

Research and Innovation

21 February 2023

Australian Sanctions Office
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
BARTON ACT 2600
sanctionsconsultation@dfat.gov.au

Re: Review of Australia's Autonomous Sanctions Framework

The University of Queensland (UQ) welcomes the opportunity to contribute to the *Review of Australia's Autonomous Sanctions Framework*.

The following response is structured to address the stakeholder questions included in the Issues Paper. It addresses only the questions that are relevant to UQ's operations or those where we believe we can make an informed contribution.

Overall, we feel that the Australian Autonomous Sanctions Framework serves its intended purpose. However, the framework is complex and difficult to administer. The legislation, while mostly clear in its intent, does not provide sufficient definition and clarity to easily apply in a university setting, particularly one that is research intensive.

The suggestions made in the Issues Paper are, on the whole, sensible and we endorse the overall approach. The suggestions we make are mostly complementary to the proposed approach. We have, however, highlighted several issues not identified in the Issues Paper.

Issue 1: Streamlining the legal framework

A. How could the Autonomous Sanctions Framework be made more clear and easy to navigate?

UQ supports the establishment of a two-tiered legislative structure by moving the provisions currently in the regulations to the Act. This would simplify the framework, make it easier to navigate and reduce confusion.

The related suggestion to consolidate all provisions unique to a country or theme in a single legislative instrument also makes sense and we support this as a way to make the framework easier to navigate.

Alternatively, the review may consider putting all provisions related to a country or theme in the instrument, including those that are common to other sanctions regimes. This way the instrument could become a single, focused point of reference for that country or theme and the Act/Regulations becomes the overarching framework. For countries where Australia implements both Australian autonomous and UN sanctions consideration could be given to enable coverage of both in the instrument.

B. What challenges have you experienced in navigating the Autonomous Sanctions Framework? How could these be addressed?

There is currently a complex interplay between different sections of the Regulations and between the Regulations and related instruments. This necessitates considerable 'back and forth' and increases the risk of misinterpreting or misreading the legislation.

For example, when determining what constitutes a sanctioned service at Section 5, Clause 4 (*Services relating to particular countries and particular activities*) of the Regulations, it is first necessary to refer to a table listing sanctioned activities. Where this table references 'export sanctioned good', it is then necessary to refer to another table in a different section listing what these goods are. Then, where this second table refers to goods 'specified by the Minister in an instrument under this legislation', it is necessary to refer to the instrument. In this example, the reader potentially moves between three parts of the Regulations before ending up in the instrument. This could be simplified if all provisions related to the one country or theme were spelled out in a single legislative instrument.

C. How would reducing the number of pieces of legislation that apply sanctions measures better assist you? Could this help with managing your administrative burden?

The sanctions assessment process at a university necessarily relies on subject-matter experts (researchers and supervisors of staff and higher degree by research students) to interrogate multiple relevant pieces of legislation and identify activities of potential concern. This increases the likelihood that an important piece of legislation (or part thereof) will be missed and increases the complexity of sanctions assessment forms, supporting guides and processes. If there was a single instrument for each country or theme containing all necessary provisions, it would be easier to support researchers and supervisors to conduct these assessments and help reduce the likelihood of missing important provisions.

Issue 2: Scope of sanctions measures

B. Have the below terms, or any other terms, in the Autonomous Sanctions Framework presented you with any challenges in understanding whether an activity you wish to undertake is sanctioned? For example:

- **Directly or indirectly**
- **Assets; and**
- **Controlled asset.**

Direct or indirect supply vs access

The concept of directly or indirectly presents challenges for a university. As a research and teaching organisation we do not typically 'supply' goods in the normal sense of selling. Most of the activities that carry sanctions risk are related to research projects conducted on university premises. Through this research project a person from a sanctioned country may have 'access' to a sanctioned item. The question we have difficulty with is whether providing 'access' to a sanctioned item could result in an 'indirect' supply of that item or otherwise risks breaching sanctions legislation.

To illustrate this point, a typical situation may be where a researcher from a sanctioned country joins a research project involving one or more sanctioned items, usually a high-tech specialised piece of equipment, or a component thereof, in a science or engineering discipline. The researcher will not be 'supplied' with the item and will not receive 'training or technical assistance' on the item. The researcher may simply have access to a lab, or other location, that houses the item. It is not clear from the legislation whether this is a concern.

'Arms or related matériel' and 'public domain' considerations

Another concept that is a cause of confusion is how 'public domain' considerations impact on whether an item is considered 'arms or related matériel'. We understand that items on the Defence and Strategic Goods List (DSGL) are generally considered to be arms or related matériel. However, it is not clear whether the 'public domain' exemption that applies to Defence Export Controls (for which the DSGL is primarily used) also applies to sanctions.

For example, if a researcher from a sanctioned country receives training on a sanctioned item but the manual, blueprints, diagrams or other technology for the item is in the public domain, is the provision of this 'service' still prohibited?

We understand that the Australian Sanctions Office factors in 'public domain' considerations when providing an indicative assessment. However, as the legislation does not explicitly include a public domain exemption, there is no legislative basis for us to make our own decision that technology in the public domain is not a concern. This results in potentially unnecessary referrals to ASO as we cannot be sure that a public domain 'exemption' will be applied.

We therefore suggest a clear definition of arms or related matériel is included in the Act. We further suggest that this definition references the connection between arms or related matériel and the DSGL and specifies any exemptions that apply. Alternatively, or in addition to, we suggest including in the legislation reference to 'public domain' considerations and its relationship to the provision of 'technical advice or training'.

Connection to a sanctioned country

A further difficulty arises when determining who should be subject to a sanctions assessment. For 'targeted' sanctions, the situation is relatively simple – we need only determine if an individual or entity is on the Consolidated List and therefore designated. However, the situation is more complicated when identifying individuals who may pose a risk related to 'country-wide' sanctions.

We understand that anyone with a 'connection' to a sanctioned country may be of concern, regardless of their citizenship status, because country-wide sanctions generally target an action (e.g., supply, import, provision of services) rather than an individual (as with targeted sanctions – e.g., asset freezes, travel bans). However, the legislation does not specify the level of connection a person must have to a sanctioned country before they become a concern. For example, is a person who holds the citizenship of a sanctioned country but is a permanent resident or citizen of Australia, and has lived in Australia since they were a child, a concern?

A definition or guidance around the concept of 'connection' is needed to facilitate screening in a large organisation like UQ that has a high turnover of staff and students from all over the world. In particular, while the strength of a specific connection sits on a continuum, guidance on the boundaries of this continuum is required. If it is not possible to write a definition of 'connection' into the legislation, we would like to see better support materials providing guidance on applying this concept.

Issue 7: Regulatory functions of the ASO

B. How could changes to the Autonomous Sanctions Framework better assist you in applying for an indicative assessment or a permit through Pax, the Australian Sanctions Portal?

A significant number of our indicative assessment applications are related to researchers from sanctioned countries who need to receive training on a sanctioned item but for which the technology related to the item (including manuals) is in the public domain. Quite often the items are widely used and relatively 'standard' (i.e. not at the higher end of sensitivity). As mentioned above, greater clarity around whether

the fact that technology is in the public domain provides an 'exemption' would reduce the number of assessments we require.

C. What costs, financial or otherwise, that are outside of ordinary business-as-usual costs, have you incurred in complying with Australian autonomous sanctions (in particular, in seeking an indicative assessment or permit through Pax)? How many times a year do you seek an indicative assessment or permit?

The main cost to UQ relates to delays caused by the indicative assessment process. Most of our indicative assessments are requested in relation to individuals being appointed to research positions. Delays in receiving the outcome of an assessment can cause significant delays in the hiring process. This may delay the commencement of the research project which, in many cases, have tight timeframes for completion. It can also result in the individual deciding to withdraw their candidacy for the position. We seek around six indicative assessments each year.

D. Do you have any suggestions for reducing the costs associated with compliance with autonomous sanctions laws?

For UQ the most effective way to reduce costs associated with compliance would be to speed up the indicative assessment process. In addition, the suggestions made above will assist us in making our own assessments and reducing the need for indicative assessments, which would in turn reduce the workload of ASO. Assisting us to make our own assessments could also be achieved through developing a 'policy advice manual' that assists with interpreting and applying the legislation, or a series of 'common scenarios' or detailed FAQs. While it is appreciated that there are risks in providing scenarios as each case must be assessed on its own merits, the current approach where individual organisations are left to establish their own criteria and precedents with no guidance arguably presents greater risks, and certainly increases administrative burden.

E. What is your experience navigating the DFAT Consolidated List?

The main issue with the consolidated list is the inconsistent way in which citizenships are recorded for designated individuals, which makes it difficult to filter the list. For example, citizenship of Afghanistan is variously recorded as Afghanistan, Afghan and Afghani. We recommend standardising the way citizenships are recorded and, assuming the list will remain on a spreadsheet, using a 'List' within the 'Data Validation' function in Excel to ensure it is recorded consistently.

We also recommend including a column for 'location' to record the country in which a designated entity is based. This would allow the reader to filter for entities in a particular country. This column would be in addition to the 'address' column, which would still spell out the full address (if known). As with citizenship, we recommend using a 'List' within the 'Data Validation' function in Excel to ensure the location is recorded consistently.

Thank you again for the opportunity to comment on the Review. We would welcome the opportunity for ongoing engagement and consultation as the process continues.

Kind regards,

Professor Alastair McEwan
Pro-Vice-Chancellor (Research)