

International and National Security

WikiLeaks

On 11 January media reported that Mr Assange had said WikiLeaks would be 'stepping up their operations'. Two days later, the organisation posted more than 400 cables to its site, the largest single release to date. The cables largely emanated from the US Embassy in Iceland and followed media reporting that the US Department of Justice issued subpoenas for the Twitter accounts of several individuals, including a serving member of the Icelandic parliament. This release takes the total number of cables released by WikiLeaks to 2444, including 29 referencing Australia. International media outlets are also intermittently releasing cables.

On 16 January, the Dutch newspaper RTL reported it had gained access to over 3000 cables and released 16 in full to its website mainly covering US reporting on the Dutch contribution to Afghanistan. There are several mentions of Australia including comments by the Australian Ambassador, but none are judged to be significant.

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s 33 (a) (iii)

WIKILEAKS

ISSUES

- Has the Government abandoned Julian Assange?
- Comment on the AFP's finding that Assange committed no criminal offences in Australian Jurisdiction.
- Mr Assange's extradition hearing was held on 7-8 February
- ~~Mr Assange has claimed the Australian Government exchanged information with foreign nations about Australians working for WikiLeaks~~

SUMMARY

- The Government continues to provide Mr Assange with consular assistance but will not comment on ongoing judicial proceedings.
- The Government condemns the unauthorised release of classified material.
- It is the long standing practice of the government not to comment on operational and investigative activities of our intelligence and security agencies.

THE GOVERNMENT HAS NOT ABANDONED MR ASSANGE

- The Government continues to provide consular assistance to Mr Assange in accordance with the Charter of Consular Service.
 - The Government makes every effort to ensure consular assistance is made available for citizens if they face criminal allegations abroad
 - Consular officers attended Mr Assange's court hearing on Tuesday 7 December and provided Mr Assange assistance in support of the 7-8 February court hearing in the UK.
 - Consular support will continue to be provided for Mr Assange's subsequent appeal hearing.
- But Sweden's extradition request to the UK is a matter for the UK authorities to consider in accordance with UK law.
 - I will not comment on ongoing independent judicial proceedings
 - The Australian Government cannot directly intervene in the legal processes of other governments.

SHOULDN'T THE AUSTRALIAN GOVERNMENT BE TAKING STEPS TO BRING MR ASSANGE HOME TO AUSTRALIA?

- Mr Assange is currently facing an extradition request to Sweden for questioning on possible sexual assault charges.
- If extradition is denied, Mr Assange will be free to travel to Australia, should he choose to do so.

WHAT WILL THE GOVERNMENT DO IF THE UNITED STATES REQUESTS MR ASSAGNE'S EXTRADITION FROM AUSTRALIA, SWEDEN OR ANOTHER COUNTRY?

- Not going to speculate on hypothetical scenarios. Mr Assange has not been charged with any offence in the United States to date.

HAS MR ASSANGE BROKEN ANY AUSTRALIAN LAWS?

- The advice I have is that – on the information available to the Australian Federal Police at this time – there has been no breach of Australian law by Mr Assange.
- But let us be clear that the foundation act of theft of US classified cables is an illegal act.
 - This act is rightly being investigated by the US authorities.
- The Government condemns the unauthorised release of classified material
 - The reckless and large scale exposure of classified material by WikiLeaks has the potential to compromise Australia, the US and other allies' national interests.

s 33(a)(iii)

HAS THE AUSTRALIAN GOVERNMENT PROVIDED INFORMATION TO FOREIGN POWERS ABOUT AUSTRALIAN CITIZENS WORKING FOR WIKILEAKS?

- It is the long standing practice of the government not to comment on operational and investigative activities of our intelligence and security agencies.
- Australian government departments and agencies share defence, security and intelligence information with allies as part of routine operations.
- The sharing of this information is governed by strict legislation and in the case of our intelligence and security agencies, is subject to the oversight of the Inspector General of Intelligence and Security.

BACKGROUND:

On 28 November 2010, WikiLeaks began releasing some of its believed holdings of 251 287 classified US Department of State cables. As of 1 February 2011, WikiLeaks has published 3204 cables, including at least 47 that reference Australia.

WikiLeaks founder and Australian citizen, Mr Julian Assange will face an extradition hearing in London on 7-8 February in relation to possible sexual assault charges brought against him in Sweden.

Separately, the US Department of Justice allegedly subpoenaed the Twitter account records of Mr Assange and others associated with WikiLeaks, according to media reporting.

On 30 November the Attorney-General's Department referred the matter relating to the publishing of US Embassy cables containing classified information on the WikiLeaks website to the AFP. The AFP examined relevant material to assess whether any Australian offences may have been committed. On 17 December, the AFP completed its assessment of the material available and has not established the existence of any criminal offences where Australia would have jurisdiction. Where additional cables are published and criminal offences are suspected, these matters should be referred to the AFP for assessment.

The Government has established a multi-agency Task Force in the Department of Prime Minister and Cabinet to monitor the cables as released by WikiLeaks and analyse the impact of the leaked material on Australia's national interest *[established 29 November, virtualised 13 December]*. The Task Force comprises representatives from across the National Security Community.

s22

Date : 1 February 2011
Ministerial ID No : QTB11/84
Consultation : DFAT, AFP, ASIO

WIKILEAKS

ISSUES

- WikiLeaks continues to release material from its believed holdings of 251 287 US Department of State cables.
- WikiLeaks founder Mr Julian Assange claimed the Australian Government has exchanged information with foreign nations about Australians working for WikiLeaks.
- Mr Assange is currently on bail in the UK, pending his appeal hearing against his extradition to Sweden.
- On 25 April 2011 WikiLeaks released secret US Department of Defense documents on former Guantanamo Bay detainees and Australian citizens Mr Mamdouh Habib and Mr David Hicks.

SUMMARY

- The Government condemns the unauthorised release of classified material.
- It is the long standing practice of the Government not to comment on operational and investigative activities of our intelligence and security agencies.
- The Government continues to provide Mr Assange with consular assistance but will not comment on ongoing judicial proceedings.
- It is Australian Government policy not to comment on the specifics of material released by WikiLeaks.

AUSTRALIAN GOVERNMENT ASSISTANCE TO MR JULIAN ASSANGE

- The Government has provided, and will continue to provide, Mr Assange with consular assistance.
 - The Government makes every effort to ensure consular assistance is made available for citizens if they face criminal allegations abroad.
 - During his detention in London, consular officers met with Mr Assange twice and spoke to him via telephone twice.
 - Consular officers have attended all eight of Mr Assange's court hearings. Consular officers will attend the appeal hearing to the High Court scheduled for 12 and 13 July 2011.

- But Sweden's extradition request to the UK is a matter for the UK authorities to consider in accordance with UK law.
 - I will not comment on ongoing independent judicial proceedings.
 - The Australian Government cannot directly intervene in the legal processes of other governments.

SHOULDN'T THE AUSTRALIAN GOVERNMENT BE TAKING STEPS TO BRING MR ASSANGE HOME TO AUSTRALIA?

- Mr Assange is currently prevented from international travel as a condition of bail.
- Should restrictions on his international travel be lifted, he would be free to travel to Australia, if he wished to do so.

WHAT WILL THE GOVERNMENT DO IF THE UNITED STATES REQUESTS MR ASSANGE'S EXTRADITION FROM AUSTRALIA, SWEDEN OR ANOTHER COUNTRY?

- I am not going to speculate on hypothetical scenarios. Mr Assange has not been charged with any offence in the United States to date.

WHAT IS THE GOVERNMENT'S POSITION ON THE DOCUMENTS RELEASED BY WIKILEAKS ON MR MAMDOUH HABIB AND/OR MR DAVID HICKS?

- It is Australian Government policy not to comment on the specifics of material released by WikiLeaks.

IS THE GOVERNMENT ANNOYED THAT THE US GOVERNMENT DID NOT PROVIDE IT WITH ALL OF THE LEAKED CABLES?

- It is US Government policy not to provide the actual documents to other governments.
- Officials received several briefings from the US Embassy on cables of likely concern.

HAS MR ASSANGE BROKEN ANY AUSTRALIAN LAWS?

- The advice I have is that – on the information available to the Australian Federal Police at this time – there has been no breach of Australian law by Mr Assange.
- The Government condemns the unauthorised release of classified material.
 - The reckless and large scale exposure of classified material by WikiLeaks has the potential to compromise Australia, the US and other allies' national interests.

HAS THE AUSTRALIAN GOVERNMENT PROVIDED INFORMATION TO FOREIGN POWERS ABOUT AUSTRALIAN CITIZENS WORKING FOR WIKILEAKS?

- It is the long standing practice of the Government not to comment on operational and investigative activities of our intelligence and security agencies.
- Australian Government departments and agencies share defence, security and intelligence information with allies as part of routine operations.
- The sharing of this information is governed by strict legislation and in the case of our intelligence and security agencies, is subject to the oversight of the Inspector General of Intelligence and Security.
- The Australian Government has stated that it will provide any support that's requested to the United States as part of any investigation relating to the release of leaked US Department of State cables by WikiLeaks.
 - No assistance has been provided by the Australian Government to the United States Government in response to this matter.

BACKGROUND:

On 28 November 2010, WikiLeaks began releasing some of its believed holdings of 251 287 classified US Department of State cables. As of 5 May 2011, WikiLeaks has published approximately 11,900 cables, including at least 2000 that reference Australia.

WikiLeaks founder and Australian citizen Mr Julian Assange has been ordered by a British court to be extradited to Sweden to face sexual assault charges. Mr Assange is appealing this decision to the UK High Court, with his hearing currently scheduled for 12-13 July 2011.

Separately, the US Department of Justice allegedly subpoenaed the Twitter account records of Mr Assange and others associated with WikiLeaks, according to media reporting.

On 30 November the Attorney-General's Department referred the matter relating to the publishing of US Embassy cables containing classified information on the WikiLeaks website to the AFP. The AFP examined relevant material to assess whether any Australian offences may have been committed. On 17 December, the AFP completed its assessment of the material available and has not established the existence of any criminal offences where Australia would have jurisdiction. Where additional cables are published and criminal offences are suspected, these matters should be referred to the AFP for assessment.

On 29 November 2010, the Government established a multi-agency Task Force in the Department of Prime Minister and Cabinet to monitor the cables

as released by WikiLeaks and analyse the impact of the leaked material on Australia's national interest. The Task Force comprised representatives from across the National Security Community. The Task Force was virtualised on 13 December 2010.

On 14 March 2011, WikiLeaks founder Mr Julian Assange claimed on the ABC television program Q&A that the Australian Government has been exchanging information with foreign powers about Australian citizens working for WikiLeaks. On 15 February 2011, PM&C received a Freedom of Information request for documents related to WikiLeaks from freelance journalist Dr Philip Dorling. The PMO and several other government departments also received similar requests. On 28 April 2011 the Department requested an extension of 30 days to finalise the request it received. The Department expects the request to be finalised and the documents provided to the applicant in the week beginning 9 May 2011.

s22

Date : 5 May 2011
Ministerial ID No : QTB11/344
Consultation : AFP, ASIO, AGD, DFAT, Intelligence Policy Branch (PM&C), Counter Terrorism and Transnational and Organised Crime Branch (PM&C)

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Ref: B11/2134

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Wimmer
Mr Eveille
Mr Sharma
Mr Hollin
Ms Geddes
Mr McGibbon
Mr McFarlane
Mr Docwra

To: Prime Minister (for information)

WIKILEAKS – RELEASE OF 120,000 NEW CABLES

Timing: Routine

PMO
Mr Hubbard
Mr Bentley
Mr Maude
Mr Hallinan

Recommendations – that you:

1. **Note** that WikiLeaks has released over 120,000 new US Department of State cables to its website, including approximately 1,800 referencing Australia;

Noted

2.

s 33(a)(i) and s 33(a)(ii)

Noted

3.

s 47C

Noted

Julia Gillard

s22

Date:

s22

Purpose: To provide you with advice on the recent release by WikiLeaks of US Department of State cables.

Key Points:

1. Since 19 August 2011, WikiLeaks has published over 120,000 new cables on its website, bringing the total number of cables released since November 2010 to approximately 140,000. WikiLeaks claims to hold a further 110,000 unreleased cables.
 - a. While the latest cables are predominantly of lower classification than those published previously, a number of unredacted classified cables from the US Embassy in Canberra have been published in full in the last 48 hours.
2. We continue to analyse the content of the cables released over recent days. However, a number of unredacted cables detailing sensitive information have already been identified, with some garnering considerable attention in domestic and international media.

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s 33(a)(i) and s 33(a)(ii)

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s33(a)(i)

s33(a)(i)

s47c

4.

s33(a)(i)

5. The subjects of other cables garnering some media attention include: the establishment of the National Broadband Network; the Australian Government's approach to discussions in multilateral fora; and defence-related matters.
6. PM&C will update you on further large-scale releases, with specific advice on content relevant to Australia.


Margot McCarthy
A/g National Security Adviser
31 August 2011

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Ref: B11/2283
Routine/Low Complexity

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DEPARTMENT OF THE PRIME MINISTER AND CABINET

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To: Prime Minister (for decision by 23 September 2011)

WIKILEAKS – RELEASE OF REMAINING KNOWN CABLES

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ecretary
r McCarthy
1s Leon
1r Hollin
1s Wimmer
1r Eveille
1r Sharma
1r Docwra
1s Geddes
1r McGibbon
1r McFarlane

MO
1r Hubbard
1r Bentley
1r Maude
1r Hallinan

Recommendations - that you:

1. **note** that WikiLeaks has now released all of the approximately 250,000 US Department of State cables it claimed to have held;

Noted

2. **note** that reviews conducted to date of the newly released cables have so far only revealed a small number of unredacted cables detailing information sensitive to Australia; and

Noted

3.

s 33(a)(1)

Noted

Julia Gillard

s22

Date:

Purpose: To provide you with advice on the recent release by WikiLeaks of US Department of State cables.

Key Points:

1. WikiLeaks has now published on its website all of the approximately 250,000 US Department of State cables it claimed to have held.
 - a. Since 19 August 2011, WikiLeaks has released over 230,000 new cables, including approximately 9,700 cables containing references to Australia.
 - b. WikiLeaks has traditionally redacted material it has judged to be sensitive, prior to publishing cables. However, in departure from this procedure, WikiLeaks released a substantive cache of unredacted Secret and sensitive cables from US posts around the world.

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s 33(a)(1)

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s 33(a)(i)

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s 33(a)(i)

5.

s 33(a)(i) & s 33(a)(ii)

a recently released cable also identified 23 individuals suspected of having links to extremist groups in Yemen.

a.

s 33(a)(i) & s 33(a)(ii)

Rachel Noble

Rachel Noble
A/g Deputy National Security Adviser
9 September 2011

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WikiLeaks

On 27 February, WikiLeaks – in cooperation with approximately 25 international media outlets – started releasing its holdings of up to five million e-mails from the US-based privately owned strategic intelligence organisation, Stratfor. WikiLeaks claim the e-mails will detail the inner workings of Stratfor, international governments' usage of the Stratfor service and US government considerations on WikiLeaks

s 33(a)(1)

WIKILEAKS - JULIAN ASSANGE EXTRADITION APPEAL DISMISSED

ISSUES

- WikiLeaks Editor-in-Chief and Australian citizen Mr Julian Assange has had his appeal against extradition to Sweden dismissed by the UK Supreme Court.
- The UK Supreme Court's decision has been stayed for a period of 14 days while Mr Assange and his legal defence team consider whether to apply to re-open the decision.
- Media reporting claims the Australian Government is aware of United States (US) Government intentions to commence legal action against Mr Assange.

SUMMARY

- The Australian Government cannot interfere in the judicial processes of another country.
- The Government will continue to closely monitor the legal proceedings against Mr Assange in the UK Supreme Court to ensure that due process is followed.
- The Australian Government will continue to offer Mr Assange consular assistance as we have done for the duration of his extradition proceedings in the UK.
- The Government has had no indication that the United States Government plans to commence legal action against Mr Assange.

KEY POINTS

- The Australian Government notes the decision handed down by the UK Supreme Court overnight dismissing Mr Julian Assange's appeal against extradition to Sweden.
 - The Court's decision has been stayed for a period of 14 days while Mr Assange and his legal defence team consider whether to apply to re-open the decision, on the grounds that the judgement was based on a point concerning the Vienna Convention on the Law of Treaties on which no argument was heard.
- The Government will continue to closely monitor the legal proceedings against Mr Assange in the UK Supreme Court to ensure that due process is followed.

- o The Australian Government will continue to offer Mr Assange consular assistance as we have done for the duration of his extradition proceedings in the UK.
 - o Fact 1: While Mr Assange was in detention in London (7 to 16 December 2010), consular officials visited him twice and raised several matters of concern with prison authorities on his behalf.
 - o Fact 2: Consular officials have attended all of Mr Assange's court appearances, including most recently on 30 May 2012.
 - o Fact 3: Since Mr Assange was released on bail, Australian officials have repeatedly conveyed offers of consular assistance through his lawyers, with whom they were most recently in contact with on 30 May 2012.
- o The Australian Government is not aware of any current plans of the United States Government to commence legal proceedings against Mr Julian Assange.

s 83(a)(iii)

- o Ongoing consular support will of course be available to Mr Assange should he be extradited to Sweden.
- o If Mr Assange is found to have not committed any criminal offences in Sweden he will be free to return to Australia.

BACKGROUND:

On 28 November 2010, the WikiLeaks organisation began releasing some of its believed holdings of 251 287 classified US Department of State cables. On Friday 2 September 2011, WikiLeaks published its entire believed holdings of the alleged Department of State cables.

On 7 December 2010, WikiLeaks Editor-in-Chief and Australian citizen Mr Julian Assange was arrested by British police on the basis of a European Arrest Warrant relating to alleged sex offences in Sweden. Mr Assange was released on bail in the UK on 16 December 2010. On 24 February 2011, a court found that the European Arrest Warrant (EAW) requesting Mr Assange be returned to Sweden to be investigated for alleged sexual assault was valid and the court ordered Mr Assange's extradition.

Mr Assange then appealed to the UK High Court against this decision, and on 2 November 2011 his appeal was dismissed. On 5 December 2011, Mr Assange was granted leave to appeal to the UK Supreme Court on a point of law - whether a European Arrest Warrant (EAW) issued by a public prosecutor is a valid EAW issued by a "judicial authority" for the purposes of UK law. The Supreme Court announced on Wednesday 30 May 2012 that it had rejected Mr Assange's appeal. The Court's decision has been stayed for a period of 14 days while Mr Assange and his legal defence team consider whether to apply to re-open the decision, on the grounds that it was based on a point concerning the Vienna Convention on the Law of Treaties on which no argument was heard.

s47f

s22

Date : 31 May 2012
Ministerial ID No : QTB12/77
[Consultation : CPHS, AGD, DFAT, AFP

M&C
Secretary
Mr McCarthy
Ms Wimmer
Mr Sadleir
Ms Klugman
Mr Hollin

MO
Mr Maude
Mr Hallinan

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Ref: B12/1139

13.

To: Prime Minister (for information)

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WIKILEAKS – MR JULIAN ASSANGE EXTRADITION APPEAL DECISION EXPECTED AT 1815H

Timing: Urgent – Issues are likely to be the subject of media attention

Recommendation – that you:

1. **Note** that the UK Supreme Court decision on Mr Assange's appeal against extradition from the United Kingdom to Sweden will be brought down today at 1815h (AEST).

Noted

2.

s47f

Noted

Julia Gillard

s22

Date:

s22

Purpose: To update you on legal proceedings against WikiLeaks Editor-in-Chief and Australian citizen Mr Julian Assange.

Key Points:

1. At 1815h (AEST) today, 30 May 2012, the UK Supreme Court is due to bring down its decision on Mr Julian Assange's appeal against his extradition from the United Kingdom to Sweden to face allegations of sexual assault.
 - a. On 1-2 February 2012, Mr Assange appealed to the UK Supreme Court on a point of law, questioning whether the Swedish prosecutor who issued the European Arrest Warrant for him is an appropriate "judicial authority" to undertake such action.

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s33(a)(iii)

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s 47F

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s33(a)(iii)

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s33(a)(iii)

6. A follow-up briefing will be provided post-decision. The current Whole-of-Government Talking Points on this issue are at Attachment C.



Rachel Noble
A/g Deputy National Security Adviser

30 May 2012

s22

Consultation: International Division

s22

UNCLASSIFIED

WikiLeaks whole-of-government talking points as at 1200h 30 May 2012

WIKILEAKS – TOP LINES

- The Government will not comment on the details of leaked material released by WikiLeaks.

Australian Government response

- The Department of the Prime Minister and Cabinet (PM&C) continues to coordinate the whole-of-government effort, including relevant security agencies, to assess the implications of the release of material by WikiLeaks and any action the government should consider.

What is the Government's response to speculation the US Government intends to commence legal action against Mr Julian Assange?

- The Australian Government is not aware of any current plans of the United States Government to commence legal proceedings against Mr Julian Assange.
- As noted publicly, the Australian Government has made high-level representations to the United States Government to ensure that any potential legal proceedings concerning Mr Assange are handled in accordance with due process.
- It is premature to speculate on what further representations the Government may make in relation to Mr Assange.
- Our Post in Washington continues to closely monitor developments.

Swedish extradition proceedings against Mr Assange

- The Swedish Government has requested Mr Assange's extradition from the United Kingdom.
 - The extradition process is being carried out in accordance with relevant laws and treaties governing extradition between these two countries.
- The Australian Government cannot intervene in the legal processes of other governments.
- The Australian Government has made representations to and obtained assurances from the Swedish Government that Mr Assange's case will proceed in accordance with due process.

Appeal against extradition decision

- The UK Supreme Court heard Mr Assange's appeal against his extradition to Sweden on 1 and 2 February 2012.
- The Court reserved its decision and will deliver its judgement on Wednesday 30 May 2012.
 - The United Kingdom is well aware of Australia's expectation that internationally accepted laws governing humanitarian behaviour, as well as its own laws, are applied when dealing with Australian citizens.

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Option 1 - If Mr Assange's appeal against extradition is upheld

- The Australian Government notes the UK Supreme Court's decision to uphold Mr Assange's appeal against his extradition to Sweden.
 - Mr Assange has exercised his right to due process and judicial review of the extradition processes.
- It is the duty of the Australian Government to seek to ensure that due process is followed should our citizens be involved in legal proceedings abroad.
 - The Australian Government is satisfied that due process has been followed in the legal proceedings in the UK.

(If asked) Can Mr Assange return to Australia?

- Mr Assange is an Australian citizen and is free to return to Australia if he wishes to do so.

(If asked) Are there possible US Government charges against Mr Assange?

- The Australian Government has not been advised of any charges to be laid by the US Government against Mr Assange.
 - A number of diplomatic cables were released last week concerning a possible US Department of Justice investigation into Mr Assange.
 - As the cables indicate, the Australian Embassy in Washington continues to monitor developments in relation to Mr Assange.
- The Australian Government expects any charges laid against Mr Assange to be dealt with in accordance with due process.

(If asked) Will the Government guarantee that if Mr Assange returns to Australia, he would not be extradited to the United States?

- It is not appropriate to make a commitment in relation to the extradition of an individual in advance of a formal determination on the merits of the case.

(If asked) Can Mr Assange be extradited from the United Kingdom to the United States?

- As Australia is not a party to the extradition agreement between the United Kingdom and the United States, the Government would not expect the United States Government to share details of any extradition request involving another country.
- An extradition request is a matter of bilateral law enforcement cooperation between the two sovereign countries involved.
- However, we would work to ensure any extradition request involving an Australian citizen to be carried out in accordance with due process.

UNCLASSIFIED

(If asked) If Mr Assange returns to Australia, will he be charged with any offences under Australian law?

- Criminal charges are a matter for law enforcement agencies.
- On 30 November 2010 the Attorney-General's Department referred the matter relating to the publishing of US embassy cables containing classified information on the WikiLeaks website to the AFP.
- The AFP examined relevant material to assess whether any Australian offences may have been committed.
- The AFP completed its assessment of that material on 17 December 2010 and did not establish the existence of any criminal offences where Australia would have jurisdiction.
 - The AFP remains ready to evaluate any further material released by WikiLeaks for potential offences against Commonwealth law.

Option 2 - If Mr Assange's appeal fails and he is ordered to be extradited to Sweden

- The Australian Government note the UK Supreme Court's decision to deny Mr Assange's appeal against extradition to Sweden.
 - This appeal to the Supreme Court was Mr Assange's last avenue of legal recourse in the UK and we expect he will be extradited to Sweden shortly (within 10 days).
- The Australian Government will continue to offer Mr Assange consular assistance should he face criminal prosecution in Sweden, as we have done for the duration of his extradition proceedings in the UK.
 - The Australian Government cannot interfere in the judicial processes of another country, but will closely monitor the legal proceedings against Mr Assange in Sweden to ensure that due process is followed.
- All further consular queries should be directed to the Department of Foreign Affairs and Trade.

(If asked) Will Mr Assange appeal against the extradition finding to the European Court of Human Rights?

- This is a matter for Mr Assange and his legal team – it would be inappropriate for the Australian Government to comment on an application to the European Court of Human Rights (ECHR).
 - Unless the ECHR ordered a stay of extradition, we expect that Mr Assange would be extradited to Sweden within 10 days.

(If asked) What will the conditions be like in Sweden; will he be held 'on remand, incommunicado'?

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- It is for the Swedish courts to determine whether Mr Assange would be held on remand and whether there will be restrictions on his detention [related to visits and conditions/privileges in detention].
- Even if held on remand with full restrictions, Mr Assange is entitled to meet with his legal representation and consular officials.

(If asked) Are there possible US Government charges against Mr Assange?

- The Australian Government has not been advised of any charges to be laid by the US Government against Mr Assange.
 - A number of diplomatic cables were released last week concerning a possible US Department of Justice investigation into Mr Assange.
 - As the cables indicate, the Australian Embassy in Washington continues to monitor developments in relation to Mr Assange.
- The Australian Government expects any charges laid against Mr Assange to be dealt with in accordance with due process.

(If asked) Isn't Mr Assange's extradition to Sweden merely a prelude to onward extradition to the United States?

- Mr Assange has been extradited to Sweden to face allegations of sexual assault.
- We have no advice of a planned US extradition request.
 - An extradition to the United States from Sweden would require both the consent of Sweden and the United Kingdom and could be challenged in their courts.

What is the Government's view on the potential 'temporary surrender' of Mr Assange to the United States from Sweden?

- The Government has no advice that any such process is being considered.
- Under Swedish law, individuals subject to a 'temporary surrender' request are afforded the same legal protection as an individual subject to an extradition request.
- Should any other nation 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, as it has done repeatedly with the Swedish and British governments.

(If asked) Will Mr Assange receive a fair trial in Sweden?

- Mr Assange will be subject to the Swedish criminal justice process, which is based on the *civil law* system that most European countries use.
 - While the Swedish justice system is different to the common law system of justice used in Australia, the Australian Government remains confident that Mr Assange will receive a fair trial.

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- The Australian Government will closely monitor the legal proceedings to ensure that due process is followed.

(If asked) If Assange is convicted in Sweden, can he serve any sentence in Australia?

- Australia and sixty other countries, including Sweden and the United States, are party to the Council of Europe Convention on the Transfer of Sentenced Persons which allows prisoners to apply to transfer to their home country to serve out the remainder of their sentence.
- It is not appropriate to speculate on whether Mr Assange may be eligible to transfer to Australia under the ITP Scheme, as he has not yet been convicted of any offence.
- A person wishing to transfer may apply once all legal proceedings, including appeals, are final.
- Under the Convention and the International Transfer of Prisoners Act 1997 (Cth) transfers are not automatic and require the consent of the Australian Government, the government of the foreign country, the prisoner and the State or Territory that the prisoner wishes to transfer to, before a transfer can take place.
- A condition of transfer to Australia is that the conduct constituting the offence committed in the foreign country would have also constituted an offence if committed in Australia. However, in particular cases, this condition can be waived.
- Transfer applications are confidential and specific cases cannot be discussed.

Has the Government placed travel restrictions upon Mr Assange's lawyer Ms Jennifer Robinson?

- There are no Australian Government restrictions applying to Ms Robinson's travel – she returned to Australia on her scheduled flight on 19 April.
- No Australian Government agency maintains an "inhibited" travel list, nor does the Department of Foreign Affairs and Trade have any form of "watch list".
- Whatever transpired at Heathrow Airport was not a result of any action by an Australian Government agency.

What is the Australian Government's response to Mr Assange's accusation that the US Government has been lobbying Australian politicians against him and WikiLeaks?

- The Australian government is unaware of any such representations.

(If asked) Why did Australian Embassy representatives attend hearings in the Bradley Manning case?

- The Australian Government continue to monitor Mr Assange's legal situation closely and, as part of that, have followed developments in associated matters such as the US proceedings against Bradley Manning and the investigations into WikiLeaks.

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(If asked) Reported whole-of-government investigation

- There was no whole-of-government investigation into WikiLeaks in December 2010 as claimed by Mr Assange.
- The only Australian Government agency to conduct an assessment of any criminality associated with the release of US Department of State cables was the Australian Federal Police (further information below).
- A whole-of-government taskforce was established in November 2010 to assess any potential implications of the released cables on Australia's national interest.

(If asked) Position/action if any extradition by the US is to face the death penalty?

- The Australian Government's opposition to the death penalty and robust representations against the death penalty on behalf of many citizens is well known and will not change.
- Sweden and the UK take a similar position to Australia: they can refuse extradition for cases which could attract the death penalty, or can seek assurances that the death penalty will not be carried out.

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Ref: B12/1152

To: Prime Minister (for information)

WIKILEAKS – MR JULIAN ASSANGE EXTRADITION APPEAL DISMISSED

Timing: Urgent – Issues are likely to be the subject of media attention

Recommendation - that you:

1. **Note** that the UK Supreme Court has dismissed Mr Assange's appeal against extradition to Sweden.
2. **Note** that the Court's judgement has been stayed for a period of 14 days while Mr Assange and his legal team consider whether to apply to reopen the decision, on the grounds the judgement was based on a point on which no argument was heard.

Noted

Noted

Julia Gillard

Date:

Purpose: To update you on legal proceedings against WikiLeaks Editor-in-Chief and Australian citizen Mr Julian Assange.

Key Points:

1. At 1815h (AEST) on 30 May 2012, the UK Supreme Court dismissed Mr Assange's appeal against his extradition from the United Kingdom to Sweden to face allegations of sexual assault. The Court held that a European Arrest Warrant issued by a public prosecutor is a valid warrant for the purposes of UK law.
2. Although the UK Supreme Court has dismissed the appeal, the judgement has been effectively stayed for a period of 14 days while Mr Assange and his UK legal defence team consider whether to make an application to re-open the Court's decision.
3. With the granting of this additional 14 days, the UK Supreme Court has stated that the required period for extradition (10 days) shall not commence until 13 June 2012, the 14th day after judgement. This date could change however, depending on whether counsel for Mr Assange does make an application to re-open the Court's decision and how the Court decides to deal with the application.

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4. Rallies in support of Mr Assange have been organised to be held across Australia and around the world over the next 24 hours. The locations are centred on Australian Government buildings with a rally for instance scheduled to occur at the Department of Foreign Affairs and Trade in Canberra and the Australian Embassy and High Commission in Washington D.C. and London respectively.
5. Updated Whole-of-Government Talking Points on this issue are at Attachment B.

Rachel Noble

Rachel Noble
A/g Deputy National Security Adviser

31 May 2012

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Consultation: International Division

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WikiLeaks whole-of-government talking points

Version #38 – Correct as at 1500h 31 May 2012

WIKILEAKS – TOP LINES

- The Government will not comment on the details of leaked material released by WikiLeaks.

Australian Government response

- The Department of the Prime Minister and Cabinet (PM&C) continues to coordinate the whole-of-government effort, including relevant security agencies, to assess the implications of the release of material by WikiLeaks and any action the government should consider.

What is the Government's response to speculation the US Government intends to commence legal action against Mr Julian Assange?

- The Australian Government is not aware of any current plans of the United States Government to lay charges against Mr Julian Assange.
- As noted publicly, the Australian Government has made high-level representations to the United States Government to ensure that any potential legal proceedings concerning Mr Assange are handled in accordance with due process.
- It is premature to speculate on what further representations the Government may make in relation to Mr Assange.
- Our Post in Washington continues to closely monitor developments.

Swedish extradition proceedings against Mr Assange

- The Swedish Government has requested Mr Assange's extradition from the United Kingdom.
 - The extradition process is being carried out in accordance with relevant laws and treaties governing extradition between these two countries.
- The Australian Government cannot intervene in the legal processes of other governments.
- The Australian Government has made representations to and obtained assurances from the Swedish Government that Mr Assange's case will proceed in accordance with due process.

Appeal against extradition decision

- The UK Supreme Court heard Mr Assange's appeal against his extradition to Sweden on 1 and 2 February 2012.
- The Court reserved its decision and delivered its judgment on Wednesday 30 May 2012.
 - The United Kingdom is well aware of Australia's expectation that internationally accepted laws governing humanitarian behaviour, as well as its own laws, are applied when dealing with Australian citizens.

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(If asked) What is the Australian Government's response to the decision handed down by the UK Supreme Court on 30 May?

- The Australian Government note the UK Supreme Court's decision to dismiss Mr Assange's appeal against extradition to Sweden.
 - This appeal to the Supreme Court was Mr Assange's last avenue of legal recourse in the UK.
 - Although the Court has dismissed the appeal, the judgment has been stayed for a period of 14 days while Mr Assange and his legal team consider whether to make an application to re-open the Court's decision on a point of law.
 - As a result the UK Supreme Court has stated that the required period for extradition (10 days) shall not commence until 13 June 2012, the 14th day after judgement.
- The Australian Government cannot interfere in the judicial processes of another country.
 - We will continue to closely monitor the legal proceedings against Mr Assange in UK Supreme Court to ensure that due process is followed.
- The Australian Government will continue to offer Mr Assange consular assistance, as we have done for the duration of his extradition proceedings in the UK.
 - All further consular queries should be directed to the Department of Foreign Affairs and Trade.

(If asked) Will Mr Assange appeal against the extradition finding to the European Court of Human Rights?

- This is a matter for Mr Assange and his legal team – it would be inappropriate for the Australian Government to comment on an application to the European Court of Human Rights (ECHR).

(If asked) What will the conditions be like in Sweden; will he be held 'on remand, incommunicado'?

- It is for the Swedish courts to determine whether Mr Assange would be held on remand and whether there will be restrictions on his detention [related to visits and conditions/privileges in detention].
- Even if held on remand with full restrictions, Mr Assange is entitled to meet with his legal representation and consular officials.

(If asked) Are there possible US Government charges against Mr Assange?

- The Australian Government has not been advised of any charges to be laid by the US Government against Mr Assange.
 - A number of diplomatic cables were released last week concerning a possible US Department of Justice investigation into Mr Assange.

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- o As the cables indicate, the Australian Embassy in Washington continues to monitor developments in relation to Mr Assange.
- The Australian Government expects any charges laid against Mr Assange to be dealt with in accordance with due process.

(If asked) Isn't Mr Assange's extradition to Sweden merely a prelude to onward extradition to the United States?

- Mr Assange has been extradited to Sweden to face allegations of sexual assault.
- We have no advice of a planned US extradition request.
 - o An extradition to the United States from Sweden would require both the consent of Sweden and the United Kingdom and could be challenged in their courts.

What is the Government's view on the potential 'temporary surrender' of Mr Assange to the United States from Sweden?

- The Government has no advice that any such process is being considered.
- Under Swedish law, individuals subject to a 'temporary surrender' request are afforded the same legal protection as an individual subject to an extradition request.
- Should any other nation 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, as it has done repeatedly with the Swedish and British governments.

(If asked) Will Mr Assange receive a fair trial in Sweden?

- Mr Assange will be subject to the Swedish criminal justice process, which is based on the *civil law* system that most European countries use.
 - o While the Swedish justice system is different to the common law system of justice used in Australia, the Australian Government remains confident that Mr Assange will receive a fair trial.
 - o The Australian Government will closely monitor the legal proceedings to ensure that due process is followed.

(If asked) If Assange is convicted in Sweden, can he serve any sentence in Australia?

- Australia and sixty other countries, including Sweden and the United States, are party to the Council of Europe Convention on the Transfer of Sentenced Persons which allows prisoners to apply to transfer to their home country to serve out the remainder of their sentence.
- It is not appropriate to speculate on whether Mr Assange may be eligible to transfer to Australia under the International Transfer of Prisoners Scheme, as he has not yet been convicted of any offence.

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- A person wishing to transfer may apply once all legal proceedings, including appeals, are final.
- Under the Convention and the International Transfer of Prisoners Act 1997 (Cth) transfers are not automatic and require the consent of the Australian Government, the government of the foreign country, the prisoner and the State or Territory that the prisoner wishes to transfer to, before a transfer can take place.
- A condition of transfer to Australia is that the conduct constituting the offence committed in the foreign country would have also constituted an offence if committed in Australia. However, in particular cases, this condition can be waived.
- Transfer applications are confidential and specific cases cannot be discussed.

(If asked) What is the Australian Government's response to Mr Assange's accusation that the US Government has been lobbying Australian politicians against him and WikiLeaks?

- The Australian Government is unaware of any such representations.

(If asked) Does the United States have a sealed indictment against Mr Assange?

- In the United States, officials have announced publicly (2010) that an investigation into Wikileaks has been underway.
 - The Australian Government does not have any advice from US officials that there is an indictment against Mr Assange, or that the United States has decided to seek his extradition.
 - We cannot comment on the veracity of recent reports of leaked emails from a private company (Stratfor) suggesting there is a sealed indictment against Mr Assange.

(If asked) Why did Australian Embassy representatives attend hearings in the Bradley Manning case?

- The Australian Government continue to monitor Mr Assange's legal situation closely and, as part of that, have followed developments in associated matters such as the US proceedings against Bradley Manning and the investigations into WikiLeaks.

(If asked) Position/action if any extradition by the US is to face the death penalty?

- The Australian Government's opposition to the death penalty and robust representations against the death penalty on behalf of many citizens is well known and will not change.
- Sweden and the UK take a similar position to Australia: they can refuse extradition for cases which could attract the death penalty, or can seek assurances that the death penalty will not be carried out.

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(If asked) Reported whole-of-government investigation

- There was no whole-of-government investigation into WikiLeaks in December 2010 as claimed by Mr Assange.
- The only Australian Government agency to conduct an assessment of any criminality associated with the release of US Department of State cables was the Australian Federal Police.
- A whole-of-government taskforce was established in November 2010 to assess any potential implications of the released cables on Australia's national interest.

(If asked) Has the Government placed travel restrictions upon Mr Assange's lawyer Ms Jennifer Robinson?

- There are no Australian Government restrictions applying to Ms Robinson's travel – she returned to Australia on her scheduled flight on 19 April.
- No Australian Government agency maintains an “inhibited” travel list, nor does the Department of Foreign Affairs and Trade have any form of “watch list”.
- Whatever transpired at Heathrow Airport was not a result of any action by an Australian Government agency.