Inquiry into Australia's Sanctions Regime

Submission to the Foreign Affairs, Defence and Trade Reference Committee

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I. Introduction

1. The authors are grateful for the opportunity to make this belated submission to the Foreign Affairs, Defence and Trade Reference Committee in relation to the inquiry into Australia's sanctions regime (**Inquiry**).

2. Geoffrey Robertson AO KC founded Doughty Street Chambers – now Europe's largest human rights practice – and is the author of "Crimes Against Humanity – The Struggle for Global Justice" (Penguin, 5th edition, 2024). He made oral submissions to the Andrews Committee and drafted the statute appended to its reports. His book "BAD PEOPLE – And How to Be Rid of Them" is the leading statement of the case for Magnitsky laws.

3. Lara Khider is a Senior Lawyer at the Australian Centre for International Justice (**ACIJ**) and leads the sanctions practice focusing on human rights designation referrals to Australian and international authorities. She represents and advises clients regarding universal jurisdiction matters under the ACIJ's mandate to develop Australia's role in investigating, prosecuting and providing remedies for grave violations of human rights. The ACIJ is also the Australian Co-Chair of the Global Magnitsky Sanctions Coalition, comprising over 300 NGOs advocating for targeted sanctions against perpetrators of human rights abuses and corruption.

4. One of the benefits of the passage of time is that it brings with it the opportunity to reflect on the successes and shortcomings of the past. Reflection often yields valuable insights that are of benefit to those who seek meaningful progress. The present Inquiry represents a timely opportunity for such reflection, marking nearly three years since Australia enacted Magnitsky-style sanctions laws and at a time when implementation of these sanctions by the Department of Foreign Affairs and Trade (**DFAT**) can be seen as unsatisfactory, both philosophically and practically, and the expectations of most who made submissions to the Joint Standing Committee on Foreign Affairs, Defence and Trade (the **Joint Committee**) in 2020 have not been fulfilled.

5. The effectiveness of the sanctions regime appears to be the primary theme of the Terms of Reference defining the parameters of the present Inquiry. 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.

6. At the time Magnitsky laws were being contemplated, the Joint Committee published its report on whether Australia should join the global Magnitsky

movement in using targeted sanctions to address human rights abuses (**Magnitsky Report**). In that report, the Joint Committee aptly observed that "comprehensive safeguards, and an individualised approach to implementing sanctions, will be vital to the success of a targeted sanctions regime in Australia".[1] The Joint Committee went on to acknowledge "the importance of upholding human rights as fundamental to any targeted sanctions regime".[2] Yet, consideration of comprehensive safeguards—or at least, adequate safeguards—does not feature as an express Term of Reference, despite being earlier recognised as a critical element for the success of the regime currently subject to review.

7. In any case, it is respectfully submitted that the above issue and others that will be raised in this submission constitute "other matters that are relevant to the effectiveness of Australia's sanctions framework" as outlined in the Terms of Reference.

8. The most fundamental of these issues is the purpose of Magnitsky laws, which is to provide objectively decided sanctions against perpetrators of human rights abuses. DFAT does not understand this: it continues to regard them as "tools of Australian foreign policy" – to be imposed (or more commonly, not imposed) for political reasons. This, in our opinion, is the key reason why, after three years, they are not working well – or, mostly, not working at all. No human rights expertise is sought or deployed in their implementation, and the basic recommendation to this effect by the Joint Committee has been ignored. Another issue of consequence in contravention of the Joint Committee recommendation is the lack of access, by NGOs or wronged individuals, to the decision-making process, which is not transparent or amenable to evidence or submissions. There are other procedural issues of significance, such as the lack of any standard of proof for determinations and the absence of any means to submit them to a merits review. These are the matters we deal with in this submission.

9. This submission will also consider Australia's use of Magnitsky-style sanctions, and particularly reflect upon the Government's apparent lack of appetite to act on credible information concerning human rights abuses and corruption that is endemic in the broader Asia-Pacific region. The view held by DFAT that "our sanctions are uniquely Australian in defending and advancing our interests"[3] is a particularly significant letdown for proponents of human rights as it appears to underscore an approach that prioritises foreign policy over universal principles of justice and accountability.

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[1] Joint Standard Committee on Foreign Affairs, 'Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?' (December 2020) [4.50] ('Magnitsky Report').
[2] Ibid, [4.51].
[3] Department of Foreign Affairs and Trade, Submission 9, Inquiry into Australia's Sanctions Regime (2024).

10. In a world where the cost of corruption is estimated to exceed $2.6 trillion annually, [4] where officials of kleptocratic regimes continue to exploit and misappropriate public resources for private gain, where systematic human rights abuses persist under repressive regimes and where the basic democratic freedoms we enjoy in this country remain a distant reality for others, DFAT should avoid promoting sentiments of a kind that expose it to criticism for engaging in the selective application of human rights standards based on political interests of the government at the time.

II. Magnitsky law serves human rights, not government policy

11. Magnitsky laws have, from their inception, been envisaged as a means of deterring human rights abuses by punishing (sanctioning) abusers. They derive from the fatal treatment of an innocent man, Sergei Magnitsky—falsely accused, wrongfully arrested and badly beaten—in a Russian prison. The first to be sanctioned were crooked police officers, lickspittle judges and unethical doctors involved in his maltreatment. People in this class—"the train drivers to Auschwitz"—are not as individuals the subject of government policy, but they deserve sanctioning by the Australian government to vindicate the rule of law and human rights. There can be no basis for a requirement that the sanction is in line with government policy (although normally it will be) and there can be no basis for declining to sanction when it is not. The determination must be objective, and based on such evidence as is available, applying the civil "balance of probabilities" standard.

12. The Joint Committee recognised the importance of replacing the previous system under the *Autonomous Sanctions Act 2011* (Cth), which gave the Minister for Foreign Affairs (**Minister**) an absolute discretion to designate people without proof and gave them no chance to contest the merits of the designation, and was unclear about the criteria to be used in sanctioning. There was no transparency and hence no confidence that human rights abuses would be kept out of Australia. Instead, the Joint Committee recommended a new system under which the designation would still be made by the Minister but in consultation with the Attorney-General, and where civil society groups and diaspora groups would be entitled to propose nominations to an advisory body. This could include a panel chaired by a judge with human rights experts as members. It would make recommendations to the Minister, who need not accept them but must at least take them into account.[5] The burden of proof by the advisory body would be the civil standard—the balance of probabilities—and fairness would be achieved by putting proposed targets on a "watchlist" from which they could apply to be

[4] United Nations, 'Cost of Corruption at Least 5 Per Cent of Global Gross Domestic Product' (Press Release, 5 December 2018).
[5] Magnitsky Report, Recommendations 12-14.

removed.[6] In other words, a new system open to the public, based on human rights standards and objectives, and not the secret system based entirely on government wishes.

13. DFAT made its position clear in its response to the Joint Committee's Magnitsky Report, which rejected any input from an independent body of human rights experts. In that response it stated, no less than nine times in a dozen pages that Australia's autonomous sanctions is a foreign policy tool and "*used in pursuit of foreign policy goals.*"[7]

14. These Statements were criticised by Geoffrey Robertson AO KC in a Sydney Morning Herald article on 8 October 2021:

> "The government does not understand that sanctions will only be credible if they are just and backed by the objective opinion of experts on human rights – not that of politicians or ministers. But Australian sanctions will be based on foreign policy goals (such as supporting the US right or wrong) or on opprobrium whipped up by the media. That DFAT repeatedly describes the new law as a "foreign-policy tool", never as an instrument for the advancement of human rights, is telling."[8]

15. Incredibly, DFAT's submissions to this committee, in the section headed "Autonomous Sanctions – A Tool of Statecraft" make no mention at all of human rights as a motivating factor in applying sanctions. Magnitsky sanctions are justice measures, based on international human rights, and their implementation should not be affected by foreign policy.

16. To date, DFAT has a woeful record of Magnitsky implementation, even in cases where Australians themselves have been oppressed by foreign powers. Incredibly no action was taken to sanction the Iranian judge who sentenced the innocent academic Kylie Moore-Gilbert to 10 years imprisonment (she served 6), and is notorious for passing death sentences – the failure to sanction him is inexplicable. The filmmaker James Ricketson was wrongfully imprisoned in Vietnam, but no sanctions resulted. The ABC "Four Corners" programme exposed politicians in the Solomon Islands who had accepted bribes from China, but again no follow-up. Nothing has been heard of sanctions for the intimidation of Chinese residents of Australia, of which much evidence was submitted to the Joint Committee. Indeed, the Chinese seem immune from Magnitsky sanctions (no doubt a foreign policy decision) as do Israeli government officials, including the two responsible for the drone targeting and killing of Zomi Francom who were instead allowed to quietly

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[6] Ibid, [3.10]. See also Recommendation 22.
[7] See Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade (9 August 2021).
[8] Geoffrey Robertson AO KC, 'Australia's sanction laws fall short of global moves to protect human rights' (8 October 2021) Sydney Morning Herald.

retire from the Israeli Defense Force. These decisions are examples of how foreign policy reasons may trump human rights considerations. Magnitsky sanctions will never be effective, or inspire public confidence, unless foreign policy considerations cease to be the driving force behind designations and unless human rights expertise by an independent body is sought and acted upon.

III. Collaboration with civil society

17. It is essential, if Magnitsky sanctions are to have effect and enjoy public confidence, that civil society (i.e., NGOs, diaspora groups and associations representing professionals such as lawyers and doctors) has some initial access to the process – e.g., by submitting nominations backed by evidence and arguments, in a procedure that is generally transparent (although provision should be made for confidential applications when necessary). The final decision must rest with the Minister, but there must be at least some explanation afforded when the requests are rejected.

18. The ACIJ's submission on the subject indicates that absent legislative reform enabling direct input from NGOs, there must be a change in the present culture that lacks a critical foundation of meaningful collaboration and calls for, at the minimum, the provision of specific feedback on designation referrals. As it currently stands, it is not apparent that such referrals have been considered at all.

19. Again, we have the problem that DFAT is an organisation without expertise in human rights, and its information from diplomatic sources may not be complete or correct. In many States (including Ukraine) it has no consular presence at all, and the quick rotation of diplomats means that in some cases "in depth" knowledge is lacking. Engagement in the Magnitsky process from human rights groups with better contacts should be welcome, but there is no sign of this. DFAT told the Joint Committee that it has a legal division with only 13 staff involved "in some measure" in sanctions policy: plainly, this is inadequate. In any event, there must be a procedure for evaluating submissions from NGOs (sometimes at public hearings) and for providing explanations if they are rejected.

IV. The importance of due process and procedural safeguards to protect fundamental human rights

20. It is well known that due process and procedural safeguards are not mere legal technicalities, but hallmarks of a society governed by the rule of law. They are fundamental to the protection of individuals' rights and should be afforded to anyone who stands to be affected by a judicial or administrative decision. Inadequate safeguards could render the sanctions regime incompatible with international human rights law, which requires any limitation on rights be

reasonable, necessary and proportionate in seeking to achieve a legitimate objective.

21. The imposition of sanctions can have potentially severe impacts on those they target, with the possibility of infringing rights in relation to privacy, freedom of movement and respect for the family, amongst others.[9] It has been recognised that the earlier Act was deficient in human rights protection, and a number of significant recommendations to remedy this were made by the Joint Committee in its Magnitsky Report including the call for a standard of proof, the provision of a statement of reasons and the establishment of an independent advisory body. None were adopted by the Australian Government in the amendments that introduced Magnitsky laws,[10] as a result of opposition from DFAT.

22. It is striking that concerns regarding the lack of such safeguards within the autonomous regime were voiced well before the consideration of Magnitsky laws in 2020, and unfortunately, remain unaddressed by the Government. Indeed, the Parliamentary Joint Committee on Human Rights (**PJCHR**) spoke of these issues as early as 2013. In its Tenth Report published that year, the PJCHR expressed "that subjecting a person to the [autonomous sanctions] regime necessarily involves a limitation on their right to privacy, their right to freedom of movement and their right to a fair hearing".[11] It went on to state "in seeking to punish an individual, it is the committee's view, that international human rights law requires that certain safeguards be made available".[12]

23. Not long after, in its Twenty-Eighth Report of 2015, the PJCHR undertook a detailed review of the compatibility of the (prior) sanctions regime with the human rights of those subject to designations. It found that while seeking to "apply pressure to regimes and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law",[13] the sanctions regime "may not be regarded as proportionate to the stated objective".[14] The PJCHR subsequently found that, "[i]n particular, the committee is concerned that there may not be effective safeguards or controls over the sanctions regimes".[15]

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[9] *International Covenant on Civil and Political Rights*, Articles 17, 23 and 12.
[10] Magnitsky Report, Recommendations 12-14, 22, 23.
[11] Parliamentary Joint Committee on Human Rights, 'Tenth Report of 2013' (26 June 2013) [3.14].
[12] Ibid, [3.15].
[13] Parliamentary Joint Committee on Human Rights, 'Twenty-Eighth Report of the 44th Parliament' (17 September 2015) [1.102] ('Twenty-Eighth Report').
[14] Ibid.
[15] Ibid.

24. The PJCHR enumerated several deficiencies of the regime, including:

    a. the designation or declaration under the autonomous sanctions regime only requires the Minister be 'satisfied' of a number of broadly defined matters;

    b. there is no provision for merits review of the Minister's decision; and

    c. there is no requirement that reasons be made available to the target as to why they have been designated or declared.[16]

25. This submission calls for well overdue amendments to the autonomous sanctions regime to ensure it is truly compliant with international human rights law. To otherwise persist in overlooking the glaring absence of procedural safeguards under the guise of well-worn but mistaken rhetoric—that targeted sanctions are merely a creature of foreign policy and not an instrument that both *advances* and *affects* human rights—only serves to erode the regime's own credibility.

A. Lack of standard of proof

26. The Minister has near-unfettered discretion to designate and declare individuals. While decisions under the regime require the Minister to obtain the written agreement of the Attorney-General and consult with other Ministers,[17] the rationale for this was not to oversee the adequacy of evidence but rather, to ensure that decisions consistently aligned with foreign policy and other national interest considerations.[18]

27. The imposition of an evidential threshold is not an uncommon feature in the sanctions laws of other jurisdictions. In the United States, for example, the threshold is one of "credible evidence",[19] while in the United Kingdom, "reasonable grounds to suspect" is adopted. [20] These thresholds are lower than the standard of the "balance of probabilities" recommended by the Joint Committee and by the authors, which would require the Minister be satisfied that there is a greater than fifty per cent chance that the evidence demonstrates satisfaction of the listing criteria. The authors maintain that the balance of probabilities - i.e. that "it is more likely than not" that the suspect has been involved in human rights abuses – is an appropriate test for identifying the point at which action should be taken.

28. The impact of sanctions on the targeted individual—whether through the freezing of their assets, travel bans or significant reputational damage—can cause hardship. This, of course, is intended to serve as the catalyst for behavioural change with

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[16] Ibid.
[17] *Autonomous Sanctions Act 2011* (Cth), section 10(4).
[18] Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Bill 2021, Revised Explanatory Memorandum, [10].
[19] *Global Magnitsky Act Human Rights Accountability Act 2016* (US), § 10102(a).
[20] *Sanctions and Anti-Money Laundering Act 2018* (UK), ss 11(2)-(2A), 12(5)(a).

the aim of promoting accountability among those who undermine international norms and human rights standards—an undeniably meritorious goal, which can be justified as outweighing individual unfairness.

29. It should however be borne in mind that such measures are imposed in the absence of an arbiter of fact. It must also be recalled that the justification for some sanctions, for example, those imposed for serious violations of human rights or serious corruption, are fundamentally predicated on criminal wrongdoing. This is not to say that the imposition of sanctions in such instances implicate the targeted individual as necessarily *guilty* of a crime, though one would expect that such a decision rests on at least a belief—to a presently non-existing threshold—that the target directly or indirectly engaged in the sanctionable conduct. Such a highly intrusive tool should not be wielded on the basis of mere suspicion or of media demonisation.

30. The insertion of a standard of proof would demystify the currently opaque decision-making process and provide long overdue transparency to the regime. It would further provide public assurance that the same standard is applied by the Minister in satisfaction of the listing criteria. The need for an evidential threshold is ever more apparent as States look to expand the reach of sanctions laws to confer powers of confiscation and repurposing of assets to the executive. Laws enabling such powers, in the specific context of assets frozen under sanctions, have already been enacted by Canada in 2022 and the UK in 2024 (in relation to interest on Russian deposits) and seem to be a focus of the present Inquiry.[21]

B. Lack of access to merits review

31. The Australian Government has persistently ignored calls for decisions made by the Minister under the autonomous sanctions regime to be subject to merits review. It must be recognised that challenges on this basis in other sanctions regimes are relatively rare, however a few have been successful and have exposed unfairness and slipshod inferences. Although potential complainants will be foreigners with no right to come to Australia or deposit money in its banks, the fact that they are effectively defamed by the government and may suffer pecuniary damage should give them, in fairness, an opportunity to have the decision reversed if it is based on no or insufficient evidence.

32. While there are grounds in judicial review proceedings for challenging a Magnitsky listing, e.g., as irrational or made in bad faith, judicial review has been confined to procedural errors. In any event, we see no harm in allowing persons subject to Magnitsky determinations to contest that determination under a merits review process: they would have to prove their innocence, or (it might be made the test) establish that the determination was made without sufficient evidence. There

[21] *Special Economic Measures Act* S.C 1992 c.17, s 5(1) (Canada), as amended by Bill C-19.

might reasonably be further conditions placed on an application for merits review, e.g. that applicants show that they have suffered substantial harm or that such harm has arisen primarily from the Australian sanctions (and not from prior sanctions elsewhere). Otherwise, they are entitled in justice to redress.

33. We set out below some of our concerns that judicial review in Australia has been constrained to show undue deference to the executive. This may in part be due to the fact that unlike all other Magnitsky jurisdictions, Australia has no bill or charter of human rights – a starting point, for example, in many UK judicial reviews. We are firmly of the opinion that Australian law, and not only in the Magnitsky context, would benefit from such a reform. However, and for the present, some merits review could be achieved by amending the *Autonomous Sanctions Act 2011* (Cth) to permit review of ministerial discretion to sanction on the grounds e.g., of unreasonableness or disproportionately or insufficient evidence.

34. In opposing merits review, the Joint Committee stated that "sanctions are not a criminal process and do not affect a person's rights".[22] However, the imposition of sanctions fundamentally infringes upon a spectrum of rights protected under international human rights law. The Joint Committee continued its justification by asserting that "its proposals for an independent advisory body prior to the decision, and for regular reporting to Parliament, [would] provide sufficient oversight".[23] It must be recalled that neither of these recommendations were implemented by the Government. What's more, the position of the Joint Committee stands in stark contrast to that of the PJCHR, which has previously expressed concerns on the inadequacy of judicial review in upholding the right to a fair hearing under Article 14 of the International Covenant on Civil and Political Rights (**ICCPR**).[24]

35. The Government may not consider it appropriate for an independent tribunal to be entitled to substitute the executive's assessment of the policy reasons that were relied upon for the decision to designate or declare a target. This would be implicit in a merits review as it requires the reviewing body to "stand in the shoes" of the primary decision-maker and make a fresh decision on the evidence available to it. In this sense, the objective of merits review is to ensure that the "correct or preferable" decision is made,[25] allowing review of the findings of fact and the exercise of any discretion conferred upon the decision-maker.

36. This problem could be avoided by making the review decision advisory rather than binding, so the Government would not be obliged to cancel the listing. This is used e.g., under the UK Human Rights Act, where courts may issue a declaration that

[22] Magnitsky Report, [5.103].
[23] Ibid.
[24] Twenty-Eighth Report, [1.122].
[25] *Re Becker and Minister for Immigration and Ethnic Affairs* (1977) 15 ALR 696, 699-700 (Brennan J). The phrase 'correct or preferable' decision was later endorsed by the Federal Court in *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, 589.

government action is contrary to the act but cannot strike it down. It would leave the Minister open to criticism if she did not withdraw the listing, but the decision would be hers alone.

37. While judicial review of the Minister's decisions is certainly available, it may be insufficient as the only external review mechanism in the framework. As mentioned, judicial review serves a function that has been limited to assessing the legality of a decision. In a well-known passage on such limits, Brennan J in *Attorney-General (NSW) v Quin* observed that: "… the scope of judicial review must be defined not in terms of the protection of individual interests, but in terms of the extent of power and the legality of its exercise".[26] It is a distinct avenue that cannot "trespass into the forbidden field of review on the merits".[27]

38. Certain grounds of judicial review such as where the decision-maker has improperly exercised their power by taking an irrelevant consideration into account or failing to take a relevant consideration into account,[28] appear to approach merits review however in practice, this is not so, with courts exercising caution to prevent encroachment on executive functions. This ground has been interpreted narrowly to considerations that the decision-maker is required, by law, to take into account for there to be a valid exercise of the power to decide.[29] On this basis, where relevant considerations are *not* specified by a legislative instrument, as can be said in the context of sanctions, the jurisprudence has observed that:

> "it is largely for the decision-maker, in the light of matters placed before him […] to determine which matters he regards as relevant and the comparative importance to be accorded to matters which he so regards".[30]

39. In the context of the autonomous sanctions regime, the effectiveness of judicial review is further diminished by the near-unfettered ministerial discretion, lack of a standard of proof and the absence of sufficiently defined matters against which the Minister's decision could conceivably be scrutinised. In its Twenty-Eighth Report, the PJCHR identified that judicial review may not be sufficient to comply with the right to a fair hearing under Article 14 of the ICCPR as it is not concerned with the substantive merits of the case where issues of fact, as in the case of sanctions, are the subject of dispute.[31]

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[26] (1990) 170 CLR 1 at 35-36.
[27] *Minister for Immigration and Ethnic Affairs v. Guo* (1997) 191 CLR 559 at 577.
[28] *Administrative Decisions (Judicial Review) Act 1977* (Cth), ss 5(1)(e), 5(2)(a)-(b).
[29] *Sean Investments v MacKeller* (1981) 38 ALR 363 at 375 (Dean J).
[30] (1981) 38 ALR 363 at 375.
[31] Twenty-Eighth Report, [1.122].

C. Lack of statement of reasons to designated persons

40. Under the *Autonomous Sanctions Act 2011* (Cth) and *Autonomous Sanctions Regulations 2011* (Cth), the Minister is not required to provide the target a statement of reasons for their designation. There does not appear to be a reasonable justification for this omission, nor would one ordinarily expect the provision of reasons be controversial, particularly if presumed that some reasons may be subject to exclusion where national security requires.

41. In the UK, the requirement to provide a statement of reasons to the target is mandated by statute. In considering the due process afforded to designated persons, the UK Joint Committee on Human Rights in its review of the *Sanctions and Anti-Money Laundering Bill 2018* found that in order to comply with the right to a fair trial, the statement of reasons "should be sufficient to ensure persons challenging their designation are given sufficient information to enable them to refute, as far as possible, the case against them".[32] The mandatory obligation is expressed under UK's sanction regime as requiring the Minister to "without delay" take such steps as are reasonably practicable to inform the person of their designation, including by the provision of a statement of reasons.[33] In their Magnitsky Report, the Joint Committee referred to the potential legislative wording of the provision as drafted by Mr Geoffrey Robertson AO KC, in endorsing the requirement for such a statement. The Committee may wish to revisit this wording where they seek to endorse the proposal for a requirement to provide a statement of reasons.

42. In the absence of a statement of reasons, a designated person would find little to no value in reviewing the Explanatory Statement accompanying the amending instrument, as these are drafted in markedly broad terms. Beyond identifying which thematic regime the Minister has relied upon for the designation, the explanations provided, if at all, leave much to be desired. These typically consist of brief statements, such as designations for "the attempted assassination of Alexei Navalny by poisoning in 2020".[34] While the Federal Court has observed that "the Explanatory Statement does not purport to be a statement of reasons",[35] it would naturally assume a more significant role than ordinarily intended in light of the absence of a requirement to provide reasons to the target upon their designation.

43. It is worthy to note that in other jurisdictions, such as the US, reasonably detailed reasons for designations are publicly available via websites of the Department of

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[32] Joint Committee on Human Rights, 'Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill' (Third Report of Session 2017–19) [62].
[33] *Sanctions and Anti-Money Laundering Act 2018* (UK) s 11(7)-(8).
[34] Explanatory Memorandum, Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Amendment (No. 1) Instrument 2022.
[35] *Deripaska v Minister for Foreign Affairs* [2024] FCA 62, [133] (Kennett J).

State or the Office of Foreign Assets Control. By way of example, Yinon Levi was designated by the US on 1 February 2024, with the following reasons disclosed:

> "YINON LEVI (LEVI) led a group of settlers who engaged in actions creating an atmosphere of fear in the West Bank. He regularly led groups of settlers from the Meitarim Farm outpost that assaulted Palestinian and Bedouin civilians, threatened them with additional violence if they did not leave their homes, burned their fields, and destroyed their property. LEVI and other settlers at Meitarim Farm have repeatedly attacked multiple communities within the West Bank."[36]

44. Australia also sanctioned Levi, amongst other Israeli settlers for violence in the illegally occupied West Bank, on 25 July 2024 with the Explanatory Statement merely providing that: "the persons are all Israeli settlers involved in the ill-treatment of Palestinians in the West Bank".[37]

45. The Government should revisit this issue with a view to amending the framework to mandate the provision of a statement of reasons to a person designated or declared. Such reasons should also be made public for the benefit of transparency and affected communities.

V. Conclusion

46. We consider that the Magnitsky law has not been deployed effectively during the first three years of its operation, when sanctions have been confined to Russians, Iranians and to a handful of settlers (only) in Israel. The main reason for its ineffectiveness is that it is characterised by DFAT as no more than a tool of foreign policy, and not as a means of punishing and deterring human rights abuses and providing a measure of justice for victims. There must be a system under which victims, NGOs, diaspora groups and other interested parties can seek the listing of individuals, supply evidence and arguments and have that material considered and be given the reasons for any rejection. The process must involve human rights experts independent of government in an advisory capacity, not derogating from the ultimate power of a government minister to make (or not to make) the designation. The process must be recognised as quasi-judicial, with a standard and burden of proof; there must be a reasoned decision expressed less elliptically than at present, and targets must be provided with an avenue to seek redress if they can prove they have been wrongly listed.

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[36] US Department of State, 'Announcement of Further Measures to Promote Peace, Security, and Stability in the West Bank' (1 February 2024).

[37] Explanatory Memorandum, Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Amendment (No. 4) Instrument 2024.