

Committee Comment

- 4.1 The Committee considers this Bill to be an important contribution to improving Australia's international crime cooperation legislation. The Committee also recognises that safeguards in extradition and mutual assistance processes are vital to ensure the protection of individual rights.
- 4.2 It is the conclusion of the Committee that the Bill achieves an appropriate balance in streamlining processes and maintaining appropriate safeguards in terms of grounds for refusal and the discretionary powers of the Attorney-General.
- 4.3 The Committee also recognises the extensive consultation processes which has taken prior in the development of the principles underpinning the Bill and the circulation of the exposure draft of the Bill. In 2009 around 26 submissions were received by the Attorney-General's Department in public consultation on an initial exposure draft of the Bill. Extensive amendments were made following that consultation process. Earlier this year when a second exposure draft of the Bill was released, around 30 submissions were received. Once again, a number of amendments were made to address concerns raised.
- 4.4 Following the referral of the Bill to this Committee, a total of six submissions were received. While noting some remaining concerns with certain aspects of the Bill, the submissions also remarked on the many positives changes which had been implemented during the development of the Bill.
- 4.5 The Committee considers that the referral of this Bill to the Committee as part of the final stages of parliamentary scrutiny is appropriate and useful.
- 4.6 The process of the Committee inquiry has affirmed the rigour of previous consultations and has allowed further interrogation of the appropriate

balance achieved between streamlined cooperative processes and human rights protection.

Recommendation 1

The Committee recommends that the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011 be passed by the House of Representatives.

- 4.7 The Committee fully supports the Bill, although as a matter of principle it queries the necessity of the presumption against bail in relation to extradition processes. The Committee is concerned that this statutory presumption against bail unnecessarily restricts the judge in the exercise of his or her judicial discretion to determine whether a person should be remanded in custody or on bail, having regard to the individual circumstances of the case and the interests of justice.
- 4.8 The Committee considers that the Extradition Act could continue to operate effectively if there was no statutory presumption in favour of or against bail. It should rightly be the role of the judiciary to determine the merits and risks of bail in each and every case.
- 4.9 The Committee does not anticipate that a change in the proposed statutory presumption in relation to bail would lead to a significant change in the outcome of bail hearings in extradition cases. Indeed, in most extradition cases it would be expected that a person would be remanded in custody due to the inherent risks of a known fugitive further attempting to flee the country to evade justice.
- 4.10 However it is the conclusion of the Committee that an assessment of the risk of a person absconding should be a matter for a magistrate to consider having regard to all the circumstances in the case. Consequently, the Committee recommends that the Government gives consideration to removing the presumption against bail which operates in the Extradition Act by allowing individuals to be granted bail only in 'special circumstances'.

Recommendation 2

The Committee recommends that the Australian Government give consideration to removing the presumption against bail which operates in the *Extradition Act 1988* by allowing individuals to be granted bail only in special circumstances.

- 4.11 While fully supporting the amendments proposed in the Bill, the Committee notes the gravity of extradition and mutual assistance matters and the need for transparency and monitoring of processes in this area.
- 4.12 In the report the Committee has noted the increased importance of undertakings received from other countries for facilitating extradition and mutual assistance processes. It is the recommendation of the Committee that, similar to the requirement for the reporting of breaches of substantive obligations under bilateral extradition agreements, there should be a requirement for the Attorney-General's Department to provide an annual report of any breaches of undertakings by a foreign country in relation to both extradition and mutual assistance processes.
- 4.13 Further, should a serious breach of an undertaking occur, the Committee recommends that the Minister for Justice or the Attorney-General be required to immediately report this breach to the Parliament.

Recommendation 3

The Committee recommends that the Attorney-General's Department be required to provide in its annual report a record of any substantive breach of an undertaking given by a foreign country in relation to extradition or mutual assistance processes.

The Committee also recommends that, should a serious breach of an undertaking occur, the Minister for Justice or the Attorney-General be required to immediately report this breach to the Parliament.

- 4.14 In addition, the Committee notes the concerns of some submitters regarding the operation of the safeguards and the scope for the Attorney-General to exercise his or her discretion. The capacity of the Attorney-General to consider all factors in exercising his or her discretion is directly

related to the quality and integrity of the information provided. It is essential that all relevant issues are investigated and duly considered to enable the Attorney-General to appropriately exercise his or her general discretion to grant or refuse a request for extradition or mutual assistance.

- 4.15 Given the gravity of the issues at stake, the Committee recommends that a future review of the implemented changes should be undertaken. The Committee considers that such a review should be limited to the operation of the amendments contained in this Bill, with a focus on the appropriateness and scope of the safeguards introduced.
- 4.16 The Committee recommends that such a review is completed within three years from when the Bill is enacted.

Recommendation 4

The Committee recommends that, within three years of its enactment, the Attorney-General's Department conduct a review of the operations of the amendments contained in the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011.

Mr Graham Perrett MP
Chair
12 September 2011