



Australian
Human Rights
Commission

Inquiry into whether Australia should enact legislation comparable to the United States' *Magnitsky Act 2012*

Australian Human Rights Commission

Submission to the Joint Standing Committee on Foreign Affairs,
Defence and Trade

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1 Introduction

1. The Australian Human Rights Commission welcomes the opportunity to make this submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade—Human Rights Sub-committee, with respect to its inquiry into whether Australia should enact legislation comparable to the United States' Magnitsky Act 2012.
2. The Commission acknowledges the importance of modern sanctions regimes in response to situations of international concern, including the grave repression of human rights or freedoms.
3. Australia's sanctions regime must address situations of international concern, in a way that upholds fundamental human rights and the rule of law. This is critical to ensuring that our laws achieve their primary aim without unintended consequences.
4. The Commission supports the introduction of legislation to enable targeted sanctions against foreign individuals who engage in gross human rights violations or significant corruption.
5. The Commission's submission focuses on the current framework for autonomous sanctions under Australian law, the experience of comparable jurisdictions, and procedural safeguards that should be considered if Australia were to introduce legislation resembling the US Magnitsky Act.

2 Recommendations

6. The Commission makes the following recommendations.

Recommendation 1

That the Australian Government enact legislation comparable to the United States' *Magnitsky Act 2012*, subject to the implementation of procedural safeguards. In addition, the Government introduce measures proposed by the Parliamentary Joint Committee on Human Rights to the current autonomous sanctions regime.

Recommendation 2

Decisions of the executive to impose sanctions under Magnitsky legislation be subject to independent merits review before an independent tribunal.

Recommendation 3

Sanctions under Magnitsky legislation be regularly reviewed by the Independent National Security Legislation Monitor.

Recommendation 4

The Australian Government consider establishing ongoing reporting obligations requiring the Minister to table in Parliament a report setting out the basis on which individual sanctions under Magnitsky legislation are imposed.

Recommendation 5

The Australian Government consider developing public guidelines setting out the factors used when deciding whether to impose a sanction upon an individual, as well as the enforcement, monitoring and administration of sanctions.

3 Autonomous sanctions framework

7. Australia currently implements two types of sanctions:
 - United Nations (UN) Security Council sanctions, which Australia must impose as a member of the United Nations
 - Australian autonomous sanctions, which are imposed as a matter of Australian foreign policy and are supplementary to or independent of any UN or other international law obligations.
8. Sanction measures can include:
 - restrictions on trade in goods and services
 - restrictions on engaging in commercial activities
 - targeted financial sanctions (including asset freezes) on designated persons and entities
 - travel bans on certain persons.
9. The *Autonomous Sanctions Act 2011* (Cth), together with the *Autonomous Sanctions Regulations 2011* (Cth), (collectively, Australia's autonomous sanctions regime) enables the Minister for Foreign Affairs and Trade to impose autonomous sanctions to facilitate the conduct of Australia's external affairs.
10. Autonomous sanctions are 'punitive measures, not involving the use of force, which a government imposes as a matter of foreign policy—as opposed to an international obligation under a UN Security Council decision'.¹
11. The *Autonomous Sanctions Act 2011* (Cth) authorises the Governor-General to make sanctions by regulation for purposes including the proscription of persons or entities and restrictions on the use or availability of assets.²
12. Before the Governor-General makes regulations, the Minister must be satisfied that the proposed regulations will:
 - facilitate the conduct of Australia's relations with other countries or with entities or persons outside Australia, or

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- otherwise deal with matters, things or relationships outside Australia.³
13. The Autonomous Sanctions Regulations 2011 (Cth) set out the countries and activities for which a person or entity can be designated or declared.⁴
 14. The Minister may, by legislative instrument, designate a person or entity for the purpose of imposing financial sanctions or declare a person for the purpose of imposing travel bans. The effect of the designation of a person is that the person is subject to financial sanctions so that it is an offence for another person to make an asset directly or indirectly available to, or for the benefit of, the designated person.⁵ The effect of a declaration is that the declared person is subject to a travel ban to prevent them from travelling to, or entering or remaining in, Australia.⁶
 15. Autonomous sanctions may be supplementary to, or independent of, United Nations Security Council sanctions. The UN Security Council is empowered under article 45 of the *Charter of the United Nations* to impose sanctions against persons or regimes when their actions threaten international peace and security.⁷ Australia is legally bound under international law to apply sanctions in accordance with the UN Security Council decisions. The Government applies UN sanctions by regulations made under the *Charter of the United Nations Act 1945* (Cth).
 16. As at 7 January 2019, 1248 individuals and 559 entities were subject to targeted financial sanctions or travel bans by Australia under both sanction regimes.⁸ The Consolidated List of individuals subject to sanctions currently does not include any Australian citizens.
 17. Under the autonomous sanctions regime, Australia has implemented sanctions against the following regions and countries: the Democratic People's Republic of Korea (North Korea), the former Federal Republic of Yugoslavia, Iran, Libya, Myanmar, Russia/Ukraine, Syria and Zimbabwe.⁹
 18. There are similarities between the Australian autonomous sanctions regime and Magnitsky legislation in the US and other comparable jurisdictions. A key difference is that Magnitsky legislation is specifically targeted at gross violations of human rights and serious corruption. While the *Autonomous Sanctions Act 2011* (Cth) does not explicitly refer to 'human rights', sanctions under this framework were designed to apply to situations of international concern including human rights abuses.¹⁰ It is

less clear whether the current legislation would apply to situations of serious corruption.

3.1 Human rights concerns

19. The Parliamentary Joint Committee on Human Rights (PJCHR) has repeatedly and consistently raised human rights concerns with the autonomous sanctions regime in relation to the way it may affect individuals residing in Australia.¹¹ The PJCHR has noted that the autonomous sanctions regime engages and may limit multiple human rights, including:
 - the right to privacy (article 17, *International Covenant on Civil and Political Rights* (ICCPR))
 - the right to a fair hearing (article 14, ICCPR)
 - the right to protection of the family (articles 17 and 23, ICCPR)
 - the right to an adequate standard of living (article 11, *International Covenant on Economic, Social and Cultural Rights* (ICESCR))
 - the right to freedom of movement (article 12, ICCPR) and
 - the prohibition against non-refoulement (in particular articles 6 and 7, ICCPR).
20. International human rights law requires that any limitation on rights must be reasonable, necessary and proportionate to the achievement of a legitimate objective. In this regard, the PJCHR has noted that the autonomous sanctions regime may not be proportionate to its stated objective:

The Committee has previously accepted that the use of international sanctions regimes to apply pressure to governments and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law. However, it has expressed concerns that the sanctions regimes may not be regarded as proportionate to their stated objective, in particular because of a lack of effective safeguards to ensure that the regimes, given their serious effects on those subject to them, are not applied in error or in a manner which is overly broad in the individual circumstances.¹²

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21. The PJCHR has recommended that the following measures be considered to ensure the autonomous sanctions regime is compatible with human rights:¹³
- the provision of publicly available guidance in legislation setting out in detail the basis on which the Minister decides to designate or declare a person
 - regular reports to Parliament in relation to the regimes, including the basis on which persons have been declared or designated and what assets, or the amount of assets, that have been frozen
 - provision for merits review before a court or tribunal of the Minister's decision to designate or declare a person
 - regular periodic reviews of designations and declarations
 - automatic reconsideration of a designation or declaration if new evidence or information comes to light
 - limits on the power of the Minister to impose conditions on a permit for access to funds to meet basic expenses
 - review of individual designations and declarations by the Independent National Security Legislation Monitor
 - provision that any prohibition on making funds available does not apply to social security payments to family members of a designated person (to protect those family members)
 - consultation with operational partners such as the police regarding other alternatives to the imposition of sanctions.
22. In response to the PJCHR recommendations the Australian Government has said that the autonomous sanctions regime has appropriate safeguards in place to 'ensure that any limitation of human rights engaged by the imposition of sanctions is justified'.¹⁴

4 Magnitsky human rights legislation

4.1 The United States

23. Sergei Magnitsky was a Russian lawyer who exposed a multimillion-dollar tax fraud scheme involving high-level Russian officials in 2008. In 2009, he was arrested by Russian officials, tortured, denied medical attention and found dead in his Moscow jail cell.
24. The United States Congress then passed a law in his name called the *Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012* (Magnitsky Act of 2012). This law imposed sanctions on Russian officials responsible for Magnitsky's detention, abuse and death. It also imposed sanctions on Russian officials who were involved in human rights violations against individuals seeking to promote human rights or expose illegal activity in Russia.
25. The *Global Magnitsky Human Rights Accountability Act 2016* (Global Magnitsky Act) was then introduced to expand the designation of sanctions to any foreign person responsible for gross violations of international human rights and significant acts of corruption.¹⁵
26. President Barack Obama signed the Global Magnitsky Act on 23 December 2016 with widespread bipartisan support.
27. Sanctions that may be imposed under the Global Magnitsky Act include:
 - the ineligibility to receive a visa to enter the United States
 - the revocation of a previously issued visa
 - the blocking of all transactions in property and interests in property.¹⁶
28. Under this legislation, the President may impose sanctions on a foreign person who, based on credible evidence:
 - (1) is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign country who seek—
 - (A) to expose illegal activity carried out by government officials; or

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(B) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections;

(2) acted as an agent of or on behalf of a foreign person in a matter relating to an activity described in paragraph (1);

(3) is a government official, or a senior associate of such an official, that is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions; or

(4) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, an activity described in paragraph (3).¹⁷

29. According to the US Department of the Treasury, 39 individual designations were made under the Magnitsky Act of 2012. After the Global Magnitsky Act was enacted in December 2016, the US executive has made 236 designations. Since 2012, 275 Magnitsky related designations have been listed, made up of 114 entity designations and 161 individual designations.¹⁸

4.2 Canada

30. Canada implements a number of targeted measures and sanctions against foreign nationals who are responsible for certain gross violations of human rights, or acts of significant corruption through the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) 2017* (Sergei Magnitsky Law 2017).
31. The Sergei Magnitsky Law 2017 also amends the *Immigration and Refugee Protection Act 2001* and the *Special Economic Measures Act 1992* to expand their powers to impose sanctions on those who have committed international human rights violations. It uses a two-prong approach where restrictions are imposed on designated foreign nationals, and on persons in Canada or Canadians outside Canada from engaging with designated foreign nationals in financial activities.

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32. Sanctions that may be imposed include:
- travel bans on designated persons¹⁹
 - targeted financial sanctions (including asset freezes) on designated persons and states.²⁰
33. Targeted measures on persons in Canada or Canadians outside Canada prohibit them from engaging with designated persons in the following ways:
- dealing with their property
 - entering into or facilitating financial transactions
 - providing financial services
 - making property available to them
 - providing financial services.²¹
34. Since the enactment of the Sergei Magnitsky Law 2017, the Canadian Governor in Council has listed 70 foreign nationals which the targeted measures apply to.²²

4.3 United Kingdom

35. The United Kingdom implements a number of sanctions under two pieces of legislation known as the 'Magnitsky amendments': the *Proceeds of Crimes Act 2002* (POCA) and the *Sanctions and Anti-Money Laundering Act 2018* (SAMLA).
36. The POCA enables the civil recovery of property obtained through unlawful conduct. This power was broadened by the *Criminal Finances Act 2017* which expanded the definition of 'unlawful conduct' to include gross human rights abuse or violations.²³ Similarly, the SAMLA was amended to include the gross violation of human rights as a reason for the Minister to impose various sanctions. These range from financial sanctions, immigration sanctions, trade sanctions, aircraft sanctions, shipping

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sanctions and sanctions for the purposes of compliance with UN obligations.²⁴

37. The United Kingdom intends to bring into force specific Magnitsky legislation after it leaves the European Union on 31 January 2020.²⁵

4.4 Australia

38. In 2018 a private member's Bill was introduced to implement Magnitsky sanctions following the precedent of similar legislation in the United States and the UK.
39. The purpose of the International Human Rights and Corruption (Magnitsky Sanctions) Bill 2018 (Cth) was to allow sanctions to be imposed, for the purposes of compliance with UN obligations or other international obligations, or for the purposes of preventing or responding to gross human rights abuse or violations, or significant corruption.²⁶
40. The Bill would have extended power to the Minister to impose immigration, financial or trade sanctions on foreign persons or entities who have violated international human rights or engaged in acts of significant corruption.
41. The Bill lapsed when Parliament was dissolved on 11 April 2019.

5 Commission's view

42. The Commission supports the introduction of targeted sanctions against foreign individuals who engage in gross human rights violations or significant corruption. While acknowledging there is ongoing global debate about the role and effectiveness of sanctions, the Commission considers that targeted individual sanctions are an important measure in the pursuit of international justice.
43. The Hon. Irwin Cotler, former Canadian Minister of Justice, considered that the following rationales underpinned Magnitsky legislation:

The first is to combat the persistent and pervasive culture of corruption, criminality, and impunity. The second is to deter thereby other would-be or prospective violators. The third is to make the Parliament of Canada a pursuant of international justice, just as we seek to be the pursuant of domestic justice. The fourth is to uphold the rule of law and justice and

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accountability in our own territory through visa bans and asset seizures and the like. ... Fifth is to protect Canadian businesses operating abroad. ... Sixth, it would operate so as to name and shame the human rights violators. ... Seventh, such legislation would not bind the Canadian government; rather, it would empower the Canadian government. It would allow us to be a protector of human rights, and not an enabler of the violators of human rights. ... Finally, and most importantly, it tells the human rights defenders ... that they are not alone, that we stand in solidarity with them, that we will not relent in our pursuit of justice for them, and that we will undertake our international responsibilities in the pursuit of justice and in the combatting of the culture of impunity and criminality in these respective countries.²⁷

44. The Minister currently has a broad discretion under the autonomous sanctions regime to impose sanctions on individuals in situations of international concern which is intended to cover human rights abuses. However, it is argued that the autonomous sanctions regime is limited in its effectiveness to combat human rights abuses and serious corruption:

So at present the ASA [Autonomous Sanctions Act] cannot be used to target individuals involved in the shooting down of MH17 or in human rights abuses occurring in the Asia-Pacific, such as the extra-judicial killings in the Philippines or the high-level corruption in Malaysia. ... [T]he ASA is only being pointed towards easy targets with no likely connection to Australia. It is not genuinely being used as a tool to combat human rights abuse. The ASA is not fit for purpose, if its purpose is to deter corruption (which it does not expressly tackle) or deter human rights abusers, for which it is rarely used.²⁸

45. The Commission acknowledges there is some ambiguity regarding the breadth of the Minister's current discretion. The Commission considers that having legislation explicitly providing for targeted sanctions against individuals who have engaged in human rights violations or serious corruption would provide clarity and certainty to the law. It may also encourage the Government to apply sanctions in these specific cases.
46. Magnitsky-style sanctions could be achieved through the introduction of legislation comparable to the United States' *Magnitsky Act 2012*, or through a thematic regulation within the existing autonomous sanctions regime.
47. Given the view of the PJCHR that the current autonomous sanctions regime may not be compatible with human rights, a new legislative framework with effective procedural safeguards may be preferable.

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48. Sanctions are punitive in nature and can have a significant impact upon the lives of those subject to such measures. The Commission agrees with the PJCHR that the existence of safeguards in any sanctions regime would be important to prevent arbitrariness and error, and ensure that the powers are exercised only in appropriate circumstances.
49. Furthermore, as noted by the Foreign Affairs, Defence and Trade Legislation Committee, 'the effectiveness of targeted sanctions depends, in a large part, on the perceived credibility of the mechanisms and processes through which they are implemented'.²⁹
50. The Commission considers that any Magnitsky legislation should incorporate safeguards to ensure a fair and transparent process that is compatible with human rights.
51. Relevant safeguards that would assist in ensuring that Magnitsky sanctions would be proportionate include the availability of merits review of determinations to impose a sanction, periodic reviews, ongoing reporting and public guidelines.
52. The Commission also recommends that the Government introduce measures proposed by the PJCHR (at para [21]) to the current autonomous sanctions regime.

Recommendation 1

The Australian Government introduce legislation comparable to the United States' *Magnitsky Act 2012*, subject to the implementation of procedural safeguards. In addition, the Government introduce measures proposed by the Parliamentary Joint Committee on Human Rights to the current autonomous sanctions regime.

5.1 Merits review

53. Article 14(1) of the ICCPR sets out the right to a fair hearing:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

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54. The notion of a fair hearing comprises different elements. At a minimum, it entitles a person to a hearing by a competent, independent and impartial tribunal established by law if they face a criminal charge or rights and obligations determined 'in a suit at law'.³⁰ It can also be said to require procedural fairness and a hearing without undue delay.
55. In its General Comment 32, the United Nations Human Rights Committee has stated that a 'suit at law' can include issues of administrative justice before a 'tribunal', being a body established by law that is independent of the executive and legislative branches of government.³¹
56. The PJCHR has noted that the autonomous sanctions regime limits the right to a fair hearing because it does not provide for merits review.³² The PJCHR has recommended that decisions of the Minister to designate or declare an individual be subject to merits review before a court or tribunal.
57. The Commission considers that any Magnitsky legislation in Australia should incorporate a merits review process. All decisions by the executive to impose sanctions upon individuals should be subject to merits review conducted by an independent tribunal.
58. The following relevant principles have been identified by the Administrative Review Council (ARC), to guide what decisions should be subject to merits review.
 - As a matter of principle an administrative decision that will 'affect the interests of a person' should be subject to merits review.³³
 - The fact that a decision-making power involves matters of national sovereignty, such as the question of who is admitted to enter the country, does not, alone, mean that decisions made under the power should be excluded from review.³⁴
 - A decision is not inappropriate for merits review merely because that decision may also be the subject of judicial review.³⁵
59. The European Court of Human Rights has considered that persons subject to sanctions should

be afforded at least a genuine opportunity to submit appropriate evidence to a court, for examination on the merits, to seek to show their inclusion on the impugned lists had been arbitrary.³⁶

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60. Like Australia's UN Charter sanctions regime, which provides for the asset-freezing of individuals, the UK has similar powers to freeze the assets of designated persons whom they reasonably believe are involved in terrorist activity under the *Terrorist Asset-Freezing Act 2010* (TAFE).³⁷ The TAFE provides for merits and judicial review of a decision to designate a person for the purposes of asset freezing.³⁸
61. The Commission notes that the *Autonomous Sanctions Act 2011* (Cth) provides for judicial review under the *Administrative Decisions Review Act 1997* (Cth) (ADJR Act). The Commission considers that any Australian Magnitsky legislation should also provide for judicial review under the ADJR Act.

Recommendation 2

Decisions of the executive to impose sanctions under Magnitsky legislation be subject to independent merits review before a tribunal.

5.2 Periodic reviews and reporting

62. The Commission considers that sanctions imposed under Magnitsky legislation should be subject to regular independent reviews. In the context of UN sanctions, the UN General Assembly has emphasised the importance of periodic reviews. In 2005 the General Assembly resolved that:

Sanctions should be implemented and monitored effectively with clear benchmarks and should be periodically reviewed, as appropriate, and remain for as limited a period as necessary to achieve their objectives and should be terminated once the objectives have been achieved.³⁹
63. The PJCHR has recommended the review of individual designations and declarations under the autonomous sanctions regime by the Independent National Security Legislation Monitor (INSLM). The Commission agrees and considers the INSLM would be well placed to conduct periodic reviews of sanctions imposed under Magnitsky legislation.
64. The PJCHR has also expressed concern that the executive is not required to report to Parliament. Consequently, the PJCHR recommended regular reports to Parliament in relation to the sanctions regimes, including the basis on which persons have been declared or designated and what assets, or the amount of assets, that have been frozen. The PJCHR stated

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that the absence of such a safeguard impacts upon the proportionality of the sanctions regimes.

65. The Commission considers that ongoing reporting obligations to Parliament would provide a level of transparency and accountability and notes the presence of reporting obligations in comparable jurisdictions.
66. The UK requires a periodic review of certain designations on named persons, or persons of a specified description, every three years.⁴⁰ It also obliges the relevant Minister who makes a regulation, to review on an annual basis whether the regulation is still appropriate for a designated person.⁴¹
67. There are several reporting obligations under the UK SAMLA for both the Secretary of State and the Minister.
68. The Secretary of State must lay before Parliament every 12 months a report which includes the following:
 - regulations made in that period
 - regulations made for a human rights purpose
 - amended or revoked regulations
 - recommendations made by a Parliamentary Committee in connection with a relevant independent review
 - responses by the Government to those recommendations.⁴²
69. The Minister is required to report and explain the reasoning behind new regulations they make which alter an original regulation.⁴³ They are not obliged to include in the report any information which may damage national security or international relations. Where the Minister makes regulations, which create an offence for the enforcement of the regulation, they must lay a report before Parliament specifying:
 - the offences created by the regulations
 - reasons why regulations should be enforced by criminal proceedings
 - the offences which are punishable by imprisonment.⁴⁴

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70. Canada provides that committees established or designated by the Senate and the House of Commons must undertake a comprehensive review of the provisions and operations of the Sergei Magnitsky Law 2017 and the SEMA, five years after it comes into force.⁴⁵ After the review, the relevant committees must submit a report to Parliament including a recommendation for changes to be made.⁴⁶
71. Canada's Sergei Magnitsky Law 2017 also provides that a copy of each order or regulation made must be tabled in each House of Parliament, within 15 days of it being made.
72. In the US, the Global Magnitsky Act requires the President to submit an annual report to appropriate congressional committees providing the following information:
 - a list of designated foreign persons that year
 - the types of sanctions imposed on each person
 - number of sanctions imposed on foreign persons
 - number of sanctions terminated on foreign persons
 - reasons for imposing or terminating sanctions
 - the President's efforts to encourage state governments to impose similar sanctions.⁴⁷
73. This report is available to the public; however, the President is able to include a classified annex in the report.⁴⁸

Recommendation 3

Sanctions under Magnitsky legislation be regularly reviewed by the Independent National Security Legislation Monitor.

Recommendation 4

The Australian Government establish ongoing reporting obligations requiring the Minister to table in Parliament a report setting out the basis on which individual sanctions under Magnitsky legislation are imposed.

5.3 Guidelines

74. One of the criticisms of the existing autonomous sanctions regime is that there is limited guidance available in the legislation, regulations or other public documents setting out the basis on which the Minister decides to designate or declare a person.⁴⁹ This is particularly problematic when the scope of the power to impose sanctions is based on the Minister's satisfaction in relation to certain matters which are stated in broad terms.
75. In 2011 the Foreign Affairs, Defence and Trade Legislation Committee reviewed the Autonomous Sanction Bill 2010 (Cth). The Committee recommended that the Government consider developing best practice guidelines for the policy formulation, drafting, implementation, enforcement, monitoring and administration of autonomous sanctions.⁵⁰
76. The PJCHR has recommended the provision of publicly available guidance in legislation setting out in detail the basis on which the Minister decides to designate or declare a person.
77. The Commission agrees with the recommendations of the Foreign Affairs, Defence and Trade Legislation Committee and the PJCHR. The Commission considers that public guidelines setting out the factors used when deciding whether to designate a person, as well as, the enforcement, monitoring and administration of sanctions would facilitate transparent and consistent decision making.

Recommendation 5

The Australian Government develop public guidelines setting out the factors used when deciding whether to impose a sanction upon an individual, as well as, the enforcement, monitoring and administration of sanctions.

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- ¹ Explanatory Memorandum, Autonomous Sanctions Bill 2010, p 1.
- ² *Autonomous Sanctions Act 2011* (Cth) s 10(1).
- ³ *Autonomous Sanctions Act 2011* (Cth) s 10(2).
- ⁴ *Autonomous Sanctions Regulations 2011* (Cth) reg 6.
- ⁵ *Autonomous Sanctions Regulations 2011* (Cth) reg 14.
- ⁶ *Autonomous Sanctions Regulations 2011* (Cth) reg 6(1)(b).
- ⁷ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI
- ⁸ Department of Foreign Affairs and Trade, *Australia and Sanctions Consolidated List*, (7 January 2020) Australian Government <<https://dfat.gov.au/international-relations/security/sanctions/pages/consolidated-list.aspx>>.
- ⁹ Department of Foreign Affairs and Trade, *Sanctions Regimes*, Australian Government <<https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/sanctions-regimes.aspx>>.
- ¹⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 2010, 4112 (Stephen Smith, Minister for Foreign Affairs).
- ¹¹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: 28th Report of the 44th Parliament* (2015); Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 6* (2018)
- ¹² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 6* (2018) 110 [2.239].
- ¹³ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 6* (2018) 128 [2.300].
- ¹⁴ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 6* (2018) Attachment A, 2.
- ¹⁵ *Global Magnitsky Human Rights Accountability Act*, 22 USC 2656 § 1261-1265 (2016).
- ¹⁶ *Global Magnitsky Human Rights Accountability Act*, 22 USC 2656 § 1263b (2016).
- ¹⁷ *Global Magnitsky Human Rights Accountability Act*, 22 USC 2656 § 1263a (2016).
- ¹⁸ U.S. Department of the Treasury, *Resource Centre: 2020 OFAC Recent Actions*, (27 January 2020) U.S. Department of the Treasury <<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/OFAC-Recent-Actions.aspx>>.
- ¹⁹ *Immigration and Refugee Protection Act*, S.C. 2001, c 27, s 35.
- ²⁰ *Special Economic Measures Act*, S.C. 1992, c 17, s 4.
- ²¹ *Justice for Victims of Corrupt Foreign Officials Act*, S.C. 2017, c 21, s 4(3).
- ²² *Justice for Victims of Corrupt Foreign Officials Regulations*, SOR 2017-233, Schedule – Foreign Nationals.
- ²³ *Criminal Finances Act 2017* (UK), c 22, s 13.
- ²⁴ *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 3-8.
- ²⁵ George Parker, *UK to begin crackdown on human rights abusers* (10 January 2020) Financial Times <<https://www.ft.com/content/38cd4b7e-32fd-11ea-a329-0bcf87a328f2>>.
- ²⁶ Explanatory Memorandum, *International Human Rights and Corruption (Magnitsky Sanctions) Bill 2018*, 1.
- ²⁷ Standing Committee on Foreign Affairs and International Development, Canada 42nd Parliament First Session, *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond* (2017) 37.

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- ²⁸ Geoffrey Robertson QC and Chris Rummery, 'Why Australia needs a Magnitsky Law' (2018) *Australian Quarterly*, 24.
- ²⁹ Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, *Autonomous Sanctions Bill 2010 [Provisions]* (2011) 39 [3.145].
- ³⁰ UN Human Rights Committee, *General Comment No 32 Article 14: Right to equality before courts and tribunals and to a fair trial*, 19th sess, UN Doc CCPR/C/GC/32 (23 August 2007) para 15. At <http://www.refworld.org/docid/478b2b2f2.html> (viewed 14 January 2020).
- ³¹ UN Human Rights Committee, *General Comment No 32 Article 14: Right to equality before courts and tribunals and to a fair trial*, 19th sess, UN Doc CCPR/C/GC/32 (23 August 2007) para 16. At <http://www.refworld.org/docid/478b2b2f2.html> (viewed 14 January 2020).
- ³² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 9* (2016) 45 [2.15].
- ³³ Administrative Review Council, Australian Government, *What decisions should be subject to merit review?* (Report, 1999) [2.1].
- ³⁴ Administrative Review Council, Australian Government, *What decisions should be subject to merit review?* (Report, 1999) [5.3].
- ³⁵ Administrative Review Council, Australian Government, *What decisions should be subject to merit review?* (Report, 1999) [5.30].
- ³⁶ *Al-Dulimi and Montana Management Inc v Switzerland*, (ECHR Grand Chamber, Application no 5809/09, 21 June 2016) [151].
- ³⁷ *Terrorist Asset-Freezing Act 2010* (UK) c 38, s 2.
- ³⁸ *A & Ors v HM Treasury* [2008] EWCA Civ 1187 [157].
- ³⁹ Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, *Autonomous Sanctions Bill 2010 [Provisions]* (2011) 10 [3.13].
- ⁴⁰ *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 24.
- ⁴¹ *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 30.
- ⁴² *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 32.
- ⁴³ *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 46.
- ⁴⁴ *Sanctions and Anti-Money Laundering Act 2018* (UK), c 13, s 18.
- ⁴⁵ *Justice for Victims of Corrupt Foreign Officials Act*, S.C. 2017, c 21, s 16(1).
- ⁴⁶ *Justice for Victims of Corrupt Foreign Officials Act*, S.C. 2017, c 21, s 16(2).
- ⁴⁷ *Global Magnitsky Human Rights Accountability Act*, 22 USC 2656 § 1264a (2016).
- ⁴⁸ *Global Magnitsky Human Rights Accountability Act*, 22 USC 2656 § 1264c (2016).
- ⁴⁹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Human Rights Scrutiny Report: Report 6* (2018) 113 [2.249].
- ⁵⁰ Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, *Autonomous Sanctions Bill 2010 [Provisions]* (2011) 15 [3.33].