

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

Output 2.2

Question No. 50

Senator Ludwig asked the following question at the hearing on 23 May 2007:

In relation to the recent extradition of Mr Hew Griffiths to the United States:

- (a) Can the Department provide an update of the current status of the trial of Hew Griffiths?
- (b) Is it correct that the offences that Hew Griffiths is alleged to have committed were offences under Australian as well as American law?
- (c) Was there any consideration given to attempting to prosecute Mr Griffiths under Australian law?
 - (i) If not, why not?
 - (ii) If so, when was this considered and why was it rejected?
- (d) Why was the decision taken to extradite Griffiths rather than prosecute him for Copyright offences under Australian law?
- (e) If convicted:
 - (i) Is the Department aware of whether or not the time he has already spent in prison in Australia will be taken into account?
 - (ii) Would he be available for prisoner transfer from the United States, and how soon would that option be available?

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

- (a) On 19 April 2007, Mr Griffiths entered a plea agreement where he pleaded guilty to the US offence of conspiracy to commit criminal copyright infringement. Under the agreement, the second charge of copyright infringement was dismissed. On Friday 22 June 2007, Mr Griffiths was sentenced to four years and three months in prison. The time Mr Griffiths spent in custody in Australia was taken into account for the purposes of the US sentence and on 25 January 2008 he was released from prison in the US.
- (b) The *Extradition Act 1988* provides that extradition to a foreign country can only occur where the conduct constituting the offence in the foreign country would also constitute an offence in Australia if the conduct had occurred in Australia. This is called the 'dual criminality' requirement. As required by the *Extradition Act 1988*, Mr Griffiths' conduct would have been an offence if it occurred in Australia.
- (c) The Australian Federal Police (AFP) evaluated the possibility of investigating and prosecuting Mr Griffiths for Australian offences under the *Copyright Act 1968*.
 - (i) As noted above, consideration was given to investigating and prosecuting Mr Griffiths under Australian law. The AFP concluded that it was not appropriate for the alleged

offences to be prosecuted in Australia as the alleged criminality primarily occurred in the United States. The Full Federal Court also held that Mr Griffiths' alleged conduct did not have any relevant extraterritorial element and the conduct constituting the offence can properly be said to have occurred in the United States.

(ii) It would be inappropriate to comment on when the AFP considered this issue. However, the AFP concluded that it was not appropriate for the alleged offences to be prosecuted in Australia as the alleged criminality primarily occurred in the United States.

(d) As noted in the response to question (c) above, the AFP concluded that it was not appropriate for the alleged offences to be prosecuted in Australia as the alleged criminality primarily occurred in the United States.

(iii)

(e)

(i) The time Mr Griffiths spent in custody in Australia is taken into account for the purposes of the US sentence.

(ii) It would be inappropriate to speculate on how prisoner transfer arrangements would apply specifically to Mr Griffiths.

However, in general, Australia has had an international transfer of prisoner (ITP) relationship with the United States since 2003. The ITP Scheme enables prisoners who are Australian citizens or who are able to enter and remain in Australia indefinitely under the *Migration Act 1958* (Cth) to apply to serve the remainder of their sentences in Australia. The ITP scheme is not automatic and requires the consent of the Australian Government, the relevant State or Territory Government, the transferring country, and the prisoner. It is not possible to give a definitive timeframe in which an application can be processed. However, the Department processes all applications as quickly as possible.