Report 167

Nuclear Cooperation-Ukraine; Extradition-China

Joint Standing Committee on Treaties

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Executive Summary

This Report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy (Washington DC, 31 March 2016); and
- Treaty on Extradition Between Australia and the People’s Republic of China (Sydney, 6 September 2007).


The Ukraine is dependent on nuclear power and is endeavouring to source nuclear materials from countries other than its traditional supplier, Russia. While the Ukrainian Government is attempting to improve the safety and security of its nuclear energy program, Australian nuclear material in Ukraine faces serious risks from war, civil unrest, and corruption.

Therefore the Committee has recommended ratification of the treaty action only if Australia has a suitable contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.

The inquiry into the Treaty on Extradition Between Australia and the People’s Republic of China lapsed at the end of the 44th Parliament. The Treaty was re-referred at the beginning of the 45th Parliament and the current Committee resolved to accept the
evidence received by the previous Committee and not call for further submissions. However, the Committee conducted one further public hearing for the inquiry.

The Committee regularly examines extradition treaties and is aware of the tension between combating domestic and transnational crime and protecting the human rights of individuals facing extradition. In this case concerns were raised regarding the lack of transparency in the Chinese justice system, allegations of the ill-treatment and torture of prisoners, and the continuing imposition of the death penalty.

The Committee has recommended ratification of the treaty action but has also put forward four additional recommendations designed to strengthen the protection of individual human rights.

The Report also includes details of six minor treaty actions for which the Committee has agreed that binding treaty action be taken:

- Amendments to the Annex of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL) - Amendments to MARPOL Annex II Resolution MEPC.270(69);
- Amendments to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL) – Amendments to regulation 13 of MARPOL Annex VI Resolution MEPC.271(69);
- Amendments to the Annex of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL) – Amendments to MARPOL Annex IV Resolution MEPC.274(69);
- Third Protocol Establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17;
- Exchange of letters with Switzerland to bring forward the start of exchange of tax information; and
Amendment to Annex I of the International Convention Against Doping in Sport.
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Abbreviations

ACF    Australian Conservation Foundation
AGD    Attorney-General’s Department
AONM   Australian obligated nuclear material
ASNO   Australian Safeguards and Non-Proliferation Office
CIA    Central Intelligence Agency
DFAT   Department of Foreign Affairs and Trade
EIA    Environmental Impact Assessment
EU     European Union
Euratom European Atomic Energy Community
FoEA   Friends of the Earth Australia
IAEA   International Atomic Energy Agency
ICCPR  *International Covenant on Civil and Political Rights*
JSCOT  Joint Standing Committee on Treaties
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>LCA</td>
<td>Law Council of Australia</td>
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<td>Medical Association for the Prevention of War</td>
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<td>NIA</td>
<td>National Interest Analysis</td>
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<td>NTP</td>
<td>Treaty on the Non-Proliferation of Nuclear Weapons</td>
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<td>RIS</td>
<td>Regulation Impact Statement</td>
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<td>United Nations</td>
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<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
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Members

Chair
Hon Stuart Robert MP

Deputy Chair
Hon Michael Danby MP

Members
Mr John Alexander OAM, MP
Senator Chris Back
Mr Chris Crewther MP
Senator Sam Dastyari
Senator David Fawcett
Senator Sarah Hanson-Young
Senator Kimberley Kitching (from 10.11.16)
Senator the Hon Ian Macdonald
Ms Nola Marino MP
Senator Jenny McAllister
Senator Glenn Sterle (to 10.11.16)

Ms Susan Templeman MP

Mr Ross Vasta MP

Mr Andrew Wallace MP

Mr Josh Wilson MP
Committee Secretariat

Ms Lynley Ducker, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary

Mr Kevin Bodel, Senior Researcher

Ms Cathy Rouland, Office Manager
Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

a. matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;

b. any questions relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
   i. either House of the Parliament, or
   ii. a Minister; and

c. such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.
List of Recommendations

Recommendation 1

2.60 The Committee supports the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy and recommends that binding treaty action be taken providing the Australian Government undertakes a proper assessment of risks, and develops and maintains a suitable contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.

Recommendation 2

3.49 The Committee recommends that the extradition decision maker take into account reports from government and non-government sources regarding the degree to which China’s criminal justice system currently complies with human rights and the rule of law, when making the decision to extradite an individual.

Recommendation 3

3.51 The Committee recommends that undertakings to provide a fair and open trial are routinely included in agreements to surrender an individual to China.

Recommendation 4

3.55 The Committee recommends that the Attorney-General’s Department supplement its current annual reporting framework for extradition cases
with the following information for each case of an Australian national or an Australian permanent resident held in a foreign country:

- if a trial has taken place;
- if so, the verdict handed down;
- if a sentence was imposed, what that sentence was; and
- whether an Australian embassy official was able to attend.

**Recommendation 5**

3.58 The Committee recommends that, 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 details of the trial, whether a consular official was able to attend, the outcome of any prosecution and, on request, the location and general health of the person while in custody as a result of a conviction.

**Recommendation 6**

3.60 The Committee supports the *Treaty on Extradition Between Australia and the People’s Republic of China* and, noting the power of the Minister for Justice to refuse extradition under the *Extradition Act*, recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy (Washington DC, 31 March 2016);
- Treaty on Extradition Between Australia and the People’s Republic of China (Sydney, 6 September 2007).¹

1.2 The Committee’s resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.

1.4 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by the Government. This document considers

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¹ The inquiry into the Treaty on Extradition Between Australia and the People’s Republic of China lapsed at the end of the 44th Parliament. The Treaty was re-referred at the beginning of the 45th Parliament and the current Committee resolved to accept the evidence received by the previous Committee and not call for further submissions. However, the Committee conducted one further public hearing for the inquiry.
arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.

1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaty examined in this report did not require a RIS.

1.6 The Committee takes account of these documents in its examination of the treaty texts, in addition to other evidence taken during the inquiry program.

1.7 Copies of the treaty considered in this report and associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:


**Conduct of the Committee’s review**

1.8 The treaty actions reviewed in this report were advertised on the Committee’s website from the date of tabling. Submissions for the inquiry into Nuclear Cooperation with Ukraine were requested by 7 October 2016.

1.9 Invitations were made to all State Premiers, Territory Chief Ministers and Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the treaty reviewed.

1.10 The Committee held a public hearing into the Nuclear Cooperation with Ukraine treaty in Canberra on 21 November 2016 and for the China Extradition treaty in Canberra on 24 November 2016.
1.11 The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee’s website.

1.12 A list of submissions is at Appendix A.

1.13 A list of witnesses who appeared at the public hearing is at Appendix B.
2. Nuclear Cooperation - Ukraine

*Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy*

**Overview**

2.1 The *Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy* (the Agreement) was signed between the two countries in Washington DC on 31 March 2016.

2.2 The Agreement’s purpose is to allow Australian uranium to be used in the Ukraine.

2.3 Australia has a policy of requiring a bilateral nuclear cooperation agreement to be in place before any Australian nuclear materials can be used in another country.¹

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2.4 Australian nuclear co-operation agreements contain a standard set of provisions intended to prevent Australian nuclear materials being used for nuclear weapons or other military uses.  

2.5 According to the NIA, Australia currently has 24 nuclear cooperation agreements in place, providing for the transfer of Australian nuclear material to 42 countries and Taiwan.

### Background

2.6 Ukraine is reliant on nuclear power, operating 15 nuclear reactor units located in four nuclear power plants supplying over half of the country's electricity.  

2.7 The National Interest Analysis (NIA) advises that Ukraine mines enough uranium for about half its requirements, with the rest having previously been supplied by Russia. Ukraine has also been reliant on Russian nuclear technology.  

2.8 Recently, the Ukrainian Government has made an effort to diversify its uranium supply and strengthen its energy security. Ukraine recently concluded contracts with US based company Westinghouse and European companies for uranium fuel assemblies and enrichment services.  

2.9 Ukraine currently has nuclear cooperation agreements with several countries, including the United States and Canada, and with the European Atomic Energy Community (Euratom).  

2.10 Ukraine is a non-nuclear weapons state, having repatriated the nuclear weapons it inherited following the collapse of the Soviet Union.  

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2 NIA, para 12.  
3 NIA, para 8.  
4 NIA, para 8.  
5 Dr John Kalish, Assistant Secretary, Australian Safeguards and Non-Proliferation Office (ASNO), Committee Hansard, Monday 21 November 2016, p 11.  
6 NIA, para 10.
acceded to the *Treaty on the Non-Proliferation of Nuclear Weapons*, commonly called the Nuclear Non-Proliferation Treaty, in 1994.7

2.11 In addition, Ukraine has a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA) and an additional protocol on strengthened safeguards.8

2.12 According to the Australian Safeguards and Non-Proliferation Office (ASNO), Ukraine has been subject to 570 person days of inspection by the IAEA in the last three years.9

The Agreement

2.13 Australia’s nuclear co-operation agreements contain a standard set of provisions, the most significant of which are:

- provision for the transfer of nuclear materials;10
- a requirement that the agreement applies to all nuclear materials transferred between the parties;11
- an obligation that the nuclear material subject to the agreement shall remain subject to the agreement until it is either: no longer usable for a nuclear activity; cannot be recovered for use by processing; or has been transferred to a third party under the Agreement;12

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7 NIA, para 13.
8 NIA, para 13.
9 Dr Kalish, ASNO, *Committee Hansard*, Monday 21 November 2016, p 12.
11 The Agreement, Article IV.1a.
12 The Agreement, Article IV.3.
- safety and waste management procedures set out in relevant international treaties must be applied to nuclear material covered by the Agreement;\textsuperscript{13}
- security measures required by relevant international treaties must be applied to the nuclear material covered by the Agreement;\textsuperscript{14}
- nuclear material cannot be reprocessed or enriched to a standard of 20 per cent or greater content of Uranium 236;\textsuperscript{15}
- nuclear material cannot be used for military purposes;\textsuperscript{16}
- Australian obligated nuclear materials in the Ukraine will be subject to IAEA standard safeguard procedure. This requires the tracking of Australian obligated nuclear material, along with the capacity for the IAEA to conduct safeguards inspections;\textsuperscript{17} and
- the capacity for the Agreement to be terminated and nuclear materials to be returned to the country of source in the event of a material breach of the Agreement.\textsuperscript{18}

2.14 In addition to standard assurances that apply international standards of physical protection, the NIA advises that the proposed Agreement also contains the following additional clauses designed to minimise security concerns:

- allowing Australia to review physical protection measures;\textsuperscript{19} and

\textsuperscript{13} The Agreement, Article V.1.
\textsuperscript{14} The Agreement, Article VI.
\textsuperscript{15} The Agreement, Article IX. Twenty per cent content of Uranium 236 is the point beyond which the uranium becomes useful in the production of nuclear weapons.
\textsuperscript{16} The Agreement, Article X.
\textsuperscript{17} The Agreement, Article XI.
\textsuperscript{18} The Agreement, Article XVI.
\textsuperscript{19} The Agreement, Article VI.3.
developing a facilities list, approved by Australia, limiting the locations where Australian nuclear material can be processed, used, or stored (Article VIII).

Benefits

2.15 The NIA indicates the Agreement will have a number of benefits for Australia:

- opening an important additional market for Australian uranium producers;
- reinforcing Australia's close bilateral relations with Ukraine;
- supporting Australia's efforts in nuclear non-proliferation by applying Australia's stringent safeguards and security standards to another uranium market;
- consolidating Australia's position as a reliable supplier of energy resources;
- providing opportunities to engage with Ukraine on a range of nuclear matters (e.g., nuclear safeguards, scientific and technical matters, nuclear safety, radioisotopes, nuclear medicine and environmental research); and
- reinforcing Australia's commitment to nuclear and radiation safety by requiring consistency with international standards of nuclear safety and waste management.

Concerns

2.16 The Committee has received seven submissions in relation to this inquiry. Their main concerns and comments are discussed in the following paragraphs.

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20 The Agreement, Article VIII.

21 NIA, para 7.
Limitations of the IAEA and adequacy of fall-back safeguards

2.17 Submissions raised concerns about the capacity of the IAEA to oversee Ukrainian nuclear facilities.

2.18 The Australian Conservation Foundation considers that ‘the IAEA faces both significant capacity constraints and increasing demands’.22

2.19 People for Nuclear Disarmament WA consider that the IAEA is ‘under-funded, under resourced, unable to fulfil its many duties’ and ‘can barely carry out routine inspections of nuclear facilities’.23

2.20 Friends of the Earth Australia’s (FoEA’s) submission argues that IAEA inspections have been compromised or delayed as a result of the civil war in Ukraine.24

2.21 FoEA note that that the IAEA does not publically release information on inspections, and as a consequence it is not possible to ascertain the extent to which the IAEA has engaged in inspections in Ukraine.25

2.22 Later in the inquiry, witnesses for the Australian Government were able to advise the Committee that Ukraine has been subject to 570 person days of inspection by the IAEA in the last three years.26

Risk of war, civil unrest and criminal activity.

2.23 Ukraine’s recent history has been troubled. Following a flawed election in October 2012, the Ukraine Government decided to pull out of a trade and cooperation agreement with the European Union (EU) in favour of a trade

22 Australian Conservation Foundation (ACF), Submission 2, p. 2.
23 People for Nuclear Disarmament WA, Submission 1, p. 1.
24 Friends of the Earth Australia (FoEA), Submission 5, p. 21.
25 FoEA, Submission 5, p. 20.
26 Dr Kalish, ASNO, Committee Hansard, Monday 21 November 2016, p 12.
agreement with Russia. Subsequent civil unrest resulted in the resignation of the Government.\(^\text{27}\)

2.24 Russia responded to the appointment of a new, pro EU Government by invading the Crimea and supporting a separatist civil war in other Eastern provinces of Ukraine.\(^\text{28}\)

2.25 A peace agreement between the parties was agreed in 2014, but low level conflict continues along the front lines.\(^\text{29}\)

2.26 The Department of Foreign Affairs and Trade (DFAT) reported that:

\[
\text{…since 2015 and the conclusion of the [first part of the peace agreement] and then, more importantly, the [second part of the peace agreement], you basically have what is often called a ‘frozen conflict’. In other words, there has been no great movement.}\(^\text{30}\)
\]

2.27 Another region of concern for Ukraine is Transnistria, an independent region along the Ukraine – Moldova border. This region claims nation status, but has not been internationally recognised. The region is ethnically Russian and Russian troops are stationed in the region.

2.28 In addition, the region is, according to the CIA, a source of criminal and underground economic activity.\(^\text{31}\)

2.29 Finally, Ukraine suffers from a corruption problem with its Government services. According to Transparency International’s latest assessment of


\(^{30}\) Mr Kevin Magee, Assistant Secretary, Northern, Southern and Eastern Europe Branch, Department of Foreign Affairs and Trade (DFAT), Committee Hansard, Monday 21 November 2016, p 16.

Europe and Central Asia (dated late 2015), Ukraine ranked amongst the worst countries for corruption in the region.\textsuperscript{32}

2.30 The risks posed by civil unrest and corruption were raised by a number of participants in the inquiry. FoEA quote Ukraine’s report to the 2016 Nuclear Security Summit where Ukraine reported that domestic nuclear inspectors were unable to safely perform their duties in certain areas at certain times in 2014.\textsuperscript{33}

2.31 FoEA argue that a loss of domestic regulatory control may compromise or delay IAEA inspections.\textsuperscript{34}

2.32 Article XI(3) of the Agreement contains a fall-back provision if the IAEA fails to administer its functions. Under this Article, both parties shall immediately consult, co-operate and arrange for the application of a new safeguard system to provide equivalent reassurance.

2.33 There is no information in the NIA as to how these safeguards would work. FoEA believes the fall-back safeguards need to be backed up by realistic plans; noting that this provision is likely to be needed quickly and in a situation of possible conflict or insecurity.\textsuperscript{35}

### Safety concerns

2.34 A number of submissions addressed the issue of the age and safety of Ukraine’s reactors.

2.35 FoEA points to a 24 August 2016 article in *Nuclear Engineering International* that discusses the life extensions of Ukraine’s reactors and growing concerns about the condition of Ukraine’s nuclear processing plants. FoEA advises


\textsuperscript{33} FoEA, *Submission 5*, p. 21.

\textsuperscript{34} FoEA, *Submission 5*, p. 21.

\textsuperscript{35} FoEA, *Submission 5*, p. 22.
that until the lifespan extension program started, 12 of the 15 power reactors were scheduled for permanent shut down by 2020.\textsuperscript{36}

2.36 The Medical Association for the Prevention of War (MAPW) also points to the ‘deeply contested’ series of license renewals and European Bank for Reconstruction and Development financing of a program to upgrade safety features.\textsuperscript{37}

2.37 The Australian Government responded that:

Ukraine is engaged in a 1.4 billion euro program. That is a comprehensive safety improvement program for Ukrainian nuclear power plants. Three hundred million euros of this money comes from the European Bank for Reconstruction and Development, 300 million euros from Euratom and other funds from a range of sources. So there is considerable work underway to improve these facilities in relation to safety and to ensure that they are up to standard for the life extension that is planned.\textsuperscript{38}

2.38 Submissions also expressed concerns about Ukraine’s own capacity to carry out regulatory inspections of its nuclear facilities. MAPW points to the Ukrainian’s government actions in January 2015, which it says prevented the national nuclear energy regulator from carrying out facility inspections on its own initiative.\textsuperscript{39}

2.39 The event MAPW is referring to is a suspension of all state regulation in Ukraine, not just nuclear industry regulation, at a time when elections in separatist areas of Ukraine had resulted in an escalation of conflict.\textsuperscript{40}

2.40 MAPW also claims that Ukraine is in breach of international safety-related obligations under the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and the UNECE Convention

\textsuperscript{36} FoEA, Submission 5, p. 16.

\textsuperscript{37} Medical Association for Prevention of War (Australia) (MAPW), Submission 4, p. 4.

\textsuperscript{38} Mr Kevin Magee, DFAT, Committee Hansard, Monday 21 November 2016, p 15.

\textsuperscript{39} MAPW, Submission 4, p. 5.

on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.\textsuperscript{41}

2.41 According to FoEA, Ukraine was found to be in breach of the Espoo Convention in 2013, and the Convention’s Implementation Committee is currently preparing a report for the June 2017 meeting on Ukraine’s adherence to the Convention.\textsuperscript{42}

**Ability to realistically repatriate material**

2.42 If Ukraine breaches its obligations under the Agreement, Australia has the right to suspend or cancel the supply of further items, require the Ukraine to take corrective steps, or require the return of items subject to the proposed Agreement.\textsuperscript{43}

2.43 This is a standard clause in nuclear cooperation agreements, and is one of the principal pillars of Australian control over the use of its nuclear material. However concerns have been raised by submitters to this inquiry, and in previous Committee inquiries, as to the practicality of implementing any return of nuclear material.

2.44 In his submission, Mr Noonan argues that because there is no feasible capacity for returning nuclear material to Australia—particularly in an emergency or conflict situation—the Agreement is essentially without sanction.

2.45 The NIA does not discuss how such return would occur. Mr Noonan gives a number of problems with how any return would work in practice; including matters such as the import, domestic carriage and storage of radioactive materials, the amount of lead time that would be required for such an undertaking, and how much it would cost.\textsuperscript{44}

\begin{flushright}
\textsuperscript{41} MAPW, Submission 5, p. 16.\\
\textsuperscript{42} MAPW, Submission 5, p. 15.\\
\textsuperscript{43} NIA, para 28.\\
\textsuperscript{44} David Noonan, Submission 3, p. 3.
\end{flushright}
Summary

2.46 To maintain the supply of electricity to its citizens, the Ukrainian Government must source nuclear materials from countries other than its traditional supplier, Russia.

2.47 The evidence before the Committee appears to show that, in order to source nuclear materials, the Ukrainian Government is prepared to engage with regulators in Europe and the IAEA to improve the safety and security of its nuclear energy program.

2.48 The Ukrainian Government’s engagement includes: sourcing funding from the European Bank of Reconstruction and Development and Euratom to extend the life and improve the safety of its current reactors; and negotiating safeguards and security agreements with the IAEA.

2.49 A reliable supply of uranium fuel providing a reliable supply of electricity will contribute to the stability of a region with a recent history of unrest.

2.50 The Ukrainian Government is engaged in developing a safety and security environment that will facilitate the supply of uranium fuel, and Australia is well placed to be a reliable supplier.

2.51 The Committee notes that Australia’s nuclear safeguards and security regime is based on the continuous regulatory control of Australian nuclear material to prevent its misuse.

2.52 While the Ukrainian Government is putting in place a safeguards and security regime of the standard necessary for the sale of Australian nuclear material, the most significant risks to Australian nuclear material in Ukraine—war, civil unrest, and corruption—are not mitigated by safeguards inspections and security agreements.

2.53 The Committee believes that Australian nuclear material should never be placed in a situation where there is a risk that regulatory control of the material will be lost.
2.54 If regulatory control of Australian nuclear material is at risk in Ukraine, then Australia should be prepared to have the material removed to a safer location.

2.55 The Agreement does contain provisions for the repatriation of Australian nuclear material in the event of a material breach of the Agreement. Nevertheless, it is unlikely that war, civil unrest or corruption would constitute a material breach of the Agreement.

2.56 In other words, the repatriation provision in the Agreement is not in the Committee’s view sufficient to ensure Australian nuclear material can be safely removed from Ukraine in the event that regulatory control is threatened.

2.57 The operational challenges of doing so are significant. Properly meeting them would require a detailed examination of risks in advance. This includes consideration of both the difficulties in securing Australian nuclear material, and the limitations of our ability to successfully repatriate it if required to do so during a time of war or unrest.

2.58 Such a plan, amongst other objectives, should seek to credibly operationalise additional safeguards in the treaty, including:

- the right under Article VI.3 to review the adequacy of the physical protection measures put in place with respect to material and equipment transferred pursuant to the Agreement, and
- the maintenance of an up to date list of facilities that process, use or store Australian nuclear material pursuant to Article VIII.

2.59 The Committee believes that the Australian Government can permit the supply of Australian nuclear material to Ukraine only if Australia has a suitable contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.

Recommendation 1

2.60 The Committee supports the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy and recommends that binding treaty action be
taken providing the Australian Government undertakes a proper assessment of risks, and develops and maintains a suitable contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.
3. China Extradition Treaty

*Treaty on Extradition between Australia and the People’s Republic of China*

Introduction

3.1 This chapter examines the *Treaty on Extradition Between Australia and the People’s Republic of China*. The Treaty was signed on 6 September 2007 and tabled in the Parliament on 2 March 2016.

3.2 Australia currently has 39 similar bilateral extradition treaties, making this the 40th such agreement. In 2014–15 Australia granted a total of ten extraditions under the existing treaties.

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3 Ms Leanne Close, Deputy Secretary, Criminal Justice Group, Attorney-General’s Department (AGD), *Committee Hansard*, Canberra, 2 May 2016, p. 13.
3.3 Under Australia’s extradition framework, the *Extradition Act 1988* provides the legal basis for extradition between Australia and another country. The Extradition Act sets out a number of mandatory requirements which must be met before Australia can make or receive an extradition request. Those requirements are supplemented by requirements contained in multilateral or bilateral treaties. According to the National Interest Analysis (NIA), Australia considers each individual extradition request on a case-by-case basis in light of its domestic legislative framework for extradition and its international obligations.⁴

**Overview**

3.4 The Attorney-General’s Department (AGD) emphasised the important role that extradition treaties play in combating serious crime, including international crime:

> Having an effective extradition relationship is important to ensure that criminals cannot evade prosecution or punishment by crossing borders. As links between [China and Australia] grow, it is in Australia’s interest to have a framework to be able to work in partnership with China in the fight against crime.⁵

3.5 The AGD explained that current extradition arrangements with China are restricted, and that the proposed Treaty will expand each country’s ability to prosecute offenders:

> Currently Australia can only extradite to China for a limited range of offences out of those covered by multilateral conventions to which both Australia and China are a party, such as the UN Convention against Corruption. The proposed treaty will strengthen our international crime cooperation relationship by extending extradition coverage to all offences considered to be serious by both countries, such as murder and fraud.⁶

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⁴ NIA, para 8.
⁵ Ms Close, AGD, *Committee Hansard*, Canberra, 2 May 2016, p. 12.
3.6 The NIA claims that the safeguards and protections in the proposed Treaty are consistent with those in the Extradition Act. The AGD listed the following mandatory grounds for refusal to allow extradition of an individual:

- where there are substantial grounds for believing the person has been or will be subjected to torture or other cruel, inhumane or humiliating treatment or punishment;
- where the person may be discriminated against on specific grounds;
- where the offence is a political or military offence;
- where the person would be exposed to double jeopardy;
- where a person is immune from prosecution by reason of lapse of time;
- a judgement has been rendered in absentia and there is no guarantee the case will be retried after the extradition; or
- where an offence was not an offence in the requested country at the time that it occurred.

3.7 Consistent with the Extradition Act, the proposed Treaty adopts the ‘no evidence’ standard for extradition requests. The NIA states that this accords with the international approach to simplifying extradition requests and is consistent with the United Nations Model Treaty on Extradition.

3.8 The AGD explained that ‘no evidence’ does not mean no information:

The no evidence standard treats the determination of guilt or innocence as fundamentally a matter for the courts of the requesting country ... The requesting country must provide a statement setting out the conduct alleged against the person in respect of the offence for which extradition is sought as well as an arrest warrant or relevant judicial documents. The treaty requires the provision of sufficient information to enable the requested country to determine whether the person is sought for the legitimate purpose of the

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7 NIA, paragraphs 5 and 6.
8 Ms Close, AGD, Committee Hansard, Canberra, 2 May 2016, p. 13.
enforcement of criminal law and to enable the requested country to consider whether there is a basis for refusing the request.\textsuperscript{9}

3.9 The AGD stressed that extradition is not an automatic process and that there are opportunities for review of extradition decisions at each stage of the process.\textsuperscript{10}

**Issues raised**

3.10 Despite the assurances offered by the AGD and the NIA that the Treaty is consistent with the Extradition Act and with Australia’s domestic legislative arrangements, serious concerns have been raised over the human rights safeguards contained in the proposed Treaty action. These include:

- the right to a fair trial;
- possible imposition of the death penalty;
- evidential standards;
- protection from torture, cruel, inhuman, humiliating treatment or punishment;
- omission of the words ‘unjust or oppressive’ from Article 4(c);
- extradition of minors; and
- monitoring of individuals extradited to China.

**Right to a fair trial**

3.11 There is a body of evidence suggesting that China’s criminal justice system ‘does not act in accordance with procedural fairness and rule of law standards in criminal proceedings’.\textsuperscript{11} This has raised questions as to whether China can guarantee the right to a fair trial for individuals extradited to the country. Amnesty International summed up the issues that have prompted the concerns:

\textsuperscript{9} Ms Close, AGD, *Committee Hansard*, Canberra, 2 May 2016, p. 13.
\textsuperscript{10} Ms Close, AGD, *Committee Hansard*, Canberra, 2 May 2016, p. 13.
\textsuperscript{11} Mr David Grace, QC, Co-Chair, National Criminal Law Committee, Law Council of Australia (LCA), *Committee Hansard*, Canberra, 2 May 2016, p. 6.
China does not have an independent judiciary. Many suspected criminals are unable to access legal counsel, especially in politically ‘sensitive’ cases. Forced ‘confessions’ extracted through torture and other forms of ill-treatment continue to play an important role in the Chinese criminal justice system, despite some recent laws, regulations, and policies attempting to curb the practice.\(^\text{12}\)

3.12 The Law Council of Australia (LCA) points to China’s limited number of bilateral extradition treaties, particularly with democratic countries, as evidence of general concern over its record in this regard. China does not have extradition treaties with the United States of America (USA), the United Kingdom (UK), Canada, the European Union (EU) or New Zealand.\(^\text{13}\)

3.13 The LCA also highlighted that China is not a party to the *International Covenant on Civil and Political Rights* (ICCPR) which protects the right to a fair trial.\(^\text{14}\) Australia is a party to the ICCPR and, in the LCA’s opinion, will violate its obligations under the Covenant if it extradites individuals to China where there is a risk they may not receive the right to a fair trial:

> The Law Council’s position, and it corresponds with European jurisprudence, is that you are prohibited under the ICCPR from returning someone to face a situation in which there might be a fundamental denial of fair trial rights.\(^\text{15}\)

3.14 The proposed Treaty will operate in conjunction with the Extradition Act and the AGD considers that this will provide the means to refuse extradition if there is doubt that an individual will have access to a fair trial:

> The extradition treaty itself has a ground of refusal in respect of incompatibility with humanitarian consideration in view of the person’s circumstances. In addition, the Extradition Act contains a general discretion to refuse extradition, in which the minister may have regard to any relevant

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\(^\text{13}\) Law Council of Australia (LCA), *Submission 1* (44th Parliament), p. 5.

\(^\text{14}\) China signed the ICCPR on 5 October 1998 but has not yet ratified the Covenant.

\(^\text{15}\) Professor Andrew Colin Byrnes, Professor of Law, Australian Human Rights Centre, Faculty of Law, University of New South Wales, and Member, Human Rights Committee, NSW Bar Association, *Committee Hansard*, Canberra, 2 May 2016, p. 8; LCA, *Submission 1* (44th Parliament), pp. 13–15.
circumstances. Collectively, those would operate together to permit the minister to consider trial arrangements, which would legitimately be a relevant consideration in determining whether or not to surrender a person and would permit the minister to have regard to the extent to which a fair trial is available in the circumstances of that particular person.\textsuperscript{16}

3.15 The AGD is satisfied that the process of negotiating each extradition decision on a case-by-case basis mitigates the risk:

\ldots it is open to the Australian government to have a conversation with the Chinese government to say, ‘In relation to this person that you want to have go back to your country, we might need to have a set of assurances.’ We might say, for example \ldots ‘Yes, we would extradite the person only if the trial is held in open court, only if that person has access to legal representation and only if the person has an opportunity to test the evidence.’ The thing about extradition is that it is about what you can arrange for that particular person, so the minister has to be satisfied of the circumstances for that person going back into a country.\textsuperscript{17}

3.16 However, the LCA considers this process unsatisfactory for a number of reasons, including:

- if China instigated a reciprocal request under this arrangement, it could raise issues regarding Australia’s sovereignty and the separation of powers, as the Australian Executive Government would not wish to guarantee that Australian courts ‘would conduct proceedings against a person in a manner that diverges from the usual procedures of the court’;

- as the proposed process has ‘no basis in the text of the Treaty’ it could prove difficult to persuade China to accept it, leaving Australia obliged to surrender the individual under international law; and

\textsuperscript{16} Ms Anna Harmer, Acting First Assistant Secretary, Criminal Justice Policy and Programs Division, Attorney-General’s Department (AGD), Committee Hansard, Canberra, 24 November 2016, p. 6.

\textsuperscript{17} Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programs Division, AGD, Committee Hansard, Canberra, 2 May 2016, p. 14.
- it provides inadequate protection for an individual’s right to a fair trial as it relies on the discretion of the decision makers in each country and the process could be ‘influenced by a wide range of factors’.18

3.17 Further, the proposed process does not address the issues raised regarding Australia’s obligations under the ICCPR. The process could leave Australia open to a challenge before the United Nations (UN) Human Rights Committee.19 However, the AGD does not accept this interpretation of the ICCPR clause:

The ICCPR imposes particular non-refoulement obligations in relation to certain fundamental rights. It does not create a non-refoulement obligation in respect of a fair trial.20

Possible implementation of the death penalty

3.18 Under Article 3(f) of the Treaty a request for extradition may be refused if the offence for which the extradition has been requested carries the death penalty and the requesting Party does not provide an undertaking ‘that the death penalty will not be imposed or, if imposed, will not be carried out’. As China is known to impose the death penalty for non-lethal offences—and there is a lack of transparency around its imposition—concerns have been raised over the effectiveness of this Article.21

3.19 Amnesty International suggests that the Article should unequivocally stipulate that ‘the death penalty will not be imposed’.22 However, the AGD explained that, in line with the doctrine of the separation of powers, an executive government cannot stop the judicial arm of government from imposing a death penalty but it can ensure that such a sentence is not carried out:

18 Law Council of Australia (LCA), Submission 3 (45th Parliament), pp. 8–9; Professor Andrew Byrnes, Submission 2 (45th Parliament), pp. 2–3.
20 Ms Harmer, AGD, Committee Hansard, Canberra, 24 November 2016, p. 7.
So, in fact, when we negotiate death penalty undertakings with countries, including obviously with our colleagues in the United States, it would make it pretty much impossible for countries around the world to be able to give us a death penalty undertaking that the death penalty would not be imposed, because that would actually be, in many instances, interfering with the independence of the judiciary … what the executive government can do is that they can say ‘if it is imposed’ … If a court does impose the death penalty, the death penalty undertaking then has those words that ‘it will not be carried out’.23

3.20 The LCA maintains that the undertaking not to carry out the death penalty in such a case is not legally enforceable and points out that the Treaty contains no provision for consequences for non-compliance:24

There is no consequence. What is Australia going to do? What is the reality? Is Australia going to try to haul China before the International Court of Justice? It is a joke. That is the reality of it. It is impossible to impose an effective sanction against a breach of the death penalty undertaking, other than as an executive act the Attorney-General may refuse future requests, and that requires the discretion of the Attorney in any particular case.25

3.21 The AGD, on the other hand, maintains that an undertaking of this nature is a deliberate and intentional government-to-government assurance that carries considerable weight:

… the nature of an undertaking, such as they are obtained in extradition practice, is to ensure that the undertaking has a particular quality of assurance on behalf of a government that a death penalty will not be carried out. That is the arrangement that has been adopted in respect of other bilateral treaties with countries with whom we have an extradition relationship, and what is required by the decision maker is to turn their mind to the adequacy of that assurance and the extent to which it gives confidence that it is an assurance that will be abided by and that it is an assurance by the national government,

23 Ms Hawkins, AGD, Committee Hansard, Canberra, 2 May 2016, p. 15.
24 LCA, Submission 1 (44th Parliament), p. 25.
25 Mr Grace, QC, LCA, Committee Hansard, Canberra, 2 May 2016, p. 8.
which then ensures that there is appropriate satisfaction that the death penalty will not be carried out.\textsuperscript{26}

3.22 Further, the AGD is adamant that there are consequences for non-compliance:

The undertaking is critically important. It is a key feature and recognised principle of international cooperation that there be the exchange of undertakings at a government-to-government level. I do not think I can emphasise enough how significant the giving of an undertaking in an extradition matter is. It underpins the bilateral crime cooperation relationship. Any breach of an undertaking would be regarded in the most serious terms and would impact not only on the international crime cooperation relationship between countries but on the broader bilateral relationship. A breach would be extraordinarily serious.\textsuperscript{27}

3.23 The AGD provided an example of China honouring a previous death penalty undertaking in a mutual assistance case. The murder case involved a Chinese national who had returned to China of his own accord after the event. A consequent mutual assistance request for evidence was acceded to on condition of a death penalty undertaking and the undertaking has been honoured.\textsuperscript{28}

3.24 The AGD also emphasised that Australia has a strong international reputation for opposing the death penalty and that it takes its obligations in this area very seriously:

So the capital punishment side is very straightforward and clear. We have an international obligation not to send someone back to face the death penalty. It has been the policy of successive Australian governments, notwithstanding those international obligations. It has been very clear that Australia is abolitionist.\textsuperscript{29}

\textsuperscript{26} Ms Harmer, AGD, \textit{Committee Hansard}, Canberra, 24 November 2016, p. 14.

\textsuperscript{27} Ms Harmer, AGD, \textit{Committee Hansard}, Canberra, 24 November 2016, p. 16.

\textsuperscript{28} Ms Hawkins, AGD, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 13.

\textsuperscript{29} Ms Hawkins, AGD, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 16.
3.25 The lack of transparency surrounding China’s use of the death penalty was also questioned. China does not publish information concerning the number of death sentences imposed or executed. The AGD was able to provide an estimate of 2 400 people executed for 2014 taken from an NGO report. The AGD pointed out that a number of other countries with which Australia has extradition treaties retain the death penalty: Indonesia, India, Malaysia, the United Arab Emirates, the United States of America, Vietnam, Brazil, Chile, Israel and the Republic of Korea. Data on the death penalty is not available for a number of those countries:

Amnesty International’s Global Report on Death Sentences and Executions in 2015 notes that the number of executions carried out by, and death sentences imposed in, Vietnam and Malaysia was unclear. The Report also notes that while the number of executions carried out by India and Indonesia was clear, the number of death sentences imposed was unclear.

Torture, cruel, inhuman, humiliating treatment or punishment

3.26 Under the mandatory grounds for refusal of an extradition request, Article 3(g) of the Treaty states that a request may be refused if the Requested Party ‘has substantial grounds for believing the person sought has been or will be subjected to torture or other cruel, inhuman or humiliating treatment or punishment’. Although this provision was generally welcomed there is concern regarding how the Government determines what constitutes ‘substantial grounds’.

3.27 The AGD stressed that an individual facing an extradition request has the opportunity to challenge each stage of the extradition process and may present relevant information if they are concerned they may be subject to torture or ill-treatment. The AGD indicated that the results of such judicial

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30 Mr Broughton Robertson, Acting Assistant Secretary, East Asia Branch, North Asia Division, Department of Foreign Affairs and Trade (DFAT), Committee Hansard, Canberra, 24 November 2016, p. 12.
reviews are publicly available. To determine if there are substantial grounds to suspect that the individual is at risk, the Department undertakes extensive research into the conditions prevailing in the requesting country and seeks assurances regarding the individual case:

... there is extensive analysis that the Attorney-General’s Department do of things like State Department reports on human rights and various human rights reporting. That is a major part of what we do. We look at what the international human rights reporting is. We look at whatever representations are made by the person who is the subject of the extradition request ... We would test it against ... internationally recognised human rights reporting. We would test it, of course, with our own diplomats, who would be in posts around the world. We would test it with the foreign country. We would put all of those representations to the foreign country, and we would require the foreign country to give us very clear assurances about what their views are about the allegations of torture and mistreatment.34

Omission of the words ‘unjust and oppressive’

3.28 The discretionary grounds for refusal of an extradition request include incompatibility with humanitarian considerations in view of that person’s age, health or other personal circumstances (Article 4(c)). However, the Extradition (Commonwealth Countries) Regulations, which cover 50 Commonwealth jurisdictions, add the words ‘unjust or oppressive’; broadening the criteria to allow factors beyond humanitarian considerations, including general injustice or oppressiveness, to be taken into account.35

3.29 Ten of Australia’s bilateral extradition treaties also include these words. The LCA would like to see the words included consistently in future extradition treaties as well as the China Treaty:

Our position would be that there needs to be a consistent position taken which would protect minimum human rights in all of our treaties. In the case of this

34 Ms Hawkins, AGD, Committee Hansard, Canberra, 2 May 2016, pp. 15–16.
one, it could be done by including such a provision in the regulations, should
they be made, to apply the act to China.\(^{36}\)

3.30 The AGD was unable to provide an explanation as to why the words ‘unjust
or oppressive’ had not been included in this extradition treaty, stressing that
each extradition treaty is unique:

No Australian modern bilateral extradition treaty is identical to another.
Bilateral treaties are, by their nature, negotiated as between the two parties,
and there is a difference in the features of the language of them.\(^{37}\)

3.31 The Department again reiterated that the discretionary grounds in the
Treaty and the Extradition Act, taken separately or together, would ensure
that humanitarian considerations are assessed for each individual case:

... the provisions in the proposed treaty between Australia and China contain
a range of grounds of refusal that are intended to give effect to our
international obligations. These are complemented by the Australian
Extradition Act, which is absolutely consistent with our international
obligations and permits relevant considerations to be taken into account.\(^{38}\)

**Evidential standards**

3.32 The Treaty adopts the ‘no evidence’ model for extradition which is currently
Australia’s policy position. The AGD explained that ‘no evidence’ does not
mean no information:

The no evidence standard treats the determination of guilt or innocence as
fundamentally a matter for the courts of the requesting country ... The
requesting country must provide a statement setting out the conduct alleged
against the person in respect of the offence for which extradition is sought as
well as an arrest warrant or relevant judicial documents. The treaty requires
the provision of sufficient information to enable the requested country to
determine whether the person is sought for the legitimate purpose of the

\(^{36}\) Professor Byrnes, *Committee Hansard*, Canberra, 2 May 2016, p. 9.


\(^{38}\) Ms Harmer, AGD, *Committee Hansard*, Canberra, 24 November 2016, p. 7; Attorney-General’s
enforcement of criminal law and to enable the requested country to consider whether there is a basis for refusing the request.\(^{39}\)

3.33 The LCA considers the evidentiary threshold too low. There is no provision requiring the requesting state to provide evidence in support of the offence\(^{40}\) and no means to challenge the strength of the evidence provided:

In Australia extradition objections are limited to what is contained in section 7 [of the Treaty] and, in the main, that relies upon being able to satisfy the court that the crime for which it is being requested the person be extradited is not a crime within Australia, the crime is based upon some political basis or the crime is a military crime and not a civilian crime.\(^{41}\)

3.34 The LCA would prefer to see Australia return to a more rigorous evidential standard:

... there are really three different models. One is the no-evidence model, where you put in a request with a list of asserted things, which is now essentially the Australian position. The second is an intermediate stage, which I think the US has to some extent, of probable cause, which is the standard for issuing an arrest warrant. The third standard is the old Australian position—that is, of a prima facie case under which you had to have evidence which was admissible before an Australian court under the peculiar common-law rules of evidence. It was felt that that was too problematic. We have gone from that third very difficult situation back to having virtually no barriers. The Law Council’s submission is that we need to rethink that and perhaps move back towards the other end of the scale.\(^{42}\)

Extradition of minors

3.35 The LCA expressed concern that Australia’s current extradition regime does not include specific protection for children.\(^{43}\) As there is no mandatory requirement with regard to extraditing a child, the LCA suggests that

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\(^{39}\) Ms Close, AGD, Committee Hansard, Canberra, 2 May 2016, p. 13.

\(^{40}\) LCA, Submission 3 (45th Parliament), p. 17.

\(^{41}\) Mr Grace, LCA, Committee Hansard, Canberra, 2 May 2016, p. 8.

\(^{42}\) Professor Byrnes, Committee Hansard, Canberra, 2 May 2016, p. 8.

potentially Australia could surrender a 10 year old or a 14 year old. The LCA argues that the lack of specific protection for children in the current regime may fail to meet Australia’s obligations under the United Nations Convention on the Rights of the Child.\footnote{LCA, Submission 1, (44th Parliament), p. 27.}

3.36 While the AGD concedes that the Extradition Act does not apply any specific limits around age, it points out that age would be taken into consideration in assessing an individual’s circumstances. Additionally, Australia’s and China’s obligations under the UN Convention on the Rights of the Child ensure children are protected under the extradition Treaty:

> … there are two particular issues that I will draw to your attention. One is the extent to which the treaty itself includes a discretionary grant of refusal which has regard to the extent to which the extradition will be incompatible, having regard to particular matters, including the age of the person to be extradited. More generally, I draw your attention to the fact that both Australia and China are parties to the Convention on the Rights of the Child. A decision-maker on an extradition request in Australia would have regard to any international obligations Australia had, including those under the Convention on the Rights of the Child, and ensure that the decision that is made is consistent with those obligations.\footnote{Ms Harmer, AGD, Committee Hansard, Canberra, 24 November 2016, p. 21.}

**Monitoring of persons extradited from Australia**

3.37 The Committee has previously expressed concern over the monitoring of extradited individuals and made recommendations accordingly to successive governments.\footnote{See Joint Standing Committee on Treaties (JSCOT), Report 91: Treaties tabled on 12 March 2008; Report 110: Treaties tabled on 18, 25(2) and 26 November 2009 and 2(2) February 2010; Report 131: Treaties tabled on 21 August, 11 and 18 September 2012.} During this inquiry, the issue of effective monitoring of extradited individuals was again raised. The secrecy and lack of transparency attached to China's judicial system–combined with allegations of the mistreatment of detainees and prisoners–have heightened concerns about this Treaty.
3.38 The NIA offers assurance that under Article 19 the Requesting Party must promptly provide the Requested Party with information about the proceedings and/or execution of a sentence against a person extradited under the Treaty. Further, where an Australian national or Australian permanent residence is to be surrendered to China pursuant to the Treaty, the AGD will inform the Department of Foreign Affairs and Trade (DFAT) of the extradition, including the terms of the extradition and any special conditions applying to the case. Following surrender, as long as the individual has entered China on a valid Australian travel document, DFAT can provide consular assistance to the person through the existing consular network to the extent practically and legally possible, and subject to the person’s ongoing consent.

3.39 These measures are not enough to allay concerns. Amnesty International questioned if the human rights safeguards provided within the Treaty would be effective with regard to the implementation of the death penalty or ill-treatment and torture, if Australia was unable to monitor individuals. The LCA also suggested that monitoring needed to be extended to non-citizens.

3.40 The AGD again reiterated the Department’s ability to seek assurances for individual cases if there was ongoing concern regarding a particular person:

... if there was a concern—so if a minister at any point clears that torture ground of refusal but in fact there were still a lot of claims made by the person—one of the things that we might have built into the agreement to extradite that particular person may well be a requirement that we have access to that person ... If there are concerns ... we can front-end load it to make sure

47 NIA, para 39.
48 NIA, para 40.
that the relevant minister is absolutely assured that it is the appropriate thing to do to extradite the person in that case.51

Implementation

3.41 The Treaty contains a number of obligations, set out in detail in the NIA. The NIA is available in the Australian Treaties Library.52 The NIA explains that Section 11 of the Extradition Act allows regulations to be made providing that the Extradition Act applies to a specified extradition country subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to a bilateral extradition treaty between that country and Australia. Through this mechanism extradition treaties are given effect in Australia’s domestic law. The NIA states that the Agreement will be implemented by declaring China an ‘extradition country’ by way of regulations.53

Costs of the treaty action

3.42 Article 20 provides that the Requested Party shall make all necessary arrangements for any proceedings in the Requested Party arising out of a request for extradition, and bear any incurred expenses. The Requesting party will bear the costs related to transportation and transit for the surrender of a person.54

3.43 The NIA assures the Committee that, as is usual, expenses incurred by Australia for extradition requests received or made by Australia under the proposed Treaty will be met from existing budgets. For extradition requests made to Australia by China the cost is principally borne by AGD. For

51 Ms Hawkins, AGD, Committee Hansard, Canberra, 2 May 2016, p. 16.
53 NIA, para 36.
54 NIA, para 37.
requests made by Australia to China, the cost is principally borne by the Australian investigative and prosecutorial agencies seeking extradition.\textsuperscript{55}

Conclusion

3.44 The Committee regularly examines extradition treaties and is aware of the important role that such treaties play in combating domestic and transnational crime. Australia does not wish to become a safe haven for people who commit serious offences and it must be able to bring back individuals from foreign countries who have offended against Australian law.

3.45 However, it is also important that the human rights of the individual are not sacrificed to the effectiveness of the extradition system. Australia has a strong commitment to international human rights as evidenced by its current bid for a seat on the UN Human Rights Council for the period 2018–20 and its ongoing support for the abolition of the death penalty.

3.46 The Committee welcomes the human rights safeguards provided in the extradition Treaty with China, but acknowledges the concerns raised regarding the implementation of those safeguards. The Committee cannot dismiss concerns over the lack of transparency in the Chinese justice system, allegations of the ill-treatment and torture of prisoners, and the continuing imposition of the death penalty.

3.47 The Committee notes the AGD’s argument that the mandatory and discretionary grounds for refusal contained in the Treaty provide sufficient assurance that the human rights of an individual will be protected on a case-by-case basis. The Committee also understands that the Treaty will be executed in conjunction with the Extradition Act. However, the Committee considers that more needs to be done to take into consideration the conditions existing within the system as a whole in order to strengthen the protection of individual human rights.

\textsuperscript{55} NIA, para 38.
3.48 There remains doubt about an individual’s access to a fair trial under the justice system in China. Although the Committee acknowledges the consideration that is given to each individual’s circumstances during the extradition process, the Committee recommends that the decision maker also take into account the broader issue of the current state of China’s criminal justice system when making a decision to extradite an individual.

Recommendation 2

3.49 The Committee recommends that the extradition decision maker take into account reports from government and non-government sources regarding the degree to which China’s criminal justice system currently complies with human rights and the rule of law, when making the decision to extradite an individual.

3.50 To further strengthen the assurance that an individual extradited to China will be provided with a fair trial, the Committee recommends that an undertaking to provide a fair trial is included in the surrender agreement.

Recommendation 3

3.51 The Committee recommends that undertakings to provide a fair and open trial are routinely included in agreements to surrender an individual to China.

3.52 The Committee acknowledges the attention successive governments have given to its recommendations for the improved monitoring of extradited individuals. The increased information provided by the AGD in its Annual Report as a result of the Committee’s recommendation in Report 91 is welcome; as is the assurance that Australians imprisoned in foreign...
countries, wherever practical and legal, will receive at least one visit from consular officials annually.\footnote{Government Response Joint Standing Committee on Treaties: Report 110: Treaties tabled on 18, 25(2) and 26 November 2009 and 2(2) February 2010, \url{http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsc/t/reports.htm} accessed 23 May 2016.}

3.53 Despite assurances from the AGD that ‘front-loading’ provides sufficient protection for extradited individuals regarding human rights, the Committee would again urge that a more systematic approach needs to be taken to ensure that individuals are not subject to human rights violations. The Committee understands from previous Government Responses that asking extradition partners to report on the condition of extradited individuals in their custody presents difficulties.

3.54 However, if annual consular visits are already being undertaken, the Committee considers it reasonable that the AGD’s reporting could be expanded to include details of individual’s status including whether a trial had taken place, if the person had been found guilty or not and what sentence had been imposed. If the Department considered it necessary to protect the privacy of individuals, an overall total could be provided for each individual question. This minimum monitoring could provide reassurance that individuals were accounted for and provide an added level of protection from execution, ill-treatment or torture.

**Recommendation 4**

3.55 The Committee recommends that the Attorney-General’s Department supplement its current annual reporting framework for extradition cases with the following information for each case of an Australian national or an Australian permanent resident held in a foreign country:

- if a trial has taken place;
- if so, the verdict handed down;
- if a sentence was imposed, what that sentence was; and
whether an Australian embassy official was able to attend.

3.56 The Committee also considers, in line with its earlier recommendations, that foreign nationals extradited from Australia should be monitored in the requesting country, including China. Previously the Government has declined to accept such a recommendation, arguing that there is no precedent for such an arrangement and that it would require the consent of the requesting country. Further, it ‘would place pressure on the limited resources of Australia’s consular network, which has been established to assist Australians overseas’.

3.57 While the Committee acknowledges the Government’s arguments, it does not consider that the difficulties identified present an insurmountable barrier to providing minimum protection of foreign nationals extradited from Australia to their country of citizenship. Therefore it again recommends that Australia develops and implements a system to monitor such individuals.

Recommendation 5

3.58 The Committee recommends that, 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 details of the trial, whether a consular official was able to attend, the outcome of any prosecution and, on request, the location and general health of the person while in custody as a result of a conviction.

3.59 Notwithstanding its ongoing concern to ensure the protection of human rights for extradited individuals, the Committee recognises the importance of an effective international extradition system and supports the Treaty on Extradition Between Australia and the People’s Republic of China.

Recommendation 6

3.60 The Committee supports the *Treaty on Extradition Between Australia and the People's Republic of China* and, noting the power of the Minister for Justice to refuse extradition under the *Extradition Act*, recommends that binding treaty action be taken.
4. Minor Treaty Actions

Introduction

4.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.

4.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee’s website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

Amendments to MARPOL

4.3 The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL) is one of the key international instruments addressing marine pollution from ships. MARPOL is administered by the International Maritime Organization (IMO), a specialised agency of the United Nations. The IMO Committee with responsibility for MARPOL is the Marine Environment Protection Committee (MEPC).

4.4 The following amendments have been made to MARPOL:

- to Annex II;
- to regulation 13 of Annex VI; and
- to Annex IV.
Amendments to Annex II

4.5 These amendments align MARPOL regulations concerning the carriage of noxious liquid substances in bulk, with the United Nations Globally Harmonized System of Classification and Labelling Chemicals, following amendments to the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) Hazard Evaluation Procedure already adopted by the United Nations Joint GESAMP.

4.6 According to the Explanatory Statement, the practical, legal and financial effects of the proposed treaty action for Australia are likely to be negligible as there are no Australian flagged chemical tankers.

Amendments to regulation 13 of Annex VI

4.7 These amendments will require certain ships to record their compliance with existing requirements regarding nitrogen oxide (NOx) emissions for ships operating in NOx emission control areas (NECAs).

4.8 According to the Explanatory Statement, the practical, legal and financial effects of the proposed treaty action for Australia are likely to be negligible as there are no Australian flagged vessels operating in NECAs.

Amendments to Annex IV

4.9 These amendments will establish commencement dates for more stringent international regulations concerning the discharge of sewage from passenger ships in the Baltic Sea Special Area.

4.10 According to the Explanatory Statement, the practical, legal and financial effects of the proposed treaty action for Australia are likely to be negligible as there are no Australian passenger ships operating in the Baltic Sea Special Area.

Third Protocol establishing the Prolongation of the Treaty with the Kingdom of the Netherlands on the Presence of Australian Personnel in the Netherlands
for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17

4.11 This treaty action extends Australia’s deployment of personnel in the Netherlands, in order to secure and identify the remains of the victims and investigate the cause of the MH17 downing. The Explanatory Statement advises that this investigation is still ongoing, and requires personnel to continue until 30 June 2017.

4.12 The proposed treaty action is the third extension prolonging the treaty. The Treaty originally entered into force on 1 August 2014 with an expiry date of 1 August 2015. In July 2015 the Treaty was extended until 1 August 2016 and in July 2016 until 31 December 2016. The Explanatory Statement advises that under Dutch domestic requirements the duration of each Protocol is limited to twelve months.

4.13 According to the Explanatory Statement, the proposed treaty action does not require legislative change and has negligible legal and financial effects.

4.14 JSCOT has previously conducted an inquiry into the Treaty (Report 146). The Minister invoked the National Interest Exemption (NIE), and the treaty entered into force on 1 August 2014 before tabling in Parliament. The First Protocol extending the Treaty was also given expedited consideration by the Committee at the Minister’s request. The Second Protocol was also presented as a minor treaty action.

Exchange of letters with Switzerland to bring forward the commencement date for the exchange of tax information

4.15 The treaty action amends the operation of the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) to bring forward by one year the exchange of information under the Organisation for Economic Cooperation and Development
(OECD) Common Reporting Standard (CRS) between Australia and Switzerland.

4.16 JSCOT considered the Convention in 2012 (Report 127) and it came into force for Australia on 1 December 2012. According to the Explanatory Statement, due to the more recent ratification of the Convention by Switzerland, without the proposed treaty action there would be no legal basis for the exchange of tax information relating to 2017 in 2018. The automatic exchange of information would start in 2019.

4.17 The Explanatory Statement advises that the proposed exchange of letters will enable the automatic exchange of information relating to 2017 in 2018. It will allow Switzerland to exchange information about Australian residents relating to the Australian 2016–17 financial year, but only information about 2017 and future years will be exchanged.

4.18 According to the Explanatory Statement, no legislative changes are needed to implement the proposed treaty action.

Amendment to Annex I of the International Convention Against Doping in Sport


4.21 According to the Explanatory Statement compliance with the proposed amendment to Annex I of the Convention does not require amendment to the Australian anti-doping legislative framework, as the specification of prohibited substances and methods under the Australian Government’s anti-doping arrangements is based on the current WADA Prohibited List.
Conclusion

4.22 The Committee determined not to hold a formal inquiry into any of these amendments, and agreed that binding treaty action may be taken in each case.
A. Submissions

Nuclear Cooperation-Ukraine

1 People for Nuclear Disarmament WA
2 Australian Conservation Foundation
3 Mr David Noonan B.Sc., M.Env.St.
4 Medical Association for Prevention of War (MAPW), Health Professionals Promoting Peace
5 Friends of the Earth, Australia
   ▪ 5.1 Supplementary
6 Minerals Council of Australia

China Extradition Treaty

44th Parliament

1 Law Council of Australia
2 Amnesty International

45th Parliament

1 Attorney-General's Department
2  Professor Andrew Byrnes
3  Law Council of Australia
B. Witnesses

Nuclear Cooperation-Ukraine

Monday, 21 November 2016
Canberra

Friends of the Earth, Australia
Minerals Council of Australia
Department of Foreign Affairs and Trade

China Extradition Treaty

44th Parliament

Monday, 2 May 2016
Canberra
Law Council of Australia

Attorney-General’s Department

45th Parliament

Thursday, 24 November 2016

Canberra

Attorney-General’s Department
Additional Comments-Australian Greens

Introduction and Recommendation

1.1 The Australian Greens acknowledge the work and analysis in the Committee report on the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy (the Agreement), and the findings that the Agreement does not contain a suitable contingency plan to ensure the security and control of Australian Obligated Nuclear Material (AONM).

1.2 At the outset, it is important to premise the below additional comments by noting that the Australian Greens do not support the mining and export of uranium, and believe these practices should cease. Therefore, the Australian Greens do not believe under any circumstances that binding treaty action should be taken to implement this Agreement.

1.3 **Recommendation 1:** No binding treaty action be taken regarding the Agreement between the Government of Australia and the Government of Ukraine on Cooperation in the Peaceful Uses of Nuclear Energy.

Additional Comments

1.4 The Australian Greens note that there are a number of serious flaws and factors which should preclude any ratification of treaty action. These include:
Increasing security threats to Ukraine nuclear facilities and nuclear material;
- Safety concerns surrounding Ukraine’s ageing nuclear reactor fleet and life extension program; and
- The fact that the Agreement does not meet the national interest test.

1.5 In addition, the Australian Greens would like to show our deep concern that past JSCOT reports and recommendations in relation to proposed nuclear actions have been ignored by the Government. Agreements have been fast-tracked before any action has been taken to address pre-conditions and deficiencies. This should not be allowed to be replicated with the Ukraine Agreement.

Lack of regulatory control of Australian nuclear material due to war, civil unrest and corruption

1.6 The Australian Greens agree with the conclusion of the JSCOT majority report, which clearly states that “the repatriation provision in the Agreement is not in the Committee’s view sufficient to ensure Australian nuclear material can be safely removed from Ukraine in the event that regulatory control is threatened.”

1.7 The ongoing conflict between Ukraine and Russia presents a clear demonstration of the risks of exporting uranium to Ukraine. Russia’s illegal annexation of Crimea, for example, led to the loss of control of multiple nuclear facilities and associated nuclear material in Ukraine. There is not sufficient evidence to suggest that the IAEA has the safeguards control or capacity to continue to regulate those facilities or the associated nuclear material. The lack of regulatory control that exist in Ukraine would make it extremely difficult, if not impossible, to repatriate AONM, should a situation arise where its security has become compromised.

1.8 JSCOT has clearly demonstrated that “war, civil unrest and corruption are not mitigated by safeguards inspections and security agreements”. The conflict not only represents a threat to control of nuclear material but to security of entire nuclear facilities.

1.9 Senior Government Regulators of Ukraine have warned:
“Given the current state of warfare, I cannot say what could be done to completely protect installations from attack, except to build them on Mars.” – Sergiy Bozhko, Chair of the State Nuclear Regulatory Inspectorate of Ukraine – May 2015.

1.10 Alexander Odoevskiy of the Russian Embassy said in December 2014:

“Given the Ukraine’s current geopolitical situation, can it provide enough security for this nuclear industry and safeguards so [uranium] doesn’t fall into the wrong hands? I’m not sure about whether the government institutions in Ukraine are capable of providing these stringent controls.”

1.11 The ongoing unrest and conflict in Ukraine, with the continuing Russian military presence and mobilisation on the Eastern border of Ukraine, coupled with numerous security incidents at reactors, are a forewarning that Ukraine nuclear facilities remain a security risk and military target.

1.12 The Committee states that “Australian nuclear material should never be placed in a situation where there is a risk that regulatory control of material will be lost”, and makes clear that The Agreement does not have sufficient mechanisms to ensure that control over AONM would be maintained.

1.13 To pursue this agreement without sufficient mechanisms in place would:

- Breach Australia’s safeguards and security regime;
- Further weaken Australia’s efforts on nuclear disarmament and non-proliferation;
- Undermine Australia’s commitment to nuclear and radiation safety; and
- Place AONM in a conflict zone with no mechanism to secure or repatriate that material in the event control over AONM was lost.

1.14 We recommend that the Executive accept the findings and recommendation of the JSCOT report and ensure that no AONM is transferred to Ukraine.

Safety of Ukrainian nuclear facilities

1.15 12 out of 15 operating reactors in Ukraine were designed to close by 2020. Extensions have now been granted for six reactors – allowing them to operate for up to two decades longer than they were designed for. It is
anticipated that another six reactors will also receive life extension licenses. Safety breaches and minor accidents increase at aging reactors, as reported by Nuclear Engineering International in August 2016.

1.16 Although Ukraine engages with the IAEA, international financial institutions and foreign governments on nuclear co-operation, in practice it has not demonstrated compliance with conditions.

1.17 Ukraine has displayed a lack of consultation with neighbouring countries on its nuclear reactor life extension program, and was shown to be in breach of the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) in 2013.

1.18 There are ongoing concerns about Ukraine’s capacity to carry out safety inspections, as well as its compliance with international environmental law and funding agreements.

1.19 When considering nuclear safety it is important to remember that Australian uranium fuelled the Fukushima Reactors at the time of the Japanese earthquake and associated tsunami, and continues to be the source of pollution from the site.

**JSCOT and NIA**

1.20 Australia has made agreements to supply uranium to the United Arab Emirates, Russia and more recently India. Each of these agreements was reviewed by the JSCOT and on every occasion JSCOT identified procedural and capacity deficiencies, or opportunities for Australia to improve non-proliferation and nuclear safety outcomes. On every occasion recommendations made by JSCOT were actively ignored, or overruled by the Executive.

1.21 The agreement with Russia, which allowed the transfer of Australian uranium to Russia against the advice of JSCOT, was later subject to an embargo – demonstrating the prudence of JSCOT’s advice.

1.22 The Agreement under consideration was first formulated in 2014, months after Australia placed an embargo on uranium sales to Russia. Australia’s intention at that time was to demonstrate support for Ukraine over Russia.
1.23 The intent or justification to sell uranium to an ‘important’ or ‘strategic’ new market is fundamentally flawed. There is no growth in nuclear power in Ukraine and reactors are ageing and should be closed. According to the Department of Foreign Affairs and Trade (DFAT) and the Australian Safeguards and Non-Proliferation Office (ASNO) the anticipated increased demand from the Agreement is just a few hundred tonnes of ore that could equate to just 0.01% growth in Australia’s uranium exports.

Conclusions

1.24 The Committee has found that:

- That are no existing mechanisms, or repatriation provisions, to ensure Australian uranium can be safely removed from Ukraine if regulatory control is threatened;

- Australian nuclear material should not be placed in a situation where there is a risk of loss of regulatory control; and

- Australian safeguards inspections and security agreements are not capable of ensuring control of nuclear material where there is war, civil unrest or corruption.

1.25 The Committee report is unambiguous in its recommendation that Australian uranium should not be sold to Ukraine without a clear “contingency plan for the removal of Australian nuclear material if the material is at risk of a loss of regulatory control.”

1.26 Given that there is no such contingency plan, the Australian Greens urge the Executive to accept the recommendations of the Committee and ensure that no binding treaty action is taken.

Sarah Hanson-Young
Australian Greens
Dissenting Report by Labor Members

1.1 Labor members support the recommendations in Chapter 2 regarding nuclear cooperation with the Ukraine. The Committee heard evidence about the risks involved with supplying nuclear material to Ukraine. Labor members agree that binding treaty action be taken providing the Australian Government develops a suitable contingency plan to address these risks.

1.2 Labor members also support the recommendations in Chapter 4 regarding minor treaty actions.

1.3 Labor members support the intent of some of the recommendations in Chapter 3 regarding the extradition treaty with China. Recommendations 3, 4 and 5 propose that the Australian Government obtain undertakings that a fair trial will be provided to extradited persons, and to take various steps to monitor the welfare of extradited persons. Labor members agree with these recommendations in principle. However, they do not fully address the serious reservations that the Committee itself has expressed in the report. Accordingly, Labor members cannot support Recommendation 6, and believe binding treaty action should not be taken at this time. The reasons for this are set out below.

The significance of extradition

1.4 Australia has ratified bilateral extradition treaties with thirty-nine countries. The extradition treaty with China would be the fortieth. Taken together,
these treaties are an important crime-fighting tool that prevent individuals exploiting national boundaries to escape justice.

1.5 Extradition is more than an expression of comity between two nations, however. It involves serious questions of human rights. In surrendering an individual to another nation, Australia is placing faith in the adequacy and propriety of their criminal justice system.

1.6 This faith has consequences for both the person and for Australia itself. Australia’s duties to a person do not stop once they board a plane to face trial. As the Law Council of Australia explained in their submission, Australia is responsible under international law for human rights violations suffered by an extradited person in the destination country.1 Moreover, as this Committee noted in a previous report:

[2.29] Australia has a moral obligation to protect the human rights of extradited persons beyond simply accepting the undertakings of countries making extradition requests.2

1.7 Australia must take this obligation seriously.

**Australia’s extradition framework**

1.8 Extradition in Australia is conducted under the Extradition Act 1988 (Cth) in conjunction with various pieces of subordinate legislation.

1.9 In its submission to this inquiry, the Law Council of Australia raised a number of concerns about the operation of this legislative framework. These concerns include:3

- the limited protections for the right to a fair trial,
- the limited evidentiary thresholds for determining an extradition request,

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1 Submission 1, Law Council of Australia, p. 15.
3 Submission 1, Law Council of Australia, p. 3.
• the definition of a political offence,
• adequacy of undertakings that the death penalty will not be imposed,
• insufficient protections for children, and
• inadequate monitoring systems.

1.10 These concerns are not new.

1.11 Five years ago, for instance, the governing legislation was amended by the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2011.

1.12 The House of Representatives Standing Committee into Social Policy and Legal Affairs (House Legal Affairs Committee) inquired into and reported on that bill. The House Legal Affairs Committee noted the human rights issues raised by extraditions and acknowledged:

[4.14] …the concerns of some submitters regarding the operation of the safeguards and the scope for the Attorney- General to exercise his or her discretion.  

1.13 This Committee has been alive to those concerns. In almost every report into an extradition treaty in the last decade, this Committee has raised concerns about the human rights of extradited persons, or made recommendations regarding the monitoring of their welfare.

The Treaty

1.14 The general concerns about the operation of Australia’s extradition system take on particular potency in the context of this present treaty.

1.15 Labor members note the following comments by the Committee in the main report:

3.46 The Committee welcomes the human rights safeguards provided in the extradition treaty with China, but acknowledges the concerns raised regarding

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the implementation of those safeguards. The Committee cannot dismiss concerns over the lack of transparency in the Chinese judicial system, allegations of the ill-treatment and torture of prisoners, and the continuing imposition of the death penalty.

3.47 ...The Committee also understands that the Treaty will be executed in conjunction with the Extradition Act. However, the Committee considers that more needs to be done to take into consideration the conditions existing within the system as a whole in order to strengthen the protection of individual human rights.

3.48 ...The Committee recommends that the decision maker must also take into account the broader issue of the current state of China’s criminal justice system when making a decision to extradite an individual.

1.16 China has not ratified the International Covenant on Civil and Political Rights (ICCPR). This does not relieve Australia of its own obligations to an extradited person under the ICCPR.

1.17 It is true that Australia has existing extradition arrangements with countries that have not ratified the ICCPR. In 2011, for instance, the extradition treaty with the United Arab Emirates (a non-signatory to the ICCPR) entered into effect.

1.18 However, the treaty with China lacks important safeguards present in other extradition treaties, including the treaty with the United Arab Emirates.

1.19 Most seriously, the treaty omits a common safeguard, namely the ability to refuse a request where extradition would be ‘unjust or oppressive’. Ten of Australia’s other bilateral extradition treaties allow an extradition to be refused on the grounds that it would be “unjust or oppressive”. The exemption exists for fifty Commonwealth countries by virtue of a similarly worded provision in the Extradition (Commonwealth Countries) Regulations.

1.20 As the main report notes:

3.30 The AGD was unable to provide an explanation as to why the words ‘unjust or oppressive’ had not been included in this extradition treaty...
The need for a review

1.22 Taken together, the deficiencies in the treaty with China, and in Australia’s legislative framework for extradition raise concerns for Labor members.

1.23 In its report on the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2011, the House Legal Affairs Committee recommended that:

…within three years of its enactment, the Attorney-General’s Department conduct a review of the operations of the amendments contained in the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011.7

1.24 There is no evidence that that review has occurred. Even if an internal, departmental review was undertaken, there would be significant benefits to having an independent review conducted.

1.25 Australia’s network of extradition treaties has grown since the passage of the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2011. We now have extradition arrangements with a large range of countries whose legal systems differ in material ways from ours. In the last five years Australia has had extradition treaties with India, Vietnam, Uruguay, and the United Arab Emirates enter into force.

1.26 Labor members consider that it is time for a proper review of Australia’s extradition arrangements.

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5 Submissions 1 and 3, Law Council of Australia.

6 Submission 2, Professor Byrnes.

1.27 Recommendation 1: That binding treaty action for the Treaty on Extradition Between Australia and the People’s Republic of China be delayed until after an independent review of the Extradition Act 1988 (Cth) to ensure that Australia’s extradition system continues to be consistent with community expectations and international legal obligations regarding the rule of law and human rights.

Michael Danby MP

Senator Sam Dastayari

Senator Kimberley Kitching

Senator Jenny McAllister
Susan Templeman MP

Josh Wilson MP