

Russia Sanctions – Compliance Guide

FAQ FOR NGOS



AUSTRALIA

Contents

Public regulatory/executive body responsible for Sanctions	3
Consolidated List	3
Relevant Guidance	3
Key Points to note	4
Do the Russia Sanctions apply to you?	4
Connections with Russian Individuals and Businesses	6
Payments and Investments	8
Exemptions and Other Points to Note	9

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Since the Russian invasion of Ukraine, countries and regional organisations around the world have imposed sanctions on Russia and Belarus, as a means of putting pressure on Russia's government to end the invasion. These sanctions take different forms and have different targets (sectors/individuals/companies etc.).

While the objective of these sanctions is not to affect organisations such as NGOs who operate in or have links with Russia, inevitably these sanctions might have a direct or indirect impact on them.

The following questionnaire has been created to collect legal research, that will in turn help NGOs understand how sanctions regimes might impact them and to understand how some of these risks could be managed.

Jurisdiction	Australia
Date Last Updated	4 May 2022

Public regulatory/executive body responsible for Sanctions

The Department of Foreign Affairs and Trade (DFAT).

The Minister for Foreign Affairs may, by legislative instrument, specify a provision of law of the Commonwealth as a sanction law

Consolidated List

The consolidated list of designated individuals and/or entities can be accessed [here](#)

Relevant Guidance

Please refer to the DFAT website which summarises the sanctions imposed on each jurisdiction and/or group. The website can be accessed [here](#)

Some key Guidance can be found here:

- [Russia sanctions regime](#)
- [Sanctions: What you need to know](#)

Key Points to note

Do the Russia Sanctions apply to you?

Is there any reason to think that you have any connection to Russia or Russians?

Consider carefully if any of the following applies to your service/transaction:

- Does any part of the transaction/service: occur anywhere in Russia? Is any Russian individual, entity, investor or sponsor involved? (Tip: be aware that Russian individuals and businesses also operate in havens such as Cyprus and Malta under names which do not suggest any Russian connection).

- Are you providing:

- a good (either directly or indirectly) to Russia, for use in Russia, or for the benefit of Russia?
- a service/commercial activity to Russia, or any service/commercial activity that is indirectly provided to Russia?

- Think about any entity you are transacting with. Is a parent company or any shareholder to that entity Russian?

- Are any goods going to be imported or exported from/to Russia?

Tip: You should treat 'service' broadly to include the provision of: technical advice, assistance or training; financial advice; financial service; or another service, if it assists with, or is provided in relation to, a sanctioned supply, import or commercial activity.

To exercise heightened due diligence / reduce sanctions risk, you should:

- aim to obtain enough information to enable you to assess whether the management, customers, end users, suppliers, and any other counterparties pose a sanctions risk to the transaction / service you are considering.

Tip: It is increasingly common practice to conduct customer due diligence of this kind. Background checks can make use of publicly available information on websites and the country abbreviation in email addresses.

- be mindful of disguised ownerships (e.g. the use of proxies, front companies, or trusts to disguise ownership).

- identify whether your organisation has (or had) any dealings (either directly or indirectly) with Russia or Russian state owned enterprises. This includes an assessment back as far as the ultimate parent companies and if applicable any controlling individual(s).

- generally understand what sanctions regimes applies to your business (e.g. where does it have a presence, where are the group companies located and where does it do business). You will also need to consider carefully the terms of any relevant financing agreements, and the currency of any payments because you may have agreed to comply with a sanctions regime which you would not otherwise be subject to.

- carefully review the terms of any contracts relevant to your transactions and/or counterparties, including if these contracts have sufficient clarity about what would happen if any party is no longer able to perform a contract due to sanctions.

With which sanctions regimes may you and/or your employees need to comply as a matter of law?

Russia sanctions imposed by Australia are administered under the:

- Autonomous Sanctions Act 2011 (Cth); and
- Autonomous Sanctions Regulations 2011 (Cth) (collectively the Autonomous Sanctions).

DFAT provides a high level summary of the Russia sanctions . The summary also includes an expanded list of relevant legislation for the Russia sanctions regime, including a list of specified export goods.

Extraterritoriality reach of Australian sanctions laws

A person or entity (including NGOs and/or charities) commits an Australian sanctions offence if any of the following occurs:

- a) the conduct constituting the alleged offence or result of the conduct occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft/ship; or
- b) the conduct constituting the alleged offence occurs wholly outside Australia and, at the time of the alleged offence, the person is an Australian citizen / the person is a body corporate incorporated by or under a law of the Commonwealth or a State or Territory; or
- c) all of the following: the alleged offence is an ancillary offence (such as aiding or abetting); the conduct constituting the alleged offence occurs wholly outside Australia; and the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft/ship.

The sanctions regimes of various other countries may also have extended geographical jurisdiction and, in some circumstances, will apply at the same time as Australian sanctions. You should always check other countries' sanctions if they are relevant to the transaction/service.

Permit to undertake prohibited activities

A person or entity may undertake an activity that would otherwise be prohibited by an Australian sanctions law if the Australian Minister for Foreign Affairs grants a sanctions permit (with or without any conditions attached to that permit).

Further information on the Australian sanctions permit can be accessed [here](#)

Have you agreed to comply with sanctions with which you would not be required to comply as a matter of law by contractual agreements (e.g. with lenders, in donor agreements)?

You should carefully review all potentially relevant contracts (including funding agreements) to identify whether your organisation has agreed to comply with additional sanctions regimes which you would not otherwise be required to comply with as a matter of law.

Failure to comply with sanctions laws which you have agreed to contractually comply with may result in a breach of contract and expose your organisation to consequences such as a claim for damages and/or termination rights.

Connections with Russian Individuals and Businesses

Are you engaging with any person specifically targeted by any of these sanctions?

Australia has imposed sanctions in the form of asset freezes and travel bans against a number of entities and individuals, including Russian ministers and senior government officials, members of the Russian military, Russian oligarchs, prominent business people and their immediate family members. These sanctions prohibit either dealing with assets controlled by a specifically targeted person or making an asset (directly or indirectly) available to, or for the benefit of, the targeted person.

'Indirectly' is not defined in the Australian Sanctions regime. Accordingly, you should apply a broad approach to this term and consider if there is any risk that an asset is ultimately provided to a designated entity/person. This includes instances where the sale of an asset to a company is ultimately resold to a designated person or entity, or there is a prior agreement with the company to transfer the asset to a designated person/entity. It is possible to include a contractual term to ban any subsequent sale (re-sale) of goods.

The list of individuals and entities maintained by DFAT can assist to identify persons specifically targeted by Australian sanctions.

Are you engaging with any entity owned or controlled by any of these sanctions?

As noted above, Australian sanctions prohibit either dealing with assets controlled by a specifically targeted person or making an asset (directly or indirectly) available to, or for the benefit of, the targeted person. Ownership or control of an entity by a targeted person is one (but not the only) means by which indirect dealings with the targeted person may occur.

Neither 'ownership' nor 'control' is defined under the Australian Sanctions laws, or is subject to any formal guidance from DFAT. However, the following considerations may be relevant to determining ownership or control for the purposes of Australian Sanctions laws:

- Section 50AA of the **Corporations Act 2011 (Cth)** states that an entity will control a second entity if the first entity has the ability to determine the outcome of the second entity's financial and operating policies. This will include considerations of the practical influence the first entity can exert, and any practice or pattern of behaviour affecting the second entity's financial or operating policy.

- The Corporations Act does not provide any specific examples of what 'control' means in practice, but Australian courts have determined that it will include where an entity can pass a resolution by majority at a general meeting (e.g. by casting more than 50% of votes at the meeting). As such, when an entity holds more than 50% of shares in a body corporate, it is likely to be considered to have control of the body corporate (similar to the UK/EU position).

- Even where an entity does not hold 50% or more of a body corporate's shares/votes, Australian courts will also consider whether the entity has control by way of some other practical ability to determine the outcome of the second entity's financial and operating policies. This can include circumstances where there

is an ability to determine decision making formally (e.g. in the case of a mortgagee exercising contractual rights over a mortgagor) or informally (such as through means of influence, a pattern of behaviour or criminal means).

Australian courts / DFAT have not provided any guidance on the approach to aggregate interest in a company (e.g. instances where, collectively, designated individuals/entities have an aggregate interest in more than 50% of a company and whether that constitutes control for the purposes of Australian Sanctions laws).

Are you importing or exporting any goods that may be subject to import/export restrictions?

The Autonomous Sanctions Regulations 2011 impose restrictions on the supply (i.e. export) of particular goods to somebody for use within either Russia or a specified Ukraine region (Crimea, Donetsk, Luhansk, Sevastopol). For Russia, this includes:

- Arms or related material;
- Coal, briquettes and other similar solid fuels;
- Peat;
- Coal gas, water gas, and similar gases;
- Petroleum gases and gaseous hydrocarbons;
- Various luxury consumer goods (e.g. wine, vehicles, tobacco, etc.).

For a specified Ukraine region, this includes items relating to:

- Transport;
- Telecommunications;
- Energy; or
- Oil exploration.

Australia has also imposed sanctions on the import of certain goods from both Russia and a specified Ukraine region. Australian sanctions prohibit the import of specified goods from Russia, largely types of fuel and arms or related material. Australian sanctions similarly prohibit the import of all goods from a specified Ukraine region.

Australia also imposes additional import/export restrictions in relation various jurisdictions/goods, not necessarily related to sanctions restrictions. For example, see the Customs (Prohibited Exports) Regulations 1956 and Customs (Prohibited Imports) Regulations 1956 under the Customs Act 1901 (Cth).

Tip: the detail of these regulations changes and **Australian Border Force** is another source of information. The list of goods the Australian Government generally prohibits importing/exporting can be accessed [here](#)

Do you have any involvement with activities in the Donetsk, Luhansk and Crimea regions, which are subject to specific regimes?

Certain sanctions measures apply if you have any involvement with activities in Donetsk, Luhansk, Crimea and Sevastopol (specified region), including:

a)The export from Australia of sanctioned goods of a kind specified by the Minister which relate to the creation, acquisition or development of infrastructure in one or more of the following sectors: transport; telecommunications; energy; and/or the exploitation of oil, gas, and mineral reserves in the region specified above. A list of the goods, current as at 4 May 2022, can be accessed [here](#). **Tip:** the list is subject to change.

b)The import from a specified region of all goods, except for goods originating in the region which have been made available to the Ukrainian authorities for examination and for which compliance with the conditions conferring entitlement to preferential origin has been verified by the Ukrainian authorities.

c)The provision of a sanctioned service if it relates to:

i.the provision to a person of technical advice, assistance or training, financial assistance, a financial service, or another service, if it assists with, or is provided in relation to, a supply of an export sanctioned good to a specified region (as specified in (a) above);

ii.the provision to a person of financial assistance or a financial service if it assists with, or is provided in relation to, a sanctioned import from a specified region (as specified in (b) above);

iii.the provision to a person of an investment service if it assists with, or is provided in relation to, a sanctioned commercial activity for a specified region; and/or

iv.the provision to a specified region, or person for use in a specified region, of: technical advice, assistance or training; financial advice; a financial service; or another service, if it assists with or is provided in relation to the manufacture, maintenance or use of an export sanctioned good for the specified region, or engagement in a sanctioned commercial activity in a specified region.

For the purposes of a sanctioned commercial activity, this means: the granting by a person of any financial loan or credit, the establishment by a joint venture relating to: the creation, acquisition or development of infrastructure relating to transport, telecommunications, energy, or the exploitation of oil or gas, or of a mineral specified by the Minister. The current list specified by the Minister can be accessed [here](#).

Tip: the Minister may in the future specify an additional region of Ukraine. We recommend confirming each region before undertaking a transaction.

Payments and Investments

Do you have a charitable trust or foundation that might involve dealing with equity/ debt instruments issued by, or making loans available to Russian state owned companies, persons connected with Russia, or the Government of Russia?

Under the Autonomous Sanctions, a person is prohibited from engaging in sanctioned commercial activity involving the following major Russian financial institutions: Sverbank, VTB Bank, Gazprombank, Vnesheconombank and Rosselkhozbank.

A person is also prohibited from engaging in sanctioned commercial activity with any entity (incorporated outside Australia) that is over 50% owned by one of the major financial institutions referred to above.

Sanctioned commercial activity is a broad concept and means directly or indirectly dealing with bonds equity, transferable securities, money market instruments or other financial instruments. This naturally would include loans and various other forms of equity/debt instruments.

A person is also prohibited from directly or indirectly making any asset available to, or for the benefit of a designated person or entity. Those persons and entities are referred to in the relevant sanctions list which can be accessed [here](#).

Are you affected by restrictions on processing funds (e.g. making payments where Russian banks have been removed from SWIFT)?

Australia has imposed sanctions on a number of entities (including banks) and individuals that, in effect, have frozen the assets of those entities and individuals. The result of the Australian sanctions is that it is a criminal offence to deal with (including processing) the funds of those specified individuals or entities.

Accordingly, if your organisation deals with any of the individuals or entities specified on the you will not be able to receive or process funds from those organisations.

Are you affected by restrictions on access by Russian individuals to local bank accounts?

As outlined above, Australian sanctions place restrictions on dealing with the assets of designated persons. Accordingly, any individual on the will not be able to either access funds held on their behalf in local bank accounts or transfer funds into a local bank account.

Are there any sanctions that apply to using or trading cryptoassets?

Under the Autonomous Sanctions, 'asset' is defined as 'an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable "... a legal document or instrument in any form, including electronic or digital, evidencing title to, or interest in, such an asset or such property (including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit)'.

Accordingly, cryptoassets and other similar electronic currencies will likely be considered an 'asset' under the Autonomous Sanctions, and the relevant prohibitions noted in 4, 5 and 10 will apply to using or trading cryptoassets.

Whether cryptoassets qualify as a transferable security is currently a grey area under Australian sanctions laws. Accordingly, you should be cautious of engaging in sanctioned commercial activity of the nature described in 8 above if it involves cryptoassets, and be aware that crypto assets may increasingly be scrutinised if they are seen as undermining sanctions.

Exemptions and Other Points to Note

To the extent there are restrictions which apply, can you apply to relevant authorities for licences, e.g. "in connection with the performance of any humanitarian assistance activity"?

With The Minister for Foreign Affairs may grant a person a permit authorising them to engage in sanctioned commercial activity as well as other forms of sanctioned conduct. The Minister may grant a permit (on its own initiative; or in the application by a person) if satisfied that it would be in the national interest to grant the permit.

"National interest" is not defined in the legislation, regulations or instruments. However, DFAT has stated that that what is in the national interest will depend on the particular circumstances. Relevant factors include the broader objectives of a particular sanctions regime, whether the activity is in the interest of or would be advantageous to Australia as a whole (which may include economic, security, and other relevant foreign policy considerations), and any effect on Australia's international reputation or standing or external relations.

In the case of designated persons and entities, Reg 20 of the Autonomous Sanctions Regulations 2011 requires that a permit authorising the making available of an asset to a person or entity be for either: (1) a basic expense dealing; (2) a legally required dealing; or (3) a contractual dealing.

Other points to consider

DFAT's indicative assessment

If you are unsure whether a transaction/service is affected by Australian sanctions laws, you may seek an indicative assessment from DFAT. For further information, please refer to DFAT's website .

Penalties and strict liability for bodies corporate

•As at May 2022, the maximum penalties for contravening an Australian sanctions law include:

for an individual, up to 10 years imprisonment, a fine not exceeding three times the relevant transaction(s), or 2,500 penalty units (currently A\$555,000), or both; or

for a body corporate, a fine not exceeding three times the value of the transaction(s), or 10,000 penalty units (currently A\$2,220,000), whichever is higher.

•Breach of an Australian sanctions law by a body corporate is a strict liability offence, which means that engaging in conduct that contravenes a sanction will be a breach even if there was no intention, recklessness or other fault in doing so.

•It is a defence to an otherwise strict liability sanction defence if the body corporate can prove that it took reasonable precautions, and exercised due diligence, to avoid contravening the relevant law.

•Until any Australian court decisions or official government guidance are available to clarify how this defence works, the best advice is to ensure robust sanctions policies and procedures are in place and that these are regularly updated. Consider the quality and effectiveness of the following elements: risk assessments, screening, due diligence, escalation mechanisms, continuous transaction monitoring, training, audit, reporting and governance.