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Statutory Rules 1988 No. 1

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Extradition (Republic of Austria) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 24 November 1988.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

Lionel Bowen
 Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Republic of Austria) Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears: "the Act" means the *Extradition Act 1988*.

Declaration of Republic of Austria as extradition country

3. The Republic of Austria is declared to be an extradition country.

Application of Act

4. The Act applies in relation to the Republic of Austria subject to the Treaty between Australia and the Republic of Austria concerning Extradition that came into force on 6 February 1975 (being the treaty a copy of the

English text of which is set out in Schedule 1) as amended by the Protocol between Australia and the Republic of Austria amending that Treaty that came into force on 1 February 1987 (being the protocol a copy of the English text of which is set out in Schedule 2).

SCHEDULE 1

Regulation 4

**TREATY
BETWEEN AUSTRALIA
AND THE REPUBLIC OF AUSTRIA
CONCERNING EXTRADITION**

Australia and the Republic of Austria,
DESIRING to make provision for the extradition of persons accused or convicted of offences,

HAVE AGREED as follows:

ARTICLE 1

Each Contracting Party undertakes to extradite to the other Contracting Party, subject to the provisions of this Treaty, any person found in its territory who is accused, or has been convicted, of an offence committed in the territory of the other Contracting Party or outside that territory in the circumstances referred to in paragraph 3 of Article 3.

ARTICLE 2

(1) A reference in this Treaty to the territory of a Contracting Party is a reference to all the territory under the jurisdiction of that Party, including airspace and territorial sea, and vessels and aircraft owned by that Party or registered in its territory if any such vessel is on the high seas or any such aircraft is in flight when the act or omission constituting the offence takes place.

(2) For the purposes of this Treaty, the territory falling under the jurisdiction of Australia includes the Territories for the international relations of which Australia is responsible.

ARTICLE 3

(1) Extradition of a person shall be granted for an act or omission constituting an offence, whether committed in or outside the territory of the requesting State, only where the act or omission constituting the offence would, if it had taken place under similar circumstances in the part of the territory of the requested State where he is found, have constituted an offence described in paragraph 4.

(2) Extradition shall be granted in respect of an act or omission constituting an offence only where the act or omission was, according to the law of the requesting State and the requested State, at the time when it was committed, and at the time of the decision on the request for extradition, punishable by a maximum penalty of at least one year's imprisonment and also, in the case of a person who has been convicted of the offence, where a period of imprisonment of at least four months still remains to be served.

(3) Extradition shall be granted in respect of an offence committed outside the territory of the requesting State only where the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

(4) The offences referred to in paragraph 1 are as follows:

1. Wilful murder; murder.

SCHEDULE 1—continued

2. Manslaughter.
3. An offence constituted by an act referred to in Article III of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Administering drugs or using instruments with intent to procure the miscarriage of women.
5. Maliciously or wilfully wounding or inflicting grievous bodily harm: assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a girl under sixteen years of age.
8. Indecent assault.
9. Procuration.
10. Bigamy.
11. Kidnapping; abduction; false imprisonment; dealing in slaves.
12. Stealing, abandoning, exposing or unlawfully detaining a child.
13. Bribery.
14. Perjury; subornation of perjury.
15. Arson.
16. An offence concerning counterfeit currency.
17. Forgery or uttering what is forged.
18. Theft; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property or credit by false pretences; receiving stolen property; any other offence in respect of property involving fraud.
19. Fraud by a bailee, banker, agent, factor or trustee, or by a director or officer of a company.
20. Burglary; housebreaking; any other offence involving breaking and entering premises.
21. Robbery.
22. Blackmail or extortion by means of threats or by abuse of authority.
23. An offence against the law relating to bankruptcy or insolvency.
24. Maliciously or wilfully damaging property.
25. Any act done with intent to endanger the safety of persons travelling on a railway or on a vehicle, vessel or aircraft or to endanger a railway, vehicle, vessel or aircraft.
26. An offence against the law relating to dangerous drugs or narcotics.
27. Piracy.
28. An unlawful act against the authority of the master of a ship.
29. The unlawful seizure, or the unlawful exercise of control, of an aircraft, by force or threat thereof or by any other form of intimidation.
30. Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in this paragraph.

(5) Extradition shall also be granted for any other act or omission constituting an offence if the offence is, according to the laws of both Contracting Parties, one for which extradition can be granted.

ARTICLE 4

- (1) A person shall not be extradited where—
 - (a) he has already been tried, and discharged or acquitted, by a competent tribunal in, or has already undergone punishment according to the law of, the requested

SCHEDULE 1—continued

State or a third State for the act or omission constituting the offence for which his extradition is requested:

- (b) he has acquired exemption from prosecution or punishment by lapse of time or other lawful cause according to the law of the requesting or requested State in respect of the act or omission constituting the offence for which his extradition is requested;
- (c) the offence for which his extradition is requested is regarded by the requested State as an offence of a political character;
- (d) the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions or that the person might, if surrendered, be prejudiced in the criminal proceedings against him, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions; or
- (e) the offence for which extradition is requested is solely an offence against military law or a fiscal offence.

(2) The extradition of a person shall be refused if the person is under examination, or is being tried, in the territory of the requested State for the act or omission constituting the offence for which his extradition is requested.

ARTICLE 5

- (1) Neither Contracting Party shall be obliged to extradite its own nationals.
- (2) For the purposes of this Article, the expression 'national', in relation to Australia, includes an Australian protected person.

ARTICLE 6

A person shall not be extradited if he is liable to be tried by a Court that is only provisionally, or under exceptional circumstances, empowered to deal with the offence for which his extradition is requested, or if his extradition is requested for the purpose of his serving a sentence imposed by such a Court.

ARTICLE 7

If, under the law of the requesting State, a person whose extradition is requested is liable to the death penalty for an offence for which his extradition is requested but the law of the requested State does not provide for the death penalty in a similar case, the requested State may refuse the extradition of the person unless the requesting State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

ARTICLE 8

An amnesty law of the requested State shall not preclude the extradition of a person if the act or omission constituting the offence for which his extradition is requested is not subject to the jurisdiction of that State.

ARTICLE 9

The requested State may postpone the extradition of a person in order to prosecute him for an offence, other than an offence constituted by the act or omission for which his extradition is requested, or in order that he may serve a sentence for such an offence, and shall advise the requesting State accordingly.

ARTICLE 10

- (1) Subject to paragraph 3, a person extradited under this Treaty shall not—
 - (a) be detained or tried, or be subjected to any other restriction of his personal liberty, in the requesting State for any offence committed before his extradition other than—

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SCHEDULE 1—continued

- (i) an offence for which he was extradited or any other offence referred to in Article 3 of which he could be convicted upon proof of the facts upon which the request for his extradition was based; or
 - (ii) any other offence referred to in Article 3 in respect of which the requested State consents to his being so detained or tried, or subjected to any other restriction of his personal liberty; or
- (b) be extradited to a third State unless the requested State consents to his being so extradited.
- (2) A request for the consent of the requested State under this Article shall be accompanied by a copy of any statement made by the extradited person in respect of the offence concerned and by the documents mentioned in subparagraphs (a) to (d) of paragraph 2 of Article 11.
- (3) Paragraph 1 of this Article does not apply if the person has left the requesting State, or has had an opportunity, throughout a period of forty-five days beginning on the day on which he was finally set at liberty in due course of law, to leave the requesting State but has failed to do so.

ARTICLE 11

- (1) A request for the extradition of a person shall be in writing.
- (2) The request shall be accompanied—
- (a) if the person is charged with an offence or is convicted in his absence, by a warrant, duly authenticated, for his arrest and such duly authenticated documents as, according to the law of the requested State, would justify his arrest and trial if the act or omission constituting the offence had been committed in the territory of the requested State;
 - (b) if the person has been convicted of an offence, by such duly authenticated documents as prove his final conviction, and a statement showing the punishment imposed on the person and the extent to which the punishment has not been carried out;
 - (c) by a statement of the offence for which the extradition is requested and particulars of the act or omission constituting that offence to the extent to which those particulars are not contained in the abovementioned documents;
 - (d) by a copy of the relevant provisions of the statute, if any, creating the offence or a statement of the relevant law and in either case a statement of the punishment that can be imposed for the offence; and
 - (e) by as accurate a description as possible of the person together with any other information which would help to establish his identity.

ARTICLE 12

- (1) A document that is furnished in support of a request for extradition shall be admitted in evidence, if duly authenticated, in any extradition proceedings in the requested State.
- (2) A document is duly authenticated for the purposes of this Treaty if—
- (a) in the case of a warrant it is signed, and in any other case it is certified, by a Judge, Magistrate or other competent authority in the requesting State; and
 - (b) it is sealed with the official seal of a Minister of State of the requesting State.

ARTICLE 13

- (1) If the requested State considers that the evidence or information furnished in support of the request for extradition is not sufficient for extradition to be granted, that State may request that additional evidence or information be furnished within such time as it specifies.

SCHEDULE 1—continued

(2) If the additional evidence or information is not furnished within the time specified, the requested State shall make its decision on the request on the basis of the evidence and information already furnished.

ARTICLE 14

(1) In case of urgency the requesting State may apply for the provisional arrest of a person pending a request for the extradition of the person.

(2) The application shall be accompanied by —

- (a) a statement that a request for the extradition of the person will be made;
- (b) a statement that a warrant for the arrest of the person for the alleged commission of an offence for which his extradition may be requested under this Treaty has been issued by a Judge, Magistrate or other competent authority in the requesting State or that the person has been convicted of such an offence in the requesting State; and
- (c) such further information, if any, as would, according to the law of the requested State, justify the arrest of the person without the issue of a warrant, or the issue of a warrant for the arrest of the person, if the act or omission constituting the offence had taken place in that State.

(3) The authorities of the requested State shall decide on the application in accordance with the law of that State.

(4) If a request for the extradition of a person who has been arrested upon such an application is not made in accordance with this Treaty within forty days after the arrest of the person, the person may be set at liberty, but nothing in this paragraph prevents the institution of further proceedings for the purpose of securing the extradition of the person if such a request is subsequently made.

ARTICLE 15

A person who has not been conveyed out of the requested State within sixty days after his committal for extradition, or if proceedings are taken to test the validity of the committal within sixty days after the decision in the proceedings, may be released and the requested State may refuse to extradite him for the same offence.

ARTICLE 16

Where an order has been made for the extradition of a person, he shall be conveyed by the appropriate authorities in the requested State to such place of embarkation in the territory of that State and at such time as are agreed by the Contracting Parties.

ARTICLE 17

Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State. However, the requesting State shall bear any expenses occasioned by being legally represented before the courts of the requested State and by conveying the person from the place of embarkation referred to in Article 16.

ARTICLE 18

(1) When the extradition of a person is granted, the requested State shall, so far as its law allows, hand over to the requesting State all articles, including sums of money, that—

- (a) may serve as proof of the offence; or
- (b) have been acquired by the person as a result of the offence and are in his possession.

(2) If the articles in question are liable to seizure or confiscation in the territory of the requested State, that State may, in connexion with pending proceedings, temporarily

SCHEDULE 1—continued

retain them or hand them over on condition that they are returned without charge after the termination of the proceedings against the person extradited.

(3) The provisions of paragraphs 1 and 2 shall not prejudice the rights of the requested State or of any persons other than the person being extradited and, where any such rights exist, the articles shall, if the requested State so requests, be returned to the requested State without charge after the termination of the proceedings against the person extradited.

ARTICLE 19

If a document that is sent from a Contracting Party to the other Contracting Party in accordance with this Treaty is not in the language of the other Contracting Party, the first-mentioned Contracting Party shall also send a translation of the document into that language.

ARTICLE 20

(1) Where requests are received from the requesting State and from one or more other States for the extradition of the one person, the requested State shall, subject to its obligations under Treaties with the other States, determine to which of those States the person is to be extradited.

(2) In determining to which State a person is to be extradited, the requested State shall have regard to all the circumstances and, in particular, to the relative seriousness of the offences to which the requests relate, the places where the offences were committed, the respective dates on which the requests were received, the nationality of the person and his ordinary place of residence.

ARTICLE 21

(1) Where—

(a) a person is to be extradited for an offence by a third State to a Contracting Party through the territory of the other Contracting Party; and

(b) the person could be extradited for that offence by the other Contracting Party to the first-mentioned Contracting Party under the conditions of this Treaty, the other Contracting Party shall, upon request, grant the transit of that person through its territory.

(2) A request for transit shall be accompanied by—

(a) a copy of the warrant or of a certificate proving the conviction of that person, issued in the requesting State; and

(b) the same documents as would be required under subparagraphs (c) and (d) of paragraph 2 of Article 11 in the case of a request for extradition.

ARTICLE 22

(1) Where—

(a) a person who is to be extradited by a third State to a Contracting Party is proposed to be transported by aircraft over the territory of the other Contracting Party, without landing in that territory; and

(b) the transit of that person through that territory would be permitted under Article 21,

the first-mentioned Contracting Party shall notify the other Contracting Party of the proposed transport of the person and shall confirm to the other Contracting Party that the transport is in accordance with Article 21 and in particular that the person is not a national of the other Contracting Party.

(2) In the event of an unscheduled landing in the territory of a Contracting Party of an aircraft carrying a person who is being so transported, that Contracting Party may permit the transit but, if it does not permit the transit—

SCHEDULE 1—continued

- (a) it may cause the person to be held in custody pending receipt of a request for transit or for extradition; and
- (b) if a notification has been given under paragraph 1, the notification shall be deemed to be an application for the provisional arrest of the person properly made in accordance with Article 14.

ARTICLE 23

- (1) Communications between the Contracting Parties shall be conveyed through the diplomatic channel.
- (2) An application under Article 14 of this Treaty may also be made by means of the facilities of the International Criminal Police Organization—Interpol.

ARTICLE 24

This Treaty applies to offences that are alleged to be committed, or are committed, on or after the day on which this Treaty enters into force.

ARTICLE 25

- (1) This Treaty is subject to ratification.
- (2) The instruments of ratification shall be exchanged as soon as possible in Vienna.
- (3) This Treaty shall enter into force on the ninetieth day after the day on which the instruments of ratification are exchanged.
- (4) Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Canberra on the twenty-ninth day of March One thousand nine hundred and seventy-three in the English and German languages, each text being equally authentic.

E. G. WHITLAM
For Australia

DR. FRANZ PEIN
For the Republic of Austria

SCHEDULE 2

Regulation 4

PROTOCOL

between Australia and the Republic of Austria amending the Treaty concerning Extradition done at Canberra on 29 March 1973

Australia and the Republic of Austria

DESIRING to amend the Treaty between the Commonwealth of Australia and the Republic of Austria concerning Extradition, done at Canberra on 29 March 1973,

HAVE AGREED as follows:

ARTICLE 1

The text of Article 1 of the Treaty shall be replaced by the following:

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SCHEDULE 2—continued

“ARTICLE 1

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the requesting State for one or more of the offences referred to in Article 3.”

ARTICLE 2

The text of Article 3 of the Treaty shall be replaced by the following:

“ARTICLE 3

(1) For the purposes of this Treaty, offences for which extradition may be granted are offences however described which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if the period of deprivation of liberty which remains to be served is at least four months, or, in the case of more than one such period, the aggregate of such periods is at least four months.

(2) If extradition is granted for an offence described in paragraph 1 of this Article, extradition may, insofar as the law of the requested State allows, also be granted for other offences which, by reason of the penalty prescribed or the period of deprivation of liberty imposed and remaining to be served, would not otherwise be extraditable pursuant to this Treaty.

(3) For the purpose of this Article—

- (a) it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same or similar terminology;
- (b) in determining whether an offence is an offence for which extradition may be granted, the totality of the acts or omissions alleged against the person whose surrender is sought, shall be taken into account and it shall not matter whether, under the laws of both Contracting Parties, the offence comprises the same elements.

(4) Where the offence has been committed outside the territory of the requesting State extradition shall be granted where the law of the requested State provides for the exercise of jurisdiction over an offence committed outside its territory in similar circumstances. Where the law of the requested State does not so provide the requested State may, in its discretion, grant extradition.

(5) Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is sought was committed, provided that—

- (a) it was an offence in the requesting State at the time of the acts or omissions constituting the offence; and
- (b) the acts or omissions alleged would, if they had taken place in the territory of the requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.”

ARTICLE 3

The text of Article 4, paragraph (1), sub-paragraph (b), shall be replaced by the following:

- “(b) he has acquired exemption from prosecution or punishment by lapse of time or other lawful cause in respect of the act or omission constituting

SCHEDULE 2—continued

the offence for which extradition is requested; for the purposes of this sub-paragraph the statutory provisions of the requesting State alone shall be relevant.”

ARTICLE 4

The text of Article 11 of the Treaty shall be replaced by the following:

“ARTICLE 11

- (1) A request for extradition shall be made in writing. All documents furnished in support of a request for extradition shall be duly authenticated.
- (2) The request for extradition shall be accompanied—
 - (a) if the person is accused or has been convicted in his absence of an offence—by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the fugitive in respect of each offence;
 - (b) if the person has been convicted of an offence—by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - (c) if the person has been convicted of an offence but no sentence has been imposed—by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
 - (d) in all cases by documents setting out the relevant provision of the statute, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case a statement of the punishment that can be imposed for the offence; and
 - (e) in all cases by as accurate a description as possible of the person sought together with any other information which will help to establish the person's identity and nationality.
- (3) Extradition may be granted of a person sought pursuant to the provisions of this Treaty, notwithstanding that the requirements of Paragraphs 1 and 2 of this Article have not been complied with provided that the person sought consents to an order for his extradition being made.”

ARTICLE 5

The text of Article 17 of the Treaty shall be replaced by the following:

“ARTICLE 17

Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State. The requested State shall make all arrangements which may be necessary with respect to the representation of the requesting State in any proceedings arising out of the request if the law of the requested State provides for such representation. However, the requesting State shall bear any expenses occasioned by conveying the person from the place of embarkation referred to in Article 16 of the Treaty.”

ARTICLE 6

- (1) This Protocol shall enter into force on the first day of the third month following the month in which the Contracting Parties have notified each other in writing through the diplomatic channel that their respective requirements for entry into force have been fulfilled.

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SCHEDULE 2 —continued

(2) This Protocol shall remain in force for so long as the Treaty between the Commonwealth of Australia and the Republic of Austria concerning Extradition, done at Canberra on 29 March 1973, remains in force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Vienna on the Thirtieth day of August, One Thousand Nine Hundred and Eighty-Five in the English and German languages, each text being equally authentic.

LIONEL BOWEN
For Australia

HAROLD OFNER
For the Republic of Austria

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *L* 1988.

30 November/