

Legislation (Autonomous Sanctions Instruments) Sunset-altering Declaration 2024

EXPLANATORY STATEMENT

Issued by the Attorney-General in compliance with
section 15G of the *Legislation Act 2003*

INTRODUCTION

The *Legislation (Autonomous Sanctions Instruments) Sunset-altering Declaration 2024* (the Declaration) is made under subsection 51A(1) of the *Legislation Act 2003* (Cth) (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Declaration is subject to the disallowance provisions of the Legislation Act.

OUTLINE

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration.

Under subsection 51A(1) of the Legislation Act, the Attorney-General may issue a declaration aligning the sunsetting days of two or more instruments, if satisfied on application by the rule-maker/s of the relevant instruments that:

- a) all the instruments to be reviewed:
 - i. would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii. are or will be the subject of a single review; and
- b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

The objective of issuing a sunset-altering declaration is to facilitate either:

- the undertaking of a single review into the fitness-for-purpose of two or more thematically related legislative instruments, or
- the implementation of such a review's findings.

The instruments will then be repealed on the day specified in the Declaration instead of the previously scheduled sunset days. This allows the instruments to continue to be in force for a further but limited period of time after the day on which they would otherwise sunset. This reduces administrative burden as well as the possibility of legislative inconsistencies arising from reviewing and replacing related legislation at different times.

The Declaration aligns the sunset dates of the following instruments to 1 October 2027 (together, the 'Autonomous Sanctions Instruments'):

- a) *Autonomous Sanctions Regulations 2011* (Autonomous Sanctions Regulations);
- b) *Autonomous Sanctions (Sanction Law) Declaration 2012*;
- c) *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012*; and,
- d) *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*.

Without the Declaration, the *Autonomous Sanctions Regulations 2011*, *Autonomous Sanctions (Sanction Law) Declaration 2012* and *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012* would sunset on 1 April 2024, and the *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015* would sunset on 1 April 2025.

The ability to align sunset dates is an integral part of the sunset framework. It provides the necessary flexibility to ensure the standard 10-year sunset period does not result in unintended consequences or impose an unreasonable administrative burden on Commonwealth agencies or the Parliament. Aligning the sunset dates of the Autonomous Sanctions Instruments will facilitate the Department of Foreign Affairs and Trade (the department) to implement the findings of its thematic review of Australia's sanctions legislative framework as set out in the *Autonomous Sanctions Act 2011* (Autonomous Sanctions Act) and the Autonomous Sanctions Regulations, while ensuring the existing legislative framework continues to operate until the review has concluded. The alignment of these sunset dates would provide an opportunity to implement the findings of the thematic review to strengthen, clarify and streamline the autonomous sanctions framework.

PROCESS BEFORE DECLARATION WAS MADE

Regulatory impact analysis

Sunset-altering declarations are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA reference for this standing exemption is ID19633.

Consultation before making

Before the Declaration was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Autonomous Sanctions Instruments are made under the Autonomous Sanctions Act and its regulations. The Autonomous Sanctions Act contains high-level provisions to govern the autonomous sanctions framework including enabling sanctions to be made by regulation. The autonomous sanctions framework is currently contained within a complex legislative structure comprised of 18 separate pieces of legislation.

While undertaking the thematic review, the department released an issues paper for public consultation in early 2023. 27 submissions were received and are available on the department's website (excluding those where the author requested the submission remain confidential).

Alignment declarations are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. Additional consultations in relation to the alignment would represent an unnecessary administrative burden on all stakeholders given it will only have effect for a limited amount of time. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments. As such, given that alignment of the sunset date of the Autonomous Sanctions Instruments is consistent with the policy intent of the sunset regime and does not significantly alter existing arrangements, appropriate consultation has occurred for the purposes of section 17 of the Legislation Act.

Statutory preconditions relevant to the declaration

In order to align the sunset date of two or more instruments, the Attorney-General must be satisfied on written application from the relevant rule-maker/s that the statutory conditions in paragraphs 51A(1)(a) and (b) of the Legislation Act are met. The statutory conditions are that:

- (a) all the instruments to be reviewed:

- i) would (in the absence of a declaration made under section 51A of the Legislation Act) be repealed by section 50 or 51 of the Legislation Act; and
 - ii) are or will be the subject of a single review; and
- (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.

In terms of process, the Legislation Act requires:

- (a) the responsible rule-maker/s to apply to the Attorney-General;
- (b) the Attorney-General to be satisfied of the statutory conditions; and
- (c) the Attorney-General to make a declaration, which is a legislative instrument and subject to disallowance.

The rule-maker for the Autonomous Sanctions Instruments, the Minister for Foreign Affairs, Senator the Hon Penny Wong, provided a written application to the Attorney-General seeking a declaration of alignment of the sunseting days for the instruments. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the criteria in paragraphs 51A(1)(a) and (b) of the Legislation Act are met.

Statement of Reasons for issuing of the Certificate

For the purposes of subsection 51A(4) of the Legislation Act, this section sets out the statement of reasons for the issue of the certificate.

The Declaration aligns the sunseting dates for the Autonomous Sanctions Instruments to enable the department to implement improvements to the autonomous sanctions framework identified by the Review of Australia's Sanctions Legislative Framework (the Review).

The Autonomous Sanctions Act contains high-level provisions governing the autonomous sanctions framework, including enabling sanctions to be made by regulation. The Autonomous Sanctions Regulations set out sanction measures that may be imposed in respect of a particular country or theme, including restrictions on the trade in goods and services, restrictions on commercial activities, travel bans and targeted financial sanctions.

While sanction offences are contained in the Autonomous Sanctions Act, the relevant prohibited activity is set out in the Autonomous Sanctions Regulations and the scope of those prohibitions are often further detailed in country-specific instruments (such as the *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012* and the *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*). The offences in the Autonomous Sanctions Act operate by virtue of

the prohibitions in the Autonomous Sanctions Regulations being declared to be a ‘sanction law’ under the *Autonomous Sanctions (Sanction Law) Declaration 2012*. The interconnectivity of these instruments made it appropriate to review them together to enable a comprehensive review of the various sanctions measures that apply to a particular country or theme.

The *Autonomous Sanctions Regulations 2011*, the *Autonomous Sanctions (Sanction Law) Declaration 2012* and the *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012* had their original sunseting days deferred by the *Legislation (Deferral of Sunseting—Autonomous Sanctions Instruments) Certificate 2022* to 1 April 2024.

The Review was undertaken to inform proposals for implementing a more streamlined legislative framework and to consider whether the Autonomous Sanctions Regulations remain ‘fit for purpose’, ahead of three of the Autonomous Sanctions Instruments sunseting on 1 April 2024. The Review identified several improvements to the autonomous sanctions framework, including streamlining the legislation underpinning the autonomous sanctions framework by reducing the overall number of instruments, and ensuring that provisions relating to one country or theme are included in one instrument, as far as is practicable.

This restructure will:

- increase parliamentary oversight of sanction measures by lifting provisions contained in the Autonomous Sanctions Regulations that are not subject to frequent change – such as the sanction prohibitions and authorisation powers – into the Autonomous Sanctions Act
- improve usability of legislation for regulated persons and entities seeking to understand their obligations under sanctions law, and
- enable sanctions to be implemented without delay in response to situations of international concern, in line with Australia’s foreign policy objectives.

The findings of the Review have informed recommendations for legislative change to the autonomous sanctions framework. The alignment of the Autonomous Sanctions Instruments’ sunseting dates to 1 October 2027 will facilitate the implementation of those findings.

As such, the Declaration is consistent with the policy intent of the sunseting regime that legislative instruments should be kept up to date and only remain in force so long as they are needed.

More information

Further details on the provisions of the Declaration are provided in [Attachment A](#).

The Autonomous Sanctions Instruments, which will now sunset on 1 October 2027 as specified in the Declaration, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the Declaration, and from the Department of Foreign Affairs and Trade about the instruments to which the Declaration applies.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Autonomous Sanctions Instruments) Sunset-altering Declaration 2024* (the Declaration) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview of the Declaration

The Declaration is made under subsection 51A(1) of the *Legislation Act 2003* (the Legislation Act). Under that subsection, the Attorney-General can align the sunseting days of two or more legislative instruments to 1 April or 1 October of a year that is up to five years later than the earliest sunseting day. The instruments specified in the declaration will then be repealed on the day specified in the declaration instead of the previously scheduled sunseting day. The instruments specified in the Declaration are (together, 'the Autonomous Sanctions Instruments '):

- a) *Autonomous Sanctions Regulations 2011* (Autonomous Sanctions Regulations);
- b) *Autonomous Sanctions (Sanction Law) Declaration 2012*;
- c) *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012*; and
- d) *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*.

The Declaration aligns the sunseting dates of the Autonomous Sanctions Instruments to 1 October 2027. Prior to the making of the Declaration, the *Autonomous Sanctions Regulations*, *Autonomous Sanctions (Sanction Law) Declaration 2012* and *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012* were due to sunset on 1 April 2024, and the *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015* was due to sunset on 1 April 2025. The objective of issuing the Declaration is to implement the findings of the Review of Australia's Sanctions Legislative Framework (the Review).

Human Rights Implications

The Autonomous Sanctions Instruments engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

Broadly, the Autonomous Sanctions Regulations restrict trade in certain goods and services and involvement in certain commercial activities, particularly with respect to the arms industry and industries connected to the activity of international concern which the sanctions are attempting to curtail. The Autonomous Sanctions Regulations also set up the mechanism for the imposition of targeted financial sanctions and travel bans, which ultimately—once the Foreign Minister has designated specific persons and entities by separate legislative instrument—engage certain rights and freedoms declared by the international instruments set out in section 3 of the Human Rights Act.

These include the right to privacy (article 17 of the International Covenant on Civil and Political Rights (ICCPR)), the right to respect for the family (articles 17 and 23 of the ICCPR), the right to an adequate standard of living (article 11 of the International Covenant on Economic, Social and Cultural Rights), the right to freedom of movement (article 12 of the ICCPR), non-refoulement (article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; articles 6 and 7 of the ICCPR), and the right to equality and non-discrimination (article 26 of the ICCPR). The limitations on these rights and freedoms are permissible and consistent with international obligations because those limitations are reasonable, necessary and proportionate to the objectives of sanctions regimes, which are to limit the adverse consequences of situations of international concern, seek to influence those responsible for giving rise to situations of international concern, and penalise those responsible for situations of international concern.

Before issuing the Declaration, the Attorney-General was satisfied that all instruments specified in the Declaration were subject to a single thematic review. A thematic review is an effective mechanism for determining whether the instruments are fit for purpose, identifying opportunities to update, streamline and clarify the operation of the instruments and, where appropriate, reducing unnecessary regulation. Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the Autonomous Sanctions Instruments will be assessed at the time any replacement instruments are made, including through the requirement to prepare a further Statement of Compatibility with Human Rights.

Conclusion

The Declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act, as the human rights engaged by the Autonomous Sanctions Instruments are reasonable, necessary and proportionate to achieve the legitimate objectives of the sanctions regimes.

NOTES ON THE DECLARATION

Section 1 Name

This section provides for the declaration to be named the *Legislation (Autonomous Sanctions Instruments) Sunset-altering Declaration 2024*. The declaration may be cited by that name.

Section 2 Commencement

This section provides for the declaration to commence on the day after it is registered.

Section 3 Authority

This section provides that the declaration is made under subsection 51A(1) of the *Legislation Act 2003*.

Section 4 Aligning of sunseting

This section provides that the following instruments are repealed by section 51A of the *Legislation Act 2003* on 1 October 2027:

- a) the *Autonomous Sanctions Regulations 2011*;
- b) the *Autonomous Sanctions (Sanction Law) Declaration 2012*;
- c) the *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012*; and
- d) the *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*.

1 October 2027 is the aligned sunseting day for those instruments, which would otherwise have sunsetted on 1 April 2024 for the *Autonomous Sanctions Regulations 2011*, *Autonomous Sanctions (Sanction Law) Declaration 2012* and *Autonomous Sanctions (Export Sanctioned Goods – Syria) Designation 2012*, and 1 April 2025 for the *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*.

Section 5 Repeal of this instrument

This section provides that the certificate is repealed at the start of 2 October 2027.