Explanatory Statement

Autonomous Sanctions Regulations 2011

Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024

The *Autonomous Sanctions Act 2011* (the Act) was established to provide for and enforce autonomous sanctions to address situations of international concern.

The *Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024* (the Amendment Regulations) insert a five-yearly review requirement into the *Autonomous Sanctions Regulations 2011* (the Regulations) and repeal the automatic expiry of the following autonomous sanctions designations and declarations: designations of persons and entities; designations of controlled assets; designations of sanctioned vessels; and declarations of persons as subject to a travel ban (collectively, listings).

Section 28 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 10 of the Act provides that the regulations may make provision in relation to specified sanctions matters. Paragraph 10(1)(a) provides that the regulations may make provision relating to the proscription of persons or entities (for specified purposes or more generally).

The purpose of the five-yearly review of the operation of Australia's autonomous sanctions legislative framework is to ensure the framework is effective, including by assessing whether the Act and Regulations are appropriate for achieving the objects of the Act. The requirement to report to Parliament enhances transparency and responds to calls for government to report regularly on autonomous sanctions measures.

The purpose of repealing the three-yearly automatic expiry of autonomous sanctions listings is to align Australia's listings practice with like-minded jurisdictions (including the United States of America, the United Kingdom and Canada) whose listings do not expire. It is also to redirect departmental resources to other sanctions priorities, including: making new listings in coordination with international partners; monitoring and enforcing existing listings; strengthening internal review processes; and engaging regularly with the public and civil society organisations. The effect of this measure is that listings will remain in operation until the Minister revokes them, whether on application, or on the Minister's own initiative.

Details of the Amendment Regulations are set out at Attachment A**.**

The Office of Impact Analysis (OIA) has confirmed that an Impact Analysis is not required (reference: OBPR22-03488). OIA's assessment is that this instrument is unlikely to have a more than minor impact, and an Impact Analysis is not required.

The proposed 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*. A statement of compatibility with human rights is at Attachment B.

Attachment A

Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024

Section 1 – Name

This section provides that the title of the instrument is the *Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024.*

Section 2 – Commencement

This section provides that the instrument commences the day after it is registered.

Section 3 – Authority

This section provides that the instrument is made under the *Autonomous Sanctions Act 2011*.

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as indicated in the applicable items in the relevant Schedule, and that any other item in a Schedule to this instrument has effect according to its terms.

Item 1 – Schedule 1

Item 1 of Schedule 1 amends subregulations 6A(3) and (6) to omit references to regulation 9, as that regulation is being repealed. Additional information on regulation 9 can be found below under item 2.

Item 2 – Schedule 1

Item 2 of Schedule 1 repeals regulation 9 of the Regulations.

This will have the effect that instruments made under regulations 6, 6A, 7 and 8 of the Regulations will no longer cease to have effect on the third anniversary of the day on which they take effect (or are continued), and the Minister will no longer be empowered to declare that those instruments continue to have effect.

This amendment is needed to align Australia's listings practice with like-minded jurisdictions (including the United States of America, the United Kingdom and Canada) whose listings do not expire. It will also provide for departmental resources to be redirected to other sanctions priorities, including making new listings and monitoring and enforcing existing ones. Together, these outcomes will strengthen the effectiveness of Australia's autonomous sanctions.

The Minister is empowered to revoke designations of persons or entities, or declarations of persons as subject to travel bans, on the Minister's own initiative or on application by the designated (or declared) person or entity. To support this process, the department intends to conduct periodic internal reviews to confirm that listings of persons and entities remain appropriate. This review process may result in a recommendation to the Minister to revoke the listing.

These measures will guard against listings of persons and entities operating indefinitely, and ensure that autonomous sanctions listings remain targeted.

Subsection 10(1) of the Act, interpreted in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, provides authority for this amendment.

Item 3 – Schedule 1

Item 3 of Schedule 1 will insert a requirement for the Minister to cause a review of the operation of the autonomous sanctions legislative framework to take place every five years from the date of commencement of this instrument.

Without limiting the scope, each review must consider:

i. the effectiveness of the autonomous sanctions legislative framework for achieving Australia's foreign policy objectives; and
ii. whether the Act and Regulations are appropriate for achieving the objects of the Act.

The persons who complete the review must give a report on the review to the Minister within 12 months of the commencement of the review. The Minister must table the report in each House of Parliament within 15 sitting days of that House after the Minister receives the report. This will enhance Parliamentary oversight of the autonomous sanctions legislative framework and support the framework's continuous improvement.

Subsection 28(b) of the Act provides authority for this amendment.

Item 4 – Schedule 1

Item 4 of Schedule 1 inserts a provision that confirms that the repeal of regulation 9 applies in relation to a designation or declaration made under the regulations whether it was made before, on or after the commencement of this instrument.

The provision also confirms, for the avoidance of doubt, that the repeal of regulation 9 does not affect the operation of declarations made under subregulation 9(3). This means that declarations and designations made under the regulations, which were continued in effect by the Minister exercising the power in subregulation 9(3), will continue to have effect.

Consultation

The Department of Foreign Affairs and Trade conducted public consultation by releasing an issues paper in January 2023 on the review of Australia's sanctions legislation. The issues paper identified seven potential areas for reform. This included considering whether the current process for reviewing designations and declarations, under regulation 9 of the *Autonomous Sanctions Regulations 2011*, should be replaced with a more streamlined mechanism (issue 6). The issues paper explained that the current process is resource intensive and constitutes a considerable administration burden. The paper proposed that one option would be for the Minister to invite submissions on designations and declarations every five years.

Regulatory Impact analysis

The Office of Impact Analysis has confirmed that an Impact Analysis is not required (OBPR22-03488).

Attachment B

Statement Of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024

This Disallowable Legislative 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*.

Overview of the Disallowable Legislative Instrument

The *Autonomous Sanctions Amendment (Periodic Legislative Review) Regulations 2024* (the Amendment Regulations) inserts a five-yearly review requirement into the *Autonomous Sanctions Regulations 2011* (the Regulations) and repeals the automatic expiry of the following autonomous sanctions instruments: designations of persons and entities; designations of controlled assets; designations of sanctioned vessels; and declarations of persons as subject to a travel ban (collectively, listings).

The purpose of the five-yearly review of Australia's autonomous sanctions legislative framework is to ensure the framework is effective, including by assessing whether the *Autonomous Sanctions Act 2011* (the Act) and Regulations are appropriate for achieving the objects of the Act. The requirement to report to Parliament enhances transparency and responds to calls for government to report regularly on autonomous sanctions measures.

The purpose of repealing the three-yearly automatic expiry of autonomous sanctions listings is to align Australia's listings practice with like-minded jurisdictions (including the United States of America, the United Kingdom and Canada) whose listings do not expire. It is also to redirect departmental resources to other sanctions priorities, including: making new listings in coordination with international partners; monitoring and enforcing existing listings; strengthening internal review processes; and engaging regularly with the public and civil society organisations.

Human rights that are promoted

This Disallowable Legislative Instrument promotes human rights by strengthening sanctions imposed upon persons or entities that have engaged in, are responsible for or are complicit in activities that violate or undermine respect for human rights. The human rights that are promoted include:

- The right to life in article 6 of the *International Covenant on Civil and Political Rights* (ICCPR), article 6 of the *Convention on the Rights of the Child* (CRC) and article 10 of the Convention on the Rights of Persons with Disabilities (CRPD);
- The protection against torture and cruel, inhuman or degrading treatment or punishment in article 7 of the ICCPR and article 15 of the CRPD; and
- The right to liberty and security of person in article 9 of the ICCPR and article 14 of the CRPD.

The repeal of regulation 9 will enable the Department of Foreign Affairs and Trade (Department) to redirect resources to monitoring and enforcing listings, and to making new listings (in coordination with international partners) that promote human rights. Together, these outcomes will strengthen the ability of autonomous sanctions to apply pressure to regimes and individuals with a view to ending the repression of human rights, and to deter behaviour that undermines human rights.

The Disallowable Legislative Instrument also promotes the human right, in article 25 of the ICCPR, of citizens to participate in the conduct of public affairs, directly or through freely chosen

representatives. In particular, the requirement for the Minister to table a report on the review in each House of Parliament enhances the ability of Australian citizens and their elected representatives to understand, question and suggest improvements to the operation of autonomous sanctions in Australia.

Human rights that may be limited

Right to fair hearing

This Disallowable Legislative Instrument may engage the right to a fair hearing in article 14 of the ICCPR.

Article 14 of the ICCPR relevantly provides that, in the determination of a person's rights and obligations in a suit at law, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Disallowable Legislative Instrument does not interfere with the jurisdiction of the High Court of Australia or Federal Court of Australia to conduct judicial review of a decision of the Minister to designate and/or declare a person under regulations 6 or 6A of the Regulations. A listed person may bring a judicial review of the designation and/or declaration decision and is entitled to a fair and public hearing in an independent court established by law.

To the extent the right to a fair hearing in article 14 of the ICCPR protects a fair hearing before a statutory decision maker that is not a court or tribunal, this Disallowable Legislative Instrument may limit that right. In particular, the repeal of regulation 9 means that there is no longer any express legal requirement for the Minister to review designations and declarations every three years, and decide whether to continue them.

Any limitation is justified

Nevertheless, any such limitation is justified for the following reasons.

First, the repeal of regulation 9 furthers the legitimate objectives of aligning Australia's approach to listings with the approach of key international partners and allowing the department to redirect resources to other sanctions priorities, including: making new sanctions listings in coordination with international partners; monitoring and enforcing existing sanctions; and strengthening internal review processes. These objectives are pressing and substantial because they will strengthen the effectiveness of Australia's autonomous sanctions.

For example, ensuring that Australia's listing practice aligns with that of key international partners enhances the ability of autonomous sanctions coordinated among partners to influence foreign government entities, members of foreign government entities, or other persons or entities outside Australia. The Parliamentary Joint Standing Committee on Human Rights has repeatedly acknowledged 'the importance of Australia acting in concert with the international community to prevent egregious human rights abuses arising from situations of international concern' (see, e.g. Scrutiny Report 1 of 2024, paragraph 2.116). Further, the Senate Standing Committee on Foreign Affairs and Trade recommended that Australia keep pace with international partners on sanctions listings related to Russia (see Australian support for Ukraine, recommendation 11, paragraph 3.98).

Second, there is a rational connection between the repeal of regulation 9 and these legitimate objectives.

The current process for reviewing listings is resource intensive and reduces the department's capacity to progress other sanctions priorities (including monitoring and enforcing sanctions). Yet, historically, approximately 87 percent of listings have been continued following their review. The very high

proportion of continued listings indicates the current process is not supporting achievement of the Act's objects.

Repealing the automatic expiry of listings will reduce the administrative burden associated with the listing review process, and permit these resources to be redirected to monitoring and enforcing sanctions.

Third, any limitation is reasonable, necessary and proportionate.

Any interference with the right to a fair hearing is minimally restrictive. The measures in this Disallowable Legislative Instrument would only affect the right in the civil (not criminal) context, and any restriction on the right is limited to removing the *automatic* entitlement to the review of listings by the Minister every three years.

Moreover, other safeguards ensure a listed person can still obtain a fair hearing in relation to their listing. Specifically:

- Listed persons may apply to the Minister at any time to revoke a designation and/or declaration;
- The Minister has the power under regulation 10 to revoke a listing upon application by a designated person, or on the Minister's own initiative;
- Listed persons may seek judicial review of a listing decision in an Australian court; and
- The department intends to conduct periodic internal reviews to confirm that listings of persons and entities remain appropriate. This review process may result in a recommendation to the Minister to revoke the listing.

The new, five-yearly legislated review process will ensure the legislative framework under which listings are made remains fit for purpose. The requirement to table a report in Parliament after each review will also improve oversight and transparency of the autonomous sanctions framework.

There are no alternative measures that would be less restrictive on the right to a fair hearing and that would achieve the three pressing and substantial objectives identified above. For example, amending the automatic expiry of listings from three to five years would not align Australia's listing practice with the United States of America, United Kingdom and Canada. Similarly, implementing a new review *process* in lieu of the automatic expiry of listings would not reduce the significant administrative burden or permit resources to be redirected to other sanctions priorities.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because, to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate.