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Cautious support for Magnitsky-style legislation

The recommendation that Australia should adopt a stand-alone Magnitsky-style legislation, is a move in the right direction, according to the Law Council of Australia.

The final report of the inquiry of the House of Representatives Joint Standing Committee on Foreign Affairs, Defence and Trade – Human Rights Sub-committee into targeted sanctions to address human rights abuses, calls for the introduction of Magnitsky-style laws which would address both serious human rights violations and corruption.

Law Council President, Pauline Wright, says that using sanctions to apply pressure to individuals responsible for serious violations of internationally recognised human rights and serious acts of corruption has in-principle support, noting that similar laws operate in the United States, Canada and the United Kingdom.

“The Law Council cautiously welcomes the release of the Committee’s report as part of its Inquiry into targeted sanctions to address human rights abuses and appreciates the merit in facilitating international cooperation to deal with such conduct through Magnitsky-style legislation,” Ms Wright said.

“It is gratifying to see that the committee recommends the new legislation should apply to a range of conduct, including ‘serious corruption’ as well as serious human rights abuses, with careful consideration to be given to the appropriate definitions applicable.

“The Law Council is also pleased that the report recommends an independent advisory body be formed to receive nominations for sanctions targets, to consider and make recommendations to the Minister for Foreign Affairs as decision-maker; that a targeted person must be given a right to reply prior to sanctions being imposed, and lists of sanctioned people and reasons for sanctions be published, subject to certain limited exemptions.

“The suggestion of a three-yearly review post-enactment and regular Parliamentary reporting and oversight is also welcome,” Ms Wright said.

“But the Law Council is mindful that any legislation should include comprehensive safeguards that are consistent with upholding human rights. While the Committee has recognised the need for safeguards, the Law Council would like to see a more comprehensive emphasis in this regard.

“These safeguards must include legislative criteria that the Minister as decision-maker should have to consider in the course of making sanctions, including a clear measure of proportionality, amongst others. Access to independent merits review of sanction decisions is also important,” Ms Wright said.

The Law Council looks forward to responding to the detail of any proposed Bill, and anticipates closely consulting with the legal profession, noting that legislation in this area must also be clear and workable for others affected including financial institutions.

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