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17 MAY 2004

BY:.....

**GOVERNMENT RESPONSE TO THE JOINT STANDING  
COMMITTEE ON TREATIES INQUIRY INTO AUSTRALIA'S  
EXTRADITION LAW AND POLICY**

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**COMMONWEALTH GOVERNMENT RESPONSE**

**Recommendation 1**

**While acknowledging the practical difficulties associated with changing the basis of Australia's extradition arrangements, we do not favour the continuation of the default 'no evidence' model in relation to requests for extradition from Australia.**

**We recommend that the Attorney-General refer for inquiry and report by the Australian Law Reform Commission matters relating to the appropriate evidentiary standard for extradition requests to Australia. The terms of reference for this inquiry should be sufficiently broad to allow the Commission to consider:**

- **the merits and consequences of adopting the 'record of the case' model used by Canada**
- **the merits and consequences of adopting the 'probable cause' model used by the United States of America**
- **other approaches to raising the evidentiary standard for extradition requests to Australia**
- **international practice in relation to extradition arrangements, including the availability of appropriate safeguards for those persons subject to a request for extradition, and**
- **the impact of any changes on Australia's existing and future network of extradition arrangements.**

Not accepted.

The evidentiary standard under which Australia conducts its extradition relations is a matter of policy, to be determined taking into account a wide range of considerations outside the legal sphere. These matters are not appropriate for reference to the ALRC, a body whose focus is on reform of the law.

The "no evidence" standard has allowed Australia to enter into extradition relations with 31 countries on this basis. Many of these countries are European or Latin American countries which use the "civil law" system. Because of differences between the "civil law" and "common law" systems (which Australia and most of the Commonwealth use), these countries are effectively unable to conduct extradition

relations on any basis other than the "no evidence" standard. These countries remain significant partners in international criminal justice arrangements.

This expansion of Australia's extradition network has allowed Australia to participate more effectively in international efforts to combat serious and transnational crime. It allows Australia to bring to justice persons accused of committing serious crimes who have fled Australia. The Government cannot agree to adopt an evidentiary standard for extradition which would jeopardise this achievement.

## **Recommendation 2**

**We recommend that the Australian Law Reform Commission inquiry recommended above also examine:**

- **the extent of the court's role in considering extradition requests, specifically:**
  - **in scrutinising the evidence presented in support of an extradition request**
  - **in considering objections to extradition**
  - **in considering evidence that may be led by persons whose extradition is sought, and**
  - **in determining whether a person is an extraditable person.**
- **whether the current presumption against bail unless there are special circumstances should be modified in light of the onerous consequences to persons who might be considered to be at low risk of absconding**
- **whether the threshold for extraditable offences should be increased, and**
- **who should pay the costs of return to Australia of a person who has been surrendered to a foreign country to face trial.**

Noted.

The Government does not accept the recommendation to refer the appropriate evidentiary standard for extradition to the ALRC. The Government does not consider that the matters identified by the Committee in recommendation 2 warrant reference to the ALRC for inquiry in their own right.

The Government does recognise that some of the issues identified by the Committee in this recommendation should be investigated and considered further. The Government is grateful to the Committee for identifying these issues. The Government will review the *Extradition Act 1988* and Australia's extradition practice and will include these points in this review.

