



Fact Sheet 4 – What is Extradition?

Why do we need extradition?

Australia needs to ensure that criminals cannot evade justice simply by crossing borders. This requires a responsive, streamlined extradition system that effectively combats domestic and transnational crime, including terrorism, with 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

Information about the number of extradition requests made and received by Australia is available from our annual report, which you can download from our website www.ag.gov.au.

This Fact Sheet is information – not legal advice

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

What is extradition?

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

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

For example, extradition is used if a person commits an offence, such as murder, in Australia and flees to the United States (US) before he or she is prosecuted. In that case, Australia could 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. See more detail below in the sections on 'How does Australia make an extradition request to a foreign country' and 'How can a foreign country make an extradition request to Australia'. 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.

Who can make an extradition request in Australia?

Australian extradition requests can only be made by the Attorney-General or the Minister for Justice and Customs. 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 domestic law in the foreign country 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' 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 further Fact Sheet 1.

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 and obtains an arrest warrant.

Urgent provisional arrest requests

If it is an urgent matter, 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 on provisional arrest.

Director of Public Prosecutions drafts the extradition request

The Commonwealth Director of Public Prosecutions or the relevant State or Territory Director of Public Prosecutions provides advice and drafts extradition requests. The Director of Public Prosecutions undertakes to prosecute the person if they are returned to Australia.

The extradition request is sent to the Attorney-General's Department to ensure the request is in the proper form and complies with the requirements of the relevant treaties and the Extradition Act.

Minister decides whether to make the extradition request

The Attorney-General or Minister for Justice and Customs decides whether to make an outgoing extradition request. This decision is 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 progress of the request.

The other country conducts extradition proceedings as required by their laws 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 is dependent on 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 their request to the Attorney-General's Department.

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

Minister formally receives and accepts the extradition request

The Attorney-General or Minister for Justice and Customs 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 Justice and Customs must be satisfied that:

- the person is an *extraditable person* in relation to the extradition country
- the offence is an *extradition offence*
- there is dual criminality, and
- there is no double jeopardy.

The Attorney-General or the Minister for Justice and Customs must also form the opinion that the offence is not a political offence or only a military offence.

The person is arrested and the magistrate considers bail

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 are produced eg duly authenticated warrants and statement of the person’s conduct constituting the offence
- if there are any additional requirements imposed by regulations. For example the *Extradition (Republic of France) Regulations* require two years, rather than one year, as the minimum period of imprisonment to establish an extraditable offence.
- 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.

Extraditable person means a person who has been convicted in a foreign country, or a person for which a foreign country has issued an arrest warrant.

Dual criminality means that the conduct would be an offence in both Australia and the foreign country.

Extradition offence means an offence punishable by at least 12 months imprisonment.

Extradition country means a country declared in regulations. Whenever Australia ratifies a bilateral extradition treaty it is enacted in regulations. In addition, Australia has declared some countries in regulations with which we do not have a bilateral extradition treaty, such as Denmark.

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 Justice and Customs 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 Justice and Customs considers:

- whether there are 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 in relation to the person, and
- treaty requirements and any other issues, as the Attorney-General and the Minister for Justice and Customs 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 may consent to the prosecution of an Australian citizen in Australia instead of extraditing that person. 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 2004-05, nine out of the 12 people who were extradited by Australia to other countries consented to their extradition.

Judicial review of extradition

Decisions in this process 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 extraditing 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 is dependent on the complexity of any issues that may arise and issues such as whether the person consents to extradition and/or pursues the avenues of review available in the extradition process.

When does an extradition request become public?

The receipt or making of an extradition request becomes public at the time of the person's arrest or subsequent 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 crucial police investigations.

Extradition between Australia and New Zealand

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

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

How can New Zealand make an extradition request to Australia?

Receipt of arrest warrant – New Zealand Police contact Australian Federal Police

This extradition process starts with the Australian Federal Police receiving an arrest warrant from New Zealand through a New Zealand Police Liaison Officer located in Australia.

Urgent provisional arrest

In urgent circumstances, a magistrate can issue an arrest warrant without receipt of a New Zealand arrest warrant where:

- an application has been made on behalf of New Zealand for the issue of a warrant
- a New Zealand arrest warrant has been issued
- no application has been made for the indorsement of the arrest warrant, and
- the issue of the arrest warrant in relation to the person is, having regard to any information that the magistrate considers relevant, justified in all the circumstances.

CDPP seeks endorsement of New Zealand arrest warrant from Australian magistrate

The Commonwealth Director of Public Prosecutions seeks endorsement of the warrant from a magistrate. The magistrate must make an endorsement on the warrant where an application is made in the statutory form for the endorsement of a New Zealand warrant, with an affidavit sworn by an Australian Federal Police Officer that the person the subject of the warrant is, or is suspected of being, in or on his or her way to Australia.

The Attorney-General's Department is not involved in the Australia-New Zealand scheme.

The person is arrested in Australia

The Australian Federal Police arrest the person in Australia who is brought before a magistrate and remanded in custody unless there are 'special circumstances'.

Australian magistrate decides whether to surrender the person to New Zealand

The magistrate in Australia decides whether to make an order surrendering the person to New Zealand. However, the magistrate can decide not to surrender the person to New Zealand if the magistrate is satisfied that:

- the offence is trivial
- the accusation of the offence was not made in good faith or in the interests of justice
- a lengthy period has elapsed since the offence was committed, or
- for any other reason, it would be unjust, oppressive or too severe a punishment to surrender the person to New Zealand.

This is different from the general extradition process described above as the Attorney-General and the Minister for Justice and Customs are not involved in the Australia-New Zealand scheme.

Surrender and return of person to New Zealand

The magistrate makes an order surrendering the person. The Australian Federal Police liaise with the New Zealand Police Liaison Officer to arrange the logistics for the surrender of the person.

The New Zealand Police escort the person being extradited back to New Zealand.

Review of surrender decision in Australia

The 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.

Consent to extradition to New Zealand

The person can consent to extradition once:

- they are on remand
- an indorsed New Zealand warrant has been obtained, and
- a request has been made to the magistrate to undertake surrender proceedings.

How can Australia make an extradition request to New Zealand?

Australian law enforcement agency identifies the need to extradite

The process for an outgoing request to New Zealand starts when a Commonwealth, State or Territory law enforcement agency identifies the need to extradite a person from New Zealand.

Urgent provisional arrest by Australian law enforcement agency

If it is an urgent matter, the relevant law enforcement agency obtains an arrest warrant and seeks a provisional arrest from New Zealand, through the New Zealand Police Liaison Officer.

Australian Law enforcement agency obtains an arrest warrant

The law enforcement agency liaises with the Director of Public Prosecutions in their own jurisdiction about making an extradition request.

The law enforcement agency applies to a magistrate for an arrest warrant.

Transmission of arrest warrant to New Zealand

The law enforcement agency forwards the arrest warrant to New Zealand through the New Zealand Police Liaison Officer.

New Zealand extradition process

The matter is then subject to New Zealand processes.

Surrender and return of person to Australia

If New Zealand decides to surrender the person, the Australian police liaise with the New Zealand Police Liaison Officer about the progress of the request and the logistics of surrender.

The Australian law enforcement agency escorts the person being extradited back to Australia.

This fact sheet is available electronically at www.ag.gov.au/extraditionandma

Further information

For further information, see:

- Fact Sheet 5 – Provisional arrest and extradition, and
- Fact Sheets 6- 9 – Extradition Flowcharts.