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Committee Secretary  
Senate Foreign Affairs, Defence and Trade References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

### **Submission by Human Rights Watch to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into Australia's Sanctions Regime**

Human Rights Watch welcomes the opportunity to make a submission to the inquiry into Australia's sanctions regime.

During the past decade, several countries that actively promote human rights as part of their foreign policy have passed legislation that authorises targeted sanctions, including visa bans against individuals, and asset freezes against individuals and entities implicated in serious human rights violations or corruption. Targeted sanctions are an appropriate and useful foreign policy tool to press for accountability for serious abuses, and to raise the cost of human rights violations by denying abusers both entry to and assets in foreign countries where they seek to travel or do business. They are specific, targeting individuals or entities for abusive and unlawful behaviour rather than the general population. Targeted sanctions also assist where more traditional forms of legal accountability, including through international courts, is not possible.

The United States has led in this effort through the [Global Magnitsky Human Rights Accountability Act \(US Global Magnitsky Act\)](#), which came into force in 2016 and focuses on serious human rights abuses and corruption. Australia, Canada, Czech Republic, Estonia, the European Union, Latvia, Lithuania, Norway, Kosovo, and the United Kingdom have all similarly adopted human rights sanctions regimes.

In 2021 the Australian government passed new legislation that makes it easier for the government to impose targeted sanctions on those responsible for serious human rights violations and corruption. People who commit serious abuses or corruption with impunity should not be able to travel to Australia or hide their assets in Australian bank accounts. Targeted sanctions raise the cost of committing serious human rights violations.

In the context of Australia's implementation of its target sanctions legislation, this submission looks at the Australian government's:

- collaboration with civil society;
- coordination with other states and consistency;
- enforcement of sanctions;
- impact monitoring; and
- gaps in the sanctions framework.

The submission concludes with a number of recommendations to the Australian government.

### **Government collaboration with civil society**

The Department of Foreign Affairs (DFAT) has hosted a handful of meetings with civil society groups to discuss the government's sanctions process in broad terms. DFAT has actively sought input into their "[Information Note – Autonomous Human Rights and Corruption Sanctions](#)." The note contains useful guidance on what information civil society should include in any submission to the department on sanctions. This is a useful first step, however, for meaningful engagement between civil society and the government, there needs to be a tighter feedback loop.

Currently, the government provides little more than an acknowledgement of receipt when a civil society group makes a submission. Civil society groups need to know whether the information they are providing is useful. If sanctions were not issued, DFAT should explain whether it was because there was insufficient information or there were other reasons. While there may be policy or security reasons for withholding this information, without it, civil society groups are left guessing.

In addition to this, civil society groups spend a significant amount of resources pulling together dossiers to propose sanctions. In some cases civil society groups may have access to credible and relevant information that the Australian government will not be able to obtain through its diplomatic and intelligence networks. If the Australian government provides more detailed responses to these files, they will be helping to build the capacity of civil society groups and increasing the likelihood that these groups will provide them with better information. Responses can be provided privately to organisations in an in-confidence manner if necessary. On the other hand, not providing consistent feedback will lead to decreased engagement from civil society groups in the sanctions process.

## Coordination with other states and consistency

Targeted sanctions need to be coordinated to be effective. It is crucial that governments act jointly with likeminded governments. The Australian government often expresses caution in doing this by stating that while countries like the United States, Canada and the United Kingdom might have similar policy positions, Australia has distinct interests and sees things differently based on geography.

Given this, the Australian government has been reluctant to impose sanctions on nationals and entities of countries in the region. To date, it has only [used its thematic human rights or corruption sanctions](#) on entities or individuals in [Iran](#), [Russia](#) and [Israel](#). However, Australia's geographical position also means travel restrictions and asset freezes imposed by Australia will have greater impact on rights violators from nearby countries who seek to visit Australia. Southeast Asian government officials with abusive human rights records visit Australia for myriad reasons: tourism, shopping, elective medical care, to visit relatives, or because they own property in the country. Banning abusive officials from traveling to Australia on human rights grounds would carry a direct and public personal cost and raise the cost of committing human rights violations.

The Australian government has also been [reluctant to impose](#) sanctions on Chinese officials. The Australian government's repeated refrain is that there are many other diplomatic tools available to the government. However, it is difficult to see how any of these have been effective to date. The government should apply targeted sanctions in a principled, more consistent fashion so that rights violators even in powerful countries like China do not evade scrutiny.

To assist with applying sanctions in a principled approach, the Australian government should provide further clarity on the reasons and justifications for sanctions. Outlining specific violations of international law, stakeholder engagement in the decision-making process, and the criteria used will help to improve the credibility of the system. It will also help to strengthen Australia's global image as a state which supports a rules-based international order.

## Enforcement of sanctions

It is crucial that countries imposing sanctions not merely make designations, listing sanctioned persons and entities, but also take effective steps to enforce measures. It is also vitally important for governments to enforce them vigorously, and focus—where possible—on communicating effectively to those sanctioned specifically what they need to do to have the measures lifted.

While tough enforcement is important, equally important is broad coordination among sanctioning governments. If sanctions are robustly enforced across different jurisdictions, the targeted entities are more likely to face the economic consequences. Besides any asset freezes, targeted entities will be prevented from using most of the international banking sector and be unable to obtain financing from many of the world's banks, or favourable financing from any banks. Those banking institutions and companies that continue to work with sanctioned persons or entities can be expected to offer far less favourable terms, extend more expensive credit, and in general provide worse terms and services. At the same time, some outside revenue sources—for instance, royalties, fees, or dividends—may be cut off and held in escrow. If sanctions are imposed effectively, targeted entities will see adverse effects to revenue and credit terms. If coupled with effective communication about how sanctions can be eased, these measures could serve as an important catalyst for those being sanctioned to reconsider their actions and take steps to reverse them.

### **Impact monitoring**

The [terms of reference](#) for the current inquiry include assessing the effectiveness of sanctions and whether they are having the intended impact. The Australian government should be continually monitoring the impact of sanctions, both based on the behavioural change of the sanctioned individual and any conduct of the relevant state. The government should use this information to take measures that will increase the impact where possible.

It is harder to assess the deterrence impact of sanctions, but nonetheless governments should still try to consider this. One organisation, [REDRESS](#), in the United Kingdom that has an official liaison role with government and a coordination role for civil society, has [advised](#) that the following types of impact should be assessed: public accountability impact; material impact; personal behavioural impact; private sector behavioural impact; and geopolitical impact.

### **Gaps in the sanctions framework**

There remains a gap in Australia's sanctions framework, with criteria for the imposition of sanctions in relation to threats to international peace and security and serious violations of international humanitarian law, as outlined in section 3 of the Autonomous Sanctions Act 2011, still to be introduced. Without amendment of the Autonomous Sanctions Regulations 2011 (the Regulations), the foreign minister has limitations on designating persons or entities based on these grounds. This limitation reduces the effectiveness of Australian sanctions framework through a more constrained range of conduct that is considered sanctionable, reducing the scope of foreign policy tools. Such amendments would also more precisely outline the rules of the international rules-based order that the Australian government is trying to protect and promote.

**Recommendations to the Australian government:**

1. Collaborate more closely with civil society and provide more direct feedback about sanctions dossiers that are submitted by civil society groups. Additionally, provide opportunities for in-confidence briefings on sanction impositions.
2. Examine individuals and entities already sanctioned by other likeminded governments and consider implementing targeted sanctions on those same individuals and entities. Australia should view its location in the region as an opportunity to increase the impact of sanctions, not as a barrier to imposing them in the first place.
3. Apply sanctions consistently, including against officials and entities in powerful countries like China.
4. Provide further clarity on the reasons and justifications for sanctions, including the violations of international law.
5. Coordinate closely with other governments on enforcement of sanctions.
6. Consistently and continually monitor the impact of sanctions, including setting up regular meetings with relevant civil society groups to obtain feedback on the impact they are seeing.
7. Amend 6A of the Autonomous Sanctions Regulations 2011 to provide meaning to the criteria for threats to “international peace and security” and “serious violations of international humanitarian law” as contained in section 3 of the Autonomous Sanctions Act 2011.