

Comments on the Annual Report for 2009-10

of the Department of Foreign Affairs and Trade

Civil Liberties Australia (CLA) welcomes the opportunity to make formal comment on the annual report (AR) of the Department of Foreign Affairs and Trade (DFAT). ARs are meant to be THE most fundamental and critical accountability document of any reporting entity each year. In general, throughout the government sector they have declined in quantity and quality of relevant information provided to the Australian people because of a trend towards centralised control of information, and a diminishing transparency of government caused by a rise in Executive dominance. DFAT's annual report is no exception. CLA's concentration then will be as much on what is not revealed by the obfuscatory nature of the DFAT document as it will be on what is in the AR.

Firstly, the most basic problem with the DFAT AR is one shared by many government departments and agencies. It is best summed up by the term "mission neap"...which is the direct opposite of the better-known "mission creep" in which aims and objectives expand to meet the wishes and wants of the project manager. The mission neap technique is the reverse, and is used by public entities to confine the extent of their responsibilities, and – in ARs – to make it appear as if they meeting their newly self-defined, more limited roles.

For example, in the covering letter to the 2009-10 DFAT AR, the Secretary, Mr Dennis Richardson, describes the department's role as:

"advancing Australia's interests".

By p9, under "Outlook" in the "Secretary's Review" section of the AR, the DFAT mission according to Mr Richardson has become:

"advancing the Government's foreign and trade agenda".

By p10, DFAT's mission for the coming years has been restricted by the concentration on a handful of matters, most notably security, people smuggling and terrorism, and by further restricting the aim to the much more conscribed:

"strengthen political, economic and strategic ties...".

Australia's "interests" are much broader than the foreign and trade agenda, security, people smuggling and terrorism. For example, it is in our interests that the human rights approach of other countries is aligned with that of Australia. However, the DFAT AR remarkably little interest in human rights.

There are 31 countries mentioned in the Secretary's Review, and with not one of them is "advancing human rights" mentioned. Apparently, DFAT is only committed to human rights in relation to the UN:

"In support of the Government's policy of enhanced engagement with the multilateral system, we worked actively within the United Nations on key global challenges, including climate change, sustainable development issues, peace and security issues and human rights. We actively promoted Australia's candidacy for a seat on the UN Security Council for the 2011-14 term."

The first part of the above has all the hallmarks of bumph, which is padded verbiage included for the sole reason of covering off elements not addressed anywhere else in the particular section. The grab-bag of issues is tailed by the apparently-afterthought addition of "human rights". The placement at the end of a trite recital of noble concepts is an indication of the true regard that DFAT apparently has for "advancing Australia's interests" in human rights. For example, there is no mention of advancing human rights issues in relation to our closest neighbours in the Pacific particularly, and in South-East Asia.

Why is an emphasis on human rights important? The Secretary sets the tone for the operations of the department. The tone set in the Secretary's Review is clearly that human rights has a very low priority in the thinking, planning and doing of the department.

Australia's interests – political and strategic as much as any other – are clearly best served by closely-aligned human rights beliefs and values, which is why our closest allies are New Zealand, Canada, the UK and the USA, nations which generally share our human rights values. If DFAT is to truly "advance Australia's interests", it must put vastly increased emphasis on "actively" working to more closely align the human rights regimes in neighbouring countries especially.

Overall, the lack of emphasis on human rights in the AR is a sad commentary on DFAT's misdirected approach to what its role of "advancing Australia's interests" really is. CLA recommends that DFAT redefine its mission statement, or whatever it calls the description of its main *raison d'être*, and the imperatives which flow from the core mission descriptor.

Page 11 demonstrates the problem with crystal clarity. The opening paragraph says:

“The department is responsible for advancing the interests of Australia and Australians internationally”.

However, by the first dot point, this has become, instead, the:

“advancement of Australia’s strategic, security and economic interests...foreign and trade policy priorities”.

The three dot points in this section of the AR are permeated by “security” and “protection” thinking. As well, the photo shows the five top executives of the organisation: so far as CLA is aware, none is renowned for a career concentration on human rights. In fact, the opposite is the case in terms of the career of Mr Richardson, the current Secretary, whose appointment from the clandestine security sector by the government did not indicate the likelihood of a more open, transparent and human rights-oriented approach within and by DFAT.

We believe at least one of the top DFAT people, preferably the chief executive, should be drawn from the human rights fraternity, or at least have a background of overt achievement in the human rights field, so that there is a better balance in how DFAT is being led. CLA recommends that DFAT includes in all its recruiting, including from the most senior levels to the most junior, the need for an understanding, awareness and (where appropriate) demonstrated track record of enhancing human rights.

By the time the public reader reaches the “Framework” diagram on p15, DFAT’s real focus has become apparent: the first box, Outcome 1, clearly says that the department’s mission is:

“the advancement of Australia’s international strategic, security and economic interests...”.

Note how the mission, put clearly and simply in the covering letter, has been constrained to only “strategic, security and economic” and that there is no place for “human rights”. By such nuances are “Australia’s interests” altered. Subtly, the entire foreign relations approach has been twisted away from influencing others towards better aligning with Australia’s values and beliefs towards a more trade and policing emphasis and role.

By p21, we find that “the majority of the department’s financial and human resources are directed to the achievement of Outcome 1”. Precisely, that’s the problem! Outcome 1 is badly misconceived, so that the whole program is in error.

Suddenly, in the second paragraph on the page, “human rights” makes another of its infrequent appearances, again at the end of a list of high-sounding, aspirational, parenthetical clauses:

“strengthening global cooperation in such areas as the environment, human rights and good governance”.

In the same paragraph, we find “...enhancing international awareness and understanding of Australia’s policies and society to the benefit of our foreign and trade policy goals”, which is an admirable and appropriate aim. Again, though, the words “...and society” is the afterthought, tacked on at the end, and giving no confidence that DFAT is highly motivated in this area. In priority order, it ranks last, and after a bid for the UN seat.

By p23, the lack of a human rights focus is obvious in terms of Australia’s key area of influence. The second-last dot point on the page, says that “an advanced role for Australia in the Asia-Pacific” includes four activities...but no concentration on improving the human rights adherence of Asia-Pacific neighbours and partners.

CLA recommends that the Secretary convenes workshops urgently to re-focus DFAT more towards achieving positive outcomes in human rights areas so as to advance Australia’s interests in this field.

By no measure is the DFAT AR acceptable...

It appears that in all the “Program 1.1 Deliverables” there are no metrics. The “deliverables” are in fact wishful aspirations of “working towards, enhancing, leading, promoting, etc”. Nowhere is there anything remotely measurable. The misunderstanding and misuse of terms like “deliverables” and “performance indicators” (which follow on p25) make this section of the AR absolutely useless for an outsider; tragically, they are equally useless as “measures” inside the department.

DFAT appears to basically misunderstand – or deliberately reject – the setting of measurable targets. Admittedly, it’s harder to do in an area such as foreign affairs and trade, but by no means impossible. Without proper measurables, this section of the AR (and the whole performance measurement system within DFAT) is a total waste of effort and time. Certainly, it provides no way of holding the department accountable for performance externally – it’s like measuring blanc mange for structural integrity.

In passing, the paucity of both understanding and English comprehension is evidenced by the repetitive use of “effective, collaborative and persuasive”. Like much of this section (and of the DFAT AR as a whole), it sounds good, but is vapid when examined closely.

On p22, a dot point claims that one of the deliverables is:

“Effective advocacy to strengthen good governance and democracy, including advocacy of human rights.”

- Where (which countries, which forums)?
- How do you measure “strengthen”, against what original benchmark?
- How will DFAT measure “good governance and democracy” – what are the starting standards in these respects for whatever the target nation/forum is?
- Where can CLA and the public access the DFAT table of good governance and democracy, against which DFAT will measure improvement so that DFAT’s “effectiveness” can be evaluated?
- How will DFAT measure “effective” in terms of advocacy towards “strengthening human rights”?

Extradition

On p25, under “Key performance indicators”, a dot point claims that:

“The department assists in maintaining a high level of Australian compliance with international legal obligations through provision of appropriate advice, and the department’s advocacy contributes positively towards the development of a strong international framework.”

- What level? Against what benchmark?
- What legal obligations?
- Where internationally?
- Who – externally we would hope – judges “appropriate” and how?
- Contributes positively? Measured against what?
- What is a “strong international framework”. What does it look like/how can you judge-value-measure it?
- And how does DFAT know whether the department has contributed at all in this regard, positively or negatively?

There are clearly measurables available in the area of “international compliance and obligations”. For example, DFAT could measure how well, or otherwise, nations with whom we have formal international extradition and mutual assistance treaties actually abide by those treaties.

- What has happened to the people we extradited to other nations last year?
- Were they tortured, which would be against the treaty provisions?
- Were they handed over to a third country (against the treaty)?
- Were they executed at the end of a trial? Was there a trial?
- If there was a trial, under what conditions are they being detained?
- Are the conditions humane by our standards?

Despite strong recommendations from the Treaties Committee of Parliament to follow up on treaty compliance each year and to report to the Parliament (see Report 91), DFAT refuses to do so. This leads to the ridiculous situation where the

Treaties Committee is asked to renew a treaty with a particular country, but has no idea whether that nation has complied with the provisions of the treaty in previous years, because there has been no report on the fates of human beings transferred from Australia's jurisdiction.

DFAT, along with the Attorney-General's Department (AGD), presides over a Pontius Pilate approach to extradition and mutual assistance treaty compliance – we wash our hands of people we send off to who knows what fate. DFAT clearly has within its power the ability, regardless of the AGD, to report on what happens to people Australia extradites.

DFAT should also report annually to Parliament, and the Treaties Committee, on the consequences of the mutual assistance we provide to other countries. These are important human rights issues for Australian citizens because, for example, three Australians are on death row in Bali as a direct result of assistance provided by the Australian Federal Police to Indonesian police.

In passing, the continued lack of a prisoner exchange agreement with Indonesia is an unfortunate commentary on DFAT's ability to deliver much-needed international agreements. While there is intense concentration on the status of Free Trade Agreements being negotiated by DFAT (AR, pp 81-91), where is the equivalent reporting on the status of "human rights"-oriented agreements, such as those relating to prisoner exchange? There is none.

By comparing the comprehensiveness of the rest of the report in areas of endeavour which the leadership of DFAT favours, the true inadequacy of focus or reporting on human rights by DFAT becomes apparent.

On p72, the lack of a human rights focus is again demonstrated by the opening "Overview" paragraph, where the particular activity "highlighted our strong commitment to working with regional countries to address their economic, development and security challenges". No commitment to addressing of human rights: in the Pacific, DFAT should always be focusing on a "strong commitment" to "enhanced" human rights.

On p75, under "New Zealand" there is no commentary on how the activities of the Council of Australian Governments (COAG), the Standing Committee of Attorneys-General (SCAG) and 40-plus other Ministerial Councils impact on our foreign affairs and trade relationships.

The agreements mentioned in the DFAT AR are insignificant by comparison with the agreements, changes to legislation, and other negotiated positions being adopted under the COAG, SCAG and MC regimes...over which, and in which, DFAT has virtually no say or control. Surely, some DFAT comment is called for?

On p79, under "Outlook", the claim is made that "Fiji's return to democracy will continue to be a priority". How? What has DFAT done in the previous five years to

“return (Fiji) to democracy”? Given that there has been no progress whatsoever towards that desired aim over the past five years, “continuing” to do what DFAT has been doing is a waste of time. Once again, there are no measures attached to any of the “Outlook” items.

Human rights

The “Human Rights” section of the report, on p102, concentrates overwhelmingly on UN matters. Only in relation to Vietnam (p103) does DFAT appear to have put any extra effort into important human rights sub-issues, and then only in terms of an “opportunity” for “frank and constructive discussion”. If, in fact, there was any such discussion, it is not appropriately reported, and certainly there has been no “positive”, “enhanced” or “strengthened” outcome. As with virtually all DFAT activity, there has been no measurable outcome at all.

There is the trite statement that:

“Through our overseas missions, we made global representations against the death penalty to all countries that carry out executions or maintain capital punishment as part of their laws.”

If DFAT made such representations in any meaningful manner, the representations were not made publicly, nor were they reported in the local or Australian media, or highlighted in the Australian Parliament. The reality is that DFAT appears to whisper about our Australian human rights values through the wrong end of a megaphone. DFAT delivers no measurable, positive outcome in this or any other area of human rights....or, if it does, it is not mentioned in this AR.

The reason for the continuing failure to deliver, in CLA’s opinion, is that the leadership of DFAT places so little value or importance on human rights. For human rights to resonate throughout a department, it must be led and directed from the top, and imbued by word, thought and action at all levels internally and in all external dealings¹.

By contrast, CLA believes that the high-sounding “global representations” are actually delivered in pro forma representations made once a year in set-piece, staged interchanges dispensed with at the start of “real” negotiations on “real” issues. They are nothing more than diplomatic niceties, and understood as such by both sides.

If DFAT was committed against executions, and for human rights, we would expect Australia’s position and attitude to be constantly showing up in news reports from throughout the world. Silence in this regard speaks loudly about DFAT’s obvious lack of commitment, and ineffectiveness.

JSCOT

On p109, it is claimed that “the department continued to support the Parliament’s Joint Standing Committee on Treaties (JSCOT)...and by providing both JSCOT and Parliament with briefings and advice on treaty processes”.

CLA has already commented on the fact that DFAT fails JSCOT. DFAT refuses to deliver the analysis and advice that JSCOT has asked for in relation to extradition and mutual assistance. To use words like DFAT “continued to support” and “facilitated” in relation to JSCOT is demonstrably wrong in fact: DFAT refused to do what JSCOT asked.

This clear case illustrates how the “weasel” words used to provide wiggle room in the performance measures/key indicators can be twisted to fabricate a changed reality in DFAT’s favour. In this section, relating to JSCOT, the reality is precisely the reverse of what the DFAT AR claims.

Under “Outlook” on p109, CLA would prefer that DFAT concentrated on “strengthening and improving” human rights in the Pacific and South-East Asia rather than in the UN’s “machinery and processes”. Other nations are trying to remedy the defects in the UN model, whereas Australia has the leading responsibility for actively advocating for better human rights in the Pacific certainly, and for taking a far more proactive stance in South-East Asia.

Under “Counter terrorism” on p114, there are further examples of how deficient DFAT’s commitment to human rights is. With counter-terrorism, to which Australia and DFAT are committed, there are copious examples of workshops and exercises and the like; there is even the idea of developing a “South Asia law enforcement training centre” or an Asia Pacific Human Rights Centre of Excellence (ref. p116, re the AP Civil-Military COE).

Where are the workshops and exercises on human rights? Where and when will DFAT advocate for a South Asia human rights training centre? When will Australia commit people resources and funds to backing up a claimed commitment to human rights? There is ample scope for devising measurable outcomes towards achieving these targeted human rights activities.

Regional television service: Australia Network (AN)

There are nine lines covering the DFAT contract with the Australian Broadcasting Service. The contract is worth \$92.4 million, and expires/requires renewal within about a year of this AR becoming public. The AN “availability” is a claimed 22m homes in 44 countries through 648 broadcast partners.

Once again, DFAT demonstrates its ability to weasel out of meaningful metrics. It is of no relevance how many homes in how many countries can be reached: what is

relevant is the actual audience, the take-up. As audience figures are readily available for TV watching, DFAT could easily provide either overall figures for how watched the service is, or figures from selected countries that would give a fair indication of whether or not Australia is getting value for money.

First-hand reports from knowledgeable private sector employees working overseas indicate that the audience for Australia Network is miniscule, and comprises mostly expatriate Australians. Somewhere between this measly assessment and the claimed 22m homes is a figure that would be suitably indicative and suitably included in an AR. DFAT does not provide it, so the assumption must be that the nearly-\$100m expended in this area is not working, or is poorly working, "in advancing Australia's interests". Again, when it comes to renewing a major contract, DFAT has not provided the yearly reporting which will enable balanced and sensible decisions to be made (similar to the JSCOTY problem).

Prisoner watch

Under "Assisting Australians overseas" (pp152-153), DFAT is apparently able to allocate consular staff to sit in court to attend trials of the 1410 Australians arrested or imprisoned overseas over 2009-10 to "ensure they did not suffer discrimination by local police or courts". CLA believes this is an admirable activity by DFAT.

All the more reason, therefore, for DFAT to monitor, without having to sit in court all day, what happens to the mere handfuls (not many hundreds) of people Australia extradites to other countries. Australians arrested/imprisoned overseas could fairly be said to have brought their plight on themselves in virtually all cases: by contrast, Australia has taken an active decision to impose a fate on those people we extradite. Clearly, as a nation we bear more responsibility where we have acted to put people under arrest or imprisonment in a particular country...but still DFAT refuses to report to JSCOT on what happens to the people we extradite.

Passports

The AR indicates that Australians lose passports at the rate of about 100 a day (36,099 a year). Given the security implications, CLA believes DFAT should be working as much on the mechanical and behavioural aspects of physically losing a passport as the integrated 'chips' used to identify people. There is no report of DFAT putting any effort into reducing the rate of people losing passports. Once again, by focusing on platitudinous verbiage in terms of "passport deliverables", DFAT does not focus on where measurable change could be effected to produce a far better result. This focus distorts, in this case, one of the fundamental roles of DFAT.

For example, DFAT and the Ombudsman (and, presumably, Australia Post also) engaged in an "inquiry" into the loss of a total of 115 passports through the postal

system in a year. By contrast, there is no inquiry proposed, and no mention of any action, to reduce the loss of 100 passports per day around the world.

The lack of proper management focus in this area appears to be the result of a DFAT-wide inability to concentrate on what really matters. Entities in the private and public sectors usually concentrate on what's important in delivering the best possible outcomes by devising proper performance measures and key indicators which put fundamentals under the microscope and guide forward planning. DFAT doesn't.

A department responsible for passports which is apparently satisfied, without comment in its annual report, on the loss of 100 Australian passports each day (700 a week, 36,099 a year) is a department that is out of kilter with reality.

For comparison, CLA asks the department to imagine what the outcry would be if 100 identification badges were lost each day in Canberra in relation to gaining access to the DFAT building. The equivalent, in terms of access to Australia, is what DFAT presides over without finding any need for comment, or any proposal to cut the losses, in its AR.

International Peacekeeping Operations

Why is Australia still spending large sums on UN missions which have outlived their relevance, sometimes by decades. For example, p251 reveals that we are paying more than \$9.6m for the UN Interim Force in Lebanon. The conflict for which our assistance was needed is well over: Lebanon, which is a long way from Australia, should be able to do its own policing. If it can't, neighbouring countries should pick up the financial burden. Australia has the Pacific and South-East Asia to worry about more.

We are also spending \$673, 000 on the United Nations Peacekeeping Force in Cyprus. This spending, sometimes at much higher levels, has been going on for about 45 years: surely it is time that Australia pulled out, and other nations closer to Cyprus took over? Where is the strategic analysis by DFAT of why we are undertaking these missions or operations, and whether they are needed in future? Where is the leadership from DFAT, instead of just being a paymaster for wasted expenditure?

The money which continues to be extravagantly allocated to these, and other, UN missions and operations could well be re-directed to furthering human rights in the Pacific, and South-East Asia. CLA recommends DFAT and/or the Australian Parliament conducts an inquiry into Australia's spending on UN activities.

Conclusion

Overall, we offer these comments more in sorrow than in anger, but in bitter disappointment. We had thought relatively highly of DFAT, before reading the 2009-10 Annual Report. The notion that the five high-powered executives pictured on p11, with their insipid smiles, are paid huge salaries to preside over such a dreadful report is disturbing: if the quality of the report is so poor, what of the quality of what DFAT actually does which goes into manufacturing the raw material for the report?

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PS:

In technical terms:

- half the photos in the printed AR are abysmally reproduced; and
- some tables read left to right in terms of previous/current years, some right to left (this would seem to indicate an organisation not knowing whether it is coming or going?)

ⁱ DFAT appears to suffer, in human rights terms, a similar cultural problem to that exhibited by the Australian Defence Force Academy in rights culture and sexual behaviour terms. Citizens are correctly pointing out, now that they now about the extent of the problem, that measures are taken to fix the ADFA disconnect with reality: how long before the public becomes aware of a similar type of problem in DFAT? A wise leadership would self-correct the instilled culture of the department, which places such little emphasis on human rights, before the problem becomes more widely known.