

6 September 2024

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fadt.sen@aph.gov.au

Dear Committee Secretariat,

Transparency International Australia is pleased to provide the following comments and recommendations to the inquiry into Australia's sanctions regime.

As well as promoting human rights, democratic values, and international stability, sanctions can be a powerful anti-corruption measure to counter the use of the proceeds of crime and corruption and as a complement to Australia's Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) regime. We strongly support this approach which would align Australia with global efforts to combat corruption and reinforce international legal standards and accountability.

For this approach to be effective, a dedicated independent taskforce that could coordinate law enforcement across government and provide a formal link between the imposition of sanctions and the opening of investigations into possible corruption or other wrongdoing would be needed.

Sanctions, and particularly thematic corruption sanctions, as they currently operate, do not trigger any action by law enforcement into the origin of the frozen funds. This reduces the effectiveness of the regime. There is also a lack of transparency around how sanctions are applied, the financial sanctions imposed, assets targeted, and investigations launched into potentially unexplained wealth or other wrongdoing.

We provide the following comments and recommendations to strengthen Australia's sanctions regime so better prevent kleptocrats, corrupt officials and criminals benefitting from their proceeds of crime and ill-gotten gains. The best way to achieve this is through identification, asset freezing or confiscation. Importantly, any confiscated assets should be used to benefit the people impacted by corruption by developing asset return mechanisms. A greater alignment with Australia's AML/CTF and consideration of targeting the 'enablers' of sanctions avoidance would also strengthen Australia's sanctions regime.

Yours sincerely,

Clancy Moore
Chief Executive Officer
Transparency International Australia



Summary of Recommendations:

1. The government should create an independent advisory body to receive nominations for sanctions targets, consider them and make recommendations to the Minister.
2. The government should develop a clear path and process, including confirmation of receipt, timelines and data security precautions, where civil society and non-governmental organisations provide sanctions designations and submission of information.
3. The government should create a governmental mechanism that establishes a formal link between the political decision to impose sanctions and the subsequent opening of anti-corruption investigations by Australian authorities. This would ensure a more cohesive and effective approach to addressing corruption at both the domestic and international levels.
4. Law enforcement agencies should increase the transparency on the number and amount of assets frozen and seized, as well as the type of assets.
5. In cases where a controlled asset located within the jurisdiction of Australian authorities is owned by designated person, relevant law enforcement agencies in relation to proceedings against assets, civil confiscation or unexplained wealth orders should be pursued as a matter of policy.
6. Under the Criminal Assets Confiscation Taskforce (CACT) or related bodies, Australia should create an asset return or reallocation program where assets have been stolen from communities overseas
7. Australia should increase the focus on targeting the 'enablers' of sanctions avoidance and circumvention through closing regulator loopholes, better coordination with international allies and fostering greater deterrence.
8. Where appropriate, the Australia should increase the alignment and coordination with Australia's allies' sanctions regimes to multilateralise the impact of sanctions.
9. DFAT should ensure that data under the 'Consolidated List' should be presented in clearer and searchable format to increase the utility of the listings and be of greater value to businesses and other stakeholders wanting to undertake checks on PEPs, overseas entities and other persons of interest.

Submission in relation to Australia's sanctions regime, with particular reference to:

a) an assessment of the consistency in application of Australia's sanctions regime and in coordination with key partners and allies, including the identification of any gaps and time lags in their application;

Transparency International Australia's submission relates primarily to the use of sanctions regimes to counter the use of the proceeds of corruption as a supplement to the AML/CTF regime.

Application



Australia implements autonomous sanctions regimes as a matter of foreign policy. Australian autonomous sanctions may supplement UNSC sanctions regimes or may be separate from them. Australian autonomous sanctions regimes are primarily implemented under the [Autonomous Sanctions Act 2011](#) (the Autonomous Act) and the [Australian Autonomous Sanctions Regulations 2011](#). Different sanctions regimes impose different sanctions measures and may include prohibitions on import or export of sanctioned goods, providing a sanctioned service or activity, dealing with a designated person or entity, using or dealing with a controlled asset and travel bans for designated persons.¹

Australia's thematic sanctions frameworks were established on 21 December 2021 under the [Autonomous Sanctions Regulations 2011](#) (the Regulations), as amended by the [Autonomous Sanctions Amendment \(Magnitsky-style and Other Thematic Sanctions\) Regulations 2021](#).² The Regulations enable the Minister for Foreign Affairs to designate a person or entity for targeted financial sanctions and declare a person for a travel ban. The Minister, with agreement from the Attorney-General, can only list a person under the regulations for conduct occurring outside of Australia and listings are reserved for the most egregious situations of international concern. Both State and non-State actors can be sanctioned.³ The government's view is that keeping decisions at Ministerial level allows for timely and strategic responses to international developments, however, this approach prevents other appropriate agencies from considering actions within their mandate such as targeting the proceeds of crime.

An independent advisory body to receive nominations for sanctions targets, consider them and make recommendations to the Minister would strengthen the thematic sanctions regime as this could provide the opportunity, for relevant agencies such as AFP, to commence multi-jurisdictional investigations in appropriate instances related to the proceeds of corruption.

The thematic sanctions are seen by the government as an integral tool in advancing Australia's foreign policy objectives. They are used to promote human rights, democratic values, and international stability. When leveraged appropriately, these sanctions enable Australia to project its values on the global stage and collaborate with international partners in addressing shared challenges. Overseas corruption has been seen as a security issue and in certain circumstances sanctions have been used to target particular countries. The politicisation of sanctions and the targeting of specific countries tends to lose sight of the fact that dirty money can be found in many parts of the world. This approach to addressing corruption and money laundering also means there are many opportunities for individuals engaging in criminal activity to avoid sanctions. This is demonstrated in a recent case where Russian citizens with Russian political connections have been charged with money laundering but were not on the sanctions list.⁴

There is an opportunity for Australia to take a more assertive role in implementing thematic sanctions, particularly relating to corruption. The Magnitsky amendment thematic sanctions corruption criteria allows the Minister to sanction individuals or entities that have engaged in, were responsible for or complicit in acts

¹Department of Foreign Affairs and Trade, 'Australia and Sanctions', About Sanctions, <https://www.dfat.gov.au/international-relations/security/sanctions/about-sanctions#types>

² Department of Foreign Affairs and Trade, 'Sanctions Regimes, Information Note - Autonomous Human Rights and Corruption Sanctions,' <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/information-note-autonomous-human-rights-and-corruption-sanctions>

³ Ibid.

⁴ AFP, '\$15.6 million in assets restrained by AFP-led taskforce', <https://bit.ly/4eaNSWj>, 7 August, 2024.



of serious corruption – defined as bribery or misappropriation of property,⁵ which is a rather narrow definition of corruption.

The stated purpose of thematic sanctions is in line with Australia's autonomous sanctions frameworks and is to support Australia's national interest and are intended to influence, directly or indirectly, the sanctioned person or entity, impose costs on those responsible and deter others from taking similar action.⁶

Australia made some initial designations on 30 March, 2022, immediately after thematic sanctions were implemented. This includes 39 individuals involved in Magnitsky's maltreatment (14 of these are for corruption, the others are human rights designations)⁷. Since then, Australia hasn't made any further designations under thematic corruption sanctions but has made some further designations under thematic sanctions related to human rights (103 human rights designations total):⁸

- Related to Russia/Ukraine war ([attempted assassination](#) of Alexei Navalny 10 December 2022)
- Related to Iran (following violent [crackdown on protests](#) following the death of Mahsa 'Jina' Amini and the continued oppression of the people of Iran and providing weapons to Russia 10 December 2022)
- Related to [human rights violations](#) in Iran (1 February 2023) (20 March, 2023)
- Related to Federal Security Service agents and others involved in the [poisoning](#) of prominent Russian opposition figure and pro-democracy activist, Vladimir Kara-Murza. (7 December 2023)
- In response to Alexei Navalny's [mistreatment in prison](#) (26 February 2024)
- Related to [West Bank settler](#) violence (25 July 2024)

Typically, the Minister for Foreign Affairs releases a statement when designations under thematic human rights and corruption sanctions are made explaining the reasons for designation, this information is not included in the government's publicly available consolidated list. This is a deficiency of the consolidated list and makes it difficult for members of the public to track and follow thematic corruption sanctions.

Coordination with key partners and allies:

To date, Australia's allies US and UK also have thematic human rights and corruption sanctions and have sanctioned many more individuals and entities for serious human rights abuses and corruption.

United States human rights and corruption sanctions:

⁵ Department of Foreign Affairs and Trade, 'Sanctions Regimes, Information Note - Autonomous Human Rights and Corruption Sanctions,'

<https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/information-note-autonomous-human-rights-and-corruption-sanctions>

⁶ Ibid.

⁷ Department of Foreign Affairs and Trade, 'Consolidated List', <https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>.

⁸ Ibid.



As of December 2023, the United States had sanctioned over 650 foreign persons (individuals and entities) pursuant to since 2017 under its human rights and anti-corruption sanctions regime.⁹

Data from June 2023 showed:

- 316 individuals/entities for corruption only.
- 145 individuals/entities for serious human rights abuses only.
- 14 individuals/entities for both.¹⁰

The greater number of corruption actions demonstrates the US Government's practice of targeting multiple companies in a corrupt network. This approach, and working alongside the private sector to identify complex corporate structures of designated individuals, could be considered by Australia to increase the potential effectiveness of corruption sanctions whilst acknowledging the difference in legal regimes.

United Kingdom human rights and corruption sanctions:

- The UK introduced its global anti-corruption sanctions regime in April 2021, which enables the UK to impose asset freezes and travel bans on individuals and entities involved in bribery or misappropriation of property.
- As of April 2024, the UK government has designated 42 individuals as part of its Global Anti-Corruption sanctions regime.¹¹
- It includes individuals and the misappropriation of state funds in South Sudan, Iraq, Uganda, India, Lebanon, Russia, Nicaragua, Equatorial Guinea, Guatemala, Honduras, Serbia, Venezuela, Zimbabwe, Kosovo, and Bulgaria.

In addition to individuals from Russia, Israel, Iran, which Australia has also sanctioned under Magnitsky sanctions, the US has sanctioned individuals and entities from countries including Myanmar, DRC, and Cambodia.¹² The UK designations include individuals from many more countries. Clearly, Australia is well behind its allies in imposing thematic corruption sanctions and should consider adding additional thematic sanctions for corruption.

One example involves two oligarchs who have business interests in Australia and have been investigated for serious crimes and corruption internationally, were sanctioned by the US Government in 2018.¹³ After considerable public pressure it took until March 2022 for Australia to sanction these individuals when it responded to the invasion of Ukraine by Russia by implementing wide ranging sanctions which included targeted financial sanctions and travel bans on two oligarchs close to Putin; Oleg Deripaska and Viktor Vekselberg.¹⁴ These billionaires had business interests in Australia; Deripaska is the president of Russian

⁹ US State Department, "Federal Register / Vol. 89, No. 37 / Friday, February 23, 2024 / Notices" accessed: <https://www.govinfo.gov/content/pkg/FR-2024-02-23/pdf/2024-03532.pdf>

¹⁰ Human Rights First, 'U.S Global Magnitsky Sanctions', https://humanrightsfirst.org/wp-content/uploads/2023/06/GloMag-Explainer_formatted.pdf

¹¹ Office of Financial Sanctions Implementation HM Treasury, 'Consolidated List Of Financial Sanctions Targets In The UK', Regime: Global Anti-Corruption, https://assets.publishing.service.gov.uk/media/6630b42424347c67e8e3cbf0/Global_Anti-Corruption.pdf

¹² Office of Foreign Assets Control, 'Sanctions List Search', <https://sanctionssearch.ofac.treas.gov/>.

¹³ US Department of the Treasury, 'Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity', 6 April, 2018, <https://home.treasury.gov/news/press-releases/sm0338>.

¹⁴ Butler, B, Hurst, D., 'Putin Linked Russian Oligarchs with Australian Assets escape Morrison Government Sanctions', The Guardian, <https://www.theguardian.com/australia-news/2022/mar/17/putin-linked-russian-oligarchs-with-australian-assets-escape-morrison-government-sanctions>.

¹⁵ Senator The Hon. Marise Paine, 'New sanctions on Russian banks and oligarchs', 18 March 2022, <https://www.foreignminister.gov.au/minister/marise-payne/media-release/new-sanctions-russian-banks-and-oligarchs>



aluminium company Rusal which had a 20% share in Queensland Alumina Limited refinery in Gladstone run by Rio Tinto.¹⁶ Vekselberg had a stake in Origin's Beetaloo project through his 16% shareholding in Origin's joint venture partner, the London-listed Falcon Oil & Gas.¹⁷ The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned both Deripaska and Vekselberg back in April 2018. Deripaska holds a Russian diplomatic passport, has faced investigations for helping Vladimir Putin launder money and accusations of threatening business rivals, wiretapping, extortion, racketeering, bribery, ordering a murder, and ties to Russian organized crime.¹⁸ Vekselberg was arrested in Russia in 2016 for bribing public officials.¹⁹

Some of the contexts that we suggest further exploration for sanctions would be of benefit include contexts where there are serious accusations of corruption where the proceeds of that alleged corruption are linked to Australia. Examples include Australian companies engaging in alleged corruption with foreign officials overseas, instances where foreign corrupt officials, elites or cronies may have the proceeds of crime, corruption and human rights abuses, and family members residing in Australia, as evidenced by examples from Sudan, Myanmar, Malaysia, and Cambodia.²⁰ Cybercrime networks in South East Asia should also be considered under Australia's thematic sanctions regime and are often involved in human trafficking and cross border corruption.

b) consideration of the evidence on how sanctions regimes are targeting and addressing behaviour of designated individuals and entities;

In the explanatory memorandum to the *Autonomous Sanctions Bill 2010*, the stated aims of autonomous sanctions were to limit adverse consequences of situations of international concern, to seek to influence those responsible for situations of international concern to modify their behaviour and motivating them to adopt different policies, and to penalise those responsible through travel bans and asset freezes.²¹

It can be challenging to attribute change in behaviour directly to the imposition of sanctions, and one of the stated aims of sanctions, is not to change behaviour, necessarily, but to punish and deter others. The best punishment or deterrent for money launders is to stop them from getting the benefit of their dirty money by identifying and then freezing or confiscating that dirty money. We strongly urge Australia to further consider whether confiscated assets should be used to benefit the people who have suffered corruption by developing asset return mechanisms.

¹⁶ Christopher Knaus, 'Russian aluminium giant cut out of Queensland operation to abide by sanctions, Rio Tinto says', The Guardian, 13 September, 2022, <https://www.theguardian.com/business/2022/sep/13/russian-aluminium-giant-cut-out-of-queensland-operation-to-abide-by-sanctions-rio-tinto-says>

¹⁷ Ben Butler, 'Putin's blacklisted oligarch ally to cash in on Morrison government's gas-led recovery', The Guardian, 20 October, 2020, <https://www.theguardian.com/australia-news/2020/oct/20/putins-blacklisted-oligarch-ally-to-cash-in-from-morrison-governments-gas-led-recovery>

¹⁸ Henry Foy, 'US cites reports Oleg Deripaska helped Vladimir Putin launder cash', Financial Times, 14 February 2020, <https://www.ft.com/content/20b95b2c-4e6e-11ea-95a0-43d18ec715f5>.

¹⁹ US Department of the Treasury, 'Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity', 6 April, 2018, <https://home.treasury.gov/news/press-releases/sm0338>.

²⁰ BenDoherty, Ben Butler and Nino Bucci, 'Children of the junta: the relatives of Myanmar's military regime living in Australia,' 8 May, 2021, <https://www.theguardian.com/australia-news/2021/may/08/children-of-the-junta-the-relatives-of-myanmars-military-regime-living-in-australia> and Transparency International Australia, 'Stopping Dirty Money in Australia and Cambodia', <https://transparency.org.au/wp-content/uploads/2024/05/Stopping-dirty-money-in-Australia-and-Cambodia.pdf>.

²¹ Parliament of Australia, *Autonomous Sanctions Bill 2010*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4366.



There are some global examples of how corruption sanctions have targeted behaviour and resulted in immediate change of policy or behaviour that Australia could look to in order to strengthen the impact of autonomous thematic sanctions. Direct behaviour change is more likely in the case of countries that are more closely aligned to Australia and where the sanctions result in reputational damage might mean there is an incentive for those governments to change policy. Where policy positions are further apart, perhaps there is less likelihood that sanctions will result in change. Some examples are below:

- **Ukraine:** In December 2022, the US State Department sanctioned Pavlo Vovk, a senior Ukrainian judge, for "soliciting bribes in return for interfering in judicial and other public processes." Within days, the Ukrainian legislature passed long-stalled legislation to reform the notorious court that Vovk chaired.²²
- **Latvia:** In December 2019, the US State Department sanctioned Aivars Lembergs, a Latvian politician, for money laundering, expropriation, bribery, and abuse of office. Four entities that Lembergs owned or controlled were also designated, including the Ventspils Freeport Authority, which operated a major international port. The Latvian government promptly took steps to remove Lembergs from control of the entity, leading the US Government to remove the sanctions on it and highlighting the potential effectiveness of sanctions to spur behaviour modification.²³

An empirical study by the International Lawyers Project of the impact of Magnitsky corruption sanctions, highlighted the that the impact of sanctions is significantly enhanced when governments and the private sector work together to identify corporate networks and potential nominee associations with the people targeted.²⁴ Related to this, when determining appropriate targets for corruption sanctions, governments should prioritise individuals who rely on the international financial system and there are more likely to be affected by the designation.²⁵

Australia's thematic sanctions for serious corruption imposes asset freezes and travel bans on designated persons or entities but there is no transparency around how these are applied.²⁶ In September 2023, Transparency International (TI) sought information about targeted sanctions on Russian elites following the invasion of Ukraine. In this report, TI asked DFAT under the Freedom of Information Act 1982, for information related to the financial sanctions imposed, assets targeted, and investigations launched into potentially unexplained wealth or other wrongdoing. DFAT refused that request on the basis that it "would constitute a substantial and unreasonable diversion of the department's resources."²⁷

²² Human Rights First, U.S. Visa Sanctions Under Section 7031(C), https://humanrightsfirst.org/wp-content/uploads/2023/12/2023.12-Section-7031-Explainer_final.pdf.

²³ Human Rights First, 'U.S. Global Magnitsky Sanctions', https://humanrightsfirst.org/wp-content/uploads/2023/06/GloMag-Explainer_formatted.pdf.

²⁴ Anton Moiseienko, 'Making sense of sanctions: ANU Law scholar researches impact of Global Magnitsky Act', 14 August, 2023, <https://law.anu.edu.au/news-and-events/news/making-sense-sanctions-anu-law-scholar-researches-impact-global-magnitsky-act>

²⁵ International Lawyers Project, A Journey of 20: 'An Empirical Study of the Impact of Magnitsky Corruption Sanctions', 28 July, 2023, <https://www.internationallawyersproject.org/post/a-journey-of-20-an-empirical-study-of-the-impact-of-magnitsky-corruption-sanctions>

²⁶ Department of Foreign Affairs and Trade, 'Serious Corruption Sanctions Regime', <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/serious-corruption-sanctions-regime>

²⁷ Transparency International, 'Why can't Western governments tell us what they're actually doing to sanction Russian kleptocrats?', <https://www.transparency.org/en/news/right-to-information-progress-with-sanctioning-russian-kleptocrats-assets#we-learned-that-there-is-still-much-we-dont-know>



Without information on how sanctions are being implemented, it is difficult to measure their impact and effectiveness, including whether they target or address behaviour. In the long run this will likely lead to lack of trust in the regime. Creating a well-resourced unit or joint taskforce across government to coordinate sanctions and provide information on assets frozen or confiscated would greatly increase trust in the regime.

Sanctions avoidance:

Due to weaknesses in Australia's financial regulatory system, particularly the lack of a beneficial ownership register and lack of reporting requirements for designated non-financial businesses and professions (DNFBPS), individuals can create complex legal corporate and trust structures to avoid sanctions, facilitated by professional service providers both in Australia and overseas. Therefore, to increase its effectiveness we need a public beneficial ownership register and planned updates to Australia's AML/CTF regime to be implemented to make the sanctions regime more effective. As stated above, the private sector can also play a role in assisting government to identify complex corporate networks and nominee associations.

One critical response to the widespread problem of sanctions evasion or circumvention is the need to disable the professional 'enablers' of such circumvention. These include professional service providers such as trust and company formation agents, lawyers, accountants, banks, and even real-estate agents. A recent analysis assessed over 100 relevant investigative reports on Russian and Belarusian individuals and entities, who have been aided by professional service providers in their attempts to circumvent sanctions, and official US, UK and EU actions taken against professional enablers since the invasion of Ukraine in 2022.²⁸

Recommendations for Australia to consider helping disable the enablers of sanctions avoidance include:

- Closing regulatory loopholes such as Australia's current lack of a public beneficial ownership register, including on trusts, and legislating to include professional service providers such as lawyers, accountants, real-estate agents in our AML/CTF regime.
- Taking a network approach to sanctions designations. Sanctions must be imposed on an entity or individual, such as an oligarch's, entire network simultaneously to minimise opportunities to shift assets to family members and associates.
- Enhance coordination between allies such as the UK, EU and US.
- Enforcement actions against professional enabler networks that violate existing laws and designations against those that operate in lax jurisdictions must be increased. The chilling effect of US and UK designations against Cypriot enablers in April 2023 should be replicated.²⁹

There is also an issue with sanctions avoidance in relation to sanctioned goods. For example, on 10 March 2022 the Minister of Foreign Affairs made the *Autonomous Sanctions (Import Sanctioned Goods - Russia) Designation 2022* (Cth), listing coal as an "import sanctioned good" for Russia. Despite this, ASX listed company Tigers Realm continued to mine, load and sell coal in Russia through its subsidiary. The company brought in over \$140 million in revenue in 2023, extracting a record 1.6 million tonnes of the commodity amounting to 56% increase on 2021 levels. Through its subsidiaries paid A\$13 million in taxes to the Russian government between 2018 and 2021 and set aside millions more in future royalties. The ability of the company to continue trading, making a profit from extracting a sanctioned good, and funding the Putin regime demonstrates a lack

²⁸ Royal United Services Institute (2024), "Disabling the Enablers of Sanctions Circumvention", Accessed: <https://rusi.org/explore-our-research/publications/policy-briefs/disabling-enablers-sanctions-circumvention>

²⁹ Ibid.



of accountability, breeds a culture of impunity and shows serious weaknesses in Australia's ability or willingness to ensure sanctions are strong and enforceable.³⁰

As such, we would encourage the Australia Sanctions Office (ASO) to utilise the recent budget allocation of \$26.4 million to strengthen its investigative functions into any alleged breaches of Australia's sanctions laws and consider criminal prosecutions where appropriate.

d) consideration of mechanisms to freeze and confiscate assets belonging to sanctioned persons/entities and how the proceeds can be used to benefit peoples and countries impacted by the behaviour of sanctioned individuals and entities;

The intersection of sanctions and the recovery of stolen assets has become a contentious issue. While sanctions are increasingly used as an anti-corruption tool in other jurisdictions, there is often no direct legal or policy link between the imposition of sanctions and the initiation of anti-corruption investigations by authorities in many jurisdictions, including Australia. This disconnect is a critical issue that needs to be addressed.

We firmly believe that asset freezing sanctions are a potent tool which, when deployed correctly, can be used to fix potentially stolen assets in place and thereby grant law enforcement bodies sufficient time and powers to investigate the source of these assets. Our assumption is that there is some level of assets frozen in Australia, but questions have arisen regarding the origin of these assets, and extent to which some of the individuals sanctioned may have been stashing ill-gotten gains abroad and enjoying the proceeds of corruption in Europe, North America and Australia.

The invasion of Ukraine by Russia has seen many high-ranked Russian officials and individuals close to the Kremlin added to these sanctions lists. These individuals have not, though, been added under sanctions regimes relating to corruption and instead are additions to country lists already directed at Russia, following the annexation of Crimea. While at the political level these sanctions are being heralded as an important policy tool to deter Russian aggression, the relationship between these sanctions and any eventual investigation, confiscation and recovery of assets identified as the proceeds of corruption remains therefore unclear in most jurisdictions.

The government should consider creating a mechanism that creates a formal link between the political decision to impose sanctions and the subsequent opening of anti-corruption investigations by Australian authorities. This would ensure a more cohesive and effective approach to addressing corruption at both the domestic and international levels.

The Serious Organised Crime & Anti-Corruption Evidence Research Programme at the University of Birmingham assessed in 2023 that the UK's asset recovery mechanisms had fallen short when dealing with the challenges related to seizing the proceeds of bribery and corruption. The reasons were the difficulty of

³⁰ Australian Centre for International Justice and Transparency International Australia, 'Joint Media Release, Aussie coal company must be held accountable for likely breaching Russian sanctions laws', <https://acij.org.au/joint-media-release-aussie-coal-company-must-be-held-accountable-for-likely-breaching-russian-sanctions-laws/>.



investigating the alleged criminality and corruption, the vast resources often available to those who manage to hide their assets and the provenance of wealth in uncooperative jurisdictions.³¹

They pointed out the challenges of using sanctions as a basis for permanent asset deprivation. A sanctions designation has a low evidential bar, far below even the civil standard of proof. Sanctions assessments are often based on sensitive intelligence which cannot be submitted as evidence in court. Applying such a mechanism through the courts is likely to face considerable challenges in court on human rights and due process grounds.³² Any link between sanctions and subsequent investigations would need to address the challenges highlighted above.

e) consideration of opportunities for engagement by the Australian community, civil society, financial institutions and other organisations in Australia's sanctions regime;

Civil society, financial institutions and community groups all have an important role to bring issues of serious corruption and human rights violations to light and for helping inform Australia's sanctions regime. As the leading anti-corruption civil society organisation with a global network of Transparency International chapters, links with diaspora groups, and one of a few organisations working on sanctions, we form part of regular civil engagement platform with DFAT teams including the Australian Sanctions Office, Transnational Crime and Human Rights branches. We note similar platforms in the UK and US and encourage the continuation and strengthening of this platform.

This online meeting occurs every three to six months and features two other human rights organisations and, to date, there have been two such meetings. We highly value this engagement with the government on Australia's sanctions regime and note the recent updating of the civil society information note on human rights and corruption sanctions.

To further build confidence and effectiveness in Australia's sanctions regime, we request broader opportunities for face-to-face briefings and increased communication, acknowledgement of receipts of information, minimum timelines and the offer to discuss cases in detail from the Australian ASO when civil society sends information in relation to potential sanctions designations. Consideration could be given to including diaspora groups in such meetings.

We also note that despite several requests for specific information in relation to the Russian invasion of Ukraine including on the total number of person and entities financially sanctioned, the total value of any assets frozen, what type of assets and other request, that the Department of Foreign Affairs and Trade refused to provide any information or documents.³³

³¹ Maria Nizzero, 'How to Seize a Billion. Exploring Mechanisms to Recover the Proceeds of Kleptocracy', Serious Organised Crime & Anti-Corruption Evidence Research Programme, March 2023, 5.

³² Ibid.

³³ Transparency International, 'Why can't Western governments tell us what they're actually doing to sanction Russian kleptocrats?', <https://www.transparency.org/en/news/right-to-information-progress-with-sanctioning-russian-kleptocrats-assets#we-learned-that-there-is-still-much-we-dont-know>.



f) consideration of methods to assess the effectiveness of sanctions decisions and/or the extent to which sanctions are having the intended impact, and recommend any improvements;

1. The government should create an independent advisory body to receive nominations for sanctions targets, consider them and make recommendations to the Minister.

An improvement to the sanctions regime would be to implement Recommendation 12 and 13 made by the Joint Standing Committee on Foreign Affairs, Defence and Trade Human Rights Sub-Committee report, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* that “an independent advisory body be constituted to receive nominations for sanctions targets, consider them and make recommendations to the decision maker.” The recommendation was rejected by the previous government on the grounds that all decision making about sanctions should rest with the Minister. However, the reason is illogical as the body would only provide advice to the Minister after consideration of the cases put forward to the body or through its own investigations. An independent body would strengthen the thematic sanctions regime as this could provide the opportunity, for relevant agencies such as AFP, to commence multi-jurisdictional investigations in appropriate instances related to the proceeds of corruption.

Additionally, other improvements could include:

2. The government should develop a clear path and process, including confirmation of receipt, timelines and data security precautions, where civil society and non-governmental organisations provide sanctions designations and submission of information.
3. The government should create a governmental mechanism that establishes a formal link between the political decision to impose sanctions and the subsequent opening of anti-corruption investigations by Australian authorities. This would ensure a more cohesive and effective approach to addressing corruption at both the domestic and international levels.
4. Law enforcement agencies should increase the transparency on the number and amount of assets frozen and seized, as well as the type of assets.
5. In cases where a controlled asset located within the jurisdiction of Australian authorities is owned by designated person, relevant law enforcement agencies in relation to proceedings against assets, civil confiscation or unexplained wealth orders should be pursued as a matter of policy.
6. Under the Criminal Assets Confiscation Taskforce (CACT) or related bodies, Australia should create an asset return or reallocation program where assets have been stolen from communities overseas
7. Australia should increase the focus on targeting the ‘enablers’ of sanctions avoidance and circumvention through closing regulator loopholes, better coordination with international allies and fostering greater deterrence.
8. Where appropriate, the Australia should increase the alignment and coordination with Australia’s allies’ sanctions regimes to multilateralise the impact of sanctions.
9. DFAT should ensure that data under the ‘Consolidated List’ should be presented in clearer and searchable format to increase the utility of the listings and be of greater value to businesses and other stakeholders wanting to undertake checks on PEPs, overseas entities and other persons of interest.



g) consideration of how Australia's sanctions regime could better align with Australia's existing anti-corruption and crime measures, including to better target Australians involved in designated actions;

Expanding the use of the Autonomous Sanctions Regime to further target individuals and entities involved in significant corrupt practices could serve as a powerful anti-corruption measure. This approach would align Australia with global efforts to combat corruption and reinforce international legal standards and accountability. To implement this effectively, there is a need for a dedicated and well-resourced unit, capable of functioning as a specialized task force, to coordinate law enforcement, DFAT, Home Affairs, Attorney-General's Department and other relevant authorities.

Additionally, there is no formal legislative link between the imposition of sanctions and the opening of investigations into possible corruption or other wrongdoing on the part of those sanctioned. This means that the imposition of sanctions is seen as a legally separate act and does not trigger any action by law enforcement into the origin of frozen funds. We note that the Swiss government takes a different approach with the Swiss Foreign Illicit Assets Act, which mandates authorities to begin efforts to cooperate with the country where the corruption occurred.³⁴

Australia's sanctions regime could be better aligned to law enforcement, development and humanitarian efforts. For example, the Myanmar junta has strong links to financial and transnational crime as demonstrated by media reports³⁵, UN Fact Finding Missions and the Financial Action Taskforce (FATF) move to blacklist Myanmar alongside Iran and North Korea.³⁶ This includes scam centres, cybercrime, human trafficking and transnational drug trafficking which all impact Australia³⁷. Australia provide humanitarian aid to border areas and has also had a long-term commitment to combatting transnational crime in the Mekong region.³⁸ As such, Australia's relative scarcity of targeted sanctions on Myanmar individuals and entities linked to transnational crime not only stands at odds but directly undermines our attempts to counter such crimes across the region.

³⁴ Swiss Government, Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons, 2015, <https://www.fedlex.admin.ch/eli/cc/2016/322/en>.

³⁵ The Australian, 'Myanmar a global hub of organised crime,' <https://www.theaustralian.com.au/world/myanmar-the-global-hub-of-organised-crime-says-report/news-story/5ec737ef06ebee08350fc72e8bfb620>, 4 March, 2024.

³⁶ FATF, 'Black and grey lists', <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html>.

³⁷ BBC, 'My hell in Myanmar cyber slavery camp', <https://www.bbc.com/news/articles/cw076g5wnr3o>, 21 April, 2024; Radio Free Asia, 'Chinese scammers in Myanmar move trafficking victims to casino in rebel territory,' <https://www.rfa.org/english/news/myanmar/victims-03252024141724.html>, 25 March, 2024.

³⁸ Department of Foreign Affairs and Trade, 'Combatting transnational crime in Southeast Asia', 1 August, 2019, <https://www.dfat.gov.au/news/news/Pages/combating-transnational-crime-in-southeast-asia>.