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Statutory Rules 1989 No. 1

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Extradition (Republic of France) Regulations


I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 28 September 1989.

BILL HAYDEN

Governor-General

By His Excellency's Command,


 Minister of State
 for Justice

MICHAEL TATE

Citation

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

Commencement

2. These Regulations commence on 23 November 1989.

Interpretation

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

Declaration of Republic of France as extradition country

4. The Republic of France is declared to be an extradition country.

Application of Act

5. The Act applies in relation to the Republic of France subject to the Treaty on Extradition between the Government of the Republic of France and the Government of Australia done at Canberra on 31 August 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

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SCHEDULE

Regulation 5

**TREATY ON EXTRADITION BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF FRANCE
AND THE GOVERNMENT OF AUSTRALIA**

The Government of the Republic of France and the Government of Australia,

DESIRING to make more effective the co-operation of the two States 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

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 an extraditable offence.
2. The provisions of this Treaty do not affect any obligations assumed by the Contracting Parties under multilateral conventions to which both are party.

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 or other deprivation of liberty for a maximum period of at least two years or by a more severe penalty. Where a 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 a penalty of at least six months or a more severe penalty has been imposed, or if a period of at least six 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. For the purpose of this Article, in determining whether an offence is an offence against the law of both Contracting Parties, the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account.
4. Extradition may be refused if the offence has been committed outside the territory of the Requesting State and if the law of the Requested State does not provide for prosecution for the same offence committed outside its territory in similar circumstances.

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 considered by the Requested State to be a political offence or to be an offence connected with such an offence. The taking or attempted taking of the life of a Head of State shall not be considered to be a political offence;
 - (b) when the Requested State has substantial grounds for believing that the 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,

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nationality, or political opinions or that that person's position may be prejudiced for any of those reasons:

- (c) when the offence for which the extradition is requested consists solely of a breach of military law;
 - (d) where final judgment has been passed in the Requested State in respect of the offence for which the person's surrender is sought; or
 - (e) where the person whose surrender 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 conformity with the law of the Requested State in any of the following circumstances:
- (a) when the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that State; or
 - (b) when the person whose surrender is sought is a national of the Requested State. Where the extradition request is refused solely because the person sought is a national of the Requested State, that State shall, if the Requesting State so requests and the law of the Requested State allows, submit the case to its competent authorities for criminal prosecution.
3. Extradition may also be refused:
- (a) when the competent authorities of the Requested State have decided to refrain from prosecuting the person whose surrender is sought for the offence in respect of which extradition is requested;
 - (b) when the offence for which extradition is requested is a revenue offence. For the purpose of this exception, 'revenue offence' means an offence in connection with taxes, customs or other duties or exchange controls;
 - (c) when final judgment has been passed in a third state in respect of the offence for which the person's surrender is sought;
 - (d) when a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose surrender is sought, or if the competent authorities of the Requested State have decided to discontinue a prosecution for that offence; or
 - (e) if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, particularly because of the person's age or state of health.

Article 4**Capital Punishment**

When the offence for which extradition is requested is punishable by death under the law of the Requesting State, and if in respect of such offence the death-penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death-penalty will not be carried out.

Article 5**Postponement of Surrender**

The Requested State may postpone the surrender of a person whose extradition is sought in order to proceed against the person, or so that the person may serve a sentence for an offence other than the offence constituted by an act or omission for which extradition is requested. In this case, the Requested State shall advise the Requesting State accordingly.

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Article 6

Extradition Procedure and Required Documents

1. A request for extradition shall be made in writing and shall be presented through the diplomatic channel.
2. The request for extradition shall be accompanied:
 - (a) if the person is accused, by the original or a certified copy of the warrant for arrest or any other instrument having the same effect issued in accordance with the procedure laid down in the law of the Requesting State;
 - (b) if the person has been convicted of an offence in Australia but no sentence has been imposed, by the original or a certified copy of the warrant for arrest and such documents as provide evidence of the conviction and that it is intended to impose a sentence;
 - (c) if the person has been convicted in the person's absence, the original or a certified copy of the judgement of conviction accompanied by a document stating the extent to which the sentence has not been carried out and the original or a certified copy of the warrant for arrest or any other instrument having the same effect issued in accordance with the procedure laid down in the law of the Requesting State;
 - (d) in other cases, by the original or a certified copy of the judgement of conviction or any other instrument equivalent to a judgement, declaring that the person has been convicted and stating the sentence imposed, with a statement that the sentence is immediately enforceable and of the extent to which the sentence has not been carried out; and
 - (e) in all cases by:
 - a statement of the acts or omissions alleged in respect of each offence for which extradition is requested, indicating in particular the time and place at which each offence was committed;
 - references to, and the text of, the relevant legal provisions, and in particular those relating to limitation of proceedings and to the sentence that may be imposed;
 - 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.

Article 7

Authentication of Supporting Documents

1. The documents that, in accordance with Article 6, accompany a request for extradition shall be admitted in evidence in the Requested State, if duly authenticated.
2. A document is duly authenticated for the purposes of this Treaty if it purports to be signed or certified by a Judge, Magistrate or officer in or of the Requesting State and to bear the official seal of the Requesting State or of a Minister of State, Ministry or officer of the Government of that State. However, where the documents are bound and sealed, a Judge, Magistrate or officer in or of the Requesting State need only sign or certify the first and last pages of the bound documents.

Article 8

Additional Information

1. If the Requested State considers that the information furnished in support of the request for extradition 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.

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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 extradition.
3. Where the person is released from custody in accordance with paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

Article 9**Provisional Arrest**

1. (a) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.
(b) The application for provisional arrest shall be transmitted by means of the facilities of the International Criminal Police Organization (INTERPOL), by post or telegraph or by any other means affording a record in writing.
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 and terms of the warrant of arrest or the judgement of conviction, a statement of the punishment that can be imposed or has been imposed, a description of the nature of the offence, and a brief 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 arrest the person sought and the Requesting State shall be promptly notified of the result of its application.
4. A person arrested upon such an application may be set at liberty upon the expiration of forty-five days and shall be set at liberty upon the expiration of sixty days from the date of the person's arrest if a request for extradition, supported by the documents specified in Article 6, has not been received. However, the release of the person sought at any time shall remain possible provided that the Requested State takes all measures it considers necessary to prevent the escape of the person concerned.
5. The release of a person pursuant to paragraph 4 of this Article shall not prevent re-arrest and extradition if the request is subsequently received.

Article 10**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 State of its decision.
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:
 - (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.

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Article 11

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 is granted, the Requesting State shall be informed of the place of surrender, the period within which the person will be surrendered and the length of time for which the person has been detained with a view to extradition.
3. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other Party. The two Parties shall agree upon a new period within which the person is to be surrendered.
4. If the person sought has not been removed by the expiration of the set period, that person may be released after the expiration of a further period of fifteen days from that date, and shall be released in any case on the expiration of a period of thirty days. The Requested State may, in accordance with its laws, refuse to extradite a person so released for the same offence.

Article 12

Surrender of Property

1. At the request of the Requesting State, the Requested State shall seize and surrender, to the extent permitted by its law and if extradition is granted, any property which may be required as evidence or which, having been acquired as a result of the offence has been found in the possession of the person sought at the time of arrest, or discovered at any subsequent time.
2. Subject to the qualifications of paragraph 1 of this Article, the abovementioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition, having been consented to, cannot be carried out owing to the death or escape of the person sought.
3. Any rights acquired by the Requested State or third parties in the property shall be preserved. If such rights exist, the property shall, at the request of the Requested State, be returned to that State free of charge, on the completion of the proceedings in the Requesting State.

Article 13

Rule of Speciality

A person extradited under this Treaty shall not be detained or tried or be subjected to any other restriction of liberty in the territory of the Requesting State for any offence committed before extradition other than the offence for which extradition was granted except:

- (a) where the Requested State consents in respect of any other extraditable offence. A request for the consent of the Requested State shall be accompanied by the documents mentioned in Article 6 as well as a record of any statement made by the extradited person in respect of the offence concerned; or
- (b) where the person has had an opportunity to leave the Requesting State and has not done so within forty-five days of final discharge or if the person has returned to the territory of the Requesting State after leaving it.

Article 14

Re-Extradition to a Third State

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned State shall not surrender that person to any third State for an offence committed before the person's surrender unless:

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- (a) the Requested State consents to that surrender; or
 - (b) the person has had an opportunity to leave the territory of the Requesting State and has not done so within forty-five days of final discharge or has returned to the territory of the Requesting State after leaving it.
2. Before acceding to a request pursuant to sub-paragraph (1) (a) of this Article, the Requested State may request the production of the documents mentioned in Article 6 and of a record of any statements made by the person extradited in relation to the offence for which the consent of the Requested State is sought.

Article 15**Transit**

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Requesting State to which the person is to be extradited shall request the Requested State of transit to permit the transit of that person through its territory.
2. Transit shall be permitted only if the offences in respect of which the person is being surrendered are offences of a kind which would be extraditable under this Treaty.
3. 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.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if the person's transportation is not continued within a reasonable time.
5. Where air transport is used the following provisions shall apply:
 - (a) when no landing is scheduled, the Requesting State shall advise the State whose territory is to be overflown and shall certify that the documents referred to in Article 6 exist. In the case of an unscheduled landing, this advice shall have the effect of a request for provisional arrest pursuant to Article 9 and the Requesting State shall forward a normal transit request;
 - (b) when a landing is scheduled, the Requesting State shall forward a normal transit request.

Article 16**Translation**

The documents to be produced in support of any request under this Treaty shall be accompanied by a translation into the language of the Requested State.

Article 17**Expenses**

Except for the costs of conveying the person extradited and those occasioned by transit, which shall be borne by the Requesting State, expenses resulting from the extradition shall be borne by the State in whose territory they were incurred.

Article 18**Ratification, Entry Into Force and Termination**

1. Each Contracting Party shall notify the other of the accomplishment of the procedure required for the entry into force of this Treaty. This Treaty shall enter into force thirty days after the date of receipt of the last of these notifications.
2. This Treaty replaces and terminates, with regard to the relations between the Contracting Parties, the provisions of the treaty between France and Great Britain for

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the Mutual Surrender of Fugitive Criminals, signed at Paris on 14 August 1876 and amended by the Convention signed at Paris on 13 February 1896 and the Convention signed at Paris on 17 October 1908.

3. (a) For any request made after the entry into force of this Treaty extradition may be granted pursuant to the provisions of this Treaty irrespective of whether the offence in relation to which extradition is sought was committed before the entry into force of this Treaty.
- (b) However, any request for extradition presented prior to the entry into force of this Treaty shall be governed by the provisions of the extradition treaty between Great Britain and France referred to in paragraph 2 of this Article.
4. Each Contracting Party may terminate this Treaty at any time by forwarding through the diplomatic channel written notice of termination; termination shall take effect six months after receipt of this notification.

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

DONE AT Canberra on the thirty-first day of August One thousand, nine hundred and eighty-eight in English and in French both texts being equally authentic.

LIONEL BOWEN
FOR THE GOVERNMENT
OF AUSTRALIA

ROGER DUZER
FOR THE GOVERNMENT OF
THE REPUBLIC OF FRANCE

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 1 1989.

29 September/