

Extradition review recommends higher standard of proof

Parliament's Treaties Committee has recommended the Federal Government drop the current 'no evidence' approach to granting extradition from Australia.

In a 104-page report reviewing Australia's extradition policy, the Committee argues a higher standard of 'proof of offence' should apply before extradition can be granted.

Under the current 'no evidence' model a country requesting extradition of a person to face trial need not produce any evidence to support the allegations of criminal conduct. It only needs to supply a statement of that alleged conduct.

This model, implemented in 1988, represented a radical departure from the requirements that had previously applied, and that still apply, under Australia's extradition arrangements with Commonwealth countries. Other countries, such as the United States of America (our main extradition partner), also require a higher standard of proof before their courts will agree that one of their citizens should be surrendered.

The Treaties Committee considered that similar standards should be applied in relation to requests for extradition from Australia.

The Committee has recommended that the Australian Law Reform Commission conduct a comprehensive consultative process to determine the merits and consequences of raising the evidentiary standard.

The Chair of the Treaties Committee, Andrew Thomson (Member for Wentworth, NSW), said the Committee became concerned about the operation of the 'no evidence' model last year.

"Over the past 20 years high-profile extradition cases, including those involving Robert Trimbole, Christopher Skase and alleged World War II criminals such as Konrad Kalejs, have attracted considerable public attention and debate in Australia," Mr Thomson said.

"During our examination last year of Australia's proposed extradition treaty with Latvia, we became concerned that the 'no evidence' model may not provide sufficient protection for Australians who are accused of crimes in other countries.

"It is clearly in the interests of Australia, and other nations, to have in place an effective network that prevents criminals from escaping justice – especially those involved in trans-border crimes such as money laundering, drug trafficking and people smuggling.

"At the same time, however, it is important to ensure that people are protected against false allegations and unlawful prosecution and punishment," Mr Thomson said. "Balancing these competing concerns is at the heart of extradition policy.

"Of course fugitives should be brought to justice, but is it good enough to send Australia's citizens overseas without any evidence of wrong-doing? We think not. A person would not have to face court in Australia without evidence being produced – why should the standards for extradition be any less?"

The Committee was certainly not suggesting that a 'mini-trial' should be held in Australia before a person is surrendered to another country to face charges, Mr Thomson said. "But justice demands that Australian courts should be able to scrutinise evidence more closely than is currently the case.

"Because our inquiry has revealed a wide range of views on precisely what higher standard should apply, we believe there must be further consultation with legal professionals and other interested parties before a final model is determined.

"The most appropriate vehicle for this further consultation and consideration is, in our



view, the Australian Law Reform Commission. The Commission has the experience, resources, expertise and independence necessary to conduct a comprehensive examination of the merits and consequences of raising the evidentiary standard."

The Treaties Committee has suggested that the terms of reference for the Commission's review should be sufficiently broad to allow examination not just of the evidentiary standard, but also:

- the extent of the court's role in considering extradition requests, which at present is limited to non-evidentiary issues;
- whether the current presumption against bail, unless there are special circumstances, should be modified in light of the onerous consequences for persons who might be considered to be at low risk of absconding; and
- whether the threshold for extraditable offences should be increased from the current level of 12 months imprisonment (which can encompass some relatively minor offences).

For more information

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