

Submission in relation to the Inquiry into the review of the operation of the amendments made by the *Autonomous Sanctions Amendment (Magnitsky-Style and Other Thematic Sanctions) Act 2021*

24 January 2025

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Joint Standing Committee on Foreign Affairs, Defence and Trade
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NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its 15 sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The Sub-Committee comprises a group of volunteers and subscribers interested in international affairs and international law (both public and private). Overall, the Sub-Committee seeks to provide a supportive environment for law students and early career lawyers to advance their career in international law and foster valuable professional and personal relationships.

Summary of Recommendations

- 1. Recommendation 1: Establish clear, public criteria for the designation of sanctions.**
Develop and publish comprehensive guidelines that outline the factors considered when imposing sanctions, ensuring consistency in the application of the framework.
- 2. Recommendation 2: Enhance Public reporting on the decisions to impose sanctions.**
Require detailed public disclosures on the rationale for each designation, like the practices used by the UK and Canada. This will promote accountability and build public confidence in the process.
- 3. Recommendation 3: Create an Independent Oversight Mechanism:** Introduce a parliamentary or judicial review body responsible for monitoring decisions about sanctions to ensure compliance with established criteria and to guard against political interference.
- 4. Recommendation 4: Implement an Appeal or Review process for sanctioned individuals.**
Establish clear avenues for sanctioned persons or entities to request reconsideration, aligning the framework with principles of procedural fairness and Australia's international human rights obligations.
- 5. Recommendation 5: Formal right of review:** the government should be looking to establish a formal right of review for sanctioned parties, enabling them to contest their designation before an independent body, such as a specialised tribunal or judicial review process. This would

ensure that sanctions are based on credible evidence and align with principles of natural justice.

6. **Recommendation 6: Detailed reasoning with evidence:** the government should introduce greater transparency measures in the designation process - such as publishing detailed explanations for the decision to impose sanctions - which would enhance accountability while maintaining the regime's deterrent effect.
7. **Recommendation 7: Periodic Review of current imposed sanctions to ensure appropriateness:** Australia could and should set an international benchmark by providing a periodic review of the sanctions imposed and in place to ensure that they remain proportionate and justified. Adopting these measures would not only strengthen the legitimacy of Australia's sanctions regime but also position the country as a global leader in human rights and anti-corruption enforcement through principled and fair practices.
8. **Recommendation 8: Establish Evidence-Based Criteria for Family Member Designations:** Sanctions should only apply where clear evidence links the family member to the sanctioned individual's misconduct.
9. **Recommendation 9: Increase Transparency for Family-Related Sanctions:** Publicly available reasoning for sanctions imposed on relatives would improve public trust and ensure accountability.
10. **Recommendation 10: Implement Procedural Protections for Affected Family Members:** Introduce a right to independent review to ensure decisions meet legal and evidentiary standards.
11. **Recommendation 11: Enhance Information-sharing Agreements:** Strengthening partnerships with the enforcement bodies of other jurisdictions would improve Australia's ability to detect and prevent the evasion of sanctions. Formalised data-sharing and joint investigations would enhance enforcement capacity and global reach.
12. **Recommendation 12: Increase Utilisation against Perpetrators of Human Rights Abuses particularly in the Asia-Pacific Region.** Noting the under-utilisation to date, Australia should prioritise imposing Magnitsky-style sanctions against perpetrators of serious human rights violations and abuses in accordance with the intended objectives of the framework. To enhance effectiveness, Australia should also prioritise measures against perpetrators in the Asia-Pacific region considering Australia's power and influence in the region, and adverse

impacts that sanctions are likely to have on regional perpetrators with strong connections to Australia.

13. **Recommendation 13: Mandate Consultation with Civil Society Organisations.** Mandated consultations with civil society organisations should be enshrined in the sanction decision-making process. Civil society organisations are well-positioned to advise and consult the Australian government with respect to decisions regarding who should be sanctioned for human rights abuses.
14. **Recommendation 14: Proactive Approach for Gender-Based Violence.** To enhance the regime's impact on Gender Based Violence, Australia should adopt a more proactive approach in designating actors responsible for severe violations, including state and non-state perpetrators involved in trafficking, sexual violence in conflict zones, and systematic discrimination. Coordination with global partners who have successfully imposed gender-focused sanctions, such as the United States and Canada, would improve both impact and consistency.

Introduction

1. NSW Young Lawyers International Law Sub-Committee (**the Sub-Committee**) welcomes the opportunity to make the following submission in response to the inquiry into the review of the operation of the amendments made by the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021* (the Act) currently before the Parliament, which will seek to ascertain how the operation of the amendments made by the Act, accord with Australia's International Human Rights Obligations.
2. In this submission, the Sub-Committee reviews the operation of the amendments made by the Act and identifies legal issues, both at the domestic and international level, which the Sub-Committee respectfully encourages the Parliament to consider when reviewing the current amendments and their suitability.
3. The submission will first provide a brief history of the autonomous sanctions regime here in Australia, and then identify Australia's international legal obligations; highlighting the suitability of the current framework in light of Australia's obligations.
4. In doing so, the submission will critically assess whether the current framework adequately reflects Australia's commitment to human rights and anti-corruption efforts, while also examining

potential gaps in its application. It will also highlight inconsistencies in the imposition of sanctions, including a lack of due process in their application, and the need for greater coordination with other states in addressing global human rights violations. Through this analysis, the Sub-Committee aims to provide recommendations to Parliament to ensure that Australia's autonomous sanctions regime aligns more closely with its international obligations and global commitments to justice and accountability.

A Brief History of Magnitsky-style sanctions in Australia

5. Australia's adoption of a Magnitsky-style sanctions regime represents a significant evolution in its approach to human rights and anti-corruption enforcement. The regime stems from amendments to the *Autonomous Sanctions Act 2011*¹ and the *Autonomous Sanctions Regulations 2011*,² which came into effect on December 7, 2021. These changes reflect growing international momentum to provide targeted tools for addressing serious human rights abuses and corruption when traditional judicial or diplomatic avenues prove inadequate.
6. The Joint Standing Committee on Foreign Affairs, Defence and Trade conducted a major inquiry into the use of targeted sanctions, culminating in the 2020 report titled *Criminality, Corruption, and Impunity: Should Australia Join the Global Magnitsky Movement?*³ The report recommended legislative reform to empower the government to impose sanctions on individuals and entities responsible for serious human rights violations or corruption.
7. In response to these recommendations, the Australian Government introduced the ***Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021***,⁴ which broadened the grounds for imposing autonomous sanctions. Unlike the

¹ *Autonomous Sanctions Act 2011* (Cth).

² *Autonomous Sanctions Regulations 2011* (Cth).

³ Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, Corruption and Impunity: Should Australia Join the Global Magnitsky Movement?* (Report, 7 December 2020).

⁴ *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021* (Cth).

previous regime, which primarily focused on targeting geographic regions, the amendments enabled the imposition of sanctions on thematic grounds, targeting:

- The proliferation of weapons of mass destruction;
- Threats to international peace and security;
- Malicious cyber activity;
- Serious violations or serious abuses of human rights;
- Activities undermining good governance or the rule of law, significant corruption; and
- Serious violations of international humanitarian law.⁵

8. This legislative shift was designed to strengthen Australia's ability to act independently of United Nations (UN) mandates and in coordination with international partners. The new framework provides for asset freezes and travel bans on sanctioned individuals and entities.
9. While the amendments reflect a firm commitment to promoting human rights and anti-corruption globally, questions remain about the consistency and transparency of their application. Advocacy groups continue to call for broader and more robust use of the sanctions regime to ensure it meets its full potential as a tool of justice and accountability.

The Current Framework

10. The current framework allows Australia to apply sanctions autonomously, independent of the United Nations (UN) Security Council's mandates, enhancing its capacity to act swiftly in response to human rights abuses and corruption.
11. The framework is designed to complement Australia's broader foreign policy objectives, including promoting human rights, combating transnational corruption, and addressing international security threats.⁶ It also aligns with international frameworks like the *UN*

⁵ Ibid, s. 4.

⁶ Australian Government, Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper* (White Paper, November 2017) [2017 Foreign Policy White Paper](#); Australian Government, Department of Foreign Affairs and Trade, 'Corruption' (Web page) [Corruption | Australian Government Department of Foreign Affairs and Trade](#).

*Convention against Corruption (UNCAC)*⁷ and the *International Covenant on Civil and Political Rights (ICCPR)*.⁸

12. There has been a plethora of research into the legal implications, geopolitical trends, adoption and implementation of Magnitsky-style sanctions since their inception in 2012 by the United States.⁹ However, this review seeks to determine the effectiveness of the Magnitsky-style amendments to the sanction regime in Australia, and whether the amendments are meeting the intended objectives of complementing Australia's foreign policy priorities with respect to promoting human rights, combating transnational corruption, and addressing international security threats.¹⁰
13. Reflecting on Australia's implementation and use of the Magnitsky-style amendments, critics argue that Australia's application of Magnitsky-style sanctions has been limited, delayed, overly-cautious and selective.¹¹
14. For instance, in sanctioning Iranian and Russian figures, Australia followed the lead of other Western nations, implementing similar measures some months or even years later. This lag may diminish the potential deterrent effect of the sanctions. As scholar Kylie-Moore Gilbert argues "...to be most effective, Magnitsky sanctions should be enacted swiftly and in a multilateral and coordinated fashion".¹²
15. Another criticism of the framework is the ad hoc and inconsistent application; while certain individuals linked to well-documented abuses have been targeted by sanctions, other

⁷ *United Nations Convention against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005).

⁸ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁹ T. Firestone and K. Contini, 'The Global Magnitsky Act' *Criminal Law Forum* (2018) 29, 619-628; Bill Browder, *Red Notice: How I Became Putin's No. 1 Enemy* (Transworld Publishers, 2015) 436.

¹⁰ Australian Government, Department of Foreign Affairs and Trade, *2017 Foreign Policy White Paper* (White Paper, November 2017) [2017 Foreign Policy White Paper](#); Australian Government, Department of Foreign Affairs and Trade, 'Corruption' (Web page) [Corruption | Australian Government Department of Foreign Affairs and Trade](#).

¹¹ Kylie Moore-Gilbert, 'Australia must use its Magnitsky-style sanctions more effectively to deter hostage diplomacy', (Web page, *The Strategist*, 21 December 2022).

¹² Kylie Moore-Gilbert, 'Australia must use its Magnitsky-style sanctions more effectively to deter hostage diplomacy', (Web page, *The Strategist*, 21 December 2022).

perpetrators of similar crimes have enjoyed impunity, raising concerns about transparency and consistency.

Ad-Hoc Application and lack of transparency

16. Since the introduction of Australia's Magnitsky-style regime, concerns have emerged regarding its inconsistent application and the lack of transparency in decision-making processes. While the framework provides powerful tools to target human rights violators and corrupt actors, its impact is undermined when sanctions appear to be applied selectively, raising questions about whether political considerations outweigh human rights aspirations.
17. A central criticism of the current regime is the inconsistent targeting of perpetrators, despite widespread documentation of serious human rights abuses globally. For example, Australia has sanctioned Russian officials in connection with the invasion of Ukraine¹³ and imposed sanctions on individuals from Myanmar responsible for the human rights abuses in Rohingya.¹⁴ However, there is a conspicuous absence of sanctions against Chinese officials involved in human rights abuses against the Uyghur population in Xinjiang, despite overwhelming evidence of mass detention, forced labour, and systemic repression.¹⁵ This omission stands in contrast to sanctions imposed on Chinese officials for these abuses by other Western countries, including the United States, United Kingdom, and Canada.¹⁶
18. Australia imposed sanctions on Iranian officials following the suppression of protests sparked by the death of Mahsa Amini,¹⁷ no equivalent measures have been applied to high-profile cases of corruption and human rights abuses in other regions. This contrast is evident in the case of journalist Jamal Khashoggi, where, despite widespread international condemnation and

¹³ Penny Wong, 'Two Years On, Australia Stands with Ukraine' (Media Release, Department of Foreign Affairs and Trade, 24 February 2024).

¹⁴ Anne Barker, 'Australia Sanctions Myanmar Military Generals over Rohingya Atrocities' (Web Page, ABC News, 23 October 2018).

¹⁵ Stephen Dziedzic, 'Coalition Calls for Sanctions on Chinese Officials over Uyghur Human Rights Abuses in Xinjiang' (Web Page, ABC News, 24 November 2022).

¹⁶ Daniel Hurst, 'Australia and New Zealand welcome sanctions on China over Uyghur abuses but impose none of their own' (Web Page, The Guardian, 23 March 2021); UK Foreign, Commonwealth & Development Office, 'UK Sanctions Perpetrators of Gross Human Rights Violations in Xinjiang alongside EU, Canada, and US' (Web Page, UK Government, 22 March 2021).

¹⁷ Penny Wong, 'Targeted Sanctions in Response to Human Rights Violations in Iran' (Media Release, Department of Foreign Affairs and Trade, 16 September 2024).

evidence implicating senior Saudi officials,¹⁸ Australia did not impose and targeted sanctions or punitive measures, highlighting a selective approach to addressing global human rights abuses and corruption.¹⁹ This selective use creates the perception that the sanctions regime is driven by political interests rather than by a principled commitment to human rights and anti-corruption.

19. Another significant criticism of Australia's regime is the lack of transparency. The opacity surrounding the designation of the sanctions process further exacerbates concerns about fairness and accountability. The criteria for determining sanctions targets are not fully disclosed, and there is limited public information around why specific individuals or entities are sanctioned and others with comparable records of abuse are not. The decision-making process lacks clear procedural safeguards, and individuals subject to sanctions have few, if any, avenues for appeal or review.²⁰
20. International best practice suggests that transparency is key to maintaining the legitimacy of sanction regimes. For instance, the UK publishes detailed reasoning behind each designation under its Global Human Rights Sanctions Regulations,²¹ providing a model for improving accountability. Without comparable disclosure, Australia's sanctions risks being perceived as arbitrary or politically motivated, and the integrity of the regime is put into question.
21. Additionally, the absence of an independent oversight mechanism to review the decisions to impose sanctions diminishes public confidence in the process. Establishing a dedicated parliamentary or judicial body to oversee the implementation of sanctions could enhance accountability, ensure compliance with legal standards, and reduce the potential for political influence. The EU possesses a well-established framework through the EU courts, which have a robust history of adjudicating over various sanction regimes. This established judicial infrastructure adds an extra layer of oversight and accountability to the EU's approach to due

¹⁸ The Hon. Christian Porter MP AG, '*Murder of Jamal Khashoggi: Sentences handed down*' (Media Release, Australian Minister for Foreign Affairs, 24 December 2019).

¹⁹ Lisa Martin, '*Khashoggi Killing: Australia refuses to rule out arms export ban to Saudi Arabia*' (Web Page, The Guardian, 24 October 2018).

²⁰ Lorenzo Pasculli and Ben Standford, 'Form and Flexibility: The Normalisation of 'Magnitsky Sanctions' in the Face of the Rule of Law', (2022) *Hague Journal on the Rule of Law*, 1.

²¹ *The Global Human Rights Sanctions Regulations 2020* (UK)

process in sanctions matters.²² This framework serves as a model precedent that could be adopted and moulded to be fit for purpose in the Australian jurisdiction.

22. The ad-hoc application and lack of transparency in Australia's sanctions framework could undermine Australia's credibility as a global leader in human rights advocacy. Inconsistency weakens the deterrent effect of sanctions, allowing perpetrators to believe that accountability is subject to selective enforcement. Furthermore, a non-transparent process restricts Australia's ability to advocate for human rights effectively on the international stage, particularly when urging other nations to adopt similar frameworks - which is necessary to forge a strong, cohesive and effective sanctions framework and to reduce loopholes and safe-havens for perpetrators.
23. **Recommendation 1: Establish clear, public criteria for designations of sanctions.**
Develop and publish comprehensive guidelines that outline the factors considered when imposing sanctions, ensuring consistency in the application of the framework.
24. **Recommendation 2: Enhance Public reporting on the decisions to impose sanctions.**
Require detailed public disclosures on the rationale for each designation, like the practices used by the UK and Canada. This will promote accountability and build public confidence in the process.
25. **Recommendation 3: Create an Independent Oversight Mechanism:** Introduce a parliamentary or judicial review body responsible for monitoring decisions about sanctions to ensure compliance with established criteria and to guard against political interference.
26. **Recommendation 4: Implement an Appeal or Review process for sanctioned individuals.**
Establish clear avenues for sanctioned persons or entities to request reconsideration, aligning

²² See *Yassin Abdullah Kadi and Al Barakaat v Council of the European Union and Commission of the European Communities*, ECJ, Judgement of 3 September 2008 in joined cases C-402/05 and C-415/05 P.

the framework with principles of procedural fairness and Australia's international human rights obligations.

27. Effective coordination with other states is critical for ensuring the success and legitimacy of autonomous sanctions, as global cooperation enhances enforcement measures and reduces opportunities for circumvention.

Lack of due process

28. One of the most significant criticisms of Australia's Magnitsky-style sanctions regime is the lack of due process for individuals and entities subject to sanctions. While the framework is intended to target serious human rights violators and corrupt actors, it currently curtails the individual's right to procedural safeguards.²³

29. Australia's current sanctions regime offers limited avenues for challenging the designations of sanctions, raising significant concerns about fairness and accountability. Under the *Autonomous Sanctions Act 2011*, there is no formal right of appeal for individuals or entities placed on the sanctions list. Affected parties may submit a written request to the Minister for Foreign Affairs seeking a revocation of their designation, but the decision to review or revoke sanctions is entirely discretionary.²⁴

30. Sanctioned individuals and entities face severe consequences, including asset freezes and travel bans, without adequate mechanisms to challenge their designation. Unlike criminal prosecutions, which require clear evidence and allow for defence, decisions to impose sanctions are often made behind closed doors. Furthermore, the absence of an appeal process is in direct conflict with the protections provided by article 14 of the ICCPR which enshrines the concept of due process in legal proceedings and article 17(1) which states:

- a. No one shall be subjected to arbitrary or unlawful interference with his privacy, family home, or correspondence, nor to unlawful attacks on his honour or reputation.²⁵

31. Unlike frameworks in jurisdictions such as the United Kingdom (UK) and the European Union (EU), where independent judicial or administrative review mechanisms are available, Australia

²³ Anton Moiseienko, 'Corruption and Targeted Sanctions: Law and Policy of Anti-corruption Entry Bans' (Brill NiJhoff, 2019) 60.

²⁴ Lorenzo Pasculli and Ben Standford, 'Form and Flexibility: The Normalisation of 'Magnitsky Sanctions' in the Face of the Rule of Law', (2022) *Hague Journal on the Rule of Law*, 1.

²⁵ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17(1).

provides no independent oversight of these decisions to impose sanctions. This lack of procedural safeguards increases the risk of unfair or arbitrary outcomes and undermines the regime's legitimacy. Without a transparent review process, individuals are left with limited recourse to contest sanctions, making reforms essential to align the regime with international human rights standards and principles of natural justice.

32. **Recommendation 5: Formal right of review:** the government should be looking to establish a formal right of review for sanctioned parties, enabling them to contest their designation before an independent body, such as a specialised tribunal or judicial review process. This would ensure that sanctions are based on credible evidence and align with principles of natural justice.
33. **Recommendation 6: Detailed reasoning with evidence:** the government should introduce greater transparency measures in the designation process - such as publishing detailed explanations for the decision to impose sanctions - which would enhance accountability while maintaining the regime's deterrent effect.
34. **Recommendation 7: Periodic Review of current imposed sanctions to ensure appropriateness:** Australia could and should set an international benchmark by providing a periodic review of the sanctions imposed and in place to ensure that they remain proportionate and justified. Adopting these measures would not only strengthen the legitimacy of Australia's sanctions regime but also position the country as a global leader in human rights and anti-corruption enforcement through principled and fair practices.

Targeting of family members

35. One contentious aspect of Magnitsky-style sanctions regimes is the targeting of family members of sanctioned individuals. Australia's framework allows sanctions to be imposed on individuals and entities reasonably connected to primary targets, including immediate family members. This approach is intended to prevent sanctioned persons from using relatives to evade sanctions by transferring assets or influence.²⁶ However, this practice raises serious

²⁶ Geoffrey Robertson, *Bad People & How to be Rid of Them: A Plan B for Human Rights* (Vintage, 2021) 143; Victoria Kerr and James Patrick Sexton, 'Human Rights and Security: Unpacking the Elusive Nature of Magnitsky Sanctions' (2022) *European Society of International Law Paper Series* 2022,7-8.

ethical and legal questions, particularly concerning the principles of individual responsibility and fairness.

36. Sanctioning family members based on their relationship with an offender may contradict the foundational human rights principle of non-discrimination and individual culpability. Under customary international law, punitive measures should be targeted at those directly responsible for wrongdoing.²⁷ Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR)²⁸ guarantees the right to a fair trial and applying broad designations to family members can also lead to disproportionate harm, affecting their freedom of movement, financial stability, and reputations without due process protections.
37. Other jurisdictions, such as the United States and the EU, have faced similar criticisms. In response, some have moved towards more narrowly tailored approaches, requiring clear evidence of active involvement or material benefit before imposing sanctions on related parties. Australia could strengthen its regime by adopting comparable standards that limit family sanctions to cases where evidence demonstrates their direct role in facilitating or benefiting from human rights abuses or corruption.
38. **Recommendation 8: Establish Evidence-Based Criteria for Family Member Designations:** Sanctions should only apply where clear evidence links the family member to the sanctioned individual's misconduct.
39. **Recommendation 9: Increase Transparency for Family-Related Sanctions:** Publicly available reasoning for sanctions imposed on relatives would improve public trust and ensure accountability.
40. **Recommendation 10: Implement Procedural Protections for Affected Family Members:** Introduce a right to independent review to ensure decisions meet legal and evidentiary standards.

Coordination with other States

41. Effective sanctions regimes depend on robust international coordination to maximise their impact. By acting in concert with like-minded countries, Australia can enhance the reach and

²⁷ Alexandra Hofer, 'The Proportionality of Unilateral 'Targeted' Sanctions: Whose Interests Should Count?' (2020) 89 *Nordic Journal of International Law* 399-421, 402.

²⁸ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(1).

effectiveness of its Magnitsky-style sanctions, ensuring that perpetrators of human rights abuses and corruption face meaningful consequences across multiple jurisdictions.

Coordinated sanctions also help to prevent the evasion of sanctions, where individuals and entities shift assets or operations to countries with weaker enforcement mechanisms.

42. Australia's current framework aligns with this ambition by providing the flexibility to impose thematic sanctions independently of the UN Security Council resolutions, enabling Australia to coordinate more effectively with international partners. Australia's participation in multilateral efforts- such as aligning with sanctions imposed by the US, the UK and the EU and Canada- demonstrates a commitment to international cooperation. For example, recent sanctions targeting Russian Officials in response to the invasion of Ukraine reflect strong alignment with global Magnitsky regimes.
43. However, there are areas for improvement to strengthen Australia's leadership in this space. First, there is limited evidence of consistent, proactive alignment with sanctions imposed by international sanctions lists and expedited processes for designating individuals already sanctioned by key allies.
44. Additionally, greater coordination through information-sharing agreements and partnerships with other countries' sanctions enforcement bodies would improve Australia's capacity to detect and prevent sanctions evasion. Formalising such partnerships would help Australia contribute more effectively to global sanctions enforcement efforts.
45. **Recommendation 11: Enhance Information-sharing Agreements:** Strengthening partnerships with the enforcement bodies of other jurisdictions would improve Australia's ability to detect and prevent the evasion of sanctions. Formalised data-sharing and joint investigations would enhance enforcement capacity and global reach.

Serious violations or abuses of human rights

46. The Magnitsky-style sanctions regime enables sanctions to be imposed for serious violations or serious abuses of human rights.²⁹
47. Under the *Autonomous Sanctions Regulations 2011* (Cth), targeted financial sanctions and travel bans may be imposed in circumstances where the Minister for Foreign Affairs is satisfied

²⁹ *Autonomous Sanctions Act 2011* (Cth), s 4.

that a person or entity has engaged in, has been responsible for, or has been complicit in an act that constitutes a serious violation or serious abuse of a person's:

- a. right to life; or
- b. right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; or
- c. right not to be held in slavery or servitude, or right not to be required to perform forced or compulsory labour.³⁰

48. Under this remit, the Australian government has at its disposal a tool by which to target perpetrators of egregious human rights abuses around the world and combat impunity for international crimes.

49. To date, the Magnitsky-style sanctions have been predominantly used in the context of targeting Russian individuals and entities.

50. However, there are limited instances of thematic autonomous sanctions imposed for human rights violations against marginalised groups including women, children, Indigenous communities, LGBTQIA+ people and people with disabilities.

51. Marginalised communities often represent a large proportion of victims of human rights violations. For example, women and girls account for 71% of modern slavery victims worldwide according to a 2017 study.³¹

52. Cases of serious human rights violations in the Asia-Pacific region should also be considered for Magnitsky-style sanctions. Perpetrators in the Asia-Pacific region are likely to have strong ties and networks in Australia. As such, targeted financial sanctions and travel bans against persons and entities in the Asia-Pacific region are likely to be more effective in deterring behaviour.³²

53. The limited imposition of Magnitsky-style sanctions against perpetrators responsible for egregious human rights violations against marginalised communities is a gap in the operation

³⁰ *Autonomous Sanctions Regulations 2011* (Cth), reg 6A(4).

³¹ International Labour Organisation, *Global Estimates of Modern Slavery* (Report, 2017) page 5, <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf>.

³² ANU, *Making sense of sanctions: ANU Law scholar researches impact of Global Magnitsky Act* (Webpage, 14 August 2023) <https://law.anu.edu.au/news-and-events/news/making-sense-sanctions-anu-law-scholar-researches-impact-global-magnitsky-act>

of the regime, which we submit should be prioritised going forward to enhance justice and accountability for victims.

54. Civil society organisations are also uniquely positioned to consult and assist the Australian government in its decisions regarding sanctions for serious human rights abuses. For this reason, further consideration should be given to mandating regular consultations with civil society and human rights groups for decisions to impose Magnitsky-style sanctions for human rights abuses.
55. **Recommendation 12: Increase Utilisation against Perpetrators of Human Rights Abuses particularly in the Asia-Pacific Region.** Noting the under-utilisation to date, Australia should prioritise imposing Magnitsky-style sanctions against perpetrators of serious human rights violations and abuses in accordance with the intended objectives of the framework. To enhance effectiveness, Australia should also prioritise measures against perpetrators in the Asia-Pacific region considering Australia's power and influence in the region, and adverse impacts that sanctions are likely to have on regional perpetrators with strong connections to Australia.
56. **Recommendation 13: Mandate Consultation with Civil Society Organisations.** Mandated consultations with civil society organisations should be enshrined in the sanction decision-making process. Civil society organisations are well-positioned to advise and consult the Australian government with respect to decisions regarding who should be sanctioned for human rights abuses.

Gender based violence

57. The use of Magnitsky-style sanctions to address gender-based violence represents a significant step toward combating systemic human rights abuses. However, the current application in Australia has been inconsistent and under utilised in targeting perpetrators of violence against women and LGBTQIA+ individuals.
58. Gender-based violence is recognised globally as a pervasive human rights violation, often linked to broader patterns of corruption and state complicity. One recent example which demonstrates the necessity to be more proactive in imposing sanctions for these violations is the systematic sexual violence against the Rohingya minority in Myanmar. Since 2017, widespread reports of rape and sexual violence perpetrated by military forces have been

documented by organisations such as Human Rights Watch³³ and the United Nations.³⁴ These acts were part of broader campaigns of ethnic cleansing, with evidence of state-sanctioned military operations targeting women and girls. Yet, few designations have directly addressed individuals or networks responsible for these crimes.

59. **Recommendation 14: Proactive Approach for Gender-Based Violence.** To enhance the regime's impact on Gender Based Violence, Australia should adopt a more proactive approach in designating actors responsible for severe violations, including state and non-state perpetrators involved in trafficking, sexual violence in conflict zones, and systematic discrimination. Coordination with global partners who have successfully imposed gender-focused sanctions, such as the United States and Canada, would improve both impact and consistency.
60. Increased transparency and gender-specific criteria would ensure that the sanctions regime remains aligned with Australia's international human rights obligations, reinforcing its leadership in combating Gender based violence.

Conclusion

61. Australia's adoption of Magnitsky-style sanctions represents a critical step forward in combating human rights violations and corruption. However, the current framework requires significant enhancements to fulfill its intended objectives effectively.
62. This submission only addresses some of the pressing reforms needed for Australia's sanction regime, however, by introducing transparency, due process protections, and international coordination will not only strengthen the legitimacy of Australia's sanctions regime but also align it more closely with international best practices and Australia's human rights obligations.
63. This submission respectfully urges the Parliament to adopt reforms that establish clear criteria for the designations of sanctions, introduce independent oversight mechanisms, and create robust review and appeal processes. By addressing these gaps, Australia can lead the global

³³ Human Rights Watch, *All of My Body was Pain: Sexual Violence against Rohingya Women and Girls in Burma* (Report, 16 November 2017).

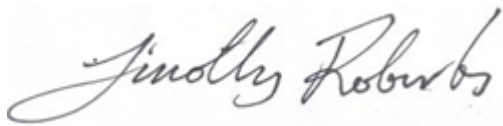
³⁴ United Nations Human Rights Council, *Report of the Independent International Fact-Finding Mission on Myanmar* (UN Doc A/HRC/39/64, 12 September 2018).

Magnitsky movement with a principled, transparent, and accountable framework, reinforcing its commitment to justice and human rights advocacy on the international stage.

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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