

2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Autonomous Sanctions Bill 2010**

**No.     , 2010**

*(Foreign Affairs)*

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



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1 **A Bill for an Act to make provision relating to**  
2 **sanctions to facilitate the conduct of Australia’s**  
3 **external affairs, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**  
6

7 **1 Short title**

8 This Act may be cited as the *Autonomous Sanctions Act 2010*.

Section 2

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1     **2 Commencement**

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

4     **3 Purposes of this Act**

5                     The main purposes of this Act are to:

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

13    **4 Definitions**

14                    In this Act:

15                    *asset* means:

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

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

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

27                    *autonomous sanction* means a sanction that:

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

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

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

9 **Commonwealth entity** means:

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

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

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

19 **foreign government entity** means:

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

24 **officer** of a Commonwealth entity includes:

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

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

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

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

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

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

6                    **5 Specifying a Commonwealth entity as a designated  
7                    Commonwealth entity**

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

10                   **6 Specifying a provision as a sanction law**

11                   (1) For a purpose stated in section 3, the Minister may by legislative  
12                   instrument specify a provision of a law of the Commonwealth as a  
13                   sanction law.

14                   (2) The Minister may specify a provision in relation to particular  
15                   circumstances.

16                   **7 Extension to external Territories**

17                   This Act extends to every external Territory.

18                   **8 Act binds the Crown**

19                   (1) This Act binds the Crown in each of its capacities.

20                   (2) This Act does not make the Crown liable to be prosecuted for an  
21                   offence.

22                   **9 Relationship with other laws**

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



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

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

4 **10 Regulations may apply sanctions**

5 (1) The regulations may make provision relating to any or all of the  
6 following:

7 (a) proscription of persons or entities (for specified purposes or  
8 more generally);

9 (b) restriction or prevention of uses of, dealings with, and  
10 making available of, assets;

11 (c) restriction or prevention of the supply, sale or transfer of  
12 goods or services;

13 (d) restriction or prevention of the procurement of goods or  
14 services;

15 (e) provision for indemnities for acting in compliance or  
16 purported compliance with the regulations;

17 (f) provision for compensation for owners of assets that are  
18 affected by regulations relating to a restriction or prevention  
19 described in paragraph (b).

20 (2) Before the Governor-General makes regulations for the purposes of  
21 subsection (1), the Minister must be satisfied that the proposed  
22 regulations:

23 (a) will facilitate the conduct of Australia's relations with other  
24 countries or with entities or persons outside Australia; or

25 (b) will otherwise deal with matters, things or relationships  
26 outside Australia.

27 (3) Despite subsection 14(2) of the *Legislative Instruments Act 2003*,  
28 regulations made for the purposes of subsection (1) may make  
29 provision in relation to a matter by applying, adopting or  
30 incorporating any matter contained in an instrument or other  
31 writing as in force or existing from time to time.

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1 **11 Regulations may have extraterritorial effect**

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

5 **12 Effect of regulations on earlier Commonwealth Acts and on State**

6 **and Territory laws**

- 7 The regulations have effect despite:
- 8 (a) an Act enacted before the commencement of this section; or
- 9 (b) an instrument made under such an Act (including such an
- 10 instrument made at or after that commencement); or
- 11 (c) a law of a State or Territory; or
- 12 (d) an instrument made under such a law.

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

14 **regulations**

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

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2 **Division 2—Enforcing the regulations**

3 **14 Injunctions**

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

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

10 (2) An injunction may be granted only on application by the  
11 Attorney-General.

12 (3) On an application, the court may grant an injunction by consent of  
13 all parties to the proceedings, whether or not the court is satisfied  
14 that subsection (1) applies.

15 (4) A superior court may grant an interim injunction pending its  
16 determination of an application.

17 (5) A court is not to require the Attorney-General or anyone else to  
18 give an undertaking as to damages, as a condition of granting an  
19 interim injunction.

20 (6) A court may discharge or vary an injunction it has granted.

21 (7) The power to grant or vary an injunction restraining a person from  
22 engaging in conduct may be exercised:

23 (a) whether or not it appears to the court that the person intends  
24 to engage again, or to continue to engage, in such conduct;  
25 and

26 (b) whether or not the person has previously engaged in such  
27 conduct.

28 **15 Invalidation of authorisations**

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

**Part 2** Regulations to provide for sanctions

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- 1 contained in, or information or a document accompanying, the  
2 application for the authorisation:  
3 (a) is false or misleading in a material particular; or  
4 (b) omits any matter or thing without which the information or  
5 document is misleading in a material particular.  
6 Example: An example of an authorisation is a licence, permission, consent or  
7 approval.

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

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

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

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

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

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

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

15 (a) if the contravention involves a transaction or transactions the  
16 value of which the court can determine—whichever is the  
17 greater of the following:

- 18 (i) 3 times the value of the transaction or transactions;  
19 (ii) 10,000 penalty units; or

20 (b) otherwise—10,000 penalty units.

21 *Definition*

- 22 (10) In this section:

23 *engage in conduct* means:

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

26 **17 Offence—false or misleading information given in connection**  
27 **with a sanction law**

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

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

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

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

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

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

28 *Geographical application of offences*

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

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## Part 4—Information relating to sanctions

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

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(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.

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(2) The requested CEO may comply with the request, despite any other law of the Commonwealth, a State or a Territory.

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

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(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:

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(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.

23

24

(2) The person must comply with the notice despite any other law of the Commonwealth, a State or a Territory.

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(3) The time specified in the notice must be reasonable.

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(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.

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(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.



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

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

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

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

15 The CEO may require the information to be verified by, or given  
16 on, oath or affirmation that the information is true.  
17

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

- 18 (1) A person commits an offence if:  
19 (a) the person has been given a notice under section 19; and  
20 (b) the person does not comply with the notice.  
21

22 Penalty: Imprisonment for 12 months.

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

**22 Self-incrimination not an excuse**

- 26 (1) An individual is not excused from giving information or a  
27 document under section 19 on the ground that the information, or  
28 the giving of the document, might tend to incriminate the  
29 individual or otherwise expose the individual to a penalty or other  
30 liability.  
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- 1 (2) However, neither the information given nor the giving of the  
2 document is admissible in evidence against the individual in any  
3 criminal proceedings, or in any proceedings that would expose the  
4 individual to a penalty, other than proceedings for an offence  
5 against:  
6 (a) section 17 (false or misleading information given in  
7 connection with a sanction law); or  
8 (b) section 21 (failure to comply with requirement to give  
9 information or document).

### 10 **23 CEO may copy documents**

- 11 If a person gives a document to the CEO of a designated  
12 Commonwealth entity under section 19, the CEO:  
13 (a) may take and keep a copy of the document; and  
14 (b) must return the document to the person within a reasonable  
15 time.

### 16 **24 Further disclosure and use of information and documents**

#### 17 *Disclosure and use of information etc. within entity*

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

#### 24 *Disclosure outside of entity*

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

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

10 *Relationship with other laws*

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

14 **25 Protection from liability**

- 15 (1) A person who, in good faith, gives, discloses, copies, makes a  
16 record of or uses information or a document under section 18, 19,  
17 23 or 24 is not liable:  
18 (a) to any proceedings for contravening any other law because of  
19 that conduct; or  
20 (b) to civil proceedings for loss, damage or injury of any kind  
21 suffered by another person or entity because of that conduct.
- 22 (2) Subsection (1) does not prevent the person from being liable to a  
23 proceeding for conduct of the person that is revealed by the  
24 information or document.

25 **26 Retention of records and documents**

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

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

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

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

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

14 **27 Delegation**

15 (1) The CEO of a Commonwealth entity may by written instrument  
16 delegate all or any of his or her powers or functions under this Part  
17 to:

- 18 (a) an SES employee or acting SES employee of the entity; or  
19 (b) an employee of the entity of equivalent rank to an SES  
20 employee.

21 (2) In exercising powers or performing functions delegated under  
22 subsection (1), the delegate must comply with any directions of the  
23 CEO.

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2 **Part 5—Miscellaneous**

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4 **28 Regulations**

5 The Governor-General may make regulations prescribing matters:

6 (a) required or permitted by this Act to be prescribed; or

7 (b) necessary or convenient to be prescribed for carrying out or  
8 giving effect to this Act.