



**Australian
Human Rights
Commission**

Inquiry into the Department of Foreign Affairs and Trade's crisis management arrangements

Australian Human Rights Commission

Submission to the Joint Committee of
Public Accounts and Audit

4 November 2022

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1 Introduction

1. This submission focuses on the key principles that guide the Department of Foreign Affairs and Trade's (DFAT's) crisis management arrangements, and the impact these had on DFAT's performance in managing the return of overseas Australians in response to the COVID-19 pandemic.
2. The Terms of Reference of this Inquiry focus on matters arising from consideration of the report *Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic*, which was a performance audit completed by the Australian National Audit Office (ANAO Report).¹ It is notable that the ANAO Report fails to consider the human rights impacts resulting from the management of the return of overseas Australians in response to the COVID-19 pandemic. In fact, the ANAO Report makes no mention of human rights at all, particularly failing to consider this significant aspect of border closures when framing its nine recommendations.
3. It is additionally notable that none of the crisis management policies or frameworks that guided DFAT's management of the return of overseas Australians or that informed the ANAO Report – including, most notably, the *Australian Government Crisis Management Framework*² – explicitly consider the protection of human rights as a key factor to be incorporated into any crisis response. In our view, this is a serious weakness in Australia's preparedness to respond effectively to future major and complex crises.
4. The ANAO Report concluded that DFAT lacks a defined crisis management framework and mature preparedness policies. This submission asserts that a strengthened crisis management plan cannot exist without the

inclusion of human rights considerations, which must be embedded in any future emergency framework.

2 Closure of International Borders

5. When reviewing DFAT's management of the return of overseas Australians during the COVID-19 pandemic, it is not enough to simply consider the provision of flights and financial assistance at various stages of the pandemic from a technical perspective. The ANAO Report references the temporary ban on travel from India from 3 to 15 May 2021 during the Delta outbreak. However, in our view, the description of this as simply a 'temporary pause' being placed on flights from India,³ masks the extraordinary nature of what actually occurred, and the ANAO Report fails entirely to engage with the significant human rights impacts that resulted from this ban.
6. The announcement of a temporary travel ban on all flights from India meant that any person caught entering Australia from India faced five years imprisonment or a \$66,000 fine.⁴ This effectively left 9,000 Australian citizens stranded in India, with some reporting that they felt abandoned by their country.⁵ To potentially criminalise our own citizens for returning home is an extraordinary step for Australia to take.
7. The extent to which Australia obstructed its own citizens from both leaving from and returning to Australia on the pretext of public health has been described as incompatible with fundamental human rights, specifically freedom of movement.⁶ Since this unprecedented step to combat COVID-19, there have been serious concerns expressed that the travel ban breached Australia's obligations under Article 12(4) of the *International Covenant on Civil and Political Rights* (ICCPR).
8. Article 12(4) of the ICCPR states that 'no one shall be arbitrarily deprived of the right to enter his own country'. In General Comment No. 27 (Freedom of Movement) the UN Human Rights Committee states 'that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable'.⁷
9. While the Australian Government stated that the decision to impose the temporary ban on all flights from India was based upon the need to protect 'the integrity of the Australian public health and quarantine systems', the reasonableness and proportionality of this measure raises serious human rights concerns. It is not clear from the ANAO Report

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whether the policy advice provided by DFAT to government with respect to international border closures adequately considered these human rights obligations and implications, nor whether they were appropriately factored into DFAT's crisis management arrangements and response.

10. Beyond this, there have also been questions as to why a similar travel ban on citizens returning to Australia had not been imposed upon Australian citizens attempting to return from countries such as the UK and US when they were experiencing COVID-19 outbreaks.⁸ The provision of flights and financial assistance in some circumstances, but not during the outbreak in India, raises questions about the consistency of Australia's response and highlights the issues attached to making such decisions without careful consideration of human rights.

3 Crisis Management Frameworks

11. It is recognised that throughout the COVID-19 pandemic, DFAT was forced to make quick decisions in unprecedented circumstances. On many occasions, DFAT's response was prompt and effective, particularly given resource constraints and the immense pressures created by state governments who asserted that hotel quarantine systems could not cope with higher numbers of returned travellers.⁹
12. It is also understood that border closures can play a necessary and significant role in upholding other human rights, such as the right to life,¹⁰ and the right to the highest attainable standard of physical health.¹¹
13. The purpose of this submission is not to criticise DFAT's efforts to return overseas Australians during the pandemic, but rather to highlight the conclusion reached in the ANAO Report with regard to DFAT lacking a defined crisis management framework.¹²
14. More broadly, we would highlight the fact that crisis management frameworks in Australia, most notably the *Australian Government Crisis Management Framework*,¹³ do not sufficiently engage with human rights considerations as an integral part of any effective emergency response.
15. To improve crisis management planning it is necessary to evaluate and review existing crisis management frameworks to ensure that Australia is better prepared for future crises. Future planning must consider human rights to ensure crisis response measures that limit or restrict human rights are necessary, reasonable and proportionate.

4 Data Collection and Management

16. The ANAO Report also concluded that DFAT failed to maintain authoritative records or reliable data on registered overseas Australians, including those identified as vulnerable.¹⁴
17. Without the keeping of accurate data, it is difficult to determine with any precision how successful the provision of flights and financial assistance to overseas Australians was during the pandemic. This is particularly concerning when it comes to vulnerable people, with the lack of data limiting the potential of a review into the human rights implications of the crisis management arrangements.
18. For this reason, this submission fully supports Recommendation 7 of the ANAO Report:

DFAT capture and retain accurate and complete data from its engagement with clients, in accordance with government information standards, and for the purposes of monitoring its effectiveness in engaging with the public.

5 Recommendations

Recommendation 1

All Australian crisis management frameworks should incorporate human rights considerations, and outline measures to ensure that any crisis response limiting or restricting human rights is necessary, reasonable and proportionate.

Recommendation 2

DFAT capture and retain accurate and complete data from its engagement with clients, in accordance with government information standards, and for the purposes of monitoring its effectiveness in engaging with the public.

¹ Australian National Audit Office, *Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic* (Auditor-General's Report No. 39 (2021-22), 21 June 2022) <[Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic | Australian National Audit Office \(anao.gov.au\)](#)>.

- ² Department of the Prime Minister and Cabinet, *Australian Government Crisis Management Framework* (Version 3.0, July 2021) <[Australian Government Crisis Management Framework \(pmc.gov.au\)](https://www.pmc.gov.au)>.
- ³ See Australian National Audit Office, *Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic* (Auditor-General's Report No. 39 (2021-22), 21 June 2022), 98. <[Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic | Australian National Audit Office \(anao.gov.au\)](https://www.anao.gov.au)>.
- ⁴ Department of Health and Aged Care, 'Travel arrangements to be strengthened for people who have been to India' (Media Release, 1 May 2021) <[Travel arrangements to be strengthened for people who have been in India | Health and Aged Care Portfolio Ministers](https://www.health.gov.au)>. See also *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements - High Risk Country Travel Pause) Determination 2021* (Cth) (30 April 2021).
- ⁵ Frances Mao, 'Australians stuck overseas "abandoned" by their own country', *BBC News* (1 May 2021). <[Australians stuck overseas 'abandoned' by their own country - BBC News](https://www.bbc.com)>
- ⁶ Olivera Simic and Kim Rubenstein, 'The challenge of "COVID-19 free" Australia: international travel restrictions and stranded citizens' (2022) *International Journal of Human Rights* 1, 3.
- ⁷ UN Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, 67th sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999). <[Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org)>.
- ⁸ Bruce Chen, 'The Covid-19 border closure to India: Would an Australian Human Rights Act have made a difference?' (2021) 46(4) *Alternative Law Journal* 320.
- ⁹ See, for example, Finbar O'Mallan, Tom McIlroy and Lucas Baird, 'NSW to cut traveller intake as outbreak grows', *Australian Financial Review*, 31 August 2021. <[Sydney lockdown: NSW to cut traveller intake as outbreak grows \(afr.com\)](https://www.afr.com)>.
- ¹⁰ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 6.
- ¹¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 12(1).
- ¹² Australian National Audit Office, *Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic* (Auditor-General's Report No. 39 (2021-22), 21 June 2022), 24. <[Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic | Australian National Audit Office \(anao.gov.au\)](https://www.anao.gov.au)>.
- ¹³ Department of the Prime Minister and Cabinet, *Australian Government Crisis Management Framework* (Version 3.0, July 2021) <[Australian Government Crisis Management Framework \(pmc.gov.au\)](https://www.pmc.gov.au)>.
- ¹⁴ Australian National Audit Office, *Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic* (Auditor-General's Report No. 39 (2021-22), 21 June 2022), [3.56]-[3.99]. <[Overseas Crisis Management and Response: The Effectiveness of the Department of Foreign Affairs and Trade's Management of the Return of Overseas Australians in Response to the COVID-19 Pandemic | Australian National Audit Office \(anao.gov.au\)](https://www.anao.gov.au)>.