



20 October 2026

Department of Foreign Affairs & Trade
Langton Crescent
PARKES ACT 2600

By email: sanctionsconsultation@dfat.gov.au

Dear Sir/Madam,

ASLA Reforms

The Australian Financial Markets Association (**AFMA**) represents the interests of over 140 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations and traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

We are pleased to make a submission on the Exposure Draft to amend the Autonomous Sanctions legislation (**the Exposure Draft**). The submission draws on the AFMA submission to the DFAT review of the Autonomous Sanctions Framework, dated 2 March 2023:

Executive Summary

AFMA's key recommendations in relation to the Exposure Draft are as follows:

- Consideration should be given to reframing the definition of "effective control" in respect of those that can make, or can influence the making of, financial and operational policies to ensure that the definition is less ambiguous and capable of being operationalised;
- The legislation should include a safe harbour that protects entities acting in good faith based on publicly available information;
- Clarification should be provided that secondary market trading in securities/financial instruments is not "dealing with a controlled asset";
- The legislation should have no application to instruments that are cash-settled and do not confer a transfer of title.

Legislative Approach

As previously advised, one of the principal AFMA recommendations arising from the Department's review was to streamline the legislative framework relating to autonomous sanctions. In this regard, AFMA supports the proposed two-tier legislative approach, with core provisions being contained in the Bill, augmented by a suite of Ministerial Rules that are sufficiently nimble to accommodate swift changes, particularly changes in the geopolitical environment.

Many of the issues that have been raised by AFMA members in relation to the consultation on the Exposure Draft relate more to the content of the Rules and, to a certain extent, associated guidance. AFMA requests that the Department commit to extensive consultation on these Rules before they go live on 1 October 2027. We reiterate our support for FAQ to be placed on the DFAT website prior to the commencement of the new Rules, as per the OFAC process.

We encourage DFAT to publish the final Act, Rules and supporting implementation materials as far in advance of the proposed commencement date as is practicable. Early publication would provide regulated entities with sufficient time to assess the implications of the reforms, undertake gap analyses and determine whether existing sanctions frameworks, systems, controls, procedures, governance arrangements and training materials remain aligned with the final requirements.

While DFAT has indicated that many of the reforms are intended to clarify, consolidate and modernise the existing framework rather than introduce new substantive obligations, clarification of legislative concepts, prohibitions, defences and interpretive provisions may nevertheless require financial institutions and other regulated entities to revisit existing arrangements to ensure that they continue to satisfy the Australian sanctions requirements.

Providing industry with adequate lead time before commencement would support consistent implementation, reduce the risk of divergent interpretations and facilitate any necessary updates to screening, customer due diligence, escalation, permit management and governance processes.

Exemptions and Permits

Similarly, AFMA supports the proposed exemptions for:

- Legal services;
- Humanitarian support; and
- Personal, domestic and non-commercial use.

The codification of these exemptions within the legislation will mitigate uncertainty and reduce pressure on the current permit process.

AFMA submits that there should be a further exemption for transactions entered into prior to commencement but settled post commencement, i.e. where there is a deferred settlement. In this regard, we note that licensed clearing and settlement facilities have statutory market integrity obligations with respect to settlement cycles and processes. Section 8(2) creates uncertainty as to how such clearing and settlement facilities should operate where sanctions obligations conflict with existing clearing and settlement obligations.

Where permits are still required, AFMA's view is that this process remains inefficient and duplicative. We agree that an OFAC-style general permit would both enhance efficiency and regulatory

transparency. This would also reduce the delay in obtaining permits which, in some cases, has been too long to be practical.

In relation to the commencement of the new legislative framework in October 2027 and permits:

- Section 48 should expressly deem a permit in force at commencement to be a sanctions permit to ensure appropriate continuity between the current and future regimes;
- Wind-down relief may also mitigate conflicts of law where new sanctions are imposed with little or no notice. For example, an Australian financial institution with operations or activities in China may need to consider the application of the PRC Anti-Foreign Sanctions Law when implementing foreign sanctions affecting Chinese persons or entities. A time-limited wind down permit would provide an orderly mechanism for exiting pre-existing transactions while managing potentially competing legal obligations;
- The draft legislation provides for existing permits to continue; however, permits are commonly drafted with reference to provisions and concepts that will be repealed. The issue is, therefore, how such permits will be interpreted. AFMA recommends a statutory rule deeming references in continued permits to repealed provisions, concepts or defined terms to be references to the corresponding provisions under the new framework, together with publication of a comprehensive concordance before commencement. This would provide certainty regarding the ongoing validity of existing permits;
- Section 55, relating to the commission of an offence for the contravention of a condition of a permit, should not apply to permits created prior to commencement and should only apply where there is actual knowledge of the contravention, with a legal defence existing where the person undertook reasonable steps to comply.

Effective Control Threshold

AFMA agrees with the policy proposal to codify the threshold for when a financially sanctioned party is considered to have sufficient control over a company. As set out in AFMA's submission to the DFAT review of the Autonomous Sanctions Framework, AFMA agrees with the alignment to the OFAC threshold of 50% in respect of ownership, voting rights and in respect of the governing board. On this point, AFMA seeks specific clarity as to whether the threshold is "50% or more" or "more than 50%."

Our concern, however, is the extension of effective control to extend to persons who "can make, or influence the creation of, financial or operating policies." This requirement is too nebulous to be able to be properly operationalised and creates unnecessary ambiguity as to whether a sanctioned entity is exercising effective control over a company. The information that would allow an entity to determine whether a financially sanctioned person is able to influence the creation of financial or operational policies is not publicly available, particularly for the service providers who generate lists against which entities screen to identify sanctioned entities. Moreover, the extension to "operational policies" should not be an indicator of effective control as such policies reflect more the executive functioning of a company as opposed to control from a governance perspective.

Given the strict liability approach to compliance with Autonomous Sanctions requirements, AFMA members providing services/assets to entities will need to adopt a conservative approach to ascertaining whether an entity is subject to sanctions restrictions. The inclusion of a criterion that

relies on information that is not publicly available will necessitate conservative assessment and exacerbate the instances where the provision of services is inappropriately restricted.

To the extent that the proposed definition is retained, then AFMA reiterates its request from 2023 that a list of in-scope entities be provided by DFAT to allow for effective administration of the sanctions framework.

Interaction with AML/CTF Framework

We support the policy objective of preventing designated persons from circumventing sanctions through legal entities they control. However, any concept of “effective control” should be sufficiently clear, objective and capable of practical implementation by regulated entities. Financial institutions already collect and maintain ownership and control information as part of their customer due diligence obligations under the AML/CTF framework. These processes are supported by established ownership and control concepts, regulatory guidance, onboarding and screening systems, and periodic review requirements. If the sanctions framework adopts a broader or materially different concept of “effective control”, institutions may not be able to rely on existing customer due diligence information for sanctions compliance. In particular:

- information collected for AML/CTF purposes may not always identify all forms of sanctions-relevant control
- institutions may be required to make complex judgements regarding informal influence, practical control, or de facto decision-making arrangements

As sanctions obligations become more closely integrated with the AML/CTF framework, greater clarity is also required regarding the respective roles of DFAT and AUSTRAC, including supervisory expectations and regulatory engagement relating to sanctions compliance. To promote consistency, reduce regulatory complexity and improve compliance outcomes, DFAT should:

- provide clear statutory indicators of control, supported by non-exhaustive examples of circumstances that would and would not constitute effective control;
- permit reasonable reliance on customer due diligence information obtained and maintained in accordance with AML/CTF obligations, unless specific risk indicators warrant additional sanctions-related enquiries; and
- publish practical guidance and examples addressing complex corporate groups, trusts, joint ventures, minority shareholdings, creditor relationships and contractual control arrangements.

This would support the policy objective of preventing sanctions evasion while leveraging existing compliance frameworks and reducing uncertainty for regulated entities.

Safe Harbour

Following on from the points above, and noting the strict liability aspects of the Australian sanctions framework and compliance issues arising from the lack of reliable, public information, AFMA submits that there should be a legislative safe harbour that protects an entity acting in good faith based on publicly available information. This would align the sanctions legislative framework with the AML/CTF framework and be consistent with the approach adopted in comparable jurisdictions, such as the UK.

In this regard, AFMA notes the existence of Section 22(7), which allows for the commission of an offence only where an outcome is likely or intended. This provision should be extended to other offence provisions, such as Sections 30 and 31.

Section 42 creates an important statutory defence; however, the accompanying note confirms that a defendant bears the legal burden in relation to the defence. As a result, the practical availability of the defence will depend heavily on an entity's ability to demonstrate that reasonable precautions and due diligence were exercised. We note that the Australian Sanctions Office has published the Sanctions Compliance Toolkit and related guidance materials that discuss reasonable precautions and due diligence in the sanctions context. Given the importance of Section 42 and the fact that the defendant bears the legal burden of establishing the defence, consideration should be given to linking the Explanatory Materials to the existing guidance and confirming whether adherence to the principles outlined in the ASO guidance will be taken into account when assessing the availability of the defence.

Facilitation

The phrase "conduct that contravenes, or would contravene, this Act" is unclear. It could be interpreted as extending the prohibition beyond facilitation of actual breaches to facilitation of conduct undertaken by foreign persons not directly subject to Australian sanctions laws, where such conduct would be prohibited if undertaken by an Australian person. Clarification of legislative intent and the intended territorial reach of the provision would assist regulated entities in assessing facilitation risk and applying the prohibition consistently.

Export Sanctions

The application of the export sanctions prohibitions in Sections 21 and 22 may require regulated entities to assess issues such as whether goods have undergone substantial transformation or have been re-exported through third countries. While these concepts may be relevant to determining the scope of the prohibitions, neither term appears to be defined in the Bill. Consideration should be given to providing guidance on the meaning and application of these concepts, including illustrative examples, to support consistent interpretation of sections 21 and 22.

Secondary Market Trading

An issue which arises under the current framework that does not appear to have been addressed in the Exposure Draft is the extent to which the framework imposes restrictions on secondary trading in securities/financial instruments, including equity instruments. From a policy perspective, given that secondary trading does not contribute (debt or equity) capital to the underlying sanctioned entity then there should not be restrictions to such trading from a sanctions perspective. However, this does not appear to be made explicitly clear in the Exposure Draft, particularly in respect of whether secondary market trading constitutes "dealing with a controlled asset."

Exemptions for Cash Settled Instruments and Value of Derivatives

Financial instruments for which there is no transfer of title should be excluded from the sanctions framework. AFMA requests that the legislation includes a class exemption for cash-settled derivatives, exchange traded products, index products such as ETFs and market making.

In addition, the legislation should specify that, in respect of derivatives, it is the exposure that represents the value as opposed to the notional value.

Statutory Codification of Inbound Transfers of Value

AFMA acknowledges correspondence from DFAT from 2022, which confirmed that where an Australian financial institution received an incoming value transfer on behalf of a customer from a sanctioned jurisdiction, then there was no requirement for the incoming value to be frozen unless the intended recipient is also subject to sanctions restrictions. While helpful, it is AFMA's view that this position should be codified in either the Act or the Rules to provide appropriate clarity to affected entities.

Custody and Related Services

Consistent with the AFMA position from 2023, we submit that the legislation should include an exemption for custody services, where the custodian is only holding legal title to the underlying asset but not beneficial title. This exemption should extend to other related legal structures, including investment management, acting as a trustee, enforcing security and external administration.

In relation to fungible physical assets such as commodities, it may be the case that such assets are co-mingled with other assets in a shared storage facility. It is unclear as to how Section 31 applies in this instance where part of the shared facility includes sanctioned assets and the Act should clarify this issue.

Section 31 does not contain the express "directly or indirectly" language used elsewhere in the Bill. As a result, it is unclear whether the prohibition is intended to extend to circumstances where a person causes, directs or arranges for another person to deal with a financially restricted asset. Clarification of the intended scope of Section 31 would assist regulated entities in applying the provision consistently.

Definitions

AFMA notes that a substantial amount of ambiguity in applying the sanctions framework arises from the lack of a statutory definition of key terms. In this light, AFMA recommends that the following terms are defined in the Act:

- "asset"
- "financial assistance"
- "financial service"
- "the value of the transaction or transactions"

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Please contact me on (02) 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,



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Head of AML