



11 October 2006

ENQUIRIES

Extradition and Mutual Assistance Review Team  
International Crime Cooperation Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600  
AUSTRALIA

**By post and email** (reviews@ag.gov.au)

Dear Review Team

**Review of Australia's mutual assistance law and practice**

The Law Institute of Victoria (LIV) has reviewed the Mutual Assistance Review Discussion Paper (Discussion Paper) and would like to comment on the following specific issues raised:

- (a) Mutual Assistance;
- (b) Extradition; and
- (c) International Transfer of Prisoners.

The LIV appreciates the important nature of the work undertaken by Australia's law enforcement agencies in cooperation with their foreign counterparts through mutual assistance provided, particularly in the areas of international drug trafficking, trafficking in women and children, money laundering, and border protection.

**1. Mutual Assistance and the Death Penalty**

The LIV has adopted a policy on the use of the death penalty, which provides a framework for the LIV to lobby on behalf of Australian residents and others in foreign jurisdictions facing or sentenced to the death penalty (Policy). The Policy deals with the above issues under review. A copy of the Policy is attached (Attachment 1).

In accordance with our Policy, the LIV is opposed to the Australian government, through the Australian Federal Police (AFP), providing mutual assistance in criminal matters to foreign jurisdictions that have the death penalty where such assistance may lead to the arrest of an Australian resident for an offence subject to punishment by death, unless an appropriate undertaking between the Australian and foreign government is given.

The AFP has been substantially criticised for its operational decision to provide police-to-police assistance to the Indonesian authorities, which has led to six members of the "Bali 9" being exposed to the death penalty. The consequence of this decision is that six Australian citizens are

now facing the death penalty in Indonesia despite the Australian government's opposition to the use of the death penalty against Australians.

The LIV notes the *AFP Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations* (1998) (AFP Guide), which states:

*... Australia will exercise discretion when considering foreign requests for mutual assistance in criminal matters where the request relates to a charge attracting the death penalty under the law of the requesting country. In the exercise of that discretion, assistance may be refused in the absence of an assurance from the requesting country that the death penalty would not be imposed or carried out.*

Finn J observed in the case of *Rush v Commissioner of Police* [2006] FCA 12 (23 January 2006) (*Rush*) that, although the AFP had not acted unlawfully in providing police-to-police assistance in the case of the "Bali 9" (at paras 1 and 117 respectively):

*... there is a need for the Minister administering the Australian Federal Police Act 1979 (Cth) ("the AFP Act") and the Commissioner of Police to address the procedures and protocols followed by members of the Australian Federal Police ("AFP") when providing information to the police forces of another country in circumstances which predictably could result in the charging of a person with an offence that would expose that person to the risk of the death penalty in that country. Especially is this so where the person concerned is an Australian citizen and the information is provided in the course of a request being made by the AFP for assistance from that other country's police force. ...*

*... Such is the current law in this country and the policy informing it, that the interests of the applicants were subordinated to the public interests served by the AFP in their conduct of the investigation in question. ...*

While the LIV recognises that public interest arguments may be advanced in an effort to retain discretion on the part of the AFP to provide mutual assistance in international criminal matters, the LIV urges that the AFP should not put Australian residents at risk of exposure to the death penalty in any circumstances.

The *Mutual Assistance in Criminal Matters Act 1987* (Cth) (MACM Act) regulates the provision of mutual assistance in death penalty cases and provides that a request by a foreign country for assistance:

- (a) *must* be refused where a person charged with, or convicted of an offence may be sentenced to the death penalty unless the Attorney-General or the Minister for Justice and Customs determines that the assistance should be granted due to the special circumstances of the case, (s8(1A)); or
- (b) *may* be refused where a person has not yet been charged or convicted if the Attorney-General or the Minister for Justice and Customs believes that the death penalty may be imposed and after taking into consideration the interests of international criminal co-operation (s8(1B)).

The LIV notes that included in the agreed facts in *Rush* was that:

- 9. *The Attorney-General and Minister for Justice and Customs are not aware or notified as a matter of course, of the documents that the AFP provides to a foreign law enforcement agency prior to a charge being made involving the death penalty unless the Attorney-General requests a briefing. The decision to provide assistance is an operational decision for the AFP. Briefings of the Minister are not normally done prior to the AFP making an operational decision.*

The LIV is concerned that the MACM Act, AFP Guide and operational decisions of the AFP do not appear to be applied uniformly in practice. Accordingly, the LIV urges the review of the AFP Guide with a view to giving it legislative authority to ensure that operational decisions

made by the AFP to provide international police-to-police assistance are consistent with the government's opposition to the use of the death penalty against Australian citizens.

## 2. Extradition

In April 2006, the LIV made a written submission to the Extradition and Mutual Assistance Review Team in relation to its review of Australia's extradition law and practices. A copy of that submission is attached (Attachment 2).

In its submission, the LIV:

- (a) stated that Human Rights and Justice should be added to the guiding principles of extradition;
- (b) recommended that additional safeguards be included in the legislation to allow discretion for rejecting an extradition application where the offence is a dual criminality offence but where the maximum penalty in the foreign jurisdiction is considered unduly harsh or oppressive;
- (c) considered that minors should not be extradited subject to a "best interests of the child" consideration;
- (d) supported the availability of prosecution in Australia in lieu of extradition;
- (e) opposed any change in the manner in which Australia deals with speciality;
- (f) supported Australia making and receiving extradition requests for international prisoners;
- (g) considered that the right to review at each stage is a fundamental right that should be preserved; and
- (h) did not oppose appropriate time limits being imposed on the actions taken by the Executive government.

The LIV submits the above response to the Review Team for its consideration as part of its current review.

## 3. International Transfer of Prisoners

In accordance with our Policy, the LIV supports the Australian government, on behalf of Australian residents who face or have been sentenced to the death penalty in a foreign jurisdiction, seeking that the death penalty be commuted to a term of imprisonment and the Australian resident be transferred to Australia to serve that term of imprisonment.

The LIV also supports the Australian government's position that it will not extradite or transfer a non-Australian resident or Australian resident where such a person may face or has been sentenced to the death penalty in a foreign jurisdiction, unless an appropriate undertaking between the Australian and foreign government is given. Such an undertaking should expressly provide that the person the subject of the request will not face or be sentenced to the death penalty in the foreign jurisdiction.

Yours sincerely



**Catherine Gale**  
President  
Law Institute of Victoria

Attach.



# LIV Policy

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## Use of the Death Penalty

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A policy developed by the Administrative Law & Human Rights Section of the Law Institute of Victoria

Date June 2006

**Queries regarding this policy statement should be directed to:**

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## 1 Background

In recognition of Australia's accession to various international treaties which support the abolition of the death penalty, namely the:

- (a) Universal Declaration of Human Rights (Article 3);
- (b) International Covenant on Civil and Political Rights (Article 6); and
- (c) Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty;

the Law Institute of Victoria (LIV) has adopted this policy statement to outline its opposition to the use of death penalty and to provide a framework for the LIV to lobby on behalf of Australian residents and others in foreign jurisdictions who face or have been sentenced to the death penalty.

## 2 Policy

- (a) The LIV is fundamentally opposed to the use of the death penalty in any circumstances.
- (b) The LIV is committed to the independence of the judiciary in all sovereign jurisdictions and is, accordingly, fundamentally opposed to the mandatory imposition of the death penalty in any circumstances.
- (c) The LIV encourages the provision of pro bono assistance to Australian residents facing the death penalty in foreign jurisdictions by members of the Victorian legal profession.
- (d) The LIV supports the Australian Government, on behalf of Australian residents who face or have been sentenced to the death penalty in a foreign jurisdiction seeking that the death penalty is commuted to a term of imprisonment and the Australian resident being transferred to Australia to serve that term of imprisonment.
- (e) The LIV supports the Australian Government's position that it will not extradite or transfer a non-Australian resident or Australian resident where such a person may face or has been sentenced to the death penalty in a foreign jurisdiction, unless an appropriate undertaking between the Australian and foreign government is given. Such an undertaking should expressly provide that the person the subject of the request will not face or be sentenced to the death penalty in the foreign jurisdiction.
- (f) The LIV is opposed to the Australian Government, through the Australian Federal Police, providing mutual assistance in criminal matters to foreign jurisdictions which have the death penalty where such assistance may lead to the arrest of an Australian resident for an offence subject to punishment by death, unless an appropriate undertaking between the Australian and foreign government is given.

### 3 Commitment

The LIV is committed to:

- (a) Lobbying on behalf of Australian residents facing or sentenced to the death penalty in a foreign jurisdiction.
- (b) Lobbying the Australian Government to ensure that Australian residents facing or sentenced to the death penalty in a foreign jurisdiction have access to independent legal representation and due legal process in the criminal justice system.
- (c) Providing support to Victorian legal practitioners who provide pro bono and legal assistance to Australian residents facing the death penalty in foreign jurisdictions.
- (d) Lobbying the Australian Government to ensure that Australian residents facing or sentenced to the death penalty in a foreign jurisdiction have their death sentence commuted to a term of imprisonment and be transferred to Australia to serve a term of imprisonment under a prisoner transfer scheme.
- (e) Lobbying the relevant foreign government to agree to the extradition or transfer of Australian residents in the foreign jurisdiction who face or have been sentenced to the death penalty.
- (f) Working collaboratively with Australian and foreign governments, the Law Council of Australia, other law societies, bar associations, non-government organisations to bring about the abolition of the death penalty and mandatory death sentences in foreign jurisdictions, with a particular emphasis on the Asian region.
- (g) Lobbying the Australian Government to proactively seek extradition treaties and prisoner transfer agreements with those foreign jurisdictions with which treaties and agreements are not currently held. Such extradition treaties and prisoner transfer agreements should expressly provide that the person the subject of an extradition or prisoner transfer request will not face or be sentenced to the death penalty in the foreign jurisdiction.
- (h) Lobbying the Victorian and Australian parliaments to affirm their opposition to the re-introduction of capital punishment in Australia.

**Attachment 2 – LIV submission to the review of Australia’s extradition laws and practices**



# Submission

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## Administrative Law & Human Rights and Criminal Law Sections

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### Review of Australia's extradition law and practices

To: Extradition and Mutual Assistance Review Team

A submission from the Administrative Law & Human Rights and Criminal Law Sections of the Law Institute of Victoria

Date 6 April 2006

**Queries regarding this submission should be directed to:**

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## 1 Introduction

The Law Institute of Victoria (*LIV*) welcomes the opportunity to make a submission to the Attorney-General's Department as part of the review of the *Extradition Act 1988* (Cth) (*Extradition Act*).

In December 2005, the Federal Government initiated a review of the Extradition Act and has invited the LIV to make a written submission on the existing and proposed new extradition system.

The Law Institute of Victoria (*LIV*) is a member organisation representing legal practitioners in Victoria. The LIV comprises a number of sections and committees. This submission is the result of consultations with and work done by members of those sections and committees, including the Administrative Law & Human Rights and Criminal Law Sections. The LIV has also established an Anti-Death Working Party, which has also contributed to this submission.

The LIV has reviewed the discussion paper, *A new extradition system. A review of Australia's extradition law and practice* released by the Federal Attorney-General's Department (*Discussion Paper*).

The LIV notes that no date has been set for a public hearing as part of the review process. The LIV would be willing to make a further written or oral submission to the Extradition and Mutual Assistance Review Team, if required.

## 2 Executive summary

This submission focuses on questions 1-19, as set out in Parts 1 and 2 of the Discussion Paper, which seek comments on the existing extradition system and possibilities for changing the current system.

Part 4 of the Discussion Paper sets out proposals for how a new extradition system could work. The LIV has not responded to questions 20-29 in Part 4 on the basis that our responses to questions 1-19 on the existing system should be considered in the first instance.

The LIV has also provided comments on related issues such as transfer of prisoners.

## 3 Background to extradition law and practice

The Discussion Paper sets out the policy objective for Australia's extradition system:

*Australia needs to ensure that criminals cannot evade justice simply by crossing borders. This requires a responsive, streamlined extradition system that effectively combats domestic and transnational crime, including terrorism, with appropriate safeguards.<sup>1</sup>*

The guiding principles are also described as:

- (a) efficiency;
- (b) reduced duplication;

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<sup>1</sup> Discussion Paper, 5.

- (c) predictability;
- (d) transparency;
- (e) appropriate safeguards;
- (f) technological neutrality; and
- (g) sovereignty<sup>2</sup>.

The Discussion Paper provides a 1995 United Nation definition of transnational crime offences as being:

*...those whose inception, prevention and/or direct effect or indirect effect involve more than one country ... such crimes include illegal trafficking in firearms and drugs, smuggling of stolen goods, credit card forgery, money laundering, people smuggling, and trafficking of women and children.*

The Federal Government is concerned that the use of technology (ie with or against computers and communications systems) and transnational crimes, such as illegal trade in firearms and drug smuggling, require that Australia's extradition law and practice be reviewed.

It suggests that current extradition law and practice involves "outdated, cumbersome legal frameworks which must be overhauled in light of the increasing globalisation of the law enforcement fight against transnational crime and terrorism"<sup>3</sup>. The Government is seeking to expand its powers to extradite to and from more countries and to grant extradition for a broader range of offences. It also aims to address lengthy delays and ensure appropriate human rights safeguards and judicial review.

The stated purpose of the review is to "ensure that Australia has the best extradition system in place so that it can cooperate effectively with other countries to combat crime".<sup>4</sup>

While the Discussion Paper notes major strengths of the current extradition system as: standard of evidence, human rights standards and backing of warrants, it also highlights "significant shortcomings" as:

- (a) duplication of decision making;
- (b) repeated appeal rights and length of time in custody;
- (c) representations – no statutory deadlines;
- (d) consent;
- (e) lengthy hearings in the existing New Zealand backing of warrants scheme;
- (f) inability to receive requests from all countries;
- (g) requirement of dual criminality;
- (h) speciality; and
- (i) prosecution in lieu.

The Discussion Paper sets out a number of key questions and issues. These are set out below with responses, where appropriate.

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<sup>2</sup> Ibid 7.

<sup>3</sup> Ibid 6.

<sup>4</sup> Id.

## 4 Key questions and issues

### 4.1 Principles: Are these principles appropriate? Should any other principles apply? (Question 1)

The LIV considers all the listed principles appropriate. We note that human rights is mentioned as a safeguard principle. While we consider that *appropriate safeguards* is a necessary principle to ensure that Australia's extradition process is robust and functional, we submit that human rights and justice are more fundamental and should be included to guide the review process generally. For this reason we consider that *Human Rights* and *Justice* should be added to the guiding principles of the review.

### 4.2 Countries Australia will deal with: Should Australia be able to receive extradition requests from any country? Should Australia be able to make extradition requests to any country? (noting that laws in some countries might require a treaty to receive such requests) (Question 2)

The LIV considers that it is appropriate for Australia to be able to receive extradition requests from any country subject to overarching requirements that may exist such as treaty requirements. We consider that actual extradition decisions should be case by case decisions based on merit and the extradition principles.

The LIV also suggests that Australia should proactively pursue bi-lateral extradition treaties and prisoner transfer agreements with all countries subject to the human rights safeguards. In the absence of such bi-lateral treaties and agreements, Australia may not be able to make timely extradition or prisoner transfer requests.

### 4.3 'Extradition offence': Should Australia continue to only extradite for an offence with a maximum penalty of not less than 12 months imprisonment in the foreign country? (Question 3)

The LIV is not opposed to the current limit imposed for extradition applications. However, we question the absolute reliance on the foreign country penalty. The LIV is concerned that although an offence may be a dual criminality offence a foreign country may impose a penalty that is manifestly unjust by Australian standards for the dual offence (for example, imposing a life sentence for a unlawful possession drug offence).

The LIV recommends that additional safeguards be included in the legislation to allow discretion for rejecting an extradition application where the offence is a dual criminality offence but where the maximum penalty in the foreign jurisdiction is considered unduly harsh or oppressive.

### 4.4 Dual criminality: Should Australia extradite for offences that do not constitute an offence under Australian law? Should Australia retain a discretion to refuse to extradite a person if the conduct is not considered criminal under Australian law? Should dual criminality be a discretionary ground to refuse extradition? (Question 4)

The LIV considers that lack of dual criminality should remain a mandatory ground of refusal of extradition applications. Australia has a comprehensive criminal legal

system which has been greatly expanded since 2001 to include new offences linked to acts of terrorism (actual or suspected) and extraterritoriality offences. On this basis, only where exceptional circumstances exist should dual criminality not be required. For example, exceptional circumstances might be where being in a physical location is an element of the offence and for that reason (alone) the offence would not be an offence under Australian law.

**4.5 Extraterritoriality: Should Australia continue to extradite for offences that occur outside the other country's territory where Australia considers that the other country is exercising jurisdiction legitimately as a matter of international law, even if Australia does not assert the same extraterritorial jurisdiction? (Question 5)**

The LIV considers that such applications for extradition should be based on the legitimate interest of the extraditing state in prosecuting the offence. Where there is an element of extraterritoriality, it is submitted that the duality must be tested as between both Australia and the extraditing state and the state where the offence is alleged to have occurred. This position is also subject to Australia being able to legitimately exercise extraterritorial powers relevant to the location of the alleged offence.

**4.6 Military offences: Should Australia continue not to extradite for military offences where they are not also offences under ordinary criminal law? (Question 6)**

The LIV supports retaining the current limitation on extraditing solely for military offences.

**4.7 Fiscal offence: Should Australia could continue to extradite for fiscal offences (eg tax fraud)? (Question 7)**

The LIV supports retaining the current practice of extraditing for fiscal offences.

**4.8 Minors: Should Australia extradite minors, and if so in what circumstances? (Question 8)**

The LIV considers that minors should not be extradited subject to the best interests of the child as expressed in the Convention on the Rights of the Child, to which Australia is a signatory.<sup>5</sup> The LIV supports prosecution in lieu of extradition in appropriate circumstances (refer to our response at 4.15). The LIV submits that prosecution in lieu, where that is appropriate, is the only acceptable way to deal with minors who should not be extradited and would have been eligible for extradition were they adults. Further the LIV submits that whether a person is a minor should be determined by the law of the Australian State or Territory in which that person is located.

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<sup>5</sup> The text of the Convention is available at: <http://www.ohchr.org/english/law/pdf/crc.pdf> (accessed 04 April 2006) Consider Article 3.1: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

**4.9 Political offence exception: Should the political offence exception be abolished? This is currently a mandatory ground for refusal of extradition. It has been so substantially narrowed that it is unclear what it actually refers to. For example, terrorist offences under the suite of UN Conventions have been carved out. (Question 9)**

The LIV notes the current absolute exception under the Extradition Act not to extradite persons for political offences and the history of protecting those involved in legitimate political resistance which underpins this principle.

While it may be the case that the “exception is rarely used” (although we note that no statistical data is provided on the use of this provision in the past 10 years or so), the LIV submits that this absolute exception should be retained as it continues to be relevant regardless of human rights safeguards. The LIV does not agree that the human rights safeguards replace or supersede this important and absolute exception.

The LIV acknowledges that the human rights safeguards operate to prevent extradition in circumstances where a request is made “for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinions or where the trial in a foreign country may be prejudiced by these considerations”<sup>6</sup>. The LIV also notes the broad exceptions applied to this principle in relation to terrorism offences, genocide and human rights abuses. However, such safeguards are not absolute and it may be that Australia is placed in a difficult position where it must use discretion in considering an extradition request under pressure of damaging a bi-lateral relationship with a foreign country, for example, with which it has a close economic relationship.

Maintaining an absolute political offence exception ensures that this important principle is preserved and is not subject to political interference as part of a discretionary decision making process.

**4.10 Double jeopardy: Should Australia continue to not extradite a person who has been acquitted or pardoned of the offence, or has undergone the punishment for the offence (or an offence constituted by the same conduct as the extradition offence)? (Question 10)**

The LIV submits that the double jeopardy principle is fundamental to a just criminal law system. For this reason the LIV strongly endorses retaining the current prohibition and submits that it should be worded to include where a person has been acquitted, pardoned, or penalised for the offence (or an offence constituted by the same conduct) by a **competent** tribunal or authority in Australia, the extraditing State or another State. The LIV considers it relevant that there be a test of competency to avoid situations of ‘rogue’ States pardoning or acquitting offenders solely to defeat justice.

**4.11 Discrimination: Should Australia continue to not extradite a person sought for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality or political opinion? Should Australia continue to not extradite where the person sought may be prejudiced at his or her trial or punished, detained or restricted**

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<sup>6</sup> Discussion Paper, 26.

**in his or her personal liberty, by reason of his or her race, religion, nationality or political opinion? Should Australia extend these grounds in the Extradition Act to include colour, sex, language, and other status? (Question 11)**

The LIV considers the existing grounds should be retained and supports the list of grounds being expanded to reflect the discrimination areas of age, race, colour, national or ethnic origin, sex, pregnancy or marital status, disability, religion, sexual preference, or any other central characteristic, as referred to by the Human Rights and Equal Opportunity Commission.<sup>7</sup>

We also refer to our comments at paragraph 4.9 above in relation to the exception under the Extradition Act not to extradite persons for political offences

**4.12 Citizenship: Should Australia continue to extradite Australian citizens? (Question 12)**

The LIV is not opposed to extradition of Australian citizens in appropriate circumstances, subject at all times to the human rights safeguards.

**4.13 Speciality: Should Australia change the way it deals with speciality? Instead of dealing with requests to waive speciality on a case-by-case basis after surrender, should Australia require countries to make appropriate undertakings when the request is made? For example, should Australia require the country to undertake to observe human rights, including in relation to the death penalty, torture and discrimination, which would apply if they prosecute the fugitive for offences other than the offences for which extradition is sought and if they extradite the person to a third country? (Question 13)**

The LIV is opposed to any change in the manner in which Australia deals with speciality. We appreciate concerns that the case by case basis of dealing with requests to waive speciality can be burdensome. However, the fundamental need to ensure the highest protection to those surrendered by Australia to another State justifies, in our consideration, that burden.

**4.14 Prosecution in lieu: Should prosecution in lieu be available in Australia where extradition has been refused on any ground? Whether such prosecutions proceed could be decided on a case-by-case basis. (Question 14)**

The LIV supports the availability of prosecution in lieu of extradition with the presenting of such prosecutions to be decided on a case by case basis, where extradition has been refused on a ground other than one that finalises the offence. For example, other than a ground such as criminal duality, double jeopardy, discrimination, solely military offence or a political offence.

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<sup>7</sup> [http://www.hreoc.gov.au/info\\_sheet.html](http://www.hreoc.gov.au/info_sheet.html) (accessed 24 March 2006)

**4.15 International transfer of prisoners: Should Australia make and receive extradition requests that are conditional on an international transfer of prisoners agreement? (Question 15)**

The LIV supports Australia making and receiving extradition requests for international prisoners. The LIV submits that decisions to make an application to another State, and to approve another State's application for transfer, should be assessed by weighing the impact of extradition against the accepted objectives of sentencing convicted persons and human rights considerations.

However, as stated in paragraph 4.2 above, the LIV submits that Australia should proactively pursue prisoner transfer agreements with all countries subject to the human rights safeguards. In the absence of such bi-lateral agreements, Australia may not be able to make timely prisoner transfer requests.

**4.16 Backing of arrest warrants: Should Australia use a backing of arrest warrants process with particular countries, called 'backing of warrants extradition countries'? That is, should Australia indorse foreign arrest warrants from particular countries and ask particular countries to indorse Australian arrest warrants? 'Backing of warrants extradition country' means a country with which Australia has determined it will back arrest warrants. This could be determined by adherence to human rights conventions and reference to issues such as death penalty, torture, discrimination, double jeopardy, fair trial, independent judiciary and the right to be heard. Countries with a longstanding history of providing undertakings not to impose or carry out the death penalty could be considered. (Question 16)**

The LIV notes the current operation of the backing warrants between Australia and New Zealand. The LIV considers Australia's close relationship with New Zealand is unique and it is not convinced that a 'backing of arrest warrants' process can be safely extended to other foreign States. For example, it would not be appropriate to extend the backing of arrest warrants process to all countries due to concerns about human rights safeguards. Such a system might also result in Australia being able to exercise less discretion in considering extradition requests.

**4.17 Judicial review mechanism: Should Australia adopt a single judicial review mechanism? Should judicial review be deferred until the end of the extradition decision making process? (Question 17)**

The LIV accepts the assertion in the Discussion Paper that repeated and partial reviews may result in lengthened time in processing legal proceedings in an extradition application and that ultimately the Minister may refuse the application in any case. The LIV also recognises the importance of balancing review rights with the need to ensure that a person is not detained for any longer than is absolutely necessary.

The LIV considers however that the right to review at each stage is a fundamental right that should be preserved. For example a successful appeal from a magistrate's decision under section 21 of the Extradition Act may result in an order being quashed and the person being released. This would mean the process does not proceed to further consideration under section 22 of the Act. For this reason the LIV does not support amending the review mechanisms and provisions as proposed in the Discussion Paper.

**4.18 Consent: Should a person be able to consent to extradition at any time during the process? Who should issue a surrender warrant, the Magistrate or the Minister? (Question 18)**

The LIV considers it appropriate that a person can consent to extradition at any stage after the process in section 19 of the Extradition Act has been completed and a magistrate has determined the person eligible for surrender. In all cases, the surrender warrant should be issued by the Minister.

**4.19 Time limits: Should time limits apply so that a person is not held for unduly long periods during the extradition process? (Question 19)**

The LIV is not opposed to appropriate time limits being imposed on the actions taken by the Executive to ensure that a matter is progressed in a timely manner. We consider that Victorian Courts would consider delay in terms of exceptional circumstances when considering bail. However, any time limits imposed must not detract from a person subject to extradition being provided with full and due process.