

# Amendment to the Hong Kong Extradition Treaty

## Introduction

- 6.1 The Amendment to the Hong Kong Extradition Treaty<sup>1</sup> makes two key amendments to the extradition framework established by the Australia Hong Kong Extradition Treaty.<sup>2</sup> The original treaty ‘outlines the process under which persons can be sent from the jurisdiction of one country to the jurisdiction of another in order to face criminal charges or serve a sentence.’<sup>3</sup> The two amendments relate to the standard of evidence required for extradition requests by Australia to Hong Kong and the provision of reasons where a request is refused.

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1 The full title for this treaty is the *Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993, Hong Kong, 19 March 2007*

2 The full title for this treaty is the *Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong, done at Hong Kong on 15 November 1992 [1997] ATS 11. This treaty entered into force on 29 June 1997.*

3 Mr Steven Marshall, *Transcript of Evidence*, 18 June 2007, p. 35.

## **‘No evidence’ standard for extradition requests by Australia**

6.2 Under the existing extradition treaty with Hong Kong, both Australia and Hong Kong are required to provide evidence that would justify a person’s committal for trial if the offence had been committed in the jurisdiction of the requested party. This is the ‘prima facie’ standard for extradition requests.

6.3 The Protocol amends the existing treaty so that the ‘no evidence’ standard will apply to extradition requests from Hong Kong to Australia.<sup>4</sup> The ‘no evidence’ standard means that the documents required for extradition do not need to include a brief of evidence of the alleged offence. The Committee was informed that previously the prima facie standard for extradition requests would require ‘witness statements, documents and all the paraphernalia that is associated with a committal proceeding.’<sup>5</sup>

6.4 Extradition requests from Australia to Hong Kong will remain at a level where the information contained in the request would, in accordance with Hong Kong’s domestic law, justify the extradited person’s committal for trial.<sup>6</sup>

6.5 The Committee was informed by representatives from the Attorney-General’s Department that:

Hong Kong’s domestic law prevents Hong Kong from reciprocally lowering the evidentiary standards for receiving extradition requests. This means that requests from Australia to Hong Kong will still need to meet the prima facie evidentiary standard.<sup>7</sup>

6.6 The adoption of the no evidence standard is already included in many of Australia’s bilateral extradition treaties and is also consistent with the United Nations Model Treaty on Extradition.<sup>8</sup> Australia currently has 31 bilateral extradition treaties which adopt the ‘no evidence’ standard, two bilateral extradition treaties, with Hong Kong and Israel, which require evidence to a *prima facie* standard and a further two, with the United States and the Republic of Korea, require the

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4 NIA, para. 11; Article 3 of the Protocol amends Article 9(3) of the Treaty.

5 NIA, para. 7. Mr Steven Marshall, *Transcript of Evidence*, 18 June 2007, p. 38.

6 NIA, para. 11.

7 Mr Steven Marshall, *Transcript of Evidence*, 18 June 2007, p. 35.

8 NIA, para. 7.

establishment of 'reasonable grounds' to believe the person sought committed the offence for which extradition is sought.<sup>9</sup>

- 6.7 Representatives from the Attorney-General's Department informed the Committee that there were two key benefits of this change:

One is from the perspective of trying to align our extradition relationships with the domestic processes under our respective laws, and to some extent we had to learn to live with differences between different legal systems. Another one is that in circumstances where an extradition request has been received from another country involving an application of the prima facie requirement, that does consume a considerable amount of resources for Australia, and in terms of having the case presented before the magistrate litigation can arise in relation to dealing with the request. So the view was taken that in circumstances where we are able to provide extradition on a no evidence basis, notwithstanding that the legal system within the foreign country does not provide it, then it would be appropriate for us to give Hong Kong the benefit of the no evidence approach.<sup>10</sup>

## Reasons for refusing an extradition request

- 6.8 The Protocol amends the existing treaty so that both Hong Kong and Australia must provide reasons to the other country where an extradition request is either partially or completely refused.<sup>11</sup>

Parties are able to better understand how requests have been dealt with where reasons are provided. The requirement to give reasons for complete or partial refusal of an extradition request is included in close to half of our modern bilateral treaties, including most recently our treaties with Malaysia and Turkey.<sup>12</sup>

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9 Attorney-General's Department, *Submission 2*, p. 2;

10 Mr Steven Marshall, *Transcript of Evidence*, 18 June 2007, p. 39.

11 NIA, para. 12; Article 4 of the Protocol amends Article 16(1) of the Treaty.

12 Mr Steven Marshall, *Transcript of Evidence*, 18 June 2007, pp 35-36.

## Conclusion and recommendation

- 6.9 The Committee supports the amendments to the Australia Hong Kong Extradition Treaty as the changes will implement a consistent approach to extradition requests in Australia's bilateral extradition agreements.

### Recommendation 6

**The Committee supports the *Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993, Hong Kong, 19 March 2007* and recommends that binding treaty action be taken.**