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SUBMISSION

to

Hon. Robert McClelland MP

ATTORNEY GENERAL

PURPOSE: The repeal of the *Extradition (Croatia) Regulations 2004*

BACKGROUND:

The *Extradition (Croatia) Regulations 2004* commenced on 8 December 2004.

This latest Regulation has apparently been an attempt to rectify problems associated with the previous *Extradition (Republic of Croatia) Regulations 2003* which had commenced on 28 October 2003 and which had sought to make Croatia a Treaty Country for the *Extradition Act 1988* based on the Treaty between the United Kingdom and Serbia for the Mutual Surrender of Fugitive Criminals of 6 December 1900. The previous Regulation was based on some level of Mutuality, but the new regulation is not.

PROBLEMS AND ISSUES:

1) NO RECIPROCITY or MUTUALITY IN ASSISTANCE

The Croatian Constitution prohibits the extradition of its citizens to any other country. Provision 9 of *THE CONSTITUTION OF THE REPUBLIC OF CROATIA* states:

“9. No citizen of the Republic of Croatia shall be exiled from the Republic or be deprived of citizenship, and shall not be extradited to another state.”

But the Commonwealth *Extradition Croatia Regulation* allows Australia to extradite its citizens to Croatia.

2) NO MUTUALITY in SENTENCING

The Federal Court also noted that the *Organization for Security and Co-operation in Europe* (‘OSCE’)¹ has reported that the Croatian Court has introduced a discrepancy into crime sentencing largely based on racial discrimination and national origin. Consequently, the same crime committed by members of the Croatian armed forces is subject to lesser punishment than when committed by Australians or by members of the former ‘Republic of Serbian Krajina’ or Yugoslav forces.

¹ ‘Background Report: Domestic War Crime Trials 2005’ dated 13 September 2006 (‘the September 2006 OSCE report’), the OSCE report entitled ‘Status Report No. 17 on Croatia’s Progress in Meeting International Commitments since July 2005’, the OSCE paper entitled ‘News in Brief 22 February – 7 March 2006’,

3) Rights of Australian Citizens paramount

The Prime Minister Mr Rudd² has spoken about the need for the interests of Australian Citizens to be paramount, especially when foreign countries arrest or take or seek to take Australian Citizens.

4) Australian Citizens at risk

The Department of Foreign Affairs and Trade³ notes the 2006 Census having recorded some 50,990 Croatian –born persons in Australia. Of these, the Department of Immigration and Citizenship, using the same 2006 Census, notes that only 75% (approx 38,000) of these are of Croatian ethnic ancestry, and that some 12.5% - 13.8% (approx 6,600) are of Serbian ethnic ancestry. These statistics omit many more of Serbian ethnic ancestry from that area⁴.

It should be noted that with the dismemberment of the Former Yugoslavia in the 1990's, the ethnic Serbian population which is indigenous to the whole of that region and some surrounding States, found itself divided into new Countries. Over 300,000 were made refugees from the new Croatia⁵ (due to the war between Croatia and the Republic of Serbian Krajina) and fled that country. Some of these are those refugees have been welcomed to Australia and become Australian citizens.

The Department of Foreign Affairs and Trade⁶ notes the 2006 Census having recorded some 95,000 people as having Serbian heritage in Australia.

5) Human Rights of Australian Citizens

The recent *Snedden Extradition* process has demonstrated a flaw in the Australian extradition protocol whereby an Australian Citizen can be arrested and jailed for nearly 4 years without any Australian Court or Jurisdiction seeking to charge him with any offence, nor be able to investigate the legitimacy or validity of the allegations underpinning the Extradition Request.

For instance, while in jail the Citizen was :-

- i) deprived of his liberty for nearly 4years,
- ii) deprived of the ability to earn an income for nearly 4years,
- iii) deprived of the ability to support his family for nearly 4years,
- iv) made to defend his reputation from inside a cell in drawn out civil proceedings against a well-funded corporation,
- v) made to fight the substantial recourses of the Australian Government that was intent on extraditing him,
- vi) incurring substantial costs for the Australian Taxpayer, who was funding not only the jail, but also the prosecution and legal defence costs as well.

6) Human Rights denial– the case of Daniel Snedden

On 2 September 2009 the Full Federal Court⁷ ordered that Snedden be released as he had a valid “extradition Objection”.

The Full Court noted that in the Croatian Courts of the 1993 people charged with war crimes, only 40 were Croatians and 1953 were Serbians. However, of these only 3 Croatians had been convicted, whilst on the other hand, 574 Serbians had been convicted by the same Courts.

² Radio National News at 6.30AM on 15 July 2009

³ Dfat - Croatia Country Brief

⁴ Many ethnic Serbians from 1900 to 1990 still say the country they were born in was “Austro-Hungaria” or “Kingdom of Serbs Croats & Slovenes” or “Yugoslavia”, as this was the Country name at the time. As refugees they refuse to acknowledge the new Croatia.

⁵ <http://www.amnesty.org/en/library/asset/EUR64/002/2005/en/dom-EUR640022005en.html>

⁶ Dfat - Serbia Country Brief

⁷ *Snedden v Republic of Croatia* [2009] FCAFC 111

The Full Federal Court ordered Daniel Snedden's release after finding that there are substantial grounds for believing that he may be '*punished*' or imprisoned and thereby '*detained*' or '*restricted in his personal liberty*' and that such treatment arises '*by reason of his ... nationality or political opinions*' if he were to be extradited to Croatia.

7) REPEAL IS NECESSARY

Therefore the Extradition Act and its Regulations needs to be closely looked at to ensure that Australian Citizens are not held in Australian Jails for years simply because a foreign country which may openly embrace racial discrimination might want to ask them questions or interrogate them about anything.

In the interim, the *Extradition (Croatia) Regulations 2004* should promptly be repealed.

The policy settings for the current *Regulation* need to be addressed promptly to avoid other Regulations being tainted with a similar un-Australian bias.

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