



Australian Government
Attorney-General's Department

International
Crime Cooperation Division

Fact sheet 1 – Provisional Arrest Requests

This fact sheet is 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* (Cth) (the Extradition Act) and should not be relied on as legal advice.

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.

Generally, 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, 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, his/her photograph and his/her fingerprints, if available, and
- a statement of why the request is urgent.

Does Australia need a treaty with a foreign 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 foreign country in accordance with its domestic laws to determine whether to arrest the person according 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 foreign country which is an 'extradition country' under the Extradition Act.

'Extradition country' means a country declared to be an 'extradition country' in regulations for the purposes of the Extradition Act.

After receiving the provisional arrest request, the Attorney General's Department decides whether to apply for an extradition arrest warrant.

Before issuing a warrant for the arrest of a person, a magistrate must be satisfied that:

- an arrest warrant for the person exists in the foreign country or the person has been convicted of an offence against the law of the foreign country
- the offence to which the warrant or conviction relate is an 'extradition offence' (**'extradition offence'** means an offence that carries a penalty of at least 12 months imprisonment; however, some regulations specify a minimum penalty of at least two years imprisonment), and
- the person is believed to be outside the foreign country making the provisional arrest request.

If the extradition arrest warrant is issued by the magistrate, Australian police execute the warrant.

After the person is arrested, they are brought before a magistrate and remanded in custody or released on bail if there are 'special circumstances' that justify the grant of bail. The foreign country which made the provisional arrest request has a limited time to make a formal extradition request to Australia (usually 45 or 60 days from the day on which the person was arrested). If an extradition request is not received within that time, the person can apply to a magistrate to be released from custody or discharged of the recognizances on which bail was granted.

Relationship between provisional arrest requests and Interpol Red Notices

Interpol 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 purposes of extradition, Australia does not arrest a person on the basis of receiving an Interpol 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 extradition 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.

Further information

For further information see:

- Fact sheet 2 – Overview of the Extradition Process
- Fact sheet 3 – Waiver of Extradition
- Flowchart 4 – Procedure for Incoming Extradition Requests
- Flowchart 5 – Procedure for Outgoing Extradition Requests