
The Parliament of the Commonwealth of Australia

Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?

An inquiry into targeted sanctions to address human rights abuses

House of Representatives

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Foreword

Through my long-term involvement with the Human Rights Sub-committee, I have observed Australians' awareness, interest and commitment to protecting human rights grow and consolidate.

Australians are proud global citizens. We are committed to our democracy, and the importance of upholding human rights, both within Australia and abroad. This commitment is reflected in our government's contribution to international efforts to uphold human rights, through international treaties, our own diplomatic missions, supporting aid and development programs and in collaboration with our allies.

In recent years there has been a growing recognition that country- or sector-wide sanctions often impact innocent parties disproportionately, and a new approach to creating consequences for unacceptable behavior is required. It has long been the case that kleptocrats and other perpetrators of human rights abuse and corruption have transferred assets to enjoy in countries other than the source of their funds. This is usually because they seek to secure their assets in democratic countries with stable financial systems.

Australia may not be able to influence other nations to apply suitable penalties to perpetrators of human rights abuse and corruption. However, the compelling argument about the experience of Mr Sergei Magnitsky, led by Mr Browder, has focused the efforts of international human rights experts and frontline organisations to advocate for targeted sanctions regimes to be introduced, effecting tangible consequences for individuals and their beneficiaries.

The Human Rights Sub-committee receives regular briefings and correspondence on human rights issues facing Australians and diaspora from across the globe. This program of work has brought to the Sub-committee's attention situations where Australian citizens with connections to different countries experience threats within Australia, and threats to their family members who remain abroad. Sub-committee members have also been concerned about situations where alleged human rights abusers and beneficiaries of corruption are investing money in Australian assets, financial systems and accessing Australian education and

healthcare systems for themselves and their beneficiaries. This is simply unacceptable.

In other countries, introducing targeted sanctions legislation has allowed governments to tackle this issue, using travel bans and asset seizure to prevent perpetrators from enjoying the proceeds of their crimes with impunity. The legislation is quite new in most jurisdictions, so there is not a significant amount of evidence to demonstrate its success. However, there are indications of early success in applying targeted sanctions to curtail options for enjoyment and freedoms of human rights abusers and beneficiaries of corruption. Australia's imposition of travel bans and asset freezes could apply some level of consequences in cases where they were otherwise lacking.

This inquiry was conducted during a period of widespread disruption and uncertainty arising from the COVID-19 pandemic. This presented challenges across Australia and the world, as people managed practical and logistical considerations such as health conditions, stay-at-home orders, home schooling and remote working arrangements. The extent of involvement of individuals and organisations in this inquiry, in spite of the those challenges, clearly demonstrated to the Sub-committee the significance of the issues under consideration, and the commitment and dedication of those involved in seeing matters addressed and resolved.

This inquiry generated evidence from a diverse range of sources. The Sub-committee appreciates the thoughtful and informed contributions from concerned Australian citizens, Australian diaspora groups, organisations involved in human rights advocacy and law, our international parliamentary colleagues, and internationally renowned human rights legal practitioners. This diversity of perspectives greatly strengthened the Sub-committee's appreciation of the subject matter.

The Sub-committee has recommended the enactment of a standalone, Magnitsky-style targeted sanctions Act during the 46th Parliament. Based on extensive considerations, members agreed that taking swift and decisive action will allow Australia to not only contribute to the Global Magnitsky movement, but also take the lead in developing a best practice targeted sanctions regime. I extend my thanks to Mr Geoffrey Robertson OAM QC for his contribution to the inquiry – not only evidence in a submission and in his appearance as a witness, but his draft Bill which could be used to guide implementation of recommendations in this report.

I thank the Deputy Chair and members of the Human Rights Sub-committee for their full and collaborative engagement, their thoughtful consideration of the issues and contributions throughout the inquiry.

It is my hope that the implementation of this report's recommendations will send a very strong signal to human rights abuse perpetrators and corrupt individuals about the values of Australians. Importantly, I expect it will play a significant role in reducing the incentives for engaging in these kind of acts. I also hope that this report is received as a message of solidarity by Australia's close allies, and of support to victims of human rights abuse and corruption everywhere.

Hon Kevin Andrews MP
Chair

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Terms of reference

The Committee shall examine the use of targeted sanctions to address gross human rights abuses. The Committee shall have particular regard to:

1. The framework for autonomous sanctions under Australian law, in particular the Autonomous Sanctions Act 2011 (Cth) and the Autonomous Sanctions Regulations 2011 (Cth)
2. The use of sanctions alongside other tools by which Australia promotes human rights internationally
3. The advantages and disadvantages of the use of human rights sanctions, including the effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses
4. Any relevant experience of other jurisdictions, including the US regarding their Global Magnitsky Human Rights Accountability Act (2016)
5. The advisability of introducing a new thematic regulation within our existing Autonomous Sanctions Regime for human rights abuses.



List of abbreviations

DFAT	Department of Foreign Affairs and Trade
GloMag	Global Magnitsky movement
Magnitsky conduct	Range of behaviour / conduct that could be sanctioned under the proposed targeted sanctions
UNSC	United Nations Security Council



List of recommendations

7 General principles and 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*.

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.

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.

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.

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.

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.

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.

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.

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.

Recommendation 22

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

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.

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.

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.

