Foreign Affairs, Defence and Trade Committee
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PO Box 6100
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Australia's Sanctions Regime

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1. Thank you for the opportunity to contribute to this inquiry. I am a Senior Lecturer in Law at ANU specialising in economic sanctions and financial crime. I am the author of a book on the legal aspects of Magnitsky sanctions (*Corruption and Targeted Sanctions*), as well as multiple peer-reviewed articles and policy reports on Australian and global sanctions regimes. The key points I make in this submission are as follows:

    a. To date, Australian sanctions policy has involved selective alignment with overseas sanctions (i.e. those imposed by the US, EU, UK and others). While acting in concert with allies and partners is desirable, Australia can and should go beyond practices that could be criticised as amounting to little more than copying others. As a regional rule of law champion, Australia should use sanctions vigorously to address corruption, human rights abuse and other malign activity in the Asia-Pacific region. Australia's emerging use of cyber sanctions against cybercriminals attacking Australian infrastructure is an example of best practice that should be expanded to other contexts.
    b. Since early 2022, Australia has had the legal ability to impose 'thematic' sanctions in response to various categories of malign activity.[1] These powers have been barely utilised. Australia should intensify the use of existing thematic sanctions programs (e.g. Magnitsky-style corruption and human rights sanctions) and consider developing new thematic programs (e.g. to target propagandists of hostile regimes raising funds in Australia).
    c. Some of Australia's perceived reluctance to implement a vigorous sanctions policy may be motivated by concerns about its diplomatic ramifications. While these concerns should be taken seriously, there are multiple ways to mitigate them, including by setting out clear and consistent criteria for the imposition of sanctions independent of the target's state of nationality.
    d. It is trite but true to say that sanctions are only as good as their implementation. Australia should be commended for expanding the Australian Sanctions Office and increasing the resources dedicated to sanctions implementation in 2024. However, there is little evidence of effective implementation so far. For instance, the AFP's assessment that no Russian-controlled sanctioned assets have been frozen in Australia raises questions about the effectiveness of implementation.
    e. The increased use of sanctions globally, especially in response to Russia's full-scale invasion of Ukraine, raises strategic questions about the role of sanctions in ensuring

[1] Unlike country-specific sanctions, such as those against Russia, thematic sanctions address certain categories of misconduct (e.g. corruption or human rights abuse) regardless of where it takes place. Corruption and human rights sanctions are a category of thematic sanctions often referred to as 'Magnitsky' sanctions by reference to a Russian whistleblower whose death prompted the US to first introduce such sanctions in 2012. The use of Magnitsky sanctions, as well as other thematic sanctions programs, is a model that multiple states, including Australia, have adopted.

accountability and providing reparations. Australia should break its silence on the issue and, consistent with international law, support using assets frozen under sanctions to compensate the victims of international crimes, including wars of aggression, and human rights abuse.

f. While the Australian legal framework for sanctions does not present any obvious problems, some gaps are likely to become apparent as Australia amasses greater experience in using sanctions. For example, so far the experience of sanctions against Russia has exposed legislative gaps in relation to the sale of 'import-sanctioned' goods outside Australia. Consideration should be given to closing those gaps, as well as continuously monitoring the need for further amendments to Australia's sanctions laws.

2. The rest of the submission deals with each of these points in greater detail.

Australia's Selective Alignment with Overseas Sanctions

3. All sanctions involve restrictions on the target's interactions with Australia. If a company or individual is sanctioned, all their Australian-based assets are frozen; no Australian person is allowed to deal with or make any assets available to them; and, for foreign individuals, no travel to Australia is allowed. Some sanctions involve sector-specific restrictions, e.g. prohibitions on trade in certain categories of goods.

4. The stronger the links between Australia and the targeted person (or, indeed, targeted sector of another country's economy), the greater is the effect of sanctions. An effective Australian sanctions policy should be geared, in part, towards targeting those who rely on the Australian economy (e.g. own property in Australia).

5. The target's links to Australia is not the only relevant criterion. For example, there is value in supporting allies' designations against targets with no known links to Australia. Furthermore, even if they exist, such links may not become known until after sanctions have been imposed. Still, simply copying other states' designations does not amount to a well-thought-through and effective sanctions policy.

6. So far, the vast majority of Australian sanctions designations are a selective copying of earlier US, EU or UK sanctions. They do not appear to target those with any links to Australia. They also only cover *some* persons sanctioned by Australia's allies, often after a significant time lag. The overarching impression this conveys is that of a halting, timid and reluctant sanctions policy.

7. For instance, consider the three most recent batches of Australian autonomous (non-UN-required) sanctions designations. Each of them involves persons with no obvious nexus to Australia who were only targeted months (or years)[2] after other states did so.[3]

Reason for Designation	**Targeted Persons**	**Prior Overseas Sanctions[4]**
Israeli settler violence in the	Yinon Levi, Zvi Bar Yosef,	Yinon Levi, David Chai

[2] For instance, the Australian designation of the Russian shipping company Sovfracht followed eight years after the US one. The Australian designation of the Iranian general Esmail Qaani took place 12 years after the US one.

[3] Two years ago, in another hearing before this Committee, I commented on the same pattern in connection with Australia's then-current Iran-related sanctions designations.

[4] The table only lists the earliest overseas sanctions designation (typically by the US), without listing all prior overseas sanctions designations (e.g. those by the UK and EU).

West Bank (25 July 2024)	Neria Ben Pazi, Elisha Yered, David Chai Chasdai, Einan Tanjil and Meir Ettinger (7 individuals) and Hilltop Youth (1 entity).	Chasdai and Einan Tanjil sanctioned by the US on 1 February 2024; Zvi Bar Yosef and Neria Ben Pazi sanctioned by the US on 14 March 2024; Elisha Yeted, Meir Ettinger and Hilltop Youth sanctioned by the EU on 19 April 2024.
North Korea's supply of arms to Russia (17 May 2024)	Vostochnaya Stevedoring Company LLC, Dunay Probable Naval Missile Facility, Marine Trans Shipping LLC, MG-Flot LLC, M Leasing LLC and Sovfracht Joint Stock Company (6 entities).	Sovfracht Joint Stock Company sanctioned by the US on **20 December 2016**. Vostochnaya Stevedoring Company LLC and Dunay Probable Naval Missile Facility sanctioned by the US on 23 February 2024. Marine Trans Shipping LLC and M Leasing LLC sanctioned by the US on 8 May 2024. MG-Flot LLC sanctioned by the UK on 19 May 2023.
Iran's destabilising activities in the Middle East (14 May 2024)	Mohammad Reza Ashtiani, Esmail Qaani, Gholam Rashid, Amir Hatami, Mehdi Gogerdchian (5 individuals) and Aircraft Engines Design and Manufacturing Company, Fanavaran Sanat Ertebatat Company and the Islamic Revolutionary Guard Corps Navy (3 entities).	Esmail Qaani sanctioned by the US **on 27 March 2012**, Gholam Rashid sanctioned by the US **on 4 November 2019**, Aircraft Engines Design and Manufacturing Company sanctioned by the US on 8 September 2022, Mehdi Gogerdchian sanctioned by the US on 19 September 2023, Mohammad Reza Ashtiani and Fanavaran Sanat Ertebatat Company sanctioned by the US on 18 October 2023, Islamic Revolutionary Guard Corps Navy sanctioned by the US on 28 April 2024.

8. This pattern raises multiple concerns. First, anyone subject to US, UK or EU sanctions is likely to take pre-emptive action to remove their assets from other like-minded jurisdictions, especially Five Eyes members. Therefore, the significant time lag before Australian designations is problematic. Second, with the exception of cyber sanctions discussed below, there is no evidence of Australia using its sanctions regimes – especially thematic Magnitsky-style programs – to address issues of regional concern, such as corruption or human rights abuse in the Asia-Pacific region.

9. One example of best practice in the use of Australian sanctions is the two joint designations by Australia, the US and the UK of two Russian cybercriminals engaged in attacks against Australian targets: specifically, sanctions against Aleksandr Ermakov in January 2023 in

response to his role in the hacking of Medibank and sanctions against Dmitry Khoroshev in May 2024 for his involvement in the LockBit ransomware group. These sanctions are an impressive demonstration of the emerging Australian capability to identify malign actors of special relevance to Australia and secure coordinated, multilateral sanctions action against them.

Australia's Limited Use of Thematic Sanctions

10. Since the entry into force of the amendments to the *Autonomous Sanctions Act 2011 (Cth)* in January 2022 authorising the imposition of thematic sanctions, only several dozen such designations have been made. They include sanctions against Russian officials involved in the killing of whistleblower Sergei Magnitsky (all sanctioned by the US 10 years prior to Australian sanctions), several designations of further Russian and Iranian officials for human rights abuse, the designations of Israeli settlers discussed above, and the two cyber sanctions designations also discussed above.

11. By contrast, US designations under the *Global Magnitsky Act 2016*,[5] which provides for corruption and human rights sanctions, cover 238 individuals and 305 entities. Of greater importance, however, is not the number of designations per se, but the almost complete absence of any truly Australia-initiated corruption or human rights designations, especially those targeting malign conduct in the Asia-Pacific region. As discussed above, Australia's excellent but nascent approach to cyber designations, which involves coordinated sanctions action against targets relevant specifically to Australia, is a welcome exception. This approach should be adopted across Australia's sanctions programs and scaled up.

12. In addition to existing thematic sanctions, Australia could consider establishing new such programs dealing with malign conduct involving Australia.[6] One good example would be developing a sanctions program targeting propagandists working for hostile regimes and soliciting funds from the Australian community.[7] In this instance, the prohibition on making assets available to such persons would have an immediate and tangible impact on the effectiveness of their malign activities which might otherwise go unaddressed.

Diplomatic Ramifications of Sanctions

13. It is possible that Australia's reluctance to implement a vigorous sanctions policy is partly a product of concerns about its diplomatic ramifications. While these concerns should be taken seriously, international experience suggests several approaches to implementing a robust sanctions policy while minimising diplomatic fallout:

    a. Identifying designation criteria. Setting out clear and consistent criteria for considering designations can help reframe Australian sanctions as a matter-of-course response to certain categories of wrongdoing rather than as an extraordinary, politically motivated measure. In particular, Australia may wish to consider the

[5] Technically made under Executive Order 13818, which expands upon the provisions of the *Global Magnitsky Act 2016*.
[6] Section 3(3) of the *Autonomous Sanctions Act 2011 (Cth)* lists some categories of possible thematic sanctions programs but expressly preserves the government's right to establish other thematic sanctions programs so long as they advance Australia's foreign policy interests: see section 10(2).
[7] Notably, the UK imposed sanctions against a UK citizen (Graham Phillips) for spreading Russia's 'propaganda' in 2022. The High Court of England and Wales ruled that these sanctions were lawful in *Phillips v Foreign Secretary* [2024] EWHC 32 (Admin).

publication of designation criteria similar to those published by the UK government for corruption and human rights sanctions.[8]

b. Considering civil society sanctions dossiers. A significant proportion of US and UK sanctions designations are triggered by civil society submissions that are evaluated by the respective government to ascertain whether sufficient grounds exist for the imposition of sanctions. This regular consideration of civil society submissions organically results in multiple designations of targets all over the world without selective focus on any particular country. This contributes to the fairness and credibility of the designations process while minimising the potential for diplomatic fallout.

Sanctions Implementation

14. The mere fact of a sanctions designation can have significant consequences for the target. For example, the imposition of sanctions based on allegations of corruption or human rights abuse can make it difficult for the targeted person to access banking services worldwide. However, in order for the full effect of Australian sanctions to be felt, effective identification and freezing of Australian-based assets of the sanctioned persons is essential.

15. The current experience of sanctions against Russia is emblematic of the concerns arising in this context. There are over 1,800 sanctioned Russian individuals and entities on the Australian sanctions list. This includes two Russian businessmen who unsuccessfully sought to challenge Australian sanctions in court,[9] one of whom (Oleg Deripaska) appears to be an indirect owner of a 20% stake in a Queensland-based alumina refinery via his company Rusal.[10] Therefore, one would expect for there to be Russian-controlled assets frozen in Australia. However, in response to a parliamentary question, the AFP stated that no Australian-based assets belonging to any of the over 1,800 sanctioned Russian individuals and entities had been identified.[11] This is surprising and calls for further examination.

Repurposing of Frozen Assets

16. The freezing of approximately US$300 billion in Russian state-owned property across the G7 has prompted an important international discussion of whether, and under what conditions, property belonging to the perpetrators of international crimes – including states engaged in wars of aggression – can be transferred to their victims. Since 2022, leading international lawyers have published analysis confirming the lawfulness of such a transfer.[12]

17. Some states, like Canada and the UK, have been forward-leaning in embracing this argument. The US government, while reserving its judgment at first, later expressed the view that the

[8] UK Foreign, Commonwealth & Development Office, 'Global Anti-Corruption Sanctions: consideration of designations', 26 April 2021; UK Foreign, Commonwealth & Development Office, 'Global Human Rights Sanctions: consideration of designations', 6 July 2020.
[9] *Abramov v Minister for Foreign Affairs (No 2)* [2023] FCA 1099; *Deripaska v Minister for Foreign Affairs* [2024] FCA 62.
[10] See *Alumina & Bauxite Co Ltd v QAL* [2024] FCA 43.
[11] Australian Federal Police, 'BE24-292 - Assets of sanctioned Russian entities and individuals'.
[12] See, e.g., Dapo Akande, Shotaro Hamamoto, Pierre Klein, Paul Reichler, Philippe Sands, Nico Schrijver, Christian Tams and Philip Zelikow, *On Proposed Countermeasures Against Russia to Compensate Injured States for Losses Caused by Russia's War of Aggression Against Ukraine*, 20 November 2023.

proposed transfer is lawful under international law.[13] However, divided opinion within the EU has so far prevented any coordinated resolution of the matter.

18. As a state with strong rule of law traditions and exceptional quality of international law expertise within its government, Australia is well-placed to contribute constructively to these discussions. Their ramifications reach far beyond the war between Russia and Ukraine and involve the setting of a precedent that can shape the economic response to future international crimes, including wars of aggression, and human rights abuse.

Gaps in Sanctions Laws

19. As Australia amasses greater experience of using sanctions, it is likely that some gaps in Australia's legal framework will become apparent, which is inevitable even with the best-designed sanctions framework. It is important to identify and fix such gaps as they arise. For now, one pertinent example is a gap in the treatment of 'import-sanctioned' goods apparent from the case of *Tigers Realm Coal Limited v Cth* [2024] FCA 340, which stems from Australia's sanctions against Russia.

20. Tigers Realm is a Melbourne-headquartered company that, at the relevant time, was extracting coal in Russia and selling it on global markets (not in Australia). Russian coal is an 'import-sanctioned good' under Australian sanctions laws, which means it is a criminal offence to 'import', 'purchase' or 'transport' it.[14] Tigers Realm wished to continue its operations in Russia against the DFAT's advice and sought a declaration from the Federal Court that such operations would be compatible with Australian sanctions laws.

21. Kennett J ruled that such operations would in fact be in breach of Australian sanctions laws because Tigers Realm 'transported' the coal within Russia, from the mine to the sea port, before selling it. In other words, the outcome of the case turned on an incidental feature of how Tigers Realm arranges its affairs.

22. The wording of the *Autonomous Sanctions Regulations 2011 (Cth)* and Kennett J's judgment leaves open the possibility that Australian companies could produce import-sanctioned goods overseas (outside Australia) and sell them to overseas (non-Australian) customers while remaining in compliance with Australian sanctions laws.

23. This is arguably inconsistent with the policy behind the relevant regulations, which must be to limit the targeted state's ability to make money from the sale of import-sanctioned goods. The inability of Australian customers to buy import-sanctioned goods is an effect of such a policy, not its objective. For example, it would be perverse to make it a criminal offence for Australian companies to import Russian coal into Australia but allow them to import it into New Zealand.

24. The existing inconsistency can be easily remedied by amending Regulation 4A in the *Autonomous Sanctions Regulations 2011 (Cth)*. Different appropriate forms of words can be found, with one possible solution proposed below:

4A Sanctioned ~~imports~~ sales

(1) For these Regulations, a person makes a ***sanctioned ~~import~~ sale*** if:

[13] Laura Dubois, James Politi and Lucy Fisher, 'G7 Moves Closer to Seizing Russian Assets for Ukraine' *Financial Times*, 15 December 2023.
[14] Regulation 4A of the *Autonomous Sanctions Regulations 2011 (Cth).*

(a) the person:
(i) imports or purchases goods from another person; or
(ii) ~~transports goods~~ sells or transports goods to another person; and
(b) the goods are ~~import~~ sale sanctioned goods for a country or part of a country.
(2) Goods mentioned in an item of the table are ~~import~~ sale sanctioned goods for the country or part of a country mentioned in the item if:
(a) the goods are exported from the country or part of a country; or
(b) the goods originate in the country or part of a country.