

## 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 – Iran) Amendment (No. 3) 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, including Iran’s development and transfer of missiles to Russia for use in Ukraine.

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 Iran. 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 paragraph (a) of item 4 of regulation 6 of the Regulations) that the person or entity (**‘Iran criteria’**) has contributed to, or is contributing to, Iran’s nuclear or missile programs.

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 Iran are listed in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) List 2012* (**the 2012 List**).

In accordance with regulation 6 of the Regulations, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 3) Instrument 2024* (**the Amending Instrument**) lists five persons for targeted financial sanctions and travel bans under the Iran criteria. The Minister exercised their discretion to make the designations and declarations being satisfied that each of the persons meets one or more of the Iran criteria.

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 Amending Instrument, which amends the 2012 List, are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations are a 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 Amending Instrument were subject to targeted consultation within government and with relevant international partners.

The Amending 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*.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons specified in the Amending 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 Office of Impact Analysis has advised that an Impact Analysis is not required for listing instruments of this nature (OBPR22-02078).

*Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 3) Instrument 2024*

Section 1

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 3) Instrument 2024 (the Amending Instrument)*.

Section 2

The Amending 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 Amending Instrument and can be inserted or edited at a later date.

Section 3

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

Section 4

Each instrument that is specified in a Schedule to the Amending 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 Amending Instrument has effect according to its terms.

Schedule 1

*Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) List 2012*

Item 1

The persons listed in Item 1 are designated by the Minister for Foreign Affairs (**the Minister**) for targeted financial sanctions under paragraph 6(a) of the Regulations and declared by the Minister for the purposes of a travel ban under paragraph 6(b) of the Regulations.

These persons listed include two Directors and a senior official in Iran's Aerospace Industries Organization, a key entity involved in Iran's ballistic missile program that is already subject to Australian sanctions. We have also listed the Director of the Shahid Bagheri Industrial Group, and the Commercial Director of the Shahid Hemmat Industrial Group – both entities involved in Iran's ballistic missile program that are subject to Australian sanctions. The Minister exercised their discretion to make these listings being satisfied that each of these persons meets the criteria under paragraph (a) of item 4 of regulation 6 of the Regulations.

## 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 – Iran) Amendment (No. 3) Instrument 2024*

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 3) Instrument 2024* (**the Amending 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 the expansion of Iran's ballistic missile program and the transfer of close-range ballistic missiles to Russia for use in Ukraine. The Government's existing policy position is to take strong action against Iran for its destabilising behaviour. The information available indicates that the persons listed via the Amending Instrument have all contributed to this situation of international concern.

The Government considers that targeted financial sanctions and travel bans are an effective way to achieve its commitment towards upholding human rights, consistent with our values and interests.

The autonomous sanctions designations and declarations made by the Amending 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 Amending Instrument designates five persons for targeted financial sanctions and declares those persons for the purposes of travel bans (together, '**lists**'). The Minister exercised their discretion to make the designations and declarations being satisfied (pursuant to paragraphs (a) of item 4 of regulation 6 of the Regulations) that each person has contributed to, or is contributing to, Iran's nuclear or missile programs

The human rights compatibility of the Amending 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'.<sup>1</sup>

### Permissible limitations

The Amending 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)' (s 10(1)(a) of the Act); and 'restriction or prevention of uses of, dealings with, and making available of, assets' (s 10(1)(b) of the Act). The designations and declarations contained in the Amending Instrument were made pursuant to regulation 6 of 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 Amending 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 declaring an individual for a travel ban, the Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons that 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 and declaration 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 Amending Instrument is not arbitrary or unlawful and is consistent with Australia's obligations under Article 17 of the ICCPR.

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<sup>1</sup> Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel, 1993) 178.

## **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 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 framework 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 consults relevant agencies as appropriate in advance of a designation and declaration of a person with known connections to Australia to consider 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 Amending 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 subregulation 19(3) of 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 of the ICCPR (discussed above), such a separation would be reasonable, necessary, proportionate and justified in achieving the objective of the Amending Instrument.

Accordingly, any interference with the right to respect for the family created by the operation of the Amending 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 (**the ICESCR**) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right, including access to food, water, clothing 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) of the ICESCR, to the extent that it occurs, is reasonable and necessary to achieve the objective of the Amending Instrument and is proportionate due to the targeted nature of the 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 accordance with permits granted by the Minister under regulation 18. The objective of regulation 20, which allows applications to be made to the Minister for permits to pay basic expenses is, in part, to enable the Australian Government to administer the sanctions framework 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) of the ICESCR.

## **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) of the ICCPR is engaged in an individual case, such that a person listed in the Amending 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 framework. Travel bans are reasonable because they are only imposed on persons who the Minister is satisfied contribute to, or have contributed to, situations of international concern.

Preventing a person who, for example, has been contributing to Iran’s nuclear or missile programs from travelling to, entering or remaining in Australia through operation of the Amending Instrument, is a reasonable means to achieve the legitimate foreign policy objective of signalling Australia’s concerns about Iran’s proliferation of missiles and destabilising behaviour. Australia’s practice in this respect is consistent with that of other countries such as the United States, Canada, the European Union, and the United Kingdom.

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 either: (a) in the national interest; or (b) 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 the right to life and prohibition on arbitrary deprivation of life in Article 6 of the ICCPR, are engaged by the travel restrictions in the Amending 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 Amending 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 Amending Instrument is consistent with Australia's international non-refoulement obligations as, together with the 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 Amending 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 countries 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 throughout this Statement.

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

Denying access to international travel and the international financial system to certain designated individuals is a highly targeted, justified and minimally rights-restrictive means of achieving the aims 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 Amending Instrument are persons that the Minister is satisfied are involved in activities that contribute to or have contributed to situations of international concern. Further, there are several safeguards in place, such as the availability of judicial review and regular review processes, to ensure that any limitation is proportionate to the objective being sought.