

**LEGISLATION (EXEMPTIONS AND OTHER MATTERS) AMENDMENT**  
**(AUTONOMOUS SANCTIONS) REGULATIONS 2022**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and instruments. It also provides for the registration, tabling, parliamentary scrutiny, disallowance and sunseting of instruments.

Section 62 of the Legislation 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 that Act.

Part 4 of Chapter 3 of the Legislation Act provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed approximately 10 years after they are made unless steps are taken to preserve their operation, or the instruments are exempt from sunseting.

Section 54 of the Legislation Act provides for instruments to which the sunseting regime in Part 4 of Chapter 3 does not apply. Subsection 54(2) of the Legislation Act provides that instruments prescribed by regulation for the purposes of paragraph 54(2)(b) are not subject to sunseting.

The *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulation) prescribes instruments that are exempt from sunseting. Section 12 of the Principal Regulation prescribes particular instruments that are exempt from sunseting under paragraph 54(2)(b) of the Act.

The *Legislation (Exemptions and Other Matters) Amendment (Autonomous Sanctions) Regulations 2022* (the Amendment Regulations) amend the Principal Regulation to provide a sunseting exemption for legislative instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 of the *Autonomous Sanctions Regulations 2011*.

*Autonomous Sanctions Regulations 2011*

The *Autonomous Sanctions Act 2011* provides for autonomous sanctions measures to be applied by regulation. The *Autonomous Sanctions Regulations 2011* (AS Regulations) facilitate the conduct of Australia's relations with certain countries through the imposition of a range of autonomous sanctions measures. Such measures include targeted financial sanctions and/or travel bans on persons and entities designated by the Minister by legislative instrument for this purpose.

*Regulation 6*

Legislative instruments made by the Minister under regulation 6 of the AS Regulations designate persons or entities that are subject to targeted financial sanctions and declare persons who are subject to travel bans due to their involvement in specified activities

relating to particular countries. This means that the prohibition in the AS Regulations on making an asset available to a designated person or entity will apply. It also prevents a declared person from travelling to, entering or remaining in Australia.

#### *Regulation 6A*

Legislative instruments made by the Minister under regulation 6A of the AS Regulations designate persons or entities that are subject to targeted financial sanctions and declare persons who are subject to travel bans due to their involvement in thematically-defined activities such as contributing to the proliferation of weapons of mass destruction, causing or otherwise participating in a cyber incident, engaging in an act of corruption that is serious or engagement in serious human rights abuses. This means the prohibitions in the AS Regulations on making an asset available to a designated person or entity will apply. It also prevents a declared person from travelling to, entering or remaining in Australia in specific circumstances.

#### *Regulation 7*

Legislative instruments made by the Minister under regulation 7 of the AS Regulations designate a ‘controlled asset’ as a ‘designated asset’. This means there would be restrictions on using, dealing with, or making available such assets.

#### *Subregulation 8(1)*

Legislative instruments made by the Minister under subregulation 8(1) of the AS Regulations designate ‘sanctioned vessels’. Under subregulation 8(4) the Minister may direct a sanctioned vessel to leave Australia (including by a particular route), or to not enter a particular port or place, or any port or place, in Australia.

#### *Regulation 9*

Under regulation 9 of the AS Regulations, a designation or declaration made under regulations 6, 6A, 7 or subregulation 8(1) automatically ceases to have effect three years from the date it commenced, unless specifically continued in effect for a further three years by legislative instrument made pursuant to subsection 9(3).

#### *Exemption from sunseting*

It is appropriate that legislative instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 be exempt from sunseting, as every three years the Minister must review their ongoing relevance and whether they should continue in effect. If these legislative instruments were to remain subject to sunseting, the Minister would be required to conduct a fitness-for-purpose sunseting review of instruments that would have already been reviewed on three occasions in the preceding ten-year period. If the sanctions applied by the instrument were still required, a replacement instrument would need to be made, despite the tailored cessation and extension mechanisms set out in the AS Regulations.

The Legislation Act does not specify any conditions that must be fulfilled before the power to grant exemptions from sunseting may be exercised. However, there are established criteria against which the Attorney-General considers all applications to exempt an instrument or class of instruments from sunseting. The legislative instruments made under regulations 6,

6A, 7, subregulation 8(1) and regulation 9 are subject to a more stringent statutory review process than is set out in the Legislation Act, and preserving that process is important. The sunseting exemptions created by the Amendment Regulations are justified on this basis.

## **CONSULTATION**

The Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Minister for Foreign Affairs, Senator the Hon Marise Payne, who has responsibility for the *Autonomous Sanctions Regulations 2011*, applied to the Attorney-General seeking an exemption from sunseting for all legislative instruments made under regulations 6, 6A, 7 and subregulation 8(1) of the *Autonomous Sanctions Regulations 2011*, as well as legislative instruments made under regulation 9 continuing in effect such designations or declarations.

In preparing the application for exemption, the Department of Foreign Affairs and Trade consulted internally, as well as with other government agencies, all of whom supported the exemption application. Public consultation was not considered appropriate and was not undertaken.

## **REGULATION IMPACT STATEMENT**

The Amendment Regulations do not have any regulatory impact. The OBPR reference is OBPR22-01793.

## **OTHER DETAILS**

Details of the Amendment Regulations are set out in the Attachment A.

The Amendment Regulations are a legislative instrument for the purposes of the Legislation Act.

The Amendment Regulations commence immediately after registration.

The Amendment Regulations, the Principal Regulations and the Legislation Act are available on the Federal Register of Legislation <https://www.legislation.gov.au/>.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### ***Legislation (Exemptions and Other Matters) Amendment (Autonomous Sanctions) Regulations 2022***

The *Legislation (Exemptions and Other Matters) Amendment (Autonomous Sanctions) Regulations 2022* (the Amendment Regulations) are 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*.

#### **Overview**

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and Instruments and provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed approximately 10 years after they are made unless steps are taken to preserve their operation or the instruments are exempt from sunseting.

The *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulation) prescribe classes of instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Act.

The Amendment Regulations are made under section 62 of the Legislation Act and amend the Principal Regulation by adding item 10B in section 12 of the Principal Regulations to create an exemption from sunseting for legislative instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 of the *Autonomous Sanctions Regulations 2011*.

The sunseting exemptions made by the Amendment Regulations are in accordance with established policy criteria for the granting of exemptions.

#### **Autonomous Sanctions Regulations 2011**

The Amendment Regulations provide an exemption from sunseting for legislative instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 of the *Autonomous Sanctions Regulations 2011*. The exemption from sunseting for these instruments does not raise human rights issues as these instruments are subject to a more stringent statutory review process than is required by the sunseting regime set out in the Legislation Act. The exemption will preserve the operation of that statutory review process.

#### **Conclusion**

Exemptions from sunseting do not alter the content of the laws to which those exemptions apply. Sunseting exemptions merely ensure that the legislative instruments in question are not automatically repealed on the first 1 April or 1 October that falls on or after the tenth anniversary of their registration. The Regulations are compatible with human rights because the exemptions from sunseting do not engage any of the rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The compatibility with human rights of legislative instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 will be assessed when those instruments are made or continued in effect.

## NOTES ON SECTIONS

### **Details of the *Legislation (Exemptions and Other Matters) Amendment (Autonomous Sanctions) Regulations 2022***

#### **Section 1 – Name**

This section provides that the title of the Regulations is the *Legislation (Exemptions and Other Matters) Amendment (Autonomous Sanctions) Regulations 2022* (Amendment Regulations).

#### **Section 2 – Commencement**

This section provides for the Amendment Regulations to commence immediately after their registration.

#### **Section 3 – Authority**

This section provides that the Amendment Regulations are made under the *Legislation Act 2003*.

#### **Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### **Schedule 1 – Amendments**

*Legislation (Exemptions and Other Matters) Regulation 2015*

#### **Item [1] – Section 12 (after table item 10A)**

For the purposes of paragraph 54(2)(b) of the Legislation Act, section 12 of the Principal Regulation provides that instruments contained in the table to that section are not subject to sunseting.

Item 1 of Schedule 1 to the proposed Regulations would insert a new sunseting exemption (item 10B) in section 12 of the Principal Regulations. New item 10B would provide an exemption from sunseting for instruments made under regulations 6, 6A, 7, subregulation 8(1) and regulation 9 of the *Autonomous Sanctions Regulations 2011*.

The exemption is appropriate as the instruments are subject to a more stringent statutory review process than is required under the sunseting regime set out in the Legislation Act.