

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.¹ 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.² 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.³

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.⁴

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.

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.⁵ He was engaged under a separate contract in April 2010 with contract dates from 16 April 2010 to 16 June 2010.⁶ 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'.⁷ 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'.⁸

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.

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.⁹

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'.¹⁰ 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.¹¹

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.

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].

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 2009.¹² He informed the committee that on numerous occasions he sought a debriefing from the department.¹³ As noted in chapter 8, a meeting eventually took place in Canberra on 10 June 2010.¹⁴ 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

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.¹⁵

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.¹⁶

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'.¹⁷ 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.¹⁸ 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?'¹⁹

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.²⁰

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:

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

