



Australian Government

Department of Foreign Affairs and Trade



SANCTIONS REGULATOR PERFORMANCE – SELF-ASSESSMENT REPORT

December 2016

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SANCTIONS REGULATOR PERFORMANCE SELF-ASSESSMENT FOR THE 2015-16 FINANCIAL YEAR

INTRODUCTION

The Sanctions Section (SAN) of the Department of Foreign Affairs and Trade (DFAT) is the Australian Government's sanctions regulator. SAN is responsible for implementing and administering Australia's sanctions regimes. Consistent with the requirements of the Australian Government's *Regulator Performance Framework*¹ (Framework), this report sets out the results of SAN's self-assessment of its performance during the 2015-16 financial year (Review Period).

The Framework includes six Key Performance Indicators (KPIs) against which all regulators must assess their performance. For each of these KPIs, SAN has assessed its performance by reference to one or two metrics which were determined at the start of the Review Period.

As part of the self-assessment, SAN sought feedback on its performance from other Australian Government departments and agencies with which it works (including the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Border Force and the Department of Defence) and from industry associations which represent Australian business. SAN has taken this feedback into account in conducting the self-assessment. In addition, this report will be externally validated in January 2017, as required by the Framework.

During the Review Period SAN had a full-time equivalent (FTE) staffing establishment of one director and 8 team members.

We welcome your feedback on this report. Please send your feedback to sanctions@dfat.gov.au.

FINDINGS

SAN performed well as the Australian Government's sanctions regulator during the Review Period. Although it did not meet all of the metrics, SAN was timely in processing applications and inquiries, worked effectively with its Australian Government partners and supported Australian business to comply with sanctions laws.

This report identifies some areas for improvement. SAN is already working to improve its performance in those areas.

Consistent with these findings, the Australian Industry Group (AI Group) provided feedback that "on the whole, member companies are satisfied with their ongoing interaction with [SAN]".

¹ Accessible at www.cuttingredtape.gov.au.

KPI 1: REGULATORS DO NOT UNNECESSARILY IMPEDE THE EFFICIENT OPERATION OF REGULATED ENTITIES

SAN's performance against Metrics 1A and 1B (see below) indicate that SAN facilitates the efficient operation of its clients by processing applications and inquiries within a reasonable period of time.

The Australian Border Force (ABF) provided feedback that SAN has occasionally made errors in the permit details provided to ABF, thereby causing minor delays to exporters. These human errors are attributable to some of the manual IT systems that SAN relies on, due to the current limitations of the Online Sanctions Administration System (OSAS) (see KPI 6).

The ABF further advised that, when it has stopped goods at the border, it takes 3-4 days after SAN has received the required technical assessment for SAN to provide the ABF with a determination as to whether the goods require a permit. To avoid delays to the export of goods, SAN is looking at ways to reduce this timeline, including through addressing staffing shortages and improving IT platforms.

Metric 1A: Responses to formal applications and inquiries in the Online Sanctions Administration System (other than Iran Financial Transaction Authorisations) are provided, whenever reasonably possible, within 10 business days of receiving all relevant information from the client and relevant government departments

Applications for sanctions permits and formal inquiries as to whether a particular activity requires a sanctions permit are submitted to SAN through OSAS. In the Review Period, SAN received 153 applications for sanctions permits (see Table 1) and 114 inquiries, excluding applications for Iran Financial Transaction Authorisations. These figures also do not include the significant number of telephone and email inquiries received by SAN.

To assess SAN's performance against KPI 1 using Metric 1A, SAN reviewed a representative sample of 10% of the OSAS applications and inquiries received during the Review Period. On average, it took SAN 16 business days to make a decision or to put a recommendation to the Minister for Foreign Affairs, after SAN had received all relevant information from the client and Australian Government agencies. However, the sample included a particularly complex application to export goods to Iran which, due to the Joint Comprehensive Plan of Action (JCPOA) taking effect, took 194 days to finalise. If that application is excluded from the sample, SAN achieved an average processing time of 9 business days, one day less than the target.

For the next review period, SAN aims to be able to take a larger representative sample; however, this is not possible using the current OSAS.

Table 1 Permit applications (excluding Iran FTAs)

Sanctions Regime	No. of Applications	Sanctions Regime	No. of Applications
Central African Republic	2	Lebanon	6
Cote d'Ivoire	3	Liberia	2
Democratic People's Republic of Korea (North Korea)	1	Libya	3
Democratic Republic of Congo	5	Myanmar	8
Eritrea	1	Russia	44
Guinea-Bissau	1	Somalia	7
Iran	50	Sudan	7
Iraq	7	Zimbabwe	6
TOTAL	153		

Metric 1B: Iran Financial Transaction Authorisations are processed in accordance with statutory requirements (maximum 56 days) and steps taken to reduce the regulatory burden imposed by these authorisations

In the Review Period, SAN received 411 applications for Iran Financial Transaction Authorisations (IFTAs). The requirement to obtain IFTAs ceased in February 2016 as a consequence of the JCPOA and the easing of sanctions on Iran. To assess SAN's performance against KPI 1 using Metric 1B, SAN reviewed a representative sample of 5% of the applications.

All of the reviewed IFTA applications were processed in accordance with statutory requirements. On average, there were 22 calendar days between receipt of an application and its approval or denial.

KPI 2: Communication with regulated entities is clear, targeted and effective

The feedback received from stakeholders supports SAN's assessment that its communication with its clients is clear, targeted and effective. SAN's has policies and procedures in place to facilitate the making of consistent decisions, providing predictable outcomes for SAN's clients.

During the Review Period, SAN promptly updated the sanctions information on DFAT's website and conducted regular outreach (see Metrics 2A and 2B below). SAN's ability to communicate effectively with its clients (and vice versa) could be improved if OSAS were upgraded (see Metric 2C and KPI 6 below).

Two external stakeholders provided feedback that SAN is difficult to reach by telephone. SAN is contactable by telephone but callers have to leave a message and wait for the call to be returned. SAN endeavours to promptly respond to callers, typically on the day they call or the following day. However, SAN is constrained in the advice it can provide by phone due to the very complex legislation it administers and the wide variety of goods and services to which sanctions may apply. Clients will usually need to submit a formal inquiry in OSAS in order to receive a detailed response to their query.

One external stakeholder noted that targeted communications with certain industry sectors may be of value in promoting sanctions compliance.

Metric 2A: DFAT Sanctions website is current and changes made within 1 business day of any regulatory change

The sanctions webpages on DFAT's website² are the primary means by which SAN provides information to the public about Australia's sanctions regimes. In the Review Period, there were six significant changes to Australia's sanctions laws. On average, DFAT's website was updated within 0.8 business days of the change, exceeding our target of one business day. SAN's ongoing review of DFAT's sanctions webpages is discussed at Metric 5B below.

In its feedback, AI Group commented that SAN could have been more proactive in providing practical information to Australian businesses when the sanctions on trade with Iran were eased in January 2016. SAN agrees that proactive outreach is an important part of its role as regulator (see Metric 2B below). On the Implementation Day for the JCPOA, DFAT's website was updated to inform the public of the changes, including answers to frequently asked questions.

Metric 2B: Outreach tours of state capitals are undertaken at least twice a year

SAN conducts regular outreach to the state capitals, to improve understanding of Australia's sanctions laws and to provide information about changes to those laws. During the Review Period, SAN delivered presentations to the general public in Brisbane, Darwin, Hobart, Melbourne, Perth and Sydney. SAN also presented at or took part in a further three events in Sydney which were for specific audiences.

Other than in respect of Sydney, SAN did not achieve the metric of conducting outreach in each state capital at least twice a year. However, SAN did visit each state capital (except for Adelaide, which will be prioritised for the next round of outreach).

Metric 2C: Sanctions applications and inquiries are managed effectively through the Online Sanctions Administration System

OSAS is the primary means by which SAN manages applications for permits and other sanctions inquiries. SAN's clients must use OSAS to apply for permits and to submit inquiries. SAN has received consistent feedback from its clients that OSAS is difficult to use, and not compatible with many internet browsers. The future upgrade of OSAS is discussed at KPI 6 below.

² Accessible at <http://dfat.gov.au/international-relations/security/sanctions/Pages/sanctions.aspx>.

KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

Metric 3A: Steps taken to introduce legislation creating tiered offences for sanctions laws

During the Review Period, SAN continued consultations with policy and law enforcement agencies on options, for Government consideration, to introduce tiered offences into the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011*. Tiered offence provisions would allow the imposition of different levels of penalties for intentionally or recklessly contravening sanction laws, as well as appropriate penalties for strict liability offences by individuals. The legislative changes required to introduce tiered offences have proven to raise complex legal issues and, additionally, the timetable for possible legislation was affected by the calling of the federal election in May 2016. SAN will continue to develop options to introduce tiered offences, in consultation with relevant agencies, for inclusion in any future amendments to national security legislation. This work has also been identified as a priority by other Government stakeholders.

Metric 3B: Requests for supplementary information when considering applications and inquiries is reasonable and appropriate to the transaction concerned

It is common for SAN to request additional information from its clients. This information is only requested when needed by SAN to respond to the inquiry or assess the application. For example, SAN may require further information regarding the goods for which a permit is sought or the end user of the goods.

As part of the review of applications and inquiries referred to in KPI 1 above, SAN considered whether requests to clients for additional information were reasonable and appropriate and concluded that, in all cases, they were.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Unlike some Australian Government regulators which have a broader mandate to do compliance and monitoring work, SAN has a limited role in enforcing and monitoring compliance with Australia's sanctions laws. Where SAN identifies a potential non-compliance with those laws, SAN will refer the matter to the Australian Federal Police for investigation.

A 2015 Mutual Evaluation of Australia by the Financial Action Task Force (FATF) found that, while Australia's targeted financial sanctions framework complies with the FATF standards, Australia does not adequately monitor or supervise reporting entities for compliance with the terrorism, terrorism financing and proliferation financing targeted financial sanctions regimes. The *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* (April 2016), coordinated by the Attorney-General's Department, recommended that "AUSTRAC and DFAT should explore the feasibility of AUSTRAC monitoring and supervising compliance with Australian sanction law" (Recommendation 15.8). This recommendation is supported by DFAT and work is ongoing.

The Department of Immigration and Border Protection and its operational enforcement arm, ABF, play an important role in ensuring compliance with Australia's sanctions laws at Australia's borders. Their contribution to sanctions compliance is critical, but falls outside the scope of this self-assessment.

Metric 4A: Where there has not been full compliance, work with the business to inform, advise and guide on sanctions requirements

In addition to maintaining DFAT's sanctions webpages and conducting outreach (see KPI 2), SAN regularly works with individual Australian businesses to assist them to understand and comply with Australia's sanctions laws. For example, if ABF stops a shipment at the border, SAN will work with the affected exporter to determine if the goods require a permit and, if they do, to explain the permit application process.

KPI 5: Regulators are open and transparent in their dealings with regulated entities

SAN's performance against Metric 5A and the feedback received from external stakeholders both indicate that SAN is open and transparent in its dealings with clients. With respect to Metric 5B, SAN acknowledges that the clarity of the sanctions information on DFAT's website could be improved and that work is progressing (see Metric 5B). The complexity of Australia's sanctions regimes, however, do limit the degree to which information on the website can be simplified for the benefit of the general public.

Metric 5A: Administrative decisions and responses to formal applications and inquiries clearly outline the legal basis for such decisions

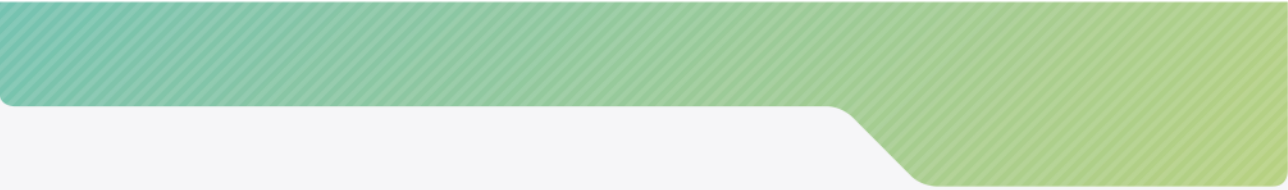
Decisions regarding the application of Australia's sanctions laws (such as whether or not a permit can or should be granted) are either made by SAN, by the head of DFAT's Sanctions, Treaties and Transnational Crime Legal Branch or by the Minister for Foreign Affairs. If a decision is not made by SAN, SAN is responsible for making a recommendation to the decision maker which sets out the applicable law.

As part of the review of applications and inquiries referred to in KPI 1 above, SAN also considered whether administrative decisions and SAN's written responses clearly outlined the legal basis for the decisions. SAN determined that its internal decision documents and its letters to clients did outline clearly the legal basis for its decisions. For example, the relevant legislation is referred to and its application to the specific matter is outlined.

One external stakeholder noted that there would be benefit in SAN making clearer in its correspondence to regulated entities what has been assessed under Australian sanction laws, as opposed to other regulatory processes such as export controls. SAN accepts the need to provide greater clarity in this area to business and industry, and is consulting with relevant stakeholders accordingly.

Metric 5B: Ongoing review of DFAT sanctions website and consider including further guidance as appropriate

SAN provides comprehensive information on each of Australia's sanctions regimes and guidance on how to apply for a sanctions permit on DFAT's website. The website content is continuously updated as changes to sanctions laws take effect (see Metric 2A above). For example, during the Review Period, significant updates were made to the Iran and Democratic People's Republic of Korea (North Korea) sanctions webpages to reflect changes to those sanctions regimes. Updates to the Consolidated List of persons and entities subject to targeted financial sanctions are published on the website as soon as practicable, usually within 48 hours.



SAN is working to improve the clarity of the sanctions information on DFAT's website to address feedback received, including from the Senate inquiry into the partial suspension of sanctions against Iran. In its report, the Senate inquiry recommended that "DFAT improve the clarity and accessibility of information on its website on Iran" (Recommendation 6). Towards the end of the Review Period, SAN began work on a significant refresh of the sanctions webpages on DFAT's website. That work is ongoing.

KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

SAN works closely with its Australian Government counterpart agencies, including on the improvement of Australia's regulatory framework for sanctions. For the purposes of this self-assessment, those counterparts provided positive feedback on SAN's engagement with them, although there is room for those relationships to be further enhanced. For example, one agency highlighted in its feedback that the frequency of its communication with SAN could be increased.

Another way in which SAN contributes to the improvement of Australia's sanctions regulation is through its participation in FATF – the global standard setting body for anti-money laundering, counter-terrorism financing and counter-proliferation financing. SAN is an active member of Australia's Financial Action Task Force (FATF) and Asia-Pacific Group on Money Laundering (APG) delegations, contributing to the development of global standards on the implementation of targeted financial sanctions and the peer review of fellow FATF and APG members. SAN's involvement in the FATF and APG helps to ensure that Australia's regulatory framework for sanctions meets international standards.

Metric 6: DFAT has earmarked funding to improve the technical specifications of the Online Sanctions Administration System. The improved system is scheduled to be launched in the first quarter of 2016.

DFAT continues to progress its work to upgrade OSAS but the project has been delayed due to budgetary constraints. This upgrade will be taken forward as a matter of priority as soon as is feasible.