

SUBMISSION

Senate enquiry to investigate Australia's management of cases of wrongful detention abroad

My name is Lamisse Hamouda, and I am making a submission to parliament regarding the wrongful imprisonment of Australian citizens abroad. My submission is personal, rooted in the experience of my father's wrongful detention in Egypt. My father was imprisoned from January 2018 – March 2019.

My father and I have detailed our experiences in a memoir, titled *The Shape of Dust* (published by Pantera Press, 2023), which went on to win the 2024 National Biography Award and was shortlisted for the 2024 NSW Premier's Literary Award. Writing was an important avenue to make sense of such a sudden, traumatic experience – an experience that has echoed through our lives since my father's release and return to Australia in 2019. You can refer to my book for a detailed account of the experience. Additionally, I am a member of AWADA (Australian's Wrongful and Arbitrary Detention Alliance) and a youth worker with a decade of experience working in refugee resettlement programs with unaccompanied humanitarian minors.

I put forward this submission as it is my conviction that Australia's approach to the wrongful detention of Australian's abroad requires urgent review and reform.

1. **Federal Human Rights Act / Constitutional Charter of Rights.**
<https://humanrights.gov.au/human-rights-act-for-australia>
2. **Consideration of the human rights landscape of the country in which the arrest is made.** For my father's case, Egypt has a long, documented history of human rights abuses, which includes the arbitrary arrest and detention of nationals, dual nationals and foreign nationals; disappearance and torture; inadequate prison environments that do not meet human rights standards; abuse of process, including the legal limits to remand detention; and documented state corruption (for further information, see reports from groups & organisations such as Human Rights Watch, Amnesty International, United Nations Working Group for Arbitrary Arrest and Detention and Egyptian Initiative for Personal Rights). As such, for DFAT and the Australian Consular to advise that I ought 'follow the legal processes' of Egypt appeared to me as negligent and cruel advice in a country that has a documented history of human rights abuses – even if this advice stands in line with international relations principles. If the human rights record of a country does not meet the international standards, such as that set by the Universal Declaration of Human Rights, DFAT should refuse to accept the abuse of the law through tacit submission to corrupted internal legal processes, and advocate more forcefully for release of Australian citizens.
3. **Refusal to accept Australian citizens being held in remand detention.** Foreign countries should not be allowed to detain individuals with Australian citizenship without sufficient and compelling evidence – if an arrest is to be

made of an Australian citizen, whether as a single or dual-national, the arresting state must judiciously and speedily submit sufficient evidence to Australian authorities. Information to justify arrests must be requested from nation-states with a record of abusing remand detention laws (particularly nation-states with evidence of abusing remand detention to bypass due process).

4. **Review and Reform DFAT approach to handling cases of wrongful imprisonment**

Set-Up a Specific Unit for Wrongful Imprisonment Cases: DFAT needs to set-up a specific unit for handling cases involving Australians (both single and dual-national) wrongfully detained overseas, which includes trauma-informed caseworkers.

Trauma-informed training: DFAT staff must undergo trauma-informed training, particularly given the work includes liaising with detained individuals and distressed family members and conducting prison visits. Staff need an understanding of the impact of trauma on physical and psychological well-being of the people in the cases they're managing, and they need to be equipped with trauma-informed approaches when dealing with distressed and/or traumatised individuals. Staff also need trauma-informed training to navigate traumatic situations, escalated individuals, and vicarious trauma.

Dedicated Caseworkers: Caseworkers should be assigned cases with the expectation that see the case through to start to end. Furthermore, they will be able properly hand-over to case to another Caseworker should they move on. This reduces the experience of being handballed to different staff, of speaking with staff who are unaware and having to fill them in (again!) and ensure that families and individuals are being dealt with in a sensitive, trauma-informed manner. It was particularly frustrating to not know who to contact, and then to find ourselves speaking to people who were not informed about our case. Furthermore, it was clear that staff were not trauma-informed in any way. This is a devastating oversight considering the sensitivity of dealing with the individuals and families of wrongful imprisonment cases.

Review of definitions, policies, and guidelines for DFAT. It is abhorrent that the current definitions, guidelines, and policies guiding DFAT's response to Australian's wrongfully detained abroad is both vague and opaque, as this has a significant impact on the individuals and families involved in such cases. The resources provided by Consular services are appalling vague in outlining the support, options, and rights available to citizens and their families. This vagueness produces opportunities for the mismanagement of expectations for families, damaging inconsistencies in responses across cases and inadequate responses Consular officials to distressed family members. There must be a review of DFAT's policies, approaches, and management of cases of Australian's wrongfully imprisoned abroad. Given the lack of clear frameworks for managing the imprisonment of Australian citizens abroad, it is crucial to review and reform of Australia's approach to citizens detained abroad that takes into account the nuances international relations and international law with a human rights-based, trauma-informed lens.

Mandatory accompaniment of released Australian nationals through the airport by the Ambassador. The airport is often a site of *arbitrary re-arrest*. Released Australian nationals released from prison should always be offered diplomatic protection and be accompanied by the Ambassador when going through the airport to take their flight to back to Australia. This diplomatic protection is important, both as a way of ensuring individuals board their flight without obstruction or harassment, and provides crucial psychological reassurance to released Australian nationals.

5. Establishment of an Australian equivalent of SPEHA (Special Presidential Envoy for Hostage Affairs).

DFAT need a dedicated taskforce for managing Australian's taken hostage and/or wrongfully detained abroad. Australia must join in the effort to end the practice of wrongful detention and hostage-taking as a coercive diplomatic practice. The sensitive, complex, and traumatic nature of hostage-taking and/or wrongful arrest requires specially trained staff; clear policy and directives for victim support, case reviews and planning, negotiations, and advocacy; and dedicated family support services. It is not enough to leave this to Consular staff who evidently do not have adequate training or understanding of the complexities of imprisonment abroad. Furthermore, the taskforce must undertake continual review and development of policy and approaches toward the management of hostages and individuals wrongfully imprisoned abroad.

6. Establishment of Australian-equivalent of the Levinson Act (2020):

Australia needs a clear framework for determining cases of wrongful and arbitrary arrest, the avenues to direct such cases toward a specialised taskforce and the ability for the Prime Minister to utilise individual sanctions to pressure foreign governments into releasing Australians wrongfully detained or taken hostage. It is important that Australia institute the authority to access multiple avenues for securing the return of Australians wrongfully detained abroad.

7. Supporting Individuals and Families DURING Imprisonment

There is immense emotional and material strain placed on families of Australians detained abroad. Families are often tasked with the burden of undertaking both the care of the detained, as well as the legal and advocacy work. Many families do not have any training in law or advocacy (including media appearances) and are tasked with quickly understanding – and navigating – complex systems (carceral, media, government) under high-pressure, distressing circumstances. Financial burdens include multiple lost incomes while managing ongoing everyday livings costs, all while covering costs associated with wrongful imprisonment abroad such as flights, living expenses in a foreign country, and legal fees.

Personal experience: After a year in Egypt of working with local authorities and undertaking the care of my father, I left Egypt to undertake advocacy work in Australia for my father's release. This was a particularly challenging decision to make, as prisons in Egypt do not provide adequate food or medical care – as such, visits by family members are needed to ensure those in detention receive enough food and care. In my absence, the staff at the Australian Consular in Egypt were still able to undertake monthly visits to my father – however, they could not offer any material support, such as taking in food or medication. After six weeks without visits,

my father reported to DFAT staff that he was particularly distressed and had run out of the food I had supplied prior to leaving. With the pressures of advocacy work, I could not return to Egypt. With no other options available, my younger sister – who at the time was only 22 – went to Egypt alone (at our expense) to continue care for our father through in-person prison visits.

Recommendations:

- DFAT to clearly define what constitutes exceptional circumstances, in order to address situations where families struggle to meet the financial demands of having a loved one imprisoned abroad. This may include the provisions of approved goods during monthly welfare visits by Embassy Staff (for situations where families have no access), and to work with the Department of Social Services on arranging an avenue of welfare for families under financial strain to access. During my father's imprisonment, we were advised to apply for JobSeeker. This is an inadequate recommendation, it places additional strain on families to keep up with JobSeeker requirements, does not allow for payments to continue when overseas, and does not accurately reflect the fact that families do not choose to be subjected to the impacts of a wrongful, overseas imprisonment.

8. Supporting Individuals and Families AFTER Imprisonment:

Provision of support for re-entry and recovery after detention abroad. This could involve expanding the Victim of Crime payment to include returned Australians who've been wrongfully and arbitrarily imprisoned abroad. As a family, we struggled to return to normal after our father's imprisonment – everyone in my family was affected by PTSD. The mental health care plan still required us to cover the gap-fee and was limited to accessing CBT-based therapy (Cognitive Behavioural Therapy, also known as 'talk therapy'). With financial strain of unemployment, even the gap-fee was a challenge to cover. Meanwhile, CBT proved ill-suited to the initial challenges of our experience with PTSD. In our personal experience, accessing creative and somatic therapies initially helped with understanding trauma through embodied, emotional regulation and why it was a struggle to talk about the experience (please see linked studies on trauma, speech and memory). Creative and Somatic therapies provided a necessary bridge into CBT, as well as crucial, practical, and embodied skills in emotional regulation.

- **Expanding the Mental Health Care Plan:** allow for access to Creative and Somatic Therapies: Currently, the mental health care plan does not expand creative and somatic therapies. Many studies (such as the seminal research undertaken by Dr. Bessel van der Kolk, Dr. Peter Levine and other leading trauma researchers and practitioners) show that involvement in creative and/or somatic therapies has a significant impact of the recovery of survivors of torture and trauma. This includes movement (dance) therapies, somatic therapies, art therapies and psychodrama.
- **Access to Torture and Trauma Services:** the experience of a wrongful imprisonment abroad (particularly if accompanied by the experience of being disappeared) fits within the definitions of the [Convention against Torture and](#)

[Other Cruel, Inhuman or Degrading Treatment or Punishment \(United Nations Human Rights Office of the High Commission, 1984\)](#). The term 'torture', as outlined in the Convention, includes *'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, which such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'*

As such, individuals who've experience wrongful imprisonment abroad should be made eligible to access organisation associated with [FASTT \(Forum of Australian Services for Survivors of Torture and Trauma\)](#). Returnees from an imprisonment overseas are recommended to access the standard mental health care plan and search for their own psychological provider. The FASTT associated providers have staff who possesses the necessary intersectional, therapeutic skillsets required to address the experience of an imprisonment abroad, particularly given such an experience invariably fits the definition of experiencing torture.

The eight organisations are:

- STTARS (Survivors of Torture and Trauma Rehabilitation Service), NSW
- ASeTTS (Associations for Services to Torture and Trauma Survivors), WA
- STARRTS (Service for Treatment and Rehabilitation of Torture and Trauma Survivors), NSW
- QPASTT (Queensland Program of Assistance to Survivors of Torture and Trauma), QLD
- Foundation House, VIC
- Phoenix Centre, TAS
- Melaleuca Australia, NT
- Companion House, ACT

Conclusion:

I welcome the Senate enquiry to investigate Australia's management of cases of wrongful detention abroad. It is crucial that the Senate consider the testimony of Australians wrongfully imprisoned abroad when reviewing policies that govern Australians approach to wrongful detention - both as part of this submission and into the future.

Signed,

Lamisse Hamouda
28 August 2024