



Australian Government Response to the Report:

Held Hostage

Government's response to the kidnapping of Australian citizens overseas

Australian Government Response to the Report of the Foreign Affairs, Defence and Trade References Committee

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This is the Australian Government's response to the report of the Foreign Affairs, Defence and Trade References Committee entitled: *Held Hostage. Government's response to the kidnapping of Australian citizens overseas*, as tabled on 25 November 2011.

The government welcomes the committee's acknowledgement of the extremely difficult work undertaken by government officials in response to kidnapping events. Recognition that the situation where an Australian may be held captive limits the government's ability to work towards the victim's release, and that a hostage situation involving an Australian citizen overseas presents many challenges for the government, is also welcomed.

The committee's agreement with the Australian Government's no ransom policy, and that any involvement of the Australian Government in the payment of a ransom would increase the risk of kidnapping for Australians abroad, is welcomed.

The attached response to the committee's recommendation reflects the government's commitment to reduce the risk of Australian citizens abroad becoming the victims of kidnapping, and when it does occur, to provide effective support and assistance to the victim and their family.

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.

Responsible Agency: DFAT

Response: Agreed

DFAT has committed to providing clear advice to families that they can to consult private companies on their options regarding paying a ransom, given the Government cannot. In

providing this advice, DFAT shall also provide families with a list of companies that they could consider engaging on a non-endorsement basis. It is for the family to decide whether to enter into arrangements and/or contracts with the company directly.

If a family chooses to engage a kidnap and ransom specialist, DFAT will continue to provide the family and their representatives with as much information as possible bearing in mind national security and privacy concerns.

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.

Responsible Agency: DFAT
Response: Agreed

On 28 June 2011, DFAT led an interdepartmental roundtable to discuss the outcomes of the McCarthy Review. At this meeting, relevant agencies agreed to establish a regular, whole of government coordinating group. This group would meet regularly to stay abreast of kidnapping issues and best practice.

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.)

Responsible Agency: DFAT
Response: Agreed

The group will consider all of the above mentioned issues.

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.

Responsible Agency: DFAT
Response: Agreed

Consular staff form part of any emergency response task force and support the families of kidnap victims. Consular staff are trained to assist families in difficult situations and will provide a high level of consular support consistent with DFAT's consular charter. Consistent with reviews of the Government's kidnapping policy, a dedicated unit of consular and other specialists has been established to support families related to the most recent kidnapping. This will be standard practice for all future cases. DFAT will strive to maintain continuity of consular staff in this role, dependant on operational requirements.

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.

Responsible Agency: DFAT
Response: Agreed

While a victim is overseas, DFAT will facilitate access to counselling services for family. Upon return to Australia, DFAT can provide recommendations to kidnap victims to access counselling services but currently cannot formally facilitate access to these services as they are governed by State and Territory service providers. DFAT will work to establish a mechanism whereby DFAT can alert appropriate service providers to the case and arrange for clear information on the services to be made available to the victim at an early date.

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.

Responsible Agency: DFAT
Response: Agreed

DFAT strives to maintain an open and strong relationship with the news media, and to provide accurate and timely responses to media inquiries. In kidnapping cases, DFAT's firm view is that it is not helpful to provide a detailed commentary on developments in the public domain, as this is often monitored by the kidnappers and can increase their expectations, and the perceived value in cases of kidnap-for-ransom, potentially placing the victim in greater

danger. This strategy was endorsed in both the McCarthy Review and the DFAT internal review on the Nigel Brennan kidnapping.

In communicating this strategy, DFAT will engage as closely as possible with major media outlets, explaining the situation and requesting their cooperation. DFAT will also provide on-the-record comments, where possible, in response to individual media inquiries, but these comments are unlikely to touch on operational details. DFAT has done this – providing on the record comments and background briefing media outlets by a senior official on the overall strategy -- for the current kidnapping case.

DFAT will also explain the media strategy to the family and be open in discussing the advantages and disadvantages of engaging the media. DFAT will involve the family in the decision making on this issue. Ultimately, it is up to the family whether they would like to speak to the media. If so, DFAT will offer to facilitate this contact, where appropriate. Again, DFAT has implemented this in the current kidnapping case.

DFAT notes that if a private contractor is engaged, the family and contractor would need to assume primary responsibility for media management.

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.

Responsible Agency: DFAT / Attorney-General's Department

Response: Rejected

The Government has considered possible legislative amendments as described in Recommendation 7. The Government does not support such legislative changes. Changing the relevant legislation would undermine Australia's no-ransom policy, and indirectly result in Australians overseas being targeted. Providing a legislative exemption could result in opportunities for manipulation of Australia's laws by terrorist organisations. Australian laws imposing targeted financial sanctions against terrorist-related entities to give effect to obligations under United Nations Security Council (UNSC) decisions already provide for strictly limited exemptions in accordance with the relevant UNSC decisions themselves. The UNSC decisions do not provide an exception for the payment of ransoms, and in respect of certain designated groups and individuals, expressly prohibits the payment of ransoms. Therefore, legislative amendments of this type are likely to raise issues of consistency with Australia's international legal obligations.

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.

Responsible Agency: DFAT
Response: Partially agreed

DFAT, as a matter of course, conducts an internal review in the event of every major consular case. We will continue to do so. Where warranted, DFAT may also request an independent review of its handling of the case, as occurred with the McCarthy Review following the Nigel Brennan kidnapping.

DFAT also conducts a debrief session with the victim and their immediate family and will arrange a suitable time for all parties and cover the costs of attending the debrief for those immediately involved. We will continue with this practice.