

Ministerial Submission

s 47E(d)
Cleared by:

Date sent to MO: PLE to complete


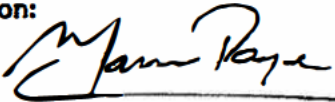
FOR: Senator the Hon Marise Payne

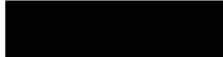
Action Requested By: 17 March 2022

INFO: The Hon Dan Tehan MP

Reason for Urgency: As requested by FMO.
Media reporting expected on 17 March.

Russia: Autonomous sanctions against Russian oligarchs Deripaska and Vekselberg

<p>Key Issues: This submission seeks your (Minister Payne's) agreement to list Oleg Deripaska, founder of United Company Rusal, and Viktor Vekselberg, Chairman of Renova Group, for targeted financial sanctions and travel bans. Statements of case are at Attachment A. Deripaska and Vekselberg have interests in Queensland Alumina Limited (QAL), which Rio Tinto controls. Vekselberg also has an interest in the Beetaloo Basin project, which Origin Energy controls. Any impact on QAL or the Beetaloo Basin project would depend on the detail of the relevant commercial arrangements. Deripaska and Vekselberg have been listed by the United States and the United Kingdom. Deripaska has also been listed by Canada.</p>	
<p>Recommendation: That you:</p> <p>a) Consider the Declaration and Decision Record at Attachment A and:</p> <ul style="list-style-type: none"> i) if you are satisfied that Deripaska and Vekselberg meet the criteria, designate them for targeted financial sanctions and declare them for travel bans by signing Part A of the Decision Record ii) note that, if you do not agree to a designation or declaration, you should indicate this by initialling the 'Do Not List' column corresponding to the relevant person or entity in Part C of the Decision Record <p>b) If you agree to designate Deripaska and Vekselberg for targeted financial sanctions and declare them for travel bans:</p> <ul style="list-style-type: none"> i) Sign and date the first page of the legislative instrument at Attachment B; and ii) Agree to the Explanatory Statement and Statement of Compatibility with Human Rights at Attachment C 	<p>Decision:</p> <p><u>Signed / Not Signed</u></p> <p></p> <p><u>Signed / Not Signed</u></p> <p><u>Agreed / Not Agreed</u></p>
<p>Domestic/Media Considerations: Announcement of sanctions targeting Deripaska and Vekselberg will attract media attention. The Government will be criticised for not listing them, or not doing so soon.</p> <p>Action:</p> <p></p> <p>Marise Payne 17/03/2022</p>	
<p>Information: <u>Noted</u></p> <p style="text-align: center;">Dan Tehan / /</p>	
<p>From: Katrina Coopers s22(1)(a) (iii) s22(1)(a) (iii) s22(1)(a) (iii)</p> <p>Ben Playle (ASO)</p>	<p>Contact: s22(1)(a)(ii) s22(1)(a)(ii) s22(1)(a)(ii)</p> <p>(a/g Dir r, ASO)</p>
<p>Can this proposal be funded from within your existing divisional allocation (departmental/aid)? Not Applicable</p> <p>If the proposal high risk/high value (over \$100m) concept has been approved by the Aid Governance Board? Not Applicable</p>	
<p>Consultation: LGD (ASO), TID</p>	





s 47E(d)

Background:

You (Minister Payne) decided on 13 March to list 11 Russian oligarchs for targeted financial sanctions and travel bans (see s 47E(d)). They did not include Oleg Vladimirovich Deripaska and Viktor Feixovich Vekselberg, pending further analysis of their Australian business interests. Now that we have undertaken that analysis, we recommend that you list Deripaska and Vekselberg.

2. Imposing targeted financial sanctions against Deripaska and Vekselberg would prohibit Australians from using or dealing with any asset that is owned or controlled by either of them; and prohibit Australians from providing any asset directly or indirectly to, or for the benefit of, either of them. The *Autonomous Sanctions Act 2011* defines 'asset' for these purposes broadly to include an asset or property of any kind, whether tangible or intangible, movable or immovable.

3. Both Deripaska and Vekselberg have interests in United Company Rusal, a state-owned Russian company. Rusal owns a 20 per cent share of Queensland Alumina Limited (QAL), which operates an alumina refinery in Gladstone. Rio Tinto owns the remaining 80 per cent. Rio issued a statement on 10 March that it would sever all business links with Rusal. Separately, Rio informed DFAT in-confidence on 16 March that it had planned for the possible listings of Deripaska and Vekselberg, which Rio indicated would not affect QAL's operations.

4. Vekselberg, via Lamesa Group Holding SA, also owns a 16 per cent interest in Falcon Oil and Gas Limited. Falcon is a joint venture partner with Origin Energy in the Beetaloo Basin project in the Northern Territory. Origin issued a statement on 1 March that it was 'appalled by the Russian aggression and invasion of Ukraine'. Origin explained that it carried '100 per cent of the costs of exploration activity in the Beetaloo Basin', but was nonetheless 'concerned about Lamesa Holding's investment in Falcon'.

s 47F(1), s 47G(1)(a) s 47C(1), s 47E(d)

s 33(a)(iii)

6. Listing Deripaska and Vekselberg would further align us with like-minded partners. Both have been listed by the United States and the United Kingdom. Deripaska has also been listed by Canada. Neither has been listed by the EU. Beyond merely aligning with like-minded partners, listing Deripaska and Vekselberg would demonstrate that we are committed to imposing severe sanctions on Russia in response to its invasion of Ukraine, even where that may have an impact on our economic interests and those of Australian businesses. To the contrary, not listing Deripaska and Vekselberg may attract domestic criticism questioning our commitment to sanctions that actually bite. Largely because of their greater exposure to Russia, our like-minded partners have already suffered direct economic damage, whereas we have not.

7. On balance, we consider that our prevailing interest is in aligning with like-minded partners to demonstrate our commitment to strong sanctions action against Russia. Should you agree to list Deripaska and Vekselberg, we would register the legislative instrument on the same day. The listings would take effect at 12.01 am on the following day.





Decision Record

Autonomous Sanctions – Russia

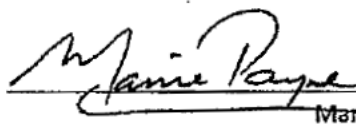
Guide

- The Decision at Part A designates and declares 2 persons, except for those which you indicate 'Do Not List' in Part C.
- The listing criteria at Part B provides the criteria for listing persons for targeted financial sanctions and travel bans, as set out in item 6A of regulation 6 of the *Autonomous Sanctions Regulations 2011* (the Regulations).
- The statements of case at Part D support your consideration of the persons for designation and declaration.

Part A: Designation and declaration

I am satisfied that the persons identified in Part C meet the criteria for designation and declaration (if applicable), outlined in Part B below, unless I have initialled the 'Do Not List' column in respect of a person.

I confirm that I considered the statements of case supporting designation for targeted financial sanctions and declaration for travel bans in respect of each person in Part D in reaching my decision.



Marise Payne

Minister for Foreign Affairs

17 / 03 / 2022

Part B: Criteria for listing

The listing criteria for persons is set out in item 6A of regulation 6 of the Regulations, as follows:

- (a) A person or entity that the Minister is satisfied is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.
- (b) A current or former Minister or senior official of the Russian Government.
- (c) An immediate family member of a person mentioned in paragraph (a) or (b).

[REDACTED]

Part C: Decision on designation and declaration

Persons

Ref No	Primary name	Title	Place of Birth	DOB (DD/MM/YY)	Listed by likemindeds as of 11 March 2022	DO NOT LIST
1.	Oleg Vladimirovich Deripaska	Founder of UC Rusal	Dzerzhinsk, Russia	02/01/1968	Canada, UK, US (2018)	
2.	Viktor Feixovich Vekselberg	Chairman of Renova Group	Drohobych, Ukraine	14/04/1957	UK, US (2018 & 2022)	

Context

Oleg Vladimirovich Deripaska and Viktor Feixovich Vekselberg are Russian oligarchs and prominent Russian businessmen. Deripaska and Vekselberg are people who are performing, or have performed, a function that is of economic or strategic significance to Russia.

Deripaska and Vekselberg have interests in United Company Rusal, which owns a 20 per cent share of Gladstone-based, Queensland Alumina Limited (QAL). On 10 March 2022, Rio Tinto, which owns the remaining 80 per cent of QAL, announced that it would sever all business links with Russia. We are yet to see how this may be delivered. Separately, Vekselberg, via a subsidiary company (Lamesa Group Holding SA), also owns a 16 per cent interest in Falcon Oil and Gas Limited, a joint venture with Origin Energy in the Beetaloo Basin, Northern Territory.

Recent approach of likemindeds:

UK:

The UK announced sanctions on Deripaska on 10 March 2022 and Vekselberg on 15 March 2022. The UK has imposed an asset freeze and travel ban on both individuals.¹

US:

The US imposed sanctions on Deripaska and Vekselberg initially in 2018. The US issued additional sanctions on Vekselberg on 11 March 2022 (classifying two luxury assets – an aircraft and yacht – as blocked property).²

Canada:

Canada has imposed sanctions on Deripaska.³

¹ <https://www.gov.uk/government/publications/the-uk-sanctions-list>, pg. 457 and 635.

² <https://home.treasury.gov/news/press-releases/lv0650>.

³ https://www.international.gc.ca/world-monde/assets/pdfs/international_relations-relations_internationales/sanctions/sema-lmes.pdf

[REDACTED]

Part D: Statements of Case supporting designation and declaration

The information in the statements of case set out below is, to the Australian Government's knowledge, accurate and reliable.

1. Name: Oleg Vladimirovich Deripaska Nationality: Russian Federation, Cyprus

Oleg Vladimirovich DERIPASKA is a prominent Russian businessman (oligarch) and public reports state he has particularly close personal ties to President Putin.⁴

DERIPASKA is the founder of UC Rusal which has a 20 percent interest in Queensland Alumina.⁵ On 10 March 2022, Rio Tinto, which owns the remaining 80 percent, announced that it would sever all business links with Russia.⁶

DERIPASKA has said that he does not separate himself from the Russian state. He has also acknowledged possessing a Russian diplomatic passport and claims to have represented the Russian government in other countries.⁷

DERIPASKA has been subject to US sanctions since 2018⁸ and Canadian sanctions since 6 March 2022⁹. The UK imposed sanctions on DERIPASKA on 10 March 2022.¹⁰

In March 2019, DERIPASKA sued the US, alleging that it had overstepped its legal bounds in imposing sanctions on him and made him the "latest victim" in the US probe into Moscow's election interference. The lawsuit was dismissed in June 2021, as lacking merit.¹¹

DERIPASKA is or has been involved in obtaining benefit from or supporting the Government of Russia, by carrying on business in, and owning or controlling and working as a director or equivalent in businesses in the Russian extractives and energy sectors, sectors of strategic significance to the Government of Russia.¹²

Given his business interests and close personal ties to Putin, it is open for the Minister to be satisfied that Oleg Vladimirovich DERIPASKA is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.

2. Name: Viktor Feixovich Vekselberg Nationality: Russian Federation, Cyprus

Viktor Feixovich VEKSELBERG is a prominent Russian businessman (oligarch) and an associate of President Putin.¹³

⁴ [Russian Oligarch Deripaska Calls For End Of War Against Ukraine \(rfed.org\)](https://www.rfed.org/)

⁵ [How the Russian conflict could affect Gladstone - Australian Mining](https://www.afr.com/)

⁶ [Rio to sever 'all' Russian links \(afr.com\)](https://www.afr.com/)

⁷ [Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity | U.S. Department of the Treasury](https://www.dhs.gov/)

⁸ [Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity | U.S. Department of the Treasury](https://www.dhs.gov/)

⁹ [Consolidated Canadian Autonomous Sanctions List \(international.gc.ca\)](https://www.international.gc.ca/)

¹⁰ <https://www.gov.uk/government/publications/the-uk-sanctions-list>

¹¹ [U.S. Judge dismisses Russian tycoon Deripaska's lawsuit against U.S. -filing | Reuters](https://www.reuters.com/)

¹² <https://www.gov.uk/government/publications/the-uk-sanctions-list>

¹³ [Who is Viktor Vekselberg, the Russian oligarch linked to Trump lawyer Michael Cohen? \(nbcnews.com\)](https://www.nbcnews.com/)

[REDACTED]

- [REDACTED]
- VEKSELBERG is the founder and Chairman of Renova Group; Renova Group is comprised of asset management companies and investment funds that own and manage assets in several sectors of the Russian economy, including energy.¹⁴
 - VEKSELBERG has interests in UC Rusal which has a 20 percent interest in Queensland Alumina.¹⁵ On 10 March 2022, Rio Tinto, which owns the remaining 80 percent, announced that it would sever all business links with Russia.¹⁶
 - Additionally, VEKSELBERG through Lamesa Group Holding SA, owns a 16 percent interest in Falcon Oil and Gas Ltd, a joint venture with Origin Energy in the Beetaloo Basin, Northern Territory.¹⁷ On 1 March 2022, Origin Energy released a statement in which it noted the venture currently only involves exploration activity, the costs of which are borne by Origin Energy, and there is currently no gas production or earnings associated with it.¹⁸ Also on 1 March 2022, Russian businessman Maxim Mayorets stepped down as a director of Falcon Oil and Gas Ltd.¹⁹
 - VEKSELBERG has been subject to US sanctions since 2018,²⁰ with additional sanctions imposed on 11 March 2022 (blocking two luxury assets).²¹ The UK imposed sanctions on VEKSELBERG on 15 March 2022.²²
 - VEKSELBERG's extensive holdings span multiple sectors of the Russian economy and are intertwined with some of the Russian Government's global initiatives, such as the Rusnano Group, one of the largest technological investors in Russia which provides a revenue source to the Government of Russia.²³
 - Given his business interests and ties to Putin, it is open for the Minister to be satisfied that Viktor Feixovich VEKSELBERG is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia.

¹⁴ [Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity | U.S. Department of the Treasury](#)

¹⁵ [How the Russian conflict could affect Gladstone - Australian Mining](#)

¹⁶ [Rio to sever 'all' Russian links \(afr.com\)](#)

¹⁷ [Australian companies must urgently review ties with Russian oligarchs - ACCR](#)

¹⁸ [Statement on Beetaloo Basin joint venture - Origin Energy](#)

¹⁹ [Director Change - Falcon Oil & Gas \(falconoilandgas.com\)](#)

²⁰ [Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity | U.S. Department of the Treasury](#)

²¹ <https://home.treasury.gov/news/press-releases/jv0650>

²² <https://www.gov.uk/government/publications/the-uk-sanctions-list>

²³ [Treasury Sanctions Kremlin Elites, Leaders, Oligarchs, and Family for Enabling Putin's War Against Ukraine | U.S. Department of the Treasury](#)



Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022

I, Marise Payne, Minister for Foreign Affairs, make the following instrument.

Dated 17 March 2022

A handwritten signature in black ink, appearing to read 'Marise Payne', written over a horizontal line.

Marise Payne
Minister for Foreign Affairs

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1 Name

This instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under paragraphs 6(a) and (b) of the *Autonomous Sanctions Regulations 2011*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014

1 In the appropriate position in Part 1 of Schedule 2 (table)

Add:

62	Name of individual	Viktor Feixovich VEKSELBERG
	Date of birth	14 April 1957
	Place of birth	Drohobych, Ukraine
	Instrument of first designation and declaration	<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022</i>
63	Name of individual	Oleg Vladimirovich DERIPASKA
	Date of birth	2 January 1968
	Place of birth	Dzerzhinsk, Russia
	Instrument of first designation and declaration	<i>Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022</i>

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—Russia and Ukraine) Amendment (No. 7) Instrument 2022

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, including where there are, or have been, threats to the sovereignty and territorial integrity of a State.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the proscription of persons or entities for autonomous sanctions in relation to Russia. 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 a travel ban, 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 (the Russia listing criteria)).

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two components to 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 Russia and Ukraine are listed in the *Autonomous Sanctions (Designated and Declared Persons – Russia and Ukraine) List 2014* (the 2014 List).

In accordance with regulation 6, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022* (the Instrument) lists two persons for targeted financial sanctions and travel bans

under the Russia listing criteria. These persons are Russian oligarchs Viktor Vekselberg and Oleg Deripaska. These persons play key roles in Russian entities with interests in the energy sector and support the Russian Government in furtherance of its economic and strategic priorities. The Minister made the designations and declarations being satisfied that, by virtue of their positions and actions, the two persons are, or have 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).

Details of the 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 and the 2014 List 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 Instrument were subject to targeted consultation within government and with relevant international partners.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons designated in the 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 is not appropriate in the circumstances in order to enable Australia to act swiftly in response to threats to the sovereignty and territorial integrity of Ukraine posed by these persons and to strengthen the impact of sanctions on Russia. Additionally, consultation would risk alerting persons to the impending sanctions and enabling capital flight before assets can be frozen.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for listing instruments (OBPR reference: 26252).

Attachment A*Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022***Section 1**

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022* (the Instrument).

Section 2

The instrument commences the day after it is registered.

Section 3

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

Section 4

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this 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 – Part 1 of Schedule 2 (at the end of the table)**

The persons listed in Part 1 of Schedule 2 are designated by the Minister as designated persons for Russia for the purposes of paragraph 6(a) of the Regulations and declared by the Minister for the purposes of paragraph 6(b) of the Regulations. These persons are Russian oligarchs Viktor Vekselberg and Oleg Deripaska. These persons play key roles in Russian entities with particular interests in the energy sector and support the Russian Government in furtherance of its economic and strategic priorities. Viktor Vekselberg's extensive holdings span multiple sectors of the Russian economy and are intertwined with some of the Russian Government's global initiatives, such as the Rusnano Group, one of the largest technological investors in Russia which provides a revenue source to the Government of Russia. Oleg Deripaska is or has been involved in obtaining benefit from or supporting the Government of Russia, by carrying on business in, and owning or controlling and working as a director or equivalent in businesses in the Russian extractives and energy sectors, sectors of strategic significance to the Government of Russia.

The Minister made the designations and declarations being satisfied that, by virtue of their positions and actions, the two persons are, or have 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. 7) Instrument 2022

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022* (the 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 regimes impose highly targeted measures in response to situations of international concern, including where there are, or have been, threats to the sovereignty and territorial integrity of a State. Given the serious nature of the threats to the sovereignty and territorial integrity of Ukraine, 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 concerns about the situation in Ukraine. These sanctions allow a targeted response to Australia's concerns relating to Russia's unprovoked and completely unjustified attack on Ukraine, by imposing a cost on Russia and seeking to influence the Russian state to de-escalate the situation.

Thus, the autonomous sanctions designations and declarations made by this 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 regimes 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, amongst other things, the proscription of persons or entities for autonomous sanctions. The Instrument, made under regulation 6 of the Regulations, designates persons for targeted financial sanctions and declares those persons for the purposes of travel bans. The Minister made the designations and declarations being satisfied that the persons are, or have 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 (the Russia listing criteria)).

The human rights compatibility of the 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'.¹

Permissible limitations

The 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)'; and 'restriction or prevention of uses of, dealings with, and making available of, assets'. The designations and declarations contained in the Instrument were made pursuant to regulation 6 of the *Autonomous Sanctions Regulations 2011* (the Regulations), which provides that the Minister may, by legislative instrument, designate and/or declare a person for targeted financial sanctions and/or travel bans.

The measures contained in the 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 travel bans, the Minister uses predictable, publicly available criteria. These criteria are designed to capture only those persons 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 of specific persons under the Regulations are reasonable, necessary and proportionate to the individual circumstances the sanctions are seeking to address. Therefore, any interference with the right to privacy created by the operation of the Instrument is not arbitrary or unlawful and, therefore, is consistent with Australia's obligations under Article 17 of the ICCPR.

¹ 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 regime 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 (DFAT) consults relevant agencies as appropriate in advance of a designation and declaration of a person with known connections to Australia to determine 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 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 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 above, such a separation would be reasonable, necessary and proportionate justified in the achieving the objective of the Instrument.

Accordingly, any interference with the right to respect for the family created by the operation of the Instrument is not unlawful or arbitrary and, therefore, 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 (ICESCR) and requires States to ensure the availability and accessibility of the resources that are essential to the realisation of the right: namely, food, water, 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), to the extent that it occurs, is reasonable and necessary to achieve the objective of the Instrument and are proportionate due to the targeted nature of 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 certain circumstances. The objective of 'basic expenses exemption' in regulation 20 is, in part, to enable the Australian Government to administer the sanctions regime 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).

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) is engaged in an individual case, such that a person listed in the 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 regime. Travel bans are reasonable because they are only imposed on persons who the Minister is satisfied are responsible for giving rise to situations of international concern. Thus, preventing a person who is, for example, engaging in activity or performing a function that is of economic or strategic influence to Russia, from travelling to, entering or remaining in Australia through operation of the Instrument is a reasonable means to achieve the legitimate foreign policy objective of signalling Australia’s concerns about the current situation in Ukraine. Australia’s practice in this respect is consistent with that of other countries such as the United States, the United Kingdom and Canada.

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 in the national interest, or 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 Article 6 of the ICCPR on the right to life and prohibition on arbitrary deprivation of life, are engaged by the travel restrictions in the 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 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 Instrument is consistent with Australia's international non-refoulement obligations as, together with the Foreign 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

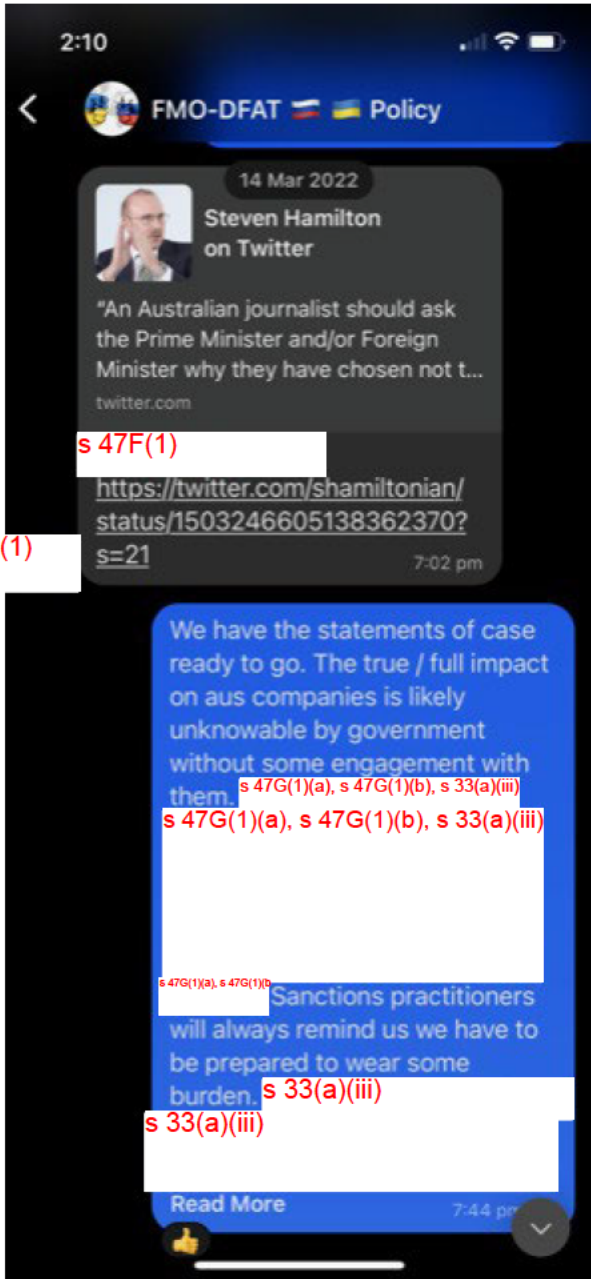
Any differential treatment of people as a consequence of the application of the Instrument does not amount to discrimination pursuant to Article 26 of the ICCPR.

The criteria set out in regulation 6 of the Regulations are reasonable and objective. They are reasonable insofar as they list only those States 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 above.

To the extent that the measures result in a differential impact on persons from particular countries, this is both proportionate and necessary to achieve the objective of the Instrument. Country-specific sanctions will inevitably impact persons from certain countries more than others, as they are used as a tool of foreign diplomacy to facilitate the conduct of Australia's international relations with particular countries. In this case, the measures will predominately impact persons of Russian national origin or nationality due to the location of the situation of international concern to which the measures respond.

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



s 47F(1)

s 47F(1)

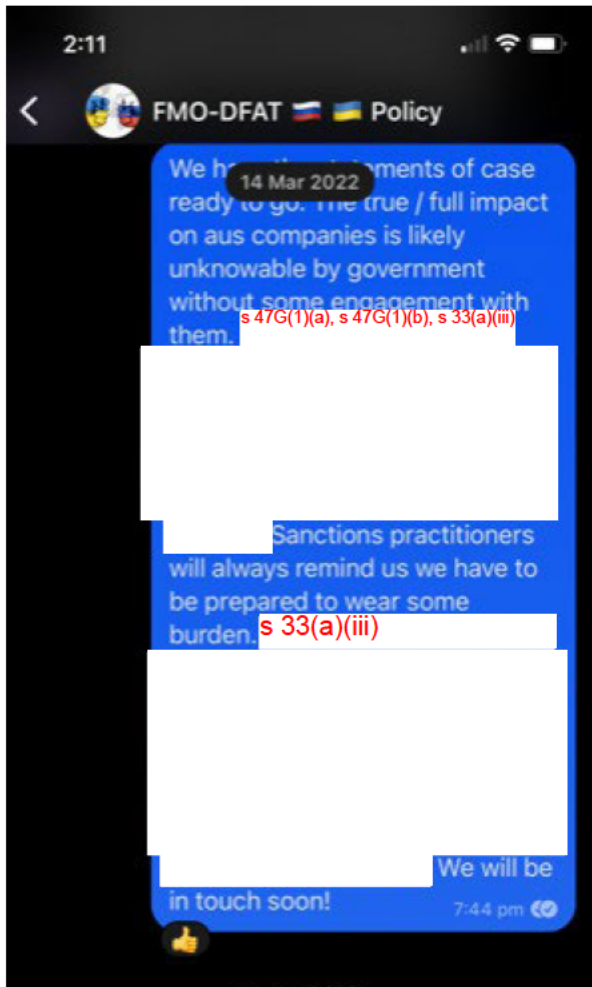
s 47G(1)(a), s 47G(1)(b), s 33(a)(iii)

s 47G(1)(a), s 47G(1)(b), s 33(a)(iii)

s 47G(1)(a), s 47G(1)(b)

s 33(a)(iii)

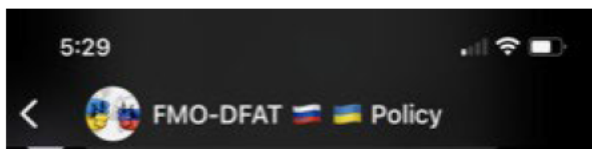
s 33(a)(iii)



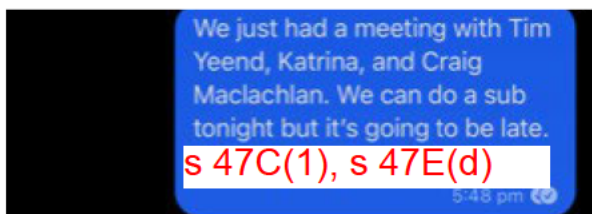
s 47G(1)(a), s 47G(1)(b), s 33(a)(iii)

s 33(a)(iii)

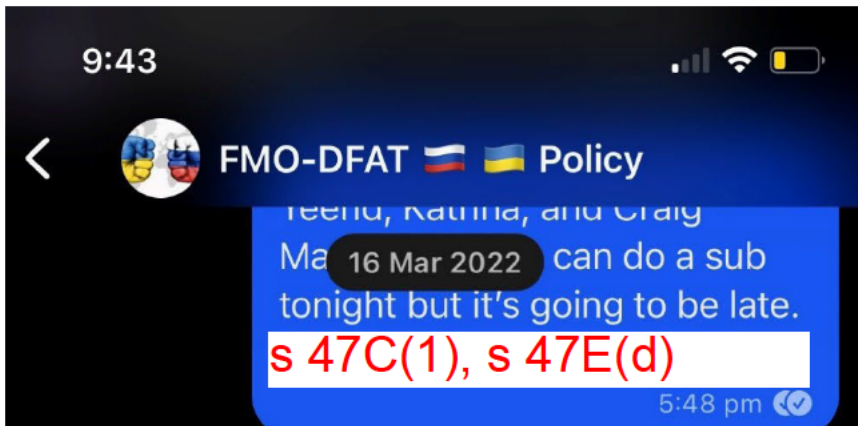
s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)

[REDACTED]

From: "Michael Growder" <Michael.Growder@dfat.gov.au>
Date: Monday, 14 March 2022 at 3:52:04 pm
To: "Ben Playle" <Ben.Playle@dfat.gov.au>, "Jonathan Kenna" <Jonathan.Kenna@dfat.gov.au>
Cc: s 22(1)(a)(ii) <[\[REDACTED\]@dfat.gov.au](mailto:[REDACTED]@dfat.gov.au)>, s 22(1)(a)(ii) <[\[REDACTED\]@dfat.gov.au](mailto:[REDACTED]@dfat.gov.au)>, "Helen Stylianou" <Helen.Stylianou@dfat.gov.au>, "s 22(1)(a)(ii)" <[\[REDACTED\]@dfat.gov.au](mailto:[REDACTED]@dfat.gov.au)>, s 22(1)(a)(ii) <[\[REDACTED\]@dfat.gov.au](mailto:[REDACTED]@dfat.gov.au)>, "Marcus Lumb" <Marcus.Lumb@dfat.gov.au>, "Rachel Moseley" <Rachel.Moseley@dfat.gov.au>, "Lynette Wood" <Lynette.Wood@dfat.gov.au>
Subject: RE: Washington cable just in: Queensland Alumina Refinery and request from owners of EnPlus/Rusal stake [REDACTED]

[REDACTED]

Thanks Ben.

s 47E(d)

s 22(1)(a)(ii)

Cheers,

Michael

From: Ben Playle <Ben.Playle@dfat.gov.au>

Sent: Monday, 14 March 2022 12:40 PM

To: Michael Growder <Michael.Growder@dfat.gov.au>; Jonathan Kenna

<Jonathan.Kenna@dfat.gov.au>

Cc: s 22(1)(a)(ii) <dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>;

<Helen.Stylianou@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>; Helen Stylianou

<Helen.Stylianou@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>;

<Marcus.Lumb@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>; Marcus Lumb

<Marcus.Lumb@dfat.gov.au>; Rachel Moseley <Rachel.Moseley@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>;

<Rachel.Moseley@dfat.gov.au>; s 22(1)(a)(ii) <dfat.gov.au>; Lynette Wood

<Lynette.Wood@dfat.gov.au>

Subject: Re: Washington cable just in: Queensland Alumina Refinery and request from owners of EnPlus/Rusal stake [REDACTED]

Thanks Michael.

s 22(1)(a)(ii)

s 47E(d), s 47C(1)

s 22(1)(a)(ii)


Cheers,
Ben

s 22(1)(a)(ii)



s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: Michael Growder
Sent: Friday, 18 March 2022 11:55 AM
To: Andrew Martin <Andrew.Martin@dfat.gov.au>
Cc: s 22(1)(a)(ii) [@dfat.gov.au](mailto:s 22(1)(a)(ii)@dfat.gov.au)
Subject: RE: s 33(a)(iii) sanctions priority for the week ahead 



s 22(1)(a)(ii)

By contrast, Rio (s 47F(1)) went to ASO this morning and briefed in line with what s 47F(1) told me the other night s 47E(d), s 47G(1)(b)

s 22(1)(a)(ii)

MG



From: Michael Growder <Michael.Growder@dfat.gov.au>

Sent: Friday, 18 March 2022 1:12 PM

To: s 22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>

Cc: s 22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@dfat.gov.au](mailto:s22(1)(a)(ii)@dfat.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; Marcus

Lumb <Marcus.Lumb@dfat.gov.au>; s 22(1)(a)(ii)

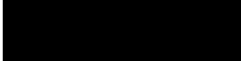
<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

<[s22\(1\)\(a\)\(ii\)@dfat.gov.au](mailto:s22(1)(a)(ii)@dfat.gov.au)>;

Helen Stylianou <Helen.Stylianou@dfat.gov.au>

Subject: RE: Russia/Ukraine - UPDATE - new oligarch sanctions + banning alumina exports



s 22(1)(a)(ii)

Rio s 47F(1) was in touch with the Sanctions Office this morning, in similar terms to below, while noting that they'd now study the implications closely. s 22(1)(a)(ii)

Michael

From: Michael Growder

Sent: Wednesday, 16 March 2022 9:42 PM

To: s 22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@industry.gov.au](mailto:s22(1)(a)(ii)@industry.gov.au)>; s 22(1)(a)(ii)

s 22(1)(a)(ii) [@industry.gov.au](mailto:industry.gov.au); s 22(1)(a)(ii) [@industry.gov.au](mailto:industry.gov.au)
 Cc: s 22(1)(a)(ii) [@dfat.gov.au](mailto:dfat.gov.au); s 22(1)(a)(ii) [@industry.gov.au](mailto:industry.gov.au); Marcus
 Lumb <Marcus.Lumb@dfat.gov.au>; s 22(1)(a)(ii) [@industry.gov.au](mailto:industry.gov.au);
 s 22(1)(a)(ii) [@industry.gov.au](mailto:industry.gov.au); s 22(1)(a)(ii) [@dfat.gov.au](mailto:dfat.gov.au); Helen Stylianou <Helen.Stylianou@dfat.gov.au>
 Subject: RE: Update - potential Russia sanctions [REDACTED]

s 22(1)(a)(ii)

As part of this, I spoke to Rio's s 47G(1)(a), s 47G(1)(b), s 47F(1), s 47E(d) [REDACTED]

s 47G(1)(a), s 47G(1)(b) [REDACTED]

s 47E(d) [REDACTED]

s 22(1)(a)(ii)

Cheers,

Michael
 s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

[REDACTED]

From: Lumb, Marcus s 47E(d)
Sent: Wednesday, 16 March 2022 6:56 PM
To: s 22(1)(a)(ii) s 47E(d) s 22(1)(a)(ii)
 s 47E(d)
Subject: FW: Conversation with Rio Tinto [SEC=PROTECTED]

[REDACTED]

From: Growder, Michael s 47E(d)
Sent: Wednesday, 16 March 2022 6:47 PM
To: Lumb, Marcus s 47E(d) Playle, Ben
 s 47E(d)
Cc: Cooper, Katrina s 47E(d) ; Maclachlan, Craig
 s 47E(d) >; Yeend, Tim s 47E(d)
 s 22(1)(a)(ii) s 47E(d) s 22(1)(a)(ii)
 s 47E(d) Stylianou, Helen s 47E(d)
 Wood, Lynette s 47E(d) s 22(1)(a)(ii)
 s 47E(d) s 22(1)(a)(ii)
 s 47E(d)
Subject: Conversation with Rio Tinto [SEC=PROTECTED]

[REDACTED]

All, spoke to s 47F(1) , Rio s 47F(1) , s 47E(d)

Bottom line(s) up front:
 - ss 47G(1)(a), 47G(1)(b)

Detail

ss 47G(1)(a), 47G(1)(b)

Cheers,

Michael