

International Comparative Legal Guides



Sanctions 2021

A practical cross-border insight into sanctions law

Second Edition

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Australia implements two types of economic sanctions:

1. United Nations Security Council (UNSC) multi-lateral sanctions, which Australia imposes as a member of the United Nations (UN) under the *Charter of the United Nations Act 1945* (Cth) (the **UN Act**); and
2. autonomous sanctions which Australia imposes as part of its independent foreign policy under the *Autonomous Sanctions Act 2011* (Cth) (the **Sanctions Act**) and *Autonomous Sanctions Regulations 2011* (Cth) (the **Sanctions Regulations**). Contraventions of the Sanctions Act and Regulations give rise to serious penalties involving imprisonment and/or significant fines.

Australian sanction laws apply broadly (with potential extra-territorial effect), including in relation to activities:

- in Australia;
- by Australian citizens and Australian-registered bodies corporate overseas; and
- on board Australian-flagged vessels and aircraft.

The type of sanctions imposed use four different measures, depending on the circumstances and objectives of the sanction. These are:

1. restrictions on trade in goods and services;
2. restrictions on engaging in commercial activities;
3. targeted financial sanctions on designated persons and entities; and
4. travel bans on certain persons.

Restrictions on trade in goods and services prohibits the export and import of certain goods and the provision of certain services. Typically, these restrictions prohibit goods and services to a country or region subject to the sanction; however, the restrictions can also be imposed on individuals, entities or groups.

Restrictions on engaging in commercial activities prohibit certain commercial activities (such as purchasing or selling shares) with companies that are operating in nominated industries or providing credit to certain offending entities.

Targeted financial sanctions specifically target certain goods and services to prohibit the supply to designated persons and entities, and prohibit directly or indirectly making an asset available to (or for the benefit of) a designated person or entity. Targeted financial sanctions also prohibit an asset holder using or dealing with an asset that is owned or controlled by a designated entity or person (i.e. 'freezing' the asset).

Travel bans prohibit the designated person(s) from entering or transiting through Australia.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

The Department of Foreign Affairs and Trade (DFAT) is the primary department that both administers and enforces the sanctions regime in Australia. The Australian Minister responsible for sanctions is the Minister for Foreign Affairs (the **Minister**). Prosecutions are undertaken by the independent Commonwealth Director of Public Prosecutions (CDPP) who brings prosecutions for serious Commonwealth criminal offences pursuant to the *Director of Public Prosecutions Act 1988* (Cth). The CDPP commences and continues prosecutions in accordance with the Prosecution Policy of the Commonwealth (**Prosecution Policy**). DFAT also maintains a Consolidated List of all entities and persons subject to sanctions.

The newly created Australian Sanctions Office (ASO) is the Australian Government's sanctions regulator. It sits within DFAT's Legal Division in the International Security, Humanitarian and Consular Group. As the sanctions regulator, ASO:

- provides guidance to regulated entities, including government agencies, individuals, business and other organisations on Australian sanctions law;
- processes applications for, and issues, sanctions permits;
- works with individuals, business and other organisations to promote compliance and help prevent breaches of the law;
- works in partnership with other government agencies to monitor compliance with sanctions legislation; and
- supports corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance.

In order to promote compliance with Australian sanctions law and respond to possible breaches, ASO operates within a network of federal partners, including the CDPP, the Department of Defence, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Department of Home Affairs (which administers UNSC travel bans, visa restrictions and violations of the *Customs Act 1901* (Cth)), Defence Export Controls (DEC), Australian Border Force, and the Australian Federal Police (AFP).

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

As of 1 January 2020, DFAT established the ASO which sits within DFAT's Legal Division in the International Security, Humanitarian and Consular Group.

Prior to 2020, an individual could register as a user of the Online Sanctions Administration System (**OSAS**) to contact DFAT in relation to sanctions permits. However, in 2020, OSAS will be replaced by a new online platform (titled “Pax”) in order to improve the process for making enquiries regarding Australian sanctions regimes and applying for sanctions permits. User guides will be available to ease this transition and all existing applications will remain in OSAS until finalised. As at August 2020, Pax has not yet been introduced and OSAS is still the only online system in which to contact DFAT.

Recent developments in Australia include the following:

- Between 9 April 2019 and 12 September 2019, the Australian Government amended the *Charter of the United Nations (Sanctions—Central African Republic) 2014* (Cth) sanctions on the Central African Republic to effect revisions to the UNSC resolutions to continue the arms embargo with certain exemptions. The embargo exemptions have been modified to require advance notification of a proposed supply to the Central African Republic instead of advanced approval.
- On 1 February 2020, the Minister imposed new targeted financial sanctions and travel bans on seven individuals for their role in the “elections” in Crimea and Sevastopol held in September 2019.
- On 10 August 2020, the Minister listed, by notice in the Commonwealth Government Gazette and pursuant to section 15 of the UN Act, additional persons and entities that, following the date of gazettal, will have their assets frozen.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The Australian Parliament imposes sanctions through legislation to give effect to UNSC sanctions and autonomous sanctions.

The UN Act, the Sanctions Act and the Sanctions Regulations give specific powers to the Minister to regulate economic sanctions (such as the recent activity referenced under question 1.3 above). The Minister can make decisions, subject to the whole of Commonwealth Government and Cabinet approval, as to the persons and entities who will be sanctioned, and can initiate investigations (through the ASO and the AFP) and issue permits for activities that would otherwise be sanctioned.

DFAT administers all three legislative regimes and their regulations. ASO and DFAT regulate the administrative and enforcement of these sanctions. The Department of Home Affairs specifically implements all visa restrictions relating to travel bans that are part of Australian sanctions law.

The following prohibitions are included under the legislative regime in the UN Act and the Sanctions Act:

- making a ‘sanctioned supply’ of ‘export sanctioned goods’;
- making a ‘sanctioned import’ of ‘import sanctioned goods’;
- providing a ‘sanctioned service’;
- engaging in a ‘sanctioned commercial activity’;
- dealing with a ‘designated person or entity’;
- using or dealing with a ‘controlled asset’; or
- the entry into or transit through Australia of a ‘designated person’ or a ‘declared person’.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Australia imposes UN sanctions where they are implemented

by the UNSC. Once a UN sanction is imposed, then it is up to the Australian Government to implement that sanction through the UN Act, and relevantly for travel plans, the *Migration (United Nations Security Resolutions) Regulations 2007* (Cth).

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

There is no regional body that issues sanctions. Sanctions only apply in Australia by reason of domestic Australian law.

Nonetheless, Australia has been a member of the Financial Action Task Force (**FATF**) since 1990. FATF sets international standards aimed to prevent global money laundering and terrorist financing. FATF issues FATF Recommendations, or FATF Standards, and involves member countries in mutual evaluations, of which Australia last took part in 2015. Money laundering is a common reason for sanctions to be imposed, particularly against designated persons. Due to Australia’s positive response and progress in strengthening its framework to tackle money laundering and terrorist financing, FATF re-rated Australia on seven of the 40 existing FATF Recommendations. However, there has been ongoing criticism of Australia’s overall anti-money laundering regime, with the Organisation for Economic Co-operation & Development stating, in its Phase 4 Review of Australia, that more needed to be done to address money laundering risks in the real estate sector from the flow of illicit funds into Australia. Sanctions is one tool to address the illicit flow of money.

Australia implements targeted financial sanctions under UNSCR 1718 and its successor resolutions (**Resolutions**). Designations under these Resolutions have automatic legal effect under Australian law. The Minister may also designate Democratic People’s Republic of Korea (**DPRK**) individuals or entities. Following the adoption of UNSC Resolution 2231, Australia introduced the *Charter of the United Nations (Sanctions – Iran) Regulations 2016* (Cth) which provide for designations under UNSC Resolution 2231 to be automatically incorporated under Australian law.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Australia maintains a Consolidated List for the persons and entities that are currently sanctioned by the UNSC and/or autonomously sanctioned. The Consolidated List contains all persons and entities sanctioned including Australian citizens, foreign nationals, and residents in Australia and overseas.

ASO maintains the Consolidated List and updates it regularly to ensure it is up to date with UNSC sanctions.

In addition, under section 15 of the UN Act, the Minister has the power to list, by notice in the Commonwealth Government Gazette, persons and entities upon being satisfied on reasonable grounds that they are:

- a) a person who commits, or attempts to commit, terrorist acts or participates in or facilitates the commission of terrorist acts; or
- b) an entity owned or controlled directly or indirectly by such persons; or
- c) a person or an entity acting on behalf of, or at the direction of such persons and entities.

Once an entity is listed pursuant to section 15 of the UN Act, any person holding an asset that is owned or controlled by a listed person or entity (a **frozen asset**) commits an offence if they, without the authorisation of the Minister, use or deal with a frozen asset, or allow it to be used or dealt with, or facilitates the use of or dealing with it. In addition, any person who, directly or indirectly, makes a frozen asset available to a listed person or entity, without the authorisation of the Minister, commits an offence.

The person or entity that was listed may write to DFAT to request a statement of reasons for the listing. Further, a listed person or entity, or their authorised representative, may make a written submission to the Minister for the purpose of further informing the Ministerial decision as to whether to declare that the listing will continue to have effect.

Should the listed person or entity wish for their name to be removed from the Consolidated List, they may write to the Minister at any time, outlining this request and setting out the circumstances relied upon to justify the application for revocation of a listing.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

There are mechanisms for challenging an addition to the sanctions list depending on what type of list the individual or entity is designated under. The statutory process for being de-listed is as follows:

- UNSC Listing must be applied for through the UNSC Focal Point for De-listing, through the country of citizenship or residence;
- UNSC Listing (related to ISIL/Da'esh and Al Qaida) must be applied for through the UN Office of the Ombudsman or through the country or residence; and
- counter-terrorism (UNSCR 1373) sanctions regime and Australian autonomous sanctions must be applied for through DFAT.

With regard to the Australian autonomous sanctions regime, DFAT directs that requests for de-listing should be made through the Sanctions Contact Page (<https://www.dfat.gov.au/international-relations/security/sanctions/Pages/contacts-and-links>).

Additionally, if an individual believes that an asset, directly or indirectly owned or controlled by that individual, has been frozen in error, that person should contact the asset holder in the first instance. If, following contact with the asset holder, the belief continues that the asset has been frozen in error, an email should be sent to ASO at asset.freezing@dfat.gov.au and the following information should be provided:

- full name and contact details;
- the details of the asset and asset holder, including details of legal or other interest in the asset;
- details of any contact with the asset holder; and
- the reasons for the belief that the asset has been frozen in error.

In relation to the decision to designate or declare a person under the autonomous sanctions regime, the Minister's decision is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and under common law. This is the one safeguard available under domestic law; however, there is current debate within Australia as to whether judicial review merely secures the minimum requirement that the Minister act in accordance with the legislation, rather than anything more. For example, in recent times, the Commonwealth Australian Parliamentary Joint Committee on Human Rights was of the

opinion that judicial review will generally be insufficient, in and of itself, for human rights purposes, especially in relation to the right to a fair hearing.

2.6 How does the public access those lists?

The public can access the Consolidated List through the DFAT's website (<https://www.dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list>) (linking to the current Consolidated List. This will change when it is updated is here: https://www.dfat.gov.au/sites/default/files/regulation8_consolidated_2.xls). The public can also subscribe to the ASO's email database to receive emails when the Consolidated List is updated, or subscribe to Commonwealth Gazettal notices, which will include, from time to time, an update to the Consolidated List.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Australia maintains comprehensive sanctions on several countries and regions. The comprehensive sanctions are implemented under the UN Act, Australia's autonomous sanctions and under both systems.

Australia has currently implemented comprehensive sanctions from the UNSC on countries including: Central African Republic; Democratic Republic of the Congo; Guinea-Bissau; Iraq; Lebanon; Mali; Somalia; South Sudan; Sudan; and Yemen. Australia also implements UNSC sanctions against Counter Terrorism (UNSCR 1373), ISIL (Da'esh), the Taliban, and Al-Qaida.

Australia has currently implemented comprehensive sanctions autonomously and through the UNSC on countries including: DPRK; Iran; and Libya.

Separate to the UNSC, Australia has also currently implemented autonomous sanctions against countries including: The Former Federal Republic of Yugoslavia; Myanmar; Russia; Ukraine; Syria; and Zimbabwe.

The DFAT website has further detailed information of each of the sanctions here: <https://www.dfat.gov.au/international-relations/security/sanctions/Pages/sanctions-regimes>.

2.8 Does your jurisdiction maintain any other sanctions?

Yes. Australia maintains sanctions on individuals and entities.

2.9 What is the process for lifting sanctions?

In addition to the process listed under questions 2.4 and 2.5 above, the Australian Parliament also retains the ability to remove sanctions where the sanction itself was imposed by law.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Australia has a complex export control regime that dictates the prohibitions, restrictions and documentation required for importing and exporting products to and from Australia.

The export regime is regulated by the Department of Home Affairs, Department of Agricultural and Water Resources and the Australian Trade and Investment Commission. Other

departments can also be involved where the products are related to that department (for example, the export of wine and grape products necessitate that the Australian Wine and Grape Authority will become involved).

There are further regimes for specific exports that relate to military and dual use goods and technologies. In addition, Australia has a prescriptive permit regime under the *Customs Act 1901* (Cth), which affects the export regime for certain countries and pursuant to certain multilateral trade treaties. In particular, section 50 provides for a prohibition of goods imported into Australia, while section 112 generally prohibits the exportation of goods unless specified conditions or restrictions are complied with.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes?

No. Australia has not introduced blocking statutes or other restrictions that prohibit adherence to other jurisdictions' sanctions or embargoes.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as "secondary sanctions")?

Australia does not have secondary sanctions in a form similar to the United States. Australia's sanctions must have a territorial jurisdiction which involves an Australian citizen and/or Australian registered entities. The sanctions still apply to Australian citizens and Australian registered entities regardless of the jurisdiction they are operating within, given the laws have an extra-territorial effect. However, the laws create primary offences of contravening sanctions. There is no secondary sanction regime in Australia. If there is any secondary liability, it arises under traditional common law principles and the statutory regime for accessorial liability under the *Criminal Code 1995* (Cth) (**Criminal Code**) (including under 11.1 to 11.5).

Sanctions will apply to persons and entities that are not citizens or incorporated in Australia where their conduct occurs in Australia and/or on Australian vessels/aircrafts.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction's sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

As noted above, the sanctions are imposed both on countries, organisations (such as ISIL (Da'esh)) and individuals.

However, the sanctions must be complied with by all citizens of, and entities incorporated in, Australia. As a result, the sanctions apply to all activities in Australia and to activities undertaken overseas by Australian citizens and entities incorporated in Australia, and Australian-registered bodies corporate overseas.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

The Australian Government can seek to freeze the assets of a

party that is alleged to hold assets or who may deal with an asset that is owned or controlled by a designated person or entity. In addition, the Minister may 'freeze' certain funds or other assets, the consequence of which is that persons and entities are prohibited from dealing with it, as doing so would constitute an offence. This is action taken by the Australian Government, not, traditionally, private litigants.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

The Minister can authorise a sanctions permit to allow a prohibited activity to be undertaken. The permit may have conditions imposed by the Minister. The criteria to obtain a permit depend on which regime (i.e. which country or party) the permit is for. Where the permit is for a sanction that is endorsed by the UNSC, Australia will need to notify and receive approval from the UNSC before a permit is issued.

The application for a permit will require detailed information about the goods and/or services to be provided, the end use of the goods and/or services, the end user and any other relevant parties, and the intended transport for goods and/or services. An individual or entity wanting to submit a sanctions permit may do so by registering as a user of the OSAS.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

DFAT may exercise its discretion to issue a notice requiring a person to give information or documents, including under oath, for the purpose of determining whether a sanction law has been or is being complied with.

In addition to the above, it is an offence under Australian law to provide false or misleading information in connection with the administration of a sanction law. Penalties range from imprisonment for up to 10 years, as well as significant monetary fines. Should a sanctions permit have been granted on the basis of false or misleading information, penalties can be sought by criminal proceedings (see question 4.12 below).

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

There is no explicit reporting requirement for a sanctions compliance programme for entities. However, DFAT does arrange and provide free presentations twice a year on Australian sanction laws for Australian businesses, universities and individuals in major Australian cities (but only if requested to do so).

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

Yes. It is a serious criminal offence of strict liability for breaching an economic sanction or condition on a permit.

Under the Sanctions Act, the offences in sections 16 and 17 are as follows:

- engaging in conduct that contravenes a sanctions law;

- engaging in conduct that contravenes a condition of an authorisation under a sanction law;
- giving false or misleading information or a document to a Commonwealth entity in connection with the administration of a sanction law; and
- giving false or misleading information or a document to another person recklessly as to whether that person, or another, will give it to a Commonwealth entity in connection with the administration of a sanction law.

Under the UN Act, the offences in sections 28 and 29 are expressed in similar terms, with a reference to a “sanction law” replaced with “UN sanction enforcement law”.

The maximum penalty for breaching an economic sanction under the Sanctions Act is, per offence, from 1 July 2020, as follows:

- For an individual:
 - 10 years imprisonment; and/or
 - a fine up to 2,500 penalty units (a penalty unit from 1 July 2020 is AU\$222.00) (presently AU\$555,000).
- For a company:
 - 10,000 penalty units (AU\$2,220,000); or
 - three times the value of the transaction(s) which the court can determine (whichever is the greater).

The penalties under the UN Act are the same as under the Sanctions Act.

The imposition of any penalty following a prosecution and conviction (or a guilty plea) is at the discretion of the sentencing court applying general sentencing principles for Commonwealth offences under the *Crimes Act 1901* (Cth).

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

DFAT and ASO are responsible for investigating criminal economic sanction offences in conjunction with other authorities. ASO has the power to issue a notice to require a person or entities to give information or documents, including sworn evidence. The ASO can then use this information for determining whether a sanction has been complied with. When DFAT and ASO conclude that an offence has been or may have been committed, they will refer the matter to the AFP for further investigation and to the CDPP for prosecution.

4.3 Is there both corporate and personal criminal liability?

Yes, both corporations and individual persons can be held criminally liable for an offence under the Criminal Code and be penalised.

The Criminal Code sets out a statutory regime for the attribution of knowledge of individual officers to a corporation. Under the Criminal Code, physical elements are attributed to a company in circumstances where an employee, agent or officer of a company commits the physical element when acting within the actual or apparent scope of his or her employment or authority. Fault elements are attributed to a company that expressly, tacitly or impliedly authorised or permitted the commission of the offence. The corporation may be found guilty of any offence, including one punishable by imprisonment.

The terms of corporate criminal responsibility are contained in sections 12.1 to 12.6 of the Criminal Code. In summary, these provisions:

- set out important definitions of ‘board of directors’, ‘corporate culture’ and ‘high managerial agent’;

- establish criminal liability on a corporation by attributing the knowledge and conduct of a person to the corporation;
- attribute negligence to a corporation by reference to the corporation’s conduct as a whole;
- provide a mistake-of-fact defence of limited application; and
- establish criminal liability for a bad corporate culture (one that condones or tolerates breaches of the law).

A corporation has an available defence to the question of whether any relevant knowledge or intention possessed by a high managerial agent (as opposed to the board of directors) is to be imputed to it, if the corporation had itself exercised due diligence to prevent the conduct occurring that constituted the offence.

This statutory regime is subject to review by the Australian Law Reform Commission, which presented a report to the Australian Government in April 2020. The report has yet to be released.

Further, individuals may be liable as a director or officer of a corporation if conduct in contravention of the UN Act and the Sanctions Act can properly be characterised as conduct in breach of common law and/or statutory director/officer duties (under the *Corporations Act 2001* (Cth)).

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

See question 4.1 above.

The penalties are expressed as a maximum per offence. Any sentence passed by a sentencing court will apply the sentencing process set out in the *Crimes Act 1901* (Cth) and depend upon the facts of each case and the circumstances of the convicted person.

4.5 Are there other potential consequences from a criminal law perspective?

A breach of laws relating to sanctions may also open up an individual or entity to offences under customs and migrations law, as well as fraud, supporting terrorism or trafficking offences, anti-money laundering offences or other crimes set out in the Criminal Code.

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

At the time of writing, no civil penalties exist except for sanction offences.

Where companies provide false or misleading information, liability may arise under the Criminal Code for general criminal offences against the Commonwealth, under the *Corporations Act 2001* (Cth) for a breach of directors’ duties and under the Australian Consumer Law for misleading or deceptive conduct offences. In addition, if the conduct is sufficiently egregious and impacts the share value of a company, or otherwise causes significant loss to numerous claimants, a class action (under the terms of the Commonwealth class action regime, pursuant to the *Federal Court of Australia Act 1976* (Cth) or State equivalents) may be available to aggrieved victims.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

See questions 1.2 and 4.2 above.

4.8 Is there both corporate and personal civil liability?

Yes, see question 4.3 above.

Under the *Corporations Act 2001* (Cth), the corporate veil of a company may be pierced in some limited circumstances to allow for liability of directors and/or managers in their individual capacity.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

See questions 4.1 and 4.4 above.

4.10 Are there other potential consequences from a civil law perspective?

Depending upon the conduct, the general fraud, financial deception and dishonesty offences in the Criminal Code may apply. Other civil offences, aside from director/officer duty principles are limited.

There is an increasing emphasis of Corporate Social Responsibility within the corporate sphere in Australia. For example, shareholders are holding companies to account at an increased rate and demanding transparency in a world increasingly influenced by global investigative reporting. It remains to be seen the extent to which these issues translate into a duty recognised by Australian law as forming part of the duties a director and officer owe to a company, for example, not to engage in conduct in breach of sanctions law which is not in the exercise of power or discharge of a duty with the degree of care and diligence that a reasonable person would exercise in such a position (see section 180 (1) of the *Corporations Act 2001* (Cth)).

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

The enforcement of sanctions in Australia is criminal, not civil.

The Australian Government agencies involved in the enforcement of sanctions are DFAT, the AFP and the CDPP. In general terms, the AFP and DFAT will investigate and the CDPP will prosecute. All criminal trials are public unless circumstances exist to justify suppression or non-publication orders. There is generally less publicity until an open trial where admissible evidence is made public. The CDPP does not comment on any existing investigations or prosecutions before the courts. All sentences are public unless there is a good reason (for example, other co-accused are still to stand trial) to make judgments and sentences subject to non-publication orders.

If there are judicial review proceedings, challenging the determination of the Minister or of DFAT, these are civil administrative appeal proceedings in the Federal Court of Australia. They are conducted in accordance with the requirements of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and the rules of the Federal Court of Australia. Again, these are public unless court non-publication orders are justified.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

Any appeal of a criminal conviction for a sanctions offence must be lodged within a specified time, and involves an appeal

against conviction and/or sentence. Appeals are to the Court of Appeal in each State where an original trial was held in a State court (exercising Commonwealth jurisdiction) or the Federal Court of Australia. Most criminal proceedings are conducted in State courts, which are entitled to exercise Commonwealth jurisdiction in respect to conduct occurring in a particular State. Appeal proceedings are governed by the relevant Rules of Court applicable to the State or Federal Court.

There have been two publicised proceedings for contraventions of economic sanctions, as outlined below.

- Between March 2009 and April 2010, two individuals were alleged to have exported 90 tonnes of nickel alloys to Iran. Nickel is a banned export to Iran as its potential end use could contribute to Iran's nuclear programme. The nickel alloys were purchased by a Dubai-based company that effected an indirect transfer of the goods to Iran. The AFP launched an investigation in 2012 over allegations 90 tonnes of the banned material was sent to Iran in two shipments falsely labelled as stainless steel.
 - One individual pleaded not guilty and proceeded to trial. The matter is ongoing and currently subject to non-publication orders.
 - Another individual pleaded guilty in May 2019 on two counts of conduct in contravention of the UN Act and of giving false information to another person, reckless that it would be given to the Commonwealth in connection with the administration of the sanctions regime in contravention of the UN Act. On 24 December 2019, that person was sentenced to an Intensive Corrections order (18 hours of community service per month for two years) by the District Court of New South Wales.
- In *R v Chan Han Choi*, one individual was charged with breaching UN sanctions for the supply of products related to the proliferation of weapons of mass destruction to the DPRK. The AFP's Operation Byahaut investigated and arrested an individual who was acting as an economic agent of DPRK. It was alleged that the individual was brokering the sale of missiles and missile componentry and expertise from DPRK to other international entities; and attempting to transfer coal from DPRK to entities in Indonesia and Vietnam. The individual was charged with offences under s 27(1) of the UN Act, Regulation, 11(2) of the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008* (Cth), s 11 of the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (Cth), s 16(1) of the *Sanctions Act and Regulation* and 13(1) of the *Autonomous Sanctions Regulations 2011* (Cth). The case is ongoing with a trial listed before the Supreme Court of New South Wales in February 2021.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Australia's sanctions offences give rise to criminal offences under the Criminal Code and are enforced at a national level. Offending conduct is investigated by the AFP. Prosecutions are conducted by the CDPP.

In relation to investigations, the AFP cooperates within each State and Territory locally and may draw upon and conduct joint taskforces with State and Territory enforcement agencies when conducting investigations, as the circumstances may require it.

4.14 What is the statute of limitations for economic sanctions violations?

There are no statute of limitation for contraventions of economic sanctions as a serious criminal offence.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

The following legislation is not specifically regarded as economic sanctions, but are nonetheless related to the topic, including:

- *Weapons of Mass Destruction (Prevention of Proliferation Act 1995)* (Cth): <https://www.legislation.gov.au/Details/C2018C00445>.
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth): <https://www.legislation.gov.au/Details/C2019C00011>.
- *Criminal Code 1995* (Cth): <https://www.legislation.gov.au/Details/C2020C00245>.
- *Foreign Acquisitions and Takeovers Act 1975* (Cth): <https://www.legislation.gov.au/Details/C2020C00023>.
- *Foreign Influence Transparency Scheme Act 2018* (Cth): <https://www.legislation.gov.au/Details/C2019C00133>.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Guidance

- DFAT website 'Australia and sanctions': <https://www.dfat.gov.au/international-relations/security/sanctions/Pages/sanctions-regimes>.
- Central African Republic and Democratic Republic of the Congo sanctions regimes: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/central-african-republic-and-democratic-republic-congo-sanctions-regimes-sanctions-regime>.
- Counter-Terrorism (UNSC 1373) sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/counter-terrorism-uns-1373-sanctions-regime>.
- Crimea and Sevastopol sanctions regimes: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/crimea-and-sevastopol-sanctions-regime>.
- Democratic People's Republic of Korea (North Korea) sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/democratic-peoples-republic-korea-sanctions-regime>.
- Former Federal Republic of Yugoslavia sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/former-federal-republic-yugoslavia-sanctions-regime>.
- Guinea-Bissau sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/guinea-bissau-sanctions-regime>.
- Iran sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iran-sanctions-regime>.

- Iraq sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/iraq-sanctions-regime>.
- ISIL (Da'esh) and Al-Qaida sanctions regimes: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/isil-daesh-and-al-qaida-sanctions-regime>.
- Lebanon sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/lebanon-sanctions-regime>.
- Libya sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/libya-sanctions-regime>.
- Mali sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/mali-sanctions-regime>.
- Myanmar sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx>.
- Russia sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/russia.aspx>.
- Somalia sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/somalia.aspx>.
- Sudan and South Sudan sanctions regimes: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/sudan-and-south-sudan-sanctions-regime>.
- Syria sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/syria.aspx>.
- The Taliban sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/the-taliban.aspx>.
- Ukraine sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/ukraine.aspx>.
- Yemen sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/yemen.aspx>.
- Zimbabwe sanctions regime: <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/zimbabwe.aspx>.

Legislation

- *Charter of the United Nations Act 1945* (Cth) – regulations: <https://www.legislation.gov.au/Details/C2016C00742>.
- *Autonomous Sanctions Act 2011* (Cth) – regulations: <https://www.legislation.gov.au/Details/C2016C00247>.
- *Weapons of Mass Destruction (Prevention of Proliferation Act 1995)* (Cth): <https://www.legislation.gov.au/Details/C2018C00445>.
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth): <https://www.legislation.gov.au/Details/C2019C00011>.
- *Criminal Code 1995* (Cth): <https://www.legislation.gov.au/Details/C2020C00245>.
- *Foreign Acquisitions and Takeovers Act 1975* (Cth): <https://www.legislation.gov.au/Details/C2020C00023>.
- *Foreign Influence Transparency Scheme Act 2018* (Cth): <https://www.legislation.gov.au/Details/C2019C00133>.
- Consolidated List: <https://www.dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list>.



Robert Wyld is one of Australia's leading commercial crime lawyers. For over 30 years, he has practised in commercial crime, including fraud, bribery, corruption, money laundering, sanctions, extradition and internal corporate investigations. He has represented individuals and leading companies in relation to internal and external investigations and prosecutions. Robert has advised various clients on Australia's sanctions regime and on the United States sanctions regime in a variety of industries and sectors.

He has published extensively in Australia, the United Kingdom, Germany and the United States (with Oxford University Press). Robert has been recognised as a leading Business Crime, Investigations & Asset Recovery lawyer by Who's Who Legal Australia 2017 to 2020 inclusive, is the only Who's Who Thought Leader in Investigations for Australia and is a Band 1 Chambers Asia Pacific lawyer for bribery and anti-corruption work.

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Lara Douvartzidis is a rising talent at Johnson Winter & Slattery, one of Australia's leading independent law firms. As an associate, Lara works with partners across the firm to advise major Australian and international corporations on their most challenging legal issues, with a focus on *pro bono* and commercial litigation, environment and planning law, class actions, and modern slavery law obligations. Lara assists in expanding the firm's *pro bono* practice as a *pro bono* coordinator. She is passionate about strategic litigation trends, including the convergence of international human rights law with national and international environmental law.

Lara previously served as the associate to the Honourable Chief Justice Kourakis of the Supreme Court of South Australia. She holds an Advanced Master's in European and International Human Rights Law from Leiden University in The Hague and is a valued member of the Business and Human Rights Subcommittee for the Australian Lawyers for Human Rights.

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