

EXPLANATORY STATEMENT

Select Legislative Instrument No. 76, 2014

Autonomous Sanctions Act 2011

Autonomous Sanctions Amendment (Ukraine) Regulation 2014

Section 28 of the *Autonomous Sanctions Act 2011* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Autonomous Sanctions Regulations 2011* (the Principal Regulations) 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.

The purpose of the *Autonomous Sanctions Amendment (Ukraine) Regulation 2014* (the Regulation) is to implement autonomous sanctions measures announced by the Minister for Foreign Affairs (the Minister) on 19 March and 21 May 2014 in response to the Russian threat to the sovereignty and territorial integrity of Ukraine.

The Regulation adds a new criterion in subregulation 6(1) of the Principal Regulations for the imposition of targeted financial and travel sanctions on "a person or entity that the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine."

The Department of Prime Minister and Cabinet, the Attorney-General's Department, the Department of Defence, the Treasury, the Department of Immigration and Border Protection and the Department of Infrastructure and Regional Development were consulted in the preparation of the Regulation.

In accordance with subsection 18 (2) of the *Legislative Instruments Act 2003*, no public consultation was undertaken in relation to the Regulation, as it is an instrument that is of minor regulatory impact and that does not substantially alter existing arrangements. The Regulation is also an instrument that is required as a matter of urgency. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain sanctions laws implementing Australia's autonomous sanctions.

Details of the Regulation are set out in the Attachment.

Statement of Compatibility with Human Rights

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

Autonomous Sanctions Amendment (Ukraine) Regulation 2014

The *Autonomous Sanctions Amendment (Ukraine) Regulation 2014* (the Regulation) 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 Regulation is intended to give effect to autonomous sanctions measures announced by the Minister for Foreign Affairs (the Minister) on 19 March and 21 May 2014 in response to the Russian threat to the sovereignty and territorial integrity of Ukraine.

The Regulation adds a new criterion in subregulation 6(1) of the Principal Regulations for the imposition of targeted financial and travel sanctions on “a person or entity that the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine.”

The human rights obligations that may possibly be affected by the amendment to the Principal Regulations are:

- Equality and non-discrimination (Article 26 of the International Covenant on Civil and Political Rights)
- Freedom of movement (Article 12 of the International Covenant on Civil and Political Rights)
- Right to an effective remedy (Article 2 of the International Covenant on Civil and Political Rights)
- Expulsion of aliens, including potential non-refoulement issues (Articles 6, 7 and 13 of the International Covenant on Civil and Political Rights; Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

The new criterion in the Regulation for the imposition of travel sanctions will authorise the Minister to declare a person, who the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine, for the purpose of preventing the person from travelling to, entering or remaining in Australia.

To the extent that the travel sanctions relate to a non-citizen outside Australia applying for a visa to enter Australia, Australia’s human rights obligations are not engaged as such a person is outside Australia’s jurisdiction. In particular, the right to freedom of movement (ICCPR Article 12) does not provide a right for non-citizens to enter a country of which they are not a national.

In terms of non-discrimination, persons who are declared by the Minister will be treated differently to persons who are not. This differentiation in treatment does not

constitute unlawful discrimination as it is a reasonable and proportionate response aimed at punishing persons closely associated with regimes which are involved in grave human rights breaches and unlawful armed conflict.

The consequence for a non-citizen in Australia whose visa application is refused, or whose visa is cancelled, because they have been declared by the Minister, is that they must leave Australia if they do not obtain another visa to remain, or be removed.

A person can apply to the Minister to have the declaration revoked. The Minister may also waive, for national interest or humanitarian reasons, the operation of the declaration, meaning it is not a bar to visa grant or a ground for cancellation. The decisions of the Minister are subject to judicial review and the Regulation therefore complies with Australia's obligations about the expulsion of non-citizens who are lawfully in Australia (Article 13 of ICCPR).

The Regulation is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.

ATTACHMENT

Details of the *Autonomous Sanctions Amendment (Ukraine) Regulation 2014*

Section 1 – Name of Regulation

Section 1 provides that the name of the Regulation is the *Autonomous Sanctions Amendment (Ukraine) Regulation 2014*.

Section 2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

Section 3 provides that the Regulation is made under the *Autonomous Sanctions Act 2011*.

Section 4 – Schedule

Schedule 4 provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item [1] – Subregulation 6 (1) (at the end of the table)

Item [1] adds a new criterion for the imposition of targeted financial and travel sanctions on “a person or entity that the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine.”