

Submission 13  
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Australian Government  
Attorney-General's Department

Criminal Justice Division

06/8080

31 July 2006

Committee Secretary  
Joint Standing Committee on Treaties  
Department of House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Committee Secretary

**Treaties between Australia and Malaysia on Extradition and Mutual Assistance**

On 19 June 2006, the Attorney-General's Department appeared before the Joint Standing Committee on Treaties to answer questions on the Treaty between the Government of Australia and the Government of Malaysia on Extradition and Exchange of Notes and the Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters and Exchange of Notes (the MA Treaty). I am writing to supplement and clarify the information that was provided to the Committee.

The Department's answers to the Committee's questions are at pages TR23 to TR35 of the Hansard proof of 19 June 2006. In addition, two questions were taken on notice by the Department. The Department's responses to these two questions are attached.

At TR33, the Chair of the Committee, Dr Andrew Southcott MP, asked whether under the MA Treaty the States and Territories have obligations to pass on evidence or information to Malaysia. In addition to the information provided, I note that the Treaty does not create any obligations for the States and Territories that do not already exist under the *Mutual Assistance in Criminal Matters Act 1987*. Subject to the provisions of that Act, a State or Territory agency may be required to provide evidence or information in response to a request for assistance from a foreign country in the same way as a Commonwealth agency or private entity. For example, the agency may be required to provide relevant information in response to a search warrant issued under the Act.

I hope that this information is of assistance to the Committee.

The action officer for this matter is Katherine Reimers who can be contacted on 6250 6257.

Yours sincerely

*Robin M. J. Warner.*

Robin Warner  
Assistant Secretary  
International crime Branch  
Criminal Justice Division

Telephone: + 61 2 6250 6285  
Facsimile: + 61 2 6250 5457

JOINT STANDING COMMITTEE ON TREATIES

QUESTION TAKEN ON NOTICE ON 19 JUNE 2006

**Deputy Chair Mr Kim Wilkie MP**— Have we had any applications to Malaysia for extradition rejected? Has Australia ever asked for anyone to be extradited to Australia and had that application rejected?

**Deputy Chair Mr Kim Wilkie MP**— Could you please look into that one on Malaysia and, if there have been any applications rejected, outline why the applications have been rejected?

**Response:**

Historical data regarding extradition requests is not readily available for specific countries. Although the Department publishes figures of the total number of extradition requests refused by other countries in its Annual Report, it does not collect or publish data on which countries refuse requests. Significant resources would be required to obtain this data. In addition, in the case of Malaysia, the Department would be unable to provide accurate data as a number of case files have been lawfully destroyed.

Extradition requests may not be completed for a variety of reasons, such as the requesting country withdrawing the request, the requested person not being located in the requested country, the death of the requested person, or a refusal to extradite for reasons under the *Extradition Act 1988* or the relevant bilateral treaty.

In the absence of specific treaty obligations to provide reasons, there is no general obligation under international law for a country to make public the reasons for a decision to surrender or not surrender. In the case of Australia, the reasons for the Minister's decisions are not disclosed.

JOINT STANDING COMMITTEE ON TREATIES

QUESTION TAKEN ON NOTICE ON 19 JUNE 2006

**Chair of the Committee, Dr Andrew Southcott MP**—How many of our 34 extradition treaties use the no evidence approach? I am happy if you take it on notice.

**Response:**

Of the 34 countries with which Australia has a bilateral extradition treaty relationship, 30 of those treaties adopt the 'no evidence' standard.

The table below outlines the standard of evidence that applies in each of Australia's bilateral extradition treaties.

<b>Standard of Evidence</b>	<b>Countries</b>
No Evidence	Argentina, Austria, Belgium, Brazil, Chile, Ecuador, Finland, France, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Latvia, Luxembourg, Mexico, Monaco, Netherlands, Norway, Paraguay, Philippines, Poland, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, Venezuela.
Reasonable Grounds	Republic of Korea, United States of America.
Prima Facie	Hong Kong, Israel.