

## Julian Assange – ITP process

### *Talking points*

- The International Transfer of Prisoners Act provides the Australian legal framework for Australia to undertake the transfer of prisoners to and from other countries
- Both Australia and the United States are parties to the Council of Europe Transfer of Sentenced Persons Convention, and, under the Act, international prisoner transfers can take place between the US and Australia
- Prisoner transfers cannot be agreed between governments in advance of a person being a prisoner (after a criminal trial, conviction and sentencing) in a particular country, and require the consent of the prisoner.
- International prisoner transfers to Australia are initiated by an application from a prisoner after the prisoner has been convicted and sentenced.
- International prisoner transfers to Australia require the consent of the prisoner, the Australian Government, the relevant State/Territory Minister into whose prison the prisoner would be transferring, and the foreign country concerned.
- If the Australian Government received an application for the transfer of a prisoner from the US, it would consider the application at that time in accordance with Australia's legal framework.

### *Background*

Julian Assange is the subject of an extradition request from the US to the UK. He is wanted in the US to face prosecution for offences relating to the publication of secret government and military documents. In January 2021, a British judge refused the extradition request on health grounds.

On Friday 10 December 2021, the UK High Court handed down its appeal judgment (<https://www.judiciary.uk/judgments/usa-v-julian-assange-2/>), overturning the lower court's decision that Julian Assange was not eligible for extradition.

If surrendered, convicted and sentenced in the US, Assange could apply under the ITP scheme to serve his sentence in Australia. Australia has maintained the view that it can only consider a transfer application after it has been made, given:

- we won't know the circumstances, the sentence or the proposed US terms of transfer until that point of time – both to be assured of legal eligibility under the ITP Act and also to check that the proposed conditions of transfer are acceptable to Australia
- transfers to Australia also require the agreement of the relevant State/Territory Minister
- given the Attorney-General is required to agree to a transfer at that point in time, it would be inappropriate (and legally unenforceable) to seek to attempt to bind the Attorney-General
- as such, it would be inappropriate to pre-empt this through any sort of in-principle informal decision which would not be binding, and may raise expectations that can't be met later.

s 33(a)(iii)

. However, the UK High Court's judgment does note that the US has provided an assurance that they will consent to Mr Assange being transferred to Australia to serve any custodial sentence imposed on him if he is convicted.

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Australian Government  
Attorney-General's Department

**INSTRUCTIONS FOR MCU: RETURN TO CONTACT OFFICER WHEN SIGNED**

Sub No: MS22-000418

Date submitted to Office by AGD: 06 June 2022

File No: 21/96058

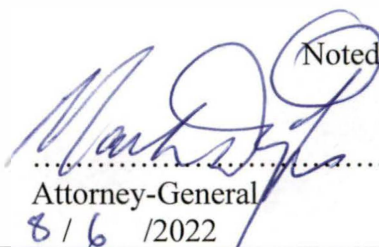
Min No: N/A

**ATTORNEY-GENERAL****Julian Assange - extradition request from the United States to the United Kingdom****Deadline:** None.

**Recommendation:** That you note the current status of the Julian Assange extradition proceedings in the UK, including that:

- 1) The matter is currently with the UK Secretary of State for the Home Department for a decision on extradition by 20 June 2022 (that deadline can be extended on application to the Court).
- 2) The UK Supreme Court determined in March 2022 that Mr Assange is eligible for surrender to the US by refusing him leave to appeal against the High Court's decision of December 2021.
- 3) If Mr Assange is extradited, convicted and sentenced in the US, he may apply for transfer to Australia under the International Transfer of Prisoner's (ITP) Scheme. This will require the consent of the US and Australian authorities.
- 4) The UK High Court's judgment notes that the US has provided an assurance that it will consent to Mr Assange being transferred to Australia to serve any custodial sentence imposed on him if he is convicted.

Noted / Discuss



.....  
Attorney-General

8/6/2022

**MO Comments/Feedback**

**Key Issues:** The UK Home Secretary is due to make a final decision on Mr Assange's extradition to the US by 20 June. Mr Assange will have one final avenue of appeal with the leave of the High Court, otherwise he must be extradited within 28 days of the Secretary of State's decision.

**ITP Scheme**

If Mr Assange is convicted and sentenced to imprisonment in the US, it will be possible for him to apply under the ITP scheme to serve the remainder of his sentence in Australia. A transfer would also require the consent of the US, the Australian Government (through you as Attorney-General), and the relevant minister in the state into whose prison Mr Assange would be transferring. In making any such decision, the department would provide you with advice on factors such as the extent to which the transfer would assist the prisoner's rehabilitation, sentence enforcement, community safety and any relevant humanitarian considerations, in addition to any

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conditions of transfer required by the US. (See International Transfer of Prisoners Statement of Policy at **Attachment A**).

Government representations and consular engagement

s 33(a)(iii)

. From April to November 2019, consular staff visited Mr Assange at HMP Belmarsh Prison on 3 occasions. s 33(a)(iii), s 33(b)

. The High Commission has continued to write to Mr Assange to offer consular assistance, most recently on 9 May 2022.

**UK Court decisions:** The UK Supreme Court determined in March 2022 that Mr Assange is eligible for surrender to the US, by refusing him leave to appeal against the High Court's decision of 10 December 2021. The UK High Court allowed the US's appeal against the Westminster Magistrate Court's decision of January 2021 not to extradite, on the grounds that:

- the District Judge ought to have notified the US of her provisional view, to afford it the opportunity to offer assurances to the court; and
- the US had now provided the UK with a package of assurances that responded to the District Judge's specific findings.

The High Court was satisfied by US assurances concerning conditions of detention, US consent to any ITP application by Mr Assange, and the provision of appropriate clinical and psychological treatment.

US Indictment and Extradition Request

Mr Assange was indicted by the US in connection with one federal charge of conspiracy to commit computer intrusion for agreeing to break a password to a classified US Government computer and 17 counts of violating the US Espionage Act. On 24 June 2020, the US Justice Department varied the indictment against Mr Assange to include alleged incitement of hacking. If convicted, Mr Assange faces a cumulative total of up to 175 years imprisonment. His charges attract a maximum penalty of 10 years in prison on each count of violating the Espionage Act and a maximum penalty of five years for the single count of conspiracy to commit computer intrusion.

Key risks and mitigation: The conditions for transfer under the ITP scheme cannot be met until Mr Assange is prosecuted and sentenced, which will take some time, and the necessary application and consents are in place. Should the extradition proceed and Mr Assange be prosecuted, communication around the nature of the ITP will be necessary.

**AGD Clearing Officer:** Katherine Jones, Secretary, 6141 4100

**Date Cleared:** 06 June 2022

**Branch Head:** Karen Moore, Assistant Secretary, International Cooperation Unit, 02 6141 4075, s 47E(d)

**Dept Action Officer:** Sarah Chidgey, Deputy Secretary, 02 6141 4130, s 47E(d)

**Attachment:**

- **Attachment A** ITP Policy

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DREYFUS QTB

Category: Daily Issues  
PDR: QB22-000072

## Assange

- The Australian Government notes Julian Assange is seeking to appeal the UK Home Secretary's decision to extradite him to the United States.
- The Australian Government has been clear in our view that Mr Assange's case has dragged on for too long and that it should be brought to a close.
- We will continue to express this view to the governments of the United Kingdom and United States.
- As the Prime Minister has said, not all foreign affairs is best conducted with a loud hailer.
- The United Kingdom and United States are well aware of our interest in Mr Assange's case.
- The Australian Government will continue to offer consular support to Mr Assange.
- If surrendered to the United States, convicted and sentenced, it would be open to Mr Assange to apply to transfer to Australia to serve his sentence under the international transfer of prisoners scheme.

|                                |                       |                             |   |
|--------------------------------|-----------------------|-----------------------------|---|
| Contact Officer<br>Karen Moore | Phone<br>02 6141 4075 | Date Created<br>4 July 2022 | Date Updated<br><a href="#">29 August 20 October 2022</a> |
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- It is not possible to make a decision regarding an international prisoner transfer in advance of the person being eligible to apply for transfer.
  - If the Australian Government received Mr Assange's application to transfer from the United States to Australia, it would consider the application at that time in accordance with Australia's legal framework.

## **The ITP scheme**

- Australia's International Transfer of Prisoners Act provides the Australian legal framework for Australia to undertake the transfer of prisoners to and from other countries.
- Under the Act, international prisoner transfers can take place between the US and Australia.
- International prisoner transfers to Australia are initiated by an application from a prisoner after the person has been convicted and sentenced.
- Prisoner transfers cannot be agreed between governments in advance of a person being a prisoner in a particular country.
- International prisoner transfers to Australia require the consent of the prisoner, the Australian Government, the relevant State/Territory Minister into whose prison the prisoner would be transferring, and the foreign country concerned.

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- If the Australian Government received an application for the transfer of a prisoner from the US, it would consider the application at that time in accordance with Australia's legal framework.

**If Mr Assange is extradited to the US and convicted, will the Australian Government support Assange in serving his sentence back in Australia?**

- I will not comment on hypothetical scenarios.
- International prisoner transfers to Australia require the consent of the prisoner, the Australian Government, the State or Territory Minister who is responsible for the relevant prison, and the foreign country concerned.
- If the Australian Government received an application for the transfer of a prisoner from the US, it would consider the application at that time in accordance with Australia's legal framework.

***Why did the Attorney-General's senior adviser tell Mr Assange's brother and father that there was nothing the Attorney-General could do about Mr Assange's situation?***

- It would not be appropriate to comment on private conversations between the Attorney-General's Office and Mr Assange's family.

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**What is Mr Assange's current legal status and what are next steps?**

- Mr Assange's legal status is a matter of public record.
- On 17 June 2022 the UK Home Secretary ordered Mr Assange's surrender to the United States.
- On 1 July 2022 Mr Assange sought leave from the High Court to appeal the decision to extradite him.
- Mr Assange remains detained.

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PDR: QB22-000072

## Background

Julian Assange is the subject of an extradition request from the US to the UK. He is wanted in the US to face prosecution for offences relating to the publication of secret government and military documents. In January 2021, a British judge refused the extradition request on health grounds (mental health and associated suicide risk). The High Court granted the US permission to appeal that decision and to expand their grounds of appeal. On 10 December the UK High Court allowed the US' appeal on the grounds that:

- the District Judge ought to have notified the US of her provisional view, to afford it the opportunity to offer assurances to the court; and
- the US had now provided the UK with a package of assurances which responded to the District Judge's specific findings.

In December 2021, Mr Assange filed an appeal against that decision. In January 2022, the UK High Court refused Mr Assange's application for leave to appeal to the Supreme Court in relation to their decision but ruled that Mr Assange can seek leave to appeal to the Supreme Court in relation to the issue of whether the High Court could rely on the US' assurances about Mr Assange's treatment as they had not been available in the initial proceedings. On 14 March 2022, the Supreme Court refused Mr Assange's application for leave to appeal. On 17 June 2022 the UK Home Secretary ordered Mr Assange's extradition to the US. <sup>s 47F(1)</sup>

[REDACTED]

[REDACTED]

[REDACTED]

If surrendered to the US, convicted and sentenced, Assange could apply under the international transfer of prisoners scheme to serve his sentence in Australia. As part of the extradition process, the US has undertaken to consent to an application by Mr Assange to transfer to Australia to serve his sentence.

The Australian Government has consistently maintained the view that Australia can only consider a transfer application after it has been made (given that we will not know the circumstances, the sentence or the proposed US terms of transfer until that point of time, and it would be inappropriate to pre-empt this through any sort of in-principle informal decision which would not be binding, and may raise expectations that cannot be met later).

Following the Home Secretary's decision, the Foreign Minister and Attorney-General issued a joint statement (Attachment 1). Amnesty International also issued a statement calling on the UK to refrain from extraditing Assange and the US to drop the charges.

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In June 2022, media reports indicated that Spain's National High Court has summoned Mike Pompeo, former director of the CIA, to testify in proceedings in which it is alleged that Undercover Global, the company contracted to provide security for the Ecuadorean Embassy in London, had entered into an agreement with the US government to spy on Mr Assange and his guests. It is also alleged there were discussions about potentially abducting Mr Assange or poisoning him.

On 16 August 2022, media reports indicated that Mr Assange's legal team, in collaboration with two journalists, have commenced legal proceedings against the CIA and Mike Pompeo. They allege the CIA violated US constitutional protections and worked with a security firm contracted by the Ecuadorean Embassy in London, to spy on Mr Assange and his agents.

In early August 2022, the media reported that members of Mr Assange's family had attended Parliament House to urge the Government to intervene in the proposed extradition and that they intended to provide copies of a book on Mr Assange by Nils Melzer, the former UN special rapporteur on torture, but security staff seized the books, deeming it 'protest material'. The family expressed frustration that they had been unable to secure a meeting with either the Prime Minister, the Foreign Affairs Minister or the Attorney-General. One media report noted that supporters were concerned that, although the Attorney-General's incoming government brief referred to conditions for a transfer under the ITP scheme, it did not indicate that this was the government's preferred strategy.

On 8 August 2022, Declassified Australia reported that Mr Assange's brother and father travelled to Canberra and 'in a meeting with a senior adviser to Attorney-General Mark Dreyfus, they were told that there was 'nothing [Dreyfus] could do''. (Attachment 2)

When questioned about Assange at the National Press Club on 12 October 2022, the Attorney-General reiterated that Assange's case had gone on long enough but that the Government was not going to conduct their representations to the US Government in public.

In a speech given at the National Press Club on 19 October 2022, Mr Assange's lawyer, Jennifer Robinson, referred to her clients' deteriorating health and stated that, if he is extradited to the US, he will suicide. Ms Robinson stated that the case required an urgent political fix and, called upon the government to act urgently, stating the Prime Minister should get on the phone to President Biden to get the matter sorted out.

**Attachment**

|    |  |
|----|--|
| 1. | <i>UK Decision to extradite Julian Assange - Media Release – 17 June 2022</i>            |
| 2. | <i>Labor and Assange – Burying the Politics – Declassified Australia – 8 August 2022</i> |

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## HOT TOPIC BRIEF

**HTB-NSCJG-11**

### Julian Assange

#### BRCH NSCJG ISCD International Cooperation Branch

Julian Assange is an Australian citizen and the subject of an extradition request from the United States (US) to the United Kingdom (UK). He is wanted for prosecution in the US for offences relating to the publication of secret government and military documents. If extradited, convicted and sentenced in the US, Mr Assange could apply to transfer to Australia to serve his sentence.

On 17 June 2022, the Attorney-General and Foreign Minister issued a statement noting the UK Home Secretary's decision of that date to extradite Mr Assange to the US and stated that Australia would continue to provide consular assistance. Their joint statement also stated 'The Australian Government has been clear in our view that Mr Assange's case has dragged on for too long and that it should be brought to a close. We will continue to express this view to the governments of the United Kingdom and the United States'.

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#### Key Points

##### **CURRENT LEGAL STATUS OF MR ASSANGE**

- On 1 July 2022 Mr Assange sought leave from the High Court to appeal the UK Home Secretary's decision to extradite him.
- The High Court is yet to hand down its decision on Mr Assange's application for leave.
- Mr Assange remains detained in the UK pending resolution of the extradition proceedings.

##### **ASSISTANCE BEING OFFERED TO MR ASSANGE**

- Australia will continue to convey its expectations to the UK and US that Mr Assange is entitled to due process, humane and fair treatment, access to proper medical care, and access to his legal team.
- The Department of Foreign Affairs and Trade will continue to offer consular assistance to Mr Assange.
- The Australian Government has made clear its view that Mr Assange's case has dragged on for too long and that it should be brought to a close.
- Australia is not a party to Mr Assange's case, nor can the Australian Government intervene in the legal matters of another country.

**WHETHER THE AUSTRALIAN GOVERNMENT SUPPORTS POSSIBLE TRANSFER TO SERVE SENTENCE IN AUSTRALIA**

- The US has undertaken to consent to an application by Mr Assange to transfer him to Australia to serve his sentence if he is extradited, convicted and sentenced.
- If the Australian Government receives an application for transfer, the application will be considered at that time in accordance with Australia’s legal framework.
- International prisoner transfers to Australia require the consent of the prisoner, the Australian Government, the relevant minister of the State/Territory where the prisoner wishes to transfer, and the foreign country concerned.

|                               |                           |                                |
|-------------------------------|---------------------------|--------------------------------|
| Version: 1                    | Cleared by: Sue Robertson | Action officer: s 22(1)        |
| Current at: 28 September 2022 | Phone number: s 47E(d)    | Action officer number: s 22(1) |

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Category: Daily Issues  
PDR: QB23-000101

## Assange

- The Australian Government is aware that the UK High Court has rejected Mr Assange’s appeal against his extradition to the United States and that Mr Assange has filed a renewal of that appeal.
- The Australian Government has been clear in our view that Mr Assange’s case has dragged on for too long and that it should be brought to a close.
- We will continue to express this view to the governments of the United Kingdom and United States.

## The ITP scheme

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|------------------------------------|-------------------|-----------------------------|----------------------------------|
| Contact Officer<br>Alaina Mitchell | Phone<br>s 47E(d) | Date Created<br>4 July 2022 | Date Updated<br>5 September 2023 |
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PDR: QB23-000101

- International prisoner transfers to Australia require the consent of the prisoner, the Australian Government, the relevant State/Territory Minister into whose prison the prisoner would be transferring, and the foreign country concerned.
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**If Mr Assange is extradited to the US and convicted, will the Australian Government support Assange in serving his sentence back in Australia?**

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PDR: QB23-000101

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PDR: QB23-000101

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- the District Judge ought to have notified the US of her provisional view, to afford it the opportunity to offer assurances to the court; and
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[REDACTED]. In December 2022, media reports indicate that Mr Assange had submitted an appeal to the European Court of Human Rights (ECHR). On 13 December 2022, the ECHR ruled the application as inadmissible as domestic legal proceedings need to have been exhausted before a matter can be heard. However, the panel stated that it could reconsider Mr Assange's application should he "be dissatisfied in the future with the progress or outcome of the domestic procedures..."

If surrendered to the US, convicted and sentenced, Assange could apply under the international transfer of prisoners scheme to serve his sentence in Australia. As part of the extradition process, the US has undertaken to consent to an application by Mr Assange to transfer to Australia to serve his sentence.

The Australian Government has consistently maintained the view that Australia can only consider a transfer application after it has been made (given that we will not know the circumstances, the sentence or the proposed US terms of transfer until that point of time, and it would be inappropriate to pre-empt this through any sort of in-principle informal decision which would not be binding, and may raise expectations that cannot be met later).

Following the Home Secretary's decision, the Foreign Minister and Attorney-General issued a joint statement (Attachment A). Amnesty International also issued a statement calling on the UK to refrain from extraditing Assange and the US to drop the charges.

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In June 2022, media reports indicated that Spain's National High Court has summoned Mike Pompeo, former director of the CIA, to testify in proceedings in which it is alleged that Undercover Global, the company contracted to provide security for the Ecuadorean Embassy in London, had entered into an agreement with the US government to spy on Mr Assange and his guests. It is also alleged there were discussions about potentially abducting Mr Assange or poisoning him.

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On 8 August 2022, Declassified Australia reported that Mr Assange's brother and father travelled to Canberra and 'in a meeting with a senior adviser to Attorney-General Mark Dreyfus, they were told that there was 'nothing [Dreyfus] could do' (Attachment B).

When questioned about Assange at the National Press Club on 12 October 2022, the Attorney-General reiterated that Assange's case had gone on long enough but that the Government was not going to conduct their representations to the US Government in public.

In a speech given at the National Press Club on 19 October 2022, Mr Assange's lawyer, Jennifer Robinson, referred to her clients' deteriorating health and stated that, if he is extradited to the US, he will suicide.

Ms Robinson stated that the case required an urgent political fix and, called upon the government to act urgently, stating the Prime Minister should get on the phone to President Biden to get the matter sorted out.

On 14 August 2023, the Sydney Morning Herald reported that 'the United States ambassador Caroline Kennedy has flagged a potential plea deal between Julian Assange and US authorities that could the end America's pursuit of the WikiLeaks founder and allow him to return to Australia.' It was further reported that, 'Assange's legal options to avoid being extradited from the United Kingdom to the US could be exhausted within two months, coinciding with a visit by Prime Minister Anthony Albanese to Washington in late October' (Attachment C).

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On 5 September 2023, the Age reported that 'Australian MPs from across the political spectrum will travel to Washington in September in a bid to recruit American politicians to the campaign to pressure the Biden administration to drop its pursuit of WikiLeaks founder Julian Assange' (Attachment D).

**Attachment**

|    |   |
|----|---|
| A. | <i>UK Decision to extradite Julian Assange - Media Release – 17 June 2022</i>                         |
| B. | <i>Labor and Assange – Burying the Politics – Declassified Australia – 8 August 2022</i>              |
| C. | <i>US envoy flags Assange deal – Sydney Morning Herald - 14 August 2023</i>                           |
| D. | <i>Cross-party group of MPs off to US to lobby for Assange's freedom – The Age - 5 September 2023</i> |

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