

## **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—Russia and Ukraine) Amendment (No. 3) Instrument 2022*

Autonomous sanctions are measures not involving the use of armed force which a government imposes as a matter of foreign policy in response to situations of international concern, including where there are, or have been, threats to the sovereignty and territorial integrity of a State.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the proscription of persons or entities for autonomous sanctions in relation to Russia. Regulation 6 of the Regulations enables the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions, including if the Minister is satisfied that the person or entity is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia (paragraph (a) of item 6A of the table at regulation 6 (the Russia listing criteria)).

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two components to targeted financial sanctions under the Regulations:

- a 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); and/or
- 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).

Designated and declared persons, and designated entities, in relation to Russia and Ukraine are listed in the *Autonomous Sanctions (Designated and Declared Persons – Russia and Ukraine) List 2014* (the 2014 List).

In accordance with regulation 6, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 3) Instrument 2022* (the Instrument) lists seven entities for targeted financial sanctions under the Russia listing criteria. These entities are Russian banks, investment funds and include the Central Bank of the Russian Federation and an export credit agency. The Minister made the designations being satisfied that each entity is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.

Under subregulations 9(1) and (2) of the Regulations, designations and declarations that are made under regulation 6 of the Regulations cease to have effect three years after the date on which they took effect, unless the Minister declares they are to continue pursuant to subregulation 9(3).

Details of the Instrument which amends the 2014 List are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the 2014 List are part, was the subject of extensive consultation with governmental and non-governmental stakeholders when introduced. The new sanctions being imposed through the making of the Instrument were subject to targeted consultation within government and with relevant international partners.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the entities designated in the Instrument, the Minister is satisfied that wider consultations beyond those already undertaken would not be appropriate or practicable (subsections 17(1) and (2) of the *Legislation Act 2003*). Consultation is not appropriate in the circumstances in order to enable Australia to act swiftly in response to threats to the sovereignty and territorial integrity of Ukraine posed by these entities and to strengthen the impact of sanctions on Russia. Additionally, consultation would risk alerting entities to the impending sanctions and enabling capital flight before assets can be frozen.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for listing instruments (OBPR reference: 26252).

*Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 3) Instrument 2022*

Section 1

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 3) Instrument 2022* (the Instrument).

Section 2

The instrument commences the day after it is registered.

Section 3

The instrument is made under paragraph 6(a) of the *Autonomous Sanctions Regulations 2011*.

Section 4

Each instrument that is specified in a Schedule to this instrument 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

*Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014*

Item 1 – Part 2 of Schedule 2 (at the end of the table)

The entities listed in Part 2 of Schedule 2 are designated by the Minister as a designated person or entity (as defined in Regulation 3 of the Regulations) for Russia for the purposes of paragraph 6(a) of the Regulations. These entities are Russian banks, investment funds and an export credit agency. The Minister made the designations being satisfied that each of the entities are, or have been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.

## **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—Russia and Ukraine) Amendment (No. 3) Instrument 2022*

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 3) Instrument 2022* (the Instrument) 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*.

Australia's autonomous sanctions regimes impose highly targeted measures in response to situations of international concern, including where there are, or have been, threats to the sovereignty and territorial integrity of a State. Given the serious nature of the threats to the sovereignty and territorial integrity of Ukraine, the Government considers that targeted financial sanctions are the most effective and least rights-restrictive way to achieve its legitimate foreign policy objective of signalling Australia's concerns about the situation in Ukraine. These sanctions allow a targeted response to Australia's concerns relating to Russia's unprovoked and completely unjustified attack on Ukraine, by imposing a cost on Russia and seeking to influence the Russian state to de-escalate the situation.

Thus, the autonomous sanctions designations and declarations made by this Instrument pursue legitimate objectives and have appropriate safeguards in place to ensure that any limitation on human rights engaged by the imposition of sanctions is a reasonable, necessary and proportionate response to the situation of international concern, and do not affect particularly vulnerable groups. The Government keeps its sanctions regimes under regular review, including in relation to whether more effective, less rights-restrictive means are available to achieve similar foreign policy objectives.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the proscription of persons or entities for autonomous sanctions. The Instrument, made under regulation 6 of the Regulations, designates entities for targeted financial sanctions. The Minister made the designations being satisfied that the entities are, or have been, engaging in an activity or performing a function that is of economic or strategic significance to Russia (paragraph (a) of item 6A of the table at regulation 6).

As this Instrument relates to the designation of entities for targeted financial sanctions, humans are only affected insofar as they are prohibited from making an asset available to, or for the benefit of, the designated entity or from making an asset which they own or control to be used with or dealt with by a designated entity. This does not engage any of the applicable rights or freedoms.

## **Conclusion**

The Instrument is compatible with human rights as it does not raise any human rights issues.