

## Current Australian sanctions legislation

- 2.1 This chapter will discuss Australia's current international sanctions regimes. It will then discuss the fitness for purpose of these regimes for enforcing sanctions against human rights abusers.

### Australia's two sanctions regimes

- 2.2 There are currently two international sanctions regimes operating in Australia:
- Sanctions imposed through the *Charter of the United Nations Act 1945* (Cth) to implement decisions of the United Nations Security Council (UNSC); and
  - Sanctions imposed through the *Autonomous Sanctions Act 2011* (Cth) (the Act) and the *Autonomous Sanctions Regulations 2011* (Cth) (the Regulations) which allow the Australian Government to impose sanctions without reference to any United Nations decision.
- 2.3 In addition to the above measures, Australian sanctions may also be implemented through other legislation and regulations. For example, financial sanctions are applied under the *Banking (Foreign Exchange) Regulations 1959* (Cth) and arms embargos are enforced under the *Customs (Prohibited Exports) Regulations 1958* (Cth) and the implementation of defence related export controls through the *Defence and Strategic Goods List 2019*.

## United Nations Security Council Sanctions

- 2.4 As a member state of the United Nations, Australia is required to implement sanctions reflecting the resolutions of the UNSC.<sup>1</sup> Under Article 25 of the United Nations Charter, members of the United Nations agree to accept and carry out the decisions of the Security Council.<sup>2</sup> This includes decisions by the Security Council relating to international or domestic conflict and/or human rights concerns to impose sanctions including economic sanctions, arms and other embargos, entry restrictions on persons from particular countries.
- 2.5 To date, the UNSC has established 30 sanctions regimes of which there are 14 currently active.<sup>3</sup>

**Table 1** Current UNSC sanctions regimes

Number	Sanctions Regime
1	Somalia Sanctions Regime
2	ISIL (Da'esh) and Al-Qaida Sanctions Regime
3	Iraq Sanctions Regime
4	Democratic Republic of the Congo (DRC) Sanctions Regime
5	Sudan Sanctions Regime
6	1636 Sanctions Regime (sanctions relating to the 2005 terrorist bombing in Beirut, Lebanon)
7	Democratic People's Republic of the Korea Sanctions Regime
8	Libya Sanctions Regime
9	1988 Sanctions Regime (sanctions against the Taliban and groups associated with this organisation)
10	Guinea-Bissau Sanctions Regime
11	Central African Republic Sanctions Regime
12	Yemen Sanctions Regime
13	South Sudan Sanctions Regime
14	Mali Sanctions Regime

Source *United Nations Department of Political Affairs (UNDPA), 2020 Fact Sheets: Subsidiary Organs of the United Nations Security Council, 22 September 2020.*

- 2.6 Since 2004, the UNSC has moved away from comprehensive sanctions to more targeted regimes which have had a more strategic focus on

1 Human Rights Network of Australia (HRNA), *Submission 19*, p. 3.

2 Human Rights Network of Australia (HRNA), *Submission 19*, p. 3.

3 United Nations Department of Political Affairs (UNDPA), *2020 Fact sheets: Subsidiary Organs of the United Nations Security Council*, 22 September 2020, p. 4, <[https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary\\_organ\\_factsheets.pdf](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organ_factsheets.pdf)> viewed 24 September 2020.

- 'individuals, entities, groups or undertakings.'<sup>4</sup> Most commonly, UN sanctions take the form of arms embargos, freezing of assets and travel bans.<sup>5</sup>
- 2.7 UNSC sanctions are given effect by Australia through the *Charter of the United Nations Act 1945* (Cth). This legislation allows the Australia Government to implement and enforce UNSC resolutions, such as the listing of countries, individuals or entities for sanctions.<sup>6</sup>
- 2.8 Sanctions are punitive measures not involving armed force and apply to activities occurring in Australia, by citizens of Australia and/or involving Australian registered organisations overseas.<sup>7</sup> These measures impose restrictions on activities related to particular countries, people and entities, and/or goods and services.<sup>8</sup>
- 2.9 Each sanctions regime imposes different sanctions measures on the nation, government or individuals in question. These may include prohibitions on:
- Import or export of sanctioned goods;
  - Providing services;
  - Engaging in commercial activities;
  - Travel restrictions; and
  - Dealing with a person, entity or asset.<sup>9</sup>
- 2.10 All 14 of the current UNSC sanctions regimes are implemented with sanctions imposed under Australia's UN sanctions legislation. Some of these overlap with sanctions implemented under the *Autonomous Sanctions Act 2011* (Cth). There are also sanctions which are only implemented under the *Autonomous Sanctions Act 2011* (Cth) which is discussed further below. See figure 1:

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4 United Nations Department of Political Affairs (UNDPA), *2020 Fact sheets: Subsidiary Organs of the United Nations Security Council*, 22 September 2020, p. 4, <[https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary\\_organ\\_factsheets.pdf](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organ_factsheets.pdf)> viewed 24 September 2020.

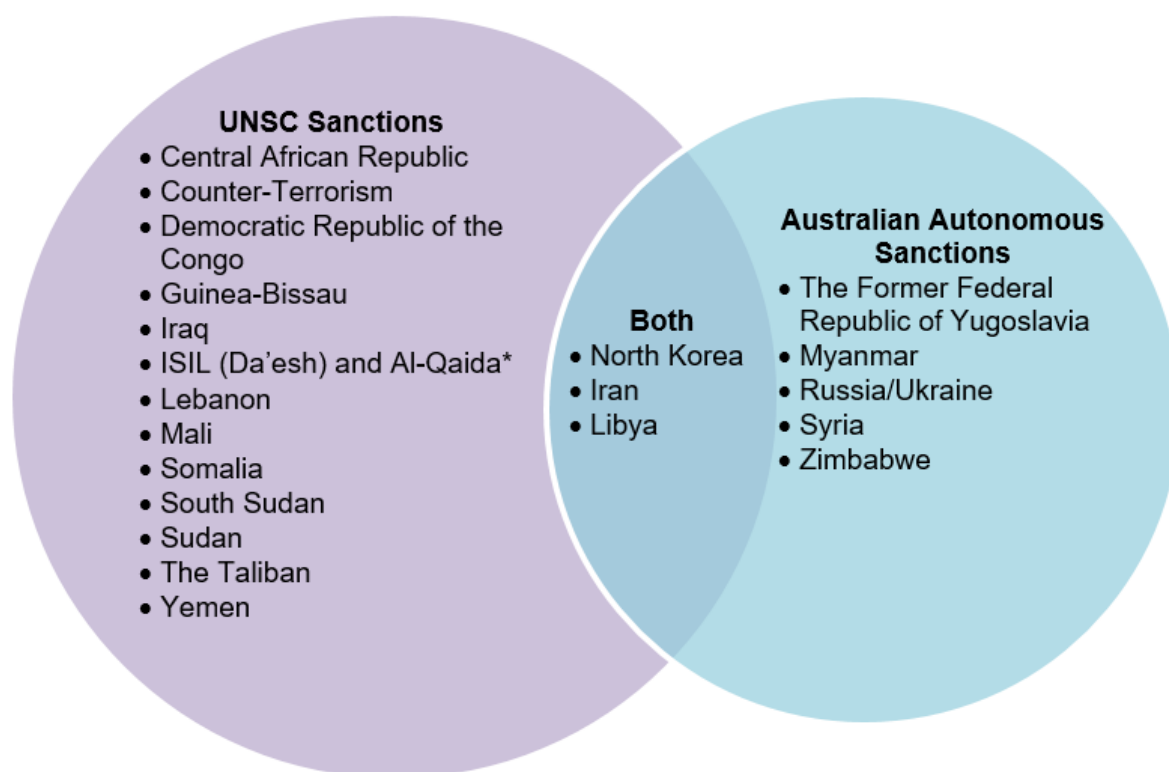
5 United Nations Department of Political Affairs (UNDPA), *2020 Fact sheets: Subsidiary Organs of the United Nations Security Council*, 22 September 2020, p. 4, <[https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary\\_organ\\_factsheets.pdf](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organ_factsheets.pdf)> viewed 24 September 2020.

6 Save the Children, *Submission 47*, p. 7.

7 Human Rights Network of Australia (HRNA), *Submission 19*, p. 3.

8 Department of Foreign Affairs and Trade (DFAT), 'What are sanctions' <<https://www.dfat.gov.au/international-relations/security/sanctions/Pages/about-sanctions>> viewed 28 September 2020.

9 Department of Foreign Affairs and Trade (DFAT), 'What are sanctions' <<https://www.dfat.gov.au/international-relations/security/sanctions/Pages/about-sanctions>> viewed 28 September 2020.

**Figure 1 Sanctions regime implemented in Australia**

Source Department of Foreign Affairs and Trade, 'Sanctions Regimes' <<https://www.dfat.gov.au/node/123620>> viewed 28 September 2020.

2.11 Sanctions imposed in accordance with UNSC resolutions have been utilised recently in Australia. In July 2019, the Minister for Foreign Affairs listed Australian national Soheyb Laraibi for counter-terrorism financial sanctions under section 15(1) of the *Charter of the United Nations Act 1945* (Cth), pursuant to Australia's obligations under UNSC resolution 1373.<sup>10</sup>

2.12 There may be situations in which the UNSC may not be able to reach agreement regarding the decision to impose sanctions on a state, group or individual. In the last decade, many conflicts have attracted strongly divergent views between the five permanent members of the UNSC which may exercise a veto to any decision or resolution made by the Security Council.<sup>11</sup> This has limited the ability of the UNSC to impose sanctions. It is in this context that Australia introduced its own domestic sanctions regime.<sup>12</sup>

<sup>10</sup> Save the Children, *Submission 47*, p. 7.

<sup>11</sup> United Nations Security Council 'Voting System' <<https://www.un.org/securitycouncil/content/voting-system>> viewed 11 August 2020.

<sup>12</sup> Save the Children, *Submission 47*, p. 8.

## Australian Autonomous Sanctions

### The current framework

2.13 The Autonomous Sanctions Bill 2010 (Cth) (the Bill) was introduced into Parliament on 26 May 2010. Then Minister for Foreign Affairs, the Hon Stephen Smith MP said in his second reading speech:

Autonomous sanctions are a key tool in Australian diplomacy. They are highly targeted measures intended to apply pressure on regimes to end the repression of human rights, to end the repression of democratic freedoms, or to end regionally or internationally destabilising actions.<sup>13</sup>

2.14 Mr Smith stated that the purpose of the Bill was to:

... strengthen Australia's autonomous sanctions regime by allowing greater flexibility in the range of measures Australia can implement, beyond those achievable under existing instruments, thus ensuring Australia's autonomous sanctions can match the scope and extent of measures implemented by like-minded states.<sup>14</sup>

2.15 According to the Explanatory Memorandum for the Bill, autonomous sanctions under this legislation would have three objectives:

- to limit the adverse consequences of the situation of international concern (for example, by denying access to military or paramilitary goods, or to goods, technologies or funding that are enabling the pursuit of programs of proliferation concern);
- to seek to influence those responsible for giving rise to the situation of international concern to modify their behaviour to remove the concern (by motivating them to adopt different policies); and
- to penalise those responsible (for example, by denying access to international travel or to the international financial system).<sup>15</sup>

2.16 The Executive Memorandum defined autonomous sanctions as being 'punitive measures not involving the use of armed force which a government imposes as a matter of foreign policy...in situations of international concern.'<sup>16</sup> These situations include 'the grave repression of the human rights or democratic freedoms of a population by a

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13 The Hon. Mr Stephen Smith MP, Minister for Foreign Affairs, *House of Representatives Hansard*, 26 May 2010, p. 4112.

14 The Hon. Mr Stephen Smith MP, Minister for Foreign Affairs, *House of Representatives Hansard*, 26 May 2010, p. 4113.

15 Explanatory Memorandum, Autonomous Sanctions Bill 2010 (Cth).

16 Explanatory Memorandum, Autonomous Sanctions Bill 2010 (Cth).

government, or proliferation of weapons of mass destruction or their means of delivery.’<sup>17</sup>

- 2.17 Australian autonomous sanctions are ‘autonomous’ in the sense that they do not arise pursuant to any other international obligations, such as a resolution of the UNSC. As such these sanctions can supplement a pre-existing UNSC sanction or can stand alone.<sup>18</sup>
- 2.18 The framework for Australia’s autonomous sanctions regime is set out in the Act and the Regulations. Sanctions measures can include:
- Restrictions on engaging in certain commercial activities as well as trade in goods and services;<sup>19</sup>
  - Travel bans restricting a person from entering Australia without authorisation;<sup>20</sup> and
  - Targeted financial sanctions which would prevent a designated person from accessing assets in Australia or receiving assets from people or entities within Australia without authorisation.<sup>21</sup>
- 2.19 Under Section 4 of the Autonomous Sanctions Act, an ‘autonomous sanction’ is defined as a sanction that is intended to directly or indirectly influence a foreign government or entity, member of a foreign government, or another person or entity outside Australia in accordance with Australian Government policy or to prohibit conduct which is contrary to Australian Government policy.<sup>22</sup>
- 2.20 The autonomous sanctions legislation itself does not designate any person or entity for sanctions. Instead subsection 10(1) of the Act allows the Governor-General on advice from the Minister for Foreign Affairs (designated by the Administrative Arrangements Orders as the Minister responsible for administration of the Act) to apply sanctions through Regulations that relate to:
- Proscribing of persons or entities;<sup>23</sup>
  - Restriction or prevention of the supply, sale or transfer of goods, and the use, dealings and availability of assets;<sup>24</sup>
  - Indemnities for acting in compliance with these regulations;<sup>25</sup> and

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17 Explanatory Memorandum, Autonomous Sanctions Bill 2010 (Cth).

18 Law Council of Australia, *Submission 99*, p. 9.

19 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, p. 3.

20 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, p. 3.

21 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, p. 3.

22 *Autonomous Sanctions Act 2011* (Cth), s 4.

23 *Autonomous Sanctions Act 2011* (Cth), s 10(1)(a).

24 *Autonomous Sanctions Act 2011* (Cth), ss 10(1)(b) and (c).

25 *Autonomous Sanctions Act 2011* (Cth), ss 10(1)(e).

- The provision of compensation for owners of assets that are affected by any regulation made under the above provisions.<sup>26</sup>

2.21 The following table lists all current autonomous sanctions relating to persons or entities in force in Australia as at the time of writing:

**Table 2 Regulation 6: Countries, persons and entities currently designated under the Regulations**

<b>Countries, persons and entities</b>		
<i>Item</i>	<i>Country</i>	<i>Activity</i>
1	Democratic People's Republic of Korea	a) A person or entity that the Minister is satisfied is, or has been, associated with the DPRK's weapons of mass destruction program or missiles program. b) A person or entity that the Minister is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of: <ul style="list-style-type: none"> <li>i) Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the United Nations Security Council; or</li> <li>ii) a subsequent resolution relevant to a resolution mentioned in subparagraph (i).</li> </ul>
2	Former Federal Republic of Yugoslavia	a) A person who has been indicted for an offence by the ICTY (whether or not the person has been convicted of the offence). b) A person who has been indicted for an offence within the jurisdiction of the ICTY by a domestic court in Bosnia-Herzegovina, Croatia or Serbia (whether or not the person has been convicted of the offence). c) A person who is subject to an Interpol arrest warrant related to an offence within the jurisdiction of the ICTY. d) A person who the Minister is satisfied is a supporter of the former regime of Slobodan Milosevic. e) A person who is suspected of assisting a person who is: <ul style="list-style-type: none"> <li>i) indicted by the ICTY; and</li> <li>ii) (ii) not currently detained by the ICTY.</li> </ul>
4	Iran	a) A person or entity that the Minister is satisfied has contributed to, or is contributing to, Iran's nuclear or missile programs. b) A person or entity that the Minister is satisfied has assisted, or is assisting, Iran to violate: <ul style="list-style-type: none"> <li>i) Resolution 1737, 1747, 1803, 1929 or 2231 of the United Nations Security Council; or</li> <li>ii) a subsequent resolution relevant to a resolution mentioned in subparagraph (i).</li> </ul>
5	Libya	a) A person who the Minister is satisfied was a close associate of the former Qadhafi regime.

<sup>26</sup> *Autonomous Sanctions Act 2011* (Cth), ss 10(1)(f).

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		<ul style="list-style-type: none"> <li>b) An entity that the Minister is satisfied is under the control of one or more members of Muammar Qadhafi's family.</li> <li>c) A person or entity that the Minister is satisfied has assisted, or is assisting, in the violation of: <ul style="list-style-type: none"> <li>i) Resolution 1970 or 1973 of the United Nations Security Council; or</li> <li>ii) a subsequent resolution relevant to a resolution mentioned in subparagraph (i).</li> </ul> </li> <li>d) An immediate family member of a person mentioned in paragraph (a) or (c).</li> </ul>
6	Myanmar	<ul style="list-style-type: none"> <li>a) A former member of the State Peace and Development Council (SPDC).</li> <li>b) A person who the Minister is satisfied is a business associate of the Myanmar military.</li> <li>c) A current or former minister or a current or former deputy minister.</li> <li>d) A current or former military officer of the rank of Brigadier-General or higher.</li> <li>e) A senior official in any of Myanmar's security or corrections agencies.</li> <li>f) A current or former senior officeholder of the Union Solidarity and Development Party (USDP) or the Union Solidarity and Development Association (USDA).</li> <li>g) A senior official or executive in a state-owned or a military-owned enterprise.</li> <li>h) An immediate family member of a person mentioned in any of paragraphs (a) to (g).</li> </ul>
7	Syria	<ul style="list-style-type: none"> <li>a) A person or entity that the Minister is satisfied is providing support to the Syrian regime.</li> <li>b) A person or entity that the Minister is satisfied is responsible for human rights abuses in Syria, including: <ul style="list-style-type: none"> <li>i. the use of violence against civilians; and</li> <li>ii. the commission of other abuses.</li> </ul> </li> </ul>
8	Zimbabwe	A person or entity that the Minister is satisfied is engaged in, or has engaged in, activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.
9	Ukraine	A person or entity that the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine.

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- 2.22 The power of the Foreign Minister to make a decision to impose sanctions through amending the Regulations is very broad. Regulation 10 sets out that before making any regulations under subsection 10(1), the Minister for Foreign Affairs must be satisfied that the proposed regulation:
- a) will facilitate the conduct of Australia's relations with other countries or with entities or persons outside Australia; or
  - b) will otherwise deal with matters, things or relationships outside Australia.<sup>27</sup>
- 2.23 There are no other limitations on the Minister's decision making within the Act or Regulations.
- 2.24 In order to list a person or entity, the Minister for Foreign Affairs must undertake a two-step process. First the Minister must advise the Governor-General to amend the Regulations to identify the targeted country and the activities for which a person or entity could be designated. The Minister must then make a second instrument to designate a specific person or entity, pursuant to regulation 6(1).<sup>28</sup> The Minister must be satisfied that the person or entity meets a range of criteria set out in Regulation 6.<sup>29</sup>
- 2.25 For example, in 2014 the Minister for Foreign Affairs advised the Governor-General to make the Autonomous Sanctions Amendment (Ukraine) Regulation 2014 (Cth). The effect of this regulation was to amend regulation 6(1) of the Regulations to list the Ukraine (Item 9, Table 1). A Ukrainian national or entity that 'the Minister is satisfied is responsible for, or complicit in, the threat to the sovereignty and territorial integrity of Ukraine...' could then be listed as a 'designated person', step one of the two-step process mentioned above.<sup>30</sup>
- 2.26 The Foreign Minister then made the Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Ukraine) Amendment List 2014 (Cth). This legislative instrument listed 113 individuals and 32 entities as designed persons or entities, preventing them from travelling to Australia (Step two of the two-step process).<sup>31</sup>
- 2.27 Because Ukraine had already been listed as a country in the Regulations in 2014, this allowed for more individuals to be listed at a later date. On January 2020, the Foreign Minister made the Autonomous Sanctions

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27 *Autonomous Sanctions Act 2011* (Cth), s(10)(2)(a) and (b).

28 Law Council of Australia, *Submission 99*, p. 11.

29 *Autonomous Sanctions Regulations 2011* (Cth), reg 6(1).

30 *Autonomous Sanctions Regulations 2011* (Cth), reg 6.

31 *Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Ukraine) Amendment List 2014* (Cth), sch 1.

(Designated and Declared Persons – Ukraine) Amendment List 2020 (Cth) which listed a further seven Ukrainian nationals as designated persons.<sup>32</sup>

- 2.28 The current criteria for imposing sanctions is framed by reference to specific countries; however regulation 6(2) allows for the listing of a person or entity if they are contributing to the proliferation of weapons of mass destruction without the requirement that the conduct in question is related to a particular nation.<sup>33</sup>
- 2.29 At the time of writing, Australia has established sanctions regimes in relation to Myanmar, the Democratic People’s Republic of Korea, the Former Federal Republic of Yugoslavia, Iran, Libya, Syria, Zimbabwe and Russia/Ukraine.<sup>34</sup>

### **Use of the autonomous sanctions regime as a tool for sanctioning human rights abusers**

- 2.30 There is provision within the current Australian autonomous sanctions regime to sanction individuals on the basis of human rights abuses. Similarly to Magnitsky-style Acts in the United States and Canada, the Act and Regulations allow for a person to be listed for financial sanctions and travel bans for human rights violations.<sup>35</sup>
- 2.31 The current autonomous sanctions regimes for both Syria and Zimbabwe both contain provisions for sanctioning individuals for human rights violations. Regarding Syria, a person or entity can be sanctioned for, among other things, violence against civilians. The autonomous sanctions regime for Zimbabwe allows individuals or entities to be sanctioned for engaging in activities that undermine democracy, the rule of law and respect for human rights.<sup>36</sup>
- 2.32 In other country-based autonomous sanctions regimes under the Act, human rights abuses may be a relevant consideration in making listings. The Regulation’s sanctions regime against Myanmar allows for the listing of military officers holding certain ranks or positions. This kind of listing, although focused on position rather than the conduct of the individual, allows the Minister for Foreign Affairs to make a decision taking into account the involvement of such a person in human rights violations.<sup>37</sup>

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32 Autonomous Sanctions (Designated and Declared Persons – Ukraine) Amendment List 2020, sch 1.

33 Autonomous Sanctions Regulations 2011 (Cth), regs 6(1) and (2).

34 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, p. 3.

35 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, pp. 3-4.

36 Department of Foreign Affairs and Trade (DFAT), *Submission 63*, pp. 3-4.

37 Department of Foreign Affairs and Trade, *Submission 63*, p. 4.

- 2.33 The current autonomous sanctions regulations also allow for family members of sanctioned people to be listed under the Libya and Myanmar country regimes.<sup>38</sup>
- 2.34 The Law Council of Australia stated that there may be scope within the current legislative regime to expand the imposition of sanctions on individuals for gross violations of human rights. This is referred to in the Explanatory Memorandum of the Bill which details ‘the grave repression of human rights or democratic freedoms of a population by a government’<sup>39</sup> as a situation which could incur sanctions.<sup>40</sup>
- 2.35 Mr Simon Newnham, First Assistant Secretary, Chief Legal Officer, DFAT, stated that if Australia wished to move towards a sanctions regime with a more express role for sanctioning human rights abusers, it would be possible to work within the existing Act and Regulations. He suggested it would be possible for the Australian Government to implement a thematic regime by amending the existing Act and/or Regulations.<sup>41</sup>
- 2.36 Mr Newnham further argued that the existing regime has safeguards and processes already built in which would be applicable to any new regime, such as the automatic lapsing of a listing after three years unless it is relisted, permits for exemptions to sanctions, and internal merits review. He argued that building changes into the existing regulatory regime would increase the chances of compliance and would reduce complexity.<sup>42</sup>
- 2.37 Mr Newnham stated that the decision to impose sanctions on an individual was not a step taken lightly. The range of steps built into the existing legislative regime reflects the seriousness of sanctioning.<sup>43</sup>
- 2.38 DFAT currently has 13 staff and two directors in some measure involved in administration and policy relating to sanctions, as part of the Department’s Legal Division.<sup>44</sup>

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38 Ms Jennifer Cavenagh, Director, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 10.

39 Explanatory Memorandum, Autonomous Sanctions Bill 2010 (Cth), p. 1.

40 Law Council of Australia, *Submission 99*, p. 12.

41 Mr Simon Newnham, First Assistant Secretary, Chief Legal Officer, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 7.

42 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p.7.

43 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 12.

44 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 14.

## Non-legislative measures to prevent human rights abuses

- 2.39 Beyond the two legislative Sanctions frameworks, the Australian Government has other tools at its disposal in order to discourage and respond to human rights abuses overseas.
- 2.40 Australia is a signatory to the Universal Declaration of Human Rights, and promotes its role as a 'leading proponent of its consistent and comprehensive implementation'.<sup>45</sup> The Department of Foreign Affairs and Trade states that it promotes human rights through constructive bilateral dialogue, where appropriate through development assistance and humanitarian support, and in instances of gross human rights violations, through sanctions.<sup>46</sup>
- 2.41 DFAT stated that Australia's 'commitment to human rights reflects our national values... and an underlying principle of Australia's engagement with the international community'.<sup>47</sup>
- 2.42 Mr Newnham suggested that 'sanctions will not always be the most appropriate or effective response to human rights violations and abuses.'<sup>48</sup> Other avenues which may be more effective in certain circumstances could include bilateral representations, dialogue, development programs, or representations at the UN Human Rights Council with Australia serving as a member of the Council in 2018-2020. A range of diplomatic tools could be used in combination or in a sequence.<sup>49</sup>
- 2.43 Mr Newnham said:
- Sanctions might not be effective. In certain circumstances, they may close off opportunities to positively influence a situation, and they may not be in our interests. There will be work that Australia does with other countries, with different systems and different standards, principles and values. Sometimes we work with systems that don't uphold human rights and freedoms in the same way that we do in Australia, but we do so to meet other

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45 The Department of Foreign Affairs and Trade, <https://www.dfat.gov.au/international-relations/themes/human-rights/Pages/human-rights>, accessed 28 July 2020.

46 The Department of Foreign Affairs and Trade, <https://www.dfat.gov.au/international-relations/themes/human-rights/Pages/human-rights>, accessed 28 July 2020.

47 The Department of Foreign Affairs and Trade, <https://www.dfat.gov.au/international-relations/themes/human-rights/Pages/human-rights>, accessed 28 July 2020.

48 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 6.

49 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 6.

objectives – for example, on counterterrorism, transnational crime, economic issues and so forth.<sup>50</sup>

- 2.44 Ms Janice Le, representing the Human Rights Network of Australia (HRNA), suggested that other legislation such as the *Proceeds of Crime Act 2002* (Cth), the *Migration Act 1958* (Cth), and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) could be used as further tools for promoting Australia’s human rights.<sup>51</sup>
- 2.45 HRNA discussed other tools that the Australian Government uses to advance human rights abroad as well as suggestions for expanding those techniques.
- Annual dialogues between Australia and countries of concern. These dialogues provide an opportunity for the Australian Government to raise issues regarding human rights in a particular country and give recommendations on how to improve in these areas. This practice could be improved by allowing civil society and human rights organisations to take part.<sup>52</sup>
  - Providing aid to civil society and human rights organisations within countries of concern. Currently, the Australian Government provides funding to civil society organisations that are registered with the government and have their activities restricted by authorities. This can be very limiting to organisations which are experiencing harsh repression within their own countries. HRNA suggested that these aid programs should be extended to unregistered civil society organisations which meet the same requirements as a similar organisation in Australia.<sup>53</sup>
  - Implementing human rights provisions in free trade agreements (FTAs). Australia could use FTA negotiations as ways to leverage our trading partners to commit to improvements in human rights within their own countries. This could be particularly useful in the area of labour rights and preventing child labour.<sup>54</sup>
- 2.46 Save the Children divided Australia’s non-legislative methods for promoting human rights into multilateral and bilateral advocacy.
- Multilateral advocacy includes working through various arms of the United Nations, such as through the Security Council and Human

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50 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, p. 6.

51 Ms Janice Le, Representative, Human Rights Network of Australia, *Committee Hansard*, 28 April 2020, p. 2.

52 Human Rights Network of Australia, *Submission 19*, p. 5.

53 Human Rights Network of Australia, *Submission 19*, p. 5.

54 Human Rights Network of Australia, *Submission 19*, p. 5.

Rights Council.<sup>55</sup> It also includes working through regional organisations such as the Association of South East Asian Nations (ASEAN) and the Pacific Islands Forum (PIF).<sup>56</sup>

- Bilateral advocacy can involve a number of strategies, such as tying aid policy to the advancement of human rights, human rights dialogues (such as those currently ongoing with Vietnam, Laos and Iran)<sup>57</sup> and including human rights provisions in free trade agreements (a common practice in the European Union).<sup>58</sup>

## Flaws in current regime

- 2.47 Many organisations and individuals gave evidence to the Committee expressing the view that the current autonomous sanctions regime in Australia is not sufficient for targeting, deterring and punishing human rights violations.
- 2.48 Ms Rawan Arraf, Director of the Australian Centre for International Justice (ACIJ) stated that of the nine countries which are subject to Australian autonomous sanctions regimes in place, only two (Zimbabwe and Syria) mention protecting human rights. While other country regimes may have an implicit purpose of targeting human rights abusers, this raises questions about the appropriateness and effectiveness of the current sanctions regime as a tool for protecting human rights.<sup>59</sup>
- 2.49 Ms Pauline Wright, President of the Law Council of Australia, made similar comments, stating that although there is room within the existing autonomous sanction framework to target human rights violations, in practice this has rarely occurred and the current Act and Regulations lack express criteria directed at this objective.<sup>60</sup>
- 2.50 The Law Council of Australia noted that the current sanctions regime lacks a specific requirement for the consideration of human rights issues and 'is oblique on how they are considered in practice.'<sup>61</sup> The Act makes no mention of human rights violations as a basis for imposing sanctions and the Regulations only make minimal mention of it.<sup>62</sup>

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55 Save the Children, *Submission 47*, pp. 14-16.

56 Save the Children, *Submission 47*, pp. 16-17.

57 Save the Children, *Submission 47*, p. 18.

58 Save the Children, *Submission 47*, p. 19.

59 Ms Rawan Arraf, Director, Australian Centre for International Justice, *Committee Hansard*, Canberra, 31 March 2020, p. 11.

60 Ms Pauline Wright, President, Law Council of Australia, *Committee Hansard*, Canberra, 15 June 2020, p. 7.

61 Law Council of Australia, *Submission 99*, pp. 12-13.

62 Law Council of Australia, *Submission 99*, pp. 12-13.

- 2.51 As mentioned above, the Regulations only identifying human rights abuses as a factor for the designation of a person or entity twice, in relation to the regimes for Zimbabwe and Syria. While human rights violations may have been a consideration for sanctioning in regards to other country regimes, there is currently no specific guidance or trigger for policy makers to ensure that human rights are considered in making a designation.<sup>63</sup>
- 2.52 The Law Council's submission noted that it is unclear whether the Act and Regulations could be used to sanction individuals or entities for corruption as neither piece of legislation expressly refers to this.<sup>64</sup>
- 2.53 The Law Council further stated that the Act and Regulations gave too much power to the Minister in decision making and also placed too much emphasis on the role of the State in human rights abuses, as opposed to more targeted sanctions regimes which focus on sanctioning individuals.<sup>65</sup>
- 2.54 Ms Elaine Pearson, Australian Director of Human Rights Watch, held a similar view. She gave evidence that the current autonomous sanctions regime lacked specificity in regards to sanctioning individuals for human rights abuses and corruption. Ms Pearson described the true power of Magnitsky-style Acts as their role as deterrents, and argued that an Australian sanctions regime which explicitly referred to human rights abuses and corruption as grounds for sanctioning would be a powerful deterrent.<sup>66</sup>
- 2.55 Mr Simon Henderson, Head of Policy at Save the Children Australia, argued that the Australian autonomous sanctions regime was not fit-for-purpose and lacked both flexibility and precision.<sup>67</sup> Mr Henderson outlined four main problems with the current Australian sanctions regime:
- The Act and Regulations do not mention international humanitarian law, international human rights law or corruption. Human rights in general are only mentioned briefly in the Explanatory Memorandum of the Autonomous Sanctions Bill 2010 (Cth).<sup>68</sup>
  - The Act and Regulations lack a clear criteria and methodology for sanctions listing and de-listing. The current legislative regime has only limited guidance for Departmental staff and the decision maker on

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63 Law Council of Australia, *Submission 99*, p. 13.

64 Law Council of Australia, *Submission 99*, p. 14.

65 Law Council of Australia, *Submission 99*, p. 14.

66 Ms Elaine Pearson, Australian Director, Human Rights Watch, *Committee Hansard*, Canberra, 31 March 2020, p. 2.

67 Mr Simon Henderson, Head of Policy, Save the Children Australia, *Committee Hansard*, Canberra, 31 March 2020, pp. 6-7

68 Mr Simon Henderson, Head of Policy, Save the Children Australia, *Committee Hansard*, Canberra, 31 March 2020, p. 7.

criteria to follow. Mr Henderson noted that the explanations for imposition of sanctions are often only a few sentences long and lack information on how assessments were made. Fact sheets provided by DFAT often lack this information as well.<sup>69</sup>

- The current regime lacks specific provisions for civil society engagement in decision making through both the Act and the Regulations.<sup>70</sup>
- The current autonomous sanctions regime lacks parliamentary oversight, such as obligations to report to Parliament or a review process.<sup>71</sup>

2.56 Ms Arraf stated that the current autonomous sanction regime is not based on objective criteria. She gave the example of the financial sanctioning and travel bans placed on high level military officials from Myanmar for human rights abuses against the Rohingya. The UN Independent International Fact Finding Mission on Myanmar recommended the sanctioning of six high ranking military generals. The Australian Government listed four individuals for sanctions, of which only three were people named in the UN's findings. The Australian Government also did not sanction the two highest ranking members of the Tatmadaw, the Burmese Armed Forces, though these two individuals were sanctioned by the United States, Canada and European countries. Ms Arraf said that this reflected the arbitrary and inconsistent nature of the current Australian sanctions regime and showed the need for a sanctions regime that focussed specifically on human rights.<sup>72</sup>

2.57 Professor Rosalind Croucher, President of the Australian Human Rights Commission, expressed the view that the Autonomous Sanctions regime lacks procedural safeguards which may make it inconsistent with the principles of human rights. She said further that having a sanctions regime which targeted individuals for human rights abuses and serious corruption would provide clarity to the existing legislation as well as providing a deterrent to potential human rights abusers.<sup>73</sup>

2.58 Dr Elizabeth Biok, Secretary General of the International Commission of Jurists Australia (ICJA), held the view that the current Australian regime

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69 Mr Simon Henderson, Save the Children Australia, *Committee Hansard*, Canberra, 31 March 2020, p. 7.

70 Mr Simon Henderson, Save the Children Australia, *Committee Hansard*, Canberra, 31 March 2020, p. 7.

71 Mr Simon Henderson, Save the Children Australia, *Committee Hansard*, Canberra, 31 March 2020, p. 7.

72 Ms Rawan Arraf, Australian Centre for International Justice, *Committee Hansard*, Canberra, 31 March 2020, pp. 11-12.

73 Prof Rosalind Croucher, President, Australian Human Rights Commission (AHRC), *Committee Hansard*, Canberra, 17 June 2020, p. 1.



does not reflect the reality of human rights abuses occurring currently, that the perpetrators of these abuses often act with state sanction and avoid legal consequences within their own countries. The view of the ICJA is that the definition of autonomous sanctions imposed within Section 4 of the Act (a sanction intended to influence a foreign government member or entity in accordance with Australian Government policy<sup>74</sup>) is too imprecise and uncertain.<sup>75</sup>

- 2.59 As evidence for this, Dr Biok gave the example of the movements of Lieutenant General Kiki Syahnakri, a retired Indonesian military official. Despite being named as one of the alleged organisers of militia violence in East Timor in 1999, Lt. Gen. Syahnakri has been able to enter Australia three times, on the last occasion in 2014, after the introduction of the Act.<sup>76</sup>
- 2.60 Save the Children's submission stated there were three omissions of the current legislative regime which were concerning to them. The current regime makes only minimal mention of human rights law (as mentioned in the Explanatory Memorandum to the Bill – see discussion above), and makes no mention of international humanitarian law or of corruption.<sup>77</sup>
- 2.61 Although there are some country listings under the Regulations which make reference to human rights, there is no requirement to link sanctions to human rights violations. Save the Children stated that even in cases where human rights are mentioned within the Regulations, there is a lack of information on what human rights abuses are being targeted.<sup>78</sup> For example, the Regulation relating to Zimbabwe refers to
- A person or entity that the Minister is satisfied is engaged in, or has engaged in, activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.<sup>79</sup>
- 2.62 Save the Children also noted that DFAT's fact sheet for Zimbabwe does not list the human rights abuses or violations which have resulted in the decision to sanction the country.<sup>80</sup>

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74 *Autonomous Sanctions Act 2011* (Cth), s 4.

75 Dr Elizabeth Biok, Secretary General, International Commission of Jurists Australia, *Committee Hansard*, Canberra, 15 June 2020, p. 1.

76 Dr Elizabeth Biok, International Commission of Jurists Australia, *Committee Hansard*, Canberra, 15 June 2020, p. 2. Further information about the movements of Lt. Gen. Syahnakri to and from Australia was described by Mr Patrick Walsh, who raised questions about the screening practices, promotion of screening practices, and level of information available to immigration officials, see: Mr Patrick Walsh, *Submission 132*, p. 3.

77 Save the Children, *Submission 47*, p. 9.

78 Save the Children, *Submission 47*, pp. 8-9.

79 *Autonomous Sanctions Regulation 2011* (Cth), reg 6, item 8.

80 Save the Children, *Submission 47*, p. 10.

- 2.63 Save the Children was also concerned by the lack of reference to corruption in the current sanctions regime, especially considering the prevalence of corruption in South East Asia and the Pacific. Save the Children has offices in the Solomon Islands and has identified corruption as a major obstacle to the Australian Government's aid and development aims in the region. A targeted sanctions regime that allowed for individuals to be sanctioned for corruption would complement Australia's aims in the Pacific region, especially around good governance.<sup>81</sup>
- 2.64 Save the Children also argued that the Act and Regulations provide limited assistance to decision makers or to those engaged in implementing the sanctions. Regulation 6 lists the entities or individuals which may be sanctioned by country but provides little detail on the reason for a designation. Clear criteria and a methodology for listing and de-listing sanctions would ensure transparency and accountability for Government.<sup>82</sup>
- 2.65 Save the Children also stated that the current sanctions regime is used relatively infrequently compared to other regimes in countries like the United States. Australia has not sanctioned any individuals from Cambodia despite its high levels of corruption, or any of the individuals from Saudi Arabia implicated in the murder of Jamal Khashoggi, despite condemning the murder at the Human Rights Council.<sup>83</sup>
- 2.66 Save the Children further argued there is a lack of civil society engagement in the sanctions process. Civil society organisations and diaspora groups have access to valuable evidence documenting human rights abuses and corruption where they are occurring which could be very valuable to Australian decision makers in making a decision to sanction someone.<sup>84</sup> Save the Children noted that, in its experience, decisions to impose autonomous sanctions have involved very limited external input.<sup>85</sup>
- 2.67 Save the Children was also concerned by the lack of information in the Act and the Regulations about procedural safeguards such as merits review for people or entities subject to sanctions.<sup>86</sup> It was also concerned about the lack of parliamentary oversight, noting there is no specific reporting or review process for the sanctions regime.<sup>87</sup>

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81 Save the Children, *Submission 47*, p. 11.

82 Save the Children, *Submission 47*, p. 11.

83 Save the Children, *Submission 47*, p. 12.

84 Save the Children, *Submission 47*, p. 12.

85 Save the Children, *Submission 47*, p. 13.

86 Save the Children, *Submission 47*, p. 13.

87 Save the Children, *Submission 47*, p. 14.

- 2.68 It was also submitted to the inquiry that Australia diplomacy has not been effective in discouraging human rights abusers in foreign countries.
- 2.69 Mr Hemara In, President of the Cambodia National Rescue Party of Victoria, gave evidence that soft diplomacy and aid from the international community have had limited effect on the Hun Sen regime's human rights record and the high levels of corruption within Cambodia.<sup>88</sup>
- 2.70 Professor Irwin Cotler, Chair of the Raoul Wallenberg Centre for Human Rights, stated that regarding China's human rights record, trade considerations have often taken precedence. He went on to say that:
- The same rule of law that is to uphold human rights also upholds principles of international trade and respect for the rule of law. With regard to China, we have allowed this impunity to continue. By indulging it, we [have] become enablers.<sup>89</sup>

## Amending existing legislation vs new legislation

- 2.71 The Department of Foreign Affairs and Trade advised that their preference is to amend the current Act and Regulations in order to introduce a human rights based sanctions regime.<sup>90</sup>
- 2.72 Mr Newnham of DFAT stated that amendments to the Regulations, in particular Regulation 6, could be used to create a human rights targeted sanctions regime. Amending the Act and Regulations would allow for operational consistency with regards to applications for renewal, granting of permits, as well as providing a list of sanctioned people that would flow from the previous version of the Regulations. Mr Newnham also claimed that a consolidated sanctions regime within one Act and Regulations would be more accessible for the public and would further support compliance.<sup>91</sup>
- 2.73 In contrast to the position of DFAT, a wide range of other interested organisations and persons strongly held the view that new legislation, focused on targeted sanctions for human rights abuses and serious corruption is required. Many witnesses and submitters agreed that the

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88 Mr Hemara In, President, Cambodia National Rescue Party of Victoria, *Committee Hansard*, Canberra 31 March 2020, p. 23.

89 Prof Irwin Cotler, Chair and Founder, Raoul Wallenberg Centre for Human Rights, *Committee Hansard*, Canberra, 15 May 2020, p. 23.

90 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, pp. 6-7.

91 Mr Simon Newnham, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 17 June 2020, pp. 6-7.

new legislation would have a powerful symbolic and practical effect to advance respect for human rights internationally.<sup>92</sup>

- 2.74 Ms Amal Clooney, Deputy-Chair of the High-Level Panel of Legal Experts on Media Freedom, stated that adopting new targeted human rights sanctions legislation ‘would allow Australia to be a global human rights leader.’<sup>93</sup> Ms Clooney further observed that the Australian Government would be able to act without the UNSC imposing sanctions and could work with other like-minded nations in order to promote human rights. Ms Clooney said further:

At a time when authoritarian leaders are becoming more united and innovative in finding ways to abuse human rights, surely governments that are defending human rights should do the same. Yet, so far, only three states, the US, Canada and the UK, have robust global powers to impose targeted sanctions on human rights grounds. I think it [is] time that Australia joined the club.<sup>94</sup>

- 2.75 The Law Council of Australia’s submission also addressed the option of developing separate Magnitsky-style legislation, after identifying shortcomings in the current Autonomous Sanctions Regime:

While there may be overlap and some confusion due to having three sanctions regimes in place, there may be advantages in that a Magnitsky Act would be more visible than an amended AS regime in expressly filling a gap in the broader international framework of Magnitsky Laws. Australia would be more emphatically joining a growing international movement of countries tackling human rights abuses and serious corruption through explicitly targeted domestic legislation which strengthens its overall legislative framework on these issues.<sup>95</sup>

- 2.76 Allens, an international law firm, noted that the existing autonomous sanctions regime could accommodate Magnitsky-style sanctions, but stated:

We consider that the enactment of legislation comparable to the Magnitsky Act could give the Australian Government more strength and capacity to respond to gross human rights violations

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92 Mr Vladimir Kara-Murza, Vice-President, Free Russia Foundation, *Committee Hansard*, Canberra, 15 May 2020, p. 1; Rt. Hon. Lord David Neuberger of Abbotsbury, Chair, High Level Panel of Legal Experts on Media Freedom, *Committee Hansard*, Canberra, 15 May 2020, p. 28; Mr Geoffrey Robertson OAM QC, *Committee Hansard*, Canberra 15 May 2020, p. 40.

93 Ms Amal Clooney, Barrister, Doughty Street Chambers; Deputy Chair, High-Level Panel of Legal Experts on Media Freedom, *Committee Hansard*, Canberra, 15 May 2020, p. 11.

94 Ms Amal Clooney, Barrister, Doughty Street Chambers; Deputy Chair, High-Level Panel of Legal Experts on Media Freedom, *Committee Hansard*, Canberra, 15 May 2020, p. 11.

95 Law Council of Australia, *Submission 99*, p. 38.

abroad. For that reason, we support in principle the proposal to enact such legislation.<sup>96</sup>

## Calls for Australia to adopt targeted sanctions

2.77 The Sub-committee received evidence during this inquiry from a wide range of organisations and individuals interested in the discussion on targeted sanctions, and possibility of legislation, using such a mechanism, to protect human rights.

### International views

2.78 The inquiry received evidence from a number of jurisdictions around the world outlining their progress in introducing targeted sanctions legislation<sup>97</sup> (further detail in Chapter 3), and the importance to other jurisdictions and international human rights advocacy groups of Australia introducing targeted sanctions legislation.<sup>98</sup>

2.79 The United States Helsinki Commission is an independent commission of the U.S. Government which monitors human rights in accordance with the 1975 Helsinki Accords. It stated in its submission that:

The United States, Canada, the United Kingdom and now the European Union have already adopted Magnitsky-style legislation. However, the lack of similar sanctions mechanisms in other democratic states reduces the impact of our collective effort. Democratic allies need to close ranks around this new policy for fighting human rights abuses and grand corruption lest we risk becoming refuges for those already unwelcome in countries that have adopted Magnitsky laws ... Australia has long been a global leader in human rights advocacy and is the most robust democracy in the region ... our voices are stronger when we speak together.<sup>99</sup>

2.80 A number of submitters pointed to the importance of addressing human rights abuse and corruption within the Asia Pacific region<sup>100</sup>, and the

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96 Allens, *Submission 28*, p. 2.

97 Netherlands Ministry of Foreign Affairs, *Submission 51*; Ministry of Foreign Affairs Lithuania, *Submission 75*; Global Affairs Canada, *Submission 109*, US Senator Cardin, *Submission 119*; Lord Ahmed of Wimbledon, *Submission 120*; US Department of State, *Submission 80*.

98 US Helsinki Commission, *Submission 10*; p.1; Norwegian Helsinki Committee, *Submission 22*, p.2; Sjoerd Sjoerdsma, *Submission 31*, p.1.

99 US Helsinki Commission, *Submission 10*, p. 1.

100 Save the Children Australia, *Submission 47*, p.16; International Commission of Jurists Australia, *Submission 95*, p.5; Presbyterian Church of Victoria, *Submission 27*, p.1; Benjamin Cronshaw, *Submission 48*, p.1.

potential impact that targeted sanctions could have on officials and individuals within the region.<sup>101</sup>

## Australian support for targeted sanctions

2.81 The inquiry received evidence from Australian citizens who described their support for targeted sanctions legislation, and for Australia to join the global effort to address human rights abuse and corruption through Magnitsky-style targeted sanctions legislation.<sup>102</sup> Ms Tonya Steven, for example submitted that:

A Global Magnitsky Act ... would also be the most effective way for Australia to protect the 'fair go' we believe in so passionately and to stop hostile forces and foreign powers removing this from us.<sup>103</sup>

2.82 A number of submissions described concerns that if Australia does not align itself with other jurisdictions that have introduced Magnitsky-style legislation, by introducing more rigorous targeted sanctions legislation to address human rights abuse and corruption, it risks becoming a safe haven for corrupt and abusive individuals and their families.<sup>104</sup>

2.83 On this perspective, one submitter (name withheld) stated:

It is my concern that ... Australia would become a safe haven for mass human rights abusers and agents of authoritarian states. As these criminals face sanctions and becoming [sic] increasingly difficult to enter western democracies, they will turn to Australia and settle with their ill-gotten gains if we do not have an appropriate sanction scheme that is comparable to other western democracies.<sup>105</sup>

2.84 Other submitters outlined concerns that Australians could end up inadvertently doing business with human rights abusers. Mrs Carol Baulch described her concerns on this matter:

I do not wish to do business with, or liaise with individuals or organisations who have benefited in any way through the abuse of human rights. Australians expect that when doing business or consuming products from within Australia, that they are not contributing to human rights abuses or supporting those with a history of committing human rights abuses.<sup>106</sup>

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101 Senator Leila M. de Lima, *Submission 151*, p. 2; Name Withheld, *Submission 83*, p.3.

102 Tonya Stevens, *Submission 84*; Name Withheld, *Submission 53*; Benjamin Cronshaw, *Submission 48*.

103 Tonya Stevens, *Submission 84*, p. 1.

104 Wing Tang, *Submission 38*; Glen McNamara, *Submission 8*.

105 Name Withheld, *Submission 45*, p. 1.

106 Mrs Carol Baulch, *Submission 15*, p. 1

- 2.85 Some submissions highlighted the potential role of a targeted sanctions scheme in maintaining and protecting Australia's multicultural society and ensure that Australians from other countries are safe from threat and fear of reprisals 'to protect the rights of their compatriots resident in Australia, whose relatives at home could be endangered'.<sup>107</sup>
- 2.86 Evidence received from Mr Jon O'Brien, whose son Jack was killed in the attack on flight MH17 over Ukraine on 17 July 2014, described his support for the introduction of a targeted sanctions regime, and the importance of holding perpetrators to account to the extent possible:
- It may be that those responsible for orchestrating the events that led to the shooting down of MH17 will never be prosecuted. But people should not be able to commit serious crimes and egregiously exploit others with impunity. It is important that we hold people who have committed such crimes to account, as far as that is possible. We believe and trust that Australia has a responsibility not only to uphold human rights and the rule of law in our own country, but to do what we can to promote them within our world.<sup>108</sup>

### **Representations by diaspora groups**

- 2.87 The inquiry received a large number of submissions from Australians who experienced human rights abuse and corruption in their homeland before migrating to Australia, and also from people who have been subjected to abuse, or threatened while living in Australia. Australians from Kurdistan submitted that:
- Members of the various diaspora communities in Australia are often aware of the appearance here of corrupt leaders and those who have committed human rights violations in their countries of origin, or the family members of such abusers.<sup>109</sup>
- 2.88 This inquiry received evidence from a large number of individuals and groups, expressing their support for Australia to introduce a targeted sanctions scheme. Many submissions as well as a large amount of correspondence were received from individuals and groups with connections to Hong Kong<sup>110</sup> and China,<sup>111</sup> including with links to Uyghurs in China's Xinjiang province.<sup>112</sup>

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<sup>107</sup> Glen McNamara, *Submission 8*, p. 1.

<sup>108</sup> Mr Jon O'Brien, *Submission 146*, p. 2.

<sup>109</sup> Australians for Kurdistan, *Submission 152*, p. 1.

<sup>110</sup> Selected examples include: Hong Kong Watch, *Submission 114*; Fight for Freedom Stand with Hong Kong, *Submission 37*; Mr Keith Chan, *Submission 103*; Kenneth So, *Submission 91*; Livia Leung, *Submission 79*; Name Withheld, *Submission 70*.

- 2.89 Cambodian diaspora groups reported incidents of corruption and human rights abuse, and active threats from Cambodian officials against Australian citizens, their families in Cambodia and consequences of speaking out against human rights abuses such as banning individuals from returning to their home country.<sup>113</sup>
- 2.90 Evidence provided to the Sub-committee included claims that corrupt Cambodian officials have laundered money through investments in Australia, or send their children to be educated in Australia. There were also descriptions of Cambodian Australian citizens with connections to the Cambodian embassy in Australia, recruiting people to put pressure on members of Australia's Cambodian community.<sup>114</sup>
- 2.91 Members of the Cambodian diaspora described threats and distress faced by diaspora living in Australia, arising from the reach of the Cambodian People's Party (CPP) within Australia. One witness described this as:
- ...this regime now is penetrating very deeply in the community here because of its money-laundering, because of its power and because of its money... [the CPP] are here. They are dividing the community. They threaten the community. They have threatened the lives of people here in Melbourne, physically.<sup>115</sup>
- 2.92 Mr Meng Heang Tak described support from the Cambodian diaspora for Australia to join international targeted sanctions efforts, and the risks of not doing so:
- ...it's about time that Australia played a role in curbing this regime. Given our geographic location, if we don't have a Magnitsky or we don't have enough measures to curb this interference in Australia, Australia is a very good place for the ruling party, for the elite, to park their assets. In my electorate and in neighbouring electorates, we already know that there are relatives of the elite who park their assets here.<sup>116</sup>
- 2.93 Mr Hemara In described support for the introduction of targeted sanctions legislation:

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111 Selected examples include: Michelle Li, *Submission 143*; Zhen Yang, *Submission 142*; Association of Chinese Human Rights and Democracy, *Submission 135*; Im Xin Chen, *Submission 136*; Kent Luo, *Submission 137*.

112 Selected examples include: East Turkistan Australian Association, *Submission 88*; Sabit Ruzehaji, *Submission 124*; Avaaz, *Submission 126*.

113 Mr Hong Lim, *Submission 121*, p. 1.

114 Mr Hong Lim, *Submission 121*, p. 2; International Federation for Human Rights, *Submission 127*, p. 2; Cambodian Action Group, *Submission 73*, p. 2.

115 Mr Hong Lim, President, Cambodian Australian Federation, *Committee Hansard*, Canberra, 31 March 2020, p. 15.

116 Mr Meng Heang Tak, private capacity, *Committee Hansard*, Canberra, 31 March 2020, p. 18.



It will limit the ability to violate human rights and to gather wealth. This will also cause damage to their influence and reputation not only in Cambodia but also internationally. These people are the people in the leadership around Hun Sen. Not only is their wealth and influence used inside Cambodia; their wealth is sent to their children, relatives, wife or husband living overseas. Having a Magnitsky act for individuals will send a clear message that the international community will not tolerate human rights violations.<sup>117</sup>

- 2.94 According to Mr Hemara In, if Australia were to adopt a Magnitsky-style targeted sanctions regime it would send a message to people around the world. He stated that it would 'send[s] hope to ordinary people that the international community understands their plight and is willing to stand by them and to help them. It is a message of hope.'<sup>118</sup>
- 2.95 Some evidence was received by the Sub-committee relating to concerns that human rights abusers have gained Australian citizenship<sup>119</sup>, and are living with impunity in Australia. Some witnesses described that they are being monitored and threatened by foreign Governments while they live in Australia. The Sub-committee recognises that it is quite possible that many Australians would be unaware of this situation, and the difficulties facing diaspora groups.

### **Uyghur peoples**

- 2.96 The inquiry received evidence from Uyghur diaspora representatives and individuals, and the Sub-committee noted their clear concerns about speaking publicly on issues of human rights abuse in submissions that were made public, and a number of confidential submissions.
- 2.97 Witnesses described the experience of being in Australia and receiving threatening contact from Chinese embassy officials as a result of speaking out on human rights issues. Some evidence described situations where family members who are living in China had been threatened as a result of Australian-based Uyghurs speaking out publicly on human rights matters in Australia.<sup>120</sup>

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117 Mr Hemara In, President, Cambodia National Rescue Party of Victoria, *Committee Hansard*, Canberra, 31 March 2020, p. 22.

118 Mr Hemara In, President, Cambodia National Rescue Party of Victoria, *Committee Hansard*, Canberra, 31 March 2020, p. 22.

119 Name Withheld, *Submission 70.1*, p. 2; Cambodian Action Group, *Submission 73*, p.2.

120 Mr Alim Osman, President, Uyghur Association of Victoria, *Committee Hansard*, Canberra 30 April 2020, p. 3.

## Committee comment

- 2.98 The Sub-committee is very appreciative of contributions to the inquiry by many individuals from Australia and some from other countries, who made submissions, and provided evidence at public hearings.
- 2.99 Members of the Sub-committee would particularly like to acknowledge those individuals who reflected upon their personal experiences of human rights violations.
- 2.100 A number of witnesses requested that their evidence be taken confidentially, citing fear of retribution, either through threats made in Australia, or to family overseas. The Sub-committee wishes to thank all witnesses and submitters who put forward evidence despite their fears of further repercussions.
- 2.101 It is a matter of serious concern to the Sub-committee that, notwithstanding the passage of new National Security Legislation aimed at countering foreign interference, a number of witnesses appeared reluctant to provide public evidence to this inquiry. Many people instead wished to make confidential submissions, have their names withheld from submissions, or opted to express their views through private correspondence, stating that they feared retaliation and retribution against family members overseas and against themselves in Australia.
- 2.102 This is an issue of significant concern that highlights the importance of the measures being considered in this report.

## Conclusion

- 2.103 The Sub-committee agrees with many of the concerns raised about the effectiveness and scope of the existing autonomous sanctions regime. The Sub-committee supports the introduction of new, stand-alone Magnitsky-style legislation to allow for targeted sanctions of individuals who have committed human rights abuses.