

## Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

*Autonomous Sanctions Regulations 2011*

*Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022*

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to Russia, for use in Russia or for the benefit of Russia is prohibited under regulations 4 and 12 of the Regulations.

Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. The purpose of the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022* (the Designation) is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include aluminium ores (for example, bauxite), aluminium oxide (for example, alumina) and aluminium hydroxide. This means that in addition to the existing prohibition on the export of ‘arms or related matériel’ to, or for the benefit of, Russia, Australia will now also prohibit the export of goods that are a key component in the manufacture and development of weapons. In prohibiting the export of such goods, Australia is demonstrating its condemnation of Russia’s illegal and unjustified invasion of Ukraine.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

Details of the Designation are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations are part, was the subject of extensive consultation with governmental and non-governmental stakeholders when introduced, and when amended to include the Russia/Ukraine sanctions. The application of the existing sanctioned supply prohibitions to Russia was subject to targeted consultation within government, including the Department of Industry, Science, Energy and Resources. The Minister considered such consultation to be appropriate and practicable in the circumstances, given the urgency presented by Russia’s actions, and because the proposed amendment does not alter the operation of the existing regulatory framework.

The goods designated as export sanctioned goods for Russia are set out in Schedule 1 to the Designation and are described by reference to codes in the Australian Harmonized Export Commodity Classification (AHECC), as follows: ‘2606 0000: Aluminium ores and concentrates’ and ‘2818 1000: Artificial corundum, whether or not chemically defined’; ‘2818 2000: other aluminium oxide’; and ‘2818 3000: aluminium hydroxide’. This document

is incorporated as existing at the time of the commencement of the Designation and could in March 2022 be freely accessed on the Australian Bureau of Statistics website ([Australian Harmonized Export Commodity Classification \(AHECC\), 2022 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-harmonized-export-commodity-classification-ahecc-2022)).

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required (reference: OBPR22-02018).

The instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is at **Attachment B**.

*Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022*

Section 1

The title of the instrument is the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022*.

Section 2

Subsection 2(1) provides that the instrument commences the day after it is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the instrument and can be inserted or edited at a later date.

Section 3

The instrument is made under subregulation 4(3) of the *Autonomous Sanctions Regulations 2022* (the Regulations).

Section 4

Regulation 4 of the Regulations sets out what constitutes a sanctioned supply for a country or part of country. Provision of a sanctioned supply is prohibited under regulation 12, unless the Minister has granted a permit under regulation 18.

Item 3A of the table in subregulation 4(2) of the Regulations provides that export sanctioned goods for Russia are: (i) arms and related materiel and (ii) specified items suited to use in certain categories of oil exploration or production projects in Russia. The Minister for Foreign Affairs has the authority, under subregulation 4(3) of the Regulations, to designate by legislative instrument, additional goods as export sanctioned goods for a country or part of a country mentioned in the designation. This mechanism exists to ensure that the Australian Government is able to act swiftly to expand the existing export prohibitions that apply in respect of a sanctioned country, enabling Australia to be responsive to evolving situations of international concern.

Section 4 provides that goods that have been designated by the Minister as export sanctioned goods for Russia under subregulation 4(3) of the Regulations are listed in Schedule 1 of the instrument.

Schedule 1

Schedule 1 sets out export sanctioned goods for Russia. These goods are aluminium ores, aluminium oxide and aluminium hydroxide, falling within specified Australian Harmonized Export Commodity Classification (AHECC) codes. Goods exported under these AHECC codes are export sanctioned goods for Russia.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **AUTONOMOUS SANCTIONS (EXPORT SANCTIONED GOODS—RUSSIA) DESIGNATION 2022**

The *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022* (the Designation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Amendment Regulations**

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to Russia, for use in Russia or for the benefit of Russia is prohibited under regulations 4 and 12 of the Regulations.

Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. The purpose of the *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022* (the Designation) is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include aluminium ores (for example, bauxite), aluminium oxide (for example, alumina) and aluminium hydroxide. This means that in addition to the existing prohibition on the export of ‘arms or related matériel’ to, or for the benefit of, Russia, Australia will now also prohibit the export of goods that are a key component in the manufacture and development of weapons. In prohibiting the export of such goods, Australia is demonstrating its condemnation of Russia’s illegal and unjustified invasion of Ukraine.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

#### **Human rights implications**

The Designation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Designation expands, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for Russia to include aluminium ores, aluminium oxide and aluminium hydroxide. The supply, sale or transfer of such goods therefore become subject to

the existing prohibition on making a sanctioned supply under regulation 12 of the Regulations. The Designation does not change the overarching operation of the Regulations.

The human rights obligation that may possibly be affected by including aluminium ores, aluminium oxide and aluminium hydroxide as ‘export sanctioned goods’ for Russia is the presumption of innocence. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. As strict liability offences allow for the imposition of criminal liability without the need to prove fault, all strict liability offences engage the presumption of innocence in article 14(2) of the ICCPR. A strict liability offence will not necessarily violate the presumption of innocence provided that it is: (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

Regulation 12 of the Regulations provide that strict liability applies unless the sanctioned supply is authorised by a permit under regulation 18 of the Regulations. The Designation has the effect of making aluminium ores, aluminium oxide and aluminium hydroxide ‘export sanctioned goods’ for Russia. The effect of this is that strict liability applies to the existence or otherwise of a sanctions permit. For an individual, strict liability will not apply to any other element of the offence.

The Designation is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.

## **Conclusion**

This instrument is compatible with human rights as the measures in the Designation do not raise any human rights issues.