

SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE – INQUIRY INTO AUTONOMOUS SANCTIONS BILL 2010

SUBMISSION BY THE RESERVE BANK OF AUSTRALIA

The Reserve Bank of Australia supports the proposed decision to introduce specific legislation for the purpose of implementing autonomous financial sanctions. The Reserve Bank has been responsible for administering financial sanctions under the *Banking (Foreign Exchange) Regulations 1959* (hereafter ‘the Regulations’) for two decades. It is the Bank’s view that the new legislation will improve the efficacy and efficiency of the autonomous financial sanctions regime and has the potential to reduce the regulatory burden associated with sanctions compliance.

Based on consultations with the Department for Foreign Affairs and Trade (DFAT), the Reserve Bank understands that regulatory changes to be implemented following implementation of the *Autonomous Sanctions Bill 2010* will adequately meet the need for reform.

Involvement of the Reserve Bank in autonomous sanctions administration

Over the past two decades, the Reserve Bank has administered financial sanctions at the request of successive Australian governments. The Bank implements financial sanctions by varying legal instruments issued under the Regulations. Currently individuals and entities from five countries (Burma, Iran, North Korea, Former Yugoslavia and Zimbabwe) are subject to Australian autonomous financial sanctions. The Bank has no involvement in implementing sanctions imposed in accordance with UN Security Council resolutions; these sanctions are implemented under the *Charter of the United Nations Act 1945* and administered by DFAT.

Entities (most importantly financial institutions) are required to refer any pending international and foreign currency transactions they suspect may be in breach of Australia’s autonomous sanctions to the Reserve Bank for approval. The Bank then provides details of these transactions to the Australian Federal Police and DFAT for the purpose of checking the identity of the parties involved against the sanctions list. In the very small number of cases where a positive identification of a sanctioned entity has been made, the Bank has imposed restrictions to prohibit transactions that would be in breach of the sanctions.

Effectiveness of the current autonomous sanctions regime

Although compliance with autonomous sanctions among the largest financial institutions is very high, for some time the Reserve Bank has held concerns about the legal efficacy of the current regime and the inadequate legislative basis for effective enforcement of the sanctions. These problems largely stem from the use of the Regulations as the legal vehicle for implementing sanctions, a purpose quite removed from their original purpose of providing a legislative basis for implementing capital controls.

Autonomous Sanctions Bill 2010

The Reserve Bank supports the decision to introduce specific legislation for the purpose of implementing autonomous sanctions. Although the Bank has not been extensively involved in the drafting of the *Autonomous Sanctions Bill 2010*, the Bank has been involved in consultations with DFAT and other agencies about the general direction of the proposed reforms.

In the Bank's view, specific legislation is necessary to address a number of shortcomings in the current autonomous sanctions regime. In particular, new legislative and regulatory arrangements are required to:

- provide greater legal certainty regarding the types of financial transactions covered by Australian's autonomous financial sanctions;
- allow for efficient administration of autonomous sanctions through the appropriate allocation of responsibilities across agencies and by improving the ability to share information between agencies;
- reduce the compliance burden by ensuring, where possible, that the legal and regulatory features of autonomous sanctions laws are consistent with Australia's implementation of UN Security Council sanctions; and
- ensure effective enforcement of autonomous sanctions through clear regulatory processes and the application of appropriate penalties.

The Reserve Bank does not have the legal expertise independently to assess the specifics of the Bill. Nevertheless, the Bank has been briefed by DFAT on the Bill and the likely form of regulatory changes to follow should the Bill be passed. The Bank is confident that the proposed changes will substantially strengthen the legal and regulatory basis for the implementation of autonomous financial sanctions.

Reserve Bank of Australia
SYDNEY

16 June 2010