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ISLAMIC COUNCIL OF VICTORIA

# **Submission to the Inquiry into the review of the operation of the amendments made by the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021***

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

17th January 2025

66-68 Jeffcott St  
West Melbourne  
VIC 3003

## Introduction

The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into the 'Magnitsky sanctions' Act. The ICV supports the introduction of individual Magnitsky-style sanctions under the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021* ('the Magnitsky Sanctions Act'), and believes these sanctions have since played a crucial role in responding to human rights abuses around the world. However, the ICV is concerned about Australia's inconsistent and politicised application of sanctions against individuals and entities responsible for serious human rights abuses and violations of international law. We are disturbed by our government's inaction on current humanitarian crises, particularly Israel's genocide in Gaza. This is despite Australia's commitments under international law to intervene in mass human rights violations, with sanctions being a key tool for condemning and deterring human rights abuses. However, Australia's inconsistent application of Magnitsky sanctions in response to recent humanitarian crises has highlighted the failings of the current legislative and policy frameworks, which appear to be heavily influenced by political rather than humanitarian considerations.

All inquiries about this submission should be directed to:

Mohamed Mohideen,

President

## 1. The role and purpose of Magnitsky sanctions

The ICV appreciates that under Australia's existing sanctions regime, sanctions are considered a foreign policy tool, and that many competing interests inform the decision to issue, or not to issue sanctions against a particular state or individual. However, particularly in relation to Magnitsky-style and other thematic sanctions, the most paramount and inalienable of these interests is to promote the universal protection of the most basic human rights.

Fundamentally, this is the purpose of sanctions under the *Autonomous Sanctions Act 2011* and the *Autonomous Sanctions Amendment (Magnitsky Sanctions) Act 2021*. The Explanatory Memoranda of both acts define autonomous sanctions as "punitive measures" to address "issues of international concern."<sup>1</sup> Namely, "the grave repression of the human rights or democratic freedoms of a population by a government."<sup>2</sup> The objects of the *Autonomous Sanctions Act* are to limit adverse consequences of these situations, penalise those responsible and influence them to change their course of action, as well as to deter similar violations of international laws and norms.<sup>3</sup> The stated purpose of the 2021 Amendment was to introduce a new form of sanctions to enable more flexible and swift responses to situations of international concern, and allow Australia to "define, defend and demonstrate our values, and protect international rules-based order."<sup>4</sup> These values, as highlighted by the Regulations, include preventing and responding to acts that undermine good governance and the rule of law, violations of international humanitarian law, and serious abuses of human rights.<sup>5</sup> Primarily, violations of the right to life, the right to freedom from torture or cruel, inhumane or degrading treatment or punishment, and the right not to be held in slavery or servitude.<sup>6</sup>

## 2. The need for consistency and objectivity in the application of sanctions

The introduction of Magnitsky sanctions in 2021 has provided a valuable tool for Australia to exercise its commitment to upholding universal human rights, and to respond effectively to grave abuses of those rights. However, in order to effectively fulfill the purpose of the Magnitsky sanctions framework, Australian governments must be consistent, coherent and decisive in their application of sanctions against individuals and entities. The punitive nature of Magnitsky sanctions also entails that they must be applied consistently and fairly, in the interest of natural justice. However, the current framework under the Magnitsky Sanctions Act relies far too heavily on the discretion and political priorities of successive governments and ministers, lacking objective criteria and measures to ensure the efficacy and integrity of targeted sanctions.

The report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's previous inquiry into Magnitsky sanctions in 2020 acknowledged significant "concerns about the

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<sup>1</sup> Explanatory Memorandum, *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021*, [9]; Explanatory Memorandum, *Autonomous Sanctions Bill 2010*, [1].

<sup>2</sup> Explanatory Memorandum, *Autonomous Sanctions Bill 2010*, [1].

<sup>3</sup> *Autonomous Sanctions Act 2011* (Cth), s3.

<sup>4</sup> Explanatory Memorandum, *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021*, [5]

<sup>5</sup> *Autonomous Sanctions Regulations 2011* (Cth), s6A(4).

<sup>6</sup> *Ibid*, s6A(4)(a)(i)-(iii).

potential for targeted sanctions to be politicised, and applied inconsistently.”<sup>7</sup> In its submission to this inquiry, the Australian Centre for International Justice aptly explained “the subjective state of mind of satisfaction of the Minister as a precondition to the exercise of power means it is a politically driven exercise, rather than one based on objective criteria. The breadth of this ministerial discretion also makes the process opaque, open to abuse, and difficult to challenge...”<sup>8</sup> Since the *Magnitsky Sanctions Act* was passed in 2021, Australia’s responses to international humanitarian crises and grave abuses of human rights have shown these concerns to be justified. Although Australia has effectively utilised Magnitsky sanctions under the Act on several occasions, overall, the regime has been continuously undermined by political partiality, individual discretion and lack of objective input and oversight.

## 2.1 Effective uses of targeted sanctions under the Magnitsky Sanctions Act

Prior to the passing of the Magnitsky Sanctions Act in 2021, human rights violations had long been a key factor considered by Australian governments in issuing country-based sanctions. As early as the 1970s, Australia played a leading role in enforcing economic, financial and cultural sanctions against apartheid South Africa.<sup>9</sup> Since 2011, Australia has imposed countrywide sanctions on Syria as a result of the Assad regime’s “deeply disturbing and unacceptable use of violence” against civilians.<sup>10</sup> Australia’s current sanctions on Zimbabwe target individuals and entities engaged in “activities that seriously undermine democracy, respect for human rights and the rule of law,”<sup>11</sup> and since 2018, Australia has imposed sanctions on government-linked individuals and entities in Myanmar in response to the United Nations finding evidence of state-sanctioned human rights abuses and ethnic cleansing of minority groups.<sup>12</sup>

The new framework of targeted sanctions under the Magnitsky Sanctions Act is intended to strengthen Australia’s capacity to respond to human rights abuses and humanitarian crises globally, offering a more targeted and adaptable method of sanctioning key leaders and perpetrators of human rights abuse. Indeed, the new framework under the Act has been used effectively on multiple occasions to denounce and deter grave violations of human rights and threats to international law, order and peace. For example, in 2022, after the beginning of Russia’s military invasion of Ukraine, Australia did not hesitate to utilise sanctions as a diplomatic tool to deescalate the conflict and punish Russia’s military aggression. Within a day of the invasion, legislative amendments were made to facilitate sanctions on government officials, military officers, and mercenaries supporting the invasion, as well as senior businesspeople and major banks and corporations in Russia.<sup>13</sup> Although Australia’s Prime

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<sup>7</sup> House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* (Report, 2020), 53.

<sup>8</sup> Australian Centre for International Justice, *Submission to the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into an Australian Human Rights Sanctions Regime* (Submission, 28 February 2020), 11.

<sup>9</sup> Hon Gareth Evans AC QC, *Australia’s Role in the Struggle for Democracy and Bilateral Cooperation Since 1994*, Speech at Customs House, Sydney, 11 September 2014.

<sup>10</sup> ‘Syria Sanctions Regime, Australian Government Department of Foreign Affairs and Trade,’ <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/syria-sanctions-regime>, [1].

<sup>11</sup> House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* (Report, 2020) 16.

<sup>12</sup> ‘Myanmar sanctions regime,’ Australian Government Department of Foreign Affairs and Trade, <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/myanmar-sanctions-regime> [2]–[4].

<sup>13</sup> Leah Ferris, ‘Sanctions imposed on Russia in response to aggression against Ukraine – how are they imposed under Australia’s sanctions laws?’ *Parliament of*

Minister acknowledged the limitations of sanctions on influencing Russia's behaviour, he emphasised the importance of "play[ing] our part...in the broader international community" to stand against authoritarian regimes, and ensure that those who perpetrate or benefit from threats to international peace face consequences.<sup>14</sup> In December 2023, additional Magnitsky sanctions were imposed on three Russian federal agents, a Deputy Minister and nine other Russian individuals for their role in political assassinations and the "politically motivated arrest" of a democratic activist.<sup>15</sup> Australia's Minister for Foreign Affairs has continued to denounce Russia's "crackdown on civil society, human rights defenders, independent journalists... and minority groups," calling for the responsible authorities to be punished and for Russia to comply with international law.<sup>16</sup> As of 2024, Australia had imposed over 1,200 sanctions on Russia, including targeted restrictions on 7,241 individuals and entities, such as companies supplying the Russian military, government officials involved in human rights violations, defence firms and arms traders, and even non-Russian military officials who had expressed support for Russia's aggression against Ukraine.<sup>17</sup>

In 2022 in response to government repression of mass protests in Iran, Australia also swiftly utilised Magnitsky sanctions to condemn and punish Iranian officials. This included police officials who had made threatening statements towards civilians, and state-run media outlets that had made vilifying broadcasts against anti-government protesters.<sup>18</sup> Further sanctions imposed in 2023 included government censors responsible for limiting journalistic freedom in Iran.<sup>19</sup> Australia's Foreign Affairs Minister stated that the government was committed to enforcing consequences for "egregious human rights violations," and emphasised "solidarity with... the courageous women and girls who continue to demonstrate immense bravery in the face of ongoing repression."<sup>20</sup>

These sanctions are a welcome response to various international humanitarian crises. They represent an attempt to deter and punish perpetrators of state-sanctioned violence and the worst international crimes, and to fulfil Australia's obligations under international law to prevent and respond to such atrocities. However, these measures also highlight the shortcomings of Australia's current sanctions regime. Namely, the inconsistent application of human rights-based sanctions between different states. This can only be attributed to political and economic

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Australia, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_departments/Parliamentary\\_Library/Research/FlagPost/2022/February/Sanctions\\_on\\_Russia](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/FlagPost/2022/February/Sanctions_on_Russia).

<sup>14</sup> Hon. Scott Morrison, *Press Conference, Sydney, Wednesday 23 February 2022*.

<sup>15</sup> Hon. Penny Wong, *Targeted sanctions in response to human rights violations in Russia* (Media Release, 7 December 2023) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violationsrussia%20> [2].

<sup>16</sup> Ibid, [4].

<sup>17</sup> Ibid; Hon. Penny Wong and Hon. Tim Watts, *Further sanctions in response to Russia's invasion of Ukraine* (Media Release, 20 July 2023) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/further-sanctions-response-russias-invasionukraine>, [1]-[2].

<sup>18</sup> Hon. Penny Wong, *Targeted Sanctions in response to Human Rights violations in Iran and Iranian support for Russia's invasion of Ukraine* (Media Release, 20 March 2023) <https://www.foreignminister.gov.au/minister/penny-wong/mediarelease/targeted-sanctions-response-human-rights-violations-iran-and-iranian-support-russias-invasion-ukraine>, [1]-[3]; *Targeted sanctions in response to human rights violations in Iran* (Media Release, 13 September 2023) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violationsiran>.

<sup>19</sup> Stephen Dziedzic, 'Australia announces new sanctions against Iranians 'who oppress women and girls', as regime continues clamp down on dissent' *ABC News*, 13 September 2023, <https://www.abc.net.au/news/2023-09-13/australia-new-sanctions-iranregime-oppress-women-girls-dissent/102847516>.

<sup>20</sup> Hon. Penny Wong, *Targeted sanctions in response to human rights violations in Iran* (Media Release, 13 September 2023) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violationsiran> [6].



partiality, and the government placing these concerns above the most fundamental human rights and Australia's obligations to protect them globally.

## **2.2 The urgent need for sanctions against Israeli authorities**

In contrast, the ongoing genocide in Gaza since October 2023, and the Australian government's lack of response thereto, exemplifies our shameful failure to apply sanctions consistently for the sake of protecting human rights and upholding international law and justice. Israel's military campaign against the Palestinian people has continued uninhibited for over a year, making apparent that state violence, international crimes and systemic discrimination which are abhorred and sanctioned by the international community in some states, are entirely accepted in others.

### **2.2.1 Military aggression against civilians**

Following the attacks on Israel by Hamas in October 2023, Israel launched a ground and air military attack on Gaza, which has not only continued to this day, but has expanded to include military assaults on Lebanon, Syria and Yemen. Israel's brutal campaign has completely destroyed Gaza, a region of over 2.1 million inhabitants, killing at least 46,707 people including 17,492 children, and injuring more than 110,265.<sup>21</sup> A study published in *The Lancet* medical journal in 2025 concluded that this death toll could be more than 40 per cent higher than officially reported in the first 9 months of Israel's campaign.<sup>22</sup> More than 17,000 children now lived unaccompanied in Gaza.<sup>23</sup>

While Israel has claimed its military is taking steps to avoid civilian casualties, the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory reported in 2024 that Israel forces "intentionally...[directed] attacks against...civilian objects," and had issued "blanket authorisation to target civilian locations widely and indiscriminately in the Gaza Strip," in blatant violation of humanitarian law.<sup>24</sup> The Commission also reported that the Israeli Defence Force (IDF) routinely and systematically used forms of sexual and gender-based violence against victims in Gaza.<sup>25</sup>

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<sup>21</sup> 'Israel-Gaza war in maps and charts: Live tracker,' Al Jazeera, updated 16 January 2025,

<https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-inmaps-and-charts-live-tracker>.

<sup>22</sup> Zeina Jamaluddine et al., 'Traumatic injury mortality in the Gaza Strip from Oct 7, 2023, to June 30, 2024: a capture-recapture analysis,' *The Lancet*, 9 January 2025.

<sup>23</sup> United Nations Office for the Coordination of Humanitarian Affairs 'Reported impact snapshot | Gaza Strip, 28 August 2024' <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-28-august-2024>.

<sup>24</sup> *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, A/HRC/56/26, 27 May 2024, 16.

<sup>25</sup> *Ibid*, 14.

Unyielding assaults by the Israeli military have massacred civilians at markets,<sup>26</sup> in refugee camps and temporary shelters,<sup>27</sup> in mosques and churches,<sup>28</sup> and in schools.<sup>29</sup> Approximately 90 per cent of Gaza's population have been displaced since October 7, many having been forced to relocate internally up to ten times as Israel repeatedly bombs areas it previously designated as safe zones.<sup>30</sup> As of January 2025, more than 80 per cent of Gaza's population are under active evacuation orders from Israel.<sup>31</sup>

The United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) has reported that 90 per cent of homes in Gaza are completely destroyed or damaged, along with more than 80 per cent of commercial facilities, 68 per cent of cropland and 88 per cent of schools.<sup>32</sup> Over 1.8 million people are currently in need of emergency shelter, and only 17 out of 36 hospitals remain partially functional.<sup>33</sup>

91 per cent of the population is projected to face famine of a 'crisis level or higher' by April 2025, and the current water supply for civilians is less than a quarter of the average prior to October 2023.<sup>34</sup>

### 2.2.2 Non-compliance with international law and order

In January 2024, the International Court of Justice (ICJ) found that there was a "real and imminent risk" of violations of the rights of Palestinians under the Genocide Convention and ordered Israel to take all available steps to prevent genocide within the state and the territories it occupies.<sup>35</sup> The ICJ decided that there were plausible grounds to adjudicate on the genocide case brought against Israel. In November 2024, the International Criminal Court (ICC) issued arrest warrants for Israel's Prime Minister and Former Defence Minister for alleged war crimes and crimes against humanity committed in Gaza since 2023.<sup>36</sup>

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<sup>26</sup> 'Damning evidence of war crimes as Israeli attacks wipe out entire families in Gaza,' *Amnesty International*, 20 October 2023, <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-ingaza/>; 'Latest massacres in Gaza illustrate the complete dehumanisation of Palestinians' *Médecins Sans Frontières*, 11 June 2024, <https://www.msf.org/latest-massacres-gaza-illustrate-complete-dehumanisation-palestinians>.

<sup>27</sup> Nida Al-Mughrabi, Dan Williams, 'Israeli attack on Rafah tent camp kills 45, prompts international outcry,' *Reuters*, 27 May 2024, <https://www.reuters.com/world/middle-east/israeli-attack-rafah-tent-camp-draws-globalcondemnation-2024-05-27/>.

<sup>28</sup> 'Israel bombs Greek Orthodox Gaza church sheltering displaced people,' *Al Jazeera*, 20 October 2024, <https://www.aljazeera.com/news/2023/10/20/war-crime-israel-bombs-gaza-church-sheltering-displaced-people>; Maram Humaid and Abdelhakim Abu Riash, 'Israel bombs mosque in Gaza, hitting families sheltering nearby,' *Al Jazeera*, 5 March 2024, <https://www.aljazeera.com/gallery/2024/3/5/israeli-airstrikes-hit-mosque-killing-families-sheltering-nearby>.

<sup>29</sup> 'World leaders 'appalled' by deadly Israeli strike on Gaza school,' *Le Monde*, 11 August 2024, [https://www.lemonde.fr/en/international/article/2024/08/11/world-leaders-appalled-by-deadly-israeli-strike-on-gazaschool\\_6712632\\_4.html](https://www.lemonde.fr/en/international/article/2024/08/11/world-leaders-appalled-by-deadly-israeli-strike-on-gazaschool_6712632_4.html).

<sup>30</sup> Agence France-Presse in Geneva, 'About 90% of people in Gaza displaced since war began, says UN agency,' *The Guardian*, 4 July 2024, <https://www.theguardian.com/world/article/2024/jul/03/about-90-of-people-in-gaza-displaced-since-war-begansays-un-agency>.

<sup>31</sup> United Nations Office for the Coordination of Humanitarian Affairs 'Reported impact snapshot | Gaza Strip, 8 January 2025, <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-8-january-2025>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> International Court of Justice, *Summary of the Order of 26 January 2024*, Doc. 192-20240126-SUM-01-00-EN, 6.

<sup>36</sup> Basel Hindeleh, 'The alleged crimes laid out in the ICC's arrest warrants for Netanyahu, Gallant and Deif,' *ABC News*, 23 November 2024, <https://www.abc.net.au/news/2024-11-23/why-icc-arrest-warrant-for-netanyahu-alleged-crimes/104633838>.

The Israeli government refused to acknowledge these decisions, comply with ICJ recommendations or reign in its assaults on civilians. In 2024, within days of the ICJ's ruling, Israel's Minister for Finance stated that "the establishment of a military government that will control Gaza" was needed to ensure "long-term control."<sup>37</sup> The Minister for Communications similarly called for Israelis to settle all remaining Palestinian land.<sup>38</sup> Defence Minister Gallant stated that Israel would not heed "moral preaching" that separated "terrorism from the civilian population in Gaza," and asserted that "whoever is looking for justice, will not find it on the leather chairs in The Hague... The IDF and the security agencies will continue to act..."<sup>39</sup> In response to the arrest warrants in November, the Israeli government denounced the ICC as a biased and "discriminatory political body," emphasising its stance that "no war is more just than the war Israel has been waging in Gaza".<sup>40</sup>

Israel has also rapidly increased its illegal settlements in the West Bank since 2022, progressing with 24,300 new housing units for Israeli settlers in the Occupied Palestinian Territories, and 'legalising' nine new privately developed Israeli towns in the occupied territories between November 2022 and October 2023.<sup>41</sup> In the same period, 917 Palestinian owned buildings and facilities in the West Bank were demolished, displacing at least 1,015 people.<sup>42</sup> The ICJ issued a ruling in July 2024 reaffirming the illegality of these settlements, and prohibiting member states from rendering assistance to them.<sup>43</sup>

The expansion of illegal settlements has also seen a rise in violent assaults on Palestinian civilians by settlers. In the first ten months of 2023, 1,038 violent attacks on Palestinians by settlers were reported to the UN OHCHR, including both racially motivated and gender-based violence, with nearly one-fifth of these incidents occurring between October 7 and 31.<sup>44</sup>

### 2.2.3 A system of apartheid

For years, leading human rights organisations including Human Rights Watch, Amnesty International and the Israeli Information Center for Human Rights in the Occupied Territories, have labelled Israel an apartheid state.<sup>45</sup> In its pursuit to establish a Jewish

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<sup>37</sup> Law For Palestine, Database of Israeli Incitement to Genocide 27 February 2024 Incitements since the ICJ Order to Cease Genocidal Acts and Incitement, <https://law4palestine.org/wp-content/uploads/2024/02/Final-Jan.-26-Statements-DB.pdf>.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Julian Borger and Andrew Roth, 'ICC issues arrest warrant for Benjamin Netanyahu for alleged Gaza war crimes,' *The Guardian*, 22 November 2024, <https://www.theguardian.com/world/2024/nov/21/icc-issues-arrest-warrant-for-benjamin-netanyahu-israel>.

<sup>41</sup> UN Office of the High Commissioner for Human Rights, 'STATE OF PALESTINE: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,' <https://www.ohchr.org/sites/default/files/2024-03/Palestine-March2024.pdf>.

<sup>42</sup> Ibid.

<sup>43</sup> International Court of Justice, *Summary of the Advisory Opinion of 19 July 2024*, Doc. 186-20240719-SUM-01-00-EN, 18

<sup>44</sup> UN Office of the High Commissioner for Human Rights, 'STATE OF PALESTINE: Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,' <https://www.ohchr.org/sites/default/files/2024-03/Palestine-March2024.pdf>.

<sup>45</sup> Amnesty International, *Israel's Apartheid Against Palestine* (Report, 2022); Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (Report, 2021); B'Tselem *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid* (Report, 2021).



ethnocracy, Israel enforces a brutal regime of oppression and segregation against Palestinians in the Occupied Territories and systematically denies equal rights to Palestinian and non-Jewish citizens of Israel. For example, Palestinians living in the West Bank and Gaza are subject to Israeli law, but are not guaranteed the civil rights or freedoms afforded to Israelis. Those in the Occupied Territories who have not obtained citizenship from a third country remain stateless. Israel imposes severe restrictions on their freedom of movement, controlling all entry and exit points to the West Bank and Gaza and requiring special permits for international or cross-border travel.<sup>46</sup> Palestinians face nearly 600 permanent obstacles to movement, including military checkpoints, blockades, and separation barriers.<sup>47</sup> Despite being subject to Israeli law, Palestinians do not have access to the Israeli justice system, instead facing a harsh military court system that falls appallingly short of the international standards of due process and fair trials.<sup>48</sup>

Furthermore, Palestinians are systematically denied rights over their private property, as Israel has created a legal framework to facilitate the appropriation of Palestinian property for the benefit of Israeli settlers.<sup>49</sup> For example, after the passing of the Absentee Property Law in 1950, it is estimate that Israel expropriated over 10,000 shops, 25,000 buildings and almost 60% of the fertile land privately owned by Palestinians.<sup>50</sup> This law remains in place and continues to facilitate the expropriation of Palestinian land and property for the benefit of Jewish Israelis.<sup>51</sup>

This discriminatory system extends not only to those living under occupation but also to Palestinians who have accepted Israeli citizenship. After the formal establishment of Israel in 1948, approximately 150,000 Palestinians were granted Israeli citizenship.<sup>52</sup> Today, Palestinian citizens of Israel make up about 20% of the population, yet 92% of these live segregated from the general Israeli population.<sup>53</sup> These citizens are forced to deny their nationality, culture, and heritage, living as second-class citizens in exchange for citizenship. Although they hold Israeli citizenship, they are denied nationality, creating a legal distinction that limits their rights and privileges. Palestinian citizens also relentlessly face arrest, harassment, loss of employment, and denial of opportunities for supporting Palestinian culture and causes. Between October 2023 and February 2024, over 221 Palestinian citizens of Israel were arrested for statements or social media posts criticising Israel's military campaign in Gaza, and over 100 were fired from their jobs within Israel.<sup>54</sup>

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<sup>46</sup> Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 95-97

<sup>47</sup> Ibid.

<sup>48</sup> Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 18.

<sup>49</sup> Ibid, 113.

<sup>50</sup> Anna Roiser, 'Why we need to talk about the Absentee Property Law' The Times of Israel Blogs, 2020, <https://blogs.timesofisrael.com/why-we-need-to-speak-about-the-absentee-property-law/>[6].

<sup>51</sup> Ibid.

<sup>52</sup> Layla Gantus, 'The Many Civil and Human Rights Challenges Facing Israel's Palestinian Citizens,' *Carnegie Endowment*, 2024, <https://carnegieendowment.org/posts/2024/02/the-many-civil-and-human-rights-challenges-facing-israels-palestiniancitizens?lang=en>, [2].

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

#### 2.2.4 Transgressions on civil liberties and freedom of the press

Israel systematically misuses indefinite administrative detention to persecute and punish individuals exercising their rights to freedom of expression and association. In recent years, Palestinians have faced indefinite detention for social media posts criticising the Israeli government, for peacefully protesting without a permit, or as an expedient alternative to a criminal trial where they are accused of a crime but there is insufficient evidence to prosecute them.<sup>55</sup> Local human rights groups have reported that at least 1,319 Palestinians were in administrative detention on October 7, 2023, which rose to 2,070 within a month thereafter.<sup>56</sup> As of 2025, it is reported that 10,400 political prisoners are held in Israel, including 3,376 in administrative detention and 320 child prisoners, most of them never convicted or even properly tried for a crime.<sup>57</sup>

Since October 7, Israel has killed 165 journalists and media workers in Gaza, injured 49 and arrested 75.<sup>58</sup> The Committee to Protect Journalists has reported that in some cases, journalists were killed while clearly wearing press insignia in a location with no active fighting, or received personal threats from Israeli military officers before they or their family members were killed.<sup>59</sup> Israel has also blocked foreign media from entering Gaza, restricting accurate and independent reporting of their brutal assault. Even local Israeli networks have been threatened with financial penalties for challenging official IDF reports.<sup>60</sup>

According to the UN OCHA, Israel has killed 369 aid workers and 1057 healthcare workers since October 2023, including one Australian aid worker whose aid van was targeted by an airstrike while delivering food.<sup>61</sup>

Australia's response to Israel's latest assault on Gaza exposes the grave limitations of our current sanctions regime. As a signatory to the *International Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention), Australia has accepted our responsibility to take steps to prevent and punish genocide. As a signatory to the Rome Statute, Australia is obligated to support the criminal prosecution of those responsible for genocide, war crimes, ethnic cleansing or crimes against humanity, and cooperate with the International Criminal Court (ICC) in pursuing perpetrators.

Sanctions are a key foreign policy tool available to states to uphold these obligations and enforce international law. Amendments under the Magnitsky Sanctions Act were intended to make this process more accessible and effective. For years, successive governments have claimed that our autonomous sanctions allow Australia to "demonstrate our values" and

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<sup>55</sup> Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 241-243.

<sup>56</sup> 'Israel/OPT: Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests,' *Amnesty International*, 8 November 2023, <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>.

<sup>57</sup> HaMoked, '9,112 "Security" Inmates Are Held In Prisons Inside Israel,' <https://hamoked.org/prisoners-charts.php>. Addameer, 'Statistics,' <https://www.addameer.org/statistics>.

<sup>58</sup> Committee to Protect Journalists, 'Journalist casualties in the Israel-Gaza war,' 15 January 2025, <https://cpj.org/2025/01/journalist-casualties-in-the-israel-gaza-conflict/>.

<sup>59</sup> 'Journalist casualties in the Israel-Gaza war,' Committee to Protect Journalists, 5 September 2024, <https://cpj.org/2024/09/journalist-casualties-in-the-israel-gaza-conflict/>.

<sup>60</sup> Colleen Murrell, 'How Israel continues to censor journalists covering the war in Gaza,' *The Conversation*, 25 April 2024, <https://theconversation.com/how-israel-continues-to-censor-journalists-covering-the-war-in-gaza-228241>, [17]-[18].

<sup>61</sup> United Nations Office for the Coordination of Humanitarian Affairs 'Reported impact snapshot | Gaza Strip, 8 January 2025, <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-8-january-2025>.

censure violations of international law and threats to global peace. To punish and deter “the grave repression of... human rights or democratic freedoms” by governments. To stand in solidarity with those suffering under unjust regimes and fighting repression. However, this sympathy and solidarity has never been extended to the people of Palestine.

Since October 7th, Australian leaders have staunchly emphasised Israel’s right to self-defence and stood by Israel’s military campaign against Hamas. That is, despite Israel’s illegal siege of Gaza and colonisation of the West Bank, and despite the UN and international legal experts affirming that Israel’s right to self-defence cannot apply within territories it illegally occupies. As early as November 2023, Australia imposed counter-terrorism sanctions against individuals linked to Hamas and Palestinian Islamic Jihad, condemning their “abhorrent [violence] against civilians.”<sup>62</sup> These sanctions were expanded throughout 2024.

By contrast, the government has neglected to take any substantive action, let alone impose sanctions against Israel. Since 2023, prominent human rights organisations, civil society and advocacy groups, legal experts, and tens of thousands of Australian constituents have tirelessly called on the government to promote a ceasefire and sanction Israel, including by restricting trade and imposing arms embargoes.<sup>63</sup> The International Court of Justice ruled a year ago that there was an imminent risk of genocide in Gaza, and that all states have an obligation to refuse support for Israel’s colonisation of the Occupied Palestinian Territories.<sup>64</sup> The UN Special Rapporteur has specifically warned Australia that we are neglecting our obligations to prevent mass atrocity crimes, and urged Australia to stop giving “leeway” to Israel’s barbaric assault.<sup>65</sup> In a meeting with senior government officials in late 2023, she stated that Australia must “be consistent and coherent with its international law obligations,” and that diplomatic isolation of Israel was needed to prevent further atrocities.<sup>66</sup> All of these warnings have gone unheeded. In fact, this month the government announced plans for the Attorney-General to visit Israel in an effort to mend strained diplomatic relations with its government, despite the credible accusations of genocide, war crimes and crimes against humanity currently levelled against them.

In October 2023, after Israel had already slaughtered more than 7,000 Gazans in less than a month, Australia declined to support a proposed UN resolution calling for a ceasefire between

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<sup>62</sup> Hon. Penny Wong, *Sanctions in response to Hamas terror attacks* (Media Release, 18 November 2023) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/sanctions-response-hamas-terror-attacks>.

<sup>63</sup> See, For Example: Sarah Shwarz & Dr Max Kaiser, ‘Australia must cut all military ties and place sanctions on Israel,’ *Jewish Council of Australia* (Media Release, 2 April 2024) <https://www.jewishcouncil.com.au/media/australia-must-cut-military-ties-sanctions-israel>; ‘Global: Governments’ brazen flouting of Arms Trade Treaty rules leading to devastating loss of life,’ *Amnesty International*, 19 August 2024, <https://www.amnesty.org/en/latest/news/2024/08/global-governments-brazen-flouting-of-arms-trade-treaty-rules-leading-to-devastating-loss-of-life/>; ‘Australian Lawyers’ Letter RE Gaza, Lawyer’s Letter, <https://lawyersletter.au/>, Siobhan Martin, ‘Why Australians are taking to the street to protest the Israel Gaza war,’ *ABC News*, 11 April 2024, <https://www.abc.net.au/news/2024-04-11/new-generation-australian-activists-protest-israel-gaza-war/103670328>.

<sup>64</sup> International Court of Justice, *Summary of the Order of 26 January 2024*, Doc.192-20240126-SUM-01-00- EN, 6; International Court of Justice, *Summary of the Advisory Opinion of 19 July 2024*, Doc. 186-20240719-SUM-01-00-EN, 18.

<sup>65</sup> Daniel Hurst, Australia must stop giving ‘leeway’ to Israel’s continued assault on Gaza, UN expert says, *The Guardian*, 16 November 2023, <https://www.theguardian.com/australia-news/2023/nov/16/australia-must-stop-giving-leeway-to-israelscontinued-assault-on-gaza-un-expert-says>.

<sup>66</sup> *Ibid.*

Israel and Hamas.<sup>67</sup> The government has declined to issue state-based or individual sanctions against Israel or its leaders, to revisit any of the plethora of trade agreements, tax agreements or defence agreements shared between Australia and Israel, or to place any limitations on the more than \$1.34 billion in annual bilateral trade.<sup>68</sup> Australia has also failed to fulfill its obligations to the ICC, declining to follow in the footsteps of allies such as the France, Belgium, Norway, Ireland and Spain by affirming that it would support enforcement of ICC arrest warrants against Benjamin Netanyahu and Yoav Gallant.<sup>69</sup>

The ICV acknowledges and welcomes the issuing of Magnitsky sanctions against seven Israeli individuals and the organisation Hilltop Youth in 2024, for their roles in inciting and committing settler violence in the West Bank. However, in the context of Israel's decades of illegal occupation, compounded by the unfolding genocide and military assaults on civilians, these sanctions against seven citizens and one organisation fall shamefully short of being adequate. The Minister for Foreign Affairs has repeatedly emphasised the government's stance that "Israeli settlements in the Occupied Palestinian Territories are illegal...and a significant obstacle to peace," and has half-heartedly called on Israel to hold settlers accountable for violent crimes against Palestinians.<sup>70</sup> Nonetheless, Australia's sanctions only came after 10 months of military assault and more than 40,000 deaths, and only after the ICJ ruled that it is the responsibility of all states to refuse support for Israeli settlements.<sup>71</sup> Moreover, genocidal violence and mass atrocity crimes against Palestinian civilians are perpetrated foremostly by the Israeli state, against which the Australian government has taken no meaningful action.

### **3. Recommendations on the inconsistency and politicisation of human rights sanctions**

In order to effectively and justly realise the objectives of the Magnitsky Sanctions Act, legislative reforms are needed to guide the imposition and enforcement of these sanctions by successive Australian governments. In order to depoliticise sanctions and ensure their efficacy as a foreign policy tool, the ICV asks the Human Rights Subcommittee to consider and support the following legislative reforms.

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<sup>67</sup> Jordyn Beazley, 'Australia abstains from UN resolution calling for truce in Gaza, prompting criticism at home,' *The Guardian*, 28 October 2023, <https://www.theguardian.com/world/2023/oct/28/australiaabstains-from-un-resolution-calling-for-truce-in-gaza-prompting-criticism-at-home>.

<sup>68</sup> 'Israel Country Brief,' *Australian Government Department of Foreign Affairs and Trade*, <https://www.dfat.gov.au/geo/israel/israel-country-brief> [15].

<sup>69</sup> 'France and Belgium support ICC request for arrest warrants of Israel and Hamas leaders,' *The Independent*, 21 May 2024, <https://www.independent.co.uk/news/world/europe/israel-ap-hamas-benjamin-netanyahu-ebrahim-raisi-b2548506.html>; Anthony Deutsch, Andreas Rinke & Andrew Macaskill, 'Israel's allies grapple with bid for ICC warrant against Netanyahu,' *Reuters*, 24 May 2024, <https://www.reuters.com/world/israels-allies-grapple-with-bid-icc-warrant-against-netanyahu-2024-05-22/>.

<sup>70</sup> Hon. Penny Wong, *Human Rights Sanctions in response to Israeli settler violence in the West Bank* (Media Release, 25 July 2024) <https://www.reuters.com/world/israels-allies-grapple-with-bid-icc-warrant-against-netanyahu-2024-05-22/> [4].

<sup>71</sup> International Court of Justice, *Summary of the Advisory Opinion of 19 July 2024*, Doc. 186-20240719-SUM-01-00-EN, 18.

**Recommendation 1: Legislate objective criteria, guidelines and thresholds for the imposition of sanctions in order to ensure consistency, fairness and the depoliticisation of human rights protection.**

The Magnitsky sanctions framework is in dire need of legislative reforms to create objective, consistent and binding criteria for the imposition of sanctions, in order to combat their current inconsistency and over-politicisation. The existing criteria established under the *Autonomous Sanctions Regulations 2011* are lax and discretionary, giving the Foreign Minister merely the option to issue sanctions against an individual who has been responsible or complicit in serious violations of certain human rights. The Department of Foreign Affairs and Trade lists a handful of “non-exhaustive” guidelines for the Minister to consider, but these are not explicitly entrenched within the legislation.<sup>72</sup>

As the 2020 Joint Committee Report recommended, the legislation must include criteria, guidelines and thresholds outlining the conduct warranting sanctions, particularly for Magnitsky-type sanctions against individuals.<sup>73</sup> The criteria warranting sanctions should include clearly defined egregious violations of international law, including state-imposed apartheid and forced civilian displacement, serious and systematic violations of humanitarian law, and the commission of mass atrocity crimes including genocide, war crimes, ethnic cleansing and crimes against humanity. Furthermore, the legislation should outline objective evidentiary thresholds for sanctioning a state or an individual for involvement in these crimes, rather than simply requiring the Minister to be subjectively satisfied of their wrongdoing.

These criteria should also emphasise the need for sanctions limiting the trade of weapons, military and dual-purpose technologies, with the objective of cutting off resources to oppressive regimes and armed forces where there is credible evidence those resources are likely to be used in the commission of mass atrocity crimes. The ICV reiterates that it is an inalienable obligation upon Australia under international law to prevent and punish mass atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. Furthermore, the *Arms Trade Treaty* signed by Australia in 2013 prohibits states from transferring arms and ammunition if they have knowledge that “[these] items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions,...attacks directed against civilian objects...or other war crimes.”<sup>74</sup> Nonetheless, the gaps in Australia’s current sanctions and embargoes regime allow Australian-made weapons and technologies to be used by foreign states and militant groups to commit the most inhumane of crimes. Australia’s sanctions regime must focus on limiting the trade of arms and military technology that facilitates atrocities and violence against civilians. This should include criteria mandating targeted sanctions against companies and entities supplying weapons to the perpetrators of mass atrocity crimes, particularly where international authorities such as the UNSC, ICJ and ICC have found evidence of these crimes or imminent risks thereof.

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<sup>72</sup> ‘Information Note - Autonomous Human Rights and Corruption Sanctions,’ Australian Government Department of Foreign Affairs and Trade, <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/information-note-autonomous-human-rights-and-corruption-sanctions>.

<sup>73</sup> House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* (Report, 2020), Recommendations 3, 4 & 6.

<sup>74</sup> *The Arms Trade Treaty 2013*, 3013 UNTS 269, art. 6.2-6.3.



**Recommendation 2: Establish an independent advisory body to evaluate and advise on the imposition of Magnitsky sanctions. This should be a transparent process that ensures government and ministerial accountability for decisions regarding sanctions, and should require the Minister to respond publicly to recommendations made by the advisory body.**

In order to make Australia's sanctions regime less discretionary and politically driven, an independent expert advisory body should be established to make observations, inquiries and recommendations to the government about the imposition of sanctions, as was recommended by the Joint Committee in 2020.<sup>75</sup> This should be a permanent authority independent of any political affiliation, in order to ensure that sanctions are evaluated and imposed consistently, rather than at the free discretion of the government of the day. This body should also be tasked with conducting regular reviews of existing sanctions to ensure their continued relevance and efficacy, and evaluate any negative ramifications against civilian populations. Sanctions should be lifted only when there is verifiable evidence of changed behaviour and compliance with international human rights standards.

**Recommendation 3: Prioritise the prosecution of those responsible for egregious human rights violations and mass atrocity crimes, using sanctions as a supplementary measure rather than as an alternative to serving justice.**

As explained in section 2, Australia has obligations under international law to both prevent and punish genocide and other mass atrocity crimes.<sup>76</sup> Central to this is enforcing the principle of universal jurisdiction over these crimes, and supporting international judicial bodies like the ICC in investigating and trying perpetrators. Expert bodies such as the Australian Centre for International Justice and the European Parliament have emphasised that criminal prosecution should be the underlying objective of sanctions regimes.<sup>77</sup> Within this framework, Australia should be cautious not to utilise Magnitsky sanctions against international criminals as an alternative to a proper investigation, trial and punishment. However, in cases where criminal prosecution is unlikely, impossible, or delayed, sanctions are an effective supplementary measure to isolate, deter and punish individuals responsible for these crimes. For this reason, the ICV recommends that those charged with mass atrocity crimes by the ICC or competent international authority should automatically be subject to strict Magnitsky sanctions under Australia's legislative regime, particularly where their offences are ongoing and pressure is needed to stop the abuse of human rights.

**Recommendation 4: Prioritise, where possible, the use of Magnitsky sanctions as opposed to state-wide sanctions, which often have detrimental impacts on civilian populations.**

The ICV acknowledges that the imposition of sanctions, particularly against economically weak or politically unstable states, often has severe adverse impacts on civilian populations while having minimal effect on powerful state authorities. This may include limiting access to necessities such as medical supplies, food and fuel for the general population within sanctioned states. For this reason, we encourage the Committee, and the Australian government, to promote the use of targeted Magnitsky sanctions against individuals,

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<sup>75</sup> House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* (Report, 2020), Recommendations 12 -14.

<sup>76</sup> *Convention on the Prevention and Punishment of the Crime of Genocide 1948*, 78 UNTS 277, art 1; United Nations General Assembly Resolution 60/1: 2005 World Summit Outcome, UN Doc A/RES/60/1, [138]-[139].

<sup>77</sup> Australian Centre for International Justice, *Submission to the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into an Australian Human Rights Sanctions Regime* (Submission, 28 February 2020), 12-13.

organisations, state bodies and private entities engaged in, complicit in, or responsible for egregious human rights violations, as opposed to state-wide sanctions where feasible. Where a foreign government or its forces are responsible for mass human rights abuses, Australia's sanctions regime should prioritise targeted sanctions against specified government authorities, departments or officers playing a direct role, as opposed to state-wide sanctions.

**Recommendation 5: Legislate express protections for groups vulnerable to oppression and human rights abuses, including journalists, activists and humanitarian workers.**

As highlighted in the 2020 Joint Committee Report, journalists and human rights defenders face increased threats within autocratic regimes, due to their public profiles and role in amplifying victim's voices and challenging official narratives.<sup>78</sup> The targeting of media workers, aid workers, medical staff and human rights defenders has been glaringly apparent in Israel's current assault on Gaza, and has even resulted in the death of one Australian aid worker, against which the Albanese government has taken no punitive or censoring action. By contrast, in other cases Australia has used economic, financial, cultural and other sanctions to oppose the restriction of free press and humanitarian assistance. This includes sanctions on Russian authorities responsible for arbitrary arrests, and on Iranian officials responsible for government censorship and oppression of protestors. The increased threats posed to these groups warrant specific emphasis on their protection. For this reason, this ICV supports the Joint Committee's 2020 recommendation that Australia's sanctions legislation should expressly acknowledge the importance of protecting the rights of journalists and human rights defenders, including aid workers and medical staff. We urge the Committee to pursue the implementation of this recommendation. State-sanctioned violence or extrajudicial action against journalists and humanitarian workers should also fall within the criteria warranting sanctions under Australia's regime.

## Conclusion

The framework for human rights sanctions under the Magnitsky Sanctions Act is designed to facilitate swift and effective responses to grave violations of human rights and international law, and ultimately for Australia to play a role in ending these atrocities across the globe. However, the framework is currently undermined by its lack of objective criteria and oversight, which leave it open to abuse and politicisation and ultimately limit its efficacy. The potential for this framework to be utilised justly and effectively has been seen in the Australian government's response to human rights abuses committed in states such as Russia and Iran, but our government's complacency to the genocide currently being committed by Israel reveals glaring faults in our human rights sanctions regime. We therefore request that the Committee make appropriate recommendations to make the Magnitsky sanctions framework effective, just and consistent, and facilitate just, effective and principled responses to humanitarian crises across the globe.

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<sup>78</sup> House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* 67.