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Statutory Rules 1990 No. 1

135/

## Extradition (Swiss Confederation) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Extradition Act 1988*.

Dated *18 June*. 1990.

**BILL HAYDEN**  
Governor-General

By His Excellency's Command,

*Michael Duffy*

Attorney-General

### Citation

1. These Regulations may be cited as the Extradition (Swiss Confederation) Regulations.

### Commencement

2. These Regulations commence on 1 January 1991.

### Interpretation

3. In these Regulations, unless the contrary intention appears: "the Act" means the *Extradition Act 1988*.

### Declaration of Swiss Confederation as extradition country

4. The Swiss Confederation is declared to be an extradition country.

**Application of Act**

5. The Act applies in relation to the Swiss Confederation subject to the Treaty between Australia and Switzerland on Extradition done at Sydney on 29 July 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

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**SCHEDULE**

Regulation 5

**TREATY BETWEEN AUSTRALIA AND SWITZERLAND ON EXTRADITION**

Australia and the Swiss Confederation,

DESIRING to provide for more effective co-operation between the two States in the repression of crime and to facilitate the relations between the two States in the area of extradition,

HAVE AGREED as follows:

**ARTICLE 1****Obligation to Extradite**

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted for prosecution, sentencing or the carrying out of a sentence or detention order in the Requesting State, for an extraditable offence.

**ARTICLE 2****Extraditable Offences**

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months imprisonment or other deprivation of liberty remains to be served.
2. To the extent permitted under the law of the Requested State, where a person is to be extradited for an extraditable offence, extradition may also be granted in respect of offences which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a period of less than one year or by a less severe penalty.
3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting Parties:
  - (a) it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
  - (b) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

**SCHEDULE—continued**

4. Extradition shall be granted pursuant to the provisions of this Treaty irrespective of when the offence for which extradition is requested was committed, provided that:

- (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence; and
- (b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

5. If the offence for which extradition is requested has been committed outside the territory of the Requesting State extradition shall be granted, subject to the provisions of this Treaty, if the person whose extradition is requested is a national of the Requesting State. If the person whose extradition is requested in respect of such an offence is not a national of the Requesting State the Requested State may, in its discretion, grant extradition.

**ARTICLE 3**

Exceptions to Extradition

1. Extradition shall not be granted in any of the following circumstances, if:

- (a) the offence for which extradition is requested is regarded by the Requested State as a political or fiscal offence or an offence only under military law;
- (b) the offence of which the person sought is accused or convicted, or any other offence for which the person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
- (c) there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that the person's position may be prejudiced for any of those reasons;
- (d) final judgment has been rendered in the Requested State or in a third state in respect of the offence for which the person's extradition is requested:
  - if the afore-mentioned judgment resulted in the person's acquittal;
  - if the term of imprisonment or other deprivation of liberty to which the person was sentenced has been completely enforced, or has been wholly or, with respect to the part not enforced, the subject of a pardon or an amnesty; or
  - if the court convicted the person without imposing a penalty; or
- (e) the person whose extradition is requested cannot, according to the law of either Contracting Party, be prosecuted or punished by reason of lapse of time.

2. Extradition may be refused in any of the following circumstances if:

- (a) the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the Requesting State so requests and the law of the Requested State allows, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken; or
- (b) the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence.

**SCHEDULE—continued**

3. The Requested State may recommend to the Requesting State that a request for extradition be withdrawn, specifying the reasons therefore, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.

**ARTICLE 4****The Request and Supporting Documents**

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 5.
2. The request for extradition shall be accompanied:
  - (a) if a person is accused of an offence—by a warrant for the arrest or a copy of the warrant for the arrest of the person, a statement of each offence for which extradition is requested and a description of the acts or omissions which are alleged against the person in respect of each offence;
  - (b) if a person has been convicted in that person's absence of an offence—by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested and a description of the acts or omissions which are alleged against the person in respect of each offence;
  - (c) if the person has been convicted of an offence otherwise than in that person's absence—by a statement of each offence for which extradition is requested and a description of the acts or omissions which are alleged against the person in respect of each offence, and by documents evidencing the conviction and penalty imposed, the fact that the sentence is immediately enforceable, and the extent to which the penalty has not been carried out;
  - (d) if the person has been convicted of an offence otherwise than in that person's absence but no penalty has been imposed—by a statement of each offence for which extradition is requested and a description of the acts or omissions which are alleged against the person in respect of each offence, and by documents evidencing the conviction and a statement affirming that it is intended to impose a penalty;
  - (e) in all cases—by a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings and a statement of the penalty that can be imposed for the offence; and
  - (f) in all cases—by a description which is as accurate as possible of the person sought together with any other information which may help to establish the person's identity and nationality.
3. Extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of Paragraphs 1 and 2 of this Article have not been complied with, provided that the person sought consents to being extradited.
4. All documents submitted by Switzerland in support of the request for extradition shall be in, or shall be translated into English. All documents submitted by Australia in support of the request for extradition shall be in, or shall be translated into an official language of Switzerland, to be specified in each case by the competent authority of Switzerland.

**ARTICLE 5****Authentication of Supporting Documents**

1. A document that, in accordance with Article 4, accompanies a request for extradition shall be admitted, if authenticated, in any extradition proceedings in the Requested State.

**SCHEDULE—continued**

2. A document is authenticated for the purposes of this Treaty if:
  - (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the Requesting State; and
  - (b) it purports to be sealed with an official seal of the Requesting State or of a Minister of State, or of a Department of the Requesting State.

**ARTICLE 6**

Additional Information

1. If the Requested State considers that the documentation furnished in support of the request is not sufficient in accordance with this Treaty to enable the extradition to be granted, that State may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest in relation to extradition and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.
3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as possible.

**ARTICLE 7**

Conflicting Requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the nationality of the person sought, the possibility of subsequent extradition to another State and the respective dates of the requests. Where appropriate the Requested State shall inform the Requesting State whether it consents to re-extradition.

**ARTICLE 8**

Rule of Speciality

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subject to any other restriction of personal liberty, in the Requesting State for any offence committed before the surrender other than:
  - (a) an offence for which extradition was granted; or
  - (b) any other extraditable offence in respect of which the Requested State consents.
2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 4 as well as a legal record of any statement made by the extradited person in respect of the offence concerned.
3. Paragraph 1 of this Article does not apply if the person extradited has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the Requesting State after having left it.

## SCHEDULE—continued

## ARTICLE 9

Re-Extradition to a Third State

1. Where a person has been surrendered to the Requesting State that State shall not extradite the person to any third state for an offence committed before that person's surrender unless:
  - (a) the Requested State consents to that extradition; or
  - (b) the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the Requesting State after having left it.
2. The Requested State may request the production of the documents mentioned in Article 4 in relation to any consent pursuant to sub-paragraph (1) (a) of this Article.

## ARTICLE 10

Provisional Arrest

1. In case of urgency a Contracting Party may apply through the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought. The application may be transmitted by post or telegraph or by any other means affording a record in writing.
2. The application for provisional arrest shall contain a description of the person sought, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 4 authorising the apprehension of the person, a statement of an offence for which extradition will be requested, a description of the acts or omissions alleged to constitute the offence, a statement of the penalty that can be, or has been, imposed for the offence and a statement that extradition is to be requested through the diplomatic channel.
3. A person arrested upon an application for provisional arrest may be released upon the expiration of 40 days from the date of that person's arrest if a request for extradition has not been received.

## ARTICLE 11

Surrender

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel. Reasons shall be given for any complete or partial rejection of an extradition request.
2. Where extradition is granted, the Requested State shall inform the Requesting State of the length of time for which the person claimed was detained with a view to extradition.
3. Where extradition is granted, the person shall be taken over by the Requesting State from the Requested State at a point of departure arranged by the Contracting Parties.
4. The Requesting State shall take over the person from the Requested State within fifteen days of notification of the decision referred to in paragraph 1 of this Article. If the Requesting State is unable to take over the person within this period the Requested State may extend the period by a further fifteen days upon a request substantiated by the Requesting State.

**SCHEDULE—continued**

**ARTICLE 12**

Postponed or Temporary Surrender

1. The Requested State may postpone the surrender of a person in order to proceed against the person, or so that the person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is requested. In such cases the Requested State shall advise the Requesting State accordingly.
2. To the extent permitted by its law, the Requested State may temporarily surrender the person sought to the Requesting State in accordance with conditions to be determined between the Contracting Parties.

**ARTICLE 13**

Surrender of Property

1. To the extent permitted under the law of the Requested State and subject to the right of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition, having been consented to, cannot be carried out.
3. Where the law of the Requested State or the rights of third parties so require, any property so surrendered shall be returned to the Requested State free of charge if that State so requests.

**ARTICLE 14**

Transit

Transit through the territory of one of the Contracting Parties shall be granted on a request in writing by the other Contracting Party. The request for transit:

- (a) may be transmitted by post or telegraph or by any other means affording a record in writing; and
- (b) shall contain the information referred to in paragraph 2 of Article 10.

**ARTICLE 15**

Representation and Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State, as well as bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is requested.
2. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

**ARTICLE 16**

Other Obligations

This Treaty shall not affect any obligation which the Contracting Parties may have undertaken or may undertake under any multilateral convention, to which they are both party.

## SCHEDULE—continued

## ARTICLE 17

Dispute Settlement

1. The Contracting Parties shall consult, at the request of either, concerning the interpretation or the application of this Treaty either generally or in relation to a particular case.
2. Any dispute between the Contracting Parties concerning the interpretation of this Treaty which has not been settled by consultations under paragraph 1 of this Article may be referred by either Party to the International Court of Justice in conformity with the Statute of the Court.
3. Any dispute settlement in accordance with paragraph 2 of this Article shall not affect the validity of any final decision of an executive or judicial authority of a Contracting Party made in connection with a request giving rise to the dispute.

## ARTICLE 18

Amendment

The Contracting Parties shall consult at the request of either concerning any proposal to amend this Treaty.

## ARTICLE 19

Entry into Force and Termination

1. This Treaty shall enter into force 180 days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. On the entry into force of this Treaty the provisions of:
  - (a) the Treaty for the Mutual Extradition of Fugitive Criminals between the Swiss Confederation and the United Kingdom of Great Britain and Ireland, done at Berne on 26 November 1880;
  - (b) the Supplementary Convention to the aforesaid Treaty, done at London on 29 June 1904; and
  - (c) the Supplementary Convention to the aforesaid Treaty, done at Berne on 19 December 1934,

shall cease to have effect, except with respect to extradition proceedings pending at that time, between Australia and Switzerland.

3. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at SYDNEY on the TWENTY NINTH day of JULY One Thousand nine hundred and eighty-eight, in English and German, both texts being equally authentic.

FOR AUSTRALIA  
Lionel Bowen

FOR THE SWISS CONFEDERATION  
Jean-Pascal Delamurcz

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on

1990. 25 June /

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