Flowchart 4 - Procedure for Incoming Extradition Requests

(1) Crime committed: A crime is committed in a foreign country.

(2) Alleged offender: Alleged offender is in Australia.

(3) Receipt: Australia receives an extradition request from a foreign country.

(4) Accept*: The Attorney-General has a discretion to issue a notice to a magistrate that the request has been received if he/she is satisfied that the person is an *extraditable person* in relation to the *extradition country* (s 16).

(5) Arrest and remand/bail: If an urgent extradition arrest warrant was not issued, the magistrate issues an arrest warrant (s 12). The warrant is executed by the police. The person must be remanded in custody unless there are "special circumstances" that justify the grant of bail (s 15).

(6) Eligible for surrender: A magistrate determines if the person is eligible for surrender (s 19) if satisfied:
(1) the necessary documents are produced
(2) of any additional requirements imposed by regulations, such as the need to establish a *prima facie* case
(3) the conduct would have constituted an *extradition offence* if done in Australia (*dual criminality*), and
(4) there are no substantial grounds for believing that there is an *extradition objection* in relation to the offence.
If the magistrate determines that the person is eligible for surrender, the person must be remanded in custody unless there are "special circumstances" that justify the grant of bail.

(7) Surrender*: The Attorney-General determines whether the person should be surrendered (s 22) only if:
(1) there is no *extradition objection*
(2) the person will not, on surrender to the extradition country, be subjected to torture
(3) the death penalty will not be imposed/carried out
(4) a speciality assurance has been given
(5) a mandatory ground for refusal in regulations does not apply, or a discretionary ground for refusal in regulations should not apply, and
(6) s/he considers in his/her discretion, the person should be surrendered.

(8A) Logistics of surrender: AGD liaises with the foreign country about logistics of surrender.

(8B) Release: The Attorney-General decides not to surrender the person.

(9) Escorts: Authorities from the foreign country escort the person to the foreign country.

(10) Prosecution: The person is prosecuted in the foreign country.

(3A) Provisional arrest: In urgent cases, the foreign country may send a provisional arrest request to AGD. An application is made to a magistrate for an extradition arrest warrant (s 12). The warrant is executed by the police. The country must provide a formal extradition request within 45 days of the person's arrest (this time period can be varied by treaty (s 17)). Not all cases involve an urgent extradition arrest warrant, therefore this step is only part of the process if a provisional arrest request is received and granted.

(6A) Waive: A person can waive extradition (ss 15A and 15B). The magistrate must be satisfied that:
(1) the person voluntarily waives extradition
(2) the person is or has had the opportunity to be legally represented, and
(3) after informing the person that:
  a. the person cannot apply for the order to be revoked
  b. a speciality assurance is not required
  c. requirements that would otherwise apply, will not apply, and
  d. the person will be surrendered if it is ordered by the Attorney-General.
the person confirms that he/she wishes to waive extradition.

If an order is made, the Attorney-General determines whether the person should be surrendered only if:
(1) the person will not be tortured, and
(2) there is no real risk that the death penalty will be carried out.

(6B) Consent: A person can consent to their extradition before a magistrate (s 18).

(6C) Review: Person or country can seek review of the magistrate's decision under s 21 of the Act in the Federal Court. Such a decision can be appealed to the Full Court of the Federal Court and then to the High Court.

(7A) Prosecution in lieu: If the Attorney-General refuses to extradite a person, the Attorney-General may consent to the person being prosecuted for the offence in Australia (in lieu of extradition).

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 (s 6).

Extradition country means a country declared in regulations (s 5).

Extradition offence means an offence punishable by at least 12 months imprisonment (s5).

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

Extradition objections (s 7) includes:
i) the offence is a political offence
ii) the surrender is sought for purpose of prosecuting on grounds of race, sex, sexual orientation, 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, sex, sexual orientation, religion, nationality or political opinions
iv) the offence is a military offence only, or
v) the person has been acquitted, pardoned or already punished for the offence in Australia or the requesting country.

The person may make submissions to the Attorney-General.

If the person is not removed from Australia within 2 months from the surrender warrant, the person can apply to be released (s 26).

* A person can seek review of these decisions under s39B of the *Judiciary Act 1903* and s 75(v) of the Constitution.