

Chapter 3

Key issues

Introduction

3.1 A number of concerns were raised during the inquiry regarding the Foreign Minister's decision to partially suspend sanctions against Iran. Criticisms were made regarding the adequacy and clarity of the explanatory statements that gave effect to the partial suspension, together with the scarcity of information on the reasoning behind the removal of some entities from the sanctions list and the retention of others.

3.2 The lack of public consultation prior to the suspension of sanctions was a significant concern, as was the positive political message the partial lifting would send to the Iranian authorities. Many argued that the partial suspension could be perceived as an expression of support for Iran's approach to human rights, its foreign policy and behaviour on the international stage, which many submitters widely condemned.

3.3 The proposed re-opening of a trade office in Tehran received a mixed response. While some supported the re-opening as a means of providing support and guidance to Australian business entering Iranian markets and encouraging change within Iranian society, others argued it would legitimise a regime that is the antithesis of Australia's open and pluralist society and liberal democratic values.

3.4 This chapter examines each of these concerns in greater detail under the following seven headings:

- explanatory statements;
- removal of entities and financial ties;
- lack of public consultation;
- significance of the partial suspension;
- human rights in Iran;
- Iran in international affairs; and
- an Australian trade office in Iran.

Explanatory statements

3.5 Criticisms were made of the explanatory statements that gave effect to the partial suspension and repeal of sanctions. The Department of Foreign Affairs and Trade (DFAT) advised that the explanatory statements 'comply with the requirements of both the *Legislation Act 2003* and the General Requirements for Preparing Explanatory Statements as required by the Senate Regulations and Ordinances Committee'.¹

1 Department of Foreign Affairs and Trade, *Submission 8*, p. 2.

3.6 The Export Council of Australia (ECA) was of the view that the explanatory statements adequately informed relevant parties of business dealings that remain restricted or prohibited between Australia and Iran. While the ECA stated that the statements 'are concise and present information on the regime in a clear and accessible manner, including relevant implementing legislation',² at the hearing the ECA Director, Mr Andrew Hudson, did not fully endorse the information on the DFAT website, especially information to assist SME exporters.³

3.7 However, the ECA argued that a lack of clarity and specificity with regard to the sanctions is one of the biggest barriers nationally and internationally to increased engagement with Iran following the Joint Comprehensive Plan of Action (JCPOA).⁴ It was suggested there was scope to enhance the information available on DFAT's website to clearly state which trade remains restricted or prohibited:

... one recommendation to improve the available information on the Iran sanctions regime would be to create a summary of some sort that succinctly outlines trade which is still restricted or prohibited with Iran, rather than requiring users to scroll through the entire regime webpage to get a full picture of the situation. Considering relatively few sectors and activities remain restricted or prohibited, this may go some way toward providing a clearer picture of the sanction regime's current status.⁵

3.8 The ECA also recommended that a summary of the US and other international sanctions regimes on Iran be included.⁶

3.9 The Hon Michael Danby MP, Member for Melbourne Ports and Shadow Parliamentary Secretary to the Leader of the Opposition, described the explanatory statements as 'highly inadequate' for failing to provide information on the reasons supporting the decision to lift some sanctions but not others, and a comparison of Australia's sanctions regimes with other nations:

... the Australian Government has provided no detailed explanation as to why particular sanctions relief was given in relation to particular activities, persons and entities, the extent to which Australia differs from the U.S. and other relevant countries' approaches to sanctions relief, and the reasons for those differences.

On such an important matter and in relation to such a dangerous and untrustworthy regime, there should be detailed explanations of the matters referred to above. Not all such detail needs to be included in the

2 Export Council of Australia, *Submission 3*, p. 1.

3 Mr Andrew Hudson, Director, Export Council of Australia, *Committee Hansard*, 27 April 2016, p. 2

4 *Submission 3*, p. 2.

5 *Submission 3*, pp. 1-2.

6 *Submission 3*, p. 2.

explanatory statements, but it should be easily accessible elsewhere with appropriate references to it.⁷

3.10 The Executive Council of Australian Jewry noted that while the Iran page on the DFAT website provides relevant background and details of the UN Security Council and autonomous sanctions which currently apply under Australian law: 'There is no statement of the underlying rationale for removing or continuing each of the autonomous sanctions'.⁸

3.11 Moreover, the submission argued that when read together the Explanatory Statements, DFAT's website and the Foreign Minister's media release do not provide an easily comprehensible summary of the new sanctions regime, or how the remaining sanctions are targeted against Iran's human rights record, in particular Iran's promotion of racism and support for terrorism:

...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.⁹

Snapback of sanctions

3.12 The Executive Council of Australian Jewry was also critical of the Explanatory Statements for not providing an explanation of how the Australian government intends to reimpose autonomous sanctions against Iran in the event of a significant breach or non-performance by Iran of its JCPOA commitments.¹⁰

3.13 Mr Danby speculated on the circumstances which could lead to a 'snapback' of sanctions:

7 The Hon Michael Danby MP, *Submission 9*, p. 8.

8 Executive Council of Australian Jewry, *Submission 6*, p. 6.

9 *Submission 6*, p. 6.

10 *Submission 6*, p. 6.

It is difficult to see beyond what the Iranians are already doing that could lead to snapback of sanctions. They are conducting ballistic missile tests. The one on 18 April this year had the potential to carry a nuclear warhead. It is difficult to be more specific or threatening than that, if you ask me. They have written on the side of a missile tested in February of this year that a member state of the United Nations should be wiped out. I wonder what more they ought to do?¹¹

3.14 The Australian Strategic Policy Institute (ASPI) submission emphasised the importance of the Australian Government developing a clear 'snapback' plan for the rapid reimposition of sanctions in the event of non-compliance:

Government should have the necessary regulations drafted to allow a swift re-imposition of sanctions should other countries adopt this course of action. It would be important for Australia not to lag the international community in this effort, nor to find that loopholes in regulations are unable to prevent exports that might in some way assist an Iranian nuclear or missile program should any come to the attention of Western Governments.¹²

3.15 When questioned on the mechanisms for reimposing sanctions on Iran, Ms Justine Braithwaite, Assistant Secretary, Sanctions, Treaties and Transnational Crime Legal Branch, DFAT, replied that there were clear provisions in the JCPOA and UN Security Council Resolution 2231 around the circumstances under which sanctions could be reimposed.¹³ However, the situation in regard to the reimposition of Australian autonomous sanctions was less clear:

On the threshold for reinstating Australian autonomous sanctions, I would be hesitant to speculate on the set of circumstances that might lead to that ... what I can say is that the decision to reinstitute sanctions will be one for the government of the day at a time when there is an activity of concern that would require some form of response. I should also note that sanctions are only one of the available tools in our foreign policy toolbox to respond to situations or developments of concern.¹⁴

Removal of entities and financial ties

3.16 Concern was also expressed regarding how the decision to remove certain entities from the sanctions list was made. DFAT explained that Australia's approach to sanctions against Iran has 'closely followed' that of the European Union. DFAT added:

The revocations of the lists of designated persons and entities were in line with the actions of likeminded states party to the JCPOA, which was endorsed by UN Security Council Resolution 2231...the Australian

11 The Hon Michael Danby MP, Member for Melbourne Ports and Shadow parliamentary Secretary to the Leader of the Opposition, *Committee Hansard*, 27 April 2016, p. 17.

12 Australian Strategic Policy Institute, *Submission 11*, p. 3.

13 Ms Justine Braithwaite, Assistant Secretary, Sanctions, Treaties and Transnational Crime Legal Branch, Department of Foreign Affairs and Trade, *Committee Hansard*, 27 April 2016, p. 37.

14 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 37.

Government will continue to closely monitor developments in Iran and it is open to the Government to impose new sanctions on individuals, entities or classes of activities if the Government considers it appropriate to do so.¹⁵

3.17 The Executive Council of Australian Jewry criticised the dearth of information provided by DFAT regarding the decision to remove certain entities but not others from the sanctions 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.¹⁶

3.18 Mr Peter Wertheim, Executive Director, stated that he 'would simply like the government to share its thinking with the public about why particular individuals have been removed from that list and why particular individuals have been kept on it'.¹⁷ Mr Wertheim outlined the potential benefits of a more open approach:

It would simply serve to better inform the public, and I think also the business community in particular, about the dangers that are faced in dealing with the particular individuals who remain on the list and why the government feels that there is no continuing danger in relation to those who have been removed from the list.¹⁸

3.19 Mr Danby was also critical of the process, saying that while 'some very brief and general information' was contained in the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) List 2012*, the Australian Government should provide information and an explanation as to how the government determined who should be removed from, and who should be retained on, the list.¹⁹

3.20 Mr Danby contended that to enable proper consideration of the partial suspension of sanctions, the Australian Government should provide the following information:

- a detailed explanation of the reasons for particular sanctions relief;
- a detailed explanation of the criteria used by the Government to determine particular sanctions relief and the reasons for such criteria;
- detailed information about the checks and other investigations made to determine that persons or entities removed from the sanctions regime are not

15 *Submission 8*, pp. 2-3.

16 *Submission 6*, p. 4.

17 Mr Peter Wertheim, Executive Director, Executive Council of Australian Jewry, *Committee Hansard*, 27 April 2016, p. 10.

18 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 10.

19 The Hon Michael Danby MP, *Supplementary Submission 9*, p. 8.

linked to persons or entities that are, or should be, subject to the sanctions regime e.g. the Army of the Guardians of the Islamic Revolution (IRGC);

- to what extent, and why, do Australia's sanctions relating to Iran differ from those of the U.S. and other relevant countries?²⁰

3.21 Former Australian diplomat and senior editor of the *Australian*, Ms Rebecca Weisser, submitted that it is vital that sanctions continue to apply to the IRGC because it is directly involved in training and supplying Hezbollah and Hamas, which are fully proscribed terrorist organisations in Australia.²¹

3.22 Drawing on the work Dr Emanuele Ottolenghi, an international authority who recently described the IRGC as an 'economic conglomerate',²² Ms Weisser argued that because IRGC is the single most powerful institution in Iran, the Australian Government must work with key intelligence partners to identify all of the IRGC's economic activities to ensure they remain fully sanctioned:

Unless the Australian government urgently devotes the necessary resources to do this, it is almost certain, given the reach of the IRGC throughout the Iranian economy, that Australian businesses will inadvertently contribute to providing the IRGC with the means to continue its terrorist agenda and threaten the security not just of the Middle East and in other parts of the world, but in Australia's own region.²³

3.23 Ms Weisser emphasised that unless this close examination of the IRGC's ties occurs, 'the lifting of sanctions will almost certainly contribute to the enrichment of the IRGC and increase its ability to fund terror'.²⁴

Approach to sanctions

3.24 As noted earlier, Australia's approach to sanctions against Iran is closely aligned with that of the European Union. Mr Danby queried why Australia was following the European approach to sanctions, rather than aligning with the United States given that 225 entities and individuals remain under sanctions in the United States compared with 91 entities and individuals on the Australian sanctions list:

Given the fact that the United States has 225 entities and individuals listed...under sanctions, there are only 91 who are listed by the Australian government after the current lifting of sanctions. There is an obvious danger that Australian companies trading with Iranian individuals or entities, such

20 *Submission 9*, p. 2.

21 Hizballah is a multi-faceted organisation including political, social and military components. The Hizballah External Security Organisation (ESO) is a discrete branch within Hizballah responsible for the planning, coordination and execution of terrorist attacks against Hizballah's enemies outside of Lebanon. The ESO is a proscribed terrorist organisation.

22 Ms Rebecca Weisser, *Submission 10*, pp. 1-2.

23 *Submission 10*, p. 2.

24 *Submission 10*, p. 3.

as the Iranian Revolutionary Guards, will still be trading with companies that are barred or sanctioned by the United States.²⁵

3.25 In a supplementary submission, Mr Danby cited a speech by senior US Treasury Official, Adam J. Szubin, outlining how US sanctions with respect to Iran pursued a significantly tougher approach than that of Australia:

Mr Szubin comments that, 'more than 225 Iran-linked persons will remain designated and subject to our sanctions'. That figure is more than double the number of persons and entities listed by Australia for sanction, as set out in the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) List 2012 (as amended). The numbers in that list are 23 individuals and 68 entities, making a total of 91 altogether. Given the differences, the Australian Government should explain why Australia's list carries a significantly lesser number of persons and entities than that of the U.S.²⁶

3.26 Mr Danby was of the view that 'Australia should reorientate its policy on Iran sanctions by aligning them in word and deed with the United States'.²⁷

3.27 When questioned on this matter, Ms Braithwaite advised that alignment with the European Union occurred because the European sanctions system is the most comparable, and applied in a similar way, to Australia.²⁸ Ms Braithwaite explained that the United States' approach to sanctions is fundamentally different to that taken by Australia:

The US system uses sanctions that are far more broadly defined in terms of a tool of national security. The US applies not just nuclear related sanctions; it also applies sanctions in a whole range of other areas that we do not have—for example, on the grounds of organised crime, counter-narcotics and in response to cyberattacks. Those are just some of the additional areas where the US applies additional sanctions. That could explain the differentiation in numbers.²⁹

3.28 By contrast, Australia's autonomous sanctions are only linked to two criteria:

- the Foreign Minister must be satisfied that the person is engaging in an activity connected with Weapons of Mass Destruction programs or their delivery systems; or
- the Foreign Minister must be satisfied that a person or an entity is assisting someone to violate relevant UN Security Council resolutions.³⁰

25 Mr Danby, *Committee Hansard*, 27 April 2016, p. 13.

26 *Supplementary Submission 9*, p. 9.

27 Mr Danby, *Committee Hansard*, 27 April 2016, p. 13.

28 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 35.

29 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 35.

30 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 35.

3.29 The ASPI submission observed that the views on JCPOA held by candidates in the United States Presidential Election differ to those held by the Obama Administration, meaning there is likely to be a change in the United States' approach to Iran after the forthcoming election. As such, the Institute suggested that it would be prudent to take a cautious approach to any change in Australia's policy:

The most sensible course of action for Australia is not to get too far ahead of possible American changes of policy after the Presidential election. A significant reversal of American policy in response to concerns about Iranian nuclear developments would presumably force a reconsideration of Australian policy. Following Hillary Clinton's advice to 'distrust and verify' Australia should remove sanctions slowly and only after evidence of a positive Iranian intent to abide by the JCPOA.³¹

Lack of public consultation

3.30 In its submission to the inquiry, DFAT advised that no public consultation was undertaken in relation to the instruments that put into effect the partial suspension of sanctions because 'all instruments used to give effect to the decision *reduce* legal obligations on Australians in regard to Iran'.³² DFAT described this reduction as of 'minor regulatory impact', and noted that the lack of consultation was in accordance with the process followed when autonomous sanctions were partially removed against Fiji in 2014 and Myanmar in 2015.³³

3.31 However, a number of submitters were of the view that the government should have undertaken public consultation prior to the partial suspension of sanctions to ensure that the wider implications of the suspension were taken into account. For example, the Executive Council of Australian Jewry stated:

... 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.³⁴

3.32 The Council was of the view that the lack of consultation meant that individuals and organisations were unable to ventilate their concerns over the partial suspension of sanctions:

... 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

31 *Submission 11*, p. 3.

32 *Submission 8*, p. 2.

33 *Submission 8*, p. 2.

34 *Submission 6*, p. 4.

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.³⁵

3.33 Mr Wertheim suggested that a public consultation could have occurred under the auspices of the Senate's Foreign Affairs, Defence and Trade Committee following the conclusion of the JCPOA but before the partial lifting of sanctions came into effect. Such a public consultation process would not have disadvantaged Australian businesses, but would have highlighted important considerations beyond Iran's nuclear program and possible new business opportunities.³⁶

3.34 Mr Wertheim speculated that one of the reasons for the lack of public consultation may have been the Government's desire to repatriate Iranian refugees:

I think it was no secret—because the foreign minister did actually say so—that the government's principal concern at the time, or perhaps I should say one of its principal concerns, was the repatriation of some 8,000 or 9,000 former Iranian nationals who had sought asylum in Australia and had been found not to be refugees. The government, I think it is fair to say, was anxious to reach an understanding with the Iranian government about the repatriation of those people to Iran.³⁷

3.35 Mr Danby was adamant that consultation should have taken place to explain the reasons for the partial suspension:

The sanctions were in place because Iran was considered a danger to world peace and security and had engaged in unacceptable behaviour. Little to no explanation has been given as to why particular sanctions and listings of persons and entities have been suspended ... Without public consultation and scrutiny and a proper explanation, Australians have not had the opportunity of assessing the appropriateness of sanctions relief and what steps have been taken to ensure that relieved individuals and entities are not associated with wrongful activity or sanctioned organisations.³⁸

3.36 Mr Danby believed that the partial suspension should have been debated in the Parliament to allow for a fulsome consideration of relevant issues and implications.³⁹

3.37 In response to DFAT's statement that the lack of consultation was in accordance with the process followed when autonomous sanctions were removed against Myanmar and Fiji, Mr Danby contended that 'those countries had nothing like

35 *Submission 6*, p. 5.

36 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 8.

37 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 9.

38 *Submission 9*, pp. 6-7.

39 *Supplementary Submission 9*, p. 9.

the global impact and egregious record of Iran, and posed nothing like the threat to peace and security that Iran does'.⁴⁰

3.38 Mr Wertheim similarly considered that there was 'no comparison' between Myanmar and Fiji on the one hand, and Iran on the other, observing that while Myanmar and Fiji may have been internally problematic they did not pose an external threat of the magnitude of Iran.⁴¹

3.39 DFAT indicated that the comparison with Myanmar, Fiji and Iran was not made to compare the nations themselves, but merely to highlight recent instances of sanctions being lifted or eased without DFAT undertaking public consultation.⁴² Ms Braithwaite assured the committee that '[i]f we were imposing sanctions on new individuals or creating new sanction regimes altogether, then in that circumstance the department would go out to public consultation'.⁴³

Significance of the partial suspension

3.40 The majority of submitters expressed deep concern over the significance of the partial suspension of sanctions against Iran, arguing it could be interpreted as a message of support for Iran's approach to domestic and international affairs.

3.41 The Jewish Community Council of Victoria was highly critical of Iran's behaviour, arguing that Iran had done nothing to warrant sanctions being lifted:

... the Australian Government should cut all and any economic ties with the Iranian regime until it implements true democracy, ceases the brutal and inhumane treatment of its people which is the antitheses to Australian expectations, and demonstrates a real commitment to peaceful coexistence with its neighbours, around the region and around the world.⁴⁴

3.42 Mr Wertheim stated: 'The easing of sanctions by Australia in such circumstances sends a signal to the Iranian regime that it can persist in this behaviour with impunity'.⁴⁵

3.43 Concerns were also raised by the Australian Bahá'í Community, who argued that the partial suspension of sanctions may signal to Iran that it would not be held to account for its poor human rights record:

To decrease the international pressure on the Iranian government over the human rights situation in its country at this time, when there has been no documented improvement in conditions on the ground, may well give credence to the false view, often put forward by Iranian representatives, that past expressions of concern have been politically motivated. It would give a

40 *Supplementary Submission 9*, p. 3.

41 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 8.

42 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 36.

43 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 36.

44 Jewish Community Council of Victoria, *Submission 4*, p. 4.

45 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 8.

signal to Iran that it will no longer be held accountable for its treatment of its citizens and thus has a free hand to continue, and possibly increase, its human rights abuses.⁴⁶

3.44 Mr Joshua Koonin, Member of executive, B'nai B'rith Australia/New Zealand, outlined the circumstances in which he considered it appropriate that sanctions could be relaxed without there being a perception of the current Iranian regime being supported:

... there would have to be a significant pattern of behaviour shown by the Iranian regime in terms of promotion of human rights at home. I think that issues such as the decriminalisation of homosexuality would be important, as would the end of persecution of minorities—particularly the Baha'i, the Kurds, the Jewish community and various Christian communities who are persecuted—and I think that Iran would also need to change its behaviour in the international arena.⁴⁷

3.45 The submission from B'nai B'rith Australia/New Zealand drew particular attention to Iran's treatment of Israel as a cause for concern, arguing that there should be no relaxation in sanctions until Iran demonstrated a commitment to democratic values or until there was a significant change in Iran's attitude towards Israel:

Further, in the light of the avowed intention of Iran's leaders to destroy another sovereign state – Israel – any relaxation of the sanctions regime would signal Australia's sanctioning of Iran's current policies and practices.

In this context, we note that a relaxation of global sanctions in all likelihood would lead to increased Iranian revenue flowing to its recognised proxy terror organisations such as the military wings of Hezbollah and Hamas, both of which support the Iranian aim of destroying Israel.⁴⁸

3.46 In order to address perceptions that the lifting of sanctions may condone the behaviour of Iran, Mr Wertheim suggested the Australian Government should have issued a statement that:

- affirmed the values that Australia subscribes to and seeks to promote both domestically and internationally;
- affirmed that Australia has not fundamentally altered its view of the Iranian regime;
- noted that Iran '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';

46 Australian Bahá'í Community, *Submission 1*, p. 2.

47 Mr Joshua Koonin, Member of executive, B'nai B'rith Australia/New Zealand, *Committee Hansard*, 27 April 2016, p. 26.

48 B'nai B'rith Australia/New Zealand, *Submission 2*, p. 2.

- noted that Iran lacks respect for the UN charter system, violates international laws, and complies with it 'only grudgingly and to the extent that it feels compelled to do so';
- noted the regime continues to use brutal repression domestically, and military force, terrorism and espionage externally; and
- concluded that friendly relations, such as those which ordinarily prevail between nations, cannot be sustained with Iran under its present form of government.⁴⁹

3.47 Mrs Venus Khalessi, Director of Public Information, Australian Bahá'í Community, asserted that given Iran's continued poor human rights record, the Australian Government must take every opportunity to maintain scrutiny of human rights abuses in Iran, both in its bilateral relationship with Iran and in multilateral fora.⁵⁰

Human rights in Iran

3.48 As noted in the previous section, of serious concern to submitters was the poor human rights situation in Iran. For example, the submission from Amnesty International highlighted significant misgivings regarding the human rights record of Iran, including:

- use of the death penalty, including for minors;
- the use of torture, and cruel, inhuman and degrading punishment;
- unfair trials;
- lack of freedom of expression, association and assembly; and
- extensive discrimination against woman, and ethnic and religious minorities.⁵¹

3.49 The Jewish Community Council of Victoria also drew attention to the high number of public executions, persecution of people of 'diverse sexual orientation and gender identity', anti-Semitism and religious intolerance. The Council concluded that these transgressions 'suggest a regime that should not be trusted, tolerated or partnered with'.⁵²

3.50 The Executive Council of Australian Jewry considered that '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'.⁵³

49 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 8.

50 Mrs Venus Khalessi, Director of Public Information, Australian Bahá'í Community, *Committee Hansard*, 27 April 2016, p. 19.

51 Amnesty International Australia, *Submission 5*, pp. 1-5.

52 *Submission 4*, p. 2.

53 *Submission 6*, p. 9

3.51 Whilst acknowledging Iran's poor record in the human rights sphere, the ECA offered the pragmatic view that closer economic engagement might serve to improve the human rights situation:

Australia has been able to separate trade and politics with Iran in the past ... There is an argument to be made that economic engagement rather than sanctions is the best way to encourage Iran toward a less confrontational and more open path over the medium and longer terms.⁵⁴

3.52 Ms Michelle Bolger drew upon her personal experience as a traveller to Iran to argue the sanctions only served to punish the wider population:

... it is difficult to understand why we have participated in the en masse punishment of innocent people and seriously undermined their capacity to meet their basic economic and social needs ... I am confident that I speak for the majority of Australians in stating that they would be as distressed as I was to witness and understand the severe effects of the sanctions on the Iranian people, particularly given the lack of proven efficacy that sanctions have when punishing non-target groups and the seeming lack of a severe enough security concern to justify the harshest sanctions ever imposed on a nation.⁵⁵

3.53 However, other submitters were not convinced that the partial suspension of sanctions would improve the human rights situation, arguing instead that sanctions were a proven mechanism to force regime's to change their behaviour. For example, Mr Koonin cited the example of sanctions against South Africa as an instance where sanctions had brought about positive change:

... in previous historic instances, such as the apartheid regime in South Africa, sanctions were extremely effective in bringing about democratic change and in forcing a regime to meet international norms. I believe that there is no reason to set a different course with regard to Iran.⁵⁶

3.54 Mr Wertheim concurred, noting that while trade, education and cultural exchanges can soften the hard edges of dictatorial regimes, when it comes to dealing with Iran such soft measures have been limited in their effectiveness: 'Unfortunately, the only things that seem to have worked have been sanctions and, occasionally, the threat of force.'⁵⁷

3.55 In response to concerns about the appearance of a lack of action over human rights violations, Mr Greg Ralph, Acting First Assistant Secretary, Middle East and Africa Division, DFAT said: '... there was a question this morning that we might be pulling our punches on some of these things, because we have other interests with

54 *Submission 3*, p. 3.

55 Ms Michelle Bolger, *Submission 7*, p. 1.

56 Mr Koonin, *Committee Hansard*, 27 April 2016, p. 25.

57 Mr Wertheim, *Committee Hansard*, 27 April 2016, p.11.

Iran. We do have other interests with Iran, certainly on the security front, but we do not pull our punches on human rights'.⁵⁸

Iran in international affairs

3.56 A number of submitters were deeply concerned about the potential impact of the partial suspension of sanctions against Iran on international affairs, arguing that Iran had not demonstrated the behaviour expected of a valued member of the international community.

3.57 The Executive Council of Australian Jewry considered that the impact of lifting sanctions is likely to '...give a major boost to Iran's international standing and its ability to infiltrate other countries'.⁵⁹ The Council considered this to be an undesirable and potentially dangerous development, taking into consideration that Iran:

- is widely regarded as the world's foremost state sponsor of terrorism;
- continues to carry out public executions at the rate of two to three people each day;
- continues to promote Holocaust denial;
- continues to persecute, harass and intimidate trade union activists and to deny basic labour rights to workers;
- is involved in cyber-attacks against Western targets; and
- continues to arbitrarily arrest and imprison political activists, ethnic minorities, religious minorities, gays and artists.⁶⁰

3.58 Mr Danby also commented on the potential implications of the partial suspension of sanctions for Iran's conduct in international affairs, suggesting that a number of broader issues required careful consideration:

- lack of evidence that Iran has 'significantly changed its ways', including the recent ballistic missile tests;
- impact of the partial suspension on Australia's relations with other nations;
- assessments of security concerns for Australian businesses operating in Iran;
- risks to Australian banks and financial institutions from associations with Iranian banks and financial institutions;
- potential for goods or services supplied to Iran to be used for terrorist or military activities; and

58 Mr Greg Ralph, Acting First Assistant Secretary, Middle East and Africa Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 27 April 2016, p. 33.

59 *Submission 6*, p. 7.

60 *Submission 6*, pp. 7-9.

- assessments made regarding the removal of persons and entities from the Designated Persons and Entities List, as well as the decisions to lift certain sanctions but not others.⁶¹

3.59 The submission by Ms Weisser raised concerns about the effect that lifting of sanctions would have on Iran's capacity to sponsor international terrorist activity. Estimating that Iran could access approximately US\$150 billion in sanctions relief following implementation of the JCPOA, Ms Weisser argued that these substantial additional funds will allow Iran to 'turbo-charge its terrorist activities', support its allies in advancing the goal of achieving regional hegemony, and increase the threat of a nuclear-armed Iran.⁶²

3.60 Ms Weisser highlighted a number of weaknesses with the JCPOA which could impact global and therefore Australian security. These include that it:

- expires after ten years;
- does not allow for 'anytime, anywhere' inspections;
- does not impose penalties for anything other than 'gross infringements';
- ends the arms embargo in five years and the ballistic missile embargo in ten years; and
- does not address Iran's support for terrorism, nor its destabilisation of the Middle East region including threats to Israel.⁶³

3.61 Further, Ms Weisser drew attention to two recent incidents involving Iran which further show the limitations of the JCPOA:

- on October 10 2015, Iran fired two ballistic missiles which resulted in US sanctions against businesses and individuals involved in procurement of materials for Iran's ballistic missile program; and
- on 9 March 2016, Iran test fired two ballistic missiles which had the phrase 'Israel must be wiped out' written in Hebrew.⁶⁴

3.62 Mr Danby questioned if the Australian Government was reconsidering the partial suspension of sanctions, or if additional sanctions should be imposed against Iran, in light of this continued activity in ballistic missile development and testing.⁶⁵

Financial Action Task Force

3.63 In order to avoid Australian funds being used to support terrorist activities, the role of the Financial Action Task Force (FATF) as the global standard-setting body for anti-money-laundering and combatting the financing of terrorism organisations

61 *Submission 9*, pp. 8-10.

62 *Submission 10*, p. 4.

63 *Submission 10*, p. 4.

64 *Submission 10*, p. 5.

65 *Submission 9*, p. 11.

was briefly discussed. Mr Danby noted that in February 2016 the FATF had declared that it 'remains particularly and exceptionally concerned about Iran's failure to address the risk of terrorist financing and the serious threat this poses to the integrity of the international financial system.'⁶⁶

3.64 Mr Danby suggested that Australia should be an active member at a forthcoming FATF conference, and seek to apply specific cautions to Iranian involvement in Australia or Australian involvement in Iran with financial institutions that the FATF identifies as problematic.⁶⁷ Mr Danby justified his reasoning for this stance:

I would not like Australia to be involved—I am sure none of us would—in entities which might be involved in the financing of terrorism even though they are the business that, for example, you were doing some metallurgy within Isfahan or somewhere.⁶⁸

3.65 Ms Braithwaite advised that there are 'very robust requirements' under the FATF regime around the need for financial institutions to conduct enhanced customer due diligence. Ms Braithwaite explained that responsibility for undertaking due diligence had shifted from DFAT to the financial institutions themselves:

Previously, DFAT was in a situation where it needed to assess all financial transfers to and from Iran over \$20,000. That financial transaction limit has now been repealed. Instead, it has been replaced by this FATF requirement for financial institutions to conduct due diligence to specifically address the issue of counterterrorist financing and money laundering. Due diligence includes obviously updating and clarifying identity and beneficial ownership information, obtaining further information on the source of the customer's beneficial owner's funds, clarifying the nature of the customer's business, analysing past and future transactions and seeking senior management approval to process transactions or to continue the business relationship. Those are the types of questions that financial institutions are now obliged to seek information on before supporting those dealings.⁶⁹

3.66 Mr Ralph was encouraged by the fact that Iran itself had shown an interest in engaging with the FATF to improve the transparency of its banking sector. The matter was discussed during the recent visit by the Iranian Foreign Minister Zarif to Australia:

He [Dr Zarif] made the point himself that the Iranian banking sector has been cut off from the outside world from nearly two decades and is a long way behind where it needs to be in terms of openness and transparency. I think it is reassuring that at least elements of the Iranian government are aware of that, and we will do what we can to assist their re-engagement with the FATF process. Anything we can do to push them further down that

66 Mr Danby, *Committee Hansard*, 27 April 2016, p. 13.

67 Mr Danby, *Committee Hansard*, 27 April 2016, pp. 16-17.

68 Mr Danby, *Committee Hansard*, 27 April 2016, pp. 16-17.

69 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 38.

path can only be to the good in ensuring that no moneys flow from any business engagement that Australia might have to support for other groups in the region which we would not want to see supported.⁷⁰

An Australian trade office in Iran

3.67 As noted in chapter 2, the Australian Government will re-open a trade office in Tehran in the second half of 2016. DFAT advised that Australia had previously maintained an office within the Australian Embassy in Tehran from 1968 to 2010.⁷¹

3.68 Given the considerable significance of Iran as a regional economy, the re-opened trade office '...will allow the Australian Government to more effectively assist Australian businesses to capitalise on commercial opportunities emerging in Iran following sanctions removal'.⁷² DFAT observed that there are particular opportunities in the areas of mining, oil and gas, water resource management, healthcare, and education and skills training.⁷³

3.69 Mr Ralph advised that preparations for re-opening the office were proceeding, and that the office would be a valuable resource for Australian companies looking to move into Iranian markets:

The reopening of the office, as much as anything else, is to have a resource there to assist those companies that are coming in. As I said, we have had a lot of interest. We, and our colleagues in Austrade—there are 30 or 40 Australian companies who are kind of queueing at the door. Some have already reopened offices in Tehran and others have expressed interest in doing so. So we actually need a resource at the embassy dedicated to making those contacts.⁷⁴

3.70 The ECA expressed strong support for the re-opening of the trade office, noting that it would '... go some way toward restoring our once strong trading relationship with Iran'.⁷⁵ The Council considered that having a physical presence in Iran would both assist Australian businesses to make initial connections in the market, and signal to the Australian business community that the Government takes market potential in Iran seriously, and is willing to provide assistance to business interested in engaging there.⁷⁶

3.71 The ECA identified a number of areas where there is significant potential for trade growth, including:

- agricultural commodities;

70 Mr Ralph, *Committee Hansard*, 27 April 2016, p. 33.

71 *Submission 8*, p. 3.

72 *Submission 8*, p. 3.

73 *Submission 8*, p. 3.

74 Mr Ralph, *Committee Hansard*, 27 April 2016, p. 35.

75 *Submission 3*, p. 1.

76 *Submission 3*, p. 3.

- livestock exports;
- mining and related knowledge;
- manufacturing;
- education; and
- health, medical and aged care services.⁷⁷

3.72 In order to take advantage of new opportunities the ECA suggested that DFAT develop a specific Iran page that comprehensively outlines trade with Iran, including online tutorials and presentations, and information on the Australian and international sanctions regime.⁷⁸

3.73 Mr Andrew Hudson, Director of ECA, further suggested that small and medium enterprise exporters would benefit from the establishment of a specialist Iran office in one of the capital cities in Australia which could act as a central point of expertise on doing business in Iran.⁷⁹

3.74 Ms Braithwaite advised that DFAT was currently revising its website, as well as the online sanctions system to make information more readily accessible.⁸⁰ Ms Braithwaite also expressed a desire to include information regarding obligations under the sanctions laws of other countries.⁸¹

3.75 However, a number of submitters were critical of the decision to re-open a trade office. For example, Mr Danby described the decision as 'highly premature'.⁸²

3.76 Ms Weisser was stridently opposed to the re-establishment of a trade office in Iran:

In view of the scarcity of resources in the budget of the Department of Foreign Affairs and Trade, it seems to me unconscionable that Australian taxpayers should be expected to foot the bill for actively promoting commerce with a state that ruthlessly launches terror attacks on civilian targets.

Until Iran ceases to sponsor terrorism, it seems to me that it would be much better to devote resources to determining the involvement of the IRGC in the Iranian economy and that the government should maintain the highest vigilance in ensuring that Australian companies do not, either advertently or inadvertently, contribute to the funding of Iranian terror.⁸³

77 *Submission 3*, pp. 3-4.

78 *Submission 3*, p. 5.

79 Mr Hudson, *Committee Hansard*, 27 April 2016, pp. 2-3.

80 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 37.

81 Ms Braithwaite, *Committee Hansard*, 27 April 2016, p. 39.

82 *Submission 9*, p. 11.

83 *Submission 10*, p. 6.

3.77 Similarly, the Executive Council of Australian Jewry and the Jewish Community Council of Victoria were adamant that the trade office should not be re-opened as it would have the effect of normalising relations with Iran.⁸⁴

Doing business in Iran

3.78 A number of submitters commented on the risks and complexities of doing business in Iran and recommended that the Australian Government proceed with caution. Mr Wertheim drew attention to a 2008 statement from the former Deputy Prime Minister, the Hon Warren Truss MP, who described Iran as a 'difficult market':

He was alluding, I think, to several things. One was the fact that most of the trade that we had with Iran prior to the imposition of sanctions was trade which Australia itself financed. In other words, we provided the money to the Iranians to buy our product. That was done through the Export Finance and Insurance Corporation and also through export market development grants. So the arrangement was that we would depend, then, on the Iranian government repaying that debt. My understanding is they did fully repay that debt. However, the commercial reality of that arrangement was that the Australian taxpayer was essentially bearing the commercial risk of that debt for the benefit of private exporters, and it seems to me that there is something fundamentally askew with that kind of rationale... The other thing was that, as you said, it is a notoriously difficult market to deal with, because there is no real rule of law in Iran. There is no transparency. There is nothing that would in any way approximate our standards of transparency and accountability in commercial dealings. So it was indeed, as he said, a difficult market, and I think it remains so.⁸⁵

3.79 Mr Hudson agreed that Iran would be a challenging operating environment, but considered that Australian businesses should strive to be early entrants into the market to make the most of the opportunities.⁸⁶ Mr Hudson emphasised the critical importance of due diligence, observing that Iran was not unique in this regard:

The starting point is extreme caution. It is part of the due diligence or the homework we talk about. Iran is not necessarily unique in this respect. There are many governments around the world where you might find that the military who previously ran the country have now changed into business suits and still have those significant connections ... increasingly exporters, whether of goods or financials, will have this on their agenda. It is part of their anticorruption and bribery training, part of their concern about the regimes that take place.⁸⁷

3.80 Ms Weisser warned that entrants into the Iranian markets should 'use extreme caution' due to the uncertainty of the environment.⁸⁸

84 *Submission 6*, p. 9; *Submission 4*, p. 4.

85 Mr Wertheim, *Committee Hansard*, 27 April 2016, p. 11.

86 Mr Hudson, *Committee Hansard*, 27 April 2016, p. 3.

87 Mr Hudson, *Committee Hansard*, 27 April 2016, pp. 5-6.

88 Ms Weisser, *Committee Hansard*, 27 April 2016, p. 28.

3.81 In order to ensure that Australian companies do not inadvertently contribute to the exclusion of minorities from Iranian society, Mrs Khalessi recommended that 'systematic measures be put in place to ensure that those Australian corporations seeking to do business in Iran are made fully aware of the environment in which they propose to operate'.⁸⁹

3.82 Mr Danby said that the United Kingdom had taken a cautious approach in its explanatory guide for businesses looking to operate in Iran, highlighting the following potential challenges:

- risk of bribery and corruption, with Iran scoring highly on the Corruption Perception Index;
- influence, direct or indirect control by the Iranian security services of many Iranian companies;
- inflation, price control and subsidies reduce the potential for private sector growth;
- Iran ranks low on the World Bank Ease of Doing Business report ranking 118th in 2015-16 report;
- lack of investment in infrastructure;
- risk of bureaucratic delays; and
- some sanctions on Iran remain in place.⁹⁰

3.83 Mr Danby considered that 'the Australian government should be more explicit in issuing similar cautions'.⁹¹

3.84 The ASPI submission also advised that the Australian Government should take a cautious approach in facilitating Australian trade and investment with Iran, given the risks associated with moving too quickly. This support for a cautious approach was based on four factors:

- Australia's ability to lift a sanction regime can be done far more quickly than the detailed intelligence analysis can be done to establish evidence of covert proliferation;
- because of the classified nature of this analysis, it can be problematic to share the results of these assessments with firms seeking to expand business opportunities in Iran;
- Australia's ability to 'snap-back' with fresh sanctions will, by definition, lag behind covert proliferation activities. Once sanctions are lifted it may not be possible to bring an effective sanctions regime back into existence; and

89 Mrs Khalessi, *Committee Hansard*, 27 April 2016, p. 19.

90 Mr Danby, *Committee Hansard*, 27 April 2016, p. 12.

91 Mr Danby, *Committee Hansard*, 27 April 2016, p. 12.

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- the range of current American and Australian sanctions form a very complex body of regulations and laws. These are difficult to interpret with a view to providing the private sector with actionable and accurate advice on trade and investment.⁹²

3.85 Mr Danby was also concerned about dual use goods. He asked:

What consideration has been given to the possibility of dual-use goods (goods that can be used for both non-military and military purposes) finding their way to Iran; identifying the persons and entities providing such dual-use goods; and Australian laws and Ministerial determinations that have been, and can be, relied on, to prevent the export or sale of such dual-use goods to Iran?⁹³

3.86 He also noted that:

...sanctions have been removed from "Goods mentioned in the Australia Group Common Control Lists"...The Australia Group, which provides such lists, notes on its website that it "seeks to ensure that exports do not contribute to the development of chemical or biological weapons". It refers to the following lists that it provides – (i) Chemical Weapons Precursors, (ii) Dual-use chemical manufacturing facilities and equipment and related technology and software, (iii) Dual-use biological equipment and related technology and software, (iv) Human and Animal Pathogens and Toxins, and (v) Plant pathogens.⁹⁴

3.87 Further he drew specific attention to the fact that 'Australia has lifted sanctions in relation to the provision of a service that "assists with, or is provided in relation to", "a military activity" for Iran', and asked 'why should Australia and Australians be permitted to play a role in enhancing Iran's military capability?'⁹⁵

3.88 ASPI called for the exercise of caution over the export of goods that could have both civilian and military uses:

Mining equipment, technology and services, for example are just as important to the construction of underground nuclear facilities as they are to natural resource extraction. As has been observed with Iranian covert programs in the past, Tehran can take measures to hide the intended purpose of dual-use goods, or indeed simply divert useful acquisitions to more covert purposes. The Australian Government should take particular care over export approvals that may have dual use applications.⁹⁶

92 *Submission 11*, p. 3.

93 *Submission 9*, p. 10.

94 *Submission 9*, p. 9.

95 *Supplementary Submission 9*, p. 7.

96 *Submission 11*, p. 4.

3.89 ASPI warned that the Government's advice to Australian businesses may not remain valid or accurate for long given the rapidly changing strategic landscape of the Middle East.⁹⁷ Taking into consideration the various factors at play, the Institute concluded that the most prudent approach to doing business with Iran would be to 'proceed slowly and carefully with expanding business connections ... There is no benefit and, indeed, substantial risk for the Australian Government and business community to get too far ahead of the international community in lifting sanctions'.⁹⁸

97 *Submission 11*, p. 4.

98 *Submission 11*, p. 4.