Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

23 January 2026

Dear Officer,

RE:Effectiveness of sanctions against the Russian Federation

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Foreign Affairs, Defence and Trade References Committee, responding to the terms of reference.

The ANU LRSJ Research Hub falls within the ANU Law School's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the School. Members of the group are students of the ANU Law School, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

Summary of Recommendations:

1. Australia should maintain its freezing regime, rather than pursue confiscation of Russian sovereign assets;
2. Legislate and pursue criminal prosecution forfeiture of private assets;
3. Issue comprehensive regulatory guidance on indirect control and ownership;
4. Explicitly prohibit receiving payments and benefits from sanctioned persons;
5. Extend sanctions to include entities owned wholly or in part by RUSAL or the EN+ Group, and restrict RUSAL and the EN+ group from owning assets and conducting business in Australia; and
6. Extend individual sanctions and travel bans to management and leadership of production facilities outside of the Russian Federation owned wholly or in part by RUSAL or the EN+ Group.

If further information is required, please contact us at anulrsjresearchhub@gmail.com.

On behalf of the ANU LRSJ Research Hub,

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1. Scope of Seizing Russian Assets

In February 2022, a coalition of states froze approximately US$300 billion in Russian state assets that primarily consisted of foreign currency reserves held by the Central Bank of Russia. Additionally, private assets belonging to sanctioned Russian individuals and entities were also frozen. Subsequently, there have been proposals that these assets be seized and liquidated, to finance Ukraine's war and reconstruction efforts. Such proposals are actively being considered by the European Union. Meanwhile, they have already been legislated in the United States.[1] Australia has, to date, confined its response to asset freezing measures implemented in March 2022. The legality of asset seizure, as part of enforcing a sanctions regime in Australia, remains untested.

1.1 Constitutional Constraints to Seizing Public Assets

Section 51(xxxi) of the Australian Constitution ('Constitution') confers power on the Commonwealth to acquire property from 'any State or person ...', subject to the condition that acquisition be 'on just terms'.[2] The 'just terms' limitation is contingent rather than freestanding: operating only where a law affects the acquisition of a proprietary benefit by the Commonwealth – or another party – for Commonwealth purposes. In such cases, it requires the provision of fair compensation. 'Property' is construed broadly, encompassing 'every species of valuable [proprietary] right and interest',[3] tangible or intangible.[4]

Although the policy rationale for asset seizure is to punish Russia economically, while supporting Ukraine's defence and reconstruction, the operation of section 51(xxxi) may constrain such measures. If the Commonwealth is, in substance, seen to be acquiring property, this raises the question whether this acquisition is subject to just terms – in Russia's favour. Paradoxically, just terms may require compensating Russia, whereas confiscation seeks to deprive them of their assets.

The High Court of Australia has held certain acquisitions of property, such as taxation,[5] and criminal forfeitures,[6] as exempt from the ambit of section 51(xxxi). Ostensibly, the categorical exemption of criminal forfeiture appears to remove any constitutional constraints, as it suggests certain deprivations of property can be affected without triggering section 51(xxxi). Indeed, if asset seizure could be characterised as a form of criminal forfeiture, this constraint may not arise. However, various structural features of the Constitution and sanctions regime may prevent such a straightforward solution.

The forfeiture exemption is tethered to criminal liability: there is no 'acquisition of property' which confers a proprietary benefit on the Commonwealth, instead, forfeiture is strictly punitive.[7] Although violating Australia's sanctions regime is a criminal act, sanctions designation does not reflect criminal conviction under Australian law. Designation is an executive foreign policy measure, not a judicial finding of criminal guilt. Accordingly, pre-sanctions assets held lawfully by the Russian Central Bank, cannot be treated as proceeds of crime subject to forfeiture. Moreover, unlike contraband or illegal proceeds, neutralised

[1] See 21st Century *Peace through Strength Act*, Pub L No 118-50, tit V (2024) (US).
[2] *Commonwealth Constitution* s 51(xxxi).
[3] See *Bank of New South Wales v Commonwealth* (1948) 76 CLR 1, 299 (Starke J).
[4] See *Minister of State for the Army v Dalziel* (1946) 68 CLR 261, 295 (McTiernan J).
[5] *Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155, 166-7 (Mason CJ).
[6] See *Attorney-General (NT) v Emmerson* (2014) 253 CLR 393, 438-9 [81]-[85] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane J) ('*Emmerson*').
[7] Ibid.

through forfeiture, Russian central bank assets are income-generating reserves, being transferred for affirmative economic use. Fundamentally, this is inconsistent with the punitive character required for the forfeiture exemption.

These structural constraints create a constitutional impasse. Unilateral executive confiscation without judicial process would violate Chapter III's separation of judicial power, as the Executive would, in substance, be determining punitive consequences absent a judicial finding of criminal responsibility.[8] Naturally, the solution would be passing legislation which, upon a judicial finding of criminal guilt, enables the seizure of assets. However, pursuing judicial confiscation encounters an equally insurmountable barrier: the Russian Central Bank, as an organ of Russian State, is protected by sovereign immunity under customary international law, codified in the Foreign State Immunities Act 1985 (Cth), shielding it from criminal prosecution in Australian courts.[9]

1.2 International Legal Constraints

Questioning the legality of seizure proposals, Russia has invoked the doctrine of sovereign state immunity. Under the doctrine, states enjoy immunity from adjudication in foreign court; accordingly, state property is immune from execution. Regardless, as Russia's war of aggression against Ukraine is widely considered to violate *erga omnes* obligations (owed to the entire international community). Accordingly, proponents of confiscation argue this permits third-party countermeasures from non-injured states – such as Australia.[10] Nevertheless, the legality countermeasures, in this context, remain contentious.[11] Broadly, proponents contend that regardless of whether asset seizure itself violates international law, countermeasures are by definition respond to prior illegality and need not themselves be otherwise lawful acts.[12] Thus, there are no barriers to confiscation, provided it qualifies as a countermeasure – that is proportionate to the breach it seeks to address'.

This reading interprets the Draft Articles on Responsibility of States for Internationally Wrongful Acts as formulating permissive rules for countermeasures, rather than imposing constraints on responses to unlawful acts.[13] Conversely, according to the ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts, such logic undercuts the raison d'être of the countermeasures doctrine: to induce *compliance* with international law and be reversible.[14] Permanent seizure eliminates any prospect of reversibility, converting what should be temporary pressure into irreversible punishment. Moreover, once assets are confiscated, Russia has no incentive to comply with international law – that leverage is gone.

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[8] See generally *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254.
[9] *Foreign State Immunities Act 1985* (Cth) s 9; further Richard Garnett, 'Foreign States in Australian Courts' (2005) 29(3) *Melbourne University Law Review*, 704, 705.
[10] Anton Moiseienko, 'Legal: The Freezing of the Russian Central Bank's Assets' (2023) 34(4) E*uropean Journal of International Law* 1007-1020, 1016-20.
[11] Ibid.
[12] See, eg, Adam Hemmeter, Isaac Sherman and Brian Ziegler, 'The International Law Implications of Unilateral Central Bank Asset Seizure' (Working Paper, Social Science Research Network, 21 January 2025) 16 <https://ssrn.com/abstract=5106341>.
[13] Ibid 16-8.
[14] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*,UN GAOR, 56th sess, UN Doc A/56/10 (24 October 2001), 75, 129, 139.

This intersects uneasily with Australia's dualist legal framework. International law does not operate directly within Australian domestic law. Even if asset seizure were an uncontentious and permissible countermeasure, domestic legislative authority remains constrained by section 51(xxxi). Executive seizure without judicial process would violate Chapter III's separation of powers, as determining liability and imposition deprivation are inherently judicial functions. Yet involving courts trigger sovereign immunity barriers, creating an impasse regardless of international legal permissibility. Abrogating sovereign immunity through domestic legislation would not resolve this constraint. As sovereign immunity exists independently as customary international law; legislative abrogation would constitute a breach of international law, potentially inviting reciprocal exposure of Australian sovereign assets held abroad.

Recommendation 1: Australia should maintain its freezing regime, rather than pursue confiscation of Russian sovereign assets.

Freezing best achieves the policy objective of economic pressure while avoiding the constitutional paradox of compensating Russia under section 51(xxxi), the Chapter III complications of unilateral executive seizure, and the sovereign immunity barriers to criminal proceedings. Seizure risks losing leverage over Russia, and reduces any incentive to comply with international law. Instead, such attempts could invite protracted legal challenges that would undermine the effectiveness of Australia's sanctions regime and expose Australian sovereign assets abroad to reciprocal action.

1.3 Seizing Private Assets

Although freezing Russia's sovereign assets faces constitutional and international legal impediments, this does not extend to private assets held by sanctioned individuals and entities. Noting the High Court's categorical exemption of criminal forfeiture penalties from section 51(xxxi),[15] legislating such penalties against individuals and non-public entities – contingent on a judicial finding of criminal guilt – remains open. Parliament cannot legislate criminality and mandate forfeiture on that basis alone; Chapter III requires actual judicial determination of guilt through criminal prosecution.

Accordingly, the Executive should actively pursue criminal prosecution of sanctioned individuals and entities under both ordinary and extraterritorial jurisdiction, with asset forfeiture upon conviction. This approach would leverage existing constitutional frameworks while comprehensively targeting private wealth linked to Russia's war effort.

Presently, breaching Australia's sanctions regime constitutes a criminal offence,[16] but the mere status of being sanctioned does not reflect criminal guilt on part of that entity. Although offences against humanity[17] and sanctions evasion are crimes under statute,[18] they require proving specific prohibited acts. Legislating a broader offence – such as material support or financing of Russia's military operations – would better

[15] See, eg, *Emmerson* (n 6).
[16] See generally *Autonomous Sanctions Regulations 2011* (Cth).
[17] *Criminal Code Act 1995* (Cth) div 268.
[18] *Autonomous Sanctions* (n 16).

facilitate prosecution and asset forfeiture, without meeting the narrow elements of other crimes. This could facilitate prosecution and forfeiture against persons complicit in sustaining the conflict.

Recommendation 2: Legislate and pursue criminal prosecution forfeiture of private assets.

The Executive should actively pursue criminal prosecution of sanctioned individuals and entities under both ordinary and extraterritorial jurisdiction, with asset forfeiture on conviction. Accordingly, Parliament should legislate criminal offences targeting material support for sanctioned military operations with forfeiture penalties applicable to convicted individuals and entities. This approach satisfies Chapter III requirements, while avoiding section 51(xxxi) constraints applicable to sovereign assets.

2. Statutory Limitations

2.1 Undefined Scope of 'Indirectness' in Control and Ownership

Presently, Australian sanctions law prevent a person holding a 'controlled asset' – an asset owned or controlled by a designated person or entity – from using or dealing with said asset, without the authorisation of a permit.[19] It creates a strict liability offence where a person 'directly or indirectly makes an asset available to, or for the benefit of, a designated person or entity', without a permit.[20] However, key terms, including 'control', 'ownership' and 'indirect' remain undefined. While section 50AA of the *Corporations Act 2001* recognises that control may exist even where a person holds less than 50% interest in an entity,[21] Sanctions regulations provide no equivalent guidance on when control is established for sanctions purposes.

This creates significant uncertainty for regulated entities conducting due diligence. The breadth of 'indirectly' potentially captures transactions involving shell companies, layered corporate structures, and complex beneficial ownership arrangements. Without clear guidance, private actors face difficult judgement calls about compliance. While the Department of Foreign Affairs and Trade has issued a guidance note on ownership,[22] it offers minimal insight on what constitutes 'indirect dealings' – a critical gap, given that sanctioned networks operate through layered intermediaries and complex structures.

Although case law has taken an expansion construction of the issue,[23] this is insufficient. Case law is inherently adaptive: it cannot provide general regulatory guidance since its application is context-specific.

[19] *Autonomous Sanctions Regulations 2011* (Cth) r 3.
[20] Ibid r 14.
[21] *Corporations Act 2011* (Cth) s 50AA.
[22] 'Guidance Note - Dealing with assets owned or controlled by designated persons and entities', Australian Government *Department of Foreign Affairs* (Web Page, 12 September 2025) <https://www.dfat.gov.au/international-relations/security/sanctions/guidance/dealing-assets-owned-or-controlled-designated-persons-and-entities>.
[23] See, eg, *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd* [2024] FCA 43, 138, [193] (Moshinsky, Stewart and Button JJ); Tiger Realms Coal Ltd v Commonwealth (2024) 302 FCR 567, 579-80, [40]-[44] (Kennett J).

By contrast, the United Kingdom's Office of Financial Sanctions Implementation has published comprehensive regulatory guidance;[24] detailing tighter statutory definitions, ownership thresholds, control factor analysis, risk assessments, and practical examples of indirect dealings. Australia's more limited guidance, however, imposes greater uncertainty on regulated entities.

Recommendation 3: Issue comprehensive regulatory guidance on indirect control and ownership

Australia should publish detailed regulator guidance, providing specific interpretation of 'indirect dealings' in the context of control and ownership, providing control thresholds and factors (including board appointment rights, veto powers and financial dependence), practical examples of indirect dealings through intermediaries and layered structures, risk-based assessment frameworks with f=red flags for sanctions evasion, and sector-specific considerations for high-risk industries. Current DFAT guidance lacks this granularity, creating compliance uncertainty for regulated entities navigating complex ownership structures.

2.2 Receiving Payments from Sanctioned Persons

While Australian sanctions law criminalises making assets available to, providing services to, or dealing with the assets owned by, of sanctions persons; there is no general prohibition on receiving payments from sanctioned persons or entities. Presently, sanctions only target ownership or control of an asset, directly or indirectly.[25] In January 2025, the Australian Sanctions Office confirmed that 'there are no prohibitions on receiving funds or financial assets from a designated person or entity', provided said asset does not remain under their control.[26] This creates an asymmetry: sanctioned persons and entities may lawfully pay Australian parties, enabling economic ties provided the sanctioned entity is the payer. While the Australians Sanctions Office contends that this preserves access to legitimate payments, such as pensions,[27] it nonetheless permits commercial relationships that undercut comprehensive economic isolation objectives.

Recommendation 4: Explicitly prohibit receiving payments and benefits from sanctioned persons.

Following from practice in the United States, otherwise legitimate payments (such as pensions or pre-existing debts) should be addressed through targeted general licences, rather than wholesale exemption.

[24] See 'Ownership and Control: Public Officials and Control guidance', *GOV.UK* (Web Page, 20 August 2024) <https://www.gov.uk/government/publications/ownership-and-control-public-officials-and-control-guidance/ownership-and-control-public-officials-and-control-guidance>.
[25] *Autonomous Sanctions Regulations 2011* (Cth) r 14(1)(a)(b).
[26] See 'Guidance Note - Dealing with assets owned or controlled by designated persons or entities', *Department of Foreign Affairs and Trade*, (Wed Page, 12 September 2025) <https://www.dfat.gov.au/international-relations/security/sanctions/guidance/financial-transactions-involving-designated-persons-and-entities>.
[27] Ibid.

3. Bauxite and Alumina Sanctions

3.1 RUSAL, EN+ Group, and Sanctioned Shareholders

RUSAL is the only producer of aluminium within Russia,[28] so a review of RUSAL, its majority ownership organisation, the EN+ group; and the largest shareholder of EN+, Oleg Deripaska, will be briefly elaborated to provide an overview of Russian aluminium production and ownership.

RUSAL is the world's third-largest producer of aluminium and aims to fully vertically integrate its supply chains. Before the implementation of sanctions, RUSAL had achieved complete self-sufficiency in alumina production and 77% self-sufficiency in bauxite and ores.[29] This production and mining are not entirely based within Russia. Since 2021, approximately one-third of the alumina and bauxite from RUSAL-owned production has occurred within Russia.[30] Barring the Ukrainian nationalisation of Nikolaev Alumina Refinery, no assets of RUSAL have been divested since the implementation of Australian and international sanctions against Russia; however, in 2024, RUSAL acquired a 30% stake in the alumina smelter Hebei Wenfeng New Materials and in 2025 signed to acquire 50% of Pioneer Alumina Refinery Limited to offset the elimination of Australian and Ukrainian supply.[31]

The EN+ group is the majority ownership company of RUSAL. It maintains a 56.9% ownership share in RUSAL and seeks to vertically integrate power production with aluminium production. Assets owned to achieve this goal consist of power and coal mining assets, all of which are located within Russia.[32]

Oleg Deripaska is the largest shareholder in the EN+ group, holding a 44.95% stake.[33] EN+ and RUSAL were previously sanctioned by the United States due to Oleg Deripaska's majority ownership at the time of EN+ and, therefore, a controlling stake in RUSAL. This was rescinded in 2019 due to Oleg Deripaska divesting shares.[34] A second sanctioned shareholder is Viktor Vekselberg who has a stake in RUSAL indirectly through investment companies.[35] Oleg Deripaska and Viktor Velkselberg are currently sanctioned individuals by Australia as part of *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 7) Instrument 2022,* and are widely sanctioned by friendly states.[36]

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[28] *[2024] FCAFC 142* (5); RUSAL production also matches US estimates of Russian production: Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 31. Mineral Commodity Summaries (Report, 31 January 2025) pg 33.
[29] EN+ Group 2021 (Annual Report, 29 April 2022) pg 26-27.
[30] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 31-32. Does not include nepheline production, Percentage of RUSAL owned raw goods production in Russia drops to about 28%, of total raw needs production in Russia is 22%.
[31] EN+ Group 2021 (Annual Report, 29 April 2022) pg 214-215. Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 295. 'Russia's Rusal to buy 50% stake in Indian alumina refinery owner in stages', *Reuters* (online, 14 March 2025)
https://www.reuters.com/markets/deals/russias-rusal-buy-50-stake-indian-alumina-refinery-owner-stages-2025-03-14/
[32] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 295.
[33] EN+, 'Shareholder center', *Shareholder Structure*, (n.d.)
<https://enplusgroup.com/en/investors/shareholders/structure/>
[34] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 234. (ANOTHER SOURCE)
[35] Department of Foreign Affairs and Trade, 'Russia: Autonomous Sanctions Against Russian Oligarchs Deripaska and Velksberg', (Freedom of Information release, LEX 10450, 17 March 2022) pg 2,4-7
[36] *[2024] FCAFC 142* (5); Department of Foreign Affairs and Trade, 'Russia: Autonomous Sanctions Against Russian Oligarchs Deripaska and Velksberg', (Freedom of Information release, LEX 10450, 17 March 2022) pg 2,4-7

3.2 Current sanctions and outcomes for Bauxite and Alumina

Alumina and bauxite exports to Russia have been banned since the 20th of March 2022.[37] The direct result of this ban was the freezing of alumina exports to RUSAL subsidiaries processed by Queensland Alumina (QAL) and other Australian suppliers.[38] Furthermore, *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd* [2024] FCAFC 142 interpreted Australian sanctions to apply to non-named and indirect entities if entities are beholden to sanctioned individuals or assets eventually are made available to sanctioned individuals.[39] While indirect breaches are to be considered on a case-by-case basis, this interpretation was in support of QAL and others refusing to supply bauxite to an intermediary not directly sanctioned under the belief this entity would later supply the Russian Federation with alumina.[40]

Since the ban, Russian production has increased from 3,640 kilotons (kt) in 2021 to 3,883 kt in 2024, with production growing in every intervening year.[41] At the implementation of the ban the intended effect was to limit Russian capacity to produce aluminium.[42] The lack of reduction in aluminium production means this objective has failed. Additionally, despite the ban successfully stopping direct alumina and bauxite trade between Russia and Australia, the global alumina trade was elastic enough to manage increased Russian demand immediately following the ban, primarily due to spare production capacity in China and potentially increased Australian exports to China during 2022 being resold to Russian smelters.[43] In 2023 this gap was filled by Indian, Chinese, and Kazakh sources, and in 2024 this also included Indonesian sources.[44] Despite this, the financial impact on RUSAL has been significant.

In 2021, Australia exported approximately 1,510 kt of alumina to Russia through joint ventures and other means, accounting for approximately 20% of Russian Alumina usage.[45] This removal of Australian supply due to the ban occurred within a week of Ukraine seizing the RUSAL plant in its territory. This reduction in supply caused RUSAL's complete self-sufficiency in alumina to drop to 75% in 2022 and 65% in 2023. In 2022, RUSAL faced a 149% increase in operating costs from alumina due to the removal of the previous supply and a 15% increase in global alumina prices.[46] This caused RUSAL's profit to halve in 2022, and by 2024, RUSAL spent 292% more on alumina than it did in 2021. This has reduced RUSAL's profit in

[37] *Autonomous Sanctions (Export Sanctioned Goods—Russia) Designation 2022*, Scott Morrison et al, 'Additional support to Ukraine' (Media Statement, Department of Defense, 20 March 2022) para 13-15.
[38] *[2024] FCAFC 142* (69-71)
[39] *[2024] FCAFC 142* (147)
[40] *[2024] FCAFC 142* (198)
[41] EN+ Group Consolidated Report 2022 (Annual Report, 28 April 2023) pg 26. Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 31.
[42] Scott Morrison et al, 'Additional support to Ukraine' (Media Statement, Department of Defense, 20 March 2022) para 13.
[43] *[2024] FCAFC 142* (101, 168)
[44] This is reported imports nationally. 'Trade Data', *United Nations COMTRADE database* (webpage) <https://comtradeplus.un.org/TradeFlow?Frequency=A&Flows=X&CommodityCodes=2818&Partners=643&Reporters=all&period=2024&AggregateBy=none&BreakdownMode=plus>
[45] Scott Morrison et al, 'Additional support to Ukraine' (Media Statement, Department of Defense, 20 March 2022) para 15; *[2024] FCAFC 142* (32,33,35,36)
[46] Consolidated Report En+ 2023 (Annual Report, 26 April 2024) pg 24.

2024 to 25% of 2021's value.[47]

Additionally, the Hebei Wenfeng New Materials acquisition failed to offset the losses from Australia and Ukraine. RUSAL achieved about 78% self sufficiency in alumina in 2024 due to this acquisition up from the recent low of 65% self-sufficiency.[48] Thus, for RUSAL to achieve desired self-sufficiency in alumina production while the Australian ban is still in effect will require additional expenditure of significant resources, such as the Indian acquisition. Additionally, while the EN+ group report for 2025 is not yet out, it has been reported that RUSAL made a loss in the first half of 2025.[49] This was primarily due to the significant increase in bauxite and alumina cost per ton around the end of 2024 and early 2025.[50] The impact of RUSAL on acquiring significant shares in an Indian alumina refinery to further achieve self-sufficiency on RUSALs operations will continue to enable RUSAL's growing self-sufficiency in alumina outside of its original Australian sources undercutting the future effect of the current ban.[51] However, the continued rise in expenses for alumina despite RUSAL's growing self-sufficiency with the Hebei acquisition indicates that the effect of utilising non-Australian smelters may have a limited effect in overcoming the impacts of the Australian ban.

Thus, while the stated objective to limit Russian capacity to produce aluminium failed, Australian bauxite and alumina sanctions played a significant role in damaging RUSAL's financial viability, and future instability in the bauxite and alumina markets will continue to damage RUSAL's ability to operate as long as the ban remains in place and RUSAL fails to re-achieve self-sufficiency in alumina production.

3.3 Strengthening Bauxite and Alumina Sanctions

Despite the Australian ban, RUSAL's global production chain does still exist and is growing. RUSAL still owns producing alumina facilities in: Ireland, Jamaica, Guinea, and, as previously stated, China and India; and significant bauxite mines in Guinea.[52] As of now, there is little risk of sale of Australian bauxite to these facilities, as previously stated, the *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd* [2024] FCAFC 142 interpretation bans the sale of goods to companies owned by RUSAL. Furthermore, certain other services are also prohibited as they relate to assisting the supply, transfer, and sale of bauxite and alumina.[53] However, it is still possible to provide loans and credit to the facilities producing alumina and bauxite, and provide services to the management entities of RUSAL organised outside the Russian Federation. Furthermore, individuals involved with the continued operation of RUSAL production assets, which Australia bans the exportation of, are able to conduct business within Australia as Australian sanctions are limited to the exportation of bauxite and alumina, and providing services that assist with the supply, sale, or transfer of bauxite and alumina.

[47] 149% increase in 2022, 9.9% increase in 2023, 6.9% increase in 2024. 350% increase in purchased alumina over same time period: calculated from 263% increase in 2022, 12% increase in 2023, estimated 15% decrease in 2024. EN+ Group 2021 (Annual Report, 29 April 2022) pg 51. Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 60-61. [IF REQ REF 2024 appeal allan clark report]
[48] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 16:18.
[49] RUSAL, 'RUSAL announces its 2025 interim results' (Media Statement, 15 August 2025) pg1.
[50] Ibid pg 3-4
[51] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 24-25.
[52] Consolidated Report En+ 2024 (Annual Report, 29 April 2025) pg 15:268-269:295.
[53] *Autonomous Sanctions Act 2011 (Cth)* pt 3

Complexity exists in the Irish Aughinish Alumina Refinery. While these refineries supply significant quantities of alumina to Russia, Aughinish Alumina Refinery is a major alumina supplier to the European Union.[54] Furthermore, Guinea bauxite is used to supply the Aughinish Alumina Refinery.[55] With friendly and other states unwilling to impose similar sanctions to Australia, the efficacy of Australian sanctions can only be strengthened by attempting to leverage Australia's relative importance in alumina production imposing sanctions on either all entities that deal with Russia relating to bauxite and alumina or on entities owned in whole or in part by RUSAL.

Imposing sanctions on any entity dealing with Russia in the sale of alumina and bauxite would be incredibly difficult, if not impossible, to implement successfully. This is because alumina can be considered an incredibly fungible and difficult to track good due to its commonality.[56] That fungibility and commonality of alumina and bauxite would make it possible for entities that have absolutely no business with Australia to supply the required materials in the hypothetical that significant quantities of producers do adjust for some reason.

The alternative to strengthening related sanctions is to target RUSAL subsidiaries and partially owned entities. While this has no chance of directly impacting Russian aluminium capacity, any growth in complexity or cost required for RUSAL and its associated assets to deal with Australian businesses in its attempts to regain self-sufficiency in alumina production should be implemented. Furthermore, legislating RUSAL subsidiary sanctions prevents challenges such as *Alumina and Bauxite Company Ltd v Queensland Alumina Ltd [2024]* FCAFC 142 to the Australian sanction regime, as this case is an appeal to a case dealing with QAL interpreting Australian sanctions around bauxite and alumina to mean it must not provide alumina to RUSAL subsidiary ABC despite its assurances the alumina would not end up being used in Russian smelters because it was likely to eventually do so.[57] Thus, sanctioning entities with partial or full RUSAL ownership with broader prohibitions forces those that continue to conduct business in Australia to either do so through intermediaries or stop entirely. This will grow in importance as RUSAL continues to acquire its preceding production chain requirements to fill the gap left by Australian suppliers with future benefits to Russian alumina and bauxite production chains coming from very indirect dealings between entities instead of the original means of Australian entities being involved with Russian aluminium production. As has been seen with the post-sanctions performance of RUSAL, while the current sanctions were incapable of limiting production, forcing alternative sources of business and the likely use of intermediaries in 2022, did severely impact RUSAL finances. Thus, Australian sanctions should extend to limiting business with RUSAL-owned entities in general.

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[54] 'Aluminium Oxide in Ireland Trade', *The Observatory of Economic Complexity* (webpage) <https://oec.world/en/profile/bilateral-product/aluminium-oxide/reporter/irl>

[55] 'Rusal diverts bauxite ore shipment to refinery in Ireland', *Mining Technology* (online, 16 March 2022) https://www.mining-technology.com/news/rusal-bauxite-ore-shipment-ireland/?cf-view; 'Aluminium Ores in Ireland Trade', *The Observatory of Economic Complexity* (webpage) <https://oec.world/en/profile/bilateral-product/aluminium-ore/reporter/irl>. 'Trade Data', *United Nations COMTRADE database* (webpage) <https://comtradeplus.un.org/TradeFlow?Frequency=A&Flows=X&CommodityCodes=2818&Partners=643&Reporters=all&period=2024&AggregateBy=none&BreakdownMode=plus>

[56] *[2024] FCAFC 142* (101)

[57] *[2024] FCAFC 142* (194-195)

Recommendation 5: Extend sanctions to include entities owned wholly or in part by RUSAL or the EN+ Group, and restrict RUSAL and the EN+ group from owning assets and conducting business in Australia.

A second proposed way to strengthen sanctions on alumina and bauxite is to sanction the individuals responsible for the operation of RUSAL's production facilities. As it is now, individuals important to the operation of facilities that enable RUSAL's vertical integration practically face no repercussions or hindrances within Australia, despite enabling RUSAL's overcoming of Australian sanctions. This would seek to limit individuals who act against Australian intentions in foreign policy regarding the supply of alumina and bauxite from conducting business or travelling in Australia, especially in the case of more friendly states.

Recommendation 6: Extend individual sanctions and travel bans to management and leadership of production facilities outside of the Russian Federation owned wholly or in part by RUSAL or the EN+ Group.