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1997B01925



Statutory Rules 1988 No. 1

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Extradition (Kingdom of Belgium) 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 (Kingdom of Belgium) Regulations.

Interpretation

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

Declaration of Kingdom of Belgium as extradition country

3. The Kingdom of Belgium is declared to be an extradition country.

Application of Act

4. The Act applies in relation to the Kingdom of Belgium subject to the Treaty on Extradition between Australia and the Kingdom of Belgium that

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came into force on 19 November 1986 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 4

**TREATY ON EXTRADITION
BETWEEN
AUSTRALIA
AND
THE KINGDOM OF BELGIUM***AUSTRALIA*

and

THE KINGDOM OF BELGIUM.

Desiring to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty for the extradition of persons charged with or convicted of offences.

Have agreed as follows:

Article 1*Obligation to extradite*

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 an extraditable offence.

Article 2*Extraditable offences*

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting Parties by imprisonment 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, extradition shall be granted only if a penalty of at least one year has been imposed and if a period of at least three months of such penalty remains to be served.
2. For the purpose of this Article, 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.
3. 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 extradition is sought, shall be taken into account and it shall not matter whether, under the laws of both Contracting Parties, the constituent elements of the offence differ.
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 punishment of an offence committed outside its territory in similar circumstances.
5. Extradition may be granted pursuant to the provisions of this Treaty whether or not the offence in relation to which extradition is sought was committed before or after the entry into force of this Treaty, provided that:
 - a) in the case of a request emanating from Belgium:
 - (i) it was an offence under the law of Belgium at the time of the acts or omissions constituting the offence; and

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- (ii) the acts or omissions alleged would, if they had taken place in Australia at the time of the making of the request for extradition, have constituted an offence against the law in force in Australia; and
- b) in the case of a request emanating from Australia, it was an offence under the law of both Contracting Parties at the time of the acts or omissions constituting the offence.

Article 3

Exceptions to extradition

1. Extradition shall not be granted in any of the following circumstances:
 - a) when the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family;
 - b) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - c) when the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting Parties;
 - d) where final judgement has been passed in the Requested State or in a third State in respect of the offence for which the person's extradition is sought; or
 - e) where the person whose extradition is sought has, according to the law of either Contracting Party, become immune from prosecution or punishment by reason of lapse of time.
2. Extradition may be refused in any of the following circumstances:
 - a) when the person whose extradition is sought is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other Contracting Party so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken;
 - b) when the competent authorities of the Requested State have decided to refrain from prosecuting the person for the offence in respect of which extradition is requested;
 - c) where the offence with which the person sought is charged or of which he is convicted, carries the death penalty under the law of the Requesting State unless that State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out;
 - d) when the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in that State;
 - e) when a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is sought; or
 - f) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition would be incompatible with humanitarian considerations such as the age or health of the person.
3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting Parties under any multilateral Convention.

SCHEDULE—continued

Article 4

Postponement of extradition

The Requested State may postpone the extradition of a person in order to proceed against him, or so that he may serve a sentence, for an offence other than the offence for which his extradition is sought.

In such case the Requested State shall advise the Requesting State accordingly.

Article 5

Extradition procedure and required documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.
2. The request for extradition shall be accompanied:
 - a) if the person is accused 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 person in respect of each offence;
 - b) if the person has been convicted in his absence—
by a judicial or other document, including a judgement, or a copy thereof, authorizing the apprehension of the person, issued in the Requesting State, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - c) 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;
 - d) 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;
 - e) in all cases by the text of the relevant provision of the law creating the offence (or in the case of Australia in respect of a common law offence, by a statement of the law applicable to the offence) including any law relating to the limitation of proceedings and, in either case, a statement of the punishment that can be imposed for the offence; and
 - f) in all cases by as accurate a description as possible of the person claimed together with any other information which may help to establish his identity and nationality.
3. To the extent permitted by the law of the Requested State, 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.
4. The documents submitted in support of a request for extradition shall be recompanied by a translation into one of the languages of the Requested State.

Article 6

Authentication of supporting documents

1. A document that, in accordance with Article 5, accompanies a request for extradition

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shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested State.

2. A document is authenticated for the purposes of this Treaty if:
 - a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the Requesting State; and
 - b) it purports to be authenticated by being sealed with an official or public seal of the Requesting State or of a Minister of State or of a Department or officer of the Government, of the Requesting State.

Article 7

Additional information

1. If the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of its law with respect to extradition, that State may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest and the additional information furnished is not sufficient or is not received within the time specified, the person may be released from custody but such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

Article 8

Provisional arrest

1. In case of urgency a Contracting Party may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise in writing for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.
2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 5 authorizing the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested State, a statement of the acts or omissions alleged to constitute the offence.
3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person claimed and the Requesting State shall be promptly notified of the result of its request.
4. A person arrested upon such an application may be set at liberty upon the expiration of forty five days from the date of his arrest if a request for his extradition, supported by the documents specified in Article 5, has not been received.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 9

Conflicting requests

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

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SCHEDULE—continued

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- a) the relative seriousness of the offences;
- b) the time and place of commission of each offence;
- c) the respective dates of the requests;
- d) the nationality of the person; and
- e) the ordinary place of residence of the person.

Article 10*Surrender of person to be extradited*

1. The Requested State shall as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel.
2. Where extradition of a person for an offence is granted, the person shall be removed from the territory of the Requested State from a point of departure in the territory of that State convenient to the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the last-mentioned State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite him for the same offence.
4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other Contracting Party. The two Contracting Parties shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

Article 11*Surrender of property*

1. To the extent permitted under the law of the Requested State all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.
2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting State so requests, be surrendered to that State even if the extradition, having been consented to, cannot be carried out owing to the death or escape of the person sought.
3. The rights of the Requested State or of third parties in the property shall be preserved. Where such rights exist, the property shall, without charge, be returned to the Requested State at the end of the proceedings in the Requesting State if the Requested State so requests.
4. The Requested State may temporarily retain the property referred to in this Article if it considers it necessary for the purpose of criminal or civil proceedings. In such a case the Requesting State may request the temporary handing over of the property, undertaking to return it as soon as the proceedings conducted in its territory permit if the Requested State so requests.

Article 12*Rule of speciality*

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of his personal liberty,

SCHEDULE—continued

in the territory of the Requesting State for any offence committed before his extradition other than:

- (i) an offence for which his extradition was granted; or
- (ii) any other extraditable offence in respect of which the Requested State consents to his being so detained, tried or subjected to a restriction of his personal liberty.

2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 5.

3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within forty five days of final discharge in respect of the offence for which that person was extradited or if the person has returned voluntarily to the territory of the Requesting State after leaving it.

Article 13

Surrender to a third State

1. The person extradited may not be surrendered by the Requesting State to a third State for an offence committed prior to his surrender to the first-mentioned State, except:

- a) where the Requested State consents; or
- b) where the person extradited, having had an opportunity to leave the Requesting State, has not done so within forty five days of his final discharge in respect of the offence for which he was surrendered, or has returned voluntarily to the Requesting State after leaving it.

2. Where the consent of the Requested State is sought in accordance with this Article, that State may request that the request for the consent be supported by the relevant documents mentioned in Article 5 of this Treaty.

Article 14

Transit

1. Each Contracting Party may, when requested by the other Contracting Party, grant transit through its territory of a person sought by the latter Party from a third State pursuant to an extradition treaty. In support of the request, the Requesting State shall produce the documents and information required by the State which has been requested to grant transit.

2. Permission for the transit of a person shall, subject to the law of the Requested State, include permission for the person to be held in custody during transit.

3. Where a person is being held in custody pursuant to paragraph 2 of this Article, the Requested State may direct that the person be released if his transportation is not continued within a reasonable time.

4. The Requesting State shall reimburse the Requested State for any expense in connection with the transit incurred by the Requested State in its territory.

Article 15

Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.

2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, and in the maintenance in custody of the person until he is surrendered to a person nominated by the Requesting State.

SCHEDULE—continued

Article 16

Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force six months after date of receipt of such notice.

Article 17

Termination of existing Treaties

On the entry into force of this Treaty the provisions of:

- a) the Treaty for the Mutual Extradition of Fugitive Criminals, done at Brussels on 29 October 1901;
 - b) the Supplementary Convention, done at London on 5 March 1907; and
 - c) the second Supplementary Convention, done at London on 3 March 1911.
- shall cease to have effect between Australia and the Kingdom of Belgium.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Treaty.

Done in duplicate at Brussels, on 4 September 1985, in English, French and Dutch, each text being equally authentic.

For Australia:
LIONEL BOWEN

For the Kingdom of Belgium:
LEO TINDEMANS

NOTE

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

30 November/