THE HON KEVIN RUDD MP

MINISTER FOR FOREIGN AFFAIRS
CANBERRA

The Hon Kelvin Thomson MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

16 JAN 2012

Dear Mr Thomson

I refer to Report 110 of the Joint Standing Committee on Treaties (JSCOT), which was presented to Parliament on 15 March 2010.

Report 110 considered nine treaty actions and made formal recommendations concerning the *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters.* JSCOT also recommended (recommendation 3) that the Minister for Foreign Affairs write to all Ministers to remind them of the agreed timeframe for tabling treaty actions. The acting Minister for Foreign Affairs wrote accordingly on 16 September 2011.

I enclose for your information the Government response to JSCOT Report 110, which has been approved by the Prime Minister and appropriate Ministers.

Yours sincerely

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JOINT STANDING COMMITTEE ON TREATIES

REPORT 110: TREATIES TABLED ON 18, 25 (2) AND 26 NOVEMBER 2009 AND 2 (2) FEBRUARY 2010

GOVERNMENT RESPONSE

Recommendation 3: *Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities* of 29 May 1980, as amended

Recommendation 3: The Committee recommends that the Minister for Foreign Affairs write to all other ministers to remind them that, when they are planning to enter into a treaty, they must factor in the agreed 15 to 20 sitting day timeframe for the Committee to conduct its inquiry.

The Government agrees with the Committee that requests for the expeditious consideration of a treaty should be reserved for exceptional circumstances. The Acting Minister for Foreign Affairs, the Hon Dr Craig Emerson MP, wrote to Ministers on 16 September 2011 to remind them of the need to factor in the 15 to 20 sitting day timeframe when tabling treaty actions.

Treaty tabling timeframes are also highlighted in the 2011 edition of *Signed, Sealed and Delivered - Treaties and Treaty Making: Officials' Handbook*. This handbook contains the domestic and international legal framework supporting treaties and sets out the steps involved in treaty making, including critical timelines and individual departments' and agencies' responsibilities. It is widely distributed and readily available to assist officials from all Commonwealth agencies. When dealing with line agencies about tabling treaties, Treaties Secretariat staff regularly reinforce the information regarding the importance of maintaining the timelines set out in *Signed, Sealed and Delivered*. The need to factor in the agreed timeframe for Committee inquiries and deliberations in respect of treaty actions is also emphasised in the annual Treaty Seminar conducted by the Treaties Secretariat of the Department of Foreign Affairs and Trade.

Recommendations 4-7: *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters*

The Government thanks the Committee for its consideration of the *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters*. The Government provides the following responses to the Committee's recommendations.

Recommendation 4: 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 Committee suggests that implementing this recommendation would mitigate perceived risks resulting from the introduction of the 'no evidence' standard in Australian extradition practice in 1986. The Government does not consider that the

removal of the prima facie case requirement is directly relevant to the question of human rights protections available to a person following his or her surrender to another country. An assessment of whether or not an application for extradition has met the prima facie standard of evidence is separate from consideration of post-extradition issues such as the person's trial status, health and conditions of detention.

Further, and more importantly, the Government considers that the most appropriate time at which to examine any potential human rights concerns is *before* extradition occurs. The extensive review process during extradition proceedings provides ample opportunity for any such concerns to be raised and investigated.

This approach is consistent with Australia's obligations under international human rights law and mirrors Australia's approach to considering the risk of human rights abuses *before* an individual is removed from Australia under the *Migration Act 1958.* It is also consistent with international extradition practice. It is likely that current and potential extradition partners would not be prepared to accept the inclusion of explicit monitoring obligations in extradition arrangements with Australia.

The extradition process in Australia includes extensive procedural safeguards. These safeguards are included in the *Extradition Act 1988*, as well as in bilateral treaties. For example, Article 4(3)(d) of the *Extradition Treaty between Australia and the Republic of India* provides for the refusal of an extradition request where the Requested State believes that the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, including because of the person's age or state of health. This is in addition to other internationally accepted grounds of refusal, such as where the death penalty may be imposed or where the Requested State has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion.

Further, as noted in the Government Response to Report 91 of the Committee, Australia has established monitoring mechanisms in relation to Australian nationals who have been extradited overseas. This monitoring is able to be conducted because of the consular rights provided for under the *Vienna Convention on Consular Relations* and the resources provided to support Australia's consular network. The consular role reflects the Australian Government's particular responsibility for assisting its nationals while overseas.

Also consistent with the Government Response to Report 91, 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.

Recommendation 5: The Committee recommends that all Australians who are subject to extradition should receive a face to face meeting with an Australian consular official, except where the person has made explicit their objection to consular assistance to the satisfaction of consular officers.

The Government accepts this recommendation. Current Australian Government procedures ensure that, wherever practically and legally possible, consular officials visit Australians who are imprisoned overseas at least annually, and normally more frequently than this. In some limited circumstances, face to face meetings may not be practicable or necessary. For example, in a large country such as the United States where there are significant numbers of Australians imprisoned, they are widely dispersed and consular staff are familiar with the standard of prison conditions, consular assistance can be provided satisfactorily via regular telephone calls to the prisoner.

Recommendation 6: The Committee recommends that, when a foreign national is extradited from Australia to a third country, the Australian Government formally advise the government of that person's country of citizenship that one of its nationals has been extradited from Australia to a third country.

The Government accepts this recommendation in principle. When foreign nationals are detained in Australia for the purposes of extradition, law enforcement officers will generally inform them that they are entitled to request that their consular authorities be informed of their detention, and consular authorities are entitled to visit and communicate with the person. In accordance with the constraints of disclosure of personal information under the *Privacy Act 1988*, the Government will only notify the extraditee's country of citizenship of their detention and extradition if the individual consents to the disclosure of personal information.

Recommendation 7: The Committee supports the *Extradition Treaty between Australia and the Republic of India* and the *Treaty between Australia and the Republic of India on Mutual Legal Assistance in Criminal Matters* and recommends that binding treaty action be taken.

The Government accepts this recommendation. Regulations have been made under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*. The treaties entered into force on 20 January 2011.