

**Inquiry into Whether Australia Should Examine the Use of Targeted Sanctions
to Address Human Rights Abuses**

Islamic Council of Victoria

**Submission to the Joint Standing Committee on Foreign Affairs, Defence and
Trade**

1. Introduction

1. The Islamic Council of Victoria (ICV) is the peak Muslim body in Victoria, with more than 60 member societies and representing over 200,000 Muslims, from over 70 diverse ethnic and cultural backgrounds. The ICV offers advocacy and social welfare services while leading state and national initiatives on cohesion and harmony through community consultations and advice to Government.¹
2. The ICV is greatly concerned by the number of international human rights atrocities which take place around the world. Given the importance of safeguarding fundamental human rights in the Islamic faith, the ICV is pleased to offer its submission to the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, with regard to the Committee's Inquiry into the Use of Targeted Sanctions to Address Human Rights Abuses.
3. The ICV supports the introduction of *Magnitsky* legislation which authorizes the use of sanctions against individuals who have committed human rights abuses. Such legislation would play an important role in not only punishing abusers, but actively denouncing their violations of fundamental human rights.
4. This submission investigates the effectiveness of sanctions as a tool to promote human rights as well as the experience of other jurisdictions in implementing sanctions, and provides procedural recommendations to ensure a favourable introduction of targeted sanctions legislation.

¹ For more information, see the ICV website: www.icv.org.au

1. Recommendations

2. The following recommendations by the ICV are offered to the Joint Standing Committee:

Recommendation 1: Magnitsky-type legislation be introduced by the Commonwealth which allows the Minister for Foreign Affairs, Defence and Trade ('the Minister') to impose sanctions on individuals who are found to have committed human rights violations.

Recommendation 2: An official be appointed Commissioner for International Human Rights, and tasked with receiving and investigating complaints made by individuals, NGOs, NFPs, political parties and politicians. The Commissioner would then make recommendations to the Minister regarding the appropriateness of sanctions, and report to complainants of their findings, outlining reasons for their recommendations to the Minister, within a time frame to be provided by legislation.

Recommendation 3: Any introduced Magnitsky legislation include a provision which affirms the Act being applicable to all foreign individuals, regardless of their office.

Recommendation 4: That the legislation include the widest possible range of sanction options. The legislation should take into consideration similar legislation including those highlighted in this submission.

Recommendation 5: That the legislation define gross human rights abuses in line with UN and ICC conventions, and that the requirements for a complaint to be made don't place unreasonable conditions that limit the scope of conduct and individuals that could be brought before the government.

Recommendation 6: Australia utilise any introduced legislation to work in cooperation with other nations in targeting human rights violators. Australia utilise any introduced legislation to work in cooperation with other nations in

targeting human rights violators. The legislation should include specific provisions that allow for design and implementation of coordinated sanctions amongst nations with Magnitsky-type legislation.

Recommendation 7: For maximum effectiveness of the introduced legislation, any individual indicted by the ICC should automatically be investigated by the Minister with respect to whether it is appropriate for Australia to impose sanctions.

3. The Framework for Autonomous Sanctions under Australian Law

4. As the Committee is no doubt aware, the current Australian sanctions regime operates on two fronts: sanctions imposed pursuant to United Nations Security Council resolutions, as well as those imposed under the Autonomous Sanctions Act 2011 and the Autonomous Sanctions Regulations 2011.
5. The Autonomous Sanctions Act operates such that sanctions are imposed on foreign government entities or individuals and entities outside Australia, for the purposes of furthering Australian foreign policy. Sanctions imposed under this Act have been made with respect to foreign government officials in Iran, Myanmar, Russia and Syria, amongst other nations of the world.
6. Importantly, however, the Act does not identify actions for which sanctions may be imposed as a result, or issues which the Act intends to resolve, with any real specificity.
7. Much of this is due to the fact that the autonomous sanctions regime does not operate for the express purpose of sanctioning human rights abusers, even though the explanatory memorandum of the Autonomous Sanctions Bill 2010 provides that sanctions are imposed “in situations of international concern”, which include “the grave repression of human rights”.²
8. By virtue of this, the Act does not provide for any process through which complaints of human rights abuses can be made for investigation and subsequent designations under the Act.

² Explanatory Memorandum, *Autonomous Sanctions Bill 2010* (Cth)

9. Ultimately, the present Australian autonomous sanctions regime is insufficient, and there remains a need for legislation which expressly allows for the Minister to impose sanctions on individuals who have committed acts which amount to gross violations of human rights, as defined by the United Nations and the International Criminal Court.

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10. The Use of Sanctions to Combat Human Rights Abuses and the Relevant Experience of Other Jurisdictions

United States

11. In its broadest form, the use of targeted sanctions towards human rights abusers largely stems from Magnitsky-type legislation, first introduced in the United States in 2012 (the Magnitsky Act of 2012),³ and expanded upon in subsequent legislation (the Global Magnitsky Act of 2016).⁴ While the initial legislation served to impose sanctions specifically on Russian officials responsible for the abuse and death of Sergei Magnitsky, its successor allowed for the imposition of sanctions against any individual responsible for gross violations of human rights, as well as substantial corruption.
12. In the United States, 275 designations have been made under the Global Magnitsky Act. One prominent case is the Jamal Khashoggi case, in which the United States imposed sanctions on 17 Saudi Arabian officials responsible for the killing of journalist Jamal Khashoggi.⁵ Those

³ *Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012*, United States

⁴ *Global Magnitsky Human Rights Accountability Act of 2016*, United States

⁵ *United States Government*. (2018). *Treasury Sanctions 17 Individuals for Their Roles in the Killing of Jamal Khashoggi* | U.S. Department of the Treasury. [online] Available at: <https://home.treasury.gov/news/press-releases/sm547>.

designated included members of the Royal Court as well as senior officials within several ministries of the Government of Saudi Arabia.

13. Effectively, the Global Magnitsky Act in the United States operates by allowing the US Assistant Secretary of State for Democracy, Human Rights and Labour to submit recommendations to the Secretary of State in relation to individuals or entities for whom sanctions are appropriate. In this regard, Members of Congress, as well as NGOs, are also entitled to make suggestions to the State Department. Upon advice from the US State and Treasury Departments, the President then makes a designation under the Act.
14. In light of this process, the ICV believes it is necessary not only for Magnitsky-type legislation which expressly serves to sanction human rights violators, but also allows for civic engagement. This could be best provided through the introduction of a position in Government solely responsible for investigating violations of human rights, and accepting complaints.

Recommendation 2: An official be appointed Commissioner for International Human Rights, and tasked with receiving and investigating complaints made by individuals, NGOs, NFPs, political parties and politicians. The Commissioner would then make recommendations to the Minister regarding the appropriateness of sanctions, and report to complainants of their findings, outlining reasons for their recommendations to the Minister, within a time frame to be provided by legislation.

Canada

15. Since the introduction of the Act, Canada and the United Kingdom, amongst other states, have introduced similar legislation.
16. Canada's Sergei Magnitsky Law of 2017⁶ allows for a two-tier sanctions regime, whereby sanctions can be imposed upon individuals responsible for human rights violations and significant acts of corruption, and targeted measures can be imposed upon individuals in

⁶ *Justice for Victims of Corrupt Foreign Officials Act 2017*. Canada.

Canada, or Canadians abroad, from dealing with designated persons. These targeted measures prevent the offering of financial services, dealing in property, and entering into business transactions with designated persons.

17. In addition to imposing sanctions on the 17 individuals found responsible for the extrajudicial killing of Jamal Khashoggi, Canada also imposed sanctions on Major General Maung Maung Soe of Myanmar, a major contributor towards the deplorable encroachment of the Rohingya peoples' fundamental human rights and the ensuing refugee crisis.⁷
18. Canada has also utilised the Sergei Magnitsky Law to impose sanctions on officials within the highest offices of foreign governments, including heads of state. More specifically, Venezuelan President Nicolas Maduro along with over 100 other high-level officials have been designated under the Act, a result of the large scale persecution of political dissidents and opponents by the Maduro government.⁸
19. This represents an important facet of Magnitsky legislation: there ought to be no immunity for foreign officials on the basis of their office. This includes heads of state, who serve as the representative of the integrity of their nation on the international stage.
20. In order to ensure this, the ICV proposes that any introduced legislation should expressly provide that the Act applies to all individuals regardless of their status or position.

Recommendation 3: Any introduced Magnitsky legislation include a provision which affirms the Act being applicable to all foreign individuals, regardless of their office.

⁷ Government of Canada. (2018). *Canada imposes targeted sanctions in response to human rights violations in Myanmar – Global Affairs Canada*. [online] Available at: https://www.canada.ca/en/global-affairs/news/2018/02/canada_imposes_targetedsanctionsinresponsetohumanrightsviolation.html.

⁸ Government of Canada. (2018). *Canada imposes targeted sanctions in response to human rights violations in Myanmar – Global Affairs Canada*. [online] Available at: https://www.canada.ca/en/global-affairs/news/2018/02/canada_imposes_targetedsanctionsinresponsetohumanrightsviolation.html.

United Kingdom

21. In the United Kingdom, two key pieces of legislation, known as the ‘Magnitsky amendments’, allow for the imposition of sanctions on individuals found to have committed gross human rights abuses. The first of which, the Proceeds of Crime Act 2002, was recently amended by the Criminal Finances Act 2017, to the effect that confiscation and civil recovery of proceeds and property can now take place whereby these proceeds stemmed from gross human rights abuse or violations. The other, the Sanctions and Anti-Money Laundering Act 2018, served to include gross human rights violations as a ground for imposing sanctions on both individuals and entities. These violations, as defined in the Proceeds of Crime Act, are constituted by “the torture of a person who has sought to expose illegal activity... or obtain, exercise, defend or promote human rights”, else “the cruel, inhumane or degrading treatment or punishment of such a person”.⁹
22. Sanctions which could be imposed upon designated persons include the freezing of assets, prevention of supply of financial services, prevention of entry into the United Kingdom, as well as aircraft sanctions, shipping sanctions, and other sanctions “for the purposes of compliance with a UN obligation”.¹⁰
23. Relative to other implementations of sanctions, legislation within the United Kingdom model specifies a greater variety of sanctions which could be imposed on designated persons. The ICV believes that legislation enacted in Australia could be of similar breadth to increase the effectiveness of designations made under such an Act.
24. Conversely, there exists concern that the definition of unlawful conduct which constitutes a gross human rights violation for the purposes of the Sanctions and Money Laundering Act is too narrow. There exist many instances of human rights abuses in which those who have their rights violated are not seeking to expose illegal activity or actively exercise or promote human rights. Canada’s aforementioned sanctioning of the military official responsible for violations of the Rohingya peoples serves as an example.

⁹ *Proceeds of Crime Act 2002*, s 241.

¹⁰ *Sanctions and Anti-Money Laundering Act 2018*, s 8.

25. It is therefore best for introduced legislation to provide definitions of gross violations of human rights which do not place unnecessary requirements on the conduct for it to be in fact considered a gross violation.

Recommendation 4: That the legislation include the widest possible range of sanction options. The legislation should take into consideration similar legislation including those highlighted in this submission.

Recommendation 5: That the legislation define gross human rights abuses in line with UN and ICC conventions, and that the requirements for a complaint to be made don't place unreasonable conditions that limit the scope of conduct and individuals that could be brought before the government.

26. The Effectiveness of Sanctions as an Instrument of Foreign Policy to Combat Human Rights Abuses

27. The use of sanctions which specifically targets human rights abuses serves to prevent, punish and ultimately denounce violations of fundamental human rights, regardless of where in the world they occur.
28. At a time when human rights are becoming of increasing concern for world governments, the ability to sanction individuals, rather than entire governments and entities, allows for substantial and consequential responses to human rights abuses. Many nations would be unwilling to condemn or sanction entire nations or organisations for human rights abuses, but this is circumvented by a clear pathway to targeting individuals implicated in these abuses. This is well exemplified in the Khashoggi case, whereby the United States sanctioned 17 officials of the government of arguably its closest ally in the Middle East.
29. The effectiveness of sanctions only increases when one considers the potential for global implementation. With the United States, Canada, the United Kingdom, the Baltic States and several African nations having already implemented Magnitsky legislation, the addition of Australia to the list would mean a greater international effort in the path of upholding human rights.

30. Moreover, Australia is particularly well suited for the introduction of targeted sanctions. Its membership within the Five Eyes intelligence alliance facilitates effective use of intelligence gathered from allies on human rights violators and corrupt officials, in turn allowing for a coordinated international response. Sanctions imposed by a unified international community will send a clear message that human rights is an issue not taken lightly. Each nation which imposes sanctions on a particular individual or entity will reinforce the sanctions of those implemented by other nations.
31. Global co-operation with regard to sanctions can be further enhanced by adopting a policy whereby the Australian government automatically investigates foreign officials indicted by the ICC for gross violations of human rights. This would facilitate for the collateral benefit of alleviating, to some extent, concerns of any introduced legislation applying only in circumstances which are conducive to achieving Australian foreign policy objectives.

Recommendation 6: Australia utilise any introduced legislation to work in cooperation with other nations in targeting human rights violators. The legislation should include specific provisions that allow for design and implementation of coordinated sanctions amongst nations with Magnitsky-type legislation.

Recommendation 7: For maximum effectiveness of the introduced legislation, any individual indicted by the ICC should automatically be investigated by the Minister with respect to whether it is appropriate for Australia to impose sanctions.

32. **Conclusion**

33. The ICV commends the Commonwealth Government for its intention to improve the options that it has at its disposal to sanction individuals that have committed gross human rights abuses wherever they are around the world, and whatever position or office that they may hold. Australia has a strong record of standing up for international human rights and the ICV believes that Magnitsky-type legislation is wholly consistent with our principles.

34. Please contact Vice President Adel Salman regarding the contents of this submission.

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