

Joint Standing Committee on Treaties

Attorney-General's Department

Hearing date: 08 May 2023

Hansard page: Page 4, draft transcript

Josh Wilson MP asked the following question:

Noting that the Treaty was signed in February 2022 and was the first new extradition treaty following the adoption of *Australia's Strategy for the Abolition of the Death Penalty*, to what extent was there novel consideration of the language on the death penalty in the Treaty?

The response to the question is as follows:

Australia's Strategy for Abolition of the Death Penalty (the Strategy) was released in 2018. It sets out Australia's policy on capital punishment and outlines Australia's overarching approach to pursuing global abolition of the death penalty. The Strategy does not consider Australia's approach to government-to-government assistance or police cooperation in a death penalty context, as governed by the *Extradition Act 1988* in the context of extradition.

A key priority for Australia in negotiating extradition treaties is ensuring there are appropriate safeguards in relation to the death penalty, consistent with the *Extradition Act 1988*, Australia's international obligations, and Australia's longstanding opposition to the death penalty in all circumstances for all people.

Article 3(e) of the Czech Republic Extradition Treaty contains a mandatory ground of refusal relating to the death penalty, and provides extradition shall not be granted if the offence for which extradition is requested carries the death penalty under the law of the Requesting State unless that State gives such assurances as the Requested States considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. This is consistent with Australia's other bilateral extradition treaties and the United Nations Model Extradition Treaty.

Like Australia, the Czech Republic has abolished the death penalty and is a party to the *International Covenant on Civil and Political Rights* (ICCPR) and the *Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty*.

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Josh Wilson MP asked the following question:

Has the department considered undertaking a review of the *Extradition Act 1988*, following the recommendation from the House of Representatives Standing Committee on Social Policy and Legal Affairs in 2011 during its review of the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011?

The response to the question is as follows:

During consideration of the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs recommended that the department conduct a review of the operation of the amendments contained in the Bill within 3 years of its enactment.

The department finalised a review of the amendments in 2017. In terms of the Extradition Act amendments, the review found that the reforms had achieved their intended goals of streamlining extradition processes while maintaining appropriate safeguards.

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Henry Pike MP asked the following question:

What are the incoming and outgoing extradition trends over the last 10 years, particularly particularly the volume of requests over that time and whether there has been a shift in the regions the subject of extradition requests

The response to the question is as follows:

The department's 2021-22 Annual Report includes statistics on extradition requests made by and to Australia from the period 2012-13 to 2021-22. These statistics are extracted below, and indicate that the number of new requests made has varied from year to year but have been reasonably stable since 2018-19. The number of requests received has also varied from year to year, with no clear trend demonstrated.

Comparative statistics for extradition and mutual assistance cases

TABLE 47: EXTRADITION REQUESTS MADE BY AUSTRALIA, 2012–13 TO 2021–22

Year	Requests active at start of period	New requests made	Requests granted/number of persons surrendered ¹	Requests refused	Requests otherwise finalised
2012–13	37	16	14	1	4
2013–14	34	15	18	0	6
2014–15	25	9	8	0	0
2015–16	24	6	5	3	2
2016–17	20	7	6	0	1
2017–18	20	19	9	2	1
2018–19	27	10	4	2	5
2019–20	33	11	3	1	1
2020–21	40	9	9	0	6 ²
2021–22	34	11	6	3	2

¹ With effect from 2020–21, the department is reporting on the number of persons surrendered, rather than requests granted.

² Includes requests withdrawn.

TABLE 48: EXTRADITION REQUESTS MADE TO AUSTRALIA, 2012–13 TO 2021–22

Year	Requests active at start of period	New requests received	Requests granted/number of persons surrendered ¹	Requests refused	Requests otherwise finalised
2012–13	52	23	11	2	15
2013–14	47	43	13	2	18
2014–15	57	32	10	1	13
2015–16	60	28	11	1	16
2016–17	60	16	9	1	1
2017–18	65	40	8	1	21
2018–19	79	40	17	2	10
2019–20	80	40	11	0	13 ²
2020–21	91	29	10	1	31 ³
2021–22	78	35	6	0	21

¹ With effect from 2020–21, the department is reporting on the number of persons surrendered, rather than requests granted.

² In the Attorney-General's Annual Report 2019–20, this figure was 3 and was incorrect.

³ Includes requests withdrawn.

Australia receives requests from countries with which it has established extradition relationships (noting that, under the *Extradition Act 1988*, Australia can only accept and consider an extradition request from an 'extradition country', which generally refers to a country prescribed in regulations as an extradition country). As such, it is difficult to provide observations about regional trends, where Australia may have extradition relationships with only some countries in a particular region.

Data on persons surrendered to and from Australia during the same 10 year period indicates that Australia has surrendered the most people to the United States, United Kingdom and Ireland. The three countries that have surrendered the most people to Australia are the United Kingdom, United States and Thailand.

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Senator Deborah O'Neill asked the following question:

What are the processes for extradition in the Czech Republic, and are they comparable with those in Australia?

The response to the question is as follows:

The process in the Czech Republic for considering an extradition request from a foreign country is broadly similar to Australia's domestic regime under the *Extradition Act 1988*.

Extradition in the Czech Republic is governed by the Act on International Judicial Cooperation in Criminal Matters (No. 104/2013).¹ Under this Act, the process for extradition to foreign countries comprises the following stages:

- acceptance of the request by the Ministry of Justice
- preliminary investigation by the Public Prosecutor's Office, including assessment of grounds of refusal and other eligibility requirements
- court consideration on admissibility of extradition, and
- final decision by Minister of Justice on surrender.

A key difference between Australia's *Extradition Act 1988* and the Czech Republic's domestic framework is that the Czech Republic can consider extradition requests based on formal undertakings of reciprocity, whereas Australia requires a country to be declared an 'extradition country' (or otherwise meet the definition of 'extradition country' in section 5 of the *Extradition Act 1988*).

¹ Available in English here: [Act_104_2013_on_International_Judicial_Cooperation_oprava.pdf \(unodc.org\)](https://www.unodc.org/documents/australia/act_104_2013_on_international_judicial_cooperation_oprava.pdf)