



**Submission of the Australian Wrongful and Arbitrary Detention Alliance (AWADA)
Senate Standing Committee on Foreign Affairs, Defence and Trade Enquiry into
Australia's Sanctions Regime**

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ABOUT AWADA

The Australian Wrongful and Arbitrary Detention Alliance (AWADA) was established in 2023 by Australians with first-hand experience of wrongful detention. AWADA has three core objectives:

- To provide advice and support to the families of current Australian detainees
- To raise awareness about the phenomena of arbitrary detention and 'hostage diplomacy,' including campaigning for current cases; and
- To advocate for meaningful policy reform in Australia.

AWADA is actively engaged in supporting a number of current cases of wrongfully detained Australians and also acts as a support group for Australians who have returned home following a period of detention abroad. Our membership is both public (listed on our [website](#)) and private. The experiences and stories of a number of current and former detainees and their families have informed this submission.

ABOUT THE AUTHOR

Dr Kylie Moore-Gilbert is a political scientist of the Middle East who was arrested in Iran in 2018. Kylie spent 804 days in the Iranian prison system, having received a 10-year sentence for 'espionage' denounced as baseless by the Australian government. Kylie was released in a diplomatic deal in 2020 negotiated by the Australian government, which saw Thailand release three Iranians convicted of terrorism offences in exchange for her freedom.

Kylie currently holds a research fellowship at Macquarie University investigating wrongful and arbitrary detention policy, and recently completed a Churchill Fellowship investigating international best practice in this area.

EXECUTIVE SUMMARY

- To date the Australian government has not sanctioned any individuals in any country specifically for the wrongful detention or state hostage-taking of Australian citizens.
- Some of Australia's key partners and allies have used their Magnitsky sanctions regimes to target perpetrators of hostage diplomacy.
- The process by which individuals and civil society organisations are able to submit requests to the Foreign Minister for consideration of sanctions is opaque and lacks transparency.
- Malign actors like Myanmar have successfully instrumentalised wrongful detentions to prevent Australia from imposing sanctions.
- Iran and China are two of the most egregious perpetrators of the wrongful detention of Australians and sanctions should be employed to deter and punish their role in this practice.
- Sanctions could be used to achieve a measure of redress and restitution for Australian victims of hostage-taking and wrongful detention.

RECOMMENDATIONS

1. Coordinate Australia's financial and Magnitsky sanctions regimes with those of other Western partners and allies, particularly with respect to targeting perpetrators of wrongful detention and hostage diplomacy.
2. Clarify and streamline the process for individuals and civil society organisations to request that the Foreign Minister consider applying sanctions.
3. Impose unilateral financial and Magnitsky sanctions on individuals and organisations involved in Iranian state hostage-taking of Australian citizens, and explore options for collective multilateral sanctions.
4. Consider imposing Magnitsky-style targeted sanctions on individuals and organisations involved in the wrongful detention of Australian citizens in China and Hong Kong.
5. Collect data on past and current wrongful detentions of Australian citizens abroad and impose targeted Magnitsky sanctions on individuals and organisations identified as having been involved in this practice.
6. Legislate an Australian 'Hostage-Takers Accountability Act' or similar to provide DFAT and the Foreign Minister with specific tools to sanction perpetrators and allow victims access to redress and restitution.

RESPONSE TO TERMS OF REFERENCE

This submission seeks to respond to the following terms of reference, with respect to the intersection of Australia's sanctions regime with AWADA's focus on the wrongful detention of Australians abroad:

A) An assessment of the consistency in application of Australia's sanctions regime and in coordination with key partners and allies, including the identification of any gaps and time lags in their application;

D) Consideration of mechanisms to freeze and confiscate assets belonging to sanctioned persons/entities and how the proceeds can be used to benefit peoples and countries impacted by the behaviour of sanctioned individuals and entities;

E) Consideration of opportunities for engagement by the Australian community, civil society, financial institutions and other organisations in Australia's sanctions regime

Sanctions as deterrence: Wrongful detention and hostage diplomacy

At any one time, an unknown number of Australians face imprisonment abroad, having been wrongfully detained by foreign governments or kidnapped by armed groups, terrorist organisations or other non-state actors. Despite the fact that state wrongful detention for purposes of diplomatic leverage ('hostage diplomacy') is widely considered to be increasing worldwide,¹ Australia lacks both a policy framework for managing cases and a strategy for preventing and deterring malign actors from targeting Australia with this practice.

Whilst Australia is a signatory² to the 2021 Canadian Declaration Against Arbitrary Detention in State-to-State Relations and has participated in multilateral meetings and events organised by Canada's Arbitrary Detention Initiative,³ Australia does not appear to have taken any steps toward implementing the Declaration's objectives beyond the purely symbolic.

Australia must do more to deter the specific threat of hostage diplomacy beyond signing up to symbolic multilateral initiatives. True deterrence demands more than toothless gestures denouncing the practice. Difficult decisions must be made to impose meaningful costs on authoritarian regimes which wrongfully detain Australian citizens in order to exert leverage over the Australian government (eg. Iran, Myanmar) or to send a signal in the context of bilateral relations (eg. China).

A first step in establishing deterrence for which the legislative and policy levers are already in place would be to impose targeted 'Magnitsky' sanctions on officials and other individuals complicit in the hostage-taking of Australians. To date the Australian government has not sanctioned any individuals in any country specifically for the wrongful detention or state hostage-taking of Australian citizens.

A related concern is Australia's neglecting to impose targeted or broad financial sanctions on states that gravely violate human rights due to their hostage taking of Australian citizens. It has been reported that, for example, Australia did not join its allies and partners, including the US, EU and

¹ Loertscher, Cynthia. 'Bringing Americans Home: A Non-Governmental Assessment of U.S. Hostage Policy and Family Engagement,' *James W. Foley Legacy Foundation* (2022): 5.

² <https://www.foreignminister.gov.au/minister/marise-payne/speech/canadas-declaration-against-use-arbitrary-detention-state-state-relations>

³ https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/arbitrary_detention-detention_arbitraire.aspx?lang=eng#a1

Canada, in imposing sanctions on Myanmar following the 2021 military coup due to Myanmar's detention of AWADA co-founder Prof. Sean Turnell, then-economics adviser to the Aung San Suu Kyi government. Prof. Turnell is of the opinion that Australia refrained from imposing financial sanctions on the Myanmar junta due to his imprisonment, and has since been vocal in calling for a tougher Australian response to the grievous human rights abuses perpetrated by Myanmar's military rulers.⁴

AWADA appreciates that balancing the need to punish the Myanmar junta for its illegal coup and human rights offences with securing Professor Turnell's release is a very difficult needle to thread, and that hostage diplomacy is fundamentally a rock-and-a-hard-place conundrum. Given that the Myanmar regime was able to instrumentalise the wrongful arrest of Prof. Turnell to influence Australia's foreign policy in this way however, the need for real and meaningful deterrence after a hostage diplomacy event is resolved is even more crucial.

In spite of the fact that the hostage-taking of innocent Australians by governments seeking leverage over Australia amounts to a direct assault on our bilateral relationship, the Australian government has been reluctant to allow such cases to impact broader diplomatic relations. AWADA urges the Australian government to consider such detentions not on an ad hoc and individual basis, but as part of a global trend of coercive diplomacy which warrants a broader foreign policy response, including around deterrence.

Australia should be willing to employ its sanctions regime and other creative foreign policy levers in direct and explicit response to the hostage-taking of our citizens abroad by nation states, and we should clearly signal that such malign activities will have a negative impact on our diplomatic relationship with countries that engage in this practice.

Australia should be prepared to undertake such deterrence measures unilaterally, in addition to our cooperation and collaboration with other like-minded democratic countries also grappling with this issue.

Recommendation 1: Coordinate Australia's financial and Magnitsky sanctions regimes with those of other Western partners and allies, particularly with respect to targeting perpetrators of wrongful detention and hostage diplomacy

Perpetrator countries

Countries which have wrongfully detained Australian citizens in the past include Iraq, Egypt, the UAE, Myanmar, Vietnam, Thailand, Laos and Cambodia. Iran and China are two of the most prolific and egregious repeat offenders.

Iran

The Islamic Republic of Iran is well-known globally for wrongful detentions and has arguably transformed its hostage diplomacy into a lucrative business model, the success of which other malign actors are now seeking to emulate.

⁴ <https://www.voanews.com/a/former-australian-adviser-to-aung-san-suu-kyi-calls-for-sanctions-on-myanmar-s-banks-/7266278.html>

Four Australian citizens are known to have been wrongfully imprisoned in Iran between 2018-2020, and a fifth died in Iran's Evin prison from medical neglect in March 2022.⁵ The Australian government was compelled to offer a prisoner exchange for three of them,⁶ and assisted the fourth⁷ to depart Iran under emergency circumstances. At least one additional Australian citizen remains behind bars in Iran at the time of writing.⁸

AWADA co-founder Kylie Moore-Gilbert submitted a list of known Iranian officials who played a direct role in her wrongful detention to the offices of former Foreign Minister Marise Payne and current Foreign Minister Penny Wong, requesting that sanctions be considered (see Appendix 1). The UK-based NGO REDRESS also submitted a lengthy report, based on comprehensive research with victim-survivors of Iranian hostage diplomacy including Moore-Gilbert, to the Foreign Minister's office and DFAT in December 2022. The report recommended imposing Magnitsky sanctions on an initial tranche of 10 individuals directly implicated in Iran's hostage-taking business model (see Appendix 2).

Both Dr Moore-Gilbert and REDRESS did not receive a response to their request for sanctions from either Minister's office. This is in spite of the matter being raised in DFAT Senate Estimates in February 2023, wherein DFAT representatives took the question on notice.⁹ The process by which individuals and civil society organisations are able to submit requests for consideration of sanctions is opaque and lacks transparency. AWADA strongly urges the government to provide a coherent and user-friendly means through which individuals and organisations are able to apply to the Foreign Minister for sanctions consideration.

Recommendation 2: Clarify and streamline the process for individuals and civil society organisations to request that the Foreign Minister consider applying sanctions

Given Iran's extensive record of targeting the citizens of a variety of Western democracies, including the US, Canada, the UK, Japan, New Zealand and the European Union states, the scope for multilateral foreign policy responses is considerable. AWADA strongly encourages the Australian government to coordinate its sanctions regimes with its 5 Eyes partners and other affected states to mount a collective response to Iranian hostage-taking. This could include an 'Article 5' style response to Iranian hostage diplomacy, whereby when the national of one allied country is taken hostage by Iran, all partner countries impose the same costs.

⁵ <https://www.theguardian.com/world/2022/mar/21/australian-shokrollah-jebeli-iranian-prison-denied-healthcare>

⁶ Jolie King and Mark Firkin in 2019 and Kylie Moore-Gilbert in 2020.

⁷ Dr Meimanat Hosseini-Chavoshi.

⁸ The circumstances of this individual's trial and imprisonment are known to DFAT. A senior United States security official told Dr Moore-Gilbert during a visit to Washington in June 2024 that more than one Australian citizen is currently in prison in Iran. This was corroborated in private discussions with an Australia-based media outlet investigating reports that up to four Australian citizens are currently imprisoned in Iran, a figure which AWADA has not presently been able to confirm.

⁹ Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee 16/02/2023

https://www.aph.gov.au/-/media/Estimates/fadt/supp2223/Hansards/PROOF_160223_DFAT.pdf?la=en&hash=E9D6FB88B449FDA78CCA05FC6446E6D96AFEAF71 Hansard, page 69.

At present, Australia has sanctioned the Islamic Republic extensively in areas related to its nuclear and missile programs¹⁰ and sponsorship of terrorism,¹¹ and recently announced Magnitsky sanctions on individuals and organisations involved in the persecution of women and suppression of peaceful protests.¹²

Australia has however declined to sanction Iranian officials specifically involved in the wrongful detention and state hostage-taking of Australian citizens. In not doing so, we have missed out on better coordinating our Iran sanctions regime with our allies the UK¹³ and US¹⁴ who have specifically sanctioned Iranian hostage-takers. This represents a missed opportunity to both deter future Iranian hostage-taking and send a strong signal that Australia will not tolerate our citizens being used for diplomatic leverage.

Recommendation 3: Impose unilateral financial and Magnitsky sanctions on individuals and organisations involved in Iranian state hostage-taking of Australian citizens, and explore options for collective multilateral sanctions.

China

China also has a long history of arresting Australian citizens on spurious or highly dubious charges, including most recently in the context of the breakdown of the bilateral diplomatic relationship under the previous Morrison government. Cases include AWADA co-founder and journalist Cheng Lei (released after a rapprochement in 2023), the pro-democracy writer Dr Yang Hengjun and the Hong Kong-based democracy advocate Gordon Ng, both of whom remain in prison.

China's use of wrongful detention is distinct from the more transactional practice of countries like Iran, in that China rarely makes specific demands of Australia in dealmaking to secure the person's release. China's practice of wrongfully detaining Australian citizens should rather be viewed as part of its broader practice of coercive diplomacy, which has seen Beijing freeze high-level diplomatic and political contact with Australia, slap punitive trade sanctions on Australian export industries and threaten Chinese dissidents living in Australia.

Australians like Cheng Lei and Yang Hengjun have arguably been caught up in the recent breakdown of the Sino-Australian relationship and their arrests appear to have been used by Beijing to send a warning signal to Canberra over the then-Morrison government's hardline approach.

China has also in the past jailed Australian businesspeople for financial-related crimes under dubious circumstances,¹⁵ including Stern Hu, Matthew Ng, Charlotte Chou and Troy Bremer, for whom significant concerns have been raised about access to a fair judicial process. Such prosecutions may

¹⁰ <https://www.foreignminister.gov.au/minister/penny-wong/media-release/sanctions-response-irans-nuclear-and-missile-programs>

¹¹ <https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-irans-destabilising-activities-middle-east>

¹² <https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violations-iran-and-iranian-support-russias-invasion-ukraine>

¹³ <https://www.gov.uk/government/news/uk-sanctions-target-30-corrupt-political-figures-human-rights-violators-and-perpetrators-of-conflict-related-sexual-violence-around-the-world>

¹⁴ <https://ofac.treasury.gov/sanctions-programs-and-country-information/hostages-and-wrongfully-detained-us-nationals-sanctions>

¹⁵ <https://aus.thechinastory.org/archive/australians-in-the-chinese-justice-system/>

have been designed to send a punitive message to foreigners involved in doing business in China and could potentially also be characterised as wrongful detentions.

Recommendation 4: Consider imposing Magnitsky-style targeted sanctions on individuals and organisations involved in the wrongful detention of Australian citizens in China and Hong Kong

Foreign policy implications

These cases highlight that there are real and significant foreign policy ramifications when countries wrongfully detain Australian citizens for diplomatic leverage. Ramifications which extend well beyond the devastating impact such detentions have on the lives of the individuals involved and their families. Hostage diplomacy is a very effective means of shaping, or curtailing, Australia's foreign policy in ways which might be entirely unrelated to the relatively niche issue of the imprisonment of individual Australian citizens.

Sometimes Australia is forced to pay a price in the form of direct concessions like prisoner swap agreements, which carry important ethical questions concerning the administration of justice and the longer-term implications of materially rewarding one's adversaries. Sometimes concessions occupy a grey zone, enabling both countries concerned to employ a measure of plausible deniability. Neglecting to impose sanctions, previously discussed with respect to Myanmar, is one example of this. Implicit recognition, when making deals with groups like the Afghan Taliban for example, is another. By forcing Australia to deal with them in order to secure captive citizens' release,¹⁶ malign actors like the Taliban are able to attain a measure of sought-after legitimacy denied to them on the international stage.

Overall, it does not appear that successive Australian governments, whether they be Coalition or Labor, have devoted resources to developing standalone policies designed to prevent and deter wrongful detention and hostage diplomacy. AWADA calls for greater awareness and strategic thinking by DFAT and other agencies involved in foreign policy development in this space.

At the forefront of strengthening Australia's response to wrongful detention should be robust efforts to apply targeted humanitarian and financial sanctions to punish perpetrators and deter them from continuing this insidious and growing practice. In many ways deploying Australia's sanctions regime to this end is an easy first step. The tools are already at our disposal, we just need to use them.

Recommendation 5: Collect data on past and current wrongful detentions of Australian citizens abroad and impose targeted Magnitsky sanctions on individuals and organisations identified as having been involved in this practice

Sanctions as a form of justice and redress for victims

One little-discussed aspect of support for victims of wrongful detention is the issue of access to justice and redress on account of their unjust deprivation of liberty and the human rights or other abuses they may have suffered. Achieving a sense that perpetrators have paid a price, whether they

¹⁶ Australian citizens kidnapped by the Afghan Taliban include Timothy Weeks, Diana Thomas and Peter Bunch. Australian aid worker Kerry Jane Wilson was similarly kidnapped in Afghanistan by non-Taliban armed groups.

be non-state terrorists or criminal gangs that take hostages, rogue governments which engage in hostage diplomacy, or individual officials responsible for imprisoning innocent people, can play a pivotal role in the wrongful detainee's recovery.

Former detainees consistently cite a desire to ensure that what happened to them can't happen again to anyone else. Seeing that some sort of cost or consequence is extracted from a perpetrator in response to their ordeal helps the detainee to feel that what they went through wasn't for nothing, and that some measure of justice has been restored.

There are obvious linkages between the matter of achieving a semblance of justice for victims and the need to punish and deter bad actors who engage in state hostage-taking and wrongful detention. Using sanctions to hold perpetrators accountable would enable wrongfully detained Australians to achieve a measure of closure for what they have suffered, as well as send a strong message of deterrence that may see off attempts to wrongfully detain Australians in the future.

The US and Canada have taken steps in this direction which could be examined by Australia. Firstly, an act of legislation could be instated to provide the government with tools to specifically deter and punish perpetrators. Such an act could take inspiration from the United States' 'Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act'¹⁷ of 2020 and Canada's 'Foreign Hostage Takers Accountability Act,' which is currently awaiting its third reading in the House of Commons.¹⁸

The Levinson Act explicitly empowers the US President to "impose visa- and property-blocking sanctions against any foreign person responsible for or complicit in the unlawful or wrongful detention of a U.S. national abroad"¹⁹ and the Canadian Act provides for "the imposition of restrictive measures against foreign hostage takers and those who practice arbitrary detention in state-to-state relations"²⁰ including sanctions, property and asset freezes, visa revocations and travel bans.

Crucially, the Canadian Act grants the Minister of Foreign Affairs discretionary power to use the proceeds of assets frozen under the Act to "to compensate hostages or detained individuals... or, if deceased, their estates or successions."²¹

The US has also instituted the 2015 'Justice for United States Victims of State Sponsored Terrorism Act,' which established a fund to provide compensation to:

*individuals (or personal representatives of deceased individuals) who hold a final judgment issued by a United States District Court awarding the individual compensatory damages. The judgment must arise from acts of international terrorism for which a foreign state sponsor of terrorism was found not immune from the jurisdiction of U.S. courts under the Foreign Sovereign Immunities Act.*²²

The fund makes payments to 9/11 victims and to Americans who were held hostage by Iran during the 1979 embassy crisis, among others. Four countries are currently designated as state sponsors of terrorism in the US: Cuba, Iran, North Korea and Syria. American citizens who are wrongfully detained in one of these countries are also able to apply to the courts to access the fund. Crucially, in

¹⁷ <https://www.congress.gov/bill/116th-congress/senate-bill/712>

¹⁸ <https://www.parl.ca/legisinfo/en/bill/44-1/c-353>

¹⁹ <https://www.congress.gov/bill/116th-congress/senate-bill/712>

²⁰ <https://www.parl.ca/documentviewer/en/44-1/bill/C-353/first-reading>

²¹ <https://www.parl.ca/documentviewer/en/44-1/bill/C-353/first-reading>

²² <https://www.usvsst.com/>

the US nation-state immunity from prosecution can be waived in cases in which the state in question is a sponsor of terrorism.

Allowing Australian victims of wrongful detention, terrorism and other international crimes to sue perpetrator states, state bodies or individuals within these states in Australian courts would have a revolutionary effect on victims' ability to seek justice for the crimes committed against them. A compensation fund repurposing assets confiscated through sanctions would also compel perpetrators to pay restitution to their victims, potentially deterring future malign behaviour and assisting victims in the recovery process.

Recommendation 6: Legislate an Australian 'Hostage-Takers Accountability Act' or similar to provide DFAT and the Foreign Minister with specific tools to sanction perpetrators and allow victims access to redress and restitution