



# SANCTIONS COMPLIANCE FOR AUSTRALIAN GOVERNMENT AGENCIES AND EMPLOYEES

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This guidance note is produced by the Australian Sanctions Office (ASO) within the Department of Foreign Affairs and Trade (DFAT). It provides a summary of relevant sanctions laws that commonly apply to Australian Government (Commonwealth) agencies but does not cover all possible sanctions risks. Users should consider all applicable sanctions measures and seek independent legal advice. This document should not be used as a substitute for legal advice. Users are responsible for ensuring compliance with Australian sanctions laws.



## Australian Government Officials

Australian Government officials must not contravene Australian sanctions laws and are not immune from prosecution for sanctions offences. Australian Government officials must take positive steps to prevent sanctions contraventions.



## OVERVIEW

This guidance note outlines the application of Australian sanctions laws to Australian Government agencies and their employees. It emphasises the necessity for these agencies to comply with Australian sanctions laws. This guidance informs Australian Government employees and contractors of their legal obligations, potential sanctions risks, and the importance of taking reasonable precautions and exercising due diligence to avoid sanctions contraventions.

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## Glossary

Term	Definition
<b>Arms or related matériel</b>	Arms or related matériel generally includes weapons, ammunition, military vehicles and equipment, spare parts and accessories for any of those things, and paramilitary equipment.
<b>Australian Sanctions Office</b>	The Australian Sanctions Office ( <b>ASO</b> ) is the Australian Government's sanctions regulator. The ASO sits within the Department of Foreign Affairs and Trade ( <b>DFAT</b> ).
<b>Controlled asset</b>	Generally, an asset owned or controlled by a designated person or entity. Some sanctions legislation also refers to these kinds of assets as 'freezable assets'.
<b>Consolidated List</b>	See <b>Designated person or entity</b> .
<b>Designated person or entity</b>	<p>A person or entity listed under Australian sanctions laws. Listed persons and entities are subject to targeted financial sanctions. Listed persons may also be subject to travel bans. See <a href="#">DFAT website</a> for further information. Some sanctions legislation also refers to these persons or entities as 'proscribed persons or entities'.</p> <p>DFAT keeps a <a href="#">Consolidated List</a> of designated persons and entities, available on the Department's website.</p>
<b>Pax</b>	<a href="#">Pax</a> is the Australian sanctions platform. You can make general enquiries or submit sanctions permit applications to the ASO in Pax.
<b>Reasonable precautions and due diligence</b>	In the sanctions context, reasonable precautions and due diligence are not defined terms but generally refer to the steps and measures a regulated entity must take to ensure it is not engaging in sanctioned activities. This includes implementing robust internal controls, screening transactions and parties against the Consolidated List, and ensuring staff are adequately trained to recognise and respond to potential sanctions risks. This is a relative standard, as what constitutes "reasonable" can vary based on a range of factors, including the size and nature of the business, the complexity of transactions, the geographic areas involved, and the specific sanctions regulations in place. Consequently, what is deemed sufficient for one entity may not be for another, making the concept inherently flexible and context dependent.
<b>Regulated entity</b>	A government agency, individual, business or other organisation whose activities are subject to Australian sanctions law.
<b>Risk assessment</b>	A sanctions compliance risk assessment is a systematic evaluation of an organisation's exposure to potential sanctions contraventions. This process identifies and analyses the risks associated with a particular activity to determine where sanctions risks may arise.
<b>Sanctions permit</b>	A sanctions permit is authorisation from the Minister for Foreign Affairs (or the Minister's delegate) to undertake an activity that would otherwise be prohibited by an Australian sanctions law.

## AUSTRALIAN SANCTIONS LAWS

Australia implements two types of sanctions frameworks under Australian sanctions laws:

- United Nations Security Council (UNSC) sanctions frameworks, which Australia must impose as a member of the United Nations; and
- Australian autonomous sanctions frameworks, which are imposed as a matter of Australian foreign policy.

Each sanctions framework imposes specific sanctions measures, depending on the individual circumstances and objectives of the regime. Sanctions measures can include prohibitions on making a sanctioned supply, providing a sanctioned service, dealing with a **designated person or entity**, or dealing with **controlled assets**.

Further information on Australia's sanctions frameworks and specific sanctions measures can be found [here](#).

### Sanctions contraventions and penalties

Prohibitions under Australian sanctions laws apply to the conduct of all Australian nationals and bodies corporate, whether in or outside Australia. This means that sanctions prohibitions must be observed by Australian Government agencies and their employees, agents, and contractors.

Australian sanctions laws establish serious criminal offences for contravening a sanctions measure or a condition of a sanctions permit. If an Australian Government officer were to engage in conduct that was a contravention of Australian sanctions laws, they could be subject to criminal prosecution.

Various provisions in Australian law oblige Australian Government officials to take positive steps to prevent unintended or accidental sanctions contraventions. The [APS Code of Conduct](#) requires all APS employees to act lawfully and with care and diligence when acting in connection with APS employment. The *Public Governance, Performance and Accountability Act 2013* (Cth) requires the majority of Australian Government agencies to act consistently with the sanctions and risk management policies of the Australian Government. Corporate Commonwealth entities that are not subject to these provisions must still take positive steps to prevent sanctions breaches as a defence against strict liability provisions in sanctions laws that apply specifically to bodies corporate.



#### Sanctions compliance is your responsibility

The identification, mitigation and ultimate responsibility for sanctions compliance rests with Australian Government agencies and their employees, not the ASO. The ASO provides guidance and resources but does not offer assurances about undertaking activities. The final decision and responsibility for compliance rests with the respective Australian Government agency. It is important for Australian Government agencies and their employees to thoroughly understand and implement the necessary measures to ensure sanctions compliance.



#### Penalties for sanctions offences

Sanctions offences are punishable by:

- For an individual - up to 10 years in prison and/or a fine of 2500 penalty units (\$825,000 as of 7 November 2024) or three times the value of the transaction(s) (whichever is the greater).
- For a body corporate – a fine of up to 10,000 penalty units (\$3.3 million as of 7 November 2024) or three times the value of the transaction(s) (whichever is the greater).



### Strict liability

Sanctions offences are strict liability offences for bodies corporate (including corporate government agencies), meaning that it is not necessary to prove any fault element (intent, knowledge, recklessness or negligence). However, bodies corporate can prove they undertook **reasonable precautions** and exercised **due diligence** to avoid contravening sanctions laws as a defence.

## WHAT ARE THE KEY SANCTIONS RISKS FACED BY AUSTRALIAN GOVERNMENT AGENCIES?

Australian Government agencies and employees often face sanctions compliance risks, particularly in relation to providing assets to designated persons or entities or providing sanctioned goods and services.

### Providing assets to a designated person or entity

Australian sanctions laws prohibit directly or indirectly making an asset available to, or for the benefit of, a designated person or entity. A **Consolidated List** of all the persons and entities designated under Australian sanctions law can be found [here](#).

An 'asset' includes an asset or property of any kind, whether tangible or intangible, movable or immovable.



### Case study 1: Humanitarian aid

Providing humanitarian aid may pose sanctions compliance risks for government agencies and employees. Aid might inadvertently reach designated persons or entities through intermediaries with poor vetting processes. Some aid items, like medical supplies or technology, can be used for both civilian and military purposes, risking misuse by sanctioned entities. The urgency of crisis situations can lead to less stringent screening. This may increase the likelihood of aid inadvertently being provided to designated persons. Australian Government agencies must take reasonable precautions and exercise due diligence to avoid contraventions.

### Providing sanctioned goods and services

Australian sanctions laws restrict trade in goods and services with certain countries, prohibiting the provision of specified goods and services to those regions.

For example, it is prohibited to supply, sell or transfer '**arms or related matériel**' to another person with the direct or indirect result that the goods are transferred to, for use in, or for the benefit of Russia. It is also prohibited to provide a sanctioned service to Russia or a person for use in Russia if it assists with, or is provided in relation to, a military activity, or the manufacture, maintenance or use of '**arms or related matériel**'.

Australian Government agencies and employees face risks when dealing with dual-use goods, which can serve both civilian and military purposes. Items including software and technology may be subject to prohibitions on '**arms or related matériel**' due to their potential military applications.



#### Case study 2: Research collaboration

Australian Government agencies involved in multilateral research face sanctions compliance risks, particularly with dual-use goods. These items have both civilian and military applications. If a sanctioned country participates in the research, it could exploit the findings for military purposes, potentially making the Australian Government agency and its employees liable for providing a sanctioned service. Australian Government agencies must take reasonable precautions and exercise due diligence to avoid contraventions in such activities.



#### Case study 3: Multilateral capacity-building exercises

Australian Government agencies participating in multilateral diplomatic capacity-building exercises may be exposed to sanctions risks if the capacities being developed have military applications. For example, a multilateral capacity-building exercise focused on improving cybersecurity infrastructure could inadvertently provide a sanctioned country with military benefits. For instance, if the exercise involves sharing advanced encryption techniques and network defence strategies (which are dual-use technologies), the sanctioned country could apply these techniques to enhance the security of its military communications and command-and-control systems, thereby strengthening its military capabilities.

## REASONABLE PRECAUTIONS AND DUE DILIGENCE

The ASO encourages all Australian Government agencies to put in place procedures to manage sanctions risks. In the sanctions context, reasonable precautions and due diligence refers to the steps and measures a **regulated entity** can reasonably take to ensure it is not engaging in sanctioned activities. This is a relative standard. What constitutes "reasonable" can vary based on a range of factors, including the size and nature of the agency, the complexity of transactions, the geographic areas involved, and the specific sanctions regulations in place. What is considered sufficient for one agency or transaction may not be for another.



#### Commonwealth Risk Management Policy

Officials in a government agency that is subject to the Commonwealth Risk Management Policy should follow the procedures and arrangements set out in their agency's risk management framework to decide what precautions are reasonable in the circumstances.

Due diligence generally involves gathering all relevant information about a proposed activity to identify any sanctions risks. This includes information about the people involved (principals), details of the activity, and information about others connected to the principals.

Government agencies should consider screening parties they may engage with against the Consolidated List and other relevant data sources to provide secondary confirmation. Screening forms part of the risk-based approach that Australian Government agencies should employ to identify, mitigate, and manage the risk of contravening sanctions laws.

Further information on managing sanctions compliance risks is available on the Department of Foreign Affairs and Trade's [website](#), including information on specific types of sanctioned activities.

## SANCTIONS PERMITS

A sanctions permit is authorisation from the Minister for Foreign Affairs (or the Minister's delegate) to undertake an activity that would otherwise be prohibited by an Australian sanctions law.

The Minister may grant permits under both UNSC and autonomous sanctions. For some countries, both UNSC and autonomous sanctions apply. More detailed information on Australia's sanctions frameworks and the specific criteria for granting permits under each framework can be found [here](#).



### Sanctions permits

The ASO recommends proactive risk management rather than relying on permits. Sanctions permits are generally appropriate only when there is a clear likelihood of a sanctions contravention occurring. For broad or non-specific sanctions risks, it's better to manage compliance through **reasonable precautions and due diligence** to prevent issues before they arise. To enable due consideration of any permit application, ASO must be provided sufficient detail of a specific contravention to which the application relates.

Further information on sanctions permits and how to apply for a sanctions permit can be found [here](#).

### General permits

The Minister for Foreign Affairs has issued several general permits that provide authorisation, subject to conditions, for a range of specified activities commonly undertaken by Australian Government agencies and employees.

Further information on general permits can be found [here](#).



### Further information and resources

While this guidance note provides a framework for understanding key sanctions risks and compliance requirements, it is essential to remember that it does not cover every possible scenario. Sanctions compliance is an ongoing obligation rather than a one-time assessment. Sanctions measures and associated risks are constantly evolving, requiring regulated entities to continuously monitor and reassess their compliance strategies. Regulated entities are encouraged to seek independent legal advice tailored to their specific situations and ensure thorough due diligence in all activities.

Further information is available on the Department's [website](#) and in [ASO guidance notes](#) on specific sanctions topics. If you have any questions, you can make an enquiry through [Pax](#).