



Australian Government

Department of Foreign Affairs and Trade



SANCTIONS REGULATOR PERFORMANCE – SELF-ASSESSMENT REPORT

August 2018

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SANCTIONS REGULATOR PERFORMANCE SELF-ASSESSMENT FOR THE 2017-18 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 2017-18 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 has been externally validated, as required by the Framework.

During the Review Period, SAN had an average of 7.6 FTE (including the director). Following staff reductions associated with the Functional and Efficiency Review, SAN's full-time equivalent (FTE) staffing establishment currently consists of one director and 7 team members.

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

FINDINGS

During the Review Period, SAN worked effectively with its Australian Government partners and supported Australian business to comply with sanctions laws. SAN processed applications and inquiries within 13 business days of receiving all relevant information from the client and relevant government departments but acknowledges that its processing times were longer than usual. SAN also acknowledges that the total time for responding, measured from the time of application or inquiry to the date of response, is significantly longer than 10 working days. SAN will also consider ways to provide greater transparency regarding timeframes so business can factor this into their planning.

SAN is working to improve its performance in the areas which feedback and this report identifies require improvement. SAN had a significant turnover of staff in the Review Period, and was also responsible for progressing significant updates to Australia's sanctions regime on North Korea during the period, which diverted some resources from processing sanctions applications and inquiries. These issues may have

¹ Accessible at www.pmc.gov.au/regulation.

contributed to longer processing times in some instances. SAN expects that an upgrade to the Online Sanctions Administration System (OSAS) would also assist in improving its processing times.

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

SAN's performance against Metric 1 (see below) indicates that SAN does not unnecessarily impede the efficient operation of its clients, and that there have been some improvements in DFAT's performance as a sanctions regulator in 2017-18 from the previous year.

Defence Export Controls (DEC) found SAN to be very responsive to short-notice requirements and tasks.

The ABF provided feedback that the mandatory requirement to conduct sanctions assessments impacts on the efficient operation of low-risk legitimate trade, as goods destined to, and originating in sanctions destinations are subject to further scrutiny at the border. It also impacts the urgent processing of consignments that require special treatment at the border (e.g. perishable items) or when there is public interest to not delay the processing of the consignment (e.g. medical goods). The ABF also advised that the sanctions assessment process provides minimal avenues for the ABF to efficiently process urgent consignments.

One stakeholder emphasised the benefits of SAN establishing clear guidelines for assessment timeframes to allow business to put plans in place.

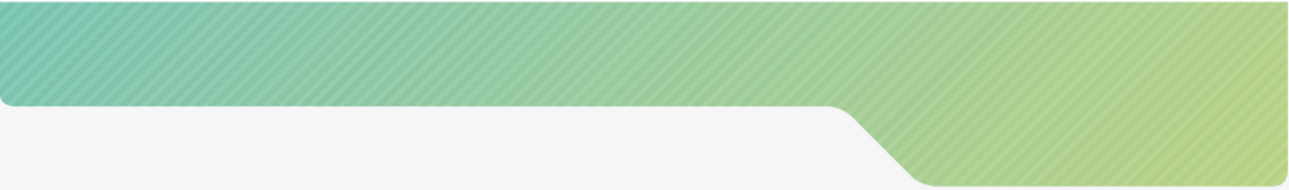
Metric 1: Responses to formal applications and inquiries in the Online Sanctions Administration System are provided, whenever reasonably possible, within 10 business days of receiving all relevant information from the client and relevant government departments

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 finalised 82 applications for sanctions permits (see Table 1) and 22 inquiries (where SAN assessed that it was required to make a decision or put a recommendation to the Minister for Foreign Affairs). These figures do not include the significant number of telephone and email inquiries received by SAN. These figures also do not include a large number of applications and inquiries which were withdrawn by clients following initial assessment by SAN and complex applications and inquiries which are ongoing.

To assess SAN's performance against KPI 1 using Metric 1, SAN reviewed a sample of 20% of the OSAS applications and inquiries during the Review Period. On average, it took SAN 13 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. This is outside the target. The median number of business days was 9 business days.

SAN is working with relevant areas of DFAT to ensure that the OSAS upgrade is treated as a high priority for the 2018-19 financial year (see Metric 6 below). SAN anticipates that an upgraded OSAS would allow for more detailed reporting.

SAN notes that Metric 1 excludes applications and inquiries received in the Review Period that were not finalised in the Review Period and which remained ongoing at the end of the 2017-18 financial year. While it took SAN an average of 13 business days to conclude matters once all relevant material was obtained, SAN acknowledges that total response times can be significantly longer. For example, on complex matters consultation with relevant government departments can take several months. SAN is committed to



improving its total response times in the 2018-19 financial year, informed by a risk-based approach to sanctions assessments (see KPI 3 below).

In the context of Metric 1, one external stakeholder said that the time DFAT takes to administer sanctions approvals has improved. However, its members report that likeminded countries (such as the US or UK) still issue permits far more quickly. The stakeholder suggested that SAN issue guidelines for assessment timeframes, and consider providing early, non-binding guidance on sanctions permits, which would deliver significant efficiencies for business. SAN is committed to work with stakeholders to address their concerns in the coming financial year.

Table 1 Permit applications (where SAN assessed that it was required to make a decision or put a recommendation to the Minister for Foreign Affairs)

Sanctions Regime	No. of Applications	Sanctions Regime	No. of Applications
Democratic Republic of Congo	5	Russia	46
Iran	10	Somalia	5
Iraq	1	Sudan	2
Lebanon	3	Syria	3
Libya	1	Yemen	1
Myanmar	3	Zimbabwe	2
TOTAL	82		

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

SAN seeks to ensure that its communication with its clients is clear, targeted and effective.

During the Review Period, SAN updated the sanctions information on DFAT's website and conducted domestic outreach (see Metrics 2A and 2B below).

In the context of this KPI, DEC cited SAN's assistance to competitors participating in major shooting competitions (such as the 2018 Commonwealth Games) as an example of clear, targeted and effective whole-of-government communication with regulated entities. DEC said that SAN's assistance was integral to the successful and timely issuing of Defence Export permits to competitors to facilitate their departure from Australia at the conclusion of the competition.

DEC provided second-hand feedback from applicants that SAN can be difficult to contact, and that it can take some time to receive a response. Applicants said they cannot call DFAT directly; instead, they are required to leave voice messages on a group number. Applicants also said they must first register on the DFAT Online Sanctions Administration System before they can contact SAN. Applicants advised that SAN take a very 'hands off' or 'old school' regulatory approach. The ABF provided similar second-hand feedback.

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 through the Online Sanctions Administration System in order to receive a detailed response to their query.

AUSTRAC noted that in 2017 and 2018, AUSTRAC and SAN established a process for communicating with the financial sector which gives trusted partners early warning of changes to the sanctions listings. This allows the major financial partners sufficient time to adjust their internal screening for new sanctions. The aim of

this process is give the majority of the financial sector in Australia a greater ability to ensure compliance with sanctions listings the as soon as the changes are published. AUSTRAC also noted that it and SAN have developed a close and open relationship with our dealings on possible sanctions violations. AUSTRAC and the Sanctions team are in regular contact, and discuss developing issues freely (see KPI 5 below).

One stakeholder recommended DFAT adopt an account manager system in order to aid communication. The stakeholder also suggested SAN could have taken a greater role in explaining the implications of changes to the US sanctions regime. SAN is not able to provide advice on other countries' sanctions but endeavours to ensure any change to Australia's sanctions regime is clearly articulated. 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. It is current. In the Review Period, there were four significant updates of the DFAT Sanctions website in response to a regulatory change.

1. Update to North Korea sanctions regime pages (July 2017)

The first update was in response to the entry into force of the first part of the *Charter of the United Nations (Sanctions—Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017* (2017 Measures No. 1 – Part 1). The 2017 Measures No. 1 – Part 1 came into effect on 6 July 2017; the website was updated on 6 July 2017.

No. of business days between change taking effect and website being updated by SAN: 0

2. Update to North Korea sanctions regime pages (August 2017)

The second update was in response to the entry into force of the second part of the *Charter of the United Nations (Sanctions—Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017* (2017 Measures No. 1 – Part 2). The 2017 Measures No. 1 – Part 2 came into effect on 5 August 2017; the website was updated on 8 August 2017.

No. of business days between change taking effect and website being updated/change to website requested by SAN: 3

3. Update to North Korea sanctions regime pages (November 2017)

The third update was in response to the entry into force of the *Charter of the United Nations (Sanctions—Democratic People's Republic of Korea) Amendment (2017 Measures No. 2) Regulations 2017* (2017 Measures No. 2). The 2017 Measures No. 2 came into effect on 4 November 2017; the website was updated on 3 November 2017 (in anticipation of the regulatory changes).

No. of business days between change taking effect and website being updated/change to website requested by SAN: 0

4. Update to North Korea sanctions regime pages (June 2018)

The fourth update was in response to the entry into force of the *Charter of the United Nations (Sanctions—Democratic People's Republic of Korea) Amendment (Resolution 2397) Regulations 2018* (2018 Measures). The 2018 Measures came into effect on 2 June 2018; the website was updated on 22 June 2018.

No. of business days between change taking effect and website being updated/change to website requested by SAN: 14

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

SAN acknowledges that its website updates did not meet Metric 2A in two cases. SAN will work to ensure that its website updates are more timely in the 2018-19 financial year.

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

During the Review Period, SAN undertook outreach twice in Brisbane (on 21 September 2017 and 5 June 2018), and once in Adelaide (on 6 December 2017), Sydney (on 25 October 2017) and Melbourne (on 12 July 2017).

SAN did not achieve the metric of conducting outreach in each state capital at least twice a year.

One stakeholder indicated it would like to see increased engagement, particularly with SMEs, noting that SMEs lack awareness of Australia's sanctions regime; and for those SMEs that are aware of sanctions, and may be affected by them, the information available is difficult to interpret.

SAN recognises that it is vital for regulators to engage effectively with stakeholders, and has already undertaken a number of events in the 2018-19 financial year. SAN will also look for opportunities to engage in joint outreach with other Commonwealth agencies such as DEC.

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.

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

DEC provided feedback that, from its perspective, SAN has improved significantly in relation to this KPI and is now more actively seeking defence input to assess risk. Noting DEC's and SAN's common stakeholder/client base, DEC said that it would welcome the opportunity to share its risk management frameworks and practices with SAN. One stakeholder encouraged DFAT to take more of a risk-based approach to issuing sanctions permits.

Metric 3: 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.

One external stakeholder's members identified situations where a 'quick no' would have saved them significant time and effort. While the stakeholder applauded DFAT not wanting to unjustifiably rule out any potential business opportunities, it reported that businesses would appreciate early, informal guidance if an application was unlikely to succeed.

SAN will consider the option of providing early, non-binding guidance on sanction permits.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Unlike some Australian Government regulators which have a broader mandate to undertake compliance and monitoring, SAN has a limited role in enforcing and monitoring compliance with Australian sanctions law.

Where SAN identifies potential non-compliance with Australian sanctions law, SAN will refer the matter to the Australian Federal Police (AFP) for investigation. SAN works closely with the AFP in the pre- and post-referral stage – including by issuing production notices. SAN also works closely with AUSTRAC to monitor transactions for possible violations of Australian sanctions law.

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). DFAT supports this recommendation and work is ongoing.

DEC noted that it does not have a clear understanding of SAN's compliance and monitoring work. SAN will work with DEC and other stakeholders to ensure that its role in enforcing and monitoring compliance with Australian sanctions law is clear.

The Department of Home Affairs (DHA) and its operational enforcement arm at the border, ABF, play an important role in ensuring compliance with Australia's sanctions laws. Feedback from ABF emphasised the importance of SAN providing early and consistent assessments of goods stopped at the border where they may be sanctions risks.

Although not directly related to compliance and monitoring, one stakeholder provided feedback that its members continued to experience increased regulatory burden from a lack of coordination with Defence (when applying for sanctions and Defence export permits simultaneously). The stakeholder suggested that DFAT and Defence should ensure they comply with the spirit of the Government's commitment to a 'single window' for export. SAN is examining how to enhance coordination with DEC to manage client information and reviewing its risk management frameworks and practices.

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 indicates 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 in progress to this end (see Metric 5B). This will need to be done while ensuring the accuracy and completeness of information.

AUSTRAC noted that it and SAN have developed a close and open relationship with our dealings on possible sanctions violations. AUSTRAC also said that it and SAN are in regular contact, and discuss developing issues freely.

DEC reiterated its second-hand feedback from applicants that SAN can be difficult to contact and concern about the time it takes to receive a response.

Although not directly related to Metrics 5A and 5B, SAN received feedback from one stakeholder that it was frustrated with a lack of transparency regarding the time sanctions permit applications would likely take to process. There are sometimes complex processes involved in considering whether to issue a sanctions permit. However, SAN will take the feedback on board, and look into ways to further streamline SAN's engagement with stakeholders.

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

Administrative decisions regarding the application of Australia's sanctions laws (such as whether or not a permit can be granted) are made by the Minister for Foreign Affairs or her delegate. In these cases, SAN is responsible for making a recommendation to the decision maker which sets out the applicable law.

Occasionally, where a formal administrative decision is not required, SAN responds to formal applications and inquiries advising that the proposed activity is not prohibited by, or subject to authorisation under, Australian sanctions 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 decision or response. SAN determined that its internal decision documents and its letters to clients did outline clearly the legal basis for its decisions or responses. For example, the relevant legislation is referred to and its application to the specific matter is outlined.

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 Democratic People's Republic of Korea (North Korea) sanctions webpage 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.

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). SAN has continued working on a significant refresh of the sanctions webpages on DFAT's website. This 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 key stakeholder's members reported that DFAT's performance in assessing sanctions permits improved in 2017-18. Likewise, the ABF said that it believes that SAN is committed to the continuous improvement of administrative processes; and that SAN has been transparent with the ABF by actively seeking to regularly meet and discuss ongoing issues, and has implemented improved processes based on feedback provided by the ABF.

AUSTRAC was of the view that it and SAN have developed a close and productive working relationship and AUSTRAC is confident that it will be able to adjust and improve procedures as the cooperative work continues. AUSTRAC noted that communicating changes of sanctions listings to major financial partners is an improvement to the regulatory framework for sanction screening in Australia. AUSTRAC also noted that it and DFAT are committed to improving this processes to ensure it is effective and efficient.

DEC said that SAN appears to apply a higher denial threshold than DEC, which sometimes requires DEC to make 'catch-all' decisions which perhaps could be made under sanctions legislation. This sometimes results in inefficiencies between DEC and DFAT and the operation of both regulatory frameworks. SAN notes that it uses a different regulatory framework to DEC. As noted above (Metric 3), SAN will work with DEC to ensure that there is greater coordination on our risk management frameworks and practices. SAN will also endeavour to foster greater understanding of its regulatory powers (and their limits) with other agencies.

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 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.

Metric 6: DFAT has earmarked funding to improve the technical specifications of the Online Sanctions Administration System.

SAN recognises the importance of upgrading OSAS. An upgraded OSAS would provide enhanced case management functions and streamline processes, enabling SAN to more effectively undertake its regulatory function. SAN is working with relevant areas of DFAT to ensure that the OSAS upgrade is treated as a high priority for the 2018-19 financial year.