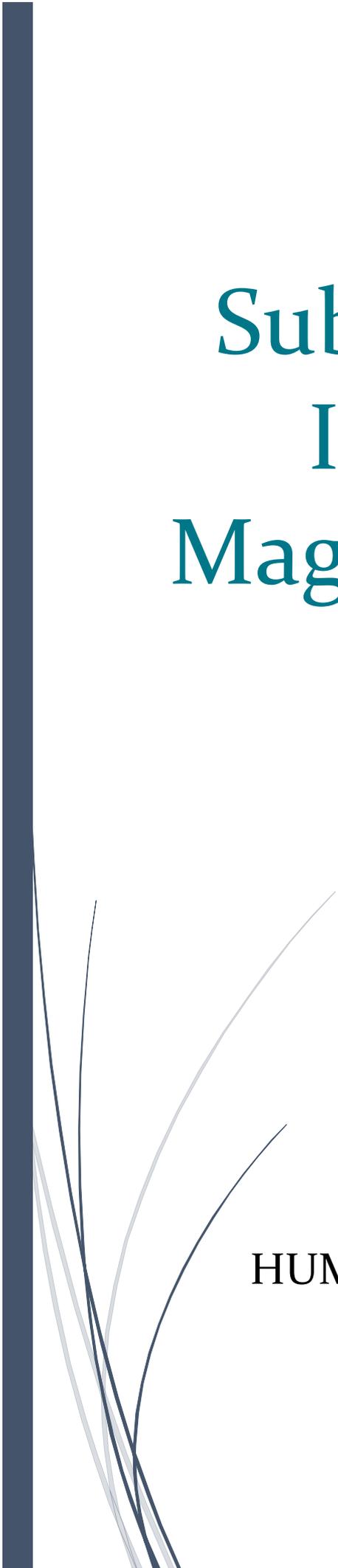


# Submission on an International Magnitsky-style Act in Australia



HUMAN RIGHTS NETWORK OF  
AUSTRALIA

## About Human Rights Network of Australia

Human Rights Network of Australia is a group of Non-Government Organisations (NGOs) and individuals interested in promoting human rights and advocating for the implementation of sanctions and restrictive measures in respect of gross violations of internationally recognised human rights.

This submission is made jointly by the following NGOs and individuals with similar views on the ratification of human rights violations.

### NGOs:

- Democratic Youth Australia
- Human Rights Relief Foundation
- Multicultural Communities Council of New South Wales
- Vietnamese Australian Lawyers' Association
- Vietnamese Community in Australia – Federal
- Vietnamese Community in Australia – NSW Chapter
- Vietnamese Community in Australia – QLD Chapter
- Vietnamese Overseas Initiative for Conscience Empowerment (VOICE) Australia

### Individuals:

- Ms Andie Lam
- Dr Cuong Trong Bui AOM, President of the Vietnamese Community in Australia - QLD Chapter
- Ms Dinh Tran, President of the Vietnamese Australian Lawyers' Association
- Ms Janice Le
- Mrs Janice Vu
- Mr Paul Huy Nguyen, President of the Vietnamese Community in Australia – NSW Chapter
- Dr Peter Thang Ha
- Ms Sydney Nguyen
- Mr Than Nguyen
- Mrs Thien Giang Nguyen, President of VOICE Australia
- Mr Thuan Nguyen
- Mr Trung Chinh Dang, President of Human Rights Relief Foundation
- Ms Tu Le
- Mr Tuong Quang Luu AO
- Mr Vincent Do, Leader of Democratic Youth Australia

## Executive Summary

Human Rights Network Australia welcomes the opportunity to provide a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade – Human Rights Subcommittee to inquire into and report on whether Australia should enact legislation comparable to the United States *Magnitsky Act 2012* and similar legislations introduced by Canada, the United Kingdom, the Baltic States and the legislation to be introduced by the European Union.

Human Rights Network Australia seeks to ensure that foreign persons responsible for gross human rights violations are held accountable in accordance with international and domestic law.

Human rights violations and abuses continue to affect individuals worldwide. This is a crucial opportunity for the Australian Government to consider legislative action to help address an urgent global problem and show leadership on a crucial issue in our region. Australia should join forces with countries such as the United States, the United Kingdom, Canada and 3 Baltic States which pass their respective legislation to impose sanctions on foreign persons who have committed gross violations of internationally recognised human rights. On 9 December 2019, the European Union have agreed to work on the European version of the Magnitsky Act to address the issue of serious human rights violations.<sup>1</sup>

This submission considers the terms of reference of the inquiry:

- The framework for autonomous sanctions under Australian law, in particular the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth);
- The use of sanctions alongside other tools by which Australia promotes human rights internationally;
- The advantages and disadvantages of the use of human rights sanctions, including the effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses;
- Any relevant experience of other jurisdictions, including the US regarding their *Global Magnitsky Human Rights Accountability Act* (2016); and
- The advisability of introducing a new thematic regulation within our existing Autonomous Sanctions Regime for human rights abuses.

Recommendations:

1. The Australian government should investigate gross human rights violations by foreign persons and make them accountable for their actions.
2. Australia should introduce an International Human Rights (Magnitsky Sanctions) Act to meet our obligations under the UN Human Rights Council and implement sanctions consistent with our allied countries.
3. An International Human Rights (Magnitsky Sanctions) Act should have the following provisions:
  - Broad reach
  - Define the act of violation

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<sup>1</sup> <https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-break-ground-on-european-magnitsky-act/>

- Penalties impose on violators
  - Length of sanctions
4. Australia should use other tools such as participating in annual human rights dialogue, providing aid to civil society and/or human rights organisations and implementing human rights provisions in trade agreements alongside sanctions to assist countries with human rights concerns to improve on the human rights situation in their countries.

### The framework for autonomous sanctions under Australian law, in particular the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth)

Australia currently has two legal frameworks used as a tool to impose sanctions on persons and entities from a particular regime, namely the *Charter of the United Nations Act 1945* and the *Autonomous Sanctions Act 2011* and the *Autonomous Sanctions Regulations 2011*.

#### *Charter of the United Nations Act 1945*

As a member of the United Nations member state, Australia is to implement sanctions reflecting sanctions that are imposed by the United Nations Security Council (UNSC) resolutions. The listing or de-listing of persons or entities will reflect the UNSC resolutions or the listed person or entity may apply to the Foreign Minister to revoke the listing.

The purpose of the legislation is to restrict the financial support to terrorist organisations and to make it an offence to deal with freezable assets. The sanctions are measures not involving armed forces and apply to activities in Australia, by Australian citizens and Australian registered organisations overseas.

#### *Autonomous Sanctions Act 2011* (Cth) and *Autonomous Sanctions Regulations 2011*

The purposes of the *Autonomous Sanctions Act 2011* are to provide for autonomous sanctions and its enforcement as well as to facilitate the collection, flow and use of information relevant to the administration of autonomous sanctions.<sup>2</sup>

The *Autonomous Sanctions Act* imposes restrictions on activities that relate to particular countries, goods and services, or persons and entities. The Act defines autonomous sanction as a tool to influence a foreign government's policy, a member of a foreign entity or another person or entity outside Australia or prohibit conducts of the engagement of the above person or entity actions outside Australia that is contrary to Australian Government policy.<sup>3</sup>

The *Autonomous Sanctions Act* imposes sanctions on a country, part of a country, an individual or entity in a particular country. For example, Regulation 4 through to Regulation 7 of the *Autonomous Sanctions Regulations* directs for sanctions to be imposed on a person or entity in countries such as Crimea, Iran, Myanmar, Russia and other countries and the activities that occurred in those countries, however it does not include gross human rights violations or abuses.

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<sup>2</sup> Section 3 of the *Autonomous Sanctions Act 2011*

<sup>3</sup> Section 4 of the *Autonomous Sanctions Act 2011*

The current legal frameworks for autonomous sanctions are time-consuming to legislate and are too narrow. The Minister for Foreign Affairs is required to issue a legislative instrument on each occasion a sanction is to be imposed on a country or activities committed by an individual or entity in that country. For instance, in order to list individuals responsible for the grave human rights abuses in Rakhine State in Myanmar, a legislative instrument was issued under the *Autonomous Sanctions Regulations 2011* followed by an explanatory statement and a statement of compatibility with Human Rights to comply with the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Since the introduction of the *Autonomous Sanctions Act 2011*, there have been 24 legislative instruments with additional explanatory statements issued in order to designate a country or individual or entity to the sanction list.

The introduction of a new legislation, whether in the name of the International Human Rights (Magnitsky Sanctions) Act or a similar name, would eliminate the additional work involved in sanctioning an individual. The Act should allow for the designation of individuals or entities without having to issue a legislative instrument to include individuals or entities from a regime.

The framework should have the following elements:

**a) Broad approach**

The sanctions imposed by the legislation should target persons in the world who are responsible for committing gross human rights violations which the current Autonomous Sanctions Act and Regulation lacks. The sanctions should also extend to cover persons ranging from senior officials to low-level officials to senior associate of officials that are responsible for, or complicit to, ordering, controlling or otherwise directing acts of significant corruption as defined in the US and Canada legislations.

**b) Acts of gross or grave human rights violations**

The legislation shall clearly define certain acts that are characterised as gross or grave violations of internationally recognised human rights. The vagueness of the definition will lead to the difficulty and unpredictability process of determining unlawful conduct that contravenes gross or grave human rights violation and a ground for review. The definition of grave or gross human rights violations should include extrajudicial killings, torture or cruel or degrading treatment or punishment or other gross violations of internationally recognised human rights.

**c) Punishment for such violations**

The legislation must outline the punishment and restrictive measures in respect of the violations, whether pecuniary and/or imposition of sanctions. This should include freezing assets, banning entry into Australia, or trade restrictions. The purpose of the punishment is to prevent or to deter violators from transferring their assets from the country where the violations occurred and the prevention of money laundering by the violators to their associates.

**d) Length of sanctions or termination of sanctions**

The burden of proof shall rest upon the perpetrators and their name shall remain on the designation list until the perpetrators make an application and provide evidence that the sanctions imposed should be lifted or terminated.

## The use of sanctions alongside other tools by which Australia promotes human rights internationally

If Australia introduces a Magnitsky type of tool, this new tool will complement Australia's existing suite of tools. Below, we discuss some of them, and we take this opportunity to suggest how to improve them so that the existing and the new tool work well together and have increased effectiveness:

Sanctions are one of the methodologies that Australia could use to promote human rights internationally. There are many other tools by which Australia could utilise alongside sanctions which include but are not limited to:

- **Annual human rights dialogue between Australia and countries of concern:**  
The human rights dialogue gives Australia and other countries the opportunity to raise human rights issues in their respective countries and to provide recommendations for the country to improve on their human rights issues. It is a diplomatic platform for Australia to contribute to the improvement of human rights internationally however it could be improved by allowing civil society and human rights organisations to participate in the dialogue with the country of concern.
- **Financial support for Civil Society and Human Rights Organisations in countries of concern:**  
Australia currently provides aid to civil society organisations and human rights groups in a number of countries to assist in the improvement of human rights in the country, however the funding is only limited to organisations that are registered with the government and their operations are restricted by the authorities. In the countries where there are grave concerns for violations of human rights and the authorities are repressing basic rights, providing aid to registered organisations does not serve the purpose of assisting and improving human rights. The aid program should be extended to unregistered civil society and human rights organisations provided that the organisations meet the requirements of a similar organisation registered in Australia.
- **Implementing human rights provisions in free trade agreements:**  
Australia should use free trade agreements as leverage to ensure that our trade partners are committed to the improvement in human rights and promoting the rule of law. For instance, the use of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as leverage to ensure that the 11 signatory countries to the agreement uphold and respect human rights reflecting Australia's standards such as the prohibition of child labour and labour rights.

The use of sanctions are punitive measures to restrict or prohibit actions of human rights violations and a mechanism to deter human rights violators from such actions. The other tools used alongside sanctions are methods for Australia to assist countries with human rights concerns to improve on the human rights situation in their countries. The above methods show Australia's position in the human rights spectrum and our effort in promoting human rights.

## The advantages and disadvantages of the use of human rights sanctions, including the effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses

The advantages of the use of human rights sanctions are:

- It provides incentives to foreign government to improve their policy in the improvement of human rights situation in their country.
- It is a diplomatic platform to pressure individuals to change their behaviours as there are repercussions in any act that violate internationally recognised human rights.
- Deterring any potential human rights violators from such actions as Australia will not let their actions go unnoticed and they will be made accountable for their actions.
- Show Australia's firm position in the area of human rights and that Australia does not tolerate such actions hence any human rights violators are barred from entry.
- Sanctions on human rights violators will further enhance Australia's obligations under the United Nations.
- Targeted sanctions will only directly affect the individual responsible for the violation.
- Sanctioning human rights violators is a remedy to bringing justice to the victims of the act of human rights violations.
- Australia will help further tighten the net and prevent Australia from becoming a loophole for violators to transfer their ill-gotten money and negate the hard work that our allies have developed. Once the EU passes a similar legislation, it is probable that Australia remains one of the few attractive countries in the world for violators to use as a safe haven and the nearest for violators in our region.
- As a member of the Five Eyes intelligence-sharing alliance, it is beneficial and compels Australia to assist our alliances in strengthening the network by confirming the identities of the violators and their roles in the violation, help minimise the chances of wrongfully designating a person or entity and close the gaps in tracing investment of their ill-gotten fund.

The disadvantages of the use of human rights sanctions are:

- Sanctions may be imposed for invalid political reasons; the government may be selective on corrupt officials or officials found to be abusing human rights.<sup>4</sup> The process to maintain checks and balances are crucial and to ensure accountability and transparency that the responsible department act according to the law and not beyond it to mitigate this issue.
- The government may face litigation from corrupt officials or human rights abusers in disputing the sanctions however the allowing for judicial review by the designated person or entity warrants fairness in the process.

The framework for autonomous sanctions will provide punitive measures or impose sanctions on individuals a) if they are responsible for or acted as an agent for someone responsible for "extrajudicial killings, torture, or other gross human rights violations of internationally recognised human rights", or b) if they are government officials or senior associates of government officials complicit in acts of significant corruption.

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<sup>4</sup> <https://researchbriefings.files.parliament.uk/documents/CBP-8374/CBP-8374.pdf>

The sanctions promote respect for human rights at all levels of government by enabling Australia to apply targeted sanctions on any individual involved in a human rights violation, from senior officials to low-level officers and even non-government associates. These sanctions can take the form of freezing assets, non-admission into Australia and restriction of trade. An autonomous sanction under Australian law functions as a deterrent, forcing foreign officials at all levels who would use unlawful violence or corruption to consider repercussions from the Australian government. The sanctions also provide incentives to foreign governments to improve their own accountability mechanisms.

### Any relevant experience of other jurisdictions, including the US regarding their Global Magnitsky Human Rights Accountability Act (2016)

A number of countries, including the United States, the United Kingdom, Canada and 3 Baltic States (Estonia, Lithuania & Latvia) have introduced the Magnitsky Act into their legislature to impose sanctions on human rights violators or as deterrence for potential violators.

**The United States:** on December 2012, the United States Senate passed the *Sergei Magnitsky Rule of Law Accountability Act 2012*, which was signed by President Barack Obama on 14 December 2012 to punish Russian officials who were responsible for the death of Russian tax accountant Sergei Magnitsky in a Moscow prison in 2009.

In December 2016, the Congress broadened the scope of the legislation and enacted the *Global Magnitsky Human Rights Accountability Act*, which allows the United States Government to sanction foreign government officials responsible for human rights violations anywhere in the world. The United States have publicised the sanctions list of individuals and organisations and updated the list annually on their Federal Register.<sup>5</sup>

Some successes that arise from the application of the Magnitsky Act in the US are:

- The Khashoggi case: Jamal Khashoggi, a journalist, a Saudi dissident and US resident was killed at the Consulate of the Kingdom of Saudi Arabia in Istanbul, Turkey after Mr Khashoggi wrote columns in The Washington Post in which he criticised Saudi Arabia's Crown Prince Mohammed bin Salman.<sup>6</sup> On 15 November 2018, the US imposed sanctions on 17 Saudi Arabian individuals, including individuals holding positions in the Royal Court and several ministries and offices of the Government of Saudi Arabia, responsible for the killing of Mr Khashoggi.<sup>7</sup> This is considered a significant step forward in the US in the promotion of human rights as Saudi Arabia is considered as one of the US's closest allies.
- On 10 December 2019, marking International Human Rights Day, the US imposed sanctions against 18 individuals located in Burma, Pakistan, Libya, Slovakia, Democratic Republic of the Congo and South Sudan for their roles in serious human rights abuse and corruption.<sup>8</sup>

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<sup>5</sup> <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

<sup>6</sup> <https://www.bbc.com/news/world-middle-east-49826905>

<sup>7</sup> <https://www.state.gov/global-magnitsky-sanctions-on-individuals-involved-in-the-killing-of-jamal-khashoggi/>

<sup>8</sup> <https://home.treasury.gov/news/press-releases/sm852>

- Opposition Senator Leila de Lima: Senator Leila de Lima has been critical of President Rodrigo Duterte and his administration for the extrajudicial killings in the government's fight against drugs. Senator De Lima was arrested in the Philippines on 24 February 2017 over trumped-up charges filed against her.<sup>9</sup> On 20 December 2019, the US President Donald Trump signed the Department of State, Foreign Operations, and Related Programs Appropriations Bill 2020 to include a provision which prohibits the entry of those involved in the wrongful detention of Philippine opposition Senator Leila de Lima.<sup>10</sup>

**The United Kingdom:** on 21 February 2017, the United Kingdom House of Commons unanimously passed an amendment to their *Criminal Finances Bill* that allows the government to freeze assets of international human rights violators in the UK. On 1 May 2018, United Kingdom House of Commons took further actions and made amendments to the *Sanctions and anti-Money Laundering Act 2018* to impose sanctions on people who commit gross human rights violations<sup>11</sup> and the *Criminal Finances Act 2017* amended the definition under the *Proceeds of Crime Act 2002* to expand 'unlawful conduct' to include gross human rights abuse or violation.<sup>12</sup> The United Kingdom has published the sanctions list on the UK Government website of individuals and organisations affected by the financial sanctions.<sup>13</sup>

Success that arises from the application of the sanctions in the UK include:

- The UK has imposed financial sanctions on 2 Russian military intelligence officers, Alexander Petrov and Ruslan Boshirov, accused of carrying out the Salisbury novichok poisoning.<sup>14</sup>

Britain Foreign Secretary, Dominic Raab stated on 29 September 2019 that Britain will bring into force a UK Magnitsky law that will place visa bans and freezing assets on those responsible for serious human rights abuses after Brexit.<sup>15</sup>

**Canada:** on 19 October 2017, the Canadian parliament passed the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to take restrictive measures and make foreign nationals responsible for gross violations of internationally recognised human rights.<sup>16</sup> Canada published a list of individuals and entities subject to sanctions made under the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act* in the government's international relations website.<sup>17</sup>

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<sup>9</sup> <https://www.rappler.com/nation/161278-leila-de-lima-surrender-drug-charges>

<sup>10</sup> <https://www.cnnphilippines.com/news/2019/12/23/De-Lima-accusers-banned-from-US.html>

<sup>11</sup> <https://www.reuters.com/article/us-britain-russia-magnitsky/uk-lawmakers-back-magnitsky-amendment-on-sanctions-for-human-rights-abuses-idUSKBN1I24BI>

<sup>12</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8374#fullreport>

<sup>13</sup> <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

<sup>14</sup> <https://www.independent.co.uk/news/uk/home-news/salisbury-poisoning-suspects-sanctions-alexander-petrov-ruslan-boshirov-russia-skripal-novichok-a8738851.html>

<sup>15</sup> <https://www.europeansanctions.com/2019/09/uk-to-impose-magnitsky-sanctions-on-regimes-that-imprison-journalists-and-campaigners/>

<sup>16</sup> Act published on <http://laws-lois.justice.gc.ca>

<sup>17</sup> [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/sanctions/consolidated-consolide.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng)

Some successes that arise from the application of the *Justice for Victims of Corrupt Foreign Officials Act* in Canada are:

- In February 2018, sanctions were imposed against Major-General Maung Maung Soe who played a significant role in the human rights violations against the Rohingya people in Myanmar forcing over 688,000 Rohingya to flee their country.<sup>18</sup> In June 2018, Canada imposed sanctions on seven Myanmar officials involved in the violent persecution of the Rohingya people under the *Special Economic Measures (Burma) Regulations* which includes Major-General Maung Maung Soe.<sup>19</sup>
- In November 2018, the Government of Canada imposed sanctions such as freezing their assets and barring their entry into Canada, on 17 individuals who were responsible for or complicit in the extrajudicial killings of journalist Jamal Khashoggi.<sup>20</sup>

**Baltic States:** Estonia, Lithuania and Latvia passed legislations in 2016, 2017 and 2018 respectively to ban foreign persons deemed guilty of human rights abuses from entering their countries. The Estonian Foreign Ministry has developed a website for various sanctions applied in the European Union on persons, entities and countries.<sup>21</sup>

The above countries have effectively used their respective sanctions legislation to impose sanctions on individuals and entities committing gross human rights violations and their designation list are updated annually.

**European Union:** On 9 December 2019, the European Union has agreed to work on the European version of the Magnitsky Act to address the issue of serious human rights violations.<sup>22</sup> The push for the legislation is to allow the EU to specifically target individual perpetrators responsible for human rights abuses rather than the country or regime.

## The advisability of introducing a new thematic regulation within our existing Autonomous Sanctions Regime for human rights abuses

The existing Autonomous Sanctions Regime allows the Minister for Foreign Affairs to impose sanctions on a regime, person or entity however the *Autonomous Sanctions Act* and the *Autonomous Sanctions Regulations* do not include the definition of gross or grave human rights violations. The Explanatory Statement – Select Legislative Instrument 2011 No. 247 included a situation of grave international concern, that is grave repression of the human rights or democratic freedoms of a population.<sup>23</sup> The definition is so broadly defined that it does not

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<sup>18</sup> [https://www.canada.ca/en/global-affairs/news/2018/02/canada\\_imposes\\_targetedsanctionsinresponsetohumanrightsviolation.html](https://www.canada.ca/en/global-affairs/news/2018/02/canada_imposes_targetedsanctionsinresponsetohumanrightsviolation.html)

<sup>19</sup> <https://www.canada.ca/en/global-affairs/news/2018/06/myanmar-sanctions.html>

<sup>20</sup> <https://www.canada.ca/en/global-affairs/news/2018/11/canada-imposes-sanctions-on-individuals-linked-to-murder-of-jamal-khashoggi.html>

<sup>21</sup> <https://www.sanctionsmap.eu/#/main>

<sup>22</sup> <https://www.euractiv.com/section/justice-home-affairs/news/eu-ministers-break-ground-on-european-magnitsky-act/>

<sup>23</sup> Autonomous sanctions are punitive measures not involving the use of armed force that target the persons, entities or governments most responsible for a situation of grave international concern, with the goals of mitigating the harmful consequences of that situation and achieving positive change. Situations of international concern may include the grave repression of the human rights or democratic freedoms of a population by a

state the act that constitutes grave repression of the human rights or democratic freedoms nor give a definition to a population. The regulation omits to categorise the conduct that connects activities of grave human rights abuse, that is, there is no link between the abuse that took place and the designation.

The legislation is complex and not a robust process as the Minister is required to issue a legislative instrument on each occasion in which persons or entities from a regime is to be included in the designation list.

However, the *Autonomous Sanctions Act* and *Autonomous Sanctions Regulations* provide a platform for delisting of persons or entities who were wrongfully targeted and allows for judicial review which the US Global Magnitsky sanctions lacks. This component is crucial in the legislation as the omission of such rights would potentially cause an adverse effect on the operation of the legislation and deny the basic rights of those who were wrongfully listed.

Concerns may be raised that the introduction of a Magnitsky-style Act may create some overlap with the existing regulation however, a well drafted legislation would complement the existing regulation providing parliament with the opportunity to review the existing legislation to establish one that is more relevant, precise and effective.

Nevertheless, the *Autonomous Sanctions Act* and the *Autonomous Sanctions Regulations* will be an effective tool if the above observations are to be taken into consideration and appropriate amendments are to be made to the existing legislation. It will be consistent in sanctioning human rights violators and better serve its purpose.

## Conclusion

As a member of the UN Human Rights Council, Australia has the responsibility to uphold and respect fundamental rights and freedoms by contributing to the improvement of basic human rights and join forces with countries such as the United States, the United Kingdom, Canada and 3 Baltic States (Estonia, Latvia & Lithuania), which passed their respective legislations to impose sanctions on foreign persons who have committed gross violations of internationally recognised human rights. The EU has agreed to work on the European version of the Magnitsky Act to address the issue of serious human rights violations.

As Australia is a member of the Five Eyes intelligence-sharing alliance comprising Australia, Canada, New Zealand, the UK and the US, it is beneficial and pragmatic for Australia to introduce an International Magnitsky Act in support of and enhance the work of the Five Eyes. Australia could benefit from the information that the US, the UK and Canada have available on the human rights violators and corrupt officials to align with the majority of the Five Eyes partners and to tackle the issues in a coordinated and effective way. The method would be similar to the rapid sharing of information between the partners, that is, alerts and intelligence relating to the movement of known and suspected terrorists are shared between all five partners quickly and effectively.<sup>24</sup>

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government, or the proliferation of weapons of mass destruction (WDM or their means of delivery, or an internal or international armed conflict.

<sup>24</sup> <https://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/security-coordination/five-country-ministerial-2018>

A Magnitsky-style Act is designed to meet regulatory enforcement on individuals and set expectations on Australia's values including respect for human rights. The Human Rights Network of Australia therefore urges the Australian Government to consider the proposal and pass an International Magnitsky Act to play a leading role in our region to address and contribute to the rectification of a global crisis.

An introduction of a Magnitsky-style Act or the inclusion of the observations from this submission into the *Autonomous Sanctions Act* would eliminate the deficiencies of the existing legislation and allow for the flexibility of a punitive measure that restricts or prohibits actions of gross or grave human rights violations anywhere in the world and a mechanism to deter human rights violators from such actions.

## **Recommendations:**

1. Australia should investigate gross human rights violations by foreign persons and make them accountable for their actions.
2. Australia should introduce an International Human Rights (Magnitsky Sanctions) Act to meet our obligations under the UN Human Rights Council and implement sanctions consistent with our allied countries.
3. An International Human Rights (Magnitsky Sanctions) Act should have the following provisions:
  - **Broad approach**

The sanctions imposed by the legislation should target persons in the world who are responsible for committing gross human rights violations which the current Autonomous Sanctions Act and Regulation lacks. The sanctions should also extend to cover persons ranging from senior officials to low-level officials to senior associate of officials that are responsible for, or complicit to, ordering, controlling or otherwise directing acts of significant corruption as defined in the US and Canada legislations.
  - **Acts of gross or grave human rights violations**

The legislation shall clearly define certain acts that are characterised as gross or grave violations of internationally recognised human rights. The vagueness of the definition will lead to the difficulty and unpredictability process of determining unlawful conduct that contravenes gross or grave human rights violation and a ground for review. The definition of grave or gross human rights violations should include extrajudicial killings, torture or cruel or degrading treatment or punishment or other gross violations of internationally recognised human rights.
  - **Punishment for such violations**

The legislation must outline the punishment and restrictive measures in respect of the violations, whether pecuniary and/or imposition of sanctions. This should include freezing assets, banning entry into Australia, or trade restrictions. The purpose of the punishment is to prevent or to deter violators from transferring their assets from the country where the violations occurred and the prevention of money laundering by the violators to their associates.

- **Length of sanctions or termination of sanctions**  
The burden of proof shall rest upon the perpetrators and their name shall remain on the designation list until the perpetrators make an application and provide evidence that the sanctions imposed should be lifted or terminated.
4. Australia should use other tools such as participating in annual human rights dialogue, providing aid to civil society and/or human rights organisations and implementing human rights provisions in trade agreements alongside sanctions to assist countries with human rights concerns to improve on the human rights situation in their countries.