

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—
Myanmar) Amendment (No. 1) Instrument 2024

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. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

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 Myanmar. 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 the purposes of a travel ban, in a range of circumstances, including if the Minister is satisfied (pursuant to item 6 of regulation 6, ‘**Myanmar criteria**’) that the person/entity is:

- A former member of the State Peace and Development Council (SPDC).
- A person who the Minister is satisfied is a business associate of the Myanmar military.
- A current or former minister or a current or former deputy minister.
- A current or former military officer of the rank of Brigadier-General or higher.
- A senior official in any of Myanmar’s security or corrections agencies.
- A current or former senior officeholder of the Union Solidarity and Development Party (USDP) or the Union Solidarity and Development Association (USDA).
- A senior official or executive in a state-owned or a military-owned enterprise.
- A current or former member of any of the following:
 - the State Administration Council (SAC) or any successor of that body with similar functions;
 - the National Defence and Security Council (NDSC) or any successor of that body with similar functions;
 - any other body that the Minister is satisfied is a key governance body of a regime controlled by the Myanmar military;
 - a political party or association that the Minister is satisfied is part of, or is participating in the governance or administration of, a regime controlled by the Myanmar military.
- An immediate family member of a person mentioned in any of paragraphs (a) to (ga).
- An entity that the Minister is satisfied:

- is owned or controlled by, or provides support (including political support) to, a regime controlled by the Myanmar military; or
- is owned or controlled by a person mentioned in the first 8 dot points above or by an immediate family member of such a person.

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two types of 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 and declared persons, and designated entities, in relation to Myanmar are listed in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Myanmar) List 2018* (the 2018 List).

In accordance with regulation 6, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Myanmar) Amendment (No. 1) Instrument 2024* (the 2024 (No. 1) Instrument) gives effect to the following:

- The 2024 (No. 1) Instrument lists 2 entities for targeted financial sanctions under the Myanmar listing criteria. The Minister exercised her discretion to make the designations, after being satisfied that each of the entities meets the Myanmar criteria.

Under subregulations 9(1) and (2) of the Regulations, listings 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 2024 (No. 1) Instrument, which amends the 2018 List, are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations 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 2024 (No. 1) Instrument were subject to targeted consultation within government.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the entities specified in the 2024 (No. 1) 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 would risk alerting persons to the impending sanctions and enabling capital flight before assets can be frozen.

The 2024 (No. 1) Instrument is exempt from sunseting under table item 10B of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* on the basis that it is subject to a more stringent statutory review process than is set out in Part 4 of Chapter 3 of the *Legislation Act 2003* (Cth).

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

Attachment A

Autonomous Sanctions (Designated Persons and Entities and Declared Persons— Myanmar) Amendment (No. 1) Instrument 2024

Section 1

The title of this instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Myanmar) Amendment (No. 1) Instrument 2024*.

Section 2

Subsection 2(1) provides that 2024 (No. 1) 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 in any published version of this instrument.

Section 3

Section 3 provides that the 2024 (No. 1) Instrument is made under paragraph 6(a) of the *Autonomous Sanctions Regulations 2011* (the Regulations).

Section 4

Each instrument that is specified in a Schedule to the 2024 (No. 1) Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the 2024 (No. 1) Instrument has effect according to its terms.

Schedule 1

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Myanmar) List 2018

Item 1

The entities to be added to the list in Part 2 of Schedule 1 to the 2018 List by this item are designated by the Minister for targeted financial sanctions under paragraph 6(a) of the Regulations.

These entities are military linked entities. The Minister made the designations being satisfied (pursuant to subparagraph (i)(i) of item 6 of the table in regulation 6) that the entity is:

- An entity that the Minister is satisfied:
 - is owned or controlled by, or provides support (including political support) to, a regime controlled by the Myanmar military

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—
Myanmar) Amendment (No. 1) Instrument 2024*

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—
Myanmar) Amendment (No. 1) Instrument 2024* (the 2024 (No. 1) 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 frameworks impose highly targeted measures in response to situations of international concern. The Government considers that targeted financial sanctions and travel bans are the most effective and least rights-restrictive way to achieve its legitimate foreign policy objective of signalling Australia's ongoing concerns about the situation in Myanmar. These sanctions allow a targeted response to Australia's concerns about serious violations of human rights committed by the military regime and ongoing efforts to suppress the rights of the civilian population through violence and coercion.

The autonomous sanctions designations made by the 2024 (No. 1) Instrument pursue legitimate objectives and has 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 frameworks 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. The 2024 (No. 1) Instrument designates entities for targeted financial sanctions. The Minister for Foreign Affairs (the Minister) made the designations being satisfied (pursuant to subparagraph (i)(i) of item 6 of the table in regulation 6) that the entity is:

- An entity that the Minister is satisfied:
 - is owned or controlled by, or provides support (including political support) to, a regime controlled by the Myanmar military

Human rights implications

As the 2024 (No. 1) Instrument relates to the designation of entities not persons, persons 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.

The 2024 (No. 1) Instrument is compatible with human rights as it does not raise any human rights issues.