



**Australian Government**

**Department of Foreign Affairs and Trade**



# **SANCTIONS REGULATOR PERFORMANCE – SELF-ASSESSMENT REPORT**

July 2019

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# SANCTIONS REGULATOR PERFORMANCE SELF-ASSESSMENT FOR THE 2018-19 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*<sup>1</sup> (Framework), this report sets out the results of SAN's self-assessment of its performance during the 2018-19 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.

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 (ABF), the Department of Defence, the Australian Federal Police (AFP) and industry associations which represent Australian business and universities. SAN has taken this feedback into account in conducting the self-assessment. This report has also been externally validated, as required by the Framework.

During the Review Period, SAN had an average of 6.9 FTE (including the director). SAN's full-time equivalent (FTE) staffing establishment currently consists of 7 FTE.

We welcome your feedback on this report. Please send your feedback to [sanctions@dfat.gov.au](mailto: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, on average, within 18 business days of receiving all relevant information from the client and relevant government departments. SAN acknowledges that its processing times were longer than usual and longer than its target of 10 working days where consultation with external agencies is required. 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. 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 stakeholder feedback and this report identified as requiring improvement. SAN had a significant turnover of staff, with the turnover of 7 staff-members in the Review Period, and was also responsible for progressing significant updates to Australia's sanctions regimes, which diverted some resources from processing sanctions applications and inquiries. A planned Online Sanctions Administration System (OSAS) upgrade did not proceed during the year. These issues are likely to have contributed to longer processing times in some instances. SAN anticipates that increased staffing levels, outsourcing where appropriate and an upgrade to the OSAS in the coming period would also assist in improving its processing times for sanctions applications and inquiries.

<sup>1</sup> Accessible at [www.pmc.gov.au/regulation](http://www.pmc.gov.au/regulation).



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

**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 84 applications for sanctions permits (see Table 1) and 29 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 both by the public and within Government, nor the significant number of assessments made in response to referrals from ABF concerning consignments stopped at the border. 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 18 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 13 business days.

SAN anticipates that an upgraded OSAS would provide enhanced case management functions, streamline processes, provide more details reporting and decrease troubleshooting associated with the aging system. SAN has worked with relevant areas of DFAT during the Review period to ensure that the OSAS upgrade has been treated as a high priority. Funding has recently been allocated to the project. (see Metric 6 below).

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 2018-19 financial year. While it took SAN an average of 18 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 2019-20 financial year, informed by a risk-based approach to sanctions assessments (see KPI 3 below).

One stakeholder provide feedback that its members had reported a decline in SAN's performance during the Reporting period particularly in respect of the time taken to assess and respond to sanctions permit applications. It noted that this put Australian exporters at a disadvantage when compared to their overseas competitors who experienced much shorter turnaround times for permits. The stakeholders' members also identified situations where early non-binding guidance to businesses regarding sanctions applications would have saved them significant time and effort.

On stakeholder also noted it was concerned that the sanctions processing team was under-resourced for the volume of applications and inquiries it needed to process and that until this is issue is addressed, it considered that it would cost Australian businesses in lost exports.

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). While mandatory assessment is required, we will work with ABF to determine whether additional steps can be taken for low-risk consignments.

**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
Central African Republic	4	Myanmar	4
Democratic Republic of Congo	6	Mali	2
Democratic People's Republic of Korea	1	Russia	39
Former Yugoslavia	1	Somalia	5
Iran	5	Sudan	2
Iraq	3	Ukraine	1
Lebanon	4	Zimbabwe	4
Libya	3		
<b>TOTAL</b>	<b>84</b>		

## 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 also conducted domestic outreach to Australian businesses and universities (see Metrics 2A and 2B below). SAN is also in the process of undertaking a substantial upgrade to the DFAT website to create a series of plain language 'snapshots' (see Metric 5B below).

AUSTRAC noted that on the occasions it has been involved in communicated sanctions changes with the financial sector that SAN's communication has been clear, targeted and well-coordinated. The AFP similarly noted that the communication they had observed from SAN was always clear, specific, and met the required objectives.

One stakeholder reported that its members experienced a decline in the effectiveness of SAN's communication during the reporting period due to the fact that communication was limited to email and that timeframes were unclear or underestimated. ABF also provided second-hand feedback from regulated

entities that they can, at times, experience difficulty in contacting SAN to discuss sanctions matters. It was suggested by one stakeholder group that a hotline for general enquiries and greater access to case officers would improve the effectiveness of SAN's communication. Another stakeholder suggested that SAN adopt an account manager system in order to aid communication and that regular status updates through the Online Sanctions Administration System could also provide greater transparency for applicants.

Due to resource constraints SAN generally encourages contact from the public by email rather than by phone. SAN is constrained in the advice it can provide by phone and email 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.

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

The sanctions webpages on DFAT's website<sup>2</sup> 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 5 significant updates of the DFAT Sanctions website in response to a regulatory change. The 4 changes which involved increased regulatory implications were updated within 1 (Mali), 3 (South Sudan), 2 (North Korea) and 4 (Central African Republic) business days.

There was a delay of 41 business days between the lifting of sanctions on Eritrea by the United Nations Security Council and updating of the website. The website update was performed in conjunction with work to formally remove the expired sanctions from the legislation.

SAN acknowledges that its website updates did not meet Metric 2A in four cases. SAN will work to ensure that its website updates are timelier in the 2019-20 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 Sydney (on 13 November 2018 and 11 June 2019) and Melbourne (on 12 September 2018 and 1 May 2019), and once in Perth (on 24 July 2018), Adelaide (on 6 November 2018) and Hobart (on 28 November 2018).

SAN did not achieve the metric of conducting outreach in each state capital at least twice a year however our overall number of outreach activities (seven) has improved when compared to 2017-18 (five). Most of SAN's outreach activities in 2018-19 were delivered jointly with other Commonwealth agencies such as DEC and ABF. DEC noted that SAN's involvement in these outreach activities had been helpful and informative to attendees.

Stakeholders welcomed SAN's joint outreach with DEC and ABF. However they also indicated they would like to see increased engagement, particularly with SMEs and universities, in order to improve awareness of Australia's sanctions regime.

SAN recognises that it is vital for regulators to engage effectively with stakeholders, and has already scheduled a number of outreach events for the 2019-20 financial year.

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

## **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 upgrade of OSAS is discussed at KPI 6 below.

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

AUSTRAC provided feedback that, from its perspective, SAN has demonstrated a mature, measured and appropriate approach to regulatory risk and that SAN has always taken the time to communicate their approach to risk to AUSTRAC. The AFP also considered that SAN acted proportionately to the risk presented. On the other hand, one industry stakeholder reported that there were instances in the Reporting period where the time taken for SAN to process sanctions permit applications did not seem proportionate to the level of risk.

## **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. SAN's review of a sample of OSAS applications and inquiries during the review period (refer to Metric 1) revealed that requests for supplementary information were reasonable and appropriate.

## **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 AFP or ABF as appropriate for investigation. SAN works closely with the AFP and ABF 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. Discussions continue regarding whether AUSTRAC will take a more formal monitoring and compliance role in relation to sanctions.

The AFP referred to the close cooperation between DFAT and the AFP on the interaction between production notices and investigations, which was timely, consistent and clear. The AFP participated in DFAT training on sanctions which it described as extremely beneficial for investigating officers.

ABF noted that SAN's assessment of consignments provide the legal basis for the ABF to enforce breaches in sanctions compliance. ABF further noted that the lengthy timeframes for some sanctions assessments may lead to some regulated entities being inclined to disregard sanctions requirements to avoid delays to their operations. SAN is working to address this issue through increasing outreach to businesses and working with ABF on risk protocols.

One stakeholder reported that the whole-of-government approach taken to assessing exports appeared poorly coordinated and considered that this was contributing to slower response times. SAN is reliant on external agencies for technical advice but will continue to identify opportunities for streamlining processes.

**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. SAN processed 37 of these ABF referrals during the Review period.

**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.

**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.

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. During the Review period, SAN has also improved its internal decision-making processes and templates which has strengthened the quality of decision-making.

**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 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 that sanctions regimes. Updates to the Consolidated List of persons and entities subject to targeted financial sanctions are also published on the website as soon as practicable. Members of the public are able to subscribe to SAN's mailing list for the purpose of receiving updates on Australia's sanctions laws.



SAN is working to improve the clarity of the sanctions information on DFAT's website to address feedback received. One external stakeholder suggested that further guidance on DFAT's sanctions website would be useful including case studies and best practice self-assessment processes. During the review period SAN commenced working on a significant refresh of the sanctions webpages on DFAT's website. This work is ongoing and includes the development of a series of plain language 'snapshots' to provide clearer, more effective information to the public.

## **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.

ABF noted that it has confidence in SAN's commitment to the continuous improvement of their administrative processes. It reported that, during the Reporting period, SAN has actively pursued opportunities to regularly meet and discuss ongoing concerns, and has implemented improved processes based on the feedback provided by the ABF.

For example, one key stakeholder's members reported that DFAT's performance in assessing sanctions permits improved in 2018-19. 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 reported that it and SAN have developed a productive and strong working relationship and that SAN's feedback and advice has greatly assisted AUSTRAC to improve its sanctions referrals and assessments. The AFP also noted increased engagement with SAN, and greater consultation and coordination on investigations and disruption of potential sanctions breaches.

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 contributes to whole-of-government FATF and Asia-Pacific Group on Money Laundering (APG) work, 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 also delivered capacity building training to Sri Lanka during the review period to enhance its administration and regulatory frameworks concerning targeted financial sanctions.

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

SAN recognises the importance of upgrading OSAS and has made this a high priority during the review period. An upgraded OSAS would provide enhanced case management functions, streamline processes, provide more details reporting and decrease troubleshooting associated with the aging system enabling SAN to more effectively undertake its regulatory function. SAN has worked with relevant areas of DFAT during the Review period secure an OSAS upgrade. Funding for the upgrade has now been allocated.