



Terms of Reference – Review of the legal framework for autonomous sanctions

Context

Sanctions are a tool of foreign policy that are imposed in response to situations of international concern. Australia’s sanctions framework consists of autonomous sanctions (country-based and thematic) and United Nations-mandated sanctions.

The legal framework for autonomous sanctions comprises the *Autonomous Sanctions Act 2011* (the Act), the *Autonomous Sanctions Regulations 2011* (the Regulations), and 18 legislative instruments made pursuant to the Act and Regulations. The framework is designed to enable swift implementation of sanctions by Government, with high-level machinery provisions contained in the Act, and specific sanctions measures provided for in the Regulations and other delegated legislation.

The review will consider the legal framework for autonomous sanctions ahead of the sunset (automatic expiry) on 1 April 2024 of the Regulations and associated instruments.

Purpose of the review

The review will examine how the autonomous sanctions framework could better support the government’s foreign policy objectives. In doing so, it will consider whether the Regulations and associated instruments remain fit for purpose and will seek to identify administrative and regulatory efficiencies for government and the public, with a view to ensuring robust sanctions compliance.

Matters to be considered by the review

Without limiting its scope, the review will consider:

- streamlining the legal framework—to reduce the volume of subordinate legislation dealing with autonomous sanctions and improve the accessibility of the legislation
- the preconditions for applying sanctions measures—to assess if there should be clearer parameters for imposing sanctions and inform decisions as to the lifting of sanctions measures
- the existing categories of sanctions measures—to assess if they are fit for purpose
- refining the authorisation powers—to ensure permit powers are comprehensive, reduce administrative obligations and enable more balanced restrictions on activities
- the appropriateness and possible scope of a humanitarian exemption—to facilitate legitimate humanitarian activities



- the existing sanction offences, including the introduction of civil penalties—to enable flexible enforcement options, including non-criminal mechanisms for less serious contraventions of autonomous sanctions
- the appropriateness of existing regulatory powers—to examine if additional compliance tools are required, including with reference to the *Regulatory Powers (Standard Provisions) Act 2014*
- the renewal requirement that applies to targeted financial sanction designations and travel ban declarations—to examine the efficacy of this process
- key concepts, terms and definitions, including the criteria for the imposition of targeted financial sanctions and travel bans—to clarify the operation of sanctions prohibitions
- any other matters that are relevant to the efficiency and effectiveness of the autonomous sanctions framework.

The autonomous sanctions framework was modelled on the *Charter of the United Nations Act 1945* (COTUNA). Consideration of these issues will extend to whether it would be appropriate for COTUNA to replicate subsequent reforms that may be made to the autonomous sanctions framework.

Process

The review, led by the Australian Sanctions Office within the Department of Foreign Affairs and Trade, will be informed by responses to an Issues Paper and by consultations with key stakeholders. Submissions from the public, and from within Government, will be invited. Public consultation will be confined to the matters contained in these Terms of Reference and not include consideration of whether Australia should undertake further sanctions measures in response to specific situations of international concern or develop further sanctions regimes.

The purpose of the review is to provide recommendations on possible legislative amendments to Government for its consideration.

The Review will be completed by 30 June 2023.