



Our reference: 2006-0047-01

Mr James Rees  
Committee Secretary  
Joint Standing Committee on Treaties  
Parliament House  
CANBERRA, ACT 2600

Dear Mr Rees

### **EXTRADITION AND MUTUAL ASSISTANCE TREATIES WITH MALAYSIA**

I refer to your letter of 27 June 2006 inviting my Office to make a submission to the Joint Standing Committee on Treaties ('the Committee') regarding its current inquiry into extradition and mutual assistance treaties with Malaysia.

While my Office does not have specific comments to make on these treaties, I would draw the Committee's attention to a recent submission made by my Office to the Attorney-General's Department on the subject of its review of Australia's extradition arrangements ('the AGD submission'). A copy of this submission is attached.<sup>1</sup>

In summary, the key points my Office made in that submission are as follows:

- On some occasions, the public interest in maintaining the safety and security of the Australian community may warrant diminishing the privacy protections that are otherwise afforded to personal information.
- The handling of personal information for the purpose of extradition should be transparent and subject to clear rules which ensure that transparency and also provide for accountability.
- Australian Government agencies should ensure that their handling of personal information, particularly where it is disclosed to overseas jurisdictions, complies with the *Privacy Act 1988* ('the Privacy Act').

There are a number of authorities provided in the Privacy Act under which agencies may disclose personal information. These include for the purpose of enforcing criminal law and where the disclosure is required or authorised by law. However, in regard to the former, this authority should not be interpreted too broadly. In regard to the second exception, the meaning of "law" for the purpose of statutory interpretation may not extend to include an international instrument.

- Agencies may best meet their Privacy Act obligations by pursuing clear legislative authorisations for the handling of personal information pursuant to extraditions. Such authorisations could, most obviously, be achieved by provisions in the *Extradition Act 1988 (Cth)* and the *Mutual Assistance in*

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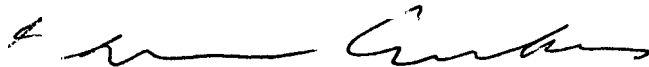
The submission is also available electronically from  
[http://www.privacy.gov.au/publications/sub\\_agd\\_extradition200603.html](http://www.privacy.gov.au/publications/sub_agd_extradition200603.html)

*Criminal Matters Act 1987 (Cth)* which expressly authorise disclosures of personal information for the purposes of those Acts.

- It would be good privacy practice that personal information should not be transferred to a foreign jurisdiction unless the foreign jurisdiction offers privacy protections substantially similar to Australian privacy standards. Where such protections are not in place, a series of administrative arrangements, memoranda of understanding and protocols may be necessary.

Should you wish to discuss this matter further, the contact officer is Andrew Hayne, Deputy Director, Policy, 02 9284 9800, or email [andrewhayne@privacy.gov.au](mailto:andrewhayne@privacy.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karen Curtis', with a stylized flourish at the end.

Karen Curtis  
Privacy Commissioner

26 July 2006