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Foreign Affairs, Defence and Trade Committee  
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**Dear members of the Foreign Affairs, Defence and Trade Committee,**

This letter has been prepared by the Anti-Corruption Foundation regarding the **inquiry into Australia's sanctions regime**, currently being conducted by the Foreign Affairs, Defence, and Trade Committee.

The Anti-Corruption Foundation (ACF) is an international non-governmental organization focused on combating corruption generated by authoritarian kleptocratic regimes and exported far beyond their borders. The organization was founded 13 years ago by Russian opposition leader Alexei Navalny, who was killed for his relentless fight against the corrupt and aggressive regime established in Russia by Vladimir Putin.

Autonomous sanctions are part of the legislation in all countries that play a significant role in international politics, and their main features are generally similar. The key differences usually stem from the strategies chosen by each nation, depending on the discretion of their political leadership. In line with the inquiry's objectives, we suggest three legislative ideas, based on the practical application reflected in the Consolidated List. While ACF's focus remains on Russia, our proposals are applicable across the board. They target our area of expertise—corrupt elites—and recommend restrictive measures that can be applied to specific individuals. In the final section, we put our suggestions within a broader strategy that could enhance the effectiveness of pressure on authoritarian kleptocratic regimes.

Sincerely,

Alexander Pomazuev

Head of the Sanctions Department  
Anti-Corruption Foundation

## **SUGGESTIONS FOR IMPROVING AUSTRALIA'S SANCTIONS REGIME** **(as part of the inquiry of the Foreign Affairs, Defence and Trade Committee)**

### **Suggestion No. 1: Adding the Criterion of Holding Certain Positions to the List of Grounds for Imposing Personal Sanctions**

**Summary:** Introducing criteria like holding specific positions into the Australian sanctions regime can reduce the resource costs of targeting individuals critical to the regimes and streamline the administration of sanctions lists. This proposal paves the way for applying pressure on the numerous but vulnerable middle tier of elites in authoritarian regimes. It should also help maintain consistent sanctions pressure even with limited resources.

**Description of the Problem:** Compiling evidence packages for imposing sanctions and keeping them up-to-date requires significant resources. This challenge is compounded by the secretive nature of authoritarian regimes and the absence of independent media. It hinders the prompt imposition of sanctions on individuals in key positions, especially given the frequent personnel changes within the state apparatus. Moreover, due to limited resources, there's a reduced ability to apply pressure on the vulnerable but numerous middle tier of elites.

The EU sanctions provide an example of targeting individuals based on their specific positions. The sanctions regime against Syria (Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria) specifies in Article 28 that restrictive measures can be applied to certain levels of positions, such as government ministers, and ranks, like colonel and above. This example also includes various exceptions, offering flexibility in how sanctions are enforced.

The middle tier of elites crucial to authoritarian regimes, which is vulnerable to sanctions yet well-protected due to its large numbers and the limited resources available for imposing new sanctions, is currently protected by these factors (for more details, see Annex 1 'The Middle Tier of the Elites as a Target for Australian Personal Sanctions'). This is because gathering evidence on officials—many of whom are not public figures—relies on a decreasing number of open sources. Defining a list of positions would enable faster imposition of sanctions on these individuals (as soon as they take on a sanctioned position), reducing resource costs and increasing the likelihood of resisting legal challenges. Importantly, this would send a clear message to potential candidates for these roles, helping to limit the influx of professional personnel.

The list of positions could be outlined in the *Autonomous Sanctions Regulations* (as they depend on the specifics of each country), but the basis for listing should be established in the *Autonomous Sanctions Act*. Positions themselves can be described in a way that is resilient to changes in names, structures, and powers of government bodies, based on their legal status and, if necessary, their functions.

**Suggestion No. 2: Applying Sanctions for Serious Corruption (Magnitsky-style Sanctions) as Part of Sanctions Against Specific Regimes.**

**Summary:** Sanctions for serious corruption are a universal tool for exerting pressure on the elites of corrupt authoritarian regimes. This mechanism should be incorporated into sanctions regimes targeting specific countries, rather than being limited to a one-off case for the 15 individuals involved in the Sergei Magnitsky case. It provides additional grounds for listing, allowing civil society, opposition groups, and independent media (whether in exile or at home) to contribute to the fight against regimes that violate international law. For Australia, this approach would help maintain sanctions pressure with lower costs.

**Description of the Problem:** In large states with numerous elites, corrupt regimes form a complex system. Those who directly violate human rights or other international laws are often low-level actors, and sanctions against them are unlikely to influence the regime's policies. However, imposing sanctions for violations of international law against specific individuals who shape the regime's policies can be challenging due to the difficulty of gathering evidence. Nonetheless, involvement in large-scale corruption is a hallmark of elites in such regimes and is a consistent focus of investigations by opposition groups and media (even if they are in exile). These investigations provide an extensive and valuable source of evidence. Australia already has the necessary legal framework but is not effectively using it to apply additional pressure on the elites of authoritarian, corrupt regimes at their most vulnerable points.

We suggest that Australia study and adopt Canada's approach to using involvement in significant corruption as a criterion for listing individuals under autonomous sanctions against representatives of authoritarian states. Canada's Magnitsky Act (*Justice for Victims of Corrupt Foreign Officials Act*) is applied very limitedly, similar to its Australian analogue. At the same time, Canada has incorporated provisions related to involvement in acts of significant corruption into its core autonomous sanctions legislation (*Special Economic Measures Act*). This has expanded the scope

of targets for listing to include officials and entrepreneurs involved in anti-corruption investigations based on open and verifiable information. Such an approach is justified as it provides an additional means of applying pressure on authoritarian regimes through their corrupt elites. More criteria mean more individuals who are valuable to the regime and could influence its policies can be sanctioned. The availability of data from public and journalistic investigations simplifies evidence collection, leaving the executive branch with only the task of ensuring it meets Australian legal standards. Using these materials for sanctions indirectly supports civil society in authoritarian countries, demonstrating that wrongdoers are held accountable even if the government refuses to investigate proven crimes.

Australia has included serious corruption as a listing criterion in the Autonomous Sanctions Act, but it appears to be applied very limitedly, as seen in the Consolidated List. *The Autonomous Sanctions Regulations* (Article 6) provide for country-specific designation of persons or entities or declaration of persons related to Russia's invasion of Ukraine solely for a 'threat to the sovereignty and territorial integrity of Ukraine'. This demonstrates a limited understanding of the nature of the Russian regime and the causes of its military aggression. Corruption has created Vladimir Putin's authoritarian regime, which uses corruption both as a weapon and as a means to consolidate elites and sustain the war. Legislative barriers to the broad application of this criterion for sanctions should be removed.

### **Suggestion No. 3: Imposing an Obligation on Sanctioned Individuals to Declare Their Assets in Australia**

**Summary:** Imposing a declaration obligation is a universal and widely used measure by governments when assets, information, or other items might be hidden from oversight and are known only to their owner. Applying this measure to the sanctions regime could simplify the process of locating the assets of sanctioned individuals and enable the imposition of penalties for concealing these assets, with the aim of converting them into state revenue through fines and enforcement mechanisms.

**Description of the Problem:** The introduction of sanctions that include asset freezes traditionally means that the state takes on the responsibility of identifying sanctioned assets and freezing those it has managed to expose, either independently or through the bona fide actions of the sanctioned individual's counterparts. However, these assets remain frozen and cannot be confiscated. Even in rare cases where legislation (such as Canada's *Special Economic Measures Act*) allows for the

confiscation of frozen assets, it is often not applied due to legal issues related to property rights guarantees. This situation encourages sanctioned individuals to hide their assets, as this strategy does not result in any negative consequences for them.

Imposing an obligation on sanctioned individuals to declare their assets, even when subject to an asset freeze ('restriction or prevention of uses of, dealings with, and making available of, assets'—Autonomous Sanctions Act), would not be unique to the legal system. This mechanism is widely used in areas where control objects are hidden (e.g., tax declarations, customs declarations). This measure is always accompanied by penalties for false declarations. The severity of these penalties can be adjusted based on the amount of hidden property to meet the objectives of punishment. In the context of sanctions, requiring a sanctioned individual to notify the relevant Australian authority of their assets, including those already frozen, within a set period could help identify assets that might otherwise remain concealed. While sanctioned individuals might still attempt to hide their ownership, this requirement provides an additional incentive to comply with the law. Declaration can also prevent disputes over asset ownership if the sanctioned individual voluntarily acknowledges possession.

An additional aspect is the enforcement of penalties for non-compliance. Enforcing fines, potentially equal to the value of assets, could serve as a mechanism to convert a sanctioned individual's assets (either partially or fully) into revenue for Australia. Overall, this would complement the obligations of the sanctioned individual's counterparts to notify the state of any transactions or dealings involving sanctioned assets, providing them with an added incentive to adhere to their legal obligations.

## ANNEX

### 1. The Middle Tier of the Elites as a Target for Australian Personal Sanctions

**Summary:** Mid-level elites<sup>1</sup> are the most vulnerable to sanctions in authoritarian corrupt regimes. They play a crucial role in executing the decisions of the highest political leadership, but their large numbers make it impractical to maintain total control over them. At the same time, they often plan their future—and those of their families—in Europe or other countries with strong rule of law. Australia is an important member of the international community and the Commonwealth, where countries closely cooperate with one another. While not all corrupt elites link their future to Australia (for instance, Russian elites are primarily focused on the EU), the personal sanctions imposed by Australia significantly increase the risk of sanctions in other jurisdictions, making it less desirable for others to engage with those who are sanctioned.

#### **Description of the Problem:**

Australia's policy on personal sanctions is inconsistent. Restrictive measures are imposed (using Russia as an example) simultaneously against:

- Putin's inner circle, who are largely immune to sanctions due to their accumulated corrupt wealth;
- Those for whom sanctions are genuinely impactful;
- Individuals who have little to no influence over regime policy and often no connection with foreign states.

This has significantly weakened the impact of the few restrictive measures introduced since 2022 and has led the Russian elite to believe that the potential for sanctions pressure has reached its limit, allowing them to cooperate with the regime without fearing any personal consequences. As a result, the goal of sanctions to change the behaviour of the regime and its representatives is not being achieved.

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<sup>1</sup> We include the following (using Russia as an example): 1) political appointees and 'elected' officials (federal ministers, members of both chambers of parliament, heads of regional parliaments, governors, and their deputies); 2) leaders of state agencies with broad discretion or responsibility for key regime functions (heads and deputy heads of federal executive agencies, leaders of territorial bodies of federal executive authorities in security matters); 3) leaders of state agencies not part of the separation of powers system (leadership of the Central Bank of Russia, heads of electoral commissions, prosecutor's offices, and the Investigative Committee); 4) leaders of state-owned companies in sectors critical to the state (those generating revenue for the budget, ensuring infrastructure operation, responsible for propaganda, and major defence holdings). We estimate the middle tier of the elite to consist of approximately 4 to 6 thousand people, excluding family members and other close associates.

Personal sanctions pose varying levels of threat to different groups within the national elite and have differing degrees of influence on their behaviour, which carries different implications for their regime. The middle tier of the elite represents a strategic target. Its members already possess capital, often of corrupt origin, which cannot be guaranteed to remain safe in their home countries. At the same time, they are not so wealthy that sanctions would be inconsequential. On the contrary, their primary strategy is to move their capital out of the risks associated with their own states and into countries with strong rule of law and property rights guarantees. No allies of Russia or other authoritarian regimes can guarantee the security of their capital for decades or its transfer to future generations.

Meanwhile, the middle tier of the elite plays a crucial role in authoritarian regimes. While individual members can be replaced, collectively they fulfil an important function by ensuring the transmission of directives from the country's top political leadership to the state apparatus and loyal societal institutions. This makes the middle tier of the elite a convenient target for sanctions pressure, provided there are resources and strategies that can undermine their confidence in the notion that they face no real sanctions risks. The main defence strategy of this group is its sheer number, which far exceeds the capacity of any state to impose sanctions effectively. More details on this issue can be found in part 2 of the Annex, 'The Pace of Personal Sanctions Implementation—a Reserve for Enhancing the Effectiveness of Restrictive Measures'. Given the extensive nature of the middle tier of the elite, it is important to have grounds for imposing sanctions based on the positions they hold (see Suggestion No. 1: Adding the Criterion of Holding Certain Positions to the List of Grounds for Imposing Personal Sanctions). All these elites are deeply involved in corruption, which is the price of their loyalty. Therefore, sanctions for serious corruption are an important tool (see Suggestion No. 2: Applying Sanctions for Serious Corruption (Magnitsky-style Sanctions) as Part of Sanctions Against Specific Regimes).

## **2. The Pace of Personal Sanctions Implementation—a Reserve for Enhancing the Effectiveness of Restrictive Measures**

**Summary:** Personal sanctions are likely to be more effective if they are applied consistently, making each member of the targeted group feel that the threat is real. This fear should motivate individuals and the group as a whole to steer clear of supporting the regime.

**Description of the Problem:** The priority strategy for authoritarian elites is to continue supporting the regime while planning to relocate their capital and families to countries with a strong rule of

law once they retire. The middle tier of these elites, particularly vulnerable to Australian sanctions (see Annex 1) yet crucial in implementing political decisions, far outnumbers the current restrictive measures. The size of this group has become its primary defence mechanism. It's so large, and the pace of new sanctions so slow, that individual members don't perceive any real risk of sanctions being imposed on them. Consequently, sanctions fail to achieve their primary goal of changing the behaviour of specific individuals and the targeted group as a whole.

Rather than simply increasing the number of personal sanctions, which seems unrealistic, an alternative approach could be to regularly impose sanctions on a small number of representatives from the target group. Understanding that new sanctions are inevitable in the near future and that there is a genuine risk of severe consequences would create an atmosphere of fear driven by uncertainty. This method addresses the defensive strategy by focusing on quantity. Sanctions cannot be imposed on all members of the Russian or any other corrupt authoritarian elite—this is neither possible nor the goal. However, they should create a sense of uncertainty and fear among those not yet targeted, by instilling a sense of real risks. For example, on 24 June 2024, the EU imposed sanctions on nine deputy ministers from the Russian Ministry of Construction, Housing and Utilities. While their inclusion alone won't change the behaviour of the heads of central federal executive bodies and their deputies, whose total number exceeds 500 people, imposing sanctions every month or two on the head and all deputies of one ministry, then another, would create a sense of ongoing risk and encourage behavioural change.

Within this strategy, several key conditions are important in addition to regularity. Firstly, the target group must be clearly identifiable (in the example given, it's the heads and deputies of central federal executive bodies). Secondly, there must be comprehensiveness in imposing sanctions within the microgroup. In the example provided, this means imposing sanctions on all deputies without exception. This disrupts the sense of security among ordinary deputies. They constitute the majority in the target group but are confident that there are no significant risks for them until sanctions are imposed on the heads and their immediate deputies. Thirdly, there must be unpredictability in the composition of the next microgroup. The feeling that you could accidentally find yourself on the next list creates an atmosphere of uncertainty and fear, which is the primary tool for changing the behaviour of the group as a whole.

Implementing sanctions based on this principle aligns well with the idea of imposing sanctions on those holding positions at a certain level (see Annex 1). This approach facilitates the imposition of sanctions on members of the target group, allowing it to be done regularly and selectively.