

Explanatory Statement

Issued by the authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 (No. 2)

The *Autonomous Sanctions Regulations 2011* (the Regulations) commenced on 15 December 2011. The purpose of the Regulations is to facilitate the conduct of Australia's relations with certain countries, and with specific entities or persons outside Australia, through the imposition of autonomous sanctions in relation to those countries, or targeting those entities or persons.

Paragraph 6 (1) (a) of the Regulations authorises the Minister for Foreign Affairs (the Minister), by legislative instrument, to designate a person or entity on the basis that the person or entity is mentioned in an item of the table in regulation 6. The purpose of such a designation is to subject the designated person or entity to targeted financial sanctions. The designated person or entity becomes the object of the prohibition in regulation 14 (which prohibits directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, other than as authorised by a permit granted under regulation 18). An asset owned or controlled by a designated person or entity is a "controlled asset", subject to the prohibition in regulation 15 (which requires a person who holds an asset that is owned or controlled by a designated person or entity to freeze that asset, by prohibiting that person from either using or dealing with that asset, or allowing it to be used or dealt with, or facilitating the use of or dealing with it, other than as authorised by a permit granted under regulation 18).

Paragraph 6 (1) (b) of the Regulations authorises the Minister, by legislative instrument, to declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia on the basis that the person is mentioned in an item of the table in regulation 6.

The persons designated and declared by the Minister for the purpose of Australia's autonomous sanctions in relation to Zimbabwe are listed in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) List 2012* (the List).

The corresponding authority for the Minister to revoke designations and declarations made under regulation 6 is found in paragraph 10 (1) (a) (for designations) and paragraph 10 (1) (b) (for declarations) of the Regulations. Sub-regulation 10 (2) provides that the Minister may revoke a designation or declaration on the Minister's initiative.

On 7 February 2013 the Minister for Foreign Affairs announced a three-step process for the progressive removal of autonomous sanctions against Zimbabwe, with each step linked to the achievement of political milestones. When these milestones are achieved, the Minister will revoke designations and declarations in relation to

individuals whom the Government considers are not hindering the political reform process in Zimbabwe and are not involved in human rights abuses.

The first easing of Australia's autonomous sanctions followed the agreement between Prime Minister Tsvangirai and President Mugabe on a draft constitutional text and the setting of a referendum date for 16 March 2013. The first tranche of reductions to the List came into effect on 15 March 2013 with the commencement of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013*.

In recognition of Zimbabwe's successful conduct of a peaceful and credible constitutional referendum, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 (No. 2)* (the Amendment List) gives effect to the second easing of Australia's autonomous sanctions. The Amendment List further reduces the list of individuals and entities subject to autonomous sanctions and continues the three-step process for the removal of autonomous sanctions against Zimbabwe.

Each person and entity listed in Schedule 1 of the Amendment List remains designated by the Minister for the purposes of paragraph 6 (1) (a) of the Regulations and declared by the Minister for the purposes of paragraph 6 (1) (b) of the Regulations, on the basis that he, she or it is mentioned in Item 8 of the table in regulation 6: that is, a person or entity that the Minister is satisfied is engaged in, or has engaged in, activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.

Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument. In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons specified in the Amendment List, the Department of Foreign Affairs and Trade is satisfied that wider consultations beyond those it has already undertaken would be inappropriate (sub-sections 18 (1) and (2) (e) of the *Legislative Instruments Act 2003*).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 (No. 2)

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 (No. 2)* (Amendment List) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Amendment List amends the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) List 2012* (the List) to give effect to the decision by the Minister for Foreign Affairs on 19 April 2013 to remove 65

individuals and three entities from Australia's autonomous sanctions list in relation to Zimbabwe. The removal of these individuals and entities is in response to the holding of a peaceful and credible constitutional referendum in Zimbabwe on 16 March 2013, which met the second of the three political benchmarks announced by the Minister on 7 February 2013 for the progressive removal of sanctions against Zimbabwe. Australia made an initial reduction in response to the announcement of the date of the referendum, and will make further reductions when free and fair elections take place and a democratically-elected government takes office.

A person or entity subject to designation or declaration under regulation 6 of the Regulations may apply to the Minister for the revocation of those decisions (regulation 11 of the Regulations). Decisions under both regulations 6 and 11 of the Regulations are judicially reviewable.

The targeted financial sanctions imposed on persons and entities designated under paragraph 6 (1) (a) of the Regulations do not affect the title to any asset owned or controlled by the designated person or entity. A designated person or entity may continue to draw on his or her frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or fees or service charges that are in accordance with a law in force in Australia for the routine holding or maintenance of frozen assets (regulations 18 and 20 of the Regulations).

Similarly, a designated person or entity may draw on frozen assets they own or control to satisfy any pre-existing judicial, administrative or arbitral lien or judgement awarded to another (non-designated) person or entity, as well as to make payments required under contracts, agreements or obligations made before the date on which those assets became frozen.

Regulation 19 authorises the Minister to waive the operation of a declaration under regulation 6 so as to allow the person to travel to, enter or remain in Australia, either on the grounds that it would be in the national interest or on humanitarian grounds.

The object and purpose of the Amendment List is, *inter alia*, to acknowledge and support the democratic transition underway in Zimbabwe and to continue to place pressure on key decision makers in Zimbabwe to allow the full enjoyment of the rights and freedoms referred to in subsection 3 (1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.