



**Australian Government**  
**Attorney-General's Department**

**International  
Crime Cooperation Division**

## **Fact Sheet 4—What is Extradition?**

### **Why do we need extradition?**

Australia needs to ensure that criminals cannot evade justice by crossing borders. This requires an effective extradition regime that includes appropriate safeguards.

Australia's extradition relationships with other countries exist to enable Australia to ensure the effective administration of criminal justice in this country. Australia's extradition relationships also enable us to cooperate with partner countries to fight crime and prevent Australia from becoming a refuge and safe haven for persons accused of serious crimes in other countries.

### **Statistics about cases—Annual Report**

The number of extradition requests made and received by Australia is available from our annual report, which can be downloaded from [www.ag.gov.au](http://www.ag.gov.au).

### **This Fact Sheet provides information—not legal advice**

This Fact Sheet provides general information only. It does not give legal advice on the operation of the *Extradition Act 1988* and should not be relied on as legal advice.

### **What is extradition?**

Extradition is the process by which one country apprehends and sends a person to another country to face criminal charges or serve a sentence.

There is also a system of interstate extradition within Australia. This Fact Sheet is only about international extradition, not interstate extradition.

For example, extradition is used if a person is alleged to have committed an offence, such as murder, in Australia and flees to the United States before he or she is prosecuted. In that case, Australia can make an extradition request to the US for the arrest of the person in the US and his or her return to Australia to face prosecution.

The Extradition Act provides Australia's legislative basis for extradition. It sets out a number of mandatory requirements which must be met before Australia can make or accept an extradition request (for more detail see below). Those requirements may be supplemented by requirements contained in a multilateral or bilateral treaty.

The Australian Government Attorney-General's Department administers the Extradition Act. The extradition process is managed by the Australian Central Authority for extradition, which is the Mutual Assistance and Extradition Branch of the International Crime Cooperation Division of the Attorney-General's Department.

### **Who can make an extradition request in Australia?**

Australian extradition requests can only be made by the Attorney-General or the Minister for Home Affairs. Extradition is not available at the request of members of the public.

### **Which countries can Australia make an extradition request to?**

Australia is able to make an extradition request to any country. Australia's treaty partners have obligations to consider Australia's requests. In the absence of a treaty, it is a matter for the receiving country in accordance with its domestic law to determine whether the country can agree to Australia's extradition request.

### **Which countries can make an extradition request to Australia?**

Countries that are defined as an 'extradition country' in Australian legislation can make an extradition request to Australia.

An extradition country is defined in the Extradition Act and includes any country that is declared by the regulations to be an extradition country. For example, the *Extradition (United States of America) Regulations* declare that the US is an extradition country and enable Australia to receive extradition requests from the US.

This is different from mutual assistance. Australia can receive mutual assistance requests from any country without the need for regulations or a treaty (see Fact Sheet 1— What is mutual assistance?)

### **How does Australia make an extradition request to a foreign country?**

*Australian law enforcement agency identifies the need to extradite and obtains an arrest warrant*

A Commonwealth, State or Territory law enforcement agency identifies the need to extradite a person from a foreign country for prosecution in Australia or to serve a sentence of imprisonment and obtains an arrest warrant.

*Urgent provisional arrest requests*

In urgent circumstances, the Attorney-General's Department, on receipt of an arrest warrant from the Commonwealth, State or Territory law enforcement agency, can seek a provisional arrest through Interpol or directly from the foreign country itself (see Fact Sheet 5— Extradition and provisional arrest).

*Director of Public Prosecutions drafts documents in support of the extradition request*

The Commonwealth Director of Public Prosecutions or the State or Territory Director of Public Prosecutions prepares documentation in support of the extradition request,

including a prosecutor's affidavit of law. The Director of Public Prosecutions undertakes to prosecute the person if they are returned to Australia.

The extradition request documentation is sent to the Attorney-General's Department for review and to ensure compliance with the requirements of the relevant treaty and the Extradition Act.

*Minister decides whether to make the extradition request*

The Attorney-General or Minister for Home Affairs decides whether to make an outgoing extradition request. This decision can be subject to judicial review.

*Attorney-General's Department sends the extradition request to the foreign country*

The Attorney-General's Department transmits the extradition request to the other country through diplomatic channels. The Attorney-General's Department liaises with the Central Authority in the other country about the request.

The other country conducts extradition proceedings in accordance with their law and decides whether to agree to Australia's extradition request.

*Surrender and return of person*

The Attorney-General's Department advises the relevant Australian law enforcement agency if the person is being surrendered. The Attorney-General's Department liaises with the other country and the Australian law enforcement agency to arrange the logistics of surrender. The Australian law enforcement agency escorts the person back to Australia.

There is a different process for making extradition requests to New Zealand (see below).

The timeframe varies significantly in each case and depends on factors such as the laws and processes for extradition in the other country and any treaty requirements.

**How can a foreign country make an extradition request to Australia?**

*Extradition requests and urgent provisional arrest requests*

The incoming extradition process starts with an extradition request from a foreign country. The foreign country sends its request to the Attorney-General's Department.

A foreign country can also make an urgent request to provisionally arrest a person before it sends a formal extradition request to Australia.

*Minister formally receives and accepts the extradition request*

The Attorney-General or Minister for Home Affairs must decide whether to accept an extradition request. If a request is accepted, a notice to a magistrate that the request has been received is issued. To accept a request, the Attorney-General or the Minister for Home Affairs must be of the opinion that:

- the person is an *extraditable person* in relation to the extradition country
- the offence is an *extradition offence* and
- there is dual criminality.

The Attorney-General or the Minister for Home Affairs must also form the opinion that there is no extradition objection in respect of the offence for which the person's extradition is sought.

*Extraditable objections* include if extradition is sought for a political and military offence, if there is double jeopardy, if the person is to be prosecuted on the basis of race, religion, nationality and political opinions or whether the person would be prejudiced at trial or otherwise on the basis of his or her race, religion, nationality and political opinion.

*Extraditable person* means a person who has been convicted in a foreign country, or a person in respect of whom a foreign country has issued an arrest warrant for an *extradition offence*.

*Dual criminality* means that the conduct would be an offence in Australia as well as in the foreign country.

*Extradition offence* means an offence punishable by at least 12 months

*Extradition country* means a country declared in regulations made under the Extradition Act. Whenever Australia ratifies a bilateral extradition treaty regulations are made containing that Treaty. In addition, Australia has declared some countries in regulations with which we do not have a bilateral extradition treaty, such as Denmark.

*The person is arrested and the magistrate considers bail*

The CDPP applies to a magistrate to issue a warrant for the person's arrest. The magistrate in Australia issues a warrant for the arrest of the person. The arrest warrant is executed by the police.

The person must be remanded in custody unless there are 'special circumstances' that warrant bail being granted.

*The magistrate determines whether the person is eligible for surrender*

In determining whether the person is eligible for surrender, the magistrate considers:

- whether the necessary documents (eg duly authenticated warrants and statement of the person's conduct constituting the offence) are produced
- if there are any additional requirements imposed by regulations. For example the *Extradition (Republic of France) Regulations* require that the offence for which extradition is sought carry a penalty of two years imprisonment
- whether there is *dual criminality*, and
- whether there is an *extradition objection*.

### *Review of the magistrate's decision*

The person or country can seek review of the decision of the magistrate about the person's eligibility for surrender.

The magistrate's surrender decision can be reviewed by the Federal Court or the Supreme Court of the State or Territory within 15 days. The decision can be appealed further to the Full Court of the Federal Court and then the High Court, again within 15 days.

### *Attorney-General or Minister decides if the person should be surrendered*

If the magistrate determines the person is 'eligible for surrender', or if the person consents to extradition, the Attorney-General or the Minister for Home Affairs decides whether to surrender the person.

In deciding whether to extradite a person who has been found eligible for extradition the Attorney-General or the Minister for Home Affairs considers:

- any *extradition objections*
- whether the person will be subjected to torture
- whether the offence is punishable by a penalty of death
- whether the extradition country concerned has given a speciality assurance for the person, and
- treaty requirements and any other issues, as the Attorney-General and the Minister for Home Affairs have a general discretion as to whether to surrender the person.

An *extradition objection* includes:

- i) the offence is a political offence
- ii) the surrender is sought for purpose of prosecuting on grounds of race, religion, nationality or political opinions
- iii) 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, religion, nationality or political opinions
- iv) the offence is a military offence only, and
- v) the person has been acquitted, pardoned or already punished for the offence in Australia or the requesting country.

### *Prosecution in lieu—Australian citizens*

The Attorney-General or the Minister for Home Affairs may consent to the prosecution of an Australian citizen in Australia instead of extraditing that person to the foreign country. This can only be done if Australia refuses extradition on the ground of citizenship and the other country would also not extradite its own citizen in similar circumstances. However, Australia does not, as a matter of practice, refuse to grant extradition on the grounds of citizenship.

### *Consent*

The person may consent to their extradition. In 2006–07, four out of the eight people who were extradited by Australia to other countries consented to their extradition.

### *Judicial review of extradition*

Decisions made by the Attorney-General or the Minister for Home Affairs can be subject to judicial review.

### *Surrender and return of person*

If a decision is made to surrender a person to a foreign country, the Attorney-General's Department liaises with the foreign country about the logistics for surrender. 'Surrender' is the term used for transporting a person to another country.

Authorities from the foreign country escort the person to the foreign country.

If the person is not removed from Australia within two months from the surrender warrant being issued, the person can apply to the courts to be released.

The timeframe for return of a person varies significantly in each case and depends on factors such as whether the person consents to extradition and/or pursues the avenues of judicial review available in the extradition process.

### **When does an extradition request become public?**

The receipt of an extradition request from a foreign country or the fact that Australia has made an extradition request becomes public at the time of the person's arrest or the subsequent commencement of extradition proceedings.

The Australian Government does not usually disclose whether it has received or made an extradition request before arrest to avoid giving the person who is the subject of a request an opportunity to flee the jurisdiction. To do otherwise would defeat the purpose of extradition and could compromise police investigations.

### **Extradition between Australia and New Zealand**

There is a separate extradition process for extradition requests between Australia and New Zealand.

The 'backing of warrants scheme' between Australia and New Zealand is administered by police forces and prosecuting authorities in Australia and New Zealand.

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### **Further information**

For further information, see:

- Fact Sheet 11—Extradition between Australia and New Zealand.