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8 April 2016

Committee Secretariat
Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: fadt.sen@aph.gov.au

Dear Sir/Madam

Re: Inquiry into Partial Suspension of Sanctions Against Iran

The Executive Council of Australian Jewry (ECAJ), the elected representative body of the Jewish community in Australia, presents the following submission in response to the Committee's Inquiry into the Partial Suspension of Sanctions Against Iran.

This submission addresses each of the Terms of Reference of the Inquiry.

(a) Nature and scope of public consultation prior to the making of the Autonomous Sanctions (Suspension of Sanctions – Iran) Instrument 2016, the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2016 (No. 2)

The Autonomous Sanctions (Suspension of Sanctions – Iran) Instrument 2016 suspends certain autonomous sanctions measures that Australia previously implemented in relation to Iran. Prior to the Instrument coming into effect, those sanctions prohibited certain imports, exports, services and commercial activities with Iran.

The [Explanatory Statement](#) to the Instrument issued by the Minister for Foreign Affairs on 16 January 2016 states:

“In accordance with subsection 18(2) of the *Legislative Instruments Act 2003*, no public consultation was undertaken in relation to the *Autonomous Sanctions (Suspension of Sanctions—Iran) Instrument 2016*, as it is an instrument that is of minor regulatory impact as it suspends, and does not add to the legislative obligations on the Australian community.”

In point of fact, [subsection 2\(a\)](#) of section 18 of the *Legislative Instruments Act 2003* provides that a public consultation may be unnecessary or inappropriate in the case of:

*“an instrument that is of **a minor or machinery nature and that does not substantially alter existing arrangements**”.* (Emphasis added).

In any event the assertion in the Explanatory Statement that the suspension of some of the sanctions against Iran will have “*minor regulatory impact*” is inconsistent with other statements made by the government. The effect of the Instrument was to suspend sanctions against a long list of previously prohibited commercial activities. Indeed, the Explanatory Statement itself noted that:

“the instrument is suspending a range of sanctions measures that prohibited certain activities. This has a beneficial effect for the Australian business community by immediately allowing certain previously prohibited commercial activities to be undertaken.”

This is reinforced by the Foreign Minister’s [Media Release](#) dated 17 January 2016 which stated:

“The easing of these sanctions will ensure that Australian business is not disadvantaged in pursuing opportunities in Iran”.

It follows that the lifting of some of Australia’s autonomous sanctions against Iran is intended by the government to clear the way for an expansion of Australian business activity in Iran. This alone would suggest that the Instrument substantially altered the pre-existing arrangements and was other than “*of a minor or machinery nature*”. [Subsection 17\(1\)\(a\)](#) of the *Legislative Instruments Act 2003* contemplates that a public consultation will be undertaken:

“Before a rule-maker makes a legislative instrument, and particularly where the proposed instrument is likely to:

(a) have a direct, or a substantial indirect, effect on business.”

This provision is not restricted only to an effect on business which is adverse to business. It may also be beneficial to business, but adverse in other respects. In this instance the effect on business will be “substantial” based on the government’s own statements. Accordingly, a public consultation should have been held.

Consideration should also be given to the broader impact of the Instrument. The partial lifting of sanctions, a likely expansion of Australian business activity in Iran and the consequent move towards normalization of Australia’s relations with Iran are likely to have an impact beyond the business sector.

These moves tend to afford the Iranian regime a degree of international legitimacy despite the fact that the regime has not in any way resiled from its current aggressive, expansionist and destabilising foreign policies, its support for international terrorist organisations, its official promotion of antisemitism and other forms of racism and bigotry, and its gross and systematic human rights abuses within Iran, including the persecution of religious minorities, gays and political dissidents. (These policies and practices of the Iranian regime are more fully described in

our response to paragraph (d) of the Terms of Reference, below, together with an explanation of the way some of these policies and practices directly affect Jewish communities around the world, including in Australia, and other community groups in Australia).

In this regard, Iran's policies and practices are also diametrically opposed to the values of democracy, human rights and the rule of law which Australia as a nation subscribes to and seeks to promote both domestically and internationally. Commendably, the Australian government criticised many of Iran's deficiencies in this regard in Australia's written submission to the UN Human Rights Council in 2014 as part of the Council's Universal Periodic Review of human rights in Iran (See the Council's Report, UN document A/HRC/28/12*, paras 42 and 138.72).

Accordingly, consultation with the Australian people about the impact of the relaxation of sanctions, not only on the business sector but also on: (i) other interest groups in the community; (ii) the threat of terrorism both within Australia and abroad; and (iii) Australia's national interests more broadly, was warranted.

The Explanatory Memorandum to the Instrument, includes a Statement of Compatibility with Human Rights as required by Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. It states:

“The *Autonomous Sanctions (Suspension of Sanctions—Iran) Instrument 2016* does not engage, and is therefore compatible with, the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.”

This assertion is unsupported by reasons. The mere fact that the sanctions formerly in force related to certain imports, exports, services and commercial activities does not preclude the possibility that their suspension will have adverse human rights consequences. The Iranian regime is notorious for being among the world's worst human rights abusers. The relaxation of sanctions risks weakening the international stigma that has hitherto been attached to the regime itself because of its anti-human rights policies and practices. The easing of sanctions therefore further risks emboldening the Iranian regime into believing that it can continue these policies and practices indefinitely and with impunity.

A process of public consultation should have been undertaken in order to provide an opportunity for experts, affected communities and citizens in the wider community to contribute their insights into the nature and extent of these risks and to suggest additional measures – beyond the lifting of sanctions – which the government might take in order to avoid or ameliorate any adverse human rights consequences.

The [Explanatory Statement](#) to the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2016 (No.2)* issued by the Minister for Foreign Affairs on 12 February 2016 states that no public consultation was entered into regarding the lifting of autonomous sanctions against designated and declared persons and designated entities:

“Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument, but no public consultation was undertaken in relation

to this instrument as it revokes the listings of certain persons and entities, but does not add to, the list of designated and declared persons and designated entities.”

The “list” referred to consists of the names of certain persons and entities who or which have been designated by the Minister for Foreign Affairs for the purpose of subjecting them to targeted financial sanctions. The list also names persons who are declared by the Minister for Foreign Affairs to be subject to travel bans.

The new list (the [Australian List](#)) is set out in Schedule 1 of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2016 (No.2)*, which revokes the designations and declarations in relation to certain individuals, and revokes designations in relation to certain entities. The Australian List names 23 individuals and 68 entities against whom autonomous sanctions will continue to apply.

We note in passing that these are in addition to the persons and entities against whom UN sanctions will continue to apply, as determined by the Security Council Committee established pursuant to United Nations Security Council (UNSC) resolution 1737 (2006). That Committee maintains a list of such persons and entities (the UN’s List). UNSC resolution 2231 had the effect, as from 16 January 2016, of removing from the UN’s List 36 individuals and entities named in the Attachment to Annex B of that resolution. Further, on 17 January 2016, the Security Council removed one further entity from the UN’s List. There currently remain 23 individuals and 61 entities on the [UN’s List](#).

There is no readily available list of persons and entities against whom autonomous sanctions by Australia have ceased to apply. Nor is there any explanation as to why autonomous sanctions by Australia have ceased to apply to each of those persons and entities, but continue to apply to persons and entities who continue to be named in the Australian List.

Further, the mere fact that the relevant instrument removed, rather than added, the names of persons and entities who are subject to Australia’s sanctions regime is not, in our view, a sufficient reason not to have had a prior public consultation about the changes. The removal of the names of persons and entities from the sanctioned list might adversely affect third parties, that is, persons or groups in the wider Australian community, and Australia’s national interests more broadly. The effect on the persons and entities themselves is only one, but by no means the sole, consideration.

The relevant Explanatory Memorandum includes a Statement of Compatibility with Human Rights as required by Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act). It focuses exclusively on the effect of the changes reflected in the Australian List on the property and financial rights of designated persons or entities or declared persons. It does not consider the compatibility of the Instrument with human rights more broadly, as is required by subsection 9(2) of the Act which provides:

“A statement of compatibility must include an assessment of whether the legislative instrument is compatible with human rights.”

“Human rights” is defined in section 3 of the Act to mean the rights and freedoms recognised or declared by the seven international human rights conventions enumerated in the section. These

include international conventions prohibiting racial discrimination, discrimination against women and torture, and conventions upholding civil and political rights, economic, social and cultural rights, the rights of the child and the rights of persons with disabilities.

In this instance, the Statement of Compatibility with Human Rights does not consider the likely impact of the removal of sanctions against named persons and entities on the behavior of the Iranian regime, domestically, regionally or internationally, and the human rights impact of that behaviour. As already noted, the removal of sanctions risks weakening the international stigma that has hitherto been attached to the regime itself because of its anti-human rights policies and practices. It therefore further risks emboldening the Iranian regime into believing that it can continue these policies and practices indefinitely and with impunity.

We note with appreciation that the Foreign Minister met with the leadership of the Executive Council of Australian Jewry, at our request, in October 2015 and the issue of sanctions relief for Iran was discussed, among other matters. Details of the meeting were provided in our [Media Release](#) dated 26 October 2015. We are grateful to have been given the opportunity at that meeting to convey our community's perspective, as set out in this submission, on the Iran issue and how it impacts on the Australian Jewish community.

We are aware that many other groups in Australia have expressed their concerns publicly over Iran's appalling human rights and foreign policy record. These groups include the Australian Bahai community, the trade union movement, the National Council of Churches of Australia, the Australian Partnership of Religious Organisations, human rights organisations such as Amnesty International, women's rights advocates and children's rights advocates.

A process of public consultation should have been undertaken so as to give these groups, and any other groups or individuals in Australia who have an interest in these matters, an opportunity to ventilate their concerns and have them addressed by the government. A public consultation would also have given Australian citizens more generally, the opportunity to express concerns about the overall domestic and international messages conveyed by Australia in taking the measures in question.

(b) Adequacy of the explanatory statements accompanying the regulations for the removal of certain activities and entities from the sanctions regime

In our response to paragraph (a) of the Terms of Reference (above), we have commented on some aspects of the adequacy or otherwise of the two Explanatory Statements accompanying the relevant instruments that brought into effect the removal of certain sanctions against Iran.

In seeking to understand the Government's rationale for the partial suspension of autonomous sanctions and the potential impact on the Australian Jewish community and Australian society more broadly, we have considered the two Explanatory Statements previously referred to, as well as the Foreign Minister's Media Release dated 17 January 2016 and also the Iran page of the Department of Foreign Affairs and Trade (DFAT) website on sanctions regimes - <http://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/iran/pages/iran.aspx>

The background to the relaxation of sanctions is UNSC resolution 2231 which was unanimously adopted on 20 July 2015. Resolution 2231 endorsed the [Joint Comprehensive Plan of Action \(JCPOA\)](#) concerning the future of Iran's nuclear program which was concluded on 14 July 2015 by China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union and the Islamic Republic of Iran. In accordance with the provisions of UNSC resolution 2231, as from 16 January 2016 (when the UN Security Council received the [report from the International Atomic Energy Agency](#) confirming that Iran has taken a series of nuclear-related actions specified in the JCPOA), the following occurred:

- The provisions of previous UNSC resolutions directed against Iran's nuclear program were terminated, subject to re-imposition in the event of significant non-performance of JCPOA commitments; and
- All States became bound, by virtue of Article 25 of the UN Charter, to comply with the specific restrictions established by Annex B of resolution 2231, for the duration specified in each paragraph or subparagraph.

The Iran page of the DFAT website outlines the relevant background and provides details of both the UNSC and autonomous sanctions which currently apply under Australian law, although it notes that the information concerning the UNSC sanctions regime "*is currently being updated*". There is no statement of the underlying rationale for removing or continuing each of the autonomous sanctions.

Read together, the Explanatory Statements, the Iran page of the DFAT website and the Foreign Minister's media release do not, in our view, provide a simple, readily-comprehensible summary of which sanctions (both UN-mandated and autonomous) that were formerly applied by Australia against Iran have been removed, which of them remain in force, and the underlying rationale in each case for removing or continuing the sanctions. A summary table collating this information would be helpful, and could be provided on the Iran page of the DFAT website.

It is also unclear from the Explanatory Statements how the remaining autonomous sanctions are effectively targeted against Iran's human rights abuses, its promotion of racism, its support for terrorism and its destabilising foreign policy. Given that the stated purpose of removing certain sanctions is as a reward for Iran's compliance with its obligations under the JCPOA, it would have been desirable to have provided some explanation of how the remaining sanctions will be directed at other unlawful behaviours of the Iranian regime which fall outside the scope of the JCPOA. This information also could be provided on the Iran page of the DFAT website.

Finally, while the Explanatory Statements make clear that some sanctions have been suspended in light of "*progress made by Iran in relation to its obligations under the Joint Comprehensive Plan of Action*," no explanation is given of how the Australian government intends to re-impose autonomous sanctions against Iran in the event of a significant breach or non-performance by Iran of its JCPOA commitments. In contrast, the re-imposition of UN sanctions in such circumstances is expressly required by the provisions of paragraph 12 of UNSC resolution 2231.

A breach by Iran of its obligations under the JCPOA is not merely a remote or theoretical possibility. The governments of the United States, France, Germany and the United Kingdom have

already issued statements declaring Iran to have committed a breach of its obligations by having conducted a series of launches of its short-range and medium-range ballistic missiles, including its Shahab-3 medium-range and Qiam-1 short-range ballistic missiles.

We note also the contents of a letter dated 28 March 2016 [reported](#) sent by US Ambassador Samantha Power on behalf of France, Germany, the United Kingdom and the United States, to Ambassador Marchesi, the Facilitator for UNSC Resolution 2231, and to UN Secretary General Ban Ki Moon. It described Iran's ballistic missile launches as “*destabilizing and provocative*”, and “*in defiance*” of UNSC resolution 2231. The letter also reportedly strongly condemned the threats made against another UN Member State (namely Israel), in Iranian statements regarding these launches.

This latest breach of Iran's obligations under UNSC Resolution 2231, comes after the United States imposed additional sanctions against Iran for prior breaches also relating to its ballistic missile program. (Australia did not follow suit). We refer you to the following [statement](#) by the United States Treasury Undersecretary Adam J. Szubin on 17 January 2016:

“Iran’s ballistic missile program poses a significant threat to regional and global security, and it will continue to be subject to international sanctions. We have consistently made clear that the United States will vigorously press sanctions against Iranian activities outside of the Joint Comprehensive Plan of Action — including those related to Iran’s support for terrorism, regional destabilization, human rights abuses, and ballistic missile program.”

In these circumstances, the failure of the Explanatory Statements and other government publications to mention the precise conditions under which the recently-removed autonomous sanctions will be reimposed, the timing and mechanisms for doing so and other related matters, is especially regrettable.

(c) **Extent to which any removed entities have institutional or financial ties to any entities that continue to be designated, and the nature of such ties;**

We do not have sufficient information on the relevant entities and persons to comment on this paragraph.

(d) **Impact of lifting sanctions on the conduct of Iran in international relations and on Australia's national interest**

As noted in section (a) above, the impact of lifting sanctions on Iran is likely to extend beyond the economic benefits to Iran and its trading partners, and to give a major boost to Iran's international standing and its ability to infiltrate other countries, despite the fact that the Iranian regime has not resiled from its unlawful policies and practices concerning a wide range of issues other than its nuclear program. This is an undesirable and potentially dangerous development having particular regard to the following:

- (i) Iran is widely regarded as the world's foremost state sponsor of terrorism. The Iranian regime and its proxies, including the Lebanese-based Shi'ite terrorist group Hizballah, have been directly implicated in numerous acts of terrorism around the world. Hizballah receives military training, weapons, and financial support from Iran. Its External Security Organisation is listed as a terrorist organisation by the Australian government. Most notoriously, Hizballah was responsible for the bombings of the Israeli Consulate in Buenos Aires in 1992, which killed 29 people, the AMIA Jewish Community Centre in that city in 1994; which killed 85 people, and an Israeli tourist bus in Burgas, Bulgaria, in 2012, which killed 6 people. Several hundred other civilians were maimed or wounded in these attacks.

Iran also supports Hamas, whose military wing, the "Izz al-Din al-Qassam Brigades" is also listed as a terrorist organisation by the Australian government. Its Charter calls for the violent destruction of a UN member State, namely Israel, and the murder or expulsion of most of its Jewish population. These goals are openly shared by the Iranian regime itself and by Hizballah.

Whilst we note from the applicable Explanatory Statement that "*relevant Commonwealth Government departments were consulted prior to and during the drafting of the legislative instrument*" which removed sanctions from certain designated and declared persons and certain designated entities, we are concerned that the full implications of the suspension of sanctions in expanding the ability of Iran and its proxies to coordinate and conduct terrorist attacks in other countries, including in Australia, and against the Jewish community in particular, have not been communicated to groups in the community that are the most likely to be the targets of any such attacks, and to the Australian public generally.

Specifically, the removal of sanctions will almost certainly lead to a massive flow of funds to Iran as a result of the freeing up of its exports and international financial transactions. It is highly likely that a part of these funds will be utilised to maintain or increase Iran's financial support for the terrorist activities of Hizballah and Hamas and other internationally criminal behaviour.

- (ii) Iran continues to carry out public executions at the rate of 2-3 people per day, more than half of which executions go unannounced by the regime:
<http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000620-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2016.html>.

Minors continue to be included among those who are executed:
http://www.nytimes.com/2016/01/26/world/middleeast/iran-still-a-leading-executioner-of-minors-report-says.html?_r=0.

The executions often involve being strung up from a lamp-post or a crane, rather than a drop through a trap-door. Being strung up prolongs the death agony:
<https://www.google.com.au/search?q=iran+public+hangings&biw=881&bih=352&tbm=>

[isch&tbo=u&source=univ&sa=X&sqi=2&ved=0ahUKEwi5uOzlw7zLAhWELaYKHfxFDYkQsAQIJQ](http://www.ishch&tbo=u&source=univ&sa=X&sqi=2&ved=0ahUKEwi5uOzlw7zLAhWELaYKHfxFDYkQsAQIJQ).

Eye gouging is also practised:

<https://www.amnesty.org/en/documents/mde13/3722/2016/en/>;
<http://iranhr.net/en/articles/2471/>

- (iii) Iran continues to promote Holocaust denial, an especially pernicious form of antisemitism, through its sponsorship of the annual International Holocaust Cartoon Competition. Irina Bokova, the Director General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), recently [wrote](#) to Iranian President Hassan Rouhani to warn that his government's actions "*further serve to incite hatred, racism, and discrimination [which] goes against the objectives pursued by UNESCO to promote greater understanding and knowledge about the Holocaust.*"
- (iv) Iran continues to persecute, harass and intimidate trade union activists and to deny basic labour rights to workers, including freedom of association, equality of opportunity and treatment and prohibition of forced labour. It is in violation of other internationally-accepted standards regulating conditions across the entire spectrum of work-related issues. We note in particular that the International Labour Organisation (ILO) has found that Iran is in violation of the *Discrimination (Employment and Occupation) Convention 1958 (No. C111)* due to widespread inequality in access to employment and educational opportunities afforded to members of religious minority groups, including the Baha'i and Jewish communities, who are denied equality of treatment in practice.
- (v) Iran is involved in cyber-attacks against Western targets. The United States has said that Iran carries out such attacks with the goal of "crippling America's economy." In March 2016, the United States Justice Department [announced](#) the indictment of seven hackers associated with the Iranian Government for crimes including attacks on US banks and vital infrastructure.
- (vi) Iran continues to arbitrarily arrest and imprison (often for sentences of indeterminate length) political activists, ethnic minorities, religious minorities, gays and artists – <http://en.iranwire.com/features/7161/>; <http://payvand.com/news/16/mar/1115.html>; <http://www.theguardian.com/world/2016/mar/24/filmmaker-two-musicians-three-years-prison-iran>; <http://english.aawsat.com/2016/03/article55348871/sunni-convicts-facing-hostile-discrimination-iranian-prisons>; <http://www.jpost.com/Iranian-Threat/News/UN-report-assails-Iran-for-persecution-of-religious-minorities-347089>; <https://www.bic.org/focus-areas/situation-iranian-bahais/current-situation#KFZX4afM2JHhLCm4.97>; <https://www.bic.org/focus-areas/situation-iranian-bahais/current-situation#KFZX4afM2JHhLCm4.97>

As we have already noted, Iran's policies and practices are diametrically opposed to the values of democracy, human rights and the rule of law, which Australia as a nation subscribes to and seeks to promote both domestically and internationally.

(e) **Australian Government's decision to re-open a trade office in Iran;**

We have expressed our concerns about the legitimising effect, benefiting the Iranian regime, of any move towards normalisation of Australia's relationship with Iran, such as the re-opening of a trade office. We would be alarmed by any expansion of consular, trade or other official representation of the Iranian regime in Australia in light of Iran's record of using such missions, particularly in Latin America, as command centres for the co-ordination of regional terrorist and espionage activities.

(f) **Related matters**

The Iranian regime remains implacably committed to the propagation around the world of its theocratic, totalitarian ideology and form of government, and remains equally implacably opposed to democratic and secular forms of government everywhere. Internationally, the regime lacks respect for the UN Charter system, violates international law to the extent that it can do so, and complies with it only grudgingly and to the extent that it feels compelled to do so. Worse, the regime continues to use brutal repression domestically, and military force, terrorism and espionage externally, in order to secure and expand its power. Friendly relations such as those which ordinarily prevail between nations, cannot be sustained with Iran under its present form of government.

As long as this state of affairs continues, the Australian Jewish community will remain concerned by any expansion of bilateral ties with Iran and any relaxation of pressure against it, including in the form of sanctions, to comply with civilised norms of conduct. We urge the government to proceed cautiously with any further engagement with the Iranian regime and to take no further steps which will be of benefit to it, unless the regime has made and carried out clear and measurable concessions in advance.

We consent to this submission being published by the Committee.

Yours sincerely

Robert Goot SC AM
President

Peter Wertheim AM
Executive Director