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Sanctions 2025

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Global Practice Guides

Sanctions

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2025

Chambers Global Practice Guides

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INTRODUCTION

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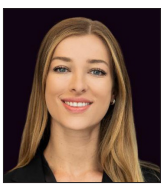
Carter-Ruck advises on a broad range of sanctions issues and is widely considered to be the leading UK law firm for individuals and entities wishing to take steps, including court action, for the annulment of restrictive measures. The firm pioneered challenges to such sanctions in 2001 for client Sheikh Yassin Abdullah Kadi whose two successes before the European Court of Justice have set the benchmark for sanctions challenges. It has represented clients before the UK and EU courts and authorities, the UN and the Ombudsperson to the United Nation's ISIL and Al-Qaida Sanctions Committee. The firm also works closely with local counsel advising clients challenging US and Australian designations. Carter-Ruck's unrivalled expertise in media law means that it is uniquely well-placed to assist in this area, providing swift and authoritative responses to press interest concerning its clients.

Contributing Editor

Charles Enderby Smith is a partner and international law specialist at Carter-Ruck. He spearheads its leading sanctions practice, while also maintaining a wider focus on international law, commercial and media disputes. Charlie maintains a pioneering practice in international and domestic sanctions. He advises clients on administrative and judicial challenges before various tribunals including the authorities and courts of the UK, EU, US and UN; as well as on pre-emptive steps to mitigate designation risk, on sanctions compliance and on representation before regulators and licencing authorities, including OFSI. His sanctions cases often test new rules and legislation, establishing important principles of law.

Co-Author



Tasha Benkhadra is an associate at Carter-Ruck with significant experience in all areas of domestic and international sanctions, including advising on steps to pre-empt potential designations, how to comply with the UK's sanctions regime, licence applications, OFSI reporting, OFSI breach investigations and information requests and delisting challenges both at the ministerial and court review stages. Her practice spans the full range of UK sanctions regimes, with a particular focus on the UK's Russia Regime. Tasha is a founding member of the City Sanctions Network and a committee member of the Young Fraud Lawyers Association (YFLA).

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INTRODUCTION

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A General Overview

While the deployment of sanctions by states and executive bodies has grown steadily over the last few decades, there can be little doubt that the last few years have seen a marked increase in their use as Western powers have grappled with how to respond to Russia's activity in Ukraine. This is true of both targeted sanctions (ie, restrictive measures targeted at entities or legal or natural persons) and trade sanctions (for example, sanctions on the purchase of oil or the provision of professional services). It is also true globally – with restrictive measures being introduced by Western and emerging nations alike (with Russia, for example, imposing retaliatory sanctions on the West).

This has created an unprecedented level of activity for almost all stakeholders in the sanctions industry, whether designated persons, regulators, governments, executives or advisers. On the latter, legal representatives in particular have been extraordinarily busy advising on administrative and legal challenges to sanctions designations, compliance, and regulatory enforcements and investigations. The levels of work across the global legal industry have arisen not just from the unprecedented numbers of people and businesses affected by sanctions, but also from the constantly and rapidly evolving legal and regulatory landscape in which stakeholders have found themselves.

This has been exacerbated by the fact that, post-Brexit, the UK now has its own autonomous and relatively new sanctions regime, which has perhaps been tested much sooner than anyone could have expected in light of the West's response to Russia's actions.

This autonomous regime presents new challenges where clients taking a global perspective now have an additional layer of rules and compliance to consider, enforced by one of the world's largest and most influential economies. In the context of administrative and legal challenges to sanctions designations it is not unusual for clients to find themselves included on sanctions lists imposed by the USA, the EU and the UK (as well as the lists of other Western-aligned countries such as Australia and Canada). This presents additional complexity and the need for additional strands of litigation, as well as opportunities where clients are appropriately advised.

Given the continuing geopolitical turbulence seen over the last three years, and states' ever-increasing reliance upon sanctions as a means of response and of pressing their foreign policy objectives, it seems unlikely that the rapid development in this area will abate over the course of this next year.

Stakeholders should be braced for further legislative and regulatory changes in this exciting and dynamic intersection between politics and law.

Given the interconnected and multinational scope of today's sanctions regulations, with many regimes striving for extraterritorial effect, practitioners are more than ever in need of guidance from a global perspective. It is our hope that this guide will provide such a resource.

AUSTRALIA

Law and Practice

Contributed by:
Dennis Miralis, Jack Dennis, Henry Yu and Darren Pham
Nyman Gibson Miralis

Contents

Nyman Gibson Miralis is an international, award-winning criminal defence law firm based in Sydney, Australia. For more than 55 years, the firm has been leading the market in all aspects of general, complex and international crime, and is widely recognised for its involvement in some of Australia's most significant criminal cases. Nyman Gibson Miralis' international law practice focuses on white-collar and corporate crime, transnational financial crime, international sanctions, bribery and corruption, international money laundering, cybercrime, international asset freezing/forfeiture, extradition and mutual assistance law. The team strategically advises and appears in matters where cross-border investigations and prosecutions are being conducted in parallel jurisdictions, involving some of the largest law enforcement agencies and financial regulators worldwide. Working with the firm's international partners, Nyman Gibson Miralis has advised and acted in investigations involving the USA, Canada, the UK, the EU, China, Hong Kong, Singapore, Taiwan, Macao, Vietnam, Cambodia, Russia, Mexico, South Korea, the British Virgin Islands, New Zealand and South Africa.

Authors

Dennis Miralis of Nyman Gibson Miralis is a leading Australian defence lawyer who specialises in international criminal law, with a focus on complex multi-jurisdictional regulatory investigations and prosecutions. His areas of expertise include international sanctions, cybercrime, global investigations, proceeds of crime, bribery and corruption, AML, worldwide freezing orders, national security law, INTERPOL Red Notices, extradition, and mutual legal assistance law. Dennis advises individuals and companies under investigation for economic crimes both locally and internationally. He has extensive experience in dealing with all major Australian and international investigative agencies.

Jack Dennis is a senior criminal defence lawyer who brings significant experience in international, corporate and tax matters to his role at Nyman Gibson Miralis, having worked at a top-tier commercial firm and advised on cross-border transactions and disputes involving foreign and domestic corporations and individuals across the software, financial services and crypto industries. His international criminal work involves transnational criminal and regulatory investigations, often working in parallel with other jurisdictions to co-ordinate with foreign law enforcement, intelligence and regulatory agencies. Through such matters, Jack has developed expertise in extraditions, sanctions, customs, white-collar crime and national security.

Henry Yu is an international criminal lawyer and part of the white-collar investigations team at Nyman Gibson Miralis. He assists the partners in various international criminal law matters, focusing on white-collar crime, anti-bribery and corruption, anti-money laundering, tax fraud and evasion, and cybercrime. With extensive experience in financial crime, foreign bribery, high-value taxation investigations and disputes, tax fraud and evasion, money laundering, and unexplained wealth matters, Henry brings a comprehensive understanding to complex legal challenges.

Darren Pham is a defence lawyer who is part of the white-collar investigations team at Nyman Gibson Miralis, where he brings his deep experience in risk advisory, AML, fraud, corruption, bribery and sanctions to complex local and international investigations. Darren is experienced in advising banks, insurance companies, superannuation funds and casinos on their operational policies, governance frameworks, and internal audit compliance.

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1. Trends and Overview

1.1 Sanctions Market

During the past 12 months, Australia's steady deceleration in the use of sanctions overall continued and contrasted against an influx of government reviews. It remains to be seen what will come from the multiple recommendations. However, the stakeholders made it very clear that they want change in both the legislation and regulatory operations.

Out from the gates of 2025, the primary regulator's co-operative and educative regulatory approach has been amped up with the release of a deluge of advisory and guidance notes and in conducting outreach sessions. There is an increasingly strong focus on enforcement and compliance, suggesting that the Australian Sanctions Office (ASO) may soon switch into a more proactive role.

Russia is now the primary focus for Australian sanctions law, with the overwhelming amount of sanctions directed towards the Russia-Ukraine conflict and Russia's potential sanctions evasion tactics being a primary concern of the recent government reviews.

1.2 Key Trends

Statistics on the Use of Sanctions

As of July 2025, approximately 3,259 individuals and entities were designated under Australian sanctions regimes according to the Consolidated List. From an examination of the Consolidated List, the following observations can be made:

- There continues to be a deceleration of sanctions use. As at June 2024, there were almost double the amount of sanctions that had been imposed as at June 2025. Of the sanctions still in force, 35.62% were imposed in 2022, 25.31% were imposed in 2023, 13.96% were imposed in 2024, with only 6.9% being imposed in the first six months of 2025.
- Australia's overall focus with sanctions remains on the Russia–Ukraine conflict. Over 50% of in-force sanctions as at June 2025 relate to the autonomous sanction regimes concerning Russia and Ukraine.
- Australia's sanctions focus is narrowing. In the first six months of 2024, an almost equal amount of individuals and entities were designated under the autonomous sanctions regimes relating to Syria (25.3%), Russia (24.1%), and Iran (23.2%). This focus barely shifted throughout the remaining six months. In contrast, Australia's sanctions regime over the first six months of 2025 has been squarely utilised in relation to Russia (85.78%) and the remainder peppered towards ISIL (Da'esh) and Al-Qaida, UN 1373 (2001), and Magnitsky-style sanctions.
- There continues to be a steady but minimal use of Magnitsky-style sanction instruments since the introduction of the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021 (Cth) (the "Magnitsky-style Regulations") in December 2021, with Australia incrementally using these powers more throughout 2024, with five of the nine instruments being issued between November 2023 and June 2024. While

there is increased utilisation of these sanctions in relation to human rights violations in the Israel-Palestine conflict, there has been a notable drop-off in any usage in relation to corruption, with the last set of still-in-force corruption sanctions dating back to 2022.

Statistics on Permits

Statistics on reports, contraventions, enforcement actions, and permits remain undisclosed to the general public. In July 2021, the Department of Foreign Affairs and Trade (DFAT) released a "Sanctions Regulator Performance – Self-Assessment Report", disclosing that in 2020–21 there were 55 permit applications finalised (where ASO assessed that a sanctions permit was required).

Co-Ordinated Sanctions

Australia continues to impose sanctions in co-ordination with the UK and the USA. All three governments have sanctioned key figures in cybercrime networks and the financial networks of Hamas and Palestinian Islamic Jihad.

Court Proceedings and Enforcement Action

The slow trickle of judicial decisions on Australia's sanctions regimes has come to a stop in terms of contractual and administrative law, signalling the complexity of the former and difficulty (if not futility) with the latter. There also remains a distinct lack of enforcement cases commencing or enforcement action being publicly announced or pursued. The Australian government may be looking to shift gears, as additional powers for the regulator are being contemplated and sanctions evasion continues to feature prominently in the government's reviews across 2024 and 2025.

1.3 Key Industries

Sanctions can be imposed on individuals irrespective of their industry, which in turn impacts how other individuals and entities can interact with those designated. Commonly, financial industries are particularly affected by any sanction, given the requirement to freeze the assets of designated individuals.

Australian sanctions can be targeted towards specific industries. By way of example:

- the sanctions concerning Syria have an express focus on the oil and gas industry or the petrochemical industry; and
- the sanctions concerning the Democratic People's Republic of Korea ("North Korea") expressly sanction any service that assists with or is in relation to an "extractive or related industry".

Court decisions in 2024 have shone a spotlight on the application of Australian sanctions on the resources (coal, alumina, and bauxite) and transport industries. The ramifications may be felt throughout many global industries with complex and intersecting operations.

Finally, with the recent amendments to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and proposed new anti-money laundering and counter-terrorism financing (AML/CTF) rules, governance obligations related to sanctions are expanding.

1.4 Overview

1.4.1 Types of Sanctions

In Australia, there are two sets of sanction regimes: the United Nations Security Council (UNSC) sanctions regimes and the autonomous sanctions regimes.

Sanctions Under the COTUNA Sanctions Regimes

The UNSC sanctions regime comprises sanctions passed by the UNSC. The primary instrument of its implementation is the Charter of the United Nations Act 1945 (Cth) (COTUNA).

Sanctions Under the Autonomous Sanctions Regimes

The Australian autonomous sanctions regimes comprise sanctions imposed by the Australia government that target specific countries or regions and, since the enactment of the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021 (Cth), address particular issues (referred to as "themes") such as threats to international peace and security, malicious cyber-activity, serious violations or serious abuses of human rights, or activities that undermine good governance or the rule of law.

This second set of regimes is primarily implemented by the Autonomous Sanctions Act 2011 (Cth) (the

"Sanctions Act") and the Autonomous Sanctions Regulations 2011 (Cth) (the "Sanctions Regulations").

Under Section 10 of the Sanctions Act, the regulations may make provisions relating to several prohibitions, including:

- proscription of persons or entities;
- restriction or prevention of uses of, dealings with, and the making available of assets;
- restriction or prevention of the supply, sale, or transfer of goods or services; and
- restriction or prevention of the procurement of goods or services.

In other words, the main types of sanctions employed by Australia are:

- designation of specific individuals or entities as subject to financial sanctions (eg, prohibiting making assets available to that person, as well as asset freezes);
- travel bans on certain persons, preventing them from entering or transiting through Australia;
- restrictions on trade in or procurement of goods and services (eg, prohibiting the export or the import of specific goods or services);
- restrictions on engaging in commercial activities or dealing with assets (eg, purchasing shares, granting IP rights, or establishing a joint venture); and
- designation of specific vessels as sanctioned vessels, including preventing them from entering Australia.

Simultaneous Sanctions

Sanctions can be passed under both regimes, such as the current (as of June 2025) regimes against North Korea, Iran, Libya, Sudan, South Sudan, and Syria.

1.4.2 Scope of Sanctions

Who must comply with the sanctions depends on the specific regulations relating to the sanction regime. Generally speaking, sanctions regulations have extra-territorial effect. Therefore, the sanctions law applies to activities that occur:

- in Australia;
- on board an Australian aircraft or an Australian ship; or
- by Australian citizens living or bodies corporates registered/incorporated by or under Australian law (whether in Australia, overseas, or on board a domestic or foreign vessel or aircraft).

1.4.3 Domestic and/or Supranational Measures

Both sets of sanctions are imposed at the (domestic) federal level in Australia.

Although the COTUNA sanctions regimes only relate to sanctions passed by the UNSC, as a dualist system, the Australian government must still pass domestic legislation for each sanction to give it effect under Australian law.

2. Overview of Regulatory Field

2.1 Primary Regulators

DFAT is broadly responsible for administering and enforcing the sanctions. To this end, DFAT established ASO on 1 January 2022 to sit within DFAT's Regulatory Legal Division in the Security, Legal and Consular Group. ASO is the Australian government's sanctions regulator.

As the regulator, ASO:

- provides guidance on Australian sanctions law to regulated entities and to the public, government and relevant parties;
- processes applications for, and issues, sanctions permits (see **2.3 Licensing**);
- works with the public to promote compliance and help prevent breaches;
- works in partnership with other government agencies to monitor compliance; and
- supports corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance (see **2.2 Enforcement**).

2.2 Enforcement

2.2.1 Enforcement Responsibilities

ASO is the primary agency responsible for the enforcement of Australian sanctions law. It does so by working with a network of Australian partners, including the

Department of Defence (DOD), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Department of Home Affairs, the Australian Border Force (ABF) and the Australian Federal Police (AFP), to promote compliance with Australian sanctions law and respond to possible breaches.

Criminal prosecution of sanction contraventions is undertaken by the Commonwealth Director of Public Prosecutions.

There is no civil liability or enforcement for sanction contraventions.

2.2.2 Breaching Sanctions

It is a criminal offence to breach sanctions law, or a condition of authorisation under sanctions law (see **2.3 Licensing**). The penalty depends on who committed the contravention.

For individuals, the penalty can be a maximum term of imprisonment of ten years, a fine, or both. The fine is calculated as 2,500 penalty units or – where transactions are involved – the greater of three times the value of the transaction or 2,500 penalty units. At as June 2025, 2,500 penalty units equalled AUD825,000.

For body corporates, the penalty can be a fine of 10,000 penalty units or – where transactions are involved – the greater of three times the value of the transaction or 10,000 penalty units. As at June 2025, 10,000 penalty units equalled AUD3.30 million.

2.2.3 Civil Enforcement Action

There is no civil liability or enforcement for sanction contraventions.

2.2.4 Criminal Enforcement Action

There has been no key criminal enforcement action taken in respect of sanctions breaches in Australia in the last three years.

The only publicly known criminal enforcement action in Australia was brought against Chan Han Choi, which concluded in 2021.

2.2.5 Mitigation

ASO adopts a co-operative approach in administering and enforcing sanctions law to work with the public to prevent and address breaches of Australian sanctions law. Certain actions are beneficial to undertake to minimise risk and potential penalties as a result of a breach, including:

- undertaking due diligence checks for Australian sanctions law and the business and organisational structure of the ultimate customer (or end user) – to this end, ASO manages the ASO Consolidated List, which sets out the persons and entities who are sanctioned (this is a good, but not definitive, reference point);
- adopting appropriate compliance measures and governance policies;
- obtaining professional legal advice before engaging in business activities and throughout; and
- after obtaining legal advice or otherwise with the assistance of a lawyer, engaging with ASO when there are outstanding queries relating to business or activities.

The above-mentioned guidance is particularly pertinent for corporate entities. The criminal offence for breaching a sanctions law is one of strict liability; however, there is a defence if the body corporate "took reasonable precautions – and exercised due diligence – to avoid contravening" the sanctions law. What this means will depend on the context of each person and company, but the foregoing is a good starting point.

2.2.6 "Strict Liability"

For body corporates, breaches of sanctions are "strict liability" offences (see **2.2.2 Breaching Sanctions**).

Otherwise, mental elements are still required to be proven.

2.3 Licensing

2.3.1 Derogation

An "authorisation" or "permit" (typically called a "sanctions permit") is available in certain circumstances to permit certain activities related to a person or entity on the Consolidated List that would otherwise be prohibited under Australian sanctions laws. These sanctions permits are granted by the Minister (or their delegate).

The criteria that must be met vary depending on the specific activity and the sanctions regime from which derogation is sought. For all permits, the Minister must be satisfied that it would be in the national interest to grant the permit. Additionally, any permits under the COTUNA require approval from the UNSC.

According to new DFAT guidance, any permit application must be in respect of one of the following:

- a basic expense dealing, being "a transaction that is necessary for basic expenses";
- a legally required dealing, being "a transaction that is necessary to satisfy a judicial, administrative or arbitral judgement that was made prior to the date which the person or entity who is party to the proposed transaction became a designated person or entity"; or
- a contractual dealing, such as "payment of interest on accounts holding controlled assets and payments required under contracts, agreement or obligations made before the date on which the assets became controlled assets".

ASO requires all applications to contain "sufficient detail of a specific contravention to which the application relates" and should not be made unless "there is a clear likelihood of a sanctions contravention occurring".

The application process will likely take at least three months and will take even longer for complex activities and activities in high-risk countries or regions.

2.3.2 Provision of Legal Services

There is no exception for the provision of legal services to designated persons; activities associated with such services are likely to breach Australian sanctions law. Therefore, the provision of legal services to a designated person requires a permit.

There is a general permit authorising certain dealings in association with the provision of certain services directly related to the provision of legal advice or legal representation (SAN-2024-00138). This permit was reissued 30 October 2024.

2.4 Reporting

There are no continuous reporting obligations under Australian sanctions law. However, there are record-keeping obligations and certain government officials have information-gathering powers.

Record-Keeping Obligations

Two types of records must be retained, as follows:

- Any records or documents relating to an application must be retained for five years by the applicant. Importantly, this obligation remains even if the permit is not granted. The five years begins from when the permit was granted or, if it was refused, when the application was made.
- Any records or documents relating to the person's compliance with any conditions of the permit must be retained for five years, beginning on the last day on which an action to which the permit relates was done.

Information-Gathering Powers

A "CEO of a designated Commonwealth entity" can require a person to give information or documents to determine compliance with a sanction law. A designated Commonwealth entity includes DFAT, the Department of Defence, the Australian Customs Service, and AUSTRAC. These are called section 353 notices. The section 353 notice will specify the information and/or documents sought, and the timing and manner in which the notice must be complied with.

Information cannot be withheld on the basis that its provision will be self-incriminating. However, neither the information given – nor the giving of the document – is admissible as evidence against the individual in any criminal proceedings or in any proceedings that would expose the individual to a penalty, apart from proceedings for:

- providing false or misleading information given in connection with a sanction law; or
- failing to comply with the requirement to provide information or documents.

Failing to comply with the requirement is a criminal offence, with a penalty of up to 12 months' imprisonment.

3. Recent and Future Legal Developments

3.1 Significant Court Decisions or Legal Developments

The three most significant court decisions or legal developments in Australia are:

- *Alexander Abramov v Minister for Foreign Affairs (No 2) (2023)*, which challenged the designation of an individual and confirmed that sanctions could be imposed for past actions that have been discontinued but also provided further insight into the administrative process of sanction-making – this decision, in turn, led to the Australian government passing legislation to reflect the outcome of this decision and retrospectively validate past sanction decisions;
- *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd (2024) FCA 43*, which was Australia's first case examining the sanctions regimes in the context of commercial contracts/force majeure and confirmed the broad scope of sanction provisions (see **6.1 Force Majeure** for further details); and
- the Full Federal Court decision (same name, [2024] FCAFC 142) dismissed this appeal in November 2024, confirming the primary judge's reasoning.

3.2 Future Developments

The Australian government has received reports from at least four reviews that addressed the Australian sanctions regimes:

- DFAT's review that commenced in January 2023 and concluded on 30 October 2024, titled "Review of Australia's Autonomous Sanctions Framework";
- the Defence and Trade References Committee's review that commenced in March 2024 and concluded in September 2024, titled "Australian Support for Ukraine", September 2024;
- the Foreign Affairs, Defence and Trade Reference Committee's review that commenced in July 2024 and concluded in February 2025, titled "Australia's sanctions regime"; and
- the review by the Human Rights Subcommittee of the Foreign Affairs, Defence and Trade Reference Committee that commenced in December 2024 and concluded in March 2025, titled "Australia's thematic sanctions framework: A legislated review of the operation of the Autonomous Sanctions Amendment (Magnitsky-style and other Thematic Sanctions) Act 2021".

All in all, this patchwork of reviews lays out a variety of stakeholders' views on Australia's sanctions regimes and provides a starting point for an array of legal and regulatory developments. However, there is no draft legislation on the table.

4. Delisting Challenges

4.1 Process

There are two general ways to "challenge" a designation – namely, by requesting a revocation of the designation or by seeking judicial review of the decision to designate.

Request Revocation

The specific procedure depends on the specific case factors, including what basis a person wants to challenge the designation and under which specific regime the person was designated. By way of example, requests for delisting of:

- UNSC listings should be made to the Focal Point for De-listing or through the country of citizenship or residence;
- UNSC listings related to ISIL (Da'esh) and Al Qaeda should be made to the UN Office of the Ombudsperson or through the country of citizenship or residence;
- UNSC listings related to the counter-terrorism (UNSCR 1373) sanctions regime should be made to DFAT; and
- listings related to Australian autonomous sanctions should be made to DFAT.

Importantly for requests relating to Australian autonomous sanctions, once any such request is made, the Minister is not required to review any further requests by (or on behalf of) the same entity for at least 12 months. That is to say, it is important that any initial request be properly made (with legal advice), lest there be a 12-month wait afterwards.

Judicial Review

The procedure by which to challenge the decision to list itself may be different from the foregoing (eg, through administration law) and differ from case to case.

4.2 Remedies

A successful de-listing challenge can result in the removal of the designation list, as this is the primary objective of a delisting challenge.

Importantly, there is no statutory right or framework in Australia to recover financial compensation for being wrongly designated. However, there may be compensation available if the sanctions were imposed "maliciously". This remains untested in Australia.

4.3 Timing

The time it takes to obtain a delisting may vary significantly depending on the specific circumstances. There are no statutory timeframes.

5. Trade and Export Restrictions

5.1 Services

There are several – independent and overlapping – statutory regimes prohibiting, authorising or otherwise controlling the import and export of a range of services and goods in Australia.

The primary statutory instruments include the following:

- The Customs Act 1901 (Cth) and the Customs (Prohibited Exports) Regulations 1958 (Cth) – these primarily deal with controls for the import and export of most goods, including defence and dual-use goods and technologies. The ABF is the primary agency responsible for enforcing this regime; however, other government agencies are involved, including the Defence Export Controls (DEC) within the Department of Defence.
- The Weapons of Mass Destruction (Prevention of Proliferation) Act 1995 (Cth) – this controls any goods, technologies, or services that could be used in a weapons of mass destruction programme. This regime is administered by the DEC.
- Defence Trade Controls Act 2012 (Cth) – this controls the transfer of defence and strategic goods, technologies, and services. This regime is also administered by the DEC. Key to this regime is the Defence and Strategic Goods List 2024, which lists the military and dual-use goods, software, and technologies that are subject to export control regulations in Australia.
- Export Control Act 2020 (Cth) – this creates a framework regulating the export of all goods (including agricultural products and food) through the Export Control Rules 2021. This regime is generally administered by the Department of Agriculture, Fisheries and Forestry.

The import or export of a good or service must be compliant with any applicable regime, which may require seeking authorisation under each regime from the relevant authority. By way of example, the exporting of a dual-use good to a country in respect of which there is a sanction regime may require an export permit from the DEC as well as a sanctions permit from ASO.

5.2 Goods

Please refer to **5.1 Services**.

6. Civil Litigation and Arbitration

6.1 Force Majeure

Australian courts have recognised that Australian-imposed sanctions can trigger a force majeure clause, allowing the contracting party to terminate a contract. This position was made clear in *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd (2024) FCA 43*, whereby it was found that a party was entitled to cease supplying, shipping and delivering certain goods to other entities – in which the designated oligarchs held indirect shareholding interests – on the basis that such activities would breach Australia's autonomous sanctions. This question turned on the construction of the specific sanction regime and each of the contract's force majeure clauses. This position was confirmed by the Full Federal Court of Australia in dismissing Alumina and Bauxite Company Ltd's appeal i *n Alumina and Bauxite Company Ltd v Queensland Alumina Ltd [2024] FCAFC 142*.

Based on this, a party would have to show only on the balance of probabilities that they would breach Australian sanctions (a breach that would ordinarily require proving beyond a reasonable doubt).

Even where there is not a suitable force majeure clause, there may be other avenues available to parties where sanctions impact contracted obligations, such as the common-law defence of supervening illegality. This defence is enlivened where there is a change in the law – after the formation of a contract – that renders the future performance of a contract unlawful. Supervening illegality is a defence to the non-performance of the contract. In some circumstances, supervening illegality may have the same terminating effect as frustration.

The impact of non-Australian sanctions on the performance of contractual obligations remains a largely untested question.

6.2 Enforcement

Australian courts are yet to consider key questions concerning the enforcement of Australian judgments – or the recognition and enforcement of foreign judgments – where sanctions are live issues.

These questions will turn on the precise sanction regimes that are at play, the role of the sanctioned person or entity (eg, plaintiff, defendant, judgment creditor or judgment debtor), and the circumstances of the matter, including the timing of the proceedings. There may be influence drawn from UK decisions such as *PJSC National Bank Trust & Anor v Boris Mints & Ors (2023) EWHC 118 (Comm)* and *the Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd (2019) 1 WLR 6409*.

As a starting point, a permit may be able to be issued under regulation 20 (4) of the Sanctions Regulations for certain dealings required to "satisfy a judicial, administrative or arbitral lien or judgment that was made before the date on which the person or entity became a designated person or entity" where the dealing is not "for the benefit" of that designatee.

It remains to be seen how courts will interpret and apply this provision, including whether it extends to foreign judgments. Regardless, ASO has noted that assets provided to a designated person or entity as a result of a legal proceeding or settlement will be frozen until the designation is removed, which is an approach that seeks compliance both with pre-designation judgments and sanctions regimes.

What is clear is that a permit basis is not expressly available for judgments secured after a designation, even where those proceedings were ongoing at the time the designation was made, further widening the impact of sanctions.

7. Designation, Compliance and Circumvention

7.1 Executive Body

The Minister of Foreign Affairs is responsible for making designation decisions.

7.2 Scope of Designation

Strictly speaking, only those who are expressly designated are designated. However, Regulation 14 of the Sanctions Regulations prohibits indirect facilitation of providing sanctioned assets to a designated person. That is to say, it is an offence if one "indirectly makes an asset available to or for the benefit of a person or entity" without a permit. Australian courts have stated that this regulation should be given "the full meaning that is open from the words", so as to include provision "through interposed corporate entities" and "where the benefit is either the object, effect or likely effect of making the asset available".

There are also additional offences that extend prohibitions to entities or bodies "owned or controlled" by or those "acting on behalf of" (and similar language) sanctioned governments, individuals, or entities.

More definitively, the assets of a designated person may not be easy to identify and extend beyond those that are obvious as it encapsulates assets that are owned or controlled by the designated person. ASO's Guidance Note – dealing with assets owned or controlled by designated persons and entities – advis-

es that ownership and control of a given asset are determined according to the "factual circumstances, including the kind of asset and the laws of jurisdiction in which it was created".

7.3 Circumvention

7.3.1 Prohibiting Provisions

Some provisions were designed to ensure compliance with Australia's sanctions regimes by preventing any circumvention. Specifically, Regulation 13 of the Sanctions Regulations prohibits the provision of a "sanctioned service", which is broadly defined to include essentially any service "if it assists with, or is provided in relation to, a sanctioned supply". This broad scope was reportedly explained by the Australian government as necessary to prevent circumvention of the laws through the use of intermediaries or exploiting loopholes.

7.3.2 Criminal Penalties

An activity that breaches Regulation 13 of the Sanctions Regulations is a criminal offence and attracts the same penalties as set out in **2.2.2 Breaching Sanctions**.

Trends and Developments

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Nyman Gibson Miralis is an international, award-winning criminal defence law firm based in Sydney, Australia. For more than 55 years, the firm has been leading the market in all aspects of general, complex and international crime, and is widely recognised for its involvement in some of Australia's most significant criminal cases. Nyman Gibson Miralis' international law practice focuses on white-collar and corporate crime, transnational financial crime, international sanctions, bribery and corruption, international money laundering, cybercrime, international asset freezing/forfeiture, extradition and mutual assistance law. The team strategically advises and appears in matters where cross-border investigations and prosecutions are being conducted in parallel jurisdictions, involving some of the largest law enforcement agencies and financial regulators worldwide. Working with the firm's international partners, Nyman Gibson Miralis has advised and acted in investigations involving the USA, Canada, the UK, the EU, China, Hong Kong, Singapore, Taiwan, Macao, Vietnam, Cambodia, Russia, Mexico, South Korea, the British Virgin Islands, New Zealand and South Africa.

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Introduction

Australia is on the precipice of change for both the legislative framework and regulatory approach within its sanctions landscape. Stakeholders have made their views clear, with multiple reviews having been concluded by Senate Committees and the Department of Foreign Affairs and Trade (DFAT), opening up potential for change across the board. Already regulatory practice has leaned heavily into compliance and education in response to reviews, with DFAT releasing several publications and tools. These may prove critical to Australian businesses as new AML/CTF obligations come into effect and the AML/CTF regime expands its coverage in 2026.

Although much remains the same at this stage in terms of the enforcement and use of sanctions regimes, there are early signs that the Australian government and regulator may be increasing enforcement actions targeting evasions and breaches. Even now, the government is considering additional regulatory powers and capacity-building methods.

However, the scale continues to be tipped towards opaqueness and away from fairness, with limited (if any) reasoning disclosed for listings; delisting processes remaining as hard as ever to navigate; permits left unrecognised by financial institutions; and the Australian government continuing to embrace and use sanctions in a highly selective and transparently political fashion. Although we will likely see notable legislative reform and regulatory operational changes in the 2025-26 period, it remains to be seen whether they will resolve or exacerbate the ongoing issues.

Reviews, Reviews, Reviews!

A constant theme of the Australian sanctions legal landscape has been reviews.

In January 2023, DFAT announced its review of Australia's autonomous sanctions framework after 12 years of operations and ahead of the framework expiring on 1 April 2024. This review was ongoing until 30 October 2024, when a five-page report was published summarising stakeholders' responses to the seven issues. Recognised in this report was the need to streamline and increase guidance on several facets of Australian sanctions regimes. The report is still under consideration by the Australian government.

In February 2025, another review into Australia's sanctions regime concluded after being conducted by the Foreign Affairs, Defence and Trade Reference Committee (FADT Committee). Having started in July 2024, this review focused on the assessment of consistency and effectiveness of the regime, Australia's co-ordination with "like-minded states", and potential uses of frozen/confiscated assets. The report comprised eight recommendations and canvassed a range of views, including:

- the underutilisation, inconsistent application of, and lack of objective reasoning behind Magnitsky-style sanctions;
- concerns that Australia's sanctions are lagging many months behind allies' sanctions notwithstanding the same intelligence likely being available; and
- the need for stronger enforcement, including building capabilities to "close loopholes which allow

Iran and Russia to evade the financial impact of Australian sanctions" and repurpose such assets.

In March 2025, the Human Rights Subcommittee of the FADT Committee published a report of the amendments made by the Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021. The public consultation concluded on 17 January 2025. The Subcommittee made five recommendations, orientated towards increasing transparency and accountability by publishing reasons for listing decisions, expanding the use and basis for Magnitsky-style sanctions criteria, and introducing a humanitarian exception.

Overall, these reviews noted a serious need to strengthen regulatory monitoring and enforcement capabilities and a strong desire for increased reasoning and challenging processes. If these reports are anything to go by, there may be significant legislative reform ahead, increased regulatory operations for both compliance and enforcement, and more movement in this space than ever before.

AUSTRAC's AML/CTF Rules

Speaking of law reform, the Australian Parliament amended the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Amended AML/CTF Act) to introduce tranche 2 reforms on 29 November 2024. Relevantly, these amendments expressly included sanctions law in the ongoing obligations of AUSTRAC-regulated entities in defining "proliferation financing".

Section 28 of the newly amended legislation requires reporting entities, in undertaking initial customer due diligence of new customers of designated services, to establish on reasonable grounds "whether the customer, any beneficial owner of the customer, any person on whose behalf the customer is receiving the designated service, or any person acting on behalf of the customer is… a person designated for targeted financial sanctions". Further, sections 26C and 26D require entities to undertake ML/TF risk assessments before providing designated services. Failure to do so can result in a civil penalty.

On 11 December 2024, AUSTRAC sought feedback on new anti-money laundering and counter-terrorism financing (AML/CTF) rules (AML/CTF Rules), to reflect the impending Amended AML/CTF Act. This initial consultation closed on 14 February 2025. On 19 May 2025, AUSTRAC commenced a second round of public consultation on new AML/CTF Rules.

The proposed draft AML/CTF Rules:

- introduce a requirement for AUSTRAC-regulated reporting entities to develop, maintain, and comply with AML/CTF policies to address the Autonomous Sanctions Act 2011 (Cth) and the Charter of the United Nations Act 1945 (Cth) in the provision of their designated services; however, there is an exception to developing such a policy if the risk of proliferation financing is low and otherwise appropriately managed (on this point, DFAT released a new advisory note on low-risk sectors in June 2025);
- retains a discrete and temporary exception for the obligation to establish whether a customer was a politically exposed person or designated for targeted financial sanctions; this temporary exception is subject to certain requirements, including that commencement of the services "is essential to avoid interrupting the ordinary course of business", but also that the "AML/CTF policies [are implemented] to mitigate and manage the associated risks"; and
- expressly inserts ongoing customer due diligence and monitoring obligations related to sanctions to reflect the Amended AML/CTF Act.

Failure to develop sanctions-related policies, as well as to comply with these policies, will result in a civil penalty.

In their current form, the draft AML/CTF Rules represent a marked shift from the official role sanctions policies played for AUSTRAC-regulated reporting entities. However, the actual impact in practice remains to be seen given that many entities likely already incorporated proliferation financing risks into their AML/CTF policies or had self-standing sanction policies.

Increase in Regulatory Guidance

In the wake of the DFAT report in July 2024, which recognised many stakeholders calling for DFAT to "increase its use of guidance notes and FAQs", DFAT has published a deluge of guidance and advisory notes. This material addresses both general and specific sanction-related issues and is critical in light of not only sanctions law but also the formalisation of sanctions-related AML/CTF responsibilities.

The guidance notes cover a broad range of topics across commercial activity, industry sectors, and general compliance. These include artificial intelligence and quantum technology; cyber and ransomware payments; digital currency exchanges; fintech and the DeFi sectors; employment; the finance industry; maritime; remittance service providers; government employees; and universities.

The advisory notes are more targeted in scope, intended to assist stakeholders in identifying and understanding their sanctions risks by outlining typologies that may be relevant to their risk assessments. Accordingly, these will be the starting point for any AUSTRAC-regulated entity (see AUSTRAC's AML/CTF Rules above). The new advisory notes include topics such as Russian sanctions evasion, the Australian export sector, the information technology sector and touring companies, and musicians and sports professionals.

Finally, for further assurance, DFAT released two tools:

- Sanctions Compliance Toolkit (SCT): This is a comprehensive guidance document that explains Australia's sanctions regulations through practical case studies in two parts. The first provides an overview of how to identify sanctions risks; the second outlines how regulated entities can manage those risks effectively.
- Risk Assessment Tool (RAT): This is a structured questionnaire designed to help regulated entities and legal professionals conduct an initial assessment of whether their activities may be subject to sanctions risk.

Absence of Enforcement Action

From compliance to enforcement; or rather, a lack thereof. Without published statistics, it is difficult to determine trends, including in the use of Section 19 notices and enforcement proceedings. According to the Office of the Director of Public Prosecution's 2024 Annual Report, there were no charges under the Sanctions Act, leaving *R v Choi (No 10) (2021)* as the only reported law enforcement case in Australia.

This stands in sharp contrast with other jurisdictions.

Australia's lack of enforcement actions may be due to resources, a preference for a co-operative approach by the Australian Sanctions Office (ASO), or acknowledgment that the sanctions regimes are new and untested – giving rise to such cases as *Tigers Realm Coal Limited v Commonwealth of Australia (2024)* ("Tigers Realm"), where the business continued to operate for approximately 18 months, despite the ASO assessing such operations as being prohibited. In respect of this case, the ASO is reportedly still considering enforcement options. However, as of July 2024, the relevant Australian Securities Exchange (ASX)-listed company was delisted and the sale of its assets was complete, pending President Putin's approval.

An emerging thread from the recent reviews was the need to increase monitoring and enforcement capabilities, particularly against assets in Australia and evasion tactics.

Multilateral Sanctions Monitoring Team

In March 2025, Russia vetoed the renewal of the mandate of the Panel of Experts (PoE) under the Security Council Committee established pursuant to resolution 1718. The PoE was responsible for reporting on North Korea's non-compliance with sanctions.

In response, Australia has joined Canada, France, Germany, Italy, Japan, the Netherlands, the Republic of Korea, New Zealand, the United Kingdom, and the United States to establish a member state-led Multilateral Sanctions Monitoring Team (MSMT) to monitor and report on North Korea's sanctions non-compliance.

Australia has announced that its decision to participate in the MSMT is driven by the need to address North Korea's ongoing pursuit of weapons of mass destruction and malicious cyber activities.

Alumina Decision: Sweeping Scope of Sanctions

A long-standing issue in terms of the Australian sanctions regime has been understanding the scope of targeted financial sanctions. This has been identified as a strong issue of concern in need of regulatory and potentially legislative clarification.

One of the most important legal developments in the Australian sanctions landscape is the landmark judicial guidance provided by the Federal Court of Australia in *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd (2024) FCA 43* ("Alumina"). The case concerned the permissibility of the supply parties relying on the force majeure provisions to terminate the supply arrangement early in light of Australian sanctions against Russia.

For the sake of brevity, certain Australian sanctions offences may be triggered where the designated person or country receives a benefit or good as a "direct or indirect" result of someone supplying a good/service to the person, country, or a third party (see Regulations 4, 12 and 14). There was (and remains) no legislative or regulatory guidance on how to interpret "direct or indirect".

According to the Alumina decision, whether the goods immediately result in – or eventually (no matter the additional steps or actions in the supply chain) result in – the good or benefit to the designated person or country, there would be an offence. In doing so, the court openly acknowledged that there was the "possibility that a person may engage in a transaction that initially is not a sanctioned supply, but which subsequently becomes a sanctioned supply" due to "events that occur after the transaction has been undertaken".

This decision was affirmed by the Full Federal Court of Australia dismissing Alumina and Bauxite Company Ltd's appeal in November 2024. The Court once more expressly recognised that "at the time of the supply, sale or transfer in para (a), it may not be possible to determine whether or not the supply, sale or transfer is a 'sanctioned supply'".

Of course, one should be able to avoid penalties under the sanctions regime if any supplier obtains a permit for their operations or if a (body corporate) supplier takes reasonable precautions and exercises due diligence at the time the initial supply is made, or even if a (individual) supplier makes the initial supply while mistaken as to a relevant fact (eg, they are deceived about who is the end user). The Full Federal Court acknowledged that this finding "may seem surprising at first blush"; however, the "potential harshness… is ameliorated" by these aforementioned factors.

Nevertheless, suppliers are still left without a clear idea of the scope of the laws and possible offences and are at the mercy of the regulatory body in terms of enforcement action. This not only impacts liability under criminal and corporate law but also obligations under contract.

Where suppliers are investigated by the ASO in respect of their compliance, they will be significantly reliant upon:

- their best efforts regarding due diligence and compliance programmes;
- their ability to obtain and follow (in a technical sense) permits, which may also have interpretation issues; and
- as a last resort, the ASO's discretion to avoid the cost and time of an investigation (and perhaps trial) in such scenarios.

This serves as a warning for all suppliers who are subject to Australian sanctions law on the importance not only of undertaking reasonable precautions and due diligence in their business operations, including applying and obtaining a permit where there is any identified risk, but also of the need to always ensure force majeure clauses can properly respond to changes in sanctions law.

Permits in Practice

Publication but continued limited use

An important non-legislative development is in the publication of general permits. Since the inception

of the autonomous regimes, the Minister of Foreign Affairs ("the Minister") has had the power to make general permits to allow conduct that would otherwise be prohibited by sanctions. In July 2023, for the first time, the ASO published the existing general permits concerning certain IP, legal services, tax, and oil and petroleum price caps on their website. Some of these permits had been issued as early as 25 May 2022. Previously, each individual and entity would have to make an application for a permit, without knowing if a general permit existed.

It remains the responsibility of each individual seeking to rely on the general permit to "read the terms of the permit carefully" and report to the ASO that they intend to rely on the permit. For any conduct falling outside these permits, entities must engage with the ASO and apply for an individual permit. The ASO estimates the standard waiting time as three months. Such a length of time can lead to significant consequences for the financial industry and other businesses – the impact of which is compounded, given the lack of notice before sanctions are imposed.

There is still a distinct lack of general permits seen as key in other jurisdictions, such as for humanitarian reasons or for an orderly wind-down of existing business activities and contractual obligations. The impact of the latter is compounded by the lack of authoritative guidance on the sanctions regimes, as illustrated by arguments progressed in the Alumina and the Tigers Realm cases.

Gap between law and banking policies

A subsisting trend among certain banks operating in Australia is that their sanction policies and practices do not account for permits. Accordingly, although an entity may have obtained a permit or fall under a general permit to allow for dealings with designated persons, the bank continues to prevent transactions relating to the engagement.

This gap undermines the effectiveness of permits and has serious ramifications that permits try to address. By way of example, failure to recognise the general permit allowing transactions that are required by Russian tax law will result in serious consequences for any individual or entity who has tax obligations and may even impact their position under Australian law should there be any correlative aspects, such as foreign tax credits. Another example is the failure to recognise the general permit allowing the provision of legal services. Prevention of payment may lead to:

- the denial of legal services crucial to ensuring the sanctions regime is accurate and fair; and
- the abrogation of certain individuals' human rights.

This issue was left unexamined by the Senate's latest inquiry, remaining in the "too hard" basket. Designated individuals are left at the whim of the financial institutions, relying on banks to prepare and implement policies that properly accommodate permits. The practical difficulties of the banks in doing so are only exacerbated by the piecemeal and fractured nature of the domestic and global sanctions system and growing obstacles in challenging listings.

Areas of Focus

Russia-Ukraine situation

Australia has continued imposing sanctions in respect of the ongoing Russia-Ukraine situation. On 18 June 2025, for the first time, the Minister of Foreign Affairs, Penny Wong, sanctioned 60 vessels linked to "Russia's shadow fleet". The Minister stated that these vessels "enable the illicit trade of Russian oil and other sanctioned goods".

Complementing this ongoing use of sanctions concerning the Russia-Ukraine situation, DFAT has released further Russian-related guidance, including general export goods and Russia-origin petroleum gases, oil, and refined petroleum products.

Russia was a repeating theme in the recent reviews into the sanctions regimes, with calls for increased targeting of Russian assets and closing the loopholes that allow Russia to circumvent the sanctions against goods to and from Russia. If anything, Russia and its intermediaries are shaping up to be the stone against which Australia may best sharpen its sanctions regimes so as to improve their efficacy.

Israel-Palestinian conflict

In July 2024, the International Court of Justice (ICJ) issued a non-binding advisory opinion on the legal

consequences arising from Israel's policies and practices in the occupied Palestinian territory. Five days after the opinion, the Australian government imposed Magnitsky-style sanctions on seven Israeli individuals and one organisation for "settler violence".

On 10 June 2025, the Honourable Penny Wong, along with the Foreign Ministers of Canada, New Zealand, Norway, and the United Kingdom announced sanctions against far-right Israeli politicians, Itamar Ben-Gvir and Bezalel Smotrich for inciting violence against Palestinians in the West Bank. This was formally enacted the next day with Magnitsky-style sanctions against these individuals for serious violations and serious abuses of human rights.

Although the recent Australian Senate inquiries recognised the lack of sanctions arising from the Israel-Palestinian conflict as a point of serious inconsistency in the application of Australian sanctions law, the Australian government continues to move slowly in comparison to other ongoing situations.

Cyber sanctions

Australia continues to pursue its co-ordinated approach with its allies in sanctions against transnational cybercrime, with continuing co-ordinated international investigative and law enforcement efforts, resulting in the simultaneous sanctioning of entities.

This was seen in 2024 with Operation Cronos, a co-ordinated law enforcement action against the LockBit ransomware group and comprised the efforts of Australia, the UK, the USA, France, Germany, Switzerland, Japan, Sweden, Canada, and the Netherlands – with Finland's support. This resulted in Australia imposing its first and second cyber sanctions against Aleksandr Ermakov and Dmitry Yuryevich Khoroshev. DFAT has labelled this 18-month investigation and resultant sanctioning as "best practice methodology".

Since then, additional cyber sanctions have been imposed against three Russian nationals who were identified as senior personnel of the Evil Corp cybercrime group in October 2024, as well as against a Russian entity, ZServers, and five other Russian nationals on 12 February 2025 who were accused of being cybercriminals involved in the compromise of Medibank and the theft of almost ten million health insurance records of Australians in 2022.

Relatedly, on 3 February 2025, the Australian government imposed, for the first time, counter-terrorism financing sanctions on an entity based entirely online: the white supremacist terrorist network Terrorgram. The Australian government reiterated its commitment to "disrupting the activities of terrorists and violent extremists and preventing them from recruiting and radicalising people online".

As cyber-attacks are increasing and DFAT continues to develop their sanctions methodology, there may be a correlating uptick in sanctions – specifically those under the Magnitsky-style regulations.

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