

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 3

Program: Other Agency

Question No. BE15/043

Senator Collins asked the following question at the hearing on 27 and 28 May 2015:

Mr Colvin: We have the guideline; the guideline is there for us to follow.

Senator JACINTA COLLINS: So, in your view, they have essentially adopted what was in the guideline?

Mr Colvin: Exactly. Essentially, it was asking us to give precedence to a guideline that is one of over 100 guidelines that we follow.

Senator Birmingham: If it helps, according to my briefing information the substantive changes that have been discussed in relation to the practical guide on international police-to-police assistance in potential death penalty matters came into effect on 18 December 2009.

Senator JACINTA COLLINS: Is that the most recent change to the guidelines?

Senator Birmingham: There are other changes to the guidelines, I believe, but that—

Mr Colvin: But that is a substantive change. Occasionally the guideline refers to particular individuals and positions that are in positions to make decisions. It is an internal guideline. From time to time, we need to amend it to reflect the current structure of the organisation, for instance. We may refine it in terms of how many people can and cannot approve certain parts of the guideline, but the substantive change, in relation to when and under what circumstances we can share information, was in 2009.

Senator Birmingham: In that eventuality, by the time of a 2010 ministerial directive, those guidelines would already have reflected, essentially, that ministerial directive.

Senator JACINTA COLLINS: I will go back to questions on the Bali Nine. This question is to both the AFP and the department. I would have asked this of the CDPP earlier, but it has been overlooked. Did the CDPP liaise with the AFP or the Attorney-General's Department regarding the possibility of charging members of the Bali nine, including Andrew Chan and Myuran Sukumaran, with trafficking offences or at any other legal avenue for extradition?

CHAIR: Estimates is a wide-ranging and open forum, but it is really about dealing with the 2015-16 budget and the expenditure of funds. I have to say that I have not followed this matter closely, but are you asking whether this happened 10 years ago? If so, it seems a bit unfair to ask officers who came here to deal with the 2015-16 budget, as it affects them, to start reminiscing about what might have been said to the DPP 10 years ago—or is not 10 years ago?

Senator JACINTA COLLINS: No, it is not 10 years ago.

CHAIR: When would it have been—if this conversation you are talking about had happened?

Senator JACINTA COLLINS: Let us partly put this into context. The first part of the context is that many of these questions have not been asked for some time out of respect for the Australian community's attempts to progress this situation in an appropriate way. The reference to whether extradition was sought related to a campaign by Robert Richter and Brian Walters back in late 2005, I think.

CHAIR: That is 10 years.

Senator JACINTA COLLINS: Let me finish. These are all matters that have arisen recently as a result of subsequent statements from the AFP and questions that arise from those statements. Is that not fair, Mr Colvin? You seem to be nodding your head a bit.

Mr Colvin: We are certainly happy to help the committee as much as we can. Yes, it is 10 years ago, but I do not think anyone would be surprised to hear that we have trawled over this matter in great depth for the last 10 years. To give you an absolutely ironclad answer, Senator Collins, we can take on notice whether there was ever any correspondence entered into in relation to extradition proceedings. But I would say that it would be highly unusual for the AFP or Australia to seek extradition of somebody for an offence where they have substantively been charged in the jurisdiction where they committed the offence. Extradition is usually relied upon when someone is wanted in a jurisdiction for a crime that has been committed in that jurisdiction—not when they are facing court for a crime they have committed in the jurisdiction you are asking them to be extradited from.

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

In December 2005, the Australian Federal Police (AFP) sought the advice of the Commonwealth Director of Public Prosecutions in relation to preferred charges, if any, which could be brought against members of the 'Bali Nine' in Australia, and on the evidence available to support the laying of such charges.

This advice was sought to determine whether there may have been sufficient evidence available to enable any of the Bali Nine to be extradited to Australia to face charges.

Extradition is the formal process by which a country can apprehend and surrender a person to another country to face criminal prosecution or to serve a sentence of imprisonment.

The AFP kept the Attorney-General's Department (AGD) informed of the Chan and Sukumaran matters and the possibility of charging members of the Bali Nine. AGD worked with agencies in relation to the policy on the possibility of extradition requests for persons charged with offences in foreign jurisdictions.

However, it is a matter for law enforcement and prosecution authorities to determine the operational question of whether a person will be charged and prosecuted under Australian law.

The Australian Government will not seek the extradition of a person without a request from Australian law enforcement authorities and a commitment from the prosecutors to prosecute, which we did not have in this case.