

Little, Matthew

From: Clifton, Jacob
Sent: Tuesday, 1 November 2011 5:04 pm
To: McMullan, Kathryn; Nelson, Diana
Subject: Ludlam Senate motion re Assange [SEC=UNCLASSIFIED]
Attachments: ScanDoc_2011_11_01_15_02_06_097.pdf

UNCLASSIFIED

Kathryn, Diana,

Please see Senate Notice of Motion form attached from Ludlam regarding Assange.

I am advised that Aus is unable to prevent the extradition of Assange from Sweden to the USA.

This would therefore prevent Government members supporting the motion.

Please let me know if you have any issues/questions with this approach.

Thanks,

Jacob.

Jacob Clifton
Adviser
Office of the Hon Robert McClelland MP
Attorney General

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PARLIAMENT OF AUSTRALIA - THE SENATE
GOVERNMENT WHIP

SENATE NOTICE OF MOTION ADVICE FORM

I recommend that the Notice of Motion of moved by:

**SENATOR LUDLAM
JULIAN ASSANGE**

1. The motion is to be declared:

FORMAL/NOT FORMAL

(Strike out the option not supported)

2. If the motion is to be voted on it is to be:

SUPPORTED BY THE GOVERNMENT

BE OPPOSED BY THE GOVERNMENT

(Strike out the option not supported)

3. In the case of a motion to refer a matter to a Committee, has the Chair of the Committee been consulted?

YES/NO

Signed:

Chief of Staff

Date...../.../2011


Please fax back to Kay O'Leary on 6277 3425 or email: kay.oleary@aph.gov.au


NOTICE OF MOTION

SENATOR LUDLAM

I give notice that on 2 November 2011 I shall move that the Senate

1. Notes that
 - a) The High Court in London will bring down its decision on Wednesday 2 November 2011 regarding Sweden's request to extradite Julian Assange.
2. Calls on the government to ensure that
 - a) The consular and legal rights of all Australian citizens overseas are fully protected;
 - b) If extradited to Sweden for questioning, Mr. Assange not be subject to further extradition from Sweden to the USA under a bilateral agreement to which Australia is not party.


1 November 2011

Lodged (12)
12-11-11


Clifton, Jacob

From: Nelson, Diana [Diana.Nelson@dfat.gov.au]
Sent: Tuesday, 1 November 2011 5:44 PM
To: McMullan, Kathryn; Clifton, Jacob
Subject: RE: Ludlam Senate motion re Assange [SEC=UNCLASSIFIED]

we are looking at this now. diana

Diana Nelson
Office of the Hon. Kevin Rudd MP
Minister for Foreign Affairs

P: +61 2 6277 7500 M: [REDACTED] S 47F(1)
Parliament House, Canberra ACT 2600
www.foreignminister.gov.au

From: McMullan, Kathryn [mailto:Kathryn.McMullan@ag.gov.au]
Sent: Tuesday, 1 November 2011 5:08 PM
To: Clifton, Jacob; Nelson, Diana
Subject: RE: Ludlam Senate motion re Assange [SEC=UNCLASSIFIED]

Thanks Jacob – that is my understanding and on that basis we would not be able to support the motion

From: Clifton, Jacob
Sent: Tuesday, 1 November 2011 5:04 PM
To: McMullan, Kathryn; Nelson, Diana
Subject: Ludlam Senate motion re Assange [SEC=UNCLASSIFIED]

UNCLASSIFIED

Kathryn, Diana,

Please see Senate Notice of Motion form attached from Ludlam regarding Assange.

I am advised that Aus is unable to prevent the extradition of Assange from Sweden to the USA.

This would therefore prevent Government members supporting the motion.

Please let me know if you have any issues/questions with this approach.

Thanks,

Jacob.

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THE HON KEVIN RUDD MP

MINISTER FOR FOREIGN AFFAIRS
CANBERRA

Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

A handwritten signature in black ink that reads 'Robert'.

I am writing to you in respect of Julian Assange. As you will be aware, Mr Assange is currently the subject of extradition proceedings by Sweden under the European Arrest Warrant system in relation to a sexual assault matter. On 2 November the UK High Court upheld Sweden's request for extradition and Mr Assange has been granted 14 days from that date to file an application for leave to appeal this decision in the UK Supreme Court.

Separately, there have been suggestions that a grand jury has been empanelled in Alexandria, Virginia to investigate whether Mr Assange can be charged under US law for offences related to Wikileaks. I understand that grand juries can issue indictments under seal, and that theoretically one could already have been issued for Mr Assange.

Mr Assange's lawyers have written to me to express concerns that, based on past practice, the US could commence extradition proceedings against Mr Assange in the UK or Sweden, and that the existence of any sealed indictment will only become known at this point.

While the US Government has not confirmed to us the existence of a grand jury or sealed indictment, the US Attorney General, Eric Holder, has said publicly that the Administration was pursuing a "very serious investigation" into the matter. He also said that charges could be brought under the Espionage Act of 1917 or "other statutes, other tools...at our disposal".

Media commentary has suggested that the most likely route to a successful prosecution would be to show that Mr Assange had acted as a co-conspirator - soliciting, encouraging or assisting Bradley Manning to obtain and provide the documents. Commentary has also suggested that any prosecution of Mr Assange under the Espionage Act would be unprecedented.

Recent media reporting indicates that Mr Assange may be considering abandoning any appeal against the UK High Court's decision to uphold the extradition to Sweden. If that is the case, we can expect Mr Assange to be extradited to Sweden very shortly to face proceedings in that country.

s 33(a)(iii)

While extradition matters are the responsibility of your portfolio, as Minister for Foreign Affairs, I have a consular interest in this matter. At my direction, DFAT have been providing full consular support for Mr Assange. They have attended court hearings, visited him when he was in prison, engaged with the UK prison authorities in relation to his interests, and stayed in touch with his family and legal representatives.

s 33(a)(iii)

Given the prominent nature of Wikileaks matters, s 33(a)(iii) [redacted]
s 33(a)(iii) [redacted] I am copying this letter to the
Prime Minister.

Yours sincerely



Kevin Rudd

15 xi 2011



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Dear Foreign Minister

Thank you for your letter dated 15 November 2011 regarding Mr Julian Assange, which has been forwarded on the basis of your consular interest in Mr Assange.

In your letter you seek my views, as the minister with portfolio responsibility for extradition,

s 33(a)(iii)

Extradition is a matter of bilateral law enforcement cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed.

Australia would, of course, continue to make representations in relation to the treatment of Mr Assange including in the event he could possibly be subject to the death penalty. In this context, I note your advice that, at your direction, officers from your Department have been providing full consular support to Mr Assange. This includes attending court hearings, prison visits and communication with his family and legal representatives.

I further understand that officers from your Department have raised at a senior level with United Kingdom and Swedish authorities Australia's expectation that Mr Assange's case will proceed in accordance with due process. It is also open to Mr Assange to exercise any appeal rights that are available to him at a national or European level. I note that, since the date of your correspondence, Mr Assange has exercised his right in the United Kingdom to seek leave

to appeal against the recent decision of the High Court upholding his extradition to Sweden, to the Supreme Court.

I have copied the Prime Minister directly into my response to your correspondence.

The action officer for this matter in my Department is Anna Harmer who can be contacted on (02) 6141 3280.

Yours sincerely

Robert McClelland

Clifton, Jacob

From: Post, Katherine
Sent: Friday, 18 November 2011 12:20 PM
To: Whelan, John; Clifton, Jacob; RBM (AG)
Cc: Langton, Adele; Little, Matthew
Subject: Re: Response to Rudd re Assange with changes [SEC=UNCLASSIFIED]

Classification UNCLASSIFIED

AG added a few commas but is otherwise happy for this to go with elec signature

Thanks
Kat

Dear Foreign Minister

Thank you for your letter dated 15 November 2011 regarding Mr Julian Assange, which has been forwarded on the basis of your consular interest in Mr Assange.

In your letter you seek my views, as the Minister with portfolio responsibility for extradition, [REDACTED]

s 33(a)(iii)

It is clear that as an Australian citizen, Mr Assange should be provided with the same support afforded any Australian citizen finding themselves in the circumstances of being charged with offences in a foreign country. To this end I note and support the full consular assistance currently being provided to Mr Assange by Australia including attendance by consular officials at court hearings, prison visits and communication with his family and legal representatives.

I have sought advice from the Attorney General's Department on the matters you have raised given the international legal complexities associated with extradition. The advice provided to me mirrors the advice I understand has been provided by the Department of Foreign Affairs and Trade to Mr Assange's legal representatives.

First, I understand that officers from your Department have raised at a senior level with United Kingdom and Swedish authorities Australia's expectation that Mr Assange's case will proceed in accordance with due process. It is also open to Mr Assange to exercise any appeal rights that are available to him at a national or European level. I note that, since the date of your correspondence, Mr Assange has exercised his right in the United Kingdom to seek leave to appeal against the recent decision of the High Court upholding his extradition to Sweden, to the Supreme Court [REDACTED]

s 33(a)(iii)

Further, as outlined in legal advice, extradition is a matter of bilateral law enforcement cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. [REDACTED]

s 33(a)(iii)

Finally, with regard to Mr Assange's ability to return to Australia at the conclusion of the current proceedings, I note the advice from DFAT that Mr Assange's passport has not been cancelled and, in the absence of any further action, Mr Assange would be free to return to Australia. Whilst not a relevant consideration at this stage, in relation to any possible extradition requests made of Australia by a foreign country such requests are assessed on a case by case basis.

s 33(a)(iii)

[REDACTED] I note you have copied the Prime Minister with your correspondence and I have similarly provided her with my reply. The action officer for this matter in my Department is Anna Harmer who can be contacted on (02) 6141 3280

Yours sincerely

From: Whelan, John
To: Clifton, Jacob; RBM (AG)
Cc: Post, Katherine; Langton, Adele; Little, Matthew
Sent: Fri Nov 18 12:09:09 2011
Subject: Re: Response to Rudd re Assange with changes [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

Good letter! JW

From: Clifton, Jacob
To: RBM (AG)
Cc: Post, Katherine; Langton, Adele; Whelan, John; Little, Matthew
Sent: Fri Nov 18 12:05:05 2011
Subject: Response to Rudd re Assange with changes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Robert,

Please see the response to Rudd below incorporating your changes.

Would you like me to attach your electronic signature and send?

Jacob.

The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Dear Foreign Minister

Thank you for your letter dated 15 November 2011 regarding Mr Julian Assange, which has been forwarded on the basis of your consular interest in Mr Assange.

In your letter you seek my views, as the Minister with portfolio responsibility for extradition,

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[REDACTED]
s 33(a)(iii)

Further, as outlined in legal advice extradition is a matter of bilateral law enforcement cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. Australia is not a party to any extradition discussions that may take place between either Sweden and the United States or the United Kingdom and the United States [REDACTED]

[REDACTED]
s 33(a)(iii)

Finally, with regard to Mr Assange's ability to return to Australia at the conclusion of the current proceedings, I note the advice from DFAT that Mr Assange's passport has not been cancelled and in the absence of any further action Mr Assange would be free to return to Australia. Whilst not a relevant consideration at this stage, in relation to any possible extradition requests made of Australia by a foreign country such requests are assessed on a case by case basis.

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Yours sincerely



ATTORNEY-GENERAL
THE HON ROBERT MCKEILLAND MP

The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Dear Foreign Minister

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In your letter you seek my views, as the Minister with portfolio responsibility for extradition,

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s 33(a)(iii)

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cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. Australia is not a party to any extradition discussions that may take place between either Sweden and the United States or the United Kingdom and the United States.

s 33(a)(iii)

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s 33(a)(iii)

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Yours sincerely

Robert McClelland

MATERIAL OUTSIDE AMBIT

Email – Page 1 of 4

Thanks and best wishes

Peter

Peter Scott
Director, Sanctions and Transnational Crime Section
International Legal Branch
Department of Foreign Affairs and Trade

Ph. + 61 2 6261 2922

Fax. + 61 2 6112 2922

Cell. [redacted] s 47F(1)

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From: Bytnerowicz, Gosia [mailto:Gosia.Bytnerowicz@ag.gov.au]

Sent: Friday, 25 November 2011 4:55 PM

To: Scott, Peter

Cc: Jackson, Maggie; Williams, Kelly; Harmer, Anna; French, Greg; Dawe, Katherine; Taylor, Julie

Subject: RE: Short Paper from Mr Rudd's Office for Senator Ludlam on "Temporary Surrender"
[SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Peter,

Thanks for your email. We'll work with you on Monday in relation to this. Julie will be the contact point for this on Monday (6141 3202 [redacted])

Kind regards,

Gosia

[redacted] s 47F(1)

Gosia Bytnerowicz | Senior Legal Officer
International Crime Cooperation Central Authority
Australian Government Attorney-General's Department
Robert Garran Offices | National Circuit | Barton ACT 2600
Tel +61 2 6141 3118 | Fax +61 2 6141 5457
gosia.bytnerowicz@ag.gov.au | <http://www.ag.gov.au/extraditionandma>

Act for a sustainable future - only print if needed

From: Scott, Peter [mailto:Peter.Scott@dfat.gov.au]

Sent: Friday, 25 November 2011 4:45 pm

To: Taylor, Julie

Cc: Jackson, Maggie; Williams, Kelly; Harmer, Anna; French, Greg; Bytnerowicz, Gosia; Dawe, Katherine

Subject: Short Paper from Mr Rudd's Office for Senator Ludlam on "Temporary Surrender" [SEC=UNCLASSIFIED]

Hi Julie

Mr Rudd's office has asked us to prepare a short paper (one or two pages only) for delivery on **Monday 28**

November on the practice of "temporary surrender" in international extradition. [redacted]

[redacted] s 33(a)(iii)

s 33(a)(iii)

We would be grateful for your assistance in preparing the Australian perspective in relation to the general practice of temporary surrender and perhaps a bit of a history of its introduction into Australian extradition treaties and the Extradition Act (and, if possible, when and why it started entering extradition treaties around the world).

s 33(a)(iii)

For your info, this is what we provided to our office (in a series of pretty hasty emails, so the language may be a bit loose), in response to an article on this issue on the swedenversusassange website:

Every modern extradition relationship recognises the concept of "temporary surrender" as expressed in Article VI (b) of the US-Sweden Extradition Treaty of 1983. You can find it in Australia's own Extradition Act (section 24 in relation to requests from extradition countries other than New Zealand to Australia for extradition; section 36 in relation to requests from New Zealand) and in Australia's modern extradition treaties (as in this example from the Treaty with UAE ratified this year - it also appears in our Malaysia Extradition Treaty of 2005 and others of recent years):

"ARTICLE 13 POSTPONEMENT OF EXTRADITION AND TEMPORARY SURRENDER

1. The Requested State may postpone the surrender of a person in order to proceed against that person, or so that that person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is sought. In such case the Requested State shall advise the Requesting State accordingly.
2. When the person is serving a sentence in the territory of the Requested State for an offence other than an offence constituted by an act or omission for which extradition is sought, the Requested State may temporarily surrender the person to the Requesting State to be prosecuted for an offence for which extradition is sought. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after proceedings against the person have concluded, in accordance with written conditions to be mutually determined by the States.
3. When, in the opinion of the competent medical authority in the Requested State, the person whose extradition is sought cannot be transported from the Requested State to the Requesting State without serious danger to the person's life due to grave illness, the surrender of the person shall be deferred until such time as the danger, in the opinion of the competent medical authority, has been sufficiently mitigated."

All protections provided to a person whose extradition is sought under the treaty apply to a "temporary surrender" as in the case of a standard surrender, including any obligations the requested state (in this case, Sweden), owes to other states (in this case, the UK) or generally (under, for example, EU Human Rights Treaties).

The purpose of temporary surrender is obvious: it allows prosecutions to occur as soon as possible after a crime has occurred, when evidence is fresh and witnesses' memories more reliable, rather than having to wait til another sentence in a foreign country is completed first. It is in fact a more just arrangement for all concerned than seeking to extradite and prosecute a person several years after their alleged crime was committed. It in no way undermines the procedural rights of the accused / extradited person.

The US-UK Extradition Treaty (entered into force 2007) includes the following article:

ARTICLE 14 Temporary and Deferred Surrender

1. If the extradition request is granted for a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. If the Requested State requests, the Requesting State shall keep the person so surrendered

in custody and shall return that person to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the States.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

The US-Sweden Treaty Article VI applies to "a person who is being prosecuted or is serving a sentence in the territory of the requested State for a different offense". So they don't need to be serving a sentence; they may simply be being prosecuted. The same is true for article 14 of the US-UK Extradition Treaty cited above.

Article IX of the Australia-US Extradition Treaty (as amended) is essentially identical to the US-Sweden and US-UK Treaties. It reads as follows:

(1) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State after the conclusion of the proceedings against that person, in accordance with conditions to be mutually determined in writing between the Contracting Parties.

(2) The requested State may postpone the extradition proceedings against, or the surrender of, any person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served.

We will give you our content as early as possible on Monday, so that you can check to see if you're comfortable with it.

Thanks for your assistance with this. Please let me know if you have any questions.

Best wishes

Peter

Peter Scott
Director, Sanctions and Transnational Crime Section
International Legal Branch
Department of Foreign Affairs and Trade

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Cell.

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Little, Matthew

From: Little, Matthew
Sent: Friday, 7 October 2011 1:08 pm
To: Clifton, Jacob
Subject: FW: Julian Assange ~~(SEC - IN CONFIDENCE)~~
Attachments: Email attachment - Letter from Birnberg Peirce & Partner Solicitors.tif

~~IN CONFIDENCE~~

From: Hemingway, Lisa
Sent: Friday, 7 October 2011 12:38 pm
To: McMullan, Kathryn; Little, Matthew
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: Julian Assange ~~(SEC - IN CONFIDENCE)~~

~~IN CONFIDENCE~~

Dear Kathryn and Matt,

Julian Assange

Further to your telephone conversation this afternoon with Kelly Williams, I attach a copy of the correspondence received by the Foreign Minister from Mr Assange's legal representatives in the United Kingdom.

I also provide below AGD's proposed response to the request for input into the Foreign Minister's response:

"Dear....,

Julian Assange – Response to Birnberg Peirce & Partners

I refer to your request for input from AGD in relation to the letter received from Mr Assange's solicitors (Birnberg Peirce & Partners).

A copy of the letter from Mr Assange's solicitors and our input has been provided to the Attorney-General's Office and the Minister for Home Affairs' Office.

I provide below our suggested input into the questions posed by Mr Peirce. The responses proposed by AGD are consistent with its position that extradition is a matter of bilateral law enforcement cooperation between states and that it is not appropriate for the Australian Government to comment on, or otherwise intervene in, discussions held by other countries in the context of their bilateral extradition relationships. To the extent that the questions relate to an assurance that Australia would not extradite Mr Assange to the United States, AGD highlights that whether Australia accepts a request from a foreign country, or determines to surrender a person to a foreign country, is a matter of ministerial discretion. In addition, pursuant to Article 1 of Australia's extradition treaty with the United States, each country has an obligation to extradite persons 'under the conditions and circumstances established by the Treaty'. In these circumstances, it is not possible nor appropriate for the Australian Government to make commitments about not extraditing a person. I note further that it is the Australian Government's longstanding policy not to confirm or deny whether Australia has received an extradition request from another country.

Questions 1 & 2

- *Extradition is governed by the domestic laws and practices of individual states. As such, the requirements and processes relating to extradition differ between countries.*
- *As extradition is a matter of bilateral law enforcement cooperation, the Australian Government does not consider it appropriate to comment on discussions which may occur between other states in the context of their bilateral extradition relationship.*

As to Question 3

- *Australia's extradition relationship with the United States is governed by the Extradition Act 1988 (Cth) and the Treaty on extradition between Australia and the United States of America done at Washington on 14 May 1974, as amended by the Protocol done at Seoul on 4 September 1990. All extradition requests made by the United States to Australia are considered in accordance with the legislation and treaty.*
- *As a matter of longstanding practice the Australian Government does not comment publicly on extradition matters, including whether it has received an extradition request, until the person is arrested or brought before a court pursuant to a request. Extradition requests made to Australia are considered on a case-by-case basis.*

AGD looks forward to receiving a copy of the Foreign Minister's proposed response to Mr Assange's solicitors for final clearance.

...."

Kind regards,

Lisa

Lisa Hemingway | A/g Director - Extradition Unit
International Crime Cooperation Central Authority
Australian Government Attorney-General's Department
Robert Garran Offices | National Circuit | Barton ACT 2600
Tel +61 2 6141 3301 | Fax +61 2 6141 5457
lisa.hemingway@ag.gov.au | www.ag.gov.au

Our ref:

Your ref:



Hon. Kevin Rudd MP
Minister for Foreign Affairs
Commonwealth of Australia

September 15th, 2011

Dear Mr. Rudd,

Malcolm Turnbull, who has taken an interest in the case of Julian Assange, has kindly offered to deliver this letter to you.

I represent Mr. Assange in the UK. A number of concerned persons in this country, some of whom are members of his Defence Fund and others who include prominent Australians in the UK, have suggested that it would be appropriate to place before you important information about this Australian citizen about which you may not be aware.

It is the considered opinion of all of the above, and of his lawyers in this country, that without the help of his government, Mr. Assange may well be in grave danger. His life has been threatened on a number of occasions notably by prominent figures in the United States. The prospect of his prosecution in that country, as the editor in chief of WikiLeaks, for matters that are not crimes, and certainly not crimes in Australia, as well as the further consequences of US prosecution give rise to parallel grave concerns

We currently await a judgment from the High Court in the UK regarding an application by the Swedish authorities for Mr. Assange's extradition on a European Arrest Warrant (EAW) regarding allegations of sexual offences in Sweden. He has not been charged in Sweden with any crime; one of the central arguments before the High Court is that if Mr Assange were to be prosecuted in Sweden following extradition, on the facts of what is alleged against him no criminal offence would have been committed in the UK or, indeed, in Australia. Given the extent of the public discussion, frequently on the basis of entirely false assumptions, of Mr Assange's potential criminality on either issue (ie potential prosecution in the United States or in Sweden), it is very hard to attempt to preserve for him any presumption of innocence.

The very real danger that faces Mr. Assange is that should the extradition request by Sweden be agreed by the courts here, once Mr Assange is in Sweden (and, we are informed inevitably held in custody even if not charged) an application for his 'temporary surrender' by the USA will most likely materialise. This may happen and even before any decision is made to bring criminal proceedings in Sweden. What it means is that Mr. Assange could be, without further ado, on his way to the United States and to a situation of considerable judicial uncertainty, not to say peril.

Response from
LOS covering
letter from
ADD/DFAH addressing
substance of
extradition
concerns.

DW 23/9/11

Birnberg Peirce & Partners

Solicitors

14 Inverness Street
London NW1 7HJ
Telephone: 020 7911 0166
DX 57059 Camden Town
Fax: 020 7911 0170
Immigration Dept Fax: 020 7388 9036
Email: [name]@birnbergpeirce.co.uk

Partners
Gareth Peirce
Nigel Leakin
Micaela Willis Stewart

Practice Manager
Dawn Elkin

Solicitors
Smita Bajaria
Rachael Despicht
Matt Foot
Ronnie Graham
Daniel Guedalla
Sarah Kellas

Parti Kemp
Alastair Lyon
Sajida Malik
Sally Middleton
Henry Miller
Irene Numbard
Barry O'Connor

Sonia Routledge
Harriet Watrich

Immigration Caseworkers
Irfan Cangain
Liz Farroll
Anu Ganarathar

*Criminal
Defence Service*



*Community
Legal Service*



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It is likely that the US has already issued a sealed indictment, and that this would then be activated once the proceedings in the UK have concluded. (One example of commentary on this potential appears on the website below.)

<http://www.csmonitor.com/USA/Justice/2010/1202/WikiLeaks-founder-Julian-Assange-Has-US-already-indicted-him>

So far as the UK is concerned, were the extradition case to Sweden to fail in the courts here, the US would be most likely, if the above presumption is correct, to initiate extradition proceedings in the UK, as opposed to Sweden. It is a matter of public record that the US on a significant number of occasions has synchronised extradition requests with the conclusion of a pending case in the relevant domestic jurisdiction, and has relied on the cooperation of the requested country to do so; the UK and Sweden have in the past provided exactly such close cooperation. Were Mr Assange's appeal in the UK to succeed conclusively in the near future (and were no further appeal to be possible for the prosecution to the Supreme Court), a provisional warrant could be issued at short notice by the USA pending the obtaining of a warrant issued by a US court on the basis of a grand jury indictment, if the potential for such a warrant were claimed to exist.

There have been a number of cases of extradition synchronised in precisely this way. For example:

- The case of Eiderous, who was held in prison in the UK in relation to immigration matters until 9 July 1999, when he succeeded in a habeas corpus application. Within hours a warrant was obtained from the USA on the basis of the testimony of a "co-operating witness" (ie a witness who would otherwise face a severe sentence in the absence of cooperation) and within 24 hours of his release he was arrested.

- The case of Kassir. This Swedish national successfully challenged an extradition request by the US; the Swedish extradition treaty excludes Swedish nationals from extradition to the US. He was freed from prison. However, Kassir was also a Lebanese national. He was arrested in Prague airport while in transit to Lebanon, and subsequently extradited to the US (also on the basis of the evidence of a "co-operating witness"). The Swedish press reported that was probably coordinated by the Swedish special police, SÄPO, and that this type of coordination is the standard operating procedure of mutual assistance in transnational crime - link: <http://www.dn.se/nyheter/sverige/jag-alskar-bin-ladin>.

I myself have had lengthy experience in cases involving extradition from the UK to the USA and have written about the grave consequences of extradition post 9/11 in this paper: **'America's non-compliance'**

<http://www.lrb.co.uk/v32/n09/gareth-peirce/americas-non-compliance>

The views I express in the above paper do not represent the viewpoint of a defence lawyer alone; they are shared across the board by many politicians, lawyers and members of the judiciary and are considered of such seriousness

that two Parliamentary committees have been hearing evidence on the issue of UK/US extradition during the past 6 months and a third, judicial enquiry, set up by the government is due to report soon, again on the same issue. The major points of concern relating to prosecutions in the US relate to coercive plea pressure (97% of defendants plead guilty in the USA), the excessive use of extreme isolation in prison and the enormity of potential sentences (the major factor in producing guilty pleas and, indeed, "co-operating witnesses").

It is our understanding that a grand jury has been convened in secret session in relation to Mr Assange in Alexandria, Virginia. The choice of this location for a potential prosecution of Mr Assange has raised expressions of considerable concern by experienced lawyers in the USA, the catchment area for a potential jury being drawn from the penumbra of Washington, DC but in particular from the extensive 'dormitory' area of the national security establishment.

It should be emphasised that Mr. Assange as editor in chief of WikiLeaks has, he has been advised, violated no known American law: indeed, US constitutional experts have given their opinion that he should enjoy complete protection, guaranteed by the First Amendment to the US Constitution, safeguarding as it does, freedom of information. Nevertheless however, a secret, or sealed, indictment may well be in existence, and being held until what is considered to be the most appropriate moment at which to issue an extradition request. This is the view of the former legal adviser to the State Department and the National Security Council, John Bellingham, who has said, "We could potentially see if he is prosecuted in Sweden and then still seek his extradition to the United States, and ask the Swedes to extradite him here [to the US]" and the *Independent* newspaper's diplomatic correspondent disclosed last December that Sweden and the US had already commenced talks about Julian Assange's extradition (link: <http://www.independent.co.uk/news/uk/crime/assange-could-face-espionage-trial-in-us-2154107.html>).

In consequence, it appears to us that we should request as a matter of urgency that the Australian government seek specific assurances from both the UK and Sweden regarding Mr. Assange's possible onward extradition.

We believe it is relevant therefore that we respectfully raise the following questions;

1. Is the Australian government aware of the potential for Mr Assange to be transferred under the Temporary Surrender regime (see Article VI of the Supplemental US-Sweden Extradition Treaty of 1984: US – Sweden Extradition Supplementary Treaty – 35 U.S.T. 2501) direct from Sweden to the US; and if so, what inquiries has the Australian government made in relation to the potential for Mr Assange to be transferred in this manner to the US? Has the Australian government sought to be a party to the negotiations between the United States and Sweden in these circumstances?

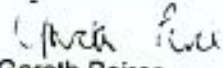
2. What assurances, beyond basic consular assistance, has the Australian government sought or obtained regarding Mr. Assange's due process rights and his ability to return direct to Australia at the conclusion of extradition proceedings in London? Has the Australian government made inquiries about both the UK's and Sweden's position in a possible three-way US-UK-Swedish negotiation regarding any potential request for Mr. Assange's onward extradition to the US?

3. Should Mr. Assange be able to return to Australia following a successful conclusion of the UK appeal, will the Australian government commit to not extraditing Mr. Assange, an Australian citizen, to the United States where there exists the real possibility of a politically motivated prosecution relating to WikiLeaks' publication, bearing in mind in particular that the work of WikiLeaks does not amount to a crime under Australian law – as we understand has been determined by the Australian Federal Police investigation ordered by the Prime Minister?

We hope that you will consider that these are serious and appropriate concerns for the Australian government to address on behalf of an Australian citizen. In particular the extraordinary prospect that Mr Assange has now hanging over him not one but two Damocles swords, of potential extradition to two different jurisdictions in turn for two different alleged crimes, neither of which are crimes in his own country, and that his personal safety and security has become at risk in circumstances that have become highly politically charged. As I hope I have been able to indicate, the issue of the consequences of extradition to the USA in particular has become one of exceptional concern in the UK in recent years in precisely such situations as those in which Mr Assange finds himself now. Should it assist you to have any further information in relation to the body of evidence being currently considered in the UK to determine whether such extradition arrangements should in fact continue in the future, I would be very pleased to provide it.

Thank you for giving this letter your attention. I very much look forward to hearing from you.

Yours sincerely,


Gareth Peirce
Birnberg Peirce & Partners

Clifton, Jacob

From: McMullan, Kathryn
Sent: Friday, 7 October 2011 1:29 PM
To: Hemingway, Lisa; Little, Matthew; Clifton, Jacob
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: RE: Julian Assange ~~{SEC-IN-CONFIDENCE}~~

Hi Lisa

I've discussed with Jacob in AGO

Can you see if you can beef up the input to Q3 please re dual criminality, death penalty and our non-refoulement obligations, and political crimes.

I appreciate that you don't want to be drawn on a hypothetical potential case but I think we can make clear that there are standard threshold elements that must be satisfied.

Happy to discuss further, and I'll give Kelly a quick ring.

Thanks, Kathryn

From: Hemingway, Lisa
Sent: Friday, 7 October 2011 12:38 PM
To: McMullan, Kathryn; Little, Matthew
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: Julian Assange ~~{SEC-IN-CONFIDENCE}~~

~~**IN CONFIDENCE**~~

Dear Kathryn and Matt,

Julian Assange

Further to your telephone conversation this afternoon with Kelly Williams, I attach a copy of the correspondence received by the Foreign Minister from Mr Assange's legal representatives in the United Kingdom.

I also provide below AGD's proposed response to the request for input into the Foreign Minister's response:

"Dear....,

Julian Assange – Response to Birnberg Peirce & Partners

I refer to your request for input from AGD in relation to the letter received from Mr Assange's solicitors (Birnberg Peirce & Partners).

A copy of the letter from Mr Assange's solicitors and our input has been provided to the Attorney-General's Office and the Minister for Home Affairs' Office.

I provide below our suggested input into the questions posed by Mr Peirce. The responses proposed by AGD are consistent with its position that extradition is a matter of bilateral law enforcement cooperation between states and that it is not appropriate for the Australian Government to comment on, or otherwise intervene in, discussions held by other countries in the context of their bilateral extradition relationships. To the extent that the questions relate to an assurance that Australia would not extradite Mr Assange to the United States, AGD highlights that whether Australia accepts a request from a foreign country, or determines to surrender a person to a foreign country, is a

matter of ministerial discretion. In addition, pursuant to Article 1 of Australia's extradition treaty with the United States, each country has an obligation to extradite persons 'under the conditions and circumstances established by the Treaty'. In these circumstances, it is not possible nor appropriate for the Australian Government to make commitments about not extraditing a person. I note further that it is the Australian Government's longstanding policy not to confirm or deny whether Australia has received an extradition request from another country.

Questions 1 & 2

- *Extradition is governed by the domestic laws and practices of individual states. As such, the requirements and processes relating to extradition differ between countries.*
- *As extradition is a matter of bilateral law enforcement cooperation, the Australian Government does not consider it appropriate to comment on discussions which may occur between other states in the context of their bilateral extradition relationship.*

As to Question 3

- *Australia's extradition relationship with the United States is governed by the Extradition Act 1988 (Cth) and the Treaty on extradition between Australia and the United States of America done at Washington on 14 May 1974, as amended by the Protocol done at Seoul on 4 September 1990. All extradition requests made by the United States to Australia are considered in accordance with the legislation and treaty.*
- *As a matter of longstanding practice the Australian Government does not comment publicly on extradition matters, including whether it has received an extradition request, until the person is arrested or brought before a court pursuant to a request. Extradition requests made to Australia are considered on a case-by-case basis.*

AGD looks forward to receiving a copy of the Foreign Minister's proposed response to Mr Assange's solicitors for final clearance.

...."

Kind regards,

Lisa

Lisa Hemingway | A/g Director - Extradition Unit
International Crime Cooperation Central Authority
Australian Government Attorney-General's Department
Robert Garran Offices | National Circuit | Barton ACT 2600
Tel +61 2 6141 3301 | Fax +61 2 6141 5457
lisa.hemingway@ag.gov.au | www.ag.gov.au

Little, Matthew

From: McMullan, Kathryn
Sent: Friday, 7 October 2011 3:44 pm
To: Hemingway, Lisa; Little, Matthew; Clifton, Jacob
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: RE: Assange - Revised response to DFAT ~~(SEC- IN CONFIDENCE)~~

Thanks Lisa, we are happy with the additional info under Q3

Thanks again, Kathryn

From: Hemingway, Lisa
Sent: Friday, 7 October 2011 3:37 PM
To: McMullan, Kathryn; Little, Matthew; Clifton, Jacob
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: Assange - Revised response to DFAT ~~(SEC- IN CONFIDENCE)~~

~~IN-CONFIDENCE~~

Dear Kathryn, Matt and Jacob,

Julian Assange – Revised response

I provide below AGD's proposed revised response to the request for input into the Foreign Minister's response to Mr Assange's legal representatives in the United Kingdom.

"Dear....,

Julian Assange – Response to Birnberg Peirce & Partners

I refer to your request for input from AGD in relation to the letter received from Mr Assange's solicitors (Birnberg Peirce & Partners).

A copy of the letter from Mr Assange's solicitors and our input has been provided to the Attorney-General's Office and the Minister for Home Affairs' Office.

I provide below our suggested input into the questions posed by Mr Peirce. The responses proposed by AGD are consistent with its position that extradition is a matter of bilateral law enforcement cooperation between states and that it is not appropriate for the Australian Government to comment on, or otherwise intervene in, discussions held by other countries in the context of their bilateral extradition relationships. To the extent that the questions relate to an assurance that Australia would not extradite Mr Assange to the United States, AGD highlights that whether Australia accepts a request from a foreign country, or determines to surrender a person to a foreign country, is a matter of ministerial discretion. In addition, pursuant to Article 1 of Australia's extradition treaty with the United States, each country has an obligation to extradite persons 'under the conditions and circumstances established by the Treaty'. In these circumstances, it is not possible nor appropriate for the Australian Government to make commitments about not extraditing a person. I note further that it is the Australian Government's longstanding policy not to confirm or deny whether Australia has received an extradition request from another country.

Questions 1 & 2

- *Extradition is governed by the domestic laws and practices of individual states. As such, the requirements and processes relating to extradition differ between countries.*

- *As extradition is a matter of bilateral law enforcement cooperation, the Australian Government does not consider it appropriate to comment on discussions which may occur between other states in the context of their bilateral extradition relationship.*

As to Question 3

- *Australia's extradition relationship with the United States is governed by the Extradition Act 1988 (Cth) and the Treaty on extradition between Australia and the United States of America done at Washington on 14 May 1974, as amended by the Protocol done at Seoul on 4 September 1990.*
- *All extradition requests made by the United States to Australia are considered in accordance with Australia's legislative framework and bilateral treaty with the United States. In particular, they provide that:*
 - a) Australia can only extradite a person to the United States for prosecution or punishment for conduct that would constitute an offence that would be punishable under both Australian and United States law by more than one year's imprisonment.*
 - b) Australia will only extradite a person to the United States for an offence for which the death penalty is available if the United States undertakes not to impose or carry out the death penalty for the offence.*
 - c) Australia will not extradite a person to the United States where there is a relevant 'extradition objection.' Extradition objections include where extradition is sought in relation to a 'political offence', where it is sought for the purposes of prosecuting or punishing the person because of his or her race, religion, nationality or political opinions, or where, on surrender, the person may be prejudiced at trial or punished because of his or her race, religion, nationality or political opinions.*
 - d) In accordance with its international obligations, Australia will not extradite a person where it has substantial grounds for believing that, on surrender, there is a real risk the person will be subject to torture, arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.*
 - e) A person may only be prosecuted or punished for the offences for which Australia grants his or her extradition to the United States. Australia's consent is required before the person may be prosecuted or punished for additional offences.*
 - f) Australia has the discretion to refuse the extradition of Australian nationals to the United States. As a matter of policy, Australia does not refuse extradition solely on the basis of citizenship. The High Court of Australia has confirmed that Australian citizens do not enjoy immunity from extradition from Australia by reason of their nationality. Australia is one of a number of countries, including the United States and the United Kingdom, that surrenders its own nationals. If Australia exercises its discretion to refuse the surrender of a national it must, if requested by the United States, refer the national to the relevant prosecution authority to consider prosecution of the national for the relevant conduct under Australian law (to the extent that Australian law so permits).*
- *As a matter of longstanding practice the Australian Government does not comment publicly on extradition matters, including whether it has received an extradition request, until the person is arrested or brought before a court pursuant to a request. Extradition requests made to Australia are considered on a case-by-case basis.*

AGD looks forward to receiving a copy of the Foreign Minister's proposed response to Mr Assange's solicitors for final clearance.

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Kind regards,

Lisa

Lisa Hemingway | A/g Director - Extradition Unit
International Crime Cooperation Central Authority
Australian Government Attorney-General's Department
Robert Garran Offices | National Circuit | Barton ACT 2600
Tel +61 2 6141 3301 | Fax +61 2 6141 5457
lisa.hemingway@ag.gov.au | www.ag.gov.au

Little, Matthew

From: Hemingway, Lisa
Sent: Wednesday, 9 November 2011 10:33 am
To: McMullan, Kathryn; Little, Matthew; Clifton, Jacob
Cc: Taylor, Julie; Thwaite, Julia; Williams, Kelly; Harmer, Anna
Subject: Julian Assange - Response from DFAT to UK legal representative ~~(SEC-**IN-CONFIDENCE**)~~
Attachments: 20111025 Assange letter response.pdf

~~**IN-CONFIDENCE**~~

Dear Kathryn, Matt and Jacob,

Julian Assange – Copy of response to UK legal representatives

I refer to our previous email correspondence regarding AGD's input into the Foreign Minister's response to the letter received in September 2011 from Mr Gareth Peirce (Mr Assange's legal representative in the United Kingdom).

For your information and assistance, I now attach a copy of the final response to Mr Peirce, which was forwarded yesterday by DFAT. I understand from DFAT that the original letter was posted on 25 October 2011 and provided electronically to Mr Peirce on 7 November 2011.

Kind regards,

Lisa

Lisa Hemingway | Senior Legal Officer - Extradition Unit
International Crime Cooperation Central Authority
Australian Government Attorney-General's Department
Robert Garran Offices | National Circuit | Barton ACT 2600
Tel +61 2 6141 3301 | Fax +61 2 6141 5457
lisa.hemingway@ag.gov.au | www.ag.gov.au

From: McMullan, Kathryn
Sent: Friday, 7 October 2011 3:44 PM
To: Hemingway, Lisa; Little, Matthew; Clifton, Jacob
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: TRIM: RE: Assange - Revised response to DFAT

Thanks Lisa, we are happy with the additional info under Q3

Thanks again, Kathryn

From: Hemingway, Lisa
Sent: Friday, 7 October 2011 3:37 PM
To: McMullan, Kathryn; Little, Matthew; Clifton, Jacob
Cc: Jackson, Maggie; Williams, Kelly; Taylor, Julie
Subject: Assange - Revised response to DFAT ~~(SEC-**IN-CONFIDENCE**)~~

~~**IN-CONFIDENCE**~~

Dear Kathryn, Matt and Jacob,

Julian Assange – Revised response

I provide below AGD's proposed revised response to the request for input into the Foreign Minister's response to Mr Assange's legal representatives in the United Kingdom.

"Dear....,

Julian Assange – Response to Birnberg Peirce & Partners

I refer to your request for input from AGD in relation to the letter received from Mr Assange's solicitors (Birnberg Peirce & Partners).

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I provide below our suggested input into the questions posed by Mr Peirce. The responses proposed by AGD are consistent with its position that extradition is a matter of bilateral law enforcement cooperation between states and that it is not appropriate for the Australian Government to comment on, or otherwise intervene in, discussions held by other countries in the context of their bilateral extradition relationships. To the extent that the questions relate to an assurance that Australia would not extradite Mr Assange to the United States, AGD highlights that whether Australia accepts a request from a foreign country, or determines to surrender a person to a foreign country, is a matter of ministerial discretion. In addition, pursuant to Article 1 of Australia's extradition treaty with the United States, each country has an obligation to extradite persons 'under the conditions and circumstances established by the Treaty'. In these circumstances, it is not possible nor appropriate for the Australian Government to make commitments about not extraditing a person. I note further that it is the Australian Government's longstanding policy not to confirm or deny whether Australia has received an extradition request from another country.

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 - b) Australia will only extradite a person to the United States for an offence for which the death penalty is available if the United States undertakes not to impose or carry out the death penalty for the offence.*
 - c) Australia will not extradite a person to the United States where there is a relevant 'extradition objection.' Extradition objections include where extradition is sought in relation to a 'political offence', where it is sought for the purposes of prosecuting or punishing the person because of his or her race, religion, nationality or political opinions, or where, on surrender, the person may be prejudiced at trial or punished because of his or her race, religion, nationality or political opinions.*

- d) *In accordance with its international obligations, Australia will not extradite a person where it has substantial grounds for believing that, on surrender, there is a real risk the person will be subject to torture, arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.*
- e) *A person may only be prosecuted or punished for the offences for which Australia grants his or her extradition to the United States. Australia's consent is required before the person may be prosecuted or punished for additional offences.*
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AGD looks forward to receiving a copy of the Foreign Minister's proposed response to Mr Assange's solicitors for final clearance.

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Kind regards,

Lisa

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Australian Government
Department of Foreign Affairs and Trade

File Number: 11/4540

25 October 2011

Mr Gareth Peirce
Bimberg Peirce & Partners
14 Inverness Street
LONDON NW1 7HJ
UNITED KINGDOM

Dear Mr Peirce

I refer to your letter of 15 September 2011 to the Hon Kevin Rudd MP, Minister for Foreign Affairs, raising concerns about Sweden's request to the United Kingdom for the extradition of your client, Julian Assange. Mr Rudd has asked me to reply to you on his behalf.

You will appreciate that extradition is governed by the domestic laws and practices of individual states and is a matter of bilateral law enforcement cooperation. On that basis Australia would not expect to be a party to any extradition discussions that may take place between either Sweden and the US, or the UK and the US.

Nevertheless, I can assure you the Australian Government has repeatedly emphasised to the Swedish Government at senior levels our expectation that Mr Assange's case will proceed in accordance with due process. Our Ambassador in Stockholm made this point to [redacted] s 33(a)(iii) [redacted] s 33(a)(iii) [redacted] on 7 December 2010 and on 5 January 2011. On 10 February 2011, the Ambassador again addressed this point with the Ministry of Justice, including in writing to [redacted] s 33(a)(iii) [redacted]. The Australian Government also raised our expectation that Mr Assange's case would proceed in accordance with due process with relevant authorities in the United Kingdom.

[redacted]
s 33(b)

R G Casey Building, Barton ACT 0221 www.dfat.gov.au Telephone: 02-62611111

With regard to Mr Assange's ability to return directly to Australia at the conclusion of extradition proceedings in London, I can advise that Mr Assange's passport has not been cancelled. Like any Australian in such circumstances, Mr Assange is able to return to Australia, if he wishes, once any orders precluding his international travel have been lifted.

In answer to the specific questions you raised regarding Australia's extradition relationship with the United States, all extradition requests from the United States are considered in accordance with the Extradition Act 1988 (Cth) and the Treaty on Extradition between Australia and the United States of America done at Washington on 14 May 1974, as amended by the Protocol done at Seoul on 4 September 1990. Within this framework:

- a) Australia can only extradite a person to the United States for prosecution or punishment for conduct that would constitute an offence that would be punishable under both Australian and United States law by more than one year's imprisonment.
- b) Australia will only extradite a person to the United States for an offence for which the death penalty is available if the United States undertakes not to impose or carry out the death penalty for the offence.
- c) Australia will not extradite a person to the United States where there is a relevant 'extradition objection.' Extradition objections include where extradition is sought in relation to a 'political offence', where it is sought for the purposes of prosecuting or punishing the person because of his or her race, religion, nationality or political opinions, or where, on surrender, the person may be prejudiced at trial or punished because of his or her race, religion, nationality or political opinions.
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Australia has the discretion to refuse the extradition of Australian nationals to the United States. As a matter of policy, Australia does not refuse extradition solely on the basis of citizenship. The High Court of Australia has confirmed that Australian citizens do not enjoy immunity from extradition from Australia by reason of their nationality. Australia is one of a number of countries, including the United States and the United Kingdom, that may surrender their own nationals.

If Australia exercises its discretion to refuse the surrender of a national it must, if requested by the United States, refer the national to the relevant prosecution authority to consider prosecution of the national for the relevant conduct under Australian law (to the extent that Australian law so permits).

As a matter of longstanding practice the Government does not comment publicly on extradition matters, including whether it has received an extradition request, until the person is arrested or brought before a court pursuant to a request. Extradition requests made to Australia are considered on a case-by-case basis.

Thank you for raising your concerns with the Minister.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg French', written in a cursive style.

Greg French
A/g Senior Legal Adviser

Tudor, Logan

From: Taylor, Julie
Sent: Wednesday, 9 February 2011 9:11 AM
To: Chapman, Andrew
Subject: FW: Seeking Urgent Advice: Proposed letter lawyers: Assange [SEC=UNCLASSIFIED]
Attachments: proposed letter lawyers.docx; FSI Lawyers Letter.pdf

Importance: High

Security Classification: UNCLASSIFIED

UNCLASSIFIED

-----Original Message-----

From: Wyman, Lisa
Sent: Wednesday, 9 February 2011 8:59 AM
To: Taylor, Julie
Subject: Fw: Seeking Urgent Advice: Proposed letter lawyers: Assange [SEC=IN-CONFIDENCE:CONSULAR] [SEC=UNCLASSIFIED]
Importance: High

Classification: UNCLASSIFIED

----- Original Message -----

From: Penny.Morton@dfat.gov.au <Penny.Morton@dfat.gov.au>
To: Harmer, Anna
Cc: Wyman, Lisa; Una.Bazdar@dfat.gov.au <Una.Bazdar@dfat.gov.au>
Sent: Wed Feb 09 08:56:12 2011
Subject: Seeking Urgent Advice: Proposed letter lawyers: Assange [SEC=IN-CONFIDENCE:CONSULAR]

Dear Anna, I was in contact with Lisa Wyman yesterday in relation to outcomes of various potential international extradition actions in relation to Mr Assange. Lisa has advised AGD will provide some further advice in relation to those scenarios today.

In the mean time, we request your urgent consideration of the attached draft letter to Mr Assange's lawyers in response to their letter (attached) sent to Australia's Ambassador to London requesting the Australian Government seek assurances from the Swedish Government in the event Mr Assange is extradited to Sweden that he will not be handed over to the US.

DFAT requests AGD's consideration of the suggested wording of the letter as soon as possible today, Wed 9 February. If you would like to discuss this further, please contact me, or my Assistant Secretary Greg French (on 6261 1188).

Regards, Penny

Penny Morton
Sanctions and Transnational Crime Section (STC) International Legal Branch Department of Foreign Affairs and Trade

penny.morton@dfat.gov.au
Phone: +61 2 6261 9559
Fax: +61 2 6160 9559

31 January 2011



Our ref: D401/JZR/557E44.1/FSI-4842557-1
Your ref:

Ambassador Paul Stephens
Klarabergsviadukten 63, 8th Floor,
Stockholm
Sweden

By fax: +46 (0)8 613 2982

Dear Ambassador Stephens

Re: Julian Assange

Thank you for meeting with us in Stockholm and for speaking with Geoffrey Robertson QC on the telephone. It is mutually concerning that an Australian citizen like Mr. Assange has been treated in ways which would not accord with the standards of Australian law or indeed international law. As we explained, if he is extradited to Sweden, he will be held incommunicado, in solitary confinement, and without bail for several months and then tried in secret on charges which are weak and which he emphatically denies.

In such event, it can be predicted that Australians will be outraged and that considerable damage will eventuate in respect of relations between the two countries. This will obviously be exacerbated if, as has been widely predicted, Sweden hands over Mr. Assange to the US for prosecution under the Espionage Act (whether before or after the rape trial and after an acquittal). The possibility of this happening can be inferred from cases where international bodies have recently found Sweden liable for handing asylum seekers over to the CIA for torture (see *Mohammed Alzery v. Sweden* (Communication No. 1416/2005, UN Human Rights Committee) and *Agiza v. Sweden* (Communication No. 233/2003, UN Committee Against Torture, Decision of 24 May 2005 (CAT/C/34/D/233/2003))).

In these circumstances, and on behalf of Mr. Assange, we respectfully request the Australian government to act so as to protect him from the prospect of unlawful or improper action by the Swedish government. On the basis of the facts referred to in the last paragraph, we would be grateful if the Australian government would seek an assurance from the Swedish government that in the event that Mr. Assange is extradited to Sweden, he will not, at the end of the proceedings in Sweden, be rendered, expelled, arrested or otherwise handed over to the USA, or to the USA via a third state, and that on being set at liberty in Sweden in due course, that he should be free to return directly to Australia, the country of his nationality.

Yours sincerely,

 s 47F(1)

Cc: Australian High Commission, London

Our ref:

Your ref:



Hon. Kevin Rudd MP
Minister for Foreign Affairs
Commonwealth of Australia

September 15th, 2011

Dear Mr. Rudd,

Malcolm Turnbull, who has taken an interest in the case of Julian Assange, has kindly offered to deliver this letter to you.

I represent Mr. Assange in the UK. A number of concerned persons in this country, some of whom are members of his Defence Fund and others who include prominent Australians in the UK, have suggested that it would be appropriate to place before you important information about this Australian citizen about which you may not be aware.

It is the considered opinion of all of the above, and of his lawyers in this country, that without the help of his government, Mr. Assange may well be in grave danger. His life has been threatened on a number of occasions notably by prominent figures in the United States. The prospect of his prosecution in that country, as the editor in chief of WikiLeaks, for matters that are not crimes, and certainly not crimes in Australia, as well as the further consequences of US prosecution give rise to parallel grave concerns

We currently await a judgment from the High Court in the UK regarding an application by the Swedish authorities for Mr. Assange's extradition on a European Arrest Warrant (EAW) regarding allegations of sexual offences in Sweden. He has not been charged in Sweden with any crime; one of the central arguments before the High Court is that if Mr Assange were to be prosecuted in Sweden following extradition, on the facts of what is alleged against him no criminal offence would have been committed in the UK or, indeed, in Australia. Given the extent of the public discussion, frequently on the basis of entirely false assumptions, of Mr Assange's potential criminality on either issue (ie potential prosecution in the United States or in Sweden), it is very hard to attempt to preserve for him any presumption of innocence.

The very real danger that faces Mr. Assange is that should the extradition request by Sweden be agreed by the courts here, once Mr Assange is in Sweden (and, we are informed inevitably held in custody even if not charged) an application for his 'temporary surrender' by the USA will most likely materialise. This may happen and even before any decision is made to bring criminal proceedings in Sweden. What it means is that Mr. Assange could be, without further ado, on his way to the United States and to a situation of considerable judicial uncertainty, not to say peril.

*Response from
LOS covering
letter Lam
ADD/DFAA addressing
substance of
extradition
concerns.*

DN 23/9/11



14 Inverness Street
London NW1 7HJ
Telephone: 020 7911 0166
DX 57059 Camden Town
Fax: 020 7911 0170
Immigration Dept Fax: 020 7388 9036
Email: [name]@birnbergpeirce.co.uk

Partners
Gareth Peirce
Nigel Leskin
Marcia Willis Stewart

Practice Manager
Dawn Etkin

Solicitors
Smith Bajaria
Rachael Despicht
Matt Foot
Ronnie Graham
Daniel Gaedalla
Sarah Kellas

Partners
Patti Kemp
Alastair Lyon
Sajida Malik
Sally Middleton
Henry Miller
Irene Nembhard
Barry O'Connor

Solicitors
Sonia Routledge
Harriet Wistrich

Immigration Caseworkers
Irfan Cangatin
Liz Farrell
Anu Ganathanan



Specialist Help Point

It is likely that the US has already issued a sealed indictment, and that this would then be activated once the proceedings in the UK have concluded. (One example of commentary on this potential appears on the website below.)

<http://www.csmonitor.com/USA/Justice/2010/1202/WikiLeaks-founder-Julian-Assange-Has-US-already-indicted-him>

So far as the UK is concerned, were the extradition case to Sweden to fail in the courts here, the US would be most likely, if the above presumption is correct, to initiate extradition proceedings in the UK, as opposed to Sweden. It is a matter of public record that the US on a significant number of occasions has synchronised extradition requests with the conclusion of a pending case in the relevant domestic jurisdiction, and has relied on the cooperation of the requested country to do so; the UK and Sweden have in the past provided exactly such close cooperation. Were Mr Assange's appeal in the UK to succeed conclusively in the near future (and were no further appeal to be possible for the prosecution to the Supreme Court), a provisional warrant could be issued at short notice by the USA pending the obtaining of a warrant issued by a US court on the basis of a grand jury indictment, if the potential for such a warrant were claimed to exist.

There have been a number of cases of extradition synchronised in precisely this way. For example:

- The case of Eiderous, who was held in prison in the UK in relation to immigration matters until 9 July 1999, when he succeeded in a habeas corpus application. Within hours a warrant was obtained from the USA on the basis of the testimony of a "co-operating witness" (ie a witness who would otherwise face a severe sentence in the absence of cooperation) and within 24 hours of his release he was arrested.

- The case of Kassir. This Swedish national successfully challenged an extradition request by the US; the Swedish extradition treaty excludes Swedish nationals from extradition to the US. He was freed from prison. However, Kassir was also a Lebanese national. He was arrested in Prague airport while in transit to Lebanon, and subsequently extradited to the US (also on the basis of the evidence of a "co-operating witness"). The Swedish press reported that was probably coordinated by the Swedish special police, SÄPO, and that this type of coordination is the standard operating procedure of mutual assistance in transnational crime - link: <http://www.dn.se/nyheter/sverige/lag-alskar-bin-ladin>.

I myself have had lengthy experience in cases involving extradition from the UK to the USA and have written about the grave consequences of extradition post 9/11 in this paper: **'America's non-compliance'**

<http://www.lrb.co.uk/v32/n09/gareth-peirce/americas-non-compliance>

The views I express in the above paper do not represent the viewpoint of a defence lawyer alone; they are shared across the board by many politicians, lawyers and members of the judiciary and are considered of such seriousness

that two Parliamentary committees have been hearing evidence on the issue of UK/US extradition during the past 6 months and a third, judicial enquiry, set up by the government is due to report soon, again on the same issue. The major points of concern relating to prosecutions in the US relate to coercive plea pressure (97% of defendants plead guilty in the USA), the excessive use of extreme isolation in prison and the enormity of potential sentences (the major factor in producing guilty pleas and, indeed, "co-operating witnesses").

It is our understanding that a grand jury has been convened in secret session in relation to Mr Assange in Alexandria, Virginia. The choice of this location for a potential prosecution of Mr Assange has raised expressions of considerable concern by experienced lawyers in the USA, the catchment area for a potential jury being drawn from the penumbra of Washington, DC but in particular from the extensive 'dormitory' area of the national security establishment.

It should be emphasised that Mr. Assange as editor in chief of WikiLeaks has, he has been advised, violated no known American law: indeed, US constitutional experts have given their opinion that he should enjoy complete protection, guaranteed by the First Amendment to the US Constitution, safeguarding as it does, freedom of information. Nevertheless however, a secret, or sealed, indictment may well be in existence, and being held until what is considered to be the most appropriate moment at which to issue an extradition request. This is the view of the former legal adviser to the State Department and the National Security Council, John Bellingham, who has said, "We could potentially see if he is prosecuted in Sweden and then still seek his extradition to the United States, and ask the Swedes to extradite him here [to the US]" and the *Independent* newspaper's diplomatic correspondent disclosed last December that Sweden and the US had already commenced talks about Julian Assange's extradition (link: <http://www.independent.co.uk/news/uk/crime/assange-could-face-espionage-trial-in-us-2154107.html>).

In consequence, it appears to us that we should request as a matter of urgency that the Australian government seek specific assurances from both the UK and Sweden regarding Mr. Assange's possible onward extradition.

We believe it is relevant therefore that we respectfully raise the following questions;

1. Is the Australian government aware of the potential for Mr Assange to be transferred under the Temporary Surrender regime (see Article VI of the Supplemental US-Sweden Extradition Treaty of 1984: US – Sweden Extradition Supplementary Treaty – 35 U.S.T. 2501) direct from Sweden to the US; and if so, what inquiries has the Australian government made in relation to the potential for Mr Assange to be transferred in this manner to the US? Has the Australian government sought to be a party to the negotiations between the United States and Sweden in these circumstances?

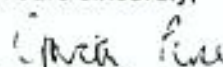
2. What assurances, beyond basic consular assistance, has the Australian government sought or obtained regarding Mr. Assange's due process rights and his ability to return direct to Australia at the conclusion of extradition proceedings in London? Has the Australian government made inquiries about both the UK's and Sweden's position in a possible three-way US-UK-Swedish negotiation regarding any potential request for Mr. Assange's onward extradition to the US?

3. Should Mr. Assange be able to return to Australia following a successful conclusion of the UK appeal, will the Australian government commit to not extraditing Mr. Assange, an Australian citizen, to the United States where there exists the real possibility of a politically motivated prosecution relating to WikiLeaks' publication, bearing in mind in particular that the work of WikiLeaks does not amount to a crime under Australian law – as we understand has been determined by the Australian Federal Police investigation ordered by the Prime Minister?

We hope that you will consider that these are serious and appropriate concerns for the Australian government to address on behalf of an Australian citizen. In particular the extraordinary prospect that Mr Assange has now hanging over him not one but two Damocles swords, of potential extradition to two different jurisdictions in turn for two different alleged crimes, neither of which are crimes in his own country, and that his personal safety and security has become at risk in circumstances that have become highly politically charged. As I hope I have been able to indicate, the issue of the consequences of extradition to the USA in particular has become one of exceptional concern in the UK in recent years in precisely such situations as those in which Mr Assange finds himself now. Should it assist you to have any further information in relation to the body of evidence being currently considered in the UK to determine whether such extradition arrangements should in fact continue in the future, I would be very pleased to provide it.

Thank you for giving this letter your attention. I very much look forward to hearing from you.

Yours sincerely,


Gareth Peirce
Bimberg Peirce & Partners



Australian Government
Department of Foreign Affairs and Trade

File Number: 0

20 October 2011

Mr Gareth Peirce
Bimberg Peirce & Partners
14 Inverness Street
LONDON NW1 7HJ
UNITED KINGDOM

Dear Mr Peirce

I refer to your letter of 15 September 2011 to the Hon Kevin Rudd MP, Minister for Foreign Affairs, raising concerns about Sweden's request to the United Kingdom for the extradition of your client, Julian Assange. Mr Rudd has asked me to reply to you on his behalf.

You will appreciate that extradition is governed by the domestic laws and practices of individual states and is a matter of bilateral law enforcement cooperation. Australian practice for extradition requests in Australia is not to allow intervention by the country of nationality in extradition proceedings where that country is not making the extradition request, and on that basis Australia would not expect to be a party to any extradition negotiations that may take place between either Sweden and the U.S. or the UK and the U.S. and that the Government cannot comment on discussions which may occur between other states in the context of their bilateral extradition relationship.

Nevertheless, I can assure you the Australian Government has repeatedly emphasised to the Swedish Government at senior levels our expectation that Mr Assange's case will proceed in accordance with due process. Our Ambassador in Stockholm made this point to s 33(a)(iii) on 7 December 2010 and on 5 January 2011. On 10 February 2011, the Ambassador again addressed this point with the Ministry of Justice, including in writing to s 33(a)(iii). The Australian Government also raised our expectation that Mr Assange's case would proceed in accordance with due process with relevant authorities in the United Kingdom.

s 33(b)

R G Casey Building, Barton ACT 0221 www.dfat.gov.au Telephone: 02-62611111

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s 33(b)

With regard to Mr Assange's ability to return directly to Australia at the conclusion of extradition proceedings in London, I can advise that Mr Assange's passport has not been cancelled. Like any Australian in such circumstances, Mr Assange is able to return to Australia, if he wishes, once any orders precluding his international travel have been lifted.

In answer to the specific questions you raised regarding Australia's extradition relationship with the United States, all extradition requests from the United States are considered in accordance with the Extradition Act 1988 (Cth) and the Treaty on Extradition between Australia and the United States of America done at Washington on 14 May 1974, as amended by the Protocol done at Seoul on 4 September 1990. Within this framework:

- a) Australia can only extradite a person to the United States for prosecution or punishment for conduct that would constitute an offence that would be punishable under both Australian and United States law by more than one year's imprisonment.
- b) Australia will only extradite a person to the United States for an offence for which the death penalty is available if the United States undertakes not to impose or carry out the death penalty for the offence.
- c) Australia will not extradite a person to the United States where there is a relevant 'extradition objection.' Extradition objections include where extradition is sought in relation to a 'political offence', where it is sought for the purposes of prosecuting or punishing the person because of his or her race, religion, nationality or political opinions, or where, on surrender, the person may be prejudiced at trial or punished because of his or her race, religion, nationality or political opinions.
- d) In accordance with its international obligations, Australia will not extradite a person where it has substantial grounds for believing that, on surrender, there is a real risk the person will be subject to torture, arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.
- e) A person may only be prosecuted or punished for the offences for which Australia grants his or her extradition to the United States. Australia's consent is required before the person may be prosecuted or punished for additional offences.

Australia has the discretion to refuse the extradition of Australian nationals to the United States. As a matter of policy, Australia does not refuse extradition solely on the basis of citizenship. The High Court of Australia has confirmed that Australian citizens do not enjoy immunity from extradition from Australia by reason of their nationality. Australia is one of a number of countries, including the United States and the United Kingdom that surrenders its own nationals.

If Australia exercises its discretion to refuse the surrender of a national it must, if requested by the United States, refer the national to the relevant prosecution authority to consider

prosecution of the national for the relevant conduct under Australian law (to the extent that Australian law so permits).

As a matter of longstanding practice the Government does not comment publicly on extradition matters, including whether it has received an extradition request, until the person is arrested or brought before a court pursuant to a request. Extradition requests made to Australia are considered on a case-by-case basis.

Thank you for raising your concerns with the Minister.

Yours sincerely

Richard Rowe
Senior Legal Adviser

Tudor, Logan

From: Swinbourne, Emma
Sent: Thursday, 27 October 2011 11:36 AM
To: 'Katherine.Dawe@dfat.gov.au'
Cc: Taylor, Julie; Hemingway, Lisa
Subject: FW: TRIM: Senate QoN 1282 - Mr Julian Assange [SEC=UNCLASSIFIED]
Attachments: Senate QoN 1282 - Mr Julian Assange.doc; FW: TRIM: Assange - Input into response to Birnberg Peirce & Partners [SEC=IN-CONFIDENCE:LEGAL]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

Hi Katherine

I'm responding to you on behalf of Lisa Hemingway. Below is our suggested text in response to Question on Notice (9) – 'Can the Minister confirm that the Government would not extradite Mr Assange to the US should he return home'. The text is essentially the same as that which was provided in response to a letter from Mr Assange's solicitors (see attached email).

Whether Australia accepts an extradition request from the United States, or determines to surrender a person to the United States, is a matter of ministerial discretion in accordance with the framework established by the *Extradition Act 1988* (Cth), as modified to give effect to the *Treaty on Extradition between Australia and the United States of America* done at Washington on 14 May 1974 and amended by the Protocol done at Seoul on 4 September 1990.

It is neither possible nor appropriate for the Australian Government to make commitments in relation to the extradition of an individual.

Question 9 is the only question in relation to which we can assist you. I expect AFP may be in a position to respond to question (7), and PMC to question (11). A suggested contact is Greg Miller in PMC (gregory.miller@pmc.gov.au). I understand he distributes the whole of government talking points on Wikileaks, so he should be able to suggest other appropriate contacts.

I initially wondered whether AGD might be able to assist with question (10), but (and apologies if you're already aware of this) it arises from questioning of Mr Richardson and Senator Conroy by Senator Ludlam so it would have required DFAT's response:

<http://www.aph.gov.au/hansard/senate/commttee/s94.pdf> (see page 33)

I hope this assists - please let me know if you wish to discuss.

Kind regards,

Emma Swinbourne
Litigation Unit
International Crime Cooperation Central Authority
Attorney-General's Department
☎ + 61 2 6141 2859
☎ + 61 2 6141 5457

From: Dawe, Katherine [mailto:Katherine.Dawe@dfat.gov.au]
Sent: Monday, 24 October 2011 12:23 PM

SENATE

Mr Julian Assange

(Question No. 1282)

Senator Ludlam asked the Minister representing the Minister for Foreign Affairs, upon notice, on 21 October 2011:

Given the Minister's responsibility for the protection of consular and legal rights of all Australian citizens overseas:

- (1) Has the Government maintained communication with Mr Julian Assange and extended consular and legal support while he adheres to bail conditions that include the surrendering of his passport, house arrest, electronic tagging, observation of curfews and daily reporting to police; if so, through what channels, and when and what services have been received.
- (2) Has the Government sought assurances from Sweden that, if extradited, Mr Assange will be questioned or face the charges of which he is accused and will not be subject to the temporary surrender mechanism that could see him extradited to the United States of America (US).
- (3) Has the Government investigated allegations in *The Independent* of 8 December 2010 that the US and Sweden have already commenced discussions on Mr Assange's extradition.
- (4) Has the Government ascertained whether or not a reported sealed indictment of a US Grand Jury exists for crimes under the Espionage Act of 1917 or other statutes.
- (5) Does the Government define the work of Mr Assange in his capacity as Editor in Chief of Wikileaks as 'having implications for Australia's foreign relations', thereby triggering the application of the *Intelligence Services Act 2001*.
- (6) Has the department provided advice to the Australian Security Intelligence Organisation regarding investigations of Wikileaks.
- (7) On what date did the Government communicate to the US the results of the Australian Federal Police investigation that indicated that Mr Assange had not committed a crime under Australian law in his capacity as Editor in Chief of Wikileaks.
- (8) Has the Government sought clarification from the US Government as to what crimes Mr Assange is being investigated for by the Grand Jury in Alexandria.
- (9) Can the Minister confirm that the Government would not extradite Mr Assange to the US should he return home.
- (10) Why has the Government failed to or refused to supply an answer to the question taken on notice on 2 June 2011 regarding a public interest immunity ground for a blanket refusal to answer any question arising from information in US cables made public through Wikileaks.
- (11) Has the Government reactivated the Wikileaks taskforce on the release of the unredacted cables.

Senator Conroy – the following answer has been provided by the Minister for Foreign Affairs to the Honourable Senator's question:

Material Outside Ambit

- (2) The Government sought assurances from Sweden that Mr Assange's case would be handled in accordance with due process on 7 December 2010, 5 January 2011 and 10 February 2011.
- (3) No

Material Outside Ambit

- (9) Whether Australia accepts an extradition request from the United States, or determines to surrender a person to the United States, is a matter of ministerial discretion in accordance with the framework established by the Extradition Act 1988 (Cth), as modified to give effect to the Treaty on Extradition between Australia and the United States of America done at Washington on 14 May 1974 and amended by the Protocol done at Seoul on 4 September 1990. It is neither possible nor appropriate for the Australian Government to make commitments in relation to the extradition of an individual.

Material Outside Ambit



ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Dear Foreign Minister

Thank you for your letter dated 15 November 2011 regarding Mr Julian Assange, which has been forwarded on the basis of your consular interest in Mr Assange.

In your letter you seek my views, as the Minister with portfolio responsibility for extradition,

s 33(a)(iii)

It is clear that as an Australian citizen, Mr Assange should be provided with the same support afforded any Australian citizen finding themselves in the circumstances of being charged with offences in a foreign country. To this end I note and support the full consular assistance currently being provided to Mr Assange by Australia including attendance by consular officials at court hearings, prison visits and communication with his family and legal representatives.

I have sought advice from the Attorney General's Department on the matters you have raised given the international legal complexities associated with extradition. The advice provided to me mirrors the advice I understand has been provided by the Department of Foreign Affairs and Trade to Mr Assange's legal representatives.

First, I understand that officers from your Department have raised at a senior level with United Kingdom and Swedish authorities Australia's expectation that Mr Assange's case will proceed in accordance with due process. It is also open to Mr Assange to exercise any appeal rights that are available to him at a national or European level. I note that, since the date of your correspondence, Mr Assange has exercised his right in the United Kingdom to seek leave to appeal against the recent decision of the High Court upholding his extradition to Sweden, to the Supreme Court.

s 33(a)(iii)

Further, as outlined in legal advice, extradition is a matter of bilateral law enforcement

cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. Australia is not a party to any extradition discussions that may take place between either Sweden and the United States or the United Kingdom and the United States

s 33(a)(iii)

Finally, with regard to Mr Assange's ability to return to Australia at the conclusion of the current proceedings, I note the advice from DFAT that Mr Assange's passport has not been cancelled and, in the absence of any further action, Mr Assange would be free to return to Australia. Whilst not a relevant consideration at this stage, in relation to any possible extradition requests made of Australia by a foreign country such requests are assessed on a case by case basis.

s 33(a)(iii)

I note you have copied the Prime Minister with your correspondence and I have similarly provided her with my reply. The action officer for this matter in my Department is Anna Harmer who can be contacted on (02) 6141 3280.

Yours sincerely



Robert McClelland

I further understand that officers from your Department have raised at a senior level with United Kingdom and Swedish authorities Australia's expectation that Mr Assange's case will proceed in accordance with due process. It is also open to Mr Assange to exercise any appeal rights that are available to him at a national or European level. I note that, since the date of your correspondence, Mr Assange has exercised his right in the United Kingdom to seek leave to appeal against the recent decision of the High Court upholding his extradition to Sweden, to the Supreme Court. --

I have copied the Prime Minister directly into my response to your correspondence.

Yours sincerely"



THE HON KEVIN RUDD MP

MINISTER FOR FOREIGN AFFAIRS
CANBERRA

Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney 

I am writing to you in respect of Julian Assange. As you will be aware, Mr Assange is currently the subject of extradition proceedings by Sweden under the European Arrest Warrant system in relation to a sexual assault matter. On 2 November the UK High Court upheld Sweden's request for extradition and Mr Assange has been granted 14 days from that date to file an application for leave to appeal this decision in the UK Supreme Court.

Separately, there have been suggestions that a grand jury has been empanelled in Alexandria, Virginia to investigate whether Mr Assange can be charged under US law for offences related to Wikileaks. I understand that grand juries can issue indictments under seal, and that theoretically one could already have been issued for Mr Assange.

Mr Assange's lawyers have written to me to express concerns that, based on past practice, the US could commence extradition proceedings against Mr Assange in the UK or Sweden, and that the existence of any sealed indictment will only become known at this point.

While the US Government has not confirmed to us the existence of a grand jury or sealed indictment, the US Attorney General, Eric Holder, has said publicly that the Administration was pursuing a "very serious investigation" into the matter. He also said that charges could be brought under the Espionage Act of 1917 or "other statutes, other tools...at our disposal".

Media commentary has suggested that the most likely route to a successful prosecution would be to show that Mr Assange had acted as a co-conspirator - soliciting, encouraging or assisting Bradley Manning to obtain and provide the documents. Commentary has also suggested that any prosecution of Mr Assange under the Espionage Act would be unprecedented.

Recent media reporting indicates that Mr Assange may be considering abandoning any appeal against the UK High Court's decision to uphold the extradition to Sweden. If that is the case, we can expect Mr Assange to be extradited to Sweden very shortly to face proceedings in that country.

s 33(a)(iii)

While extradition matters are the responsibility of your portfolio, as Minister for Foreign Affairs, I have a consular interest in this matter. At my direction, DFAT have been providing full consular support for Mr Assange. They have attended court hearings, visited him when he was in prison, engaged with the UK prison authorities in relation to his interests, and stayed in touch with his family and legal representatives.

s 33(a)(iii)

Given the prominent nature of WikiLeaks matters, s 33(a)(iii) s 33(a)(iii)
I am copying this letter to the
Prime Minister.

Yours sincerely



Kevin Rudd

15 x: 2011

MATERIAL OUTSIDE AMBIT

Email – Pages 1 and 2 of 4

From: Williams, Kelly
Sent: Thursday, 17 November 2011 8:34 AM
To: Manning, Greg; Sheehan, Tony
Cc: Caggiano, Stephanie; Taylor, Julie
Subject: FW: Draft letter to foreign minister ~~[SEC=IN-CONFIDENCE]~~
Importance: High

~~**IN-CONFIDENCE**~~

Greg

My phone message refers. Below is a draft response to the Foreign Minister's letter [redacted]

[redacted] s 33(a)(iii)

The Foreign Minister's letter is enclosed.

Grateful for OIL's input/comments on the draft response. The AGO would like the letter by 10am this morning.

Tony - thought you may want to be aware of this correspondence.

Kelly

x 3211

[redacted] s 47F(1)

"Dear Foreign Minister,

Thank you for your letter dated 15 November 2011 regarding Mr Julian Assange, which has been forwarded on the basis of your consular interest in Mr Assange.

In your letter you seek my views, as the minister with portfolio responsibility for extradition, [redacted]

[redacted] s 33(a)(iii)

[redacted] s 33(a)(iii)

Extradition is a matter of bilateral law enforcement cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. In these circumstances, [redacted]

[redacted] s 33(a)(iii)

[redacted] s 33(a)(iii)

As you will appreciate, this principle is a corollary of the sovereign equality that is accorded to all states within the international community. The principle is also accepted as forming part of customary international law and as such is binding on Australia

(Case Concerning Military and Paramilitary Activities in and against Nicaragua, I.C.J Report 1986 at para [202]).

In respect of the ongoing consular responsibilities that the Australian Government has in relation to Mr Assange, I note your advice that, at your direction, officers from your Department have been providing full consular support to Mr Assange. This includes attending court hearings, prison visits and communication with his family and legal representatives.

I further understand that officers from your Department have raised at a senior level with United Kingdom and Swedish authorities Australia's expectation that Mr Assange's case will proceed in accordance with due process. It is also open to Mr Assange to exercise any appeal rights that are available to him at a national or European level. I note that, since the date of your correspondence, Mr Assange has exercised his right in the United Kingdom to seek leave to appeal against the recent decision of the High Court upholding his extradition to Sweden, to the Supreme Court.

I have copied the Prime Minister directly into my response to your correspondence.

Yours sincerely"

Tudor, Logan

From: Taylor, Julie
Sent: Monday, 28 November 2011 9:58 AM
To: Swinbourne, Emma
Subject: FW: Assange research [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

UNCLASSIFIED

From: Gao, Ruimin
Sent: Thursday, 24 November 2011 12:31 PM
To: Williams, Kelly
Cc: Taylor, Julie; Thwaite, Julia
Subject: Assange research [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi Kelly

Here is a summary of what I've found on the potential "fast-track" extradition of Assange from Sweden to the US.

Extradition relationship between Sweden and the US

Extradition from Sweden to the US is governed by Sweden's *Extradition for Criminal Offences Act* (1957:668) and bilateral treaties between Sweden and US:

- a) *Convention on Extradition between the United States of America and Sweden* 24 October 1961 (SÖ 1963:17), and
- b) *Supplementary Convention on Extradition between the United States of America and Sweden* 14 March 1983 (SÖ 1984:34).

Temporary surrender from Sweden to the US

Article VI of the *Supplementary Convention on Extradition between the United States of America and Sweden* (signed 14 March 1983; in force 24 September 1984) provides for a "temporary surrender" agreement between the countries.

- E.g. if an extradition request from the US is granted by Sweden for Assange while he is being prosecuted or is serving a sentence in Sweden for a different offence, Sweden may temporarily surrender him to the US for the purpose of prosecution. If Assange is temporarily surrendered, the treaty requires that he be returned to Sweden once proceedings against him have concluded in the US. However, this arrangement is to be in accordance with conditions determined in advance by mutual agreement between Sweden and the US.
- Section 11 of Sweden's *Extradition for Criminal Offences Act* (1957:668) allows for a person to be extradited to stand trial in a foreign state while they are being prosecuted or serving a sentence in Sweden. However, this is subject to a decision by the Swedish Government to allow the person to be extradited and on the condition that the person must subsequently be surrendered back to Sweden.

Note:

- Article 3 of the *EU-US Extradition Agreement* (entered into in February 2010) has applied the temporary surrender provision to all bilateral treaties between the US and European countries that do not already contain such a provision.
- The Council of the EU handbook on the EU-US Extradition Agreement explains temporary surrender as follows:

[Temporary surrender] facilitates the orderly and efficient prosecution of a person sought in two jurisdictions by allowing the temporary transfer of the person to the Requesting State for prosecution, when that person is subject to proceedings (either prosecution or service of a sentence) in the Requested State. The transfer is subject to conditions agreed to in advance of the transfer.

Potential limitations on surrender from Sweden to the US

- Sweden is currently seeking Assange's extradition from the UK according to the European Arrest Warrant regime, which has generally replaced extradition procedures in the EU. If Assange is surrendered by the UK, Sweden will require consent from the UK Home Office (which presumably would be subject to judicial review) before extraditing him to a third country.
- Extradition from Sweden may not be granted for political offences (may incl. espionage) or if there is a risk that the person may, on account of his political beliefs, be subjected to persecution threatening his life or liberty, or is otherwise of a harsh nature
- An extradited person may not have the death penalty imposed for the offence.

General procedure for extradition from Sweden

- Extradition requests to Sweden are made to a Central Authority which assesses the request in the first instance.
- If approved, the request is then forwarded to the Office of the Prosecutor-General to determine whether the conditions under Swedish extradition law are met. The case is investigated by a regional or local public prosecution office according to Swedish rules for preliminary investigation.
- If the person opposes extradition, the Supreme Court is then required to examine whether extradition can be granted under the extradition law. If the Supreme Court finds any legal impediment to the extradition, the Swedish Government cannot approve the request. The Swedish Government can however refuse extradition even if the Supreme Court has not declared against it (the law states that a person "may" be extradited, not "shall" → subject to discretion of Swedish Government).
- If the person does not oppose extradition, the report from the investigation is instead delivered directly from the Prosecutor-General to the Swedish Government, which makes the final decision regarding surrender.

1. Was the US probe into Wikileaks and Julian Assange raised whether formally or informally with President Obama or members of his delegation to Australia? If so, in what manner and by who and what assurances for information were requested and what was the US response?

[PM&C to provide input]

2. Has the Government used what was apparently known as the "Wikileaks Bill" within the AG Dept., aka the Intelligence Amendment Bill, to spy on Wikileaks or its people or has the recent MOU with the US on data sharing information on Australian Citizens who are said to have committed or will commit crimes for which there is a penalty for 4 years or above been used to this end?

Consistent with longstanding practice, it is not appropriate to comment on operational matters, or to confirm or deny whether any particular person or organisation is the subject of intelligence or law enforcement inquiry or investigation.

However, I can say that, as officers of my Department have already made clear to Senate Committees, there is no substance to allegations about the *Intelligence Services Legislation Amendment Act 2011* being known as the "Wikileaks Bill". The amendments in that legislation were not connected with the Wikileaks matter and were developed long before Wikileaks started releasing cables.

3. Will the Australian Government prevent Mr Assange being further extradited from Sweden to the United States for doing what the media have always done which is bring to light material that governments would prefer to keep secret?

Extradition is a matter of bilateral law enforcement cooperation. The decision by a foreign state whether to make, or grant, an extradition request is a sovereign act done in accordance with that state's domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. On that basis, Australia would not expect to be a party to any extradition discussions that may take place either between Sweden and the United States or the United Kingdom and the United States.

If any Australian citizen is required to respond to allegations of breaching the laws of another country, the Government's role is to seek to ensure due process is followed in the legal proceedings. Mr Assange is entitled to the same rights as any other Australian citizen and has been afforded full consular assistance, including attendance by consular officials at court hearings, prison visits and communications with his family and legal representatives.

~~IN CONFIDENCE~~

MOB 4901

Ministers' Office Brief—Office of the Attorney-General

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Wikileaks – publication of classified material

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[If asked: Is the Australian Government going to allow Mr Assange to end up in the hands of the US Government, as David Hicks has said?]

s 33(a)(iii)

- **The US Government, through its Ambassador in Australia has made it clear that any US legal action will follow due process, respect the presumption of innocence until proven guilty, and afford all the other protections that the American justice system guarantees.**

Material Outside Ambit

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Wikileaks – publication of classified material

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Material Outside Ambit

[If asked: about US investigations and possible legal proceedings against Mr Assange]

- It would not be appropriate for me to comment on law enforcement activities or legal proceedings in a foreign jurisdiction.

What support has the Australian Government provided to US investigations?

- The Australian Government has said it will provide any support that is requested by the United States as part of their investigations.
- Consistent with long-standing practice, the Government does not comment on cooperation in operational matters.

Material Outside Ambit

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Wikileaks – publication of classified material
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