

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN FEDERAL POLICE

**Question No. SBE15/096**

**Senator Collins asked the following question at the hearing on 20 October 2015:**

1. In answer to questions put on notice at last estimates, the AFP said:  
*In December 2005, the Australian Federal Police (AFP) sought the advice of the Commonwealth Director of Public Prosecutions in relation to preferred charges, if any, which could be brought against members of the 'Bali Nine' in Australia, and on the evidence available to support the laying of such charges.*
  - a. Did the AFP prepare a formal brief of evidence (or similar) and provide it to the CDPP? When?
  - b. Did the AFP consult with the AGD before it took this step?
  - c. Had the AGD asked the AFP to take this step?
2. What answer was received from the CDPP?
  - a. When was this received?
  - b. In what format?
  - c. Did the CDPP provide a formal advice that charges could not be brought in Australia against Chan and Sukumaran? If so, why not?
3. The documentation the AGD publishes to explain the extradition process states that the first step in any extradition is a request by law enforcement authorities to the Attorney-General and the obtaining of a warrant:
  - a. Did the AFP make any such request?
  - b. Did the AFP seek any arrest warrant? Did it obtain any arrest warrant?

**The answer to the honourable senator's question is as follows:**

1. a. Refer also to answer to question BE15/043 of May 2015.  
In December 2005, the Australian Federal Police (AFP) sought the advice of the Commonwealth Director of Public Prosecutions (CDPP) in relation to preferred charges, if any, which could be brought against members of the 'Bali Nine' in Australia, and on the evidence available to support the laying of such charges. This advice was sought to determine whether there may have been sufficient evidence available to enable any of the Bali Nine to be extradited to Australia to face charges and did not represent a formal brief of evidence or similar.
- b. As indicated in response to question BE15/088 of May 2015, in late 2005 AGD worked with agencies, including the AFP, in relation to the policy on the possibility of extradition requests for persons charged with offences in foreign jurisdictions, including the Bali Nine.
- c. It is a matter for law enforcement and prosecution authorities to determine the operational question of whether a person will be charged and prosecuted under Australian law.

2. The advice sought by the AFP was on the basis of identified evidentiary material and the CDPP provided advice based on this material. The details of the CDPP's response to the AFP's request for advice are subject to legal privilege.
  - a. Responses were received from the CDPP on 9 December 2005 and 17 December 2005.
  - b. The responses were in the form of letters from the CDPP to the then National Manager, Border and International Network, Assistant Commissioner Michael Phelan.
  - c. As stated above, the details of the CDPP advice are subject to legal privilege.
3.
  - a. No.
  - b. No.