



Extradition (Uruguay) Regulations 2010¹

Select Legislative Instrument 2010 No. 163

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 29 June 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 (Uruguay) Regulations 2010*.

2 Commencement

These Regulations commence on the day on which the Treaty on Extradition between Australia and the Oriental Republic of Uruguay, done at Montevideo in Uruguay on 7 October 1988, enters into force.

3 Definition

In these Regulations:

Uruguay means the Oriental Republic of Uruguay.

4 Declaration that Uruguay is an extradition country

Uruguay is declared to be an extradition country.

5 Application of Act

The *Extradition Act 1988* applies to Uruguay subject to the Treaty on Extradition between Australia and the Oriental Republic of Uruguay, a copy of which is set out in Schedule 1.

Schedule 1 Treaty on Extradition between Australia and the Oriental Republic of Uruguay

(regulation 5)

TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE ORIENTAL REPUBLIC OF URUGUAY (Montevideo, 7 October 1988)

AUSTRALIA AND THE ORIENTAL REPUBLIC OF URUGUAY,
DESIRING to make more effective the co-operation of the two countries
in the suppression of crime 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
prosecution in the courts of the Requesting State or for the imposition or
enforcement of a sentence imposed by a court 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 deprivation of liberty for a period of not less than
two years. Where the request for extradition relates to a person convicted
of such an offence who is wanted for the enforcement of a sentence of
deprivation of liberty, extradition shall be granted only if a period of at
least six months of such penalty remains to be served.

2. For the purposes 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;

(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. Where the offence has been committed outside the territorial jurisdiction 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 territorial jurisdiction in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.

4. Extradition may be granted pursuant to the provisions of this Treaty provided that:

(a) the offence for which extradition is requested was an offence in both Contracting States at the time of the acts or omissions constituting the offence; and

(b) it was an offence in both Contracting States at the time the request for extradition was made.

Article 3

Exceptions to extradition

1. Extradition shall not be granted when:

(a) the Requested State determines that the offence for which extradition is requested is a political offence, an offence directly related to a political offence or an ordinary criminal offence prosecuted for political reasons. Reference to a political offence, for the purposes of this paragraph, shall not include:

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- (i) the taking or attempted taking of the life of an internationally protected person being a person described in sub-paragraph (1)(A) of Article 1 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
 - (ii) an offence relating to any law against genocide; or
 - (iii) any offence in respect of which the Contracting States have assumed or will assume an obligation pursuant to an international agreement to which they are both parties, to submit the case to their competent authorities for a decision as to prosecution if extradition is not granted.
- (b) 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) the offence for which extradition is sought is an offence exclusively or purely under military law which is not punishable under the ordinary criminal law of the Contracting States.
- (d) final judgment has been passed in the Requested State or in a third state in respect of the offence for which the person's extradition is requested:
- (i) if the afore-mentioned judgment resulted in the person's acquittal; or the case against him has been finally dismissed so as to preclude subsequent prosecution for that same offence; or
 - (ii) if the sentence has been completed or the person has been granted a pardon or is the subject of an amnesty
- (e) the person sought cannot be prosecuted by reason of any limitation prescribed or imposed by the law of either Contracting State;
- (f) the person sought has been tried or sentenced or is to be tried before an extraordinary or ad hoc tribunal in the Requesting State.

2. Extradition may be refused in any of the following circumstances:

(a) if 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 State 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 may be taken.

(b) if the competent authorities of the Requested State had decided, before the request for extradition was received, to refrain from prosecuting the person for the offence in respect of which extradition is sought;

(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 that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;

(d) if the offence for which extradition is sought is regarded under the law of the Requested State as having been committed in whole or in part within that State;

(e) if a prosecution in respect of the offence for which extradition is sought is pending in the Requested State against the person whose extradition is sought;

(f) if the offence for which extradition is sought is an offence which carries a punishment of the kind referred to in Article 7 of the International Covenant Civil and Political Rights; or

(g) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.

Article 4

Postponement of surrender

1. When the person whose extradition is sought is being, or will be, prosecuted, or is serving a sentence in the Requested State for an offence other than that for which extradition is sought, the Requested State may postpone surrender of the person until that person is available to be surrendered in accordance with the law of that State. No civil case to which the person sought is a party in the Requested State may prevent or delay surrender.
2. When the health or other personal circumstances of the person are such as would make surrender dangerous to the life of the person or incompatible with humanitarian considerations, the Requested State may postpone surrender until it no longer poses a danger to life or is incompatible with humanitarian considerations.
3. Where the Requested State postpones the surrender of a person sought pursuant to this article, it shall advise the Requesting State accordingly.

Article 5

Extradition procedure and required documents

1. A request for extradition shall be made in writing and communicated through the diplomatic or consular channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.
2. In all cases the request for extradition shall be accompanied by:
 - (a) a statement of each offence for which extradition is sought;
 - (b) a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (c) the text of the relevant provisions of the law, 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 or the prescription of the

offence, and a statement of the punishment that can be imposed for the offence;

(d) as accurate a description as possible of the person sought together with any other information which may help to establish that person's identity and nationality.

3. When the request for extradition relates to a person accused of an offence or to a person who has been convicted in his absence the request shall also be accompanied by:

(a) a warrant for the arrest, or a copy of the warrant for the arrest, of that person; and

(b) in relation to a person convicted in his absence, an undertaking by the Requesting State that the person shall be deemed not to have been convicted of that offence, but rather shall be deemed to be accused of that offence.

4. When the request for extradition relates to a person who has been convicted of an offence otherwise than in his absence but no sentence has been imposed, the request shall also be accompanied by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose the sentence.

5. When the request relates to a person convicted of an offence, otherwise than in his absence, the request shall also be accompanied by such documents as provide evidence of the conviction and of the sentence imposed, the fact that the sentence is immediately enforceable and the extent to which the sentence has not been carried out.

6. To the extent permitted by the law of the Requested State, extradition may be granted without a formal extradition proceeding if the person sought consents in writing to the extradition after being advised by a judge or other competent authority of his right to a formal extradition proceeding and the protection afforded by such a proceeding.

7. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State.

Article 6

Authentication of supporting documents

1. A document that, in accordance with Article 5, 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:

(i) signed or certified by a Judge, Magistrate or other judicial officer in or of the Requesting State; and

(ii) 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; or

(b) it is legalised in accordance with the practice of the Requesting State where such legalisation is sufficient for the purposes of the Requested State.

Article 7

Additional information

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted that State may request that additional information be furnished within 45 days.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the Requesting State from making a fresh request for the extradition of the person.

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

Article 8**Provisional arrest**

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic or consular channel. The application may be transmitted 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 or consular channel, a statement of the existence of one of the documents mentioned in paragraphs 3, 4 or 5 of Article 5 authorising 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 concise 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 application may be set at liberty upon the expiration of 45 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.
6. The Contracting States shall indemnify each other in respect of any damages judicially awarded as a result of a person being provisionally arrested without just cause.

Article 9

Requests by more than one State

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 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

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 or consular channel.
2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.
3. The Requesting State shall remove the person from the territory of the Requested State within 45 days from the date on which the person was placed at the disposal of the Requesting State and, if the person is not removed within that period, the Requested State may refuse to extradite the 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 mutually decide upon a new date of surrender, and the relevant provisions of paragraph 3 of this Article shall apply.

Article 11

Surrender of property

1. 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. The surrender of property is subject always to the rights of third parties and the law of the Requested State.

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 owing to the death or escape of the person sought.

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 12

Rule of speciality

1. A person extradited under this Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offence, committed prior to the date of the request for extradition, other than the offence for which extradition was granted unless:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within 45 days of being free to do so;

(c) the competent authority of the Requested State consents to that person's detention trial or punishment for another offence. In such case, the Requested State may require the Requesting State to submit the documents mentioned in Article 5 of this Treaty.

Article 13

Surrender 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 his surrender unless:

(a) the Requested State consents to that surrender; or

(b) the person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(c) the person does not leave the territory of the Requesting State within 45 days of being free to do so.

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 5 of this Treaty.

Article 14

Transit

1. Where a person is to be extradited to a Contracting State from a third state through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.

2. Upon receipt of such a request the Requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.

3. Permission for the transit of a person shall, subject to the law of the Requested Contracting 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 State in whose territory the person is being held may direct that the person be released if his transportation is not continued within 10 days or within such further period as is considered reasonable by that Contracting State in all the circumstances of the case.

5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expenses incurred by that other Contracting State in connection with the transit.

6. No permission for transit is required where air transportation is used and no landing is scheduled on the territory of the other Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the Contracting State may require a request for transit as provided in paragraph 1 of this Article. That Contracting State shall detain the person being transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 15

Representation

1. The Requested State shall provide, at no cost to the Requesting State, legal assistance to protect the interests of the Requesting State before the competent authorities of the Requested State.

2. The person sought shall enjoy in the Requested State all the legal rights and guarantees granted by the laws of that State.

3. The person sought shall have the right to be assisted by legal counsel if that person so requests, and, if the official language of the Requested State is other than that person's language, the right to assistance of an interpreter.

Article 16

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.

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

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

Article 17
Multilateral obligations

This Treaty shall not affect any obligations which have been or may in the future be assumed by the Contracting States under any multilateral Convention.

Article 18
Mutual assistance in criminal matters

Subject to any further treaty between them, the Contracting States agree to afford each other, in accordance with their laws, mutual assistance to the maximum extent possible, for the purposes of the investigation or prosecution of any offence under their jurisdiction.

Article 19
Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.

2. Subject to paragraph 3 of this Article, on the entry into force of this Treaty, the Treaty between Great Britain and Uruguay for the Mutual Extradition of Fugitive Criminals done at Montevideo on 26 March 1884, and the Protocol amending the Treaty of 26 March 1884 signed at Montevideo on 20 March 1891, shall cease to be in force between Australia and Uruguay.

3. Requests for extradition in respect of offences committed before the entry into force of this Treaty shall continue to be governed by the Provisions of the Treaty of 26 March 1884 and the Protocol amending that Treaty of 20 March 1891.

4. Either Contracting State 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 notice is given.

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

DONE at Montevideo on the seventh day of October, One thousand nine hundred and eighty-eight in duplicate in English and Spanish, each text being equally authentic.

FOR AUSTRALIA:

FOR THE ORIENTAL
REPUBLIC OF
URUGUAY:

[Signed:]
LIONEL BOWEN

[Signed:]
H G ESPIELL

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>.