

8 August 2006

I have a number of minor comments on the material sent to me.

1. #6 of exchange of notes. Would it not be desirable to have some procedures available where the defence in a criminal case in one jurisdiction needs evidence from the other? This may require a minor addition to the word "office" in Article 5 para 1(b).

2. Article 10 #4 add "or added to" after "altered".

3. Art 13 #7 - request by whom?

4. Art 16 #1. The Committee should be aware that there may be a constitutional problem with the Commonwealth requiring a state not to prosecute someone. See *re Tracey ex parte Ryan* (1989) 166 CLR 518. I consider that there is a real doubt about the correctness of this case. The issue arose in *R v Truong* a few years ago but was not resolved.

5. Art 17 #1. This is an issue I have been concerned about for some time. It is useful for it to be dealt with here but someone should note that the places with which it is really important are Thailand and Singapore. What defence would Australian police officers have if someone sought habeas corpus in the Supreme Court of Singapore while they were extraditing a fugitive from Europe through Changi airport?

6. Art 18. Both paragraphs should contain the words "on request by the requesting party". Otherwise the obligation is too open-ended.

#### 7. Extradition Treaty

Article 3, #3(d) This needs an exception where the reason for non-prosecution is extra-territorial considerations. It would be ridiculous to refuse extradition to Malaysia if the Australian DPP had decided not to prosecute because the offence was committed in Malaysia.

Articles 4 and 8, #2(a) (in each case) What about DNA samples if available?

Article 14, #3(b) 45 days seems a bit long.

Sorry to take so long

David Bennett  
Solicitor-General