



THE UNIVERSITY OF
SYDNEY

Professor Emma Johnston AO FAA FTSE FRSN
Deputy Vice-Chancellor (Research)

23 February 2023

Lindsay Buckingham
Assistant Secretary
Australian Sanctions Office
Department of Foreign Affairs and Trade

Via email: sanctionsconsultation@dfat.gov.au

Dear Ms Buckingham,

Review of Australia's Autonomous Sanctions Framework – Issues Paper

The University of Sydney is grateful for the opportunity to participate in the [Review of Australia's Autonomous Sanctions Framework](#) ahead of the sunset of the Regulations in 2024. Australia's public universities, their staff and affiliates have a range of significant obligations under a variety of Commonwealth legislation and guidelines, for example, export controls, foreign interference, the Blueprint for Critical Technologies and the *Security of Critical Infrastructure Act 2018* to name a few in a long list. While these instruments together create a robust national security framework, the compliance requirements impose a significant burden for universities in establishing, embedding and maintaining systems; providing training and monitoring compliance etc. We therefore greatly appreciate the opportunity to help simplify this important legislative package, which is complex and costly to apply to a large and multifaceted teaching and research organisation.

We welcome the various thoughtful suggestions for improvement outlined in the Issues Paper. While our **attached** submission reflects one research-intensive university's experiences complying with the Autonomous Sanctions Framework, we hope the Australian Sanctions Office finds our feedback helpful.

In summary, while we consider the Act and Regulations fit for purpose, their ease of use and understanding would be improved significantly by introducing a two-tiered approach, and by ensuring that all key terms are clearly defined. Our submission recommends consideration of a series of humanitarian exemptions, and in the case of universities, we can foresee instances where these could apply to potential academic staff and doctoral candidates. We would also prefer to see alternatives to civil pecuniary penalties, while we support replacing the relisting mechanism with some modifications.

Please do not hesitate to contact me should you wish to discuss any aspect of this submission. Alternatively, please liaise with Helen Brown in our Office of General Counsel [REDACTED] who supports our legal compliance obligations under autonomous sanctions, defence and strategic goods controls and foreign interference legislation.

Yours sincerely,

[REDACTED]

Professor Emma Johnston
Deputy Vice-Chancellor (Research)

Attachment: University of Sydney submission to DFAT's review of Australia's Autonomous Sanctions Framework, February 2023

Research Portfolio

[REDACTED]

T [REDACTED]
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ABN 15 211 513 464
CRICOS 00026A

University of Sydney submission to DFAT's review of Australia's Autonomous Sanctions Framework, February 2023

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

<p>1A. How could the Autonomous Sanctions Framework be made more clear and easy to navigate?</p>	<p>The University of Sydney has been working extensively with the Autonomous Sanctions Framework for more than a decade. Despite significant investment in training and the streamlining of internal processes, the framework remains difficult for some to navigate.</p> <p>The University supports the establishment of a two-tiered structure, with some provisions currently contained in the Regulations moved to the Act. As retaining legislative safeguards will ensure accountability and protect against abuse of power, the provisions relevant to a country or theme should be located in a single instrument to improve clarity and ease of navigation.</p>
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Issue 2: Scope of sanctions measures (ToR 2, 3, 9)

<p>2A. 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?</p>	<p>Yes, they are fit for purpose.</p> <p>We have no other sanctions measures to suggest that would support Australia's foreign policy objectives.</p>
<p>2B. 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:</p> <ul style="list-style-type: none"> • Directly or indirectly • Assets; and • Controlled asset. 	<p>The terms "<i>directly</i>", "<i>indirectly</i>" and "<i>assets</i>" have caused confusion on occasion and have required resolution through legal advice.</p> <p>Improving the uniformity of the meaning of each of these terms would be helpful.</p> <p>We support greater clarity around the definition of these terms - including the provision of examples - to resolve any uncertainty regarding their interpretation.</p>

2C. Would having a uniform concept of sanctioned commercial activity assist you in understanding sanctions obligations for this measure? If not, what might?	<p>The University is rarely in the situation of conducting this activity, however, we support a definition of “sanctioned commercial activity” to provide greater clarity and certainty.</p> <p>Although the University is not a commercial entity, it sometimes provides consultancy services, therefore, greater clarity on this point would be welcome.</p>
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Issue 3: Permit powers (ToR 4, 9)

3A. Are there situations which you think would warrant a standing general permit being issued? If so, what is the justification?	<p>The University would have little cause to request a standing general permit as each research project that requires a permit would turn on its facts and a standing permit would not be applicable. However, we strongly support the concept of using a standing general permit wherever possible, as this would cut down the significant costs incurred in operating a sanctions compliance program across a large and complex organisation. We feel that this is an underappreciated factor and anything to minimise operational costs should be considered.</p>
3B. Are there other permit-related matters you wish to raise?	<p>In the main, we support the general granting powers contained in the Regulations being dealt with in greater detail as this will enhance transparency and provide more comprehensible information regarding options.</p> <p>However, we acknowledge that obtaining permits involves a long wait time and highlight the significant uncertainty for potential doctoral candidates. Most of these PhD candidates will opt to refine their area of study to avoid the need for a permit, by avoiding an export sanctioned good. Accordingly, where a permit is sought, minimising the time to decision should be an important objective and KPI for the Framework.</p>

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

4A. In what circumstance would you support the introduction of a humanitarian exemption for a set group humanitarian actors?	<p>The University strongly supports the introduction of a humanitarian exemption for academics and higher degree by research candidates from sanctioned countries. Academics and postgraduate students may require a permit to conduct their STEM research in Australia, however, their research in their homeland may be interrupted or compromised by civil or military conflict; their working environments may be unsafe, or as women, they may be prohibited from conducting their research or undertaking further study. A humanitarian exemption, particularly in instances where the academic or student is unlikely to return to their country of birth would in our view, warrant an exemption.</p>
4B. What safeguards would be necessary to ensure such an exemption is not misused, for example to facilitate	<p>In the example given above, one safeguard would be to have no ongoing professional association with the regime from which they originated.</p>

proliferation financing or sanctions evasion?	
4C. If an exemption for ‘humanitarian assistance’ were to be included in the legislation, what types of activities would it be important to capture?	For universities, teaching and research.

Issue 5: Sanctions offences and enforcement (ToR 6)

5A. Would civil penalties be a suitable enforcement tool in the sanctions context?	<p>While civil pecuniary penalties would appear to be a solution to circumstances that do not warrant a criminal conviction, we would be concerned about the application of a lower standard of proof.</p> <p>The idea of criminal convictions for the provision of technical advice, assistance and training in the form of education and research training to persons from a sanctioned regime undertaking postgraduate education is not consistent overall with the mission of Australia’s public universities. The current Framework affords certain defences and has a rigorous process which requires proof above a certain standard.</p> <p>We would prefer to see some other intermediate step such as mandated education and compliance monitoring for a prescribed period e.g. via a deed of undertaking in preference to a civil pecuniary penalty on a lower standard of proof.</p>
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Issue 6: Review mechanism for designations and declarations (ToR 4, 8)

6A. 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?	<p>The benefit of such an approach would be certainty and universities would not deal with the uncertainty in checking and rechecking therefore resources are better deployed. We would also be aligned with other universities overseas.</p> <p>We think that five years is too long a period for a person to make a submission as much can change in that period in a listee’s circumstances and three years is a more reasonable period.</p>
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Issue 7: Regulatory functions of the ASO (ToR 7)

<p>7A. Do you support aligning the existing injunction power with those set out in Part 7 of the <i>Regulatory Powers (Standard Provisions) Act 2014</i>?</p>	<p>Issuing an injunction is a serious step and we would prefer to not expand the injunction power to allow an authorised person within DFAT to seek injunctive relief.</p>
<p>7B. 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?</p>	<p>The process for applying for an indicative assessment or a permit through Pax is quite clear so we would not benefit from further changes.</p>
<p>7C. 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?</p>	<p>Overall, the University's compliance costs are high. We recruit many international scientists from sanctioned countries and have a large number of staff flowing through the University that we need to check against Australian and US Consolidated Lists.</p> <p>We also cover the gamut of areas in the Defence and Strategic Goods List (DSGL) therefore our costs and the costs of any research-intensive university are high. Anything to reduce this would be welcome.</p> <p>Further, it is becoming increasingly difficult to recruit experienced staff to our sector so any measures such as an online guided form with explanatory text supporting its completion would be helpful. We rarely seek indicative assessment as we have specialist and experienced staff available but when we do it is often a complex issue, and it takes a very long time to obtain a response which is not always definitive.</p>
<p>7D. Do you have any suggestions for reducing the costs associated with compliance with autonomous sanctions laws?</p>	<p>Development of automated tools to allow better navigation of legislation and some supplementary guidance text. The Department's rewrite of its website was very helpful and provided greater clarity, however, more definitions and more examples would be helpful.</p>
<p>7E. What is your experience navigating the DFAT Consolidated List?</p>	<p>The University appreciates having the list available as it saves a lot of time. A standing working group of users to provide more in-depth suggestions would likely be helpful to all users.</p>