



THE HON JASON CLARE MP

Minister for Home Affairs

Minister for Justice

Acting Attorney-General

11/28972

Julian Burnside AO QC
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By email: jb@julianburnside.com.au

Dear Mr Burnside

Thank you for your letter of 30 June 2012 to the Attorney-General, Nicola Roxon MP, which raises a number of concerns on behalf of your client, Mr Julian Assange. In particular, I note your queries regarding the extent of discussions between the Australian and United States Governments with respect to the possible United States investigation of, or extradition request for, Mr Assange. I am responding to your letter as the Acting Attorney-General.

While the Australian Government notes your view that the United States has made allegations against Mr Assange that are 'founded on political reactions and motivations', it is important to emphasise that Mr Assange's legal proceedings involve a request by Sweden for his extradition from the United Kingdom in relation to alleged sexual assault offences.

As you would appreciate, the Australian Government cannot intervene in the legal processes of other governments. The extradition process is being carried out in accordance with relevant laws and treaties governing extradition between these two countries. In these matters, Mr Assange has had legal counsel, and has pursued his legal rights to the highest court in the United Kingdom. On any extradition to Sweden, Mr Assange will also have recourse to the Swedish courts, with legal representation. The Australian Government has also made representations to, and obtained assurances from, the Swedish Government that Mr Assange's case will proceed in accordance with due process.

You comment in your letter that 'the Swedish allegations emerged in very unusual circumstances'. As you are aware, Sweden is a civil law jurisdiction. In accordance with civil law procedure, the decision to charge is made by the prosecutor once a person has been formally questioned in relation to the alleged offence or offences. I understand that Mr Assange is sought by Swedish authorities for final questioning in order for a decision to be made whether to lay charges. The Australian Government has made clear to Swedish authorities the expectation that Mr Assange should be afforded due process. This has also been raised with United States authorities in the event that any proceedings were to commence in the United States.

In addition, the Australian Government has provided strong consular support to Mr Assange throughout his extradition proceedings in the United Kingdom, and this consular support remains available to him. The Australian Government cannot intervene in legal proceedings in foreign jurisdictions on behalf of Australian citizens.

Australian consular officials visited Mr Assange when he was detained and responded to a number of issues that he raised. Since Mr Assange was granted bail in December 2010, Australian consular officials have been in contact with his lawyers on more than 20 occasions, and have regularly conveyed to them the Australian Government's preparedness to provide consular support. Australian consular officials have also attended all Mr Assange's court hearings. Most recently, Australian consular officials in London have been in contact with the Ecuadorian Embassy and Mr Assange's lawyers to reiterate the offer of continued consular support. This is consistent with the support that the Australian Government provides to any Australian facing legal proceedings overseas.

In response to your four questions, I offer the following reply. As the Attorney-General and Minister for Foreign Affairs have previously stated, the Australian Government has no advice from the United States to suggest that it has laid any charges against Mr Assange. The Minister for Foreign Affairs has raised this issue with United States officials and the Attorney-General has also raised this issue in recent meetings with the United States Secretary for Homeland Security, the United States Deputy Attorney-General and the United States Ambassador to Australia. Consistent with Australian Government practice, these conversations between Australian Ministers and their counterparts were conducted in confidence. What I can say though is that the Australian Government has received no advice that the United States will seek Mr Assange's extradition from Sweden.

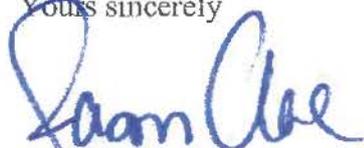
In the event that a request is made by the United States for Mr Assange's extradition from Sweden, the request would need to be considered by both the Swedish and United Kingdom Governments, and any decision to surrender Mr Assange to the United States could be appealed in the courts of both countries as well as to the European Court of Human Rights. Should any other nation, including the United States, seek to undertake legal proceedings against Mr Assange, the Australian Government would continue to make robust representations that it expects any proceedings to be undertaken in accordance with due process. Additionally, it would be open to Mr Assange to raise issues regarding prison conditions and treatment in the United States in the course of any extradition or ensuing appeal proceedings.

In the event the United States does lay charges against Mr Assange, the only lawful mechanism by which the United States could 'move' Mr Assange from Sweden to the United States for the purposes of prosecution would be to seek his extradition or temporary surrender. Your letter makes reference to the temporary surrender provision in the extradition agreement between Sweden and the United States as 'circumventing the safeguards of a formal extradition'. This is not the case. Temporary surrender is not an alternative to extradition but an option for a requested State to interrupt its own legal proceedings or sentence to allow extradition of a person for the duration of criminal proceedings in the country seeking the extradition (hence 'temporary'). All protections available to the person whose extradition is sought apply equally to an extradition that is a temporary surrender. Provision for temporary surrender is a common feature in modern extradition relationships and is not unique to the relationship between the United States and Sweden.

In your letter, you ask whether the Australian Government will seek various assurances from United States authorities regarding the extradition of Mr Assange from Sweden to the United States. As the Attorney-General outlined in her letter to Ms Jennifer Robinson, any extradition request made by the United States is a sovereign act done in accordance with its domestic laws and procedures, and in light of relevant treaty obligations that it has assumed. Australia does not have standing to intervene in a matter of bilateral law enforcement cooperation between two foreign states and, as such, would not expect to be a party to any extradition discussions that may take place between the United States and Sweden. Any extradition request made to Sweden by the United States would be progressed in accordance with due process and with relevant laws and treaties governing extradition between the two countries. This includes various judicial appeal avenues as outlined above.

I trust that the above information addresses the issues you raised in your letter. The Australian Government will continue to closely monitor Mr Assange's situation and advocate on his behalf to ensure that he is accorded procedural fairness and due process.

Yours sincerely



Jason Clare

06 JUL 2012