



ISLAMIC COUNCIL OF VICTORIA

**ICV Submission to the Foreign Affairs,
Defence and Trade Reference Committee
Inquiry into Australia's Sanction Regime**

6th September 2024

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The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Foreign Affairs, Defence and Trade Reference Committee's Inquiry into Australia's Sanctions Regime. As the peak representative body for Muslims in Victoria, the ICV's mission is to protect and advance the rights of Muslims in Victoria, across Australia and globally. The ICV is concerned about Australia's inconsistent application of autonomous sanctions against states, 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 ongoing 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 sanctions in response to recent humanitarian crises has highlighted the failings of the current approach, which appears to be heavily influenced by political rather than humanitarian considerations.

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1. The role and purpose of Australia's sanctions regime

The ICV appreciates that under Australia's existing sanctions regime, sanctions are considered a foreign policy tool and that the process for imposing sanctions aims to ensure that "all relevant foreign policy and other national interest considerations" are given due deliberation.¹ Within this framework, we acknowledge that many competing interests inform the decision to issue, or not to issue, sanctions against a particular state or individual. In practice, however, the most paramount and inalienable of these interests ought to be promoting the universal protection of the most basic human rights. Indeed, this is acknowledged in key legislation governing Australia's sanctions regime. The Explanatory Memoranda of both the *Autonomous Sanctions Act 2011* and the 2021 'Magnitsky sanctions' amendment define autonomous sanctions as a "punitive matter" to address "issues of international concern."² Namely, "the grave repression of the human rights or democratic freedoms of a population by a government."³ The objects of the 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.⁴

The 2021 *Autonomous Sanctions Amendment (Magnitsky Sanctions) Act* further emphasises the universal protection of human rights as the basis for Australia's sanctions regime. The amendment's stated purpose 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."⁵ These values, as highlighted by the new 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.⁶ 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.⁷

Sanctions serve the same purpose in the context of international law, and states such as Australia have committed to using sanctions to deter and punish violent, illegal and inhumane actions. As a signatory to the Responsibility to Protect (R2P) doctrine, Australia has accepted its responsibility within the international community to intervene in a timely and decisive manner when a state fails to protect its

¹ Explanatory Memorandum, *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021*, [9].

² Ibid, Explanatory Memorandum, *Autonomous Sanctions Bill 2010*, [1].

³ Explanatory Memorandum, *Autonomous Sanctions Bill 2010*, [1].

⁴ *Autonomous Sanctions Act 2011* (Cth), s3.

⁵ Explanatory Memorandum, *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021*, [5].

⁶ *Autonomous Sanctions Regulations 2011* (Cth), s6A(4).

⁷ Ibid, s6A(4)(a)(i)-(iii).

population from genocide, ethnic cleansing, war crimes and crimes against humanity.⁸ This doctrine favours and promotes the use of diplomatic and economic measures, including sanctions and embargoes as a key tool to deter, isolate and punish states that are failing to protect their populations.⁹ As a last resort, it even requires the use of military force to bring an end to mass atrocity crimes. Although the doctrine calls for this intervention via the UN Security Council (UNSC), there is ample precedent warranting autonomous interventions by states where the UNSC has proven ineffective or stalemated in an urgent humanitarian crisis.¹⁰ Indeed, Australia has autonomously imposed sanctions on Russia, Syria, Myanmar and Zimbabwe without UNSC authority, due to the gravity and urgency of violence and human rights violations within these states.¹¹

Similarly, 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.¹² 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.¹³

Ultimately, within both domestic and international law, sanctions are upheld as a key tool available to states to promote the universal protection of basic human rights, and punish and isolate those states, individuals or bodies responsible for violations thereof. The fundamental purpose of sanctions is as a coercive intervention measure, chiefly to protect human life and dignity. In reality, however, the politicisation and selectivity of their use under Australia's current sanctions regime undermines their efficacy and the fulfilment of this purpose. Far too often, Australian governments have placed political and economic concerns above the humanitarian need for sanctions and other forms of intervention, all while sanctimoniously proclaiming our humanitarian values and diplomatic influence.

2. Australia's history of human rights-based sanctions

Over many years, Australia has exemplified the effective use of sanctions to respond to *certain* human rights abuses and violations of international law. For example, throughout the 1970s and 1980s, Australia played a leading role in enforcing economic and cultural boycotts against apartheid South Africa. Initially,

⁸ *United Nations General Assembly Resolution 60/1: 2005 World Summit Outcome*, UN Doc A/RES/60/1, [138]-[139].

⁹ UN Secretary-General, *Implementing the Responsibility to Protect* (Report, 2009, UN Doc A/63/677), 25.

¹⁰ Ljupcho Stojkovski, 'Non-UN sanctions and the responsibility to protect: Legality, legitimacy and their significance for R2P' in Vasilka Sancin and Maša Kovič Dine (eds.) *The Limits of the Responsibility to Protect* (2023, University of Ljubljana), 21, 29.

¹¹ *Autonomous Sanctions Regulations 2011* (Cth), Part 2, ss 4, 4A.

¹² *Convention on the Prevention and Punishment of the Crime of Genocide 1948*, 78 UNTS 277, art 1.

¹³ *Rome Statute of the International Criminal Court 1998*, 2187 UNTS 90, preamble, art 12-14.

this included a series of trade embargoes as well as prohibiting sporting tours in Australia in which segregated South African teams were participating.¹⁴ Realising this was insufficient, in the mid-1980s Australia introduced a series of financial sanctions aimed at “drying up the sources of trade credit and investment funds” available to the South African state, as stated by former Foreign Minister Gareth Evans.¹⁵ The government also spearheaded an initiative bringing together Foreign Ministers from the Commonwealth states to develop a unified strategy of “relentlessly increasing sanctions” and monitoring policy changes implemented by the South African government.¹⁶ Only after the official repeal of apartheid in 1991 were these sanctions eased.¹⁷

More recently, under the *Autonomous Sanctions Act 2011*, human rights abuses have always been a key factor in determining country-based sanctions, and additionally, the Act has allowed for wrongdoing individuals within a sanctioned country to be targeted directly.¹⁸ Since 2011, Australia has imposed country-wide sanctions including trade and commerce restrictions on Syria as a result of the state’s “deeply disturbing and unacceptable use of violence” against civilians.¹⁹ Australia’s sanctions regime on Syria also allows the government to target individuals with travel bans, asset freezes and business restrictions, if the Foreign Affairs Minister is satisfied they are responsible for human rights abuses including violence against civilians.²⁰ Similarly, Australia’s existing sanctions regime on Zimbabwe specifically targets people and entities engaged in “activities that seriously undermine democracy, respect for human rights and the rule of law.”²¹ Sanctions imposed on Myanmar since 2018 target government-linked offices and entities, in response to the United Nations finding evidence of state-sanctioned human rights abuses and ethnic cleansing of minorities.²²

The 2021 *Autonomous Sanctions Amendment (Magnitsky Sanctions) Act* expanded the application of sanctions in response to grave human rights abuses and threats to international peace, and the new regulations have been used effectively on numerous occasions. In 2022, Russia launched a full-scale

¹⁴ 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.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Hon. Bob Hawke, *Parliamentary Statement by the Prime Minister on his visit to Zimbabwe and the 1991 Commonwealth Heads of Government* (Speech, 6 November 1991, Parliament House, Canberra).

¹⁸ 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) 18.

¹⁹ ‘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].

²⁰ *Autonomous Sanctions Regulations 2011* (Cth), s 6(8).

²¹ 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.

²² ‘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].

military invasion and occupation of Ukraine, which killed over 10,000 civilians in the following two years.²³ Australia did not hesitate to utilise sanctions as a diplomatic tool to de-escalate 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 business people and major banks and corporations in Russia.²⁴ Although Australia's Prime 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.²⁵ 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 pro-democracy activist.²⁶ Australia's Minister for Foreign Affairs deplored 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.²⁷

As of 2024, Australia has imposed over 1,200 sanctions on Russia, including targeted restrictions on 7,241 individuals and entities.²⁸ Sanctioned entities include companies supplying technology and resources to the Russian military, high-ranking political and military officials involved in human rights violations, major defence entities and arms producers, and even foreign military officials who have supported Russia's threats to Ukrainian sovereignty.²⁹

²³ United Nations Office of the High Commissioner for Human Rights, 'Ukraine: Türk deplores horrific human cost as Russia's full-scale invasion enters third year, *UN OHCHR*, 22 February 2024, <https://www.ohchr.org/en/press-releases/2024/02/ukraine-turk-deplores-horrific-human-cost-russias-full-scale-invasion-enters>.

²⁴ Leah Ferris, 'Sanctions imposed on Russia in response to aggression against Ukraine – how are they imposed under Australia's sanctions laws?' *Parliament of Australia*, https://www.aph.gov.au/About/Parliament/Parliamentary_departments/Parliamentary_Library/Research/FlagPost/2022/February/Sanctions_on_Russia.

²⁵ Hon. Scott Morrison, *Press Conference, Sydney, Wednesday 23 February 2022*.

²⁶ 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-violations-russia> [2].

²⁷ *Ibid*, [4].

²⁸ Hon. Penny Wong and Hon. Tim Watts, *Two years on, Australia stands with Ukraine* (Media Release, 24 February 2024) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/two-years-australia-stands-ukraine> [6]; Kayla Cook, 'International sanctions: Prevention or precipitation of human rights violations?' *UNSW Australian Human Rights Institute*, <https://www.humanrights.unsw.edu.au/students/blogs/international-sanctions-prevention-precipitation-human-rights-violations>, [5].

²⁹ 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-invasion-ukraine>, [1]-[2].

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.³⁰ Further sanctions imposed in 2023 included government censors responsible for limiting journalistic freedom in Iran.³¹ 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."³²

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

3. The urgent need for sanctions against Israel

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. Israel's military campaign against the Palestinian people has continued uninhibited for almost 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.

³⁰ 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/media-release/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-violations-iran>.

³¹ 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-iran-regime-oppress-women-girls-dissent/102847516>.

³² 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-violations-iran> [6].

3.1 A system of apartheid

For years, leading human rights organisations including Human Rights Watch and the Israeli Information Center for Human Rights in the Occupied Territories, have labelled Israel an apartheid state.³³ In its pursuit to establish a Jewish 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.³⁴ Palestinians face nearly 600 permanent obstacles to movement, including military checkpoints, blockades, and separation barriers.³⁵ Among these is a 700-kilometre wall that Israel is constructing inside the occupied West Bank, isolating and trapping numerous Palestinian communities.³⁶ These restrictions not only limit movement between communities but also prevent access to agricultural land and essential services like healthcare.³⁷

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.³⁸ Thousands of Palestinians, including children, are regularly held under administrative detention, effectively imprisoning them without trial or charge for indefinite periods.³⁹ Further demonstrating the selective allocation of rights within this legal system, an Israeli citizen charged with a crime must be brought before a civilian court within 48 hours of arrest, while Palestinians from Gaza or the West Bank can be held for up to 14 or 8 days respectively, before appearing before a military judge.⁴⁰

³³ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022); Human Rights Watch, 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution,' 27 April 2021, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>; B'Tselem 'A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid,' 2021, https://www.btselem.org/publications/fulltext/202101_this_is_apartheid

³⁴ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 95-97.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 18.

³⁹ Omar Shakir, 'Why does Israel have so many Palestinians in detention and available to swap?' *Los Angeles Times*, 2 November 2023, <https://www.latimes.com/opinion/story/2023-11-29/gaza-palestinian-prisoners-hostage-exchange-detention-israeli-prisons>.

⁴⁰ B'Tselem and HaMoked, *Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law*, (Report, 2009) https://www.btselem.org/download/200910_without_trial_eng.pdf.

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. Legislation such as the Absentees' Property Law allows the state to seize all movable and immovable property of Palestinians deemed "absentee owners," including those displaced by settlers or military action, even if they have relocated only a short distance from their home.⁴¹ It is estimated that Israel has expropriated over 10,000 shops, 25,000 buildings and almost 60% of the fertile land once privately owned by Palestinians under the Absentees' Property Law.⁴²

This discriminatory system extends not only to those living under occupation but also to Palestinians who have accepted Israeli citizenship. After Israel's declaration of statehood in 1948, approximately three-quarters of Palestinians were forcibly displaced, but 150,000 were granted Israeli citizenship.⁴³ Today, Palestinian citizens of Israel make up about 20% of the population, yet 92% of these live segregated from the general Israeli population.⁴⁴ 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.⁴⁵ 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.⁴⁶

3.2 Disturbing military aggression against civilians

On October 7, 2023, Hamas and the Palestinian Islamic Jihad militants launched an attack on Israel from the Gaza Strip, killing approximately 695 Israeli civilians and taking over 250 hostages in response to Israel's decades-long crippling blockade of Gaza, ongoing occupation and expansion of illegal settlements.⁴⁷ In response, Israel launched a ground and air military attack on Gaza that continues to this day. Israel's brutal campaign has completely destroyed Gaza, a region of over 2.1 million inhabitants,

⁴¹ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022); Human Rights Watch, 113.

⁴² 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].

⁴³ 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-palestinian-citizens?lang=en> [2].

⁴⁴ Ibid.

⁴⁵ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 82.

⁴⁶ 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-palestinian-citizens?lang=en> [8].

⁴⁷ 'Israel social security data reveals true picture of Oct 7 deaths' *France24*, 2023, <https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths>.

killing approximately 41,546 people and injuring a further 94,398 as of September 2024, and wiping out swathes of civilian infrastructure.⁴⁸

Unyielding military assaults have massacred civilians at markets,⁴⁹ in refugee camps and temporary shelters,⁵⁰ in mosques and churches,⁵¹ and in schools.⁵² The UN Office for the Coordination of Humanitarian Affairs (UNOCHA) has reported that more than half of homes in Gaza are damaged or completely destroyed, along with 80 per cent of commercial facilities, 65 per cent of cropland and 85 per cent of schools.⁵³ At least 19 out of 36 hospitals are completely out of service.⁵⁴

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.⁵⁵ At least 17,000 children in Gaza now live unaccompanied.⁵⁶ Preventable diseases run rampant among displaced populations. Cases of polio have been detected for the first time in 25 years, and the UN has accused the Israeli government of hindering its attempts to distribute vaccinations.⁵⁷

⁴⁸ 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>; 8 'Israel-Gaza war in maps and charts: Live tracker,' Al Jazeera, updated 4 September 2024, <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>.

⁴⁹ '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-in-gaza/>; '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>.

⁵⁰ 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-global-condemnation-2024-05-27/>.

⁵¹ '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>.

⁵² '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-gaza-school_6712632_4.html.

⁵³ 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>.

⁵⁴ Ibid.

⁵⁵ 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-began-says-un-agency>.

⁵⁶ 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>.

⁵⁷ Julian Borger, 'Gaza polio vaccine rollout hindered by Israeli evacuation orders, says UN' *The Guardian*, 27 August 2024, <https://www.theguardian.com/world/article/2024/aug/27/gaza-polio-vaccine-rollout-hindered-by-israeli-evacuation-orders-says-un>.

Throughout 2024, Human Rights Watch has accused Israel of the war crime of using starvation as a weapon of war, and the UN has warned of an imminent “man-made famine.”⁵⁸ According to the Integrated Food Security Phase Classification and World Food Program, 96% of Gaza’s population faces acute food insecurity amounting to a “crisis level or higher,” with approximately half a million people facing “catastrophic” famine.⁵⁹

3.3 Flagrant violations of international law and national sovereignty

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. The ICJ decided that there were plausible grounds to adjudicate on the genocide case brought against Israel.⁶⁰

In the meantime, Israeli officials and state forces have made their genocidal intentions undeniable. In October 2023, Israeli Defence Minister Yoav Gallant stated, “Gaza won’t return to what it was before... we will eliminate everything” in reference to the beginning of Israel’s military campaign. He also stated that he had “ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed... We are fighting human animals, and we are acting accordingly.”⁶¹ In November 2023, after weeks of intense bombing in the North of Gaza had already killed over 9,100 Palestinians, Israel’s Minister of Heritage Amichai Eliyahu posted a video of a bulldozer demolishing the remains of destroyed homes in Gaza on his social media. He wrote in the caption “The North of the Gaza Strip, more beautiful than ever. Blow up and flatten everything, delightful. After we are done, we allocate the lands of Gaza to the soldiers fighting and the settlers who lived in Gush Katif.”⁶²

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.”⁶³ The entrenchment

⁵⁸ Human Rights Watch, ‘Gaza: Israel’s Imposed Starvation Deadly for Children,’ 9 April 2024, <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>; ‘Imminent famine in northern Gaza is ‘entirely man-made disaster’: Guterres,’ *UN News*, 18 March 2024, <https://news.un.org/en/story/2024/03/1147656>.

⁵⁹ World Food Program, ‘WFP response to new IPC Food Security Assessment on Gaza,’ 25 June 2024, <https://www.wfp.org/news/wfpresponse-new-ipc-food-security-assessment-gaza>.

⁶⁰ International Court of Justice, *Summary of the Order of 26 January 2024*, Document 192-20240126-SUM-01-00- EN, 6.

⁶¹ Emanuel Fabian, ‘Defense minister announces ‘complete siege’ of Gaza: No power, food or fuel,’ *The Times of Israel*, 9 October 2023, https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-completesiege-of-gaza-no-power-food-or-fuel/.

⁶² <https://www.facebook.com/watch/?v=148918588283326>. For previous caption and English translation, see Safaa Kasraoui, ‘More Beautiful Than Ever’: Israeli Minister Delights in Gaza Genocide’ *Morocco World News*, 3 November 2023, <https://www.moroccoworldnews.com/2023/11/358737/more-beautiful-than-ever-israeliminister-delights-in-gaza-genocide>.

⁶³ 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>.

of such control now appears imminent, as on August 28, 2024, Israel appointed a high-ranking military officer to a newly-created office responsible for administering humanitarian and civilian affairs in Gaza.⁶⁴ The Minister for Communications similarly called for Israelis to settle all remaining Palestinian land.⁶⁵ 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...”⁶⁶

The majority of the international community recognises Israel's borders as excluding Gaza and the West Bank, as well as East Jerusalem. However, since 1967 these Palestinian territories have been under military occupation or siege by the IDF, and those not under siege are constantly fragmented and strangled by the proliferation of illegal settlements. These settlements have increased at an unprecedented rate since 2022. Between November 2022 and October 2023, 917 Palestinian-owned buildings in the West Bank alone were demolished, including residential buildings, donor-funded public buildings and water and sanitation facilities, displacing at least 1,015 Palestinians.⁶⁷ In the same period, the government progressed with 24,300 new housing units for Israeli settlers in the Occupied Palestinian Territories, and ‘legalised’ 9 new privately developed Israeli towns in the occupied territories.⁶⁸

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 31.⁶⁹

In July 2024, the ICJ reaffirmed the illegality of Israel's settlements in the Occupied Palestinian Territories and called for an end to Israeli presence in these territories as soon as possible.⁷⁰ The Court also stated that other nations have an obligation not to “render aid or assistance” to Israel in maintaining its “presence, settlement or use of the land,” nor to support Israel in impeding on Palestinian self-determination.⁷¹

⁶⁴ ‘Chief of Staff Herzi Halevi appoints Elad Goren as new Head of Humanitarian-Civilian effort in Gaza,’ *The Jerusalem Post*, 28 August 2024, <https://www.jpost.com/breaking-news/article-816729>.

⁶⁵ 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>.

⁶⁶ Ibid.

⁶⁷ 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>.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ International Court of Justice, *Summary of the Advisory Opinion of 19 July 2024*, Doc 186-20240719-SUM-01-00-EN, 18.

⁷¹ Ibid.

Furthermore, since 2023 Israel has carried out multiple air strikes and political assassinations within Syria and Lebanon,⁷² further violating national sovereignty and international peace. Israel's Defence Minister has even made explicit threats against foreign civilian populations, stating "...the ones who will pay the price are first of all the citizens of Lebanon. What we are doing in Gaza, we know how to do in Beirut..." in reference to military action against Hezbollah.⁷³

3.4 Transgressions on civil liberties and freedom of the press

Israel routinely misuses indefinite administrative detention to persecute and punish individuals exercising their right to freedom of expression and association by challenging the occupation. Palestinians can face 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.⁷⁴ 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.⁷⁵ As of September 2024, it is reported that 9,900 political prisoners are held in Israel, including 3,432 in administrative detention and 250 child prisoners, most of them never convicted or even properly tried for a crime.⁷⁶

Since October 7, Israel has killed 116 journalists and media workers in Gaza, injured 35 and arrested 53.⁷⁷ The Committee to Protect Journalists has declared that at least 5 of these journalists were directly targeted and murdered by Israeli forces, and other killings of media personnel and their families are also being investigated.⁷⁸ The Committee 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. Israel has also blocked foreign media from entering Gaza,

⁷² 'Israeli air attack on Syria's southern region kills two people, Syrian state media says,' *ABC News*, 27 June 2024, <https://www.abc.net.au/news/2024-06-27/israel-launches-air-attack-on-syria/104028400>.

⁷³ Law For Palestine, *Database of Israeli Incitement to Genocide - Decision Makers, Version 2 (15th January 2024)* <https://law4palestine.org/wp-content/uploads/2024/01/1-Database-of-Israeli-Incitement-to-Genocide-15th-January-2024-DECISION-MAKERS.pdf>.

⁷⁴ Amnesty International, *Israel's Apartheid Against Palestine*, (Report, 2022), 241-243.

⁷⁵ '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/>.

⁷⁶ HaMoked, '9,112 "Security" Inmates Are Held In Prisons Inside Israel,' <https://hamoked.org/prisoners-charts.php>. Addameer, 'Statistics,' <https://www.addameer.org/statistics>.

⁷⁷ '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/>.

⁷⁸ *Ibid.*

restricting accurate and independent reporting of their brutal assault.⁷⁹ In 2024, Israel passed a law banning foreign media coverage that is deemed to threaten state security, under which the government has sought to shut down media networks actively reporting on the war in Gaza. Even local Israeli networks have been threatened with financial penalties for challenging official IDF reports.⁸⁰

According to the UNOCHA, over the past year, Israel has killed at least 294 aid workers and 885 healthcare workers.⁸¹ This includes targeting World Central Kitchen workers as they delivered food in Deir al-Balah, including one Australian.⁸²

4. Australia's deplorable response to Israel's crimes

Australia's response to Israel's latest assault on Gaza exposes the grave limitations of our current sanctions regime. For years, successive governments have claimed that our autonomous sanctions allow Australia to "demonstrate our values" and 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.⁸³

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."⁸⁴ These sanctions were expanded throughout 2024.

⁷⁹ 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>, [2].

⁸⁰ Ibid, [17]-[18].

⁸¹ 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>.

⁸² Rashida Yosufzai, Anthony Albanese demands accountability from Israel over death of aid worker in Gaza, *SBS News*, 2 April 2024, <https://www.sbs.com.au/news/article/anthony-albanese-demands-accountability-from-israel-over-death-of-aid-worker-in-gaza/0ms3lvr2g>.

⁸³ Kunal Purohit, 'Does Israel have the right to self-defence in Gaza?' *Al Jazeera*, 17 November 2023, <https://www.aljazeera.com/news/2023/11/17/does-israel-have-the-right-to-self-defence-in-gaza>.

⁸⁴ 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>.

By contrast, the government has neglected to take any substantive action, let alone impose sanctions against Israel. Over the past year, prominent human rights organisations, civil society and advocacy groups,⁸⁵ legal experts,⁸⁶ and tens of thousands of Australian constituents⁸⁷ have tirelessly called on the government to promote a ceasefire and sanction Israel, including by restricting trade and imposing arms embargoes. The International Court of Justice has ruled there is an imminent risk of genocide unfolding in Gaza, and that all states have an obligation to refuse support for Israel's colonisation of the Occupied Palestinian Territories.⁸⁸ The Chief Prosecutor of the International Criminal Court has requested arrest warrants for Israel's Prime Minister and Defence Minister, accusing them of orchestrating mass atrocity crimes in Gaza.⁸⁹ 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. 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.⁹⁰ All of these warnings have gone unheeded.

In fact, the Australian government has actively impeded the promotion of a ceasefire and the provision of humanitarian assistance. In January, after Israel baselessly accused 12 of the 13,000 UNRWA staff in Gaza of involvement in the October 7 attacks, Australia immediately cut off \$6 million in funding to the refugee agency without question or investigation.⁹¹ Israel then refused to provide any evidence of the allegations, and a report from an independent investigator in April found no evidence for the allegations.⁹²

⁸⁵ 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/>.

⁸⁶ 'Australian Lawyers' Letter RE Gaza, *Lawyer's Letter*, <https://lawyersletter.au/>.

⁸⁷ 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>.

⁸⁸ International Court of Justice, *Summary of the Order of 26 January 2024*, Document 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.

⁸⁹ 'ICC prosecutor urges judges to rule on warrants for Israeli, Hamas leaders,' *Al Jazeera*, 24 August 2024, <https://www.aljazeera.com/news/2024/8/24/icc-prosecutor-urges-judges-to-rule-on-warrants-for-israeli-hamas-leaders>.

⁹⁰ 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-israels-continued-assault-on-gaza-un-expert-says>

⁹¹ Josh Taylor & Jordyn Beazley, 'Australia pauses UN agency funding as staff investigated for suspected role in 7 October attack on Israel,' *The Guardian*, 27 January 2024, <https://www.theguardian.com/australia-news/2024/jan/27/australia-pauses-un-agency-funding-as-staff-investigated-for-suspected-role-in-7-october-attack-on-israel>.

⁹² Independent Review Group for the United Nations Secretary-General, *Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality* (Report, 20 April 2020); 'UNRWA: Claims Versus Facts,' *UNRWA*, May 2024 <https://www.unrwa.org/unrwa-claims-versus-facts-february-2024>.

In late October 2023, after Israel had already slaughtered more than 7,000 Gazans in less than a month,⁹³ Australia declined to support a proposed UN resolution calling for an “immediate, durable and sustainable humanitarian truce” between Israel and Hamas, and the provision of humanitarian aid to the people of Gaza, a resolution supported by 120 states.⁹⁴ Australia’s representative to the General Assembly once again reiterated Israel’s right to defend itself, whilst disingenuously acknowledging that “innocent civilians should not pay for the horrors perpetrated by Hamas.”⁹⁵ A few days later, Foreign Affairs Minister Penny Wong mourned the loss of innocent life in Gaza, and stated that Israel is held to the high standards expected of democracies, including that “Israel must observe international law and the rules of war.”⁹⁶ To date, the government has refused to back these platitudes with any action.

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.⁹⁷ Moreover, while the Albanese government has claimed that Australia does not directly supply weapons to the Israeli state, there is evidence that Australian exports of arms and ammunition end up in use by Israeli forces under existing multilateral trade agreements.⁹⁸ Australia has also failed to follow in the footsteps of allies such as the UK, France, Belgium, Norway, Ireland and Spain by affirming that it would support enforcement of ICC arrest warrants against Benjamin Netanyahu and Yoav Gallant.⁹⁹

The ICV acknowledges and welcomes the recent issuing of sanctions against seven Israeli individuals and the organisation Hilltop Youth for their roles in inciting and committing settler violence in the West Bank.

⁹³ ‘UN says Gaza Health Ministry death tolls in previous wars ‘credible’ *Al Jazeera*, 27 October 2023, <https://www.aljazeera.com/news/2023/10/27/un-says-gaza-health-ministry-death-tolls-in-previous-wars>.

⁹⁴ Jordyn Beazley, ‘This article is more than 10 months old 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/australia-abstains-from-un-resolution-calling-for-truce-in-gaza-prompting-criticism-at-home>.

⁹⁵ Ibid.

⁹⁶ Hon. Penny Wong, ‘A two-state solution is the only way that the Israel-Palestine conflict can be solved,’ (Opinion, 4 November 2023) <https://www.foreignminister.gov.au/minister/penny-wong/opinion/two-state-solution-only-way-israel-palestine-conflict-can-be-solved>.

⁹⁷ ‘Israel Country Brief,’ *Australian Government Department of Foreign Affairs and Trade*, <https://www.dfat.gov.au/geo/israel/israel-country-brief>, [15].

⁹⁸ Andrew Greene, ‘Inside the murky debate over whether Australia is exporting weapons to Israel,’ *ABC News*, 14 June 2024, <https://www.abc.net.au/news/2024-06-14/is-australia-sending-weapons-to-israel/103975910>.

⁹⁹ ‘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/>; ‘UK won’t challenge ICC arrest warrant request for Netanyahu, Gallant,’ *Al Jazeera*, 26 July 2024, <https://www.aljazeera.com/news/2024/7/26/uk-wont-challenge-icc-arrest-warrant-request-for-netanyahu-gallant>.

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.¹⁰⁰ Nonetheless, these 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. 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.

5. Recommendations to resolve the inconsistency and politicisation of sanctions

In order to effectively fulfil the purpose of our sanctions regime, Australia must be consistent, coherent and decisive in its application of sanctions against foreign states, individuals and entities. The punitive nature of sanctions also entails that they must be applied consistently, in the interest of natural justice. Demonstrating this, in 2020, the Joint Standing Committee on Foreign Affairs, Defence and Trade report on the inquiry into Magnitsky sanctions acknowledged significant "concerns about the potential for targeted sanctions to be politicised, and applied inconsistently."¹⁰¹ 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..."¹⁰²

The Joint Committee Report made a series of recommendations that would depoliticise Australia's sanctions regime and ensure that Magnitsky-type sanctions would be applied consistently, justly and effectively under the new legislation. Far too few of these recommendations were adopted in the *Autonomous Sanctions Amendment Act 2021*, but international events in the last three years have once again

¹⁰⁰ Hon. Penny Wong, *Human Rights Sanctions in response to Israeli settler violence in the West Bank* (Media Release, 25 July 2024) <https://www.foreignminister.gov.au/minister/penny-wong/media-release/human-rights-sanctions-response-israeli-settler-violence-west-bank>, [4].

¹⁰¹ 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.

¹⁰² 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.

shown the irrefutable need for such measures. In particular, the ICV urges the Foreign Affairs, Defence, and Trade Reference Committee to pursue the following reforms.

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.

Australia's sanctions regime is in dire need of legislative reforms creating objective, consistent and binding criteria for the imposition of sanctions, in order to combat the current inconsistency and over-politicisation of sanctions. 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.¹⁰³ 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.¹⁰⁴ The criteria warranting sanctions should include clearly defined egregious violations of international law, including state-imposed apartheid and forced civilian displacement, serious 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.

Recommendation 2: Mandate sanctions, including embargoes, on the trade of weapons, military intelligence and dual-purpose technologies to foreign states where there is substantial, verifiable evidence of war crimes and intentional military aggression against civilian populations.

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.¹⁰⁵ 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

¹⁰³ '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>.

¹⁰⁴ 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.

¹⁰⁵ *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].

objects...or other war crimes.”¹⁰⁶ Nonetheless, the gaps in Australia’s current sanctions 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. Legislation that outlines criteria for the imposition of sanctions should be passed with the object of cutting off resources to oppressive regimes, particularly those resources that are likely to be used in the commission of mass atrocity crimes and egregious human rights violations. Any legislative criteria for the imposition of sanctions should include mandatory embargoes on the trade of arms, ammunition, military technology and/or intelligence, and dual-purpose technology to states where there is substantial credible evidence of those states using these resources to commit mass atrocity crimes. This should include embargoes on states where international authorities such as the UNSC, ICJ and ICC have found evidence of these crimes or imminent risks thereof. This would both ensure that Australia does not play a role in facilitating mass atrocity crimes, and fulfil our obligations to support the judicial procedures of these international authorities.

Recommendation 3: Establish an independent advisory body to evaluate and advise on the imposition of state-based and thematic 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 2020.¹⁰⁷ 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.

¹⁰⁶ *The Arms Trade Treaty 2013*, 3013 UNTS 269, art. 6.2-6.3.

¹⁰⁷ 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.

In order to increase the transparency of Australia's sanctions regime, and promote government accountability, the recommendations of this advisory body should generally be made public, and it should have the capacity to conduct public inquiries and receive and evaluate suggestions from the public and civil society groups.¹⁰⁸ The Minister for Foreign Affairs should be required under the legislation to respond publicly to recommendations made by the advisory body, including explaining reasons for refusing any recommendations made by this body.

Recommendation 4: 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 discussed in Section 1, Australia has obligations under international law to both prevent and punish genocide and other mass atrocity crimes. 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. Organisations 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.¹⁰⁹ Within this framework, Australia should be cautious not to utilise Magnitsky-type 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-type sanctions under Australia's legislative regime.

Recommendation 5: Prioritise, where possible, the use of Magnitsky-type 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 Reference Committee, and the Australian government, to promote the use of targeted Magnitsky sanctions against individuals, organisations, state bodies and private entities engaged in, complicit in, or

¹⁰⁸ Ibid, Recommendation 13.

¹⁰⁹ 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.

responsible for egregious human rights violations, as opposed to state-wide sanctions where feasible. We acknowledge the utility of state-based sanctions as a diplomatic tool and method of humanitarian intervention, and recognise the necessity of state-wide sanctions in certain situations. However, state-based sanctions should be accompanied by regular impact assessments, with a particular focus on how the impact on civilians and innocent parties can be minimised.

Recommendation 6: 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. 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 pro-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 Reference 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

Sanctions are one of the foremost political tools available to states to influence behaviour and uphold order and respect for human rights within the global arena. Australia's current sanctions regime has the potential to position the state as a global leader in preventing egregious human rights abuses, mass atrocity crimes, and impunity for perpetrators. However, the current limitations of our sanctions regime make it ineffective and inconsistent, being open to misuse and politicisation at the discretion of successive governments and Foreign Ministers. Australia's deplorable response to the ongoing genocide, war crimes, apartheid and censorship imposed by Israel makes these limitations abundantly clear. In order to strengthen Australia's sanctions regime, and to truly embody our stated values of human rights, justice and freedom, significant

legislative reforms are urgently needed. We implore the Foreign Affairs, Defence and Trade Reference Committee to reevaluate the deficiencies of the 2021 *Autonomous Sanctions Amendment Act* and to thoroughly consider the global events that have since exposed the failures of Australia's sanctions regime. History will otherwise condemn our nation's hypocrisy.