

JOINT STANDING COMMITTEE ON TREATIES

REPORT 131: TREATIES TABLED ON 21 AUGUST, 11 AND 18 SEPTEMBER 2012

GOVERNMENT RESPONSE

Recommendation 2: The Committee recommends that new and revised extradition agreements should explicitly provide a requirement that the requesting country provide annual information concerning the trial status and health of extradited persons and the conditions of the detention facilities in which they are held.

The Government does not accept this recommendation.

The Government notes that the Committee made a similar recommendation in its Report 110 (Recommendation 4), and the Government's response to Report 110, which was tabled in February 2012, did not accept that recommendation. In considering Recommendation 2 of the current Report, the Government has carefully considered its previous response to Report 110 and the operation of Australia's extradition framework since that response. The Government has concluded that Australia's current extradition arrangements and policies remain appropriate and effective at this time.

The Government reiterates its view that the most appropriate time at which to examine any potential human rights concerns is *before* extradition occurs, during the extensive review process. This is consistent with Australia's obligations under international human rights law and with international extradition practice. As noted in the Government's Response to Report 110, the extradition process in Australia includes extensive procedural safeguards, which are included in the *Extradition Act 1988* and in bilateral treaties. For example, Australia will not extradite a person if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life, application of the death penalty, or cruel, inhuman or degrading treatment or punishment.

In addition, since the time of the Government's response to Report 110, the Parliament has enacted the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012*. This Act contains a number of significant amendments to further strengthen the protections in the *Extradition Act 1988*. These amendments include a new ground for refusing extradition where the person may be punished, or discriminated against, upon surrender on the basis of his or her sex or sexual orientation, as well as amendments to strengthen protections in situations where a person may be subjected to torture. The Government will continue to closely monitor the operation of Australia's extradition framework, and will examine the need for any further amendments as required.

As noted in the Government's Response to Report 110, the Government has established monitoring mechanisms in relation to Australian nationals who have been extradited overseas. The Government is able to conduct this monitoring because of the consular rights provided for under the *Vienna Convention on Consular Relations* and the resources provided to support Australia's consular network. In 2011-12, the Department of Foreign Affairs and Trade provided consular assistance to 236 Australian nationals serving prison sentences overseas. In addition, when a foreign national is extradited from Australia to a third country, the Government has agreed to formally advise that person's country of citizenship of his or her detention and extradition, subject to that person's consent (noting the constraints on the disclosure of personal information under the *Privacy Act 1988*).

As also noted in the Government's Response to Report 110, the Government has agreed to include additional information on persons extradited from Australia in the Annual Reports of the Attorney-General's Department, including information on:

- extradition requests granted by Australia and the categories of the relevant offences by reference to the countries which made the request
- the number of Australian permanent residents extradited, and
- any breaches of substantive obligations under bilateral extradition agreements noted by Australian authorities.

Accordingly, in 2011-12, the Attorney-General's Department Annual Report included the following information:

- **10** extradition requests were granted by Australia in 2011-12. This included:
 - **Jurisdictions to which extradition was granted:** United Kingdom (6), Hong Kong (1), Indonesia (1), Ireland (1), United States (1)
 - **Offence categories:** Child sex and child exploitation offences (4), Drugs (1), Theft and/or fraud (3), Corruption (1), Culpable driving (1)
 - **Citizenship of person extradited:** Australia (5), Hong Kong (1), Ecuador (1),* United Kingdom (3),* United States (1)
- **No permanent residents** were extradited in the reporting period.
- **No breaches of substantive obligations** contained in bilateral extradition treaties were noted in the reporting period.

*One person was a dual Ecuadorian-United Kingdom national.