

The Senate

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Foreign Affairs, Defence and Trade  
References Committee

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Held Hostage

Government's response to kidnapping of  
Australian citizens overseas

November 2011

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## Acronyms and Abbreviations

ABC	Australian Broadcasting Corporation
ADF	Australian Defence Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
AKE	Andrew Kane Enterprises
AML/CTF Act	<i>Anti Money Laundering and Counter-Terrorism Financing Act 2006</i>
AIC	Australian Intelligence Community
ASIO	Australian Security Intelligence Organisation
ASIS	Australian Secret Intelligence Service
AUSTEO	Australian Eyes Only
CRG	Consular Response Group
DFAT	Department of Foreign Affairs and Trade
ERT	Emergency Response Team
FATF	Financial Action Task Force
IDETF	Inter-Departmental Emergency Task Force
K&R	Kidnap and Ransom (Companies)
NCTC	National Counterterrorism Center
NGO	Non-government organisation
RCMP	Royal Canadian Mounted Police
UNAMID	African Union/United Nations Hybrid operation in Darfur
McCarthy review	<i>Independent Review of the Nigel Brennan kidnapping in Somalia, conducted by Mr John McCarthy AO</i>



## **Executive summary and recommendations**

In this report, the committee looked closely at the government's response to incidents involving Australian citizens who have been kidnapped and held for ransom overseas. It considered three recent cases—the kidnappings of Mr John Martinkus (Iraq, 2004), Mr Douglas Wood (Iraq, 2005) and Mr Nigel Brennan (Somalia, 2008–09). The committee found that although such occurrences are infrequent, the global trend in this type of crime indicates that Australia must be prepared for another event.

One of the most compelling messages coming out of this inquiry was the importance of government agencies, especially the Department of Foreign Affairs and Trade (DFAT), exercising greater care, consideration and diligence in the way they deal with the distressed families of a person kidnapped and held for ransom overseas.

The committee formed the view that DFAT must ensure that while its efforts are being directed toward the safe and expeditious release of a kidnapped victim, the family must also be a primary concern. It must make every effort to keep families well informed about developments and to make them feel as though they are part of important decision-making. If a family chooses to engage a private consultant, the department, while adhering to the government's no-ransom policy, should continue to provide support to the family and do so in a generous and non-judgemental way.

In this regard, the committee recognised that government officers liaising with and providing support to a family require a particular temperament as well as appropriate skills and training. They should form a sub group of the government's emergency response team mobilised to deal with the hostage situation. The committee concluded that DFAT should ensure that there is a pool of suitably qualified personnel ready to fill this family liaison role as soon as a kidnapping is reported.

The support role of this specialist group should continue after the victim returns home in order to facilitate his or her smooth transition back into the Australian community, including assistance locating suitable counselling and medical services. The committee also found that government officials should refrain from making unsubstantiated statements or comments that could be interpreted as politicising the kidnapping.

A debriefing from the relevant agencies that involves a genuine two-way exchange of information between the family and government officials is a critical aspect of the recovery period for the victim and the family. In the committee's view, DFAT should offer, as an established practice, to conduct such a meeting and make arrangements for the victim of the kidnapping and family to attend, should they accept the invitation.

The committee has made eight recommendations directed at relevant government agencies with the intention, by and large, of ensuring that their engagement with the victims of kidnapping and their families is better directed at helping them through the ordeal.

**Recommendation 1****paragraph 5.38**

The committee recommends that:

- DFAT ensures that the next of kin of any future kidnap victim are made aware of the option of engaging a private kidnap and ransom consultant; and
- if the next of kin decide to proceed with a private consultant, DFAT ensures that any advice or information it then provides to the family is given in a non-judgemental way; that it is willing to cooperate and to share relevant information with the consultant as appropriate (given national security concerns); and that it alerts the family to possible legal complications to paying a ransom.

**Recommendation 2****paragraph 6.42**

The committee supports the establishment of the regular, whole of government coordinating group and recommends that DFAT give close consideration as to how it can maintain the high level of skills that members of an interdepartmental emergency task force require to respond effectively to a kidnapping incident overseas.

**Recommendation 3****paragraph 6.43**

In particular, the committee recommends that the coordinating group:

- commits to regular meetings and keeping up-to-date with global developments in kidnapping and hostage taking;
- assumes responsibility for ensuring that there is a pool of specially trained personnel across all relevant agencies ready to respond to an incident such as a kidnapping abroad;
- oversees the training regime of this pool of specialists that places a high priority on continuous improvement in interagency coordination and cooperation through joint training programs and workshops;
- in consultation with other countries and organisations involved in resolving hostage situations, explores and develops strategies for dealing with protracted hostage episodes; and
- gives special attention to developing a pool of personnel ready to take on the functions of family liaison and ensures that this sub group is seen as an integral part of any interdepartmental emergency task force. (See following recommendation.)

**Recommendation 4****paragraph 7.52**

The committee recommends that any inter-departmental emergency response task force include a sub group dedicated to supporting families of a victim of kidnapping. This group should be made up of personnel specially trained for this liaison role and able to provide the family with ongoing and accurate information. Agencies should strive to maintain the continuity of the personnel assigned to act in this role.

**Recommendation 5****paragraph 8.39**

The committee recommends that the family liaison sub group within the emergency response task force assumes responsibility for ensuring that a victim of kidnapping has access to appropriate counselling services once released and is active in helping to facilitate a smooth transition from medical and counselling services provided overseas to the appropriate domestic providers once the victim returns home. This recommendation also applies to people who are released before an emergency task force is mobilised or can take any substantial action such as in the Martinkus case.

**Recommendation 6****paragraph 9.29**

The committee recommends that DFAT examine ways to improve its relationship with the media when dealing with a kidnapping situation and how it explains its media strategy to media organisations and family members at the outset of a crisis.

**Recommendation 7****paragraphs 10.52–10.53**

In light of the difficulties experienced by both the Wood and Brennan families, the committee recommends that the government investigate thoroughly the options for making special allowance for people seeking to transmit money overseas in order to save the life of another Australian citizen being held hostage.

The committee recommends particularly that the government consider changes to the relevant sections of the Criminal Code and the United Nations Charter Act that would allow the minister at his or her discretion to grant exemptions in exceptional circumstances.

**Recommendation 8****paragraph 11.18**

The committee believes that, after every major incident overseas, an internal review should be undertaken (the committee notes that DFAT indicated that it does so as a matter of course). This internal review should provide all agencies that formed part of the response team with necessary feedback on their performance and also on the performance of the team as a whole. The committee noted, however, that often the victim and his or her family would like to be part of a debriefing. In light of this finding, the committee recommends that:

- the government ensure that DFAT as the lead agency invites the victim and his/her family and friends to a debriefing from the whole-of-government emergency response task force including the sub unit responsible for providing support to the family. Further that:
  - if accepted, this offer of a debriefing is to be a two way exchange of information providing the family with the opportunity to have their questions answered; and
  - DFAT to offer to cover the costs for the victim, family and friends to attend the debriefing.



# Chapter 1

## Introduction

1.1 On 23 June 2011, the Senate referred the following matters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 19 September 2011:

- (a) the effectiveness of the Australian Government's response to Australian citizens who are kidnapped and held for ransom overseas, including but not limited to the response of the Australian Federal Police, the Department of Foreign Affairs and Trade and the consular assistance in the relevant country;
- (b) how the Australian Government's response in these situations compares to the approach taken by other countries;
- (c) measures that could be taken by the Australian Government to improve the handling of its assistance to Australian citizens and their families; and
- (d) any other related matter.

1.2 On 19 September 2011, the Senate granted an extension of the reporting date to 24 November 2011.

### Conduct of inquiry

1.3 The committee advertised its inquiry on its website and in the *Australian*, *Brisbane Courier Mail*, *Age*, *Sydney Morning Herald*, *West Australian* and the *Canberra Times* calling for submissions to be lodged by mid-August. The committee also wrote directly to a range of people, agencies, organisations, and overseas governments likely to have been involved in matters covered by the terms of reference, drawing their attention to the inquiry and inviting them to make written submissions. It wrote to the Australian Federal Police (AFP), the Department of Foreign Affairs and Trade (DFAT) and the Attorney General's Department and invited some of the families of those who have been involved in kidnappings to make submissions.

### *Submissions*

1.4 The committee received 15 submissions, which are listed at Appendix 1, as well as additional information and a series of answers to questions taken on notice by witnesses, listed at Appendix 3. The committee held two public hearings in Canberra: on 6 October 2011 and 11 October 2011. A list of hearings and the names of witnesses who appeared is at Appendix 2.

### ***In camera evidence***

1.5 The committee prefers submissions and transcripts of evidence to be made public. Such disclosure promotes full and frank debate about the matters under the committee's consideration and enables the committee to produce a report demonstrating that its findings and recommendations are based on considered analysis of the evidence before it.

1.6 In this inquiry, however, a number of witnesses asked the committee not to publish their evidence. The committee took account of their requests which, by and large, highlighted the importance of withholding information from the public that had the potential to compromise any future negotiations for the release of an Australian captive. Although this evidence remains in camera, the committee has drawn from it and cites clearly where it has relied on this confidential material. The committee also took the approach that in considering recent kidnapping cases, it would not name specific public servants unless they occupied a senior position and could rightly take responsibility or speak for the actions of their relevant department or agency. This approach is consistent with the terms of reference, which are concerned with systemic issues that may impinge on the effectiveness of the Australian government's response to the kidnapping of an Australian citizen overseas.

### ***Research and statistics***

1.7 Due to the sensitive nature of kidnappings and the lack of publicly available information regarding the actions and policies of government agencies involved in kidnappings, the committee has in some cases had to rely on media reports as a source of information. The committee notes the difficulty of establishing the veracity of all information contained in media reports of kidnapping cases and has endeavoured to base its findings on a range of supporting and credible sources.

1.8 A number of international consultants specialise in assisting corporations and non-government organisations to secure the release of abducted employees. The family and friends of a kidnapped victim may also engage such specialists in order to achieve their loved one's safe return. Some of these consultants gather and publish information on kidnappings. The committee has used information and statistics published by Clayton Consultants and the AKE group. The United Nations and organisations such as Amnesty International also produce material on kidnappings. The committee has drawn on these sources as well.

### ***Previous inquiry***

1.9 In June 1997, the Senate Foreign Affairs, Defence and Trade References Committee tabled its report, *Helping Australians abroad: a review of the Australian Government's consular services*. The inquiry covered not only the broad issues of consular assistance but also a number of case studies, including the kidnappings and murders of Australians Kellie Wilkinson and David Wilson in Cambodia in 1994. They were abducted in separate instances by the Khmer Rouge and both hostages and

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their companions were later killed. The committee made a number of findings and related recommendations in respect of:

- the family members' need for information;
- the sensitivity required when dealing with a family under severe stress;
- consular assistance to the families, including the provision of counselling services;
- statements made by government ministers at the time of the kidnapping or soon after; and
- DFAT's relationship with the media.

1.10 In this report, the committee draws on these findings, which provide a starting point for the committee's current consideration of the effectiveness of Australia's response to similar incidents.

### ***McCarthy Review***

1.11 Following the recent kidnapping incident involving Mr Nigel Brennan, the Minister for Foreign Affairs (the minister) requested former DFAT Deputy Secretary, Mr John McCarthy, to undertake an independent review of the government's handling of the case (the McCarthy review). The terms of reference for the McCarthy review are listed at Appendix 5. Throughout this report, the committee refers to the findings and recommendations of this review, which was completed in June 2010. A summary of the review's key findings and recommendations are contained in DFAT's submission and are also reproduced and discussed in chapter 10 of this report.

1.12 The McCarthy review has not been made public. DFAT explained that for operational reasons, it did not want to discuss the detail of the recommendations publicly, as this would inform future strategies for dealing with any other kidnap cases. The department offered to provide the committee with a private briefing on the review.<sup>1</sup> The committee accepted the invitation and the private briefing was held on 8 November 2011.

### **Scope of inquiry**

1.13 Under the inquiry's terms of reference, the committee is to consider the effectiveness of the Australian Government's response to Australian citizens who are kidnapped overseas and held for ransom.

1.14 Kidnapping is used by diverse perpetrators in different circumstances for different objectives. The committee uses the term kidnapping in this report in a broad sense to mean the abduction or detention of an individual against their will with their

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1 Answer to question taken on notice no. 42, Additional Estimates, Senate Foreign Affairs, Defence and Trade Legislation Committee, 24 February 2011.

release dependent upon whether political, personal or material demands are met.<sup>2</sup> The committee is concerned only with cases where the kidnap and ransom involves an Australian and occurs overseas.

1.15 The committee received submissions from the victims of kidnapping and/or their family members or associates. The submissions were concerned with three recent cases which form the basis of the committee's report—the kidnappings of Mr John Martinkus (Iraq 2004), Mr Douglas Wood (Iraq 2005) and Mr Nigel Brennan (Somalia 2008–09). The committee has organised its report into three parts.

- Part I provides background information on kidnapping: it looks at this crime in a worldwide context before outlining Australia's particular experiences and providing detail on the three case studies cited above.
- Part II uses these three recent cases of Australian citizens being kidnapped overseas to examine the effectiveness of the Australian government's response to these incidents and to identify measures that could be taken to improve the way it handles such situations. The committee considers the following issues:
  - Australia's no-ransom policy and its implications for negotiating and securing the release of a captive;
  - the preparedness and competence of government agencies to manage a hostage situation overseas, including inter-agency coordination;
  - consular advice to, and agency support for, the families of a ransom victim, including the use of third party intermediaries, provision of interpreters and financial assistance;
  - consular assistance provided post resolution;
  - the government's use of, and relationship with, the media, including public commentary on the kidnapping made by government officials or ministers; and
  - legal implications for an Australian endeavouring to pay a ransom.
- Part III focuses on the procedures following the conclusion of a hostage situation including debriefings and the departments' assessments of their performance. The committee considers in particular the conduct and findings of an internal review undertaken by DFAT in 2010—the McCarthy review.

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2 United Nations Commission on Crime Prevention and Criminal Justice, 'International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims: report of the Secretary-General', UN Economic and Social Council, E/CN.15/2003/7, 5 March 2003, p. 2, accessed 30 August 2011, [http://www.unodc.org/pdf/crime/commissions/12\\_commission/7e.pdf](http://www.unodc.org/pdf/crime/commissions/12_commission/7e.pdf); Clayton Consultants, *Kidnap RiskBrief*, 2010, accessed 30 August 2011, <http://www.claytonconsultants.com/pdf/CCKRB-EN.pdf>

## **Acknowledgements**

1.16 The committee thanks all those who assisted with the inquiry, especially those who have been the victim of a kidnapping and their families for presenting the committee with thorough, thoughtful and well informed submissions.



**Part I**  
**Background**



# Chapter 2

## Background

2.1 Kidnapping for ransom occurs more often in conflict prone areas where security is fragile, law enforcement is weak and poverty pronounced. In this chapter, the committee provides a brief overview of the incidence of kidnapping for ransom worldwide, including cases involving Australian citizens.

### **Kidnapping worldwide**

2.2 Kidnappings are often categorised according to whether the motive of the hostage takers is criminal or political in nature. Criminal motives are those where the intention of the hostage takers is to obtain a material ransom or gain from a business or family. Political motives are those where the intention of the kidnapping is to further the aims of a political group or movement through the targeting of a particular organisation, institution or individual or through ransom demands to help fund the activities of the group. These two motives can be and often are combined.

2.3 For people driven by ideological motives, such as terrorist groups, kidnapping can be an effective propaganda tool to draw attention to their cause and to intimidate politicians to make concessions, such as the release of imprisoned followers or sympathisers. If a ransom is demanded and paid, it provides a source of funding that enables the perpetrators to sustain and grow their organisation.<sup>1</sup> According to the Financial Action Task Force (FATF):<sup>2</sup>

Ransoms resulting from KFR [kidnap for ransom] enables terrorist groups to recruit and indoctrinate new members, acquire sophisticated weapons and communications gear such as satellite phones, establish training camps and support units, including 'safe houses' and transportation operations, as well as provide financial resources which can be used to bribe government

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1 See for example, John Rollins and Liana Sun Wyler, 'International Terrorism and Transitional Crime: Security Threats, U.S. Policy, and Considerations for Congress', CRS Report for Congress, Congressional Research Service, March 2010, p. 5, accessed 7 September 2011, <http://www.fas.org/sgp/crs/terror/R41004.pdf>

2 Financial Action Task Force is an independent inter-governmental body established by the G-7 Summit in 1989, in response to mounting concern over money laundering. 'About the FATF', accessed 2 November 2011, [http://www.fatf-gafi.org/pages/0,3417,en\\_32250379\\_32236836\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1_1,00.html)

officials, law enforcement personnel and others who can be of use to a terrorist organisation in conducting its nefarious activities.<sup>3</sup>

2.4 Importantly, the demand for money can be a lucrative business. Clayton Consultants noted that:

Contrary to others, the kidnap industry is not subject to the volatile upswings and downswings of market conditions. Not only is it profitable, but when planned properly, it requires very little investment for a high yield of return. No part of the world is immune and its composition is in a constant state of flux, adapting to the local security conditions.<sup>4</sup>

2.5 Whatever the motives, each kidnapping is unique. It can take place in any country or region which has its own particular law and order regime, geography and political, economic and social environment. A kidnapping involves perpetrators who may be experienced, well-organised hostage-takers, members of a hardened criminal network or complete amateurs. Their temperaments and expectations will differ and their actions driven by financial or ideological motives or a combination of both.<sup>5</sup> Indeed, criminals may exchange their captives with terrorists for money.<sup>6</sup> Their victims will vary in age, gender, religion, state of health, education, nationality and profession and their reaction to kidnapping and confinement will be different and may fluctuate as their detainment continues. The relationship that develops between the hostage taker and their hostages will depend on a range of variables, including those cited above, and will likely change over time according to the response to the kidnappers' demands.

### ***Information on kidnapping incidents***

2.6 Available statistics on incidents of kidnapping for the purpose of obtaining a ransom, including a political concession, indicate that such activity remains a major

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3 Financial Action Task Force (FATF), *Organised Maritime Piracy and Related Kidnapping for Ransom*, FATF/OECD, July 2011, p. 26. A recent study noted, 'kidnappings have proven a lucrative enterprise for criminal gangs that...can demand ransom for the victims from their families and organisations, or sell them on to armed militant groups. These armed groups in turn use the victims for political leverage, as a propaganda tool, or to demonstrate power over a certain territory or in relation to authorities'. United Nations, Office for the Coordination of Humanitarian Affairs, *To Stay and Deliver: Good practice for humanitarian in complex security environments*, Policy and Studies Series, 2011, p. 11.

4 Clayton Consultants, *Kidnap RiskBrief*, 2010, 'Introduction'.

5 Department of Foreign Affairs and Trade, 'Kidnapping threat worldwide', *Smartraveller* website, 3 November 2011, accessed 3 November 2011, [http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap\\_Threat\\_in\\_Africa](http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap_Threat_in_Africa)

6 Department of Foreign Affairs and Trade, 'Kidnapping threat worldwide', *Smartraveller* website, bulletin issued on 27 September 2011 and updated on 7 October 2011. [http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap\\_Threat\\_in\\_Africa](http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap_Threat_in_Africa)

concern and will continue to be so.<sup>7</sup> It should be noted, however, that accurate information on kidnapping incidents is difficult to obtain due to a number of factors specific to the nature of the crime, including:

- the difficulty inherent in gaining reliable information in the areas of violent conflict where many kidnappings occur such as Somalia and Colombia;
- many victims do not report kidnappings for personal reasons, particularly a fear of retaliation by the hostage takers;
- many kidnappings occur between or within criminal groups and activities meaning that there is little likelihood such incidents would be reported to police or other authorities; and
- different ways of defining and recording kidnapping incidents across different jurisdictions; for example, in Argentina, 'express kidnappings' involving a randomly selected victim and small amounts of ransom (often paid by the victims themselves) are recorded by some police jurisdictions as 'aggravated robberies'.<sup>8</sup>

2.7 One witness told the committee in camera that the companies that assist in negotiating the release of hostages do not publish the details of their cases.<sup>9</sup> Estimates as to the number of kidnappings worldwide range from 12,000 each year to between 20,000 and 30,000 reported cases a year.<sup>10</sup> The number of incidents, particularly involving foreigners, is increasing.<sup>11</sup>

2.8 The National Counterterrorism Center's 2008 report on terrorism noted that the terrorist use of kidnappings for ransom increased significantly in that year.<sup>12</sup> Clayton Consultants found that in 2009 'political and economic turmoil, the war on drugs, stabilization efforts in Iraq and Afghanistan, revitalised insurgencies and failed

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7 United Nations, Security Council, 'Threats to international peace and security caused by terrorist acts', S/PV.6390, 27 September 2010, p. 8. See also National Counterterrorism Center (NCTC), *2008 Report on Terrorism*, NCTC, 2009, p. 10; NCTC, *2009 Report on Terrorism*, NCTC, 2010, p. 8.

8 United Nations Commission on Crime Prevention and Criminal Justice, 'International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims: report of the Secretary-General', UN Economic and Social Council, E/CN.15/2003/7, 5 March 2003, p. 5, accessed 30 August 2011, [http://www.unodc.org/pdf/crime/commissions/12\\_commission/7e.pdf](http://www.unodc.org/pdf/crime/commissions/12_commission/7e.pdf); J Kelly, 'The business of kidnapping', *The Australian*, 17 February 2010.

9 In camera evidence.

10 E McAvoy and D Randall, 'Hostage-taking a booming industry', *New Zealand Herald*, 23 October 2010; J Kelly, 'The business of kidnapping', *The Australian*, 17 February 2010.

11 European Interagency Security Forum (EISF), *Abduction management*, EISF Briefing paper, May 2010, p. 4; Clayton Consultants, *Kidnap RiskBrief*, 2010, accessed 30 August 2011, <http://www.claytonconsultants.com/pdf/CCKRB-EN.pdf>

12 National Counterterrorism Center (NCTC), *2008 Report on Terrorism*, NCTC, 2009, p. 10.

states continued to be the underlying precursors to the kidnapping industry'. It reported:

Drug-related kidnappings increased in Mexico, particularly in its border areas. While FARC-related kidnappings decreased in Colombia, opportunism kidnappings exploded in neighbouring Venezuela. The failed-state syndrome in Somalia continues to fuel piracy. Increases in kidnappings were a direct result of the political crisis in Nigeria, Honduras and Kenya. Afghanistan and Iraq are seeing shifts in kidnappings towards the local population. And a resurgent Abu Sayyaf gang turned to high-profile kidnappings in the southern Philippines.<sup>13</sup>

### ***High risk countries and targets***

2.9 The National Counterterrorism Center's 2010 report on terrorism recorded that Somalia had the highest number of kidnapping victims with 1,305, followed by the Gaza strip with 1,058 and then Afghanistan with 951.<sup>14</sup>

### ***Kidnapping targets***

2.10 No one is immune from being kidnapped and held for ransom. Kidnap gangs do not necessarily target wealthy individuals and business executives. Although people from all walks of life and nationalities have fallen prey to hostage-takers, victims of kidnap and ransom, however, can be grouped into broad categories.

### ***Expatriate workers and business people***

2.11 Over the years, numerous expatriate oil workers have been kidnapped in Nigeria and indeed, for a number of years this country has led Africa in the number of kidnapped expatriates.<sup>15</sup> Although the major oil companies deny involvement in ransom payouts, there are estimates of payments in the vicinity of £450,000 per kidnap victim.<sup>16</sup> According to Clayton Consultants' 2010 report, most kidnappings in Nigeria traditionally occurred in the Niger Delta with oil company employees as the preferred targets. It noted, however, that while this region remained a 'hot zone' for expatriates and a rich target for criminal elements, there was a notable shift toward wealthy locals and other prominent members of Nigerian society.<sup>17</sup>

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13 Clayton Consultants, *Kidnap RiskBrief*, 2010, 'Introduction'. FARC is the acronym for the Revolutionary Armed Forces of Colombia.

14 National Counterterrorism Center (NCTC), *2010 Report on Terrorism*, NCTC, 2010, p. 22.

15 Clayton Consultants, *Kidnap RiskBrief*, 2009, p. 8.

16 E Alike, 'Chevron Loses 23,000 Barrels Daily to Pipeline Damage', *Business Day*, 2 August 2006; M Pflanz, 'Nigerian Rebels threaten new wave of kidnaps', *Daily Telegraph*, 7 February 2007, p. 13.

17 Clayton Consultants, *Kidnap RiskBrief*, 2010, p. 9. See also AKE Group, *Kidnap report, Q4 2010 hotspots*, accessed 3 November 2011, <http://www.akegroup.com>

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### *Aid workers and journalists*

2.12 Aid workers, who tend to be a visible and soft target, are also vulnerable to hostage-takers. Recent reports have highlighted growing concerns about attacks against aid workers including kidnapping. Indeed, one report noted that of all means of violence recorded in aid worker attacks, two stand alone as on the rise—kidnappings and the use of major explosives. These tactics proliferated in Afghanistan and Pakistan.<sup>18</sup> The report stated that, even as incidents in general have fallen off, the nearly four-fold rise in kidnappings since 2005, 'speaks to the multiple incentives it offers in economic gains and political leverage'.<sup>19</sup>

2.13 According to statistics gathered by the AKE Group, over 20 foreign aid workers and UNAMID peacekeepers have been kidnapped in the Sudan since March 2009.<sup>20</sup> The surge in abductions has significantly restricted aid operations, forcing foreigners to relocate to main towns and avoid travelling to rural areas in need.<sup>21</sup> A UN report released at the beginning of this year found:

Kidnappings—including incidents where the victims were killed, in addition to the more common outcome of victims being released alive—remained the fastest growing type of attack affecting aid workers, even as other tactics such as armed break-ins and violent road banditry dropped off as organisations instituted tighter and more protective security measures and restricted movement in some areas.<sup>22</sup>

2.14 Journalists, whose job is to report on developments in volatile or war torn and highly dangerous areas, are also at risk of kidnapping. Similar to aid workers, they are often targeted by hostage-takers for monetary or political benefit. For example, in Afghanistan journalists and politicians are often the most publicised cases. Over the last decade there have been a number of high profile kidnappings. In September 2001, Yvonne Ridley, a British journalist, was captured by the Taliban and released after ten days on a promise that she would study Islam. The following year, while pursuing a story about Islamic militants in Pakistan, Daniel Pearl was abducted and executed by his captors. In 2008, militants captured David Rohde, a *New York Times* journalist and

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18 Humanitarian Outcomes, *Spotlight on security for national aid workers: Issues and perspectives*, Aid Worker Security Report 2011, p. 7.

19 Humanitarian Outcomes, *Spotlight on security for national aid workers: Issues and perspectives*, Aid Worker Security Report 2011, p. 7.

20 Kidnapping to gain a ransom has become a major business in Darfur, AKE Group, *Kidnap Report, Q4 2010*, p. 5, accessed 26 October 2011, <http://www.akegroup.com>

21 AKE Group, *Kidnap Report, Q4 2010*, p. 5, accessed 26 October 2011, <http://www.akegroup.com>

22 United Nations Office for the Coordination of Humanitarian Affairs, Policy Development and Studies Branch, *To Stay and Deliver*, Policy and Studies Series, 2011, p. 11.

detained him for around seven months before he managed to escape.<sup>23</sup> At the end of the second quarter of 2010 at least three foreign reporters—two French and one Japanese—remained in Taliban captivity.<sup>24</sup> The French reporters were finally released after being held hostage for 547 days.<sup>25</sup>

### *Tourists*

2.15 Tourists are also the targets of kidnappers.<sup>26</sup> For example in 2009, a group of four Western tourists—German, Swiss and UK nationals—was kidnapped while on holiday in West Africa. They were returning from a cultural festival when their convoy of SUVs was attacked and they were taken hostage. A ransom was demanded. The UK national was executed and a follow-up ransom was issued. The three remaining hostages were later released at different intervals.<sup>27</sup>

2.16 Foreign affairs departments, travel agents and insurance companies issue travel warnings regularly to alert tourists to the risk of kidnappings in certain countries or regions of particular countries. For example, the United States Bureau of Consular Services recently urged travellers to Colombia to exercise care:

...terrorist groups such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and other criminal organizations continue to kidnap and hold civilians for ransom or as political bargaining chips...Kidnapping remains a serious threat, with two kidnapping cases of U.S. citizens reported since August 2010. One kidnapped citizen was rescued within 4 days and the other case resulted in

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- 23 CNC World, transcript, 'Taliban kidnapping', 6 February 2011; and *New York Times*, 'Times Reporter Escapes Taliban After 7 Months', <http://www.nytimes.com/2009/06/21/world/asia/21taliban.html?ref=davidrohde>. Committee to Protect Journalists, 'On Assignment: Covering Conflicts Safely', accessed 18 October 2011, <http://www.cpj.org/reports/2003/02/journalist-safety-guide.php>
- 24 AKE Group, *Kidnap Report, Q2 2010*, pp. 2 and 7, accessed 18 October 2011, [www.akegroup.com](http://www.akegroup.com).
- 25 Committee to Protect Journalists, 'French ex-hostages: Press must continue in Afghanistan', accessed 10 October 2011, <http://cpj.org/blog/2011/07/french-ex-hostages-press-must-continue-in-afghanistan.php>; Reporters without Borders, 'Two French journalists now held hostage for 500 days: Only reporters held hostage', accessed 18 October 2011, [http://en.rsf.org/afghanistan-two-french-journalists-now-held-12-05-2011\\_40275.html](http://en.rsf.org/afghanistan-two-french-journalists-now-held-12-05-2011_40275.html)
- 26 New Zealand Ministry of Foreign Affairs and Trade, 'Tunisia', *Safetravel* website, <https://www.safetravel.govt.nz/destinations/tunisia.shtml>, Flight Centre, 'Destination Malaysia', accessed 3 November 2011, <http://www.flightcentre.ca/destinations/asia/malaysia>; UK Foreign and Commonwealth Office, 'South America and South Atlantic Islands', accessed 3 November 2011, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/south-america/venezuela>
- 27 Financial Action Task Force (FATF), *Organised Maritime Piracy and Related Kidnapping for Ransom*, FATF/OECD, July 2011, Case study #1, p. 27. SUV is an acronym for sport utility vehicle.

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the murder of the victim. Kidnapping in rural areas is of particular concern.<sup>28</sup>

2.17 DFAT noted that over the last decade there has been steady increases in the numbers of Australians going abroad for 'adventure tourism'. This enthusiasm for travelling to exotic, remote and sometimes risky locations is consistent with an international trend.<sup>29</sup> DFAT stated that cultural festivals, especially those held in north and west Africa, are 'attractive places for terrorists and criminals to identify and target tourists for kidnapping'. These festivals bring people to predictable locations along unsecured routes. DFAT strongly advises Australians not to attend major festivals such as the Tuareg 'Festival in the Desert' and the 'Sahara Nights' festival in northern Mali and the Tamadach Festival in Eastern Mali.<sup>30</sup>

### *Piracy*

2.18 Most recently the escalating incidences of piracy have raised concerns. The waters off Somalia and the Gulf of Guinea are the most high risk areas for piracy attacks and there is concern about the growing propensity to use violence when seizing ships and their crews.<sup>31</sup> As at 3 March 2011, 33 vessels were being held off the coast of Somalia, including one that was converted for use as a pirate 'mother ship'.<sup>32</sup> It should also be noted that not all vessels hijacked and held for ransom are large commercial vessels, some can be smaller fishing boats and yachts. A recent study observed:

In cases involving fishing boats and sailing yachts, the owners often do not have the financial resources to pay ransoms and, particularly in the case of yachts, lack insurance coverage as well. Consequently, persons captured on smaller vessels are likely to be held captive for longer periods of time.<sup>33</sup>

2.19 Mr Jack Lang, a special adviser to the Secretary-General, reported to the Security Council in January 2011 that nearly 2000 hostages had been taken in two years:

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28 Bureau of Consular Affairs, 'Colombia: country specific information', US Department of State, accessed 3 November 2011, [http://www.travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1090.html](http://www.travel.state.gov/travel/cis_pa_tw/cis/cis_1090.html)

29 Department of Foreign Affairs and Trade, *Submission 8*, [pp. 1–2].

30 Department of Foreign Affairs and Trade, *Travel Bulletin*, 'Kidnapping threat worldwide', current for Tuesday, 18 October 2011; and Department of Foreign Affairs and Trade, *Submission 8*, [p. 2].

31 Financial Action Task Force (FATF), *Organised Maritime Piracy and Related Kidnapping for Ransom*, FATF/OECD, July 2011, pp. 7–10.

32 Financial Action Task Force (FATF), *Organised Maritime Piracy and Related Kidnapping for Ransom*, FATF/OECD, July 2011, pp. 7–8.

33 Financial Action Task Force (FATF), *Organised Maritime Piracy and Related Kidnapping for Ransom*, FATF/OECD, July 2011, p. 16.

We have seen the industrialization of the phenomenon, an increasing number of pirates, sophisticated operations, the increasing use of mother ships, the latest technology, such as GPS, heavy weaponry, better organization during attacks, seizures and the negotiation of ransoms, and the gradual emergence of a true industry and new professions linked to piracy, including intermediaries, negotiators and interpreters.<sup>34</sup>

2.20 Three piracy attacks were reported in the last quarter of 2010 in the Gulf of Guinea although, according to the AKE Group, 'the actual number could be higher as such incidents are heavily under-reported'. It noted that usually the pirates, armed with guns and knives, board a vessel and demand cash and belongings. If hostages are taken they are likely to be held on the mainland until a ransom is paid.<sup>35</sup>

2.21 The President of the United Nations General Assembly in May 2010 noted that the payment of ransom to free hostages and ships has 'created an incentive for Somalis to engage in piracy'. He concluded that the problem of piracy 'if not addressed urgently and effectively, would spiral out of control and lead to further serious global consequences'.<sup>36</sup> DFAT noted the most recent cases where Somali pirates have actually gone into Kenyan territory and taken tourists.<sup>37</sup>

### **Outcomes**

2.22 The vast majority of reported kidnap incidents worldwide are resolved with the release of the victim though an estimated 6% of incidents result in the death of the hostage.<sup>38</sup> One firm with expertise in kidnap response estimated that ransoms are paid in around 64% of cases, and only 18% are released without any form of payment. Around 10% of hostages are rescued and an estimated 2% are able to escape their captors.<sup>39</sup>

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34 Address by Mr Jack Lang, United Nations Security Council, 6473<sup>rd</sup> meeting, S/PV.6473, pp. 2–3.

35 AKE Group, *Kidnap Report, Q4 2010*, p. 3, <http://www.akegroup.com>; See also AKE Group, *Kidnap Report, Q2 2010*, <http://www.akegroup.com>

36 United Nations Security Council, 'Report of the Secretary-General pursuant to Security Council Resolution 1897 (2009)', S/2010/556, 27 October 2010, paragraphs 12 and 68. See also address by Ambassador Kumalo, United Nations Security Council, 6043<sup>rd</sup> meeting, S/PV.6043, 15 December 2008, p. 4. Ambassador Kumalo noted, 'Recently, the link between piracy, kidnapping and ransom payments in financing embargo violations committed by armed groups has received increased attention. In recent months, the number of piracy incidents has increased dramatically....' In 2011, Mr Lang stated, 'I may exaggerate a little here—the pirates are increasingly becoming the masters of the Indian Ocean'. United Nations Security Council, 6473<sup>rd</sup> meeting, S/PV.6473, p. 4.

37 *Committee Hansard*, 6 October 2011, p. 36. References to the *Committee Hansard* in this report are to the proof *Hansard*—page numbers may vary between the proof and the official *Hansard*.

38 *Submission 7*, (Confidential), p. 15.

39 *Submission 7*, (Confidential), p. 15.

## Australians kidnapped overseas

2.23 Being kidnapped and held for ransom is a real and persistent threat for many Australians who live, work and travel abroad. The small but significant number of Australians who have been involved in kidnapping incidents overseas in recent decades reflect the diverse range of circumstances under which kidnappings occur worldwide. The cases differ by location and by the motivations and demands of the hostage takers.

2.24 The majority of Australians who have been kidnapped and held for ransom overseas since 1994 have been in Africa, particularly in Nigeria where a large number of Australians are employed in the oil industry. Australians have also been kidnapped in Iraq, Afghanistan, Gaza, Colombia, Cambodia, Yemen, Russia, Turkey and India.

2.25 Most Australians who have been taken hostage have been released. However, a number have tragically died including Andrew Thirsk, kidnapped with a tour group in Yemen in 1998 and killed during the rescue attempt by Yemeni government forces, and the separate kidnappings and murders of David Wilson and Kellie Wilkinson by the Khmer Rouge in Cambodia in 1994.

2.26 There have been at least 30 reported kidnapping incidents involving Australians overseas since the deaths of Kellie Wilkinson and David Wilson. In information provided to the committee, the Department of Foreign Affairs and Trade (DFAT) has listed 11 cases that it was aware of dating from 1996 (DFAT acknowledges that there be other cases in situations that have been resolved without any request for government assistance). Information from other sources including newspaper reports and press releases suggests a further 20 cases of Australians being kidnapped overseas in that period (see Appendix 4 for a list of Australians who have been kidnapped overseas since 2001). The reported kidnapping incidents involving Australians that have occurred over the last seven years in chronological order are:

- 2004—Iraq: Robert Colvill, an American-Australian sound engineer for NBC was kidnapped with three colleagues in Fallujah. He was released three days later after the NBC reportedly paid a ransom.<sup>40</sup>
- 2004—Iraq: Two Australian security guards were reportedly taken hostage with their clients by a group known as the 'Horror Brigades of the Islamic Secret Army' in September. The group demanded that Australian forces be withdrawn from Iraq. The kidnapping was never confirmed but media reports stated that an SAS team was dispatched to Iraq and that an AFP team specially trained for hostage crises in the Middle-East was on standby.<sup>41</sup>

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40 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011. Received as confidential.

41 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011; J Kerin and B Norington, 'SAS team flies into Iraq as hostage mystery deepens' *The Australian*, 15 September 2004.

- 2004—Iraq: Sheik Mohamed Alsibiyani (also known as Mohammed Naji) was held by Sunni insurgents for four days before being released. The hostage takers demanded a ransom but the Sheik was eventually released after they took the cash he was carrying.<sup>42</sup>
- 2004—Iraq: John Martinkus, journalist, kidnapped with two local companions outside his hotel in Baghdad and held for 20 hours by Sunni insurgents before being released.<sup>43</sup>
- 2005—Iraq: Douglas Wood, engineer, kidnapped with two Iraqi colleagues on 30 April in Baghdad by the Shura Council of the Mujahadeen of Iraq. The hostage takers demanded that Australian forces leave Iraq. An 'emergency response' team was dispatched from Australia to Iraq. Wood was released by Iraqi forces during a 'random' operation on 15 June 2005. His two colleagues had been killed at an earlier date by the hostage takers.<sup>44</sup>
- 2005—Gaza: Brian Ambrosio, deputy principal at a private American school, was kidnapped with a Dutch colleague in December by a group connected to the Popular Front for the Liberation of Palestine. He was released unharmed after being held for two days.<sup>45</sup>
- 2006—Gaza: Kaye Bennett and Oles Shchrytsya were abducted with seven other foreigners at the American International School at Beit Lahiya in Gaza. They were held for two hours before being released at a nearby police station after the captors determined that none of the hostages was American.<sup>46</sup>
- 2007—Nigeria: Jason Lane, oil worker, was kidnapped with four other foreign contractors on 4 July from an oil rig operated by Shell in the Niger Delta. The hostages were released after seven days.<sup>47</sup>
- 2007—Mali: Des Gregor, farmer, was kidnapped after travelling to Bamako to meet a woman he had met over the internet whom he believed would be his bride. He was held by a criminal gang who demanded a ransom of \$100,000 from Mr Gregor's friends and family in Australia. Mr Gregor was held for 12 days before AFP negotiators persuaded the kidnappers that there was money

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42 E Connolly, 'Released hostage grateful to be alive', *Sydney Morning Herald*, 17 September 2004; 'Australians kidnapped abroad', *Sydney Morning Herald*, 2 May 2005.

43 J Martinkus, *Submission 4*.

44 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

45 'Freed Aussie teacher talks of hopes for Gaza peace after kidnapping', *Canberra Times*, 23 December 2005.

46 C Hart and A Rabinovich, 'Teachers freed after Gaza kidnapping "outing"', *The Australian*, 16 March 2006.

47 B Way, 'Father warned son of kidnap threat', *Adelaide Advertiser*, 7 July 2007.

to be collected by the captive from the Canadian Embassy in Bamako. The gang released Mr Gregor near the embassy and he was rescued by police.<sup>48</sup>

- 2008–09—Somalia: an Australian with dual nationality kidnapped with colleagues working for an NGO. Their employer conducted negotiations with the support of a private security firm and the hostages were released after an estimated ransom of US\$4.1 million was paid. The family requested that his Australian nationality not be disclosed at any point in the negotiations.<sup>49</sup>
- 2008–09—Somalia: Nigel Brennan, photo journalist, kidnapped with Canadian journalist, Amanda Lindhout, and a number of Somali nationals on 23 August 2008 outside Mogadishu. Hostage takers demanded a multi-million dollar ransom. Somali nationals were released in January 2009. Brennan and Lindhout were released on 25 November 2009 after their families engaged a private security firm and paid ransom of around US\$600,000.<sup>50</sup>
- 2009—The Gambia: Justin Liebig, lured by a scam and kidnapped on 2 February. He was freed on 10 February after a reported €5,000 in ransom was paid. DFAT and the Australian Federal Police officers were reportedly sent to The Gambia to assist with investigations. Gambian police arrested the kidnappers and recovered most of the ransom.<sup>51</sup>
- 2011—East Africa: Australian ship captain with dual nationality taken hostage with crew by Somali pirates in February. Captain, crew and vessel were released two months later after ransom was paid by the shipping company.<sup>52</sup>

2.27 Fortunately, the incidence of Australians being kidnapped and held for ransom overseas is infrequent. Nonetheless, the global trend in this type of crime suggests that Australia must be prepared for another event.

## Conclusion

2.28 Although the ultimate aim of the Australian government is to secure the safe and expeditious release of its citizens who are kidnapped and held for ransom, its response depends on many factors. They include the existence of international

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48 S Larkin, 'Scam victim lucky to be alive', *Sydney Morning Herald*, 13 August 2007; 'Kidnapped Des trapped by love', *Sunday Mail Adelaide*, 12 August 2007.

49 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

50 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

51 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011; 'Australian pensioner tied up for one week in a toilet', *Sydney Morning Herald*, 13 February 2009.

52 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

conventions, humanitarian considerations such as the safety of the hostage, the state of law and order in the country where the hostage is held, the relationship with the respective government and law enforcement agencies, and the need to deter future similar acts.

2.29 In many cases, the situation in the country where an Australian may be held captive limits the government's ability to work toward the victim's release. For example, kidnappings often occur in areas experiencing economic and political turmoil, where law and order is weak, even non-existent, corruption is endemic and where Australia has little or no diplomatic or official representation. The avenues for direct intervention may be too dangerous or attempts to exercise diplomatic influence unproductive. A hostage situation involving an Australian citizen overseas presents many challenges for the government. The committee stresses that past responses should in no way be seen as indicative of that which may occur in the future. Any response will very much be determined by the circumstances of the day.

2.30 The committee examines the Australian government's response to an Australian kidnapped and held for ransom overseas in subsequent chapters, but starts its consideration by providing the particulars and circumstances of three of the most recent cases of Australians who have been abducted and held captive overseas—Mr John Martinkus, Mr Douglas Wood and Mr Nigel Brennan.

# Chapter 3

## Recent cases

3.1 The committee received evidence in relation to three Australians who had been kidnapped overseas: Mr John Martinkus, Mr Douglas Wood and Mr Nigel Brennan.

3.2 This chapter summarises each of these kidnappings and the following chapters will use these cases to examine the effectiveness of the Australian government's response to these incidents and to identify measures that could be taken to improve the way it handles such situations.

### John Martinkus

#### *The kidnapping and time in captivity*

3.3 A freelance journalist working on assignment for SBS's *Dateline* program, John Martinkus was kidnapped by a Sunni militant group close to the Al Hamra Hotel and the Australian Embassy in Baghdad on 16 October 2004.

3.4 Mr Martinkus stated in his submission that he left the hotel compound with his translator and driver intending to film the outside of a building as part of a story.<sup>1</sup> Mr Martinkus had been to Iraq twice previously in 2004 but stated in his submission that the security situation in Baghdad had deteriorated significantly since those trips:

The space we were able to occupy and function in as journalists trying to report on the situation in the country had become confined to several fortified and guarded hotel complexes, the green zone and wherever in the city our drivers and translators felt safe enough to take us that day.<sup>2</sup>

3.5 Mr Martinkus' account states that he and his companions were carjacked by a group of armed men approximately 500 metres from the Al Hamra Hotel entrance, having just turned a corner. Mr Martinkus stated that he struggled with the armed group, aware that other journalists who had been kidnapped in Iraq had been executed.<sup>3</sup> The struggle was to no avail.

3.6 Following the scuffle, Mr Martinkus received a phone call from another translator he had worked with and was able to shout that he had been kidnapped before the phone was taken away from him by his kidnappers.<sup>4</sup> He and his

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1 J Martinkus, *Submission 4*, supporting statement, p. 2.

2 J Martinkus, *Submission 4*, supporting statement, p. 1.

3 J Martinkus, *Submission 4*, supporting statement, p. 2.

4 J Martinkus, *Submission 4*, supporting statement, p. 3.

companions were driven to a building in Western Baghdad where they were blindfolded and had their hands bound.

3.7 Mr Martinkus' kidnappers told him that they were 'Iraqi mujahedeen' who wanted to question him but were not interested in money.<sup>5</sup> He was interrogated by the leader of the group who had kidnapped him as to what he was doing in Iraq and what links he had to the American-led coalition military forces. Mr Martinkus stated that during these interrogations he tried to explain his role as a journalist and convince his captors that he was not part of the coalition military forces.<sup>6</sup>

3.8 Mr Martinkus and the other hostages were moved to another location where the questioning continued. In his submission to the committee, Mr Martinkus described being made to appear in a video reading a prepared statement. He believed that the video was to be used as a propaganda tool to announce that he was to be released.<sup>7</sup>

3.9 According to Mr Martinkus, he was then interrogated by the leader of another group but following this his original captors decided that he would be let go. Mr Martinkus and his companions were driven to a location close to where his translator lived and released; around 20 hours after they were first taken hostage.<sup>8</sup>

### ***The response to the kidnapping***

3.10 In his submission to the committee, Mr Martinkus stated that, after he had failed to return from his trip on 16 October 2004, fellow Australian journalist, Michael Ware, had been in touch with Mr Martinkus' management at SBS and with Australian government representatives.<sup>9</sup> However, according to his submission, 'no one had really known where to start looking'.<sup>10</sup>

3.11 It is not clear whether Australian government agencies responded in any way to the alert sounded by Mr Ware. In its evidence to the committee, the Department of Foreign Affairs and Trade (DFAT) stated that: 'we did not have any involvement in that [Mr Martinkus' kidnapping incident] because he was out before we knew about his case'.<sup>11</sup>

3.12 The department told the committee that consular staff attempted to contact Mr Martinkus twice: just after his release on 17 October 2004 and before his departure

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5 J Martinkus, *Submission 4*, supporting statement, p. 2.

6 J Martinkus, *Submission 4*, supporting statement, p. 4.

7 J Martinkus, *Submission 4*, supporting statement, pp. 6–7.

8 J Martinkus, *Submission 4*, supporting statement, pp. 7–8.

9 J Martinkus, *Submission 4*, supporting statement, p. 8.

10 J Martinkus, *Submission 4*, supporting statement, p. 8.

11 *Committee Hansard*, 6 October 2011, p. 39.

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from Baghdad on 18 October 2004.<sup>12</sup> Mr Martinkus stated in his evidence to the committee that he was aware of one attempt by consular staff to contact him just after his release:

When I was released I went to Michael Ware's office—his house—which was inside the security zone of the al-Hamra Hotel. I was quite wired up. I was exhausted. Whilst I was telling him and some colleagues who were gathered there what had happened and how I had been taken and how I had got released, the embassy called Michael. I remember quite distinctly waving away the phone call, because I did not want to talk to them. I wanted to wait until I was more together. I also wanted to wait until I was out of the country. I pretty much said to Michael, 'Look, I'll talk to them later.' I cannot recall whether I asked him to tell them what happened, but I think basically he was in the process of telling them what had happened as I was talking to him.<sup>13</sup>

3.13 Mr Martinkus stated that he gave an account of what had happened to him to SBS and that SBS was in contact with DFAT. Mr Martinkus noted that he never spoke to embassy staff following his kidnapping and that he was never contacted by DFAT after he left Iraq.<sup>14</sup> DFAT confirmed this, explaining:

We did try to contact him a couple of times and passed on that offer of consular assistance and asked to speak to him at the earliest opportunity. If he had wanted to get in touch with us, that offer was definitely there.<sup>15</sup>

3.14 Mr Martinkus was critical of comments made in the media following his kidnapping which he believed should have been corrected by DFAT. These issues will be examined in chapters 8 and 9.

## **Douglas Wood**

### ***The kidnapping and time as a hostage***

3.15 Douglas Wood, an engineer working in Baghdad managing and facilitating construction contracts, was kidnapped on 29 April 2005 with two of his Iraqi colleagues. Mr Wood claimed that he was lured to a meeting by the hostage takers to discuss a possible construction contract.<sup>16</sup>

3.16 Mr Wood's original hostage takers released a video of Mr Wood on 1 May 2005 in which Mr Wood stated their demand that the US, Australia and Britain

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12 *Committee Hansard*, 6 October 2011, p. 40.

13 *Committee Hansard*, 6 October 2011, p. 9.

14 *Committee Hansard*, 6 October 2011, p. 9.

15 *Committee Hansard*, 6 October 2011, p. 40.

16 M Attard, 'Interview with Douglas Wood', *Sunday Profile*, ABC Local Radio, 3 July 2005, accessed 20 October 2011, <http://www.abc.net.au/sundayprofile/stories/s1404739.htm>

withdraw their troops from Iraq.<sup>17</sup> Mr Wood's initial captors later traded Mr Wood to a second group who only made monetary demands to secure Mr Wood's release.

3.17 Mr Wood was held hostage for 47 days. His two Iraqi colleagues are believed to have been executed soon after Mr Wood was kidnapped. When Mr Wood was handed over to the second group, he was held with a Swedish oil trader, Ulf Hjerstrom and a number of Iraqi hostages.<sup>18</sup> Mr Hjerstrom reported that he and Mr Wood were forced to witness the execution of a number of Iraqi hostages.<sup>19</sup> Mr Wood stated that he was beaten by the hostage takers and had his feet shackled to a bed frame.<sup>20</sup>

### *The response to the kidnapping*

3.18 In his evidence to the committee, Douglas Wood's brother, Dr Malcolm Wood, stated that the family first heard of the kidnapping in the early hours of the morning of 2 May 2005. Douglas Wood's wife, who lived in the US, had been informed of the kidnapping by an American journalist in Iraq. She contacted another of her husband's brothers, Vernon Wood, based in Melbourne, who informed the rest of the family.<sup>21</sup> Dr Malcolm Wood contacted DFAT that morning:

...there was a duty officer at work who answered. They were very glad that I had rung because they had no connection between Douglas Wood, whom they knew had been kidnapped as an Australian citizen, and his family. So the connection was then made. So they knew of his kidnapping but did not know of his connections in Australia.<sup>22</sup>

3.19 Dr Wood spoke to DFAT's public relations officer and was briefed a few hours later by the Assistant Secretary, Consular. Dr Wood stated that he met with DFAT officials including Deputy Secretary Nick Warner later that morning. Mr Warner was set to depart for Baghdad that day to lead an Australian Government task force charged with obtaining the release of Douglas Wood.<sup>23</sup>

3.20 DFAT officials assisted the Wood family to issue a public statement to the media. The family later engaged a private media advisor and conducted their own public diplomacy.<sup>24</sup> However, Dr Wood was clear that the family worked closely with DFAT throughout the crisis:

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17 'Hostage has little chance of getting out alive: Hill', *Australian*, 4 May 2005.

18 P Ker, 'Cash must have saved Wood, says cellmate', *Sydney Morning Herald*, 23 June 2005.

19 P Ker, 'Cash must have saved Wood, says cellmate', *Sydney Morning Herald*, 23 June 2005.

20 M Attard, 'Interview with Douglas Wood', *Sunday Profile*, ABC Local Radio, 3 July 2005, accessed 20 October 2011, <http://www.abc.net.au/sundayprofile/stories/s1404739.htm>

21 *Committee Hansard*, 6 October 2011, p. 1.

22 *Committee Hansard*, 6 October 2011, p. 1.

23 *Committee Hansard*, 6 October 2011, p. 2.

24 *Committee Hansard*, 6 October 2011, p. 2.

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We had excellent relations with the foreign affairs officials from the very start...all the time we kept in touch with DFAT and made sure, and they were grateful for this, that whatever we did was as a family and we did with their knowledge, and if not concurrence then at least their satisfaction that there would be no harm to Douglas in what they were doing.<sup>25</sup>

3.21 In their evidence to the committee, DFAT and the AFP did not detail the actions undertaken by the task force based in Baghdad. Dr Wood, however, stated in his evidence that he was briefed almost daily by DFAT officials as to what was occurring in Baghdad. He stated:

...we had a lot of information about people he [Mr Warner] was seeking to cultivate as possible intermediaries—some discussions he had with Iraqi government officials or ministers; his contact from time to time with Sheik Al-Hilali...<sup>26</sup>

3.22 The Australian task force reportedly worked closely with the US forces in Iraq, particularly with the US Department of State's Hostages Working Group.<sup>27</sup>

3.23 Around a month after Mr Wood was first kidnapped the Australian task force received a ransom demand of \$US25 million.<sup>28</sup> The task force was unable to verify whether the demand actually came from the group holding Douglas Wood. The Australian Government and the Wood family rejected the ransom demand.<sup>29</sup>

3.24 Dr Malcolm Wood stated in his submission that the family had made a decision early on in the crisis to pre-empt a ransom demand by making an offer of a charitable donation to the people of Iraq, conditional on Douglas Wood's release. The family decided to make this offer at the upper level of their own means but chose not to seek financial support from others or through a public appeal.<sup>30</sup>

3.25 On 15 June 2005, Iraqi soldiers from the 2<sup>nd</sup> Battalion, 1<sup>st</sup> Iraqi Army Brigade, discovered Douglas Wood in a house in the western Baghdad suburb of Ghazaliya.<sup>31</sup> There are differing accounts as to how Mr Wood was discovered: some media reports suggested that the Iraqi unit was tipped off as to the hostages' location while DFAT, in their evidence to the committee, described it as a 'random operation'.<sup>32</sup> An airborne

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25 *Committee Hansard*, 6 October 2011, p. 2.

26 *Committee Hansard*, 6 October 2011, p. 3.

27 'The raid that went wrong', *Age*, 18 June 2005.

28 'Kidnappers wanted \$US25m, Wood reveals', *Canberra Times*, 8 December 2005.

29 M Wood, *Submission 3*, p. 1.

30 M Wood, *Submission 3*, pp. 2–3.

31 'Tip came from the streets', *Herald Sun*, 17 June 2005.

32 'Tip came from the streets', *Herald Sun*, 17 June 2005; Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

American Incidence Response Unit and brigade combat team was called in, and Mr Wood was flown to Camp Victory.<sup>33</sup>

3.26 Following Mr Wood's release, his brothers kept their commitment to make a donation to an Iraqi charity.

## **Nigel Brennan**

### *The kidnapping and time as a hostage*

3.27 Nigel Brennan, an Australian photojournalist, was kidnapped on the outskirts of Mogadishu, Somalia, with Canadian journalist, Amanda Lindhout, on 23 August 2008. The pair had travelled to Somalia as freelance journalists intending to cover the country's civil war, drought and food crisis.<sup>34</sup> They were kidnapped on their way to visit camps for internally displaced persons near Mogadishu with a local cameraman and two other Somalis.

3.28 In his submission, Mr Brennan stated that the kidnappers claimed to be part of the 'Somali Mujahedeen' and that their kidnapping was politically motivated as the Australian and Canadian Governments were 'at war with Islam'.<sup>35</sup> They were told by one of the hostage takers that, while believing the pair were journalists, they would be held for ransom.<sup>36</sup>

3.29 Mr Brennan and Ms Lindhout were held for 462 days by the same group. They were moved with their fellow hostages to a number of different houses and towns during this time. For the first two months of their time as hostages, Mr Brennan and Ms Lindhout were held together in the same room. They were separated on or about 21 October 2008 and the remainder of their time in captivity was spent in isolation.<sup>37</sup>

3.30 The treatment of Mr Brennan and Ms Lindhout worsened over time with poor food and filthy conditions. Mr Brennan's account of his ordeal included long periods of illness, interrogations, beatings, threats to his life and mock executions, solitary confinement and, following a failed escape attempt in January 2009, being constantly shackled.

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33 'Tip came from the streets', *Herald Sun*, 17 June 2005.

34 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, pp. 48–50.

35 N Brennan, *Submission 12*, p. 1.

36 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 36.

37 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 128.

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### *The response to the kidnapping*

3.31 The Brennan family were notified of the kidnapping by a journalist from the *Sydney Morning Herald* on 24 August 2008. Mr Brennan's mother, Heather Brennan, then contacted DFAT who, in turn, contacted the Australian Federal Police (AFP) and initiated the government's response to the kidnapping.

3.32 A ransom demand was made by the hostage takers on 25 August 2008. Mr Brennan's sister, Nicole Bonney, answered the call from a representative of the hostage takers demanding US\$3 million for the release of both of the hostages. Mrs Bonney continued to act as a negotiator with the hostage takers on behalf of the Brennan family throughout the crisis.

3.33 Queensland Police attended the Brennan family home in Moore Park, Queensland, following the first call from the hostage takers. Police negotiators provided advice and training to Mrs Bonney. The AFP took over the operation within the Brennan family home from Queensland Police on, or around, 30 August 2008.

3.34 The AFP formed part of an Inter-Departmental Emergency Task Force (IDETF), established in response to the kidnapping. This task force was chaired by DFAT and supported by a dedicated unit within its Consular, Public Diplomacy and Parliamentary Affairs Division.<sup>38</sup>

3.35 Australian agencies liaised with their Canadian counterparts on the response to the kidnapping of Mr Brennan and Ms Lindhout. Strategies aimed at securing the release of the two hostages were developed in concert with Canadian authorities.

3.36 Separate units of the task force were established in Nairobi (Kenya), Moore Park, Brisbane and Canberra.

3.37 AFP personnel dispatched to the Nairobi unit engaged in negotiations with the hostage takers and Mrs Bonney was directed to refer all discussion with the hostage takers of ransom payments to the Nairobi-based unit.<sup>39</sup> The family were informed that the negotiation strategy of the Australian and Canadian authorities was to offer small amounts of money to the hostage takers so as to not give the impression that larger amounts could be forthcoming.<sup>40</sup>

3.38 Mr Brennan and Mrs Bonney described in their evidence to the committee a number of strategies undertaken by Australian government agencies to secure the release of the hostages. These strategies included the offer of amounts of money to the hostage takers on behalf of the family, the use of a number of different third party

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38 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

39 *Committee Hansard*, 11 October 2011, p. 2.

40 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, pp. 114–115.

intermediaries operating in Somalia and a 'no contact' policy which, according to a letter from the Minister for Foreign Affairs to the family in June 2009, was intended to wear the hostage takers down.<sup>41</sup> None of these strategies were successful in obtaining the release of the hostages.

3.39 Mr Brennan's family were approached by a number of private individuals and groups offering to negotiate or secure the release of the hostages. The family also sought out private operators with experience in such situations and were referred to a number of different companies by victims of previous kidnappings.

3.40 A journalist from the Australian Broadcasting Corporation referred the family to a London-based security and crisis response consultancy, AKE Group. Mr Brennan's and Ms Lindhout's family met with a representative of AKE Group in Vancouver, Canada, on 28 July 2009 and decided to hire the firm to assist in securing the release of Mr Brennan. The families took control of the case from the Australian and Canadian Governments.

3.41 The families, with the assistance of AKE Group, secured the release of both hostages on 25 November 2009 after the payment of a ransom of around US\$600,000.<sup>42</sup> The Brennan family were assisted in making this payment by a consular loan from the Australian Government and money raised from a number of donors.

3.42 In the following chapters, the committee draws on the three cases described in this chapter to examine the effectiveness of different aspects of the Australian Government's response to kidnappings and to identify measures that could be taken to improve the way it handles such situations in the future.

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41 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 285.

42 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

## **Part II**

### **Response to kidnapping incidents**



## Chapter 4

### Australia's no-ransom policy

4.1 The key policy shaping the Australian Government's response to the kidnapping of Australian citizens overseas is that the government does not pay ransoms. This policy existed in 1994 when Mr David Wilson was kidnapped in Cambodia. At that time, the three governments involved—the United Kingdom, France and Australia—were united in their decision not to pay a ransom. The Wilson family accepted the government's position but David's brother could not understand why 'support could not have been given to the Cambodian government's ransom plans'.<sup>1</sup> This vexed issue of the extent to which the government should become involved in assisting, facilitating or recognising the payment of ransom while upholding the principle of no ransom arose in both the Wood and Brennan cases.

4.2 In this chapter, the committee examines the rationale for this no-ransom policy, how the policy determines the response of government agencies to incidents of kidnapping and the way it is explained to the families of kidnapping victims.

#### The rationale for the no-ransom policy

4.3 The Department of Foreign Affairs and Trade's (DFAT) submission to the inquiry stated:

Our response to each kidnapping situation varies, according to the specific details of each case and location.

The underlying policy, however, is clear: the Australian Government does not pay ransoms. The no-ransom policy is standard across all our major international consular partners and many other countries as well, on the basis that paying ransom would encourage other kidnappings.<sup>2</sup>

4.4 This policy is made clear in DFAT's 'General Advice to Australian Travellers', made available on its *Smartraveller* website:

The Australian Government's longstanding policy is that it does not make payments or concessions to kidnappers. The Australian Government considers paying ransoms increases the risk of further kidnappings.<sup>3</sup>

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1 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, pp. 140–141, 148.

2 Department of Foreign Affairs and Trade, *Submission 8*, [p. 1].

3 Department of Foreign Affairs and Trade, 'General Advice to Australian Travellers', accessed 25 October 2011, <http://www.smartraveller.gov.au/zw-cgi/view/Advice/General>

4.5 As detailed in Part I of this report, kidnap for ransom can be a lucrative business and the payment of ransom by any party creates an incentive for individuals and groups to engage in kidnapping. The government's prime rationale in not paying ransoms is to avoid creating any incentive for Australian citizens to be kidnapped.

4.6 Further to this rationale are a number of domestic and international legal obligations on the government preventing the payments to certain groups or individuals. These legal obligations are discussed further in chapter 10 and were outlined in the Attorney-General's Department's submission to the inquiry. These legal obligations primarily relate to ransom payments that could be transmitted to or which support certain individuals or groups, particularly terrorist organisations. The provision of support or funds to terrorist organisations falls foul of provisions of both Australia's domestic criminal code as well its obligations under international law.

### **Support for the no-ransom policy**

4.7 The committee did not receive any submissions or hear any evidence which suggested that the government should change its policy of not paying ransoms. Both the victims of kidnappings and their families spoke in favour of the policy. Dr Malcolm Wood told the committee:

DFAT made it very plain from the very first day when I asked the question that in no circumstances would the Australian government pay a ransom. I agreed with that, and the family as a whole agreed with that without reservation.<sup>4</sup>

4.8 Kidnapping victim, Nigel Brennan, also stated his opposition to the government paying a ransom:

In the press it has been construed that I expected the Australian government to pay a ransom. That is actually incorrect. Even before being kidnapped, I did not expect the government to pay a ransom, as that endangers the lives of other Australian citizens.<sup>5</sup>

4.9 This position was supported by Mr Brennan's sister, Nicole Bonney, who wrote in her submission:

In reality we would agree that governments should not pay ransom as it encourages the practice; however, we are aware that some governments do exactly this.<sup>6</sup>

4.10 One submission received by the committee emphasised the risk to family members overseas if the government were to consider changing their policy:

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4 *Committee Hansard*, 6 October 2011, p. 2.

5 *Committee Hansard*, 11 October 2011, p. 1.

6 N Bonney, *Submission 13*, [p. 46].

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The merest hint that the Australian government may become involved in the ransoming of kidnap victims makes me apprehensive, because of the perception in the minds of some people that this is an indication that any ransom will be underwritten by our government, rather than an impecunious foreigner.<sup>7</sup>

4.11 The committee heard evidence from those with experience in dealing with kidnap situations that reinforced this view. It was asserted that the possibility of a government financing ransom raises the expectations of hostage takers in regards to the value of the hostage and the amount they will receive in exchange for them. One of the consultants engaged by the Brennan family told the *Australian* newspaper that it is impractical and highly inappropriate for governments to pay ransoms and that governments should be open with families about how this limits what government agencies can do in response to a kidnapping.<sup>8</sup>

### **Position of other governments**

4.12 DFAT's evidence to the committee noted that the no-ransom policy to kidnapping cases is held in common with other governments:

The no ransom policy remains the cornerstone of our approach. It has been the consistent policy of successive Australian governments and is shared by our likeminded consular partners—namely, Canada, New Zealand, the United Kingdom and the United States. To do otherwise would only encourage the kidnapping of Australians and the kidnapping-for-ransom business more generally.<sup>9</sup>

4.13 The department also stated that it was not aware of any country that admits to paying ransom.<sup>10</sup>

4.14 Media reports of kidnappings of foreign citizens for ransom have often alleged that some governments were involved in the payment of ransom, particularly governments in Western Europe.<sup>11</sup> Some of these reports also alleged that foreign governments facilitated the meeting of hostage takers' demands by offers of foreign

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7 *Submission 2* (name withheld).

8 J Kelly, 'The business of kidnapping', *Australian*, 17 February 2010.

9 *Committee Hansard*, 6 October 2011, p. 30.

10 *Committee Hansard*, 6 October 2011, p. 33.

11 See, for example: V Walt, 'Terrorist hostage situations: rescue or ransom', *Time*, 12 October 2010, accessed 26 October 2011, <http://www.time.com/time/world/article/0,8599,2024420,00.html>; W Wark, 'The art of ransom payments', *CBC News*, 7 February 2011, accessed 26 October 2011, <http://www.cbc.ca/news/canada/story/2011/02/04/f-ransom-payments.html>.

aid or other forms of assistance to local authorities.<sup>12</sup> The committee has not seen evidence to substantiate these reports and is not in a position to comment beyond the evidence DFAT has provided.

### **Constraints on the government's response to kidnappings**

4.15 In international kidnapping cases, the Australian Government is bound to respect the sovereignty of the State in which the kidnapping takes place. This will mean that the government is often limited to pursuing the release of an Australian hostage through diplomatic channels and through assistance to local authorities. The degree to which Australian government agencies can become involved on the ground, and the range of actions open to them, will differ from cases to case and country to country.

4.16 In situations where Australian agencies can be directly involved in a case of an Australian kidnapped for ransom overseas, the government's clear policy on not paying ransom places considerable limitations on the kind of response that can be undertaken. The options left open to agencies include:

- negotiating with the hostage takers in an attempt to convince them to release their hostages for no financial or material gain;
- undertaking a rescue operation with armed forces;
- outsmarting the hostage takers so that they release the hostage (as occurred in the case of Des Gregor in 2007, see paragraph 2.7);<sup>13</sup>
- assisting another party to negotiate and pay ransom without financing the ransom payment; and/or
- letting the hostage, family, employer or private firm negotiate a release.

4.17 Each of these options is fraught with difficulties and significant risks—the most serious being the possible death of the hostage. This risk is clear and present when government policy is adamantly against meeting the key demand of hostage takers in kidnap and ransom cases, as Nigel Brennan argued in his submission:

By offering the kidnapers no hope of receiving any payment for keeping the kidnapped person alive and returning them home safely, the kidnapers have no incentive to do so. People like those who kidnapped me are clearly

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12 See, for example: M Pflanz, 'Paul and Rachel Chandler: Government denies aid money could have been used for ransom', *The Telegraph*, 15 November 2010, accessed 26 October 2011, <http://www.telegraph.co.uk/news/worldnews/piracy/8134251/Paul-and-Rachel-Chandler-Government-denies-aid-money-could-have-been-used-for-ransom.html>; M Petrou, 'Source: Germany and Switzerland paid ransom for kidnapped Canadian diplomats', *Macleans*, 29 April 2009, accessed 26 October 2011, <http://www2.macleans.ca/2009/04/29/germany-and-switzerland-paid-ransom-for-kidnapped-canadian-diplomats/>

13 See S Larkin, 'Scam victim lucky to be alive', *Sydney Morning Herald*, 13 August 2007, accessed 27 October 2011, <http://www.smh.com.au/articles/2007/08/12/1186857348148.html>

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not taking people for ideological reasons, so failure to address their financial motives is a sure way to get people killed.<sup>14</sup>

4.18 Balanced against the risk to the hostage if ransom is not paid are the increased risk of Australians being targeted in the future by hostage takers and the risk of the hostage not being released following the payment of ransom, as the Australian Federal Police (AFP) noted:

The difficulty in these scenarios is the fact that there have unfortunately been cases where, even with the payment of a ransom being effected, the individual is not released...typically, you do not know whom you are dealing with at the other end of the phone; you have not necessarily been able to establish their credentials, particularly in failed states...There is the potential, unfortunately, to make significant payments to individuals and not secure the release of the victim.<sup>15</sup>

4.19 These risks underscore the rationale for the no-ransom policy as well as problems that can arise in negotiating with those claiming to represent a kidnapping group.

#### *Negotiating for release without ransom*

4.20 Identifying a way to influence or pressure those behind a kidnapping in a way that does not involve a ransom or material reward is the primary means for government agencies to negotiate a release within the limits of the no-ransom policy. The use of Australia's intelligence networks is, in these situations, vital.

4.21 In its submission to the committee, DFAT stated that its role in responding to kidnapping events included gathering information and intelligence that could be brought to bear on the situation. DFAT stated that, where appropriate, they will work closely with their colleagues in other governments, particularly Australia's key consular partners. It noted that:

In some cases, other foreign services may have detailed on-the-ground knowledge or influence. This cooperation can be invaluable in providing access to additional information or insights, including into the circumstances of the location concerned and the group or organisation responsible for the kidnapping or adding pressure or influence on the kidnappers.<sup>16</sup>

4.22 DFAT noted that it would also work with Australian and international non-government organisations that may have expertise in the area or location that a kidnapping has occurred.<sup>17</sup> In some cases, it would work with local intermediaries,

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14 N Brennan, *Submission 12*, [p. 4].

15 *Committee Hansard*, 11 October 2011, p. 18.

16 Department of Foreign Affairs and Trade, *Submission 8*, [pp. 3–4].

17 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

'who may be able to provide further information or insights, or bring influence to bear'.<sup>18</sup> The AFP also told the committee that, on occasion, it would make use of third-party intermediaries to provide information and assist in their efforts to negotiate in kidnapping cases.<sup>19</sup>

4.23 The committee heard that the use of third-party intermediaries was pursued in both the Nigel Brennan and Douglas Wood cases. Nicole Bonney stated in February 2009 that the Brennan family were informed of a contact the Royal Canadian Mounted Police (RCMP) had made in Somalia who they believed would be able to generate the release of the hostages.<sup>20</sup> In May 2009, the family were informed that this contact had been unable to obtain a proof of life from the kidnappers and the strategy involving this intermediary had failed.<sup>21</sup>

4.24 Malcolm Wood stated that he and the Wood family were kept regularly informed as to DFAT's meetings with possible intermediaries with the kidnappers but it is unclear whether any of these intermediaries were used or whether any direct negotiations took place.<sup>22</sup> Dr Wood told the committee that he did not believe that the response team in Baghdad had any direct contact with the kidnappers:

I believe that if they had they would have told us. Nick Warner had contact with various characters, some of whom were pretty shady, including the people who presented the ransom note. His difficult task throughout was to gauge how trustworthy people were and whether in fact they had Douglas.<sup>23</sup>

4.25 The reliability and trustworthiness of any possible intermediaries is a key difficulty for agencies involved in negotiating the release of hostages. The issue is exacerbated in countries where Australia and its partner governments have little presence or limited intelligence capabilities.<sup>24</sup>

4.26 The interaction between any Australian government official and those who belong to or have influence over the kind of criminal or militant groups that engage in kidnappings is of concern. The committee notes, however, that all such activities are required to be carried out within the framework set by the government's no-ransom policy and its domestic and international legal obligations.

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18 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

19 *Committee Hansard*, 11 October 2011, pp. 17–18.

20 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 210.

21 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, pp. 275–276.

22 M Wood, *Submission 3*, p. 2.

23 *Committee Hansard*, 6 October 2011, p. 6.

24 *Committee Hansard*, 11 October 2011, p. 18.

4.27 The evidence before the committee suggests that the utility of such intermediaries is limited without some further incentive being offered to the kidnappers. In relation to the specific cases considered in this report, the government was unable to negotiate the release of the hostages through the use of intermediaries.

### *The military option*

4.28 The option of a rescue operation is a high risk operation for all involved on the ground. In its submission to the committee, the Department of Defence stated that the Australian Defence Force (ADF) 'maintains contingency plans for select response capabilities, including kidnap recovery options overseas'.<sup>25</sup> Defence noted that 'the capacity of the ADF to effect kidnap recovery operations is contingent on a number of external factors. Recovery operations are not feasible or advisable in every case'.<sup>26</sup> DFAT also raised the possibility of a military option to respond to kidnapping cases but submitted:

While our approach will always be based on exploring all available options, the reality is that this option is rarely feasible and unlikely to be deployed. This is due to safety concerns for both the hostage and Defence personnel, as well as complex practical and legal issues preventing an operation in another country.<sup>27</sup>

4.29 The victims who participated in this inquiry and their families also held strong reservations about any rescue operation being conducted. Dr Wood told the committee:

Fairly early the family asked Foreign Affairs about the range of their activities, including rescue. I had heard again from an academic whom I had consulted that the prospects of a successful rescue in historic kidnapping cases were pretty dim—quite a low percentage. The family basically said to Foreign Affairs, 'We can't demand that you do or don't attempt rescues, but we're concerned. As far as we're concerned, an attempted rescue perhaps should be a last resort because of the risk of mischance—accident, killing.' They never really told us what their position was, except to say a number of times, 'All options are on the table'. I took this to be code for 'of course rescues will be attempted'.<sup>28</sup>

4.30 Nigel Brennan outlined to the committee his opposition to such operations:

...with regard to rescue attempts: that should never, ever be an option, because they usually end in disaster with hostages dying and possibly Army personnel that are tasked to go in. I felt uncomfortable enough having an

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25 Department of Defence, *Submission 15*, p. 1.

26 Department of Defence, *Submission 15*, p. 1.

27 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

28 *Committee Hansard*, 6 October 2011, p. 5.

extraction team—guys who were married who were risking their lives for mine.<sup>29</sup>

4.31 The risks involved in any rescue operation were underscored by the deaths of Andrew Thirsk and three Britons in Yemen in 1999; killed during a military assault by Yemeni government forces on the camp of the kidnappers, the Aden-Abyan Islamic Army. Mr Thirsk and the other victims were part of group of 16 sightseeing in Yemen when they were abducted. Another Australian who was part of the group, Catherine Spence, survived the rescue operation.<sup>30</sup>

4.32 As noted by Defence and DFAT, the possibility of a rescue operation being conducted by the ADF would be contingent on a range of factors and would not be feasible in every case.

### *Negotiating on behalf of another party*

4.33 Evidence before the committee suggested that the government's no-ransom policy does not preclude government agencies from negotiating some form of payment to the kidnappers on behalf of family members or another party. In the case of Nigel Brennan, the committee heard that AFP negotiators acted on behalf of the family to offer a payment of up to US\$250,000 for the release of the hostages.

4.34 Nicole Bonney reported that the Brennan family were asked by AFP officers in the first week of the kidnapping how much money they would be able to make available within 24 hours.<sup>31</sup> Nicole Bonney submitted that at the beginning of the kidnapping the family were opposed to the paying of ransom. However, on being asked by AFP officers as to their net worth, the family reversed its position and 'indicated that they would be prepared to pay a ransom for Nigel's safe release'.<sup>32</sup> For the Brennan family, the question as to how much money they could secure indicated that the AFP would negotiate a ransom payment with the kidnappers. Nicole Bonney told the committee: 'to our thinking this was clearly a cash ransom'.<sup>33</sup>

4.35 The issue of whether the money offer to the kidnappers constituted ransom payment was particularly ambiguous. DFAT was clear in its evidence to the committee that its 'basic starting point is that the government will not negotiate a

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29 *Committee Hansard*, 11 October 2011, p. 8.

30 A Downer, Minister for Foreign Affairs, *Yemen tourist killings: outcome of trial*, media release, 6 May 1999, accessed 31 October 2011, [http://www.foreignminister.gov.au/releases/1999/fa045\\_99.html](http://www.foreignminister.gov.au/releases/1999/fa045_99.html); J Schetler, 'UK tourists were used as shields in Yemen', *The Independent*, 1 December 1999, accessed 31 October 2011, <http://www.independent.co.uk/news/uk-tourists-were-used-as-shields-in-yemen-1124453.html>

31 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 25.

32 N Bonney, *Submission 13*, [p. 5].

33 *Committee Hansard*, 11 October 2011, p. 3.

ransom payment'.<sup>34</sup> Nicole Bonney submitted that the money raised by the family to offer the kidnappers was explained by DFAT and the AFP as 'costs involved that would cover the outlay the kidnappers had incurred' and that 'this word play was intended to convince the family that they were not in reality paying a ransom'.<sup>35</sup> Nicole Bonney told the committee:

The Australian Government continued to perpetuate this confusion of ransom by ensconcing the wording of the \$US250,000 as costs, when it was clearly a ransom being paid for by the Brennan family...It was evident to our family that we were paying the ransom, however, all negotiations in relation to ransom were undertaken by the Australian Federal Police and the RCMP in Nairobi. I was under direct instruction to deflect all discussion with regard to ransom with the kidnappers to the negotiators in Nairobi.<sup>36</sup>

4.36 While the evidence indicated that the AFP was involved in negotiating a financial payment on behalf of the Brennan family, the distinction between a ransom payment and 'costs' incurred by the kidnappers is not clear. Irrespective of this distinction, government involvement in the negotiation of a payment or a ransom does carry considerable risk. Nicole Bonney argued:

All evidence we have since gleaned from NGOs and private K&R [kidnap and ransom] companies indicates that discussions between governments and kidnappers increases kidnappers' expectations of substantially large ransoms being paid by those governments. The stance of not paying a ransom yet negotiating for the Brennan family to pay a ransom had a twofold effect. It took considerably longer to gain Nigel's release and it was considerably more costly than previous land based kidnappings in Somalia.<sup>37</sup>

4.37 The confusion felt by the family at the government's participation in the negotiation of a payment to the kidnappers increased when they were informed that DFAT and the AFP could not be involved in or assist in the facilitation of any payment over US\$250,000.<sup>38</sup> According to the Brennan family, DFAT and the AFP informed them that this amount was mandated by the Australian and Canadian governments as an amount representing costs and that anything over that amount would, therefore, constitute a ransom payment.<sup>39</sup>

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34 *Committee Hansard*, 6 October 2011, p. 32.

35 N Bonney, *Submission 13*, [p. 17].

36 *Committee Hansard*, 11 October 2011, p. 2.

37 *Committee Hansard*, 11 October 2011, p. 2.

38 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 283.

39 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 183.

4.38 This decision by government agencies to set a limit on the amount that they could be involved in negotiating or facilitating points to the tensions involved in any government participation in such an interaction. Government agencies need to limit their exposure to any involvement in a ransom payment. However, the fact that government agencies are involved in negotiations gives rise to a legitimate concern that the kidnappers will have higher expectations as to the importance of a hostage and the payment they might receive for them.

4.39 Furthermore, the ambiguity and confusion surrounding any government involvement in negotiating a payment on behalf of others is bound to create significant levels of confusion and distress for the families of those in captivity.

### ***Allowing others to negotiate a ransom payment***

4.40 In some cases involving Australians kidnapped overseas, the victim's employer has stepped in to resolve the hostage situation. Such negotiations have frequently resulted in the victim's firm, generally through the engagement of its insurance company and a specialist K&R consultant, paying a ransom to secure the release of hostages. These cases have typically involved Australian employees of resources companies operating in regions such as West Africa where kidnappings are commonplace. In such cases, the Australian government takes a step backwards.

4.41 DFAT noted in its submission that it was open to others outside of government taking the lead in responding to kidnapping cases:

If the kidnap victim is in the region as an employee, the employer may have their own avenues to explore. Some employers choose to employ a private contractor to take the lead in negotiations. Employers may also choose to act through their insurers, as has happened in hostage cases related to piracy.

In other situations, the victim's family might nominate or engage a private contractor to lead the response.<sup>40</sup>

4.42 In the department's view, these situations 'are entirely appropriate and it is open to employers and families to take whatever approach they consider most effective to achieve resolution'.<sup>41</sup> In the following chapter, the committee considers the implications for a family contemplating paying a ransom but without the wherewithal of a well-resourced corporation to do so.

### **Communicating the no-ransom policy**

4.43 As noted previously, DFAT includes a statement on its no-ransom policy in the 'General Advice to Australian Travellers' section of its *Smartraveller* website. The policy is restated elsewhere on the website in the travel bulletin on the 'Kidnapping

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40 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

41 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

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threat worldwide' and in country specific travel advisories where there is a perceived risk of kidnapping.<sup>42</sup> DFAT stated in its submission that:

While we highlight the kidnap threat effectively in our travel advisories and have made clear publicly the no-ransom policy, we are in the process of making this fundamental principle clearer in each relevant travel advisory and in other relevant travel publications.<sup>43</sup>

4.44 DFAT told the committee that in terms of responding to cases of kidnappings and explaining the policy to families:

We make it absolutely clear that we cannot pay that ransom—that, if a ransom is required, that is not something that the government can do...We will be as direct as we can and provide as frank advice as we can.<sup>44</sup>

4.45 In the cases under the committee's consideration, however, the families of kidnapping victims were often confused by the messages received from the government departments. As described above, the no-ransom policy was clearly explained at the outset but this message was then muddled by instances such as when the Brennan family were asked how much money the family could put together for a payment.

4.46 In the Brennan case, the communication of the no-ransom policy was confused further by the decision to negotiate a payment of 'costs' to the kidnappers. As noted above the Brennan family did not differentiate this payment from a ransom and was frustrated by the limit put on the amount that could be negotiated with the kidnappers.

4.47 The evidence before the committee suggested that DFAT did not adequately explain to families the no-ransom policy and its implications in regards to what actions government agencies could take in response to kidnappings. One of the recommendations of the internal review of the Brennan case, conducted by former DFAT Deputy Secretary, John McCarthy, described in DFAT's submission was that:

The Government must make clear to next of kin from the outset what it can and cannot do in an international kidnapping case, including an explanation of the no ransom policy and its implications for the handling of kidnapping cases.<sup>45</sup>

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42 Department of Foreign Affairs and Trade, 'Kidnapping threat worldwide', 7 October 2011, accessed 2 November 2011, [http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap\\_Threat\\_in\\_Africa](http://www.smartraveller.gov.au/zw-cgi/view/TravelBulletins/Kidnap_Threat_in_Africa)

43 Department of Foreign Affairs and Trade, *Submission 8*, [p. 7].

44 *Committee Hansard*, 6 October 2011, p. 39.

45 Department of Foreign Affairs and Trade, *Submission 8*, [p. 10].

4.48 DFAT stated in its submission that it was preparing a written guide for families on what to expect in kidnapping situations.<sup>46</sup> DFAT told the committee that such advice is currently delivered orally.<sup>47</sup>

## Conclusion

4.49 The committee agrees with the Australian Government's no-ransom policy. The rationale for the policy is sound: ransom provides an incentive for and emboldens potential hostage takers, it may finance terrorists' activities, and the payment of a ransom risks breaching Australia's domestic and legal obligations. The committee agrees that any involvement of the Australian Government in the payment of a ransom would increase the risk of kidnapping for Australian citizens abroad.

4.50 Australia's no-ransom policy is consistent with that of its major allies and the broader international community under the umbrella of the United Nations. The payment of ransoms undermines the cooperation of States endeavouring to prevent or contain future acts of hostage-taking and their efforts to starve terrorists of the means to finance their activities. The committee recognises the importance of the international community remaining united in its efforts to discourage future kidnappings.

4.51 The committee notes the issues raised by the Brennan family with regards to the involvement of government agencies in negotiating a limited payment, financed by the family, to the kidnappers. The committee is concerned at the participation of government officials in any communications with those connected to kidnapping which involve the negotiation of monetary or material offers. While the committee believes that agencies should be open to all options that might secure the release of Australians who have been kidnapped, it should only pursue those that fall within the framework of the no-ransom policy and Australia's legal obligations. The involvement of government officials directly in any monetary or material offer to kidnappers threatens to undermine the rationale of the government's no-ransom policy which states clearly that no payments or concessions will be made to kidnappers. The committee is concerned that any ambiguity in regards to this issue has the potential to put Australians at greater risk.

4.52 Finally, the committee believes that it is important for those agencies involved in kidnapping cases to be clear with families from the beginning as to the details of the government's no-ransom policy and what agencies can and cannot do in regards to ransom payments. The committee supports the proposal to issue written guidelines to families.

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46 Department of Foreign Affairs and Trade, *Submission 8*, [p. 10]. See also *Committee Hansard*, 6 October 2011, p. 34.

47 *Committee Hansard*, 6 October 2011, p. 34.

# Chapter 5

## Options and decisions—paying a ransom

5.1 The committee understands and supports the government's no-ransom policy and as a consequence its position that it cannot be a direct party to any negotiations toward such a payment. Even so, the committee understands that the families of kidnap victims in their desperation to save the life of their loved one may be prepared to pay a ransom. In this regard, the committee notes DFAT's statement that it is open to others outside of government taking the lead in responding to kidnapping cases—employers who choose to act through their insurers and families who engage a private contractor.<sup>1</sup> As noted in the previous chapter, the department holds the view that these situations 'are entirely appropriate and it is open to employers and families to take whatever approach they consider most effective to achieve resolution'.<sup>2</sup>

5.2 Despite the government's no ransom policy, and its understanding and acceptance of families taking measures on their own initiative to secure the release of a family member, these families are likely to need government assistance. In this chapter, the committee explores the role of government agencies in cases where a family is contemplating the payment of a ransom.

### Difficult decisions

5.3 At the time of a kidnapping, family members are confronted with difficult choices, including whether to pay a ransom. As noted in the previous chapter, both the Wood and Brennan families supported the government's no-ransom policy. Even so, both appreciated that when confronted with the reality of kidnapping, their prime concern was with the immediate and safe return of their loved one. Dr Wood explained to the committee that the 'threatened murder of a loved family member is emotionally taxing and poses vexatious questions of political and personal ethics'.<sup>3</sup>

5.4 Caught totally unaware by events, family members are in no position to make decisions about the appropriateness of offering and/or paying a ransom and ill-equipped to engage in negotiation with the hostage-takers. Yet at this time of confusion, uncertainty and distress, they are faced with difficult choices. Dr Wood stated:

The family had all sorts of people approaching us during the crisis suggesting all kinds of actions, including that [engagement of private contractors]. We needed to assess whether we were prudent to rely only on the government, basically, and our own exertions, which were pretty much

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1 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

2 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

3 M Wood, *Submission 3*, p. 2.

limited to contacts with the Muslim community or making media releases and so on.<sup>4</sup>

5.5 He agreed that expert private contractors have a role.<sup>5</sup> The Wood family, however, struggled with the prospect of paying a ransom:

In the first week of such a crisis a family tries almost anything...Anyway, to cover all bases I felt that we should at least be prepared to pay money or say something about money. So, you can imagine, the family...had some difficulty and faced some turmoil in coming to a position on that....in the end we resolved that we would not be prepared to pay a ransom but we could go so far as to offer to make a charitable donation to the people of Iraq...But the family does try to do whatever it can.<sup>6</sup>

5.6 Having made the decision to make a donation instead of paying a ransom, the family received confusing advice from government agencies. For example, while DFAT informed them that the decision to pay a ransom was the family's to make, some officials reportedly informed the family that a ransom would be necessary and that their offer should be explicitly distinguished from a ransom payment.<sup>7</sup> Dr Wood explained that DFAT 'encouraged diplomatic ambiguity, to keep the captors guessing'.<sup>8</sup> In his view, DFAT's opinion, carefully phrased and given orally, was clear—that only a ransom was likely to secure Douglas' release. He noted that although DFAT 'would not be party to any ransom being paid, they said what we might do was our business'.<sup>9</sup>

5.7 While Dr Wood understood the position DFAT officials were in, he suggested that the ambiguity of the advice caused some distress to the family:

It did seem that DFAT knew that we would need to pay some money if we wanted a successful outcome, unless there happened to be a rescue. But again, they did not feel in a position to advise anything about money—how much, how to get it, how to pay it, to whom, what mechanisms to use, banking arrangements. So we felt a little on our own, and I am not saying that it is necessarily wrong, because I do agree that the government should not be paying money.<sup>10</sup>

5.8 In this regard, Mr Brennan argued that if the Australian Government decides not to pay a ransom, then 'families of kidnapped persons should be told that immediately and provided [with] advice that alternatives exist external to the

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4 *Committee Hansard*, 6 October 2011, p. 5.

5 *Committee Hansard*, 6 October 2011, p. 5.

6 *Committee Hansard*, 6 October 2011, p. 4.

7 M Wood, *Submission 3*, p. 3.

8 M Wood, *Submission 3*, p. 3.

9 M Wood, *Submission 3*, p. 3.

10 *Committee Hansard*, 6 October 2011, p. 3.

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government'.<sup>11</sup> But while DFAT claimed to be open to families taking whatever approach they considered effective to achieve a resolution, evidence indicated that the department did not provide clear information or advice to the families on alternative approaches.

### **Paying a ransom and advice to families**

5.9 As noted previously, kidnapping for ransom can be described as 'a lucrative business'. A large industry has grown in response to the number of kidnappings that take place worldwide with insurers offering kidnap and ransom insurance and companies hiring highly paid crisis response consultants, negotiators, lawyers and security personnel to protect their staff. For example, the President of the General Assembly in May 2010 noted that ship owners can 'take out private insurance that covers negotiation assistance and ransom payments'.<sup>12</sup>

5.10 A kidnap and ransom consultant informed the committee that in his experience when a kidnapping occurs 'a lot of people come out of the woodwork, approach the families and say, "I'm the bees knees, you just need to pay me a lot of money and I'll do it" or they will say, "tell you what: I'll work for free," because they just want the experience and the exposure'.<sup>13</sup> Clearly, having weighed up the options for a safe release, a family considering paying a ransom needs guidance and support on how to proceed and whom to trust.

### ***Assistance identifying a reputable intermediary***

5.11 From the first day, DFAT made clear to the Wood family that 'in no circumstances would the Australian Government pay a ransom' and that it was entirely up to the Wood family to decide what to do. Dr Malcolm Wood noted that there 'was a bit of a disconnect between their official hands-off policy and their willingness to allow us to do whatever, including pay money'.<sup>14</sup> He accepted that it was a tricky position for government officials but in his view 'there was perhaps some ambiguity or scope for misunderstanding'.<sup>15</sup> Dr Wood explained:

As I recall, my eldest brother in England, Graeme, and my brother in Melbourne, Vernon, between them sussed out the existence of such firms from people that talked to them and then from the internet. They made contact with people in those firms. Our principal interest at this stage was not rescue; it was simply the matter of getting money into Baghdad. I then talked to DFAT about our interest in this and the extent, limited though it

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11 N Brennan, *Submission 12*, [p. 5].

12 United Nations Security Council, 'Report of the Secretary-General pursuant to Security Council Resolution 1897 (2009)', S/2010/556, 27 October 2010, paragraph 68.

13 In camera evidence.

14 *Committee Hansard*, 6 October 2011, p. 2.

15 *Committee Hansard*, 6 October 2011, p. 2.

was, of our knowledge. They then told us what they knew, but not with any great detail. They indicated probably only orally that there were some firms that could help us. They could give us some names and it was then up to us to follow up. I think they did give us a couple of names. We already knew of those firms and we had already been in touch. So effectively, they were a bit behind the eight ball.<sup>16</sup>

5.12 In Dr Wood's view, DFAT held back information: that they were not as forthcoming as they could have been. He understood the position that the department was in but, at the same time, it was not easy for the family. While he acknowledged that the level of contact was exemplary:

There was a difficulty when money was necessarily being discussed in draft authorities [for a third party intermediary], about Foreign Affairs transmitting that to Nick Warner through their channels, because of the possibility that at some stage, if people knew that they had passed such information, they could be implicated in money.<sup>17</sup>

5.13 Dr Wood informed the committee that DFAT provided very little information on the services available from private firms that act as intermediaries to secure the release of a captive. He explained:

Only when we mentioned this to Foreign Affairs did they admit that there were such firms that could help.<sup>18</sup>

5.14 He was of the view that the department's advice was 'somewhat reactive and limited'.<sup>19</sup>

5.15 Mrs Bonney also acknowledged the overriding concern of securing the release of a family member, and in the case of the Brennan family, a ransom appeared to be the only viable option. She told the committee:

...if money was the thing that was going to get Nigel home, that was what we were going to provide. I do not think, when push comes to shove, that any other family would be able to do anything different.<sup>20</sup>

5.16 The Brennan family also received mixed and confusing messages from government agencies about the payment of a ransom. Mrs Bonney explained that in April 2009 she rang a consular official 'no less than three times asking for names of companies'.<sup>21</sup>

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16 *Committee Hansard*, 6 October 2011, p. 3.

17 *Committee Hansard*, 6 October 2011, pp. 3–4.

18 *Committee Hansard*, 6 October 2011, p. 7.

19 *Committee Hansard*, 6 October 2011, p. 7.

20 *Committee Hansard*, 11 October 2011, p. 12.

21 *Committee Hansard*, 11 October 2011, p. 7.

5.17 The family had, however, already undertaken preliminary research. According to Mrs Bonney, the family was not told explicitly to avoid engaging a K&R specialist. She recalled that she specifically asked for names:

We were hoping to achieve some sort of credibility in the names that we requested from the Australian government because we believed that there were companies that do train Australians and are used for that purpose. Two of them that we are in contact with now actually do and are quite involved with the ABC journalists. That was the information that I was trying to get because we had sourced five or six different ones. I wanted someone that I believed the Australian government felt comfortable about recommending to us. We were actually told by a consular official that they would not recommend anyone lest they be regarded as cowboys or mercenaries.<sup>22</sup>

5.18 A K&R consultant suggested to the committee that DFAT could have a role in establishing the bona fides of such companies—'do due diligence, establish credentials'.<sup>23</sup> It was an ABC journalist who eventually referred Mrs Bonney to the company that finally secured her brother's release.<sup>24</sup> Mrs Bonney told the committee that she had spoken to the kidnap and ransom company that dealt with Colin Freeman, a British journalist held hostage in Somalia from late November 2008 until January 2009. Based on the actions of a family friend, Mr Freeman made contact and put Mrs Bonney in touch with his titular head who then referred her to the K&R company in question.<sup>25</sup>

5.19 Evidence before the committee indicated that in addition to failing to assist family members to identify credible companies in the K&R field, pressure could be exerted on them to resist going down the ransom path. For example, Mrs Bonney explained that a letter from the then Minister for Foreign Affairs suggested that they should not be engaging a K&R firm: that that was not an option the family should be taking whilst the Australian government was involved.<sup>26</sup> Indeed, the committee was told by a consultant who specialises in kidnap and ransom cases that DFAT has not only discouraged families from engaging such specialists but pressured them into not doing so. The consultant gave an example of one case where, according to the family, DFAT told them that if they met a kidnap and ransom consultant the department 'would walk away from the case—"you make a decision: it is them or us"'.<sup>27</sup>

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22 *Committee Hansard*, 11 October 2011, p. 8.

23 In camera evidence.

24 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 290.

25 *Committee Hansard*, 11 October 2011, p. 7.

26 *Committee Hansard*, 11 October 2011, p. 8.

27 In camera evidence.

5.20 Government agencies are able to tap into a range of intelligence sources to gain an insight into the circumstances of the kidnap and the kidnappers, their motives and the way they operate. As such the agencies are in possession of vital information and well placed to explain to families the options available for the safe release of their loved one. Although the Australian government has a no-ransom policy, the committee believes that government agencies have an important role to inform the families of a kidnap victim of all the possible avenues open to them. This information should be presented to the families in such a way that would allow them to make a well informed decision including the payment of a ransom. When providing this information, agencies should be conscious of the need to be non-judgemental and to convey in clear language what government agencies can and cannot do in respect of each option.

### *Sharing information with private contractors*

5.21 The committee also took evidence indicating that DFAT refused to pass on information about the circumstances of the kidnapping and intelligence on the hostage takers to the Brennan family's K&R consultant. Mr Brennan noted that when AKE came on board, the Australian Government refused to hand over any documentation or information because they said there was a security clearance problem which then slowed down the process.<sup>28</sup> In his opinion, DFAT's decision not to hand over this critical information or provide AKE with a formal situation briefing was a dangerous one: that 'through its actions my own Government prolonged my kidnap and duress by many months'.<sup>29</sup>

5.22 In Mrs Bonney's assessment, there was a total lack of information and intelligence on the ground of the situation. She explained that DFAT had the 'constant security clearance issue'.<sup>30</sup> She wanted to know whether there was some way whereby they could have overcome these perceived security clearance issues:

Surely there is some way that that can be done. I do not know what you have to do, but there has to be some way around that.<sup>31</sup>

5.23 The committee understands that some of the intelligence gathered by Australian government agencies would have been highly sensitive yet of great benefit to the K&R consultant. It is of the view that DFAT should have done its utmost to converse with and to convey as much information as it could to the family's K&R consultant.

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28 *Committee Hansard*, 11 October 2001, p. 5.

29 N Brennan, *Submission 12*, [p. 16].

30 *Committee Hansard*, 11 October 2011, p. 7.

31 *Committee Hansard*, 11 October 2011, p. 7.

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### *Information on legal impediments*

5.24 Finally, both the Wood and Brennan families were not informed about the legal implications of transferring large amounts of money to another country until the process was in train. The Wood family were only belatedly informed as to possible legal problems they could face in transmitting money to Iraq in order to facilitate a charitable donation. Dr Wood submitted that the family only learnt of possible issues when Vernon Wood's bank referred to certain provisions under the Criminal Code applicable to the transmitting of funds which may be used by or benefit terrorists. After raising the issue with DFAT, the family was informed of certain companies that could safely transmit funds on behalf of the Wood family.<sup>32</sup> The Wood family had, however, already researched and become aware of these firms.<sup>33</sup>

5.25 Similarly, the Brennan family found out about serious legal problems related to paying a ransom only after they had committed to this course of action. Mrs Bonney informed the committee that the government was well aware that her family was paying a ransom. According to Mrs Bonney, the bank expressed concerns about handling the transaction because they might have been liable to prosecution or sanctions themselves.<sup>34</sup> Mr Brennan noted further the same concerns related to generous individuals as well: that they would possibly face prosecution.<sup>35</sup>

5.26 The Brennan family encountered not only a lack of information in regards to the legal issues around paying a ransom but also a lack of empathy for the distressing predicament in which they found themselves. Mr Brennan's sister-in-law, Kellie Brennan, arranged for the transfer of the ransom money from Australia. She encountered resistance from the Somali money transfer company, concerned that they could be prosecuted. The company was seeking reassurances from the Australian government. Kellie Brennan explained in *The Price of Life* that when she asked the head of DFAT operations in Canberra to call the company and let them know that the department was aware of the transaction, she was laughed at and told that the government cannot facilitate the payment. In Mrs Brennan's account, she was told: 'Kellie, this is your problem and we are not able to help. We won't stop the money going through but we can't help you get it there'.<sup>36</sup>

5.27 The issue of legal impediments to ransom payments is examined further in chapter 10.

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32 M Wood, *Submission 3*, p. 3.

33 *Committee Hansard*, 6 October 2011, p. 3.

34 *Committee Hansard*, 11 October 2011, p. 6.

35 *Committee Hansard*, 11 October 2011, p. 6.

36 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 395. See also *Committee Hansard*, 11 October 2011, p. 6.

**McCarthy review**

5.28 The McCarthy review recommended that if the next of kin wishes to proceed with a contractor 'it would be in everyone's interest to provide them with the names of a couple of companies known to the Government that might be able to help'.<sup>37</sup>

5.29 In light of recent experiences, DFAT has issued definite statements on its approach to managing future kidnapping events. It has acknowledged the appropriateness of a victim's family engaging a private contractor to lead a response to secure the release of a hostage. Furthermore, the department has recognised the importance of providing clear advice on the implications of the no-ransom policy for the handling of a particular case, including where a ransom payment has been demanded and the possible timelines. DFAT Deputy Secretary, Ms Gillian Bird, indicated that in future the department would be 'as upfront as we can'.<sup>38</sup> She explained that one of the lessons coming out of the Brennan kidnapping, identified in the McCarthy review, was the importance of communicating to next of kin from the outset, 'what the government can and cannot do in an international kidnapping case' and 'the option of engaging a private contractor should they wish to pay a ransom'.<sup>39</sup> She stated:

If the next of kin wishes to proceed with the contractor, we will provide them with the names of some companies which might be able to help.<sup>40</sup>

5.30 Ms Bird explained further that the department had not in the past explicitly said to a family at the outset that there was the private contractor option—however, that option has always been open to families.<sup>41</sup> She said:

We have never stood in the way of a family that wishes to engage a private contractor. That has always been an option for them, but we will in future be absolutely crystal clear at the outset that there is that option should they wish to pursue it.<sup>42</sup>

5.31 Ms Bird explained that if a kidnapping occurred tomorrow, the department would give that advice orally. She stated:

We are also in the process, to ensure that it is absolutely crystal clear, of putting that in writing so that the family has a clear written advice as well as what we would provide orally... We are still in the process of ensuring that any names that we give are ones that we have done due diligence of. We are talking to the Brits, the Americans and others as part of that process.

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37 Department of Foreign Affairs and Trade, *Submission 8*, [p. 10].

38 *Committee Hansard*, 6 October 2011, p. 38.

39 *Committee Hansard*, 6 October 2011, pp. 30, 33.

40 *Committee Hansard*, 6 October 2011, p. 30.

41 *Committee Hansard*, 6 October 2011, p. 33.

42 *Committee Hansard*, 6 October 2011, p. 33.

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We are well advanced; we should have that done soon...my colleague made a good point that we would not be endorsing this...It is like we do overseas. We give lists of lawyers.<sup>43</sup>

5.32 Importantly, the department has indicated that it would continue to provide consular support to the family and maintain the channels of communication between the Australian and other relevant governments and entities. It would also continue 'to monitor information on the case, including through intelligence networks, and monitor the efforts of the employer or negotiator'.<sup>44</sup>

5.33 The committee welcomes the assurances given by DFAT that in future it would continue to support a family that chooses to pay a ransom and that it is taking concrete steps in the form of drafting written guidelines to provide to families.

### *Committee view*

5.34 Even though, the Australian government has a clear no-ransom policy, it still has an important role in providing advice and guidance to the family members of a kidnap victim who opt to pay a ransom. They certainly should not be abandoned and left to their own devices.

5.35 During its consideration of these matters, the committee touched on the manner in which DFAT, in particular, related to the families. It noted instances where rather than help them with their difficult choices, DFAT added to their confusion, uncertainty, and distress; for example, by refusing to help the family identify reputable companies and declining requests to share information with the family's chosen negotiator. The committee also noted that the Wood and Brennan families were not made aware of possible legal complications concerning the transfer of funds to Iraq and Somalia. The committee was particularly concerned by the Brennan's reports of a DFAT officer laughing in response to a request by Kellie Brennan for assistance in regards to the transmitting of money to Somalia.<sup>45</sup>

5.36 The committee believes that an important part of DFAT's consular role is to continue to provide assistance to a family that decides to pay a ransom. That support can take the form of providing information to the family on reputable firms that undertake K&R tasks; passing on relevant intelligence to the family's chosen K&R consultant; and informing the family about possible legal complications with the transfer of money.

5.37 The committee fully supports DFAT's acceptance of the McCarthy recommendation that it provide next of kin with the names of companies that might be able to help family members should they decide to proceed with a private K&R

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43 *Committee Hansard*, 6 October 2011, p. 34.

44 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

45 *Committee Hansard*, 11 October 2011, p. 6. See also paragraph 5.26 above.

specialist. The committee, however, would like to expand on some aspects of McCarthy's recommendation. These include ensuring that DFAT provides comprehensive advice to the family on the options before them promptly and in a non-judgemental way and, wherever possible, in a timely manner. Also, that the department improves its relationship with the private consultant, and that the family are made aware of the possible legal impediments to paying a ransom.

### **Recommendation 1**

#### **5.38 The committee recommends that:**

- **DFAT ensures that the next of kin of any future kidnap victim are made aware of the option of engaging a private kidnap and ransom consultant; and**
- **if the next of kin decide to proceed with a private consultant, DFAT ensures that any advice or information it then provides to the family is given in a non-judgemental way; that it is willing to cooperate and to share relevant information with the consultant as appropriate (given national security concerns); and that it alerts the family to possible legal complications to paying a ransom.**

# Chapter 6

## Response team and interagency coordination

6.1 The government is confronted with two major considerations when it first learns that an Australian has been taken captive overseas—mobilising its resources to effect the safe and expeditious release of the captive and assisting the family and friends of the kidnapped victim.

6.2 In this chapter, the committee looks at the government's immediate response to reports of an Australian kidnapped overseas and its subsequent actions to secure the victim's release. In the following chapter, the committee considers the manner in which departments liaise with, and support, family members during the captive's detention.

### Consular Response Group (1996)

6.3 In cases of kidnapping abroad, Australia's no-ransom approach limits its options. Even so, DFAT informed the committee that it has 'clear and established procedures' that govern its response to any incident involving the kidnapping of an Australian overseas.<sup>1</sup>

6.4 In May 1996, DFAT established the Consular Response Group (CRG) to manage major or complicated consular cases that 'entail particular difficulties for the department', including hostage cases.<sup>2</sup> At the time, the Minister for Foreign Affairs, the Hon Alexander Downer, described this initiative as 'giving a powerful boost' to the government's ability to handle sensitive and complex situations.<sup>3</sup> The group comprised three officers at differing levels, 'combining skills for varying backgrounds'.<sup>4</sup> Soon after it was established, the group had a key role in negotiations when an Australian pilot was detained in Somalia for four months by militia forces.<sup>5</sup> On his release in October 1996, the minister praised the group for performing

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1 Department of Foreign Affairs and Trade, *Submission 8*, [p. 2].

2 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 177.

3 A Downer, Minister for Foreign Affairs, 'Government Response to Senate Consular Services Report', media release, FA144, 26, November 1997, accessed 3 November 2011, [http://www.foreignminister.gov.au/releases/1997/fa144\\_97.html](http://www.foreignminister.gov.au/releases/1997/fa144_97.html)

4 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 177.

5 United Nations Development Programme, Horn of Africa, *The Monthly Review*, 24 September–31 October 1996, accessed 1 November 2011, [http://www.africa.upenn.edu/eue\\_web/hoa1096.htm](http://www.africa.upenn.edu/eue_web/hoa1096.htm)

'admirably in exactly the role for which it was created'. In this case an officer from within the department travelled to Nairobi to work directly on the case.<sup>6</sup>

6.5 In its 1997 report on consular services, the committee recognised that the only feasible and appropriate way to handle a crisis such as a kidnapping was through 'a specialist unit'. It commended DFAT for establishing the CRG but recommended that the department ensure that the group was adequately resourced and that the optimal level of expertise was maintained within it at all times.<sup>7</sup>

6.6 Although no longer named the Consular Response Group, DFAT has people in the department ready to respond to an overseas incident such as the kidnapping of an Australian citizen. For example, in the case of Mr Wood, the department dispatched promptly a sizable task force of senior level personnel to Baghdad, led by a Deputy Secretary, Mr Nick Warner.<sup>8</sup> At that time, Australia's diplomatic and military presence in that country was already high due to the Iraq war, which made this particular response possible.

6.7 It should be noted, however, that the government's ability to dispatch a team to another country in response to a kidnapping is severely constrained by a number of factors. Kidnappings may occur in a remote and lawless region of a country with which Australia has no diplomatic ties. Even where friendly relations exist between the two countries, Australia must respect the other's sovereignty. In such cases, Australia may offer to assist in resolving the hostage situation, usually through the offices of its Embassy or High Commission. But that decision and the extent to which the country would accept Australia's involvement rests with the local authorities. In other incidents, the Australian victim may be part of a larger hostage group requiring complex negotiations and liaison with the respective governments. The cases of kidnappings cited in chapter 2 demonstrate the limitations placed on Australia's ability to send a response team into the country where an Australian may be held captive or indeed the wisdom in doing so. These considerations are taken into account when an emergency response team meets to determine the best means of securing the safe return of the victim.

### **Inter-Departmental Emergency Task Force**

6.8 DFAT informed the committee that it undertakes contingency planning across all aspects of consular operations, which takes account of the government's preparedness to deal with major international incidents and crises overseas such as the kidnapping of an Australian citizen. According to DFAT, its contingency planning

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6 A Downer, Minister for Foreign Affairs, 'Justin Fraser Release', media release, FA106, 4 October 1996, accessed 3 November 2011, <https://www.foreignminister.gov.au/releases/1996/fa106.html>

7 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 179.

8 M Wood, *Submission 3*, p. 1.

includes information gathering and analysis; desktop and scenario exercises; liaison with other Australian government agencies; and consultations with partner governments and governments in high-risk locations. DFAT participates in the contingency planning exercises of other countries.<sup>9</sup> The committee now looks in greater detail at the government's response to a kidnapping incident overseas.

6.9 Despite the differences and specific circumstances of each kidnapping, DFAT informed the committee that 'there are core principles that can be applied' in determining its response to any kidnapping situation and these protocols reflect DFAT's experience.<sup>10</sup> Ms Bird informed the committee that first and foremost, the government would do everything it could within the bounds of the no-ransom policy to help secure the release of any Australian kidnap victim.<sup>11</sup> For example, DFAT explained that some incidents of kidnapping require a more comprehensive response that draws on the expertise of a range of government agencies.<sup>12</sup> In such cases, a number of key government departments or agencies swing into action when an Australian citizen is kidnapped overseas, including DFAT; the Attorney-General's Department; intelligence agencies, such as ASIO; the AFP; and Defence.<sup>13</sup> The extent of their involvement depends on the nature and circumstances of the kidnapping.

6.10 DFAT leads the whole-of-government response through an Inter-Departmental Emergency Task Force (IDETF) which assumes a coordinating role across government covering all relevant government agencies.<sup>14</sup> This response draws on every available source of information and assistance to contribute to resolving the kidnapping and to support the kidnap victim and their families.<sup>15</sup> Once alerted to an incident, the task force will proceed straightaway to examine the issues.<sup>16</sup> DFAT explained:

As a first step, DFAT will activate and chair an Inter-Departmental Emergency Task Force (IDETF). This is supported by a dedicated unit within the Consular, Public Diplomacy and Parliamentary Affairs Division. Membership of the IDETF will be broad, including not only core agencies with specific expertise and information but all agencies that can contribute to an effective whole-of-government response. This is an important element

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9 Department of Foreign Affairs and Trade, *Submission 8*, [p. 8].

10 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

11 *Committee Hansard*, 6 October 2011, p. 30.

12 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

13 Defence recognised that the complex situations in which a kidnapping occur require 'a coordinated, multiagency response by the Australian Government'. Department of Defence, *Submission 15*, [p. 1].

14 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3] and *Committee Hansard*, 6 October 2011, p. 30.

15 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

16 *Committee Hansard*, 6 October 2011, p. 24.

in ensuring that every possible lead, suggestion or offer of assistance or information is fully explored.<sup>17</sup>

6.11 As an example of the expertise provided by specific agencies, Ms Bird cited the AFP which handles hostage negotiations—DFAT do not get involved in the actual conduct of the negotiations, the details and how that is done.<sup>18</sup> The AFP explained that its response to an incident would be in support of the IDETF and typically 'comprise investigative, negotiator and intelligence capability'. It would also work to achieve full cooperation, on a police-to-police basis, with any relevant foreign law enforcement agency.<sup>19</sup> Assistant Commissioner Ramzi Jabbour explained that the AFP's role is normally one of working through its international network:

...to liaise and provide support, if appropriate, to local law enforcement authorities in that regard. We could also potentially provide intelligence to them from the families and other next of kin to be able to assist in the negotiation process.<sup>20</sup>

6.12 Australia's intelligence community would also become involved. The Australian Security Intelligence Organisation (ASIO) highlighted the importance of indentifying a lead intelligence agency at the earliest stages of a kidnapping to support the work of DFAT and the AFP. It explained:

A lead agency fulfils the important role of driving and coordinating the whole-of-intelligence community effort, as well as providing a single point of contact on intelligence issues for DFAT and the AFP.<sup>21</sup>

6.13 ASIO recognised the necessity to determine the lead agency on a case-by-case basis, taking account of the circumstances of the kidnapping and responsibilities of the various Australian Intelligence Community (AIC) agencies:

It would be appropriate, for example, for ASIO to act as lead agency when a kidnapping involves individuals or groups engaged in activities relevant to security. Absent a link to security issues for which ASIO has mandate—for example in the case of a criminally-inspired kidnapping—the lead intelligence agency role would fall to another AIC agency.<sup>22</sup>

6.14 The Attorney-General's Department noted that on being informed about the kidnapping of an Australian overseas, its Office of International Law would not wait to be asked to get involved but would immediately commence looking at the issues. Mr Geoffrey McDonald, First Assistant Secretary, National Law and Policy Division,

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17 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

18 *Committee Hansard*, 6 October 2011, pp. 30, 32.

19 Australian Federal Police, *Submission 10*, [p. 1].

20 *Committee Hansard*, 11 October 2011, p. 15.

21 Australian Security Intelligence Organisation (ASIO), *Submission 6*, [p. 2].

22 Australian Security Intelligence Organisation (ASIO), *Submission 6*, [p. 2].

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Attorney-General's Department, explained that the advice his department could offer in the first 24 hours could be provided very quickly:

...if that happened [need for advice on a kidnapping], the phone would be ringing at six o'clock in the morning or something like that. We can provide advice quickly about what the scope of the law is, but to apply it to a particular circumstance depends a lot on the facts, which are not clear.<sup>23</sup>

6.15 In some cases ADF capabilities may be called on to assist in resolving an overseas kidnapping (see paragraphs 4.28–4.32).

***Government-to-government assistance and links with non-government organisations***

6.16 In the international context, DFAT indicated that it would cooperate with the government of the country in which the kidnapping happened:

...to ensure all appropriate action to resolve the situation is pursued actively, while maintaining the safety interests of the Australian who is kidnapped. This generally involves significant representations and liaison at various levels of government.<sup>24</sup>

6.17 In addition and where appropriate, DFAT would work closely with colleagues from other governments, including but not limited to Australia's key consular partners: New Zealand, the United States, the United Kingdom and Canada.<sup>25</sup> DFAT Acting First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division, Mr Jon Philp, stated as an example:

I should also point out that the Canadians do, unfortunately, have a great deal more experience than us on these sorts of issues and they will closely engage with us and we listen very carefully to what they have to say.<sup>26</sup>

6.18 DFAT would also liaise with other foreign services that may have 'detailed on-the-ground knowledge or influence' and directly or indirectly, draw on the assistance of Australian and international non-government organisations that may have particular skills or expertise in the relevant location'.<sup>27</sup> According to DFAT this liaison and cooperation with countries:

...can be invaluable in providing access to additional information or insights, including into the circumstances of the location concerned and the group or organisation responsible for the kidnapping or adding pressure or

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23 *Committee Hansard*, 6 October 2011, p. 26.

24 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

25 Department of Foreign Affairs and Trade, *Submission 8*, [p. 3].

26 *Committee Hansard*, 6 October 2011, p. 32.

27 *Committee Hansard*, 6 October 2011, p. 30 and Department of Foreign Affairs and Trade, *Submission 8*, [pp. 2–4].

influence on the kidnappers. Other countries may also have direct experience of kidnappings in the same region.<sup>28</sup>

6.19 According to DFAT, in some cases, it may work with local intermediaries, able to provide further information or insights, or bring influence to bear.<sup>29</sup> As part of this action, the department would make use of intelligence networks. Overall, DFAT would seek information from 'any avenue possible to support a comprehensive, whole-of-government response'.<sup>30</sup>

6.20 The success of the task force depends, by and large, on the extent to which the respective agencies work in unison toward the protection and safe release of the hostage and the assistance they can elicit from overseas countries and organisations well placed to assist in achieving this objective. The experience, expertise and preparedness of the members of the team will also determine the effectiveness of their performance.

### **Family views on the response**

6.21 The experiences of the Brennan family and to a lesser extent the Wood family do not match the description provided by the government agencies which contemplates a prompt, focused and well coordinated response to kidnappings. According to Dr Wood, the foreign affairs officials generally were savvy. He felt that they were 'very alive to the implications of a kidnapped citizen and the kinds of demands that would be placed on the family'.<sup>31</sup> Overall, he described the contingency planning for the crisis and the speedy actions of the task force as 'impressive'.<sup>32</sup> Dr Wood indicated that although DFAT did not have a role in securing his brother's release, it managed to 'keep the lines of communication open' and possibly delayed what might have been an execution.<sup>33</sup> He stated:

From the first traumatic day, I felt very strongly that there was a structure. It was impressive that Nick Warner, with a team—I knew it included police and I took that it included intelligence—flew off that very day. They were prepared for a contingency such as happened. They had no foreknowledge of who exactly would be involved. But they were prepared for such a contingency. That was impressive. Such a response may have applied, I guess, only to someone kidnapped in Iraq, of all places.<sup>34</sup>

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28 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

29 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

30 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

31 *Committee Hansard*, 6 October 2011, p. 2.

32 M Wood, *Submission 3*, p. 1.

33 *Committee Hansard*, 6 October 2011, p. 5.

34 *Committee Hansard*, 6 October 2011, p. 5.

6.22 Dr Wood was critical of the AFP, however, whose role within government was to advise the family on negotiation strategies. In his view, the AFP officers did not seem to have the same degree of savvy as DFAT: the officers' 'expertise in negotiation strategies was limited'.<sup>35</sup> He stated that the recording equipment installed in his and his brother's home to record all phone conversations appeared 'antiquated':

My wife and I had a recording device put into our home within days of the crisis outset, which was adequate; it recorded phone conversation, incoming and my own voice or my wife's voice, so there was that sort of very technical somewhat clunky assistance.<sup>36</sup>

6.23 He also suggested that the AFP's briefing of the family, and him, in particular, was not particularly sophisticated:

Officers provided briefing of a standard nature on what to note and say in the event of a call. Higher-level officers, of the Counter-Terrorism Unit, briefed me on negotiation strategies. Apart from the proof-of-life question, the strategies seemed basic. Our impression was that the officers' expertise in negotiation strategies was limited.<sup>37</sup>

6.24 An interagency team was also formed during the early days of Mr Brennan's kidnapping which included DFAT, the AFP and the Queensland Police.<sup>38</sup> According to Mr Brennan:

Four special operational units were set up to support what became known as 'Operation Mane'. Three were established in Australia, one at my family home in Moore Park, one in Brisbane and the other in Canberra. The fourth was based in Nairobi, Kenya to more readily facilitate direct negotiations with the kidnappers in neighbouring Somalia.<sup>39</sup>

6.25 Mr Brennan noted that no government agency explained to him or his family which departments or agencies, aside from DFAT and the AFP, were involved in the operation, how they interacted and coordinated their activities, their role, functions and strategies.<sup>40</sup> Mrs Bonney indicated that after some initial confusion, the family was informed that although Nigel's kidnapping was a matter under DFAT's jurisdiction, the AFP would be the lead investigative agency.<sup>41</sup> She noted further that the AFP were 'unable to mobilize rapidly enough' so the Queensland Police were called on to assist.<sup>42</sup>

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35 M Wood, *Submission 3*, p. 3.

36 *Committee Hansard*, 6 October 2011, p. 2.

37 M Wood, *Submission 3*, p. 3 and also *Committee Hansard*, 6 October 2011, p. 3.

38 N Brennan, *Submission 12*, [p. 5].

39 N Brennan, *Submission 12*, [p. 5].

40 N Brennan, *Submission 12*, [pp. 5–6].

41 N Bonney, *Submission 13*, [p. 8].

42 N Bonney, *Submission 13*, [p. 2].

6.26 Based on his and his family's experience, Mr Brennan suggested that the government departments 'did not work together at all'.<sup>43</sup> He noted that the Queensland Police Service were there from the start but that one of their best negotiators was tasked out in the first week because of jurisdictional issues.<sup>44</sup> Mr Brennan explained:

He was someone that had bonded with the family as well. He was teaching my sister, Nicole, how to basically negotiate with the kidnapers. My family loved the idea of community policing, and then this government department was thrown into the house and those guys were basically told to leave without even saying goodbye to my family. And it was only the Queensland police guys that actually pulled my family aside and said, 'We have been told that we have got to go'.<sup>45</sup>

6.27 Furthermore, the various government agencies were providing conflicting information to the Brennan family indicating a breakdown in communication between them. As an example, Mr Brennan informed the committee that DFAT made clear that it would not pay a ransom or facilitate a ransom while, at the same time, the AFP was asking his family 'its net worth and was telling them to liquidate assets to pay a ransom'.<sup>46</sup> Indeed, Nicole Bonney told the committee that on day 7 of her brother's incarceration, the family received a directive through the AFP negotiators stationed in the family home 'to acquire as much instant cash as possible'.<sup>47</sup> Such action directly contradicted advice given to the family 'clearly and repeatedly that the Australian government does not pay ransoms'.<sup>48</sup>

6.28 Not only did there appear to be a confused understanding of this no-ransom policy across agencies, but a lack of consistency or, at the very least, clarity in its application.

6.29 As the kidnapping also involved a Canadian citizen, the Australian and Canadian governments worked in conjunction.<sup>49</sup> Again there is evidence of inconsistency in policy. Nicole Bonney told the committee that at a meeting about six weeks after the kidnapping, family members were informed about the 'joint governments' mechanics of a kidnapping'.<sup>50</sup> It was explained to them that continuous communication with the kidnapers was essential to establish a rapport with the

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43 *Committee Hansard*, 11 October 2011, p. 5.

44 *Committee Hansard*, 11 October 2011, p. 5. According to Mr Brennan and Ms Bonney this police officer 'is now actually working for the United Nations, was far better trained. He has trained, I think, FBI and CIA people in negotiating...has actually trained the AFP negotiators.'

45 *Committee Hansard*, 11 October 2011, p. 6.

46 N Brennan, *Submission 12*, [p. 14].

47 N Bonney, *Submission 13*, [p. 6].

48 N Bonney, *Submission 13*, [p. 6].

49 N Bonney, *Submission 13*, [p. 4]. Also see [p. 23] of Mrs Bonney's submission where she provides another example of conflicting advice on paying a ransom.

50 N Bonney, *Submission 13*, [p. 9].

kidnappers. Both the next of kin negotiator and government negotiators in Nairobi had this role. She then explained that without their knowledge or discussion the Australian government in conjunction with the Canadian government implemented a strategy of not communicating with the kidnappers at all.<sup>51</sup> In her view, this approach was 'the polar opposite to what had been previously described as essential kidnapping negotiator techniques'.<sup>52</sup> Moreover, according to Mrs Bonney this strategy was eventually discarded three weeks after the family raised their serious concerns with the Minister about this strategy.<sup>53</sup>

### **Managing a hostage crisis**

6.30 Mr Brennan was of the view that the Australian government's management of his case for 10½ months may have prolonged his period in captivity.<sup>54</sup> His sister believed that the strategies implemented by the Australian government were ineffective and that Nigel's kidnapping 'was beyond the realm of the Australian government's knowledge and capabilities'.<sup>55</sup> She told the committee:

The Australian government had the finances and resources but not the ability to facilitate Nigel's release. We had none of that and achieved what the Australian government could not do—his freedom.<sup>56</sup>

6.31 A member of a response team dealing with international kidnap for ransom and threat extortion for the insurance sector for 18 years was of the same opinion. In his estimation, Australia's response to Nigel Brennan's kidnapping was naïve and:

...the actions or lack thereof taken by the Australian Government were directly responsible for increased suffering and prolonging the time in captivity of Nigel Brennan.<sup>57</sup>

6.32 The committee understands that DFAT officials do not have a great deal of long-term practical expertise with kidnappings abroad. Mr Philp informed the committee that following the Wood kidnapping, some of the members of that team were immediately put onto the Brennan case after his kidnapping.<sup>58</sup> He also noted that in terms of obtaining expertise at the outset of, and throughout, the case, particularly on the ground in Nairobi where DFAT's forward team was based, DFAT spoke to private companies that specialise in hostage release. According to Mr Philp,

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51 N Bonney, *Submission 13*, [p. 9].

52 N Bonney, *Submission 13*, [p. 10].

53 N Bonney, *Submission 13*, [p. 10].

54 *Committee Hansard*, 11 October 2011, p. 2.

55 *Committee Hansard*, 11 October 2011, p. 3.

56 *Committee Hansard*, 11 October 2011, p. 3.

57 Confidential submission.

58 *Committee Hansard*, 6 October 2011, p. 32.

the discussions involved the companies' 'experience in Somalia, how they dealt with it and what they could suggest to us about methods, operations, tactics and so on'.<sup>59</sup>

6.33 Considering the department's access to countries such as Canada and the private companies, Mr Philp was of the view that despite the intermittent requirement to respond to a hostage situation in a practical sense, DFAT officers 'upskill very quickly as it happens'.<sup>60</sup> He noted that, since the Brennan case, DFAT have not had specific discussions with the specialist K&R groups about how to create a degree of expertise that would take the department through to the next incident. In his view, consular people undertake a lot of training that is relevant but not specifically with the private sector.<sup>61</sup>

6.34 Ms Bird noted, however, that the role of specialist K&R companies was to negotiate ransoms. She reminded the committee that the 'basic starting point is that the government will not negotiate a ransom payment'. She explained:

We do not do that; that is not our role. So we have talked to other governments and others who are involved in kidnapping about how they handle the case and what you can do short of facilitating a ransom payment. Since we are not going to pay a ransom, that particular expertise is not relevant.<sup>62</sup>

6.35 The committee is of the view that the department may not have fully appreciated the work and extent of expertise of those engaged in this K&R activity. The committee took evidence in camera from people active in this field of managing a release through the payment of a ransom. DFAT's lack of understanding means that its officers are missing out on a vital source of intelligence and not tapping into a wealth of practical experience. Consequently, they are not well placed to provide advice to families who may wish to go down the path toward paying a ransom.

6.36 If private companies are to continue to assume a role in securing the release of hostages, it is imperative that DFAT have a sound understanding and appreciation of their work. One of the kidnap and ransom consultants informed the committee that he would 'relish the opportunity to run simulation based training for crisis management teams' and have more dialogue and interaction to demonstrate the expertise that exists.<sup>63</sup>

6.37 The committee is of the view that government agencies handling a hostage situation could benefit from obtaining intelligence and advice from such consultants to assist in their assessment of the situation and analysis of options. Keeping in mind,

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59 *Committee Hansard*, 6 October 2011, p. 32.

60 *Committee Hansard*, 6 October 2011, p. 32.

61 *Committee Hansard*, 6 October 2011, p. 32.

62 *Committee Hansard*, 6 October 2011, p. 32.

63 In camera evidence.

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DFAT's statement that it would seek information from 'any avenue possible to support a comprehensive, whole-of-government response', the committee believes that the department should be more open to engaging with K&R companies.<sup>64</sup>

6.38 Clearly, if the government's policy is no ransom and no concessions to kidnappers in a situation where the payment of a ransom offers the safest and quickest route to freedom, then it must accept its limitations and assist others more suited to the task as best it can.

### **A specialist unit in DFAT**

6.39 Despite the rapid response by a specialist team to his brother's kidnapping, Dr Wood was of the view that there is a role for a special unit or special training for people in the Public Service who would be ready for any future kidnapping. He believed that such a capacity should exist and would like to think that 'there are people in the consular branch of Foreign Affairs and police who might [have] greater expertise' than he felt they had six years ago.<sup>65</sup> Mr Martinkus 'wholeheartedly endorsed' such a proposal for a specialist team.<sup>66</sup>

6.40 The findings of the McCarthy review suggested that the present day equivalent of the CRG, needed to be reinvigorated and improved. It recommended the establishment of a regular, high level and whole of government coordinating group to ensure a core group remains abreast of kidnapping issues and to form the nucleus of a future response. DFAT informed the committee that an interdepartmental emergency task force (IDETF) of key agencies has met to discuss the recommendations of the McCarthy Review. This group will form the nucleus of a regular coordinating group.<sup>67</sup>

6.41 The committee believes that the need for a specialist group designed to respond to incidents such as kidnapping remains as strong now as it was when the CRG was established in 1996. It fully supports the establishment of a regular, whole of government coordinating group. It recognises, however, the difficulty keeping a team well trained and prepared to manage a crisis such as an overseas hostage situation when such incidents occur infrequently. The main concern is that staff rotations and the irregularity of incidents may erode the enthusiasm and support for the team over time. A second important matter that the committee believes that DFAT needs to consider is the management of a protracted hostage situation such as the Brennan case.

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64 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

65 *Committee Hansard*, 6 October 2011, p. 7.

66 *Committee Hansard*, 6 October 2011, p. 11.

67 Department of Foreign Affairs and Trade, *Submission 8*, [p. 9].

## Recommendation 2

**6.42** The committee supports the establishment of the regular, whole of government coordinating group and recommends that DFAT give close consideration to how it can maintain the high level of skills that members of an interdepartmental emergency task force require to respond effectively to a kidnapping incident overseas.

## Recommendation 3

**6.43** In particular, the committee recommends that the coordinating group:

- **commits to regular meetings and keeping up-to-date with global developments in kidnapping and hostage taking;**
- **assumes responsibility for ensuring that there is a pool of specially trained personnel across all relevant agencies ready to respond to an incident such as a kidnapping abroad;**
- **oversees the training regime of this pool of specialists that places a high priority on continuous improvement in interagency coordination and cooperation through joint training programs and workshops;**
- **in consultation with other countries and organisations involved in resolving hostage situations, explores and develops strategies for dealing with protracted hostage episodes; and**
- **gives special attention to developing a pool of personnel ready to take on the functions of family liaison and ensures that this sub group is seen as an integral part of any interdepartmental emergency task force (see recommendation at paragraph 7.52).**

6.44 The McCarthy review also suggested that the government consider establishing a bipartisan convention on handling of abductions, particularly those with a national security element.<sup>68</sup> DFAT informed the committee that the Minister for Foreign Affairs has directed DFAT to provide further recommendations on establishing a bipartisan convention and the Opposition have indicated that they are supportive in principle.<sup>69</sup>

6.45 Finally in this regard, the McCarthy review recommended the establishment of a regular consultative mechanism with partner countries, to discuss the broad complexities of kidnapping cases and opportunities for cooperation. DFAT informed the committee that it would be meeting with partner countries as part of regular consular talks soon. According to the department, kidnapping is one agenda item and the government will look to develop further cooperation with our partners on this issue.

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68 Department of Foreign Affairs and Trade, *Submission 8*, [p. 9].

69 Department of Foreign Affairs and Trade, *Submission 8*, [p. 9].

6.46 The committee welcomes these initiatives and would like to be kept informed of developments toward the bipartisan, or more appropriately multi-partisan, convention and the consultative mechanism with partner countries.

### **Conclusion**

6.47 The committee recognises the need for DFAT to have a small specialised, highly trained unit ready to be activated should a crisis such as a hostage situation develop overseas. The small group should have the knowledge, experience, skills and institutional linkages to be able to marshal the resources of relevant agencies to deal with the matter. It should also be aware of its limitations, especially in respect of Australia's no-ransom policy, and be ready and willing to provide assistance to others who may be in a better position to secure the release of a hostage.



# Chapter 7

## Consular support

7.1 The committee has considered the preparedness and competence of government agencies in handling a kidnapping situation. Their goal is to secure the release of the hostage as safely and expeditiously as possible. But during this ordeal, families, often in shock and under great stress, also need special assistance and support.

7.2 In its 1997 report, the committee acknowledged the anguish and grief that families and friends may experience following a traumatic event such as the violent death overseas of one of their own. At that time, a consultant engaged by DFAT, Mr Tim McDonald, noted that the focus of consular services had been on Australians overseas, their families at home being a secondary consideration. Although in the context of a death overseas, not necessarily following a hostage situation, he was of the view that in this day and age 'the question of the welfare of the family has to be taken much more seriously. Importantly, the problem does not end when the person overseas dies'.<sup>1</sup> The same circumstances apply to victims taken hostage and held for ransom and their families. In this chapter, the committee considers the consular support provided to the family and associates of a kidnap victim.

### Respect for the work of government officials

7.3 Before examining the services and support provided during and after kidnapping events, it is important to acknowledge the extremely difficult work undertaken by government officials in response to kidnapping events: work requiring high levels of expertise and involving significant danger and stress. The committee notes the remarks from a number of witnesses commending the work of officials.

7.4 Dr Malcolm Wood noted in his submission that his family 'never had occasion to criticise DFAT or any other agency publicly, and did not: indeed, in our press conference at Parliament House after Douglas' rescue, Vernon and I commended the Government and its agencies highly'.<sup>2</sup> Dr Wood reiterated this to the committee stating:

In the case of Douglas Wood...his family's experience of the role and conduct of the then Australian government and its agencies was overwhelmingly positive. It seemed to me this committee, as also the government and its agencies, deserved testimony to that effect for

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1 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, pp. 83–84.

2 M Wood, *Submission 3*, p. 2.

perspective and balance, particularly as there have been few documented cases falling within the committee's terms of reference.<sup>3</sup>

7.5 Nigel Brennan also acknowledged the work of some government officials in his submission:

There were a number of individuals from the Government agencies that should be commended for the dedicated work and abundant compassion they shared with my family and myself throughout my 462-day ordeal and since my release...In so many ways we will never be able to thank them enough, which I hope they understand and accept. They are fine Australians and we should all be proud of them.<sup>4</sup>

7.6 Although some officers stand out for commendation, both the Wood and Brennan families identified particular areas of the government's consular support that could be improved.

### **Consular services**

7.7 In its submission, DFAT outlined its consular role in kidnapping situations involving Australians:

Within the parameters of the no-ransom policy, DFAT has a clear consular role to play to assist an Australian citizen who is kidnapped overseas and their families.

We can provide information to families on what they can expect, including on possible timelines and expected psychological and emotional challenges, notwithstanding that each case is different and experiences will vary.

- We will appoint a case officer as the primary point of contact for the family.

We know from lessons learned from other hostage situations that the provision of information, including on what the government cannot do, is vital for families.<sup>5</sup>

7.8 The department can also provide a level of financial assistance in emergencies such as kidnappings through the provision of a repayable consular loan to assist with costs such as family travel associated with the hostage situation or for counselling services.<sup>6</sup>

7.9 DFAT also offers support for arrangements in regard to the release and return of hostages. The department may deploy an emergency response team with specialised

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3 *Committee Hansard*, 6 October 2011, p. 1.

4 N Brennan, *Submission 12*, [p. 21].

5 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

6 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

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staff to a nearby location to provide support for family and make reception arrangements following the release of the hostage.<sup>7</sup>

### ***The Consular Charter and duty of care***

7.10 The range of consular services provided by DFAT is described by the *Consular Services Charter* and the *Consular Operations Handbook*. The charter signifies DFAT's 'commitment to providing effective, prompt and courteous consular services delivered in an equitable way to all Australian citizens'.<sup>8</sup> The handbook presents guidelines in regards to the operation of policies, procedures and levels of service provided by the department. Neither publication creates a legally binding duty or obligation on the Australian Government to provide any particular consular assistance or services nor refers specifically to kidnapping situations.

7.11 In this regard, DFAT made it clear that it was not legally obliged to provide certain forms of assistance and services to Australians in foreign countries:

There is not a duty of care as such. The way I would describe it is that we will do all that we can to assist Australians who find themselves in difficulty overseas. There is nothing legislated around that, but that is our practice...

...As far as I am aware, there is nothing legislative about what we do. As I said, the government will do all it can and we have a general consular charter that we put out there which explains what the government can and cannot do.<sup>9</sup>

7.12 The department has sole discretion over the most appropriate level of consular services and this will vary depending on the case and the constraints on DFAT's ability to provide appropriate services. As noted above, however, DFAT appoints a case officer as the primary point of contact for the next of kin as part of its assistance to the family.<sup>10</sup>

### **Communicating and liaising with families**

7.13 Communicating with, and providing information to, victims' families is one of the most important roles for consular services in emergencies such as kidnappings.

7.14 Families learning of the kidnapping of a loved one experience a range of emotions—shock, anguish, frustration and confusion—which continue as the days, weeks and in some cases months pass. Naturally, throughout this ordeal, they will feel as though they have no control over the situation. Their distress, grief and sense of

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7 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

8 Department of Foreign Affairs and Trade, *Consular Services Charter*, March 2010, accessed 3 November 2011, [http://www.smartraveller.gov.au/consular\\_charter/index.html](http://www.smartraveller.gov.au/consular_charter/index.html)

9 *Committee Hansard*, 6 October 2011, p. 41.

10 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

helplessness will affect the way they relate to others including the consular and police officers involved in the kidnapping situation. Assisting the family through this traumatic period requires special skills and careful attention.

7.15 In 1997, the committee found that although the release of the hostages should be of paramount importance, family members have a vital interest in the proceedings and outcome. Importantly, they want to be as fully informed as possible about developments relating to the kidnapping. At that time, the committee noted DFAT's concern that much information available was unsubstantiated and proved to be incorrect or misleading.<sup>11</sup> Even so, the committee formed the view that it was the department's role to pass on its concerns about the quality of the information as that information was relayed to the family.<sup>12</sup> The committee recommended that:

...the provision of information to families, in such distressing circumstances, be a high priority for DFAT and any mission abroad.<sup>13</sup>

7.16 Evidence before this committee also suggested that access to information was vitally important to the family of a kidnapped person, as is confidence and trust in those providing that information. The committee has already noted the dissatisfaction of family members with the mixed messages conveyed by DFAT and the AFP when they were considering the payment of a ransom or engaging a private consultant to negotiate the release. The committee now considers whether this failure in communication was evident in other areas.

7.17 As noted previously, DFAT explained to the committee that it can provide information to families on what to expect in the event of a kidnapping, including possible timelines and expected challenges.<sup>14</sup> DFAT submitted that the department would work 'to share as much information with families as practicable, to the extent permitted by privacy laws'.<sup>15</sup>

### ***Differing levels of service and support***

7.18 Despite DFAT's awareness of the importance of helping family members throughout the kidnapping process, especially of keeping them informed, a number of witnesses were critical of the level and quality of the support provided. There also appeared to be a marked difference in the experiences of the Wood and the Brennan families.

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11 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 162.

12 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 162.

13 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, pp. 162–3.

14 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

15 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

7.19 Dr Wood praised the high quality and frequency of DFAT's consultation with the family. He explained that he and his brother had several meetings with DFAT officers including senior officers at the Deputy Secretary or First Assistant Secretary level. He explained further:

The Assistant Secretary, Consular, with the senior staff counsellor and a senior officer of the AFP (Counter Terrorism Unit), initiated separate phone conversations with Douglas's wife, daughter and me on all weekdays and most weekends throughout the crisis. I had other regular contact, by email or phone, if not face-to-face, with the Assistant Secretary, Consular (or his First Assistant Secretary), a staff journalist working on public diplomacy and the senior staff counsellor. Other family members also had easy contact.<sup>16</sup>

7.20 Dr Wood was also impressed with Mr Warner, who before packing his bags and flying to Baghdad, 'made a point of coming to the meeting to talk with me'. Mr Warner assured him 'of what he would try to do and, obviously, he gained some information from me about Douglas'.<sup>17</sup> Furthermore, the Minister for Foreign Affairs and the Prime Minister made personal contact with Dr Wood.<sup>18</sup> In addition to this high level attention, DFAT officers phoned family members almost daily throughout the crisis, 'with information and to consult on the next steps'.<sup>19</sup> Dr Wood, however, cautioned against any direct comparisons with other kidnapping cases:

Standard consular and humanitarian reasons aside, Australia's military engagement in Iraq—which was contentious—was surely relevant. An execution of an Australian citizen by political terrorists in Iraq would have weighed with ministers personally and politically...The public profile which Vernon and I, and also Sheik Al-Hilali and representatives of Australia's Muslim community, adopted helped keep the case prominent in the Australian media during the first week of the crisis and at its end. I make this comment because the political and other circumstances of each case of kidnapping differ. The circumstances of the Nigel Brennan case differed greatly.<sup>20</sup>

7.21 Even so, the consideration shown to the Wood family, particularly, in relaying information about developments with the hostage taking, contrasts starkly with the experiences of the Brennan family.

7.22 Mr Brennan believes that the early discussions between his family, DFAT and the AFP were positive. He noted that the AFP set up a number of special operational units, including one in his parent's home where regular family briefings took place.<sup>21</sup>

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16 M Wood, *Submission 3*, p. 2.

17 *Committee Hansard*, 6 October 2011, p. 5.

18 M Wood, *Submission 3*, p. 1.

19 M Wood, *Submission 3*, p. 1.

20 M Wood, *Submission 3*, pp. 1–2.

21 N Brennan, *Submission 12*, [pp. 5, 8].

The discussions covered developments and possible resolution strategies. He noted that his family 'greatly appreciated' having these conversations at home.<sup>22</sup> There were also phone and email correspondence with their DFAT case officer, believed to be in charge of the government operation, who was based in Canberra. Mr Brennan noted, however, that:

These briefings started to dwindle in October 2008, when the AFP moved out of my family's home to the 'Villas' apartments in Moore Park, and evaporated completely when the 'next of kin' phone was moved to Canberra in February 2009.<sup>23</sup>

7.23 According to Mr Brennan, his family, always desperate for information, 'was soon and too often left stranded and alone'.<sup>24</sup> He stated:

Increasingly, phrases such as 'no need to know, no security clearance, it's confidential, it's a moving situation, it's uncertain etc' became commonplace excuses for not giving new information. Daily briefings became weekly and then non-existent.<sup>25</sup>

7.24 Nicole Bonney informed the committee about how constantly and consistently her family requested information about the strategies being used to obtain her brother's release from captivity. She explained the protocol adopted for managing the flow of information:

...questions and information was to be passed through AFP negotiators on site in the Brennan family home. This would be passed on up through the chain of command and questions asked by Brennan family members may or may not be answered by higher authority. These possible answers came back down through the chain of command to the AFP negotiators to be passed on to the Brennan family. The Brennan family were not given any written information in regards to these questions and answers.<sup>26</sup>

7.25 In her view this approach was 'a deliberate move to give the Australian government the ability to stagger and limit incoming information given to the Brennan family and to create an obscure chain of information'.<sup>27</sup> According to Mrs Bonney, the effect of this approach was that the Brennan family was 'unable to ascertain facts from the Australian government'.<sup>28</sup> Mrs Bonney summarised her family's experience:

Throughout the time Operation Mane was in place and beyond the Brennan family was treated with little respect by the Australian government in

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22 N Brennan, *Submission 12*, [p. 8].

23 N Brennan, *Submission 12*, [p. 8].

24 N Brennan, *Submission 12*, [p. 8].

25 N Brennan, *Submission 12*, [p. 8].

26 N Bonney, *Submission 13*, [p. 8].

27 N Bonney, *Submission 13*, [p. 8].

28 N Bonney, *Submission 13*, [p. 8].

regard to their need and drive to obtain information regarding Nigel's kidnapping...The Brennan family suspects that the general opinion of the government was that of the Brennan family being dumb uneducated farmers and accordingly should be kept ill informed and ignorant of Nigel's situation and the situation in Somalia.<sup>29</sup>

7.26 Mrs Bonney indicated that regular contact from DFAT would have been a better approach. She acknowledged, however, that family members 'were extremely pushy because we wanted as much information as we possibly could get'. She believed that they 'were not getting that phone call of "no change" because whoever was on that phone knew that we were going to ask questions'.<sup>30</sup>

### ***Withholding information and mixed messages***

7.27 The criticisms that the Brennan family had with regard to the flow of information from government agencies were focused on a number of key instances in which the family felt they had been kept uninformed of important developments. Mr Brennan and Mrs Bonney cited a number of these instances, including:

- agencies not notifying the family of telephone conversations between Mr Brennan and an AFP officer based in South Africa in August 2008 until December 2008;<sup>31</sup>
- officials not informing the family as to which government departments were involved in the operation outside of DFAT and the AFP, their mission and how they interacted and worked together;<sup>32</sup>
- the removal of the next of kin phone located in the Brennan family home without the family's full understanding or endorsement;<sup>33</sup>
- calls and letters to the Minister for Foreign Affairs' office that went unanswered for months and requests for the family to meet with the Minister and the Prime Minister that received no response;<sup>34</sup>
- agencies not discussing any procedures or the implementation of strategies in full with the Brennan family and not providing any written documentation of meetings with government departments to the family despite requests;<sup>35</sup>
- misleading information about the official Australian-Canadian Government strategy;<sup>36</sup>

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29 N Bonney, *Submission 13*, [p. 47].

30 *Committee Hansard*, 11 October 2011, p. 5.

31 N Brennan, *Submission 12*, [p. 2].

32 N Brennan, *Submission 12*, [p. 7].

33 N Brennan, *Submission 12*, [p. 8].

34 N Brennan, *Submission 12*, [pp. 9, 21].

35 N Bonney, *Submission 13*, [p. 3].

- agencies failing to adequately explain a change in strategy from building rapport and keeping lines of communication open with the kidnappers to the complete opposite;<sup>37</sup> and
- the denial of the family's request in July 2009, after securing the services of a private kidnap response firm, for the case details and a situation briefing due to claims that a 'full security clearance' was required.<sup>38</sup>

7.28 One of the most disturbing accounts of the lack of awareness or disregard for Nigel Brennan and his family involved unanswered phone calls from Nigel Brennan to his family's phone over the Easter long-weekend in April 2009. The phone had been re-directed to the AFP's Operations Centre in Canberra in January 2009 under assurance that it would be under 24 hour monitoring. Mr Brennan explained:

...when the phone was actually removed from my house, it was under the proviso that it would be under 24-hour surveillance. The fact that those two phone calls I made around Easter went through to voicemail was absolutely distressing for my family. We went for a period of 10½ months when my family had absolutely no idea whether I was alive or dead. So the fact that the Australian Federal Police had told my family that it would be under 24-hour surveillance and then missed the calls because it was a public holiday, I think was disgraceful.<sup>39</sup>

7.29 The AFP informed the committee that there was an explanation for the calls not being answered other than that the centre was not being staffed. Officers could not, however, discuss the issue publicly.<sup>40</sup> Even so, the Brennan family have not received any satisfactory explanation in regards to this matter.

7.30 Family members also recounted instances where they were not informed about offers to provide assistance from relevant people. Mrs Bonney noted that on one occasion they visited Canberra to get the latest update. She explained further:

Mum had sourced an NGO that was still on the ground that had an Australian head. It was the only NGO functioning inside Mogadishu at that point in time...We had specifically asked for contact with that NGO. Unbeknown to us the person had been in contact with the Australian consulate within the first 24 hours of Nigel actually being taken. That information was never passed on to us. When we tracked him down ourselves...we asked if we could speak to him through the Department of Foreign Affairs and Trade, who then said to us, 'He doesn't want contact

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36 N Brennan, *Submission 12*, [p. 9].

37 N Brennan, *Submission 12*, [p. 9].

38 N Brennan, *Submission 12*, [p. 16]; N Bonney, *Submission 13*, [p. 4].

39 *Committee Hansard*, 11 October 2011, p. 4.

40 *Committee Hansard*, 11 October 2011, p. 18.

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with you'...Which was incorrect, because we had already had contact with him.<sup>41</sup>

7.31 Nicole Bonney submitted that her family often found out information relating to her brother from local and international media. These accounts included the first report of the kidnapping; the broadcast of a video of the hostages on Al Jazeera; reports of deadlines in regards to the ransom; a phone interview with the hostages conducted by Agence France-Presse; and, the release of Somalis taken hostage at the same time as Mr Brennan and Ms Lindhout.<sup>42</sup> She commented:

Unfortunately the Australian government were not forthcoming with alerting the Brennan family to the fact when incoming media was electronically coming in. At the time Heather Brennan questioned as to whether Operation Mane was indeed a 24/7 case as the Brennan family had been led to believe and assured it was.<sup>43</sup>

7.32 Mrs Bonney went further to suggest:

On many occasions unconfirmed information was deliberately withheld from the Brennan family, a case in point was the attempted escape and seeking of sanctuary in a mosque by Nigel and Amanda.<sup>44</sup>

7.33 She asked, did the Australian government recognise that 'this (in)action effectively made the opportunities for the family to decide on further actions an impossibility as they were not informed of unconfirmed information?'<sup>45</sup>

7.34 The Brennan family's evidence tells of a drawn out and distressing experience where the family felt they were being misinformed, drip-fed and fobbed off. This experience contrasts with DFAT's statements in regards to how it views its service to families in regards to information sharing. As noted above, DFAT's submission stated that it understands that the provision of information, including on what the government cannot do, is vital to families. The department informed the committee that it was preparing a written guide for families on what to expect if a family member is kidnapped (see paragraph 4.47). The submission noted:

Providing families with clear and up-to-date information on developments in the case can help families make informed decisions and navigate their way through sometimes unreliable information from other sources.<sup>46</sup>

7.35 DFAT did recognise, however, that:

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41 *Committee Hansard*, 11 October 2011, p. 7.

42 N Bonney, *Submission 13*, [p. 21].

43 N Bonney, *Submission 13*, [p. 22].

44 N Bonney, *Submission 13*, [p. 43].

45 N Bonney, *Submission 13*, [p. 43].

46 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

There are complexities and challenges when dealing with intelligence material and these are addressed on a case-by-case basis.<sup>47</sup>

7.36 While the committee understands the sensitivities around intelligence and information on operational matters, it would appear that these issues were never explained adequately to the Brennan family. This contrasts with Dr Wood's experience:

I understood from the outset that a government agency was never going to tell us—a family—about intelligence or military activities, and broadly they did not. I understood that. Perhaps if I had not served in government myself I would have been stronger in pushing.<sup>48</sup>

7.37 While the background of the two families may have contributed to different expectations as to what information could be shared at the outset, it does not explain the Brennans' ongoing distress at the lack of information and inadequate explanations.

### ***Breach of trust***

7.38 Beyond their concerns with access to information, the Brennan family also criticised the government and agencies for what they considered to be misleading and untrue statements as well as significant delays in responding to their letters and questions. These actions amounted to what was considered by the family to be a breach of the trust they had placed in government officials. Mr Brennan explained:

That was another thing with information from very early on. DFAT and AFP asked my family to have no contact with Amanda's family, because apparently Amanda's family did not want my family to contact them. The Canadian family was told the same thing. There was disinformation that was being used. Both families were going through an incredibly traumatic experience, and there would have been nothing better than the two families working together and trying to communicate and share the burden of what they were going through. For a government to lie to my family and say 'The Lindhouts don't want you to talk to them' was a blatant lie.<sup>49</sup>

7.39 Mrs Bonney told the committee that these discrepancies were 'really difficult for us to deal with because they made us doubt our own government and what our government was doing for us and if, in fact, they were helping us'.<sup>50</sup> They also related that the family later discovered that the head of the NGO in Mogadishu, referred to above, had, within 24 hours of the capture, contacted the consulate in Nairobi offering help and information on the kidnapping. Mrs Bonney elaborated on the man's efforts:

On the first day that Nigel was taken he rang three times. On the second day he rang twice. He received no calls back from the Australian High

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47 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

48 *Committee Hansard*, 6 October 2011, p. 4.

49 *Committee Hansard*, 11 October 2011, p. 10.

50 *Committee Hansard*, 11 October 2011, p. 7.

Commission in Nairobi...He then rang on a monthly basis and finally, in May, the Australian government approached him. At that point in time we had told the Australian government that we were planning on moving away from them and engaging a private contractor. We got a phone call saying, 'This guy can do it. Stick with us.'<sup>51</sup>

7.40 The man was believed to have been unable to obtain a proof-of-life from the hostage takers and was not involved in the negotiations for the release of the hostages.

7.41 The Brennan family stated that in mid-June 2009, they received a letter from then Minister for Foreign Affairs, Stephen Smith, describing the strategies which had been implemented by the negotiators in Nairobi as 'based on wearing down the kidnappers'.<sup>52</sup> Nicole Bonney wrote:

If it had been explicitly stated to us that this was their main strategy, we would have pulled the plug on DFAT months ago. The emotions of family members range from despair to fury. It's soul-destroying for Dad...He's been completely let down by the government and its inability to help Nigel.<sup>53</sup>

7.42 The Brennan's evidence suggested a considerable breakdown in the relationship between the family and government officials and their ability to work together towards the release of the hostages. This came about primarily through the way information was shared and the significant problems with the way different matters were communicated to the family.

### *Continuity in liaison officers*

7.43 A key factor identified by the Brennan family with regard to the problems with the relationship with government agencies was the lack of continuity in the personnel assigned to work with the family. While a number of senior DFAT and AFP staff worked on the case for the entire period, those placed in the family home and other officials working directly with the family were frequently rotated. Mrs Bonney submitted:

A large number of people worked on 'Operation Mane' and from the outset the Brennan family requested continuity...The Brennans found this an important request as it was both time consuming and distressing to have to constantly explain the family dynamics to new negotiators. New negotiators were also not aware of the capabilities of the various family members and the Brennan family felt they constantly had to prove themselves to new negotiators. This request took a number of months for the AFP to implement, as a result a large number of people lived with the Brennan

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51 *Committee Hansard*, 11 October 2011, p. 8.

52 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 285.

53 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 285.

family under very stressful situations and on the whole relations were cordial. There were however exceptions to the rule and when the Brennan family made it aware they had personality and working issues with some individuals this was disregarded by the relevant authorities.<sup>54</sup>

7.44 While personnel may have been rotated for operational and health and safety reasons, the family believed that agencies took issue with any bonds formed between officials and the family. Mr Brennan told the committee:

There were...problems that arose because anyone from a government department who got at all emotionally attached to my family were very quickly pulled out of the house never to return. The fact was that my family, as time went on, got less and less information.<sup>55</sup>

7.45 Mr Brennan noted further that the family liaison officer was removed from the house. In his view a liaison officer 'should have been something that should have been there even after the government was tasked off the job and a private company was put in. There should have been some sort of family liaison officer involved'.<sup>56</sup> In this regard, Mrs Bonney stated:

I guess the real pity about that is that could actually really effectively work—having a family liaison officer actually dealing directly with a private contractor. If everyone is okay with it and happy with it, it could actually work extremely well. That was another difficulty that we had to deal with. We were dealing with different time zones and different countries. We were extremely fortunate that we had 24-hour access to John Chase [private crisis management consultant], but there may be other people in other situations that do not.<sup>57</sup>

7.46 Mrs Bonney told the committee that the removal of the Queensland police officers permanently from the case 'was very distressing for the family and when the Brennan family questioned [an AFP officer] about these moves no satisfactory answer was provided'.<sup>58</sup> Mr Brennan also noted that family friends who were involved with Queensland Police or with the Army were 'basically told not to contact my family'.<sup>59</sup>

7.47 Dr Wood submitted that his family had frequent contact, primarily with the Assistant Secretary, Consular, and with the senior staff counsellor and a senior officer in the AFP's counter-terrorism unit. While the Dr Wood had recording equipment installed in his home, no DFAT or AFP stayed in the home. As the Wood case was

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54 N Bonney, *Submission 13*, [pp. 22–23].

55 *Committee Hansard*, 11 October 2011, p. 4.

56 *Committee Hansard*, 11 October 2011, p. 5.

57 *Committee Hansard*, 11 October 2011, p. 5.

58 N Bonney, *Submission 13*, [p. 2].

59 *Committee Hansard*, 11 October 2011, p. 8.

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resolved in a much shorter period of time, it is difficult to compare the experiences of family liaison between the two cases.

7.48 Despite the severe criticism levelled at the government's response to the family's needs, the committee takes this opportunity to note again that the Brennan family were highly appreciative of some government officials who assisted them through their ordeal. Mr Brennan reminded the committee that there were 'a number of people within departments who did a fantastic job and who dealt with my family in a great way'.<sup>60</sup>

#### *Previous report and McCarthy review*

7.49 Given the trauma faced by any family dealing with a kidnapping situation, the committee believes that the welfare of family members and those close to the victim should be a priority for all agencies involved. This finding is consistent with the committee's recommendation in 1997 that the 'provision of information to families, in such distressing circumstances, be a high priority for DFAT and any mission abroad'.<sup>61</sup> The committee also notes the McCarthy review's recommendation that families be provided with oral and written advice on what to expect in a kidnapping case and make it clear what the government can and cannot do.

7.50 The evidence before this committee and the two recommendations cited above highlight the need for DFAT to improve the way it delivers its consular service to people under severe stress. The committee believes that the good relations between family members and government officials in such cases depend upon trust and effective communication. It is important for families to feel as though their interests are a high priority and that they are being kept in the loop. DFAT needs to be aware of the importance of sharing information and of selecting staff specially trained and equipped to deal with traumatised family members and able to convey information effectively between the relevant parties.

#### *Committee view*

7.51 The committee believes it is important that a sub-unit or section of the emergency response task force be responsible for supporting the families of victims. The members of this sub-unit should be specially trained for this liaison role and be able to provide families with accurate information and continuity.

#### **Recommendation 4**

**7.52 The committee recommends that any inter-departmental emergency response task force include a sub group dedicated to supporting families of a victim of kidnapping. This group should be made up of personnel specially**

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60 *Committee Hansard*, 11 October 2011, p. 1.

61 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. xix.

**trained for this liaison role and able to provide the family with ongoing and accurate information. Agencies should strive to maintain the continuity of the personnel assigned to act in this role.**

## Interpreters

7.53 A key criticism made by the Brennan family with regard to consular services and communication relates to the significant language difficulties experienced by Nicole Bonney in her negotiations with the kidnappers. Mrs Bonney told the committee:

DFAT were unable or unwilling to assist requests on two particularly damning points: one, the refusal for a repeated request for a Somalian interpreter and, two, the refusal to pass on information with regard to legitimate private kidnap and ransom companies.<sup>62</sup>

7.54 The 1997 committee report raised the issue of the provision of interpreters and translation services, specifically in regard to Australians involved in legal proceedings overseas. At the time, the committee recommended 'in the case of Australian victims of crime and those facing serious charges in overseas jurisdictions, that DFAT provide them with translator and interpreter services'.<sup>63</sup> The government at the time did not support this recommendation stating:

The Government cannot commit itself to an open obligation to fund translators overseas. However, the Government is prepared to consider carefully providing translators and interpreters on a case by case basis.<sup>64</sup>

7.55 The response recognised further that:

...there will be particular cases which arise from time to time which, for particular reasons, demand that public funding be made available for translator and/or interpreter services. We consider that DFAT, in consultation with other Government agencies such as the Attorney-General's Department, should consider such cases as sympathetically as possible and subject to appropriate financial tests.<sup>65</sup>

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62 *Committee Hansard*, 11 October 2011, p. 2.

63 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, p. 100.

64 'Government response to Review by Senate Foreign Affairs, Defence and Trade References Committee of the Australian Government's consular services', *Senate Hansard*, 26 November 1997, p. 9521, accessed 4 November 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1997-11-26%2F0141%22>

65 'Government response to Review by Senate Foreign Affairs, Defence and Trade References Committee of the Australian Government's consular services', *Senate Hansard*, 26 November 1997, p. 9521, accessed 4 November 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1997-11-26%2F0141%22>

7.56 Mrs Bonney submitted that a request for a Somali translator was made in the first week of her brother's kidnapping:

The phone calls that Nicole Bonney was having with [...] the kidnapper spokesperson were extremely difficult to understand and the transcribers in Canberra appeared to find his speech pattern no easier as Nicole was asked to confirm on a number of occasions what he was saying... This request [for a translator] was steadfastly ignored until the Brennan family became very vocal and then the request was denied outright claiming that we could not have a translator because then the government 'would need a translator to translate the translator'.<sup>66</sup>

7.57 When asked the reason for not providing translator or interpreter services, DFAT told the committee:

It has been a longstanding policy of government that that is one of the things that we do not do. We do not provide translating or interpreting services. We have a consular charter which sets out very clearly what the government can and cannot do, and one of the things the government does not do is provide translating or interpreting services. Families can access those services if they wish, obviously, but it is set out clearly in our charter that those are just not something that the government provides.<sup>67</sup>

7.58 When pressed on whether the circumstances of a kidnapping might require a different response to that set out in the consular charter, Ms Bird replied: 'We just generally do not do it in that way'.<sup>68</sup>

7.59 DFAT addressed the issue of Mrs Bonney's calls with the kidnapper's spokesperson stating:

Obviously there were some phone calls to Nigel Brennan's family. They were in English. We clearly did need for our own purposes to have some Somali language translating capacity, for obvious reasons. Clearly we had some material that we needed to deal with. But the family calls were in English. Because it is such a business, the kidnappers know that they are going to be dealing with Western families, they will use English.<sup>69</sup>

7.60 DFAT stated that families are able access private interpreter or translation services if they wished.<sup>70</sup>

7.61 While the calls were made in English, Mrs Bonney documents in *The Price of Life* the considerable difficulties she had in understanding the spokesperson's accent and explaining certain terms. The private contractor, hired by the family to assist in

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66 N Bonney, *Submission 13*, [p. 28].

67 *Committee Hansard*, 6 October 2011, p. 39.

68 *Committee Hansard*, 6 October 2011, p. 39.

69 *Committee Hansard*, 6 October 2011, p. 39.

70 *Committee Hansard*, 6 October 2011, p. 39.

negotiating the release of Mr Brennan and Ms Lindhout, located a Somali translator to communicate for them.

### ***Committee view***

7.62 Due to the limited evidence before the committee on the details of the negotiation process it is difficult for the committee to assess whether a translator was necessary in the Brennan case. It is clear, however, that Nicole Bonney experienced significant difficulties in understanding the kidnapper's representative and that misunderstandings increased the level of distress experienced by the family.

7.63 While DFAT's consular charter may rule out the provision of such services for Australians in trouble overseas, it is not clear to the committee why such rules should apply in special cases such as kidnappings where family members in Australia and the AFP are involved in negotiations with hostage takers. The committee believes that any measures which could assist in obtaining the successful release of hostages should be considered. The committee believes that it is inappropriate to encourage families to seek out and finance private translation services when the AFP or other agencies are involved in the negotiation process.

7.64 The committee agrees with the government's response to its recommendation in 1997 regarding the provision of translation and interpreter services: that agencies be 'prepared to consider carefully providing translators and interpreters on a case by case basis'.<sup>71</sup>

### **Proposed written guidelines**

7.65 As discussed in chapter 4, DFAT agreed to the recommendation of the McCarthy review that written guidelines be prepared outlining for a family what to expect in kidnapping cases and what government agencies can and cannot do. DFAT told the committee that the written guidelines are 'very well advanced and should be done very shortly'.<sup>72</sup>

### ***Committee view***

7.66 The committee believes that this written advice should be clear in regards to the consular services available to families. It should state that families will still receive support if they choose to engage a private contractor.

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71 'Government response to Review by Senate Foreign Affairs, Defence and Trade References Committee of the Australian Government's consular services', *Senate Hansard*, 26 November 1997, p. 9521, accessed 4 November 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F1997-11-26%2F0141%22>

72 *Committee Hansard*, 6 October 2011, p. 38.

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## Conclusion

7.67 One of the most compelling messages coming out of this inquiry, was the importance of DFAT exercising more care and diligence in the way in which it deals with distressed families. In 1997, the committee noted advice that following a traumatic event, ‘the question of the welfare of the family has to be taken more seriously’.<sup>73</sup> That advice is as relevant today as it was then.

7.68 The committee believes that DFAT must ensure that while efforts are being directed toward the safe release of the kidnapped victim, the family must also be a primary concern. The committee believes that the guidelines DFAT is now drafting should contain a preface that recognises the importance of treating families as a high priority, of building trust and of keeping family members fully informed on developments.

7.69 The family members of a kidnap victim may be demanding of an agency's time and resources: they may be difficult to converse with and ask hard questions. Officers should be able to make allowances and remain sensitive to how their actions affect families in such distressing circumstances. The committee believes that liaising with and providing direct support to family members requires special skills and training. It is of the view that those taking on the family support role should be specially trained for their liaison role and also be part of the emergency response task force. Being a sub unit of this task force would ensure that the family has someone representing their interests able to communicate directly with the task force and to convey back to the family information received from the team. The committee has made a recommendation to this effect (paragraph 7.52).

7.70 While consular support is most important for families in kidnapping cases during the period of captivity, issues can also arise in the transition period following the crisis. The next chapter examines the role of consular support once an incident is over.

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73 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australians abroad: a review of the Australian Government's consular services*, June 1997, pp. 83–84.



# Chapter 8

## Post crisis support

8.1 The effects of a kidnapping incident do not end for captives on their return home. Hostages are often held for long periods of time and endure injuries, sickness, beatings, torture and mental anguish. Even those held for shorter periods, especially where violence and the fear of impending death are involved, may suffer from the trauma of the kidnapping long after their release. In this chapter, the committee looks at the post resolution period, focusing on the role of relevant government agencies during this important recovery period.

### Support for Mr Martinkus

8.2 Mr Martinkus explained to the committee that soon after his release he was in a colleague's house/office recounting the details of his kidnapping when a DFAT official rang his colleague. He remembered distinctly 'waving away the phone call' because he did not want to talk to them. In his words, although exhausted he was 'quite wired up' and wanted to wait until he was 'more together'.<sup>1</sup> He was also in the process of arranging his departure and wanted to wait until he was out of the country before speaking to Australian representatives from the embassy. Mr Martinkus described the range of emotion and the adrenaline he was experiencing on gaining his freedom—'exhaustion, elation at my release and what I later realised was shock'.<sup>2</sup>

### *Debriefings*

8.3 According to Mr Martinkus, the conduct of DFAT following his return to Australia has only added to his suffering.<sup>3</sup> As noted earlier, Mr Martinkus was abducted outside his hotel which he argued was deemed to be in 'a secure part of the city'. Indeed he told the committee that it was the only place in Iraq at the time that had Australian troops securing it:<sup>4</sup>

It was where a lot of foreign journalists were staying and where the Australian Embassy was. There were Australian troops outside. People thought that was reasonably safe but, because the situation was unpredictable and deteriorating, the insurgents managed to get in and snatch me.<sup>5</sup>

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1 *Committee Hansard*, 6 October 2011, p. 9.

2 J Martinkus, *Submission 4*, supporting statement, [p. 9].

3 *Committee Hansard*, 6 October 2011, p. 8.

4 *Committee Hansard*, 6 October 2011, p. 12.

5 *Committee Hansard*, 6 October 2011, p. 9.

8.4 Mr Martinkus was surprised to learn, however, that before he could be interviewed or debriefed by DFAT officials the then Foreign Minister, who was led to believe that Mr Martinkus had been in a dangerous part of the city, informed the media as though this was fact.<sup>6</sup> The minister was reported as stating that Mr Martinkus, whom he did not name, 'had been captured when he went to an area of Baghdad against advice'. He then said:

Obviously, we're concerned about the safety of Australians and we do ask that Australians don't go to Iraq. Some do. When they're in Iraq some of them take risks.

In this particular case, the journalist went out to investigate a story, I understand, and went to a part of Baghdad that he was advised not to go, but he went there anyway and journalists do that sort of thing, but he was detained, but just for 24 hours and subsequently has been released.<sup>7</sup>

8.5 According to Mr Martinkus, he was on his way home and in a plane between Baghdad and Amman, Jordan, when the minister made the statement that in essence 'the kidnapping was my fault'.<sup>8</sup> Mr Martinkus was of the view that, in his case, DFAT officials in Iraq 'basically' misinformed the minister as to what had actually happened. He suggested that DFAT seemed intent on trying to downplay his story and ultimately to discredit him and damage his reputation as a journalist.<sup>9</sup> Mr Martinkus does not know where the story originated but surmises that it may have started as 'a value judgement probably made by a lower level DFAT official in Baghdad in that I was doing dangerous things, behaving inappropriately'.<sup>10</sup> In his assessment, the Minister for Foreign Affairs at the time increased his distress and trauma by endeavouring to make a political point.<sup>11</sup>

8.6 Mr Martinkus concluded that DFAT should be mindful that people may be readily victimised rather than helped to get back on with their lives on their return to Australia.<sup>12</sup> He stated:

There is this knee-jerk reaction to blame the victim. They blame them for being somewhere they should not be or whatever, like what happened in my case...a knee-jerk response to somehow implicate them in their own misfortune. In the case of journalists, I think there is almost a refusal to see

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6 *Committee Hansard*, 6 October 2011, pp. 8, 12.

7 ABC Radio, 'Foreign Minister discusses kidnapping and release of SBS journalist', *PM*, 'Downer rejects UN request for more troops', 18 October 2004, <http://www.abc.net.au/pm/content/2004/s1222494.htm>; 'Kidnapped journo hits back at Downer', *Sydney Morning Herald*, 19 October 2004.

8 *Committee Hansard*, 6 October 2011, p. 10.

9 *Committee Hansard*, 6 October 2011, p. 8.

10 *Committee Hansard*, 6 October 2011, p. 12.

11 *Committee Hansard*, 6 October 2011, p. 8.

12 *Committee Hansard*, 6 October 2011, p. 14.

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that they legitimately have a right to be where they are in these conflict zones and that they have a job to do and are supposed to be there.<sup>13</sup>

8.7 He recommended that in future DFAT officials could seek 'to be properly informed about issues before incorrectly briefing the minister and should refrain from imposing their preconceived and institutionally biased opinions onto the victim's case'.<sup>14</sup>

8.8 Furthermore, he was concerned that DFAT officials have continued to doubt his story 'long after the event without ever seeking to clarify events with myself'.<sup>15</sup> Mr Martinkus informed the committee that since his return to Australia after his kidnapping, DFAT have never contacted him, sought his account of the kidnapping or offered him assistance.<sup>16</sup> He recalled:

The fact that DFAT never tried to verify that with me and continued to run this rumour campaign that somehow something was wrong, that I was not telling the full truth, or that there was something not right about what happened without even bothering to verify it with me is unacceptable. The minister at the time was basically trying to downplay the security situation in Baghdad by denigrating me and denigrating SBS—basically playing politics with the whole incident—and, at the end of the day, I was the one who had to defend myself against all these charges that I was somehow involved.<sup>17</sup>

8.9 As an example of DFAT's failure to check the facts and recognise that he had been the victim of a kidnapping, he recalled that at the time of Mr Wood's abduction he was shown a fax received at the SBS office from DFAT outlining the previous Australians kidnapped. In his words:

They basically said that my kidnapping had never happened and that it was alleged. For me, that was extremely hurtful because it was the press release DFAT was putting out and it was basically calling me a liar. That was incredibly insulting...I remember I was quite angry and I got the boss at SBS...to write a letter to them. They then amended the press release, but it was all after the fact.<sup>18</sup>

8.10 He told the committee that he has had to go through the government's reaction to his kidnapping with his counsellor a few times including what he believes was the politicisation of his predicament. He explained:

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13 *Committee Hansard*, 6 October 2011, p. 14.

14 *Committee Hansard*, 6 October 2011, p. 8.

15 *Committee Hansard*, 6 October 2011, p. 8.

16 *Committee Hansard*, 6 October 2011, p. 8 and J Martinkus, *Submission 4*, 'Supporting statement', [p. 17].

17 *Committee Hansard*, 6 October 2011, p. 10.

18 *Committee Hansard*, 6 October 2011, p. 9.

It made me feel under attack and having to justify myself continually to colleagues and to the general public about what had happened. To be honest, what traumatised me more was the stigma and pigeon-holing and accusations from right-wing members of the press and having to continually justify my actions. This has gone on for years.<sup>19</sup>

8.11 Comments to the media soon after Mr Martinkus' kidnapping highlight the importance of government officials ensuring that any public statements they make or advice they provide are based in fact and sensitive to the circumstances of the victim. The committee also notes that since his return to Australia, DFAT is yet to offer Mr Martinkus a debriefing or contact him directly or formally about his welfare. The AFP visited him in his office about two weeks after his release asking him about the insurgents who had kidnapped him.

### *Advice and counselling*

8.12 Mr Jon Philp, Acting First Assistant Secretary, DFAT, indicated that his department tried to contact Mr Martinkus immediately after his release and before his departure from Iraq on 18 October but not after his return to Australia.<sup>20</sup> In response to Mr Martinkus' account of DFAT's lack of concern for his welfare, Ms Bird noted that as he had already been freed there was no role in terms of trying to get him out of there.<sup>21</sup> She acknowledged that the usual approach would have been to offer consular assistance, to make sure he was okay and ask whether there were any messages he wanted to pass to his family. But, she explained, DFAT tried to contact him and as he did not respond to DFAT's call and he was out and working again, there was 'no longer any need for consular assistance per se'.<sup>22</sup> She indicated on a number of occasions that:

We did try to contact him a couple of times and passed on that offer of consular assistance and asked to speak to him at the earliest opportunity. If he had wanted to get in touch with us, that offer was definitely there.<sup>23</sup>

8.13 According to Ms Bird, having inquired whether he was 'okay' and whether anything could be done for him—'It was up to him to take it up if he wanted to'.<sup>24</sup> Mr Philp noted further that in Mr Martinkus' case—'he had an employer who has a formal duty of care'.<sup>25</sup> He told the committee, however, that he was not aware whether SBS

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19 *Committee Hansard*, 6 October 2011, p. 12.

20 *Committee Hansard*, 6 October 2011, p. 40.

21 *Committee Hansard*, 6 October 2011, p. 40.

22 *Committee Hansard*, 6 October 2011, p. 40.

23 *Committee Hansard*, 6 October 2011, p. 40.

24 *Committee Hansard*, 6 October 2011, p. 40.

25 *Committee Hansard*, 6 October 2011, p. 40.

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were in touch with DFAT and that the department would not as a matter of course be in touch with them.<sup>26</sup>

8.14 Ms Bird informed the committee that DFAT provides exactly the same consular assistance in all cases. She mentioned on a number of occasions that DFAT sought to do so in Mr Martinkus' case but he did not see any need to take it up.<sup>27</sup> When pressed on this matter of providing assistance after his return, Ms Bird replied:

...our role would have been to make sure that he was okay; that he had got out; whether he needed any assistance in leaving the country—we would not have wanted him to hang around Baghdad any longer than he needed to; and whether there was something we could pass on to his next of kin to assure them he was okay. That was unnecessary by the time he was back in Australia. All that was self-evidently done: he was out and presumably he had been in touch with his family directly.<sup>28</sup>

8.15 On a number of occasions, Ms Bird repeated her explanation that if Mr Martinkus had wanted counselling, 'he could have got in touch with us':<sup>29</sup>

...if he was back in Australia he would clearly be able to avail himself to whatever the domestic services were. We would want to have made sure that he was well and out of the country, which he was.<sup>30</sup>

8.16 The committee has described Mr Martinkus' state of mind at the time DFAT tried to contact him in Baghdad—he had just been freed from a traumatic experience where he had been abducted at gun point, held, restrained and interrogated, and at times feared execution. In the committee's view, DFAT's effort to provide consular services to Mr Martinkus fell short of acceptable. The onus was on DFAT to ensure that all effort was made to make direct contact with Mr Martinkus, especially on his return to Australia, to ensure that he was safe and well and to offer him consular assistance. DFAT may have gained the impression that Mr Martinkus did not need or want assistance, but it was incumbent on the department to make sure this was so.

### **Support for Mr Brennan**

8.17 Eventually released after being held hostage for 462 days, Mr Brennan similarly found DFAT unsympathetic to his needs. The committee has recorded the numerous instances of where Mr Brennan and his family believe that they were poorly treated especially with regard to access to information. The dissatisfaction with their treatment continued after Mr Brennan's return to Australia. Indeed, Mr Brennan stated

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26 *Committee Hansard*, 6 October 2011, p. 41.

27 *Committee Hansard*, 6 October 2011, p. 40.

28 *Committee Hansard*, 6 October 2011, p. 40.

29 *Committee Hansard*, 6 October 2011, p. 40.

30 *Committee Hansard*, 6 October 2011, p. 41.

that in their experience, the government's treatment of them, during and after his detention, was 'overwhelmingly poor' in almost all respects.<sup>31</sup>

### ***Debriefings—filling in the blanks***

8.18 Mr Brennan explained that after his return, the family wanted 'some closure' on the kidnapping incident by gaining a better understanding and insight into the government's handling of the case.<sup>32</sup> After his release, the Brennan family requested 'full debriefings' with government agencies. According to Mr Brennan when he requested a debrief from DFAT and the AFP they asked him why he wanted one. He then replied:

I have heard my family's side of the story and I would like to hear the government's side of the story of where you think you did stuff right and where you did stuff wrong.<sup>33</sup>

8.19 Mr Brennan explained that 'I sort of got a laugh at that and they said, "What do you mean we did stuff wrong?"'<sup>34</sup> His sister added that when they requested information, DFAT was 'quite surprised'. This response alarmed them because from the beginning they had requested information and wanted to know what was going on. In her words:

We felt that we were falling, yet again, into the situation where communication was only going one way, which was something that had been problematic for us from the outset.<sup>35</sup>

8.20 The family had to wait more than six months before a meeting with relevant government agencies was finally arranged. Several DFAT and AFP officers attended a debriefing on 10 June 2010.<sup>36</sup> This meeting covered various legal matters with the Criminal Code and counter terrorism provisions as they relate to the payment of a ransom. At this meeting, the family expressed concern about possible surveillance and phone tapping.<sup>37</sup> The family also attended a meeting as part of the McCarthy review. Mr Brennan informed the committee that the minutes of either meeting or their outcomes or a copy of the McCarthy review have not been provided to his family.<sup>38</sup>

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31 N Brennan, *Submission 12*, [p. 20].

32 N Brennan, *Submission 12*, [p. 12].

33 *Committee Hansard*, 11 October 2011, p. 5.

34 *Committee Hansard*, 11 October 2011, p. 5.

35 *Committee Hansard*, 11 October 2011, p. 5.

36 N Brennan, *Submission 12*, [p. 12]. See also *Committee Hansard*, Estimates, 18 October 2010, p. 92.

37 N Brennan, *Submission 12*, [p. 13].

38 N Brennan, *Submission 12*, [pp. 12–13].

8.21 Yet again, the committee received very different interpretations about this post resolution period. DFAT acknowledged that an important part of any kidnapping incident occurs post-resolution. The department explained:

After each case involving an Australian overseas, we have conducted in-depth and careful analysis of all the detail of the specific kidnapping: how each scenario has played out and what can be learned. This critical examination is a key element in maintaining a strong response capacity. As a result, we have made some minor adjustments to aspects of our policy response, but the fundamental principles have been reaffirmed.<sup>39</sup>

8.22 The committee believes that a post-resolution review is extremely important but the benefits should not be limited to the department and related agencies. Such an exercise is an opportunity for a two-way exchange of information. For example, an interview with Mr Martinkus could have allowed him to put his account of the kidnapping to DFAT, to clear up any misunderstandings and to express his disappointment with the handling of his case. The Brennan family could have sought answers to its many questions—questions that remain largely unanswered even today (see further discussion and recommendation in chapter 11).

### *Counselling*

8.23 The Brennan family also raised 'strong concerns about the fact that no assistance was given' to either the family or Nigel after his return to Australia with regards to counselling services.<sup>40</sup> Nicole Bonney informed the committee that prior to leaving for Nairobi, the family asked if counselling would be available after Nigel's release but were told that 'this was not the case and they should contact the government service Centrelink for assistance with counselling services'.<sup>41</sup>

8.24 Mr Brennan noted that after his lengthy confinement his cognitive skills were very slow and his doctors had said that he could not operate any sort machinery—'anxiety, hyper vigilance and stuff like that'. He then stated:

To sort of be fobbed off as soon as I got off the plane from Nairobi was, I think, a little bit rude. That is my thing. The government has a responsibility for its citizens. I take responsibility for what I did.<sup>42</sup>

8.25 Mr Brennan stated that he had to find out about a government scheme, 'Better Access to Mental Health Care', through his GP, who referred him to a psychologist.<sup>43</sup>

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39 Department of Foreign Affairs and Trade, *Submission 8*, [p. 4].

40 N Brennan, *Submission 12*, [p. 14].

41 N Bonney, *Submission 13*, [p. 40].

42 *Committee Hansard*, 11 October 2011, p. 5.

43 *Committee Hansard*, 11 October 2011, p. 4.

8.26 Nigel and his family's account of DFAT's offers of support differs significantly from that of the department.

8.27 When asked about the government's general duty of care for Australians overseas, Ms Bird indicated that the department would do all that it could 'to assist Australians who find themselves in difficulty overseas. There is nothing legislated around that, but that is our practice'.<sup>44</sup> DFAT explained that it could help with post-release return to Australia and reception arrangements and, wherever possible, work with other government agencies that may be able to provide continued support to the victim and their families.<sup>45</sup>

8.28 Ms Bird informed the committee that DFAT transfers the responsibility for following up a person who has suffered a traumatic experience overseas to 'services through Centrelink and others that can be made available, and we do work with Centrelink on an ad hoc basis'. She indicated that DFAT assisted Mr Brennan with counselling services in Nairobi after he was released.<sup>46</sup> She explained further:

As I said, in the case of Nigel Brennan—because we knew, obviously, he would be extremely traumatised after the time he had spent—we had arranged for counselling in Nairobi when he first got out. But, as you said, when they come back to Australia it is helping them transition into the Australian system that is important.<sup>47</sup>

8.29 According to Ms Bird, DFAT are looking to see how it 'can continue to do that and perhaps make that as effective as possible so that when people transition back they can be helped into the Australian services'.<sup>48</sup>

8.30 Again, this general description of the way in which DFAT helps a person through the transition period to a local service provider does not match the specific cases of Mr Martinkus and Mr Brennan.

### **Benefiting from the experiences of former hostages**

8.31 When Mr Brennan arrived back in Australia, he considered trying to set up some sort of foundation that would deal with Australian citizens finding themselves in trouble overseas 'so that there is a think tank for people who are imprisoned or kidnapped'. He would like to involve DFAT and the AFP in some respect as well.<sup>49</sup> He was also of the view that there should be a position created within DFAT or a government agency whereby a person who understands the trauma of a kidnapped

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44 *Committee Hansard*, 6 October 2011, p. 41.

45 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

46 *Committee Hansard*, 6 October 2011, p. 38.

47 *Committee Hansard*, 6 October 2011, p. 38.

48 *Committee Hansard*, 6 October 2011, p. 38.

49 *Committee Hansard*, 11 October 2011, p. 12.

victim is able to represent the interests of and provide the best advice on behalf of any future kidnapped Australian.<sup>50</sup> He said:

There should be some sort of task force that does involve the Australian Federal Police, DFAT, a private company and families like mine, the Woods and the Danes that can put together an information package for those families. I do not know how you would get the government sector and the private sector to work together without the ego and the bravado. That is the difficult task.<sup>51</sup>

8.32 Mr Brennan elaborated on how the government could capitalise on their skills and experience. He said:

At the end of the day, when we came home we offered our help to the Australian Federal Police to improve their negotiations and how they deal with a family...My sister Nicky spent 15 months negotiating. She probably in some respects has more skills than some of the AFP negotiators. Why not hone Nicky's knowledge? We have offered on several occasions, and they do not seem to be interested whatsoever. I think they would prefer us just to crawl under a rock and disappear. We have done negotiation skills with Queensland police. We are about to start doing it with the New South Wales police. It is not as if we do not want to offer our knowledge and skill base.<sup>52</sup>

8.33 Mrs Bonney added that it would be tragic to think that pride is the only thing stopping them. According to Mrs Bonney, she has been in contact with a number of international families that have been through the same experience since her brother's kidnapping and release. She noted:

I was in probably fortnightly contact with Stephen Collett, who was the next-of-kin negotiator for Rachel and Paul Chandler. We are also in contact with the South African family of the couple that have just been taken and the Canadian family of the young fellow who has been taken in Afghanistan. We certainly have information that we are quite willing to share. I think governments should be able to pass this information and our names on readily, but at this point in time it tends to be the grapevine thing rather than more official channels that it happens through.<sup>53</sup>

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50 *Committee Hansard*, 11 October 2011, p. 11.

51 *Committee Hansard*, 11 October 2011, p. 11.

52 *Committee Hansard*, 11 October 2011, p. 12.

53 *Committee Hansard*, 11 October 2011, p. 12. In October 2009, the Chandlers, from the UK, were taken hostage by gunmen in the Indian Ocean while sailing their yacht, the *Lynn Rival*, from the Seychelles towards Tanzania. They were held for ransom for over a year and finally released after paying an unconfirmed ransom. Private consultants helped the family negotiate with the kidnappers. BBC News, 'Timeline: Paul and Rachel Chandler kidnap', <http://www.bbc.co.uk/news/uk-10338484> and D Aitkenhead, 'Paul and Rachel Chandler: How we survived being kidnapped by Somali pirates', *The Guardian*, 30 October 2011, <http://www.guardian.co.uk/uk/2011/oct/30/paul-rachel-chandler-kidnap-somali-pirates>, accessed 1 November 2011.

8.34 It appears to the committee that an initiative that would capture and make use of the experiences of kidnap victims and their families in order to benefit others caught up in any future hostage situation is certainly worthy of government recognition and support.

## **Conclusion**

8.35 The committee is of the view that both the Martinkus and Brennan cases have demonstrated that DFAT needs to give much greater attention to how it can better manage the post resolution phase of a kidnapping.

8.36 The committee noted at the beginning of chapter 6 that there are two major considerations for the government when it first learns that an Australian has been taken captive overseas—mobilising its resources to effect the safe and expeditious release of the captive and assisting the family and friends of the kidnapped victim. The committee has underlined the importance that DFAT needs to attach to the second consideration—the welfare of the family. This consideration extends to the family and the kidnapped person even after the victim has been released.

8.37 The committee believes that DFAT should offer to debrief Mr Martinkus and ensure that its record of his kidnapping incident is correct and incorporates his account of what occurred. The committee also suggests that DFAT and the AFP invite Mr Brennan and his family to a meeting where the family can ask their many unanswered questions. The committee understands that, because of the sensitive nature of some of the questions, DFAT or the AFP may not be able to give a complete answer. They should, however, be able to give a satisfactory explanation for not being able to do so.

8.38 It is clear to the committee that people who have undergone a frightening and traumatic experience, such as being held hostage, need special care and consideration after their release. Further, that DFAT's consular responsibilities do not end when the victim finally regains his or her freedom. The committee is of the view that DFAT has a role facilitating a smooth transition from the services provided to a kidnap victim overseas to the appropriate domestic service provider. In light of this finding, the committee makes the following recommendation.

## **Recommendation 5**

**8.39 The committee recommends that the family liaison sub group within the emergency response task force assumes responsibility for ensuring that a victim of kidnapping has access to appropriate counselling services once released and is active in helping to facilitate a smooth transition from medical and counselling services provided overseas to the appropriate domestic providers once the victim returns home. This recommendation also applies to people who are released before an emergency task force is mobilised or can take any substantial action such as in the Martinkus case.**

8.40 The committee also sees merit in DFAT maintaining contact with the victims or the families of victims who make known that they would be available should a

kidnapping happen in the future and the family of the kidnapped person wishes to meet or speak to people who have had similar experiences.



# Chapter 9

## Public commentary and media coverage

9.1 Kidnapping incidents create significant public and media interest. Such incidents occurring overseas raise political and diplomatic issues attracting significant public commentary. Journalists and their contacts are a primary source of information for kidnapping victim's families as well as for the hostage takers. Due to their role in reporting in dangerous locations, journalists are also often the target for kidnappings.

9.2 Comment on and reporting of kidnapping cases can influence the decisions of hostage takers and the trauma of families. The media can also be used as a means to contact hostage takers or for hostage takers to send messages, particularly ransom demands and threats. For these reasons, the way that the government interacts with media is an important part of its response to any kidnapping case. This chapter examines the issues arising with regard to public commentary and media coverage of kidnapping cases, particularly DFAT's relationship with the media during such crises.

### Previous experience

9.3 In its 1997 report, the committee examined the issue of media coverage and the government's media policy during kidnappings. Throughout the David Wilson hostage crisis, there were concerns that investigations by journalists on the ground in Cambodia could disrupt negotiations with the hostage takers and that the Khmer Rouge would make use of media interest in the story to further their own views. DFAT was also concerned that the publicity surrounding the case irritated the kidnappers. At the time, DFAT adopted a 'no comment' policy approach to the media.<sup>1</sup>

9.4 Journalists were critical of this approach stating that DFAT could have provided information and guidance to the media which would have helped to ensure that their investigations did not interfere with the case and that they could share information they had gleaned with DFAT.

9.5 The committee believed that DFAT's total 'no comment' policy in the Wilson case was a mistake.<sup>2</sup> It found that while DFAT must continue to have the right to adopt a public 'no comment' policy in particular situations, it needs to develop means of handling the media in a co-operative way which ultimately best serves the interests of the hostages.<sup>3</sup> The committee recommended that 'in any future hostage crisis or

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1 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australian abroad: a review of the Australian Government's consular services*, June 1997, pp. 168–171.

2 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australian abroad: a review of the Australian Government's consular services*, June 1997, p. 171.

3 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australian abroad: a review of the Australian Government's consular services*, June 1997, p. 172.

similar event, DFAT provide guidance to the media rather than ignore it. The Department should also explain its media strategy to a hostage's family'.<sup>4</sup>

### **Current approach to media**

9.6 In its submission to the inquiry, DFAT explained its approach to media and publicity in kidnapping cases:

In most kidnapping cases, it is helpful to keep the situation out of the public eye as far as possible. This assists in managing the kidnappers' expectations of a ransom: kidnappers will routinely monitor media, particularly reports of public and government comment on a case, to gauge the response to their demands and whether there is pressure on the government to comply.

Rather than attempting to enforce a media blackout, cooperation with media outlets and providing an explanation of the merits of this approach is genuinely effective. This voluntary media self-censorship has been applied in other countries' cases as well.<sup>5</sup>

9.7 The McCarthy review noted that the department's media management during the Brennan case was beneficial and recommended that 'tight media management be repeated in future cases, including encouraging news agencies to minimise coverage in the interests of the hostage'.<sup>6</sup>

9.8 The committee understands the reasoning behind Mr McCarthy's recommendation and believes that the department's approach to cooperate with media outlets rather than try to enforce a 'blackout' is sensible. The committee took evidence, however, that suggested that the department's relationship with the media is not conducive to a cooperative relationship.

### **Criticisms of DFAT's media policy**

9.9 A number of witnesses raised the issue of DFAT's negative attitude towards the media or made criticisms of the way in which it interacted with particular media outlets. Dr Wood told the committee that:

DFAT, I would have to say, generally seemed to have a disposition which was antipathetic to the press. You do not trust the press. Be very careful—do not talk to them. And they did not seem to talk to them or use them, except that their public diplomacy in Iraq was using whatever public channels they could—that is different perhaps.<sup>7</sup>

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4 Senate Foreign Affairs, Defence and Trade References Committee, *Helping Australian abroad: a review of the Australian Government's consular services*, June 1997, p. 172.

5 Department of Foreign Affairs and Trade, *Submission 8*, [p. 6].

6 Department of Foreign Affairs and Trade, *Submission 8*, [p. 11].

7 *Committee Hansard*, 6 October 2011, p. 4.

9.10 Dr Wood stated that his family, however, 'engaged a media adviser and forged a mutually beneficial relationship with the media'.<sup>8</sup>

9.11 Nicole Bonney also commented in her submission on DFAT's approach to media:

DFAT appears to have an adverse reaction to media especially if it appears to reflect badly on DFAT who it would appear endeavours to shut it down to save face. Yet DFAT used the guise of safety of the hostages to achieve this aim.<sup>9</sup>

9.12 Mrs Nikki Sorbello, news editor for the Bundaberg *NewsMail*, Nigel Brennan's previous employer, was particularly disappointed with DFAT's approach. As noted previously, each kidnapping event is different. It would follow that as a consequence the role or function of the media or a particular media outlet may also vary. In Mr Brennan's case, the staff on the local newspaper felt that they could make a contribution. As Mrs Sorbello explained:

...given that Mr Brennan was from Moore Park Beach in Bundaberg and that he had worked for the paper for 12 months before leaving for overseas, this story became important to our paper and to our community. It was also extremely personal for me and a number of other staff members in the newsroom who knew Mr Brennan personally...we were a close-knit group.<sup>10</sup>

9.13 While she accepted that her paper should not have received any special treatment from DFAT, she noted that in effect they were 'brushed off more and treated as less because of the size and location of our paper'.<sup>11</sup> She explained that DFAT released general statements during the first couple of days, but after a time officers from the department explained that 'there would be no more and that we were to minimise the coverage'.<sup>12</sup> At first, the paper did so. Mrs Sorbello explained that from then on, they were the ones to initiate contact with DFAT and received most of their information from the news wires, the internet, Canadian papers and from reports out of Somalia. She explained that some of the information turned out to be true and some to be false. DFAT refused to provide the paper with any information.<sup>13</sup>

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8 M Wood, *Submission 3*, p. 2.

9 N Bonney, *Submission 13*, [pp. 43–44]. Former DFAT officer, Alistair Gaisford told the committee that DFAT officers 'were taught that "the media are the enemy", not to be trusted nor shared information with—this despite the frequent fact that the media were far better informed than we consular officers in the field were, constrained as we were by our very restrictive operating procedures and rules.' A Gaisford, *Submission 14*, [p. 2].

10 *Committee Hansard*, 6 October 2011, p. 16.

11 *Committee Hansard*, 6 October 2011, p. 16.

12 *Committee Hansard*, 6 October 2011, p. 16.

13 *Committee Hansard*, 6 October 2011, p. 17.

9.14 With regards to DFAT's relationship with the paper, Mrs Sorbello was damning:

We were treated with disrespect by arrogant bureaucrats, who spoke to us like we did not know what we were doing, who made accusations towards me that I could personally jeopardise Mr Brennan, who treated us like we were just another problem that had to be dealt with and who acted as though they thought that, just on their say-so, we would fall in line and follow orders that were given with little reason or explanation.<sup>14</sup>

9.15 The main thrust of the criticism was that DFAT's approach to the media has been to minimise coverage and comment on the basis that it could endanger the lives of hostages or interfere in negotiations. The concern from witnesses was whether protecting the hostages was actually the priority of DFAT and questioned whether the relationship with media could be better managed.

9.16 The AFP was asked whether it was best to keep kidnapping cases out of the media for management of intelligence purposes and to control information going back to the hostage takers. Assistant Commissioner Jabbour replied:

I think it largely depends again on the case, but in the main I would say not necessarily. If it is general media covering the incident, it can indeed be useful to warn others of a similar fate, particularly where there are travel warnings put out by DFAT in relation to particular countries...So there can indeed be some value in the coverage of cases. I think where they start to get into specifics, potentially it could impact on an ongoing operation. So, again, I would qualify it by saying it really does depend on the content of the media, but in general terms I have no issue with it.<sup>15</sup>

9.17 The committee heard that journalists were just as concerned as government agencies at ensuring their reporting did not jeopardise the safety of hostages. Mrs Sorbello told the committee that the *NewsMail* was always concerned about how any story might affect Mr Brennan's situation:

...we know Mr Brennan as a person and there was no way that we would ever want to do anything that would have hindered his release or endangered his safety. That was something that was forefront of my mind.<sup>16</sup>

9.18 Nicole Bonney also told the committee:

The Brennan family had a number of contacts within the media who were far more helpful and compassionate to Nigel's situation in Somalia than within the ranks of the Department...The Australian government has to

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14 *Committee Hansard*, 6 October 2011, p. 16.

15 *Committee Hansard*, 11 October 2011, p. 16.

16 *Committee Hansard*, 6 October 2011, p. 20.

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recognize that the media is Nigel's peer group and had his best interest at heart.<sup>17</sup>

9.19 The Brennan family came to trust the journalists they had dealt with. Nicole Bonney found that the 'Australian media was nothing but helpful to us at all times'.<sup>18</sup> Mr Brennan told the committee:

There were print journalists especially who were at times given information from start to finish with regard to what the family was going through, and they were asked not to publish. They were sitting on a gold mine and chose not to run those stories because the family requested that. Certainly stuff that is in print can have an effect on a kidnap situation.<sup>19</sup>

9.20 Clearly, government agencies must weigh up competing considerations when dealing with the media during a kidnapping incident.

### *Weighing up the risks*

9.21 At issue on one side are the risks inherent in government sharing any information on a case which may be fed back to the hostage takers, interfere with a negotiation strategy, or suggest that a particular individual is of significant importance such that the hostage takers' ransom expectations are raised. On the other is the significant public interest in such a story, the stream of misinformation and conjecture that swirls around such cases and how best government officials can manage the way a story is reported and ensure it causes no harm.

9.22 The committee heard that even if details of the kidnapping were not provided, a positive relationship between DFAT and media outlets could be useful to quell misreporting of facts or damaging speculation. Mrs Sorbello stated:

I just think it would have been helpful to have a relationship so that we could have said: 'This is what we are hearing. Have you heard anything about it? Do you know if it is true? Don't you know if it is true?' That is not to say that we would have decided to do anything differently, but if there was a case where DFAT did know that this information that was out there was untrue and they said to us, 'No, we definitely know that is untrue', we certainly would not have published it knowing that it was actually false.<sup>20</sup>

9.23 As noted above, DFAT stated in its submission that developing a cooperative relationship with media was preferable to a media blackout and could be done by explaining the merits of the department's decision to limit comment and request minimal coverage. The committee heard, however, that the manner in which such requests were made was not always conducive to such a relationship.

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17 N Bonney, *Submission 13*, [pp. 44–45].

18 *Committee Hansard*, 11 October 2011, p. 10.

19 *Committee Hansard*, 11 October 2011, p. 11.

20 *Committee Hansard*, 6 October 2011, p. 19.

9.24 One incident was particularly unfortunate. Mrs Sorbello informed the committee that a person from the minister's office had contacted her and said that the newspaper's coverage of the case was putting Mr Brennan in danger and that she would be personally responsible if any harm were to come to him. According to Mrs Sorbello:

That was probably one of the worst experiences I personally had during this whole time. It probably upset me the most personally to have somebody say that to me...To be honest, when I had someone from a minister's office, who did not know Nigel, did not know his family, tell me that...I just did not believe it. I just felt that that was a scare tactic and that they were trying to be a bully. If it had come from the family, however, then it certainly would have carried more weight. As I said, if they had an issue with anything we were doing, we certainly would have changed tacks.<sup>21</sup>

9.25 The committee is of the view that this statement implying that the journalist would be responsible if any harm came to Nigel Brennan was inappropriate and unacceptable.

#### *Committee view*

9.26 As has been previously noted, each kidnapping case differs markedly and the committee agrees with the AFP's point that the approach taken to media coverage should depend on the case. The committee does not believe that a blanket 'no comment' policy contributes to good relations with media or to a successful outcome of a case.

9.27 The committee notes the criticisms made of DFAT's attitude towards media and believes work needs to be done to build bridges between the department and media. While a no comment approach may be necessary to protect the safety of a hostage or ensure operations are not disrupted, this approach should be clearly explained to both the victim's family and to the media.

9.28 The committee would support any efforts by DFAT or by an inter-departmental group to work with media organisations or representative bodies to formulate guidelines for the reporting of hostage cases that will not endanger hostages or affect ransom demands.

#### **Recommendation 6**

**9.29 The committee recommends that DFAT examine ways to improve its relationship with the media when dealing with a kidnapping situation and how it explains its media strategy to media organisations and family members at the outset of a crisis.**

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21 *Committee Hansard*, 6 October 2011, p. 20.

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## Public statements

9.30 In some cases kidnappings occur in a politically charged environment which means that any statements made by government officials may carry particular significance. The committee is considering two kidnappings that occurred in Iraq when Australian troops were actively engaged in fighting: Douglas Wood and John Martinkus. In both cases, concern was raised over public statements made by government members.

9.31 Dr Wood wrote that his family was concerned that comments made by the then Foreign Minister, the Hon Alexander Downer, denouncing Douglas Wood's kidnappers could be 'counter-productive to efforts to forge some kind of dialogue with the captors'.<sup>22</sup> According to Dr Wood:

Someone who is a family friend...suggested to me that the foreign minister's remarks early on were somewhat bellicose and his continuing denunciation of terrorists as the scum of the earth, or whatever expression he used, was likely to be counterproductive because his own department, our family and the Muslim community were trying to forge some kind of linkage, however tenuous, or at least keep lines of communication there to be potentially used with the captors. There is the political reality that a government which was fighting a war in Iraq against terrorists is going to denounce terrorists and yet in this tricky situation it was in the interests of the family to have a softer line. I fed back that line of thought to my contacts in foreign affairs, and while they did not directly say it I believe they fed back their own perceptions and the family's perceptions to the minister, and my thought is that his public stance became less belligerent.<sup>23</sup>

9.32 As described in the previous chapter, Mr Martinkus was surprised and offended by comments made by the minister following his release by militants in Baghdad. He recommended that DFAT officials be better informed with regard to the facts involved in a kidnapping before briefing the minister.<sup>24</sup> Mr Martinkus was concerned that there was an inclination to blame those working in dangerous locations, particularly journalists, for the violence against them:

The attitude from foreign affairs, especially in my case, was: 'Baghdad's not safe. You shouldn't be there, and if you are you should be embedded'. That was a kind of a belittling of the role of journalists, which is to inform the public about what is going on in a war that we are involved in.

So there has to be a bit of recognition of the legitimacy of the role of journalists. I think later today that you are speaking to Nigel Brennan. He was going to Somalia to report on a humanitarian disaster, and I heard that when he was taken there were rumours with people saying, 'He shouldn't have been there', and that kind of thing. So I think we have to step back

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22 M Wood, *Submission 3*, p. 2.

23 *Committee Hansard*, 6 October, p. 6.

24 *Committee Hansard*, 6 October 2011, p. 8.

from our tendency to immediately blame victims for the circumstances and actually look at what has happened.<sup>25</sup>

9.33 The Brennan family were also critical of comments made to the media by the then Prime Minister, the Hon Kevin Rudd. Mr Rudd visited the hometown of Mr Brennan's parents, Bundaberg, in July 2009 and was confronted by Heather Brennan. Mr Brennan submitted that 'at that time he [Mr Rudd] told my mother that he had "spent more time on my case than any other in the past year", though then he could not recall my name'.<sup>26</sup> The Brennan family took offence because they felt that the then Prime Minister had ignored their family and had not attempted to contact them.<sup>27</sup>

### *Committee view*

9.34 Kidnapping situations are highly fraught and emotionally tense experiences for all involved and, as the committee has heard, often involve contentious political and diplomatic issues. The committee has already underscored the importance of government officials being alert to the effect their statements and actions can have on victims and their families. The committee believes anyone commenting on kidnapping cases should be sensitive to the welfare of those involved and be certain of the facts of the case.

9.35 The evidence on insensitive, ill-informed or inaccurate statements made by departmental officers, ministers and ministers' staff underscores the need for greater discipline on the part of officers when commenting on matters likely to arouse strong sentiments. In a situation such as a kidnapping overseas, comments should always take account of the welfare of the victim and his or her family. The committee believes that only those authorised to make public statements should do so, taking care that their statements are factual rather than judgemental and all care is taken not to politicise an incident or attribute blame.

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25 *Committee Hansard*, 6 October 2011, p. 14.

26 N Brennan, *Submission 12*, [p. 9].

27 N Brennan, *Submission 12*, [p. 9].

# Chapter 10

## Legal implications of negotiating and paying a ransom

10.1 The committee has considered the government's no-ransom policy. As noted earlier this stance is consistent with Australia's major allies and those of a number of other countries. Indeed, this policy aligns with the principle underpinning a number of international conventions. In this chapter, the committee considers the implications that the respective international conventions and Australia's domestic laws have for people considering the payment of a ransom.

### United Nations

10.2 By way of a number of key instruments, the international community through the United Nations has denounced hostage-taking and expressed its objection to the payment of ransoms.<sup>1</sup>

#### *International Convention against the Taking of Hostages*

10.3 The United Nations General Assembly adopted the *International Convention against the Taking of Hostages* on 17 December 1979, which entered into force on 3 June 1983. It requires member states to make hostage-taking an offence punishable by appropriate penalties and to take all appropriate measures to ease the situation of hostages and to facilitate their release.<sup>2</sup>

#### *International Convention for the Suppression of the Financing of Terrorism*

10.4 The United Nations General Assembly adopted the *International Convention for the Suppression of the Financing of Terrorism* on 9 December 1999 (resolution 54/109). At that time, the General Assembly expressed grave concerns about the financing of terrorism and noted further that existing multilateral legal instruments did not expressly address such financing. The convention, which entered into force on 10 April 2002, recognised the urgent need 'to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism as well as for its suppression through the prosecution and punishment of its perpetrators'. It requires States parties to take steps to prevent or counteract the

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1 See for example, United Nations Security Council, Resolution 1373 (2001), p. 1; United Nations, General Assembly, Summary of the Human Rights Council panel discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking, prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/18/29, 4 July 2011, paragraph 11.

2 See for example, United Nations, General Assembly, Summary of the Human Rights Council panel discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking, prepared by the Office of the United Nations High Commissioner for Human Rights, A/HRC/18/29, 4 July 2011, paragraph 6.

financing of terrorism: to in effect, 'prevent such acts by "drying up" their sources of funding'.<sup>3</sup>

10.5 The convention imposes an obligation upon States to create the offence of providing or collecting funds, directly or indirectly, unlawfully and wilfully with the intention or knowledge that they are to be used, in full or in part, to carry out a terrorist act.<sup>4</sup> The convention specifically:

- requires parties to take steps to prevent and counteract the financing of terrorists, whether directly or indirectly, and that under no circumstances are the such acts justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature;
- commits States to hold those who finance terrorism criminally, civilly or administratively liable for such acts and for such offences to be punishable by appropriate penalties; and
- provides for the identification, detection, and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer an adequate justification for refusing to cooperate.<sup>5</sup>

10.6 It should be noted that the convention also covers attempts to commit such acts, to organise or direct others to commit them, participate as an accomplice or intentionally contribute to their commission.<sup>6</sup> Australia is a party to this convention and as such the payment of a ransom in relation to an Australian citizen kidnapped overseas could raise issues about compliance with the convention.

### ***Security Council resolution 1373 (2001)***

10.7 In 2001, the Security Council called on states to 'work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism'.<sup>7</sup> By

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3 Article 2, *International Convention for the Suppression of the Financing of Terrorism*; Pierre Klein, *International Convention for the Suppression of the Financing of Terrorism*, United Nations Audiovisual Library of International Law, United Nations, 2009, p. 1.

4 Article 2, *International Convention for the Suppression of the Financing of Terrorism*; Attorney-General's Department, *Submission 11*, p. 5; P Klein, *International Convention for the Suppression of the Financing of Terrorism*, United Nations Audiovisual Library of International Law, United Nations, 2009, p. 1.

5 Articles 5, 6 and 8, *International Convention for the Suppression of the Financing of Terrorism*; Pierre Klein, *International Convention for the Suppression of the Financing of Terrorism*, United Nations Audiovisual Library of International Law, United Nations, 2009, p. 1.

6 Article 2, *International Convention for the Suppression of the Financing of Terrorism*.

7 *Resolution on threats to international peace and security caused by terrorist acts*, SC Res 1373, UN Security, UN Doc S/RES/1373 (2001), p. 1.

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adopting resolution 1373 (2001), the Council requires all States to take responsibility for preventing and punishing the financing of terrorism by making it a criminal offence for a national to provide funds to be used to carry out terrorist acts. More specifically, it requires the States to:

- criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals in or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- freeze funds and other financial assets or economic resources of persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts;
- prohibit their nationals or any persons within their territories from making funds or financial assets or services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorists acts; and
- ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and such acts are established as serious criminal offences in domestic laws.<sup>8</sup>

10.8 As a member of the United Nations, Australia has obligations to enforce this resolution.

### **Australia's compliance with UN conventions and resolutions**

10.9 Consistent with the conventions and the resolution, Australia has taken the necessary measures under its domestic legislation to establish criminal offences relating to kidnapping, the financing of terrorist activities and to make those offences punishable by appropriate penalties.

10.10 Firstly, Australia has enacted legislation that makes hostage-taking a criminal offence. Under section 115.3 of the *Criminal Code Act 1995 (Commonwealth)* a person is guilty of an offence if:

- (a) the person engages in conduct outside Australia; and
- (b) the conduct causes serious harm to another person; and
- (c) the other person is an Australian citizen or a resident of Australia; and
- (d) the first-mentioned person intends to cause serious harm to the Australian citizen or resident of Australia or any other person by the conduct.

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8 *Resolution on threats to international peace and security caused by terrorist acts*, SC Res 1373, UN Security, UN Doc S/RES/1373 (2001), p. 2; 'Security Council unanimously adopts wide-ranging anti terrorism resolution', media release, SC/7158.

10.11 Secondly, the Australian Government has established a domestic legal framework that applies to the financing of terrorist acts which has direct relevance to the payment of ransoms. The following legislation is relevant—the *Criminal Code Act 1995 (Commonwealth)*, *Anti-Terrorism Act (No. 2) 2005 (Commonwealth)*, *Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Commonwealth)*.

***Suppression of the Financing Terrorism Act 2002 (Commonwealth)***

10.12 The Australian Government implemented its obligations under the Convention for the Suppression of the Financing of Terrorism and resolution 1373 by passing the *Suppression of the Financing Terrorism Act 2002 (Commonwealth)*. The Act was passed with amendments on 27 June 2002 and received assent on 5 July 2002.

10.13 This legislation inserted a new financing of terrorism offence into the Australian Federal Criminal Code.<sup>9</sup> It also supplemented the freezing of suspected terrorist assets which were already in place under the *Charter of the United Nations Act 1945* and amended the *Financial Transaction Reports Act 1988*. The legislation among other things:

- creates an offence directed at those who provide or collect funds with the intention that they be used to facilitate terrorist activities; makes it an offence for a person to provide or collect funds where the person is reckless as to whether those funds would be used to facilitate or carry out a terrorist act;<sup>10</sup>
- requires cash dealers (financial institutions, financial corporations, insurers, securities dealers, future brokers, trustees and persons who collect, hold, exchange, remit or transfer cash and non-cash funds on behalf of others) to report transactions that are suspected to relate to terrorist activities.<sup>11</sup>

10.14 The term 'funds' is defined as property and assets of every kind and legal documents or instruments in any form. Terrorist act is defined to mean a specified action or threat of action that is made with the intention of advancing a political, religious or ideological cause. The types of actions covered by the definition include actions involving serious harm to persons, serious damage to property, endangers life, creates a serious risk to the health or safety of the public or a section of the public, or is designed to interfere with essential electronic systems.<sup>12</sup>

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9 D Williams, Attorney-General, *House of Representatives Hansard*, 12 March 2002, p. 1043.

10 *Criminal Code Act 1995*, s. 103.1.

11 *Financial Transaction Reports Act 1988*, s. 16(1A).

12 *Criminal Code Act 1995*, ss 100.1 (1) (2); *Suppression of the Financing of Terrorism Bill 2002*, Explanatory Memorandum, p. 4.

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***Criminal Code Act 1995 (Commonwealth)***

10.15 Subdivision B of Division 102 of Part 5.3 of the *Criminal Code Act 1995 (Commonwealth)* contains offences related to 'getting funds to, from or for a terrorist organisation',<sup>13</sup> 'providing support to a terrorist organisation'<sup>14</sup> and 'associating with terrorist organisations'.<sup>15</sup> As noted in the Attorney-General's Department submission 'these offences could be applicable in the context where a kidnapping takes place in a political context'.<sup>16</sup> Under section 102.6 of the *Criminal Code Act 1995*

(1) A person commits an offence if:

(a) The person intentionally:

- (i) receives funds from, or makes funds available to, an organization (whether directly or indirectly); or
- (ii) collects funds for, or on behalf of, an organisation (whether directly or indirectly); and

(b) the organisation is a terrorist organisation; and

(c) the person knows the organisation is a terrorist organisation.

10.16 The offence under section 102.6(1) carries a maximum penalty of 25 years imprisonment. To be guilty of an offence under section 102.6 the person must either know or be reckless to the fact that the organisation is a terrorist organisation. 'Knowledge' and 'recklessness' are defined in sections 5.3 and 5.4 respectively of the Criminal Code. Section 5.3 provides that a person has knowledge of a circumstance (in this case that an organisation is a terrorist organisation) if they are aware that the circumstance exists or will exist in the ordinary course of events. Section 5.4 provides that a person is reckless with respect to a circumstance if (a) they are aware of a substantial risk that the circumstance exists or will exist, and (b) having regard to the circumstances known to them, it is unjustifiable to take the risk.<sup>17</sup> Accordingly, paying a ransom may constitute an offence only if the person knows or is reckless to the fact that the organisation to which the ransom is paid is a terrorist organisation.<sup>18</sup>

10.17 Notably section 102.6(1) of the *Criminal Code Act 1995* criminalises the collection of funds for or on behalf of a terrorist organisation. The Financial Action Task Force on Money Laundering (FATF) recommended that the wilful collection of funds for terrorist organisation be explicitly covered by terrorist financial offences.<sup>19</sup>

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13 *Criminal Code Act 1995*, s. 102.6.

14 *Criminal Code Act 1995*, s. 102.6.

15 *Criminal Code Act 1995*, s. 102.8.

16 Attorney-General's Department, *Submission 11*, p. 2.

17 See for example Anti-Terrorism Bill (No. 2) 2005, Explanatory Memorandum, p. 12.

18 Attorney-General's Department, *Submission 11*, p. 2.

19 See for example Anti-Terrorism Bill (No. 2) 2005, Explanatory Memorandum, p. 12.

10.18 Under section 102.7 of the *Criminal Code Act 1995* a person commits an offence if:

- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and
- (b) the organisation is a terrorist organisation; and
- (c) the person knows the organisation is a terrorist organisation.

10.19 Under section 103.2(1) of the *Criminal Code Act 1995*:

- (1) A person commits an offence if:
  - (a) the person intentionally:
    - (i) makes funds available to another person (whether directly or indirectly); or
    - (ii) collects funds for, or on behalf of, another person (whether directly or indirectly); and
  - (b) the first-mentioned person is reckless as to whether the other person will use funds to facilitate or engage in a terrorist act.

10.20 The offence in subsection 103.2(1) deals with financing terrorism and explicitly requires that the funds be made available to or collected for, or on behalf of, another person: 'If the person providing or collecting the funds is reckless as to whether that other person will use the funds to facilitate or engage in a terrorist act, the offence will be made out'.<sup>20</sup>

10.21 Under section 103.2(2) of the *Criminal Code Act 1995*

- (1) A person commits an offence under section (1) even if:
  - (a) a terrorist act does not occur; or
  - (b) the funds will not be used to facilitate or engage in a specific terrorist act; or
  - (c) the funds will be used to facilitate or engage in more than one terrorist act.

10.22 The effect of this provision is that as long as the elements of the offence can be proven it does not matter whether a terrorist act actually occurs.<sup>21</sup>

### ***Charter of the United Nations Act 1945 (Commonwealth)***

10.23 Under the *Charter of the United Nations Act 1945 (Commonwealth)* there are financial sanctions aimed at preventing the direct or indirect provision of assets to individuals or entities that are listed pursuant to UN Security Council resolutions. Part

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20 See for example Anti-Terrorism Bill (No. 2) 2005, Explanatory Memorandum, p. 12.

21 See for example Anti-Terrorism Bill (No. 2) 2005, Explanatory Memorandum, p. 12.

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4 of the Act created new offences directed at those who provide assets to, or deal in the assets of persons and entities involved in terrorist activities.

10.24 Section 20 provides that a person who holds a freezable asset is guilty of an offence if the person uses or deals with the asset, or allows or facilitates a use or dealing, and is reckless as to whether the asset is a freezable asset, and the use or dealing is not in accordance with a notice under section 22. The maximum penalty for dealing with a freezable asset is 5 years imprisonment. A freezable asset means an asset that listed by the Minister for Foreign Affairs or owned or controlled by a person or entity listed by the Minister or proscribed by regulations, or is derived or generated from such an asset.

10.25 The part also contains associated provisions that, amongst other things, provide for the Minister for Foreign Affairs to list persons and entities for the purpose of the offences, to revoke a listing and to permit a specified dealing in a freezable asset.<sup>22</sup> Section 22 provides that the owner of an asset may apply in writing to the Minister for Foreign Affairs for permission to make the asset available to a proscribed person or entity or, if the asset is a freezable asset, to use or deal with the asset in a specified way.

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Commonwealth)***

10.26 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) imposes obligations on regulated businesses to detect and deter money laundering, and to provide financial intelligence to revenue and law enforcement agencies. As the Attorney-General's Department's submission outlines, the AML/CTF Act establishes a risk based approach. This means that regulated business must identify the risks associated with providing certain services, and take action proportionate to that risk. As such, in situations where a person is seeking to make a ransom payment it is possible that extra controls will be applied by money transfer service providers, or the transaction will not be carried out if the transfer provider considers under its AML/CTF programs that the money laundering or terrorism financing risk is too great.

### ***Defences***

10.27 The Attorney-General's Department's submission outlined two defences that may be available in relation to offences in Division 10 of the Criminal Code.<sup>23</sup> Firstly, at section 10.2 of the *Criminal Code Act 1995*, the defence of duress provides:

- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

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22 Charter of the United Nations Amendment Bill 2002, Explanatory Memorandum.

23 Attorney-General's Department, *Submission 11*, p. 3.

- (2) A person carries out conduct under duress if and only if he or she reasonably believes that:
- a. a threat has been made that will be carried out unless an offence is committed; and
  - b. there is no reasonable way that the threat can be rendered ineffective; and
  - c. the conduct is a reasonable response to the threat.

10.28 Secondly, at section 10.4 of the *Criminal Code Act 1995*, the defence of self-defence provides:

- (1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self-defence
- (2) A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
  - a. to defend himself or herself or another person; or
  - b. to prevent or terminate the unlawful imprisonment of himself or herself or another person

.....

and the conduct is a reasonable response in the circumstances as he or she perceives them.

10.29 Mr Geoffrey McDonald, First Assistant Secretary in the National Law and Policy Division of the Attorney-General's Department, explained the relevance of these defences to the payment of a ransom that could breach Commonwealth law. With regard to duress, he noted:

If you commit an offence in response to a threat that will be carried out unless you do so, as long as there is no reasonable way to render the threat ineffective and your conduct is reasonable in response to the threat, even though it would otherwise be criminal, you can rely on that defence.<sup>24</sup>

10.30 According to Mr McDonald, people often do not appreciate that self-defence 'covers defending someone else'. He also referred to terminating the unlawful imprisonment of another person as a recognised defence.<sup>25</sup> These defences are considered later in this chapter.

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24 *Committee Hansard*, 6 October 2011, p. 27.

25 *Committee Hansard*, 6 October 2011, p. 27.

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## Paying a ransom and the law

10.31 Both the Wood and Brennan family were surprised and distressed to learn of legal impediments and possible criminal offences associated with transferring funds overseas.

10.32 According to Dr Wood, his family formed the view that at some stage it would be prudent for them to have some money available in Baghdad for possible use by their chosen intermediary. He noted, however, that they found it very difficult to get money into Baghdad and their first attempt was 'stymied by the somewhat heavy-handed provisions of the criminal code'.<sup>26</sup>

10.33 The family was aware that there were limits on the amount of money that an Australian could take out of the country. In Dr Wood's view, family members may have been somewhat naïve in that they did not think that their attempt to transfer their own money through the banks for what they believed was a benevolent purpose could invoke the criminal code.<sup>27</sup> Dr Wood explained in greater detail the family's efforts to move funds to Baghdad.

Once the family had gathered its money together to make a charitable donation, Vernon [Wood], stating his purpose in connection with the well-publicised case, asked his bank how to transmit money to Baghdad...Relying on the Criminal Code, the bank's heavy-handed response to Vernon caused him trauma and potential financial embarrassment: it reported his approach and placed a monitor on his accounts. Consultations of solicitors (for both the bank and Vernon, which the bank funded) and of government lawyers followed.<sup>28</sup>

10.34 In his submission, Dr Wood stressed that nobody had forewarned his family about the counter-terrorism provisions of Australia's Criminal Code that can trap people involved in trying to transmit money that 'could conceivably be converted to terrorist ends'.<sup>29</sup> He then noted that belatedly and quietly, DFAT informed the family that certain international corporations, with risk assessment, security and financial transaction functions, 'might be able to transmit money in circumstances such as ours'.<sup>30</sup> But, he found that the relationship between DFAT and Vernon Wood's bank with these corporations, and between the corporations and the family lacked transparency. Indeed, for him, the fact that the relationships were meant to be secret was disconcerting. With a change in circumstances, the family later made a donation to a charity in Iraq, without difficulty.<sup>31</sup> Dr Wood explained that:

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26 *Committee Hansard*, 6 October 2011, p. 2.

27 *Committee Hansard*, 6 October 2011, p. 7.

28 M Wood, *Submission 3*, p. 3.

29 M Wood, *Submission 3*, p. 3.

30 M Wood, *Submission 3*, p. 3.

31 M Wood, *Submission 3*, pp. 3–4.

I felt then and still feel that someone in government, perhaps not DFAT but possibly the Attorney-General's Department, might have and perhaps should have alerted us to the possible implications of what we felt we needed to do as a family.<sup>32</sup>

10.35 He suggested that DFAT, the AFP or government lawyers should 'guide the family, proactively, through "the minefield"'.<sup>33</sup> In his view, relevant government agencies should advise a family in similar circumstances of relevant provisions of Australia's Criminal Code so that it also would not unwittingly be in breach of the law.<sup>34</sup>

10.36 Furthermore, Dr Wood was not reassured by the Attorney-General's Department's reference to an Explanatory Memorandum which mentioned 'the presumption of innocence, or something'.<sup>35</sup> From Dr Wood's perspective, if there is not something in the law which provides a protection, then 'there is a vulnerability'.<sup>36</sup> He was of the view that the Criminal Code needed to be reviewed in light of his family's experiences in trying to transfer funds to Iraq:

I think the provisions, particularly the use of the word 'recklessly', which is a very broad word, could conceivably lead an entirely innocent party, such as I felt we were, being taken through a court and found guilty because of the limited scope for exceptional circumstances in those provisions.<sup>37</sup>

10.37 The Brennan family experienced the same difficulties and anxieties as the Wood family. Mr Brennan explained that the banks were willing to help, but they needed government clearance. Having decided to pay the ransom, his family had to:

...firstly find a bank that would assist with and was capable to make the transfer. Secondly, the Australian Government's approval had to be obtained for this to occur—the latter being the most difficult because of the threat of assets being frozen if my family paid this ransom and possible prosecution in Australia and overseas, for criminal breaches of Australian and UN laws.<sup>38</sup>

10.38 Mr Brennan, in his submission, stated further:

The Australian Government would not give my family immunity from prosecution or even let them use the Australian diplomatic bag system to move funds safely to Nairobi, where my sister and AKE [the private

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32 *Committee Hansard*, 6 October 2011, p. 2.

33 M Wood, *Submission 3*, p. 4.

34 M Wood, *Submission 3*, p. 4.

35 *Committee Hansard*, 6 October 2011, p. 7.

36 *Committee Hansard*, 6 October 2011, p. 7.

37 *Committee Hansard*, 6 October 2011, p. 7.

38 N Brennan, *Submission 12*, p. 18.

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contractor assisting the family], were waiting to close the ransom-release deal.<sup>39</sup>

10.39 As previously noted, Mrs Bonney was of the view that the government was well aware that her family was paying a ransom. The banks, however, were reluctant to handle the transaction because they feared being liable to prosecution or sanction. Mrs Bonney explained that the banks were extremely concerned that the money:

...would actually be withdrawn from circulation when it left the country, before it actually got to Somalia. So that was a major concern for the banks because they had to report that movement. I believe, certainly with Bank of Queensland, that was them trying to quite clearly say to us, 'This may not make it over there'.<sup>40</sup>

10.40 Mr Brennan informed the committee that the operator of the money transfer company they used was at risk of having his business shut down and his assets frozen.<sup>41</sup> He noted further the same concerns related to generous individuals as well: that they would possibly face prosecution.<sup>42</sup> He wanted to know whether the Australian government was in the same seat by giving his family a \$100,000 consular loan, which it knew was going straight into the ransom basket.<sup>43</sup> Mr Brennan also noted that he could not understand being told six months after his return by government officials that they believed that a criminal gang was involved in the kidnapping and that 'there is no possible prosecution towards the family'. He asked, 'When did they know that? How do they know that? And if they knew that as a fact before the ransom was paid, why did they not facilitate it?'<sup>44</sup>

### **Defences and likelihood of prosecution**

10.41 The committee has noted that there are two defences that may be available in relation to offences in the Criminal Code—duress and self-defence. Mr McDonald informed the committee that the Director of Public Prosecutions would always take into account whether it was in the public interest to prosecute and that decisions were often made not to prosecute because the public interest is not served by it for various reasons:<sup>45</sup>

...the Director of Public Prosecutions has prosecutorial discretion and would take into account whether it was in the public interest to prosecute someone or not. It would also take into account what defences are available.

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39 N Brennan, *Submission 12*, p. 18.

40 *Committee Hansard*, 11 October 2011, p. 6.

41 *Committee Hansard*, 11 October 2011, p. 6.

42 *Committee Hansard*, 11 October 2011, p. 6.

43 *Committee Hansard*, 11 October 2011, p. 6.

44 *Committee Hansard*, 11 October 2011, p. 6.

45 *Committee Hansard*, 6 October 2011, p. 27.

There are defences in relation to duress and the like. No-one has been prosecuted for these sorts of offences in these circumstances. My feelings would be that it would probably be unlikely there would be a prosecution.<sup>46</sup>

10.42 In support of this opinion, Mr Bill Campbell, General Counsel, indicated that he was not aware of any action that has been taken against a person for securing the release of a kidnapping victim by paying a ransom.<sup>47</sup>

10.43 The committee understands that the prosecution would need to give careful consideration to the defences available to a family paying a ransom and whether to prosecute.<sup>48</sup> As noted previously, however, people who get caught out by this law are not in a position to appreciate that at some future date the Director of Public Prosecutions may use his or her discretion in their favour or that they have defences of duress and self-defence available to them. People seeking to transfer money overseas in order to secure the release of a loved one are focused on the immediacy and urgency of their predicament.

### **Need for criminal offences relating to the payment of a ransom**

10.44 Dr Wood questioned the need for such draconian provisions. He stated the major lesson for him was 'that relevant provisions of Australia's Criminal Code...make no allowance for exceptional circumstances such as a family member's kidnapping for ransom'.<sup>49</sup> He argued that in circumstances such as his family's:

Australia's Criminal Code should not imperil citizens initiating action with their bank, reasonably, openly and in good faith, to withdraw or transmit their own money...<sup>50</sup>

10.45 He suggested that perhaps a clause could be inserted in the legislation that would 'allow a government minister or delegate to authorise a bank in special cases to do what the Code would ordinarily prohibit'.<sup>51</sup>

10.46 The committee asked the officers from the Attorney General's Department to comment on possible changes to Australian law that would assist families of a kidnapped victim such as allowing an independent officer or minister the discretion in

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46 *Committee Hansard*, 6 October 2011, p. 23. Mr McDonald discussed the prosecutorial discretion that exists in countries with a legal tradition similar to Australia: 'That would apply in, say, the UK and the United States. Prosecution systems are different from ours in, say, European countries. But I would expect that they would have some discretion in relation to what matters they examine and what they do not'. *Committee Hansard*, 6 October 2011, p. 29.

47 *Committee Hansard*, 6 October 2011, p. 26.

48 *Committee Hansard*, 6 October 2011, p. 27.

49 *Committee Hansard*, 6 October 2011, p. 1.

50 M Wood, *Submission 3*, p. 4.

51 M Wood, *Submission 3*, p. 4.

special circumstances to permit the transfer of money.<sup>52</sup> In response, Mr McDonald explained that some policy issues were relevant to any exemption:

One has to be very, very careful about the way it is framed to ensure that it is not counterproductive and able to be manipulated by some of the terrorist organisations and the like. You would not want a secondary consequence to be that, knowing there was this capacity, Australians became more targeted. Certainly what you are talking about is something that could be examined. Of course it would be a policy decision for the government.<sup>53</sup>

10.47 In the same context, the officers were asked about the merits of a legislative model such as subsection 22(1) of the *Charter of the United Nations Act 1945* which allows the owner or holder of a freezable asset to apply in writing to the minister for permission to use or deal with the asset in a specified way.<sup>54</sup> This power would only be exercised in exceptional circumstances, for example, to protect the rights of third parties.<sup>55</sup> In regards to this suggestion, Mr Campbell stated:

...if what you are getting at is whether you could have a provision which said a minister in other circumstances in relation to the payment of a ransom could give an authorisation, it is partly a question of policy about whether that would be done—in the sense of putting that provision in.<sup>56</sup>

10.48 Mr Campbell, however, cited another major consideration—Australia's obligation to comply with its international obligations.<sup>57</sup> Asked where it would be legally possible to pay a ransom, he answered:

If there were no laws in place which prevented the payment of the ransom and there were no international obligations that bore on the payment of the ransom. That is as a matter of law.<sup>58</sup>

10.49 According to Mr Campbell, by changing the law you might well be able to overcome an issue under domestic law, but you cannot by changing the law overcome Australia's international obligations in the area:

...there are certainly two levels of law that apply: there are the international obligations, which our domestic law implements; and there is the domestic law. What I am saying is: if you have an international obligation, you

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52 *Committee Hansard*, 6 October 2011, p. 24.

53 *Committee Hansard*, 6 October 2011, p. 24.

54 *Committee Hansard*, 6 October 2011, pp. 27–28.

55 Charter of the United Nations Amendment Bill 2002, Explanatory Memorandum.

56 *Committee Hansard*, 6 October 2011, p. 28.

57 *Committee Hansard*, 6 October 2011, p. 24. He referred to and also drew attention to the reporting mechanisms to the UN about compliance with sanctions. *Committee Hansard*, 6 October 2011, p. 26.

58 *Committee Hansard*, 6 October 2011, p. 25.

cannot generally overcome that international obligation by changing the domestic law.<sup>59</sup>

10.50 In his view, the position remains that no payment should be made if it is going to place Australia in breach of its international obligations—that 'is one aspect to it that would need to be taken into account if you were going to amend the law'.<sup>60</sup> Mr McDonald noted that countries all over the world have similar offences relating to the financing of terrorism, for example in the UK and United States:

In fact, Australia has been one of many countries that have been encouraging other countries to deal with the financing of terrorism. Successive governments have made the financing of crime a particular target. We know that it is a way to hurt organised crime; of course, terrorism is a form of organised crime.<sup>61</sup>

10.51 The committee understands the need for Australia to comply with its international obligations and supports the government's no-ransom policy. Even so, it believes that the government should consider exploring avenues that would relieve the legal burden on those seeking to secure the safe return of a loved being held hostage overseas for ransom.

### **Recommendation 7**

**10.52 In light of the difficulties experienced by both the Wood and Brennan families, the committee recommends that the government investigate thoroughly the options for making special allowance for people seeking to transmit money overseas in order to save the life of another Australian citizen being held hostage.**

**10.53 The committee recommends particularly that the government consider changes to the relevant sections of the Criminal Code and the United Nations Charter Act that would allow the minister at his or her discretion to grant exemptions in exceptional circumstances.**

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59 *Committee Hansard*, 6 October 2011, p. 26.

60 *Committee Hansard*, 6 October 2011, p. 24.

61 *Committee Hansard*, 6 October 2011, p. 29.

## **Part III**

### **Post resolution procedures**



# Chapter 11

## Lessons to be learned and the McCarthy review

11.1 After Nigel Brennan returned to Australia, DFAT conducted a lessons-learned exercise, as it does after all of major consular cases. The minister also asked that Mr John McCarthy review those lessons learned.<sup>1</sup> In this chapter, the committee considers the findings of both undertakings.

### Lessons learned exercise

11.2 The department conducted an internal lessons learned exercise soon after Mr Brennan returned to Australia. In doing so, DFAT officers talked to other agencies that were involved in the IDETF process in order to identify lessons learned which were then shared across government.<sup>2</sup> In October 2010, Mr James Batley, First Assistant Secretary, informed the Senate Foreign Affairs, Defence and Trade Legislation Committee that the fundamental lesson or conclusion that DFAT has drawn from its lessons learned exercise was that:

...the government's basic position of principle in these kidnapping cases of not offering funds for ransom remains appropriate. There are a range of other issues that have come to our attention about relationships between the department and the families and other agencies. But I think that in general the conclusion was that in terms of the department's institutional response we did all that could reasonably have been expected.<sup>3</sup>

11.3 The Secretary of the department added that DFAT had learned many lessons from this review and had already implemented or were in the process of implementing the recommendations:

We reviewed it ourselves and we also got in a former senior officer to independently review the review. So we have had a couple of goes over it.<sup>4</sup>

11.4 As noted throughout this report, the committee, however, was of the view that there were areas where DFAT could have improved its performance particularly in respect of the relationship between government agencies and the kidnapped victims and their families.

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1 *Committee Hansard*, 6 October 2011, p. 31.

2 *Committee Hansard*, 6 October 2011, p. 35.

3 *Committee Hansard*, Budget supplementary estimates, 18 October 2010, p. 92.

4 *Committee Hansard*, Budget supplementary estimates, 18 October 2010, p. 93.

## McCarthy review

11.5 The minister commissioned a former DFAT Deputy Secretary, John McCarthy, to conduct an independent review of the lessons learned and to make recommendations.<sup>5</sup> He was engaged under a separate contract in April 2010 with contract dates from 16 April 2010 to 16 June 2010.<sup>6</sup> Ms Bird explained that Mr McCarthy looked at the government's handling of Mr Brennan's case, 'talked to those involved, talked to Nigel Brennan's family and then put his recommendations on top of what we had done internally'.<sup>7</sup> See Appendix 5 for the terms of reference for Mr McCarthy's review.

11.6 The department shared a sanitised version of the review with the Canadian Government. A copy of the review was also provided to other government agencies involved in the process to 'facilitate a complete and informed interdepartmental roundtable to consider the recommendations and any changes to policy for handling kidnapping cases'.<sup>8</sup>

11.7 The McCarthy Review broadly affirmed the procedures in place to deal with kidnapping situations, including the no-ransom policy, but noted some specific areas where the government could strengthen its approach. Ms Bird noted that Mr McCarthy's twenty-one recommendations were broken down into five categories:

- preparing for future kidnapping cases;
- response to kidnapping;
- assistance provided to family members of kidnap victims;
- media; and
- intelligence.

11.8 DFAT's submission provides a summary of the McCarthy report, the key recommendations and the accompanying department's response and are reproduced as follows:

- The Government should be clear in its travel warnings and in the travel booklet issued with every new passport about the risk of kidnapping and the government's refusal to pay ransoms.

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5 *Committee Hansard*, 6 October 2011, p. 30.

6 The rate of Mr McCarthy's contract was \$1,785 per day (inclusive of GST (\$150) and superannuation (\$135)). Travel, reimbursements and associated costs were separate. Total contract costs were \$39,755 (inclusive of GST). Of this, contracted services were \$31,025 (inclusive of GST) and incidental costs (travel and associated expenses) were \$8,730 (inclusive of GST). Senate Foreign Affairs, Defence and Trade Legislation Committee, Answer to question on notice no. 42, Additional Estimates, 24 February 2011.

7 *Committee Hansard*, 6 October 2011, p. 35.

8 Senate Foreign Affairs, Defence and Trade Legislation Committee, Answer to question on notice no. 42, Additional Estimates, 24 February 2011.

- While the Department highlights the kidnap threat effectively in its travel advisories and has made the no ransom policy clear publicly, it is in the process of making this fundamental principle clearer in all travel publications.
- Establish a regular, high level and whole of government coordinating group to ensure a core group remains abreast of kidnapping issues and to form the nucleus of a future response.
  - An IDETF of key agencies has met to discuss the recommendations of the McCarthy Review. This group will form the nucleus of a regular coordinating group.
- Consider establishing a bipartisan convention on handling of abductions, particularly those with a national security element.
  - The Minister for Foreign Affairs has directed DFAT to provide further recommendations on establishing a bipartisan convention and the Opposition have indicated that they are supportive in principle.
- The establishment of a regular consultative mechanism with partner countries, to discuss the broad complexities of kidnapping cases and opportunities for cooperation.
  - DFAT will be meeting with partner countries as part of regular consular talks soon. Kidnapping is one agenda item and we will look to develop further cooperation with our partners on this issue.

#### Response to kidnappings

The general perception of the McCarthy Review is that the whole-of-government response worked well. Government agencies were sufficiently seized of the priority of the case and remained engaged throughout. There were no serious shortcomings with information flows or cooperation between agencies. Nonetheless, some areas of improvement were identified, including relating to strengthening of the Emergency Response Team (ERT).

#### Assistance to be provided to family members of kidnap victims

A key role for the Department is the assistance provided to family members. The McCarthy Review recommended that the high level of consular assistance provided to families be continued. It mentioned in particular:

- The Government must make clear to next of kin from the outset what it can and cannot do in an international kidnapping case, including an explanation of the no ransom policy and its implications for the handling of kidnapping cases.
- Next of kin should be briefed on what to typically expect in a kidnapping case.
  - We are currently preparing a written guide for families on what to expect if a family member is kidnapped.

- If next of kin wishes to proceed with a contractor it would be in everyone's interest to provide them with the names of a couple of companies known to the Government that might be able to help.
- If the victim is not insured, the Government should be prepared to provide some limited funding to the family to cover airfares, locating a contractor etc, but not a sum which could be considered large enough to constitute part of a ransom.

#### Media

The McCarthy Review noted that the media management throughout the Brennan case was beneficial and recommended that tight media management be repeated in future cases, including encouraging news agencies to minimise coverage in the interests of the hostage.

#### Intelligence

The McCarthy Review considered the intelligence role in the context of a kidnapping and made some recommendations concerning the use of intelligence material.<sup>9</sup>

11.9 DFAT officials identified two of the recommendations as particularly significant—making clear at the outset, in the case of a kidnap for ransom, what the options might be for the family and, that DFAT 'establish across the relevant agencies and departments a high-level group particularly on this issue of kidnapping'. According to Mr Philp, this group would hold regular meetings to ensure that DFAT maintains 'contact across the different agencies and the level of expertise and contingency planning'.<sup>10</sup> He informed the committee that the group has already been established and would continue to meet.

11.10 DFAT submitted that the recommendations 'will inform future strategies for dealing with kidnap cases'. It stated further:

The Department has been working closely with other relevant government agencies, to implement Mr McCarthy's recommendations as part of a broader, whole of government effort to ensure that the lessons learned inform planning for our response to any future kidnapping events.<sup>11</sup>

11.11 The committee has considered the recommendations where relevant in this report and welcomes the department's quick and positive response to the McCarthy review and its recommendations. The committee now turns, however to the actual review process itself.

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9 Department of Foreign Affairs and Trade, *Submission 8*, [pp. 9–11].

10 *Committee Hansard*, 6 October 2011, p. 36.

11 Department of Foreign Affairs and Trade, *Submission 8*, [p. 8].

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## Review of the review

11.12 Throughout this report, the committee has referred to the importance of working closely and sympathetically with the families of a kidnap victim and with the victims on their release and return to Australia. The lessons learned exercise and the McCarthy review provided an ideal opportunity for the department to reconcile any differences with the Brennan family or to answer any of their questions.

11.13 The committee knows from Mr Martinkus' evidence that DFAT did not contact him after his return to Australia but that the AFP interviewed him. This lack of interest in his welfare still rankles with Mr Martinkus.

11.14 Mr Brennan was released on 25 November 2009.<sup>12</sup> He informed the committee that on numerous occasions he sought a debriefing from the department.<sup>13</sup> As noted in chapter 8, a meeting eventually took place in Canberra on 10 June 2010.<sup>14</sup> Mr Brennan's account of his eagerness to have a debriefing, however, does not match the explanation provided by the department. On 2 June 2010, when asked about the delay in interviewing the Brennan family, Mr Greg Moriarty, First Assistant Secretary explained:

I think it is fair to say that for an initial period of time it was very important for Mr Brennan and his family to deal with the issues that were obviously caused by that very traumatic experience. We have for several months sought to put arrangements in place to have a discussion with Mr Brennan and members of his family. We have just been unable to do that. They are keen to do so, and we are keen to put those arrangements in place and have a debriefing session with him.

...

There were certainly discussions with Mr Brennan in Kenya prior to his return to Australia, including with our officials and with law enforcement officials. That sort of hot debrief, if you like, was able to get some information. There are also issues to do with the circumstances that he found himself in, the trauma and the stress. That was also tackled very early. Now we have had time to go over the issues and he and his family have also had time to think about the issues, to think about the messages they want to pass on to us about how the case was handled, their impressions, their feelings, where they think they have something to add to our future approach to these types of issues. That is not something you would want to do in the very early stages after a release. We have had some time. We have sought for several months to put in place arrangements for

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12 N Brennan, *Submission 12*, [p. 1].

13 N Brennan, *Submission 12*, [p. 12].

14 *Committee Hansard*, Budget supplementary estimates, 18 October 2010, p. 92 and N Brennan, *Submission 12*, [p. 12].

that longer discussion with Mr Brennan and his family. Those arrangements are being worked through but the meeting has yet to take place.<sup>15</sup>

11.15 As noted above, a meeting eventually took place a week later and over six months after Mr Brennan's return to Australia. DFAT informed the committee that the meeting was 'a productive and positive session'. Mr Batley explained further:

Indeed, we continue to remain in touch with the family. I do not have particular details on the outcomes of the discussions. Indeed, I am not sure that I have the family's agreement to disclose what was discussed in any case.<sup>16</sup>

11.16 Again, the department's perception of this meeting stands in stark contrast to that of the Brennan family. Throughout this report, the committee has noted the family's disappointment and frustration in failing to obtain satisfactory explanations to many of their questions. Indeed, Mr Brennan told the committee that for him there are 'so many unanswered questions, and you will see I have got 110 questions in my submission'.<sup>17</sup> According to Mr Brennan, he did not think that he or his family had seen the recommendations or the notes or minutes taken from the debrief with the DFAT and the AFP.<sup>18</sup> Interestingly, in her submission to the committee Mrs Bonney asked, 'What was the aim of the debriefs of Nigel and other Brennan family members with DFAT, the AFP and John McCarthy?'<sup>19</sup>

11.17 It should also be noted that although Mr McCarthy made findings and a recommendation in respect of handling the media, he did not invite the *Bundaberg NewsMail* to comment, or talk to its staff about, the paper's relationship with government agencies during Mr Brennan's time in captivity.<sup>20</sup>

## **Recommendation 8**

**11.18 The committee believes that, after every major incident overseas, an internal review should be undertaken (the committee notes that DFAT indicated that it does so as a matter of course). This internal review should provide all agencies that formed part of the response team with necessary feedback on their performance and also on the performance of the team as a whole. The committee noted, however, that often the victim and his or her family would like to be part of a debriefing. In light of this finding, the committee recommends that:**

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15 *Committee Hansard*, Budget Estimates, 2 June 2010, p. 103.

16 *Committee Hansard*, Budget supplementary estimates, 18 October 2010, p. 92.

17 *Committee Hansard*, 11 October 2011, p. 6.

18 *Committee Hansard*, 11 October 2011, p. 10.

19 N Bonney, *Submission 13*, [p. 32].

20 *Committee Hansard*, 6 October 2011, p. 16; *Bundaberg NewsMail*, Answer to question on notice, received 28 October 2011.

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- **the government ensure that DFAT as the lead agency invites the victim and his/her family and friends to a debriefing from the whole-of-government emergency response task force including the sub unit responsible for providing support to the family. Further that:**
    - **if accepted, this offer of a debriefing is to be a two way exchange of information providing the family with the opportunity to have their questions answered; and**
    - **DFAT offer to cover the costs for the victim, family and friends to attend the debriefing.**

11.19 The committee notes that it has also suggested that DFAT offer to provide both Mr Martinkus and the Brennan family with a debriefing in order to allow them to reconcile discrepancies in their respective accounts of the circumstances of the kidnappings and to provide them with the opportunity to ask unanswered questions (see paragraph 8.37).

## **Conclusion**

11.20 The committee is concerned that the lessons with respect of the level of information provided to the family are yet to be learned. Involving the victim and his or her family in a debriefing that involves an exchange of information and consulting with them about the findings would certainly help them bring their ordeal to an end. This type of engagement may seem a small, insignificant undertaking, even a waste of time, for a government department but for the victim and family such a meeting would be important and should be recognised as such.

Senator Alan Eggleston

Chair



# Appendix 1

## List of submissions

### Public submissions

- 1 Confidential
- 2 Name withheld
- 3 Dr Malcolm Wood
- 4 Mr John Martinkus
- 5 Confidential
- 6 Australian Security and Intelligence Organisation
- 7 Confidential
- 8 Department of Foreign Affairs and Trade
- 9 Bundaberg *NewsMail*
- 10 Australian Federal Police
- 11 Attorney-General's Department
- 12 Mr Nigel Brennan
- 13 Mrs Nicole Bonney
- 14 Mr Alastair Gaisford
- 15 Department of Defence



## Appendix 2

### Public hearings and witnesses

#### Thursday 6 October 2011—Canberra

BIRD, Ms Gillian, Deputy Secretary, Department of Foreign Affairs and Trade

CAMPBELL, Mr Bill, QC, General Counsel, Attorney-General's Department

KARLSSON, Ms Tiffany, Acting Assistant Secretary, Attorney-General's Department

MARTINKUS, Mr John Raymond, Private capacity

McDONALD, Mr Geoffrey, PSM, First Assistant Secretary, National Law and Policy Division, Attorney-General's Department

PHILP, Mr Jon, Acting First Assistant Secretary, Consular Public Diplomacy and Parliamentary Affairs Division, Department of Foreign Affairs and Trade

SORBELLO, Mrs Nikki, News Editor; Former Chief of Staff, Bundaberg *NewsMail*

WOOD, Dr Malcolm Robert, Private capacity

#### Tuesday 11 October 2011—Canberra

BONNEY, Mrs Nicole Louise, private capacity

BRENNAN, Mr Nigel Geoffrey, private capacity

JABBOUR, Mr Ramzi, Assistant Commissioner, National Manager, Crime Operations, Australian Federal Police

McDEVITT, Commander Chris, Manager, Special References, Crime Operations, Australian Federal Police

WHOWELL, Mr Peter, Manager, Government Relations, Policy and Governance, Australian Federal Police



## Appendix 3

### Additional information, tabled documents, and answers to questions on notice

#### Additional information

- 1 Mr John Martinkus—supporting statement to *Submission 4*, received 4 August 2011.
- 2 Department of Foreign Affairs and Trade—letter to the committee secretary and 'List of Australians who have been kidnapped while overseas', received as confidential 19 July 2011.

#### Tabled documents

##### *6 October 2011*

- 1 Letter from Senator Bob Brown to the Hon Stephen Smith MP, Minister for Foreign Affairs, dated 11 May 2010.
- 2 Letter from the Hon Stephen Smith MP, Minister for Foreign Affairs to Senator Bob Brown, dated 19 August 2010.

#### Answers to questions on notice

##### *6 October 2011*

- Bundaberg *NewsMail*
- Attorney-General's Department
- Department of Foreign Affairs and Trade

##### *11 October 2011*

- Australian Federal Police



## Appendix 4

### List of reported kidnapping incidents overseas involving Australians since 2001

This list of reported kidnappings has been sourced from media releases, newspaper articles and information provided to the committee by the Department of Foreign Affairs and Trade. It should not be considered a definitive list of all kidnapping incidents involving Australians overseas.

**2001—Turkey:** Michael Musgrave, Ian Burton, George Jones and eight other Australians were held at gun-point, either in the lobby of the Swisshotel in Istanbul or in their rooms, by a group of Chechen militants on 23 April. The hostage takers surrendered peacefully after 12 hours. They stated that their wish was to bring international attention to their political cause.<sup>1</sup>

**2001—Colombia:** An Australian man was reportedly abducted in February. The victim claimed he was drugged and had his bank accounts drained before being released two days later.<sup>2</sup>

**2001—Nigeria:** Three Australians reportedly among 91 oil workers released after being held hostage for five days in August on an oil rig.<sup>3</sup>

**2001—Afghanistan:** Peter Bunch and Diana Thomas, Christian missionaries, were detained by the Taliban along with other foreign nationals on 6 August for preaching Christianity. In November they were transferred from Kabul and handed over to a local warlord in Ghanzi. The hostages were freed on 15 November by Afghan 'Northern Alliance' forces and were repatriated by US Special Forces.<sup>4</sup>

**2002—Russia:** Alex Bobik, a Melbourne academic, and his Russian student, Natalia Kalinina were amongst more than 800 people taken hostage in a Moscow theatre by Chechen militants on 23 October. Bobik and his student survived unharmed following the rescue attempt by Russian forces on 26 October when more than 100 of the

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- 1 M Colvin, 'Istanbul hotel hostage drama', *PM*, ABC Radio National, 23 April 2001, accessed on 5 September 2011, <http://www.abc.net.au/pm/stories/s281622.htm>; M Musgrave and J Walsh, 'Midnight gunmen in Istanbul', personal account, 23 April 2001, [web.me.com/mmus/files/.../IstanbulMIDNIGHTGUNMEN23Apr2001.pdf](http://web.me.com/mmus/files/.../IstanbulMIDNIGHTGUNMEN23Apr2001.pdf)
  - 2 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.
  - 3 'Australians kidnapped abroad', *Sydney Morning Herald*, 2 May 2005.
  - 4 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

hostages were killed. The hostage takers had demanded the withdrawal of Russian forces from Chechnya.<sup>5</sup>

**2003—Nigeria:** Joshua Nijam, oil worker for Bredero Price was kidnapped from a boat in the Niger delta with six other foreign workers in November. He was released four days later as part of a goodwill gesture following the payment of part of the ransom. Others were released the following day.<sup>6</sup>

**2004—Iraq:** Robert Colvill, an American-Australian sound engineer for NBC was kidnapped with three colleagues in Fallujah. He was released three days later after the NBC reportedly paid a ransom.<sup>7</sup>

**2004—Iraq:** Two Australian security guards were reportedly taken hostage with their clients by a group known as the 'Horror Brigades of the Islamic Secret Army' in September. The group demanded that Australian forces be withdrawn from Iraq. The kidnapping was never confirmed but media reports stated that an SAS team was dispatched to Iraq and that an AFP team specially trained for hostage crises in the Middle-East was on standby.<sup>8</sup>

**2004—Iraq:** Sheik Mohamed Alsibiyani (also known as Mohammed Naji) was held by Sunni insurgents for four days before being released. The hostage takers demanded a ransom but he was eventually released after they had taken the cash being carried by the Sheik.<sup>9</sup>

**2004—Iraq:** John Martinkus, journalist, kidnapped with two local companions outside his hotel in Baghdad and held for 20 hours by Sunni insurgents before being released.<sup>10</sup>

**2005—Iraq:** Douglas Wood, engineer, kidnapped with two Iraqi colleagues on 30 April in Baghdad by the Shura Council of the Mujahadeen of Iraq. The hostage takers demanded that Australian forces leave Iraq. An 'emergency response' team was dispatched from Australia to Iraq. Wood was released by Iraqi forces during a

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5 C Nelson, 'Russians saved me', *Age*, 1 November 2002; K O'Brien, 'Transcript: Bobik relays Moscow nightmare', *7.30 Report*, ABC TV, 13 November 2002, <http://www.abc.net.au/7.30/content/2002/s726257.htm>

6 R Wells, 'Beer, prayers help kidnap man's family', *Age*, 2 December 2003.

7 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

8 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011; J Kerin and B Norington, 'SAS team flies into Iraq as hostage mystery deepens' *The Australian*, 15 September 2004.

9 E Connolly, 'Released hostage grateful to be alive', *Sydney Morning Herald*, 17 September 2004; 'Australians kidnapped abroad', *Sydney Morning Herald*, 2 May 2005.

10 J Martinkus, *Submission 4*.

'random' operation on 15 June 2005. His two colleagues a killed at an earlier date by the hostage takers.<sup>11</sup>

**2005—Gaza:** Brian Ambrosio, deputy principal at a private American school, was kidnapped with a Dutch colleague in December by a group connected to the Popular Front for the Liberation of Palestine. Released unharmed after being held for two days.<sup>12</sup>

**2006—Gaza:** Kaye Bennett and Oles Shchyrytsya were abducted with seven other foreigners at the American International School at Beit Lahiya in Gaza. They were held for two hours before being released at a nearby police station after the captors determined that none of the hostages were American.<sup>13</sup>

**2007—Nigeria:** Jason Lane, oil worker, kidnapped with four other foreign contractors on 4 July from an oil rig operated by Shell in the Niger Delta. The hostages were released after seven days.<sup>14</sup>

**2007—Mali:** Des Gregor, farmer, was kidnapped after travelling to Bamako to meet a woman he had met over the internet whom he believed would be his bride. He was held by a criminal gang who demanded a ransom of \$100 000 from Mr Gregor's friends and family in Australia. Mr Gregor was held for 12 days before AFP negotiators persuaded the kidnappers that there was money to be collected by the captive from the Canadian Embassy in Bamako. The gang released Mr Gregor near the embassy and he was rescued by police.<sup>15</sup>

**2008–09—Somalia:** Australian with dual nationality kidnapped with colleagues working for an NGO. Their employer conducted negotiations with support of a security consultancy firm and the hostages were released after an estimated ransom of US\$4.1 million was paid. The family requested that his Australian nationality not be disclosed at any point in the negotiations.<sup>16</sup>

**2008–09—Somalia:** Nigel Brennan, photo journalist, kidnapped with Canadian journalist, Amanda Lindhout, and a number of Somali nationals on 23 August 2008 outside of Mogadishu. Hostage takers demanded a multi-million dollar ransom.

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11 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

12 'Freed Aussie teacher talks of hopes for Gaza peace after kidnapping', *Canberra Times*, 23 December 2005.

13 C Hart and A Rabinovich, 'Teachers freed after Gaza kidnapping "outing"', *The Australian*, 16 March 2006.

14 B Way, 'Father warned son of kidnap threat', *Adelaide Advertiser*, 7 July 2007.

15 S Larkin, 'Scam victim lucky to be alive', *Sydney Morning Herald*, 13 August 2007; 'Kidnapped Des trapped by love', *Sunday Mail Adelaide*, 12 August 2007.

16 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

Somali nationals were released in January 2009. Brennan and Lindhout were released on 25 November 2009 after their families engaged a security consultancy firm and paid ransom of around US\$600 000.<sup>17</sup>

**2009—The Gambia:** Justin Liebig, lured by a scam and kidnapped on 2 February. Freed on 10 February after a reported €5000 in ransom was paid. DFAT and the Australian Federal Police officers were reportedly sent to The Gambia to assist with investigations. Gambian police arrested the kidnappers and recovered most of the ransom.<sup>18</sup>

**2011—East Africa:** Australian ship captain with dual nationality taken hostage with crew by Somali pirates in February. Captain, crew and vessel were released two months later after ransom was paid by the shipping company.<sup>19</sup>

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17 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

18 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011; 'Australian pensioner tied up for one week in a toilet', *Sydney Morning Herald*, 13 February 2009.

19 Department of Foreign Affairs and Trade, 'List of Australians who have been kidnapped while overseas', 19 July 2011.

## **Appendix 5**

### **Terms of Reference for the Independent review of the Nigel Brennan kidnapping in Somalia (McCarthy review)**

Review the decisions taken by the Australian Government in regard to the overall handling of the case, including but not limited to:

- the application of our policy not to pay ransoms;
- communications with, and advice, assistance and information given to the Brennan family and their chosen agents;
- operation of the Inter-Departmental Emergency Task Force (IDETF) and the structure of cooperation with other government agencies both in Australia and Nairobi;
- interaction with the Canadian Government; and
- the Government's interaction with third party intermediaries

Interested not only in determining whether the case was handled as well as it could be, but also in the implications of this case for any future kidnapping.

