

Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013

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Portfolio: Foreign Affairs

Summary of committee view

2.23 The committee seeks further information as to how this instrument is compatible with human rights, in particular, the right to privacy, the right to a family life, and the right to freedom of movement, and a designation under the sanctions regime can properly be determined to be 'in accordance with law'.

Overview

2.24 The *Autonomous Sanctions Act 2011* allows the Minister for Foreign Affairs to make regulations proscribing any person or entity 'for specified purposes or more generally' if satisfied that this will 'facilitate the conduct of Australia's relations with other countries or with entities or persons outside Australia' or 'will otherwise deal with matters, things or relationships outside Australia'.³ The *Autonomous Sanctions Regulations 2011* sets out a list of countries and the type of persons that may be proscribed. This includes Zimbabwe, and states that a person may be proscribed if the Minister is satisfied that he or she is engaging, or has engaged in 'activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe'.⁴ The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) List 2012* sets out a list of persons and entities proscribed by the Minister under these powers. The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013* amends that list to designate 98 named individuals (removing 55 individuals who were previously listed).

2.25 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 the Minister for Immigration and Citizenship will deny the issue of a new visa or cancel an existing visa issued to a designated person.⁵

3 *Autonomous Sanctions Act 2011*, section 10.

4 *Autonomous Sanctions Regulations 2011*, regulation 6, item 8.

5 See *Migration Regulations 1994*, Public Interest Criterion 4003(c) and regulation 2.43(1)(aa).

Compatibility with human rights

2.26 The statement of compatibility states that the instrument is compatible with rights as:

The object and purpose of the Amendment List is, *inter alia*, to acknowledge and support the democratic transition underway in Zimbabwe and to continue to place pressure on key decision makers in Zimbabwe to allow the full enjoyment of the rights and freedoms referred to in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

2.27 While it may seek to achieve a legitimate objective of promoting human rights in Zimbabwe, this instrument appears to the committee to raise a number of human rights issues insofar as it affects the human rights of persons in Australia.

2.28 In particular, article 17 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right of a person to a private life. Denying a person use of their own personal assets – and requiring a Ministerial permit to access assets to use for basic expenses – appears to limit the right to privacy given the potential impact on an individual's personal life.

2.29 The designation of a person would also appear to engage the right to freedom of movement under article 12 of the ICCPR, as a designated person will be refused a visa to travel to Australia and those already in Australia will be forced to leave on cancellation of their visa. In addition, depending on the person's individual circumstances and where their close family members reside, such a decision may impact on the right to a family life under article 17 and 23 of the ICCPR.

2.30 These rights may be limited but any limitation must be in accordance with law, seek to achieve a legitimate objective, have a rational connection to that objective and be proportionate to that objective. It is not clear to the committee whether the designation of person under this regime would be sufficiently prescribed to be 'in accordance with law'. International human rights jurisprudence has established that 'law' in this context means not only that there must be a domestic rule adopted as part of the standard legislative process (or an accepted rule of the common law), but that the law or rule in question must satisfy the 'quality of law' test. This means that it must be sufficiently precise so as to provide an indication in advance to a person whose rights are to be affected by the law of the circumstances under which, and the extent to which, the person may be affected. It also requires that adequate safeguards exist to prevent abuse.

2.31 In this case the criteria for designation are very broad: it is enough that the Minister be satisfied that a person is engaging, or has engaged in activities that 'seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe'. In addition, the designation is made by the Minister without involvement of the courts. A person objecting to a designation can seek review from the original decision maker and judicial review. However, the judicial review will be restricted to

a review of whether the Minister acted in accordance with the criteria set out in the sanctions regime, and as those are so broad as to solely require the Minister's satisfaction that a person should be designated, access to judicial review is unlikely to assist a person in challenging a designation.

2.32 The committee intends to write to the Minister for Foreign Affairs to seek further information as to how this instrument is compatible with human rights, in particular, the right to privacy, the right to a family life, and the right to freedom of movement, and how such a designation can properly be determined to be 'in accordance with law'.