

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 1994 / 3059

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: DAVID JOHN WILSON

Delivered On: 19 September, 2012

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne 3000

Hearing Dates: 5 and 6 March 1998, 14 and 20 April 1998, 7 March 2000
and 29 August, 2011

Findings of: IAIN WEST, DEPUTY STATE CORONER

Representation: Mr J. Howe of counsel appeared on behalf of the
Department of Foreign Affairs and Trade (DFAT) on the 6
March 1998,
Mr A. Kirkham QC appeared on behalf of DFAT on the 14
and 20 April 1998,
Mr W. Wodrow appeared on behalf of the family on the 20
April 1998
Mr P. Vermeesch appeared on behalf of DFAT on the 7
March 2000 and
Ms Seckler appeared for DFAT on the 29 August 2011

Police Coronial Support Unit

Senior Sergeant E. Phillips appeared to assist during the hearings held in 1998 and

Sergeant D. Dimsey appeared to assist on the 7 March 2000

Counsel Assisting the Coroner

Dr I. Freckelton SC appeared to assist at the hearing held on the 29 August, 2011, instructed by the Victorian Government Solicitor

I, IAIN TRELOAR WEST, Deputy State Coroner having investigated the death of DAVID WILSON

AND an inquest having been held in relation to this death on 5 and 6 March 1998, 14 and 20 April 1998, 7 March 2000 and 29 August, 2011

at MELBOURNE

find that the identity of the deceased was DAVID JOHN WILSON

born on 2 July 1965

and that the death occurred on the 28 September 1994

at Knach Prey area in Topuk Meas district, Kampot Province, Cambodia

from:

- 1a. SEVERE FRACTURING OF THE SKULL

History of the inquest

- a. On 5 March 1998, an inquest into the death of Mr Wilson was commenced and proceeded on 6 March, 14 April, and 20 April 1998, before being resumed on the 7 March 2000. Mr Wilson was killed in Cambodia along with a British national, Mark Slater, and a French national, Jean-Michel Braquet, following their kidnapping by members of the Khmer Rouge. Senior Sergeant Ed Phillips appeared to assist the then State Coroner, Mr Graeme Johnstone, and Mr Wilson's family attended and the Department of Foreign Affairs and Trade ("the Department") were represented.
- b. During the course of this phase of the inquest, four witnesses were called and fourteen exhibits were tendered. Documentation was also provided by Mr Wilson's family to the coroner.
- c. The inquest was adjourned to enable further investigation of matters raised by a witness before the inquest, a former employee of the Department, Mr Alastair Gaisford.
- d. During this time, three senior members of the Khmer Rouge were arrested and charged in Cambodia with the murder of the three foreigners who were kidnapped on 26 July 1994, including Mr Wilson. A series of appeals ensued over a period of over eight years. As is the practice in coronial matters, the inquest was delayed pending resolution of these criminal matters.

- e. In summary, on 8 June 1999 Nuon Paet (General Paet), the Political Commander of the Khmer Rouge forces in the Phnom Vor area, was found guilty of the murder of Mr Wilson and his companions. He appealed. The Court of Appeal in 2000 dismissed his appeal and the Supreme Court dismissed a further appeal on 4 September 2002.
- f. On 1 August 1998, Chhouk Rin, the Khmer Rouge commander of forces in the Kampong Trach area, was arrested. He was subsequently charged with a number of offences including murder. Mr Rin was acquitted on 18 July 2000 but an appeal was taken to the Court of Appeal. The appeal was successful in 2002 and Mr Rin was convicted of murder and sentenced to life imprisonment. Two further appeals were lodged by Mr Rin. On 16 February 2005, the Supreme Court dismissed Mr Rin's appeal and ordered that he be arrested.
- g. Sam Bith, the Regional Commander of the Khmer Rouge forces in the south-western region, was arrested on 22 May 2002 and charged with conspiracy to murder, terrorism and a variety of other charges. He was found guilty on 23 December 2002 and sentenced to life imprisonment. He lodged an appeal. In April 2005, the Court of Appeal substantially dismissed his appeal. In December 2006, the Appeal Court dismissed Mr Bith's further appeal filed on 26 April 2005. On 13 February 2008, the Supreme Court rejected a further appeal by Mr Bith.

Inquests in England and France and resumption of Mr Wilson's inquest

- h. An inquest was held on 10 January 1995 into the death of Mark Slater by the English Coroner, Dr Paul Knapman, at the Westminster Coroner's Court. Before Coroner Knapman were a "Report Concerning the Death of Mark Slater in Cambodia on or about 28 September 1994" and odontology evidence. Coroner Knapman's findings were in short form. He concluded that Mr Slater had died from a firearm wound to the chest. The precise time of his death was not known but most likely was at 0.600 on 8 September 1994. (This date appears on the court record, however, the evidence before me supports a finding that all three hostages died on 28 September 1994.) Coroner Knapman concluded that Mr Slater had been taken hostage by the Khmer Rouge on 26 July 1994 and had been unlawfully killed.
- i. In addition, an inquiry is being held in France into the death of Jean-Michel Braquet. It commenced on 4 November 1994 and its outcome is still pending. Mr Marc Trevidic, Vice-President in Charge of the Inquiry, informed the Coroners Court of Victoria on 18 October 2011 that he had entered into correspondence with authorities in Cambodia in order to

ascertain conclusively the final state of appellate decisions in respect of the trials of those accused of the murders of the foreigners in Cambodia.

- j. On 29 August 2011, the inquest into the death of Mr Wilson resumed before me, with the consent of interested parties. This occurred due to the incapacity of Mr Johnstone to continue with the inquest, which had remained part-heard. I was assisted by Dr Ian Freckelton SC, of counsel, who was instructed by Mr David Ryan and Ms Huong Nguyen of the Victorian Government Solicitor's Office. I am indebted to each of them for their assistance throughout, particularly to Dr Freckelton SC for his analysis of the historic evidentiary material and summary of the factual circumstances.
- k. I extended the opportunity to parties to make further submissions to me and to file submissions in response to the submissions by other parties. Counsel assisting filed submissions, as did the Department of Foreign Affairs and Trade, while Mr Peter Wilson relied on his submissions dated 5 April 2006.
- l. I am satisfied that no further material is required to conclude the inquest in light of the substantial documentation that has become available since the previous hearing. I set out Dr Freckelton's summary of the circumstances in this finding. As I am satisfied they accurately reflect the history, I adopt them as findings of fact.

Mr Wilson's death occurred in the following circumstances:

1. David John Wilson, who was born on 2 July 1965, was one of the three deceased persons whose bodies were located on 2 November 1994. By occupation, Mr Wilson was a youth officer and in Melbourne had coached a soccer team for underprivileged children.
2. In 1994, Mr Wilson took leave from his job and travelled through south-east Asia. He travelled to Malaysia, Thailand and Cambodia, arriving in Phnom Penh from Bangkok on 6 July 1994. On 26 July 1994, he elected to travel by train from Phnom Penh station to Sihanoukville, an area being developed as a resort with white sand beaches and good swimming conditions, in company with Mark Slater and Jean-Michel Braquet.
3. The following facts can be identified principally from the statements prepared for, and the transcripts of, the trials in Cambodia of General Nuon Paet, Chhouk Rin and Sam Bith.

4. Whilst en route at approximately 14.20 (at Kilometre 145 Rohes dike) the train was attacked by a substantial force of Khmer militia. The attack was either led by Chhouk Rin, military commander of the Khmer Rouge and an assistant to General Paet, the Political Commander of the Khmer Rouge in the district, or others, including Vith Vorn (also known as Yung Vorn), who is deceased, acting on his behalf and that of General Paet. The attack was ordered by Sam Bith, the Khmer Rouge Regional Commander in the District.
5. The train was stopped by the use of anti-tank mines and fired upon by the Khmer Rouge forces using rifles and B40 rockets. Some ten Cambodian militia and civilians were killed at the time. Whether or not the kidnapping of foreign nationals was an object of the attack is unclear. However, an outcome was that in the vicinity of 100 persons were kidnapped, including Messrs Wilson, Slater and Braquet, but also including Vietnamese and Cambodian nationals. They were forced to carry food supplies and other material from the train to the Khmer Rouge base in Phnom Vor (Vine Mountains), a mountain range in the south of Cambodia near the border of Kampot Province.
6. At the time of the kidnapping the Khmer Rouge controlled or threatened about 60 percent of Cambodia's territory, in particular the hilly forested regions of the southwest, west and northwest of the country. As Ambassador Kevin (Australian Ambassador in Cambodia between 25 July 1994 and 1997) put it:

“Their armed bands roved widely, stealing and kidnapping for ransom as opportunity allowed them. No roads outside the capital Phnom Penh were really safe unless one travelled in convoys with armed escorts between 10am and 3pm. The slow run-down railway lines were similarly dangerous, being regularly subject to Khmer Rouge holdup, robbery and hostage taking. The Embassy's standing advice to all Australians was never to travel on these trains.”¹
7. The three foreigners were taken to the vicinity of General Paet's base and left at Chamkar Bey, Chhouk Rin's base. Shortly afterwards they were taken to Knach Prey and held hostage until their death. The camp was about 20 kilometres to the north-east of Kampot city and was surrounded by banana, rice and corn fields.

¹ Statement 9 March, 2012 at para 4.

8. The most reliable evidence about the death of the three men was given at the trial of Chhouk Rin on 18 July 2000 by Chum On, a member at the relevant time of the Khmer Rouge. This is largely, although not wholly, consistent with a statement that Mr On made for the trial of General Paet.²
9. He testified that on 28 September 1994 General Paet ordered "Comrade Sen" to tell him (Chum On) to bring the three foreigners from Vith Vorn's base to General Paet's location at Vine Mountain in the Knach Prey area in Topuk Meas, about 10 kilometres from Chhouk Rin's base. Chum On undertook this task, armed with an AK rifle. The three men at this stage were not bound. He took them to where four males, Bon, San, Muth's father and Pheap, were waiting. Pheap was General Paet's bodyguard. The three foreigners' hands were tied with coloured nylon rope, and they were taken to the back of the house to the west by the four men. Bon and San were carrying AK rifles. Chum On heard a number of shots and then saw San who ordered him to bring shovels to dig graves. He took two shovels and saw Muth's father, Bon and Pheap. He also observed two dead bodies downwards and the other lying on his side. He dug three separate graves and he and the three others placed the bodies in them.
10. Another account was given by Bon, a Lieutenant Colonel in the Khmer Rouge, in a statement for the trial of General Paet in which he alleged that Mout's father, also known as Mein, was the person who fired the fatal shots. It is not now possible to determine definitively who applied the blunt instrument force that caused Mr Wilson's death or why he was not shot, while Mr Slater and Mr Braquet were.
11. As a result of information received, a tri-partisan team of officials attended at General Paet's camp on 2 November 1994. The bodies of the three foreign nationals were located in a shallow grave near General Paet's camp by Australian Federal Police and an Australian Army official. Mr Wilson's body was lying face down and his arms were tied together behind his back with blue rope. Each of the bodies was exhumed, taken to Phnom Penh for identification and then returned to their respective countries to be appropriately interred.
12. Upon the body of David Wilson being repatriated, Professor Stephen Cordner, Director of the Victorian Institute of Forensic Pathology, as it was then called, undertook an autopsy (on 5 November 1994). He concluded that the body which he examined was that of David Wilson.

² The major discrepancy relates to whether the graves had been pre-dug or whether Mr On played a role in digging them.

He found that Mr Wilson had sustained a severe injury to the right side of the head, causing a number of fractures. He expressed the view that the fractures were brought about by a heavy blow or blows with a blunt instrument. It was highly likely that this occurred while Mr Wilson was alive. There was no evidence of any gunshot wound. Mr Wilson's arms were loosely bound behind his back.

13. The Cambodian Supreme Court in its 16 February 2005 judgement in the Chhouk Rin appeal provided a summary of the deaths:

“.... the most important and responsible persons involved with the train attack on July 26, 1994 and who killed three foreigners were NUON Pet, CHHOUK Rin, VIT Vorn and SAM Bith.”

14. I find that David Wilson was brutally and tragically killed close to General Paet's house by members of the Khmer Rouge early in the morning of 28 September 1994 in the Knach Prey area, Touk Meas district, Kampot Province, Cambodia on the orders of General Paet.

Australian Efforts to Secure the Release of Mr Wilson

15. Upon the kidnapping of the three foreigners, the First Prime Minister of Cambodia, Prince Ranariddh, immediately announced to the media that his government took full responsibility for achieving the safe return of the hostages.
16. At the time of the hostage-taking two Australian Federal Agents, Messrs Kirk and Anderson were in Cambodia pursuing other investigations. They confirmed that Mr Wilson had been kidnapped. Communications took place between the Australian and Cambodian governments with a view to optimizing the prospects of securing the release of Mr Wilson. Similar efforts were made by the United Kingdom and French governments in relation to their nationals with each government adopting the position that the responsibility for the conduct of the negotiation rested with the Cambodian Government.
17. On 30 July 1994 the Australian Embassy officer in Kampot city sent a written message to Mr Wilson. On the next day the Cambodian Foreign Minister Prince Sirivudh received a letter from Mr Wilson, which included a demand from General Paet for a ransom of \$US50,000 in gold for each hostage. This raised issues of broader policy for the Australian Government.

18. On 8 August 1994 ambassadors from the three countries involved in the hostage crisis met with Foreign Minister Sirivudh to discuss developments. Those at the meeting were informed that there would be a concerted attack on Phnom Vor within one to two weeks. However, the plan was that the Cambodian Government would wait to commence this offensive until after the hostage situation was resolved. Further, Foreign Minister Sirivudh emphasised that the Cambodian Government would "deal and negotiate" first and that no attack would take place until then; the hostages must be free and safe before any military operation.³
19. Foreign Minister Evans wrote to First Prime Minister Ranariddh and Second Prime Minister Hun Sen on 29 August 1994 confirming this position and providing reasons for it:

"I met today with both of David's parents. They are good people, honest and hard-working. We all share their anguish and their fears for the safety of their son. Notwithstanding the Australian Government's strong interest in the fate of this Australian hostage, we have as you know, made it clear that the responsibility for resolving this matter lies with your Government The basis for our policy is that your Government is in the best position to make judgements about how to proceed: the hostages were abducted in your country, the kidnappers are Cambodians and you have the best understanding of the local circumstances and of how to manage them. We know too that your Government has a strong commitment to resolving this crisis in a way which places a high priority on the welfare of the three hostages ... We also need to be conscious and wary of the Khmer Rouge strategy of trying to divide your Government from my own Government and those of the other two hostages. We cannot allow ourselves to fall into this trap."

20. Foreign Minister Evans in the same communication expressed the Australian Government's commitment to "coordination and focus in bringing about a positive outcome." He expressed interest in monitoring what was taking place through its embassy in Phnom Penh.
21. The longstanding position of most Western countries, including Australia, has been not to pay ransoms. This was the position at the time also of the British and French governments. In this instance there was a particularly good and practical reason for the policy, as explained by Ambassador Kevin:

³ Inward Cablegram from Australian Embassy, 9 August 1994.

“[A]ny such payment would be likely to have the effect of encouraging further such kidnappings in Cambodia and thereby endangering the position of other Australians living in Cambodia and elsewhere overseas. There were up to several hundred Australian working in Cambodia on aid-type and NGO charitable projects at the time, some working in rural areas vulnerable to Khmer Rouge attack or harassment.”⁴

22. Ambassador Kevin expressed the view that the use of special forces was not a realistic option in the circumstances.
23. Federal Agent Colin Rowley was deployed from Australia to Cambodia, arriving on 15 August 1994. On 21 August 1994 he joined an Australian consular official, two British police, a French consular official and a Cambodian interpreter.
24. During August 1994 there was significant contact from the hostages and some indirect contact was possible through the respective embassies. Extraordinarily, media interviews were given by the hostage-takers, government negotiators and field operatives. A video-tape of the hostages was taken by a government field official on 16 August 1994 and then a 20 minute video filmed on 29 August 1994, again taken by a government field operative, was received by Australian Federal Police personnel on 2 September 1994. It had been provided to journalists and depicted Mark Slater complaining of shelling in and around the area where the hostages were being held. The selling of such tapes to journalists was highly problematic and probably complicated the negotiation process by reason of its introduction of collateral dynamics.
25. The period around August/September 1994 was a complex time in relation to the Khmer Rouge and the civil war that was taking place within Cambodia. The nominal leader Khieu Samphan was seeking a repeal of the legislation outlawing the Khmer Rouge. King Sihanouk privately corresponded with Khieu Samphan encouraging the release of the hostages. Multiple defections of Khmer Rouge members were being negotiated by the Cambodian Government. Ultimately, these included Chhouk Rin with some 76 other Khmer Rouge fighters and their families around 15 October 1994.
26. On 19 August 1994 General Paet demanded in writing that the Royal Cambodian Armed Forces withdraw from their positions of encirclement around Vine Mountain where his camp

⁴ Statement 9 March 2012 at para 30.

was located as a precondition to “solving the matter of the foreigners”. However, unfortunately the Cambodian Government instead intensified the military offensive in the region, bombarding areas some distance from the camp and expelling foreigners from the Kampot area on 23 August 1994. Ambassador Kevin (Statement 9 March 2012, at para 23) has observed that following other events “the Royal Cambodian Armed Forces launched a revenge air attack on General Paet’s camp at Vine Mountain which caused significant damage to humans and livestock and humiliated and enraged Paet, almost certainly adversely affecting his attitude toward negotiations in the David Wilson case.”⁵

Evidence called at Inquest

27. **Federal Agent Eaton.** The first witness before the Inquest was Christopher Eaton, an agent with the Australian Federal Police in the international division. From 1992 he was the director of the United Nations Support Branch which managed the peace-keeping mission in Cambodia. In 1994 he attended Cambodia in relation to the kidnapping and murder of Mr Wilson. In 1995 he went to Cambodia for an AusAid mission to examine the law and justice system in Cambodia. On the basis of his investigation he expressed the opinion that it was not possible to identify whether the kidnapping was pre-planned or opportunistic. He expressed the view that Mr Wilson was murdered on or around 8 September 1994 by General Paet’s bodyguards. He speculated that “it is likely that [General] Paet reasoned that he would have to retreat from his stronghold and that this would have been hampered by the hostages. As he could not see their value to him alive, he chose to kill them to make his own escape from capture more secure.”⁶
28. In evidence he commented that “the principal cause of law enforcement failure in this matter was that the hostage negotiation process was subsumed within a wider military objective. Ultimately, military imperatives subordinated negotiations for the release of the hostages.” He stated that in his view the military offensive had three objectives: “one was to secure defections, two was to take control, that is, through an artillery and infantry process take

⁵ This was in spite of a meeting with the Cambodian Foreign Minister, Prince Sirivudh on 8 August 1994 in which he informed ambassadors that the government would deal and negotiate first – no attack would take place before the hostages were safe and free: Inward Cablegram, 9 August 1994.

⁶ Statement 8 May 1996.

control of the stronghold, and the last objective was to secure the release of the hostages.” He expressed the view that the hostages became “pawns in a wider game”.⁷

29. In terms of the Australian involvement in monitoring the situation, he stated that his unit had satellite communication that worked effectively within Cambodia and with Canberra. He observed that the Department of Foreign Affairs and Trade now has a more systematized process of early and regular warnings for Australians who visit areas where they might be at risk. Mr Eaton declined to comment on whether the Department could have done more to secure the safe release of Mr Wilson as he said he was not privy to all of the diplomatic and consular processes.
30. **Federal Agent Small.** Federal Agent Small, the second witness before the inquest, endorsed the views of Agent Eaton. He made the point that between 19 and 30 October 1994, the international liaison team in which he replaced Agent Eaton received varied and conflicting intelligence on the whereabouts and condition of the hostages.
31. **Alistair Gaisford.** At the conclusion of the evidence called at the inquest Alastair John Gaisford made himself known to coronial staff and was permitted by State Coroner Johnstone to give evidence as a witness. When he did so, he stated that he was employed in the North Asia Division of the Department. He said he was posted to Cambodia in March 1994 as the Second Secretary and Consul until March 1995 when he returned to Canberra. He stated that he was placed on special leave by the Department from 1 March 1996 and that his position in the Department had been the subject of extended litigation in the Federal Court.
32. However, the next day (6 March 1998) the Court was informed on behalf of the Department that Mr Gaisford had no greater diplomatic status than any ordinary member of the Australian community and that he was at all times no more than the Second Secretary to Cambodia, his substantive level being that of “a relatively junior officer in the Embassy”⁸, never holding the position of consul.⁹ This was confirmed in a statement by Mr Paul Grigson (adviser to the Department), dated 14 November 2011. The Court was further informed that Mr Gaisford at that time of the inquest had no substantive employment with the Department and had been

⁷ Quotations from Transcript at pp 3-4.

⁸ Transcript at p 26.

⁹ Mr Gaisford’s position in the Department and his suitability for access to security classifications of national security and sensitive classified information held by the Department were the subject of extensive litigation: see eg *William Norman Fisher v Alastair John Gaisford* [1997] FCA 590.

barred and banned from entering Department premises for some time. In addition, he had not been in charge of liaising in respect of hostage negotiations with relevant parties on behalf of Australia.

33. Mr Gaisford maintained in his evidence that he had been responsible for a variety of communications with David Wilson and had received replies from him. He criticised the fact that, as he contended, not all communications from Mr Wilson had been supplied to Mr Wilson's family. Mr Gaisford asserted dysfunctionality in the co-ordination of the Australian approach to intelligence gathering and hostage negotiations with the British and the French, as well as the absence of mobile radio facilities for Australian personnel. He maintained that there was inadequate guidance and an absence of protocols for consular staff on hostage-taking scenarios. He complained of what he termed "the stifling hierarchy" of the Department of Foreign Affairs and Trade and gave an adverse account of what he said was the debriefing for staff that ensued after the return of Mr Wilson's body to Australia. He said he was not aware of the conduct of a critical incident review conducted by the Department into Mr Wilson's death. He made a number of personal criticisms of the Australian Ambassador, Mr Kevin, who took over on 25 July 1994 and of other personnel within the Department.
34. Mr Gaisford was critical too of the efforts made by Australia for dissuading the build-up of forces against the Khmer Rouge in the Kampot area. However, he accepted that letters were exchanged between Foreign Minister Gareth Evans and the Cambodian Foreign Minister resulting in a Cambodian assurance that Cambodia would take no action to harm hostages. He maintained that Foreign Minister Evans should have been more assertive to the point of threatening to cancel aid or withdraw consular representation unless the safety of the hostages was provided for. He provided an account of a preliminary agreement that had been brokered for the release of the hostages but which miscarried because of escalating bombardments of the Khmer Rouge by government forces during August 1994.

Adjournment of the Inquest

35. The inquest was adjourned on 6 March 1998, after the lifting of a suppression order by Coroner Johnstone. Subsequently, Mr Gaisford made a written statement of 14 handwritten pages in which, amongst other things, he passed a variety of critical comments about Australian Foreign Ministers and their attitudes toward consular services and the training

courses provided to consular staff. He also provided a 40 page handwritten document, dated 5 March 1998, entitled "Corrections/Elaboration – Transcript."

DFAT Statements

36. A series of witness statements was provided to the Court by the Department of Foreign Affairs and Trade in response to the evidence of Mr Gaisford:

- Statement of **Tony Kevin**, Ambassador to Cambodia between 1994 and 1997, dated 9 March 2012;
- Statement of **Paul Grigson**, adviser to the Australian ambassadors and the Department of Foreign Affairs and Trade in Canberra, dated 14 November 2011;
- Statement of **Stephanie Shwabsky**, an officer in the Department of Trade and Foreign Affairs and Counsellor and Deputy Head of Mission in the **Australian Embassy in Phnom Penh**, dated 16 April 1998;
- Statement of **John Oliver**, Assistant Secretary in charge of the Consular Branch of the Department from July 1997, dated 15 November 2011;
- Statement of **Robert Hamilton**, Director of consular Policy in the Consular and Passports Branch of the Department of Foreign Affairs and Trade at the time of Mr Wilson's kidnapping, dated 8 April 1998;
- Statement of **Wayne Fulton**, a former officer of the Department of Foreign Affairs and Trade, at the time of Mr Wilson's kidnapping with primary responsibility for liaising with Mr Wilson's family on behalf of the Department, dated 16 January 2012;
- Statement of **George Fraser**, a former officer of the Department of Foreign Affairs and Trade. He was despatched from Canberra on a short-term mission to Cambodia in early August 1994 as a Senior Consular Official to perform consular duties at Kampot in relation to the David Wilson case, dated 8 May 1998; and
- Statement of **Dominic Trindade**, Legal Adviser and Assistant Secretary, Domestic Legal Branch in the Department of Foreign Affairs and Trade, dated 20 January 2012.

Important Elements of the DFAT Statements

37. In his statement Mr Grigson emphasized the junior status of Mr Gaisford and the fact that he was only privy to a proportion of matters involving Mr Wilson. Generally, this did not include meetings involving senior officials and politicians. Mr Grigson expressed the view that cancellation of aid by the Australian Government "would not have assisted our case. We were seeking to influence elites in Phnom Penh. Our aid was delivered to the poorer members of the community, often in provincial areas. The aid was not passed through officials – the government received no money from us."¹⁰
38. Mr Fulton, the officer of the Department with primary responsibility for liaising with Mr Wilson's family, acknowledged that Mr Wilson's family were frustrated at the refusal by the Australian Government to pay a ransom to the Khmer Rouge to secure Mr Wilson's release and at the absence of a threat to withdraw aid if the Cambodian Government did not act in accordance with the Australian Government's wishes.
39. Mr Fulton stated that he spent the last month of Mr Wilson's life in the Kampot area, liaising with Cambodian Government officials, military commanders and local officials such as the Mayor. He "sought to impress upon the Cambodian military the enormous significance the Australian Government attached to a successful outcome."¹¹
40. Mr Fulton stressed that the British Government also worked "constantly and tirelessly in an effort to resolve the crisis successfully."¹² He stated that after Mr Wilson's death a 'lessons learned debriefing' was convened. It lasted several hours and involved self-analysis of individual and corporate roles.
41. He noted that Mr Gaisford has levelled serious allegations against the Australian Ambassador, Mr Kevin. He rejected the proposition that Mr Gaisford was in a position to do so and contended on the basis of his observations that "Ambassador Kevin did a terrific job. He was open and accessible. He appeared to me to be doing all that he could do to secure David Wilson's release."¹³

¹⁰ Statement at para 56.

¹¹ Statement at para 24.

¹² Statement at para 33.

¹³ Statement at para 39.

42. Ambassador Kevin emphasized the supernumerary and junior responsibilities of Mr Gaisford, as well as his "intermittent and marginal"¹⁴ involvement in Mr Wilson's case. Further, he explained that because of improper and unauthorized conduct on the part of Mr Gaisford, he set wheels in motion for Mr Gaisford to be recalled to Canberra. Ultimately, Mr Gaisford was returned to Canberra at the Secretary's request.
43. Ambassador Kevin emphatically repudiated Mr Gaisford's account of how the hostages died as not corresponding to any information that was reported to the Department and expressed the view that he would have heard such a version had it surfaced during this three year period of service in Cambodia. He expressed the view that the Cambodian Government, when faced with a major crisis of the kind encountered with the hostage crisis, could not cope with its divisions and problems.
44. John Oliver, formerly the Second Secretary in the Australian Embassy in Phnom Penh, emphasized that the Embassy staff were able to draw on the Wilson case experience in other matters. In addition, after Mr Wilson's death, the Department extensively reviewed all of its involvement and on 3 November 1994, Senator Evans issued a detailed 20 page account and analysis of the Government's handling of the case.
45. Mr Oliver stated that the principal lessons learned from the Wilson experience were:
- Australians are free to travel when and where they wish;
 - There are real limits to just how far the Australian Government can go to protect its citizens abroad, especially in tragic cases of this kind;
 - We should do more to try and inform the public of the risks of travel in certain parts of the world.
46. Mr Oliver described the creation in the Wilson emergency of a crisis management group and the various options that were considered. On the basis of a consultant's report the Department thereafter established a Consular Response Group to manage such emergencies.
47. He noted that:

¹⁴ Statement 9 March 2012, at para 14.

“At the time that David travelled to Phnom Penh the Department’s travel advisory notice for Cambodia specifically identified the dangers of travel outside Phnom Penh. It noted that banditry was widespread outside the main urban areas. It advised travel in daylight in convoys. It urged travellers to seek advice from the Embassy. Between March and December, the advisory notice was reviewed and updated on 5 occasions. The Embassy also held a meeting with the Australian community on 1 August to encourage greater awareness of the risks of travel in Cambodia.”¹⁵

48. He rejected the proposition that Mr Wilson’s family was not acquainted with developments and kept fully informed during the crisis, detailing the extent and nature of the communications which took place with Mr Wilson’s family. Mr Oliver rejected the view of Mr Gaisford that no or insufficient efforts were made to limit the damage being done by the use of intermediaries during negotiations.
49. Mr Oliver emphasized that Australia utilized multiple sources in its efforts to secure the release of Mr Wilson, including:
- The British and French governments and their respective police and intelligence services;
 - The United States, Thai, Chinese and Indonesian governments and agencies;
 - The United Nations Secretary General and some of the United Nation’s specialized agencies, e.g. International Committee of the Red Cross;
 - Several non-government organizations (NGOs) based in Cambodia including Food for the Hungry;
 - Private individuals with experience in Cambodia and knowledge of the Khmer Rouge;
 - Advice from the Australian Federal Police, the Department of Defence and the Defence Intelligence Organization; and
 - In Cambodia, armed forces and key political and military leaders including King Sihanouk.

¹⁵ Statement at para 46.

50. Dominic Trindade, the current Legal Adviser and Assistant Secretary, Domestic Branch of the Department of Foreign Affairs and Trade, observed that as a matter of practice and policy:

“The Australian Government does not pay ransoms for kidnap victims. The basis of this policy is that paying ransoms would encourage kidnappings. The no-ransom policy is standard across all our major international consular partners and many other countries, and enjoys bipartisan support within Australia.”¹⁶

51. He commented that while Australian Government policy on response to kidnappings of its citizens is well developed “a review and/or lessons learned exercise has been conducted after each major international kidnapping incident with Government involvement.”¹⁷

The Senate Committee Inquiry

52. The Australian Senate Foreign Affairs Defence and Trade References Committee (“the Committee”) was asked by the Senate to inquire into and report on:

1. The appropriateness and effectiveness of the Australian Government’s provision of consular assistance to Australian’s abroad, taking into account the principles of international law and practice which provide the framework for such assistance, including:
 - a. Issues and problems in dealing with difficult and complex cases, particularly:
 - i. Deaths of Australians in criminal and possibly criminal circumstances, for example, the cases of David Wilson, Kellie Wilkinson, Ben Maresh;
 - ii. Foreign judicial proceedings involving Australians;
 - iii. Custody issues involving Australian children; and
 - iv. The extent of the Government’s responsibility for providing legal assistance to Australians involved in judicial proceedings overseas;

¹⁶ Statement at para 11.

¹⁷ Statement at para 16.

- b. The provision of consular assistance including that to Australians in foreign jails, in cases of missing Australians and in cases of Australians in need of support overseas, such as short-term loans and medical assistance; and
- c. Provision of timely and accurate consular travel advice to Australian travellers or intending travellers.

2. Measures that could be taken by the Australian Government to improve the handling of consular matters.

53. It undertook its inquiry during 1996 and 1997. I have before me the evidence given to the Committee, as well as the submissions provided to it and the Committee's report, dated June 1997.
54. Similarly the Australian Senate Foreign Affairs, Defence and Trade References Committee on 25 November 2011 published a report entitled 'Held Hostage: Government's Response to Kidnapping of Australian Citizens Overseas.'
55. It is not appropriate for these reports or the evidence taken by them to be referred to or taken into account by reason of s16 of the *Parliamentary Privileges Act 1987 (Cth)*. In addition, it would not be appropriate for the Coroners Court of Victoria to cover the same ground as these investigations in a continuation of the inquest or recommendations that might be made.

Further Information Coming to Light in 2011

56. On 7 April 2011 an unsolicited statement was forwarded to the Court by Darryl Raymond Hockey. He stated that he was working in Western Australia on a major infrastructure project and that he believed that he had information of material interest to the inquest. He stated that information had come available to him when he resided in a town in southern Cambodia between February and May 2010. He hired a motorcycle and spoke to a variety of persons who he believed had first-hand information about the circumstances in which the three hostages had been killed, in particular a Brasso-te (later known as Juhm Nuong) who was a Khmer commander responsible for overseeing fighting in the west of Cambodia near the Thai border. He made various criticisms of the sufficiency of the interventions made by the Australian Government. Mr Hockey acknowledged that an article published in the *Phnom Post* on 19 February 2010 conflicts with much of the information that he had sourced.

57. Although the information provided by Mr Hockey is pertinent, in light of the fact that it was procured many years after the relevant events and is of a hearsay nature, its probative value is extremely limited.
58. I am satisfied that no further germane material is required to conclude the inquest in light of the substantial documentation that has become available since the previous evidence before the inquest.

Australian Government Responses

59. The Australian Government's response to Mr Wilson's kidnapping was criticized by his family and by Mr Gaisford. In correspondence to Coroner Johnstone, Mr Wilson Senior complained that the response was 'insufficiently interventionist'; that the Government (along with the British and French Governments), 'never protested in order to stop the bombing' of the area near General Paet's camp and that the Government's trust in the Royal Cambodian Armed Forces 'to do the right thing,'¹⁸ was naïve and misplaced. Criticism was made of Government's position on ransoms and its failure to facilitate his private payment of a ransom to General Paet. Further criticism was expressed over the Government's involvement in negotiations and its refusal to withdraw aid as a means of leveraging the Cambodian Government into different or better responsiveness to the needs of Mr Wilson.
60. Insofar as such issues arise from the evidence and allegations of Mr Gaisford, I do not propose to pursue them further, as I am not satisfied as to his reliability as a witness and historian. In addition, his credibility is in issue as an aggrieved former member of the Department of Foreign Affairs and Trade.
61. In assessing the appropriateness of the response by Australia's representatives to secure Mr Wilson's release, it is necessary to be mindful of the exceptionally difficult circumstances confronting them. Mr Wilson was being held in a foreign country that was embroiled in a complex civil war, with shifting alliances and unstable social, economic and political dynamics. In these circumstances, it was appropriate that the responsibility for conducting negotiations with the rebel group remain an internal matter for Cambodia. Ambassador Kevin stated:

¹⁸ Quotations from Mr Wilson Senior's letter dated 5 April 2006.

“The Australian Government did not have the right or power to demand a certain course of action from the Cambodian Government, nor to give orders as to the deployment by the Cambodian Government of its armed forces. The Australian Government had no authority as such within Cambodia, and it was not possible for the three foreign governments involved, let alone the Australian Government alone, to take over the case. Put shortly, the Australian Government could not disregard Cambodian sovereignty within Cambodia.

Even were it otherwise, the three Western governments did not have the knowledge or experience that the Cambodian Government had acquired in dealing with the ruthless and fanatical Khmer Rouge over many years. Conspicuous direct involvement of the three Western governments would have been counter-productive as it would have only to serve to encourage the Khmer Rouge to ‘politicise’ and ‘crank up’ their demands. There were insurmountable military, political and practical constraints which precluded proceeding in any way apart from that which was taken. The Australian Government could only seek to persuade the Cambodian Government to take appropriate steps in the interests of securing the safe release of David Wilson and his two fellow hostages”.¹⁹

62. This approach was taken by the British and French Governments and was accepted by the Cambodian Government, reflecting the political reality of the situation. The only available option for the Australian Government was to make repeated high level approaches to the Cambodian Government directed toward optimizing the chances of securing Mr Wilson’s release and to register concerns that military action which might endanger the hostages’ safety, be avoided. For the most part this was successful and those who witnessed the exhumation of the hostages reported that the camp where the hostages had been held showed no signs of shelling. This confirmed advice from General Shea Dara that the hostages were being kept in a safe area and that government shelling was avoiding the area.
63. The evidence reveals that there was continuing and frequent contact between Canberra and Australian representatives in Cambodia, in particular with Ambassador Kevin. During the relevant period the mission staff of the Australian Embassy, numbering 10 people, treated the efforts to secure the release of Mr Wilson as their highest priority. During the approximately 100 days of the hostage crisis, Ambassador Kevin met with Foreign Minister Prince Sirivudh 15 times and with General Chea Dara, the Cambodian chief negotiator, or Ke Kim Yan, the

¹⁹ Statement at paras 26-27.

Chief of General Staff of the Cambodian Armed Forces, or their representatives, 23 times. Further meetings took place with Mr Grigson representing the embassy, making a total during the relevant period of 45 such meetings. In addition, meetings took place with First Prime Minister Ranariddh and Second Prime Minister Hun Sen.

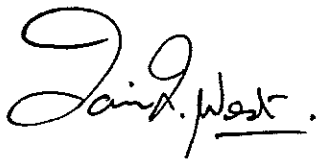
64. Contact was consistently maintained by Australian Government representatives with the Chief Cambodian negotiator, General Chea Dara, as well as with senior members of the Cambodian Armed Forces. This allowed input, in particular directed at avoidance of the use of force which might endanger Mr Wilson and other hostages, but allowed negotiations to be conducted from one source. In addition, there is reason to conclude that the Australian Government constructively and appropriately co-operated and co-ordinated with the British and French Governments, including at Ambassadorial level.
65. It is likely that the development which precipitated the orders of General Paet to kill the hostages was the escalation in the military offensive by the Royal Cambodian Armed Forces. Such a step was inconsistent with promises to the contrary that had been made at the highest levels of the Cambodian Government on multiple occasions. It was appropriate in all the circumstances for the Australian Government and its representatives in Cambodia to rely upon these representations which were honoured for a significant period of the hostages' captivity.
66. I am satisfied there is no legitimate reason for criticising the Australian Government for opposing or not co-operating in the payment of a ransom to General Paet. The principle behind not doing so is sound and internationally acknowledged. Similarly, there is no basis for criticising the decision to abstain from taking diplomatic measures involving threats to limit or cease provision of foreign aid as a means to manipulate or place pressure upon the conduct of another sovereign nation. There is no evidence before the Court that such efforts would have assisted in securing Mr Wilson's release by General Paet.
67. I am further satisfied that following the death of Mr Wilson, appropriate critical incident reviews took place within the Department, reflecting on individual and corporate roles in order to learn relevant lessons from the way in which the Department responded to the crisis of Mr Wilson's kidnapping.
68. I do not believe it is appropriate to make recommendations or comments which are critical of the handling of negotiations or the taking of measures directed towards securing the release of Mr Wilson from the Khmer Rouge forces.

69. I find that General Nuon Paet, Commander Chhouk Rin, Commander Sam Bith and a person or persons unknown, responsible for inflicting the head injuries, contributed to the death of David John Wilson.

I direct that a copy of this finding be provided to the following:

- The family of David Wilson
- The Department of Foreign Affairs and Trade

Signature:



IAIN WEST
DEPUTY STATE CORONER
Date: 19th September 2012