



Australian Government
Attorney-General's Department

**International
Crime Cooperation Division**

Fact Sheet 5—Extradition and provisional arrest

What is a provisional arrest request?

A provisional arrest request is an urgent request to arrest a person pending receipt of an extradition request. A provisional arrest request may be appropriate when it is believed that the fugitive may flee the jurisdiction.

What are the requirements for Australia making a provisional arrest request to a foreign country?

Each extradition treaty specifies the documents required for a provisional arrest request and most specify the means by which a provisional arrest request must be made.

The Australian Government Attorney-General's Department prepares a request for a provisional arrest and sends it to the foreign country.

In most cases, the following documents must be included in a provisional arrest request to a foreign country:

- a list of the offences for which the person's arrest is sought
- a statement of the acts or omissions that constitute the offence(s)
- a copy of the legal provision(s) setting out the offence(s) and the penalty for the offence(s)
- a copy of the warrant issued in Australia for the person's arrest
- a statement that if the person is provisionally arrested then Australia will seek the person's extradition within the period required by that country's law
- a physical description of the person, including his/her nationality and his/her photo if available, and
- a statement of why the request is urgent.

Does Australia need a treaty with a country to make a provisional arrest request?

No. Australia does not need a treaty to make a provisional arrest request to a foreign country.

Australia can make a provisional arrest 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 requested country in accordance with its domestic laws to determine whether the country can agree to Australia's provisional arrest request.

What are the requirements for Australia to accept a provisional arrest request from a foreign country?

Australia can only accept a provisional arrest request from a country which is an 'extradition country' under the Extradition Act.

After receiving the provisional arrest request, the Attorney-General's Department decides whether it is appropriate to apply for a provisional arrest warrant.

If a decision is made that a provisional arrest warrant should be obtained, the Attorney-General's Department refers the matter to the Commonwealth Director of Public Prosecutions and the Australian Federal Police. The Director of Public Prosecutions makes the provisional arrest warrant application before a magistrate.

Before issuing a warrant for the provisional arrest of a person under section 12 of the *Extradition Act 1988*, a magistrate must be satisfied that:

- an **arrest warrant for the person** exists in the extradition country or the person has been convicted of an offence against the law of the extradition country
- the offence to which the warrant or conviction relates is an '**extradition offence**'. An 'extradition offence' is an offence that attracts a minimum penalty of 12 months imprisonment in the extradition country (some treaties specify a minimum penalty of two years imprisonment), and
- the person is believed to be **outside the country making the provisional arrest request**.

Additional requirements may be included in any extradition treaty between Australia and a foreign country.

If the provisional arrest warrant is issued by the magistrate, Australian Federal Police officers execute the warrant.

The person arrested is then brought before a magistrate and is remanded in custody or released on bail. The country which made the provisional arrest request has a limited time to make a formal extradition request to Australia (usually 45 or 60 days). If an extradition request is not received in that time the person can apply to a magistrate to be released from custody.

Relationship between provisional arrest requests and Interpol Red Notices

Red Notices are sometimes referred to by the media as ‘international warrants’. Interpol issues Red Notices, which include warrants issued by a country for the arrest of the person specified in the notice.

For the purpose of extradition, Australia does not arrest a person on the basis of receiving a Red Notice. Generally, Australian law enforcement officers can only arrest a person for an offence against Australian law. Their arrest powers do not enable them to act on an Interpol Red Notice. The Extradition Act sets out procedures for obtaining an arrest warrant from an Australian magistrate to arrest a person at the request of a foreign country with which Australia has an extradition relationship.

Australia will only arrest a person for the purpose of extradition where another country makes a ‘provisional arrest request’, or where Australia has decided to accept a formal extradition request and has arranged for a magistrate to issue an arrest warrant. Similar procedures are followed in other countries, including the United Kingdom.

This Fact Sheet provides information—not legal advice

This is a general information note. It does not give legal advice on the operation of the *Extradition Act 1988* and should not be relied on as legal advice.

Further information

For further information, see:

- Fact Sheet 4—What is Extradition?
- Fact Sheet 6-9 —Extradition Flowchart
- Fact Sheet 11—Extradition between Australia and New Zealand