



NEWCASTLE TRADES HALL COUNCIL

The Hon Julia Gillard MP
Prime Minister
Parliament House
CANBERRA ACT
2600

4 June 2012

Dear Prime Minister

RE:

JULIAN ASSANGE

Regrettably we feel compelled to write to you about the plight of Mr Assange.

You will know that many Australians are angry, disappointed and even confused about your government's response to Mr Assange's situation. They feel that way because they care: they care about civil liberties, they care about freedom of speech, they care about truth and they care about democracy.

Many people fear that Mr Assange's greatest enemy may not be the United States or Sweden but rather the indifference demonstrated by his own Government, our Government.

Many are wondering why your only contribution to the debate has been initial accusations of illegal conduct followed by muted silence. Why?

As you know, there is currently a 14 day stay on the UK Supreme Court judgment but it is very likely that Mr Assange, an online publisher and journalist, will be extradited to Sweden. We think that the letter from Mr Assange's lawyer, Gareth Peirce, to the

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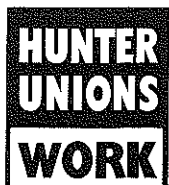
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then Foreign Affairs Minister Kevin Rudd dated 25 October 2011; the detailed brief provided to several members of the Australian Parliament by Finers Stephens Innocent in March 2011; the recent article by the Australian Centre of Independent Journalism; and the Fair Trials International note which explains what will happen to Mr Assange once he is taken to Sweden, highlight the reasons for our Government to be concerned.

The Government has said that it has and will continue to provide the same consular assistance offered to any Australian caught up in a legal matter overseas. That ignores the facts (raised by Mr Tony Kevin, now retired from the Australian Department of Foreign Affairs and Trade) that not only is this not a standard consular issue, but that “David Hicks and Mamdouh Habib received similarly worthless consular access from Howard and Ruddock at the times they were rendered with Australian Government consent to years of torture in Guantanamo. Both men were being abusively treated in Pakistan and Egypt while on their way to Guantanamo, as Australian consular officers looked on impotently.”

Foreign Affairs Minister Carr asserts that no Australian has received more consular support in a comparable period than Mr Assange. You need only refer the Government to assistance provided to one Mr Thompson (just one week after he was detained in Baghdad, in May 2006, with a cache of arms) to see that the assertion is wrong. It is perhaps also worth mentioning the assistance provided to those caught up in drug cases in Bali.

We understand that Mr Assange asked for assistance from the Ambassador while in Sweden, which wasn't forthcoming, and that the Department of Foreign Affairs and Trade later denied that any request had been made. In any case, no consular assistance was offered while he was in Sweden.

The Senate Official Committee Hansard report of February 24, 2011 shows that Mr Assange was provided with a copy of the Consular Services Charter on December 7, 2010. Of how much use was that?

In November 2011 Mr Assange's lawyer, Jennifer Robinson, confirmed that the Australian Ambassador in Sweden had agreed to convey questions from Mr Assange's defence team to the Swedish prosecutor's office, but said they offered little more. She pointed out that “correspondence was limited to requests to arrange seating in court and requests for briefings on case progress. There was little contact.”

It was only after The Age newspaper approached the Foreign Affairs Department on 25 October 2011 that a response was sent to Mr Assange's British lawyer, Gareth Peirce, in response to a letter of concern Mr Turnbull had hand delivered to Mr Rudd's office on 22 September 2011.

We understand that up until November 2011 the High Commission's help in the United Kingdom was confined to calls to Mr Assange's lawyers requesting 'tickets' to the court hearings. No real and practical help was ever offered. That same month the Consul-General in the United Kingdom, Mr Pascoe, finally requested a briefing on the case.

We are unable to ascertain whether or not a letter from prominent expatriates handed to the High Commission in December 2011 was responded to. Perhaps you would kindly confirm that it was?

Despite the fact that the Government asserts that it has no information from the United States to indicate that it has laid, or is about to lay, any charges against Mr Assange, or evidence that a sealed indictment already exists, we are kept in the dark about exactly what questions our Government has asked, what assurances have been sought and what information our officials have received.

Various Freedom of Information requests have revealed:

- that the Australian embassy in Washington knew of an “active and vigorous inquiry into whether Julian Assange can be charged under US law, most likely the 1917 Espionage Act” and that the “WikiLeaks case was unprecedented both in its scale and nature”;
- that Australian diplomats have requested “advanced warning of any public announcement of the results of US investigations or proposed actions”, but have raised no concerns about the Australian journalist being pursued by US prosecutors on charges of espionage and conspiracy;
- that Washington provided Canberra with regular updates, including reporting on the issuing of subpoenas to compel WikiLeaks associates to appear before a grand jury in Virginia, and US State Department efforts to access Twitter and other internet accounts; and
- that the Australian embassy has obtained “confidential or legal commentary” from private law firms “on aspects surrounding

WikiLeaks and/or the positions of Julian Assange and Bradley Manning.”

Washington embassy cables sent to Canberra between 1 November 2010 and 31 January 2012 do not contain any references to representations made by Australian diplomats to US officials concerning proper extradition processes, even though we were assured by Attorney-General Nicola Roxon in April this year that they had. We note the timing of Ms Roxon’s representations to Ambassador Jeffrey Bleich, US Homeland Security Janet Napolitano and US Deputy Attorney-General James Cole.

We understand that the Australian Government has made representations to the Swedish Government about due process being applied to Mr Assange, and that assurances to that effect have been given by the Swedish Government. But again, we are kept in the dark about exactly what questions were asked and the terms of the assurances received.

We don’t even know whether the Government has expressed any concerns – and there should be deep concerns – about the way in which charges were laid, investigated and dropped, only to be picked up again by a different prosecutor; about how Mr Assange’s police interview turned up in the tabloid Expressen the day after he was interviewed on 30 August 2010; why the Swedish Prosecutor, Ms Marianne Ny refused to accept Mr Assange’s offer to return to Sweden for interview on 9th and 10th of October 2010 and his offer to be interviewed at the Swedish Embassy in accordance with the Mutual Legal Assistance scheme between Sweden and the United Kingdom; about a contentious Swedish action having an Australian citizen electronically tagged and under house arrest without charge for 545 days, or about a Swedish prosecutor authorising an Interpol Red Notice for Mr Assange when he was required merely for questioning.

We find it disturbing that Mr Assange’s mother, Christine, felt compelled to respond on Twitter to recent government assurances about consular support provided to Mr Assange, as follows:

“Julian asked Aust Govt 2 ask US not 2 put him under “Special Administrative Measures” in prison (no touch torture). Request denied.

Julian asked Aust Govt 2 ask US 2 ask those who had publicly incited murder against him 2 retract statements. Request denied.

Julian asked Aust Govt 2 ask Sweden under Prisoner Transfer Program that any sentence B served in Australia. Request denied.

Julian asked Aust Govt 2 grant him safe passage home from the UK & Sweden at end of proceedings. Request denied.

Julian asked Aust Govt 2 ask Sweden 2 grant bail (unquestioned, uncharged, didn't breach UK bail conditions). Request denied.

Julian asked Aust Gov 2 ask Swedish PM,AG, FM, 2 stop misleading public re: case FACTS, & smearing him in public. Request denied."

It is very difficult to accept that, and we fail to see how, the Government's actions to date in relation to Mr Assange's plight or the level of consular support he allegedly has received are "something to be proud of".

Mr Assange's case obviously is politically charged. Governments may not be able to interfere in the legal processes of other countries, but there are plenty of precedents where governments have acted diplomatically to prevent legal processes from being invoked or continued. The Australian Government clearly has that capacity and should exercise it.

Mr Assange and WikiLeaks have given people all over the world, including the Australian people, a glimpse of the truth behind the spin, of the grubby guile behind the veneer of smooth diplomacy, and of the appalling disdain that people in power have for human life, let alone human rights. We have a right and a need to know these truths, and all Mr Assange and WikiLeaks have done is give us some scope to exercise those rights.

We call on the Australian Government to take all steps it can to assist Mr Assange, both by providing direct real assistance to him, including any necessary financial support for his legal representation and family support, and by exploring and utilising all diplomatic channels that may be available to obviate his further persecution through formal legal channels.

Yours faithfully

Gary Kennedy

Secretary

Newcastle Trades Hall Council



cc The Hon Sharon Grierson MP, 427 Hunter St, Newcastle, NSW, 2300

Ms Kellie Tranter, lawyer and human rights activist, Maitland NSW
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September 15th, 2011

Dear Mr. Rudd,

Malcolm Turnbull, who has taken an interest in the case of Julian Assange, has kindly offered to deliver this letter to you.

I represent Mr. Assange in the UK. A number of concerned persons in this country, some of whom are members of his Defence Fund and others who include prominent Australians in the UK, have suggested that it would be appropriate to place before you important information about this Australian citizen about which you may not be aware.

It is the considered opinion of all of the above, and of his lawyers in this country, that without the help of his government, Mr. Assange may well be in grave danger. His life has been threatened on a number of occasions notably by prominent figures in the United States. The prospect of his prosecution in that country, as the editor in chief of WikiLeaks, for matters that are not crimes, and certainly not crimes in Australia, as well as the further consequences of US prosecution give rise to parallel grave concerns

We currently await a judgment from the High Court in the UK regarding an application by the Swedish authorities for Mr. Assange's extradition on a European Arrest Warrant (EAW) regarding allegations of sexual offences in Sweden. He has not been charged in Sweden with any crime; one of the central arguments before the High Court is that if Mr Assange were to be prosecuted in Sweden following extradition, on the facts of what is alleged against him no criminal offence would have been committed in the UK or, indeed, in Australia. Given the extent of the public discussion, frequently on the basis of entirely false assumptions, of Mr Assange's potential criminality on either issue (ie potential prosecution in the United States or in Sweden), it is very hard to attempt to preserve for him any presumption of innocence.

The very real danger that faces Mr. Assange is that should the extradition request by Sweden be agreed by the courts here, once Mr Assange is in Sweden (and, we are informed inevitably held in custody even if not charged) an application for his 'temporary surrender' by the USA will most likely materialise. This may happen and even before any decision is made to bring criminal proceedings in Sweden. What it means is that Mr. Assange could be, without further ado, on his way to the United States and to a situation of considerable judicial uncertainty, not to say peril.

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It is likely that the US has already issued a sealed indictment, and that this would then be activated once the proceedings in the UK have concluded. (One example of commentary on this potential appears on the website below.)

<http://www.csmonitor.com/USA/Justice/2010/1202/WikiLeaks-founder-Julian-Assange-Has-US-already-indicted-him>

So far as the UK is concerned, were the extradition case to Sweden to fail in the courts here, the US would be most likely, if the above presumption is correct, to initiate extradition proceedings in the UK, as opposed to Sweden. It is a matter of public record that the US on a significant number of occasions has synchronised extradition requests with the conclusion of a pending case in the relevant domestic jurisdiction, and has relied on the cooperation of the requested country to do so; the UK and Sweden have in the past provided exactly such close cooperation. Were Mr Assange's appeal in the UK to succeed conclusively in the near future (and were no further appeal to be possible for the prosecution to the Supreme Court), a provisional warrant could be issued at short notice by the USA pending the obtaining of a warrant issued by a US court on the basis of a grand jury indictment, if the potential for such a warrant were claimed to exist.

There have been a number of cases of extradition synchronised in precisely this way. For example:

- The case of Eiderous, who was held in prison in the UK in relation to immigration matters until 9 July 1999, when he succeeded in a habeas corpus application. Within hours a warrant was obtained from the USA on the basis of the testimony of a "co-operating witness" (ie a witness who would otherwise face a severe sentence in the absence of cooperation) and within 24 hours of his release he was arrested.

- The case of Kassir. This Swedish national successfully challenged an extradition request by the US; the Swedish extradition treaty excludes Swedish nationals from extradition to the US. He was freed from prison. However, Kassir was also a Lebanese national. He was arrested in Prague airport while in transit to Lebanon, and subsequently extradited to the US (also on the basis of the evidence of a "co-operating witness"). The Swedish press reported that was probably coordinated by the Swedish special police, SÄPO, and that this type of coordination is the standard operating procedure of mutual assistance in transnational crime - link: <http://www.dn.se/nyheter/sverige/jag-alskar-bin-ladin>).

I myself have had lengthy experience in cases involving extradition from the UK to the USA and have written about the grave consequences of extradition post 9/11 in this paper: '**America's non-compliance**'

<http://www.lrb.co.uk/v32/n09/gareth-peirce/americas-non-compliance>

The views I express in the above paper do not represent the viewpoint of a defence lawyer alone; they are shared across the board by many politicians, lawyers and members of the judiciary and are considered of such seriousness

that two Parliamentary committees have been hearing evidence on the issue of UK/US extradition during the past 6 months and a third, judicial enquiry, set up by the government is due to report soon, again on the same issue. The major points of concern relating to prosecutions in the US relate to coercive plea pressure (97% of defendants plead guilty in the USA), the excessive use of extreme isolation in prison and the enormity of potential sentences (the major factor in producing guilty pleas and, indeed, "co-operating witnesses").

It is our understanding that a grand jury has been convened in secret session in relation to Mr Assange in Alexandria, Virginia. The choice of this location for a potential prosecution of Mr Assange has raised expressions of considerable concern by experienced lawyers in the USA, the catchment area for a potential jury being drawn from the penumbra of Washington, DC but in particular from the extensive 'dormitory' area of the national security establishment.

It should be emphasised that Mr. Assange as editor in chief of WikiLeaks has, he has been advised, violated no known American law: indeed, US constitutional experts have given their opinion that he should enjoy complete protection, guaranteed by the First Amendment to the US Constitution, safeguarding as it does, freedom of information. Nevertheless however, a secret, or sealed, indictment may well be in existence, and being held until what is considered to be the most appropriate moment at which to issue an extradition request. This is the view of the former legal adviser to the State Department and the National Security Council, John Bellingham, who has said, "We could potentially see if he is prosecuted in Sweden and then still seek his extradition to the United States, and ask the Swedes to extradite him here [to the US]" and the *Independent* newspaper's diplomatic correspondent disclosed last December that Sweden and the US had already commenced talks about Julian Assange's extradition (link: <http://www.independent.co.uk/news/uk/crime/assange-could-face-espionage-trial-in-us-2154107.html>).

In consequence, it appears to us that we should request as a matter of urgency that the Australian government seek specific assurances from both the UK and Sweden regarding Mr. Assange's possible onward extradition.

We believe it is relevant therefore that we respectfully raise the following questions;

1. Is the Australian government aware of the potential for Mr Assange to be transferred under the Temporary Surrender regime (see Article VI of the Supplemental US-Sweden Extradition Treaty of 1984: US – Sweden Extradition Supplementary Treaty – 35 U.S.T. 2501) direct from Sweden to the US; and if so, what inquiries has the Australian government made in relation to the potential for Mr Assange to be transferred in this manner to the US? Has the Australian government sought to be a party to the negotiations between the United States and Sweden in these circumstances?

2. What assurances, beyond basic consular assistance, has the Australian government sought or obtained regarding Mr. Assange's due process rights and his ability to return direct to Australia at the conclusion of extradition proceedings in London? Has the Australian government made inquiries about both the UK's and Sweden's position in a possible three-way US-UK-Swedish negotiation regarding any potential request for Mr. Assange's onward extradition to the US?

3. Should Mr. Assange be able to return to Australia following a successful conclusion of the UK appeal, will the Australian government commit to not extraditing Mr. Assange, an Australian citizen, to the United States where there exists the real possibility of a politically motivated prosecution relating to WikiLeaks' publication, bearing in mind in particular that the work of WikiLeaks does not amount to a crime under Australian law -- as we understand has been determined by the Australian Federal Police investigation ordered by the Prime Minister?

We hope that you will consider that these are serious and appropriate concerns for the Australian government to address on behalf of an Australian citizen. In particular the extraordinary prospect that Mr Assange has now hanging over him not one but two Damocles swords, of potential extradition to two different jurisdictions in turn for two different alleged crimes, neither of which are crimes in his own country, and that his personal safety and security has become at risk in circumstances that have become highly politically charged. As I hope I have been able to indicate, the issue of the consequences of extradition to the USA in particular has become one of exceptional concern in the UK in recent years in precisely such situations as those in which Mr Assange finds himself now. Should it assist you to have any further information in relation to the body of evidence being currently considered in the UK to determine whether such extradition arrangements should in fact continue in the future, I would be very pleased to provide it.

Thank you for giving this letter your attention. I very much look forward to hearing from you.

Yours sincerely,



Gareth Peirce
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