



# **Autonomous Sanctions Act 2011**

**No. 38, 2011**

**An Act to make provision relating to sanctions to facilitate the conduct of Australia's external affairs, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Autonomous Sanctions Act 2011**

**No. 38, 2011**

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**An Act to make provision relating to sanctions to facilitate the conduct of Australia's external affairs, and for related purposes**

[Assented to 26 May 2011]

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Autonomous Sanctions Act 2011*.

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## 2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

## 3 Purposes of this Act

The main purposes of this Act are to:

- (a) provide for autonomous sanctions; and
- (b) provide for enforcement of autonomous sanctions (whether applied under this Act or another law of the Commonwealth); and
- (c) facilitate the collection, flow and use of information relevant to the administration of autonomous sanctions (whether applied under this Act or another law of the Commonwealth).

## 4 Definitions

In this Act:

**asset** means:

- (a) an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) a legal document or instrument in any form (including electronic or digital) evidencing title to, or interest in, such an asset or such property.

Note: Some examples of documents and instruments described in paragraph (b) are bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

**Australia**, when used in a geographical sense, includes the external Territories.

**autonomous sanction** means a sanction that:

- (a) is intended to influence, directly or indirectly, one or more of the following in accordance with Australian Government policy:
  - (i) a foreign government entity;
  - (ii) a member of a foreign government entity;

- (iii) another person or entity outside Australia; or
- (b) involves the prohibition of conduct in or connected with Australia that facilitates, directly or indirectly, the engagement by a person or entity described in subparagraph (a)(i), (ii) or (iii) in action outside Australia that is contrary to Australian Government policy.

**CEO** of a Commonwealth entity means the chief executive officer (however described) of that entity.

**Commonwealth entity** means:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); or
- (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*).

**designated Commonwealth entity** means a Commonwealth entity that:

- (a) is a designated Commonwealth entity under the *Charter of the United Nations Act 1945*; or
- (b) is specified in an instrument under section 5.

**foreign government entity** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country.

**officer** of a Commonwealth entity includes:

- (a) the CEO of the Commonwealth entity; and
- (b) an employee of the Commonwealth entity; and
- (c) any other person engaged by the Commonwealth entity, under contract or otherwise, to exercise powers, or perform duties or functions, of the Commonwealth entity.

**public international organisation** has the meaning given by section 70.1 of the *Criminal Code*.

**sanction law** means a provision that is specified in an instrument under subsection 6(1).

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***State or Territory entity*** means:

- (a) a State or Territory; or
- (b) an authority of a State or Territory.

***superior court*** means the Federal Court of Australia or the Supreme Court of a State or Territory.

**5 Specifying a Commonwealth entity as a designated Commonwealth entity**

The Minister may by legislative instrument specify a Commonwealth entity as a designated Commonwealth entity.

**6 Specifying a provision as a sanction law**

- (1) For a purpose stated in section 3, the Minister may by legislative instrument specify a provision of a law of the Commonwealth as a sanction law.
- (2) The Minister may specify a provision in relation to particular circumstances.

**7 Extension to external Territories**

This Act extends to every external Territory.

**8 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**9 Relationship with other laws**

This Act does not limit the operation of other laws of the Commonwealth so far as they operate to provide for autonomous sanctions or operate in relation to autonomous sanctions.

## **Part 2—Regulations to provide for sanctions**

### **Division 1—Making and effect of regulations**

#### **10 Regulations may apply sanctions**

- (1) The regulations may make provision relating to any or all of the following:
  - (a) proscription of persons or entities (for specified purposes or more generally);
  - (b) restriction or prevention of uses of, dealings with, and making available of, assets;
  - (c) restriction or prevention of the supply, sale or transfer of goods or services;
  - (d) restriction or prevention of the procurement of goods or services;
  - (e) provision for indemnities for acting in compliance or purported compliance with the regulations;
  - (f) provision for compensation for owners of assets that are affected by regulations relating to a restriction or prevention described in paragraph (b).
- (2) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the proposed regulations:
  - (a) will facilitate the conduct of Australia's relations with other countries or with entities or persons outside Australia; or
  - (b) will otherwise deal with matters, things or relationships outside Australia.
- (3) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of subsection (1) may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

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**11 Regulations may have extraterritorial effect**

- (1) The regulations may be expressed to have extraterritorial effect.
- (2) If they are so expressed, they have effect accordingly, and so does Division 2 of this Part.

**12 Effect of regulations on earlier Commonwealth Acts and on State and Territory laws**

The regulations have effect despite:

- (a) an Act enacted before the commencement of this section; or
- (b) an instrument made under such an Act (including such an instrument made at or after that commencement); or
- (c) a law of a State or Territory; or
- (d) an instrument made under such a law.

**13 Later Acts not to be interpreted as overriding this Part or the regulations**

- (1) An Act enacted at or after the commencement of this section is not to be interpreted as:
  - (a) amending or repealing, or otherwise altering the effect or operation of, a provision of this Part or of the regulations; or
  - (b) authorising the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of this Part or of the regulations.
- (2) Subsection (1) does not affect the interpretation of an Act so far as that Act provides expressly for that Act, or for an instrument made under that Act, to have effect despite this Act, despite the regulations, or despite a specified provision of this Act or of the regulations.

## **Division 2—Enforcing the regulations**

### **14 Injunctions**

- (1) If a person has engaged, is engaging, or proposes to engage, in conduct involving a contravention of the regulations, a superior court may by order grant an injunction restraining the person from engaging in the conduct.

Note: Contravention of the regulations may also be an offence against section 16.

- (2) An injunction may be granted only on application by the Attorney-General.
- (3) On an application, the court may grant an injunction by consent of all parties to the proceedings, whether or not the court is satisfied that subsection (1) applies.
- (4) A superior court may grant an interim injunction pending its determination of an application.
- (5) A court is not to require the Attorney-General or anyone else to give an undertaking as to damages, as a condition of granting an interim injunction.
- (6) A court may discharge or vary an injunction it has granted.
- (7) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct.

### **15 Invalidation of authorisations**

An authorisation (however described) granted under the regulations is taken never to have been granted if information

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contained in, or information or a document accompanying, the application for the authorisation:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the information or document is misleading in a material particular.

Example: An example of an authorisation is a licence, permission, consent or approval.

## **Part 3—Offences relating to sanctions**

### **16 Offence—contravening a sanction law**

#### *Individuals*

- (1) An individual commits an offence if:
  - (a) the individual engages in conduct; and
  - (b) the conduct contravenes a sanction law.
- (2) An individual commits an offence if:
  - (a) the individual engages in conduct; and
  - (b) the conduct contravenes a condition of an authorisation (however described) under a sanction law.

Example: An example of an authorisation is a licence, permission, consent or approval.

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for not more than 10 years, a fine not exceeding the amount worked out under subsection (4), or both.
- (4) For the purposes of subsection (3), the amount is:
  - (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
    - (i) 3 times the value of the transaction or transactions;
    - (ii) 2,500 penalty units; or
  - (b) otherwise—2,500 penalty units.

#### *Bodies corporate*

- (5) A body corporate commits an offence if:
  - (a) the body corporate engages in conduct; and
  - (b) the conduct contravenes a sanction law.
- (6) A body corporate commits an offence if:
  - (a) the body corporate engages in conduct; and

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- (b) the conduct contravenes a condition of an authorisation (however described) under a sanction law.

Example: An example of an authorisation is a licence, permission, consent or approval.

- (7) Subsection (5) or (6) does not apply if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection.

Note: The body corporate bears a legal burden in relation to the matter in subsection (7): see section 13.4 of the *Criminal Code*.

- (8) An offence against subsection (5) or (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (9) An offence against subsection (5) or (6) is punishable on conviction by a fine not exceeding:

- (a) if the contravention involves a transaction or transactions the value of which the court can determine—whichever is the greater of the following:
- (i) 3 times the value of the transaction or transactions;
  - (ii) 10,000 penalty units; or
- (b) otherwise—10,000 penalty units.

*Definition*

- (10) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**17 Offence—false or misleading information given in connection with a sanction law**

- (1) A person commits an offence if:
- (a) the person gives information or a document to a Commonwealth entity; and
  - (b) the information or document is given in connection with the administration of a sanction law; and
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- (c) the information or document:
  - (i) is false or misleading; or
  - (ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years, 2,500 penalty units or both.

- (2) A person (the *first person*) commits an offence if:
  - (a) the first person gives information or a document to another person; and
  - (b) the first person is reckless as to whether the other person or someone else will give the information or document to a Commonwealth entity in connection with the administration of a sanction law; and
  - (c) the information or document:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information or document is misleading.

Penalty: Imprisonment for 10 years, 2,500 penalty units or both.

- (3) Subsection (1) or (2) does not apply:
  - (a) as a result of subparagraph (1)(c)(i) or (2)(c)(i) if the information or document is not false or misleading in a material particular; or
  - (b) as a result of subparagraph (1)(c)(ii) or (2)(c)(ii) if the information or document did not omit any matter or thing without which the information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

#### *Geographical application of offences*

- (4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) or (2).

## Part 4—Information relating to sanctions

### 18 CEO of Commonwealth entity may give information or document on request by CEO of designated Commonwealth entity

- (1) The CEO (the *designated CEO*) of a designated Commonwealth entity may request the CEO (the *requested CEO*) of a Commonwealth entity to give the designated CEO specified information or documents for a purpose directly related to the administration of a sanction law.
- (2) The requested CEO may comply with the request, despite any other law of the Commonwealth, a State or a Territory.

### 19 Power to require information or documents to be given

- (1) The CEO of a designated Commonwealth entity may, for the purpose of determining whether a sanction law has been or is being complied with, give a person a written notice requiring the person to do either or both of the following:
  - (a) to give the CEO information of the kind, by the time and in any manner or form, specified in the notice;
  - (b) to give the CEO documents of the kind, by the time and in any manner, specified in the notice.
- (2) The person must comply with the notice despite any other law of the Commonwealth, a State or a Territory.
- (3) The time specified in the notice must be reasonable.
- (4) The person may, before the time specified in the notice, request the CEO to extend the time by which the information or documents must be given.
- (5) The CEO may, by written notice given to the person, vary the notice under subsection (1) to specify a later time by which the information or documents must be given.

- (6) Subsection (5) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a notice under subsection (1).

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* deals with revocation and variation etc. of instruments.

- (7) Subsection (1) does not apply if:
- (a) the person is the Commonwealth or a Commonwealth entity; or
  - (b) the person:
    - (i) is, or has at any time been, an officer of a Commonwealth entity; and
    - (ii) obtained or generated the information or document in the course of carrying out his or her duties as an officer of the Commonwealth entity.

## **20 Information may be required to be given on oath**

The CEO may require the information to be verified by, or given on, oath or affirmation that the information is true.

## **21 Offence for failure to comply with requirement**

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 19; and
  - (b) the person does not comply with the notice.

Penalty: Imprisonment for 12 months.

- (2) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

## **22 Self-incrimination not an excuse**

- (1) An individual is not excused from giving information or a document under section 19 on the ground that the information, or the giving of the document, might tend to incriminate the individual or otherwise expose the individual to a penalty or other liability.

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- (2) However, neither the information given nor the giving of the document is admissible in evidence against the individual in any criminal proceedings, or in any proceedings that would expose the individual to a penalty, other than proceedings for an offence against:
- (a) section 17 (false or misleading information given in connection with a sanction law); or
  - (b) section 21 (failure to comply with requirement to give information or document).

### **23 CEO may copy documents**

If a person gives a document to the CEO of a designated Commonwealth entity under section 19, the CEO:

- (a) may take and keep a copy of the document; and
- (b) must return the document to the person within a reasonable time.

### **24 Further disclosure and use of information and documents**

*Disclosure and use of information etc. within entity*

- (1) An officer of a designated Commonwealth entity may do any of the following for a purpose connected with the administration of a sanction law:
- (a) copy, make a record of or use any information or document;
  - (b) disclose any information, or give any document, to another officer of that entity.

*Disclosure outside of entity*

- (2) A CEO of a designated Commonwealth entity may disclose any information or give any document to any of the following for a purpose connected with the administration of a sanction law:
- (a) a Minister of the Commonwealth, a State or a Territory;
  - (b) the CEO of another Commonwealth entity;
  - (c) a State or Territory entity;
  - (d) a foreign government entity;
  - (e) a public international organisation;

- (f) a person or entity specified in an instrument under subsection (3).
- (3) The Minister may by legislative instrument specify a person or entity for the purposes of paragraph (2)(f).
- (4) A CEO of a designated Commonwealth entity may disclose information under subsection (2) only if the CEO is satisfied that the recipient of the disclosure will not disclose the information to anyone else without the CEO's consent.
- (5) Subsection (2) has effect subject to subsection (4).

*Relationship with other laws*

- (6) Subsections (1) and (2) apply despite:
  - (a) a law of the Commonwealth other than this section; and
  - (b) a law of a State or a Territory.

## **25 Protection from liability**

- (1) A person who, in good faith, gives, discloses, copies, makes a record of or uses information or a document under section 18, 19, 23 or 24 is not liable:
  - (a) to any proceedings for contravening any other law because of that conduct; or
  - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person or entity because of that conduct.
- (2) Subsection (1) does not prevent the person from being liable to a proceeding for conduct of the person that is revealed by the information or document.

## **26 Retention of records and documents**

- (1) A person who applies for an authorisation (however described) under a sanction law must retain any records or documents relating to that application for the period of 5 years beginning on:
  - (a) if the authorisation was granted—the last day on which an action to which the authorisation relates was done; or

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(b) if the authorisation was not granted—the day on which the application was made.

Example: An example of an authorisation is a licence, permission, consent or approval.

(2) A person who is granted an authorisation (however described) under a sanction law must retain any records or documents relating to the person's compliance with any conditions to which the authorisation is subject for the period of 5 years beginning on the last day on which an action to which the authorisation relates was done.

Note: A person may commit an offence if the person fails to give under section 19 a record or document that is required to be retained under this section: see section 21.

**27 Delegation**

- (1) The CEO of a Commonwealth entity may by written instrument delegate all or any of his or her powers or functions under this Part to:
- (a) an SES employee or acting SES employee of the entity; or
  - (b) an employee of the entity of equivalent rank to an SES employee.
- (2) In exercising powers or performing functions delegated under subsection (1), the delegate must comply with any directions of the CEO.

## **Part 5—Miscellaneous**

### **28 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 30 September 2010  
Senate on 28 October 2010]*