

Government responses to questions on notice – JSCOT Hearing

Question One

On how many instances in the past has Australia wished to extradite a person from Jordan and been unable to? Provide specific information.

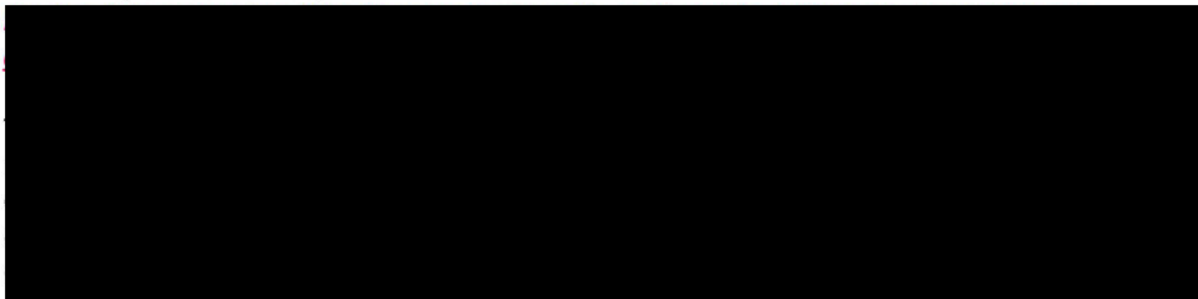
Australia made an extradition request to Jordan in 2008. However, as Australia did not have a bilateral Extradition agreement with Jordan, the request was refused. Jordan will not accept or action an extradition request from Australia in the absence of a relevant multilateral treaty or bilateral Extradition agreement.

In addition to the above matter, the Attorney-General's Department's records indicate that there were two separate enquiries in 2011 from Australian law enforcement agencies in relation to persons of interest, located in Jordan, wanted to face criminal prosecution in Australia for serious offences. However, as Jordan is unable to accept extradition requests unless there is a relevant multilateral or bilateral extradition agreement in force with the requesting country, the Australian Government was not able to seek the extradition of these accused persons. There may be further matters which have not been brought to the attention of the Attorney-General's Department due to Australian law enforcement agencies becoming aware that Australia is unable to extradite a person from Jordan.

The proposed Extradition Agreement will be extremely beneficial to Australian law enforcement and prosecutorial agencies, as it will remove the barrier that currently exists in Jordanian domestic law that prevents Jordan accepting and progressing Australian extradition requests. The proposed Extradition Agreement will enable the Australian Government to seek the extradition of fugitives in Jordan on behalf of Australian law enforcement or prosecutorial agencies. This will support future cooperation between Australia and Jordan to ensure that criminals, including those involved in transnational crimes, including terrorism, cannot evade justice simply by crossing borders.

Question Two

How many extradition requests has Australia denied?



More generally, the Department's records show that Australia has denied 40 extradition requests between 2007 and 2017.

It is not possible to give a breakdown of the specific reason that each request was denied. However the Attorney-General's Department notes that there are a range of grounds on which a request can be denied. The proposed Extradition Agreement with Jordan contains multiple mandatory and discretionary grounds for refusing requests. For example, a request under the Extradition Agreement

must be refused if Australia considers the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion (any concerns that a request had been made for the purpose of prosecuting or punishing a person on account of their ethnic origin would fall under this ground and provide the Minister with a basis to refuse extradition), where the request relates to a military or political offence, where the request relates to an offence that carries the death penalty if the requesting country has not provided an appropriate undertaking, where there are substantial grounds for believing that the person would be in danger of being subject to torture, or in circumstances where double jeopardy would apply. There are also a variety of discretionary grounds including where, in the circumstances of the case including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment. This discretionary ground for refusal could provide a basis to refuse extradition in circumstances where there are concerns about prison conditions and/or a person's access to a fair trial.

In addition, the *Extradition Act 1988* (Cth) gives the Minister a general discretion whether to surrender a person whose extradition has been requested. The Minister's discretion is at large and he or she may take any relevant factor into account.

Question Three

Are you aware of any past instances when Jordan wished to extradite a person from Australia? And did our current arrangements pose any problem?

There has been one matter in which Jordan requested the extradition of a person from Australia which was unable to be progressed due to insufficient information to meet our domestic legal requirements.

Under current arrangements, extradition requests from Jordan are considered in accordance with the requirements in Australia's *Extradition Act 1988* (Cth). The extradition request from Jordan did not contain sufficient information to satisfy the test for dual criminality in the Extradition Act. The proposed Extradition Agreement would clarify for Jordan Australia's domestic law requirements and provide the certainty of binding obligations to meet such requirements. The proposed Extradition Agreement would also facilitate greater cooperation and communication to rectify issues such as insufficient information or any difficulty in understanding domestic legal requirements.

Question Four

Do similar countries to Australia – Germany, the United Kingdom and the United States – have extradition treaties with Jordan?

Jordan has ratified extradition treaties with France, Turkey and a range of Arab states. An extradition treaty with Kazakhstan was signed last month but has not yet been ratified, and Jordan has negotiated draft extradition treaties with Spain, India and Russia, but these have not yet been signed. Jordan has signed an extradition treaty with the United States; the treaty was ratified by the United States Congress but has not been ratified by the Jordanian parliament. Jordan has a Mutual Legal Assistance treaty with the United Kingdom, which allows for deportation, but there is no bilateral extradition treaty. It has not signed Mutual Legal Assistance or Extradition treaties with Germany.

Question Five

Why is the Jordan-US Extradition treaty not yet in force?

The Department notes that Australia has not been privy to the negotiations or discussions between Jordan and the US in relation to their bilateral Extradition treaty, and is therefore unable to provide the Committee with any specific information regarding the reason that the treaty has not yet entered into force.

The US and Jordan signed a bilateral Extradition treaty on 28 March 1995. The US completed its domestic implementation process on 29 July 1995. Jordan has not yet completed its domestic implementation processes to allow ratification to occur.

Question Six

Are the Jordanian police force trained in-country, or do they have British training or anyone else's?

The Public Security Directorate (PSD) is the Jordanian Police Force for Jordan. The PSD has approximately 40,000 members, all of whom undertake the majority of their police training in Jordan. The UK is the largest provider of training assistance within Jordan, focusing on building core community policing skills and some specialist training, however a range of other countries also deliver targeted training in Jordan. In 2016 and 2017, the AFP has provided cyber training to PSD members working in the counter terrorism environment. The AFP conducted an awareness-raising workshop in Amman in December 2016 followed by a one week technology training course in May 2017 with participants from PSD Special Branch and the Gendarmerie of Jordan.

Question Seven

To go back to the Tamimi case, would the passage of this Treaty mean that since once of the people killed in the terrorist act that she was involved in was a joint Australian-US citizen then Australia could apply for extradition in response to the death of that citizen?

Extradition requests are made under the authorisation of the Commonwealth Minister for Justice or Attorney-General, at the request of the relevant Commonwealth, State or Territory law enforcement or prosecutorial authorities. The decision to commence an investigation and/or prosecution, which is necessary prior to the consideration of whether to make an extradition request, is made by the relevant Commonwealth, State or Territory law enforcement and/or prosecutorial authorities and not by the Attorney-General's Department. Australia is only able to seek a person's extradition in circumstances where a domestic arrest warrant has been issued in relation to the wanted person for the relevant offence(s) and the relevant Commonwealth or state prosecutorial agency has provided an undertaking that the person will be prosecuted for the relevant offence(s) in the event of their surrender to Australia.

As a matter of longstanding practice the Australian Government does not disclose whether it has made, or intends to make, an extradition request to a foreign country until the person is arrested or brought before the court in a foreign country pursuant to that request. This is in recognition of the sensitive law-enforcement context in which extradition requests are made and to avoid giving the person to opportunity to evade arrest.

Question Eight

Provide a list of all Australians currently incarcerated overseas that were extradited from Australia, where they are incarcerated, and how often per annum we are monitoring them.

The JSCOT report 91 of June 2008 included the recommendation that ‘the Attorney-General’s Department informs the Department of Foreign Affairs and Trade of each extradition, including the terms of the relevant extradition agreement and any special conditions applying to the case’. Since implementation of this recommendation, DFAT had had increased visibility of cases where Australians have been extradited overseas.

As of 12 December 2017, six Australians who have previously been extradited are incarcerated (i.e. in prison or detained awaiting trial) overseas. One Australian previously extradited is awaiting sentencing, and one dual national has had their Australian Citizenship revoked. (We are awaiting the latest information on another permanent resident of Australia who was previously extradited). The table below provides a summary of the consular assistance provided to those extradited from Australia, who remain incarcerated.

	Country	Citizenship Status	Date of Extradition	Currently Incarcerated	Consular Visits and Monitoring
Australians					
1	Croatia	Dual Citizen - Croatia	15 July 2007	Yes	Approximately four consular visits per year.
2	Croatia	Australian Citizen Only	8 July 2015	Yes	Approximately four consular visits per year.
3	United Kingdom	Australian Citizen Only	June 2013	Yes	Yearly prison visits provided, if requested by the client.
4	United Kingdom	Dual Citizen – United Kingdom	18 March 2016	Yes	Yearly prison visits offered to the client.
5	United Kingdom	Australian citizenship was revoked. Former Dual Citizen - United Kingdom	28 September 2011	Unable to seek updates from authorities, following revocation of Australian Citizenship	Consular assistance was withdrawn, after Australian Citizenship was revoked.
6	United States of America	Dual Citizen - Canada	6 January 2017	Yes	Regular contact and monitoring of case. Yearly visits are provided to prisoners, if requested by the client.
7	United States of America	Dual Citizen – United Kingdom	6 November 2017	Awaiting sentencing. Not incarcerated as of 12 December 2017.	Regular monitoring of the case.

	Country	Citizenship Status	Date of Extradition	Currently Incarcerated	Consular Visits and Monitoring
8	United States of America	Dual Citizen - United States of America	3 June 2016	Yes	Consular assistance not offered due to United States Citizenship and comparable criminal justice system. Consular case was closed and not monitored.
Permanent Residents of Australia					
9	United Kingdom	United Kingdom Citizen and Australian Permanent Resident	25 June 2014	Awaiting advice from relevant overseas post.	Offered consular assistance, but did not respond. Consular case was closed and not monitored.

Question Nine

Has any information from Jordan been used in relation to any of the terrorism investigations undertaken in the last 10 years?



However, Australian authorities are aware that there are over 100 Australians presently in Syria or Iraq fighting with, or supporting Islamist extremist groups. Australian law enforcement authorities believe that, as a transit country for foreign terrorist fighters, it is increasingly likely that Jordan will hold evidence required to support the investigation and prosecution of those involved in terrorism, including foreign fighters. The proposed Mutual Assistance Agreement will facilitate significantly better information and evidence sharing between Australia and Jordan, and this in turn will assist Australian investigations and prosecutions. The Agreement provides a clearly defined and mutually agreed framework that will assist Jordan to collect and provide information and evidence in a manner that complies with Australian evidentiary requirements, such as the necessity for information to be provided under an affidavit. This will reduce problems with evidence admissibility, which will assist Australian law enforcement agencies.