

General principles and recommendations

- 7.1 Taking into account the evidence presented in the course of the inquiry including from world-leading experts in the field of human rights law, the Sub-committee's own independent research, discussion of relevant issues in this report, and careful consideration of Mr Robertson's document, a draft *International Human Rights (Global Magnitsky) Bill 2020*, the Sub-committee has agreed on a range of general principles that should be applied to guide the drafting.
- 7.2 The principles are as follows:
- The definition of sanctionable conduct should be broad, and cover human rights abuses, serious corruption and conduct that impinges on media freedom.
 - There should be safeguards for individuals who may be sanctioned, including a right of reply and appeal process.
 - The decision maker should have a broad and unfettered ability to apply, remove or vary sanctions.
 - Nominations for sanctions can be made by anyone; however an independent advisory body should be created to allow a transparent pathway to the decision maker.
 - The definition of who can be sanctioned should be broad, including family members, associated entities and corporate entities.
 - The process should be as transparent as possible, with a public register of decisions, an annual report to Parliament, and review by the JSCFADT.
- 7.3 The Human Rights Sub-committee is firmly of the view that new, stand-alone targeted sanctions legislation will significantly strengthen Australian and broader international efforts to deter gross human rights violations and significant corruptions worldwide. These twin evils must

be confronted at every opportunity and strong new targeted sanctions legislation will provide Australian Governments with new weapons to do just that. The Australian Government and the Australian Parliament should move without delay.

Recommendations

Recommendation 1

The Sub-committee recommends that the Australian Government enact stand alone targeted sanctions legislation to address human rights violations and corruption, similar to the United States' *Magnitsky Act 2012*.

Definition of human rights (refer paragraph 5.4)

Recommendation 2

The Sub-committee recommends that the legislation should include a preamble, which would set out the broad purposes and general principles of the Act.

Recommendation 3

The Sub-committee recommends that the range of conduct that may be sanctioned should include serious human rights abuse and serious corruption.

Recommendation 4

The Sub-committee recommends that the new targeted sanctions legislation should apply to 'serious human rights abuses' with further guidance on thresholds and applicable conduct provided in the preamble.

Special consideration (refer paragraph 5.13)

Recommendation 5

The Sub-committee recommends that the preamble acknowledge the importance of maintaining journalist and human rights defenders' human rights and expressly state that systematic extrajudicial actions that intend to limit media freedom can be considered human rights abuses.

Scope of sanctions (refer paragraph 5.29)

Recommendation 6

The Sub-committee recommends that the legislation should name the range of conduct which can be sanctioned as 'Magnitsky conduct'.

Recommendation 7

The Sub-committee recommends that sanctions should be applicable to the immediate family and direct beneficiaries of human rights abusers.

Recommendation 8

The Sub-committee recommends that sanctions be applicable to all entities, including natural persons, corporate entities and both state and non-state organisations.

Recommendation 9

The Sub-committee recommends that sanctions be applicable to associated entities, broadly defined.

Australian citizens (refer paragraph 5.42)

Recommendation 10

The Sub-committee recommends that the new targeted sanctions legislation should not apply to Australian citizens because they are subject to legislation with similar, if not stronger, consequences. This issue should be re-examined as part of the 3-yearly review.

Retrospectivity (refer paragraph 5.48)

Recommendation 11

The Sub-committee recommends that the new targeted sanctions legislation be applicable to conduct that has occurred prior to enactment of the legislation.

Nomination process (refer paragraph 5.52)

Recommendation 12

The Sub-committee recommends that an independent advisory body be constituted to receive nominations for sanctions targets, consider them and make recommendations to the decision maker.

Recommendation 13

The Sub-committee recommends that the structure of the independent advisory body should be set out in regulations, and should include the ability to conduct its inquiry in public.

Recommendation 14

The Sub-committee recommends that the new legislation should require the decision maker to consider recommendations by the advisory body and give reasons for any decision not to adopt a recommendation by the advisory body.

Recommendation 15

The Sub-committee recommends that the decision maker should be able to receive nominations from any source.

Information sharing (refer paragraph 5.61)

Recommendation 16

The Sub-committee recommends that the legislation, or regulations under the legislation, set out processes to allow Australian authorities to work with other jurisdictions and their sanctions regimes.

Decision making (refer paragraph 5.66)

Recommendation 17

The Sub-committee recommends that the Minister for Foreign Affairs be the decision maker.

Recommendation 18

The Sub-committee recommends that the Minister for Foreign Affairs should be required to consult with the Attorney-General before making a decision.

Recommendation 19

The Sub-committee recommends that the legislation include a requirement to give the targeted person a right of reply, and a requirement for the Minister to consider this, before imposing sanctions.

Recommendation 20

The Sub-committee recommends that the Minister for Foreign Affairs should have broad discretion as to whether or not to impose sanctions. This would include the ability to remove or vary sanctions.

Recommendation 21

The Sub-committee recommends that the legislation allow for a 'watch list' of people being considered for sanctioning. Inclusion on a watch list should be for a fixed time period, after which a person must either be sanctioned or removed from the list. The watch list should be public.

Burden of proof (refer paragraph 5.79)

Recommendation 22

The Sub-committee recommends that the evidentiary standard for a decision should be the balance of probabilities.

Transparency (refer paragraph 5.80)

Recommendation 23

The Sub-committee recommends that the legislation require the publication of the names of sanctioned people and the reasons for their listing. This includes all decisions to remove or vary sanctions.

Recommendation 24

The Sub-committee recommends that the legislation require the Foreign Minister to publish an annual report to Parliament advising of sanctions.

Recommendation 25

The Sub-committee recommends that the Foreign Minister's annual report into the sanctions should stand referred to the JSCFADT for inquiry.

Recommendation 26

The Sub-committee recommends that there be limited exemptions from including information on the public register, watch list or annual report for reasons of national security or criminal investigations.

Review (refer paragraph 5.91)

Recommendation 27

The Sub-committee recommends that the legislation include a right for a sanctioned person to request a review of decision. The Minister should be required to conduct a review on request, although the regulations may limit the obligation to conduct reviews.

Recommendation 28

The Sub-committee recommends that targeted sanctions legislation be reviewed by the government three years after commencement.

The Sanctions (refer paragraph 5.107)

Recommendation 29

The Sub-committee recommends that the sanctions include visa / travel restrictions, limit access to assets, and restrict access to Australia's financial systems.

Recommendation 30

The Sub-committee recommends that the sanctions, to the extent possible, be implemented using existing processes and legislative schemes.

Recommendation 31

The Sub-committee recommends that the new sanctions regime be accompanied by a public diplomacy strategy to provide guidance to those affected, including Australian businesses.

Recommendation 32

The Sub-committee recommends that the Department of Foreign Affairs and Trade should be given additional resources to implement the sanctions regime. Other departments required to contribute to implementation should also be allocated dedicated resourcing for the task.

Recommendation 33

The Sub-committee recommends that the long title of the legislation should include 'Magnitsky' to emphasise links with the Global Magnitsky movement.

Senator the Hon David Fawcett

**Chair, Joint Standing Committee on Foreign
Affairs, Defence and Trade**

December 2020

Hon Kevin Andrews MP

**Chair, Human Rights Sub-committee of the
JSCFADT**

December 2020