



Review of Australia's sanctions laws

OVERVIEW

The Australian Government has reviewed Australia's sanctions laws to identify areas of reform to ensure sanctions law remained clear, fit for purpose and aligned with contemporary foreign policy objectives (the **Review**).

The Review considered the views of a range of Australian stakeholders, including:

- the general public
- industry
- universities and academics
- humanitarian actors
- civil society
- law firms
- regulatory and law enforcement agencies.

Genesis of the Review

In its December 2020 report, '[Criminality, Corruption and Impunity: Should Australia join the Global Magnitsky Movement?](#)', the Joint Standing Committee on Foreign Affairs, Defence and Trade (Human Rights Sub-Committee) recommended the Government enact sanctions legislation to address human rights violations and corruption, and review this legislation three years after commencement.

In [response](#), the Government agreed to make these reforms and to conduct a broader review of Australia's sanctions laws, led by the Department of Foreign Affairs and Trade (**DFAT**).

The terms of reference for the Review specified matters to be considered, including: streamlining sanctions laws; reviewing offences; and introducing a humanitarian exemption for autonomous sanctions.

Review process

In conducting the Review, DFAT considered both Australia's autonomous sanctions and United Nations Security Council (**UNSC**) sanctions frameworks, including options to enhance consistency across those frameworks.

DFAT undertook significant consultation with stakeholders across industry, academia, civil society and government, including by releasing an Issues Paper for public consultation in January 2023. The Issues Paper identified potential reform options linked to seven key issues, and posed specific questions to guide public feedback.

DFAT also drew upon more than a decade of experience in administering Australia's sanctions laws.

Summary of public submissions on the Issues Paper

DFAT received 27 submissions in response to the Issues Paper. Most submissions responded to one or more of the seven key issues identified in the Issues Paper. The submissions are posted on [DFAT's website](#) and are summarised below (excluding four submissions for which confidentiality was requested).



Issue 1: Streamlining the legal framework for autonomous sanctions

Most submissions supported the proposal to streamline the legal framework for autonomous sanctions, to enhance understanding and make the legislation easier to navigate.

In particular, stakeholders favoured consolidating all provisions relevant to a particular country or thematic sanctions framework into one instrument.

Issue 2: Scope of sanctions measures

Submissions generally supported clarification of the meaning of key autonomous sanctions terms, such as 'asset', 'indirectly', 'for the benefit of' and 'owned or controlled'.

Stakeholders provided a variety of views on how key terms should be defined. For example, some submissions recommended:

- The use of non-exhaustive guidance to ensure terms were not defined too narrowly.
- Core definitions should be consistent with those adopted by partner jurisdictions, where possible, to facilitate sanctions compliance for cross-border transactions.
- In relation to 'sanctioned commercial activity', many stakeholders favoured a consolidated definition, one stakeholder indicated that country-specific parameters would be more appropriate, and another recommended an adaptive approach to this concept.
- A percentage threshold should be established to determine ownership or control of assets or entities, or to guide when a person 'indirectly' makes assets available to a designated person or entity.
- In relation to 'sanctioned service', one stakeholder recommended that the concepts of 'another service' and 'assists with' be refined to provide greater certainty on the scope of this measure.

Some stakeholders suggested that new terms be inserted in the autonomous sanctions framework, including concepts like 'comingled' goods and 'de minimis' that are used by other jurisdictions with autonomous sanctions laws.

Issue 3: Permit powers

Some stakeholders suggested the process for applying for permits could be improved, including by enhancing transparency, making some permits (or even prospective permits) publicly available, allowing greater delegation of authority and specifying the considerations the Minister may consider in determining whether a permit is 'in the national interest'.

One stakeholder recommended removing the restrictions on the circumstances for which a permit application may be made.

Stakeholders also generally supported the use of general permits to classes of persons, including to mitigate unintended sanctions consequences and adverse impacts on the domestic economy.

One stakeholder submitted that there should be an express legislated exemption to permit the provision of legal services to designated persons or entities.



Issue 4: Humanitarian exemption

Stakeholders were generally supportive of a legislated humanitarian exemption for autonomous sanctions. Many submissions highlighted the impact of sanctions compliance costs and private sector 'de-risking' measures on the timely delivery of humanitarian aid.

Most submissions also supported a humanitarian exemption that would cover all types of autonomous sanctions measures (e.g. sanctioned supply, targeted financial sanctions etc.). Some suggested that the exemption should be consistent with exemptions applied by other jurisdictions, to streamline compliance. One stakeholder indicated that the humanitarian exemption could be supplemented by the issuance of general permits, although other stakeholders expressed the view that permits are not an effective tool for authorising humanitarian aid.

However, stakeholders expressed a variety of views on the scope of the exemption, both in respect of the actors and the activities that it might capture.

For example, some submissions advocated for a broad exemption that would apply to all impartial humanitarian organisations engaged in humanitarian activities, including local implementing partners, community networks or diaspora organisations in Australia. Others recommended the exemption be modelled upon the more narrow UNSC general humanitarian exemption (UNSC Resolution 2664 (2022)) to safeguard against sanctions evasion and enhance consistency with the UNSC sanctions framework. Some submissions suggested that the exemption could identify a specific list of actors and include a power to prescribe additional actors from time to time.

Similarly, some submissions suggested that the exemption should apply to the types of activities set out in UNSCR 2664 (2002). Other stakeholders expressed the view that the exemption should be framed in a non-exhaustive way to capture humanitarian activities as well as incidental services and transactions (e.g. payment of registration fees or taxes). Some submissions recommended that the exemption should also extend to early recovery/rebuilding and resilience building activities, or to universities, teaching and research.

Issue 5: Sanctions offences and enforcement, including the possibility of introducing civil penalties

Most stakeholders supported the introduction of civil penalties as a regulatory tool, on the basis that this would permit more proportionate enforcement action and lead to improved sanctions compliance.

Several submissions recommended that civil penalties only be introduced once the reforms flowing from the Review had been made; that appropriate defences be included; and that the Australian Sanctions Office be sufficiently resourced to pursue such penalties.

Some stakeholders had concerns that certain entities might unintentionally be exposed to civil penalties, such as bare trustees safeguarding assets or entities providing academic education or training.

Several stakeholders supported the introduction of both civil penalties and other regulatory tools, such as administrative penalties (i.e., those imposed by the regulator).



Issue 6: Review mechanism for sanctions designations and declarations

Stakeholders held a range of views on the proposal to replace the automatic expiry of autonomous sanctions listings every three years, with a more streamlined review mechanism (e.g. for the Minister to invite submissions on listings every five years).

Several stakeholders supported the proposal on the basis that it would reduce the administrative burden associated with sanctions re-listings, and the compliance burden arising from frequent changes to the Consolidated List. One submission indicated that existing safeguards under the autonomous sanctions framework would address the risk that persons or entities could remain listed for longer than necessary.

One stakeholder supported the removal of the automatic three-yearly expiry of listings, but observed that it was not clear that inviting submissions on listings every five years would actually reduce the administrative burden.

Other stakeholders did not support the proposal for the Minister to invite submissions on listings every five years (outlined in the Issues Paper) because, in their view, this would not be a sufficient replacement for the automatic expiry of listings. Some stakeholders suggested there was a risk that temporary sanctions measures could (by default) become permanent, and that this could interfere with human rights. Another stakeholder suggested the proposed five-year period for inviting submissions could be reduced to three.

Several stakeholders suggested that an independent advisory body could be established to advise the Foreign Minister on sanctions decisions. Another recommended that listing decisions be subject to merits review in an administrative tribunal (in addition to judicial review).

Issue 7: Regulatory functions of the Australian Sanctions Office

Stakeholders were generally in favour of engaging the injunction powers under the *Regulatory Powers (Standard Provisions) Act 2014*.

Several stakeholders suggested that the utility of the 'DFAT Consolidated List' could be improved, including by enhancing data quality and search functionality, introducing a 'weak alias' function, and ensuring both full names and abbreviated names appeared on the list. One stakeholder suggested that a public beneficial ownership register should also be created.

Many stakeholders suggested that DFAT should increase its use of guidance notes and FAQs, and expand its sanctions education and outreach activities.



Other Issues

In addition to the seven key issues identified above, stakeholders also commented on:

1. The extent to which reforms proposed for the autonomous sanctions framework should be mirrored in the UNSC sanctions framework implemented by the *Charter of the United Nations Act 1945*.
2. Decision-making processes for new sanctions measures and the designation of persons and entities.
3. Anti-circumvention provisions.
4. Engagement with civil society, non-government organisations and diaspora communities.
5. Alignment of obligations under Australia's sanctions laws with anti-money laundering/counter-terrorism financing legislation.

Next steps

The Review will form the basis for DFAT's advice to Government on recommended areas for reform of Australia's sanctions laws, taking into account submissions on the Issues Paper, other stakeholder feedback and DFAT's experience administering Australia's sanctions laws.