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Statutory Rules 1988 No. *h*¹

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Extradition (Kingdom of the Netherlands) 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. STEPIEN

Governor-General

By His Excellency's Command,

Lionel Bowen
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Kingdom of the Netherlands) Regulations.

Interpretation

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

Declaration of Kingdom of the Netherlands as extradition country

3. The Kingdom of the Netherlands is declared to be an extradition country.

Application of Act

4. The Act applies in relation to the Kingdom of the Netherlands subject to the Treaty on Extradition between Australia and the Kingdom of the Netherlands that came into force on 1 February 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 4

**TREATY ON EXTRADITION BETWEEN AUSTRALIA AND
THE KINGDOM OF THE NETHERLANDS**

Australia and the Kingdom of the Netherlands, desiring to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty for the extradition of persons charged with or convicted of offences,

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 persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2**Extraditable offences**

1. For the purposes of this Treaty, extraditable offences are offences however described 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 on account of such an offence who is wanted for the enforcement of a sentence, extradition shall be granted only if a deprivation of liberty has been imposed and a period of at least six months of such deprivation of liberty remains to be served.
2. For the purpose of this Article 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 or similar terminology.
3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting Parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the Requesting State.
4. The fact that an offence is considered to be of a fiscal character shall not of itself be a reason to refuse extradition.
5. Where extradition is sought for an offence against a law relating to taxation, customs, duties or other revenue matter, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs regulation of the same kind as the law of the Requesting State.
6. This Treaty shall apply to offences encompassed by this Article committed before as well as after the date this Treaty enters into force.

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ARTICLE 3

Exceptions to extradition

1. Extradition shall not be granted in any of the following circumstances:
 - (a) when the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family nor an offence against the law relating to genocide;
 - (b) when 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 that person's position may be prejudiced for any of those reasons;
 - (c) when the offence for which extradition is requested is an offence under military law which is not an offence under the ordinary criminal law of the Contracting Parties;
 - (d) where the person sought would have become immune from prosecution, or enforcement of a penalty, for the offence for which his extradition is requested under the laws of the Requested State relating to prior acquittal, conviction or sentencing, or lapse of time.
2. Extradition may be refused in any of the following circumstances:
 - (a) when the person whose surrender is sought is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other Party so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be brought in accordance with the law and practice of that State;
 - (b) when the competent authorities of the Requested State have decided to refrain from prosecuting the person whose surrender is sought for the offence in respect of which extradition is requested;
 - (c) where the offence with which the person sought is charged carries the death penalty unless the Requesting State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
 - (d) when a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose surrender is sought; or
 - (e) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, in particular the age or health of the person whose extradition is requested, the extradition of that person would be incompatible with humanitarian considerations.

ARTICLE 4

Postponement of extradition

The Requested State may postpone consideration of a request for the extradition of a person or his surrender in order to proceed against him, or so that he may serve a sentence, for an offence other than an offence constituted by an act or omission for which his extradition is requested. The Requested State shall so inform the Requesting State.

ARTICLE 5

Extradition procedure and required documents

1. A request for extradition shall be made in writing and shall be communicated through

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the diplomatic channel. All documents submitted in support of a request for extradition shall be duly authenticated.

2. The request for extradition shall be accompanied:

- (a) if the person is accused of an offence—by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions (including time and place) which are alleged against the fugitive in respect of each offence;
- (b) if the person has been convicted of an offence—by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
- (c) if the person has been convicted of an offence but no sentence has been imposed at the time of the request—by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
- (d) in all cases—by a copy of the relevant provision of the statute, if any, creating the offence or a statement of the relevant law as to the offence and in either case a statement of the maximum punishment that can be imposed for that offence and of any applicable time limitation;
- (e) in all cases—by as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

3. Extradition may be granted of a person sought 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 an order for his extradition being made. Subject to the laws of the Requested State, if the Requested State so declares, the Requesting State shall in such cases not be bound by the provisions of paragraphs 1 and 2 of Article 12.

4. A Contracting Party which sends to the other Contracting Party a document in accordance with this Treaty that is not in the language of the other Contracting Party shall, if requested, provide a translation of the document into the language of the other Contracting Party.

ARTICLE 6**Authentication of supporting documents**

1. A document that, in accordance with Article 5, accompanies a request for extradition shall be admitted in evidence, if duly authenticated, in any extradition proceedings in the Requested State.
2. A document is duly authenticated for the purposes of this Treaty if:
 - (a) it purports to be signed or certified by a judge, magistrate, or an official in or of the Requesting State; and
 - (b) it purports to be authenticated by a public seal of an official, Department, or Minister of the Requesting State.

ARTICLE 7**Additional information**

1. If the Requested State considers that the information furnished in support of the request for extradition of a person is not sufficient to fulfil the requirements of its law with respect to extradition, 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 and the additional information furnished is not sufficient or is not received within the time specified, the

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person may be released from custody but such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 8

Provisional arrest

1. In case of urgency a Contracting Party through its appropriate authority, may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise 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, a statement of the existence and terms of a warrant of arrest or a judgment of conviction against the person, a statement of the maximum punishment that can be imposed or the punishment that has been imposed for the offence, and a statement of the acts or omissions (including time and place) alleged to constitute the offence.

3. The Requested State shall promptly inform the Requesting State of any action taken on the application.

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, supported by the documents specified in Article 5, has not been received.

5. The release of a person pursuant to 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.

ARTICLE 9

Conflicting requests

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular to:

- (a) if the requests relate to different offences—the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person; and
- (e) the ordinary place of residence of the person.

ARTICLE 10

Surrender of person to be extradited

1. Australia shall not be required to make a decision on a request for extradition before the expiration of fifteen days from the date on which the person has been held judicially to be liable to extradition or if appeal proceedings have been brought, before the expiration of fifteen days from the decision of the court which hears the appeal, or, where a further appeal has been brought from that decision to another court, the date of the decision of the other court.

2. 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

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channel. Reasons shall be given for any complete or partial rejection of an extradition request.

3. Where extradition of a person for an offence is granted, the person shall be removed from the territory of the Requested State from a point of departure in the territory of that State convenient to the Requesting State.

4. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the last-mentioned State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited it shall notify the other Party. The two Contracting Parties shall agree upon a new date of surrender and the provisions of paragraph 4 of this Article shall apply.

ARTICLE 11**Surrender of property**

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 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. Subject to the qualifications of paragraph 1 of this Article, the abovementioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition 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 12**Rule of speciality**

1. Subject to paragraph 3, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of his personal liberty, in the territory of the Requesting State for any offence committed before his extradition other than:

- (a) an offence for which his extradition was granted or any other offence described in Article 1 of which he could be convicted upon proof of the facts upon which the request for his extradition was based provided that that offence does not carry a penalty which is more severe than that which could be imposed for the offence for which extradition was sought; or
- (b) any other offence in respect of which the Requested State consents, in accordance with its law, to his being so detained, tried or subjected to a restriction of his personal liberty.

2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 5.

3. Paragraph 1 does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it.

ARTICLE 13**Re-extradition to a third state**

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned State shall not extradite that person to any third state for an offence committed before his surrender unless:

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- (a) the Requested State consents to such extradition; or
 - (b) the person has had an opportunity to leave the Requesting State and has not done so within forty five days of discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the territory of the Requesting State after leaving it.
2. Before acceding to a request pursuant to sub-paragraph (1) (a) of this Article, the Requested State may request the production of the documents mentioned in Article 5.

ARTICLE 14

Transit

1. Where a person is to be extradited to a Contracting Party from a third state or from a Contracting Party to a third state through the territory of the other Contracting Party, the Contracting Party to which or from which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request the Requested Contracting Party shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.
3. Permission for the transit of a person shall, subject to the law of the Requested Contracting Party, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3, the Contracting Party in whose territory the person is being held may direct that the person be released if his transportation is not continued within a reasonable time.
5. The Contracting Party to which or from which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that other Contracting Party in connection with the transit, should the other Contracting Party request reimbursement.

ARTICLE 15

Representation and expenses

1. The Requested State shall review for legal sufficiency documentation in support of an extradition request prior to submission to its judicial authorities and shall deal with the request of the Requesting State before such authorities.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, in the maintenance in custody of the person until he is surrendered to a person nominated by the Requesting State, and in relation to any legal proceedings in the Requested State arising out of the request for extradition.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 16

Mutual assistance in criminal matters

Subject to any further treaty between them, the Contracting Parties agree to afford each other, in accordance with their national law, the widest measure of mutual assistance in criminal matters, where such assistance is requested by their competent judicial authorities for the purpose of the investigation or prosecution of any offence under their jurisdiction.

ARTICLE 17

Entry into force

1. This Treaty shall enter into force on the first day of the second month following the date on which the Contracting Parties shall have notified each other that their legal requirements have been complied with.

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2. On its entry into force this Treaty shall, as between Australia and the Kingdom of the Netherlands, terminate and replace the Treaty between the United Kingdom and the Kingdom of the Netherlands for the extradition of criminals, signed at London, September 26, 1898.

3. If the notification from the Kingdom of the Netherlands under paragraph 1 of this Article does not provide for application of this Treaty to the Kingdom as a whole, the Treaty second-mentioned in paragraph 2 of this Article will remain in force between Australia and the Kingdom of the Netherlands in respect of that part of the Kingdom of the Netherlands to which the notification states that this Treaty does not apply.

ARTICLE 18**Territorial application**

As regards the Kingdom of the Netherlands, this Treaty shall apply to the territory of the Kingdom as a whole, unless the notification of the Kingdom of the Netherlands, referred to in Article 17, shall provide otherwise.

ARTICLE 19**Termination**

1. Either Contracting Party may terminate this Treaty at any time by written notification to the other Party. The termination shall be effective six months after the date of receipt of such notice.

2. Termination of this Treaty by the Kingdom of the Netherlands may be limited to one of its constituent parts.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Treaty.

TEN BLIJKE WAARVAN de ondergetekenden, daartoe naar behoren gemachtigd, dit Verdrag hebben ondertekend.

DONE at The Hague on the fifth day of September one thousand, nine hundred and eighty five in the English and Dutch languages both texts being equally authentic.

GEDAAN te S-Gravenhage op 5 September 1985 in de Nederlandse en de Engelse taal, zijnde beide teksten gelijkelijk authentiek.

For Australia,
Voor Australië,
LIONEL BOWEN

For the Kingdom of the Netherlands,
Voor het Koninkrijk der Nederlanden,
VAN DEN BROEK

NOTE

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

30 November