

TRIPPLICATE COPY



Administering Department  
Documents sent to Federal  
Library in connection with  
the Hon. Secretary of State's  
initiation of signatures and date of making, and send  
to: Legislative Services Section,  
Office of Legislative Drafting, Attorney-General's  
Department.



Statutory Rules 1992 No. *L*<sup>1</sup>

*394/*

## Extradition (United States of America) Regulations<sup>2</sup> (Amendment)

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

Dated *9 December* 1992.

**BILL HAYDEN**  
Governor-General

By His Excellency's Command,

*Michael Duffy*  
Attorney-General

### 1. Commencement

1.1 These Regulations commence on 21 December 1992.

### 2. Amendment

2.1 The Extradition (United States of America) Regulations are amended  
as set out in these Regulations.

**3. Regulation 4 (Application of Act)**

3.1 Omit “(being the treaty a copy of the text of which is set out in the Schedule)”, substitute “, as amended by the Protocol done at Seoul on 4 September 1990 (being, respectively, the treaty a copy of the text of which is set out in Schedule 1 and the protocol a copy of the text of which is set out in Schedule 2)”.

**4. Schedule (Treaty on extradition between Australia and the United States of America)**

4.1 Omit:

“SCHEDULE”,

substitute:

“SCHEDULE 1”.

**5. New Schedule 2**

5.1 Add at the end:

**SCHEDULE 2**

Regulation 4

**PROTOCOL AMENDING THE TREATY ON EXTRADITION  
BETWEEN AUSTRALIA  
AND  
THE UNITED STATES OF AMERICA  
OF MAY 14, 1974**

Australia and The United States of America;

Desiring to make more effective the Extradition Treaty between the Contracting Parties signed at Washington May 14, 1974 (hereinafter referred to as “the Treaty”);

Have agreed as follows:

**ARTICLE 1**

The text of Article II of the Treaty is replaced by the following:

“(1) An offence shall be an extraditable offence if it is punishable under the laws in both Contracting Parties by deprivation of liberty of more than one year, or by a more severe penalty. However, if the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, the executive authority of the requested State shall have authority to refuse extradition if a period of less than six months of imprisonment remains to be served.

**SCHEDULE 2—continued**

(2) The following offences shall be extraditable if they meet the requirements of paragraph (1): conspiring to commit, attempting to commit, aiding or abetting, counselling or procuring the commission of, or being an accessory after the fact to, any offence described in that paragraph.

(3) For the purpose of this Article, an offence shall be an extraditable offence:

- (a) whether or not the laws in the Contracting Parties place the offence within the same category of offences or describe the offence by the same terminology; and
- (b) whether or not the offence is one for which United States federal law requires proof of interstate transportation, or use of the mails, or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(4) If the offence has been committed outside the territory of the requesting State, extradition shall be granted if the laws in the requested State provide for the punishment of an offence committed outside of its territory in similar circumstances. If the laws in the requested State do not so provide, the executive authority of the requested State may, in its discretion, grant extradition.

(5) Subject to the laws in the requested State, if extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by deprivation of liberty of one year or less, provided that all other requirements of extradition are met.”

**ARTICLE 2**

Article III and Article IV of the Treaty are deleted.

**ARTICLE 3**

The text of paragraph 2 of Article V of the Treaty is replaced by the following:

SCHEDULE 2—continued

“If the requested State refuses to extradite a national of that State on the basis of nationality it shall, if the requesting State so requests and the laws of the requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person may be undertaken in respect of all offences for which the extradition has been requested.”

ARTICLE 4

Article VI of the Treaty is deleted.

ARTICLE 5

The text of Article VIII of the Treaty is replaced by the following:

“If, under the law of the requesting State, an offence for which the extradition of a person is requested is subject to a penalty of death, the requested State may refuse the extradition unless the requesting State gives an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out.”

ARTICLE 6

The text of Article IX of the Treaty is replaced by the following:

“(1) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State after the conclusion of the proceedings against that person, in accordance with conditions to be mutually determined in writing between the Contracting Parties.

“(2) The requested State may postpone the extradition proceedings against, or the surrender of, any person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served.”

**SCHEDULE 2—continued**

**ARTICLE 7**

The text of Article XI of the Treaty is replaced by the following:

“(1) All requests for extradition shall be made through the diplomatic channel.

(2) The request for extradition shall be supported by:

- (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
- (b) a description of the conduct constituting the offence;
- (c) a statement of the law describing the essential elements of the offence for which extradition is requested; and
- (d) a statement of the law describing the punishment for the offence and the law relating to the limitation of legal proceedings.

(3) A request for the extradition of a person who is sought for prosecution or who has been found guilty in his absence shall also be supported by:

- (a) a copy of the warrant or order of arrest issued in the requesting State for the arrest of the person for the offence;
- (b) a copy of the charging document, if any; and
- (c) a description of the facts, by way of affidavit, statement, or declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it.

(4) A request for extradition of a person who has been found guilty of the offence for which extradition is sought, other than a person who has been found guilty in his absence, shall also be supported by:

- (a) a copy of the judgment of conviction, if available, or a statement by a judicial authority that the person has been found guilty;
- (b) information establishing that the person sought is the person to whom the finding of guilt refers;
- (c) a copy of the sentence imposed, if the person has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

**SCHEDULE 2—continued**

- (d) if the person has been found guilty but no sentence has been imposed, a statement affirming that it is intended to impose a sentence.
- (5) The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:
  - (a) in the case of a request from the United States, they
    - (i) purport to be signed or certified by a judge, magistrate, or officer in or of the United States; and
    - (ii) purport to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of the requesting State or of a Minister of State, or of a Department or officer of the Government of the requesting State;
  - (b) in the case of a request from Australia, they are certified by the principal diplomatic or consular officer of the United States resident in Australia, as provided by the extradition laws of the United States; or
  - (c) they are certified or authenticated in any other manner accepted by the law of the requested State.”

**ARTICLE 8**

The text of Article XII of the Treaty is replaced by the following:

“(1) In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Department of Justice in the United States and the Attorney-General’s Department in Australia. The facilities of the International Criminal Police Organisation (Interpol) may be used to transmit such a request.

- (2) The application for provisional arrest shall contain:
  - (a) a description of the person sought;
  - (b) the location of the person sought, if known;
  - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
  - (d) a description of the laws violated or alleged to have been violated and, where applicable, the penalty which may be imposed;

**SCHEDULE 2—continued**

- (e) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that a request for the extradition of the person sought will follow.

(3) On receipt of the application, the requested State shall take appropriate steps to secure the arrest of the person sought. The requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

(4) A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the requesting State if the executive authority of the requested State has not received the formal request for extradition and the supporting documents required in Article XI.

(5) The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are received at a later date.”

**ARTICLE 9**

Article XIII of the Treaty is amended by deleting the words “evidence or” wherever they occur in Article XIII (1) and Article XIII (2), and by adding the following:

“(4) If the person sought, after being personally advised by the competent authority of the requested State of his right to formal extradition proceedings, consents to surrender to the requesting State, the requested State may surrender the person as expeditiously as possible and without further proceedings.”

**ARTICLE 10**

The text of Article XIV of the Treaty is replaced by the following:

“(1) A person extradited under this Treaty may not be detained, tried, or punished in the requesting State except for:

**SCHEDULE 2—continued**

- (a) the offence for which extradition is granted or any other offence of which the person could be convicted on proof of the conduct constituting the extradition offence provided that the offence carries the same or a lesser punishment;
  - (b) any offence committed after the extradition; or
  - (c) any offence for which the executive authority of the requested State consents to the person's detention, trial or punishment. For the purposes of this subparagraph, the requested State may require the submission of the documents specified in Article XI.
- (2) A person extradited under this Treaty by a Contracting Party may not be extradited to a third State for an offence committed prior to his surrender unless that Contracting Party consents.
- (3) Paragraphs (1) and (2) of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:
- (a) that person leaves the territory of the requesting State after extradition and voluntarily returns to it; or
  - (b) that person does not leave the territory of the requesting State within fifteen days of the day on which the person is free to do so."

**ARTICLE 11**

The text of Article XV of the Treaty is replaced by the following:

"If the requested State receives requests from the other Contracting Party and from any other State or States for the extradition of the same person, either for the same offence or for a different offence, the executive authority of the requested State shall determine to which State it will surrender the person. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offence was committed;
- (c) the respective interests of the requesting States;
- (d) the gravity of the offences;
- (e) the nationality of the victim;



**SCHEDULE 2—continued**

- (f) the possibility of further extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States.”

**ARTICLE 12**

The text of Article XVI of the Treaty is replaced by the following:

“(1) The requested State shall promptly notify the requesting State of its decision on the request for extradition.

(2) If the request is denied in whole or in part, the requested State shall provide information as to the reasons for the denial of the request. The requested State shall provide copies of pertinent judicial decisions on request.

(3) If the request for extradition is granted, the competent authorities of the Contracting Parties shall arrange for the time and place of the surrender of the person sought.

(4) If the person sought is not removed from the territory of the requested State within the time prescribed by the law of that State, that person may be discharged from custody, and the requested State may subsequently refuse extradition for the same offences.”

**ARTICLE 13**

The text of Article XVII of the Treaty is replaced by the following:

“(1) To the extent permitted under its laws, the requested State may seize all articles, documents, and evidence connected with the offence in respect to which extradition is or is to be sought and surrender those items to the requesting State if extradition is subsequently granted. The items mentioned in this Article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.

(2) The requested State may require that the surrender of any property be subject to satisfactory assurances from the requesting State that the property will be returned to the requested State as soon as practicable. The requested State may also defer surrender of any property if it is needed as evidence in the requested State.

**SCHEDULE 2—continued**

(3) The rights of third parties in any property shall be duly respected.”

**ARTICLE 14**

The text of Article XVIII of the Treaty is replaced by the following:

“(1) The requested State shall advise, assist, and otherwise represent the interests of the requesting State in any proceedings arising out of a request for extradition.

(2) The requesting State shall bear the expenses related to any translation of documents and the transportation of the person surrendered. The requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

(3) Neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of the person sought under this Treaty.”

**ARTICLE 15**

The text of Article XIX of the Treaty is replaced by the following:

“(1) Either Contracting Party may authorise transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be held in custody during the period of transit.

(2) No authorisation is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party. If an unscheduled landing occurs on the territory of the other Contracting Party, the other Contracting Party may require the request for transit as provided in paragraph 1. That Contracting Party shall detain the person being transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.”

**ARTICLE 16**

Notwithstanding Article XX of the Treaty, this Protocol shall apply in all cases in which the request for extradition is made after its entry into force regardless of whether the offence was committed before or after that date.

**SCHEDULE 2—continued**

**ARTICLE 17**

This Protocol shall enter into force on the date on which the Contracting Parties have exchanged written notification that they have complied with their respective requirements for the entry into force of this Protocol.

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

DONE at Seoul, this 4th day of September, 1990

MICHAEL DUFFY

RICHARD THORNBURG

FOR AUSTRALIA:

FOR THE UNITED STATES OF  
AMERICA:

---

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on
2. Statutory Rules 1988 No. 298.

L 1992. 16 December