

Introduction

- 1.1 On 3 December 2019, the Minister for Foreign Affairs, Senator the Hon Marise Payne, asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire into and report on the use by Australia of targeted sanctions to address gross human rights abuses. The Joint Standing Committee tasked the Human Rights Sub-committee to undertake an inquiry.
- 1.2 The terms of reference for the inquiry required the Sub-committee to examine this issue with particular regard to the current framework for autonomous sanctions under Australian law; the use of sanctions alongside other tools by which Australia promotes human rights internationally; the advantages and disadvantages 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 United States concerning their *Global Magnitsky Human Rights Accountability Act* of 2016; and the advisability of introducing a new thematic regulation within Australia's existing autonomous sanctions regime for human rights abuses.
- 1.3 Respect for human rights and fundamental freedoms has long been recognised as essential to efforts to build a more peaceful, harmonious and prosperous world. Since 1948 the United Nations Universal Declaration of Human Rights and other widely endorsed international human rights conventions have established a global framework for promoting respect for human rights.¹

¹ United Nations 'Peace, dignity and Equality on a healthy planet', <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> viewed 10 October 2020.

- 1.4 Despite this, the ability to deter human rights violations and enforce international accountability for those responsible for such abuses, have proven to be enduring problems. Measures employed by states to penalise, isolate or otherwise sanction governments responsible for human rights violations may include making restrictions on diplomatic and other contacts, boycotts of official and other significant events, arms embargoes, trade and financial sanctions.²
- 1.5 Such measures have been imposed on countries and governments with varying degrees of effectiveness and sometimes with unintended consequences. Over the past decade, however, a new approach has been developed with so-called 'targeted sanctions' directed against individual persons and associated entities including companies and business interests, engaged in or directly associated with human rights violations. There has also been a growing recognition of the linkage of human rights abuses with large-scale corruption.³
- 1.6 The Human Rights Sub-committee has watched with interest recent developments in the practice of human rights related sanctions by other Western democracies, in particular the adoption of so-called Magnitsky laws designed to allow the application of targeted sanctions against individuals identified as responsible for serious human rights violations and/or significant corruption. Modelled on or else inspired by United States legislation, these laws seek to make those responsible for human rights violations and corruption accountable by imposing restrictive measures including entry bans and financial sanctions including asset freezing.⁴
- 1.7 Through the Sub-committee's private briefing program, human rights organisations, advocacy groups and members of diaspora communities have repeatedly raised the subject of Magnitsky-style laws and their potential to impose a measure of accountability on those engaged in

² Department of Foreign Affairs and Trade, *Submission 63*, p. 5; Law Council of Australia, *Submission 99*, p. 8; 'Sanctions: International Peace and Security,' Government of the Netherlands' <<https://www.government.nl/topics/international-peace-and-security/compliance-with-international-sanctions>> viewed 10 October 2020.

³ Human Rights First, *Submission 17*, p. 3; Avaaz Foundation, *Submission 126*, p. 5; Thomas J Biersteker, 'Watson Institute of International Studies, Brown University, www.globalpolicy.org/images/pdfs/Security_Council/Biersteker-Targeted_Sanctions.pdf, viewed 6 October 2020.

⁴ Mr William Browder, Hermitage Capital Management, *Submission 4*, pp. 1-2; Also: www.euronews.com/2020/09/16/what-is-the-magnitsky-act-euronews-answers viewed 1 November 2020; Australian Centre for International Justice, *Submission 87*, pp. 7 - 8.

planning, financing or committing human rights abuses. It has been suggested that the enactment of such a law by the Australian Parliament would significantly strengthen Australia's ability to support international efforts to deter human rights abuse.

- 1.8 Through the course of its recent work the Sub-committee has also noted the close connections between human rights abuse and large-scale corruption. The United Nations Human Rights Council has highlighted the 'negative impact of corruption on the enjoyment of human rights'⁵ Depending on the level, pervasiveness and form of corruption, corruption undermines the functioning and legitimacy of institutions and the rule of law with devastating effects on respect for human rights. As the Human Rights Council has further observed: 'Disadvantaged groups and vulnerable persons suffer disproportionately from corruption.'⁶ Those involved in the investigation, reporting and prosecution of corruption are at heightened risk of human rights violations and require effective protection.⁷
- 1.9 Against this background it was with considerable interest that the Sub-committee undertook this important inquiry.

Sergei Magnitsky and targeted sanctions

- 1.10 Legislation that enables jurisdictions to imposed sanctions on an individual who has committed human rights abuses or is guilty of significant corruption is often named, or referred to as, 'Magnitsky Legislation'. Such legislation is named after Mr Sergei Magnitsky, a Russian tax lawyer who worked for Hermitage Capital Management, owned by Mr Bill Browder, an American financier.⁸

⁵ United Nations Human Rights, Office of the High Commissioner.

<https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>, viewed 9 July 2020.

⁶ United Nations Human Rights, Office of the High Commissioner.

<https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>, viewed 9 July 2020.

⁷ United Nations Office of Drugs and Crime, The Doha Declaration: promoting a culture of lawlessness, www.unodc.org/e4j/en/anti-corruption/module-7/key-issues/overview-of-the-corruption-human-rights-nexus.html viewed 2 November 2020.

⁸ Mr William Browder, *Submission 4*, p. 1.

- 1.11 In evidence to the Sub-committee, Mr Browder described that Mr Magnitsky:
...uncovered a massive fraud committed by Russian government officials that involved the theft of US \$230 million of state taxes. Mr Magnitsky testified against the officials involved and was subsequently arrested by them, imprisoned, systematically tortured and killed in Russian police custody on November 16, 2009... the Russian authorities covered up his murder, exonerated all the officials involved ... [and] put Sergei Magnitsky on trial three years after they killed him.⁹
- 1.10 Subsequently, as a political activist, Mr Browder sought justice for Mr Magnitsky internationally, through the enactment of legislation in the United States and elsewhere to impose asset freezes and visa bans against human rights violators with assets in Western countries.¹⁰
- 1.12 The United States Congress passed the *Sergei Magnitsky Accountability Act* in 2012 in an attempt to limit the benefits to corrupt government officials who 'would never want to keep their ill-gotten gains in their own country ... Rather [in] countries like the United States, or the European Union or Australia'.¹¹
- 1.13 The Magnitsky Act of 2012 allowed sanctions to be imposed in cases involving gross violations of internationally recognised human rights, and in which victims were 'working to expose illegal activity carried out by government officials [or to] obtain, exercise, defend, or promote internationally recognized human rights and freedoms'.¹²
- 1.14 The 2012 Act was followed by the *Global Magnitsky Human Rights Accountability Act (2017)* and US Presidential Executive Order 13818 'Blocking the Property of Persons Involved in Serious Human Rights or Corruption', which enables the US Government to sanction 'the world's worst human rights abusers and most corrupt oligarchs and foreign officials, freezing their US assets and preventing them from travelling to the United States.' The objective is for sanctioned individuals responsible for gross human rights abuses or significant corruption to become 'financial pariahs' and deter national and international financial institutions from interacting with them.¹³

⁹ Mr William Browder, *Submission 4*, p. 1.

¹⁰ Mr William Browder, *Submission 4*, p. 1.

¹¹ Senator Cardin, *Submission 119*, p. 2.

¹² United States Department of State, *Submission 160*, Helsinki Commission How-to Guide Sanctioning Human Rights Abusers and Kleptocrats under the Global Magnitsky Act, p.2.

¹³ United States Department of State, *Helsinki Commission How-to Guide Sanctioning Human Rights*

Conduct of the Inquiry

- 1.15 The Human Rights Sub-committee launched the inquiry on 4 December 2019 with a press release that invited interested parties to make submissions.¹⁴ Submissions were sought from a wide range of organisations and individuals identified as having particular expertise or engagement with the issues before the Sub-committee.
- 1.16 The Sub-committee received and published over 150 submissions, which are available on the Sub-committee's webpage.¹⁵ The full list of submissions and other evidence presented to the inquiry is at Appendix A.
- 1.17 A number of submissions contained specific allegations of human rights violations and/or corruption by various governments, organisations and individuals. In some cases allegations appeared to have not been previously made public. Some submissions contained details of the victims of human rights abuses, including information that is not publicly known, as well as other sensitive personal information. A number of submitters to the inquiry wished to remain anonymous or else requested that their submissions remain confidential.
- 1.18 The Sub-committee is not able to investigate or substantiate specific allegations of human rights abuse or corruption. However the Sub-committee sought to publish as much information and as many views as possible as long as they were relevant to the terms of reference of the inquiry. In the interests of transparency, redactions from published submissions and other papers were kept to a minimum, but with an eye to protect the privacy and the safety of all persons who either submitted to the inquiry or were referred to in submissions, including individuals who are subject to unsubstantiated or unproven allegations. With regards to public officials, however, the Sub-committee was of the view they should be answerable in most cases to accusations made against them. A prudent balance between privacy, fairness and transparency is an enduring constant challenge in human rights inquiries.

Abusers and Kleptocrats under the Global Magnitsky Act Submission 160, p.2.

14 See:

https://www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House/News/Media_Releases/Inquiry_into_a_framework_for_autonomous_sanctions_under_Australian_law_to_target_human_rights_abuses

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https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Submissions

- 1.19 The Sub-committee was further informed through a program of public hearings. The conduct of these hearings proceeded despite the restrictions and altered working arrangements arising from the COVID-19 pandemic. Most witnesses appeared via teleconference or videoconference.
- 1.20 Public hearings were held as follows
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| 31 March 2020 | Teleconference |
| 28 April 2020 | Teleconference |
| 30 April 2020 | Teleconference |
| 15 May 2020 | Teleconference / videoconference |
| 15 June 2020 | Videoconference |
| 17 June 2020 | Videoconference / Witness attendance in Canberra |
| 25 June 2020 | Teleconference |
| 1 October 2020 | Teleconference |
- (See Appendix B)
- 1.21 The Sub-Committee was particularly appreciative that Mr Browder was able to make a submission and give evidence to the inquiry. Mr Browder's advocacy for the adoption of targeted sanctions laws has generated strong attacks from the Government of the Russian Federation and other regimes responsible for serious human rights abuse and suppression of democratic freedoms. The Sub-committee received a number of submissions and related correspondence that made a range of allegations about Mr Browder and Mr Magnitsky. Mr Browder was afforded opportunities to respond to those submissions and he did so. While it was outside the terms of reference of the inquiry to examine these matters in detail, the Sub-committee fully satisfied itself as to the credibility and value of Mr Browder's views in relation to the terms of reference under consideration by the Sub-committee.
- 1.22 The Sub-committee thanks all persons, groups and organisations that made submissions addressing the terms of reference or provided their perspective on the challenges of deterring and combatting human rights abuses and corruption. The Sub-committee received over 400 form letters, expressing concern for human rights in Hong Kong and calling for Australia to develop a Magnitsky-style targeted sanctions regime consistent with other jurisdictions. The Sub-committee published some examples of these documents as submissions. The Sub-committee would like to thank all individuals who expressed their views on this important matter.
- 1.23 The level of engagement with this important inquiry has been most satisfying and has greatly assisted the Sub-committee in discharging its responsibility.

Outline of report

- 1.24 Chapter 2 discusses Australia's current international sanctions regimes, and examines the evidence on the fitness for purpose of these regimes for enforcing sanctions against human rights abusers.
- 1.25 Chapter 3 addresses the Global Magnitsky legislation landscape, looking into the history of the United States targeted sanctions legislation, including the background of Sergei Magnitsky. It also examines various other jurisdictions' Magnitsky-style Acts, and identifies alternative methods of sanctioning human rights abusers used by other states or international organisations. This chapter takes an in-depth look at aspects of the US, Canadian and UK legislation.
- 1.26 Chapter 4 describes the concerns and risks relating to potential legislation and its implementation, and the safeguards and protections that were identified as ways of minimising concerns. This chapter also provides an overview of evidence received from witnesses and submitters who oppose the introduction of targeted sanctions.
- 1.27 Chapter 5 identifies features the Sub-committee believes that a new Magnitsky-style regime should incorporate.
- 1.28 Chapter 6 discusses a document presented to the Sub-committee by Mr Geoffrey Robertson AO QC, which should serve as a valuable catalyst for the development of legislation to establish a new Australian Targeted Sanctions Regime.
- 1.29 Chapter 7 outlines principles that the Sub-committee considers should be adopted to guide the drafting of the new Australian targeted sanctions legislation and includes the report recommendations.

