

(Statutory Rules and Territory O)

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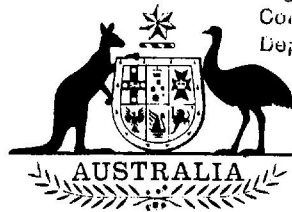
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1996B01256



Statutory Rules 1988 No. 1

298/

Extradition (United States of America) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 24 November 1988.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

Lionel Bowen
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (United States of America) Regulations.

Interpretation

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

Declaration of United States of America as extradition country

3. The United States of America is declared to be an extradition country.

Application of Act

4. The Act applies in relation to the United States of America subject to the Treaty on Extradition between Australia and the United States of America that came into force on 8 May 1976 (being the treaty a copy of the text of which is set out in the Schedule).

SCHEDULE

Regulation 4

TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE
UNITED STATES OF AMERICA

Australia and the United States of America, desiring to make more effective the cooperation of the two countries for the reciprocal extradition of offenders, agree as follows:

ARTICLE I

Each Contracting Party agrees, under the conditions and circumstances established by this Treaty, reciprocally to deliver up persons found in its territory who have been charged with or convicted of any of the offences mentioned in Article II of this Treaty committed within the territory of the other Contracting Party, or outside that territory under the conditions specified in Article IV of this Treaty.

ARTICLE II

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the following offences provided these offences are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death:

1. Murder or willful murder; assault with intent to commit murder.
2. Manslaughter.
3. Aggravated or willful wounding or injuring; assault occasioning actual bodily harm.
4. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
5. Rape; indecent assault, including unlawful sexual acts with or upon children.
6. Illegal abortion.
7. Procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution.
8. Abandoning or exposing a child when the life of that child is or is likely to be injured or endangered.
9. Bigamy.
10. Kidnapping; child stealing; abduction; false imprisonment.
11. Robbery.
12. Burglary; housebreaking or any similar offence.
13. Larceny.
14. Embezzlement.
15. Obtaining any property, money or valuable securities by false pretences or other form of deception.
16. An offence against the law relating to bribery.
17. Extortion.
18. Receiving any property, money or valuable securities knowing the same to have been unlawfully obtained.
19. Fraud by an agent, bailee, banker, factor or trustee, by a director or officer of a company or by a promoter of a company, whether existing or not.
20. An offence relating to counterfeiting or forgery.
21. Perjury; subornation of perjury; conspiring to defeat the course of justice.
22. Arson.
23. An act done with the intention of endangering the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.

SCHEDULE—continued

24. Any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, of an aircraft.
25. Piracy, by statute or by law of nations; revolt on board a vessel against the authority of the master of the vessel.
26. Malicious injury to property.
27. An offence against the bankruptcy laws.
28. An offence against the laws relating to narcotics, dangerous drugs or psychotropic substances.
29. Dealing in slaves.

(2) Extradition shall also be granted for any other offences that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America.

(3) Extradition shall also be granted for any offence against a federal law of the United States of America of which one of the above-mentioned offences is a substantial element, even if transporting or transportation or the use of the mails or of interstate facilities is also an element of the specific offence.

(4) Extradition shall also be granted for aiding, abetting, counseling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences mentioned in the preceding paragraphs of this Article.

(5) If extradition is requested for any offence mentioned in a preceding paragraph of this Article and that offence is punishable under the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death, that offence shall be extraditable under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offence within the same category of offences made extraditable by that preceding paragraph of this Article and whether or not the laws of the requested State denominate the offence by the same terminology.

ARTICLE III

(1) For the purposes of this Treaty, the territory of a Contracting Party means all the territory under the jurisdiction of that Contracting Party, including airspace and territorial waters, and also includes—

- (a) any vessel registered in any territory under the jurisdiction of that Contracting Party; and
- (b) any aircraft registered in any such territory provided that the aircraft is in flight when the relevant offence is committed.

(2) For the purposes of this Treaty—

- (a) the territory under the jurisdiction of a Contracting Party includes the Territories for the international relations of which that Contracting Party is responsible;
- (b) an aircraft shall be considered in flight from the moment when the power is applied for the purpose of take-off until the moment when the landing run ends.

ARTICLE IV

When the offence for which extradition has been requested has been committed outside the territory of the requesting State—

- (a) if the United States of America is the requested State—the executive authority of the United States of America; or
 - (b) if Australia is the requested State—the Attorney-General of Australia,
- shall have the power to grant the extradition if the laws of the requested State provide for jurisdiction over such an offence committed in similar circumstances.

SCHEDULE—continued**ARTICLE V**

(1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

(2) For the purposes of this Article—

(a) a reference to the executive authority of a Contracting Party shall, in the case of Australia, be construed as a reference to the Attorney-General of Australia;

(b) Australian protected persons shall be deemed to be nationals of Australia; and

(c) the nationality of a person shall be determined to be that which he held at the time when he was charged with the offence for which his extradition is requested.

ARTICLE VI

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offence with which he is charged or its equivalent had been committed in that territory or to prove that he is the identical person convicted by the courts of the requesting State.

ARTICLE VII

(1) Extradition shall not be granted in any of the following circumstances:

(a) when the person whose extradition is requested is being proceeded against, has been tried and discharged or punished, or has been pardoned, in the territory of the requested State for the offence for which his extradition is requested;

(b) when the prosecution for the offence has become barred by lapse of time according to the laws of the requesting State; or

(c) when the offence in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offence of a political character.

(2) If any question arises whether a case comes within the provisions of subparagraph (c) of paragraph (1) of this Article, the requested State shall decide that question.

ARTICLE VIII

If, under the law of the requesting State, an offence for which the extradition of a person is requested, or any other offence for which he may be detained or tried under paragraph (1) of Article XIV, is subject to a penalty of death but the law of the requested State does not provide for such a penalty in a similar case, the requested State may recommend to the requesting State that any punishment imposed for any of those offences be a less severe punishment.

ARTICLE IX

When the person whose extradition is requested is being proceeded against or is serving a sentence in the territory of the requested State for an offence other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment that may be or may have been imposed on him.

ARTICLE X

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law.

SCHEDULE—continued

ARTICLE XI

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting State including the law defining the offence, the law prescribing the punishment for the offence and the law relating to the limitation of the legal proceedings.

(3) When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting State and by such evidence as, according to the laws of the requested State, would justify his trial or committal for trial if the offence had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

(4) When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence, if any, passed upon him in the territory of the requesting State, by a statement, if applicable, showing how much of the sentence has not been served and by evidence proving that the person requested is the person to whom the judgment refers.

(5) The warrant of arrest and deposition or other evidence, given under oath or affirmed, and the judicial documents establishing the existence of the conviction, or certified copies of those documents, shall be admitted in evidence in the examination of the request for extradition when—

- (a) in the case of a request by Australia—those documents or certified copies bear the signature, or are accompanied by the attestation, of a judge, magistrate or officer of Australia or are authenticated by the official seal of the Attorney-General and, in any case, are certified by the principal diplomatic or consular officer of the United States of America in Australia; or
- (b) in the case of a request by the United States of America—the warrant, if any, bears an original signature, or the other documents are certified, by a judge, magistrate or officer of the United States of America and, in any case, are authenticated by the oath of a witness or sealed with the official seal of the Department of State on behalf of the Secretary of State or of the Department of Justice on behalf of the Attorney General.

ARTICLE XII

(1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

(2) The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the requested State.

(3) On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed.

(4) A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article XI has not been received.

(5) Paragraph (4) of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

SCHEDULE—continued**ARTICLE XIII**

(1) If the requested State requires additional evidence or information to enable it to decide on the request for extradition, that State may request that such evidence or information be furnished within such period as it specifies.

(2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested State, he shall be discharged from custody.

(3) The discharge of a person from custody under paragraph (2) of this Article shall not bar the requesting State from submitting another request in respect of the same offence.

ARTICLE XIV

(1) A person extradited under this Treaty may be detained, tried or punished in the territory of the requesting State for any offence mentioned in Article II for which the person could be convicted upon proof of the facts upon which the request for extradition was based.

(2) Except as provided in to paragraph (1) of this Article, a person extradited under this Treaty shall not be detained, tried or punished in the territory of the requesting State for an offence other than that for which extradition has been granted, or be extradited by that State to a third State, unless—

(a) he has left the territory of the requesting State after his extradition and has voluntarily returned to it;

(b) he has not left the territory of the requesting State within thirty days after being free to do so; or

(c) the offence concerned is one for which the requested State has consented to his detention, trial or punishment or to his extradition to a third State and is an offence mentioned in Article II.

(3) A request for the consent of the requested State under subparagraph (c) of paragraph (2) of this Article shall be accompanied by such information and documents as are requested by that State.

(4) This Article does not apply to offences committed after the extradition.

ARTICLE XV

A requested State, upon receiving two or more requests for the extradition of the same person either for the same offence, or for different offences, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offence, the place where the offence was committed, the nationality and residence of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested State and the other requesting State or States.

ARTICLE XVI

(1) The requested State shall promptly communicate to the requesting State through the diplomatic channel the decision on the request for extradition.

(2) Where extradition of a person for an offence is granted, the person shall be conveyed by the appropriate authorities of the requested State to a port or airport in the Territory of that State agreed between that State and the requesting State.

(3) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as is prescribed by the laws of that State, he may be set at liberty, and

SCHEDULE—continued

the requested State may subsequently refuse to extradite that person for the same offence.

(4) Australia is not required to extradite a person before the expiration of fifteen days after the date on which he has been held judicially to be liable to extradition, or, if proceedings for a writ of habeas corpus have been brought, before the expiration of fifteen days after the final decision of the competent court has been given.

ARTICLE XVII

(1) To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all articles found in the requested State that have 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) Subject to the qualifications of paragraph (1) of this Article, the above-mentioned articles shall, if the requested State so requests, be surrendered to the requesting State even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

(3) Where the law of the requested State or the rights of third parties so require, any articles so surrendered shall be returned to the requested State free of charge if that State so requests.

ARTICLE XVIII

(1) Expenses related to the transportation of the person sought to the requesting State shall be paid by the requesting State.

(2) The requested State shall make all necessary arrangements for, and meet the cost of, the representation of the requesting State in any proceedings arising out of a request for extradition.

(3) No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested State against the requesting State.

ARTICLE XIX

(1) The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State shall be granted on request made through the diplomatic channel.

(2) In the case of a national of the requested State, the request shall establish that conditions are present which would warrant extradition of the person by the State of transit.

(3) The request may be refused if reasons of public order are opposed to the transit.

(4) Permission for the transit of a person surrendered shall include authorisation for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the State of transit in maintaining custody.

(5) The Party to which the person has been extradited shall reimburse the Party through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

ARTICLE XX

This Treaty applies to offences mentioned in Article II committed before, on or after the date on which this Treaty enters into force, provided that no extradition shall be granted for an offence committed before that date which was not an offence under the laws of both Contracting Parties at the time of its commission.

SCHEDULE—continued

ARTICLE XXI

(1) This Treaty is subject to ratification and the instruments of ratification shall be exchanged in Canberra as soon as possible.

(2) This Treaty shall enter into force thirty days after the exchange of instruments of ratification.

(3) This Treaty may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time and the termination shall be effective six months after the date of receipt of such notice.

(4) This Treaty shall terminate and replace, as between the Contracting Parties to the present Treaty, the Treaty on Extradition between Great Britain and the United States of 22 December, 1931, as made applicable to Australia.

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

DONE at Washington this fourteenth day of May, 1974.

FOR AUSTRALIA:

PATRICK SHAW

FOR THE UNITED STATES OF AMERICA:

KENNETH RUSH

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1988.

30 November/