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. 20) 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 threats to a country's sovereignty and territorial integrity.

The Autonomous Sanctions Regulations 2011 (the Regulations) make provision for, among other things, the proscription of persons or entities for autonomous sanctions in relation to Russia and Ukraine. Regulation 6 of the Regulations enables the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions, and/or declare a person for a travel ban, if 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.

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).

The purpose of a declaration is to prevent a person from travelling to, entering or remaining in Australia.

Designated persons and entities, and declared persons, in relation to Russia and Ukraine are listed in the Autonomous Sanctions (Designated Persons and Entities 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. 20) Instrument 2022 (the Instrument) lists Alexander Grigoryevich Abramov for targeted financial sanctions and declares him for the purposes of a travel ban under the Russia listing criteria. Mr Abramov has played a key role in Evraz plc, a UK-based holding

company that owns or controls several Russian entities with operations and interests in the steel and coal sectors in Russia and provides support to the Russian Government in furtherance of its economic and strategic priorities. The Minister made the designation and declaration (listing) being satisfied that he has been engaging in an activity or performing a function that is of economic or strategic significance to Russia. Mr Abramov was previously listed under the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 11) Instrument 2022*. He made an application for revocation to the Minister in relation to that listing. In order to satisfy herself that Mr Abramov met the legal criteria—and taking into account all of the relevant information including the information provided in Mr Abramov's revocation application and subsequent submissions—the Minister decided to revoke Mr Abramov's listing (see Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 19) Instrument 2022) and consider his listing afresh.

Details of the Instrument which amends the 2014 List to designate and declare Mr Abramov 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 Department of Foreign Affairs and Trade (DFAT) also sought submissions from Mr Abramov in relation to his designation and declaration. His submissions were considered by the Minister in making her decision with regards to his designation and declaration under the Instrument.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for listing instruments of this nature (OBPR reference: OBPR22-02078).

Attachment A

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 20) 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. 20) Instrument 2022 (the Instrument).

Section 2
Subsection 2(1) provides that the Instrument commences the day after it is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the Instrument and can be inserted or edited at a later date.

Section 3
The Instrument is made under paragraphs 6(a) and (b) 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 1 of Schedule 2 of the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014 (the List) sets out persons that the Minister has designated for targeted financial sanctions under paragraph 6(a) of the Regulations and declared for the purposes of a travel ban under paragraph 6(b) of the Regulations.

This item inserts Alexander Grigoryevich Abramov's name, back into item 103 of the table in Part 1 of Schedule 2 of the List. Mr Abramov was previously listed at item 103 of the table in Part 1 of Schedule 2 of the List under the Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 11) Instrument 2022. Mr Abramov made an application for revocation to the Minister in relation to that listing. In order to satisfy herself that Mr Abramov met the legal criteria—and taking into account all of the relevant information including the information provided in Mr Abramov's revocation application and subsequent submissions—the Minister decided to revoke Mr Abramov's listing (see Autonomous Sanctions (Designated Persons and Entities and

Declared Persons—Russia and Ukraine) Amendment (No. 19) Instrument 2022) and consider his listing afresh. The Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 19) Instrument 2022 removed Mr Abramov's name from item 103 of the table in Part 1 of Schedule 2 o the List.

Alexander Grigoryevich Abramov is a co-founder of Evrazmetall, the former CEO and Chairman of Evarz Group SA and non-executive Chairman of Evraz plc, a position he resigned from on or about 10 March 2022 following the United Kingdom sanction designation of fellow Evraz plc shareholder, Mr Roman Abramovich. Mr Abramov, through his company Abiglaze Ltd has a significant minority shareholding in Evraz plc, a UK publicly listed holding company that wholly or part owns or controls a number of companies in the steel and coal sectors in Russia. Mr Abramov is a member of the Board of Trustees of the Russian Geographical Society, of which Russian President Vladimir Putin is Chairman, and Russian Defence Minister, Shoigu Sergei Kuzhugetovich, is President. These interests and positions indicate that Mr Abramov is, or has been, of economic or strategic significance to Russia.

His designation and declaration is made by the Minister on the basis that he meets the criteria mentioned in item 6A of the table in regulation 6 of the Regulations (the Russia criteria) that is that he is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia (paragraph (a) of the Russia criteria).

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. 20) Instrument 2022

The Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 20) 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 and travel bans are an effective way to achieve its legitimate foreign policy objective of signalling Australia's concerns about the situation in Ukraine, while limiting human rights as little as possible. These sanctions allow a targeted response to Australia's concerns relating to Russia's unprovoked and unacceptable attack on Ukraine, by imposing a cost on Russia and seeking to influence the Russian state to de-escalate the situation.

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 is a reasonable, necessary and proportionate response to the situation of international concern, and does 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, among other things, the proscription of persons or entities for autonomous sanctions in relation to Russia and Ukraine. Regulation 6 of the Regulations enables the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions, and/or declare a person for a travel ban, if 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.

The human rights compatibility of the Instrument is addressed by reference to each of the human rights engaged below.

Right to privacy

Right

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The use of the term 'arbitrary' in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the individual circumstances. Arbitrariness connotes elements of injustice, unpredictability, unreasonableness, capriciousness and 'unproportionality'.[1]

Permissible limitations

The Instrument is not an unlawful interference with an individual's right to privacy. Section 10 of the *Autonomous Sanctions Act 2011* (the Act) permits regulations relating to, among other things: 'proscription of persons or entities (for specified purposes or more generally)'; and 'restriction or prevention of uses of, dealings with, and making available of, assets'. The designations and declarations contained in the Instrument were made pursuant to regulation 6 of the Autonomous Sanctions Regulations 2011 (the Regulations), which provides that the Minister may, by legislative instrument, designate a person for targeted financial sanctions and/or declare a person for a travel ban.

The measures contained in the Instrument are not an arbitrary interference with an individual's right to privacy. An interference with privacy will not be arbitrary where it is reasonable, necessary and proportionate in the individual circumstances.

In designating an individual under the Regulations for targeted financial sanctions and/or travel bans, the Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons the Minister is satisfied are involved in situations of international concern, as set out in regulation 6 of the Regulations.

Accordingly, targeted financial sanctions and travel bans imposed by the Minister through the designation of specific individuals under the Regulations are reasonable, necessary and proportionate to the individual circumstances the sanctions are seeking to address. Any interference with the right to privacy created by the operation of the Instrument is not arbitrary or unlawful and is consistent with Australia's obligations under Article 17 of the ICCPR.

Right to respect for the family

Right

The right to respect for the family is protected by articles 17 and 23 of the ICCPR. It covers, among other things, the separation of family members under migration laws, and arbitrary or unlawful interferences with the family.

Limitations on the right to respect for the family under Articles 17 and 23 of the ICCPR will not violate those articles if the measures in question are lawful and

[1] Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 1993) 178.

non-arbitrary. An interference with respect for the family will be consistent with the ICCPR where it is necessary and proportionate, in accordance with the provisions, aims and objectives of the ICCPR, and is reasonable in the individual circumstances.

Permissible limitations

As set out above, the autonomous sanctions regime is authorised by domestic law and is not unlawful.

As the listing criteria in regulation 6 of the Regulations are drafted by reference to specific foreign countries, it is highly unlikely, as a practical matter, that a person declared for a travel ban will hold an Australian visa, usually reside in Australia and have immediate family also in Australia.

The Department of Foreign Affairs and Trade (DFAT) consults relevant agencies as appropriate in advance of a designation and declaration of a person with known connections to Australia to determine the possible impacts of the designation and declaration on any family members in Australia.

To the extent that the travel bans imposed pursuant to the Instrument engage and limit the right to respect for the family in a particular case, the Regulations provide sufficient flexibility to treat different cases differently. Under the Regulations, the Minister may waive the operation of a travel ban on the grounds that it would be either: (a) in the national interest; or (b) on humanitarian grounds. This provides a mechanism to address circumstances in which issues such as the possible separation of family members in Australia are involved. In addition, this decision may be judicially reviewed. Finally, were such a separation to take place, for the reasons outlined in relation to Article 17 above, such a separation would be reasonable, necessary, proportionate and justified in achieving the objective of the Instrument.

Accordingly, any interference with the right to respect for the family created by the operation of the Instrument is not unlawful or arbitrary, and, is consistent with Australia's obligations under Articles 17 and 23 of the ICCPR.

Right to an adequate standard of living

Right

The right to an adequate standard of living is contained in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right: namely, food, water, and housing.

Article 4 of the ICESCR provides that this right may be subject to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'. To be consistent with the ICESCR, limitations must be proportionate.

Permissible limitations

Any limitation on the enjoyment of Article 11(1), to the extent that it occurs, is reasonable and necessary to achieve the objective of the Instrument and are proportionate due to the targeted nature of listings. The Regulations also provide sufficient flexibility to treat different cases differently by allowing for any adverse impacts on family members as a consequence of targeted financial sanctions to be mitigated. The Regulations provide for the payment of basic expenses (among others) in certain circumstances. The objective of the 'basic expenses exemption' in regulation 20 is, in part, to enable the Australian Government to administer the sanctions regime in a manner compatible with relevant human rights standards.

The permit process is a flexible and effective safeguard on any limitation to the enjoyment of Article 11(1).

Right to freedom of movement

Right

Article 12 of the ICCPR protects the right to freedom of movement, which includes a right to leave Australia, as well as the right to enter, remain, or return to one's 'own country'.

The right to freedom of movement may be restricted under domestic law on any of the grounds in Article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others. Any limitation on the enjoyment of the right also needs to be reasonable, necessary and proportionate.

Permissible limitations

As the listing criteria in regulation 6 of the Regulations are drafted by reference to specific foreign countries, it is highly unlikely, as a practical matter, that a person declared for a travel ban would be an Australian citizen, or have spent such lengths of time in Australia, such that Australia could be considered their 'own country'. Furthermore, travel bans – which are a power to refuse a visa and to cancel a visa – do not apply to Australian citizens.

To the extent that Article 12(4) is engaged in an individual case, such that a person listed in the Instrument is prevented from entering Australia as their 'own country', the imposition of the travel ban would be justified.

As set out above in relation to Article 17 of the ICCPR, travel bans are a reasonable, necessary and proportionate means of achieving the legitimate objectives of Australia's autonomous sanctions regime. Travel bans are reasonable because they are only imposed on persons who the Minister is satisfied are responsible for giving rise to situations of international concern.

Preventing a person who is, for example, engaging in activity or performing a function that is of economic or strategic influence to Russia, from travelling to, entering or remaining in Australia through operation of the Instrument, is a reasonable

means to achieve the legitimate foreign policy objective of signalling Australia's concerns about the situation in Ukraine. Australia's practice in this respect is consistent with that of other countries such as the United States, the United Kingdom and Canada.

The Minister may also waive the operation of a declaration that was made for the purpose of preventing a person from travelling to, entering or remaining in Australia, on the grounds that it would be in the national interest, or on humanitarian grounds. This decision is subject to natural justice requirements, and may be judicially reviewed.

Non-refoulement

Right

The obligations relating to the prohibition on torture and other cruel, inhuman or degrading treatment or punishment under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT) and Article 7 of the ICCPR, as well as Article 6 of the ICCPR on the right to life and prohibition on arbitrary deprivation of life, are engaged by the travel restrictions in the Instrument. There is no permissible derogation from these implied or express non-refoulement obligations.

Permissible limitations

To the extent that the travel bans imposed pursuant to the Instrument engage Australia's non-refoulement obligations, the Regulations allow the Minister to waive the operation of a travel ban on the grounds that it would be either: (a) in the national interest; or (b) on humanitarian grounds.

A travel ban may lead to the cancellation of a visa held by a non-citizen lawfully in Australia, which can lead to removal under section 198 of the *Migration Act 1958*. Australia will continue to meet its non-refoulement obligations through mechanisms prior to the person becoming available for removal under the *Migration Act 1958*, including through the protection visa application process, and through the use of the Minister for Home Affairs' personal powers in the *Migration Act 1958*.

The Instrument is consistent with Australia's international non-refoulement obligations as, together with the Foreign Minister's powers to revoke a declaration or waive its operation in an individual case, non-refoulement obligations are considered prior to a person becoming available for removal under the *Migration Act 1958*. A person must not be removed from Australia to another country if there is a real risk that the person may be subjected to arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment.

Right to equality and non-discrimination

Right

The right to equality and non-discrimination under Article 26 of the ICCPR provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that people are equal before the law and are entitled without discrimination to the equal and non-discriminatory protection of the law.

Differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria, serves a legitimate objective, and is a proportionate means of achieving that objective.

Permissible limitations

Any differential treatment of people as a consequence of the application of the Instrument does not amount to discrimination pursuant to Article 26 of the ICCPR.

The criteria set out in regulation 6 of the Regulations are reasonable and objective. They are reasonable insofar as they list only those States and activities which the Government has specifically determined give rise to situations of international concern. They are objective as they provide a clear, consistent and objectively verifiable reference point by which the Minister is able to make a designation or declaration. The Regulations serve a legitimate objective, as discussed above.

To the extent that the measures result in a differential impact on persons from particular countries, this is both proportionate and necessary to achieve the objective of the Instrument. Country-specific sanctions will inevitably impact persons from certain countries more than others, as they are used as a tool of foreign diplomacy to facilitate the conduct of Australia's international relations with particular countries. In this case, the measures will predominantly impact persons of Russian national origin or nationality.

Denying access to international travel and the international financial system to certain designated individuals is a highly targeted, justified and less rights-restrictive means of achieving the objectives of the Regulations, including in a context where other conventional mechanisms are unavailable.
While these measures may impact individuals of certain nationalities and national origins more than others, there is no information to support the view that affected groups are vulnerable. Rather, the individuals designated in the Instrument are persons the Minister is satisfied are involved in activities that give rise to situations of international concern. Further, there are several safeguards, such as the availability of judicial review and regular review processes in place, to ensure that any limitation is proportionate to the objective being sought.