

VICTORIA POLICE

Extraditions

Victoria Police - Force Policies between 1978-2009

Sudheera Kuruppu

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This document summarises the Victoria Police policies and guidelines in relation to extradition over the time period 1978-2009

Force Policy Documents RE: Extradition between 1978-2009 by Victoria Police

Key Findings

- Extradition policies have existed from 1978 – 2009 within Victoria Police (VP) as per the Victoria Police Manuals (VPM) issued during the above time period.
- The delegates and policies responsible for authorising extraditions have changed due to organisational restructures within VP however the process throughout the specified time period has remained primarily the same.
- The legislation in place during the specified time period enabled police to request extradition.
- The force policies in place during the specified time period enabled police to request extradition.
- The following factors are likely to have been significant in determining whether to authorise an extradition:
 - Date the offence occurred and the time reported.
 - An active warrant for arrest.
 - Seriousness of the offence.
 - Cost of the extradition.
- Extradition to Australia can be effected when the other country concerned:¹
 - Is a member of the British Commonwealth, has enacted 'London Scheme' legislation, and has designated Australia as a country to which that legislation applies;
 - Is a party to a bilateral extradition treaty with Australia, either "inherited" or truly bilateral;
 - Is a party to a multilateral convention to which Australia is party that contains an obligation to try or extradite for offences specified in the convention; or
 - Is one to which Australia has applied its *Extradition (Foreign States) Act* in the absence of a treaty on the basis of a guarantee of reciprocity

Relevant legislation applicable to extradition

- *Service and Execution of Process Act 1992* (Cwlth) – Status: (Current)
- *Extradition Act 1988* (Cwlth) – Status: (Current as of 01/12/1988)
- *Service and Execution of Process Act 1901* (Cwlth) – Status: (Ceased: 10/04/1993)
- *Extradition (Foreign States) Act 1966* (Cwlth) – Status: (Ceased: 01/12/1988)
- *Extradition (Commonwealth Countries) Act 1966* (Cwlth) – Status: (Ceased: 01/12/1988)

NOTE: Victoria Police force policies related to overseas extradition (excluding New Zealand) are specified only and does not detail the role of the Attorney-General's Department who is Australia's central authority for international extradition matters

¹ Extradition procedures – (Issued 09-11-1988 by W.J. McCann – Secretary Ministry for Police and Emergency Services)

Victoria Police Manual² (1957 Edition Brown Bomber)

Note: 1957 Edition of the Brown Bomber does not have an indicator as to when the VPM was last updated by the owner

Process (Summary)

- Arrangements for the extradition to Victoria of offenders from foreign countries and British Dominions must be made through the Chief Commissioner of Police (CCP)
- As a general rule offence(s) must be of a serious nature.
- When extradition is being considered, it is necessary that a warrant should be in existence for the arrest of the offender.
- A report must be provided to the Officer in Charge (OIC) of the District who shall apply, through the OIC of Criminal Investigations Branch (CIB), for the approval of the Chief Commissioner to extradite the offender.

Detective Training School (DTS) Notes on Extradition³ (Issued 07-04-1971)

Process (Summary)

- Approval for extradition may be sought in the following cases where a person has committed, or is accused or suspected of having committed a crime:
 - All felonies and misdemeanours should be regard as crimes of a public nature, in which members of the force as a general rule should prosecute on behalf of the Crown.
- The following steps should be taken to obtain approval for extradition:
 - Interview complainant and all available witnesses and obtain full and comprehensive statements relating to the complaint.
 - Establish a crime has been committed.
 - Establish the identity of the offender.
 - Compile a brief as far as possible.
 - In most other cases it is also desirable that the application for the issue of a warrant of apprehension, for the purpose of extradition, be made to a Stipendiary Magistrate, but it is not essential.
 - Before the application is made for a warrant of apprehension, the brief of evidence should be submitted to an officer or experienced sub-officer to ensure that there is sufficient evidence available to support the charge described in the warrant.
 - Should the Crown decline to bear the cost of the extradition, obtain from the complainant sufficient money to cover the costs of extradition expenses or a guarantee to pay the costs of a extradition can be obtained from the Chief Clerk, Superintendent, C.I.B Office.

² Victoria Police Manual 1957 Edition (s848-560)

³ Detective Training School Notes – Owner: H.J. STORER VP13628 – Issued 07-04-1971

- Submit a full report in duplicate to the Superintendent, CIB, containing:
 - Full particulars surrounding the alleged offence.
 - Brief completed as far as possible.
 - Availability of witnesses, and if they reside interstate the cost of attendance and mode of travel to attending a preliminary hearing.
 - Details of the offender.
 - The particulars of the warrant.
 - Any information that will assist in locating the whereabouts of the offender.
 - Particulars of money received from a complainant or guarantee in respect of costs of extradition.
- Extradition expenses is paid by either the :
 - Police Department or
 - Law Department or
 - The Complainant.
- Where a person has been charged with an offence and bailed to appear before a Magistrates' Court, an application should be made to the Court for the surety and the recognisance to be forfeited – also for a warrant to be issued for their arrest.
- If the offender has been committed for trial from a Magistrate's Court or bailed to a superior court pending the hearing of an appeal and fails to appear for trial or prosecute his appeal, an application should be made to the Court for the surety and the recognisance to be forfeited – also for a warrant to be issued for their arrest.
- The following information must be included in the application for extradition
 - Brief to be attached
 - Full name and address of surety.
 - Whether cash, bank book or property lodged or submitted surety for bail.
 - Information as to whether or not any information has been provided by the surety to locate the offender.
 - Whereabouts or probable location of offender.
- The report is forwarded to the CCP who in conjunction with the Law Department considers whether approval will be given and whether the expense involved will be defrayed by the Police or Law Department.

Further DTS notes explain the guidelines relating to extradition to/from Victoria and explanations of the following legislation which was current at the time.

- *Extradition (Foreign States) Act 1966* (Cwlth)
- *Extradition (Commonwealth Countries) Act 1966* (Cwlth)

Victoria Police Manual (VPM) 1981 ⁴

Process (Summary)

- As a general rule offence(s) must be of a serious nature.
- Arrangements for extradition to Victoria of offenders from foreign countries must be made through the CCP.
- When extradition is being considered, it is necessary that a warrant should be in existence for the arrest of the offender.
- Before arranging an arrest to be effected in another country, the member in charge shall submit a report including a copy of the relevant warrant of apprehension for the most serious offence or a copy of the whole brief of evidence (if multiple offences) to the OIC of the District. The Report must include:
 - Outline of facts of the case.
 - Whether witnesses listed on brief are available to give evidence.
 - (If applicable) If the witness resides interstate, the costs involved in their attendance.
 - Exact copy of charge.
 - Full details of Magistrate who issued the warrant.
 - Supporting member details who can verify the signature of the Magistrate and whether they can identify the offender.
 - (If applicable) A statement advising if guarantee relating to costs has been provided.
 - (If applicable) Details relating to the absconding of bail.
 - Details relating to any other warrants held by the Information Bureau (IB).
- Unsolicited offers by the complainant to pay for the cost of extradition shall provide a written guarantee and forward it to the OIC, CIB.
- Estimated costs of extradition may be obtained on application to the OIC, CIB.
- OIC of the District on receipt of the report requesting extradition shall forward it to the OIC, CIB, and indicate whether the facts of the case are within the scope of departmental policy and recommending whether approval should be sought from the Chief Commissioner.
- VPM 1981 does not indicate the delegate or process beyond this point.

⁴ Victoria Police Manual 1981 – Courts 3.80-3.85

Victoria Police Manual 1986⁵

There is no identifiable change to the process to the previous VPM 1981

Victoria Police Manual 1994 (Issued 18-03-1994)⁶

Process (Summary)

Note: VPM framework modified significantly however general process remains consistent

- Extradition will only be considered in more serious cases.
- Where persons are being extradited from overseas, the extradition laws applicable to that particular country must be satisfied.
- Centralised area for dealing with extraditions is the Office of the Commander, State Crime Squads.
- Any extradition requests must be authorised by the Commander, State Crime Squads, after approval by the informant's District Commander.
- Victims are not to be approached to pay for the expenses of any extradition and offers made by victims must be refused.
- Specific procedures in place to enable an unlawful non-citizen to remain in Australia as a defendant or witness.
- Prior to the arranging for the execution of a Victorian warrant on a person residing overseas, the member seeking execution must, after approval from their District Commander, forward a report to the Commander, State Crime Squads which must include
 - Details of outstanding warrants or charges against the person.
 - Whether the person is to return to Victoria in custody or on bail.
 - An estimate of costs involved in the use of commercial transport or accommodation where the person is being returned in custody.
 - Whether the person named in the warrant is on bail or under a current court order of that State or any other State.
 - Additional information that must be attached to the report includes:
 - Brief of evidence or in its absence, a summary of the circumstances of the charges for which the warrant was issued.
 - A copy of prior convictions.

⁵ Victoria Police Manual 1986 – Courts 3.80-3.86

⁶ Victoria Police Manual 1994 – 11-33

- Report from a member in the other State (preferably of officer rank) stating that the person is available for extradition.
 - Any other relevant supporting documentation.
- Where a request is not approved, a copy of the report, warrant and brief of evidence must be filed at Criminal Records.
- Where a request is approved, the Commander, State Crime Squads, must endorse the report accordingly and if necessary, nominate the member who is to travel overseas
- General requirements of the extraditing Member include:
 - Arrange transportation through their District Budget Officer (DBO)
 - Inform interstate members of date and time of arrival
 - Comply with instructions regarding escort of prisoners (Section 10.4)

Further VPM processes refer to dealing with extraditions from interstate/prisons

Victoria Police Manual 1999 (Issued 29-11-1999)⁷

Process (Summary)

- Authorisation for extradition whether at Force or OPP expense must be made through:
 - Crime Department – Commander , State Crime Squads
 - General Policing – Regional Commander, after approval from Regional Superintendent (Crime)
- Where persons are being extradited from overseas, the extradition laws applicable to that particular country must be satisfied.
- Extradition will only be considered in the more serious cases.
- Victims are not to be approached to pay for the expenses of any extradition and offers made by victims must be refused.
- A Memorandum Of Understanding (MOU) developed by the Australian Police Ministers' Council (APMC) defines who absorbs the contingency costs.
- In relation to Unlawful Non-Citizens:
 - advice to be sought from Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and Executive Services, Chief of Staff with regards to specific requirements of the *Migration Act 1958* (Cwlth).
 - Seek approval from the Deputy Commissioner (Operations) through Departmental management to incur all potential or actual expenses involved in either the extradition or the extension to visa process.

⁷ Victoria Police Manual 1999 – 11-19

- Any person arrested on a warrant issued under the *Service and Execution of Process Act 1992* (Cwlth) must be taken before a magistrate as soon as practical
- Prior to the arranging for the execution of a Victorian warrant on a person residing overseas, the member seeking execution must, after approval from their District Commander, forward a report to the Commander, State Crime Squads or Regional Commander if in General Policing which must include:
 - Details of outstanding warrants or charges against the person
 - Whether the person is to return to Victoria in custody or on bail
 - An estimate of costs involved in the use of commercial transport or accommodation where the person is being returned in custody.
 - Whether the person named in the warrant is on bail or under a current court order of that State or any other State.
 - Additional information that must be attached to the report includes:
 - Brief of evidence or in its absence, a summary of the circumstances of the charges for which the warrant was issued.
 - A copy of prior convictions.
 - Report from a member in the other State (preferably of officer rank) stating that the person is available for extradition.
 - Any other relevant supporting documentation.

Further VPM processes refer to dealing with extraditions from interstate/prisons

Victoria Police Manual 2003 (Issued 11-05-2003)⁸

Process (Summary)

Note: VPM processes have been simplified for extradition

- The informant must seek approval to arrange the execution of a Victorian Warrant on a person residing or located overseas initially by the Divisional Manager.
- The requesting member must then seek approval for overseas extradition from the authorised delegate **XXXXX(PENDING RESPONSE CORP POLICY)** and provide a report including the following:
 - Brief of evidence or a summary of the circumstances of the charges if the brief is unavailable

⁸ Victoria Police Manual 2003 – 113-12

- Copy of any prior convictions.
- Report from a member in the other State stating that the person is available for extradition.
- The approving delegate must endorse the report and nominate the member who is to travel overseas to give evidence and/or escort the person to Victoria. In the event this is not approved, a copy of the report, together with the warrant and brief of evidence must be filed at RSB.

Victoria Police Manual 2007 (Issued 03-09-2007)⁹

Process (Summary)

- Initial approval for extradition must be sought from local management.

There is no other identifiable change to the process to the previous VPM 2003.

Victoria Police Manual 2009 (Issued 06-11-2009)¹⁰

Process (Summary)

- Extradition requests must be approved by the Deputy Commissioner (Crime), or if unavailable another Deputy Commissioner.
- A request for extradition must be submitted to the relevant Work Unit Manager for assessment and include a report outlining the:
 - Likelihood of achieving the objective (successfully extraditing the suspect).
 - Availability of funds and resources.
 - Potential harm to the victim or impact on the community if the offender is not pursued.
- The relevant Work Unit Manager must:
 - Assess the request for extradition and accompanying report.
 - Indicate whether or not they support the request.
 - Forward the request and accompanying report through line management to the appropriate approver.
- The approving member must endorse the report and nominate the member who is to travel overseas to give evidence and/or escort the person to Victoria. In the event this is not approved, a copy of the report, together with the warrant and brief of evidence must be filed at RSB.

⁹ Victoria Police Manual 2007 – 113-12

¹⁰ Victoria Police Manual 2009– 113-12

Further VPM processes refer to dealing with extraditions from interstate/prisons.

Victoria Police Manual 2010 (Issued 22-02-2010 – CURRENT)¹¹

Process (Summary)

- Extradition requests must be approved by the Deputy Commissioner (Specialist Operations) or if unavailable another Deputy Commissioner.
- A request for extradition must be submitted to the relevant Work Unit Manager for assessment and include a report outlining the:
 - Likelihood of achieving the objective (successfully extraditing the suspect).
 - Availability of funds and resources.
 - Potential harm to the victim or impact on the community if the offender is not pursued.
- The relevant Work Unit Manager must:
 - Assess the request for extradition and accompanying report.
 - Indicate whether or not they support the request.
 - Forward the request and accompanying report through line management to the appropriate approver.
- The investigating member should also have regard to whether the person is an unlawful non-citizen and consider the additional requirements :
 - The investigating member is responsible for obtaining a Criminal Justice Certificate where an unlawful non-citizen is either the defendant or witness and is required to attend court.
 - The *Migration Act 1958* (Cwlth) provides for Criminal Justice Visas to be granted by the Minister for Immigration and Citizenship to allow unlawful citizens to remain in Australia or enter Australia for their participation in criminal justice proceedings.
 - To obtain a Criminal Justice Visa, the Chief Commissioner of Police (CCP) must issue either a Criminal Justice Entry Certificate or State Criminal Justice Stay Certificate which must be endorsed by the Federal Attorney-General and then assessed by the Minister. Once the certificates are endorsed by the Attorney General, a Criminal Justice Visa may be granted by the Minister so that the person may enter or remain in Australia lawfully.
 - An Entry Certificate is issued by the CCP so that a non-citizen who is outside Australia can be brought into the country temporarily for the purpose of the administration of criminal justice in relation to an offence against a law of the State.

¹¹ Victoria Police Manual 2010 – Guidelines - Extradition

- A Stay certificate is issued by the CCP so that an unlawful non-citizen is prevented from being removed or reported from Australia because their presence is required for the administration of criminal justice in relation to an offence against a law of the State. The person may be in immigration detention, criminal custody or free in the community. The person will only be an unlawful non-citizen once their visa has expired.

Further VPM processes detail the application process for approving