

# MAGNITSKY SANCTIONS

SHOULD AUSTRALIA LEGISLATE FOR  
TARGETED SANCTIONS?

A summary of issues surrounding the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade - Human Rights Sub-Committee's: 'Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses' [or Magnitsky legislation]

Based on the full report:  
'Sanctioned Targets: The Australian Magnitsky Inquiry'

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# THE MAGNITSKY ACT

## WHAT ARE 'TARGETED SANCTIONS'?

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Australia is currently considering following the lead of the US, UK and Canada to enact legislation enabling 'targeted sanctions', or 'Magnitsky sanctions'. Targeted sanctions impose financial restrictions or travel bans on specific individuals or companies, intending to minimise humanitarian impact on ordinary citizens. Magnitsky sanctions were first enacted in the United States in 2012 and there is currently strong international pressure for Australia to follow suit. In December 2019, the Department of Foreign Affairs, Defence and Trade - Sub-Committee on Human Rights announced an 'Inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses', or 'Magnitsky sanctions'.

## THE MAGNITSKY ORIGIN STORY

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'Magnitsky' sanctions are named after Sergei Magnitsky, who along with his employer Bill Browder, allegedly exposed a massive tax fraud involving high-ranking members of the Russian government, and in retaliation Magnitsky was imprisoned, tortured and killed by Russian officials. Browder maintains he was so incensed over Magnitsky's wrongful death, he coordinated with US legislators to initiate the Magnitsky Act, which enables targeted sanctions against human rights abusers.

However, investigative journalism, forensic analysis and court rulings have proven Browder's account of the Magnitsky story to be utterly fraudulent, and Browder himself involved in large scale tax evasion.<sup>1</sup> The Magnitsky story was used by Browder to deflect from his crimes, and co-opted by legislators as a convenient premise for a foreign policy tool enabling Anglo-American escalation against Russia.

Independent journalist Lucy Komisar, an award-winning veteran of exposing financial corruption, has spent nearly a decade investigating the Browder/Magnitsky story. Komisar's submission to the Australian government's 'Magnitsky Inquiry', exposed the Browder narrative as unequivocally fraudulent, and uncovered the premise of the ensuing Magnitsky legislation: "The Magnitsky Act was political cover for a trade bill... the basic assertions of the U.S. Magnitsky Act are false, created by William Browder to cover up his financial corruption and used by its sponsors in the U.S. Congress for their own goals, to support a foreign policy hostile to Russia."<sup>2</sup>



Magnitsky sanctions proponent Bill Browder

## MAGNITSKY ACT - A TRADE BILL

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Russia became a member of the World Trade Organisation in 2012. This put the US in an awkward position - legislation called the Jackson-Vanik Amendment, a Cold War-era relic which leveraged conditional trade terms to coerce desired behaviour from the Soviet Union, would no longer be compatible under WTO agreements, which stipulate member states cannot discriminate against each other. Unwilling to give up this political advantage, Jackson-Vanik was effectively replaced with the Magnitsky Act. Sanctions and trade restrictions could now be applied outside of the WTO's rules, under virtuous branding of securing 'human rights' justice.

Hillary Evans, writing for the *Maryland Journal of International Law*: "The Magnitsky Act makes it clear that one of its main purposes... is to ensure that Russia complies with its obligations under the WTO. The first sentence of the Act declares an important purpose to be to "require reports on the compliance of the Russian Federation with its obligations as a member of the World Trade Organization... the Magnitsky Act ensures that the process of a WTO challenge against Russia is already set in motion as soon as the Trade Representative files a report."<sup>3</sup>

# SANCTIONS & HUMAN RIGHTS

## DO TARGETED SANCTIONS WORK?

In a word, no. ‘Magnitsky sanctions’ are new branding for an existing concept. Targeted sanctions were developed in the 1990s as a politically attractive solution to the humanitarian failure of conventional sanctions. In 2016, the Targeted Sanctions Consortium (TSC), a collaboration of over 50 academics and policy experts, published the first comprehensive analysis of United Nations sanctions implemented between 1991 - 2013.<sup>4</sup> The TSC concluded UN targeted sanctions were effective *only 22% of the time*. In addition, the TSC identified unintended consequences occurred in 94% of all case episodes. The most frequent unidentified consequence was increased corruption and criminality (58% of cases), followed by negative humanitarian consequences (44%), strengthening of authoritarian rule (35%) and diversion of resources (34%). A number of individuals sanctioned by the UN successfully challenged the listings in international courts - because the targeted sanctions did not respect procedural fundamental human rights - the rights of defence and due process.<sup>5</sup> The TSC identified a number of sanctions evasion techniques - disguising identity or using front companies - as individuals and companies will try to evade sanctions, as they would evade a domestic legal system. Unfortunately, leading global researchers on targeted sanctions such as the Targeted Sanctions Consortium, the Cato Institute or the United Nations, did not testify or submit to the Inquiry; it is unclear if their contribution was invited by the Committee.

## DO TARGETED SANCTIONS IMPACT HUMAN RIGHTS?

The TSC identified targeted sanctions resulted in unintended negative humanitarian consequences in 44% of cases. A 2019 report published by the International Peace Institute found; “Those implementing the sanctions often lack sufficient understanding of—or are not willing to acknowledge—how sanctions regimes harm humanitarian action, in particular given the shift to more targeted sanctions...”<sup>6</sup> Smaller NGOs (non-governmental organisations) are most affected, as they “do not have the same resources and capacity as UN agencies or bigger NGOs, particularly local NGOs that often cover the last mile in delivering aid in difficult contexts.” Sanctions can block supply of humanitarian goods. De-risking by banks, insurance companies, online payment or donation services (ie Paypal) have “a direct impact on their ability to operate, causing programs to be delayed, scaled back, or even closed... humanitarian organizations have been unable to pay their vendors and local implementation partners, creating security risks for staff on the ground.”

## THE ROLE OF NGOs

Non-governmental organisations (NGOs) are expected to provide a leading or legislated role in the Magnitsky sanctions process, including providing evidence to determine sanctions targets. Unfortunately, the sector is dominated by the ‘non-profit industrial complex’: powerful NGOs well-funded by (often undeclared) vested interests. Investigative journalists have exposed leading global ‘human rights’ organisations, including witnesses and submitters to the Australian Magnitsky Inquiry, are corrupt and politicised.<sup>7</sup> Ignoring human rights issues which do not contribute to a pre-conceived agenda, these organisations have been implicated in direct facilitation of regime change, support of military coups, recommending devastating economic sanctions, collaboration with the US-UK intelligence apparatus, and subversive promotion of corporate interests.<sup>8,9</sup> These NGOs serve in ‘psychological warfare’ campaigns - “systematically omit[ting] sources and facts that contradict or exclude their preferred finding... [They] pervert due process in institutions like the UN, posing as civil society but in fact serving Western elite corporate imperatives.”...<sup>10,11</sup> ‘Humanitarian’ organisations can provide virtuous branding for politically-motivated undertakings.

## HUMAN RIGHTS IN AUSTRALIA

26% of submissions to the Australian Magnitsky Inquiry referenced Australia’s human rights obligations or celebrated Australia as a ‘global human rights leader’, saying advocating for human rights is in our “national psyche”. However, there is no reference to the CIVICUS Monitor’s 2019 downgrading of Australia’s democracy from ‘open’ to ‘narrowed’, *the very day* the Magnitsky Inquiry was announced. Australian Lawyers for Human Rights’ submission makes the Inquiry’s only reference to Australia’s lack of human rights protections, saying “if Australia is to properly promote human rights law internationally and protect persons within Australia, it must remedy its position as the only developed Western liberal democracy without a federal Human Rights Act or Bill of Rights.”<sup>12</sup>

# RISKS OF MAGNITSKY SANCTIONS

## AUSTRALIA'S NEW COLD WAR?

Thirty-nine percent of Australian Magnitsky Inquiry submissions want international cooperation of “Western allies”: “It is time for the democratic countries to reunite to get the world’s order back” in the “global fight to protect human rights.” Many submissions expressed anti-China (38%) or anti-Russia (16%) sentiments, including identifying these countries as a ‘target’ of Magnitsky legislation. Cold War attitudes abound - alleged “killings by the Kremlin”, Chinese ‘gulags’, “rise of Chinese Nazism” (disregarding history- China fought with Allied Powers against the Nazis in WWII), “Chinazism” is the “hybrid of Nazism and the dark side of the Chinese Cultural Revolution.” Are submitters truly concerned about human rights, or is this the product of propaganda-driven Russia/Chinaphobia? Only 21% of submissions acknowledged due process implications of Magnitsky sanctions - the human right to legal defence and procedural safeguards. Some submissions made hostile recommendations which directly contravene human rights law. The undercurrents of arguably self-righteous grandiosity and hostility toward an appointed collective enemy, are dangerously reminiscent of the 2003 call for a “coalition of the willing” - an illegal allied invasion over fabricated WMDs, resulting in the death of a million Iraqi people. Troublingly, human rights lawyer Amal Clooney’s Inquiry testimony refers to a “coalition of the committed.” Inquiry witnesses recommend Magnitsky sanctions as a workaround of the UN Human Rights Council and the International Criminal Court, organisations they say are ineffective, recommending Magnitsky sanctions as “a kind of plan B for the global justice movement.” There is no acknowledgement of the danger in delegitimising and bypassing international courts responsible for investigating and prosecuting the gravest crimes against humanity.

## CASE STUDY: MAGNITSKY SANCTIONS RISKS

Targeted sanctions are a ‘foreign policy tool’ and unavoidably political in nature, an interventionist workaround intended to circumvent domestic governments and rule of law, potentially undermining sovereign nations. In *‘Russian Roulette: The Magnitsky Act’s Implications for U.S.-Russian Relations in an Increasingly Precarious Legislative Game’*, author Hillary Evans observes the 2012 US Magnitsky Act: “creates the impression that not only does the United States flout the dispute settlement rules of the WTO, it also takes on the responsibilities of an international organization by meddling in the business of other countries at the expense of violating its own international obligations.”<sup>3</sup> Evans observes the Magnitsky Act has not achieved its purported objective of obtaining justice for human rights violations, instead the legislation has been “more detrimental than beneficial to American foreign relations... the resentment incurred could undermine U.S.-Russian relations for years to come.” The Magnitsky Act produced adversarial, retaliatory responses from the Russian government, which did not take kindly to US interference with domestic rule of law: “[inflaming] tensions between two governments with an already unstable relationship, provoking a back- and-forth legislative game to the detriment of both countries... negotiations, agreements and treaties could be impeded, if not halted altogether”. Of deep concern, Evans notes prior cooperative agreements between the US & Russia to each reduce their nuclear weapons may be negatively impacted, a potentially catastrophic unintended consequence of Magnitsky sanctions. In 2019, the US announced withdrawal from nuclear sanctions treaties with Russia. It is now expected that the US will not renew a major Russia-US nuclear arms treaty in 2021, a treaty described as “the last remaining arms control agreement constraining the arsenals of the two major nuclear weapons powers,” the United States and Russia.”<sup>14</sup>

## CONCLUSION

Leading international research indicates that targeted sanctions, or Magnitsky sanctions, are largely ineffective and are at significant risk of potentially catastrophic unintended consequences. Targeted sanctions cause undeniable collateral damage to human rights and humanitarian work. Furthermore, the entire premise of the Magnitsky ‘human rights’ narrative is based on a fraudulent story. Magnitsky-architect, Bill Browder, has repeated these fabrications in his testimony to Australian legislators.<sup>1</sup> Magnitsky sanctions are a coercive foreign policy tool, a weaponisation of fundamental human rights. Magnitsky sanctions are an interventionist workaround which bypasses international courts, undermining sovereign nations and domestic rule of law. The inherent risks and unintended consequences outweigh any benefit (demonstrably minimal) to Australia’s commitment to uphold human rights. Australia’s human rights obligations may be better supported by negotiation and diplomacy, treaties, establishing our own Bill of Rights, de-politicised humanitarian aid and human rights dialogue.<sup>13</sup>

### REFERENCES

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