Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

# Autonomous Sanctions Act 2011

**Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Amendment List 2014**

The *Autonomous Sanctions Regulations 2011* (the Regulations) commenced on
15 December 2011. The purpose of the Regulations is to 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.

Paragraph 6 (1) (a) of the Regulations authorises the Minister for Foreign Affairs (the Minister), by legislative instrument, to designate a person or entity on the basis that the person or entity is mentioned in an item of the table in regulation 6. The purpose of such a designation is to subject the designated person or entity to targeted financial sanctions. The 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). 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 an asset that is owned or controlled by a designated person or entity 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).

Paragraph 6 (1) (b) of the Regulations authorises the Minister, by legislative instrument, to declare a person for the purpose of preventing the person from travelling to, entering or remaining in Australia on the basis that the person is mentioned in an item of the table in regulation 6.

The persons designated and declared by the Minister for the purpose of Australia’s autonomous sanctions in relation to the former Federal Republic of Yugoslavia are listed in the *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) List 2012* (the FFRY List)

The corresponding authority for the Minister to revoke designations and declarations made under regulation 6 is found in paragraph 10 (1) (a) (for designations) and paragraph 10 (1) (b) (for declarations) of the Reguations. Sub-regulation 10 (2) provides that the Minister may revoke a designation or declaration on the Minister’s initiative.

In March 2014 the Department of Foreign Affairs and Trade (DFAT) completed an extensive evidence based process to update the FFRY List. This process involved DFAT overseas missions and other Commonwealth Government departments in a review of persons subject to the International Criminal Tribunal for the former Yugoslavia (ICTY) proceedings, Interpol, EU and US Sanctions lists.

Following the completion of the review of the FFRY List, the Minister has decided to revoke designations and declarations against 82 individuals on the basis that these persons no longer satisfy the criterion in sub-regulation 6 (1) of the Regulations.

Each person listed in Schedule 1 of the *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Amendment List 2014* (the FFRY Amendment List), remains designated by the Minister for the purposes of paragraph 6 (1) (a) of the Regulations and declared by the Minister for the purposes of paragraph 6 (1) (b) of the Regulations, on the basis that he, she or it is mentioned in Item 2 of the table in regulation 6: that is:

1. a person who has been indicted for an offence by the ICTY (whether or not the person has been convicted of the offence);
2. a person who has been indicted for an offence within the jurisdiction of the ICTY by a domestic court in Bosnia-Herzegovina, Croatia or Serbia (whether or not the person has been convicted of the offence);
3. a person who is subject to an Interpol arrest warrant related to an offence within the jurisdiction of the ICTY;
4. a person who the Minister is satisfied is a supporter of the former regime of Slobodan Milosevic;
5. a person who is suspected of assisting a person who is:

(i) indicted by the ICTY; and

 (ii) not currently detained by the ICTY.

that is applied for such designation and declaration.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the FFRY List are part, has been subject to extensive consultation with governmental and non-governmental stakeholders since May 2010.

DFAT conducts ongoing public consultations, including with the Australian financial services sector and broader business community, in relation to these types of measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons specified in the FFRY Amendment List, DFAT is satisfied that wider consultations beyond those it has already undertaken would be inappropriate (sub-sections 18 (1) and (2) (e) of the *Legislative Instruments Act 2003*).

**Statement of Compatability with Human Rights**

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

*Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Amendment List 2014*

The *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Amendment List 2014* (the FFRY Amendment List) 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 FFRY Amendment List amends the *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) List 2012* to give effect to the decision of the Minister of Foreign Affairs to revoke designations and declarations against 82 individuals on the FFRY List on the basis that these persons no longer satisfy the criterion mentioned in Item 2 of the table in regulation 6, that is:

1. a person who has been indicted for an offence by the ICTY (whether or not the person has been convicted of the offence);
2. a person who has been indicted for an offence within the jurisdiction of the ICTY by a domestic court in Bosnia-Herzegovina, Croatia or Serbia (whether or not the person has been convicted of the offence);
3. a person who is subject to an Interpol arrest warrant related to an offence within the jurisdiction of the ICTY;
4. a person who the Minister is satisfied is a supporter of the former regime of Slobodan Milosevic;
5. a person who is suspected of assisting a person who is:

(i) indicted by the ICTY; and

 (ii) not currently detained by the ICTY.

that is applied for such designation and declaration.

A person or entity subject to designation or declaration under regulation 6 of the Regulations may apply to the Minister for the revocation of those decisions (regulation 11 of the Regulations). Decisions under both regulations 6 and 11 of the Regulations are judicially reviewable.

The targeted financial sanctions imposed on persons and entities designated under paragraph 6 (1) (a) of the Regulations do not affect the title to any asset owned or controlled by the designated person or entity. A designated person or entity may continue to draw on his or her frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or fees or service charges that are in accordance with a law in force in Australia for the routine holding or maintenance of frozen assets (regulations 18 and 20 of the Regulations).

Similarly, a designated person or entity may draw on frozen assets they own or control to satisfy any pre-existing judicial, administrative or arbitral lien or judgement awarded to another (non-designated) person or entity, as well as to make payments required under contracts, agreements or obligations made before the date on which those assets became frozen.

Regulation 19 authorises the Minister to waive the operation of a declaration under regulation 6 so as to allow the person to travel to, enter or remain in Australia, either on the grounds that it would be in the national interest or on humanitarian grounds.