

Dissenting Report of Coalition Senators

1.1 While acknowledging the very real human rights and security concerns associated with Iran, Coalition Senators do not support this report as it is shallow and politically motivated.

1.2 Coalition Senators welcome the opportunity to inquire into the partial lifting of sanctions on Iran as an opportunity to draw attention to the Opposition's lack of understanding of its record in government and Australia's international obligations.

Bilateral Engagement with Iran

1.3 The Australian Government continues to speak out on issues of concern in the bilateral relationship, such as human rights, the use of the death penalty and the treatment of religious minorities.

1.4 The Government recently expressed its concerns with Iran over its provocative behaviour including the recent ballistic missile tests and threatening statements directed at Israel.

1.5 The Minister for Foreign Affairs, the Hon Julie Bishop MP, raised these and other concerns directly with Iran's Foreign Minister, Dr Zarif, during his visit to Australia in March 2016. During a joint press conference with Foreign Minister Zarif, Minister Bishop stated:

I have also discussed matters of concern to Australia: Iran's recent ballistic missile tests, we have discussed human rights issues, we have discussed issues relating to Iran's relationships with other countries in the region, particularly Israel, Saudi Arabia, and in Yemen.

1.6 Coalition Senators note that ALP Members and Senators are divided regarding engagement with Iran. This Senate inquiry was motivated by the views of Labor senators who oppose engagement with Iran. In stark contrast, in November 2006, the Member for Sydney and current Deputy Leader of the Labor Party and Shadow Minister for Foreign Affairs and International Development wrote an article for the Sydney Morning Herald calling on western countries to open dialogue with Iran and Syria. This comment came at the peak of Iranian President Mahmoud Ahmadinejad's first term in office.

Autonomous Sanctions Bill 2011

1.7 The Australian Government's decision to remove economic and financial sanctions against Iran following the implementation of the Joint Comprehensive Plan of Action (JCPOA) and United Nations Security Council Resolution (UNSCR) 2231, complied with the requirements of the *Autonomous Sanctions Act 2011*, drafted and passed by the former Labor Government, as well as with the requirements of the then *Legislative Instruments Act 2003* (now the *Legislation Act 2003*).

1.8 The bill was deliberately drafted to give the government of the day the ability to respond quickly to international developments.

1.9 In his Second Reading Speech, the then Minister for Foreign Affairs, the Hon Stephen Smith MP, stated that the legislation contained:

...the necessary flexibility for the government to respond to fluid and rapidly changing international developments in a timely way.

1.10 The implementation of the Joint Comprehensive Plan of Action (JCPOA) and United Nations Security Council Resolution 2231 was clearly what the former minister had in mind when he referred to "rapidly changing international developments".

1.11 The Hon Michael Danby MP, Member for Melbourne Ports, spoke in support of the bill at the time:

I welcome this and hope we make effective use of the powers which this bill creates. I commend the bill to the House.

1.12 Mr Danby did not raise any concerns about the legislation, including the regulation making power designed to give the Minister for Foreign Affairs the ability to respond to 'rapidly changing international developments' by applying or removing autonomous sanctions.

1.13 Former Minister Smith noted the importance of the regulation making power in his response to the Senate Standing Committee for the Scrutiny of Bills:

It [regulation making power] is imperative to the goal of autonomous sanctions.¹

1.14 The bill was also considered by the Senate Foreign Affairs, Defence and Trade Legislation Committee, which recommended it be passed. In its report, the Committee agreed that:

...a regulation-making power is necessary for autonomous sanctions to be applied with the requisite speed and flexibility to respond effectively to situations of international concern.²

1.15 The need for the Minister of Foreign Affairs to have the authority to apply and remove sanctions by regulation to respond rapidly to international developments is well understood and accepted.

1.16 The partial lifting of sanctions following the implementation of JCPOA and UNSCR 2231 is entirely consistent with the legislation introduced by the former Labor Government.

Joint Comprehensive Plan of Action and obligations under UNSC 2231

1.17 The Iranian nuclear deal (or JCPOA) is acknowledged internationally, including by the International Atomic Energy Agency and the United Nations Security Council, as the best opportunity to prevent Iran from acquiring a nuclear weapon.

1 Senate Standing Committee for the Scrutiny of Bills, Tenth Report of 2010, 24 November 2010.

2 Senate Foreign Affairs, Defence and Trade Committee, Inquiry in Autonomous Sanctions Bill 2010, p. 14.

1.18 The positive impact of the JCPOA on regional and international security was outlined by the Department of Foreign Affairs and Trade (DFAT) at the public hearing:

Mr Ralph: ...back in 2014 it was assessed that Iran's break-out time—the amount of time it would take to produce enough fissile enriched uranium to create a bomb—was around two to three months. That was the nub of the matter that the JCPOA was designed to address. At the time of the negotiations, Iran had been adding rapidly to its stockpile of enriched uranium.

Today, having implemented the measures required of it by the deal, it would take Iran at least a year to accumulate enough fissile material to produce a nuclear bomb...this is the best deal that was available, and that is why it was achieved with the support of the international community, to bring Iran back from the brink of nuclear break-out.

1.19 The JCPOA is strongly supported by likeminded countries, which share Australia's view that the nuclear deal is the best option available to the international community to halt Iran's nuclear program. This is reflected in the following statements:

United State President Barack Obama:

Under the nuclear deal that we, our allies and partners reached with Iran last year, Iran will not get its hands on a nuclear bomb. The region, the United States, and the world will be more secure.

British Prime Minister David Cameron:

After persistent diplomacy and tough sanctions, the international community has delivered a historic deal with Iran. A deal which secures our fundamental aim – to keep Iran from developing a nuclear weapon - and that will help to make our world a safer place.

Canadian Foreign Minister Stéphane Dion:

Canada believes the Joint Comprehensive Plan of Action will help to ensure that Iran cannot build a nuclear weapon.

1.20 The suggestion by Opposition Members and Senators that Australia should not have lifted economic and financial sanctions following the implementation of the JCPOA and UNSCR 2231 would have left Australia isolated on the international stage.

1.21 It would have also been inconsistent with Australia's obligation to the United Nations.

1.22 Australia, as a member of the United Nations, is bound to implement UNSC Resolution 2231, which incorporates provisions of the JCPOA. The Resolution calls on all members to:

...take such action as may be appropriate to support the implementation of the JCPOA, including by taking actions commensurate with the implementation plan set out in the JCPOA and this resolution and by

refraining from actions that undermine implementation of commitments under the JCPOA.

1.23 As a long-standing and committed member of the United Nations, Australia undertook appropriate action to implement the JCPOA.

1.24 As stated by DFAT official Ms Justine Braithwaite in her opening statement to the public hearing:

The Australian Government accordingly lifted certain autonomous sanctions against Iran, and is taking steps to implement UNSCR 2231 as is required under international law; to ensure its sanctions regime on Iran is consistent with the internationally-agreed consensus reached in the JCPOA.

1.25 While economic and financial sanctions have been lifted, other sanctions have been maintained. As explained to the committee by DFAT:

...under our autonomous sanctions regime, Australia maintains sanctions on the export of arms and related material, as well as certain nuclear-related software, graphite and metals to Iran. We continue to list 23 Iranian individuals and 68 entities under autonomous sanctions due to their connection with the nuclear program.

1.26 The Australian Government is implementing a phased sanctions relief policy in line with that agreed between the European Union (EU) and Iran as part of JCPOA negotiations. Australia has aligned its Iran policy with the EU since 2008, a position initiated by the former Labor Government.

1.27 The reasons for this are straightforward:

Ms Braithwaite: ...the EU system is the most comparable to ours, and the EU apply sanctions in a similar way to Australia. That is why Australia took the policy decision to align ourselves with the European Union. That is not to say we are not in step with the United States. That is not the case; it is just that the United States applies a far broader range of sanctions than Australia has done.

1.28 It is important to note that the number of Iranian individuals and entities listed by the Australian Government mirrors that listed under Labor.

1.29 Maintaining economic and financial sanctions on Iran would be inconsistent with Australia's commitment to the United Nations, and would leave Australia isolated from its international partners, including the United States, EU, United Kingdom, Japan and Canada, all of which have removed autonomous sanctions.

Recommendations

1.30 Coalition Senators recommend that:

- 1) The committee acknowledges that the Government's lifting of economic and financial sanctions against Iran following the JCPOA and UNSCR 2231 complied with the requirements of the *Autonomous Sanctions Act 2011*, drafted and passed by the former Labor Government as well as with the requirements of the then *Legislative Instruments Act 2003* (now the *Legislation Act 2003*).

- 2) The committee acknowledges the Government's decision to remove economic and financial sanctions against Iran following the JCPOA and UNSCR 2231 was consistent with Australia's obligations as a member of the United Nations and United Nations Security Council Resolution 2231.
- 3) The committee acknowledges the Government's decision to remove economic and financial sanctions against Iran following the JCPOA and UNSCR 2231 was consistent with actions undertaken by likeminded countries including the United States, the European Union and Canada.
- 4) Coalition Senators do not support Recommendations 1, 2, 3 and 4 of the Chair's report. Coalition Senators support Recommendation 5.

Senator Chris Back
Deputy Chair

Senator David Fawcett

