

**RESPONSE TO THE VIEWS OF THE HUMAN RIGHTS COMMITTEE IN COMMUNICATION
NO. 1973/2010 (MR HEW RAYMOND GRIFFITHS V AUSTRALIA)**

The Australian Government (Australia) presents its compliments to the members of the Human Rights Committee. Australia has given careful consideration to the Committee's Views in Communication No. 1973/2010 (*Mr Hew Raymond Griffiths v Australia*) and provides further information for the Committee below.

Australia considers that the author's detention under the *Extradition Act 1988* (Cth) does not violate article 9, paragraph 1 of the ICCPR. The Minister for Justice made a final determination with respect to the author as soon as was reasonably practicable, as required under section 22 of the *Extradition Act 1988* (Cth). The author's detention was reasonable and necessary in the circumstances given the Minister's obligation to provide procedural fairness to the author and seek the necessary information from overseas agencies to properly exercise his discretion under Australian law.

With respect to article 9, paragraph 4, Australia agrees that any review of the lawfulness of detention must be real and not merely formal. Australia considers that the term 'lawfulness' refers to lawfulness according to the Australian domestic legal system and that the term 'lawful' was not intended to mean 'lawful at international law'. Further, it was open to the author to seek an order in the nature of a writ of mandamus by the High Court of Australia if he was concerned about the Minister making a determination as soon as reasonably practicable. If the author considered that the Minister had not discharged his obligation in a timely manner to determine whether he was to be surrendered, it was also open to the author to seek a remedy under section 39B of the *Judiciary Act 1903* (Cth)¹ which could compel the Minister to make a determination. In this regard, Australia agrees with the remarks of the individual opinion of Committee Member Dheerujall B Seetulsingh that that 'the author could still have attempted another bail application invoking change of circumstances and should not have prejudged the outcome.'

During the period from the author's remand in custody as a result of the Federal Court of Australia's decision in July 2004 to the Full Court of the Federal Court of Australia's dismissal of the author's appeal against that decision in March 2005, it was open to the author to make an application to the Full Court for bail. Section 21(6) of the *Extradition Act 1988* (Cth) empowered the Court to order the author's release on bail if there were 'special circumstances' justifying that release. Further, during

¹ Section 39B(1) of the *Judiciary Act 1903* (Cth) provides that the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth.

the period from the author filing an application in the High Court of Australia for special leave to appeal the Full Court of the Federal Court of Australia's decision in March 2005 to the High Court of Australia's refusal to grant the author special leave to appeal in September 2005, it was open to the author to make an application to the High Court for bail.

Australia also notes that amendments to the *Extradition Act 1988* (Cth), which came into force on 20 September 2012 have extended the availability of bail in the later stages of the extradition process. The *Extradition Act 1988* (Cth) as in force during the author's proceedings required that a person who consented to extradition or was determined by a magistrate to be eligible for surrender, be committed to prison to await a Ministerial determination on surrender. As a consequence of the amendments to the *Extradition Act 1988* (Cth), a magistrate is now empowered to order that a person who consents to extradition or is determined to be eligible for surrender be released on bail to await a Ministerial determination on surrender.

Australia avails itself of this opportunity to renew to the Committee the assurances of its highest consideration.