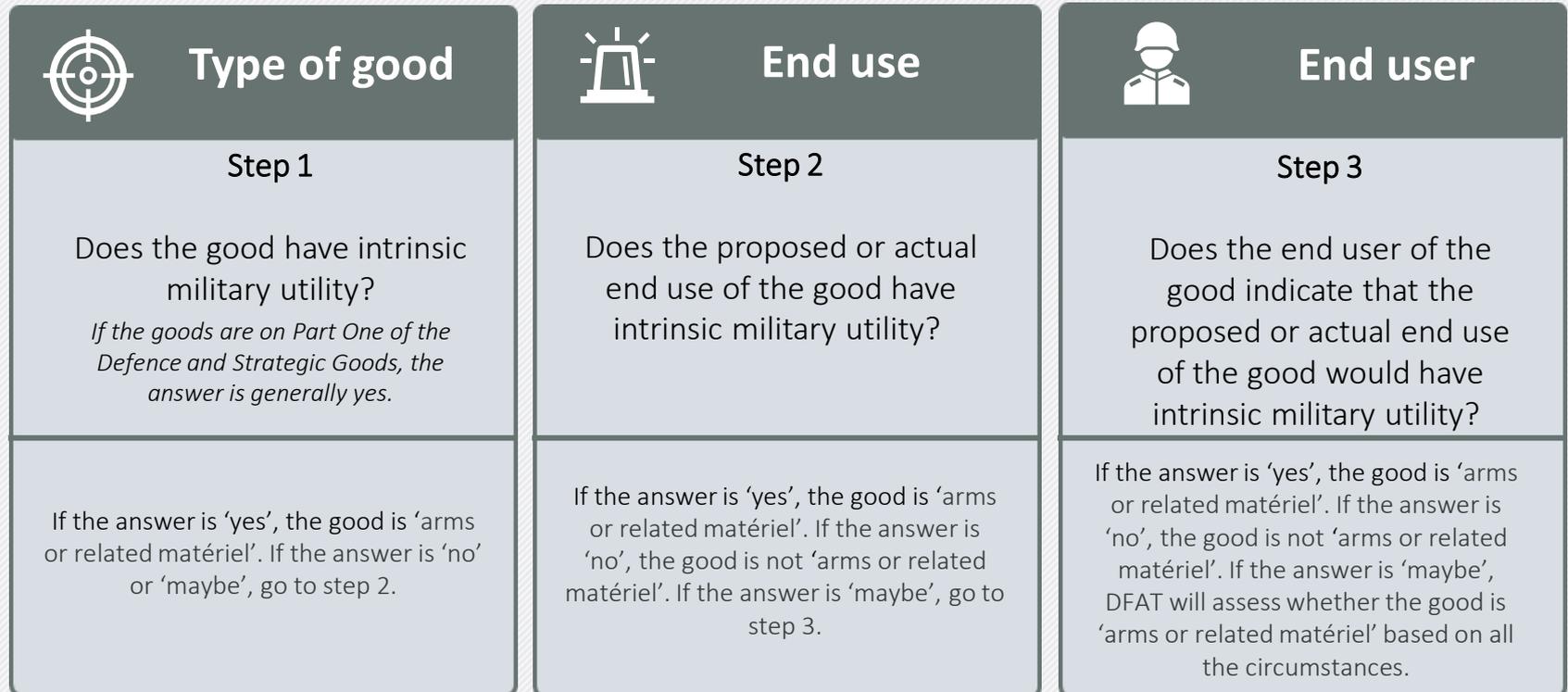
## The definition of **‘export sanctioned goods’** can include:

- ‘arms or related materiel’ (defined broadly) or ‘weapons or military equipment’
- goods related to nuclear, chemical and biological weapons
- luxury goods
- specified goods related to specific industries (for example, gas exploration)
- specific technology

# ARMS OR RELATED MATÉRIEL

‘Arms or related matériel’ or ‘weapons or military equipment’ covers a range of goods.

The three-step test can be used to determine whether goods meet these definitions.



Many of these goods also require export permission from Defence Export Controls.

## SANCTIONED IMPORT

Some regimes include import restrictions.

A sanctioned import includes where a person **imports, purchases, or transports** 'import sanctioned goods', and the goods:

- are exported from the country or part of a country; or
- originate in the country or part of a country (in some circumstances).

Some regimes target certain goods (e.g. 'arms or related matériel').

Some regimes have very broad restrictions that capture all/many imports.

# SANCTIONED SERVICE

Some regimes prohibit the provision of certain services to the country subject to sanctions or people/businesses from that country.

## A 'sanctioned service' may include, but is not limited to

- technical assistance or training
- a financial service
- financial assistance
- another service

## If it assists with, or is provided in relation to

- a sanctioned supply
- a military activity
- the manufacture, maintenance or use of export sanctioned goods

# SANCTIONED COMMERCIAL ACTIVITY

Some regimes include restrictions on particular commercial activities.

## United Nations sanctions

**DPRK includes:** certain forms of commercial activity which relate to the financial sector or joint ventures.

**Iran includes:** Nuclear technology or materials, including uranium mining, and technology or materials used in ballistic missiles.

## Autonomous sanctions

**Russia/Ukraine includes:** certain engagement with specific Russian banks and entities.

**Crimea and Sevastopol includes:** granting loans/credit and joint ventures relating to certain industries.

**Syria includes:** predominantly in relation to the petrochemical and oil and gas industries and to the financial sector.

# LISTED PERSONS OR ENTITIES

Generally, a person is prohibited from directly or indirectly making an asset\* available to, or for the benefit of, a 'listed person or entity'.

*\* The definition of asset is very broad.*

## United Nations sanctions

Persons or entities designated by the UNSC or relevant United Nations committee.

## Autonomous sanctions

Persons or entities that the Minister for Foreign Affairs is satisfied fulfil certain criteria for the relevant regime.

## Counter-Terrorism Sanctions Regime

Persons or entities listed by the Minister for Foreign Affairs under Australia's *Charter of the United Nations Act 1945* Counter-Terrorism (UNSC Resolution 1373) sanctions regime.

DFAT maintains a **Consolidated List** of all listed persons and entities in relation to all Australian sanctions. The Consolidated List is available on the DFAT website.

## USING A 'CONTROLLED ASSET'

A 'controlled asset' is an asset that is owned or controlled by:

- a 'designated person or entity';
- a person or entity acting on behalf of, or at the direction of, a 'designated person or entity' (UN sanctions only); or
- an entity owned or controlled by a 'designated person or entity' (UN sanctions only).

A person who holds a 'controlled asset' is prohibited from:

- using or dealing with it, or
- allowing or facilitating it to be used or dealt with.



If you are using or dealing with an asset that is a controlled asset, you must hold (or 'freeze') the asset and inform the AFP as soon as possible.

**Disclaimer:** The above only relates to Australia's UN and autonomous sanctions regimes. Our Counter-Terrorism (UNSC 1373) sanctions regime has similar restrictions but the details vary. Please contact the ASO if you would like further detail on Counter-Terrorism sanctions restrictions.

# SANCTIONS PERMITS

The Minister for Foreign Affairs, or in some circumstances her delegate, may grant a permit authorising an activity that would otherwise contravene a sanctions measure.

## United Nations sanctions

The UNSC sets the criteria for granting a permit. This is included in our legislation.

## Autonomous sanctions

Generally, the Minister for Foreign Affairs has discretion to grant a permit if satisfied the activity is in the national interest.

## Counter-Terrorism Sanctions Regime

Generally, the Minister for Foreign Affairs has the discretion to grant a permit.

# PAX – THE NEW AUSTRALIAN SANCTIONS PORTAL



The screenshot shows the homepage of the PAX Australian Sanctions Portal. At the top is a green navigation bar with links for Home, DFAT Sanctions, Consolidated List, User Guides, Policies, and Contact Us. Below the navigation bar is the PAX logo, which consists of the word 'pax' in a dark blue, lowercase sans-serif font, with a green leaf-like shape behind it and a yellow circle to the right. Below the logo is the text 'Welcome to Pax - the Australian Sanctions Portal'. Underneath this text are two green buttons: 'Register' and 'Explore Pax guides'. Below the buttons is a section titled 'What is Pax?' with a bulleted list of services: 'Ask a question about sanctions', 'Request an Indicative Assessment', and 'Apply for a sanctions permit'.

- Single point of contact on sanctions
- Simpler way to submit enquiries and applications
- Better tracking of sanctions matters
- Improved communication with the Australian Sanctions Office (ASO)

# ASO ASSESSMENTS

The ASO conducts a thorough assessment of all information provided by you to determine whether activities would engage Australian sanctions laws.

Considerations include:

- Are the goods subject to sanctions?
- Will the goods be, or are they likely to be, supplied to persons or entities subject to targeted financial sanctions?
- Will the relevant permit granting criteria be met?

Processing times vary depending on the complexity of the matter. Simple matters may be completed within 6-8 weeks of receiving all information.

The ASO may consult with other Government agencies, including intelligence partners, to gather information in support of our assessments.

# SANCTIONS OFFENCES

Contravening a sanctions measure or a condition of a sanctions permit is a serious offence.

## Individuals

**10 years in prison** and/or a fine the greater of **\$555,000** or three times value of transaction

## Bodies Corporate

**\$2.22 million** or three times the value of the transaction

*\*Strict liability but reasonable precautions and due diligence defence may apply*

These offences apply:

- to any activity in Australia; and
- to any Australian anywhere in the world
- to any person using an Australian flagged vessel or aircraft.

The ASO has the power to compel the production of documents or information for the purpose of determining whether an Australian sanctions law has been or is being complied with.

## WHAT DO YOU NEED TO DO?

- Explore the sanctions webpage at [www.dfat.gov.au/international-relations/security/sanctions/Pages/sanctions](http://www.dfat.gov.au/international-relations/security/sanctions/Pages/sanctions).
- Get legal advice if necessary. The onus to comply with Australian sanction laws rests on you.
- Consider sanctions when planning an activity.
- If appropriate, apply for an Indicative Assessment or a Permit using Pax at <https://pax.dfat.gov.au> .
- Advise the Australian Sanctions Office of possible breaches.



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