

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Justice

Extradition Act 1988

Extradition Legislation Amendment (2017 Measures No.1) Regulations 2017

The Act provides the legislative basis for Australia's extradition processes. It allows Australia to receive extradition requests from countries that are declared to be an 'extradition country' under the Act, and facilitates the making of requests for extradition by Australia to other countries.

Section 55 of the *Extradition Act 1988* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Section 5 of the Act provides that an 'extradition country' includes any country (other than New Zealand) that is declared by the regulations to be an extradition country. Subsection 11(1A) of the Act specifies that the regulations may provide that the Act applies to an extradition country subject to the limitations, conditions, exceptions or qualifications as are necessary to give effect to a multilateral extradition treaty in relation to that country. Subsection 11(1C) provides that this may be achieved by expressly applying the Act to the country subject to that treaty.

The *Extradition Legislation Amendment (2017 Measures No.1) Regulations 2017* (the Regulations) amends the *Extradition (Commonwealth Countries) Regulations 2010* (the current Commonwealth Countries Regulation) to remove reference to India from the list of extradition countries. It also amends the *Extradition (Physical Protection of Nuclear Material) Regulations 1988* and the *Extradition Regulations 1988* to amend the definition of Extradition Offences.

The *Extradition (India) Regulations 2010* (India Regulations) implements Australia's bilateral extradition treaty with India. The India Regulations declare India to be an 'extradition country' and, together with section 5 of the Act, provide the framework for Australia to consider extradition requests relating to India.

India is also declared as an 'extradition country' under the current Commonwealth Countries Regulation. The current Commonwealth Countries Regulation enables Australia to consider and make extradition requests to other Commonwealth Countries (as defined). This additional reference to India as an extradition country is unnecessary and may result in extradition requests not being considered under the India Regulations, which is the most appropriate framework for extradition requests. The Regulation removes India from the list of extradition countries in Schedule 1 to the current Commonwealth Countries Regulation. This will ensure that extradition requests from India will be considered under the India Regulations and the Act.

The Regulation amends the definition of the *Convention on the Physical Protection of Nuclear Material 1979* (Physical Protection Convention) in the *Extradition (Physical Protection of Nuclear Material) Regulations 1988* and the *Extradition Regulations 1988*, so that it has the same meaning as in the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Nuclear Safeguards Act).

The *Extradition (Physical Protection of Nuclear Material) Regulations 1988* (Extradition Nuclear Material Regulation) and *Extradition Regulations 1988* (Extradition Regulations) gives effect to Australia's extradition obligations under the Physical Protection Convention. The Physical Protection Convention establishes measures to prevent, detect and prosecute offences relating to the protection,

storage, and transportation of nuclear material. Article 7 of the Physical Protection Convention includes a list of offences for which parties may request a person's extradition (Extradition Offences).

On 8 July 2005, parties agreed to the *Amendment to the Convention on the Physical Protection of Nuclear Material* (the Amended Convention) which expanded the Extradition Offences in the Physical Protection Convention to include offences against trafficking of nuclear material and sabotage of nuclear facilities with intent to cause death, injury or damage by exposure to radiation or radioactive substances (Article 7). Article 11A of the Amended Convention also added a new obligation on parties to not regard offences committed under Article 7 of the Amended Convention as a 'political offence' when considering a request for extradition or mutual assistance (the political offence exception). The Amended Convention entered into force in Australia on 8 May 2016.

The Regulation amends the definition of Physical Protection Convention so that it captures amendments made to the Convention. It does so by amending the definition of the Physical Protection Convention to reference the Nuclear Safeguards Act definition, which implements the offence provisions in the Amended Convention (Division 2, Part 3). As a result of this amendment extradition requests from parties to the Convention and the Amended Convention for these offences can be considered.

The Extradition Regulations implement political offence exception obligations under multilateral treaties. Section 5 of the Act defines 'political offence' and provides that it does not include an offence prescribed by regulations to be an extraditable offence. Subsection 2B(1) of the Extradition Regulations provides that an offence is an extraditable offence if it is constituted by conduct of a kind referred to in any of the multilateral conventions listed, which includes the Physical Protection Convention.

Both the Act and the *Mutual Assistance in Criminal Matters Act 1987* (Mutual Assistance Act) provide that requests for extradition or mutual assistance must be refused if the offence for which assistance is sought is a political offence. Section 3 of the Mutual Assistance Act defines 'political offence' as having the same meaning as the Act. Accordingly, an update to the *Extradition Regulations 1988* is required to ensure that if Australia receives a request for extradition or mutual assistance pursuant to the Amended Convention the request will not be refused on the grounds that the alleged offending constitutes a political offence.

Consultation outside the Australian Government was not undertaken for the Regulations as they relate to criminal justice and law enforcement matters. Additionally, the Regulations do not have direct, or substantial indirect, effects on business, nor do they restrict competition.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after they are registered with the Federal Register of Legislation.

Details of the Regulation are set out in the [Attachment](#).

Authority: Section 55 of the *Extradition Act 1988*

Details of the Extradition Legislation Amendment (2017 Measures No.1) Regulations 2017

Section 1 – Name of Instrument

This section provides that the title of the legislative instrument is the *Extradition Legislation Amendment (2017 Measures No.1) Regulations 2017*.

Section 2 – Commencement

This section provides that the legislative instrument will commence on the day after it is registered.

Section 3 – Authority

This section specifies that the legislative instrument is made under the *Extradition Act 1988*.

Section 4 – Schedules

This section provides that any changes to instruments specified in the legislative instrument are found in the schedules of this instrument.

Schedule 1 – Amendments

Extradition (Commonwealth countries) Regulations 2010

Item 1

Item 1 omits India from the list of extradition countries at Schedule 1 in the *Extradition (Commonwealth countries) Regulations 2010*.

Australia has ratified a bilateral extradition treaty with India, implemented domestically through the *Extradition (India) Regulations 2010*. Extradition requests between Australia and India will be considered under the *Extradition Act 1988* and the *Extradition (India) Regulations 2010*.

Extradition (Physical Protection of Nuclear Material) Regulations 1988

Items 2 and 3

Items 2 and 3 repeal the definition of ‘Physical Protection Convention’ in section 2 of the *Extradition (Physical Protection of Nuclear Material) Regulations 1988* and insert a new definition. The new definition provides that the Physical Protection Convention has the same meaning as in the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Section 4 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* defines the Physical Protection Convention by reference to the Convention on the Physical Protection of Nuclear Material, including that convention as amended from time to time. This definition would incorporate amendments made by the *Amendment to the Convention on the Physical Protection of Nuclear Material*, and future amendments to the convention if Australia is a party.

Extradition Regulations 1988

Item 4

Item 4 inserts a new definition of ‘Physical Protection Convention’ into the *Extradition Regulations 1988*. This new definition states that the Physical Protection Convention has the same meaning as in the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Section 4 of the *Nuclear Non-Proliferation (Safeguards) Act 1987* defines the Physical Protection Convention by reference to the Convention on the Physical Protection of Nuclear Material, including that convention as amended from time to time. This definition would incorporate amendments made by the *Amendment to the Convention on the Physical Protection of Nuclear Material*, and future amendments to the convention if Australia is a party.

Item 5

Item 5 repeals paragraph 2B(1)(h) of the *Extradition Regulations 1988* which lists the *Convention on the Physical Protection of Nuclear Material* and substitutes a new paragraph 2B(1)(h) that references ‘Article 7 of the Physical Protection Convention.’

Article 7 of the Convention on the Physical Protection of Nuclear Material lists offences for which parties may request a person’s extradition to another party’s territory.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Extradition Legislation Amendment (2017 Measures No. 1) Regulations 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Extradition Act 1988* (the Extradition Act) provides the legislative basis for extradition in Australia. The Act allows Australia to receive extradition requests from countries that are declared to be an ‘extradition country’ under the Extradition Act, and facilitates the making of requests for extradition by Australia to other countries.

The legislative instrument removes India from the list of extradition countries at Schedule 1 of the *Extradition (Commonwealth countries) Regulations 2010* (the Commonwealth countries regulation). Australia has finalised a bilateral extradition treaty with India, the Extradition Treaty between Australia and the Republic of India (the India Extradition Treaty), and implemented that treaty domestically through the *Extradition (India) Regulations 2010*. As India is declared an ‘extradition country’ under the *Extradition (India) Regulations 2010* the inclusion of India in Schedule 1 of the Commonwealth countries regulation is no longer required.

The legislative instrument also amends the *Extradition (Physical Protection of Nuclear Materials) Regulations 1988* and the *Extradition Regulations 1988* to reflect amendments made to the *Convention on the Physical Protection of Nuclear Material 1979* (the Convention). The Convention is a multilateral treaty which establishes measures to prevent, detect and prosecute offences relating to the protection, storage and transportation of nuclear material. The Convention also requires signatories to provide extradition and mutual assistance to facilitate the enforcement of these offences. On 8 July 2005, signatories agreed to amendments to the Convention – the *Amendment to the Convention on the Physical Protection of Nuclear Material* (the Amended Convention) which relevantly, expanded the list of offences for which signatories may request a person’s extradition. It also inserted a new obligation on signatories to not regard offences committed under the Amended Convention as a ‘political offence’ when considering a request for extradition or mutual assistance (the political offence exception). The Amended Convention and these updated obligations became binding on signatories on 8 May 2016.

Human rights implications

The evolving nature of, and increased threats posed by, transnational crime requires Australia to have a robust and responsive extradition system that assists in effectively combating domestic and transnational crime, while providing appropriate safeguards. It is important to ensure that criminals cannot evade justice simply by crossing borders.

Extradition can engage a range of human rights, including the:

- prohibition against torture, cruel, inhuman and degrading treatment;
- right to life;
- right to a fair hearing and fair trial;
- right to liberty; and
- right to equality and non-discrimination.

Australia's extradition regime contains a number of measures that ensure Australia meets both international criminal justice obligations and human rights obligations. The Extradition Act contains a number of mandatory requirements that must be met before Australia can make or receive an extradition request.

Those requirements are supplemented by further safeguards contained in multilateral or bilateral treaties, including the India Extradition Treaty and the Amended Convention. Additionally, Australia will consider each individual extradition request on a case-by-case basis in light of its domestic legislative framework as well as international obligations.

The extradition process

The extradition process consists of three broad stages, and the Extradition Act requires consideration of safeguards at all three stages. First, the Attorney-General or the Minister for Justice (the decision-maker) has a discretion under section 16 of the Extradition Act whether to accept an extradition request. The decision-maker can only accept an extradition request, if they are of the opinion that the person sought is an extraditable person in relation to the extradition country. A person is an extraditable person if, there is a warrant in force in the requesting country for their arrest or, where the person has been convicted, the requesting country either intends to sentence that person, or if they have been sentenced, the whole or part of their sentence remains outstanding. In addition, the relevant offence must be an extradition offence, and the person must be believed to be outside of the country making the extradition request.

The second step is for a magistrate or eligible Federal Circuit Court Judge to determine whether the person is eligible for surrender under section 19 of the Extradition Act. A person is only eligible for surrender if:

- the necessary documents are produced;
- any additional requirements imposed by regulations are met;
- the magistrate or Judge is satisfied that the person's alleged conduct amounts to an offence in both countries; and
- the magistrate or Judge is satisfied there are no substantial grounds for believing there is an 'extradition objection.'

Section 7 of the Extradition Act provides that an extradition objection arises where:

- the person is sought for a political offence in relation to the extradition country; or
- the person is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, sex, sexual orientation, religion, nationality or political opinions; or
- the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, sex, sexual orientation, religion, nationality or political opinions; or
- the conduct constituting the offence for which the person is sought constitutes a military offence, but not a criminal offence; or
- the offence for which the person is sought is an offence for which they have been acquitted or pardoned by a competent tribunal or authority in the extradition country or Australia, or have undergone the punishment provided by the law of that country or Australia, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence (a double jeopardy ground of refusal).

Finally, if the person is found eligible for surrender, then the decision-maker must make a determination whether the person should be surrendered under section 22 of the Extradition Act. A person must not be surrendered where:

- there is an extradition objection in relation to the offence; or

- there are substantial grounds for believing that, if surrendered, the person would be in danger of being subjected to torture; or
- the requesting country has not given an assurance that the person sought will only be tried for the offences contained in the extradition request.

Further, paragraph 22(3)(c) of the Extradition Act provides that where an offence is punishable by a penalty of death, Australia cannot surrender a person unless an undertaking is given by the requesting party that:

- the person will not be tried for the offence; or
- if the person is tried for the offence, the death penalty will not be imposed on the person; or
- if the death penalty is imposed on the person, it will not be carried out.

The decision-maker also has a broad discretion under subsection 22(f) of the Extradition Act to refuse surrender.

At this stage of the extradition process, the person subject to extradition has the opportunity to make representations regarding any matter that they consider relevant to the decision-maker's determination, including human rights concerns. In circumstances where a person believes that human rights concerns were not adequately considered in the extradition process, they may seek review under the Extradition Act or under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution.

The specific human rights engaged by this legislative instrument are discussed below.

Prohibition against torture, cruel, inhumane and degrading treatment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) contain prohibitions on torture or cruel inhuman or degrading treatment or punishment. This includes *non-refoulement* obligations not to return a person to a country where they would be at risk of harm by way of torture or cruel inhuman or degrading treatment or punishment.

Paragraph 22(3)(b) of the Extradition Act prohibits extradition where the decision-maker has substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture. This language is consistent with Article 3 of the CAT.

The decision whether to surrender a person is made by the relevant decision-maker on a case-by-case basis, in accordance with the safeguards in the Extradition Act and Australia's international obligations. For the purposes of considering whether to refuse surrender under subsection 22(3), the decision-maker may consider all material reasonably available to assist in determining whether the person may be subjected to torture. This may include relevant international law obligations, any representations or assurances from the requesting country, country information, reports prepared by government or non-government sources, information provided through the diplomatic network and those matters raised on behalf of by the person who is the subject of the extradition request.

It is open to the decision-maker to consider, where appropriate, whether ongoing monitoring of an extradited individual's prosecution, sentence, and welfare should be a condition of the extradition. It is also open to the person who is the subject of an extradition request to challenge decisions at each stage of the extradition proceedings.

Article 4(3)(d) of the India Extradition treaty also allows a request for extradition to be refused if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, because of the person's age or state of health.

Article 12 of the Amended Convention also requires signatories to provide fair treatment to an accused at all stages of proceedings carried out in connection with any of the relevant offences.

This legislative instrument is consistent with a person's right in respect of prohibition against torture, cruel, inhuman, and degrading treatment.

Right to life

Article 6 of the ICCPR provides that every human being has the inherent right to life. This right shall be protected by law and no one shall be arbitrarily or unlawfully deprived of his or her life. Australia has a *non-refoulement* obligation under Article 6 not to remove a person to a country where there is a real risk that the person will be subject to the death penalty.

The Extradition Act reflects Australia's *non-refoulement* obligations and is consistent with the Australian Government's longstanding opposition to the death penalty. Paragraph 22(3)(c) of the Extradition Act requires an extradition request to be refused where the offence is punishable by a penalty of death, unless an undertaking has been provided that the person will not be tried for that offence or, if tried, the death penalty will not be imposed; or, if the death penalty is imposed, it will not be carried out.

Death penalty undertakings are an established tool in extradition. It is the Australian Government's longstanding experience that undertakings in relation to the death penalty in extradition cases have always been honoured. Undertakings are written government assurances and a breach of an undertaking would have serious consequences for the extradition relationship, and the broader bilateral cooperation relationship with the foreign country. The decision-maker would consider the reliability of any death penalty undertaking on a case-by-case basis.

Given the public nature of extradition, the Australian Government would most likely be aware of a breach of a death penalty undertaking. Australia monitors Australian citizens who have been extradited through its consular network and it is also open to the decision-maker to consider, where appropriate, whether ongoing monitoring of an extradited individual's prosecution, sentence and welfare should be a specific condition of the extradition.

It is open to the person who is the subject of an extradition request to challenge decisions at each stage of the extradition proceedings.

Article 4(1)(c) of the India Extradition Treaty also contains a mandatory ground of refusal in circumstances where the person sought may be sentenced to death for the offence for which the extradition is requested, unless the Requesting Party provides an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out. This provision is consistent with paragraph 22(3)(c) of the Extradition Act, as discussed above.

This legislative instrument is consistent with the right to life under the ICCPR and the Second Optional Protocol to the ICCPR.

Right to a fair hearing and fair trial

Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

The Australian Government's position is that Article 14 of the ICCPR does not contain *non-refoulement* obligations. However, the Extradition Act operates in a way that enables the decision-maker to consider humanitarian considerations such as a right to a fair trial in deciding

whether to surrender a person. Section 7(e) of the Extradition Act includes a double jeopardy ground of refusal. A person cannot be extradited if they have been acquitted or pardoned by a competent tribunal or authority in the extradition country or Australia, or have undergone the punishment provided by the law of that country or Australia, in respect of the extradition offence or another offence constituted by the same conduct that constitutes the extradition offence. This consideration is taken into account at the section 19 (eligibility hearing before a magistrate) stage of the extradition process.

Paragraph 22(3)(f) of the Extradition Act contains a general discretion to refuse surrender, which enables the decision-maker to consider human rights concerns, which, could include whether an extradited individual would have access to a fair trial. Relevant considerations may include the extent to which an individual would receive appropriate procedural guarantees in a criminal trial in the country to which he or she is being extradited. In accordance with the principle of procedural fairness, the person subject to extradition also has the opportunity to make representations regarding any human rights concerns.

It is open to the relevant decision-maker to request assurances from the requesting country about the treatment and conditions applying to a person upon extradition where concerns exist about whether that person would receive a fair trial. Assurances could include that the trial be held in open court, that the person has access to legal representation, that the person has an opportunity to test the evidence against them or that the person will be imprisoned in a particular jail. The decision-maker would consider any individual's claims and any representations or assurances provided by the requesting country. The decision-maker may also consider country information, reports prepared by government or non-government sources and information provided through the diplomatic network.

It is open to the person who is the subject of an extradition request to challenge decisions at each stage of the extradition proceedings.

Article 4(1)(b) of the India Extradition Treaty also requires extradition to be refused if under the law of the requesting state, the alleged offence has become immune from prosecution or punishment by reason of lapse of time. In addition, Article 4(3) grants both countries the ability to refuse extradition if:

- the person has been tried and finally dealt with in respect of the offence for which extradition is sought (Article 4(3)(a)); or
- the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting state by an extraordinary or ad hoc court or tribunal (Article 4(3)(c)).

Article 12 of the Amended Convention also requires signatories to provide fair treatment to an accused at all stages of proceedings carried out in connection with any of the relevant offences.

Other engagement with this right

The right to a fair hearing would also be engaged in relation to an extradition request received under the Amended Convention or the Indian extradition treaty.

If Australia receives a request under the Amended Convention then the 'no evidence' standard of evidence would apply. This is the international approach adopted in the United Nations Model Treaty on Extradition. The term 'no evidence' does not mean 'no information.' Rather, as provided for under the Extradition Act a range of documents are required which the relevant magistrate or eligible Federal Circuit Court Judge will consider under section 19 of the Extradition Act when determining whether the person is eligible for surrender. Evidence sufficient to prove each element of each alleged offence under the laws of the requested country (such as 'prima facie' evidence including witness statements and affidavits) is not required. This is because extradition is not a criminal process. Rather, it is an

administrative process to determine whether a person is to be surrendered to face justice in the Requesting Party. The purpose of extradition proceedings is not to determine guilt or innocence.

If Australia receives a request under the India Extradition Treaty, then supporting documentation to establish that the person sought has committed the offence must be provided. Indian domestic legal requirements have necessitated a departure from Australia's preferred 'no evidence' standard.

It is open to the person who is the subject of an extradition request to challenge decisions at each stage of the extradition proceedings.

The provisions in the India Extradition Treaty and the Amended Convention given effect by this legislative instrument operate consistently with the right to a fair hearing and fair trial under article 14 of the ICCPR.

Right to liberty

Article 9(1) of the ICCPR protects the right to freedom from arbitrary detention. The use of the term 'arbitrary' means that the detention, in all the circumstances, must be reasonable, necessary and proportionate to the end that is sought. Article 12 of the ICCPR provides that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement. This right may be limited under article 12(3) where the limitation is provided by law, and is necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

In the extradition context, a magistrate must not release a person on bail unless there are special circumstances justifying such release, for example where the person is in extremely poor health and cannot be treated in prison. This ensures the Extradition Act is suitably flexible to accommodate exceptional circumstances that may necessitate granting a person bail.

The presumption against bail for persons sought for extradition is appropriate given the serious flight risk posed in extradition matters and Australia's international obligations to secure the return of alleged offenders to face justice in the requesting country. Reporting and other bail conditions are not always sufficient to prevent individuals who wish to evade extradition by absconding. In extradition cases, there is an increased risk of persons absconding before they can be surrendered to the requesting country. If a person who has been remanded on bail absconds during extradition proceedings, it jeopardises Australia's ability to extradite the person which in turn would impede Australia's treaty obligations to return a person to the requesting country. Ultimately, it can also lead to a state of impunity where a person can disappear and continue to evade law enforcement authorities. The validity of Australia's process of remanding a person during extradition proceedings has been confirmed by the High Court in *Vasiljković v Commonwealth* [2006] HCA 40.

This is consistent with accepted international practice for a person to be held in administrative detention pending extradition proceedings. The Extradition Act provides that when a surrender warrant is issued, Australia has generally two months from the date of the warrant to transfer the person to the foreign country. This timeframe ensures that a person will not be held in custody indefinitely while awaiting transfer.

Article 12(3) of the India Extradition Treaty alternatively requires an individual to be held for a 'reasonable period.'

It is open to the person who is the subject of an extradition request to challenge decisions at each stage of the extradition proceedings.

To the extent that this legislative instrument limits the right to liberty, it does so in a way that is reasonable and proportionate.

Right to equality and non-discrimination

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Section 7 of the Extradition Act promotes this right by prohibiting extradition where:

- surrender is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, sex, sexual orientation, religion, nationality or political opinions; or
- the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, sex, sexual orientation, religion, nationality or political opinions.

The person subject to the extradition has an opportunity to make representations to the decision-maker regarding all of the protected attributes in Article 26 of the ICCPR.

Article 4(3)(b) of the India Extradition Treaty also provides that the requested State may refuse surrender if they have substantial grounds to believe that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons.

Article 11B of the Amended Convention also promotes this right by allowing a requested state to refuse a request for extradition if it has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

This legislative instrument is consistent with the right to equality and non-discrimination.

Conclusion on this instrument and human rights implications

While this legislative instrument engages with and limits some human rights, the protections in the Extradition Act, the India Extradition Treaty and the Amended Convention ensure that this legislative instrument does so in a reasonable and proportionate way.