

## JOINT STANDING COMMITTEE ON TREATIES

### RATIFICATION OF MUTUAL ASSISTANCE AND EXTRADITION TREATIES WITH MALAYSIA

#### AUSTRALIAN FEDERAL POLICE (AFP) SUBMISSION

#### 1. Introduction

1.1 The AFP welcomes the opportunity to provide the Joint Standing Committee on Treaties with information on issues relevant to the Mutual Assistance and Extradition Treaties with Malaysia.

#### 2. Overview of AFP Role and Function

2.1 The AFP is the major instrument of Commonwealth law enforcement. Its role is to enforce Commonwealth criminal law and protect Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative and the chief source of advice to the Government on policing issues.

#### 3. AFP International Network Role and Function

3.1 The AFP has two liaison officers posted to Kuala Lumpur. AFP liaison officers facilitate the investigation and prevention of crimes against the Commonwealth and the protection of Commonwealth interests in Australia and overseas.

*Strategies include:*

- Contributing effectively to international cooperative and collaborative efforts to counteract and prevent criminal activities of major concern to the Government;
- Continuing development of capacity within overseas law enforcement agencies to deal with new forms of criminal activity, particularly in regard to transnational crime;
- Facilitating enhanced cooperation and collaboration with overseas law enforcement agencies through targeted Law Enforcement Cooperation Program (LECP) funding to partner agencies in support of law enforcement initiatives of benefit to Australia; and
- Contributing effectively to the operation of the Australian National Central Bureau for the International Criminal Police Organisation (Interpol).

#### 4. Extradition and Mutual Assistance Treaties with Malaysia

4.1 The AFP supports the ratification of the extradition and mutual assistance treaties with Malaysia. The AFP considers that formal extradition and mutual assistance obligations between Australia and Malaysia are necessary to ensure the full and thorough investigation of criminal matters.

4.2 Whilst the *Mutual Assistance in Criminal Matters Act 1987* enables Australia to provide assistance to or receive assistance from any country, formal treaties provide certainty and impose mutual obligations in international law and institute practical arrangements for requesting and providing mutual assistance. Defined mutual assistance and extradition treaties will assist both countries in obtaining the necessary admissible evidence for the prosecution of a wide range of serious transnational crime including terrorism, narcotic and economic offences, as well as people smuggling, trafficking in women and children and firearms.

4.3 The increasing prevalence of transnational crime, including terrorism, has emphasised the need for international cooperation among law enforcement agencies, through both formal and informal channels. It is through the timely gathering and exchange of information that terrorists and other criminals can be detected, traced, kept under surveillance and ultimately arrested and successfully prosecuted. It is through international cooperation, in particular mutual legal assistance in criminal matters, that evidence located in foreign nations can be gathered and provided to countries that require that evidence to successfully prosecute the perpetrators of criminal acts.

4.4 The utility of mutual assistance treaties in obtaining evidence through coercive means, such as search warrants, is invaluable to the investigation and prosecution process. Mutual assistance treaties can also extend to locating, restraining and forfeiting the proceeds of criminal activity across obliging jurisdictions.

4.5 Combating transnational crime and terrorism is a high priority for the AFP. A formal extradition treaty will deny safe havens to offenders who flee to Malaysia or Australia, and ensure that such offenders are brought to justice in the jurisdiction where the crime was committed. Extradition ensures that criminals cannot evade justice simply by crossing borders. Mutual assistance ensures that criminals cannot escape prosecution and asset confiscation action just because the evidence or proceeds of their crime are in different countries.

4.6 The AFP notes that the obligation to provide mutual assistance is qualified by internationally accepted grounds for refusal, as set out in the proposed treaty. Further, the agreement in the proposed Extradition Treaty is qualified by numerous internationally accepted mandatory and discretionary grounds for refusal which reflect provisions contained in the *Extradition Act 1988*.

4.7 Malaysia is an important partner in regional efforts to combat transnational crime, including terrorism. In May 2006 Commissioner Keelty co-signed a 'statement of intent' with Royal Malaysian Police (RMP) Inspector-General Tan Sri Mohd Bakri bin Haji Omar, signifying the commitment of both agencies to work cooperatively in combating transnational crime and enhancing regional security.

4.8 In the past 18 months there have been numerous mutual assistance and one extradition request from Australia to Malaysia. These matters have been facilitated with relative ease, however the AFP Kuala Lumpur Office notes that some matters may have been facilitated within a shorter time frame had a formal mutual assistance/extradition treaty existed.

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