



Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 210

I, PROFESSOR MARIE BASHIR, AC, CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 30 August 2012

MARIE BASHIR
Administrator

By Her Excellency's Command

JASON CLARE
Minister for Justice

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1 Name of regulation

This regulation is the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the commencement of item 33 of Schedule 2 to the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012*.

3 Amendment of *Extradition Regulations 1988*

Schedule 1 amends the *Extradition Regulations 1988*.

4 Amendment of *Mutual Assistance in Criminal Matters Regulations 1988*

Schedule 2 amends the *Mutual Assistance in Criminal Matters Regulations 1988*.

5 Amendment of *Extradition (Canada) Regulations 2004*

Schedule 3 amends the *Extradition (Canada) Regulations 2004*.

6 Amendment of *Extradition (Commonwealth countries) Regulations 2010*

Schedule 4 amends the *Extradition (Commonwealth countries) Regulations 2010*.

- 7** **Amendment of *Extradition (Cook Islands) Regulations 2010***
Schedule 5 amends the *Extradition (Cook Islands) Regulations 2010*.
- 8** **Amendment of *Extradition (Denmark) Regulations***
Schedule 6 amends the *Extradition (Denmark) Regulations*.
- 9** **Amendment of *Extradition (Iceland) Regulations***
Schedule 7 amends the *Extradition (Iceland) Regulations*.
- 10** **Amendment of *Extradition (Japan) Regulations***
Schedule 8 amends the *Extradition (Japan) Regulations*.
- 11** **Amendment of *Extradition (Kiribati) Regulations 2010***
Schedule 9 amends the *Extradition (Kiribati) Regulations 2010*.
- 12** **Amendment of *Extradition (Nauru) Regulations 2010***
Schedule 10 amends the *Extradition (Nauru) Regulations 2010*.
- 13** **Amendment of *Extradition (Papua New Guinea) Regulations 2010***
Schedule 11 amends the *Extradition (Papua New Guinea) Regulations 2010*.
- 14** **Amendment of *Extradition (Republic of Estonia) Regulations 1999***
Schedule 12 amends the *Extradition (Republic of Estonia) Regulations 1999*.

- 15** **Amendment of Extradition (Republic of the Marshall Islands) Regulations**
Schedule 13 amends the Extradition (Republic of the Marshall Islands) Regulations.
- 16** **Amendment of *Extradition (Samoa) Regulations 2010***
Schedule 14 amends the *Extradition (Samoa) Regulations 2010*.
- 17** **Amendment of *Extradition (Solomon Islands) Regulations 2010***
Schedule 15 amends the *Extradition (Solomon Islands) Regulations 2010*.
- 18** **Amendment of *Extradition (Tonga) Regulations 2010***
Schedule 16 amends the *Extradition (Tonga) Regulations 2010*.
- 19** **Amendment of *Extradition (Tuvalu) Regulations 2010***
Schedule 17 amends the *Extradition (Tuvalu) Regulations 2010*.
- 20** **Amendment of *Extradition (United Kingdom) Regulations 2004***
Schedule 18 amends the *Extradition (United Kingdom) Regulations 2004*.
- 21** **Amendment of *Extradition (Vanuatu) Regulations 2010***
Schedule 19 amends the *Extradition (Vanuatu) Regulations 2010*.

Schedule 1 **Amendments of *Extradition Regulations 1988***

(section 3)

[1] **Regulation 2**

substitute

2 **Interpretation**

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

[2] **After regulation 2A**

insert

2B **Political offence**

- (1) For paragraph (b) of the definition of *political offence* in section 5 of the Act, an offence is an extraditable offence, in relation to all countries, if the offence is constituted by conduct of a kind referred to in any of the following:
 - (a) Article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft, a copy of the English text of which is set out in Schedule 1 to the *Crimes (Aviation) Act 1991*;
 - (b) Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, a copy of the English text of which is set out in Schedule 2 to the *Crimes (Aviation) Act 1991*;
 - (c) paragraph 1 of Article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, a copy of the English text of which is set out in the Schedule to the *Crimes (Internationally Protected Persons) Act 1976*;

- (d) Article 1 of the International Convention against the Taking of Hostages, done at New York on 17 December 1979;
 - (e) Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 10 December 1984;
 - (f) Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, a copy of the English text of which is set out in Schedule 1 to the *Crimes (Ships and Fixed Platforms) Act 1992*;
 - (g) Article 2 of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, a copy of the English text of which is set out in Schedule 2 to the *Crimes (Ships and Fixed Platforms) Act 1992*;
 - (h) Article 7 of the Convention on the Physical Protection of Nuclear Material done at New York and Vienna on 3 March 1980, a copy of the English text of which is set out in Schedule 4 to the *Nuclear Non-Proliferation (Safeguards) Act 1987*.
- (2) For paragraph (c) of the definition of ***political offence*** in section 5 of the Act, an offence is not a political offence, in relation to all countries, if:
- (a) the offence is constituted by conduct of a kind referred to in any of the following:
 - (i) Article 2 of the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999;
 - (ii) Article III of the Convention on the Prevention and Punishment of the Crime of Genocide, a copy of the English text of which is set out in the Schedule to the *Genocide Convention Act 1949*;
 - (iii) Article 2 of the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997;
 - (iv) Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988;

-
- (v) Article 2 of the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on 13 April 2005; or
- (b) the offence is established in accordance with the United Nations Convention against Corruption, done at New York on 31 October 2003.
- (3) For paragraph (c) of the definition of *political offence* in section 5 of the Act, an offence is not a political offence, in relation to the countries mentioned in subregulation (4), if:
- (a) the offence is constituted by taking or endangering, attempting to take or endanger, or participating in the taking or endangering of, the life of a person; and
- (b) the offence is committed in circumstances in which the conduct mentioned in paragraph (a) creates a collective danger, whether direct or indirect, to the lives of other persons.
- (4) For subregulation (3), the countries are as follows:
- (a) each country mentioned in Schedule 1 to the *Extradition (Commonwealth countries) Regulations 2010*;
- (b) Canada;
- (c) Cook Islands;
- (d) Denmark;
- (e) Iceland;
- (f) Japan;
- (g) Kiribati;
- (h) Nauru;
- (i) Papua New Guinea;
- (j) Republic of Estonia;
- (k) Republic of the Marshall Islands;
- (l) Samoa;
- (m) Solomon Islands;
- (n) Tonga;
- (o) Tuvalu;
- (p) United Kingdom;
- (q) Vanuatu.

- (5) For paragraph (c) of the definition of *political offence* in section 5 of the Act, an offence is not a political offence, in relation to the Republic of Estonia, if the offence is constituted by:
- (a) the murder, kidnapping, or other attack on the person or liberty of:
 - (i) the head of state of the Republic of Estonia; or
 - (ii) the head of government of the Republic of Estonia; or
 - (iii) a family member of the head of state, or head of government, of the Republic of Estonia; or
 - (b) a threat, or attempt, to commit a murder, kidnapping, or other attack on the person or liberty of a person mentioned in paragraph (a); or
 - (c) participation as an accomplice in a murder, kidnapping, or other attack on the person or liberty of a person mentioned in paragraph (a).

[3] Schedule, form 2, paragraphs (a) and (b)

substitute

- (a) (*name and address of witness*) was summoned to attend before me, a magistrate within the meaning of the *Extradition Act 1988*, being *a magistrate in relation to whom an arrangement is in force under section 46 of the Act/a Federal Magistrate in relation to whom a consent under subsection 45A (1) and a nomination under subsection 45A (2) of the Act are in force/, as a witness on (*date*), and then from day to day unless excused or released from so attending;
- (b) the witness has failed to attend on (*date*) as required by the summons; and

[4] Schedule, form 4, heading*substitute***Form 4 Application for extradition arrest warrant**

(subsection 12 (1) regulation 3)

[5] Schedule, form 7, paragraph (a)*omit each mention of*

a provisional arrest warrant

insert

an extradition arrest warrant

[6] Schedule, form 8, paragraph (b)*omit*

*section 18/ *section 19/ *sections 18 and 19/

insert

*section 15A/ *section 18/ *section 19/ *sections 18 and 19/

[7] Schedule, after form 8*insert***Form 8A Warrant under subsection 15A (4) in relation to waiver of extradition**

(subsection 15A (4) regulation 3)

COMMONWEALTH OF AUSTRALIA

*Extradition Act 1988*WARRANT UNDER SUBSECTION 15A (4) IN RELATION TO
WAIVER OF EXTRADITIONTo all police officers within the meaning of the *Extradition Act 1988*

AND to the person in charge of (*insert name of prison*) in (*insert name of State or Territory*).

WHEREAS:

- (a) (*insert name of person*) is on remand under section 15 of the *Extradition Act 1988*;
- (b) I am satisfied that † has voluntarily informed a magistrate under subsection 15A (3) of that Act that *he/*she/ wishes to waive extradition in relation to the following extradition *offence/*offences/
(*specify offence or offences*)
- (c) I have informed † of the following in accordance with paragraph 15A (5) (b) of that Act:
 - (i) once the order below is made, *he/*she/ cannot apply for the order to be revoked;
 - (ii) the consequences of the fact that the extradition country concerned may not have given, and if the order is made will not be required to give, a speciality assurance;
 - (iii) certain requirements in that Act that would otherwise apply in respect of the person will not apply if the order is made (including, but not limited to, requirements relating to extradition objections);
 - (iv) after the order is made, *he/*she/ will be surrendered to the extradition country if the Attorney-General determines under subsection 15B (2) of that Act that *he/*she/ is to be surrendered;
- (d) I am satisfied in accordance with paragraph 15A (5) (c) of that Act that † has confirmed that *he/*she/ wishes to waive extradition;
- (e) I am satisfied that *he/*she/ is legally represented or was given adequate opportunity to be legally represented;

NOW THEREFORE I, (*name and designation of magistrate*), a magistrate within the meaning of the *Extradition Act 1988*, under subsection 15A (4) of that Act, hereby order you to commit † to (*insert name of prison*) to await, in relation to *that offence/*those

offences/, surrender under a surrender warrant or temporary surrender warrant, or release under an order under subsection 15B (4) of that Act.

Dated

(Signature and designation of magistrate)

**Omit if not applicable.*

†Insert name of person.

**Form 8B Notice to order release from custody
under subsection 15B (4)**

(subsection 15B (4) and regulation 3)

COMMONWEALTH OF AUSTRALIA

Extradition Act 1988

To a magistrate within the meaning of the *Extradition Act 1988* (the **Act**).

GIVEN THAT I consider that the remand of *(insert name of person)*
under section 15 of the Act should cease;

I, _____, Attorney-General of the Commonwealth of Australia,
under subsection 15B (4) of the Act, direct you to order the release of
(insert name of person) from custody.

Dated

Attorney-General

[8] Schedule, after form 9*insert***Form 9A Amended notice of receipt of extradition request**

(subsection 16A (3) and regulation 3)

COMMONWEALTH OF AUSTRALIA

Extradition Act 1988

To a magistrate before whom the person named in this notice is brought.

I, _____, Attorney-General of the Commonwealth of Australia, under subsection 16 (1) of the *Extradition Act 1988*, state that an extradition request has been received from (*insert name of country*), an extradition country, in relation to (*insert name of person*) for the following extradition *offence/*offences/: (*specify the relevant offence or offences*).

**Omit if not applicable.*

Dated

Attorney-General

Note This notice amends the notice of receipt of extradition request made under subsection 16 (1) of the *Extradition Act 1988* in relation to (*insert name of person*) on (*insert date of original notice*).

[9] Schedule, form 11*omit*

To all police officers within the meaning of the *Extradition Act 1988* in (*insert name of State or Territory*)

insert

To all police officers within the meaning of the *Extradition Act 1988*

[10] Schedule, form 12*omit*

To all police officers within the meaning of the *Extradition Act 1988* in
(*insert name of State or Territory*)

insert

To all police officers within the meaning of the *Extradition Act 1988*

[11] Schedule, after form 12*insert*

**Form 12A Warrant under paragraph 21 (2A) (b)
ordering committal to prison to await
surrender**

(paragraph 21 (2A) (b) subsection 21 (2C) and regulation 3)

COMMONWEALTH OF AUSTRALIA

Extradition Act 1988

WARRANT UNDER PARAGRAPH 21 (2A) (b) ORDERING
COMMITTAL TO PRISON TO AWAIT SURRENDER

To all police officers within the meaning of the *Extradition Act 1988*

AND to the person in charge of (*insert name of prison*) in (*insert name of State or Territory*).

WHEREAS:

- (a) a magistrate has determined that (*insert name of person*) is not eligible for surrender in relation to the extradition *offence/*offences/ of (*specify offence or offences*) for which the surrender of (*insert name of person*) is sought by (*insert name of country*), an extradition country;
- (b) the magistrate has made an order under subsection 19 (10) of the Act that (*insert name of person*) be released;
- (c) the order of the magistrate has been reviewed by the Federal Court under section 21 of the Act;
- (d) the Federal Court has made an order under paragraph 21 (2) (b) of the Act to quash the order of the magistrate;

NOW THEREFORE I, (*name and designation of Federal Court Judge*), a judge of the Federal Court, under paragraph 21 (2A) (b) of the Act, hereby order you to commit (*insert name of person*) to (*insert name of prison*) to await, in relation to *that offence/*those offences/, surrender under a surrender warrant or temporary surrender warrant or release under an order under subsection 22 (5) of the Act.

Dated

(*Signature and designation of Federal Court Judge*)

**Omit if not applicable.*

[12] Schedule, form 13

omit

AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).

insert

AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).

[13] Schedule, form 13

omit

subsection 22 (2)

insert

subsection 15B (2) or 22 (2)

[14] Schedule, form 13, paragraph (a)

omit

a police

insert

any police

[15] Schedule, form 13, paragraph (b)

omit

that police

insert

any police

[16] Schedule, form 14

omit

AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).

insert

AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).

[17] Schedule, form 14, paragraph (a)

omit

subsection 22 (2)

insert

subsection 15B (2) or 22 (2)

[18] Schedule, form 14, paragraph (d)

omit

a police

insert

any police

[19] Schedule, form 14, paragraph (e)

omit

that police

insert

any police

[20] Schedule, form 15

omit

AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).

insert

AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).

[21] Schedule, form 15, paragraph (d)

omit

a police

insert

any police

[22] Schedule, form 15, paragraph (e)

omit

that police

insert

any police

[23] Schedule, form 23*omit**New Zealand escort officer)**insert**escort officer or describe class or classes of persons who may be escort officers)***[24] Schedule, form 26***omit**namely (identify proceedings),***[25] Further amendments**

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Schedule, form 1	Dated 19 .	Dated
Schedule, form 2	Dated 19 .	Dated
Schedule, form 5	Dated 19 .	Dated
Schedule, form 7	Issued on 19 .	Dated
Schedule, form 8	Dated 19 .	Dated
Schedule, form 11	Dated 19 .	Dated
Schedule, form 12	Dated 19 .	Dated
Schedule, form 16	Dated 19 .	Dated
Schedule, form 17	Dated 19 .	Dated
Schedule, form 18	Dated 19 .	Dated
Schedule, form 19	Dated 19 .	Dated
Schedule, form 20	Issued on 19 .	Dated
Schedule, form 20A	Dated .	Dated
Schedule, form 20B	Dated .	Dated
Schedule, form 21	Dated 19 .	Dated
Schedule, form 22	Dated 19 .	Dated

<i>Provision</i>	<i>omit</i>	<i>insert</i>
Schedule, form 24	Dated 19 .	Dated
Schedule, form 25	Dated 19 .	Dated
Schedule, form 26	Dated 19 .	Dated
Schedule, form 28	Dated 19 .	Dated
Schedule, form 29	Dated 19 .	Dated

Schedule 2 Amendments of *Mutual Assistance in Criminal Matters Regulations 1988*

(section 4)

[1] Regulations 12 to 18

omit

[2] Schedule, form 1

omit

SummonsIn the Matter of proceedings relating to

insert

In the Matter of proceedings relating to

[3] Schedule, form 1

omit

Dated 19 .

insert

Dated

[4] Schedule, form 2, paragraphs (a) and (b)

substitute

- (a) (*name and address of person*) was summoned to attend before me, a Magistrate *being a person performing functions under an arrangement in force under section 39 of the Act/*being a Federal Magistrate in relation to whom a consent under subsection 38ZC (1) and a nomination under subsection 38ZC (2) of the Act are in force/ on (*date*), and then from day to day unless excused or released from so attending;

(b) *(name of person)* has failed to attend on *(date)* as required
by the summons; and

[5] Schedule, forms 3 and 7 to 11

omit

Schedule 3 **Amendment of *Extradition***
(*Canada*) Regulations 2004
(section 5)

[1] **Regulation 5**
omit

**Schedule 4 Amendment of *Extradition*
(Commonwealth countries)
*Regulations 2010***

(section 6)

[1] Regulation 6

omit

Schedule 5 **Amendment of *Extradition***
(Cook Islands)
Regulations 2010
(section 7)

[1] **Regulation 5**
omit

Schedule 6 Amendment of Extradition (Denmark) Regulations

(section 8)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Extradition (Denmark) Regulations 1988*.

[2] Regulation 4

omit

Schedule 7 **Amendment of Extradition (Iceland) Regulations**

(section 9)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Extradition (Iceland) Regulations 1988*.

[2] Regulation 4

omit

Schedule 8 Amendment of Extradition (Japan) Regulations

(section 10)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Extradition (Japan) Regulations 1988*.

[2] Regulation 4

omit

Schedule 9 **Amendment of *Extradition***
(*Kiribati*) Regulations 2010
(section 11)

[1] **Regulation 5**
omit

**Schedule 10 Amendment of *Extradition*
*(Nauru) Regulations 2010***

(section 12)

[1] Regulation 5

omit

**Schedule 11 Amendment of *Extradition*
(Papua New Guinea)
*Regulations 2010***

(section 13)

[1] Regulation 5

omit

Schedule 12 **Amendment of *Extradition***
(*Republic of Estonia*)
Regulations 1999

(section 14)

[1] **Regulation 5**
omit

**Schedule 13 Amendment of Extradition
(Republic of the Marshall
Islands) Regulations**

(section 15)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Extradition (Republic of the
Marshall Islands) Regulations 1993*.

[2] Regulation 4

omit

**Schedule 14 Amendment of *Extradition*
*(Samoa) Regulations 2010***

(section 16)

[1] Regulation 5

omit

Schedule 15 **Amendment of *Extradition***
(*Solomon Islands*)
Regulations 2010

(section 17)

[1] **Regulation 5**
omit

Schedule 16 **Amendment of *Extradition***
(Tonga) Regulations 2010
(section 18)

[1] **Regulation 5**
omit

Schedule 17 **Amendment of *Extradition***
(*Tuvalu*) Regulations 2010

(section 19)

[1] **Regulation 5**

omit

Schedule 18 **Amendment of *Extradition***
(*United Kingdom*)
Regulations 2004

(section 20)

[1] **Regulation 5**

omit

Schedule 19 **Amendment of *Extradition (Vanuatu) Regulations 2010***

(section 21)

[1] **Regulation 5**

omit

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.