EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 204

Autonomous Sanctions Act 2012

Autonomous Sanctions Amendment Regulation 2012 (No. 1)

Section 28 of the Autonomous Sanctions Act 2011 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Autonomous Sanctions Regulations 2011 (the Principal Regulations) facilitate the conduct of Australia’s relations with certain countries, and with specific entities or persons outside Australia, through the imposition of autonomous sanctions in relation to those countries, or targeting those entities or persons.

The purpose of the Autonomous Sanctions Amendment Regulation 2012 (No. 1) (the Regulation) is to implement additional autonomous sanctions measures announced by the Minister for Foreign Affairs (the Minister) on 6 December 2011 and 24 January 2012 in relation to Iran and on 7 February 2012 and 25 June 2012 in relation to Syria.

The Regulation amends the Principal Regulations so as to prohibit, without prior authorisation from the Minister:

1. the supply, sale or transfer to Iran and Syria of equipment and technology, to be specified by the Minister in a separate instrument, for the oil, gas or petrochemical industry, as well as newly printed or unissued Iranian or Syrian denominated bank notes or newly minted or unissued Iranian or Syrian denominated coinage. In relation to Syria only, the Regulation extends this prohibition to goods specified by the Minister in a separate instrument as being equipment and technology for use in the construction or installation of new power plants for electricity, equipment, technology or software for the monitoring or interception of internet or telephone communications, or luxury goods;

2. the import, purchase or transport of Iranian and Syrian crude oil, petroleum or petrochemical products of a kind to be specified by the Minister in a separate instrument, as well as the provision of financial assistance or a financial service related to the import, purchase or transport of such products;

3. any transaction involving the supply, sale, transfer, import, purchase or transport of gold, precious metals and diamonds to which the governments of Iran and Syria, or their respective bodies, corporations or public agencies, are party. This prohibition extends to the provision of technical advice, assistance or training, financial assistance, a financial service or another service that assists with such a transaction

4. the acquisition or extension of an interest in, or the establishment of or participation in a joint venture with, or the granting of a financial loan or credit...
to Iranian and Syrian oil and gas and petrochemical sector entities, as well as to entities installing electricity power plants in Syria;

- the sale or otherwise making available of an interest in an Australian oil or gas commercial activity to an Iranian or Syrian public or private entity;
- an Iranian or Syrian financial institution setting up a representative office, branch or subsidiary in Australia, or acquiring or extending an interest in an Australian financial institution;
- a financial institution establishing a joint venture, correspondent banking relationship or even a bank account with an Iranian or Syria financial institution, or setting up a representative office, branch or subsidiary in Iran or Syria.

The Regulation amends the criteria in regulation 6 for the imposition of targeted financial and travel sanctions on persons in relation to Syria to include “a person or entity that the Minister is satisfied is providing support to the Syrian regime.”

The Regulation makes a number of small amendments to the definition of “sanctioned service” in regulation 5 to clarify the operation of this regulation and also amends regulation 18 to accommodate authorisations for the new “sanctioned import” and “sanctioned commercial activity” measures.

Details of the Regulation are set out in the Attachment.

**Statement of Compatibility with Human Rights**

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

**Autonomous Sanctions Amendment Regulation 2012 (No. 1)**

The Autonomous Sanctions Amendment Regulation 2012 (No. 1) (the Regulation) 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.

The Regulation is intended to give effect to additional autonomous sanctions measures announced by the Minister for Foreign Affairs (the Minister) on 6 December 2011 and 24 January 2012 in relation to Iran (in response to Iran's continuing non-compliance with United Nations Security Council resolutions on its nuclear program) and on 7 February 2012 and 25 June 2012 in relation to Syria (in response to the escalating violence and human rights abuses in Syria).

The Regulation amends the Autonomous Sanctions Regulations 2011 (the Principal Regulations) by introducing a new “sanctioned import” measure, a new “sanctioned commercial activity” and expanding the scope of existing measures targeted at trade and investment with Iran and Syria. The Regulation also amends the criteria for the imposition of targeted financial and travel sanctions on persons in relation to Syria to include “a person or entity that the Minister is satisfied is providing support to the Syrian regime.”
The human rights obligations that may possibly be affected by the amendment to the Principal Regulations are:

- Equality and non-discrimination (Article 26 of the International Covenant on Civil and Political Rights)
- Freedom of movement (Article 12 of the International Covenant on Civil and Political Rights)
- Right to an effective remedy (Article 2 of the International Covenant on Civil and Political Rights)
- Expulsion of aliens, including potential non-refoulement issues (Articles 6, 7 and 13 of the International Covenant on Civil and Political Rights; Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

The new criterion in the Regulation for the imposition of travel sanctions will authorise the Minister to declare a person, who the Minister is satisfied is providing support to the Syrian regime, for the purpose of preventing the person from travelling to, entering or remaining in Australia.

To the extent that the travel sanctions relate to a non-citizen outside Australia applying for a visa to enter Australia, Australia’s human rights obligations are not engaged as such a person is outside Australia’s jurisdiction. In particular, the right to freedom of movement (ICCPR Article 12) does not provide a right for non-citizens to enter a country of which they are not a national.

In terms of non-discrimination, persons who are declared by the Minister will be treated differently to persons who are not. This differentiation in treatment does not constitute unlawful discrimination as it is a reasonable and proportionate response aimed at punishing persons closely associated with regimes which are involved in grave human rights breaches and unlawful armed conflict.

The consequence for a non-citizen in Australia whose visa application is refused, or whose visa is cancelled, because they have been declared by the Minister, is that they must leave Australia if they do not obtain another visa to remain, or be removed.

A person can apply to the Minister to have the declaration revoked. The Minister may also waive, for national interest or humanitarian reasons, the operation of the declaration, meaning it is not a bar to visa grant or a ground for cancellation. The decisions of the Minister are subject to judicial review and the Regulation therefore complies with Australia’s obligations about the expulsion of non-citizens who are lawfully in Australia (Article 13 of ICCPR).

The Regulation is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.
Details of the *Autonomous Sanctions Amendment Regulation 2012 (No. 1)*

**Section 1 – Name of Regulation**
Section 1 provides that the name of the Regulation is the *Autonomous Sanctions Amendment Regulation 2012 (No. 1)*.

**Section 2 – Commencement**
Section 2 provides that the Regulation commences on the day after it is registered.

**Section 3 – Amendment of the *Autonomous Sanctions Regulations 2011***
Section 3 provides that Schedule 1 amends the *Autonomous Sanctions Regulations 2011*.

**Schedule 1 – Amendments**

**Item [1] - Regulation 3**

**Item [2] – Regulation 3, definition of financial service, paragraph (e)**
Item [2] amends the definition of financial service to include financial derivatives.

**Item [3] – Regulation 3**

**Item [4] – Subregulation 4 (2), table, item 3, after paragraph (b)**
Item [4] amends the list of goods for Iran in item 3 of the table in subregulation 4(2), by inserting new paragraph (c): “equipment and technology for the oil and gas industry, or the petrochemical industry, of a kind specified in an instrument under this regulation” and new paragraph (d): “newly printed or unissued Iranian denominated bank notes or newly minted or unissued Iranian denominated coinage.”

**Item [5] - Subparagraph 4 (2), table, item 4, column 3**
Item [5] amends the list of goods for Syria in item 4, column 3 of the table in subregulation 4 (2), by substituting the existing entry “arms or related materiel” with: “(a) arms or related materiel; (b) equipment and technology, for use in the construction or installation of new power plants for electricity, of a kind specified in an instrument under this regulation; (c) equipment and technology for the oil and gas industry, or the petrochemical industry, of a kind specified in an instrument under this regulation; (d) newly printed or unissued Syrian denominated bank notes or newly minted or unissued Syrian denominated coinage; (e) equipment, technology or software for the monitoring or interception of internet or telephone communications, of a kind specified in an instrument under this regulation; and (f) luxury goods, of a kind specified in an instrument under this legislation.”

Item [6] inserts new subregulation 4(4) which provides that a person makes a “sanctioned supply” if the person supplies, sells or transfers an item of gold, precious metals and diamonds; and as a direct or indirect result of the supply, sale or transfer, the goods are transferred to (a) the government of Iran; or (b) a public body, corporation or agency of the government of Iran; or (c) the government of Syria; or (d) a public body, corporation or agency of the government of Syria; or (e) a person, entity or body acting on behalf of or at the direction of an entity mentioned in paragraph (a) to (d); or (f) an entity or body owned or controlled by an entity mentioned in paragraphs (a) to (d).

**Item [7] – After Regulation 4**

Item [7] inserts new regulation 4A, which defines the scope of “sanctioned imports”.

Subregulation 4A(1) provides that a person makes a sanctioned import if (a) the person, (i) imports or purchases goods from another person; or (ii) transports goods; and (b) the goods are import sanctioned goods for a country.

Subregulation 4A(2) provides that the following goods for Iran and Syria are import sanctioned goods: (a) crude oil products of a kind specified in an instrument under this regulation, (b) petroleum products of a kind specified in an instrument under this regulation, and (c) petrochemical products of a kind specified in an instrument under this regulation.

Subregulation 4A(3) provides that the Minister may, by legislative instrument, designate goods as import sanctioned goods for a country mentioned in the designation.

Subregulation 4A(4) provides that a person makes a sanctioned import if the person imports or purchases gold, precious metals and diamonds from (a) the government of Iran; or (b) a public body, corporation or agency of the government of Iran; or (c) the government of Syria; or (d) a public body, corporation or agency of the government of Syria; or (e) a person, entity or body acting on behalf of or at the direction of an entity mentioned in paragraph (a) to (d); or (f) an entity or body owned or controlled by an entity mentioned in paragraphs (a) to (d).

**Item [8] – Regulation 5**

Item [8] amends the scope of “sanctioned service” in subregulation 5 (1) to provide that for the principal Regulations, a “sanctioned service”, for a country mentioned in an item of the table also includes the provision to a person of the services in paragraphs 5(1)(a) to (d), if it assists with, or is provided in relation to, an activity mentioned in an item of the table in subregulation 5(1).

Item [8] streamlines the description of the activities in relation to which the provision of a “sanctioned service” to, or for the use in, the relevant country in the table in subregulation 5(1) applies. For Items 1 to 5 in the table in subregulation 5(1), existing paragraph (b) is substituted with new paragraph (b), which provides that a “sanctioned service” applies to a “sanctioned supply” for the relevant country, and new paragraph (c), which provides that a “sanctioned service” applies to the manufacture,
maintenance or use of an export sanctioned goods for the relevant country. Item [8] also includes in Item 3 (Iran) and Item 4 (Syria) of the table in subregulation 5(1) a new activity (d) which provides that a “sanctioned service” applies to the provision of financial assistance or a financial service for a sanctioned import for Iran and Syria respectively.

Item [8] inserts new subregulation 5(2) which provides that a “sanctioned service” is also, for (1) the government of Iran; or (2) a public body, corporation or agency of the government of Iran; or (3) the government of Syria; or (4) a public body, corporation or agency of the government of Syria; or (5) a person, entity or body acting on behalf of or at the direction of an entity mentioned in items 1 to 4; or (6) an entity or body owned or controlled by an entity mentioned in items 1 to 5, the provision to an entity or person of (a) technical advice, assistance or training; or (b) financial assistance; or (c) a financial service; or (d) another services, if it assists with, or is provided in relation to, an activity involving the supply, sale, transfer, import, purchase or transport of an item of gold, precious metals and diamonds.

Item [8] inserts new regulation 5A, which defines the scope of a “sanctioned commercial activity”.

New subregulation 5A(1) provides that a “sanctioned commercial activity” is the acquisition or the extension of an interest in, or the establishment of, or participation in a joint venture with, or the granting of a financial loan or credit to an entity of person in the table for subregulation 5A(1), including – an entity in Iran or Syria that is engaged in the petrochemical, oil or gas industry in Iran or Syria, or – an Iranian or Iranian owned entity, or a Syrian or Syrian owned entity involved in such industries outside Iran or Syria, or – an entity in Syria engaged in the construction or installation of new power plants for electricity production.

New subregulation 5A(2) provides that a “sanctioned commercial activity” is the sale or otherwise making available of an interest in a commercial activity in Australia that is related to the oil and gas industry to an entity or person in the table for subregulation 5A(2), including (1) the government of Iran; (2) any natural person in, or resident in Iran; (3) an entity formed or incorporated in Iran; (4) the government of Syria; (5) any natural person in, or resident in Syria; (6) an entity formed or incorporated in Syria; (7) an entity or person acting on behalf of an entity or a person mentioned in items (1) to (6); (8) an entity or person acting at the direction of an entity or a person mentioned in items (1) to (6); or (9) an entity owned or controlled by a person or entity mentioned items (1) to (6).

New subregulation 5A(3) provides that a “sanctioned commercial activity” is the opening in Australia of a representative office of, or the establishment in Australia of a branch or subsidiary of, or the conclusion of a related agreement for or on behalf of, or the acquisition or extension of an interest in an Australian financial institution by, or the sale of an interest in an Australian financial institution to, or the making available (other than by sale) of an interest in an Australian financial institution to an entity or person in the table for subregulation 5A (3), including – a financial institution domiciled in Iran or Syria; a branch or subsidiary, wherever located, of a financial institution domiciled in Iran or Syria; or a financial institution, wherever domiciled, that is controlled by a person or entity domiciled in Iran or Syria.
New subregulation 5A(4) provides that a “sanctioned commercial activity” is the establishment by a financial institution of a joint venture or a correspondent banking relationship with, or the opening by a financial institution of a bank account with an entity or person in the table for subregulation 5A(4), including – a financial institution domiciled in Iran or Syria; or a branch or subsidiary, wherever located, of a financial institution domiciled in Iran or Syria; or a financial institution, wherever domiciled, that is controlled by a person or entity domiciled in Iran or Syria.

Subregulation 5A(4) also provides that a “sanctioned commercial activity” is also the opening by a financial institution of a representative office in Iran or Syria and the establishment by a financial institution of a branch or subsidiary in Iran or Syria.

**Item [9] – Subregulation 6(1), table, item 7**
Item [9] amends the designation and declaration criterion for Syria in subregulation 6(1) by substituting a new criterion, which includes “a person or entity that the Minister is satisfied is providing support for the Syrian regime.”

**Item [10] – After regulation 12**
Item [10] inserts new regulation 12A which prohibits the making of a sanctioned import other than as authorised by a permit granted under regulation 18.

The prohibition in regulation 12A applies to a person, whether or not in Australia, and whether or not an Australian citizen, who uses the services of an Australian ship or an Australian aircraft to transport import sanctioned goods in the course of, or for the purpose of, making an unauthorised sanctioned import.

A body corporate with effective control over the actions of another body corporate or entity, wherever incorporated or situated, is liable under regulation 12A for any unauthorised sanctioned import made by that other body corporate or entity.

It is anticipated that regulation 12A will be specified as a “sanction law” by the Minister under section 6 of the Act. Consequently, a contravention of regulation 12A will be an offence under section 16 of the Act.


A body corporate with effective control over the actions of another body corporate or entity, wherever incorporated or situated, is liable under regulation 13A for any unauthorised sanctioned commercial activity engaged in by that other body corporate or entity.

It is anticipated that regulation 13A will be specified as a “sanction law” by the Minister under section 6 of the Act. Consequently, a contravention of regulation 13A will be an offence under section 16 of the Act.
Item [12] – Subregulation 18(1)
Item [12] substitutes subregulation 18(1) to authorise the Minister to grant permits, either on application by a person or on the Minister’s own initiative, authorising a sanctioned supply, a sanctioned import, a sanctioned commercial activity, a sanctioned service, making an asset available to a person or entity that would otherwise contravene regulation 14, or a use of, or a dealing with, an asset that would otherwise contravene regulation 15.

Item [13] substitutes the note in subregulation 20(1) to take account of the amendments to subregulation 18(1).

Item [14] – Subregulation 20(2), note
Item [14] substitutes the note in subregulation 20(2) to take account of the amendments to subregulation 18(1).