



# SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

## INQUIRY INTO AUSTRALIA'S SANCTIONS REGIME

Australian Red Cross and the International Committee of the Red Cross (**ICRC**) welcome the opportunity to share our views with the Senate Foreign Affairs, Defence and Trade Committee in its Inquiry into Australia's sanctions regime. Responding to sections (a), (f), (h) and (i) of the Inquiry's terms of reference, we recommend the inclusion of a well-framed humanitarian exemption in Australia's sanctions frameworks in order to be effective and to capture intended targets while avoiding unintended consequences on impartial humanitarian activities.

## INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT

The International Red Cross and Red Crescent Movement (**Movement**) is a worldwide humanitarian network guided in its mission by its [Fundamental Principles](#), including humanity, impartiality, neutrality and independence. The Movement has three components: the ICRC; the International Federation of Red Cross and Red Crescent Societies (**IFRC**); and 191 National Red Cross or Red Crescent Societies (including Australian Red Cross). Our work is based on the Geneva Conventions of 1949, their Additional Protocols of 1977, the [Statutes of the Movement](#) and the resolutions of the International Conferences of the Red Cross and Red Crescent.

Australian Red Cross has been a critical part of Australian life since 1914, mandated by the [Royal Charter of 1941](#) as an auxiliary to Australia's public authorities in the humanitarian field, including during emergencies and armed conflict. Its mission is to prevent and alleviate vulnerability, including by championing international humanitarian law (**IHL**) in Australia.

The ICRC's exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC endeavours to prevent suffering by promoting and strengthening IHL and universal humanitarian principles.

## RECOMMENDATION

To ensure that Australia's sanctions regime is implemented in conformity with IHL<sup>1</sup> and humanitarian principles,<sup>2</sup> Australian Red Cross and the ICRC recommend adopting a well-framed humanitarian exemption across Australia's autonomous sanctions and UN-mandated sanctions frameworks that is consistent with the formulation of United Nations Security Council Resolution (UNSCR) 2664 (2022).<sup>3</sup>

As previously detailed,<sup>4</sup> Australian Red Cross and the ICRC have observed that sanctions measures have had unintended adverse consequences for humanitarian action.<sup>5</sup> Humanitarian organisations trying to deliver assistance

<sup>1</sup> Under IHL, during armed conflict, impartial humanitarian organisations have the right to offer their services to carry out humanitarian activities, especially when basic needs of the population are not being met (Arts 3 and 9/9/9/10 common to the Geneva Conventions of 1949, establishing the so-called 'right of humanitarian initiative'). While impartial humanitarian activities are generally subject to the consent of the parties to the conflict concerned, such consent cannot be arbitrarily or unlawfully denied (Geneva Conventions, Arts 9/9/9/10; Fourth Geneva Convention, Art. 59; Additional Protocol I, Art. 70 (1); Additional Protocol II, Art. 18). Once impartial humanitarian relief schemes have been agreed, parties to the armed conflict, as well as all States that are not a party, are expected to allow and facilitate the rapid and unimpeded passage of humanitarian relief, subject to a right of control (Fourth Geneva Convention, Art. 23; Additional Protocol I, Art. 70; ICRC Customary International Humanitarian Law Study, rule 55).

<sup>2</sup> Both the Movement and the Australian Government have committed to upholding the key principles of humanity, neutrality, impartiality and independence in humanitarian work. See DFAT, '[Australia's Humanitarian Assistance](#)', accessed 30 August 2024.

<sup>3</sup> [UNSCR 2664 \(2022\)](#) provides a legally binding carve-out for humanitarian organisations, including the ICRC, IFRC and National Societies such as Australian Red Cross, from all UN "asset freeze" sanctions. It makes clear that prohibitions on providing any form of economic benefit, directly or indirectly, to listed individuals and entities (including many non-state armed groups in armed conflicts), do not apply to activities related to "humanitarian assistance and other activities that support basic human needs". It is understood that UNSCR 2664 is given effect in Australia's sanctions regime via s 2B of the *Charter of the United Nations Act 1945 (Cth)*.

<sup>4</sup> See our submissions to: DFAT [Review of Australia's legal framework for autonomous sanctions](#); Senate Standing Committees on Foreign Affairs Defence and Trade [Inquiry into Defence Trade Controls Amendment Bill 2023](#); and Parliamentary Joint Committee on Intelligence and Security [Review of the Defence Amendment \(Safeguarding Australia's Military Secrets\) Bill 2023](#).

<sup>5</sup> For example, difficulties importing or exporting goods, bank transfers being blocked or delayed, suppliers "de-risking", leading to a halt or delay in humanitarian activities, donor agreements no longer being consistent with IHL and humanitarian principles and potential exposure for non-compliance and the ensuing liability. This last issue can give rise to problems in terms of humanitarian organisations' duty of care to staff.

in sanctions-affected areas have had to navigate a patchwork of regimes from different jurisdictions, undertake extensive due diligence processes, comply with donor/funding requirements and navigate a risk-averse private and banking sector. An increasing and dangerous politicisation of neutral and impartial humanitarian action adds to this challenge. Given the proliferation and widening scope of sanctions, their impact on humanitarian action is increasing and threatens the effective continuation of principled humanitarian action. Certain prohibitions established under sanctions regimes targeting non-state armed groups also impact humanitarian actors due to the indirect interaction with such entities. Impartiality is often compromised leaving affected populations with limited, or otherwise without, assistance and placing staff safety at risk. As illustrated by the case study below, the listing of Ministries and Ministers of some States in sanctions regimes directly affects our capacity to deliver our humanitarian activities, notably in the fields of health and water and habitation.

In our view, standing and well-framed humanitarian exemptions are the most appropriate and efficient way to safeguard humanitarian action from the unintended consequences of sanctions. Such exemptions would also help to address over-compliance and de-risking practices while fostering a culture of support for humanitarian action.

Our experiences both before and after the implementation of a humanitarian exemption to Australia's UN-mandated sanctions against the Taliban demonstrate the effectiveness of this approach.

#### **Case study: UN-mandated sanctions in Afghanistan and subsequent humanitarian exemption**

Following the change of authorities in Afghanistan in 2021, the withdrawal of international support and imposition of sanctions against the Taliban decimated the country's aid-dependent economy. By 2022, 55% of the population needed humanitarian assistance.

Initially, Australia's UN-mandated sanctions regime did not include humanitarian exemptions. It placed onerous due diligence obligations on Australian Red Cross that delayed its efforts to set up an Afghanistan funding appeal supporting the impartial humanitarian activities of the ICRC in the region. Australian Red Cross faced further delays transferring appeal funds to the ICRC when payment was automatically blocked by a financial provider due to the word "Afghanistan" appearing in the transaction details. This was followed by requests for additional information on the use of such funds. The additional bank processes took two weeks – delaying the transfer of funds on which the ICRC was relying for its essential health care work in country and demonstrating the unintended direct and "chilling" effects of such sanctions.

Since the adoption in UNSCR 2615 (2021) of a humanitarian exemption to UN-mandated sanctions impacting Afghanistan, the ICRC has been able to implement its Hospital Resilience Program, which may otherwise have been in violation of UN financial sanctions against the indirect provision of economic resources to the Taliban.

In our view, the humanitarian exemptions adopted under UNSCR 2615 and UNSCR 2664, which clarify that activities related to "humanitarian assistance and other activities that support basic human needs" are exempt from the operation of UN-mandated sanctions, serve as an appropriate model for Australia's sanctions regime. As this formulation is already read into Australia's UN-mandated sanctions regime, to use it as the basis for an express exemption would also improve clarity and consistency across Australia's sanctions frameworks.

Further, while outside the scope of this Inquiry, we note that similar issues arise with respect to Australia's counter-terrorism offences and related citizenship loss laws, which could also benefit from consistent humanitarian exceptions.

## **CONCLUSION**

Australian Red Cross and the ICRC respectfully share this submission for the Committee's consideration. We take the opportunity to convey our appreciation for Australia's support and engagement on humanitarian matters and the work of the Movement.

6 September 2024