

**AUSTRALIAN** ■■■■■  
■■■■■ **CENTRE**  
**FOR INTERNATIONAL**  
**JUSTICE** ■■■■■

## **Review of Australia's Autonomous Sanctions Framework**

Submission to the Department of Foreign Affairs  
and Trade - Australian Sanctions Office

**3 March 2023**

## About the Australian Centre for International Justice

The Australian Centre for International Justice (ACIJ) is an independent and not-for-profit legal centre working to develop Australia's domestic investigations and prosecutions of the international crimes offences in the Commonwealth Criminal Code. ACIJ aims to combat impunity and works with survivors of international crimes to seek justice, redress and accountability.

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# 1 Introduction

1. The Australian Centre for International Justice (**ACIJ**) welcomes the opportunity to make this submission to the Department of Foreign Affairs and Trade – Australian Sanctions Office (the **ASO**) to assist in their legislative review of the legal framework for autonomous sanctions and in response to the ASO's Issues Paper<sup>1</sup> and Terms of Reference<sup>2</sup> (**ToR**). Our submission focuses on the following issues and ToR:

- Issue 1 (ToR 1): Streamlining the legal framework
- Issue 3 (ToR 4): Permit powers
- ToR 10: Any other matters that are relevant to the efficiency and effectiveness of the autonomous sanctions framework

## About ACIJ

2. ACIJ works to ensure accountability for egregious violations of human rights which amount to the international crimes offences in the Commonwealth Criminal Code, namely: torture, war crimes, crimes against humanity and genocide.
3. ACIJ represents victims of atrocity crimes and works with victims and survivor communities and organisations in Australia and abroad. We develop legal strategies to target the perpetrators of grave crimes and hold them to account.

## Primary focus of submission

4. ACIJ's work focuses on seeking avenues for justice and accountability in relation to serious violations and serious abuses of human rights, including through advocating for targeted human rights sanctions to be imposed on relevant individuals and entities, in circumstances where criminal prosecutions are not feasible. This submission thus focuses on aspects of the

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<sup>1</sup> Department of Foreign Affairs and Trade, 'Issues Paper: Review of Australia's Autonomous Sanctions Framework', *Australian Sanctions Office* (Paper, 2023) <<https://www.dfat.gov.au/sites/default/files/issues-paper-review-of-australias-autonomous-sanctions-framework.pdf>> (**'Issues Paper'**).

<sup>2</sup> Department of Foreign Affairs and Trade, 'Terms of Reference – Review of the legal framework for autonomous sanctions', *Australian Sanctions Office* (Terms of Reference, 2023) <<https://www.dfat.gov.au/sites/default/files/terms-of-reference-review-of-the-legal-framework-for-autonomous-sanctions.pdf>>.

autonomous sanctions framework that could have a major impact on the ability to seek justice and accountability through the imposition of human rights sanctions, namely:

- the development of a clear route and process for contribution and submission of information from civil society;
  - the creation of an independent committee overseeing the sanctions regime, including through providing advice to government;
  - the clear identification of individuals or entities who have been designated under the thematic sanctions regime in any streamlining of the framework, and
  - an increase in transparency in relation to the permit regime.
5. The ASO's Issues Paper states that it 'does not include consideration of whether Australia should undertake sanctions measures in response to specific situations of international concern or develop further sanctions frameworks for specific countries or themes' and that 'submissions related to these considerations will not be considered by the department'.<sup>3</sup>
6. ACIJ has concerns that that the broad themes listed in section 3 of the *Autonomous Sanctions Act 2011* (Cth) are not sufficiently accounted for in the *Autonomous Sanctions Regulations 2011* (Cth). The limitation of the category of "serious violations or serious abuses of human rights" to only cover the right to life, right not to be subjected to torture and right not to be held in slavery and the failure to specify the regulatory regime for serious violations of international humanitarian law in section 6A of the *Autonomous Sanctions Regulations 2011* (Cth) unnecessarily limits the scope of Australia's thematic sanctions. However, noting the direction in the Issues Paper, we have not expanded on our views in this respect, and reserve the right to make submissions on this issue at a later time.
7. ACIJ welcomes any further opportunity to provide additional commentary or supplementary submissions to the ASO if it would assist in its review of the legal framework for autonomous sanctions.

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<sup>3</sup> Issues Paper, above n 1, 6 [8].

## Recommendations

This submission argues that Australia's autonomous sanctions framework should be amended to increase its overall effectiveness and ability to hold perpetrators of serious human rights violations to account. It makes the following recommendations:

### Recommendation 1

The autonomous sanctions framework should create a clear route and process for the contribution and submission of information from civil society and non-governmental organisations in relation to sanctions.

### Recommendation 2

The autonomous sanctions framework should be amended to establish a committee independent of the executive to provide monitoring, recommendations, guidance and expertise to the Minister for Foreign Affairs in sanctions decisions.

### Recommendation 3

A streamlined autonomous sanctions framework should clearly identify where an individual or entity has been sanctioned under specific thematic designations, and these themes should not be subsumed by broader categories.

### Recommendation 4

The autonomous sanctions framework should be amended to ensure greater transparency in relation to the granting of permits, including by clearly specifying the considerations that the Minister may take into account in granting a permit, and providing an avenue for prospective permits to be publicly available and open to challenge.

## 2 Improving the effectiveness of the autonomous sanctions framework

### Recommendation 1

The autonomous sanctions framework should create a clear route and process for the contribution and submission of information from civil society and non-governmental organisations in relation to sanctions.

### Recommendation 2

The autonomous sanctions framework should be amended to establish a committee independent of the executive to provide monitoring, recommendations, guidance and expertise to the Minister for Foreign Affairs in sanctions decisions.

8. It is ACIJ's view that the primary method for Australia to combat impunity for serious international crimes should be through the enforcement of the international criminal law provisions in the Commonwealth Criminal Code. Nonetheless, targeted human rights sanctions have the capacity to be an important subsidiary tool for holding human rights violators accountable.<sup>4</sup> As acknowledged in ACIJ's submissions to the inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses,<sup>5</sup> criminal investigations and prosecutions are not always feasible in all situations and in circumstances where perpetrators may otherwise enjoy impunity, 'targeted sanctions can be a powerful and transformative tool in an architecture of accountability'. This is because, as Professor Ben Saul notes, targeted sanctions 'are important in stigmatising and deterring

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<sup>4</sup> See, for example, European Parliament Resolution 2019/2580 (RSP) of 14 March 2019, on a European Human Rights Violations Sanctions Regime <[www.europarl.europa.eu/doceo/document/TA-8-2019-0215\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0215_EN.html)> [12].

<sup>5</sup> 'Submission: Australian human rights sanction regime', *Australian Centre for International Justice* (Submission, 23 March 2020) <<https://acij.org.au/submission-australian-human-rights-sanctions-regime-magnitsky/>> [33]; Australian Centre for International Justice, 'Inquiry into an Australian Human Rights Sanctions Regime', *Joint Standing Committee on Foreign Affairs, Defence and Trade* (Submission, 28 February 2020) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/MagnitskyAct/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/MagnitskyAct/Submissions)> [33].

violators, bringing pressure for accountability, expressing solidarity with victims, and reaffirming a global commitment to human rights'.<sup>6</sup>

9. On 8 December 2021, amendments to the *Autonomous Sanctions Act 2011* (Cth) commenced, paving the way for Australia's Magnitsky-style thematic sanctions regime (detailed within the *Autonomous Sanctions Regulations 2011* (Cth)) to come into effect on 21 December 2021. Despite this, Australia has only imposed targeted Magnitsky-style sanctions on a limited number of individuals and entities; most recently, the Basij Cooperative Foundation and senior law enforcement, political and military figures involved in the violent crackdown on protesters following the death of Mahsa 'Jina' Amini.<sup>7</sup>
10. While these measures are welcome, further efforts need to be made in order to ensure that Australia is consistently and robustly responding to human rights violations, particularly in our region. It is ACIJ's view that the autonomous sanctions framework should be amended to become more effective in holding human rights violators to account, by including the following two features.
11. First, Australia should create a clear process for the contribution and submission of information from survivor communities, civil society and non-governmental organisations in relation to potential sanctions. This will assist in allowing such organisations – who have access to key information about situations of rights abuses – to contribute meaningfully to decisions about who should be the subject of targeted sanctions. Such a move would be consistent with the recommendations set out in the November 2022 report 'Multilateral Magnitsky Sanctions at Five Years', which notes that 'civil society often plays a significant role in identifying situations of sanctionable abuses and recommending potential sanctions targets to jurisdiction'<sup>8</sup> and that relationships with civil society should be strengthened and governments should use civil society submissions as bases for sanctions.<sup>9</sup> The report estimates that at least

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<sup>6</sup> Ben Saul, 'Opinion: What Australia can do about Iran's killing, torture and rape of brave women', *The Sydney Morning Herald* (online, 27 November 2022) <<https://www.smh.com.au/world/middle-east/what-australia-can-do-about-iran-s-killing-torture-and-rape-of-brave-women-20221124-p5c14u.html?btis>>.

<sup>7</sup> 'Targeted sanctions in response to human rights violations in Myanmar and Iran', *Minister for Foreign Affairs* (Media Release, 1 February 2023) <<https://www.foreignminister.gov.au/minister/penny-wong/media-release/targeted-sanctions-response-human-rights-violations-myanmar-and-iran>>.

<sup>8</sup> Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and Redress, 'Multilateral Magnitsky Sanctions at Five Years', *Human Rights First* (Report, November 2022) <[https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years\\_November-2022.pdf](https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf)> 10.

<sup>9</sup> *Ibid* 8.



34% of US, 4% of UK and 13% of EU sanctions actions pursuant to Magnitsky-style regimes had a basis in civil society recommendations,<sup>10</sup> illustrating the significant impact that these recommendations can have on a jurisdiction's sanctions program.

12. Having a clear route and process for civil society contributions would also align with the practice of jurisdictions such as the US, Canada, UK and the EU, who have established pathways for receiving and considering information from civil society.<sup>11</sup> For example, section 1263(c) of the United States' *Global Magnitsky Human Rights and Accountability Act* provides that in determining whether to impose sanctions, the President shall consider 'credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights'. The UK Government has published an information note for non-government organisations and civil society in relation to submissions for targeted human rights sanctions.<sup>12</sup>
13. Secondly, the autonomous sanctions framework should be amended to allow for the establishment of a committee independent of the executive to provide monitoring, recommendations, guidance and expertise to the Minister for Foreign Affairs in sanctions decisions. This recommendation was raised by ACIJ in its submissions to the inquiry into whether Australia should examine the use of targeted sanctions.<sup>13</sup> An independent committee could enhance the transparency, accountability and consistency in Australia's consideration and imposition of targeted human rights sanctions.

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<sup>10</sup> Ibid 11.

<sup>11</sup> Ibid 10.

<sup>12</sup> 'Global Human Rights Sanctions: Information Note for NGOs and Civil Society', *Foreign and Commonwealth Office* (Guidance, 6 July 2020) <<https://www.gov.uk/government/publications/global-human-rights-sanctions-information-note-for-non-government-organisations-and-others-interested-in-human-rights/global-human-rights-sanctions-information-note-for-ngos-and-civil-society>>.

<sup>13</sup> ACIJ, above n 5, 17.

### 3 Ensuring that any streamlining of the framework will not diminish the focus on thematic sanctions

#### Recommendation 3

**A streamlined autonomous sanctions framework should clearly identify where an individual or entity has been sanctioned under specific thematic designations, and these themes should not be subsumed by broader categories.**

14. The Issues Paper notes the number of different regulatory instruments that the public must navigate in order to ensure compliance with Australian sanctions law, and raises a number of possible solutions to streamline the autonomous sanctions framework, such as by grouping together all relevant provisions unique to a particular country or thematic sanction into one instrument.<sup>14</sup>
15. ACIJ is supportive of measures taken to enhance the public's comprehension of the sanctions regime. We note that currently, Australia's thematic sanctions are contained within the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Instrument 2022* (Cth) (**the 2022 Instrument**), as amended by the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Amendment (No. 1) Instrument 2022* (Cth) and the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Amendment (No. 1) Instrument 2023* (Cth).<sup>15</sup> The persons and entities subject to thematic sanctions are listed in separate schedules within the 2022 Instrument, sorted by category according to the different themes of serious violations or serious abuses of human rights and serious corruption.
16. ACIJ believes that this current approach adequately highlights those persons and entities who have been designated due to their involvement in serious violations or serious abuses of human rights. The creation of a specific instrument relating to individual themes, such as serious violations or serious abuses of human rights, would also capture this information in a transparent and easily accessible way. ACIJ recommends that if any streamlining of the autonomous sanctions framework occurs, it is clearly identified under which specific thematic

<sup>14</sup> Issues Paper, above n 1, 15–16 [38]–[41].

<sup>15</sup> It is however noted that the current version of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Instrument 2022* (Cth) available on the [Federal Register of Legislation](#) does not appear to incorporate the required amendments.

designations a person or entity has been sanctioned, and that these themes are not subsumed by broader categories. A framework which does not highlight the reasons why an individual or entity has been sanctioned risks diminishing the stigmatisation and deterrence effect of targeted sanctions.

## 4 Transparency in the permit process

### Recommendation 4

**The autonomous sanctions framework should be amended to ensure greater transparency in relation to the granting of permits, including by clearly specifying the considerations that the Minister may take into account in granting a permit, and providing an avenue for prospective permits to be made publicly available and open to challenge.**

17. The Issues Paper discusses the Minister for Foreign Affairs' powers to grant general permits, authorising a particular class of persons to undertake a particular class of sanctioned activities. The Issues Paper notes that there may be merit in detailing the Minister's general permit granting powers in the *Autonomous Sanctions Regulations 2011* (Cth), in order to increase transparency and better inform the public about their permit options.<sup>16</sup>
18. The Minister's power to grant permits is contained in section 18 of the *Autonomous Sanctions Regulations 2011* (Cth). The power is stated broadly, containing no information about general permits or what specific considerations the Minister may take into account when deciding whether or not to grant a permit, apart from the criteria that the Minister must be satisfied that it would be in the national interest to grant a permit and that the activity is a basic expense dealing, a legally required dealing or a contractual dealing. The Department of Foreign Affairs website provides an online portal, Pax, through which applications for permits can be made, however does not appear to publish any information about who has been granted a permit and on what basis.<sup>17</sup>
19. ACIJ is supportive of amendments to the *Autonomous Sanctions Regulations 2011* (Cth) to ensure that there is transparency in the Minister's decision-making concerning the granting

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<sup>16</sup> Issues Paper, above n 1, 20 [56].

<sup>17</sup> 'Sanctions Permits', *Department of Foreign Affairs and Trade* (Web Page) <<https://www.dfat.gov.au/international-relations/security/sanctions/what-we-can-do-help/sanctions-permits>>.

of permits authorising what would otherwise constitute a breach of Australia's sanctions laws. These amendments should not, however, be limited to detailing the considerations that the Minister may consider in determining the granting of such permits. Rather, the amendments should go further, creating a mechanism by which prospective permits under consideration are made publicly available and there is an avenue for challenge available to potentially interested parties. This would allow greater oversight over the Minister's permit granting powers and ensure that Australia's autonomous sanctions framework is not subject to harmful carve-outs that could undermine the efficacy of the system as a whole.

## 5 Conclusion

20. The sunseting of the *Autonomous Sanctions Regulations 2011* (Cth) provides an important opportunity to amend Australia's autonomous sanctions framework, in order to better achieve justice and accountability for serious human rights violations.
21. These amendments should encompass providing a clear route and process for civil society contributions, establishing an independent oversight committee, streamlining the framework while maintaining a focus on thematic designations, and improving transparency in the granting of any permits.