

Dear Committee,

The Australian National University Law Reform and Social Justice Research Hub (**Research Hub**) offers its gratitude for the opportunity to provide a submission to, and subsequently appear before, the Foreign Affairs, Defence and Trade References Committee on the inquiry into the effectiveness of sanctions against the Russian Federation.

The Research Hub would first like to clarify that our submissions on the topic of asset forfeitures during the public hearing held on 18 February 2026 relate to **criminal** asset forfeiture only.

During the public hearing, Mr Baran Morkoc and Mr Benjamin Main, two student researchers at the Research Hub, took three questions on notice. They provide their responses below.

(1) 'Is there precedence for ... a country that is engaged in an illegal war to ... end up turning around and making reparations in the end'?

Proceeding as the question is phrased, yes, states have made reparations in the end of armed conflict. Below is a non-exhaustive list of modern conflicts which demonstrate states paying reparations:

- I. 1918: World War I
 - a. Germany, Treaty of Versailles (1919)
 - b. Russia, Treaty of Brest-Litovsk (1918)
- II. 1945: World War II
 - a. Germany, Potsdam Agreement (1945)
 - b. Italy, Treaty of Peace with Italy (1947)
 - c. Japan, San Francisco Peace Treaty (1951)
 - d. Hungary, Treaty of Peace with Hungary (1947)
 - e. Romania, Treaty of Peace with Romania (1947)
 - f. Bulgaria, Treaty of Peace with Bulgaria (1947)
- III. 1991: Gulf War (1991)
 - a. Iraq, United Nations Security Council Resolution 687 (1991)
- IV. 2000: Eritrean Ethiopian War
 - a. Both states paid under Algiers Agreement (2009)
- V. 2003: Second Congo War
 - a. In 2022, the International Court of Justice held that Uganda had to repay the Democratic Republic of the Congo for military occupation and damage. September 1st, 2022, Uganda paid the first instalment of reparations.

Indeed, states pay reparations. However, the examples above do not frame the multidimensional nature of wealth transfer. Without acknowledging this, these examples provide an incomplete perspective on reparations. For instance, after the Second Chechen War, the Russian Federation fully annexed the territory. They funded

its wholesale reconstruction. Following US victory in Iraq, they expended significant resources in reconstituting Iraqi military and civil infrastructure. While both examples are not reparations in the classic sense, they are clear examples of wealth transfers from a winning state, of their own volition. While these transfers occurred to seek beneficial reasons to these states, the function of recovery from war was, to an extent, achieved. Hypothetically, in a worst possible scenario, with significant chunks of Ukraine annexed, and Russian-friendly government installed, Russia, out of expediency, would desire to reconstruct Ukraine within its own sphere of influence. Noting that, historically, their economies were closely integrated, this is not necessarily conjecture. It illuminates a broader point: post-conflict, some broad form of wealth transfer (which could loosely be called 'reparations') will occur. Thus, the terms of reparations depend on international leverage.

For instance, the early examples of reparations were on the victors' terms. However, the most recent examples highlight aggressor states paying reparations despite not losing the conflict. Russia's conduct in Georgia (2008) and Ukraine (2014) highlights, in the absence of significant international pressure, wealth transfer occurred within the seized territories; however, no reparations were paid to states proper. However, there was no significant international pressure against Russia, as there is now. Ultimately, the terms of reconstruction come down to international leverage. In the abstract, the asset freezing regime and Russia's isolation from Western economies can be leveraged because they are easily *reversible*. If Russia will not concede reparations, bar the wholesale collapse of Ukraine, there is nothing preventing the liquidation of those assets by European Union. These assets are being mooted as loans to finance Ukraine's reconstruction – that is, the European Union is functionally forcing Russia, regardless of its willingness, to finance reparations.

(2) The difference in Australia of the proportion of sovereign assets versus private assets

The total number of Russian assets frozen in Australia is ~AU\$100 million.¹ This sum includes sovereign and private assets; however, the total breakdown remains unspecified.² Additionally, Euroclear reports that 2% of its cash balances relating to Russian sanctions are AUD-denominated; meaning of the €200 billion held there, ~€4 billion is AUD-denominated (~AUD \$7 billion).³ To date, what these AUD-denominated holdings *are* is unclear – it *could* mean the total sum of Russian assets is larger than previously reported.

(3) Can Australia follow the EU's example regarding sovereign asset forfeiture?

¹ Anton Moiseienko, No 1 to Foreign Affairs, Defence and Trade References Committee, *Effectiveness of Sanctions Against Russian Federation* (13/11/2025) 4.

² Ibid.

³ Ibid 4-5.

To date, the European Union's sovereign asset seizure proposals have not been exercised. It should be noted that the European Union has implemented a partial measure in this space: since 2024, windfall profits generated by frozen Russian sovereign assets — principally interest accruing on the ~€210 billion held at Euroclear — have been directed toward Ukraine's reconstruction, even if confiscation of the principal itself has not occurred.⁴ If Australia to follow them, it would require analysing its *implementation* to gauge its efficiency and learn from any exigencies arising around it. Regardless, section 51(xxxi) of the Australian Constitution poses a unique challenge to domestic forfeiture attempts: the Commonwealth would have to compensate the Russian Federation for the sum of the assets. Navigating around this, through courts, would be constrained by the doctrine of sovereign immunity at international law: organs of a state (here, the Russian Central Bank) are immune from criminal suit in foreign courts. Circumventing this, either by unilaterally seizing Russia's assets, or attempting to displace sovereign immunity, would invite lawfare domestically.

Nevertheless, the practicality of Australia confiscating Russian sovereign assets should be considered. The government reports it has frozen ~AUD\$100 million in Russian assets – public and private. Comparatively, this is negligible to the European Union's ~€210 billion (USD\$248 billion) in frozen assets. To put that sum into perspective, Western aid to Ukraine over the last four years totals ~USD\$380 billion.⁵ Instead of pursuing confiscation domestically, which could invite lawfare surrounding its legality, Australia should support confiscation measures abroad, while maintaining its freezing regime to preserve international pressure against the Russian Federation.

The Research Hub thanks the Committee for its consideration of our responses.

On behalf of Mr Morkoc and Mr Main,
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Co-lead, ANU Law Reform and Social Justice Research Hub.

⁴ Council Regulation (EU) 2024/1469 of 21 May 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2024] OJ L 2024/1469 (European Union).

⁵ See generally Lou Robins, Rachel Wilson, Henrick Pettersson, Gillian Roberts, 'Ukraine aid: Where the money is coming from, in 4 charts', *Cable News Network* (Online, 20 March 2024) <<https://edition.cnn.com/2023/10/05/world/ukraine-money-military-aid-intl-dg/index.html>>.