



SUBMISSION TO THE SENATE STANDING COMMITTEES ON FOREIGN AFFAIRS, DEFENCE, AND TRADE: 'OPPORTUNITIES FOR ADVANCING AUSTRALIA'S STRATEGIC INTERESTS THROUGH EXISTING REGIONAL ARCHITECTURE.'

Summary

- Beijing continues to dismantle Hong Kong's autonomy at a worrying pace, with the National Security Law being used to silence dissent and crackdown on the pro-democracy movement in the city.
- In the last few months, the Chinese Government has fired civil servants, arrested the leaders of Hong Kong's pro-democracy movement, introduced national security education for kids as young as six, amended Hong Kong's electoral system to bar pro-democracy parties from running, and passed an immigration law that would allow officials to restrict freedom of movement in and out of the city.
- The Australian Government has responded to the human rights crisis in Hong Kong by suspending its extradition treaty with Hong Kong, allowing Hong Kong graduates from Australian universities a pathway to citizenship, and issuing a number of joint-statements with members of the Five Eyes.
- Hong Kong Watch believes that the Quadrilateral Security Dialogue (QUAD) between Australia, USA, Japan, and India could form an important bulwark against Beijing's encroachment in the region, including in Hong Kong.
- Through Australia's membership of the QUAD and the Five Eyes, Hong Kong Watch believes the Australian Government could do more to respond to the crisis in Hong Kong, including:
 1. Working with likeminded partners in the region to coordinate targeted sanctions on Chinese and Hong Kong officials guilty of human rights abuses.
 2. Working with likeminded partners, particularly those in the QUAD and Five Eyes, to ensure Hong Kongers have a lifeline out of the city.
 3. Given Australia's attendance at the G7 meeting taking place in the UK next month, Ministers should ensure that Hong Kong is on the G7 agenda and use the expanded format as an opportunity to agree coordinated action including pushing for the creation of a UN Special Rapporteur/Envoy for Hong Kong.
 4. The Australian Government should consider an entities list for companies complicit in human rights violations.

Human rights situation in Hong Kong

Arrests, prosecutions, and jail sentences

- Since the anti-Extradition protest movement started in 2019, more than 10,000 people have been arrested in protest-related cases, and over 2,300 charged.¹
- Over 100 pro-democracy activists have been arrested under the National Security Law and are awaiting trial since July 2020. Under the draconian law they face 10 years to life in prison for a range of vague and draconian charges including 'subversion', 'succession', 'collusion with foreign political forces', and 'terrorism'.
- 47 pro-democracy leaders were arrested in February on suspicion of "subversion of state" under the sweeping legislation, simply for participating in the last year's democratic primaries organized by various civil groups. Among the 47, 36 were denied bail and have been in custody for more than 2 months.
- On 13 March 2021, the Foreign Secretary Dominic Raab MP reported that China is now in "on-going" breach of its international obligations under the Sino-British Joint Declaration through its continued dismantling of Hong Kong's autonomy.²
- More protestors are being charged with protest-related offences under the heavily criticised Public Order Ordinance. This includes the pro-democracy activist Joshua Wong who was recently given 10 months in prison for attending a peaceful vigil to mark the Tiananmen Square Massacre and 9 prominent veteran leaders including Martin Lee and Margaret Ng who were sentenced for participating in a peaceful assembly back in 2019.
- The Hong Kong Court of Appeal recently upheld the Justice Department's power to indict suspects who were not physically at protests under the legal principle of 'joint-enterprise', giving three protestors four years in jail for rioting despite neither of them being physically present.
- Hong Kong's Correctional Services Department has also complained of overcrowding at two of its detention centres. The number of people remanded in custody has hit a decade high, due to the spike in arrests as part of Beijing's crackdown on the pro-democracy movement.³
- On 14th May, the Hong Kong Government the Hong Kong Government used the National Security Law to freeze the financial assets of Jimmy Lai, the pro-democracy activist and owner of Apple Daily. This is the first time they have used the law to freeze the assets of an individual.⁴

¹ <https://www.hongkongwatch.org/political-prisoners>

² <https://www.theguardian.com/politics/2021/mar/13/hong-kong-uk-accuses-china-of-breaching-joint-declaration>

³ <https://www.hongkongwatch.org/all-posts/2021/5/6/briefing-human-rights-developments-in-hong-kong-in-april-2021>

⁴ <https://www.hongkongwatch.org/all-posts/2021/5/14/freezing-jimmy-lais-assets-undermines-the-rule-of-law-and-vandalises-hong-kongs-status-as-an-international-finance-centre>

National Security Education & Academic Freedom

- The Chinese Government has introduced national security education in Hong Kong schools. The topic will be covered across the curriculum from subjects ranging from biology to geography. Children as young as six will be taught to memorise the four 'crimes' under the National Security Law: secession, subversion, collusion with foreign forces, and terrorist acts. International schools will be expected to teach the new national security curriculum as well.⁵
- Under the new rules schools are also instructed to inform police and parents about incidents involving "political propaganda" – including students chanting slogans, posting material with political messages and asking or coercing other children to follow their political stance.
- Following the direction of Beijing, Hong Kong universities have fired pro-democracy academics and cut ties with their student unions.

A free press under attack

- The Hong Kong Government and Beijing have moved to censor the free press in Hong Kong. For the foreign press, this has come in the form of visa denials and in the BBC's case an outright ban.
- Local journalists fair far worse. Risking fines or imprisonment for reporting, this was the case for the investigative reporter Bao Choy who was recently fined \$HK6,000 for exposing police corruption.
- Hong Kong's Foreign Correspondents Club has warned that the prosecution of Bao Choy creates 'a dangerous precedent' and could 'open the door to further legal action against journalists for engaging in routine reporting'.⁶
- The Hong Kong Government has taken over the public broadcaster RTHK through the appointment of the former Deputy Secretary of Home Affairs, Patrick Li, as head of broadcasting.
- Two months in post, and Mr Li has already begun purging RTHK's online platforms of content a year old, removed current affairs shows and cancelled the contract of an investigative reporter known for grilling government officials.
- Hong Kong authorities have also called for the closing of Apple Daily, the last pro-democracy publication in Hong Kong and the Hong Kong Police Commissioner has warned that the National Security Law could be used in the future to target the spreading of so called "fake news".⁷

⁵ <https://www.theguardian.com/world/2021/apr/15/hong-kong-national-security-children-new-laws>

⁶ <https://www.fcchk.org/the-fcc-condemns-the-prosecution-of-journalist-bao-choy/>

⁷ <https://www.reuters.com/world/china/hong-kong-leader-flags-fake-news-laws-worries-over-media-freedom-grow-2021-05-04/>

The state of the rule of law

Judges

- The city has a long history of an independent judiciary and the rule of law is the cornerstone of its success as a global financial centre. The National Security Law has changed this, as all national security cases are now mandated to be heard by judges selected by the National Security Commission which the Chief Executive chairs.
- Currently little detail is given by the Chief Executive on the criteria she uses to select judges or which judges are part of the pool who will hear national security cases, with the process shrouded in secrecy.
- The role of foreign non-permanent judges also remains unclear. The Chief Justice has previously stated that foreign judges would not be barred from hearing national security cases, yet none have so far been selected to hear any of the current cases.
- Chinese officials in the National People's Congress have also called for any judge that holds a foreign passport to be banned from overseeing national security cases for fear of "dual allegiance".⁸

Jury

- The Justice Secretary, Teresa Cheng, has also confirmed that the first National Security case to be heard in Hong Kong will not have a jury.
- The Justice Secretary has invoked Article 46 of the National Security Law, which states that national security cases will not have to be heard in the open or with a jury, if the Justice Secretary deems that 'based on the protection of state secrets, the case has foreign-related factors, or the personal safety of the jurors and their families'.⁹

Bail

- Judges have stated that the arduous bail proceedings under the National Security Law, which in some instances have gone on so long that defendants have collapsed from exhaustion and needed medical treatment, are "highly unusual" and "appalling".¹⁰

Judicial reform

- Pro-Beijing outlets continue to call for judicial reform on an almost daily basis.
- On 27 April 2021, Hong Kong's Chief Executive, Carrie Lam, warned of 'government intervention' against the Hong Kong Bar Association for its criticism of the recent prosecution of pro-democracy activists.¹¹

⁸ <https://www.scmp.com/news/hong-kong/politics/article/3090400/hong-kong-national-security-law-citys-leader-must-have>

⁹ <https://www.hongkongwatch.org/all-posts/2021/2/8/theresa-chengs-decision-reinforces-our-worst-fears-that-pro-democracy-activists-arrested-under-the-ns-l-face-politically-charged-trials-held-in-secret-and-overseen-by-judges-handpicked>

¹⁰ <https://www.reuters.com/world/asia-pacific/special-report-hong-kong-activists-retreat-china-style-justice-comes-their-city-2021-04-21/>

¹¹ <https://www.theguardian.com/world/2021/apr/27/beijing-calls-hong-kong-bar-association-chief-an-anti-china-politician>

Electoral reform

- On 30 March 2021, the National Standing Committee of China's National People's Congress formally adopted changes to Hong Kong's electoral system.¹²
- Amendments to Hong Kong's elections include the reduction of directly elected members of Hong Kong's Legislative Council from 35 to 20 and the increase of the Legislative Council's size from 70 to 90, to ensure the dilution of the influence of directly elected members.
- This will mean that less than a quarter of Legislative Council seats will be democratically elected and nearly half the legislators will be hand-picked by Beijing.
- Under Beijing's changes anyone wishing to stand for election will need to be vetted by a newly established committee to ensure the city is "governed by patriots". The National Security Committee and the national security police will provide reports on each candidate to assist the vetting committee.
- China's National People's Congress also passed reforms of the role of the Chief Executive Election Committee, which will now be required to nominate Legislative Council members as well as the candidates for Chief Executive.

A new Immigration Law

- On 28 April 2021, the Hong Kong Legislature passed an immigration bill which could restrict freedom of movement in and out of Hong Kong in direct violation of Hong Kong's Basic Law.¹³
- Under the new immigration bill which is set to come into force in August 2021, Hong Kong authorities will have the ability to bar anyone from entering or leaving the city without a court order.
- The Hong Kong Bar Association has argued that this would give officials unbridled power to impose "exit bans" similar to the ones that currently exist on the mainland.

Hong Kong Watch's response

Since Beijing's imposition of the National Security Law, Hong Kong Watch has advocated that likeminded countries pursue a three-pronged approach:

Diplomacy:

Pushing for likeminded governments and parliamentarians to issue statements of concern and condemnation.

Encouraging governments to push for the creation of a UN Special Rapporteur/Envoy for Hong Kong, to monitor and report on the human rights situation on the ground.¹⁴

¹² <https://www.hongkongwatch.org/all-posts/2021/4/9/briefing-human-rights-developments-in-hong-kong-in-march-2021>

¹³ <https://www.hongkongwatch.org/all-posts/2021/4/28/the-passing-of-new-immigration-legislation-could-have-a-profound-impact-on-freedom-of-movement-in-hong-kong>

¹⁴ <https://www.hongkongwatch.org/united-nations>

Lifeboat & Extradition:

Advocating for the suspension of extradition treaties with Hong Kong and the People's Republic of China.¹⁵

Encouraging governments to create bespoke "lifeboat" schemes to allow Hong Kongers to work and study as a pathway to citizenship and a lifeline out of the city.¹⁶

Sanctions:

Calling for likeminded partners to coordinate targeted Magnitsky sanctions against Hong Kong and Chinese officials guilty of human rights abuses and the dismantling of Hong Kong's autonomy.¹⁷

The Australian Government's response

On 9 July 2020, the Australian Government announced the suspension of Australia's extradition treaty with Hong Kong.¹⁸

The Prime Minister, Scott Morrison MP, also announced the creation of a five-year graduate work visa for Hong Kongers studying at Australian universities. The Government estimates that up to 10,000 Hong Kongers are eligible for this new visa.¹⁹

Commenting on the developing human rights crisis in Hong Kong, the Australian Government has chosen to issue a number of joint statements with key partners. This has come commonly in the form of coordinated statements with Five Eyes partners: UK, USA, and Canada.²⁰

Regional actors and regional cooperation mechanisms

Aside from Australia, the most vocal regional actors on the human rights crisis in Hong Kong have been Taiwan, Japan and India. All of which have ongoing territorial disputes with China.

Taiwan

¹⁵ <https://www.hongkongwatch.org/extradition>

¹⁶ <https://www.hongkongwatch.org/international-lifeboat-campaign>

¹⁷ <https://www.hongkongwatch.org/magnitsky-sanctions>

¹⁸ <https://www.bbc.com/news/world-australia-53344013>

¹⁹ <https://www.pm.gov.au/media/hong-kong>

²⁰ <https://www.gov.uk/government/news/joint-statement-from-the-uk-australia-and-canada-on-hong-kong> & <https://www.state.gov/joint-statement-on-hong-kong/>

Taiwan has become the home for many pro-democracy activists fleeing Hong Kong, opening an office to help those fleeing the National Security Law.²¹

Japan

The Japanese Government has publicly condemned the National Security Law and warned that it will not tolerate the mass arrest of pro-democracy activists in Hong Kong.²²

Japanese parliamentarians have called for the creation of a lifeboat scheme for Hong Kongers that might attract high-skilled workers, particularly those in the financial services industry.²³ They are also considering the creation of their own Magnitsky sanctions regime.²⁴

India

The Indian Government has expressed concern about the National Security Law and its impact on the large number of Indians living in Hong Kong. Following clashes on India's border with China, the Indian Government announced plans to ban 59 Chinese apps from operating in India.²⁵

ASEAN

The Association of South East Nations (ASEAN) has failed to muster any criticism of the National Security Law in Hong Kong or to muster any concern over the human rights crisis in Hong Kong.

Despite the Australian Foreign Minister attending a meeting of ASEAN foreign ministers on 30 June 2020 (less than 24 hours before the National Security Law came into force) the situation in Hong Kong was not discussed.²⁶

Nor does it appear that the situation in Hong Kong was discussed at later meetings in which the Australian Foreign Minister and the Prime Minister attended with ASEAN officials and ministers present.²⁷

²¹ <https://thediplomat.com/2020/07/taiwan-opens-office-to-help-people-fleeing-hong-kong-in-wake-of-national-security-law/>

²² <https://www.scmp.com/week-asia/politics/article/3123140/japan-tells-china-it-cant-tolerate-mass-arrests-under-hong-kongs>

²³ <https://asia.nikkei.com/Spotlight/Japan-immigration/Japan-weighs-shortcut-to-green-cards-for-Hong-Kong-financial-talent>

²⁴ <https://asia.nikkei.com/Politics/China-sanctions-inspire-push-for-Japan-s-own-Magnitsky-Act>

²⁵ <https://timesofindia.indiatimes.com/india/in-a-first-india-speaks-up-on-hong-kong/articleshow/76737816.cms>

²⁶ <https://asean.org/co-chairs-statement-special-asean-australia-foreign-ministers-meeting-covid-19/>

²⁷ <https://asean.org/chairmans-statement-second-asean-australia-biennial-summit/> &

<https://asean.org/chairmans-statement-asean-post-ministerial-conference-pmc-101-session-australia/>

On 28 August 2020, ASEAN ministers and officials met with representatives from the Chinese and Hong Kong Government to discuss trade and investment. There was no mention of the National Security Law in the joint statement released after the meeting.²⁸

QUAD

The Quadrilateral Security Dialogue (QUAD) between Australia, USA, Japan, and India could form an important bulwark against Beijing's encroachment in the region, including in Hong Kong.

A recent virtual QUAD summit for the leaders of Australia, USA, Japan, and India saw the publication of a joint-statement in support of democratic partners in the Indo-Pacific region²⁹. Given the membership's mutual concern regarding the National Security Law and the human rights situation in Hong Kong, the QUAD could be a useful vehicle to coordinate action.

What more can the Australian Government do to respond to the crisis in Hong Kong with likeminded partners?

1. Magnitsky sanctions on Hong Kong and Chinese officials

The Government has promised to introduce legislation which will see Australia adopt a Global Magnitsky Sanctions regime, similar to the ones currently in operation in the USA, Canada, UK, and EU.

Japanese parliamentarians have also signalled an eagerness to adopt their own Magnitsky Act.

The Australian Government could work with likeminded partners in the region to coordinate targeted sanctions on Chinese and Hong Kong officials guilty of human rights abuses, particularly with other members of the QUAD, Five Eyes partners, and the EU.

2. Offering assistance to Hong Kongers born after 1997

The UK BNO Visa scheme currently does not cover those Hong Kongers born after 1997. This group includes many young Hong Kong students who have participated in the past in the pro-democracy movement and remain vulnerable to arrest under the National Security Law.

Australia announced a narrow and targeted scheme to allow Hong Kongers who graduate from Australian universities a five-year work visa and a pathway to citizenship.

²⁸ <https://asean.org/joint-media-statement-4th-aem-hong-kong-consultations/>

²⁹ <https://www.scmp.com/news/china/diplomacy/article/3125290/us-president-joe-biden-opens-quad-summit-calling-alliance>

The Australian Government could work with likeminded partners in the region to ensure Hong Kongers have a lifeline out of the city, in particular encouraging the USA and Japan who have previously indicated they might be willing to do more to help pro-democracy activists escape.

3. G7: coordinated action & the creation of a UN Special Rapporteur for Hong Kong

Given Australia's attendance at the G7 meeting taking place in the UK next month, **Ministers should ensure that Hong Kong is on the G7 agenda and use the expanded format as an opportunity to agree coordinated action amongst likeminded partners.** This could include a unified push amongst G7 members for the creation of a UN Special Rapporteur/Envoy for Hong Kong, which would monitor the human rights situation on the ground.

4. Review the rules around investment in companies complicit in human rights abuse

The human rights crisis in Hong Kong alongside the persecution of the Uyghurs in Xinjiang has exposed the need for new rules around Environmental, Social and Corporate Governance which consider the role of Australian investment in companies complicit in human rights abuse.

In the USA, the Government has moved to introduce an entities list which restricts US investment in companies complicit in human rights abuse.

The Australian Government should consider an entities list for companies complicit in human rights abuse, which would ensure Australian investors are not passively supporting human rights violations and would offer clear guidance when it comes to investing public pensions.