



## Australians Detained Abroad

Thank you for the opportunity to make a submission in regards to the development by the Department of Foreign Affairs and Trade of the new *Consular Strategy 2014-16*.

### **Part A. Who We Are**

Australians Detained Abroad is an independent, not for profit organisation that provides support to Australian families who have loved ones detained overseas. We also educate Australian travellers through social media about their rights and responsibilities whilst they are abroad.

Given our organisation's objects and expertise, this submission is focused on only those questions in the Issues Paper that relate to the interaction between consular services and those who have been detained overseas.

### **Part B. Consular Cases Involving Australians in Detention Overseas**

Figures released by the Australian Bureau of Statistics indicate there has been a rapid increase over the past six years in the number of Australians travelling abroad.<sup>1</sup> Consequently, this trend has been matched by a rise in Australians seeking consular assistance.<sup>2</sup>

According to the Department of Foreign Affairs and Trade, during this period the number of cases involving consular assistance and support to Australians arrested or imprisoned overseas rose by approximately 16%: from 1,241 in the 2008-2009 financial year to 1,479 during the 2012-2013 financial year.<sup>3</sup> These cases represented approximately 12% of the total cases where consular staff assisted Australians in difficulty during the 2012-2013 financial year.

---

<sup>1</sup> According to the Australian Bureau of Statistics, *'Feature Article: International Movements- 2012-13'*, 3 September 2013, Australian residents made a record 8.4 million short term departures overseas in the 2012-13 financial year, up from 5,699,500 such departures in the 2007-2008 financial year.

<sup>2</sup> According to the Department of Foreign Affairs and Trade, *Annual Report 2012-2013*, at p. 135, there has been a rise from 194,523 cases involving the provision of consular assistance to Australians during the 2008-2009 financial year, to 207,397 such cases for the 2012-2013 financial year.

<sup>3</sup> Department of Foreign Affairs and Trade, *Annual Report 2012-2013*, p. 135.

## Part C. Responses To Questions Raised in the Issues Paper

### ***What consular services should continue to be delivered and what services could be reduced or withdrawn?***

Consular officials are being required to do more work with fewer resources as funding has not been increased to match the rising demands on consular services. Notwithstanding this challenge, there should be no reduction in consular assistance delivered to those detained or being tried overseas. This is due to the important role consular services play in protecting the basic human rights of these individuals.

There is scope to both improve the services being offered to detainees and ensure that resources are directed to cases where assistance is needed most. In deciding how to allocate resources, consular officials should be required to make certain that at a minimum:

- Detainees have been provided with representation from a competent local legal practitioner within 72 hours after being detained.
- Individuals detained will be visited by consular staff within 48 hours after notification of their detention.
- Australians are being detained in humane conditions.
- Detainees have the ability to communicate on an ongoing basis with consular staff and family members, including by telephone.
- When a detainee is not fluent in the native language of the detaining country, they will receive access to translation services.
- Detainees have access to loans for legal representation.

Ensuring that these foundational requirements are met is consistent with the Department's promise under the *Consulate Services Charter* to ensure that Australians are treated fairly under the laws of the country where they have been detained.

Ensuring these standards are met may require additional sources of funding. Australians Detained Abroad supports the recommendation of the Lowy Institute for International Policy that revenue from the Department's notarial services should be redirected from the consolidated government revenue fund and returned to the Department of Foreign Affairs and Trade.<sup>4</sup> Additionally, the Department should be entitled to retain all revenue from money it earns through the provision of services to travelers, including through the issuing of passports. Ideally, an appropriate method of funding would have overseas travelers subsidising the cost of consular services.

---

<sup>4</sup> Alex Oliver, Lowy Institute for International Policy, '*Consular Conundrum: The Rising Demands and Diminishing Means for Assisting Australians Overseas*', March 2013, p. 8.

***Should consular services be varied according to local circumstances and according to the capacity of the individual to cope?***

The amount of funds expended to ensure that the minimum requirements, as previously recommended in this submission, are met will vary in relation to different countries' legal systems. It is expected that consular staff would be required to expend less funds in countries with well developed legal systems. For example, in the United States of America a detainee will be supplied with a legal representative from within a Public Defender's office if they are placed under arrest and cannot afford legal representation. Conversely, in other countries a detainee would not be entitled to legal representation funded by the detaining country and consular resources would need to be devoted to ensuring that the detainee had adequate legal representation before the local courts.

The level of legal funding may also be appropriately varied with regard to a detainee's capacity to cope financially. A similar formula to those used by domestic Legal Aid organisations when determining whether government funding should be used to assist a criminal defendant to pay their legal expenses could be applied to Australians detained overseas. This would involve the detainee satisfying a reasonable means test, determined by the Department of Foreign Affairs and Trade. Additionally, there may be cases where a detainee with financial means would require a temporary loan until the detainee could access their own funds, due to the obvious difficulty challenge of accessing funds while in detention in a foreign country.

***Are there specific areas and/or demographic groups in which there is a mismatch between client expectations and services?***

There is a mismatch of expectations between members of the Australian public and the services offered by consular staff. This divergence has been influenced by isolated cases where senior members of the Australian Government have publicly intervened on behalf of Australians detained overseas, such as the recent case involving an Australian lawyer placed in detention in Libya. Families see this intervention and, unaware of the diplomatic and political subtleties that prompted the Commonwealth's actions, naturally react "Why not my family member?"

The political and diplomatic considerations that lead Australian politicians to intervene in isolated cases and the media's varying coverage of Australians in detention overseas are unlikely to disappear anytime soon. To manage expectations in line with the reality of what government resources can be offered, the Department of Foreign Affairs and Trade should clearly identify what assistance Australians will receive if they are detained overseas.<sup>5</sup> This will hopefully promote a degree of uniformity in the type of response detainees and their families receive from consular

---

<sup>5</sup> Please refer to the dot points on p. 2 of our submission for recommendations regarding foundational requirements that should be offered to detainees.

officials and provide families with clear guidance about the consular services they can expect to be delivered in support of their loved one in detention.

Australians Detained Abroad also believes that there is a general lack of knowledge amongst Australians under 25 years of age of consular services and their rights and responsibilities whilst they are travelling overseas. Our organisation believes that this could be addressed by better targeting of the demographic through social media, including through the development of a smartphone application where travellers could access information about the legal system of the country where they are travelling and how the local consulate could assist them if they were placed under arrest whilst overseas. The effect of providing better education would hopefully be reduced demand on the Department's already stretched consular services overseas.

***Is there scope for DFAT to improve the consular services it provides so that clients can get help when they really need it and receive the right kind of service?***

Currently requests for funding for legal representation for Australians detained overseas are directed through the Attorney-General's Department. Such requests should instead be processed and approved entirely within the Department of Foreign Affairs and Trade. By removing the additional administrative burden of routing through a separate Department, the efficiency in delivering such loans will be improved.

Furthermore, the current scheme for funding legal representation for Australians detained overseas only provides for funds when the detainee is facing a sentence of 20 or more years<sup>6</sup> or in the anomalous circumstances where 'there is a moral obligation on the Commonwealth to make the grant'.<sup>7</sup> Any Australian facing a criminal trial overseas who cannot afford to fund their own legal defence but is still facing a loss of their liberty, be it 3 years or 20 years, should be able to access such loans.

#### **Part D. Summary of Recommendations**

1. The Department should develop foundational requirements for the treatment of those detained overseas.
2. The level of consular support or funds provided could be varied depending on the sophistication of the relevant country's legal system and the detainee's financial circumstances.

---

<sup>6</sup> See Attorney-General's Department, '*Serious Overseas Criminal Matters*', at <http://www.ag.gov.au/LegalSystem/Legalaidprograms/Commonwealthlegalfinancialassistance/Pages/Seriousoverseascriminalmatters.aspx>.

<sup>7</sup> See Attorney-General's Department, '*Special Circumstances Scheme*', at <http://www.ag.gov.au/LegalSystem/Legalaidprograms/Commonwealthlegalfinancialassistance/Pages/Specialcircumstancesscheme.aspx>.

3. There is a mismatch between the expectations of the Australian public and the consular services that can realistically be supplied. This should be addressed through the identification and publication of the minimum treatment that all Australians can expect if they are detained abroad.
4. There is a lack of knowledge and understanding amongst Australian travellers under the age of 25 about the level of consular services that can realistically be supplied. This can be addressed through better and more targeted use of social media by the Department.
5. The Department of Foreign Affairs and Trade should process and approve all applications for the funding of legal representation for detainees, rather than applicants having to seek approval from the Attorney-General's Department.
6. All Australians facing a criminal trial and the loss of their liberty overseas should be able to access loans to fund their legal defence, if they cannot afford to fund their defence themselves.