



Australian Government

Australian Government response to the
Joint Standing Committee on Foreign Affairs, Defence
and Trade, Foreign Affairs and Aid Sub-committee
report:

Australia's response to the coup in Myanmar

December 2021

The Australian Government welcomes the opportunity to respond to the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade: Foreign Affairs and Aid Sub-committee, on its inquiry into certain aspects of the Department of Foreign Affairs and Trade Annual Report 2019-20 – Myanmar. The Government has carefully considered the report and agrees with the majority of the Sub-committee's recommendations.

Response to Sub-committee Recommendations

Recommendation 1

2.35. The Committee recommends that the Australian Government continue to pursue the restoration of civilian rule in Myanmar as a foreign policy objective.

Response: Agreed.

Australia continues to focus on supporting an end to the violence in Myanmar and a return to the path of democratic transition. We will continue to use all available channels to do so, including by maintaining active, engaged and sustained diplomacy and through our development assistance program.

Recommendation 2

3.28. The Committee recommends that the Australian Government formally engage with groups and individuals representing the legitimately-elected representatives of Myanmar, including the CRPH and the National Unity Government.

Response: Agreed.

The Australian Government strongly supports democracy in Myanmar, and the peaceful resolution of the political situation. The Government continues to encourage dialogue between the military regime and other stakeholders to de-escalate the situation and work towards peace.

The Australian Government appreciates the importance of listening to voices championing democracy in Myanmar. To this end, officials of the Department of Foreign Affairs and Trade continue to engage with representatives of the National Unity Government and others.

3.29. The Committee, whilst acknowledging that Australia has legitimate national interests which will require contact with the Tatmadaw, urges that such liaison be highly selective, and that care be taken to avoid conveying any sense of legitimacy to military rule in Myanmar. The Committee further endorses the Government's decision to suspend defence cooperation with Myanmar.

Response: Agreed.

The Australian Government has a longstanding policy of recognising states, not governments. Australia engages with regimes to the extent required by the circumstances of each case.

It is important for Australia to maintain paths of communication with Myanmar agencies and institutions, including limited engagement with the military, to relay directly our serious concerns about the situation in Myanmar, including in relation to our consular interests, our concerns about human rights violations, and the need to allow unimpeded access for humanitarian assistance to be delivered to people in need. Our approach is carefully calibrated and seeks to maximise our ability to encourage improvements on the ground in Myanmar.

On 7 March 2021, the Australian Government suspended Australia's bilateral defence cooperation program with Myanmar, and redirected the development program away from working through military-controlled ministries and related entities.

Prior to the coup, Australia's bilateral defence cooperation was restricted to non-combat areas, such as English language training. Consistent with United Nations recommendations, engagement focused on appropriate use of the military and the promotion of international humanitarian law. Australia did not provide operational support to the military and did not conduct any bilateral military exercises.

Recommendation 3

4.21. The Committee recommends Australia continue to liaise closely with ASEAN countries and find ways to encourage and support ASEAN efforts to restore civilian rule to Myanmar, including implementation of ASEAN's five-point consensus on Myanmar.

Response: Agreed.

The Australian Government supports ASEAN's important role in responding to the situation in Myanmar. ASEAN is seeking to take tangible steps to encourage Myanmar to end the violence and find a path forward, including through dialogue between all parties concerned.

Australia has been at the forefront of countries engaging with, and supporting ASEAN's efforts.

The Australian Government welcomed ASEAN's leadership in bringing ASEAN members together at the 24 April 2021 ASEAN Leaders' Meeting in Jakarta for productive discussions on the crisis in Myanmar, and has since continued to encourage timely and effective implementation of ASEAN's Five Point Consensus.

On 25 April 2021, Foreign Minister Payne announced \$5 million to the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (the AHA Centre) to help ASEAN provide humanitarian assistance in Myanmar. This investment is a tangible way to support ASEAN efforts. The Australian Government is in discussions with the AHA Centre on how Australia's assistance will be utilised and Australia continues to emphasise the importance of coordinating with other humanitarian actors to ensure effective delivery of humanitarian assistance.

On 7 August 2021, Foreign Minister Payne announced additional COVID-19 support to the people of Myanmar including the deployment of Australian technical experts to the AHA Centre to support humanitarian operations; and providing additional Personal Protective Equipment (PPE) through ASEAN.

The Australian Government welcomed the 4 August 2021 appointment of Brunei's Foreign Minister II Dato Erywan as Special Envoy of the ASEAN Chair. On 18 August, Foreign Minister Payne spoke with Dato Erywan to discuss implementation of the Five-Point Consensus, and the Minister reiterated Australia's support for ASEAN's leadership role on the crisis at her meeting with ASEAN Secretary General, Lim Jock Hoi, and ASEAN Ambassadors on 10 September.

We will continue to register our grave concerns directly with the Myanmar regime in ASEAN fora, and continue to call on the regime to engage meaningfully with ASEAN to enable the full and timely implementation of the Five-Point Consensus.

Recommendation 4

5.23. The Committee recommends the Australian Government ensures our development assistance program to Myanmar supports basic humanitarian needs and civil society and is directed through non-government organisations and multilateral partners, and not through government entities. This should include the development of a medium to longer term plan for ongoing humanitarian assistance.

Response: Agreed.

Australia provides extensive humanitarian and development assistance to support the basic needs of crisis-affected people in Myanmar, including food, water, healthcare, shelter, livelihoods, education and gender-based violence services. Support is focused on addressing the needs of the most vulnerable and poor, including women and children, the Rohingya and other ethnic minorities, and conflict-affected communities.

The Australian Government has redirected development assistance away from regime-controlled entities. Australia's development assistance is focused on supporting the people of Myanmar. We do not provide funding directly to the regime.

In redirecting the Australian Government's development funding, Australia is working with a number of trusted multilateral and non-government partners including a range of international non-government organisations and local civil society organisations. These partners have been able to maintain operations in the current context, with demonstrated capacity to successfully deliver assistance. For example, Australia has provided additional food assistance through the World Food Programme, support for sexual and reproductive health services delivered by the United Nations Population Fund and non-government education services through the Myanmar Education Consortium.

Australia's development and humanitarian partners have rigorous processes in place to ensure that funding is delivered appropriately and to intended beneficiaries. This is a fundamental condition of the Australian Government's engagement.

Australia is a long-standing humanitarian donor to Myanmar and on the Thai-Myanmar border. The Australian Government is sustaining our support, working through humanitarian partners to deliver life-saving assistance and address urgent need.

The Australian Government continues to develop its plan for ongoing development and humanitarian assistance, taking into account the COVID-19 crisis as well as the ongoing consequences of the coup.

Australia continues to monitor developments closely to make informed decisions and to direct our assistance in Myanmar where it will have the most impact.

Recommendation 5

5.24. The Committee recommends the Australian Government explores pathways to permanent residency for Myanmar nationals in Australia given the uncertain situation they face in Myanmar.

Response: Noted.

The Australian Government has announced that Myanmar nationals can access a range of visa options, both permanent and temporary, to extend their stay in Australia.

On 5 May 2021, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon Alex Hawke MP, announced that Myanmar nationals who are in Australia on temporary visas, can apply to extend their stay until it is safe for them to return home.

To support the announcement from Minister Hawke, the Department of Home Affairs has written to Myanmar temporary visa holders in Australia, encouraging them to contact the Department regarding visa options for their specific situation.

On 6 May 2021, the Department of Home Affairs sent approximately 1,800 emails to Myanmar nationals on temporary visas in Australia. This email included information on how Myanmar nationals can check their visa status and apply for a new visa to extend their stay in Australia.

The Department of Home Affairs has also developed comprehensive scripts for the global call centre to support calls received from Myanmar nationals enquiring about visa options.

All Myanmar nationals applying for new visas will need to fulfil relevant visa criteria including health, character and security requirements.

Recommendation 6

6.36. The Committee recommends the Australian Government further consider imposing targeted sanctions upon additional senior figures in the Tatmadaw and Tatmadaw-linked entities, including MEC and MEHL, who have played a role in the overthrow of democracy and subsequent violent repression of protests.

Response: Noted.

The Australian Government maintains autonomous sanctions in relation to Myanmar, including an arms embargo, and targeted financial sanctions and travel bans against five individuals who had direct responsibility for atrocities committed in Rakhine State in 2017.

The Australian Government continues to keep our Myanmar sanctions regime under active consideration and all options remain on the table. The Australian Government's current assessment is that additional sanctions by Australia should not be imposed at this time as they would not be in Australia's interests. Australia will continue to keep this assessment under close review in response to developments on the ground and will remain in close consultation with regional and international partners on this issue.

Australia's existing sanctions framework for Myanmar does not currently allow for the designation of Myanmar entities such as the Myanmar Economic Corporation (MEC) and Myanmar Economic Holdings Public Company Limited (MEHL) for targeted financial sanctions.

Recommendation 7

6.37. The Committee recommends that the Australian Government actively contribute to international discussions regarding a possible global arms embargo against Myanmar, and/or the expansion of the number of countries imposing unilateral arms embargoes.

Response: Agreed in principle.

The Australian Government's autonomous sanctions regime already includes a longstanding and robust arms embargo against Myanmar. Our arms embargo has two aspects. It prohibits:

- (1) the supply, sale or transfer of arms or related matériel to Myanmar (including, but not limited to, weapons, ammunition, military vehicles and equipment, associated spare parts and accessories, and paramilitary equipment); and
- (2) the provision to Myanmar of services that assist with, or are provided in relation to: the supply, sale or transfer of arms or related matériel to Myanmar; or the manufacture, maintenance or use of arms or related matériel.

Australia co-sponsored the resolution on Myanmar adopted by the UN General Assembly on 18 June 2021 that called on UN Member States to prevent the flow of arms to Myanmar. Australia also takes appropriate opportunities to advocate against the supply of arms by other countries to Myanmar.

While the Australian Government is supportive in principle of calls for a global arms embargo against Myanmar, a global arms embargo would require a decision of the UN Security Council under Chapter VII of the UN Charter.

Recommendation 8

6.38. The Committee recommends the Australian Government support UN and multilateral efforts to: hold leaders of the Tatmadaw to account; investigate serious human rights violations; deter further violent repression; and restore civilian democratic rule. This includes support for the UN Special Envoy on Myanmar and for the UN Special Rapporteur on Myanmar.

Response: Agreed.

The Australian Government has raised its grave concerns about the worsening human rights situation in Myanmar directly with the Myanmar regime, at regional and multilateral forums including in the UN Human Rights Council (HRC), and in our public statements. The Australian Government has consistently urged Myanmar to engage and cooperate with international accountability mechanisms including at the UN HRC Special Session on Myanmar, HRC46, HRC47 and HRC48.

Australia has raised its serious concerns about the situation in Myanmar at every opportunity in the HRC this year including: at the 29th Special Session of the HRC on Myanmar on 12 February, as well as the 46th, 47th and 48th sessions in March, June and September (HRC46, HRC47, HRC48). Through these statements to the HRC, Australia has repeatedly expressed concerns over the use of lethal force against civilians, the harassment, arrest and detention of political leaders and others, and ongoing human rights violations against the Rohingya and other minorities.

Australia strongly supported the establishment of the UN Independent Investigative Mechanism for Myanmar (IIMM) in 2018, and continues to support its mandate. At HRC46, Australia welcomed the IIMM's announcement that it will collect, consolidate, preserve and analyse evidence of ongoing serious international crimes and violations of international law. Most recently at HRC48, Australia again expressed its support for the important work of the IIMM, reminding the regime that the international community will hold it to account, including through ongoing, robust support to the IIMM.

Australia has co-sponsored resolutions on Myanmar this year at both the HRC and UN General Assembly including at the 29th Special Session of the HRC on Myanmar, HRC47 and HRC46 which extended the mandate of the Special Rapporteur on Myanmar for a further year. The 18 June 2021 UN General Assembly Resolution on Myanmar called on the Tatmadaw regime to respect the will of Myanmar's people, end the state of emergency, respect all human rights and release those arbitrarily detained.

At the UN General Assembly meeting on Myanmar on 18 June 2021, Australia's Ambassador and Permanent Representative to the United Nations, the Hon. Mitch Fifield, condemned the use of lethal force and repression against Myanmar's people, called for the release of all those arbitrarily detained, and urged greater access for humanitarian assistance. He also underscored the need to maintain focus on accountability, including for abuses perpetrated in Rakhine State since August 2017.

The Australian Government continues to engage directly with and support the mandates of the Special Envoy of the UN Secretary General on Myanmar, Christine Schraner-Burgener, and UN Special Rapporteur on the Situation of Human Rights in Myanmar, Thomas Andrews. Minister Payne met Thomas Andrews in New York on 12 May 2021 following previous high-level and virtual meetings on 8 April and 15 April.

The International Court of Justice (ICJ) is currently considering a claim brought by The Gambia alleging violations of the Genocide Convention by Myanmar. The consideration of events in Myanmar by the ICJ is an important step towards accountability and justice. The Australian Government continues to urge Myanmar to engage with the ICJ proceedings in good faith.

The investigation authorised by the International Criminal Court (ICC) into the alleged crime against humanity of forced deportation of the Rohingya into Bangladesh is another avenue through which accountability for serious international crimes in Myanmar is being pursued. While noting that Myanmar is not a State Party to the Rome Statute, the Australian Government has urged Myanmar to engage constructively with the ICC process, including in Australia's HRC44 statement of 30 June 2020 and HRC43 statement of 27 February 2020.

Response to Additional Comments from Members

Response: Noted.

Please refer to the Government response to Recommendations 3, 5, 6 and 8 of the Committee report.

Response to Australian Greens additional comments

Recommendation: *That the Australian Government urgently impose targeted sanctions on key generals involved in the coup.*

Response: Noted.

Please refer to Government response to Recommendation 6 of the Committee report.

Recommendation: *That if the Australian Government continues to refuse to impose targeted sanctions, the Foreign Minister should provide a statement to the Parliament outlining the rationale.*

Response: Noted.

Please refer to evidence provided by the Foreign Minister in Senate Estimates hearings on 3 and 4 June 2021.