

A world map with a dark blue background and a network of orange lines connecting various points across the continents, symbolizing global connectivity or sanctions.

K&L GATES

Australian Sanctions on Russia and Surrounds

K&L Gates Legal Insight

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The Australian Sanctions Regime

Background

Australia administers a mix of United Nations Security Council (**UNSC**) sanctions regimes and autonomous sanctions laws originating in Australia.

Autonomous Australian sanctions are established by the *Autonomous Sanctions Act 2011* (**Sanctions Act**) and the *Australian Autonomous Sanctions Regulations 2011* (**Regulations**). It is generally the Regulations which create sanctions, whilst the Sanctions Act establishes the foundation upon which the Regulations operate.

The Department of Foreign Affairs and Trade (**DFAT**) administers the regime. It also provides a Consolidated List of individuals and entities against whom there are targeted financial sanctions under Australian sanctions laws. This can be accessed here: [Consolidated List](#).

The UNSC sanctions are implemented under the *Charter of the United Nations Act 1945* and related regulations. Most Australian sanctions are imposed under this legislation. However, the sanctions regimes discussed in this memo are implemented under the Sanctions Act and Regulations.

The Sanctions Act applies to activities within Australia, and will apply extraterritorially to activities undertaken overseas by Australian citizens and Australian-registered bodies corporate.

Recent Changes to the Sanctions Act

The Australian government recently expanded the autonomous sanctions regime by introducing the new concept of Thematic Sanctions under the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021*. These changes allow the Minister to designate individuals and entities for sanctions based on types of activity and behaviour in which they have engaged. This major new introduction expands the Minister's powers from geographically limited events to types of criminal activity and violations of rights.

In general, the major themes introduced to the Regulations are:

- proliferation of weapons of mass destruction;
- malicious cyber activity;
- serious violations or serious abuses of human rights; and
- serious corruption.

General Structure of Sanctions

In short, Australian sanctions can implement the following restrictions on sanctioned countries or parts of countries:

- restrict trade in goods and services - especially as they relate to financial and military services and mining equipment;
- restrict specified commercial activity;
- impose targeted financial sanctions on key individuals and entities; and
- impose travel bans on key individuals.

The Australian Sanctions Regime

Penalties and Defences

The penalties for contravening the sanctions regime can be serious and include:

- for individuals, each breach is punishable by imprisonment for up to 10 years and a fine of up to three times the value of the relevant transaction or 2,500 penalty units (AU\$555,000) (whichever is greater); and
- for bodies corporate, each breach is punishable by a fine of up to three times the value of the transaction or 10,000 penalty units (AU\$2.22 million) (whichever is greater).

It is also an offence to not provide information requested by the chief executive of a relevant government agency or to provide false or misleading information.

The Sanctions Act stipulates that contravention of the sanctions laws by a body corporate is an offence of strict liability.

Helpfully, the Explanatory Memorandum of the Sanctions Act seemingly creates an absolute defence for a body corporate if it proves "*it took reasonable precautions, and exercised due diligence, to avoid contravening the sanction law*". Therefore, if a body corporate implements the necessary controls to abide by the sanctions regime, but still fails to avoid all sanctioned individuals and entities, it may be entitled to a defence.

Asset Freezing

Regulations 14 and 15 prevent a person from dealing with assets on behalf of a designated individual or entity or making those assets available to them (ie requirement to freeze assets).

Assets that are owned or controlled by a designated entity or individual are known as "controlled assets".

The Regulations create the obligation upon the holder of a controlled asset to notify the Australian Federal Police (known as a "notifiable opinion") of whether that asset:

- is controlled; or
- no longer a controlled asset (unless it was included in the Consolidated List).

Failure to follow asset freezing requirements is an offence of strict liability.

Items 4 - 13 in table 3 of the Annexure outlines the designated entities and individuals whose assets are subject to regulations 14 and 15 when designated by the Minister.

Sanctions Permits

Under regulation 18, the Minister has the power to grant a permit to an Australian individual or entity authorising the undertaking of sanctioned activity.

The permit will be granted subject to certain conditions and if the Minister is satisfied that it is in the national interest to grant the permit.

What is "in the national interest" is determined on the circumstances of each instance. The Minister would consider matters such as the broader objectives of the relevant sanctions regime, relationships with international organisations and governments and the overall advantage to Australia.

The Australian Sanctions Regime

Duration of Sanctions

Some designations of entities and individuals, as made by the Minister, will expire on the third anniversary of the date that that designation came into effect.

This expiration principle only applies to the restrictions imposed and declarations made by the Minister. Unless stated otherwise, the following forms of designations will expire on the third anniversary:

- individuals and entities (eg family members of key Russian figures);
- restrictions and designations imposed under the thematic sanctions provisions;
- specific assets that can be designated; and
- sanctioned vessels.

Australian Sanctions on Russia

Australia has recently extended and broadened the original autonomous sanctions placed on Russia in 2014 and 2015.

When sanctions were applied to restrict trade in Russia, most measures were also applied on the Ukrainian regions of Crimea and Sevastopol (and recently expanded to Donetsk and Luhansk). As such, the information below outlines relevant measures also applied to those Ukrainian regions.

It appears that Australian and Canadian sanctions regimes against Russia are more proscriptive for financial institutions relative to those imposed by the USA, UK and EU.

Sanctioned Supplies

A person makes a sanctioned supply where certain export sanctioned goods are transferred (directly or indirectly) to a sanctioned country or region.

For each country or region, the sanctions outline an industry for which the supply of relevant goods is prohibited. Table 1 of the Annexure provides a summary of what goods are 'supply sanctioned goods'.

The *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015 (Russian Specification)* provides a list of the goods which have been designated by the Minister as export or import sanctioned goods. These include certain pipes used in the exploration and production of oil and gas, and other equipment such as parts of machinery.

Items 1 and 2 of Table 3 in the Annexure provide information on the instruments which were enacted to designate relevant goods.

In summary, the following has been prohibited:

- i. the export to Russia of any arms and related materiel;
- ii. the export to Russia of aluminium ores, aluminium oxide and aluminium hydroxide;
- iii. the export to Russia any equipment or services to be used in oil exploration and production; and
- iv. the export to Crimea, Donetsk, Luhansk and Sevastopol any equipment or services to be used infrastructure projects in the transport, telecommunications, energy, oil, gas, and minerals sectors.

Sanctioned Imports

Currently, a person will make a "sanctioned import" if they buy or transport arms or related materiel from Russia.

From 25 April 2022, Australian entities will be prohibited from importing oil, refined petroleum products, natural gas and coal from Russia.

In relation to Crimea, Donetsk, Luhansk and Sevastopol, the Regulations impose an extreme import restriction by sanctioning the import of all goods from those two regions.

Australian Sanctions on Russia

Sanctioned Services

In general, sanctioned services involve the provision of certain professional services to individuals and entities from the sanctioned regions in relation to sanctioned supplies or imports.

Regulation 5 of the Regulations sanctions specific types of services in relation to a particular type of activity if that service assists with a sanctioned supply or sanctioned import. For example, the provision of financial assistance or technical advice in relation to a sanctioned supply is prohibited under the Regulations.

Whilst the actual supply of certain export sanctioned goods has been prohibited (as outlined in the Sanctioned Supplies section above), providing professional services assisting the supply of items relating to oil is not prohibited.

The Regulations also do not prohibit the supply of financial services in relation to the import of arms and related materiel from Russia.

Table 2 in the Annexure provides an overview of the sanctioned services as per regulation 5 in relation to Russia, Crimea, Donetsk, Luhansk and Sevastopol.

Restriction on Commercial Activity

Regulation 5B contains provisions creating sanctions against commercial activity in Russia. In short, the Regulations prohibit buying, selling or dealing with most financial instruments or providing loans or credit to specified entities which are:

- publicly-owned or controlled Russian banks;
- Russian companies engaged in activities relating to military equipment or services;

- publicly-owned or controlled Russian companies involved in the sale or transport of crude oil or petroleum products; and
- majority owned subsidiaries or entities acting as agents for any of the above.

For the entities with which commercial activity is restricted, see Item 1 of the Table 3 in the Annexure.

Regulation 5C sanctions the provision of a loan or establishment of a joint venture relating to infrastructure or resources in Crimea, Donetsk, Luhansk and Sevastopol. The Russian Specification designates the types of resources which must be avoided, such as sea water, salt liquors, unroasted iron pyrites, chalk and natural graphite.

Regulation 5C will be amended to include the Ukrainian regions of Luhansk and Donetsk from 28 March 2022.

Designated Entities and Individuals

Active designations against Russian and Ukrainian individuals and entities are compiled in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014*. This list includes 60 Russian and Ukrainian financial institutions and other entities that are significant for the Russian economy (either financial, infrastructure, resources or transport).

Table 3 in the Annexure provides a chronological outline of the entities and individuals that have been designated by the Minister for targeted financial sanctions.

Australian Sanctions on Ukraine and Belarus

Ukraine

Australia currently has active sanctions on certain Ukrainian officials, which were initially imposed in 2014.

From 28 March 2022, Australia began imposing sanctions on the Donetsk and Luhansk regions of Ukraine - which is an extension of the sanctions already imposed on Crimea and Sevastopol. These sanctions will target exports and commercial activity in relation to transport, telecommunications, energy, oil, gas and mineral reserves. It will also prohibit all imports. This occurred under the instrument, *Autonomous Sanctions Amendment (Ukraine Regions) Regulations 2022*.

Currently, regulation 6 also allows the Minister to designate a Ukrainian individual or entity that is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine.

From 28 March 2022, all references to "Crimea and Sevastopol" are amended to read, "a specified Ukraine region". This term, "a specified Ukraine region", will include any regions of Ukraine designated by the Minister from time to time.

Belarus

Similar to the sanctions on Ukraine, Australian sanctions on Belarus are specifically targeted and imposed on those officials and entities complicit in supporting Russia's invasion campaign.

See [Item 6](#) of Table 3 in the Annexure for current Belarussian designations.

Annexure 1 – Tables

Table 1 – Sanctioned Supplies

Country / Region	Goods
Russia	<ul style="list-style-type: none">• Arms or related materiel• Certain items (to be specified by the Minister) that relate to the projects relating to the exploration and production of oil• Aluminium ores and concentrates, artificial corundum, other aluminium oxide, aluminium hydroxide
Crimea, Donetsk, Luhansk, Sevastopol	<ul style="list-style-type: none">• Certain items (to be specified by the Minister) that relate to the creation, acquisition or development of infrastructure in the following sectors:<ul style="list-style-type: none">○ transport;○ telecommunications;○ energy;○ exploration of oil, gas and mineral reserves in the regions.

Annexure 1 – Tables

Table 2 – Sanctioned Services

	Sanctioned Service	In relation to	Notes
1	<ul style="list-style-type: none"> Technical advice Financial assistance A financial service Another service 	A sanctioned supply	This restriction does not apply to services provides in relation to sanctioned supplies of certain items relating oil with Russia - see also 2.3(c)
2	<ul style="list-style-type: none"> Financial assistance A financial service 	A sanctioned import	This restriction does not apply to services provided in relation to sanctioned imports arms and related material from Russia - see also 2.3(d)
3	<p>Investment services (as defined in the Regulations):</p> <p>(a) reception and transmission of orders in relation to one or more financial instruments;</p> <p>(b) execution of orders on behalf of clients;</p> <p>(c) dealing on own account;</p> <p>(d) portfolio management;</p> <p>(e) investment advice;</p> <p>(f) either or both of the following:</p> <p>i. underwriting of financial instruments;</p> <p>ii. placing of financial instruments on a firm commitment basis;</p> <p>(g) placing of financial instruments without a firm commitment basis;</p> <p>(h) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility.</p>	A sanctioned commercial activity	Commercial activity is outlined in section 2.4.
4	<ul style="list-style-type: none"> Technical advice Financial assistance A financial service Another service 	Specific activity as designated by the Minister	<p>Designated activity in relation to Russia:</p> <ul style="list-style-type: none"> military activity; and manufacture, maintenance or use of export sanctioned goods in relation to arms or related materiel <p>Designated activity in relation to Crimea, Donetsk, Luhansk and Sevastopol:</p> <ul style="list-style-type: none"> manufacture, maintenance or use of export sanctioned goods in used in transport, telecommunications, energy and exploration of oil, gas, mineral reserves in the regions; and sanctioned commercial activity in the regions.
5	<ul style="list-style-type: none"> Drilling Well-testing Logging and completion services Supply of specialised floating vessels 	Specific activity related to oil exploration and production projects in Russia	

Annexure 1 – Tables

Table 3 – Designations of individuals and entities related to Russia

Each instrument in Table 3 became effective on the day following its commencement.

The Instruments contained in items 3 - 13 in Table 3 make amendments to the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014*.

Item	Date and Instrument	Individuals and Entities Targeted
1	31 March 2015 Russian Specification	<p>This instrument designated various institutions as those with which commercial activity is sanctioned. (See also item 11 of this Table.)</p> <div> <div> Financial institutions: <ul style="list-style-type: none"> • Sberbank • VTB Bank • Gazprombank • Bank for Development and Foreign Economic Affairs, Vnesheconombank (VEB) • Rosselkhozbank </div> <div> Military affiliated companies: <ul style="list-style-type: none"> • OPK Oboronprom • United Aircraft Corporation • Uralvagonzavod </div> <div> Crude oil and petroleum companies: <ul style="list-style-type: none"> • Rosneft • Transneft • Gazprom Neft </div> </div>
2	28 July 2017 Instrument	This Instrument extended the Russian Specification. Here, the Minister designated an array of equipment the supply of which is sanctioned (as per sanctioned supply regulations - see 2.1 above)
3	24 February 2022 Designation Instrument	<p>This regulation amendment provides the Minister of Foreign Affairs the power to designate an individual or entity for a targeted financial sanction on the following classes:</p> <ol style="list-style-type: none"> A person or entity that the Minister is satisfied is, or has been, engaging in an activity or performing a function that is of economic or strategic significance to Russia. A current or former Minister or senior official of the Russian Government. An immediate family member of a person mentioned in paragraph (a) or (b). <p>As per regulation 9, designations made under this Designation Instrument will expire on the third anniversary of the date on which it comes into effect.</p>
4	24 February 2022 Instrument	<p>Four entities related to military operations and four key financial institutions, being:</p> <ul style="list-style-type: none"> • Industrial Savings Bank • Promsvyazbank • Genbank • Black Sea Bank for Development and Reconstruction <p>This regulation also designated 33 key Russian government individuals.</p>

Annexure 1 – Tables

Table 3 – Designations of individuals and entities related to Russia

Item	Date and Instrument	Individuals and Entities Targeted
5	25 February 2022 Instrument	The EU, UK, Canada and Australia sanctioned another 339 members of the Russian Duma (Parliament) who voted in favour of recognising Donetsk and Luhansk regions as independent regions.
6	26 February 2022 Instrument	Targeted financial sanctions were imposed on key Belarusian figures and six entities linked to military and surveillance technology.
7	27 February 2022 Instrument	The Minister imposed sanctions on Vladimir Putin and four of his senior officials.
8	2 March 2022 Instrument	Using the powers granted to her in the Designation Instrument, the Minister designated these seven Russian financial institutions for targeted financial sanctions: <ul style="list-style-type: none"> • Russian Direct Investment Fund • Management Company of the Russian Direct Investment Fund • RVC Management Company • Central Bank of the Russian Federation • Russian Agency for Export Credit and Investment Insurance OJSC (EXIAR) • Otkritie Bank • Cetelem (or Setelem) Bank Limited Liability Company
9	7 March 2022 Instrument	This instrument designates 10 Russian individuals who played a key role in disseminating propaganda and disinformation.
10	13 March 2022 Instrument	The Minister designated 33 Russian individuals who are play key roles in Russian state owned or controlled financial, natural resources and transportation institutions for financial sanctions and travel bans. This list includes family members of the designated figures. Notably, this Instrument sanctions: <ul style="list-style-type: none"> • Alexei Borisovich Miller (CEO of Gazprom) • Dmitri Alekseevich Lebedev (Chairman of the Board of Directors of Bank Rossiya) • Nikolai Petrovich Tokarev (CEO of Transneft) • Roman Arkadyevich Abramovich (Owner of Millhouse Capital) • Sergei Sergeevich Ivanov (CEO of ALROSA) • Kirill Aleksandrovich Dmitriev (CEO of RDIF)

Annexure 1 – Tables

Table 3 – Designations of individuals and entities related to Russia

Item	Date and Instrument	Individuals and Entities Targeted
11	17 March 2022 □Instrument	<p>Under the Designating Instrument, the Minister has designated 11 Russian financial institutions, which includes previously sanctioned entities:</p> <ul style="list-style-type: none"> • Sberbank • VTB Bank • Gazprombank • Bank for Development and Foreign Economic Affairs, Vnesheconombank (VEB) • Rosselkhozbank • Sovcombank • Novikombank • Alfa-Bank • Credit Bank of Moscow • National Wealth Fund of the Russian Federation • Ministry of Finance of the Russian Federation <p>This designation is crucial as it is enacted under a different power to that used for some of the same institutions as seen in Item 1 of this Table.</p> <p>By using her powers in regulation 6 to designate Sberbank, VTB Bank, Gazprombank, VEB and Rosselkhozbank, the Minister effectively imposes upon them asset freezes.</p>
12	17 March 2022 □Instrument	<p>The Minister registered another instrument to designate two more Russian oligarchs:</p> <ul style="list-style-type: none"> • Viktor Vekselberg (President of Renova Group) • Oleg Deripaska (President of Rusal)
13	24 March 2022 □Instrument	<p>Further individuals from Belarus, Russia and Ukraine were designated for targeted financial sanctions.</p> <p>These designations are persons of strategic significance to the Russian invasion.</p> <p>This instrument designates the Belarusian President, Alexander Lukashenko, for targeted financial sanctions due to the support he provides Russia.</p>
14	24 March 2022 □Instrument	<p>The Minister has designated 22 individuals involved in activities that are of strategic significance to Russia through their active participation in the Russian Government's dissemination of disinformation and propaganda.</p> <p>This imposes targeted financial sanctions on key figures such as:</p> <ul style="list-style-type: none"> • Margarita Simonyan (Editor-in-Chief, Russia Today) • Daria Dugina (Chief Editor, United World International) • Maksim Krasovskiy (Executive Editor, InfoRos)

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