



## Fact Sheet 3 – Waiver of Extradition

### This fact sheet is information, not legal information

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

### A person can waive extradition

In Australia, once a person is remanded in custody or on bail, the person can elect to waive the extradition process. If a person elects to waive the extradition process, it can reduce the time the person spends in custody in Australia as not all stages in the extradition process will need to be completed.

If a person wishes to waive the extradition process, the person must inform a magistrate that he/she wishes to waive extradition in relation to the extradition offence(s).

The magistrate must inform the person that:

- once the order is made, the person cannot apply for the order to be revoked
- the foreign country may not have given, and if the order is made, will not be required to give, a speciality assurance
- certain requirements in the Extradition Act that would otherwise apply, will not apply if the order is made (including requirements relating to 'extradition objections'), and
- the person will be surrendered to the foreign country if the Attorney-General makes a determination that the person is to be surrendered.
- If the magistrate is satisfied that:
  - the person voluntarily informed the magistrate that he/she wishes to waive extradition in relation to the extradition offence(s)
  - after informing the person of the above matters, the person confirms that he/she wishes to waive extradition, and
  - the person is legally represented or was given adequate opportunity to be legally represented in the proceedings
  - the magistrate must make an order committing the person to prison pending the Attorney-General's surrender determination.

If the magistrate makes an order committing the person to prison, the Attorney-General must make a determination as to whether the person should be surrendered to the foreign country as soon as is reasonably practicable. In making a surrender determination, the Attorney-General must have regard to all the circumstances of the case and be satisfied that:

- there are no substantial grounds for believing that the person would be in danger of being tortured, and
- there is no real risk that the death penalty will be carried out.

## Further information

For further information see:

- Fact sheet 1 – Provisional Arrest Requests
- Fact sheet 2 – Overview of the Extradition Process
- Flowchart 4 – Procedure for Incoming Extradition Requests
- Flowchart 5 – Procedure for Outgoing Extradition Requests