



New South Wales
Council for
Civil Liberties

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The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister Morrison

INTERVENTION ON BEHALF OF AUSTRALIAN CITIZEN JULIAN ASSANGE

The NSW Council for Civil Liberties (NSWCCL) calls on the Australian Government to intervene to protect the rights of Julian Assange who is facing the increasingly likely prospect of his extradition to the USA to face trial on 17 offences under the Espionage Act 1917 and one 'conspiracy to commit computer intrusion' charge and almost certain incarceration in a high security prison for the rest of his life.

Assange's current position is desperate and dangerous. His mental and physical health have been seriously compromised. He is imprisoned in a high security London gaol with limited capacity to communicate with his legal team. His extradition proceedings in London give the appearance of bias and an almost certainly predetermined outcome. It appears that he has been, and will continue to be, unfairly treated within UK courts. If he is extradited to the USA, he will face charges which will cumulatively expose him to 175 years' imprisonment.

The treatment of Assange by the US and the UK governments since 2010 has been unjust, cruel and clearly politically motivated.

It is NSWCCL's view that the actions for which Assange has been charged and for which he has been pursued are not crimes that comply with the rule of law. The publication of the Wikileaks files constituted public interest whistleblowing (from Chelsea Manning) and public interest journalism and publishing from Julian Assange and the mainstream newspapers which published much of the material. In so doing they strengthened the public's right to know what Governments are doing in their name. Such actions strengthen, rather than undermine, democratic states.

The implications of this pursuit of Assange through the courts, however, go well beyond his personal fate. It is obvious that the determination of the USA to capture and severely punish Assange is a politically motivated enterprise aimed not only at him, but at warning off future whistle-blowers and journalists who might contemplate exposing secret US Government information in the public interest.

If successful, it will certainly have that effect.

More disturbingly, the calculated decision to charge Assange with an extra 17 offences under the Espionage Act 1917 dramatically escalates the significance of this extradition process and the pending District Court trial. If Assange is successfully prosecuted for these offences, it will have huge implications for journalists and the free press globally and will challenge the strength of protection provided to journalists by the First Amendment's prohibition of any US law '*abridging the freedom of speech, or of the press*'.

These espionage charges against Assange for acts of journalism under this 2017 Act are unprecedented in US post-World War II history. It has been accepted by US Governments that to charge journalists with espionage offences under this Act would conflict with the First Amendment.

It is worth noting that these are the extraordinary charges Assange and his lawyers had always claimed were being secretly drawn up by a Grand Jury and which would be used to extradite him to the US for trial. It was always clear the likely consequences of this would be a lengthy or life imprisonment in a high security prison. Though this process was misleadingly denied more than once by the US Government, it was the reason Assange resisted extradition to Sweden from where he reasonably feared he would be extradited to the USA - or even 'snatched' - to face these extraordinary charges.

This seemingly reasonable argument as to why he breached his bail by seeking diplomatic asylum in the Ecuadorean embassy was rejected by the UK magistrate who sentenced Assange to his current 50 weeks imprisonment.

Assange may not be a traditional kind of journalist, but he clearly engaged in acts of journalism. He has been awarded a Walkley Award for excellence in journalism in Australia. Therefore, if he can be successfully prosecuted under the Espionage Act for the Wikileaks releases, so can any journalist/ publisher inside or outside of the USA for similar public interest journalism- especially if the material is related to security matters.

The US Government has attempted to assure US journalists that they have nothing to worry about if Assange is convicted as, not being a US citizen, he is not covered by the First Amendment protections. This is highly contentious as the US Bill of Rights does not reference 'citizens' – it refers to 'people' and, in the Sixth Amendment relating to criminal prosecutions, to 'the accused'. We are hopeful that, if extradited, Assange will be entitled to the protection of the First Amendment.

Since 1963 NSWCCCL has advocated for strong and effective protection for public interest whistleblowers and journalists as fundamental to a healthy democracy.

Julian Assange and Wikileaks released truthful information about shocking and wrongful activities by the USA and its allies - including war crimes – which were kept secret and which the public had an unquestionable right to know about. These disclosures were in the public interest.

While we note the US claim, made in the current extradition proceedings, that some informants who had been assisting the USA had subsequently ‘disappeared’, we do not know of any proof of injury to persons resulting from the publication of the WikiLeaks files. The same lawyer conceded that the US could not prove that anyone had been killed as a result of the publication of the files.

NSWCCL will therefore continue to publicly defend Julian Assange as a person who has published government secrets in the public interest and has made, at great personal cost, an extraordinary contribution to civil society and democracy by challenging the excessive secrecy of the state.

We take heart that many others take a similar view.

We are both disappointed and alarmed that the Australian Government appears to have abandoned Assange to the UK and US processes despite his being an Australian citizen and despite the obvious political agenda driving this long pursuit of Assange.

We do note that the Australian Government did renew Assange’s passport in 2018 and at various stages has given some consular assistance to him.

It is possible, and we hope that it is the case, that the Government is quietly pursuing political and diplomatic overtures to prevent Assange’s extradition to the USA. But certainty and a measure of transparency are needed in the current context.

It is expected that the extradition court case will resume and be concluded in May with a decision in June/July. If the court authorises extradition the UK Government will then make the political decision as to whether to proceed with it. It is, however, almost certain that the outcome of this case will be appealed by either Assange or the prosecution depending on the outcome and it could drag on for some lengthy time.

It is vital that the Australian Government does all it can to effectively intercede on Assange’s behalf to influence the ultimate political decision by the UK Government.

NSWCCL considers this should be done in the interests of justice and fairness. It could also be done on the grounds of reasonable compassion for a man who has already been effectively imprisoned for over 7 years mostly in virtual solitary confinement and whose health is clearly compromised.

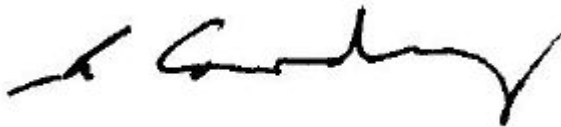
NSWCCL congratulates the Members of the Australian Parliament who have formed a cross-party group supporting Assange and advocating for his return to Australia.

Proposed Government Action

1. The NSW Council for Civil Liberties calls on the Australian Government to enhance, or immediately begin, political and diplomatic overtures to the UK Government to stop the politically motivated procedure to extradite Julian Assange to the USA and to facilitate his return to Australia.
2. With regard to the current extradition case being heard in the Woolwich Crown Court, the Australian Government should use its diplomatic and political access to urge the UK Government to ensure that Julian Assange has adequate private and confidential access to his legal team and that his treatment within the court is fair and reasonable and allows him to clearly see and hear all proceedings and communicate as appropriate with his legal team.
3. We note concerns have been expressed that, in the event of Assange returning to Australia as a result of either the Court or the UK Government not allowing his extradition, the Australian Government may have the intention of themselves facilitating his extradition to the USA. Should that be the case, the NSW Council for Civil Liberties urges the Government to publicly reject such an option.

This is a public letter and will be copied to Members of Parliament and others.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Cowdery', written in a cursive style.

Nicholas Cowdery AO QC
President
NSW Council for Civil Liberties