
Supplementary Submission – Australia – China Extradition Treaty

Joint Standing Committee on Treaties

6 May 2016

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Introduction

1. The Law Council of Australia appreciates the opportunity it had on 2 May 2016 to address the Joint Standing Committee on Treaties (JSCOT) regarding its inquiry into the *Treaty on Extradition Between Australia and The People's Republic of China* (Sydney, 6 September 2007) (the Treaty).
2. In response to a question from the Hon. Melissa Parke MP and evidence provided to the Committee by the Attorney-General's Department at the hearing, the Law Council has prepared this supplementary submission to further inform the Committee's consideration of the Treaty.
3. The Hon. Melissa Parke MP asked that the Law Council provide its views on Government responses to previous JSCOT recommendations regarding the monitoring of persons extradited by Australia to a foreign country.
4. The Law Council also undertook to provide some additional information about the inclusion in some of Australia's extradition arrangements of clauses which provide for an exception to extradition if to return a person would be unjust or oppressive.

Summary

5. Australia should not ratify the Treaty unless China ratifies the *International Covenant on Civil and Political Rights* (ICCPR) or otherwise publicly states that it will abide by fair trial and procedural fairness principles as commonly understood by the world community through United Nations and Australian human rights pronouncements. Additionally, the Treaty should state with absolute clarity that any extradition would be subject to the requirement that such principles will be applied and that monitoring is permitted and expected.
6. A formal monitoring system should be established to ensure that Australia does not directly or indirectly facilitate injustice or human rights contraventions of individuals (including foreign nationals) it extradites to foreign countries, including China. One option to improve Australia's monitoring system in extradition cases would be that the guarantees of access to information and proceedings under the *Agreement on Consular Relations between Australia and the People's Republic of China* (Canberra, 8 September 1999, entry into force 15 September 2000), [\[2000\] ATS 26](#) (the Agreement) should also apply in cases of extradition of foreign nationals (with appropriate adaptations). Alternatively or in addition, enhanced annual reporting obligations should apply detailing the particulars relating to each individual extradited to a foreign country.
7. Further, Australia should be able to refuse to extradite a person where there are substantial grounds for believing that the person may be denied fair trial guarantees. The Australia-China Extradition Treaty, and Australia's extradition arrangements more generally, should include exceptions to surrender in cases where return would be 'unjust or oppressive' or involve a likelihood of denial of fair trial guarantees. The Law Council recommends that such provision be included in the Treaty by way of amendment, in any regulations adopted, and in the *Extradition Act 1988* (Cth) (EA).

Recommendations:

- **Australia should not ratify the Treaty unless China ratifies the ICCPR or otherwise publicly states that it will abide by fair trial and procedural fairness principles as commonly understood by the world community through United Nations and Australian human rights pronouncements. Additionally, the Treaty should state with absolute clarity that any extradition would be subject to the requirement that such principles will be applied and that monitoring is permitted and expected.**
- **A formal monitoring system should be established to ensure that Australia does not directly or indirectly facilitate injustice or human rights contraventions against individuals (including foreign nationals) it extradites to foreign countries, including China.**
- **The Australia-China Extradition Treaty, and Australia's extradition arrangements more generally, should include exceptions to surrender in cases where return would be 'unjust or oppressive' and involve a likelihood of denial of fair trial guarantees. The Law Council recommends that such provision be included in the Treaty by way of amendment, in any regulations adopted, and in the EA.**

Question on Notice

JSCOT's previous recommendations for monitoring extradition cases

8. JSCOT's view of monitoring arrangements for Australia's bilateral extradition treaties has previously been that the Australian Government develop and implement formal arrangements which include the following elements:
 - the Attorney-General's Department informs the Department of Foreign Affairs and Trade of each extradition, including the terms of the relevant extradition agreement and any special conditions applying to the case;
 - the Department of Foreign Affairs and Trade would be expected to formally monitor all extradited Australians through the consular network;
 - in the event that a foreign national is extradited to their country of citizenship, the extradition should be made on the understanding that the Australian Government will be informed through its diplomatic representatives of the outcome of the prosecution and the ongoing status of the person while in custody as a result of a conviction. The Australian consular network would be expected to monitor and report on the condition of the extradited person until they had served their sentence and were released; and
 - in the event that a foreign national is extradited to a third country, the extradited person's country of citizenship should be informed and asked to monitor that person's trial status and health and the conditions of the detention facility in which they are held and report to the Australian

Government if it has the capacity and is willing to do so. In the event that an extradited person's country of citizenship does not have the capacity to monitor the extradited person or is not willing to do so, then the Australian Government should monitor that person's trial status and health and the conditions of the detention facility in which they are held through Australia's consular network until that person is acquitted or, if convicted and imprisoned, their sentence is served, they are released and leave the country.¹

9. JSCOT also recommended that the Attorney-General's Department and/or the Department of Foreign Affairs and Trade include in their annual report to Parliament the following details in respect of each extradited person:

- their name, nationality and the country to which they have been extradited;
- the person's trial status, i.e. whether they have been tried and sentenced, and the period of detention prior to trial;
- the means of monitoring the trial status and health of extradited persons and the conditions of the detention facilities in which they are held, i.e. through the Australian consular network or by some other means; and
- the outcome of the trial, if applicable, including convictions and sentencing.²

10. JSCOT also recommended in 2010 that new and revised extradition agreements should explicitly include a requirement that the requesting country provide annual information concerning the trial status and health of extradited persons and the conditions of the detention facilities in which they are held.³ This recommendation has subsequently been reiterated by the Committee.⁴

Government position

11. The previous Government did not accept these JSCOT recommendations regarding monitoring on the basis that:⁵

- the most appropriate time at which to examine any potential human rights concerns is *before* extradition occurs, during the extensive review process. This is consistent with Australia's obligations under international human rights law and with international extradition practice. The extradition process in Australia already includes extensive procedural safeguards.

¹ Joint Standing Committee on Treaties, *Report 91 – Treaties tabled on 12 March 2008*, June 2008, Recommendation 3.

² *Ibid*, Recommendation 4.

³ Joint Standing Committee on Treaties, *Report 110: Treaties Tabled on 18, 25 (2) & 26 November 2009 and 2(2) February 2010*, Recommendation 4, 34.

⁴ Joint Standing Committee on Treaties, *Report 131 Treaties Tabled on 21 August, 11 and 18 September 2012*, Recommendation 2, 23-24.

⁵ Government Response to Joint Standing Committee on Treaties Report 91 regarding Treaties between Australia and the United Arab Emirates on Extradition and Mutual Assistance in Criminal Matters; Government Response to Joint Standing Committee on Treaties Report 110 regarding Treaties Tabled on 18, 25 (2) & 26 November 2009 and 2(2) February 2010; Government Response to Joint Standing Committee on Treaties Tabled on 21 August, 11 and 18 September 2012.

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- current and potential extradition partners would not be prepared to accept the inclusion of explicit monitoring obligations in extradition arrangements with Australia.
 - Australia has established monitoring mechanisms in relation to Australian nationals who have been extradited overseas. This monitoring is able to be conducted because of the consular rights provided for under the *Vienna Convention on Consular Relations* and the resources provided to support Australia's consular network. There are practical obstacles to extending this type of arrangement to all persons extradited from Australia, including the resources and expertise that would need to be deployed.
 - the Government had agreed to include additional information on persons extradited from Australia in the Annual Reports of the Attorney-General's Department, including information on: extradition requests granted by Australia and the categories of the relevant offences by reference to the countries which made the request; the number of Australian permanent residents extradited; and any breaches of substantive obligations under bilateral extradition agreements noted by Australian authorities.

Law Council response

12. The Law Council agrees that it is essential that effective procedural safeguards are in place to ensure that extradition of a person only occurs in circumstances that are consistent with Australia's international human rights obligations.
13. However, the Law Council remains concerned that there are insufficient systems in place to monitor foreign nationals (including permanent residents of Australia) who are extradited to a foreign country.⁶ Currently, there do not appear to be sufficient mechanisms to monitor whether such individuals are treated in a manner consistent with bilateral extradition treaty obligations. In some cases, wider publicity about an issue may enable Australia to be informed of a person's circumstances (for example, in death penalty cases). In others, it may be more difficult for Australian authorities to readily obtain information as to whether treaty obligations have been met, such as when a person has been subjected to torture, cruel and unusual punishment while detained or whether they have been subjected to additional criminal charges against a specialty assurance.⁷
14. The Law Council is of the view that individuals should be treated in a manner consistent with international human rights standards. The JSCOT should recommend that Australia should not ratify an extradition treaty with States which have not ratified the ICCPR as an important human rights protection of extradited persons. As a minimum, Australia should not ratify the Treaty unless China otherwise publicly states that it will abide by fair trial and procedural fairness principles as commonly understood by the world community through United Nations and Australian human rights pronouncements. Additionally, the Treaty should state with absolute clarity that any extradition would be subject to the requirement that such principles will be applied and that monitoring is permitted and expected. A formal monitoring system should be

⁶ Article 11 of the *Agreement on Consular Relations between Australia and the People's Republic of China* (Canberra, 8 September 1999, entry into force 15 September 2000), [\[2000\] ATS 26](#) would appear to give sufficient rights of access to permit monitoring as far as Australian nationals are concerned.

⁷ A 'specialty assurance' is an assurance provided by a Requesting state that the person will not be tried for other offences. Article 16 of the proposed Australia-China Extradition Treaty includes a requirement that a specialty assurance be given.

established to ensure that Australia does not directly or indirectly facilitate injustice or human rights contraventions against individuals it extradites to foreign countries, including China.

15. The *Agreement on Consular Relations between Australia and the People's Republic of China* (Canberra, 8 September 1999, entry into force 15 September 2000), [\[2000\] ATS 26](#) (the Agreement) would appear to give sufficient rights of access to permit monitoring for Australian nationals.⁸ One option to improve Australia's monitoring system in extradition cases would be that the guarantees of access to information and proceedings under the Agreement should also apply in cases of extradition of foreign nationals (with appropriate adaptations).
16. The Government response on this issue is that resources and expertise would need to be deployed for this purpose. The Law Council is not sufficiently informed to advise on the resources that would be required. However, it notes that the number of extraditions to foreign countries is relatively low⁹ and that Australia has expertise available through its consular network.
17. Alternatively or in addition, enhanced annual reporting obligations should apply detailing the particulars relating to each individual extradited to a foreign country. The particulars could include, as JSCOT has previously recommended:
- the person's trial status, i.e. whether they have been tried and sentenced, and the period of detention prior to trial;
 - the means of monitoring the trial status and health of extradited persons and the conditions of the detention facilities in which they are held, i.e. through the Australian consular network or by some other means; and
 - the outcome of the trial, if applicable, including conviction and sentencing.¹⁰

Recommendations:

- **Australia should not ratify the Treaty unless China ratifies the ICCPR or otherwise publicly states that it will abide by fair trial and procedural fairness principles as commonly understood by the world community through United Nations and Australian human rights pronouncements. Additionally, the Treaty should state with absolute clarity that any extradition would be subject to the requirement that such principles will be applied and that monitoring is permitted and expected.**
- **A formal monitoring system should be established to ensure that Australia does not directly or indirectly facilitate injustice or human rights contraventions of individuals (including foreign nationals) it extradites to foreign countries, including China.**

⁸ Agreement on Consular Relations between Australia and the People's Republic of China (Canberra, 8 September 1999, entry into force 15 September 2000), [\[2000\] ATS 26](#), Article 11.

⁹ In 2014-2015, for example, 8 extradition requests were granted by Australia – see Attorney-General's Department, *Annual Report 2014-2015*, 25 August 2015, Appendix 7.

¹⁰ Joint Standing Committee on Treaties, *Report 91 – Treaties tabled on 12 March 2008*, June 2008, Recommendation 4.

Further information regarding 'unjust or oppressive' clauses

Australian extradition arrangements and modern bilateral extradition treaties that contain an 'unjust or oppressive' exception

18. The Law Council reiterates its call (as per its initial written submission to the Committee)¹¹ for an 'unjust or oppressive' provision to be included in the Australia-China Treaty, in any regulation made to apply the EA to China, and more generally in the EA itself.
19. Attached to this submission is a list of the approximately 50 Commonwealth jurisdictions to which such an exception applies by virtue of the *Extradition (Commonwealth Countries) Regulations 2010* (Attachment B).
20. Also attached is a table of Australia's 39 modern bilateral extradition treaties, ten of which contain an 'unjust or oppressive' exception (Attachment C). These are, in order of date of conclusion of the respective treaties: Finland (1984), Greece (1987), Philippines (1988), Uruguay (1988), Indonesia (1992), Hungary (1995), South Africa (1998), Latvia (2000), United Arab Emirates (2007), and Vietnam (2012).

Response to statements made by representatives of the Attorney-General's Department

21. At the hearing before the Committee on 2 May 2016, representatives of the Attorney-General's Department responded to some of the Law Council's concerns about the lack of a specific exception in the Treaty and the EA that would permit the refusal of extradition if the suspect showed there was a substantial risk that s/he would not receive a trial that afforded the fundamental international guarantees of a fair hearing. The Department appeared to accept that there was no specific guarantee in the Treaty or the EA which would require or permit refusal of extradition in a case in which the complaint was based on fundamental denial of fair trial rights resulting from systemic, non-discriminatory failures of due process.
22. The Attorney-General's Department suggested that the Australian government might 'enter into a conversation' with the Chinese government about making the extradition of a particular individual conditional on the trial of the person being carried out in accordance with fundamental fair trial standards, including specific conditions such as, for example, a public hearing or access by lawyers to the accused.
23. This is an unsatisfactory approach for a number of reasons. First, it is doubtful whether such an approach would be attractive to China, and it might conceivably leave open the possibility of a reciprocal request by China to Australia. Such a request to Australia in relation to a person whose return was sought from China to Australia, might be seen as an imposition on Australia's sovereignty and raise serious concern on separation of powers grounds. Australia would undoubtedly see it as highly inappropriate for the Executive Government to undertake to guarantee that Australian courts would conduct proceedings against a person in a manner that diverges from the usual procedures of

¹¹ Law Council of Australia, *Submission to the Joint Standing Committee on Treaties: Treaty on Extradition Between Australia and the People's Republic of China*, 24 March 2016, 15.

the court, unless such guarantees were specifically authorised by statute and were thus binding on the Executive and the courts (for example, specialty guarantees).

24. The second issue is that this position appears to have no basis in the text of the Treaty, and if Australia were not able to persuade China to agree to such a conversation and conditions (whose enforceability under Chinese law may in any event be open to question), Australia would be under an international legal obligation to surrender the person, if no other exception under the Treaty or the Act applies. As there is no general 'unjust or oppressive' or 'fundamentally unfair trial' exception and none of the other exceptions would apply, Australia would be obliged under international law to surrender the person. China would have a legitimate ground for complaint if Australia were not to do so.
25. Thirdly, a bilateral discussion between Australia and China to discuss specific fair trial concerns would rely on the discretion of both States. This discretion may potentially be influenced by a wide range of factors. As such, it is not an adequate protection of an individual's right to a fair trial.
26. Fourthly, the Australian Government does not accept the position that Australia's obligations under article 14 of the ICCPR extend to not returning a person to a situation in which there are substantial grounds for believing that the person risks suffering a 'flagrant denial' of the right to a fair trial. The government's view is out of line with the interpretation by the European Court of Human Rights and the UK courts of the similar guarantee in the European Convention on Human Rights. The Law Council shares the view expressed by the Parliamentary Joint Committee on Human Rights that Australia's obligations under the ICCPR do extend to an obligation not to return a person to face trial in a country where there are substantial grounds for believing that the person will be subjected to a fundamentally unfair trial.¹²
27. In any case, as a matter of policy it is unacceptable to return someone to a country if there are substantial grounds for believing the person is likely to be denied fundamental fair trial rights. In this context, the Law Council notes that comparable countries in Europe which have entered into extradition treaties with China – Spain, France and Portugal – are all bound under the *European Convention on Human Rights* not to return an individual to a country where the person risks suffering a flagrant denial of the right to a fair hearing. A similar guarantee is contained in the United Nations Model Extradition Treaty.¹³ Australia should not allow its extradition practice to fall below such a widely accepted international standard.
28. Fifthly, although there is limited opportunity under Australian law to mount a challenge to return on the ground of the risk of a fundamentally unfair trial, an affected individual might submit a complaint to the United Nations Human Rights Committee under the First Optional Protocol to the ICCPR. However, the views of this body are not binding and the Australian Government has on a number of occasions declined to accept the Committee's findings and recommendations in cases where it disagrees with the

¹² See Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013*, May 2013, 154-155, [2.105]-[2.108], *Tenth Report of 2013*, June 2013, 60-61, [3.84]. The UN Human Rights Committee has left the question open, deciding cases in which the issue has been raised on other grounds. However, in one case the Human Rights Committee explicitly did not endorse an argument by Australia that there was no such obligation in relation to article 14 (*ARJ v Australia*, Communication No. 692/1996, 6 February 1996, CCPR/C/60/D/692/1996), and in the Law Council's view the Committee is likely take the same approach as the European Court of Human Rights if it is required to decide the issue.

¹³ United Nations, *Model Treaty on Extradition*, UNGA resolution 45/116, Annex (14 December 1990) and amended by UNGA resolution 52/88 (12 December 1997), <https://www.unodc.org/tldb/pdf/Model-treaty-extradition.pdf>.

Committee's expert interpretation of the ICCPR. This possibility of redress cannot therefore be seen as a practically effective protection for fair trial rights.

Recommendations:

- **The Australia-China Extradition Treaty, and Australia's extradition arrangements more generally, should include exceptions to surrender in cases where return would be 'unjust or oppressive' and involve a likelihood of denial of fair trial guarantees. The Law Council recommends that such provision be included in the Treaty by way of amendment, in any regulations adopted, and in the EA.**

Conclusion

29. Australia should not ratify the Treaty unless China ratifies the ICCPR or otherwise publicly states that it will abide by fair trial and procedural fairness principles as commonly understood by the world community through United Nations and Australian human rights pronouncements. Additionally, the Treaty should state with absolute clarity that any extradition would be subject to the requirement that such principles will be applied and that monitoring is permitted and expected. A formal monitoring system for persons Australia extradites to a foreign country should be implemented.
30. Further, international law may require Australia to be able to refuse to extradite a person where there are substantial grounds for believing that the person may be denied fundamental fair trial guarantees. The Australia-China Extradition Treaty, and Australia's extradition arrangements more generally, should include exceptions to surrender in cases where return would be 'unjust or oppressive' and involve a likelihood of denial of fair trial guarantees. It recommends that such provision be included in the Treaty by way of amendment, in any regulations adopted, and in the EA.
31. The Law Council also notes that if a regulation applying the EA to China subject to the Treaty is made, the legislative instrument will be subject to review by the Parliamentary Joint Committee on Human Rights and, on the basis of that Committee's practice to date, may be found to be incompatible with human rights, and may even face a disallowance motion.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2016 Executive as at 1 January 2016 are:

- Mr S. Stuart Clark AM, President
- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Extradition (Commonwealth countries) Regulation

Regulation 9 of the *Extradition (Commonwealth countries) Regulations 2010* provides:

9. Modification of Act — when eligible person must not be surrendered

(1) For section 11 of the Act, the Act applies in relation to a Commonwealth country subject to the condition that an eligible person must not be surrendered in relation to a qualifying extradition offence if the Attorney General is satisfied that it would be unjust, oppressive or too severe a punishment:

- (a) to surrender the eligible person; or*
- (b) to surrender the eligible person before the end of a period stated by the Attorney General.*

Schedule 1 – Extradition countries

Anguilla	Brunei Darussalam	Jamaica	Pitcairn, Henderson, Ducie and Oeno Islands	Swaziland
Antigua and Barbuda	Cayman Islands	Kenya	St Helena	Tanzania
Bahamas	Cyprus	Lesotho	St Helena Dependencies	The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Bangladesh	Dominica	Malawi	St Kitts and Nevis	Trinidad and Tobago
Barbados	Falkland Islands	Maldives	St Lucia	Turks and Caicos Islands
Belize	Gambia	Malta	St Vincent and the Grenadines	Uganda
Bermuda	Ghana	Mauritius	Seychelles	Zambia
Botswana	Gibraltar	Montserrat	Sierra Leone	Zimbabwe
British Antarctic Territory	Grenada	Namibia	Singapore	
British Indian Ocean Territory	Guyana	Nigeria	South Georgia and the South Sandwich Islands	
British Virgin Islands	India	Pakistan	Sri Lanka	

Attachment C: Exceptions to extradition on humanitarian and other grounds

Australia's 39 modern extradition treaties contain a number of different types of clauses providing for the discretionary refusal of an extradition request on humanitarian grounds and in some cases on the basis of apparently broader considerations. This is in addition to the availability under the *Extradition (Commonwealth countries) Regulations 2010* of a generally worded 'unjust or oppressive' ground for refusal.¹⁴

The attached table reproduces the relevant provisions from all of Australia's modern bilateral treaties. (The table does not include the 17 treaties inherited from the United Kingdom that still apply). They are classified into four categories.

In addition, the treaties generally provide for (mandatory) refusal if it appears that the person's extradition is being sought for the purpose of prosecuting or punishing a person on specific grounds or if the person would be denied a fair trial for those reasons. The grounds included are race, sex, language, nationality, political opinion or personal status. The Australia-China extradition treaty contains such a clause (article 3(b)). This restriction is also specified in the definition of 'extradition objection' in section 7 of the *Extradition Act 1988* (Cth); the relevant grounds listed there are race, sex, sexual orientation, religion, nationality or political opinion.

None of the treaties contains an equivalent provision to that contained in the United Nations Model Treaty on Extradition which provides for mandatory refusal of extradition if the person whose extradition is requested 'has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14' (article 3(f)). However, Australia's obligations under the ICCPR would include at least an obligation not to return a person if there was a real possibility that the person would suffer a flagrant denial of internationally guaranteed fair trial rights. It would have been preferable to include an explicit provision to this effect in the treaties (and to do so for future treaties). However, it would be highly desirable to state explicitly in the Extradition Act and in the implementing regulations for this treaty that relevant obligations under the ICCPR relating to observance of minimum fair trial guarantees apply before extradition can be granted.

¹⁴ Regulation 9 of the *Extradition (Commonwealth countries) Regulations 2010* provides:

- 9 Modification of Act — when eligible person must not be surrendered
- (1) For section 11 of the Act, the Act applies in relation to a Commonwealth country subject to the condition that an eligible person must not be surrendered in relation to a qualifying extradition offence if the Attorney-General is satisfied that it would be unjust, oppressive or too severe a punishment:
- (a) to surrender the eligible person; or
 - (b) to surrender the eligible person before the end of a period stated by the Attorney-General.

Category	Typical wording	Comment
A (10 treaties)	'where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested , the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations ' (Australia-Indonesia, art 9(2)(b))	Appears to allow factors beyond humanitarian considerations, including general injustice or oppressiveness, to be taken into account. See <i>Minister for Justice (Cth) v Adamas</i> (2013) 253 CLR 43 (Australian standards not determinative) ¹⁵
B (4 treaties)	'if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, particularly because of the person's age or state of health.' (Australia-France, art 3(3) (e))	Appears to be limited to humanitarian considerations related to the personal circumstances of the person whose extradition is requested.
C (20 treaties)	Article 3(2)(e) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, in particular the age or health of the person whose extradition is requested, the extradition of that person would be incompatible with humanitarian considerations.	Appears to be limited to humanitarian considerations related to the personal circumstances of the person whose extradition is requested.
D (5 treaties)	No specific provision included	General objection based on unfairness of trial apparently not available under the treaty.

Professor Andrew Byrnes
University of New South Wales

¹⁵ 'The expression encapsulates a single broad evaluative standard to be applied alike by each Contracting State whenever that Contracting State finds itself in the position of the Requested State. The standards applied within each Contracting State are relevant to its application, as are international standards to which each Contracting State has assented, but none is determinative.' *Adamas* (2013) 253 CLR 43, 55.

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
	China	Treaty on extradition between Australian and the People's Republic of China	6/9/2007	Not yet in force	Article 4 (c) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requesting Party, considers that the extradition would be incompatible with humanitarian considerations in view of that person's age, health or other personal circumstances.	C
1	Argentina	Treaty on extradition between the Government of Australia and the Government of the Republic of Argentina	6/10/1988	15/02/1990	Article 3(2) (e) if, in exceptional cases, the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, deems that, because of the personal circumstances of the person sought, the extradition would be totally incompatible with humanitarian considerations.	C
2	Austria	Treaty between Australia and the Republic of Austria concerning extradition	29/03/1973	6/02/1975	No specific provision	D
		Protocol between Australia and the Republic of Austria amending the treaty concerning extradition	30/08/1985	1/02/1987		

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		done at Canberra on 29 March 1973				
3	Belgium	Treaty on extradition between Australia and the Kingdom of Belgium	4/09/1985	19/11/1986	Article 3(2)(f) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition would be incompatible with humanitarian considerations such as the age or health of the person.	C
4	Brazil	Treaty on extradition between Australia and the Federative Republic of Brazil	22/08/1994	1/09/1996	Article 4(c) when, in exceptional circumstances, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party decides that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.	C
5	Chile	Treaty on extradition between Australia and the Republic of Chile	6/10/1993	13/01/1996	Article V (4). Where the Requested State, while taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition would be incompatible with humanitarian considerations such as the age or health	C

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
					of the person sought.	
6	Ecuador	Treaty on extradition between the Government of Australia and the Government of the Republic of Ecuador	13/10/1988	1/08/1990	Article 3(2)(e) if, in exceptional cases, the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, deems that, because of the personal circumstances of the person sought, the extradition would be totally incompatible with humanitarian considerations.	C
7	Finland	Treaty between Australia and Finland concerning extradition	7/06/1984	23/06/1985	Article 5(1) (c) the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, <i>in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested</i> , the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations	A
		Protocol between Australia and Finland amending the treaty concerning extradition done at Helsinki on 7	10/09/1985	14/02/1986		

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		June 1984				
8	France	Treaty on extradition between the Government of Australia and the Government of the Republic of France	31/08/1988	23/11/1989	Article 3(3) (e) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, particularly because of the person's age or state of health.	B
9	Germany	Treaty between Australia and the Federal Republic of Germany concerning extradition	14/04/1987	1/08/1990	No specific provision	D
10	Greece	Treaty on extradition between Australia and the Hellenic Republic	13/04/1987	5/07/1991	Article 3(2)(f) when the competent authority of the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, <i>in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested</i> , the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.	A
11	Hong Kong	Agreement for the surrender of accused	15/11/1993	29/06/1997	Article 7 (e) in the circumstances of the case, the surrender	C

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		and convicted persons between the Government of Australia and the Government of Hong Kong			would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of the person sought.	
12	Hungary	Treaty on extradition between Australia and the Republic of Hungary	25/10/1995	25/04/1997	Article 3(2) (f) ' if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health and other personal circumstances of the person whose extradition is sought , the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.	A
13	India	Extradition treaty between Australia and the Republic of India	23/06/2008	20/01/2011	Article 4(2)(d) ' if the Requested State believes that the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, including because of the person's age or state of health.	C
14	Indonesia	Extradition treaty between Australia and the Republic of	22/04/1992	21/01/1995	Article 9(2)(b) where the Requested State, while also taking into account the nature of the offence and the	A

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		Indonesia			interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested , the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations;	
15	Ireland	Treaty on extradition between Australia and Ireland	2/09/1985	29/03/1989	No specific provision	D
16	Israel	Treaty between Australia and the State of Israel concerning extradition	4/12/1975	3/01/1976	No specific provision	D
17	Italy	Treaty of extradition between Australia and the Republic of Italy	26/08/1985	1/08/1990	Article 7: The requested Party may recommend to the requesting Party that a request for extradition be withdrawn, specifying the reasons therefore, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.	B
18	Korea	Treaty on extradition	5/09/1990	16/01/1991	Article 4(2) (e) if, in exceptional cases,	C

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		between Australia and the Republic of Korea			the Requested Party while also taking into account the nature of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.	
19	Latvia	Treaty on extradition between Australia and the Republic of Latvia	14/07/2000	16/01/2005	Cat A (general) Article 3(2)(g) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is sought , the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.	A
20	Luxembourg	Treaty on extradition between Australia and the Grand Duchy of Luxembourg	23/04/1987	12/08/1988	Article 3(2) (b) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition would be incompatible with humanitarian	C

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
					considerations such as the age or health of the person;	
21	Malaysia	Treaty between the Government of Australia and the Government of Malaysia on Extradition	15/11/2005	28/12/2006	Article 3(3)(e) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, particularly because of her or his age or state of health.	C
		An Exchange of Notes between the Government of Australia and the Government of Malaysia on the Treaty on Extradition	7/12/2005	28/12/2006		
22	Mexico	Treaty on extradition between Australia and the United Mexican States	22/06/1990	27/03/1991	Article 14 (b) if, in exceptional cases, the Requested Party, while also taking into account the nature of the offence and the interests of the Requesting Party, deems that, because of the personal circumstances of the person sought, the extradition would be totally incompatible with humanitarian considerations.	C
23	Monaco	Treaty on extradition between Australia and the Government of his Serene Highness the Prince of	19/10/1988	1/08/1990	Article 4(2) (c) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought particularly as regards that person's	B

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		Monaco			age or state of health.	
24	Netherlands	Treaty on extradition between Australia and the Kingdom of the Netherlands	5/09/1985	1/02/1988	Article 3(2) (e) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, in particular the age or health of the person whose extradition is requested, the extradition of that person would be incompatible with humanitarian considerations.	C
25	Norway	Treaty between Australia and Norway concerning extradition	9/09/1985	2/03/1987	<p>Article 6(3) A person shall not be extradited if the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person claimed, the extradition of that person would be in conflict with fundamental humanitarian considerations.</p> <p>Article 7(3) Extradition may also be refused on any other grounds or for any other reason specified by the law</p>	C

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
					of the requested State.	
26	Paraguay	Treaty on extradition between Australia and the Republic of Paraguay	30/12/1997	30/05/1999	Article 3(2)(g) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that by reason of the age, health or other personal circumstances of the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment;	C
27	Philippines	Treaty on extradition between Australia and the Republic of the Philippines	7/03/1988	18/01/1991	Article 4(2) (e) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.	A

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
28	Poland	Treaty between Australia and the Republic of Poland on extradition	3/06/1998	2/12/1999	Article 3(4) Where it appears to the Requested Party that extradition would be totally incompatible with humanitarian considerations because of exceptional circumstances including the state of health or old age of the person sought, the Contracting Parties shall consult to mutually determine whether the extradition request should continue.	C
29	Portugal	Treaty on extradition between Australia and the Republic of Portugal	21/04/1987	29/08/1988	Article 4(3) The Requested State may recommend to the Requesting State that a request for extradition be withdrawn, specifying the reasons therefor, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.	C
30	South Africa	Treaty on extradition between Australia and the Republic of South Africa (signed 9 December 1988, entered into force 1 August 2001)	9/12/1998	1/08/2001	Art 3(2)(g) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of	A

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
					the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment;	
31	Spain	Treaty on extradition between Australia and Spain	22/04/1987	5/05/1988	Article III(2) (f) where the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the exceptional circumstances of the case, the extradition would be incompatible with humanitarian considerations.	C
32	Sweden	Treaty on extradition between Australia and Sweden	20/03/1973	10/03/1974	Article 3(2)(e) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, in particular the age or health of the person whose extradition is requested, the extradition of that person would be incompatible with humanitarian considerations.	C
		Protocol between Australia and Sweden amending the	6/09/1985	6/10/1985		

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		treaty concerning Treaty on extradition between Australia and Sweden done at Stockholm on 20 March 1973				
		Protocol between Australia and Sweden further amending the treaty concerning Treaty on extradition between Australia and Sweden done at Stockholm on 20 March 1973	11/05/1989	11/05/1989		
33	Switzerland	Treaty between Australia and Switzerland on extradition	29/07/1988	1/01/1991	Article 3(3) The Requested State may recommend to the Requesting State that a request for extradition be withdrawn, specifying the reasons therefore, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.	C
34	Turkey	Treaty on extradition between Australia and the Republic of Turkey	3/03/1994	16/11/2003	Article 3(2)(e) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought	B

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
					particularly because of his or her age or state of health.	
		Exchange of notes in relation to the treaty on extradition, constituting an agreement between the Government of Australia and the Government of the Republic of Turkey	27/03/1995	16/11/2003		
35	United Arab Emirates	Treaty on Extradition between Australia and the State of the United Arab Emirates	26/07/2007	7/09/2011	Article 4(2)(e) ' if the Requested State, while taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition of the person is unjust, oppressive, or incompatible with humanitarian considerations in view of age, health, or other personal circumstances of that person.'	A
36	United States of America	Treaty on extradition between Australia and the United States of America	14/05/1974	8/05/1976	No specific provision	D
		Protocol amending the treaty on extradition between Australia and	4/09/1990	4/09/1990		

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		the United States of America of May 14, 1974				
37	Uruguay	Treaty on Extradition between Australia and the Oriental Republic of Uruguay	7/10/1988	9/01/2011	Article 3(2) (g) 'if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.'	A
38	Venezuela	Treaty on extradition between Australia and the Republic of Venezuela	11/10/1988	19/12/1993	Article VII(e) if, in exceptional cases, the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, deems that because of the personal circumstances of the person sought the extradition would be incompatible with humanitarian considerations.	C
39	Vietnam	Treaty between Australia and the Socialist Republic of Vietnam on	10/04/2012	7/04/2014	Article 3(2)(g) the Requested Party, while taking into account the seriousness of the offence and the interests of the	A

No.	Country	Treaty name	Date treaty signed	Date treaty entered into force	Grounds for refusing extradition (discretionary unless otherwise noted)	Category
		Extradition			Requesting Party, considers <i>that the extradition of the person would be unjust or oppressive</i> , or, in exceptional cases, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.	