

Submission by Department of Foreign Affairs and Trade

to Senate Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into the kidnapping of Australian citizens overseas

Australian policy in response to kidnappings

In recent years, few Australians have been kidnapped overseas. No two cases are exactly the same. Kidnapping cases differ in the motivations of the kidnapers; the demands being made for release of the hostage; and the circumstances of the location where the kidnapping has occurred. 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.

The often extensive assistance we provide to kidnap victims and their families is within the context of this clear no-ransom policy. We will always provide strong consular support. We will also draw on our own resources, alliances, intelligence information and relations with other governments, but the no-ransom policy clearly puts limits on our involvement. In all cases, the Australian Government will act in accordance with relevant domestic and international laws.

Kidnappings involving Australians

The last decade has seen steady increases in the numbers of Australians travelling overseas, alongside an international trend in “adventure tourism”. The Department has seen a correspondingly steady increase in its consular workload, not just in the number of individual cases but in the complexity of cases.

- While the number of cases of Australians in difficulty who we assist can fluctuate from year to year as a result of events overseas, there has been a steady upwards increase in the number of active cases the Department is dealing with on any given day – currently around 1600.

- This statistic reflects the reality that cases are more complex and taking longer to resolve; partly as a result of Australians' enthusiasm for travelling to exotic, remote and sometimes risky locations.

Against that background, there have been few cases in recent years of Australian citizens kidnapped and held hostage for ransom. In the last ten years, the Department has provided assistance in six cases of kidnapping and each case has been different and required different responses.

- There have been three cases of an Australian kidnapped and held hostage for ransom.
- There has been one case of a kidnapping that had political elements and demands.
- There has also been one instance of an Australian who was victim of a financial scam and held hostage by the scammers until a ransom was paid.
- There has been one instance of piracy, where an Australian was held hostage when pirates took control of a vessel and was freed when the shipping company paid for their release.

These are the instances of which we are aware. It may be the case that there have also been Australians held hostage overseas in situations that have been resolved, whether through negotiation or by payment of ransom by employers or family, without any request for government assistance.

A kidnapping normally falls into one of two categories. The first is where the motive is primarily criminal and/or financial, as it was in the case of Nigel Brennan. The second is where the motive is primarily political, or when the abductees' status or role makes the case political (e.g. if a politician or senior diplomat was kidnapped). There will in practice be some overlap between the two categories, but the distinction is valid.

Underpinning our response in each case is a long-standing policy that the Australian Government does not pay ransoms. This will continue to be the foundation of our policy, as it is for all our close consular partners. Within the parameters of the no-ransom policy, we have clear and established procedures governing how we respond to any incident involving the kidnapping of an Australian overseas.

The Department's role

Assisting Australians overseas – the provision of consular services - is a core DFAT role. In the majority of consular cases, DFAT handles assistance to Australians and their families without reference to other government agencies. Some cases require a more comprehensive response, bringing in expertise from a range of government agencies. In these cases, DFAT leads a whole-of-government response through an Inter-Departmental Emergency Task Force (IDETF). Most recently, this has been in response to major crisis incidents overseas, such as the tragic earthquake and tsunami that hit Japan earlier this year. DFAT also activates and coordinates a whole-of-government response if an Australian is kidnapped overseas.

Over the years, the Department has developed a robust set of procedures for responding to kidnapping scenarios. Each kidnapping case is different and specific circumstances will arise in one that will not be relevant in the next. Despite this, there are core principles that can be applied in determining our response to any kidnapping situation and these protocols reflect our experience from responding to the small number of cases involving Australians in recent years.

- 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 in ensuring that every possible lead, suggestion or offer of assistance or information is fully explored.
- We will work closely with the government of the country in which the kidnapping has taken place 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.
- Where appropriate, DFAT will also work closely with colleagues from other governments, including but not limited to our key consular partners New Zealand, the United States, the United Kingdom and Canada. 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 kidnapers. Other countries may also have direct experience of kidnappings in the same region.

- We will also work, either directly or indirectly, with Australian and international non-government organisations that may have particular skills or expertise in the relevant location.
- In some cases, we may work also with local intermediaries, who may be able to provide further information or insights, or bring influence to bear.

As part of this action, the department will make use of intelligence networks.

- We will seek information from any avenue possible to support a comprehensive, whole-of-government response.

There may be circumstances in which consideration could be given to working with the Department of Defence on possible military options. 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.

An important part of the process occurs post-resolution. 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:

- *based on a clear no-ransom policy, the Department leads a comprehensive whole-of-government response that draws on every available source of information and assistance to contribute to resolution of the kidnapping and to support the kidnap victim and their families.*

When others take the lead

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 cases, the victim's family might nominate or engage a private contractor to lead the response.

These situations are entirely appropriate and it is open to employers and families to take whatever approach they consider most effective to achieve resolution. The Department will still play a key role in the provision of consular support to the families and as the channel of communication between the Australian government and other relevant governments and entities. The Department would also continue to monitor information on the case, including through intelligence networks, and monitor the efforts of the employer or negotiator.

Assistance to Australian citizens and their families: the consular role

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.

We are currently preparing a written guide for families on what to expect if a family member is kidnapped.

The department will work to share as much information with families as practicable, to the extent permitted by privacy laws.

- 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.
- There are complexities and challenges when dealing with intelligence material and these are addressed on a case-by-case basis.

The department can also use its existing consular support mechanisms to provide a repayable consular loan to assist with costs, such as essential family travel associated with the hostage situation or counselling for family members.

We can also 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.

- In some cases the department will deploy an Emergency Response Team with specialised consular staff to the location or a neighbouring location to provide support for the family and to make reception arrangements following release of the hostage.

Our ability to provide consular assistance to Australian citizens in locations with the highest threat of kidnapping is usually severely limited. Local security situations are likely to be extremely dangerous and access to local authorities limited, particularly if the location is experiencing political and/or civil disorder.

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 generally effective. This voluntary media self-censorship has been applied in other countries' cases as well (e.g. a 2008 Canadian kidnapping case in Afghanistan involving a CBC journalist).

Informing the public: kidnapping risks

A core part of the Department's consular work is conveying information to Australians about safety and security issues overseas, to enable them to make informed decisions about their safety and security. The *Smartraveller* campaign is the cornerstone of our communication on consular issues. We draw on information from a range of sources to provide up-to-date and accurate information on risks Australians may face overseas.

- 28 of our 166 travel advisories include specific reference to the risk of kidnapping:
 - These are the travel advisories for Afghanistan, Algeria, Bangladesh, Burkina Faso, Cameroon, Colombia, Democratic Republic of the Congo, Egypt, Eritrea, Ethiopia, India, Iraq, Kenya, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, the Philippines, Saudi Arabia, Senegal, Somalia, South Sudan, Sudan, Tunisia and Yemen.
- We also maintain a travel bulletin specifically addressing the kidnap threat in Africa.
 - This was first issued on 9 April 2010 and last updated on 28 July 2011.
- All travel advisories link to the *General Advice for Australian Travellers*, which contains a reference to the risk of kidnapping.

It is important that Australians understand the very clear limits to assistance the government can provide in a kidnap situation. 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.

Within the framework of knowing the limits of the Australian government assistance in kidnapping situations, it is important that Australians travelling to high risk locations are aware of the insurance options and are encouraged to take out relevant insurance. The new *Smartraveller* campaign actively reminds Australian travellers of the benefits of insurance and encourages them to obtain appropriate cover.

Contingency planning

The Department undertakes contingency planning across all aspects of consular operations, including our preparedness for major international incidents and crises. This includes how we would respond to the kidnapping of an Australian overseas. This contingency planning 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. We also participate in other countries' contingency planning exercises.

Kidnapping of Nigel Brennan: lessons learned

Following the most recent case of an Australian kidnapped overseas – Nigel Brennan in Somalia – the Department conducted an internal review of its response, including the assistance provided to Nigel Brennan and his family. At the request of the then Minister for Foreign Affairs, Stephen Smith, former DFAT Deputy Secretary John McCarthy AO was also engaged to undertake an independent review of the government's handling of the case. Mr McCarthy worked over a period of three months, looking comprehensively at the whole-of-government response and identifying lessons that could be learned from the experience.

- All relevant government departments have agreed to adopt Mr McCarthy's recommendations.

A key outcome of the McCarthy review was reaffirmation of the existing bipartisan commitment to a clear no-ransom policy.

Within the parameters of that framework, Mr McCarthy made a number of specific recommendations. As with any major consular case, the lessons learned process and review of the Government's handling of the case is an important element in building on and improving the response of the Government. 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. The Department has kept the Minister for Foreign Affairs informed on the recommendations and the Minister has agreed that DFAT should implement all the recommendations that apply to DFAT and that DFAT should lead the interdepartmental process that is taking forward the whole-of-government response.

The recommendations will inform future strategies for dealing with kidnap cases, and therefore our ability to work as effectively as possible to assist Australians who may be affected by kidnappings overseas. As public discussion of some of the recommendations, and the government's strategy, could be used by prospective kidnappers, we do not want to discuss the detail of all the recommendations publicly.

The recommendations can broadly be categorised into five areas: preparing for future kidnapping cases; response to kidnapping; assistance provided to family members of kidnap victims; media; and intelligence.

Preparing for Future Kidnapping cases

The McCarthy Review broadly affirmed the procedures in place to deal with kidnapping situations but noted some specific areas where the Government could strengthen its approach. The Department and other agencies (where appropriate) are working to implement all of these recommendations, for example:

- 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.
 - 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.
 - We 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.