

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

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.¹ 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

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.² 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.

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; 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.

