

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 – Libya) Amendment List 2015 (No. 1)

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 a controlled asset 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.

Each person listed in Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Libya) Amendment List 2015(No. 1)* (the Libya List) was designated or declared by the Minister in 2012 for the purposes of paragraph 6 (1) (a) of the Regulations on the basis that he, she or it is mentioned in Item 2 of the table in regulation 6 that is:

- a) a person or entity that the Minister is satisfied was a close associate of the former Qadhafi regime;
- b) an entity that the Minister is satisfied is under the control of one or more members of Muammar Qadhafi's family;
- c) a person or entity that the Minister is satisfied has assisted, or is assisting, in the violation of Resolution 1970 or 1973 of the United Nations Security Council, or a subsequent resolution to Resolutions 1970 or 1973;
- d) an immediate family member of a person mentioned in a) or c).

Regulation 9 of the Regulations provides that a designation or declaration made under

regulation 6(1) (a) and (b) or (2) (a) and (b) ceases to have effect on the third anniversary of the day in which the designation took effect. The Libya List redesignates and redeclares those persons and entities that were originally designated and originally declared in 2012.

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.

The imposition of Australian autonomous sanctions on Libya is in response to to Australia's grave concern at the use of violence by the former Libyan regime against its people. Although the Libya List does not implement new sanctions on additional persons or entities, it retains financial and travel restrictions that would otherwise lapse on persons and entities that have provided support to the former Libyan regime or are responsible for human rights abuses.

Each person and entity listed in Schedule 1 of the Libya List is designated by the Minister for the purposes of paragraph 6 (1) (a) of the Regulations, and each persons in Schedule 1 is 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 2 of the table in regulation 6.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the Libya List are part, has been the subject of extensive consultation with governmental and non-governmental stakeholders since May 2010.

The Department of Foreign Affairs and Trade (the Department) conducts ongoing public consultations, including with the Australian financial services sector and broader business community, in relation to sanction measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument.

The Department undertook public consultation through its website, and notified registered users of the Department's Online Sanctions Administration System, seeking submissions from interested parties and to afford natural justice to those persons and entities whose designations or declarations are being reviewed. No submissions were received in response to these consultations.

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 – Libya) Amendment List 2015 (No. 1)

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Libya) Amendment List 2015 (No. 1)* (the Libya 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*.

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.

The Department of Foreign Affairs and Trade (DFAT) undertook public consultation through its website, and notified registered users of DFAT's Online Sanctions Administration System, seeking submissions from interested parties and to afford natural justice to those persons and entities whose designations or declarations were to lapse and are being reviewed. No submissions were received.

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.