



Extradition (India) Regulations 2010¹

Select Legislative Instrument 2010 No. 196

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated 8 July 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Home Affairs

1 Name of Regulations

These Regulations are the *Extradition (India) Regulations 2010*.

2 Commencement

These Regulations commence on the day on which the Extradition Treaty between Australia and the Republic of India, done at Canberra in Australia on 23 June 2008, enters into force.

3 Definition

In these Regulations:

Act means the *Extradition Act 1988*.

India means the Republic of India.

4 Declaration of India as an extradition country

For the definition of *extradition country* in section 5 of the Act, India is declared to be an extradition country.

5 Application of Act

For paragraph 11 (1) (a) of the Act, the Act applies to India subject to the Extradition Treaty between Australia and the Republic of India, done at Canberra in Australia on 23 June 2008, a copy which is set out in Schedule 1.

**Schedule 1 Extradition Treaty between
Australia and the Republic of
India, done at Canberra in
Australia on 23 June 2008**
(regulation 5)

**EXTRADITION TREATY BETWEEN AUSTRALIA AND THE
REPUBLIC OF INDIA**

Australia and the Republic of India (hereinafter referred to as the
'Contracting States')

DESIRING to make more effective the co-operation of the two countries in
the suppression of crime, including offences related to terrorism, by
concluding a treaty on extradition

HAVE AGREED as follows:

**ARTICLE 1
OBLIGATION TO EXTRADITE**

Each Contracting State agrees to extradite to the other, in accordance with
the provisions of this Treaty, any persons who are wanted for trial, 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,
however described, which are punishable under the laws of both Contracting
States 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 period of at
least six months of such penalty remains to be served.
2. For the purpose of this Article, in determining whether an offence is
an offence against the law of both Contracting States:

- a. it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology; and
 - b. 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 the Contracting States, the constituent elements of the offence differ.
3. An offence may be an extraditable offence notwithstanding that it relates to taxation, customs duties, foreign exchange control or other revenue matters, or is one of a purely fiscal character. Extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.
4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted if the law of the Requested State provides for the punishment of 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 shall be granted pursuant to the provisions of this Treaty irrespective of whether the offence for which extradition is sought was committed before or after entry into force of this Treaty, provided in all cases that:
- a. it was an offence in the Requesting State at the time of the acts or omissions constituting the offence are alleged to have occurred; 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 COMPOSITE OFFENCES

Extradition shall also be available in accordance with this Treaty for an extraditable offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that

State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the Requesting State.

ARTICLE 4 GROUNDS OF REFUSAL

1. Extradition shall not be granted if:
 - a. the offence of which a person is accused or convicted is a military offence which is not also an offence under the general criminal law;
 - b. if the person whose extradition is sought has, according to the law of the Requesting State, become immune from prosecution or punishment by reason of lapse of time;
 - c. if the offence with which the person sought is accused or convicted, or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State, unless the extradition request includes an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out.

2. Extradition may be refused if the offence of which it is requested is an offence of a political character. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
 - a. an offence in respect of which the Contracting States have an obligation to extradite or submit the case to their competent authorities for prosecution, under a multilateral/international treaty or convention to which both Contracting States are parties;
 - b. an offence in respect of the taking or attempted taking of the life of a Head of State, Head of Government, or a member of that person's family;
 - c. murder, culpable homicide or manslaughter;
 - d. an offence, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - e. any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; or

- f. conspiracy or attempt to commit, or participation in, or abetment of, any of the foregoing offences.
3. Extradition may be refused in any of the following circumstances:
- a. if the person has been tried and finally dealt with in respect of the offence for which extradition is sought;
 - b. if the Requested State has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - c. if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the Requesting State by an extraordinary or ad hoc court or tribunal;
 - d. if the Requested State believes that the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, including because of the person's age or state of health.

ARTICLE 5

EXTRADITION OF NATIONALS

The nationals of one Contracting State may be extradited to the other Contracting State. If extradition is not granted, the Requested State shall, on the request of the Requesting State, submit the case to its competent authorities for prosecution in accordance with the provisions of this Treaty and the laws of the Requested State.

ARTICLE 6

EXTRADITION AND PROSECUTION

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

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3. If the competent authorities decide not to prosecute the request for extradition shall be reconsidered in accordance with this Treaty.

ARTICLE 7 EXTRADITION PROCEDURES

1. The request for extradition under this Treaty shall be made in writing and communicated through diplomatic channels.
2. All documents submitted in support of a request for extradition shall be authenticated in accordance with paragraph 2 of Article 9. Three copies of the request and supporting documents shall also be provided. However, the copies need not be authenticated.
3. The request shall be accompanied by:
- a. the details necessary to establish the identity and nationality of the person sought including, where possible, photographs and fingerprints;
 - b. a statement of the current location of the person, if known;
 - c. a statement of each offence for which extradition is sought;
 - d. a statement of the acts and omissions which are alleged against the person in respect of each offence for which extradition is sought;
 - e. the text of the laws creating each offence and describing the penalty which may be imposed; and
 - f. a statement as to whether there is any limitation in respect of proceedings or punishment.
4. If the request relates to an accused person, it must also be accompanied by a warrant of arrest, or a copy thereof, issued by a Judge, Magistrate, or other competent authority in the territory of the Requesting State and such documents or other information required by the Requested State as would reasonably establish that the person sought has committed the offence for which extradition is requested and to establish that the person requested is the person to whom the warrant refers.
5. If the request relates to a person already convicted and sentenced, it shall also be accompanied by:
- a. a certificate of conviction and sentence; and

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- b. a statement that the sentence is enforceable and how much of the sentence remains to be served.

6. If the Requested State considers that the documents or other information supplied for the purposes of this Treaty are not sufficient in order to enable a decision to be taken as to the request, additional documents or other information shall be submitted within such time as the Requested State may require.

7. If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.

ARTICLE 8 CONSENT TO SURRENDER

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

ARTICLE 9 EVIDENCE/AUTHENTICATION

1. A document that, in accordance with Article 7, accompanies a request for extradition 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 an official in or of the Requesting State; and
- b. it purports to be authenticated by the official seal of a Minister of Government, or of a Department or official of the Requesting State; or
- c. it has been authenticated in such other manner as may be permitted by the law of the Requested State.

3. Documents described in paragraph 1 of this Article shall be admitted in evidence whether they originated in the Requesting State or in a third State.

ARTICLE 10
PROVISIONAL ARREST

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought, pending presentation of the request for extradition. A request for provisional arrest may be transmitted through diplomatic channels. The facilities of the International Criminal Police Organisation (Interpol) may be used to transmit such a request.
2. The application for provisional arrest shall contain:
 - a. a description of the person sought;
 - b. the location of the person sought, if known;
 - c. a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - d. a description of the laws violated;
 - e. a statement of the existence of a warrant of arrest, or a finding of guilt or judgment of conviction against the person sought; and
 - f. a statement that a request for extradition for the person sought will follow.
3. The Requesting State shall be notified without delay of the action taken on its application and the reasons for any denial.
4. A person who is provisionally arrested may be released from custody on the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7.
5. The fact that the person sought has been released from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person, if the extradition request and supporting documents are delivered at a later date.

ARTICLE 11 CONCURRENT 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.
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. if the requests relate to different offences - the relative seriousness of the offences;
 - b. the existence of an extradition treaty with the other State or States;
 - c. the time and place of commission of each offence;
 - d. the respective dates of the requests;
 - e. the nationality of the person; and
 - f. the ordinary place of residence of the person.

ARTICLE 12 SURRENDER

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.
2. Where extradition is granted, the Requested State shall surrender the person at a time, and from a point of departure in its territory as may be decided in consultation with the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State may specify and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 13
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 be surrendered if extradition is granted and the Requesting State so requests.
2. Subject to 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 cannot be carried out.
3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

ARTICLE 14
POSTPONEMENT OF EXTRADITION AND TEMPORARY
SURRENDER

1. The Requested State may postpone the surrender of a person in order to proceed against that person, or so that the person may serve a sentence, for an offence other than the offence for which extradition is sought. In such a case the Requested State shall advise the Requesting State accordingly.
2. When the person is serving a sentence in the territory of the Requested State for an offence other than the offence for which extradition is sought, the Requested State may temporarily surrender the person to the Requesting State to be prosecuted for an offence for which extradition is sought. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after proceedings against the person have concluded, in accordance with written conditions to be mutually determined by the Contracting States.

ARTICLE 15
RULE OF SPECIALITY

1. Any person who is returned to the territory of the Requesting State under this Treaty shall not be detained or tried or subjected to any other restriction of her or his personal liberty, within the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:

- a. the offence in respect of which the person was returned;
- b. any other extraditable offence disclosed by the facts upon which the request for extradition was based, provided that the offence does not carry a penalty which is more severe than that which could be imposed for the offence in respect of which the person was returned; or
- c. any other extraditable offence in respect of which the Requested State may consent to the person being dealt with.

2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his extradition unless the Requested State consents.

3. Paragraphs 1 and 2 of the present Article shall not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the Requesting State after leaving it.

4. A request for the consent of the Requested State under the present Article shall be accompanied by such of the documents as mentioned in Article 7 of the present Treaty as may be sought by the Requested State.

ARTICLE 16
TRANSIT

1. Where a person is to be extradited to a Contracting State from a third State through the territory of the other State, the State to which the person is to be extradited shall request the other State to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other State is scheduled. A person in transit may be held in custody during the period of transit.

2. Upon receipt of such a request, which shall contain relevant information, the Requested State shall deal with this request expeditiously pursuant to procedures provided by its own law.

3. In the event of an unscheduled landing, the State to be requested to permit transit may, at the request of the escorting officer, hold the person in custody, subject to its law, pending receipt of the transit request to be made in accordance with paragraph 1 of the present Article.

ARTICLE 17 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 interests of the Requesting State.

2. The Requested State shall bear the expenses incurred in its territory in relation to the arrest and detention of the person whose extradition is sought until that person is surrendered to the Requesting State.

3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 18 CONSULTATION

1. The Contracting States shall, at the request of either, consult concerning the interpretation and application of this Treaty.

2. The competent authorities of the Contracting States may consult each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE 19 OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS/TREATIES

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties.

ARTICLE 20
ENTRY INTO FORCE

1. The Contracting States shall inform each other in writing of the completion of their internal procedures required for entry into force of this Treaty. The Treaty shall enter into force thirty days after the date of the later communication.

2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through diplomatic channels, and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof, the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Canberra this the twenty third day of June, two thousand and eight, in English and Hindi both languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**On behalf of the Government of
Australia**

**On behalf of the Government of the
Republic of India**

.....
Hon Stephen Smith
Minister for Foreign Affairs

.....
Hon Pranab Mukherjee
Minister for External affairs

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.