



**FALUN DAFA**  
**ASSOCIATION OF AUSTRALIA INC**

## **Falun Dafa Association of Australia Submission**

**Inquiry into whether Australia should enact legislation  
comparable to the United States Magnitsky Act 2012**

By the Human Rights Sub-Committee of the  
Joint Standing Committee on Foreign Affairs, Defence and Trade

30 January 2020

# Preface

The Falun Dafa Association of Australia Inc. appreciates the opportunity to make this submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee).

This submission includes input from the Falun Dafa Association of Australia, Victoria Branch Inc., and the Falun Dafa Association of Australia, Queensland Branch Inc.

## Contact details

### **Dr Lucy Zhao**

President, Falun Dafa Association of Australia Inc.  
PO Box K 58, Haymarket NSW 1240

Email: [fxh@fdnsw.org](mailto:fxh@fdnsw.org)

Mob: [REDACTED]

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# 1 Introduction

- 1.1 While we acknowledge the need for all human rights abusers worldwide to be held to account, this submission focuses on targeted sanctions to address gross human rights abuses perpetrated by citizens and residents of China – an area well documented by Falun Dafa associations and related organisations around the world.
- 1.2 China is, at present, seeking to impose its “China model” of human rights in the United Nations and across the world to overturn the international human rights order. Therefore, we believe a focus on China is an important part of examining whether Australia should enact legislation comparable to the United States Magnitsky Act.
- 1.3 Human Rights Watch supports this view in its September 2017 report titled, “The Costs of International Advocacy – China’s Interference in United Nations Human Rights Mechanisms”.
- China’s efforts to subvert the UN human rights system also need to be scrutinized because they have been adopted by other countries. China should not become a model for others that hope to hobble or obstruct UN human rights bodies.<sup>1</sup>
- 1.4 Throughout this submission, “China” refers to the People’s Republic of China, currently under the control of the Chinese Communist regime, and makes no reference or commentary on the Chinese people themselves, unless specifically noted.

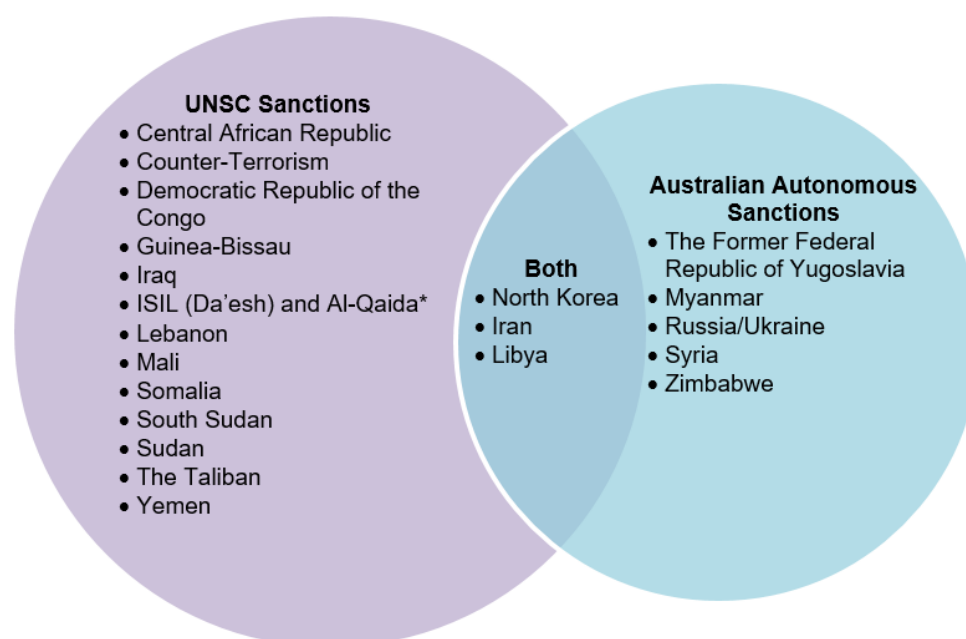
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<sup>1</sup> <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights>

## 2 Response to terms of reference

1. *The framework for autonomous sanctions under Australian law, in particular the Autonomous Sanctions Act 2011 (Cth) and the Autonomous Sanctions Regulations 2011 (Cth).*

- 2.1 We note that the Autonomous Sanctions Act 2011 and the Autonomous Sanctions Regulations 2011 are implemented and regulated by the Department of Foreign Affairs and Trade. Australia implements United Nations Security Council (UNSC) sanctions regimes as a matter of international law.<sup>2</sup>
- 2.2 We believe that a UNSC sanction that targets gross human rights abuses in China is unlikely to ever proceed under the current regime, as China is one of the five permanent members of the UNSC with the power of veto.
- 2.3 As one piece of support for this view, a search for “China” on the website of the United Nations Security Council Sanctions List<sup>3</sup> only shows individuals and entities linked to trade with the Democratic People’s Republic of Korea or involvement in the Eastern Turkistan Islamic Movement.
- 2.4 The Australian Government also implements Australian autonomous sanctions regimes as a matter of Australian foreign policy, including where there are concerns about human rights.<sup>4</sup> Australia currently implements sanctions regimes as shown in the following diagram on DFAT’s website.<sup>5</sup> The notable absentee is China.



<sup>2</sup> <https://dfat.gov.au/international-relations/security/sanctions/Pages/about-sanctions.aspx>

<sup>3</sup> <https://scsanctions.un.org/search/>

<sup>4</sup> <https://www.legislation.gov.au/Details/F2018L01409/Explanatory%20Statement/Text>

<sup>5</sup> <https://dfat.gov.au/international-relations/security/sanctions/Pages/about-sanctions.aspx>

- 2.5 We also note that DFAT maintains a Consolidated List of “all persons and entities designated for the purposes of sanctions regimes implemented under Australian sanction laws” which lists all persons and entities subject to targeted financial sanctions or travel bans under Australian sanctions laws.<sup>6</sup>
- 2.6 We searched the Consolidated List (updated 7 January 2020) and noted that, of the over 3,100 individuals or entities listed, the only reference to “China” or “Chinese” were related to Uyghurs and the East Turkistan Islamic Movement.
- 2.7 Given the threat of terrorism, it is understandable that the Consolidated List may focus on persons and entities with known links to terrorism.
- 2.8 And given the identified threat of Chinese Communist Party (CCP) interference in Australia, its expansionist activities and record of gross human rights abuses, it appears indicative of the limitations of the autonomous sanctions that no Communist Party-related official appears on the Consolidated List.
- 2.9 We also note that DFAT’s commitment to administering Australian sanction laws is done “in a way that facilitates trade wherever possible.”<sup>7</sup>
- 2.10 This focus on facilitating trade “wherever possible” can be seen in Australia’s muted response to human rights abuses in China – in particular since the CCP’s campaign to eliminate Falun Gong began in 1999 – while Australia’s trade with China has dramatically increased to date. (See Figure 1 and also Appendix A.)

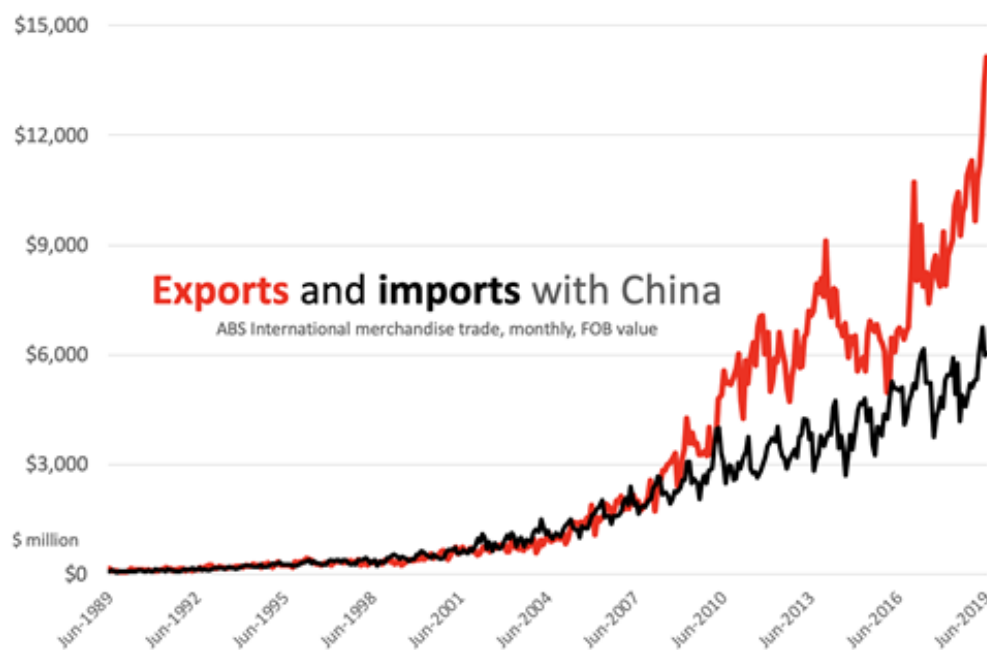


Figure 1: Extract from “Why is Australian trade becoming a political weapon?” by Jason Murphy.  
Sourced from <https://www.crikey.com.au/2019/08/23/china-trade-political-weapon/>

<sup>6</sup> <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>

<sup>7</sup> <https://dfat.gov.au/international-relations/security/sanctions/Pages/about-sanctions.aspx>

- 2.11 In summary, we submit that the current framework for autonomous sanctions under Australian law is not adequately addressing international gross human rights abuses, particularly in relation to the Communist regime in China.

<p>2. <i>The use of sanctions alongside other tools by which Australia promotes human rights internationally.</i></p>
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- 2.12 Australia is a party to seven key international human rights treaties that Australia has signed and ratified:
- the International Covenant on Civil and Political Rights (ICCPR)
  - the International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
  - the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - the Convention on the Rights of the Child (CRC)
  - the Convention on the Rights of Persons with Disabilities (CRPD).
- 2.13 Australia is also a party to a number of optional protocols to the above treaties as set out on the Attorney General's website, which also states:<sup>8</sup>
- International human rights treaties provide an agreed set of human rights standards and establish mechanisms to monitor the way that a treaty is implemented. By ratifying a treaty, a country voluntarily accepts legal obligations under international law.
- 2.14 The problem with China, for example, is that it has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), but it continues to torture its citizens who seek to uphold their right to freedom of belief and other basic human rights and, since there are no consequences for "breaking the rules", the torture continues.
- 2.15 Australia participates in bilateral human rights dialogues with several countries, and used to have human rights dialogues with China. We have been advised that the persecution of Falun Gong has been raised at these dialogues in the past. However, the policy that controls the persecution of Falun Gong in China is implemented at the highest levels of the Communist Party, and the Chinese delegates who attended the dialogues were generally from the Chinese Ministry of Foreign Affairs and do not have the authority to change the Party's campaign to eliminate Falun Gong. We are

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<sup>8</sup> <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/International-Human-Rights-System.aspx>

therefore not surprised that the dialogues with China have been suspended since 2014, since there has been no meaningful changes as a result.

2.16 Australia also participates in the Universal Periodic Review (UPR), a mechanism of the United Nations Human Rights Council which reviews the human rights records of all 192 United Nations Member States.

2.17 The use of existing autonomous sanctions under Australian law, along with Australia's commitments to UN international human rights conventions and mechanisms, all have a limited impact on human rights abuses in China because of China's position of influence within the UN. Human Rights Watch stated in a 2017 report:

As a powerful Permanent Five member of the UN Security Council, China has particular weight on the Human Rights Council. It has played an influential role, together with other members of the self-proclaimed "Like-Minded Group"—many of whom have poor human rights records—in opposing all country-specific resolutions to address the most serious human rights situations, except those critical of Israel, and in attempting to weaken the UN mechanisms themselves.<sup>9</sup>

2.18 In the same year, an article by the Council on Foreign Relations asked why the UN couldn't do more to promote freedom, given its purpose is "to reaffirm faith in fundamental human rights".

The answer is clear: so many member states are themselves dictatorships that engage in horrible human rights violations—and they stick together. The latter point is key: the worst countries are far more united in protecting human rights abuses than the democracies are in protecting human rights."<sup>10</sup>

2.19 A Human Rights Watch Report from September, 2017, "China's Interference in United Nations Human Rights Mechanisms"<sup>11</sup>, advises:

The dangers to human rights posed by an assertive China at the UN are likely to increase as the rights situation in China under President Xi worsens. Human rights defenders in China have decreasing space safe from intimidation, harassment, arbitrary detention, and a Communist Party-controlled legal system.

2.20 In summary, the current treaties, and the UN itself, have had little effect in preventing human rights abuses in China. However, we believe that if Australia unites with other countries which have – or are developing – Magnitsky-like Acts, it will provide a wide-reaching platform to help protect and promote human rights internationally.

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<sup>9</sup> <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights>

<sup>10</sup> <https://www.cfr.org/blog/minded-dictatorships-and-united-nations>

<sup>11</sup> <https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights>



3. *The advantages and disadvantages of the use of human rights sanctions, including the effectiveness of sanctions as an instrument of foreign policy to combat human rights abuses.*

2.21 Economic sanctions generally impact a whole country, including ordinary citizens not involved in human rights abuses. The World Economic Forum refers to comprehensive economic sanctions as a “collective punishment.”

They squeeze the middle classes and impose a disproportionate burden on the poorest and most vulnerable, who are arguably the biggest victims of the very regimes that sanctions are designed to punish.<sup>12</sup>

2.22 Human rights sanctions do not have the same “collective punishment” effect. Targeted human rights sanctions like a Magnitsky Act can:

- avoid indiscriminate impacts by targeting the perpetrators of human rights abuses
- help circumvent the current blocking of human rights initiatives in the UN Human Rights Council or other UN instruments by China and the so-called ‘Like-Minded Group’ of nations, by directly targeting the perpetrators of human rights abuses
- reinforce messages that Australia conveys in forums like the UN and UPR of upholding international human rights norms
- reinforce the cooperation of the “Five Eyes” intelligence partnership between the UK, USA, Canada, Australia, and New Zealand. Currently only the UK, USA and Canada have Magnitsky-type Acts. It would be an advantage for Australia and New Zealand to also implement such Acts.

2.23 When implementing a Magnitsky Act, Australia may face a number of challenges:

- strong complaints from China or similar countries when their officials are targeted for sanctions
- threats of return sanctions on Australian officials or threats of loss of trade
- the development of Bitcoin and cryptocurrencies as a way to avoid Magnitsky asset freezes, financial sanctions and other sanctions
- pressure from the corporate sector over what may be seen as additional compliance costs related to the provisions of a Magnitsky Act
- pressure from legal groups who note the US Global Magnitsky Act does not include judicial review for those sanctioned, and that Australia should include it.

2.24 While considering the above, we note that gross human rights abusers, such as the Communist regime in China, use the provisions in the ‘Rule of Law’ in democratic nations and UN procedures to avoid scrutiny or accountability. In China, the Australian Government is not dealing with a country that abides by rule of law. It is a different entity entirely.

<sup>12</sup> <https://www.weforum.org/agenda/2019/05/seven-fallacies-of-economic-sanctions/>

- 2.25 The China Tribunal, an independent tribunal into forced organ harvesting from prisoners of conscience in China, chaired by Sir Geoffrey Nice QC, concluded in its June 2019 report that governments and any who interact in any substantial way with China should now recognise that they are “interacting with a criminal state”.<sup>13</sup>
- 2.26 In April 2007, Professor Carsten A. Holz, an economist in the Social Science Division of the Hong Kong University of Science & Technology, examined the Chinese Communist Party in the *Far Eastern Economic Review* article, “Have China Scholars All Been Bought?”<sup>14</sup> Professor Holz asked:
- Would the description ‘a secret society characterized by an attitude of popular hostility to law and government’ not properly describe the secrecy of the Party’s operations, its supremacy above the law and its total control of government? In Webster’s New World College Dictionary [4th edition], this is the definition of ‘mafia.’
- 2.27 If Australia implemented a Magnitsky-style Act, it could target human rights violators from countries not already covered by sanctions simply by adding their names to the list of designated persons. This is an easier approach than implementing a new sanctions regime.

4. *Any relevant experience of other jurisdictions, including the US regarding their Global Magnitsky Human Rights Accountability Act (2016).*

***Global Magnitsky Human Rights Accountability Act (2016)***

- 2.28 The law is named after Sergei Magnitsky, a Russian tax auditor. While working for Bill Browder, CEO of Hermitage Capital Management in 2008, Magnitsky exposed a tax fraud scheme allegedly involving high-level Russian government officials. Magnitsky was arrested and died in Moscow jail cell in mysterious circumstances.
- In 2012, the US Congress passed a law in his name that imposed sanctions on a list of Russian officials believed to be responsible for serious human rights violations, freezing any US assets they hold and banning them from entry into the United States.<sup>15</sup>
- 2.29 The law was initially known as the “Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012”. In 2016 it was expanded by US Congress and called the Global Magnitsky Human Rights Accountability Act (2016), which could impose targeted sanctions, including asset freezes and visa bans in the US, on individuals and entities involved in gross violations of internationally recognised human rights and corruption anywhere in the world.<sup>16</sup>

<sup>13</sup> <https://chinatribunal.com/final-judgement-report/>

<sup>14</sup> <http://carstenholz.people.ust.hk/HaveChinaScholarsAllBeenBought-FEER30April07.pdf>

<sup>15</sup> <https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act>

<sup>16</sup> <https://www.congress.gov/bill/114th-congress/senate-bill/284/text>

- 2.30 On 21 December 2017, US President Donald Trump issued Executive Order 13818 – the first implementation of the Global Magnitsky Human Rights Accountability Act – under which the US Government imposed sanctions against 13 individuals described as “human rights abusers, kleptocrats, and corrupt actors”.<sup>17</sup>
- 2.31 The individuals sanctioned included Yahya Jammeh, former president of The Gambia, and Roberto Jose Rivas Reyes, the president of Nicaragua's Supreme Electoral Council. An additional 39 affiliated companies and individuals were also sanctioned by the Treasury Department's Office of Foreign Assets Control (OFAC).
- 2.32 During 2018, several other individuals and entities involved in serious human rights abuse and corrupt activities were added to the OFAC sanctions list including from the Dominican Republic, Nicaragua, Turkey and Saudi Arabian officials for their roles in the killing of journalist Jamal Khashoggi.
- 2.33 More recently, in a Press Statement on 8 October 2019, Michael R. Pompeo, US Secretary of State announced:<sup>18</sup>
- Visa restrictions on Chinese government and Communist Party officials who are believed to be responsible for, or complicit in, the detention or abuse of Uighurs, Kazakhs, or other members of Muslim minority groups in Xinjiang, China. Family members of such persons may also be subject to these restrictions.
- 2.34 On 3 December 2019 we note that US Congress passed the “Uighur Intervention and Global Humanitarian Unified Response Act of 2019 (UGHUR Act of 2019)”<sup>19</sup>, which requires the US President to submit to Congress a list of Chinese officials deemed responsible for, or complicit in, human rights abuses in Xinjiang, and that they be subject to sanctions under the US Global Magnitsky Act, seizing their US-based assets and barring them entry to the US.
- 2.35 The bill also contains a “national interest” provision allowing the President to waive sanctions. Due to revisions to the bill we understand it needs further approval of the Senate before being sent to President Trump, who would sign or veto the bill.
- 2.36 It is not clear to us exactly what this will mean for Chinese Communist Party officials, as at the time of compiling this submission, we could not find US government information that named any Chinese officials related to the above press statement or the Uighur Act 2019.
- 2.37 The only Chinese official we could find sanctioned under the Global Magnitsky Act is Gao Yan, who was included in an Annex to the 20 December 2017, Executive Order 13818 where President Trump imposed sanctions on 13 serious human rights abusers and corrupt actors.

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<sup>17</sup> <https://www.state.gov/background-briefing-on-the-rollout-of-the-global-magnitsky-sanctions/>

<sup>18</sup> <https://www.state.gov/u-s-department-of-state-imposes-visa-restrictions-on-chinese-officials-for-repression-in-xinjiang/>

<sup>19</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/178/text?format=txt>

Gao Yan (Gao) was the Beijing Public Security Bureau Chaoyang Branch director. During Gao's tenure, human rights activist Cao Shunli was detained at Beijing Municipal Public Security Bureau Chaoyang Branch where, in March 2014, Cao fell into a coma and died from organ failure, her body showing signs of emaciation and neglect. Cao had been arrested after attempting to board a flight to attend human rights training in Geneva, Switzerland. She was refused visitation by her lawyer, and was refused medical treatment while she suffered from tuberculosis.<sup>20</sup>

- 2.38 The lack of Chinese Communist Party officials sanctioned under the US Global Magnitsky Act may relate to provisions in the Act that allow the government to not put an individual or entity on the list, despite the evidence, if it is deemed damaging to national interests.
- 2.39 As Bill Browder, CEO of Hermitage Capital Management, noted:
- Even if evidence warrants consideration, the department of justice can say this may be damaging to our national interests. On a political level they can say they don't want to pursue the case.<sup>21</sup>
- 2.40 Yet this intersection of trade and human rights is exactly what a Magnitsky Act can target, without necessarily damaging country-to-country relations. So the US or Australian governments need to work assiduously to ensure that the target of holding human rights abusers and corrupt actors to account is not undermined by lobbying, trade pressures or a narrow view of 'national interest'.
- 2.41 We also note that under the US Global Magnitsky Act there are time provisions which limit the application of "sanctioning" to a period of five years from the date of the associated sanctioned abuse or corrupt act.
- Generally, the USG [US Government] won't consider designating someone for a crime committed beyond five years from the date of the public announcement of the designation determination.
- The USG considers sanctions to be a tool used to encourage policy or behavior modification, rather than as a punitive instrument. Under this logic, sanctions need to be administered relatively close in time to the sanctioned activity in order to have the desired effect, rather than to be seen merely as punishment for a past act. Furthermore, there is a preference for sanctions against targets engaged in ongoing or systemic violations, rather than in isolated behavior.<sup>22</sup>
- 2.42 In the case of China and the campaign to eliminate Falun Gong, this five-year timeframe may seem an impediment to sanctioning Chinese Communist Party officials. However, although this campaign officially began in July 1999, it still continues today and officials with oversight and control of 'ongoing and systematic violations' should still be held to account.

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<sup>20</sup> <https://home.treasury.gov/news/press-releases/sm0243>

<sup>21</sup> <https://ifex.org/the-magnitsky-act-an-alternative-form-of-justice-but-not-a-replacement-for-it/>

<sup>22</sup> <https://www.humanrightsfirst.org/sites/default/files/hrf-global-magnitsky-faq.pdf>

- 2.43 In giving testimony to a Joint House and Senate Hearing of the 115<sup>th</sup> US Congress on *The Magnitsky Act at Five Years: Assessing Accomplishments and Challenges*, Bill Browder noted that people have learned to evade Magnitsky sanctions. He referred to a head of a Russian organised crime group who moved all his assets into the names of nominees:

And it's not just Klyuev, but the entire concept of Bitcoin and cryptocurrencies are a way to avoid Magnitsky sanctions and all other sanctions. And this is a huge issue that needs to be addressed going forward, because while these sanctions have worked in the past, they won't work in the future if people can move money anonymously around the world.<sup>23</sup>

### ***Relevant experience of other jurisdictions***

- 2.44 Legislation similar to, and inspired by, the December 2016 US Global Magnitsky Act has subsequently been enacted, or is planned, in other countries.

#### **Estonia**

- 2.45 On 8 December 2016, Estonia introduced a new law inspired by the Magnitsky Act that disallows foreigners convicted of human rights abuses from entering Estonia.

#### **United Kingdom**

- 2.46 In February 2017 the UK House of Commons passed an amendment to the country's Proceeds of Crime Act 2002, inspired by the Magnitsky Act that would allow the government to freeze the UK assets of international human rights violators. In May 2018, the UK House of Commons, added the "Magnitsky amendment" to the Sanctions and Anti-Money Laundering Act 2018 that would allow the British government to impose sanctions on people who commit gross human rights violations.<sup>24</sup>

- 2.47 Bill Browder noted the benefit of another piece of legislation in the UK, the 'Unexplained Wealth Orders':

Also, something interesting happened with the Magnitsky act in the UK. At the same time as the act was under review, another piece of legislation created 'Unexplained Wealth Orders'. Under these orders, if someone who is suspected of connections to corruption, at home or abroad, all of a sudden shows up and purchases assets in the UK – unless they can explain where the money came from, the asset will be seized by the government. It completely shifts the burden of proof from law enforcement agencies. Instead of having to rely upon the assistance of a likely uncooperative foreign government to prove corruption in its own country, the defendant must prove that their wealth is legitimate. This is a legal template that fits together quite nicely with the Magnitsky act and should be in place in a lot more countries.<sup>25</sup>

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<sup>23</sup> <https://www.govinfo.gov/content/pkg/CHRG-115jhr28314/html/CHRG-115jhr28314.htm>

<sup>24</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8374>

<sup>25</sup> <https://www.universal-rights.org/blog/magnitsky-acts-the-future-of-accountability-for-violations-of-international-human-rights-law-an-interview-with-bill-browder/>

## Canada

- 2.48 On 19 October 2017, the Canadian Parliament unanimously passed its version of the U.S. Magnitsky Act [Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)].<sup>26</sup> Russia's President, Vladimir Putin, accused Canada of "political games" over its new Magnitsky law which also targeted 19 Venezuelan and 3 South Sudanese officials, along with the original 30 Russian individuals under sanctions.

## Lithuania

- 2.49 On 16 November 2017 the Parliament of Lithuania passed its version of the Magnitsky Act.<sup>27</sup>

## Latvia

- 2.50 On 8 February 2018, Parliament of Latvia (Saeima) became the sixth country in the world and the final of the three Baltic countries to pass a version of the Magnitsky law.<sup>28</sup>

## European Union

- 2.51 On 9 December 2019, EU foreign ministers launched the preparatory work for a global sanctions regime to address serious human rights violations.<sup>29</sup>

The Global Magnitsky Act represents a shift from geographical to thematic sanctions. For the EU, a potential advantage of this approach is that it could target human rights violators from countries not previously covered by sanctions merely by amending the list of designated persons, a less cumbersome procedure than adopting a completely new sanctions programme. At the same time, a thematic approach might be less damaging to the EU's relations with third countries than geographical sanctions.

5. *The advisability of introducing a new thematic regulation within our existing Autonomous Sanctions Regime for human rights abuses.*

- 2.52 The problem in limiting Australia to compliance with current human rights reporting, advocacy norms and existing autonomous sanctions is that human rights abusers have learnt how to negate and avoid well-intended regulations or sanctions.
- 2.53 Adding a Magnitsky-type Act would give additional "teeth" to Australia's existing tools to combat human rights abusers.
- 2.54 Also, there is a deterrent effect that flows from a Magnitsky Act whereby those involved in committing gross human rights abuses are named and exposed.

<sup>26</sup> <https://laws.justice.gc.ca/eng/acts/J-2.3/FullText.html>

<sup>27</sup> <https://www.occrp.org/en/daily/7265-lithuania-parliament-adopts-version-of-magnitsky-act>

<sup>28</sup> <https://www.occrp.org/en/daily/7621-latvia-becomes-final-baltic-state-to-pass-magnitsky-law>

<sup>29</sup> <https://www.politico.eu/article/eu-to-prepare-magnitsky-style-human-rights-sanctions-regime/>

- 2.55 An article by Human Rights Watch on 13 September 2017<sup>30</sup> notes that the US Global Magnitsky Act is a useful tool as it:
- ...functions as a deterrent, forcing foreign officials at all levels who would use unlawful violence or corruption to consider repercussions from the US government.
- 2.56 Also, the Network of Chinese Human Rights Defenders refers to the Magnitsky Act as:
- ...a tool which can be used to target Chinese officials complicit in human rights abuses. Though many officials may not have US-based assets or travel plans to the US, sanctions are a tool to put pressure on human rights abusers by highlighting their profile as a rights violator, creating pressure to change their behaviour.<sup>31</sup>
- 2.57 The following extract is taken from a report published on Minghui.org – a website that documents the persecution of Falun Gong practitioners in China, based on first hand reports from China<sup>32</sup>. While anecdotal, it gives an early indication of the potential future impact from the US Magnitsky Act.
- In May 2019, a [US Department of State] official [notified](#) several religious groups that the U.S. government is tightening visa approval of and may deny entry to human rights violators. The same official said that Falun Gong practitioners could submit a list of perpetrators involved in the persecution of Falun Gong.
- A [Notice](#) from Minghui.org has called on Falun Gong practitioners “all over the world to take immediate action to collect, compile, and submit to Minghui.org information on the perpetrators, their family members, and their assets, so as to locate and verify their identities.”
- This news spread to China and reached the justice system at all levels. Some government agencies that participated in the suppression of Falun Gong removed staff members' photos from hallways to keep them from being collected and reported to Minghui. As he was releasing a detained Falun Gong practitioner, a police officer said, “I did not beat you, right? Please do not report me because my children plan to go travel out of the country some day.”<sup>33</sup>
- 2.58 Australia could also have a positive impact on human rights abuses in neighbouring countries, such as Indonesia, Malaysia, Vietnam and the Philippines, who are typically part of the Like-Minded Group of nations that support and follow China in UN voting on human rights. By adopting a Magnitsky Act, Australia could target corrupt officials and human rights abusers directly without the complications of sanctioning the country as such, or needing the approval of UN bodies that are controlled by human rights abusing nations.
- 2.59 We also note that Allens, an international commercial law firm, has an article under its website “Insights” section on 17 December 2019 titled, “Australia considers adopting

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<sup>30</sup> <https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act>

<sup>31</sup> <https://www.nchrd.org/2019/06/the-global-magnitsky-human-rights-accountability-act/>

<sup>32</sup> <http://en.minghui.org/html/pages/about-minghui/>

<sup>33</sup> <http://en.minghui.org/html/articles/2019/12/24/181206.html>



worldwide human rights sanction regime”.<sup>34</sup> The article notes two reasons that an Australian Magnitsky law would be a significant legal development.

First, it could give the Australian Government more strength and capacity to respond to human rights violations, which could result in it sanctioning individuals in a broader range of countries, in relation to transnational, geographically dispersed human rights issues (like human and organ trafficking), as well as domestic, geographically concentrated human rights issues.

Second, the introduction of one form of thematic regulation into Australia's autonomous sanctions framework could open the door to others. For example, the United States has adopted thematic sanctions regimes in relation to cybercrime, narcotics trafficking and other transnational criminal organisations.

- 2.60 In his closing remarks at a meeting on the EU Global Human Rights Sanction Regime in November 2018, Stef Blok, Minister of Foreign Affairs for the Netherlands, acknowledged the limitations of geographical sanctions and noted:<sup>35</sup>

Worldwide, human rights are increasingly under pressure. Authoritarian regimes are tightening their grip. And unfortunately, too often the guilty parties simply get away with it.

A global regime would allow us to combat human rights violations around the world even in difficult, politically sensitive situations.

- 2.61 We agree that a thematic approach sanctioning individuals might be seen as less threatening to Australia's relations with the individuals' countries than geographical or economic sanctions, particularly if other countries impose similar sanctions.

- 2.62 A November 2019 article in the Wall Street Journal, “How to Answer Chinese Atrocities in Xinjiang”, noted the importance of global cooperation in adopting a Magnitsky Act.

The threat of retaliation from China is a serious problem for small nations. After Chinese dissident Liu Xiaobo was awarded the Nobel Peace Prize in 2010, to take one example, Beijing suspended trade talks with Norway. To ensure that costs are borne equally, countries imposing sanctions on China should adopt identical measures.<sup>36</sup>

- 2.63 An article by Ted Piccone in September 2018 from The Brookings Institution, titled “China's Long Game on Human Rights at the United Nations” also raises concerns that can be addressed by a Magnitsky Act.

In sum, China is playing the long game when it comes to human rights—gradually but assuredly stepping up its efforts at the UNHRC, the U.N. as a whole, and even outside the U.N. to shape the system to its advantage.

Without a well thought out and long-term counter-balancing strategy, China's growing economic leverage will probably allow it to achieve its objectives. The result would be a weaker international human rights system in which independent

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<sup>34</sup> <https://www.allens.com.au/insights-news/insights/2019/12/australia-considers-adopting-worldwide-human-rights-sanction-regime/>

<sup>35</sup> <https://www.government.nl/documents/speeches/2018/11/20/blok-on-eu-global-human-rights-sanction-regime>

<sup>36</sup> <https://www.wsj.com/articles/how-to-answer-chinese-atrocities-in-xinjiang-11574293976>



voices are muffled and public criticism of egregious abuses muted behind the banner of national sovereignty.<sup>37</sup>

- 2.64 A European Parliamentary Research Service paper titled, “An EU human rights sanctions regime?” noted that sanctioning officials under the US Global Magnitsky Act does not necessarily have negative consequences inter-country relationships:

These measures do not appear to have affected Washington's relations with the targeted individuals' countries of origin – for example, Saudi Arabia, which has no fewer than 17 persons on the list for their role in the killing of Jamal Khashoggi.<sup>38</sup>

- 2.65 Bill Browder's response to the idea that Global Magnitsky Acts applied to human rights issues and corruption at high levels of government in 'closed societies' can shut doors that would otherwise have remained open during bilateral negotiations, was:

That's nonsense, anybody who is violating international human rights law generally looks for the reward for doing that and calculates that against the risk of doing that. If the reward is great, politically or financially, and there's no risk then clearly committing the abuse is a much better deal for them than a similar situation in which the reward is great but the risk is also great and possibly catastrophic. I'm not sure what logic there is to saying not having a consequence for a human rights abuse is better than having a consequence.<sup>39</sup>

- 2.66 We find that the advisability of introducing a Magnitsky Act in Australia was clearly noted in US President Donald Trump's Executive Order 13818, which stated in part:

Human rights abuse and corruption undermine the values that form an essential foundation of stable, secure, and functioning societies; have devastating impacts on individuals; weaken democratic institutions; degrade the rule of law; perpetuate violent conflicts; facilitate the activities of dangerous persons; and undermine economic markets.<sup>40</sup>

- 2.67 We also note China's response to the US in sanctioning Chinese official Gao Yan under the Magnitsky Act which was conveyed by Chinese Foreign Ministry spokeswoman Hua Chunying as she told the US, “to stop acting as a so-called human rights judge.”<sup>41</sup>

- 2.68 We trust that the Australian Government knows that the issue is not one of interfering in other countries internal affairs, or acting as a 'human rights judge.'

- 2.69 The issue for the Australian Government is to stand up for, and protect the values and principles that make Australia the country we cherish today, and successfully navigate the inevitable storm of protest that may come from China or other human rights abusing states.

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<sup>37</sup> [https://www.brookings.edu/wp-content/uploads/2018/09/FP\\_20181009\\_china\\_human\\_rights.pdf](https://www.brookings.edu/wp-content/uploads/2018/09/FP_20181009_china_human_rights.pdf)

<sup>38</sup> [http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637892/EPRS\\_ATA\(2019\)637892\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2019/637892/EPRS_ATA(2019)637892_EN.pdf)

<sup>39</sup> <https://www.universal-rights.org/blog/magnitsky-acts-the-future-of-accountability-for-violations-of-international-human-rights-law-an-interview-with-bill-browder/>

<sup>40</sup> <https://www.govinfo.gov/content/pkg/DCPD-201700923/pdf/DCPD-201700923.pdf>

<sup>41</sup> <https://www.reuters.com/article/us-china-usa-rights/china-tells-u-s-not-to-be-a-human-rights-judge-after-sanctions-on-chinese-official-idUSKBN1EG0X4>

### 3 The Migration Act 1958 and an Australian ‘Magnitsky Act’

- 3.1 We present a review of how the Migration Act 1958 could be complemented by an Australian ‘Magnitsky Act’ to protect Australia from infiltration by gross human rights abusers and corrupt actors, while strengthening our commitment to the promotion and defence of human rights around the world .

#### ***The Migration Act and Ministerial Directions***

- 3.2 We understand that proposed amendments to the Migration Act 1958 and recent Ministerial Directions seek to address prominent issues facing Australia today.
- 3.3 We have reviewed the issue of visa access to Australia with a focus on our concern of entry to Australia by Chinese Communist Party officials who are complicit in gross human rights abuses.

#### ***Limitations of the Character Test under Section 501 of the Migration Act 1958***

- 3.4 We acknowledge that there are strong provisions in the Migration Act 1958 (the Act) that allow the Department of Home Affairs to refuse a visa where a person is found not to be of good character.
- 3.5 However, we also note that Section 501 may not be effective in protecting Australians from certain persons of influence connected to Australia’s major trading partners, for example, Chinese Communist Party officials seeking visas to enter, transfer wealth and reside in Australia.
- 3.6 The Australian Financial Review, in a 2015 article about Chinese fugitive Gao Yan, stated:
- Australia has regularly been named as a top three destination for corrupt Chinese officials, who are attracted by the strong legal system and the lack of an extradition treaty with Beijing.<sup>42</sup>
- 3.7 In February 2019 the Federal Parliament’s Joint Standing Committee on Migration produced a Report of the Inquiry Into Review Processes Associated With Visa Cancellations Made On Criminal Grounds (the Report).<sup>43</sup>
- 3.8 We have examined a summary of the grounds on which a person may fail the character test as set out in the Act, s 501(6) which are referenced in Item 1.12 of the Report.
- 3.9 Chinese Communist Party (CCP) officials seeking access to Australia are unlikely to have a “criminal record”, unless they have been “purged” and imprisoned by the Party, in

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<sup>42</sup> <https://www.afr.com/world/asia/chinese-agents-hunt-top-fugitive-gao-yan-in-australia-20150320-1m3wx5>

<sup>43</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Migration/Visacancellationprocess/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Visacancellationprocess/Report)

which case they would not be visa candidates. Similarly, for such officials to be designated as part of a group or organisation involved in criminal conduct requires a legal determination of such, which is something the CCP has been able to avoid through its control of Chinese courts, disdain for international courts and its economic influence.

3.10 So the most crucial grounds under s501 to refuse a visa to CCP officials appear to be:

- an adverse security assessment by ASIO, or
- if the Minister personally decides it is in the national interest, or
- if the Minister suspects the person is likely to incite discord, or represent a danger to the Australian community, or has been involved in a crime against humanity, a crime involving torture or slavery, or a crime that is of serious international concern, whether or not convicted.

3.11 The Australian Human Rights Commission has noted that:

‘National interest’ is not defined – it is a matter for the Minister to determine what constitutes the national interest in making a decision about whether to refuse or cancel a person’s visa.<sup>44</sup>

3.12 We submit that those CCP officials who have been identified as carrying out or being complicit in the persecution of Falun Gong practitioners, or involved in the illegal procurement and transplantation of human organs without donor consent, should be denied entry to Australia under the provisions of the Act, which would certainly be in our national interest.

3.13 We also note that Ministerial Direction No. 65 has been superseded by Ministerial Direction No. 79 on 28 February 2019, which prescribes mandatory considerations that must be taken into account when deciding whether to cancel or refuse a visa under the character test provisions of the Act.

3.14 In addition to the criminal convictions and serious conduct listed in Direction 65, the new Direction 79 specifically includes crimes of a violent nature against women or children. This was also affirmed in Minister for Immigration, Citizenship and Multicultural Affairs David Coleman’s Media Release of 3 March 2019 which stated, “if you’ve been convicted of a violent crime against women or children, you are not welcome in this country.”<sup>45</sup>

3.15 For those in Australia, or seeking entry from countries that operate under the *rule of law*, then the requirement of conviction is reasonable. For those seeking entry from countries like the People’s Republic of China, where there is only *rule by law* to serve the requirements of an authoritarian regime, then requirement of a court conviction or custodial sentence will not have its intended effect.

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<sup>44</sup> <https://www.humanrights.gov.au/our-work/2-when-can-visa-be-refused-or-cancelled-under-section-501>

<sup>45</sup> <https://minister.homeaffairs.gov.au/davidcoleman/Pages/govt-introduces-measures-against-domestic-violence-perpetrators-20190303.aspx>

- 3.16 It is worth noting that the vast majority of incarcerated and tortured Falun Gong practitioners are women, who are often sexually abused while in detention. The Falun Dafa Information Center describes some of this abuse:
- They have been sexually assaulted with brooms, sticks, or electric batons, causing vaginal bleeding. Their breasts have been pierced with barbed wire, and they have been gang-raped.<sup>46</sup>
- 3.17 The Department of Home Affairs website also refers to, “any impact on Australian business and community interests” as a consideration in assessing character test requirements.<sup>47</sup>
- 3.18 The Department’s website also states:
- We consider all circumstances of a case. Even if you do not meet the character requirements, we, or the Minister for Home Affairs can choose to grant your visa.<sup>48</sup>
- 3.19 We are concerned that, if the Minister (or the Department) can ignore the character test requirements and also determine what is in our national interest, then Australia may be vulnerable to exploitation of visa entry by CCP officials who have accumulated vast wealth and have the imprimatur of our largest trading partner.
- 3.20 If those identified as gross human rights abusers involved in crimes against humanity are permitted to enter, reside and transfer their wealth into Australia, it should be considered:
- a failure to effectively protect the Australian community from harm and to maintain integrity and public confidence in our visa assessment processes; and
  - a dereliction of Australia’s responsibilities under international treaties.

### ***Significant Investor Visas (SIVs) and Premium Investor Visas (PIVs)***

- 3.21 In November 2012 Australia introduced a new visa pathway for investors seeking to come to Australia. As announced on the Australian Embassy website in China:
- The Significant Investor visa will be introduced as a new stream within the Business Innovation and Investment (Provisional) (Subclass 188) visa and the Business Innovation and Investment (Permanent) (Subclass 888) visa.<sup>49</sup>
- 3.22 Clearly, this was marketing Australian residency to Chinese who can afford it, complete with the “888” visa name to appeal to the ‘lucky characteristic’ of the number “8” among Chinese people. It required an investment of \$5 million in in certain classes of assets in Australia.

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<sup>46</sup> <https://faluninfo.net/rape-and-sexual-torture/>

<sup>47</sup> <https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/character>

<sup>48</sup> <https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/character>

<sup>49</sup> <https://china.embassy.gov.au/bjng/DIAC22112012SIVEN.html>

- 3.23 An ABC News report in August 2019 noted that “Eighty-seven per cent of SIVs have been given to Chinese nationals since 2012.”<sup>50</sup>
- 3.24 In July 2015 the government introduced a new Premium Investor Subclass 188 and 888 visa streams (Premium Investor Visa), which required \$15 million investment in certain classes of assets in Australia.<sup>51</sup>
- 3.25 The Productivity Commission, Migrant Intake into Australia, Inquiry Report, of 2016 noted that:
- ...compared to other visa streams, investor visas are prone to fraud. The residency requirements (160 days over four years) are very relaxed — only requiring the holder to reside in Australia 11 per cent of the year on average over four years, effectively a non-resident permanent visa. Overall, the case for retaining the Significant and Premium Investor Visa Programmes is weak and the Government should abolish these visas.<sup>52</sup>
- 3.26 As advised on the Department of Home Affairs website as of 24 December 2019, the Significant Investor and Premium Investor visas are still available.<sup>53</sup>
- 3.27 In summary, we are concerned that Australia has developed an over-reliance on China as a source of trade and investment, while at the same not providing open scrutiny of the sources of such investment to allay ethical concerns of any associated human rights abuses or corrupt activities.
- 3.28 We believe this has left the Australian people vulnerable to the corrupting influence of Chinese Communist Party officials and their associated actors seeking visas to enter, transfer wealth and reside in Australia.
- 3.29 In order to protect the Australian community from harm and to fulfil Australia’s international responsibilities, the Australian Government should consider how to complement current provisions under the Act by enacting legislation comparable to the United States Magnitsky Act 2012.

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<sup>50</sup> <https://www.abc.net.au/news/2019-08-30/significant-investor-visa-review/11450694>

<sup>51</sup> [http://classic.austlii.edu.au/au/legis/cth/num\\_reg\\_es/mavr2015n102o2015551.html](http://classic.austlii.edu.au/au/legis/cth/num_reg_es/mavr2015n102o2015551.html)

<sup>52</sup> <https://www.pc.gov.au/inquiries/completed/migrant-intake/report/migrant-intake-report.pdf>

<sup>53</sup> <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/business-innovation-and-investment-188/premium-investor>

## 4 Conclusion and recommendations

- 4.1 As stated in this submission, we do not believe that the current framework for autonomous sanctions under Australian law adequately addresses international gross human rights abuses, particularly in relation to the Communist regime in China.
- 4.2 The current treaties that Australian has signed and ratified, and the UN itself, have had little effect in preventing human rights abuses in China.
- 4.3 While our focus on this submission has been on China, we acknowledge that such legislation must not be applied selectively, but rather to all human rights abusers in whatever country they might reside, without bias.
- 4.4 National interest provisions in a Magnitsky Act are important. We can't have Australia compelled to apply a law that is antithetical to the interests of Australian citizens.
- 4.5 Equally, we can't have national interest provisions that subvert the genuine interests of Australian citizens to maintain the values and sense of a "fair-go" which underpin our Australian way of life.
- 4.6 The challenges of human rights and trade can also be compared to the challenges of climate change and economic growth. They are part of Australian's review of how we want to live, prosper, and even survive as a people who treasure not only our economic welfare – both individual and as a nation – but also the values, morals and ethics that have made Australia the country we want to live in and protect.
- 4.7 Our national interest is not just economic. It is the intangible yet real interests of freedom, self-determination, and a "no loss-no gain" work ethic that secure our individual and national interest. This is Australia, and it should not be lost through a misunderstanding of our national interest or by the threats or coercion of foreign powers.
- 4.8 This is essentially the same "trade-off" the people of China have faced. In choosing to prosper economically, or even just survive under the rule of the Communist regime, morality and essential human rights have been eroded and "traded" away, leading to the current state of China we see today.

### **Recommendation 1**

- 4.9 We recommend that Australia enact a Magnitsky-like Act as a matter of priority, to unite with other countries which have – or are developing – Magnitsky-like Acts, to provide a wide-reaching platform to help protect and promote human rights internationally.

## **Recommendation 2**

- 4.10 To accompany a Magnitsky Act, we recommend that Australia also enacts similar legislation to the UK 'Unexplained Wealth Orders', which would require those purchasing assets in Australia to prove that their wealth is legitimate, otherwise the asset would be seized by the government.

## **Recommendation 3**

- 4.11 We recommend that CCP officials who have been identified as carrying out, or being complicit in the persecution of Falun Gong practitioners, or involved in the illegal procurement and transplantation of human organs without donor consent, should be denied entry to Australia under the provisions of the Migration Act, and also sanctioned and exposed under a Magnitsky Act once introduced in Australia.

## Appendix A 20 years of persecution and resilience

*The article below was published by the [Falun Dafa Info Center](#) in July 2019, on the 20-year anniversary of the crackdown against Falun Gong in China. Reproduced with permission.*

[Falun Gong](#), also known as Falun Dafa, is a traditional spiritual practice that consists of gentle, meditative exercises and a moral philosophy centered on the tenets of truthfulness, compassion, and tolerance.

The practice became widely popular in China during the 1990s, and by 1999, according to Chinese state-run T.V., there were [100 million people](#) practicing Falun Gong in China. That's a staggering 1 of every 13 people in the country. Furthermore, as the *Washington Post* reported in 1999, many influential people in the party, the government and the military practiced Falun Gong, in addition to those found in just about every sector of society; from farmers to university professors, factory workers to corporate leaders, high school students to members of the communist party's top leadership.

Yet, in the summer of 1999, former communist leader Jiang Zemin ordered the traditional meditation practice be eliminated. China experts at the time say Jiang was jealous that Falun Gong's widespread popularity was overshadowing his own legacy, and at the same time, Jiang hoped to use the campaign against Falun Gong to build up his own powerbase.

Over the past 20 years, millions of people have been abducted or imprisoned. Hundreds of thousands have been tortured or suffered terrible abuse in custody. Thousands have been tortured to death, and those are just the cases we know about.

Even more horrific are findings from independent investigators concerning the systematic killing of Falun Gong practitioners so their organs could be used to fuel China's booming organ transplant business. In 2016, the U.S. House of Representatives unanimously passed House Resolution 343, which cites "persistent and credible reports of systematic, state-sanctioned organ harvesting from large numbers of Falun Gong practitioners."<sup>54</sup> In June 2019, an independent tribunal<sup>55</sup> – chaired by Sir Geoffrey Nice QC, who previously prosecuted war criminals – released its conclusion that Falun Gong practitioners have been, and continue to be, killed for their organs "on a significant scale."

The persecution of Falun Gong in China continues to this day.

In its 2018 annual report, Amnesty International stated, "Falun Gong practitioners continued to be subjected to persecution, arbitrary detention, unfair trials and torture and other ill-treatment."<sup>56</sup> In its 2019 annual human rights report, the US State Department<sup>57</sup> detailed how people who practice Falun Gong have been victims of "systematic torture in custody" by the Chinese Communist Party (CCP).

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<sup>54</sup> <https://www.congress.gov/bill/114th-congress/house-resolution/343/text>

<sup>55</sup> <https://chinatribunal.com/final-judgement-report/>

<sup>56</sup> <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/>

<sup>57</sup> <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/china-includes-tibet-hong-kong-and-macau-china/>



Clearly, this persecution campaign has destroyed the lives of millions of people. Yet, the impact of this persecution extends beyond the community of Falun Gong practitioners inside China. It is felt throughout Chinese society, and to some extent, around the globe.

How?

First, let's consider the scale and nature of what's happened in China. When the communist leadership targeted Falun Gong, they were targeting 100 million people who were simply trying to live their lives according to truthfulness, compassion and tolerance. This set in motion a system of punishing good people and rewarding immoral, even criminal behavior nationwide.

The result has been far-reaching.

The campaign against Falun Gong has served as an incubator of persecution tactics now being deployed against other targeted groups in China. For example, the methods of physical and psychological torture refined on Falun Gong are now used against Tibetans, Uyghurs and Christians.

The Communist Party's incentive system used in implementing the campaign against Falun Gong has drastically undermined good governance and societal morality. For example, officials who refuse to persecute Falun Gong risk halted career advancement, demotion, or even being fired. Conversely, those willing to engage in the lawlessness rise through the ranks, gaining more power and influence.

Some medical doctors in China have literally become killers, viewing Falun Gong practitioners as little more than a source for organs. By the same token, international patients who travel to China for an organ often become unknowingly complicit in the killing.

China's state-run media has so saturated public discourse with false narratives vilifying Falun Gong that even some Western scholars and government officials have unwittingly bought into the lies, and publish or govern accordingly.

And the blatant disregard for international agreements and norms displayed by Chinese communist officials have rendered many international agreements useless, and created hostile, even criminal, market forces that affect industries around the world.

In short, the persecution of Falun Gong has played a key role in fermenting a society where dishonesty is rampant. It has promoted corrupt officials within the Chinese regime that persecute their own people and continually defraud the international community.

As the 20th anniversary of this brutal persecution approaches, we implore the international community to speak up. We must give a voice to and take action for the tens of millions of people in China that have been targeted by the communist regime, and who live their daily lives under threat of arbitrary detention, imprisonment, torture or worse simply for practicing Falun Gong.

Regaining freedom and justice for Falun Gong in China will not only end the persecution they face, it will go a long way for regaining freedom and justice for all the Chinese people, and by doing so, help China become a responsible member of the international community. And that benefits everyone, the world over.