

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade - Human
Rights Sub-committee

Considering Legislation Comparable to the United States' *Magnitsky Act* 2012

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We appreciate this opportunity to comment on the potential significance and effectiveness of enacting *Magnitsky*-style legislation in Australia for the purpose of international human rights promotion. We are of the opinion that such legislation is a pressing matter for consideration.

Magnitsky-style legislation has been shown to be effective in promoting accountability for human rights abusers, in an era in which such abuses are becoming increasingly grave yet are rarely punished. There is thus a compelling moral argument for enacting such legislation.

There is also, at the same time, a practical argument for such legislation: *Magnitsky* legislation is a growing trend in the liberal democratic world, with laws passed in the United States, Canada, the United Kingdom, Gibraltar, Estonia, Latvia, Lithuania, and Kosovo, and under consideration in the European Union. Robust *Magnitsky* legislation will help to ensure that Australia does not fall behind in this global effort to protect human rights, and thereby avoid becoming a safe haven for human rights abusers.

We write as academics working across disciplines in the field of China Studies, with a concern for human rights. Human rights abuses by the government of the People's Republic of China in Xinjiang, Tibet, Hong Kong, and China as a whole undoubtedly provide a significant reference

point for our reflections on this legislation, but the significance of this legislation extends far beyond China.

The effectiveness of Magnitsky-style Legislation

We live in an interconnected world, brought together by increasingly rapid international travel and telecommunications, and overseen by global multilateral institutions. Yet at the same time, there are extremely few effective measures available to hold human rights abusers culpable in this global community. In this context, *Magnitsky*-style legislation presents a significant development, insofar as it makes use of this growing global connectivity to promote accountability.

Magnitsky legislation gives governments the power to sanction individuals and groups involved in serious human rights violations or corruption. Potential sanctions include asset freezes and travel bans. *Magnitsky* legislation is an innovative and powerful tool in promoting human rights in an interconnected world because it is focused, evidence-based, and effective.

Magnitsky legislation is focused: sanctions can target people directly involved in these abuses, as well as people with command responsibility for such abuses. Rather than attempting to implement sanctions on an entire country, a complicated process with a track record of highly uncertain outcomes, *Magnitsky* legislation precisely targets individuals within systems involved in significant human rights abuses.

Magnitsky legislation is evidence-based: enacting sanctions against a particular individual or group requires thorough, objective, and verifiable documentation of human rights abuses. These abuses can include extrajudicial killing, torture, or rape carried out by a government official or someone acting on the orders of an official. Perpetrators include officials directly involved in the

abuses, as well as those with command responsibility. Maintaining a high standard of evidence guarantees the durability of the sanctions system as whole.

Magnitsky legislation is effective: *Magnitsky* legislation makes use of the interconnected nature of today's world to promote accountability for human rights abuses. Under this legislation, perpetrators of human rights violations who have not been held accountable by their own state's legal system can face assets freezes and travel bans by the jurisdiction implementing *Magnitsky* sanctions. Jurisdictions implementing these sanctions take significant steps toward holding human rights abusers accountable; at the same time, these jurisdictions also serve their own self-interest by avoiding providing a safe haven for human rights abusers.

Beyond these specific practical effects, *Magnitsky* sanctions may have broader effects encouraging change within the systems targeted, acting as a clear and visible deterrent to ordering and enacting similar human rights abuses in the future.

The growing trend of Magnitsky-style legislation

As noted above, since the 2012 passage of the *Global Magnitsky Human Rights Accountability Act* in the United States, similar legislation has been passed in the United Kingdom, Canada, Estonia, Latvia, Lithuania, Gibraltar, and Kosovo. In late 2019, the European Union also announced that it is beginning work on *Magnitsky*-style legislation. The growing trend of *Magnitsky*-style legislation in the liberal democratic world means that human rights abusers held accountable under such legislation will find themselves increasingly isolated from the global community.

At the same time, this trend also means that any country that does not want to serve as a safe haven for such human rights abusers must consider pursuing its own *Magnitsky*-style

legislation as a matter of urgency. It would be deeply unfortunate if human rights abusers, deterred by such legislation elsewhere in the world, came to view Australia as a potentially safe alternative. Enacting thorough and carefully crafted *Magnitsky*-style legislation in Australia will ensure that this does not happen.

Therefore, beyond the moral argument that *Magnitsky*-style legislation is effective in holding human rights abusers accountable and thereby deterring similar abuses in the future, there is also a practical, realpolitik argument supporting the consideration and passage of *Magnitsky*-style legislation here in Australia: doing so will not only further isolate human rights abusers, ensuring that they have nowhere to hide, but also ensure that Australia does not inadvertently become a safe haven where these abusers choose to hide.

Magnitsky-style legislation and the foreign interference laws

Over the past three years, there has been a lively debate regarding foreign influence in Australia and the importance of providing equal protection from authoritarian interference for all residents. The 2018 National Security Legislation Amendments (Espionage and Foreign Interference) make significant progress toward these ideals. We are of the opinion that the passage of *Magnitsky*-style legislation in Australia will also make a significant contribution in this regard.

Magnitsky-style legislation will ensure that agents of authoritarianism implicated in human rights abuses do not find safe haven in Australia. Depending on the final text of any relevant legislation, these abusers will likely face a travel ban and asset freezes. This means that such human rights abusers interested in exercising influence in Australian politics or monitoring local residents' activities will not have an opportunity to build up networks in and transfer

finances to Australia, enhancing national security. This will also help to reassure residents who have moved to Australia from authoritarian nations that agents of oppression will not follow them here, protecting diversity of opinion and freedoms of association and expression.

Therefore, although the National Security Legislation Amendments and *Magnitsky*-style legislation are two distinct legislative efforts with their own respective foundations and goals, we are of the opinion that passage of *Magnitsky*-style legislation will further contribute to ongoing efforts to resist authoritarian interference in Australian politics and society.

In sum, *Magnitsky*-style legislation is focused, evidence-based, and effective in holding human rights abusers accountable in an increasingly interconnected world, making use of this connectivity to realize accountability through travel bans and asset freezes. *Magnitsky* sanctions may even encourage systemic change in countries with records of human rights abuses, deterring officials from enacting further abuses.

Beyond the moral arguments for enacting *Magnitsky*-style legislation to hold human rights abusers accountable, there are also practical considerations. Liberal democracies the world over have either already passed or are currently considering *Magnitsky* legislation, developing a world where there is no safe haven for human rights abusers. In order to avoid inadvertently becoming such a safe haven, Australia should consider *Magnitsky*-style legislation as a matter of priority.

Taking a firm stand and ensuring that human rights abusers are not welcome in Australia through *Magnitsky* legislation will furthermore contribute to the goals of recent legislation

against foreign interference, protecting freedoms of association and expression from agents of authoritarianism.

Magnitsky-style legislation is thus in urgent need in Australia, promoting accountability for human rights abuses and ensuring that agents of authoritarianism do not seek refuge here from a growing global network of *Magnitsky* sanctions.

We appreciate your taking the time to consider this submission and are available to testify on these matters if the committee wishes.

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