

The Senate

Foreign Affairs, Defence and
Trade References Committee

Australia's sanctions regime

February 2025

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Committee webpage

www.aph.gov.au/senate_fadt

PO Box 6100

Phone +61 2 6277 3535

Parliament House

Email: fadt.sen@aph.gov.au

Canberra ACT 2600

Australia

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Terms of reference

Australia's sanctions regime, with particular reference to:

- 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;
- b) consideration of the evidence on how sanctions regimes are targeting and addressing behaviour of designated individuals and entities;
- c) consideration of specific measures to coordinate, collaborate, and harmonise sanctions with partners and allies, and multilaterally, including how different interests can be taken into account;
- 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;
- f) consideration of methods to assess the effectiveness of sanctions decisions and/or the extent to which sanctions are having the intended impact, and recommend any improvements;
- g) consideration of how Australia's sanctions regime could better align with Australia's existing anti-corruption and crime measures, including to better target Australians involved in designated actions;
- h) consideration of the role of sanctions in an increasingly complex global context, where geo-strategic competition is re-shaping our region; and
- i) any other matters that are relevant to the effectiveness of Australia's sanctions framework.

List of recommendations

Recommendation 1

- 2.36 The committee recommends that the Australian Government consider its application of thematic sanctions and explore ways to further strengthen consistency where appropriate.

Recommendation 2

- 2.58 The committee recommends that, in circumstances where foreign policy objectives allow, the Australian Government, while continuing to make its own judgments concerning the imposition of sanctions, prioritise the alignment of sanctions with allies to maximise effectiveness and place greater emphasis on imposing such sanctions promptly.

Recommendation 3

- 2.59 The committee recommends that the Australian Government consider establishing a mechanism for engagement with civil society on Australia's sanctions regime.

Recommendation 4

- 3.37 The committee recommends that the Australian Government work with its global partners to increase focus on sanctions enforcement and close loopholes which allow Iran and Russia to evade the financial impact of Australian sanctions.

Recommendation 5

- 3.38 The committee recommends that the Australian Government continue to impose sanctions on Iranian officials involved in serious violations or serious abuses of human rights, including wrongful detention.

Recommendation 6

- 3.39 The committee recommends that the Australian Government prioritise, in consultation with international partners and non-governmental Australian stakeholders, the development of methodologies to target and measure the effectiveness of Australia's sanctions regime.

Recommendation 7

- 3.62 The committee recommends that the Australian Government consider how to identify and locate all Russian and Iranian Islamic Revolutionary Guard Corps-associated assets in Australia which are currently subject to sanctions.

Recommendation 8

3.63 The committee recommends that the Australian Government identify all Russian assets in Australia that are subject to sanctions, and consider what legislative and other changes are required to enable the transfer of these assets.

Chapter 1

Background

Introduction

- 1.1 Sanctions are restrictive measures governments and multinational bodies use to influence the strategic decisions taken by those who violate international law and threaten global stability. They are a foreign policy lever in the pursuit of objectives relating to conflicts of concern, economic stability, counterterrorism, anticorruption, cybersecurity, and the values underpinning Australia's democracy and our role in the world.
- 1.2 Sanctions work by withdrawing financial and trade relations with the country imposing them. They can be comprehensive and long-standing, such as the United States (US) embargo on the Republic of Cuba in place since 1962,¹ or be targeted towards specific entities and individuals in response to specific actions. Recent years have seen a pronounced shift towards the latter form of sanctions, which target perpetrators of malign activity more precisely and in doing so aim to reduce impact on civilians.
- 1.3 Sanctions are often employed in tandem with other forms of pressure and are most effective when applied in concert with like-minded global partners. This optimises the leverage sanctions exert, thereby increasing the likelihood of altering the behaviour of targeted state and nonstate actors. Governments generally treat sanctions as a policy option between diplomacy and war, as they are a punitive intervention but do not include military action.
- 1.4 It is difficult to make a broad statement about whether and to what extent sanctions work, as individual situations involve a range of variables and political dynamics. This means that sanctions are best seen as one of a suite of policy measures available in a rapidly evolving geopolitical environment.
- 1.5 Australia's sanctions regime, like those of its allies, has evolved with these shifting geopolitical circumstances. However, the ways in which sanctioned individuals, states and entities seek to work around sanctions have evolved as well, at times undermining the effectiveness of sanctions regimes. This ability of hostile states to circumvent Western sanctions, seen most recently in Russia's mitigation of the impact of the considerable economic sanctions applied in response to its invasion of Ukraine, necessitates an appraisal of existing sanctions regimes.

¹ See U.S. Department of State, Cuba sanctions: [Cuba Sanctions - United States Department of State](#) (accessed 21 January 2025).

- 1.6 Stakeholders engaging with this inquiry submitted their views on a variety of perceived shortcomings within Australia's sanctions regime. While most of these addressed specific global situations of concern, they highlighted macro issues around consistency of application, the underutilisation of available frameworks and improvements which could be made to better align Australia's sanctions regime with those of its like-minded global partners.
- 1.7 The committee concludes that, while imperfect, sanctions remain an essential foreign policy tool.

Overview of Australia's sanctions regime

- 1.8 The Department of Foreign Affairs and Trade (DFAT) states that sanctions are used to achieve a range of objectives, including:
- **preventing, limiting or ending** the adverse impacts of a situation of international concern
 - **detering or disrupting** those who may consider future destabilising or otherwise egregious actions, and
 - **condemning behaviour and sending a wider message** about Australia's values, principles, norms and what we consider appropriate behaviour or conduct.²
- 1.9 They are imposed in response to specific situations of concern and may take several forms, including:
- **targeted financial sanctions** prohibit designated persons or entities from accessing assets, and others from using their assets
 - **travel bans** prohibit designated persons from entering or transiting through Australia
 - **trade sanctions** prohibit the provision of specified goods or services to specified targets
 - **commercial activity sanctions** prohibit certain kinds of commercial activities.³
- 1.10 Sanctions may be imposed on individuals, entities, countries, groups or vessels and do not involve the use of armed force.⁴
- 1.11 DFAT states that Australia's sanctions laws form a regulatory framework which applies to all Australians and Australian entities. Failure to comply with Australian sanctions laws attracts criminal penalties.⁵ DFAT reports that each sanction has a regulatory life cycle which includes:

² Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

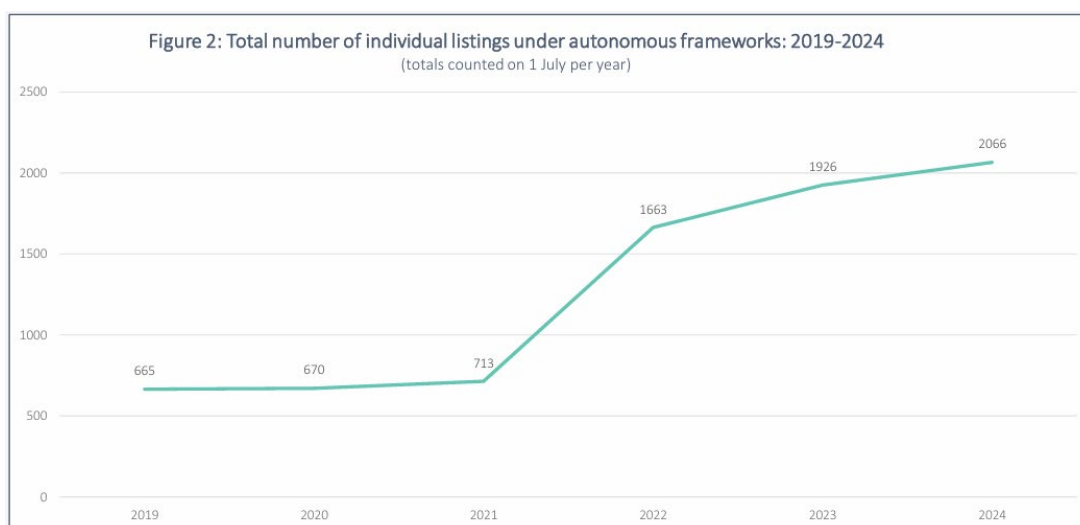
³ Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

⁴ Attorney-General's Department, *Submission 27*, p. 2.

⁵ Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

- sanctions **design**: amending sanctions laws and creating new frameworks, identifying sanctions targets (individuals, entities, vessels) and measures (trade or commercial activity sanctions, targeted financial sanctions, travel bans)
- **applying** sanctions, through a legislative instrument
- **advice and guidance** to the regulated community on their sanctions obligations
- **monitoring and enforcing** sanctions compliance
- **evaluating** the impact of sanctions, including issuing permits to allow certain Australian individuals and entities to continue engaging in activities with sanctioned foreign individuals or entities, if in the national interest or otherwise supported by legislation
- **reviewing** sanctions, and deciding whether to maintain, remove or alter them. Individuals and entities subject to sanctions can apply to have sanctions revoked at any time.⁶

1.12 DFAT advised that monitoring and enforcement of sanctions compliance received a \$26.4 million boost in the Australian Government's 2024–25 Budget, reflecting the fact that circumvention trends have grown in complexity since 2022, which saw a sharp increase in Australian sanctions following Russia's invasion of Ukraine. This is illustrated by the figure below, supplied by DFAT.⁷



Source: Department of Foreign Affairs and Trade, *Submission 9*, p. 9.

Legislative framework

1.13 Australia's sanctions regime is governed by a legislative framework based on furthering Australia's foreign policy objectives, upholding regional and international security and fulfilling international obligations. Australia currently implements two sanctions regimes, each under its own (complementary and mutually reinforcing) legislation:

⁶ Department of Foreign Affairs and Trade, *Submission 9*, p. 4.

⁷ Department of Foreign Affairs and Trade, *Submission 9*, p. 9.

- (1) Sanctions decided by the United National Security Council (UNSC) and its sanctions committees. UN member states are required to implement UNSC sanctions, which Australia does through the *Charter of the United Nations Act 1945* (COTUNA) and its Regulations.
- (2) The *Autonomous Sanctions Act 2011* (the AS Act) and its Regulations, which allow the Foreign Minister to impose autonomous sanctions as a matter of foreign policy in response to issues of international concern.⁸

United Nations Security Council Sanctions

1.14 The Charter of the United Nations (the Charter) allows the UNSC to respond to issues of concern without the use of armed force. As explained by the Australian Centre for International Justice:

Although the term sanctions is not defined expressly in the United Nations Charter, the use of sanctions as a mechanism for addressing international concern is derived from Article 41 measures. Article 41 provides for measures not involving the use of armed force, and may include a complete or partial interruption of economic relations'.⁹

- 1.15 The UNSC can only impose sanctions where it has determined 'the existence of any threat to the peace, breach of peace, or act of aggression'. Nine or more members need to have cast an affirmative vote supporting the imposition of sanctions, with none of the five permanent members of the UNSC using their veto power.¹⁰
- 1.16 Article 25 of the Charter requires member states to implement UNSC decisions. Until 1993, Australia implemented UNSC sanctions resolutions by making regulations under several Acts. The Australian Government amended the *Charter of the United Nations Act 1945* (COTUNA) in 1993 to specifically allow Regulations giving full effect to UNSC sanctions regimes, including those relating to specific countries.¹¹

Autonomous sanctions

1.17 Autonomous sanctions are highly targeted punitive measures applied as a matter of foreign policy in situations of international concern. They may include targeted financial sanctions and asset freezes, visa restrictions and travel bans, and trade and commercial limitations. Autonomous sanctions can be independent of or supplementary to UNSC sanctions. They can also be specific

⁸ Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

⁹ Australian Centre for International Justice, *Submission 12*, p. 8.

¹⁰ Articles 39, 41 and 27 of the *Charter of the United Nations*.

¹¹ Leah Ferris, *Australian sanctions law: a quick guide*, Parliamentary Library, 24 August 2022, available at: [Australian sanctions law: a quick guide – Parliament of Australia](#) (accessed 12 December 2024).

to a particular country or region, apply to a certain group, or be thematic.¹² Thematic sanctions are outlined below.

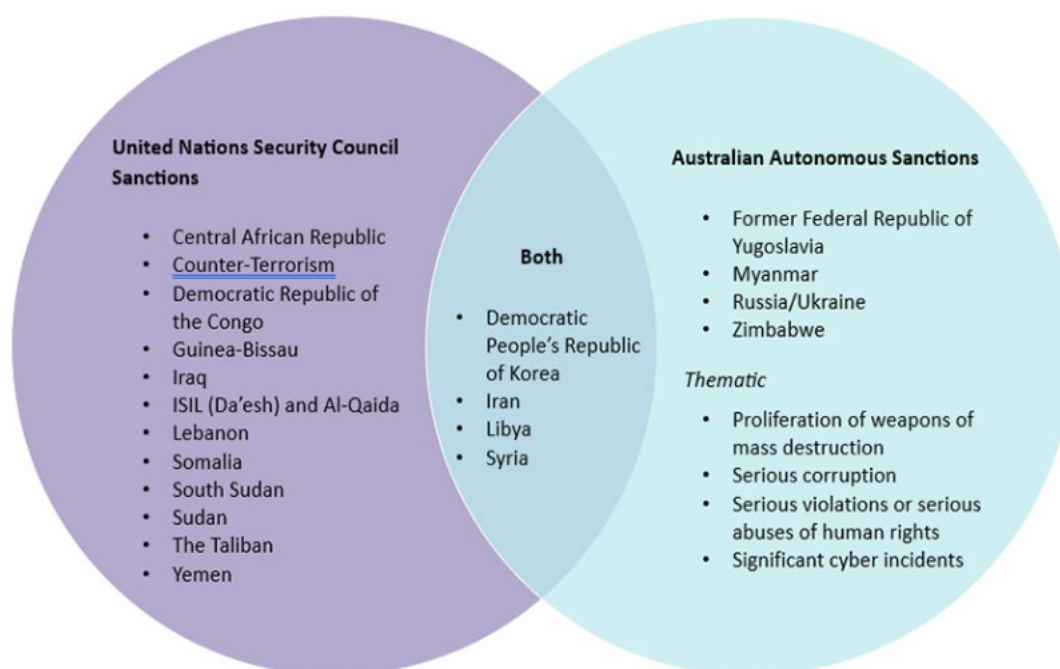
Magnitsky-style thematic sanctions

1.18 On 21 December 2021, the *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021* came into force. It enables the Minister to impose targeted sanctions against individuals or entities which have:

- been engaged in, responsible for, or complicit in serious violations or abuses of three human rights relating to physical integrity (rights to life; not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; and to be free from slavery, servitude or forced or compulsory labour);
- been engaged in, responsible for, or complicit in serious corruption, defined as bribery or misappropriation of property; or
- caused, assisted with causing, or been complicit in, a cyber incident or an attempted cyber incident that is significant or which, had it occurred, would have been significant.¹³

1.19 In implementing Magnitsky-style sanctions, the Minister must be satisfied of thematic sanctions criteria as outlined in the legislative framework.

1.20 The diagram below shows the sanctions regimes the Australian Government currently implements under UNSC and/or autonomous sanctions laws:¹⁴



¹² Attorney-General's Department, *Submission 27*, p. 2.

¹³ Australian Centre for International Justice, *Submission 12*, p. 9.

¹⁴ *About sanctions*, Department of Foreign Affairs and Trade, available at: [About sanctions | Australian Government Department of Foreign Affairs and Trade](#) (accessed 12 December 2024).

Permits for exemption

1.21 Under certain circumstances, the Minister is able to grant a sanctions permit authorising activity otherwise contravening Australia's sanctions laws. The criteria which need to be satisfied for the authorisation of such a permit differ between sanctions regimes, and the Minister or the Minister's delegate can attach conditions to a sanctions permit.¹⁵

Role of key government agencies

1.22 Implementation and enforcement of Australia's sanctions policy involves several agencies.

Department of Foreign Affairs and Trade

1.23 DFAT is the key agency supporting Australia's sanctions regime. The department is responsible for the design, implementation and administration of sanctions policy, including drafting regulations and monitoring effectiveness, as well as advising the government on possible reforms to ensure that sanctions policy and laws are clear and effective.¹⁶

Australian Sanctions Office

1.24 The Australian Sanctions Office (ASO) sits within DFAT's Regulatory Legal Division in the Security, Legal and Consular Group and is Australia's chief sanctions regulator.¹⁷ The agency's key role is to ensure compliance with sanctions. As the sanctions regulator, the agency:

- provides guidance to regulated entities, including government agencies, individuals, business and other organisations on Australian sanctions law;
- processes applications for, and issues, sanctions permits;
- works with individuals, business and other organisations to promote compliance and help prevent breaches of the law;
- works in partnership with other government agencies to monitor compliance with sanctions legislation; and
- supports corrective and enforcement action by law enforcement agencies in cases of suspected non-compliance.¹⁸

1.25 The ASO works closely with other agencies,¹⁹ including the Department of Defence, the Department of Home Affairs, the Australian Transaction Reports

¹⁵ *About sanctions*, Department of Foreign Affairs and Trade, available at: [About sanctions | Australian Government Department of Foreign Affairs and Trade](#) (accessed 12 December 2024).

¹⁶ Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

¹⁷ Department of Foreign Affairs and Trade, *Submission 9*, p. 3.

¹⁸ Department of Foreign Affairs and Trade, available at: [About sanctions | Australian Government Department of Foreign Affairs and Trade](#) (accessed 20 January 2025).

¹⁹ Attorney-General's Department, *Submission 27*, pp. 4–5.

and Analysis Centre and the Australian Federal Police, as well as the Attorney-General's Department (AGD).

Attorney-General's Department

1.26 The AGD is involved in the enforcement of UNSC-imposed sanctions, however its primary role concerns autonomous sanctions imposed by the Australian Government. While the Minister for Foreign Affairs (the Minister) is responsible for imposing autonomous sanctions, the process for applying thematic sanctions requires consultation with, and written agreement from, the Attorney-General, as well as consultation with other ministers with relevant portfolios, as determined by the Minister:

This decision-making process ensures that listing decisions take into account legal considerations and other national interest considerations, alongside foreign policy interests. This recognises that, while sanctions decisions are primarily based on foreign policy considerations, thematic sanctions may raise issues relevant to matters within the Attorney-General's broader portfolio responsibilities which should also be considered, such as international law, human rights and criminal justice matters relating to corruption or cyber activity. It also ensures that other Ministers with policy interests relevant to the situation of international concern are consulted.²⁰

1.27 The Minister must also obtain the Attorney-General's agreement prior to continuing or revoking a thematic sanctions listing.²¹

1.28 The range of criteria relevant to the AGD portfolio which the Minister must be satisfied of when seeking to impose thematic sanctions includes considerations relating specifically to significant cyber incidents, human rights and corruption.²²

1.29 The legislative framework underpinning Australia's sanctions regime also allows the Attorney-General to seek injunctions from the Federal Court of Australia or a Supreme Court of a state or territory if an individual has engaged, is or proposes to engage, in conduct which contravenes the Regulations.²³

Department of Home Affairs

1.30 The Department of Home Affairs facilitates the movement of legitimate trade and travel, whilst simultaneously undertaking enforcement activity for goods which are restricted or prohibited. The department works closely with other agencies on initiating trade prohibitions, which give effect to Australia's

²⁰ Attorney-General's Department, *Submission 27*, p. 3.

²¹ Attorney-General's Department, *Submission 27*, p. 2.

²² These are set out in detail in the AGD submission, see Attorney-General's Department, *Submission 27*, pp. 4-5.

²³ Attorney-General's Department, *Submission 27*, p. 2.

obligations under UNSC-imposed sanctions as well as Australia's autonomous sanctions.²⁴

Australian Border Force

- 1.31 The Australian Border Force (ABF) sits within the Department of Home Affairs and is Australia's lead border law enforcement agency and customs service. The ABF administers sanctions-related import and export prohibitions under Commonwealth legislation which gives effect to aspect of Australia's obligations under both UNSC-imposed and autonomous sanctions, such as the *Customs Act 1901*, the *Customs (Prohibited Imports) Regulations 1956* and *Customs (Prohibited Exports) Regulations 1958*.²⁵
- 1.32 The ABF works with domestic and international stakeholders to deter and disrupt the movement of sanctioned goods through coordinated intelligence and enforcement actions. The agency is now responsible for border-related sanctions activity 'across the enforcement lifecycle, including targeting, analysis and criminal investigations.'²⁶
- 1.33 The ABF also engages in community outreach across multiple sectors to ensure that border obligations are understood by the community.²⁷

Australian Federal Police

- 1.34 The Australian Federal Police (AFP) contributes towards ensuring the effective implementation of Australia's sanctions regime by gathering information about assets relating to sanctions and, together with the ABF, conducting criminal investigations concerning alleged breaches of laws underpinning the sanctions regime.²⁸
- 1.35 The AFP is also Australia's representative to INTERPOL, the world's largest international police organisation, which provides access to a global network of law enforcement agencies, databases and associated intelligence.²⁹
- 1.36 Together with the Australian Signals Directorate (ASD), the AFP also leads on intelligence and enforcement matters relating to Australia's cyber sanctions. The information these agencies gather informs the Minister's decisions on whether

²⁴ Department of Home Affairs, *Submission 25*, p. 3.

²⁵ Mr Tony Smith, Assistant Commissioner, Customs, Australian Border Force, Department of Home Affairs, *Proof Committee Hansard*, 15 November 2024, p. 20.

²⁶ Mr Tony Smith, Assistant Commissioner, Customs, Australian Border Force, Department of Home Affairs, *Proof Committee Hansard*, 15 November 2024, p. 21.

²⁷ Mr Tony Smith, Assistant Commissioner, Customs, Australian Border Force, Department of Home Affairs, *Proof Committee Hansard*, 15 November 2024, p. 21.

²⁸ Australian Federal Police, *Submission 26*, p. 1.

²⁹ Australian Federal Police, *Submission 26*, p. 1.

criteria for imposing sanctions are met (subject to the agreement of the Attorney-General and other relevant Ministers).³⁰

Terms of reference

1.37 On 3 July 2024, the Senate referred an inquiry into Australia's sanctions regime to the Foreign Affairs, Defence and Trade References Committee (the committee) for inquiry and report by 11 February 2025.³¹

1.38 The inquiry's terms of reference are as follows:

- (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;
- (b) consideration of the evidence on how sanctions regimes are targeting and addressing behaviour of designated individuals and entities;
- (c) consideration of specific measures to coordinate, collaborate, and harmonise sanctions with partners and allies, and multilaterally, including how different interests can be taken into account;
- (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;
- (f) consideration of methods to assess the effectiveness of sanctions decisions and/or the extent to which sanctions are having the intended impact, and recommend any improvements;
- (g) consideration of how Australia's sanctions regime could better align with Australia's existing anti-corruption and crime measures, including to better target Australians involved in designated actions;
- (h) consideration of the role of sanctions in an increasingly complex global context, where geo-strategic competition is re-shaping our region; and
- (i) any other matters that are relevant to the effectiveness of Australia's sanctions framework.³²

Conduct of the inquiry

1.39 The committee sought written submissions from a number of individuals and organisations by 6 September 2024. Details of the inquiry were also made available on the committee's website.

1.40 The committee published 45 submissions, as listed in Appendix 1.

³⁰ Australian Federal Police, *Submission 26*, p. 2.

³¹ *Journals of the Senate*, No. 118–3 July 2024, p. 3612.

³² *Journals of the Senate*, No. 118–3 July 2024, pp. 3612–3613.

1.41 A public hearing was held in Canberra on 15 November 2024. A list of witnesses is in Appendix 2.

Note on references

1.42 References to *Committee Hansard* are to proof transcripts. Page numbers may at times differ between proof and official transcripts.

Acknowledgement

1.43 The committee thanks those individuals and organisations who contributed to this inquiry by making submissions or appearing at the public hearing.

Chapter 2

Application, coordination and alignment

- 2.1 Australia has developed a robust sanctions regime framework allowing manoeuvrability in response to issues of global concern. When wielded effectively, Australia's sanctions framework can be a powerful tool for promoting accountability, have a symbolic value as well as a deterrent effect, and can influence behaviour by publicly naming human rights abusers and raising the financial and reputational costs of violating international norms.
- 2.2 In practice, however, the implementation of sanctions is complicated and their resulting effectiveness difficult to measure. Evidence provided to this inquiry indicates that Australia's implementation of the existing sanctions regime could be improved in several ways in response to emerging challenges. This could be achieved primarily by addressing three key concerns identified by this inquiry: inconsistencies in sanctions application, underutilisation of thematic sanctions and delays in applying sanctions already applied by partner states.
- 2.3 This chapter explores ways in which the Australian Government might refine how it applies its sanctions regime to address concerns about these perceived inconsistencies and suboptimal alignment with global partners. By doing so, the government can better utilise the available sanctions frameworks in pursuit of its foreign policy objectives.

Consistency in application

- 2.4 Sanctions do not always appear to be applied consistently in response to recognised abuses of human rights or international law. This leads to the observation that some states can commit human rights abuses almost with impunity, while others are subject to sanctions in response to comparable behaviour. This is potentially the case because the use of sanctions as a means of exerting political influence requires consideration of a complex range of factors and a delicate balance of ethical objectives against the practical demands of *Realpolitik*.
- 2.5 This was reflected in evidence presented to the committee, which indicated that many stakeholders, such as the ANU Law Reform and Social Justice Research Hub, are concerned by what they perceive as underutilisation of Australia's Magnitsky-style sanctions:

Australia's implementation of Magnitsky style sanctions since 2021 was a significant step forward in our ability to target human rights abusers and

corrupt actors. However, we submit that the current application of these sanctions has been limited in scope and inconsistent in practice.¹

- 2.6 Dr Anton Moiseienko, a Senior Lecturer in Law at the Australian National University and expert in legal aspects of Magnitsky-style sanctions, went further, submitting that Australia has ‘barely utilised’ its legal ability to impose these sanctions. He summarised their limited use:

They include sanctions against Russian officials involved in the killing of whistleblower Sergei Magnitsky (all sanctioned by the US 10 years prior to Australian sanctions), several designations of further Russian and Iranian officials for human rights abuse, the designations of Israeli settlers discussed above, and the two cyber sanctions designations also discussed above.²

- 2.7 Others, such as Walk Free and International Justice Mission Australia, agreed that Magnitsky-style sanctions have been used ‘in a very limited way, against targets in Russia, Iran and Israel’.³

- 2.8 In contrast, US designations under the *Global Magnitsky Act 2016* cover 238 individuals and 305 entities.⁴

- 2.9 Dr Moiseienko posited that the Australian Government’s ‘reluctance to implement a vigorous sanctions policy’ in response to malign activity could be motivated by concern about diplomatic ramifications. Recognising that diplomatic considerations must be taken seriously, Dr Moiseienko was of the view that these could be mitigated in several ways, including by setting out clear criteria for imposing sanctions which would be independent of nationality.⁵

- 2.10 Transparency International Australia (TIA) drew particular attention to how issues around the politicisation of corruption have prevented sanctions being applied as consistently as they might be:

Overseas corruption has been seen as a security issue and in certain circumstances sanctions have been used to target particular countries. The politicisation of sanctions and the targeting of specific countries tends to lose sight of the fact that dirty money can be found in many parts of the world. This approach to addressing corruption and money laundering also means there are many opportunities for individuals engaging in criminal activity to avoid sanctions. This is demonstrated in a recent case where Russian

¹ Mr Max Thomas, Student Researcher, ANU Law Reform and Social Justice Research Hub, *Proof Committee Hansard*, 15 November 2024, p. 1.

² Dr Anton Moiseienko, *Submission 1*, p. 4.

³ Walk Free and International Justice Mission Australia, *Submission 31*, p. 4.

⁴ Dr Anton Moiseienko, *Submission 1*, p. 4. Dr Moiseienko explains that these U.S. designations are technically made under Executive Order 13818, which expands on the provisions of the *Global Magnitsky Act 2016*.

⁵ Dr Anton Moiseienko, *Submission 1*, p. 1.

citizens with Russian political connections have been charged with money laundering but were not on the sanctions list.⁶

2.11 Addressing this, TIA stated that Australia could take a more assertive approach to implementing thematic sanctions using the current legislative framework, which allows the Minister to sanction individuals or entities engaging in serious corruption.⁷

2.12 Submitters also raised concerns about a lack of clarity about why the Australian Government has not imposed sanctions on any officials known to be responsible for human rights abuses in other areas of the world, such as Xinjiang, an autonomous territory in northwest China where the Chinese government has committed human rights abuses against Uyghur and other Turkic peoples. This was highlighted in a joint submission provided by Australian Uyghur organisations:

Since 2017, the Chinese government has implemented policies aimed at eliminating the ethnic and religious identity of Uyghurs and other Turkic peoples, which amount to crimes against humanity and genocide. The human rights atrocities included mass detentions, torture, forced indoctrination, separation of children from their families, forced labor, confiscation of businesses and land, and forced abortion and sterilization of women.⁸

2.13 The Australian Uyghur organisations expressed deep concern about Australia's failure to apply Magnitsky-style sanctions in this case despite Australia acknowledging the findings of UNHCR investigations into these human rights abuses, which include internment of people for simply practising their religion and maintaining cultural traditions.⁹

2.14 Representatives from the ANU Law Reform and Social Justice Research Hub were of the view that this omission exemplifies inconsistency and cited diplomatic reasons as the probable reason:

The United Kingdom, the US, the EU and Australia are purportedly champions of the rule of law, but we're so inconsistently applying these for presumably diplomatic reasons. That's probably a reason why the Australian government hasn't significantly sanctioned the Chinese government with respect to its treatment of the Uighur Muslims in Xinjiang. There are probably political reasons why we haven't sanctioned Israel to a

⁶ Transparency International Australia, *Submission 18*, p. 3.

⁷ Transparency International Australia, *Submission 18*, p. 3.

⁸ Joint submission of Australian Uyghur organisations, *Submission 33*, p. 1.

⁹ Joint submission of Australian Uyghur organisations, *Submission 33*, p. 3.

very large extent, and I think the submissions that have been made by other people to this inquiry make that clear.¹⁰

- 2.15 The Australia Tibet Council expanded on this, making the point that Australia has not imposed any sanctions on Chinese Communist Party (CCP) officials in response to human rights violations against multiple cohorts of people, including those in Tibet, the Uyghurs, Hong Kong, or indeed any Chinese democracy activists. They highlighted:

There are human rights violations in Tibet that include extrajudicial killings, physical abuse, arbitrary arrest, mass detentions in Tibet, forced sterilisation, coerced abortion, restrictions on religious and political freedoms, and torture of prisoners. These are grievous human rights abuses.¹¹

- 2.16 This omission, representatives from the Australia Tibet Council added, is deeply concerning:

We are afraid that the Australian government is allowing the Chinese government to commit these crimes with impunity by failing to impose any Magnitsky sanctions on individuals.¹²

- 2.17 They went on to explain that this is especially the case given the fact that sanctions are one of a very limited number of ways to influence the CCP:

Magnitsky-style sanctions on CCP officials are one of the few tools that Australia has that could deter officials from their brutality towards Tibetans and punish their abuses of Tibetan human rights. It's something that we feel strongly about because it's something that could create a behavioural change in Tibet. There are very few mechanisms for creating that.¹³

- 2.18 The Australia Tibet Council added that Australia's inconsistent application of sanctions where the CCP is concerned stands in stark contrast to the approach taken by partner states:

The USA has also issued visa bans for CCP officials relating to the Chinese government run colonial boarding school system. This is a system that has resulted in the separation of up to one million Tibetan children from their families into Chinese state-run institutions. The banned officials are responsible for this policy of forced assimilation that is designed to eliminate

¹⁰ Mr Max Thomas, Student Researcher, ANU Law Reform and Social Justice Research Hub, *Proof Committee Hansard*, 15 November 2024, p. 3.

¹¹ Dr Zoe Bedford, Executive Officer, Australia Tibet Council, *Proof Committee Hansard*, 15 November 2024, p. 33.

¹² Dr Zoe Bedford, Executive Officer, Australia Tibet Council, *Proof Committee Hansard*, 15 November 2024, p. 33.

¹³ Dr Zoe Bedford, Executive Officer, Australia Tibet Council, *Proof Committee Hansard*, 15 November 2024, p. 34.

Tibetans' distinct linguistic, cultural and religious traditions, as well as affect children as young as four years old and up to 18 years old.¹⁴

- 2.19 Another example cited by Walk Free and International Justice Mission Australia was of a Cambodian businessman and Senator sanctioned by the US, but not Australia. They submitted that this case is an excellent example of circumstances in which thematic sanctions would be appropriate:

Most recently, on 12 September 2024, the US sanctioned powerful Cambodian businessman Ly Yong Phat and his associated companies “for their role in serious human rights abuse related to the treatment of trafficked workers subjected to forced labor in online scam centers.” Mr Ly is a Senator in the Cambodian government, a senior Cambodian People’s Party leader and acts as an advisor to the Prime Minister, making him “virtually untouchable”.

These are precisely the types of cases that thematic sanctions are designed for, being those where there are no prospects that perpetrators of egregious human rights abuses will be held to account. This may be because of lack of domestic government will to act, or even complicity in the abuses.¹⁵

Ways to improve consistency

- 2.20 The ANU Law Reform and Social Justice Research Hub suggested that this perceived inconsistency in the application of thematic sanctions could be ameliorated by implementing a clearer set of principles to guide decisions about when sanctions should be imposed as a way of improving consistency. Defining actions which trigger sanctions would, it was suggested, reduce inconsistency and help to avoid diplomatic fallout from this inconsistency:

So it operates as more of a trigger which prevents diplomatic fallout, which might come, or the political backlash from having inconsistently applied many of the Magnitsky sanctions to countries who obviously do have human rights abuses but aren't being targeted under our sanctions program for that. So our submission is that there should be clearer criteria by which the Australian government implements Magnitsky sanctions, and we should coordinate those criteria with like-minded allies.¹⁶

- 2.21 Human Rights Watch echoed this and similar calls for consistency:

The government should apply targeted sanctions in a principled, more consistent and transparent manner so that rights violators, even in powerful countries like China, do not evade scrutiny.¹⁷

¹⁴ Dr Zoe Bedford, Executive Officer, Australia Tibet Council, *Proof Committee Hansard*, 15 November 2024, pp. 33–34.

¹⁵ Walk Free and International Justice Mission Australia, *Submission 31*, p. 4.

¹⁶ Mr Max Thomas, Student Researcher, ANU Law Reform and Social Justice Research Hub, *Proof Committee Hansard*, 15 November 2024, pp. 3–4.

¹⁷ Ms Daniela Gavshon, Australia Director, Human rights Watch, *Proof Committee Hansard*, 15 November 2024, p. 9.

- 2.22 International experience indicates that clearly identifying designation criteria as suggested can help in implementing a more consistent, robust sanctions policy and in doing so minimise diplomatic fallout. As put by Dr Moiseienko:

Setting out clear and consistent criteria for considering designations can help reframe Australian sanctions as a matter-of-course response to certain categories of wrongdoing rather than as an extraordinary, politically motivated measure. In particular, Australia may wish to consider the publication of designation criteria similar to those published by the UK government for corruption and human rights sanctions.¹⁸

- 2.23 Dr Moiseienko also pointed out that community input plays a significant role in how sanctions designations are made in the US and UK, making the process more transparent and contributing to an increased perception of consistency:

A significant proportion of US and UK sanctions designations are triggered by civil society submissions that are evaluated by the respective government to ascertain whether sufficient grounds exist for the imposition of sanctions. This regular consideration of civil society submissions organically results in multiple designations of targets all over the world without selective focus on any particular country. This contributes to the fairness and credibility of the designations process while minimising the potential for diplomatic fallout.¹⁹

- 2.24 Australia, by contrast, lacks a transparent way for civil society organisations to engage with the sanctions designation system. The Australian Wrongful and Arbitrary Detention Alliance (AWADA):

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... 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... Both Dr Moore-Gilbert and REDRESS did not receive a response to their request for sanctions from either Minister's office...The process by which individuals and civil society organisations are able to submit requests for consideration of sanctions is opaque and lacks transparency.²⁰

Sanctions as a tool for foreign policy

- 2.25 Other submitters suggested that sanctions for human rights abuses should be considered through a more objective lens, less influenced by the nationality of

¹⁸ Dr Anton Moiseienko, *Submission 1*, pp. 4–5.

¹⁹ Dr Anton Moiseienko, *Submission 1*, p. 5.

²⁰ Australian Wrongful and Arbitrary Detention Alliance, *Submission 4*, p. 4.

those responsible for breaches of human rights law. The committee heard from Geoffrey Robertson KC, whose joint submission with the Australian Centre for International Justice argued that conceptualising sanctions as predominantly a tool of foreign policy results in sacrificing consistency for diplomacy:

There is a concern that, by making it a tool of foreign policy and by making government policy the dominant concern, you never look at a human rights abuser from an allied country. You never consider the abusers that come from our friends. You perhaps go along with condemnations of the International Criminal Court—although Australia has been very supportive of it to date—but you don't hold with the idea that human rights abusers should leave the stage with an amnesty in their back pocket and a Swiss bank account intact. This is the way diplomats think. It's not the way human rights aficionados think. That is where diplomacy and human rights come into clash.²¹

2.26 International Legal Scholars against Genocide similarly advocated for the Act to be amended 'to reorient the key objective of Australia's sanctions regime towards promoting fundamental principles of international law, in particular the right of all peoples to self-determination.'²²

2.27 This argument goes to the core of sanctions being a tool of foreign policy. Mr Robertson elaborated:

I think it reduces the significance of the Magnitsky law if DFAT gives a shoulder-shrugging statement, 'Oh, it's just a tool of our foreign policy.' It's not. It's a tool of justice, aiming to deter people—particularly people like lawyers, doctors, policemen and state officials acting contrary to international law—from acting in that way.²³

2.28 DFAT, however, highlighted the fact that sanctions are not an end in themselves and are a part of a suite of tools available for responding to egregious actions. This suggests that, while the actions of an individual or entity might well meet the criteria for imposing sanctions, they may not always be the most appropriate response to a situation:

[Sanctions] are only one tool. They're not always the most appropriate, they're not always the most effective and they're complex. They're complex to apply, they're complex to comply with, they're complex to monitor and to enforce, and they impose costs beyond those intended for the target of the action. We give careful consideration every single time we impose a sanction.

Just for broader awareness, one of the things we take into account is, of course, the objective. What's the objective we're trying to achieve? We have other levers and other tools we can use. Are sanctions the most effective tool? Should we try other levers in advance of sanctions? Should sanctions

²¹ Mr Geoffrey Robertson AO KC, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 13.

²² International Legal Scholars against Genocide, *Submission 5*, p. 1.

²³ Mr Geoffrey Robertson AO KC, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 13.

be part of a consolidated strategy and should we actually partner up with other countries?²⁴

2.29 DFAT also pointed to the impact of sanctions beyond their target. This suggests that imposing sanctions must also be weighed against their impact on the Australian community on a case-by-case basis, as well as other countries and communities the Australian Government is not seeking to disadvantage even where the criteria for imposing sanctions might be met. As put by DFAT:

There are, of course, costs and impacts intended for the targeted audience, but the costs will be borne by the Australian community. It's important to remember that sanctions are effectively constraining action by the Australian community. Australians and the Australian community have to comply with sanctions. They have to undertake due diligence that potentially loses supply chains, markets and the like, and we have to take into account what those costs might be. It is not just about the intended impacts, but the costs on Australia and Australians. We also need to take into account unintended impacts of sanctions. For example, unintended impacts might be on other countries in our region, the local communities who may not be the intended target but are impacted nevertheless, and things like impacts on humanitarian supply and the like.²⁵

2.30 These considerations are extremely difficult to weigh, but include the burden placed on Australian financial institutions, businesses and individuals to comply with sanctions placed on individuals and entities whose actions they have no influence over.

2.31 One of these challenges is in understanding the sanctions regime and the obligations it creates. A submission from the Australian Banking Association (ABA), for example, described how Australia's sanctions regime is complex and challenging to interpret, with inconsistent definitions across multiple legislative frameworks.²⁶ The ABA pointed to Britain's two-tiered sanctions framework and suggested that a similar simplification would be beneficial for Australia:

To achieve a similar level of simplicity, we recommend Australia adopt a framework like the UK's, merging the COTUNA and ASA into a single Act, supported by sub-regulations that consolidate restrictions based on specific countries (e.g., Russia, North Korea) or themes (e.g., terrorism, human rights). This preferred two-tiered system would simplify compliance by making it easier for regulated entities to navigate their obligations.²⁷

²⁴ Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division, Department of Foreign Policy and Trade, *Proof Committee Hansard*, 15 November 2024, p. 21.

²⁵ Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division, Department of Foreign Policy and Trade, *Proof Committee Hansard*, 15 November 2024, p. 21.

²⁶ Australian Banking Association, *Submission 38*, p. 3.

²⁷ Australian Banking Association, *Submission 38*, p. 3.

2.32 Allens, which has considerable experience working with domestic and international business clients in relation to Australia's sanctions regime, also identified ways in which a lack of clarity around the operation of financial sanctions complicates compliance for the Australian community.²⁸ The reasons for this lack of clarity and possible mitigations through better alignment with global partners suggested by Allens are discussed later in this chapter.

Committee view

2.33 The committee is concerned that Australia is barely utilising its ability to impose thematic sanctions in circumstances which appear to warrant taking such a step. In particular, the committee notes the lack of clarity on the reason why sanctions have not been applied to CCP officials responsible for human rights abuses in Xinjiang, when the Australian Government has acknowledged the findings of UNHCR investigations and other jurisdictions have already sanctioned the individuals responsible.

2.34 Given these inconsistencies, the committee is of the view that stakeholders have valid concerns about the application of sanctions where sensitive diplomatic considerations are involved. While the committee recognises that the multifaceted flow-on effects of imposing sanctions are a strong argument against an overly simplified approach to imposing sanctions whenever a certain number of 'trigger' events occur, at the same time, failing to impose sanctions in circumstances which clearly warrant them also has consequences. Such underutilisation of thematic sanctions first and foremost allows perpetrators of human rights abuses to continue to act with impunity. It also has a negative effect on the effectiveness of sanctions imposed by Australia's global partners and could even potentially undermine the credibility of Australia's existing sanctions regime in the eyes of the Australian community.

2.35 This being the case, the committee considers it worthwhile for the government to explore how it might address perceived inconsistencies in its application of sanctions. This could include developing clear and transparent principles to guide decisions on when sanctions will be applied.

Recommendation 1

2.36 The committee recommends that the Australian Government consider its application of thematic sanctions and explore ways to further strengthen consistency where appropriate.

Alignment with allies

2.37 Australia broadly seeks to align its sanctions regimes with those imposed by key international allies, most notably the United States (US), United Kingdom (UK)

²⁸ Allens, *Submission 30*, p. 1.

and European Union (EU). Aligning the implementation of sanctions optimises effectiveness. This has particularly been the case since Russia's invasion of Ukraine in early 2022, when the Australian Government stated that it would work in lock step with allies in response to the crisis. Since then, the Australian Government has repeatedly re-affirmed its commitment to alignment with allies.²⁹

2.38 However, many submitters raised insufficient alignment with global partners as a key shortcoming of Australia's sanctions regime.

2.39 Ukrainian diaspora organisations in Australia, for example, believe that Australia trails its international partners in imposing sanctions. The Ukrainian Council of New South Wales (UCNSW) identified numerous discrepancies and delays between sanctions imposed by Australia and its allies, illustrating the need to ensure closer and more timely cooperation:

[B]ased on the UCNSW's monitoring of the sanctions regime, it is evident that Australia's implementation of sanctions has been slower and more selective than that of its counterparts. For example, in mid 2022, the UCNSW identified 50 Russian oligarchs and numerous major Russian companies that had been sanctioned by at least two of the UK, US, and NZ, but not Australia.³⁰

2.40 UCNSW added that this suboptimal alignment with allies also indicates gaps in coverage, weakening the potential impact of international sanctions:

Australia's approach of excluding individuals and entities deemed economically or geographically remote from Australia weakens the collective international effort and creates loopholes that Russian elites and businesses can exploit.³¹

2.41 The Australian Federation of Ukrainian Organisations (AFUO) agreed:

The decision not to be fully aligned on sanctions based on the perceived economic or geographic remoteness to Australia of certain individuals or entities translates to gaps in Australia's response and feeds perceptions around a fragmented international response. Active, ongoing alignment with international partners, as well as Ukraine, is key to demonstrating unity in applying pressure on Moscow and confronting the threats posed by Russia's aggression. NATO's guiding principle of collective defence — where an attack on one member is an attack on all members — is instructive here, as it speaks to an opportunity for Australia and Ukraine's partners to calibrate and coordinate sanctions as part of a joined-up deterrence effort.³²

²⁹ See for example Prime Minister Anthony Albanese, *Australia stands with Ukraine and the G& against Russia's invasion*, media release, 19 May 2023, available at: [Australia stands with Ukraine and the G7 against Russia's invasion | Prime Minister of Australia](#) (accessed 16 December 2024).

³⁰ Ukrainian Council of NSW, *Submission 44*, p. 4.

³¹ Ukrainian Council of NSW, *Submission 44*, p. 4.

³² Australian Federation of Ukrainian Organisations, *Submission 43*, p. 3.

- 2.42 AFUO suggested that Australia could improve its alignment with allies and broader sanctions response to Russia's invasion by engaging with the Ukrainian Government to address gaps in sanctions declarations made by Ukraine and Australia:

The Australian Government must liaise with the Ukrainian Government to ensure the Australian sanctions list is as comprehensive as possible, and includes persons and entities identified by the Ukrainian Government as supporting Russia's war in Ukraine.³³

- 2.43 A submission from the Australian Wrongful and Arbitrary Detention Alliance (AWADA) cited Iran as another prime example of an opportunity to align sanctions policy with that of allies, positing that key global partners could benefit from a 'collective defence' approach to imposing 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.³⁴

- 2.44 Australia has applied extensive sanctions against Iran in relation to its nuclear and missile programs, as well as activities relating to the sponsorship of terrorism, and has recently added a number of Magnitsky-style sanctions in relation to the suppression of protests and persecution of women.³⁵ However, AWADA identified areas of potential improvement:

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 UK and US 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.³⁶

- 2.45 Representatives from the Australian National University Law Reform and Social Justice Research Hub cited ways in which Australia, despite its significant Iran-related sanctions, continues to lag behind allies in ways which suggest that a bigger issue might be at play explaining the lack of optimal alignment with

³³ Australian Federation of Ukrainian Organisations, *Submission 43*, p. 3.

³⁴ Australian Wrongful and Arbitrary Detention Alliance (AWADA), *Submission 4*, p. 5.

³⁵ AWADA, *Submission 4*, p. 6.

³⁶ AWADA, *Submission 4*, p. 6.

global partners even in cases where a designation listing should be straightforward:

For example, Eisa Zarepour, who was the Iranian minister for communications until a few weeks ago, pioneered nationwide shutdowns of Iran's communications network to suppress, track and punish protests. He is but one example of an individual, sanctioned by the European Union, the United States and the UK, who has remained missing from our list. Nor has Australia sanctioned Russian individuals involved in the forced deportation of Ukrainians, including children. We note that the United Kingdom and the United States have added them to their sanctions list. Despite this being a fairly non-contentious designation listing, we would suggest that this selective alignment with overseas allies suggests there might be administrative concerns or problems coordinating our sanctions with allies, which allows individuals to fall through the cracks.³⁷

- 2.46 Others were of the view that Australia should fundamentally alter its approach to imposing sanctions. Dr Moiseienko described Australia's alignment with sanctions imposed by allies as 'a selective copying of earlier US, EU or UK sanctions'³⁸ and highlighted the importance of Australia acting proactively rather than simply responding to actions taken by global partners:

While acting in concert with allies and partners is desirable, Australia can and should go beyond practices that could be criticised as amounting to little more than copying others. As a regional rule of law champion, Australia should use sanctions vigorously to address corruption, human rights abuse and other malign activity in the Asia-Pacific region. Australia's emerging use of cyber sanctions against cybercriminals attacking Australian infrastructure is an example of best practice that should be expanded to other contexts.³⁹

- 2.47 Dr Moiseienko also described the 'almost complete absence of any truly Australia-initiated corruption or human rights designations.'⁴⁰ He described how lagging behind allies is counter-productive because it gives targeted individuals time to pre-emptively remove existing assets from Australian jurisdictions, thereby limiting the potential effectiveness of Australia's sanctions. It also gives the impression of 'a halting, timid and reluctant sanctions policy.'⁴¹

- 2.48 Allens, a company with extensive experience advising clients on trade and financial sanctions, cited the lack of clarity on how targeted financial sanctions

³⁷ Mr Max Thomas, Student Researcher, Research Hub, Law Reform and Social Justice, Australian National University, *Proof Committee Hansard*, 15 November 2024, p. 1.

³⁸ Dr Anton Moiseienko, *Submission 1*, p. 2.

³⁹ Dr Anton Moiseienko, *Submission 1*, p. 1.

⁴⁰ Dr Anton Moiseienko, *Submission 1*, p. 4.

⁴¹ Dr Anton Moiseienko, *Submission 1*, p. 2.

apply to entities which are only partially owned or controlled by listed individuals as a prime example of where Australia could significantly improve its sanctions regime:

...Australia does not apply a brightline rule when assessing whether targeted financial sanctions flow through from a designated person to another entity. For example, the 50% rule is a feature of the sanctions frameworks of the European Union, United Kingdom and United States. Though it takes differing forms, the 50% rule generally provides that if a designated person owns 50% or more of an entity (or additionally in the case of the European Union and United Kingdom, exercises certain forms of control over an entity), that entity is also considered to be a designated person.⁴²

2.49 The absence of such a rule, Allens stated, creates uncertainty and compliance challenges for Australian companies by making it difficult to know when sanctions flow from a listed individual through to their related entities. In practice, Allens added, this means that many Australian companies may conclude that they are unable to enter transactions when their international counterparts may reach the opposite conclusion when subject to similar sanctions listings.

2.50 Allens listed several other inconsistencies between Australia and its global partners which would benefit from improved alignment to better serve the interests of Australian companies, including:

- The application of import sanctions, where Australian sanctions laws have a broader application than those in place in the EU, US and UK;
- the lack of a wind-down period, such as that in place in the US, which allows a 90-day wind-down period under some sanctions to allow companies to take necessary steps to wind down relevant transactions; and
- the absence of a civil liberty mechanism, which in Australia prevents better differentiation for penalties in response to sanctions breaches which do not involve wilful violation of laws.⁴³

2.51 These differences place Australian companies at a distinct disadvantage relative to their global counterparts, and are areas Allens suggested would benefit from better alignment with sanctions laws in like-minded countries.⁴⁴

Obstacles to sanctions alignment

2.52 Allens discussed how differences in allies' legislative frameworks can complicate alignment in practice. This is because differing frameworks may result in respective sanctions programs having substantially different

⁴² Allens, *Submission 30*, pp. 1–2.

⁴³ See Allens, *Submission 30*, p. 5.

⁴⁴ Allens, *Submission 30*, p. 5.

applications and consequences. This, Allens submitted, suggests that better alignment of the legal frameworks is also required:

In our experience, this creates material difficulties for Australian companies, as well as Australian citizens employed for foreign entities, and can impact their ability to compete globally. As sanctions are most effective when they are consistently and widely adopted, we consider that Australia's sanctions law framework should be aligned – so far as is possible – with those the European Union, United Kingdom and particularly the United States (as the jurisdiction that most actively imposes sanctions and enforces sanctions laws).⁴⁵

- 2.53 AFUO also touched on the legal loopholes which undermine the effectiveness of Australia's sanctions against Russia, reporting how alarmed the Ukrainian diaspora in Australia was to learn that Australia's trade with Russia, despite the sanctions imposed, amounted to approximately \$984 million in 2022–23. This amount, AFUO submitted, is not far from the value of support provided by Australia to Ukraine since the invasion.⁴⁶
- 2.54 Noting this, AFUO called on the Australian Government to ensure that all sanctions are as effective as possible as a matter of principle.⁴⁷

Committee view

- 2.55 The committee notes that Australia has at times lagged many months behind its allies in imposing sanctions. This is concerning, particularly in circumstances where the same intelligence on individuals and entities is likely available to the US, UK and Australian governments. The reasons for this are not clear from evidence provided by government agencies.
- 2.56 While the committee agrees that Australia should always make its own judgments about circumstances warranting the imposition of sanctions, a united front is paramount in situations where Australia's foreign policy and concerns about human rights align with those of our allies. The committee is buoyed by the Australian Government's decision to finally re-open the Australian embassy in Ukraine.⁴⁸ While this decision should have been made in concert with allies over two years ago, it does indicate that the government has understood how harmful the delay and absence of Australia's diplomatic presence in Ukraine have been. It is the committee's hope that the Australian Government will similarly recognise the importance of timing its sanctions in concert with allies where our objectives and the intelligence available align, to maximise the

⁴⁵ Allens, *Submission 30*, p. 1.

⁴⁶ AFUO, *Submission 43*, p. 4.

⁴⁷ AFUO, *Submission 43*, p. 4.

⁴⁸ See 'Penny Wong announces Australia will reopen embassy in Kyiv almost three years after its closure', *ABC News*, 19 December 2024, available at: [Penny Wong announces Australia will reopen embassy in Kyiv almost three years after its closure - ABC News](#) (accessed 19 December 2024).

effectiveness of sanctions and avoid further deepening the detrimental effect of delays.

- 2.57 Furthermore, the committee considers it imperative that Australian businesses are provided with clear, timely information on steps they need to take to remain compliant with Australia's sanctions regime.

Recommendation 2

- 2.58 The committee recommends that, in circumstances where foreign policy objectives allow, the Australian Government, while continuing to make its own judgments concerning the imposition of sanctions, prioritise the alignment of sanctions with allies to maximise effectiveness and place greater emphasis on imposing such sanctions promptly.**

Recommendation 3

- 2.59 The committee recommends that the Australian Government consider establishing a mechanism for engagement with civil society on Australia's sanctions regime.**

Chapter 3

Strengthening the sanctions regime

- 3.1 Even if applied consistently and in alignment with like-minded global partners, sanctions have unintended impacts on innocent third parties, including civilians, businesses and states. Imposing and maintaining sanctions therefore involves balancing both intended and unintended outcomes.
- 3.2 Doing so requires an adequate degree of accuracy in the appraisal of effectiveness, which is empirically difficult to achieve.

Measuring effectiveness

- 3.3 Measuring the effectiveness of sanctions is complex, as the impact of each measure evolves within its specific political and economic context. Furthermore, while sanctions measures have direct effects on the target country, they also have indirect effects on other countries and global economic markets. This can in theory obscure or overshadow their effect on the target country or individuals.
- 3.4 Furthermore, individual sanctions are intended to achieve a range of intertwined short, medium and long-term policy goals. As submitted by DFAT:

There is no single or straightforward approach to evaluating sanctions' effectiveness. Measuring their qualitative and quantitative impact will depend on the objectives for their imposition and the intended impact on the target.¹
- 3.5 This means that effectiveness is measured differently between sanctions measures and regimes, depending on their respective objectives and intended effects. However, as a broad rule of thumb it is fair to say that the greater the existing links between a targeted individual or targeted sector of a country's economy, the greater the impact sanctions have the potential to have. For this reason, effectiveness might be optimised by gearing sanctions policy towards 'targeting those who rely on the Australian economy'.²
- 3.6 While measuring effectiveness is a complex, multifaceted process with recognised methodological challenges, effectiveness is demonstrated in practice. Submitters cited examples of how sanctions can bring about change and influence foreign government action. Walk Free and International Justice Mission Australia, for example, described two instructive case studies, the first of which relates to human trafficking:

¹ DFAT, *Submission 9*, p. 5.

² Dr Anton Moiseienko, *Submission 1*, p. 2.

In December 2022, the US government issued sanctions in relation to human trafficking abuses, targeting two individuals, Zhuo Xinrong and Li Zhenyu, and their network of entities and vessels involved in forced labour on a China registered distant-water fishing fleet. These were the first US sanctions targeting an entity listed on the NASDAQ stock exchange. In June 2023, an investigation by *The Australian* uncovered Zhuo Xinrong's association with the Australia China Economic, Trade and Cultural Exchange Association, which prompted his resignation, demonstrating the impact of sanctions beyond the US.³

- 3.7 The second example concerned money laundering, illustrating how sanctions have the potential to spur behaviour modification:

In December 2019, the US government imposed sanctions on Aivars Lembergs, a Latvian politician, for money laundering, expropriation, bribery, and abuse of office. Four entities that Lembergs owned or controlled were also designated, including the Ventspils Freeport Authority, which operated a major international port. Following the designation, the Latvian government passed legislation removing Lembergs from control of the Ventspils Freeport Authority, and Lembergs resigned from the entity, where he had previously served as board chair.⁴

- 3.8 DFAT informed the committee that work is currently underway to develop best-practice methodologies to measure the effectiveness of sanctions,⁵ and provided two strong case studies. The first of these relates to cyber security:

In 2024, Australia imposed its first-ever sanctions for significant cyber incidents under the cyber sanctions framework introduced in 2021. This was the culmination of an 18-month joint investigation between the Australian Signals Directorate and the Australian Federal Police, together with DFAT and other Commonwealth agencies, as well as international partners, including the United States (US), United Kingdom (UK) and European Union (EU).⁶

- 3.9 Targeted financial sanctions and travel bans were imposed on two Russian citizens, each responsible for separate, significant cyber incidents. The objective was to hold the individuals accountable for their crimes, to disrupt their ability to engage in repeat acts of cybercrime and to deter others. DFAT submitted that the measures were successful:

Australia's sanctions and the public attribution that resulted helped to break their ransomware business model by exposing the activities and identities of the criminals behind these actions.⁷

³ Walk Free and International Justice Mission Australia, *Submission 31*, p. 6.

⁴ Walk Free and International Justice Mission Australia, *Submission 31*, p. 6.

⁵ DFAT, *Submission 9*, p. 5.

⁶ DFAT, *Submission 9*, p. 5.

⁷ DFAT, *Submission 9*, p. 5.

- 3.10 The second example DFAT provided to illustrate how effective sanctions can be relates to the ongoing efforts towards imposing costs on Russia for its military invasion of Ukraine in 2022:

Australia has implemented a broad range of sanctions covering trade, commercial activities, targeted financial sanctions and travel bans... Collectively, Australia's sanctions response to Russia's invasion of Ukraine is our largest ever, with Russia-Ukraine listings comprising two-thirds of all sanctions imposed under the Autonomous Sanctions Regulations 2011.⁸

- 3.11 Others called for an assessment of effectiveness using wider parameters. A joint submission from Geoffrey Robertson AO KC, founder of Europe's largest human rights practice, and the Australian Centre for International Justice, argued that a true measure of effectiveness must include looking at the integrity of the sanctions process as well as its outcomes:

To accurately assess effectiveness, one must consider more than the mere objectives the regime seeks to achieve. A true assessment also asks whether the infrastructure in place affords adequate safeguards and due process to targeted individuals. To overlook such considerations would fail to present an honest account of the impact of sanctions. Effectiveness, in this sense, is not just about hypothetical outcomes but about the integrity and fairness of the process itself.⁹

Evasion of sanctions

- 3.12 Several witnesses and submitters discussed how the development of sanctions regimes is accompanied by increasingly sophisticated methods of sanctions evasion.
- 3.13 Representatives from the Myanmar Campaign Network, for example, highlighted the general reluctance to sanction central banks as a factor which might have the unintended consequence of aiding evasion and as a result stymieing the effectiveness of sanctions:

Sanction evasion is happening. They are scrambling for hard currencies. The sanctions are to do with hard currencies, which I'll talk about next. They can go to China, India and other suppliers. We have two prominent suppliers being sanctioned, but there are other suppliers that they can't just—not suppliers; distributors in the country which have access to hard currency to buy fuel overseas. So you're just in a kind of whack-a-mole. You just switch. But what you cannot switch here is the junta's access to hard currency. Oil money they can have, but the oil has to come from offshore. Sanctioning the Myanmar central bank, which is the conduit to get this hard currency, will

⁸ DFAT, *Submission 9*, p. 6.

⁹ Mr Geoffrey Robertson AO KC and Australian Centre for International Justice, *Submission 45*, p. 2.

be very effective. But all governments are very reluctant to sanction central banks.¹⁰

- 3.14 This reluctance is due to the fear that sanctioning central banks will, in most countries, impact ordinary citizens who are not the intended target of sanctions. The Myanmar Campaign Network explained that this was not the case in Myanmar, and that sanctions against central banks should be imposed:

[I]n Myanmar, the case is different. Ordinary citizens don't have access to hard currency. Whatever hard currency they have in these state banks, the regime has got control of it—30 per cent, 40 per cent, 45 per cent—and they've taken it and converted into whatever they want to use. Banks and hard currency are not part of the everyday lives of Myanmar people, trust me. Sanctioning the central bank will be highly effective, and Australia should make up for being behind in sanctioning and sanction the central bank. That will really tackle the core of the problem. The only advantage the regime has right now is air power. Air power means their financial ability to buy jet fighters and all that from Russia and also jet fuels. There are about 60 attacks a week or something happening. It is horrific. The only advantage it has is air power. We can stop that by financial sanctions, and the one to sanction is the central bank, which we haven't.¹¹

- 3.15 The committee also received evidence suggesting that listed individuals and entities linked to Iran's Islamic Revolutionary Guard Corps (IRGC), an organisation involved in multiple, serious human rights violations and linked to international terrorist activity, might have developed methods to circumvent sanctions undetected. AUSIRAN listed a number of these, citing sources:

- (1) **Use of Front Companies and Complex Networks:** The IRGC often employ a network of front companies and complex corporate structures to disguise the origins and destinations of its goods and funds. These front companies operate globally, including in countries like China, Hong Kong, and Venezuela, to facilitate trade that would otherwise be restricted due to sanctions (Reuters, 2023).
- (2) **Smuggling and Illicit Trade:** Smuggling has been a significant method to bypass sanctions. Goods, particularly oil, are often shipped through unofficial channels, sometimes involving complex maritime manoeuvres such as ship-to-ship transfers and falsifying cargo documentation. These tactics help the IRGC continue its oil exports despite international restrictions (Hoover Institution, 2023).
- (3) **Barter and Non-Dollar Transactions:** To mitigate the impact of financial sanctions, the IRGC has engaged in barter trade and

¹⁰ Associate Professor Htwe Htwe Thein, member, Myanmar Campaign Network, *Proof Committee Hansard*, 15 November 2024, p. 34.

¹¹ Associate Professor Htwe Htwe Thein, member, Myanmar Campaign Network, *Proof Committee Hansard*, 15 November 2024, p. 35.

transactions in currencies other than the US dollar. This includes trading oil for goods and services directly, thus avoiding the international financial systems monitored by the US and its allies (GOV.UK, 2023).

- (4) **Cryptocurrency:** There have been increasing reports of turning to cryptocurrencies to conduct transactions that are difficult to trace. Cryptocurrencies provide a way to move money across borders with relative anonymity, bypassing traditional banking channels affected by sanctions (Reuters, 2023).¹²

3.16 Other submitters, such as Dr Graham Marning, suggested that evasion of some sanctions is actively enabled by the Australian Government. He cited Australia's purchasing of fuel refined from Russian oil in other countries as being either a failure to understand how global supply chains enable sanctions evasion, or a deliberate act of self-interest in 'wanting full and unrestricted liquid energy supply'.¹³ As put by Dr Marning:

We have created a loophole that is legal, but, is not measured or defined, and is not being acted upon by our Parliament. We have failed to introduce a review mechanism of this loophole at the time of granting it. If we have reviewed it, we are comfortable with its implications for Ukraine. If that is the case, it is a national disgrace.¹⁴

3.17 This issue is discussed further below.

Trade in sanctioned goods

3.18 Oil and coal are a prime example of how legislative gaps and the complexities of global trade combine to lessen the effects of sanctions settings.

3.19 The Australian Government has banned the import and export of certain goods from and to Russia, including oil, to exert financial pressure on the Russian Government by depriving it of a valuable trade opportunity. However, a loophole remains which allows the import of products made from crude Russian oil refined in third-party countries. This has enabled Russia to continue to take considerable revenue from its oil.

3.20 AFUO submitted that refined petroleum was Australia's most imported product in 2022, with 80 per cent of Australia's required refined petroleum products coming from overseas, primarily from South Korea, Singapore, Malaysia and Taiwan—countries which purchase crude oil used for refining from various suppliers, including indirectly from Russia:

We are of the understanding that these countries purchase and refine crude oil from various global suppliers, including indirectly from Russia through intermediaries like India and China, which have emerged as major buyers

¹² AUSIRAN, *Submission 22*, p. 3.

¹³ Dr Graham Marning, *Submission 11*, p. 2.

¹⁴ Dr Graham Marning, *Submission 11*, p. 2.

of Russian oil in the time since the start of the full-scale invasion. The outcome is that Australian consumers are providing financial support to Russia's war machine when they are filling up their vehicles. That this situation is allowed to continue with India, our partner in the Quadrilateral Security Dialogue, is particularly upsetting.¹⁵

3.21 UCNSW cited a 2024 report from the Finnish Centre for Research on Energy and Clean Air (CREA), which confirms that:

Australia is among countries continuing to import oil products refined in third-party countries from Russian crude. In the first six months of 2024, Australia reportedly imported more than 1.4 million tonnes of refined oil products from at least four refineries sourcing Russian crude—Jamnagar, New Mangalore and Vadinar refineries in India, and Qingdao Huangdao refinery in China.¹⁶

3.22 One of these refineries, Jamnagar in India, is reportedly owned by a company which in May 2024 signed a deal with Russia's Rosneft—controlled by the Russian government—to purchase a minimum of 3 million barrels of oil per month. This, UCNSW stated, means that Australian companies buying products made with refined Russian petroleum are helping Russia's oil revenue to flow unimpeded despite the sanctions which Australia has imposed.¹⁷

3.23 Furthermore, in an answer to a question put on notice by the committee, UCNSW pointed out that Australia is also a member of the 'Price Cap Coalition', together with the G7 and European Union. Two of the coalition's key objectives are:

- (5) constraining Russian revenues which could otherwise be used to fund Russia's war of aggression against Ukraine; while
- (6) maintaining global oil flows and protecting energy security.¹⁸

3.24 Despite these objectives and their alignment with sanctions imposed against Russia, imports of products made with refined Russian oil are not only continuing, but increasing:

[A]ccording to CREA, EUR8.5bn of Price Cap Coalition countries' imports of oil products between December 2022 and December 2023, were made from Russian crude—the largest quantities by far being from India's Jamnagar and Vadinar refineries. In 2023, there was a 44% year-on-year increase in sanctioning countries imports of oil products, by volume, produced from Russian crude.¹⁹

¹⁵ AFUO, *Submission 43*, p. 4.

¹⁶ UCNSW, answer to question on notice, received 3 December 2024, p. 1.

¹⁷ UCNSW, answer to question on notice, received 3 December 2024, p. 1.

¹⁸ UCNSW, answer to question on notice, received 3 December 2024, p. 2.

¹⁹ UCNSW, answer to question on notice, received 3 December 2024, p. 2.

3.25 Submitters discussing this issue were unanimous in their calls for Australia to ensure that Russia cannot profit from the importation of products made from its crude oil. AFUO, for example, called on the Australian Government to take the lead in making sure that the effectiveness of sanctions targeting Russia's oil trade is not undermined by legislative gaps around the import of sanctioned goods which result in Russian oil continuing to make its way into Australia as a refined product:

To not close this loophole independently in our own legislation and sanctions regime (and by working in concert with our partners who face a similar issue) is funding Russia's war to the tune of tens of billions of dollars per year and is having demonstrably grave impacts on the weight of industrial might Ukraine must withstand.²⁰

3.26 The committee also explored how some Australian companies exploit loopholes in sanctions laws which allow them to produce import-sanctioned goods outside Australia and sell them to overseas customers. Dr Moiseienko described how one such example saw an Australian-headquartered company take its case to the Federal Court:

[A]n Australian-headquartered company, Tigers Realm Coal, which extracts coal in Russia, wanted to continue those operations and sought an indication from the Australian Sanctions Office as to whether doing so would be lawful. The Australian Sanctions Office said no, and the company sought to obtain a declaration in the Federal Court that, in fact, they would be compliant with Australian sanctions if they continued to extract coal in Russia and didn't import it into Australia but sold it to other customers around the world.²¹

3.27 Although the Federal Court ruled that continuing to operate in this manner would not be legal under Australian sanctions laws, Dr Moiseienko stated that the reason for the ruling appeared to be technical and could imply that a legal loophole remains in place:

It all came down to the fact that Australian sanctions laws prohibit not only importing import-sanctioned goods into Australia but also transporting them to anywhere in the world. So it seems the implication is that, if you, let's say, extract Russian coal and you don't import it into Australia and you don't transport it to anywhere in the world but you just simply sell it to customers elsewhere—somewhere that's not Australia—that potentially could be compliant with Australian sanctions. It seems to be the implication of the judgement.²²

3.28 This suggests that more should be done to avoid undermining the effectiveness of the Australian sanctions regime. As Dr Moiseienko observed, constraining

²⁰ AFUO, *Submission 43*, p. 5.

²¹ Dr Anton Moiseienko, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 7.

²² Dr Anton Moiseienko, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 7.

Russia or Iran's ability to trade their resources requires a tightening of the legislation:

[I]f we are trying to constrain the access of, let's say, the Russian regime or the Iranian regime to resources and we're trying to make it more difficult for them to trade in certain commodities, then it would be nonsensical to allow Australian companies to operate in those countries, extract those commodities and sell them to somewhere, provided that it's just not Australia and they don't transport those goods. That would not, I think, be compatible with the objective of those regulations, hence the point that I was making in the submission, which, although technical, has come up in legislation, so I think there is some importance to it.²³

3.29 Dr Moiseienko suggested how the Act could be amended to close these loopholes by sanctioning the sale, rather than just the import, of such goods.²⁴

3.30 DFAT representatives acknowledged the complexity involved in ensuring that sanctions laws evolve and reiterated that issues around sanctions evasion and compliance with existing sanctions are under ongoing review:

This is part of the big challenge that we face. How do we keep our sanctions regime live and up-to-date? We had a legislative review, which may well come up in questioning, that is intended to enable us to update our sanctions regimes but, of course, they are constantly under review. We will constantly tweak to add more provisions to make sure they are robust, defensible and the like. Enforcement and compliance, which was mentioned by ABF as well, is a critical piece of the sanctions workload and that has gotten more difficult.²⁵

3.31 The committee also approached the Department of Home Affairs on the topic of sanctions evasion, for example about leakage within the Australian sanctions framework which might enable companies to import Russian goods. Departmental representatives indicated that the department has 'no immediate concerns', but acknowledged that some leakage does occur:

It would be fair to say that there are no immediate concerns that are raised specific to the point that you've just raised in this inquiry. Naturally, from a border perspective we acknowledge the fact that leakage does occur when we have 95 million cargo consignments that move across the border. We target our efforts based on information and intelligence to ensure we are targeting the goods of suspect concern as best we possibly can, acknowledging the fact that leakage does occur. Our role at the border is to ensure that leakage is minimised to the highest level possible.²⁶

²³ Dr Anton Moiseienko, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 7.

²⁴ Dr Anton Moiseienko, *Submission 1*, p. 6.

²⁵ Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division, Department of Foreign Policy and Trade, *Proof Committee Hansard*, 15 November 2024, p. 22.

²⁶ Mr Tony Smith, Assistant Commissioner, Customs, Australian Border Force, Department of Home Affairs, *Proof Committee Hansard*, 15 November 2024, p. 32.

- 3.32 The department did not provide further details on active investigations relating to sanctioned trade, other than to state that six referrals from the Australian Sanctions Office (ASO) and five active investigations are currently underway. Two of these active investigations relate to ‘goods suspected of being exported to Russia’.²⁷

Committee view

- 3.33 The committee recognises that measuring the effectiveness of sanctions is complex due to the number and nature of objectives involved, the timing and duration of listings and the specific economic and political context in which they occur. On top of this, as can be seen specifically with sanctions relating to Russia, targets may adapt by seeking trade with alternative markets or selling their products through countries which may not be as committed to enforcing economic pressure imposed by the international community. It is also worth noting that measuring effectiveness is difficult to do with precision, because other forms of pressure, such as diplomatic or internal political pressure within targeted countries, often occur concurrently. This means that attributing desired outcomes to sanctions policy risks both over- and underestimating their effectiveness.
- 3.34 The committee notes that DFAT is working with international partners on developing best-practice methodologies which will be used to optimise and measure the effectiveness of sanctions. Given the rapidly evolving nature of multiple crises which threaten global security, this work must be expedited. The committee therefore urges DFAT to progress this critical work as a priority and provide Australian stakeholders and non-governmental organisations an opportunity for consultation to inform this process.
- 3.35 This is the second inquiry the committee has recently conducted involving sanctions relating to Russian oil, and both have led to the inescapable conclusion that the existing sanctions regime has had limited impact on Russia’s oil-related revenue. While sanctions prevent the import of Russian oil into Australia, legislative loopholes allow Russia to pivot towards revenue from third-party countries which continue to import its oil and then profit by exporting petroleum-derived products to Australia. The committee also notes with some disappointment that loopholes which allow the continued importation of goods made with Russian oil refined in third countries are not a new concern, and that the government has failed to act in spite of Recommendation 8 of the committee’s September 2024 inquiry into Australia’s support for Ukraine.²⁸

²⁷ Mr James Ryan, Superintendent, Customs Enforcement, Australian Border Force, Department of Home Affairs, *Proof Committee Hansard*, 15 November 2024, p. 20.

²⁸ Senate Foreign Affairs, Defence and Trade References Committee, *Australian Support for Ukraine*, September 2024, p. xii.

3.36 The committee is strongly of the view that a stronger focus on sanctions enforcement is required so that products made with oil sourced from countries which Australia has imposed sanctions on, such as Russia and Iran, are not imported into the country. The committee agrees that this is an important facet of optimising the effectiveness of sanctions and avoiding the inadvertent provision of unintended financial support to sanctioned regimes.

Recommendation 4

3.37 The committee recommends that the Australian Government work with its global partners to increase focus on sanctions enforcement and close loopholes which allow Iran and Russia to evade the financial impact of Australian sanctions.

Recommendation 5

3.38 The committee recommends that the Australian Government continue to impose sanctions on Iranian officials involved in serious violations or serious abuses of human rights, including wrongful detention.

Recommendation 6

3.39 The committee recommends that the Australian Government prioritise, in consultation with international partners and non-governmental Australian stakeholders, the development of methodologies to target and measure the effectiveness of Australia's sanctions regime.

Repurposing of frozen assets

3.40 Asset freezing extends to financial and physical assets, such as bank accounts, property and luxury goods. It prohibits sanctioned individuals or entities from accessing their assets.

3.41 Freezing financially valuable assets belonging to individuals or governments is a powerful tool for addressing and deterring undesirable behaviour and illicit activities such as human rights abuses, corruption and financing terrorism. However, it presents legal and political issues which Australia and its global partners have grappled with in recent years.

3.42 Russia's invasion of Ukraine and the subsequent freezing of hundreds of billions of dollars across Western countries have prompted considerable discussion of how best to transfer assets owned by states engaged in wars of aggression to their victims. Leading legal experts have confirmed that such transfers are indeed lawful.²⁹

²⁹ Cited in Dr Anton Moiseienko, *Submission 1*, p. 5.

3.43 The committee identified this as a priority concern during an inquiry into Australian support for Ukraine conducted in 2024. Recommendation 7 of the committee's September 2024 report urged immediate action:

The committee recommends that the Australian Government identify as a matter of priority all Russian assets in Australia that are subject to sanctions, and assess what legislative changes are required to enable the transfer of these assets or associated income to Ukraine.³⁰

3.44 To date, the US, UK and Canada have led the way in supporting the victims of military aggression through the use of assets frozen through the imposition of sanctions. At the time of writing, the US has given Ukraine US\$20 billion funded by the profits of seized Russian assets.³¹ In October 2024, the EU Parliament similarly approved a €35 billion loan to Ukraine backed by future revenue from frozen Russian assets,³² while as recently as December 2024 Ukrainian President Volodymyr Zelensky flagged Japan's intention to transfer \$3 billion from frozen Russian assets to Ukraine.³³

3.45 The committee spoke with several witnesses about the point at which consideration should be given to moving from simply freezing, to seizing of these assets, as well as the barriers to such a move.

3.46 Asset seizure is a considerable step beyond asset freezing, as it involves permanently taking ownership of assets belonging to another country, rather than temporarily freezing access as allowed under international law. Seizing and repurposing of assets therefore requires supporting legislation in order for it to be done under a legal process.

3.47 Witnesses and submitters who considered the issue of transferal of frozen assets identified several impediments, notably in the case of sanctions relating to Russian and Iranian individuals and entities.

3.48 The Australian Centre for International Justice (ACIJ), for example, noted that Australia does not currently have legal avenues in place specifically allowing authorities to seize and repurpose frozen assets belonging to sanctioned individuals or entities. While certain mechanisms for the confiscation of assets

³⁰ Senate Foreign Affairs, Defence and Trade References Committee, *Australian support for Ukraine*, September 2024, p. xii.

³¹ See *US gives \$20bn to Ukraine funded by seized Russian assets*, BBC Online, 11 December 2024, available at: [Ukraine war: US gives \\$20bn to Kyiv funded by seized Russian assets](#) (accessed 11 December 2024).

³² See *Parliament approves up to €35 billion loan to Ukraine backed by Russian assets*, European Parliament News, 22 October 2024, available at: [Parliament approves up to €35 billion loan to Ukraine backed by Russian assets | News | European Parliament](#) (accessed 11 December 2024).

³³ See 'Japan to transfer [US]\$3 billion from frozen Russian assets to Ukraine, Zelensky says', *Kyiv Independent*, 25 December 2024, available at: [Japan to transfer \\$3 billion from frozen Russian assets to Ukraine, Zelensky says](#) (accessed 20 January 2025).

exist under the *Proceeds of Crime Act 2002*, ACIJ was of the view that the legislation could be improved:

In our view, a clear amendment to the POCA or separate regulations made under the *Autonomous Sanctions Act 2011 (Cth)* addressing the procedures for confiscation and repurposing with specific respect to sanctions would be appropriate. These amendments could propose that assets would vest in a trust, with decisions on distribution to be made subject to applications to an independent committee or following consultation with affected communities.³⁴

3.49 ACIJ acknowledged that practicalities around such a measure would require further consideration.³⁵

3.50 Dr Moiseienko identified the ‘freeze and seize’ debate as part of the broader question of sanctions enforcement, urging greater focus on the ability to adequately identify the assets to be seized:

[W]hen we talk about individuals or companies with significant amounts of assets, if they know that they're likely to be sanctioned because they're involved in misconduct, then they're unlikely to hold those assets directly – they will use proxy owners, nominees and so on – and there's a genuine question around the capacity and the processes in place to identify those indirect holdings.³⁶

3.51 The challenge inherent in identifying and locating assets of sanctioned individuals and entities is of paramount importance and has been highlighted by issues around Russia-related sanctions.³⁷

3.52 Other stakeholders also discussed the difficulty involved in identifying assets linked to sanctioned individuals and entities. AUSIRAN, a not-for-profit organisation advocating for the Iranian diaspora in Australia, made several recommendations aimed at improving Australia's mechanisms for asset freezing and confiscation, including:

- Establishment of specialised recovery units working towards identifying, freezing and confiscating assets belonging to sanctioned entities.
- Developing a database for the prompt reporting of information on sanctioned assets to help track and manage such assets across jurisdictions.
- Engaging with like-minded international partners to facilitate cross-border asset recovery.

³⁴ Australian Centre for International Justice, *Submission 12*, p. 14.

³⁵ Australian Centre for International Justice, *Submission 12*, p. 15.

³⁶ Dr Anton Moiseienko, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 4.

³⁷ Dr Anton Moiseienko, private capacity, *Proof Committee Hansard*, 15 November 2024, p. 5.

- Setting up a central agency for the coordination of sanctions enforcement, which would function similarly to the US Office of Foreign Assets Control (OFAC) in managing sanctions regulation and enforcement.³⁸
- 3.53 AUSIRAN noted that AUSTRAC had recently established a team tasked with monitoring and triaging financial reporting relating to Russian sanctions, suggesting that the same approach should be applied against Islamic Revolutionary Guard Corps (IRGC) financial networks.³⁹
- 3.54 Emphasising that the disposition and use of frozen assets is a policy question for the Australian Government, the ABA urged transparency to ensure that stakeholders are adequately informed of their obligations and any legal implications if frozen assets are confiscated. The ABA also suggested that the government consider giving financial institutions legal protection from litigation by individuals or entities whose assets are confiscated.⁴⁰
- 3.55 The committee discussed the actual assessment of Russian entities and assets in Australia with government agencies, citing discrepancies in the numbers of sanctioned assets identified in Australia reported by the AFP. DFAT representatives highlighted that sanctions law places the onus on asset holders to report sanctioned assets to the government and indicated that the perceived discrepancies are not reflective of a lack of identification:
- Australian sanctions law imposes strict prohibitions on dealing with designated persons or entities and their assets. Asset holders are required by law to provide the AFP with specific information about controlled assets. That's part of the legislation. DFAT works closely with AUSTRAC actually in relation to tracking financial transactions. There are frozen Russian financial assets in Australia. These may not have been reported to the AFP, which may explain the discrepancy, but we certainly are aware of frozen Russian financial assets in Australia.⁴¹
- 3.56 The AFP explained that discrepancies in the numbers of assets cited were due to the actual assessment evolving over time:
- The figures in question relate to certain points in time for the number of instances reported to the Australian Federal Police (AFP) of potential Australian-based assets that could be the subject of the sanctions regime. The first figure of 21 notifications being as at May 2023, which increased to 23 notifications as at October 2023. During the course of the AFP's

³⁸ AUSIRAN, *Submission 22*, p. 6.

³⁹ AUSIRAN, *Submission 22*, p. 7.

⁴⁰ ABA, *Submission 38*, pp. 6–7.

⁴¹ Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division, Department of Foreign Policy and Trade, *Proof Committee Hansard*, 15 November 2024, p. 32.

investigations into these notifications, the AFP did not identify any Australian-based assets.⁴²

3.57 When asked how many referrals of possible breaches or identifications of possible breaches agencies had discovered since 2022, the AFP said:

The Australian Federal Police has received five (5) reports of crime from the Department of Foreign Affairs and Trade regarding breaches or possible breaches of the Autonomous Sanctions Act 2011 law since 2022.

Of the four current active investigations, all of these investigations commenced following reports of crime received by the Australian Federal Police from the Australian Sanctions Office.⁴³

3.58 DFAT also disputed media reports suggesting that Australia holds \$9 billion in frozen Russian assets, placing the figure closer to 'well less than \$100 million' in both private and sovereign assets.⁴⁴

Committee view

3.59 The committee has already expressed its unreserved support for Ukraine in the face of the existential threat the country faces. While the seizure and transfer of frozen Russian assets is undoubtedly complex and may even require legislative change, the committee is of the opinion that such a transfer would give existing sanctions teeth and be of tangible benefit to the Ukrainian community.

3.60 Furthermore, the government has already had considerable time to act on this issue. The committee again notes Recommendation 7 of the committee's September 2024 report on Australia's support for Ukraine, which clearly identified the transfer of Russian assets in Australia as a priority issue and called on the government to act.

3.61 The inability to identify and locate assets belonging to individuals or entities linked to human rights abuses severely compromises the effectiveness sanctions can have. This being the case, the committee recalls evidence regarding the evasion of sanctions discussed earlier in this chapter and cannot help but ask whether the reluctance to transfer frozen Russian assets to Ukraine is at least partly due to a failure to accurately identify the assets in question or the extent of ongoing, undetected trade in sanctioned goods. The committee is therefore concerned by the very limited evidence which exists to suggest that assets held in Australia by individuals associated with the IRGC or the Russian

⁴² Australian Federal Police, answer to questions on notice, 15 November 2024 (received 10 January 2025).

⁴³ Australian Federal Police, answer to questions on notice, 15 November 2024 (received 10 January 2025).

⁴⁴ Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division, Department of Foreign Policy and Trade, *Proof Committee Hansard*, 15 November 2024, p. 21.

Government have been adequately identified for sanctions to be applied and enforced.

Recommendation 7

3.62 The committee recommends that the Australian Government consider how to identify and locate all Russian and Iranian Islamic Revolutionary Guard Corps-associated assets in Australia which are currently subject to sanctions.

Recommendation 8

3.63 The committee recommends that the Australian Government identify all Russian assets in Australia that are subject to sanctions, and consider what legislative and other changes are required to enable the transfer of these assets.

Conclusion

3.64 The committee recognises that measuring the impact and effectiveness of sanctions is not a straightforward endeavour. There are many variables and potential parameters involved, and the committee looks forward to seeing the outcome of the work DFAT said is underway to develop best-practice methodologies for measuring effectiveness.

3.65 Notwithstanding the complexity involved in all aspects of a successful sanctions policy, there are clearly aspects of the current regime which could operate better than they do now. Chief among these is the inconsistency in where and when the Australian Government decides to apply sanctions, driven at least partly by the lack of objective and transparent criteria for when sanctions will be imposed. This results in the public perception that Australia is unwilling to apply sanctions objectively in circumstances where diplomatic considerations outweigh ethical ones, such as the case of CCP officials responsible for human rights abuses in Xinjiang.

3.66 The impact of this underutilisation of the existing sanctions framework and inconsistency in the application of sanctions is exacerbated by the fact that Australia consistently lags behind its global partners in applying thematic sanctions. The committee considers alignment with like-minded nations to be an important way for Australia to increase the effectiveness of its sanctions regime. Australia should always prioritise its own interests and make its own judgements about when sanctions should be applied, but where Australia's position clearly aligns with that of our allies, delays only serve to give targets time to move assets.

3.67 It is also the case that sanctions policy needs to be nimble and evolve as circumstances do. Targeted individuals, states and entities will continue to look for ways to evade sanctions, as can be seen with the continuing—arguably flourishing—trade of Russian oil and the multitude of creative ways Iranian

IRGC-affiliated individuals are finding to work around sanctions. As a result, Australia and its global partners have the unenviable task of ensuring that sanctions policy outpaces evasion. We must not be complacent in this. The committee is particularly concerned by the fact that Australian money continues to flow unabated, in its billions, to the Russian Government and its war efforts through the continuing import of goods made with refined Russian petroleum.

- 3.68 The committee urges the government to take decisive steps to address the issues identified in this report without further delay, and to offer clear avenues for stakeholders who engaged with this inquiry to provide input into the ongoing development of Australia's sanctions policy.

Senator Dave Sharma
Chair

Appendix 1

Submissions and additional information

Submissions

- 1 Dr Anton Moiseienko
- 2 Australian Muslim Advocacy Network
- 3 Mr Robert Heron
- 4 The Australian Wrongful and Arbitrary Detention Alliance
- 5 International Legal Scholars against Genocide
- 6 Name Withheld
- 7 The Anti-Corruption Foundation
- 8 Australia Palestine Advocacy Network
- 9 Department of Foreign Affairs and Trade
- 10 Australia/Israel & Jewish Affairs Council (AIJAC)
- 11 Dr Graham Marning
- 12 Australian Centre for International Justice
- 13 Australian Lithuanian Community in Melbourne Association Inc.
- 14 Mr Yuri Banens
- 15 Human Rights Watch
- 16 Australian Jewish Association
- 17 Australian Red Cross
- 18 Transparency International Australia
- 19 Medical Association for Prevention of War
- 20 Islamic Council of Victoria
- 21 Australian National University Law Reform and Social Justice Research Hub
- 22 Australian United Solidarity for Iran
- 23 Falun Dafa Association of Australia Inc.
- 24 Uniting Church in Australia, Synod of Victoria and Tasmania
- 25 Department of Home Affairs
- 26 Australian Federal Police
- 27 Attorney-General's Department
- 28 Embassy of the United States of America
- 29 South Asian Research and Advocacy Hub
- 30 Allens
- 31 Walk Free and International Justice Mission Australia
- 32 Myanmar Campaign Network
- 33 Joint submission of Australian Uyghur Organisations
- 34 Australia Hong Kong Link
- 35 Name Withheld
- 36 Name Withheld
- 37 Ms Hui Kian Tan
- 38 Australian Banking Association

- 39 Australia Tibet Council
- 40 NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS)
- 41 Chen Yonglin
- 42 Ms Fong Poh (Elaise)
- 43 Australian Federation of Ukrainian Organisations
- 44 Ukrainian Council of NSW
- 45 Joint submission Mr Geoffrey Robertson AO KC and Australian Centre for International Justice

Answers to questions on notice

- 1 Mr Andrew Mencinsky, President, Ukrainian Council of NSW, answers to questions on notice, 15 November 2024 (received 3 December 2024)
- 2 Mr Clancy Moore, Chief Executive Officer, Transparency International Australia, answers to questions on notice, 15 November 2024 (received 9 December 2024)
- 3 Australian Federal Police, answers to questions on notice, 15 November 2024 (received 10 January 2025)

Correspondence

- 1 Letter from Mr Josh Burns MP, chair of Parliamentary Joint Committee on Human Rights, to Senator Chandler, Chair of Foreign Affairs, Defence, and Trade References Committee.

Appendix 2

Public hearings and witnesses

Friday 15 November 2024

Committee Room 2S1

Australian Parliament House

Canberra

Dr Anton Moiseienko, via videoconference, Private capacity

Australian National University Law Reform and Social Justice Research Hub

- Mr Max Thomas, Student Researcher
- Mr Fabian Bonacci, Student Researcher
- Ms Esther Bornstein, Student Researcher
- Ms Bridie Liu, Student Researcher

Australian Centre for International Justice, via videoconference

- Ms Rawan Arraf, Principal Lawyer & Executive Director
- Ms Lara Khider, Senior Lawyer

Mr Geoffrey Robertson AO KC, via videoconference, Private capacity

Human Rights Watch, via videoconference

- Ms Daniela Gavshon, Australia Director

Ukrainian Council of NSW

- Mr Andrew Mencinsky, Vice President

Department of Foreign Affairs and Trade

- Ms Julie Heckscher, First Assistant Secretary, Regulatory and Legal Policy Division
- Ms Megan Anderson, A/g First Assistant Secretary, Europe Division
- Dr Peter Sawczak, First Assistant Secretary, Geostrategy and Partnerships Division
- Ms Robyn Mudie, First Assistant Secretary, Southeast Asia Regional and Mainland Division
- Mr Daniel Sloper, First Assistant Secretary, East Asia Division
- Mr Richard Feakes, Ambassador for Counter-Terrorism
- Ms Lynn Bell, Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking
- Mr Brendan Dowling, Ambassador for Cyber Affairs and Critical Technology
- Ms Bronte Moules, Ambassador for Human Rights

Department of Home Affairs

- Mr James Ryan, Superintendent, Customs Enforcement, Australian Border Force
- Mr Tony Smith, Assistant Commissioner Customs, Australian Border Force

Australian Federal Police

- Mr Adam Rice, Acting Assistant Commissioner Criminal Assets Confiscation, via videoconference
- Mr Anthony Maguire, Acting Commander of Cyber Crime Operations
- Mr Mark Rowswell, Acting Superintendent of Cyber Crime Operations and Partnerships

Attorney-General's Department

- Ms Nina Harvey, Assistant Secretary, Office of International Law, International Law and Human Rights Division

Myanmar Campaign Network, via videoconference

- Ms Tasneem Roc, Campaign Manager
- Professor Htwe Htwe Thein, Associate Professor, Curtin University

Australia Tibet Council

- Dr Zoe Bedford, Executive Officer, via videoconference
- Mr Sonam Gyeltshen, Digital Campaigner, via videoconference

Uniting Church in Australia, Synod of Victoria and Tasmania

- Dr Mark Zirnsak, Senior Social Justice Advocate, via videoconference

Transparency International Australia

- Mr Clancy Moore, Chief Executive Officer