Magnitsky Act Submission: Geoffrey Robertson AO QC

Human Rights Subcommittee, Joint Standing Committee on Foreign Affairs, Defence and Trade

1. I am an Australian barrister and former United Nations Appeal Judge, now based in London where I am founder and head of Doughty Street Chambers, a large human rights practice. I served as the first President of the UN war crimes court in Sierra Leone and was a "distinguished jurist" member of the UN's Internal Justice Council. I am a Master of the Middle Temple, a visiting professor at the New College of Humanities, and author of "Crimes Against Humanity: the Struggle for Global Justice" (Penguin/Random House, now in its 4th edition). In 2011 I received the New York Bar Association award for distinction in international law and affairs, and in 2018 was made a member of the Order of Australia for my work in international human rights.

2. My interest in Magnitsky laws began in 2011/12 when I represented Bill Browder in a defamation action brought in respect of his efforts to publicise the crimes which led to the death of Sergei Magnitsky. Since then I have collaborated with Bill in successful efforts to have Magnitsky laws passed in other jurisdictions and by the European Union and wrote a chapter in the book *"Why Europe needs a Magnitsky Law: Should the EU follow the US?"* (2013). I set out my argument for Australia adopting a Magnitsky law in my autobiography *"Rather His Own Man – In Court with Tyrants, Tarts and Troublemakers"* (Vintage, 2018, p423-5) and in greater detail in an article written with Chris Rummery, *"Why Australia needs a Magnitsky law"* in the *Australian Quarterly* (Vol 89 issue 4, Oct-Dec 2018). Both are annexed, and I would be happy to expand upon them in oral submissions.

3. May I first respectfully note that this inquiry, into "Whether Australia should enact legislation comparable to the United States Magnitsky Act 2012" has an inappropriate, or at least outdated, term of reference. The 2012 act was embryonic and unnecessarily limited (to Russia only, for example) and was supplemented by the 2016 Global Human Rights Accountability Act, which applied world-wide and included perpetrators of large-scale corruption. Moreover, improved versions have since been passed, for example in Canada in 2017, several European countries and in the Sanctions Act (UK, 2019). I would submit that the Committee is entitled – indeed logically bound – to examine these non-US and post 2012 initiatives rather than confine itself to consideration of the 2012 legislation. The language of the reference, ie "comparable to", permits it to make comparisons with later and better Magnitsky laws in deciding which legislative regime would be appropriate for Australia.

4. It will be apparent from my writing on this subject that I envision Magnitsky laws in some ways as more extensive than those which have been presently enacted, and in certain procedural questions as more limited. There has as yet been little communication between those responsible for listing and enforcement, and the design of these laws has not required those who administer them to be independent of the executive. They are at an early stage, and in my view Australia should not only have a Magnitsky law, but take this opportunity to have the best Magnitsky law.

5. For reasons given in my writing, I believe an effective Magnitsky law should apply to families of human rights violators – parents they pay to send abroad for hospital treatment and children they wish to send to expensive private schools and universities. If Australia's law were to encompass grand-scale corruption, then it ought to apply to corporations as well as to individuals, not only by permitting listing of directors and major shareholders, but enabling companies themselves to be removed from registers and prohibited from trading.

6. Existing laws generally pivot on decisions made by executive government rather than by independent tribunals, and lack elements of procedural fairness (such as availing listed individuals with an adequate opportunity to have their name removed from the list). This injustice must be addressed – and redressed – in any Australian law. This criticism applies to the *Autonomous Sanctions Act* of 2011, as the Joint Committee has pointed out in the past (see A.Q article, p23-6).

7. I welcome the decision of Parliament to consider the appropriateness Magnitsky laws for Australia. Deterrence of human rights abusers by prosecution and prison is faltering and the International Criminal Court has been undermined by the hostility of current US policy, and the antipathy of Russia and China, as indeed has the work of the Human Rights Committee of the UN. The emergence of Magnitsky laws does offer some hope of deterrence through sanctions rather than gaol sentences. I recommend that the Subcommittee read an article *"Sanctions – Financial Carpet-Bombing"* in *The Economist* of 30 November (p41-2) which assesses positively the recent extensive US use of the Global Magnitsky Act (it might consider calling Steve Mnuchin and others mentioned as witnesses).

8. There may be a question about whether the name "Magnitsky" should appear in the title of any law adopted by Australia. It does in the US and appears in brackets in Canada: *The Justice for Victims of Corrupt Foreign Officials (Sergei Magnitsky law)*. In the UK we have a *"Magnitsky Amendment"* to existing legislation but other countries have not mentioned the name. On one hand it is doubtful the word has meaning to most Australians or is relevant to a law which does not specifically target Russia, but on the other hand it is a reference to a particular case which provides an example for its use and connects it as a 'brand' with an international movement against human rights violations. Of course it would honour the sacrifice of the original victim but also reference Magnitsky acts in other democracies and the name is gaining recognition, at least among journalists, politicians, and diplomats. Merely to have a 'Sanctions Act' would not distinguish Magnitsky measures, which are targeted sanctions, with those imposed on foreign governments in respect of trade, or by the UN. Of course it is my hope that this measure will come to have a special characteristic, namely a finding by a quasi-judicial body that a particular individual or company is, on the balance of probabilities, guilty of unconscionable human rights abuse or egregious corruption. It is designed to name, blame and shame those who cannot otherwise be punished for serious crime, and to keep them, their beneficiaries and their money out of Australia.

9. I would be happy to expand on this evidence in writing or at an oral hearing. I have lived, for the purposes of my work, mainly abroad for the last half-century: never has Australia had so much sympathetic and appreciative international attention as in the past two months as the world has watched the fight against bushfires. It strikes me that this would be a good time to take a lead and show the world that Australians are concerned about other people facing danger and want to do their best to deter other kinds threats. We should not merely adopt an old Magnitsky law but should enact the most advanced of all Magnitsky laws.

Geoffrey Robertson AO QC

26th January 2020