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## **The committee has deferred its consideration of the following legislative instruments**

### **Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2013 (No. 1)**

*FRLI: F2013L01312*

*Portfolio: Foreign Affairs*

*Tabled: House of Representatives and Senate, 12 November 2013*

### **Autonomous Sanctions Amendment Regulation 2013 (No. 1)**

*FRLI: F2013L01447*

*Portfolio: Foreign Affairs*

*Tabled: House of Representatives and Senate, 12 November 2013*

#### **Summary of committee concerns**

2.259 The committee reiterates the comments of its predecessor committee in relation to the Autonomous Sanctions regime and has deferred consideration of these instruments in greater detail until it has received the government's response to its request that a review of the sanctions regime be undertaken.

#### **Overview**

2.260 The predecessor to this committee (the former committee) discussed the autonomous sanctions regime in its *Sixth* and *Tenth* reports of 2013.<sup>188</sup>

2.261 The Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Iran) List 2012 sets out a list of persons and entities proscribed by the Minister under the Regulations. The Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2013 (No. 1) gives effect to the Minister for Foreign Affairs' announcement on 10 January 2013, relating to increased sanctions on Iran.<sup>189</sup> The new sanctions include financial and travel restrictions on additional individuals and entities active in Iran's oil and gas and financial sectors or related to Iran's weapons of mass destruction proliferation activities.

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188 Refer to the committee's comments in the *Sixth Report of 2013*, tabled on 15 May 2013 for background on the operation of the *Autonomous Sanctions Act 2011*, and the *Autonomous Sanctions Regulations 2011* (the Regulations).

189 [http://foreignminister.gov.au/releases/2013/bc\\_mr\\_130110.html](http://foreignminister.gov.au/releases/2013/bc_mr_130110.html).

2.262 The statement of compatibility states that the 'new sanctions include financial and travel restrictions on additional individuals and entities active in Iran's oil and gas and financial sectors or related to Iran's weapons of mass destruction proliferation activities.'<sup>190</sup> The Minister's announcement appears to be foreshadowing amendments to the regulations which provide that certain goods and services are sanctioned without authorisation from the Minister.<sup>191</sup>

2.263 The Autonomous Sanctions Amendment Regulation 2013 (No.1) places additional sanctions on Iran as announced by the former Minister for Foreign Affairs on 10 January 2013. The regulation expands the scope of existing measures targeted at trade and investment with Iran to include restrictions on trade in new categories of goods to be specified in separate instruments. The regulation amends the sanction laws in Part 3 of the Principal Regulations to provide that an offence of strict liability applies where relevant conduct is not authorised by the Minister in the form of a permit.

### **Compatibility with human rights**

2.264 The statement of compatibility accompanying the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment List 2013 (No.1) states that the objective of the instrument is to increase pressure on Iran to comply with its nuclear non-proliferation obligations and with United Nations Security Council resolutions and to engage in serious negotiations on its nuclear program. The statement concludes that the instrument is compatible with human rights.

2.265 The statement does not identify the human rights engaged by the instrument, but states that a person or entity subject to designation or declaration under the Regulations may apply to the Minister for revocation of that decision and that such decisions are judicially reviewable and explains the effect of designation on the person or entity's ability to access their assets.

2.266 In its consideration of the autonomous sanctions regime in its *Sixth Report of 2013* and *Tenth Report of 2013*, the former committee noted that:

The effect of designation (which can apply to a person both in and outside Australia) is that the person's assets (including money held in bank accounts) are frozen and can only be made available to them if the Minister grants a permit. A permit will only allow funds to be made available for basic expenses (such as foodstuffs, rent, medicines and taxes), or where a payment is legally or contractually required to be made. In addition, designation under this regime will have flow-on effects so that

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190 Statement of compatibility, p 1.

191 [https://www.dfat.gov.au/un/unsc\\_sanctions/public\\_consultation.html](https://www.dfat.gov.au/un/unsc_sanctions/public_consultation.html).

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the Minister for Immigration and Citizenship will deny the issue of a new visa or cancel an existing visa issued to a designated person.<sup>192</sup>

2.267 The statement of compatibility accompanying the Autonomous Sanctions Amendment Regulation 2013 (No.1) states that the objective of the regulation is to give effect to the Minister's 10 January announcement. The statement notes that the regulation engages the right to be presumed innocent as the regulation makes provision for a strict liability offence to apply to relevant conduct that is not in accordance with a permit.

2.268 The former committee noted the complexity of this policy area and the need for careful consideration of competing interests. The former committee also noted the Minister's preparedness to discuss the broader concerns about human rights compatibility to which autonomous sanctions regimes give rise and wrote to the Minister asking whether the Department of Foreign Affairs and Trade might conduct a comprehensive review of the sanctions regime in light of Australia's international human rights obligations and report back to the committee in the 44<sup>th</sup> Parliament. In his response, the former Minister stated that he had instructed the Department of Foreign Affairs and Trade to carefully consider the committee's recommendation.

2.269 The committee notes that these instruments appear to raise similar human rights concerns to the previously discussed instruments and that the former committee's comments, especially in relation to the autonomous sanctions regime as a whole, appear to remain valid.

**2.270 The committee intends to write to the Minister for Foreign Affairs to draw her attention to the former committee's consideration of these matters and its request for a review of the human rights compatibility of the sanctions regime and to request advice on the progress on this matter. The committee intends to defer more detailed consideration of these instruments until it has received the Minister's response.**

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192 Parliamentary Joint Committee on Human Rights, *Tenth Report of 2013*, p 14.

## **Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Amendment Regulation 2013 (No 1)**

*FRLI: F2013L01384*

*Portfolio: Foreign Affairs*

*Tabled: House of Representatives and Senate, 12 November 2013*

### **Summary of committee concerns**

2.271 The committee intends to write to the Minister for Foreign Affairs to seek clarification as to how the instrument is compatible with human rights, in particular the right to a fair trial and a fair hearing and the right to privacy. The committee intends to draw the Minister's attention to the consideration of sanctions regimes by the committee in the 43<sup>rd</sup> Parliament and its request for a review of the human rights compatibility of the sanctions regime.

### **Overview**

2.272 This instrument amends the Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008 to give effect to decisions made by the United Nations Security Council (UNSC) amending sanctions in relation to the Democratic People's Republic of Korea. The instrument expands the scope and effect of the sanctions targeted at individuals and entities listed by the United Nations Security Council, and extends the existing sanctions to include additional supplies and services.

### **Compatibility with human rights**

2.273 The instrument is accompanied by a short statement of compatibility that states that it is compatible with human rights.

2.274 In the 43<sup>rd</sup> Parliament, the predecessor to this committee (the former committee) noted that sanctions regimes may raise significant human rights considerations, including the right to a fair trial and a fair hearing and the right to privacy.<sup>193</sup> Noting the complexity of this policy area, the committee wrote to the then Minister for Foreign Affairs asking whether his department might conduct a comprehensive review of sanctions regimes in light of Australia's international human rights obligations and report back to the committee in the 44<sup>th</sup> Parliament. In his response, the former Minister stated that he had instructed the Department of Foreign Affairs and Trade to carefully consider the committee's recommendation.

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193 See Parliamentary Joint Committee on Human Rights, *Tenth Report of 2013*, pp 13 – 16.

2.275 The committee notes that this instrument appears to raise similar human rights concerns to the previously discussed instruments and that the former committee's comments appear to remain valid.

**2.276 The committee intends to write to the Minister for Foreign Affairs to draw her attention to the former committee's consideration of these matters and its request for a review of the human rights compatibility of the sanctions regime and to request advice on the progress on this matter. The committee intends to defer more detailed consideration of this instrument until it has received the Minister's response.**

## Extradition (Vietnam) Regulation 2013

FRLI: F2013L01473

Portfolio: Attorney-General

Tabled: House of Representatives and Senate, 12 November 2013

### Summary of committee concerns

2.277 The committee has deferred its consideration of this regulation while it considers human rights concerns raised by its predecessor committee in relation to the *Extradition Act 1988* and related legislation.

### Overview

2.278 This regulation brings into effect the *Treaty between Australia and the Socialist Republic of Vietnam on Extradition* (the Treaty). It does so by ensuring that the definition of an 'extradition country' in the *Extradition Act 1988* is taken as including Vietnam.

### Compatibility with human rights

#### *Statement of compatibility*

2.279 The regulation is accompanied by a statement of compatibility that states that the instrument does not impact on Australia meeting its human rights obligations. The statement notes that extradition can engage a range of human rights, including the right to a fair hearing, the right to liberty, the right to life and the prohibition on torture and cruel, inhuman or degrading treatment or punishment and rights to equality and discrimination. The statement states that Australia's extradition regime contains a number of human rights safeguards to ensure that Australia meets both international criminal justice obligations and human rights obligations.

2.280 In its consideration of extradition instruments in the 43<sup>rd</sup> Parliament, the predecessor to this committee (the former committee) noted the importance of Australia having in place the necessary tools to meet its international criminal justice and cooperation obligations together with its human rights obligations.<sup>194</sup> However, the former committee stated that it considered the *Extradition Act 1988* to raise serious human rights concerns.<sup>195</sup> The committee's *Tenth Report of 2013* sets out the nature of these concerns in detail. These include the extent to which executive discretion can be characterised as a human rights safeguard, the extent to which

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194 Parliamentary Joint Committee on Human Rights, *Tenth Report of 2013*, p 58.

195 Parliamentary Joint Committee on Human Rights, *Tenth Report of 2013*, pp56-61.

access to judicial review is sufficient to render an executive discretion a safeguard and concerns in relation to fair hearing rights, the right to liberty and the right to privacy.

2.281 The former committee considered that there may be benefit in a full review of the human rights compatibility of the Extradition Act and related legislation and suggested that in the 44<sup>th</sup> Parliament, the Parliamentary Joint Committee on Human Rights may wish to determine whether to undertake such a review.

**2.282 The committee intends to defer its detailed consideration of this regulation while it gives close consideration to the concerns raised by the former committee and to its suggestion that a full review of the Act and related legislation be undertaken.**

## **Social Security (Administration) (Recognised State/Territory Authority - NT Alcohol Mandatory Treatment Tribunal) Determination 2013**

*FRLI: F2013L01949*

*Portfolio: Social Services*

*Tabled: House of Representatives, 21 November 2013 and Senate, 2 December 2013*

### **Summary of committee concerns**

2.283 The committee has deferred its consideration of this instrument, while it considers the former committee's recommendation that a 12-month review to evaluate the latest evidence in order to test the continuing necessity for the Stronger Futures measures be undertaken in the 44th Parliament.

### **Overview**

2.284 This instrument determines that the NT Alcohol Mandatory Treatment Tribunal<sup>196</sup> is a recognised State/Territory authority for the purposes of Part 3B of the *Social Security (Administration) Act 1999*. Part 3B of the Act sets out the various situations in which a person is subject to income management, including if among other things, an officer or employee of a recognised State/Territory authority has given the Secretary a written notice requiring that a person be subject to income management.

2.285 The instrument also revokes the Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol and Drugs Tribunal) Determination 2012 that recognised the NT Alcohol and Other Drugs Tribunal, which preceded the NT Alcohol Mandatory Treatment Tribunal.

### **Compatibility with human rights**

#### ***Statement of compatibility***

2.286 The instrument is accompanied by a statement of compatibility that states that it is compatible with a range of rights, including the right to self-

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196 The tribunal was established on 1 July 2013 as part of the Alcohol Mandatory Treatment Reform. It has authority to refer people, who have been taken into police custody three or more times in two months as a result of public intoxication, for mandatory treatment or other community management. This may include treatment in a secure residential treatment service or a community residential treatment service (where secure treatment is not warranted or available), or other community management including income management.



determination;<sup>197</sup> the right to to equal protection of the law and non-discrimination on the basis of race or ethnic origin;<sup>198</sup> the right to social security,<sup>199</sup> the right to an adequate standard of living;<sup>200</sup> and the rights of children.<sup>201</sup>

### **Committee view on compatibility**

2.287 In its *Eleventh Report of 2013* the predecessor to this committee (the former committee) considered the *Stronger Futures in the Northern Territory Act 2012* and related legislation. The former committee wrote to the Minister on 26 June 2013 inviting a response to the report. The committee notes that a Ministerial response has not yet been received.

2.288 The former committee concluded its report by noting the importance of continuing close evaluation of measures within the legislation. The former committee considered that the PJCHR could usefully perform an ongoing oversight role in this regard and recommended that in the 44<sup>th</sup> Parliament the committee should undertake a 12-month review to evaluate the latest evidence in order to test the continuing necessity for the Stronger Futures measures.

**2.289 The committee intends to defer its detailed consideration of this regulation, while it considers the former committee's recommendation.**

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197 Article 1 of the ICESCR. See also article 1 of the ICCPR.

198 Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). See also articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR); article 2(2) of the ICESCR and article 2(1) of the Convention on the Rights of the Child (CRC).

199 Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

200 Article 11(1) of the ICESCR.

201 Articles 26, 24 and 27 of the Convention on the Rights of the Child (CRC).

## **Stronger Futures in the Northern Territory Regulation 2013**

*FRLI: F2013L01442*

*Portfolio: Prime Minister and Cabinet*

*Tabled: House of Representatives and Senate, 12 November 2013*

### **Summary of committee concerns**

2.290 The committee has deferred its consideration of this regulation, while it considers the former committee's recommendation that a 12-month review to evaluate the latest evidence in order to test the continuing necessity for the Stronger Futures measures be undertaken in the 44<sup>th</sup> Parliament.

### **Overview**

2.291 This regulation modifies the Associations Act (NT) to enable community living area landowners to grant leases and licences in community living areas in respect of land uses and developments that are currently permitted under the Northern Territory Planning Scheme and to enable such grants for a term of 10 years or less without requiring consent from the relevant Northern Territory Minister.

2.292 The regulation is made under Part 3 of the Stronger Futures in the Northern Territory Act 2012, which provides for measures to be taken to facilitate the granting of individual rights and interests in town camps and community living areas in the Northern Territory with the aim of promoting economic development in town camps and community living areas. These measures are described as special measures for the purposes of the *Racial Discrimination Act 1975*. The regulation follows the release of a Discussion paper on Community Living Areas land reform in the Northern Territory in March 2013 and is substantially the same as an exposure draft regulation released in conjunction with that discussion paper.

### **Compatibility with human rights**

#### ***Statement of compatibility***

2.293 The statement of compatibility accompanying the regulation states that the regulation is compatible with human rights. The statement notes the criteria for 'special measures' under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate

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rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.<sup>202</sup>

2.294 The statement concludes that the regulation is consistent with these criteria as:

- It is being made for the sole purpose of securing adequate advancement for residents of Aboriginal community living areas and is a first step in securing land tenure in community living areas;
- The measure will cease once the special measure objective is achieved; however, the amendments to the *Associations Act (NT)* will remain in force to ensure that the objectives of the special measure are achieved and to ensure that rights, titles and interests in community living areas are not adversely affected when the Stronger Futures in the Northern Territory Act 2012 (the Act) sunsets; and
- The Act provides for an independent review to assess the effectiveness of the special measures within 4 years of the Act's commencement and for the review report to be published and tabled in Parliament.

### ***Committee view on compatibility***

2.295 In its *Eleventh Report of 2013* the predecessor to this committee (the former committee) considered the *Stronger Futures in the Northern Territory Act 2012* and related legislation. While the former committee's report did not deal specifically with land reform measures, it did consider whether various legislative measures under the Stronger Futures package should be classified as 'special measures'.

2.296 The former committee wrote to the Minister on 26 June 2013 inviting a response to the report. The committee notes that a Ministerial response has not yet been received.

2.297 The former committee concluded its report by noting the importance of continuing close evaluation of measures within the legislation. The former committee considered that the PJCHR could usefully perform an ongoing oversight role in this regard and recommended that in the 44<sup>th</sup> Parliament the committee should undertake a 12-month review to evaluate the latest evidence in order to test the continuing necessity for the Stronger Futures measures.

**2.298 The committee intends to defer its detailed consideration of this regulation, while it considers the former committee's recommendation.**

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202 Article 1(4) of the CERD.

