



Australian Government
Department of Foreign Affairs and Trade



DFAT SUBMISSION TO THE INQUIRY INTO THE WRONGFUL DETENTION OF AUSTRALIANS OVERSEAS

August 2024

Introduction

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the Senate Foreign Affairs, Defence and Trade References Committee inquiry into the Wrongful Detention of Australians Overseas.

2. DFAT places a very high priority on supporting Australians and their families in cases of arbitrary detention, with a clear focus on resolving the case and ensuring the detainee's welfare. DFAT also strongly supports international multilateral efforts to deter the unacceptable practice of arbitrary detention for diplomatic leverage.

3. We welcome this opportunity for setting out our framework for managing these complex cases and for advocating for the welfare and release of Australians who have been arbitrarily detained. DFAT is strongly committed to continuing to refine and improve its capabilities to support detainees and their families and to achieving positive outcomes in these cases. DFAT's approach has been refined in recent years, including as a result of engagement with former detainees and other stakeholders. DFAT will continue to keep its approach under review and will look for opportunities to further improve its capabilities to support any Australians who are subject to the unacceptable practice of arbitrary detention.

DFAT's approach to individual cases

4. Australians overseas are subject to the laws and judicial systems of the country in which they are living or travelling, just as foreign nationals in Australia are subject to Australia's laws and judicial system. Australians are arrested and imprisoned in many foreign countries and in a wide range of circumstances, including those that can differ significantly from Australian norms. DFAT's ability to assist arrested and imprisoned Australians overseas is limited.

5. DFAT carefully assesses whether and when to use the term 'arbitrary detention' in relation to an Australian detained overseas. Each case is judged on its individual circumstances including the charges, the nature of the legal process, detention conditions, the detainee's own wishes, the country in which they are detained and relevant international law.

6. DFAT adopts a tailored approach to each case to best support the welfare and interests of the client and their family. These are the primary considerations when considering what advocacy and support the government can provide to achieve a positive resolution of the case. This flexible approach has resulted in DFAT enabling the release of several high-profile Australian detainees, as well as others less publicly known, in recent years.

7. Case strategies draw on a range of representational approaches available to government. All advocacy channels are considered including bilateral, regional and multilateral. Our advocacy is directed through Ministers, our Heads of Mission and diplomatic staff, and other officials.

8. In certain cases, when it is judged as likely to help secure a resolution, DFAT will continue its approach of appointing a special envoy whose specific knowledge and connections may enable them to achieve positive outcomes for clients. An assessment of what is in the best interests of the client will determine whether the appointment is made public. In other cases, using senior government and diplomatic channels may be assessed as being more effective than the appointment of an envoy.

9. DFAT gives careful thought to its messaging. Some of DFAT's advocacy and action is public, but often it is confidential because confidentiality is assessed to best support the client's interests. Describing an Australian as arbitrarily detained in public communications, or even in confidential advocacy, may also carry

risks for the client and in some circumstances may undermine the effectiveness of the Government's advocacy towards a resolution.

10. While we recognise other models, including legislated criteria or permanent envoys, have been applied, DFAT assesses that our flexible approach provides the Department with the broadest range of options to secure positive outcomes.

Initiatives to strengthen our approach

Complex Case Committee

11. Sustained, high-level whole-of-government attention on complex cases has been enhanced by the creation of a Deputy-Secretary level inter-departmental Complex Case Committee (CCC) in 2023. The CCC drives case strategy design and implementation. The CCC determines what diplomatic, legal, economic or other levers are available to help resolve cases. It ensures coordinated and deliberate actions to achieve the best outcome possible for the client and their family.

12. DFAT has also established dedicated teams responsible for coordinating the management of complex cases, including those that may be arbitrarily detained. These teams draw on knowledge, skills and expertise across government to develop strategies for case resolution. Complex cases make up a small portion of the overall consular caseload, but they often require additional strategic and foreign policy consideration due to their unique circumstances. Not all complex detention cases involve arbitrary detention.

External Advisory Group

13. An External Advisory Group (EAG) was established in early 2023, to engage directly with former detainees and their families, subject matter experts, service providers and advocacy groups. DFAT also meets relevant organisations to learn from their experiences and identify ways for improving our current policies and frameworks. The EAG meetings and other engagements with stakeholders help ensure DFAT has a better understanding of issues from the perspective of our clients, remain open to new ideas, ensure that our policies and processes consider all available levers to increase transparency and public awareness, and deter regimes from engaging in the practice of arbitrary detention.

14. Drawing on the lessons from engagement with the EAG, the department has implemented a more comprehensive support system for those who have returned from overseas. This approach allows us to promptly address concerns or issues consular clients may have following their return. This can include referrals to domestic support services for both their mental and physical health. Other key lessons from the EAG that DFAT has sought to implement have included less bureaucratic communication with families of detainees and helping to mitigate risks from and barriers to international travel by former detainees.

Family support/communication

15. DFAT acknowledges the high levels of uncertainty and stress encountered by the families of Australians detained overseas. DFAT will continue to seek to refine and improve its support and assistance to these families through consulting the EAG and listening to families through direct contact. DFAT assigns a dedicated case manager to the family to be their main point of contact and the case manager connects with the family regularly, passing on information regarding the case. This may include information on prison visits undertaken by consular officers, discussions on the opportunities and risks involved in certain approaches to the case, information about actions DFAT has taken and explaining, where we can, why a case may be taking longer to resolve than expected.

16. DFAT advises all consular clients, including those potentially arbitrarily detained, that the decision to engage with the media is one for them and their family. Case managers will offer to connect families to DFAT's Media Liaison team for media advice and support. We offer advice on the potential benefits and risks associated with media engagement, noting that these are specific to the circumstances of each case. Where relevant, DFAT will advise that a high public profile for a case may be detrimental to prospects for release.

17. DFAT also provides practical support such as referrals to service providers and support organisations, to assist with counselling support and connecting the family to others with similar experiences. DFAT will continue to work on improving its assistance to the client and their family in resolving practical taxation, banking and employment matters that often arise during the detainee's incarceration.

Post release support

18. Reintegrating back into life in Australia after being arbitrarily detained can be very challenging for the client and their family. Upon return, DFAT connects the client directly with Services Australia, which can link them with established domestic service providers. Services available include medical, skin and dental checks, funded sessions with clinical psychologists, debriefs with the department and referrals to relevant support services for assistance with the difficult transition period.

19. Some clients experience difficulties with international travel after release. Foreign governments may seek to reinstate charges, carrying the potential threat of extradition or further periods of detention. Former detainees may also have a criminal conviction against their names, causing difficulties in obtaining visas for countries where they must declare recorded criminal convictions (regardless of credibility). Discussions with like-minded partners indicate that this is a shared emerging issue and there is value in co-operating to mitigate this common problem. DFAT has also assisted clients by providing briefings on potential risks and mitigation strategies on planned travel. Where appropriate, DFAT can liaise with like-minded foreign governments to proactively help manage these issues for former detainees.

Public awareness

20. DFAT seeks to increase public awareness of countries that engage in the practice of arbitrary detention, including through highlighting the risks associated with this to Australians through Smartraveller travel advice. The travel advice for Afghanistan, China, the DPRK, Iran, Mali, Myanmar and Russia all contain clear warnings regarding the risk of arbitrary detention. The travel advice for Belarus, Macau and Hong Kong highlight the risks around the arbitrary or harsh enforcement of local laws.

21. In addition, two employment-specific Smartraveller advisories were created in 2023 that, amongst other risks, highlight the risk of arbitrary arrest or detention for:

- o Journalists: <https://www.smartraveller.gov.au/before-you-go/who-you-are/advice-journalists>
- o Academics: <https://www.smartraveller.gov.au/before-you-go/who-you-are/advice-academics>

International efforts

22. DFAT advocates in multilateral fora, including the United Nations Human Rights Council, against the practice of arbitrary detention. We work closely with like-minded partners sharing experiences on strategies for preventing this practice, and on approaches for resolving individual cases, including options for collective action.

23. Australia was an inaugural endorsee of the Canadian-led Declaration Against Arbitrary Detention in State-to-State Relations (15 February 2021) and its associated Partnership Action Plan (released on 5 May 2021). The Declaration established voluntary measures that States may wish to adopt to deter, and sustain momentum against, the practice of arbitrary detention for diplomatic leverage.

24. As of 15 July 2024, the Declaration had 78 endorsees (up from an initial 58). The cross-regional nature of international partners endorsing the Declaration shows that this is a human rights issue of broad concern. The Declaration facilitates greater awareness of the unacceptable practice of arbitrary detention, the experiences of a broad group of countries and the options for handling these cases.

25. DFAT continues to work with Canada and other like-minded partners in building a strong international coalition to pursue the long-term strategy of deterring the unacceptable practice of arbitrary detention.