

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs (the Minister)

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 5) Instrument 2024

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes as a matter of foreign policy in response to situations of international concern. Such situations include threats to a country's sovereignty and territorial integrity, as in Russia's ongoing invasion of Ukraine since February 2022 and threats to regional peace and stability as posed by the Democratic People's Republic of Korea's (DPRK) weapons of mass destruction and ballistic missile programs and related proliferation activities.

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. Regulation 6 of the Regulations enables the Minister to designate a person or entity for targeted financial sanctions and/or declare a person for the purposes of a travel ban (together 'list') in a range of circumstances, 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 of the Regulations).

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:

- 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); 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 prohibits a person who holds a controlled asset 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 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 of the Regulations, *the Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 5) Instrument 2024 (the 2024 Instrument)* designates **6** entities for targeted financial sanctions under paragraph (a) of item 6A of the table at regulation 6 of the Regulations (**the Russia listing criteria**).

The Minister exercised their discretion to make the designations being satisfied that each entity listed in the 2024 Instrument 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) of the Regulations.

Details of the 2024 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 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 Instrument were subject to targeted consultation within government and with relevant international partners.

The 2024 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 that is set out in Part 4 of Chapter 3 of the *Legislation Act 2003*.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons and entities specified in the 2024 Instrument, the Minister is satisfied that wider consultations beyond those already undertaken would not be appropriate or reasonably practicable (subsections 17(1) and (2) of the *Legislation Act 2003*). Consultation would risk alerting persons and entities to the impending sanctions and enabling capital flight before assets can be frozen.

The Office of Impact Analysis (OIA) 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 – Russia and Ukraine) Amendment (No. 5) Instrument 2024

Section 1

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 5) Instrument 2024* (the **2024 Instrument**).

Section 2

The 2024 Instrument commences the day after the instrument 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 2024 Instrument and can be inserted or edited at a later date.

Section 3

The 2024 Instrument is made under paragraphs 6(a) of the *Autonomous Sanctions Regulations 2011* (the **Regulations**).

Section 4

Each instrument that is specified in a Schedule to the 2024 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 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

The entities listed in Item 1 of the 2024 Instrument are designated by the Minister for targeted financial sanctions under paragraph 6(a) of the Regulations.

The entities include 6 Russian shipping and transportation companies involved in transfers of military equipment from the DPRK to Russia. The Minister exercised their discretion to make these listings 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.

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. 5) Instrument 2024

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 5) Instrument 2024* (**the 2024 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 framework imposes highly targeted measures in response to situations of international concern. This includes threats to the sovereignty and territorial integrity of a State. Given the serious nature of Russia's contravention of 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 objectives of signalling opposition to Russia's aggression and seeking to influence the Russian state to immediately withdraw its forces from Ukrainian territory. These sanctions allow a targeted response to Australia's concerns relating to Russia's unprovoked and completely unjustified attack on Ukraine and the illegal transfer of weapons from the DPRK to support Russia's military objectives 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 the 2024 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 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 Instrument designates entities for targeted financial sanctions. The Minister for Foreign Affairs (**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 (paragraph (a) of item 6A of the table at regulation 6 of the Regulations).

Human rights implications

As the 2024 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 Instrument is compatible with human rights as it does not raise any human rights issues.