**EXTRADITION (REPUBLIC OF NORTH MACEDONIA) REGULATIONS 2023**

**EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General   
under section 55 of the *Extradition Act 1988*

The *Extradition Act 1988* (the Act) governs Australia’s extradition arrangements. Extradition is the process by which one country apprehends and sends a person to another country for the purposes of criminal prosecution or the imposition or service of a criminal sentence.

Section 55 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under the Act, Australia can only accept extradition requests from an ‘extradition country’. Section 5 of the Act defines an ‘extradition country’ to include a country that is declared by the regulations to be an extradition country.

The *Extradition (Former Yugoslav Republic of Macedonia) Regulations 2009* (the 2009 Regulations) declared the Former Yugoslav Republic of Macedonia to be an extradition country for the purposes of the Act. This enabled Australia to receive and action extradition requests from the Former Yugoslav Republic of Macedonia.

On 12 February 2019, the Former Yugoslav Republic of Macedonia became known as the Republic of North Macedonia, pursuant to the Prespa Agreement.[[1]](#footnote-1) On 14 February 2019, Australia adopted the new naming conventions for the country in accordance with the *Note Verbale* from the Republic of North Macedonia to the Permanent Missions of all States and Observer States of the United Nations of the same date.

In order to ensure that Australia can seamlessly continue to consider, accept and progress extradition requests from the Republic of North Macedonia following the name change, the *Extradition (Republic of North Macedonia) Regulations 2023* (the Regulations) declare the Republic of North Macedonia to be an ‘extradition country’ for the purposes of section 5 of the Act and repeal the 2009 Regulations. Further, given that the Former Yugoslav Republic of Macedonia and the Republic of North Macedonia are the same nation state and political entity, the Regulations provide transitional arrangements to make it clear that Australia can consider, accept and progress extradition requests made by:

1. the Republic of North Macedonia before, on or after commencement of the Regulations, and that any reference to the Former Yugoslav Republic of Macedonia in the extradition request, or in any document relating to the extradition request, would be taken to be a reference to the Republic of North Macedonia; and
2. the Former Yugoslav Republic of Macedonia before commencement of the Regulations. Any such extradition requests that Australia has received from the Former Yugoslav Republic of Macedonia (and for which a notice has not yet been issued under subsection 16(1) of the Act) would be taken to be requests made by the Republic of North Macedonia and any reference to the Former Yugoslav Republic of Macedonia in such requests (and any other document relating to such requests) would be taken to be a reference to the Republic of North Macedonia.

As noted above, the change from the Former Yugoslav Republic of Macedonia to the Republic of North Macedonia is a change in name only. In particular, there has been no change to the political institutions or territorial boundaries of the country to which these two names apply. Therefore, the Regulations make clear that the country now known as the Republic of North Macedonia (and previously known as the Former Yugoslav Republic of Macedonia) continues to be an ‘extradition country’ for the purposes of the definition of ‘extradition country’ in paragraph (a) of section 5 of the Act.

The Regulations would also modify a particular aspect of how the Act applies to extradition matters involving the Republic of North Macedonia, consistent with the 2009 Regulations. Paragraph 17(2)(a) of the Act requires that a person on remand under section 15 of the Act must be brought before a magistrate or eligible Judge 45 days after the person was arrested if a request for his or her extradition has not been received, or the Attorney-General has received such request but a notice has not been given under subsection 16(1) in relation to the person within 5 days after the end of the 45 day period. The magistrate or eligible Judge must then determine whether the person should be released. Paragraph 11(1)(b) of the Act provides that regulations may make provision to the effect that the Act applies in relation to a specified extradition country subject to limitations, conditions, exceptions or qualifications. Pursuant to subsection 11(2) of the Act, the reference to the limitations, conditions, exceptions or qualifications is deemed to include a modification to the number of days specified in paragraph 17(2)(a) of the Act. The Regulations would modify the 45 day period to 60 days, allowing a reasonable period of time for an extradition request to be received from the Republic of North Macedonia in relation to a particular person.

Before the Regulations were made, the Attorney-General considered the general obligation to undertake appropriate consultation pursuant to section 17 of the *Legislation Act 2003*. Consultation was undertaken across some government agencies. As the Regulations relate to international cooperation on criminal justice and law enforcement matters, and implement Australia’s adoption of the new naming convention in 2019, it was not considered necessary to consult further outside the Australian Government.

The Regulations are machinery in nature and are not expected to have any meaningful impact on business, individual or community organisations. The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required for the Regulations (OIA number 26477).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations are set out in Attachment A.

The human rights protections in the Act will apply to any request for extradition sent to, or received from, the Republic of North Macedonia. A statement of compatibility with human rights preparedinaccordancewithPart3ofthe *Human Rights (Parliamentary Scrutiny) Act 2011* is at Attachment B.

Authority: Section 55 of the *Extradition Act 1988*

**ATTACHMENT A**

**NOTES ON SECTIONS**

**Details of the *Extradition (Republic of North Macedonia) Regulations 2023***

**Part 1 - Preliminary**

**Section 1 - Name**

This section provides that the title of the Regulations is the *Extradition (Republic of North Macedonia) Regulations 2023*.

**Section 2 - Commencement**

This section provides that the Regulations commence on the day after the instrument is registered.

**Section 3 - Authority**

This section provides that the Regulations are made under the *Extradition Act 1988*.

**Section 4 - Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The effect of this section is that the *Extradition (Former Yugoslav Republic of Macedonia) Regulations 2009* (the 2009 Regulations) are repealed in their entirety. The 2009 Regulations declared the Former Yugoslav Republic of Macedonia to be an ‘extradition country’ for the purposes of the Act.

**Section 5 - Definitions**

This section defines terms used in the Regulations. In the Regulations, references to the word *Act* are to be interpreted as being references to the *Extradition Act 1988*.

**Part 2 – Declaration as extradition country**

**Section 6 - Declaration of Republic of North Macedonia as an extradition country**

Under the Act, Australia can only accept extradition requests from countries that are an ‘extradition country’ for the purposes of the Act. This section provides that the Republic of North Macedonia is declared to be an ‘extradition country’ for the purposes of the definition of an extradition country under paragraph 5(a) of the Act. The effect of this section is that Australia will be able to consider extradition requests from the Republic of North Macedonia as the same nation state and political entity as the Former Yugoslav Republic of Macedonia.

**Section 7 - Application of the Act**

Paragraph 11(1)(b) of the Act provides that regulations may make provision to the effect that the Act applies in relation to a specified extradition country subject to certain limitations, conditions, exceptions or qualifications.

This section provides that for the purposes of paragraph 11(1)(b) of the Act, the Act applies in relation to the Republic of North Macedonia subject to modification of paragraph 17(2)(a) of the Act by omitting ‘45 days’ and substituting ‘60 days’. The number of days in paragraph 17(2)(a) refers to the amount of time after which a person who has been remanded under section 15 of the Act following a provisional arrest request must be brought before a magistrate or eligible Judge to determine the person’s release if either:

1. an extradition request is not received in relation to the person, or
2. the Attorney-General has received an extradition request but has not issued a notice under subsection 16(1) in relation to the person within five days after the period in paragraph 17(2)(a) ends.

The modification from 45 to 60 days is the same as in section 5 of the 2009 Regulations and ensures consistency between the 2009 Regulations and the Regulations.

**Part 3 – Transitional provisions**

**Section 8 - Extradition requests made by the Republic of North Macedonia**

Section 8 relies on the ‘necessary or convenient’ regulation making power in section 55(b) of the Act to address transitional arrangements necessary to facilitate accepting and progressing extradition requests made by the Republic of North Macedonia before, as well as on or after, commencement of the Regulations. This is because it is necessary and appropriate, noting that the Republic of North Macedonia is the same political entity as the Former Yugoslav Republic of Macedonia, that extradition requests made to Australia can continue to be accepted and progressed.

Subsection 8(1) does this by setting out that section 6 of the Regulations, which declares the Republic of North Macedonia to be an extradition country for the purposes of section 5 of the Act, applies in relation to extradition requests made by the Republic of North Macedonia in all of these circumstances.

Subsection 8(1) puts beyond doubt that an extradition request made in the name of the Republic of North Macedonia *before* the commencement of the Regulations is a request from an ‘extradition country’, even though the Republic of North Macedonia was not prescribed in regulations as an ‘extradition country’ at the time the request was made.

Subsection 8(2) also makes it clear that any references to the Former Yugoslav Republic of Macedonia in an extradition request, or any other document relating to an extradition request, made by the Republic of North Macedonia before, on or after the commencement of the Regulations is taken to be a reference to the Republic of North Macedonia. This is necessary because the documents comprising the extradition request may have been received in separate bundles at different times, including prior to the country’s name change in February 2019. Furthermore, a request may include documents that were prepared prior to the country’s name change, but the request was not formally provided to Australia until after the name change took effect, in which case both country names may be referenced in one or more parts of the document.

Section 8 therefore ensures that, for the purposes of the Act, the Former Yugoslav Republic of Macedonia and the Republic of North Macedonia are the same nation state and political entity.

The Regulations do not enliven the presumption against retrospective delegated legislation, nor the provision in subsection 12(2) of the *Legislation Act 2003,* as they operate to *prospectively* confirm that a person may be susceptible to extradition to the Republic of North Macedonia for requests received in the name of that entity before the Regulations commence. Nevertheless, should the Regulations enliven subsection 12(2) of the *Legislation Act 2003*, the Regulations would not adversely affect the rights or liabilities of the extraditable person as that person could nonetheless be extradited to the Republic of North Macedonia pursuant to the 2009 Regulations. As the Republic of North Macedonia is the same country as the Former Yugoslav Republic of Macedonia, the 2009 Regulations would likely apply to make the Republic of North Macedonia an ‘extradition country’. However, in these circumstances it would be necessary for the Republic of North Macedonia to adduce evidence in order to prove, as a matter of fact, that there is sufficient identity between the Former Yugoslav Republic of Macedonia and the Republic of North Macedonia, including that the political institutions and territorial boundaries remain sufficiently identical. Any finding on that issue may be open to review. However, these Regulations will put it beyond doubt that the Republic of North Macedonia is an ‘extradition country’ for the purposes of the Act, which is consistent with Australia’s adoption of the new naming convention.

**Section 9 - Extradition requests made by the Former Yugoslav Republic of Macedonia**

Section 9 provides that, following commencement of the Regulations, an extradition request made by the Former Yugoslav Republic of Macedonia *before* commencement of the Regulations will be taken to be an extradition request made by the Republic of North Macedonia, in circumstances where the Attorney-General has not yet issued a notice under section 16 of the Act in respect of the extradition request.

This is because it is necessary and appropriate, noting that the Republic of North Macedonia is the same nation state and political entity as the Former Yugoslav Republic of Macedonia, that any extradition requests that Australia has received from the Former Yugoslav Republic of Macedonia can be accepted and progressed in accordance with the Act and the Regulations. Section 9 relies on the ‘necessary or convenient’ regulation making power in section 55(b) of the Act to make transitional arrangements to facilitate Australia accepting and progressing any such extradition requests.

Section 9 also makes it clear that any reference to the Former Yugoslav Republic of Macedonia in an extradition request, and in any other document relating to the extradition request, is taken to be a reference to the Republic of North Macedonia. This is necessary because the documents comprising the extradition request may have been received in separate bundles at different times, and may include documents that reference the previous country name in one or more parts of the document.

Section 9 therefore ensures that, for the purposes of the Act, the Former Yugoslav Republic of Macedonia and the Republic of North Macedonia are the same nation state and political entity.

**Schedule 1 – Repeals**

**Item [1] - The whole of the instrument**

This item repeals the whole of the *Extradition (Former Yugoslav Republic of Macedonia) Regulations 2009.*

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Extradition (Republic of North Macedonia) Regulations 2023**

1. This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

1. Extradition is the process by which one country apprehends and sends a person to another country for the purposes of criminal prosecution, or for the imposition or service of a prison sentence. The *Extradition Act 1988* provides the legislative basis for extradition in Australia. Under the Extradition Act, Australia can make an extradition request to any country, but can only receive an extradition request from a country that is an ‘extradition country’.
2. The Extradition Act relevantly allows regulations to be made to declare a country to be an ‘extradition country’ for the purposes of the Extradition Act. The *Extradition (Former Yugoslav Republic of Macedonia) Regulations 2009* (the 2009 Regulations) declared the Former Yugoslav Republic of Macedonia an extradition country for the purposes of the Extradition Act. This enabled Australia to receive and action extradition requests from the Former Yugoslav Republic of Macedonia.
3. On 12 February 2019, the Former Yugoslav Republic of Macedonia became known as the Republic of North Macedonia, pursuant to the Prespa Agreement.[[2]](#footnote-2) On 14 February 2019, Australia adopted the new naming conventions for the country in accordance with the *Note Verbale* from the Republic of North Macedonia to the Permanent Missions of all States and Observer States of the United Nations of the same date.
4. In order to ensure that Australia can seamlessly continue to consider, accept and progress extradition requests from the Republic of North Macedonia following the name change, the *Extradition (Republic of North Macedonia) Regulations 2023* (the Regulations) repeal the 2009 Regulations and declare the Republic of North Macedonia to be an ‘extradition country’ for the purposes of section 5 of the Extradition Act. The Regulations therefore enable Australia to continue to receive and action extradition requests from the Republic of North Macedonia notwithstanding their 2019 name change.
5. Further, given that the name change did not involve any change in territorial boundaries, political institutions or relationships of sovereignty concerning the country, the Regulations provide transitional arrangements to make it clear that Australia can consider, accept and progress extradition requests made by:

* the Republic of North Macedonia before, on or after commencement of the Regulations, and that any reference to the Former Yugoslav Republic of Macedonia in the extradition request, or in any document relating to the extradition request, would be taken to be a reference to the Republic of North Macedonia; and
* the Former Yugoslav Republic of Macedonia before commencement of the Regulations. Any such extradition requests that Australia has received from the Former Yugoslav Republic of Macedonia (and for which a notice has not yet been issued under subsection 16(1) of the Act) would be taken to be requests made by the Republic of North Macedonia and any reference to the Former Yugoslav Republic of Macedonia in such requests (and any other document relating to such requests) would be taken to be a reference to the Republic of North Macedonia.

1. The change from the Former Yugoslav Republic of Macedonia to the Republic of North Macedonia is a change in name only. In particular, there has been no change to the political institutions or territorial boundaries of the country to which these two names apply. Therefore, following the change of name, the Regulations make clear that the country now known as the Republic of North Macedonia (and previously known as the Former Yugoslav Republic of Macedonia) continues to be an ‘extradition country’ for the purposes of the definition of ‘extradition country’ in paragraph (a) of section 5 of the Act.

**Overview of the extradition process**

1. Australia’s extradition process for incoming extradition requests from foreign countries (excluding New Zealand) generally comprises four stages under the Extradition Act:
2. The Attorney-General may, in his or her discretion, issue a notice in relation to an extraditable person following receipt of a request from an extradition country (section 16).
3. If a notice is issued, an application may be made for a warrant for the arrest of the extraditable person (section 12). Following arrest, the person will be brought before a magistrate or eligible Judge who will remand the person (section 15).
4. Following remand, the person can either waive (section 15A) or consent (section 18) to their extradition. If the person does not waive or consent, a magistrate or eligible Judge must determine whether the person is eligible for surrender (section 19).
5. The Attorney-General must determine whether an extraditable person should be surrendered under either section 15B (if they have waived extradition in relation to one or more of the ‘extradition offences’) or section 22 (if they have consented to extradition or been found eligible under section 19).

*Stage 1: Issue of a notice (section 16)*

1. Following receipt of a formal extradition request from an extradition country, the Attorney‑General has discretion under section 16 of the Extradition Act to issue a notice stating that an extradition request has been received for a person for an extradition offence(s).
2. The Attorney-General must not issue a notice under section 16 unless the   
   Attorney-General is of the opinion that the person sought is an ‘extraditable person’ in relation to the extradition country. Pursuant to section 6 of the Extradition Act, a person is an ‘extraditable person’ where:

* either:
  + a warrant is in force for the arrest of the person in relation to an offence or offences, or
  + the person has been convicted of an offence or offences, and the requesting country intends to sentence that person, or if they have been sentenced, the whole or part of their sentence remains to be served, and
* the relevant offence, or any of the offences, is an ‘extradition offence’ in relation to the extradition country, and
* the person is believed to be outside of the country making the extradition request.

1. The decision to issue a notice under subsection 16(1) is subject to judicial review under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution.

*Stage 2: Arrest and remand (sections 12 and 15)*

1. With the exception of urgent matters, once a notice has been issued, the Attorney‑General’s Department will apply for an extradition arrest warrant under subsection 12(1) of the Extradition Act.
2. Pursuant to subsection 12(1) of the Extradition Act, a magistrate or eligible Judge will issue a warrant if satisfied, on the basis of information given by affidavit, that the person is an extraditable person in relation to the extradition country. Section 15 requires that a person be taken before a magistrate or eligible Judge as soon as practicable following their arrest and be remanded in custody or on bail. This decision is subject to judicial review under section 39B of the *Judiciary Act 1903*.

*Stage 3: Eligibility hearing before a magistrate or eligible Judge (section 19)*

1. If a person does not elect to waive the extradition process under section 15A or consent to their surrender under section 18 of the Extradition Act, amagistrate or eligible Judge shall determine whether the person is eligible for surrender under section 19 of the Extradition Act. Pursuant to that section, a person is only eligible for surrender if:

* the necessary supporting documents (as set out in subsection 19(3)) are produced,
* where the regulations state that the Extradition Act applies subject to a limitation, condition, exception or qualification that requires the production of additional documentation, that the additional documentation is produced,
* the magistrate or eligible Judge is satisfied that the conduct would constitute an ‘extradition offence’ in both countries (known as ‘dual criminality’), and
* the magistrate or eligible Judge is satisfied there are no substantial grounds for believing there is an ‘extradition objection’ in relation to the extradition offence.

1. An ‘extradition offence’ is defined in section 5 of the Extradition Act to mean:

* in relation to a country other than Australia, an offence against a law of the country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months (or, if the offence does not carry a penalty under the law of the country, the conduct is required to be treated as an offence for which the surrender of persons is permitted by the country and Australia under a relevant extradition treaty), or
* in relation to Australia or part of Australia, an offence against a law of Australia, or law in force in the part of Australia, for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months.

1. An ‘extradition objection’ is defined in section 7 of the Extradition Act and arises where:

* the extradition offence is a political offence in relation to the extradition country,
* the person is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, sex, sexual orientation, religion, nationality or political opinions or for a political offence in relation to the extradition country,
* the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, sex, sexual orientation, religion, nationality or political opinions,
* the conduct constituting the offence for which the person is sought constitutes a military offence in Australia, but not an ordinary criminal offence, or
* the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Australia, or has undergone the punishment provided by the law of that country or Australia, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence (i.e. protection from double jeopardy).

1. Pursuant to section 21 of the Extradition Act, either the person who is the subject of the extradition request or the extradition country may apply to the Federal Court of Australia for a review of the magistrate or eligible Judge’s finding on eligibility. The Federal Court’s decision may be further appealed to the Full Court of the Federal Court of Australia and the High Court of Australia.
2. The person who is the subject of the extradition request may also seek judicial review of an eligibility decision under section 39B of the *Judiciary Act 1903*.

*Stage 4: Attorney-General’s surrender determination (section 15B or section 22)*

1. The fourth stage requires the Attorney-General to determine whether the person should be surrendered under either section 15B of the Extradition Act (if the person has waived the extradition process in relation to one or more extradition offences) or section 22 of the Extradition Act (if the person has consented to extradition or has been found eligible by a magistrate or eligible Judge under section 19).
2. In accordance with the principles of procedural fairness, the person who is the subject of the extradition request is given an opportunity to make representations to the Attorney‑General regarding any matters, human rights or otherwise, prior to the Attorney‑General making a surrender determination under sections 15B or 22 of the Extradition Act. A person can seek a review of the Attorney-General’s surrender determination under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution.
3. Subsection 22(3) of the Extradition Act provides that a person is only to be surrendered in relation to an extradition offence if:

* (a) the Attorney-General is satisfied that there is no extradition objection (as set out above at paragraph 17) in relation to the relevant offence,
* (b) the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture,
* (c) where the offence is punishable by death, an undertaking is given by the extradition country to Australia that the person will not be tried for the offence, or if tried, the death penalty will not be imposed, or if imposed, will not be carried out,
* (d) the extradition country has given a speciality assurance in relation to the person pursuant to subsection 22(4),
* (e) where regulations made under section 11 of the Extradition Act give effect to a mandatory or discretionary limitation, condition, qualification or exception relating to surrender, the Attorney-General is satisfied that those circumstances do not exist (in the case of mandatory limitations, conditions, qualifications or exceptions), or if they exist (in the case of discretionary limitations, conditions, qualifications or exceptions), that the surrender of the person should nevertheless not be refused, and
* (f) the Attorney-General, in his or her discretion, does not consider that the person should be surrendered.

1. In relation to paragraph 22(3)(f), the Federal Court of Australia has held that this general discretion ‘is unfettered, and the Minister may, in the exercise of the discretion, take into account any matters, or no matters, provided that the discretion is exercised in good faith and consistently with the objects, scope and purpose of the [Extradition] Act.’[[3]](#footnote-3)
2. Where a person elects to waive the extradition process, section 15B sets out that the Attorney-General may only surrender the person if:
   * (a) the Attorney-General does not have substantial grounds for believing that person would be in danger of being subjected to torture if surrendered to the extradition country, and
   * (b) the Attorney-General is satisfied that there is no real risk that the death penalty would be carried out on the person in relation to any offence should they be surrendered to the extradition country.
3. The Regulations also modifies a particular aspect of how the Extradition Act applies to extradition matters involving the Republic of North Macedonia, consistent with the 2009 Regulations. Section 11(1)(b) of the Extradition Act relevantly allows regulations to be made that apply the Extradition Act to a specified extradition country subject to other limitations, conditions, exceptions or qualifications, other than such limitations, conditions, exceptions or qualifications as are necessary to give effect to a multilateral extradition treaty in relation to the country. This provides a mechanism for the Extradition Act to apply to specified extradition countries subject to modifications listed in regulations.
4. In this case, section 7 of the Regulations provides that the Extradition Act applies to the Republic of North Macedonia subject to the modification of paragraph 17(2)(a) of the Extradition Act by omitting “45 days” and substituting “60 days”. This has the effect of extending the amount of time after which a person who has been remanded under section 15 of the Extradition Act, following a provisional arrest request, must be brought before a magistrate or eligible Judge to determine release if *either* a full extradition request has not been received or if the Attorney-General has received a full extradition request in relation to the person but has not issued a notice under subsection 16(1) of the Extradition Act.
5. Modification of the number of days in paragraph 17(2)(a) is a common modification, and is expressly contemplated by subsection 11(2) of the Extradition Act. The same modification is also set out in section 5 of the 2009 Regulations. A modification to a ‘60 day’ period is common to Australia’s recent extradition practice, and has been included for a broad range of countries including, for example, the United States, Canada, Mexico, Brazil, Croatia and others. This time period takes into account the time required to comply with the requirements of the Extradition Act, namely the complexities of securing the delivery of original documents and translations thereof in the correct form from foreign countries via the diplomatic channel, and the formal acceptance of the request by the Attorney-General.

**Human rights implications**

1. The evolving nature of, and increased threats posed by, transnational crime requires Australia to have a robust and responsive extradition system that assists in effectively combating domestic and transnational crime, while providing appropriate safeguards. It is important to ensure that criminals cannot evade justice simply by crossing borders.
2. The Extradition Act and the Regulations which apply the Extradition Act to requests made by the Republic of North Macedonia engage, or have the potential to engage, human rights and freedoms under the *International Covenant on Civil and Political Rights* [1980] ATS 23 (ICCPR) and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [1989] ATS 21 (CAT), namely:
   * the right to life (Article 6 of the ICCPR)
   * the prohibition against torture and other cruel, inhuman or degrading treatment or punishment (Article 3 of the CAT and Article 7 of the ICCPR)
   * rights to freedom from arbitrary detention (Article 9 of the ICCPR)
   * fair trial and fair hearing rights, and minimum guarantees in criminal proceedings (Article 14 of the ICCPR)
   * rights of equality and non-discrimination (Articles 2(1) and 26 of the ICCPR), and
   * right to privacy (Article 17 of the ICCPR).
3. The Extradition Act contains several human rights safeguards that the Attorney‑General must take into account when determining whether to make a surrender determination (see above paragraphs 21-24), and that a magistrate or eligible Judge must take into account when determining a person’s eligibility for surrender (see paragraphs 14 and 17 on dual criminality and ‘extradition objections’). Additionally, the Attorney-General’s absolute discretion to refuse an extradition request under paragraph 22(3)(f) (see paragraph 23) provides a further safeguard for the Attorney-General to take into account the specific circumstances of the extraditable person on a case-by-case basis. These safeguards will apply to all extradition requests made by the Republic of North Macedonia.
4. Each of the human rights and freedoms that may be engaged by the Extradition Act and the Regulations, and specific safeguards for these rights, are discussed below.

The right to life

1. Article 6 of the ICCPR provides that every human being has the inherent right to life and shall not be deprived of life arbitrarily. This Article requires State parties to protect this right by law.
2. The Extradition Act and the Regulations have the potential to engage the right to life in circumstances where an extradition request relates to an offence which carries the death penalty under the law of the Requesting Party. In practical terms, this circumstance is highly unlikely to arise in extraditions between Australia and the Republic of North Macedonia as the Republic of North Macedonia has abolished the death penalty.
3. Notwithstanding this, the Extradition Act contains a number of safeguards that reflect, and are consistent with, the Australian Government’s obligations under the ICCPR to protect the right to life as well as Australia’s long‑standing opposition to the death penalty. Paragraph 22(3)(c) of the Extradition Act provides that the Attorney-General is only able to make a surrender determination in circumstances where the offence is punishable by a penalty of death if an undertaking has been provided that either the person will not be tried for that offence; or if tried, the death penalty will not be imposed; or, if the death penalty is imposed, it will not be carried out.
4. Paragraph 15B(3)(b) of the Extradition Act also provides a safeguard by stipulating that the Attorney-General may only make a surrender determination (following a person’s election to waive the extradition process) where the Attorney-General is satisfied that there is no real risk that the death penalty will be carried out on the person in relation to any offence should they be surrendered to the extradition country.
5. The use of death penalty undertakings is a well-established tool in international extradition. It is the Australian Government’s long-standing experience that undertakings in relation to the death penalty in extradition cases have always been honoured. Undertakings are written government assurances and a breach of an undertaking would have serious consequences for both Australia’s extradition relationship and broader bilateral relationship with the relevant foreign country.
6. The Full Federal Court decision in *McCrea* v *Minister for Justice and Customs*[[4]](#footnote-4) sets out the test for an acceptable death penalty undertaking. The test requires that the Attorney‑General be satisfied that ‘the undertaking is one that, in the context of the system of law and government of the country seeking surrender, has the character of an undertaking by virtue of which the penalty of death would not be carried out’.[[5]](#footnote-5)
7. Breach of an undertaking may also have reputational consequences and negatively impact the relevant foreign country’s law enforcement relationship with other countries. The Attorney-General would consider the reliability of any death penalty undertaking on a case by case basis. Furthermore, if, notwithstanding the receipt of an undertaking, the Attorney‑General considers that a real risk remains that the person will be subject to the death penalty, the Attorney‑General can refuse extradition in the exercise of the general discretion under paragraph 22(3)(f) of the Extradition Act.
8. Given the public nature of extradition, the Australian Government would most likely be made aware of a breach of a death penalty undertaking. The Attorney-General’s Department has provided information on extradition matters in its annual reports to Parliament since the establishment of the Extradition Act, including whether there have been any breaches of undertakings by a foreign country in relation to a person extradited from Australia. No significant breaches have been recorded to date.[[6]](#footnote-6)
9. Australia also monitors Australian citizens who have been extradited through its consular network, in accordance with the Vienna Convention on Consular Relations. Following recommendations made in JSCOT’s 2018 Report 177, since 2018-19, the Attorney-General’s Department also includes de-identified statistical information in its annual report in relation to Australian nationals extradited by Australia, including, where available:
   * whether a trial has taken place
   * where a trial has taken place, information on the verdict handed down
   * if a sentence was imposed, what the sentence was, and
   * the total number of extradited Australian nationals who are currently receiving consular assistance.
10. For example, the Attorney-General’s Department annual report of 2021-22 indicated that one Australian national extradited in previous reporting periods was still awaiting trial at the start of 2021-22 and four Australian nationals were extradited during 2021-22. By the end of the 2021-22 reporting period, three of these five persons had been sentenced, one person was found not guilty and one was awaiting trial. Four of the extradited Australian nationals were receiving consular assistance.
11. The Extradition Act and the Regulations are therefore consistent with the right to life under the ICCPR.

Prohibition against torture, and other cruel, inhuman or degrading treatment or punishment

1. Article 3 of the CAT establishes *non-refoulement* obligations prohibiting States from returning a person to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In addition, Article 7 of the ICCPR provides that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment (CIDTP). It is widely accepted that Article 7 of the ICCPR includes implied *non‑refoulement* obligations in relation to torture and CIDTP.
2. The Extradition Act and the Regulations have the potential to engage the prohibition against torture and CIDTP in circumstances where a person would be in danger of being subjected to torture or CIDTP if surrendered to the Requesting Party.

*Torture*

1. Article 3 of the CAT prohibits the extradition of a person to a State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and requires that decision-makers take into account all relevant considerations when determining whether there are such grounds. Article 7 of the ICCPR relevantly provides that no one shall be subjected to torture.
2. Paragraphs 15B(3)(a) and 22(3)(b) of the Extradition Act provide that the Attorney‑General may only surrender a person if (amongst other things) the Attorney‑General does not have substantial grounds for believing that, if the person were surrendered, they would be in danger of being subjected to torture.
3. Further, for the purposes of determining whether to surrender under section 15B or subsection 22(3) of the Extradition Act, the Attorney-General may consider all material reasonably available to assist in determining whether the person may be subjected to torture. This may include relevant international legal obligations, any representations or assurances from the requesting country, country-specific information, reports prepared by government or non-government sources, information provided through the diplomatic network and those matters raised by the person who is the subject of the extradition request. Therefore, the decision on whether to surrender a person is made by the Attorney-General on a case-by-case basis, in accordance with the safeguards in the Extradition Act which are in line with Australia’s international obligations, including those in Article 3 of the CAT and Article 7 of the ICCPR.

*CIDTP*

1. Australia also has *non-refoulement* obligations under Article 7 of the ICCPR in relation to CIDTP. Safeguards in the Extradition Act, in particular the Attorney-General’s general discretion under subsection 15B(2) and paragraph 22(3)(f) of the Extradition Act, provides a basis to refuse extradition where the Attorney-General has concerns based on CIDTP considerations. The Attorney-General makes surrender determinations on a case-by-case basis in accordance with the safeguards in the Extradition Act, and in line with Australia’s international legal obligations.
2. Further, the person who is the subject of an extradition request may seek judicial review under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution of the Attorney-General’s surrender determination made under sections 15B and 22 of the Extradition Act.
3. The Extradition Act and the Regulations are therefore consistent with Australia’s obligation not to return (*refouler*) a person to a country where there are substantial grounds for believing that the person would be in danger of being subjected to torture or CIDTP under Article 3 of the CAT and Article 7 of the ICCPR.

The rights to freedom from arbitrary detention

1. Article 9(1) of the ICCPR protects the right to freedom from arbitrary detention. Further, Article 9(4) of the ICCPR imposes an obligation on States to ensure that persons who are arrested and detained are entitled to take proceedings before a court to decide the lawfulness of their detention.
2. The presumption against bail for persons who are the subject of an incoming extradition request has the potential to engage the right to freedom from arbitrary detention.
3. The Australian Government does not consider that detention pending extradition ordinarily falls within the scope of Article 9(1). Rather, Australia’s position is that detention for extradition purposes is recognised as a permissible form of detention to which Article 9(1) is not directed.[[7]](#footnote-7) Notwithstanding this position, it is considered below whether the laws regarding bail for persons who are arrested in Australia pursuant to a foreign country’s extradition request have the potential to engage the right to freedom from arbitrary detention under Article 9(1).
4. The test for whether detention is arbitrary under Article 9(1) of the ICCPR is whether, in all the circumstances, detention is reasonable, necessary and proportionate to the end that is sought.[[8]](#footnote-8) Factors relevant to assessing whether detention is arbitrary include the existence of avenues of review on the appropriateness of detention, as well as whether less intrusive alternatives to detention have been considered.[[9]](#footnote-9)
5. Section 15 the Extradition Act provides for the remand of a person, either in custody or on bail, following their arrest pursuant to an extradition request. Sections 15(2) and 15(6) of the Extradition Act provide for a person to be remanded on bail where there are ‘special circumstances’ justifying such a remand. The same ‘special circumstances’ test applies to the granting of bail at the stage of a consent hearing (subsection 18(2)), a surrender eligibility hearing (subsection 19(9)), the review of a surrender eligibility decision (subsections 21(2) and (6)) or during the review of a surrender determination (section 49C).
6. Decisions on the granting of bail under the Extradition Act are decided on a case-by-case basis, in view of the individual’s particular circumstances. The ‘special circumstances’ test has been interpreted by the High Court of Australia as comprising two stages.[[10]](#footnote-10) First, the person seeking bail must establish that ‘special circumstances’ exist. In order to constitute ‘special circumstances’, the matters relied on need to be ‘different from the circumstances that persons facing extradition would ordinarily endure.’[[11]](#footnote-11) Second, the person must also establish that there is no real risk of flight. Where these two conditions are satisfied, there remains a general discretion for the magistrate or eligible Judge, or court to which a review application or appeal is made, to consider whether to grant bail based on the circumstances of the matter.[[12]](#footnote-12)
7. To the extent that the test for bail, and by extension the Extradition Act and the Regulations, may limit the right to freedom from arbitrary detention, such limitation is necessary, reasonable and proportionate to:
   * achieve the purposes of Australia’s extradition legislative and policy framework, namely to achieve the legitimate objective of facilitating the apprehension and surrender of individuals for the purposes of criminal prosecution or to serve a prison sentence,
   * give effect to Australia’s treaty obligations under international law and promote international comity between states, and
   * ensure that Australia is a reliable partner in international crime cooperation.
8. The limitation is reasonable as the requirement to remand a person in custody unless there are ‘special circumstances’ is provided for under law. The ‘special circumstances’ test is clearly defined in case law and is applied by decision-makers on a case-by-case basis, where the decision-maker is required to carefully consider whether the circumstances relied upon by a person, either individually or in combination, meet the test. Notwithstanding the nature of the ‘special circumstances’ test, bail is available as a statutory right at various stages of the extradition process[[13]](#footnote-13) and applicants can and do successfully obtain bail in Australia during the extradition process.
9. Factors arising in individual cases that have been held to amount to ‘special circumstances’ under the Extradition Act include:
   * extensive physical or mental health issues that could not properly be managed in custody,[[14]](#footnote-14)
   * advanced age and health conditions,[[15]](#footnote-15)
   * the need for critical, whole-of-family treatment in order to treat a childhood illness,[[16]](#footnote-16)
   * specific skills requiring the person to be present at their workplace, family ties and guarantees of court attendance, and unlikelihood of receiving a custodial sentence for the alleged offences,[[17]](#footnote-17) and
   * carer responsibility for a family member when no other person can fulfil the role in the circumstances and provide the required support.[[18]](#footnote-18)
10. The limitation is necessary as the ‘special circumstances’ test for bail upholds Australia’s international obligations to secure the return of alleged offenders to face justice, given the serious flight risk posed in many extradition matters.
11. The High Court of Australia has recognised that Australia has a ‘very substantial’ interest in surrendering persons subject to an extradition request in accordance with its treaty obligations, and has clarified that granting bail where a risk of flight exists may jeopardise both Australia’s crime cooperation relationship with the requesting country and broader standing in the international community.[[19]](#footnote-19) This differentiates extradition proceedings from Australian criminal prosecutions. Australia’s extradition process is administrative in nature and the High Court has affirmed that extradition forms no part of the Australian criminal justice system.[[20]](#footnote-20)
12. The limitation is also proportionate because the ‘special circumstances’ test for bail is applied by a magistrate or eligible Judge, or by the court to which a review application or appeal is made (as relevant), on a case-by-case basis according to merit. Further, consistently with Article 9(4) of the ICCPR, a person may seek judicial review of a decision of a magistrate or eligible Judge to refuse bail under section 39B of the *Judiciary Act 1903*. The case-by-case nature of these decisions, as well as the established review mechanisms, render any limitations on the rights reasonable, necessary and proportionate to the overall legitimate objective of facilitating the apprehension and surrender of individuals for the purposes of criminal prosecution or to serve a prison sentence in another country, upholding Australia’s international legal obligations and ultimately combatting serious transnational crime.
13. The Extradition Act and the Regulations are therefore consistent with the right to freedom from arbitrary detention in Article 9 of the ICCPR. To the extent that the Extradition Act and the Regulations may limit these rights, any limitation is reasonable, necessary and proportionate to achieve the legitimate objectives of the Extradition Act and Australia’s extradition regime.

Fair trial rights and minimum guarantees in criminal proceedings

1. Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals and, in the determination of criminal charges or in a suit at law, shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14 of the ICCPR also sets out a number of specific minimum guarantees in criminal proceedings including the prohibition against double jeopardy in Article 14(7).
2. The Extradition Act and the Regulations have the potential to engage fair trial rights and rights to minimum guarantees in criminal proceedings where a person is extradited in circumstances where there is a real risk of a denial of fair trial rights in the country to which the individual is to be extradited. However, it is the Australian Government’s view that Article 14 of the ICCPR does not extend to an obligation not to return a person to a country where they face a real risk of an unfair trial which could breach the obligations under Article 14. In other words, the Australian Government considers that Article 14 does not contain *non-refoulement* obligations and therefore is not engaged in the context of Australia potentially surrendering a person to another country under the Extradition Act.
3. Nevertheless, there are a range of protections under the Extradition Act which are relevant to fair trial protections.
4. At the stage of the Attorney-General deciding whether to surrender a person to the requesting country, there are a range of grounds under which the Attorney-General could refuse to surrender a person because of concerns that the person would not receive a fair trial.
5. Subsection 15B(2) and paragraph 22(3)(f) of the Extradition Act give the   
   Attorney-General a general discretion to refuse surrender, which enables the   
   Attorney-General to consider fair trial or other human rights concerns. This includes whether an extradited individual would have access to a fair trial or whether to surrender a person convicted *in absentia* (and whether a person tried *in absentia* will have an opportunity to be retried). Relevant considerations may also include the extent to which an individual would receive (or has received) appropriate procedural guarantees in a criminal trial (or re-trial) in the country to which he or she is being extradited.
6. Further, it is open to the Attorney-General to request assurances from the requesting country relating to the treatment and conditions applying to a person upon extradition where the Attorney-General has concerns regarding a person’s ability to receive a fair trial and be afforded minimum guarantees in criminal proceedings. Assurances could include that the trial be conducted in person and be held in open court, that the person has access to legal representation, that the person has an opportunity to test the evidence against them or that the person will be imprisoned in particular jails. As a matter of procedural fairness, the   
   Attorney-General would also consider any information put to him by the individual subject to the extradition request, and any representations or assurances provided by the requesting country. The Attorney‑General may also consider country-specific information, reports prepared by government or non-government sources and information provided through the diplomatic network.
7. Section 7(e) of the Extradition Act also includes double jeopardy in the definition of an ‘extradition objection’. This has the practical effect of preventing:
   * a finding by a magistrate or eligible Judge under section 19 that a person is eligible for surrender (pursuant to paragraph 19(2)(d)), or
   * the Attorney-General making a surrender determination under section 22 (pursuant to paragraph 22(3)(a)),

in circumstances where a person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Australia, or has undergone the punishment provided by the law of that country or Australia, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence.

1. It is also open to the person who is the subject of an extradition request to seek review of a magistrate or eligible Judge’s surrender eligibility decision under section 21 of the Extradition Act or seek judicial review under section 39B of the *Judiciary Act 1903* of administrative decisions at relevant stages of the extradition process, including a surrender determination by the Attorney-General.
2. The Extradition Act and the Regulations therefore operate consistently with the fair trial rights and minimum guarantees in criminal proceedings provided under Article 14 of the ICCPR.

*Extradition hearings in Australia: the ‘no evidence’ standard*

1. The guarantee to a fair and public hearing by a competent, independent and impartial tribunal under Article 14(1) of the ICCPR is not engaged in relation to extradition proceedings in Australia, including in relation to the evidentiary standard that magistrates and eligible Judges apply to determine surrender eligibility under section 19 of the Extradition Act. The United Nations Human Rights Committee has noted in its General Comment No. 32 that the right to a fair hearing by a court or tribunal does not apply to extradition proceedings (amongst other types of proceedings) as, in these circumstances, there is no determination of criminal charges nor presence of a suit at law.[[21]](#footnote-21) This reflects the fact that extradition is not a criminal process or trial. Rather, it is an administrative process to determine whether a person is to be surrendered to face justice in the Requesting Party.
2. Nonetheless, the United Nations Human Rights Committee has noted that other procedural guarantees may apply in these circumstances.[[22]](#footnote-22) These include judicial review by an independent and impartial tribunal and, in these circumstances, guarantees of impartiality, fairness and equality as enshrined in the first sentence of Article 14(1) of the ICCPR.[[23]](#footnote-23)
3. The availability of judicial review under section 39B of the *Judiciary Act* 1903 and section 75(v) of the Constitution at various stages of the extradition process satisfies this requirement. Further, the subject of an extradition request may seek a statutory review of a magistrate or eligible Judge’s surrender eligibility decision under section 21 of the Extradition Act.
4. Extradition hearings in Australia are therefore compatible with the relevant procedural guarantees under Article 14(1) of the ICCPR.
5. Further, the evidentiary standard adopted in section 19 of the Extradition Act, as reflected by the supporting documents which must be presented to a magistrate or eligible Judge during a surrender eligibility hearing, is consistent with the international approach adopted in the United Nations Model Treaty on Extradition. The term ‘no evidence’ does not mean ‘no information’. Rather, as provided for in section 19 of the Extradition Act, it requires the request for extradition to be accompanied by a range of documents including a duly authenticated statement in writing setting out a description of, and the penalty applicable in respect of, the offence for which extradition is sought, and a duly authenticated statement in writing setting out the conduct constituting the offence, amongst other documents. If a person does not waive or consent to their extradition, a magistrate or eligible Judge will consider these documents under section 19 of the Extradition Act when determining whether the person is eligible for surrender (in addition to any evidence adduced by the person as to whether there is an ‘extradition objection’). Evidence sufficient to prove each element of each alleged offence under the laws of the requested country (such as ‘prima facie’ evidence including witness statements and affidavits) is not required in relation to requests received by the Republic of North Macedonia. This reflects the overall nature of extradition proceedings as being administrative in nature, and being designed not to test evidence against the person, nor assess or determine guilt or innocence.[[24]](#footnote-24)

The rights of equality and non-discrimination

1. Article 2(1) of the ICCPR provides that State parties undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 of the ICCPR further provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, a State party’s law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. The Extradition Act and the Regulations have the potential to engage the rights of equality and non-discrimination in circumstances where an extradition request is made to Australia for the purposes of prosecuting or punishing a person on account of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or where a person may be prejudiced in the requesting country as a result of these protected attributes.
3. The Extradition Act contains important safeguards to protect rights of equality and non-discrimination. Section 7 of the Extradition Act contains the definition of an ‘extradition objection’. Relevantly, sections 7(b) and 7(c) set out that there is an extradition objection in relation to an extradition offence for which a person’s surrender is sought if:
   * the person is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, sex, sexual orientation, religion, nationality or political opinions; or
   * the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, sex, sexual orientation, religion, nationality or political opinions.
4. The presence of an extradition objection, including on the grounds listed above, has the practical effect of preventing both a finding by a magistrate or eligible Judge that a person is eligible for surrender pursuant to paragraph 19(2)(d), and a surrender determination by the Attorney-General pursuant to paragraph 22(3)(a) in those circumstances.
5. The Attorney-General may also take into account other considerations relating to discrimination under the general discretion in paragraph 22(3)(f) of the Extradition Act when considering whether to make a surrender determination. This could include factors not expressly listed in section 7(b) and 7(c), including age, health or other personal circumstances. Further, any person subject to extradition has an opportunity to make representations to the Attorney-General regarding all of the protected attributes in Article 26 of the ICCPR before he or she makes a surrender determination, so that any such matters can be taken into consideration before reaching a decision.
6. The Extradition Act and the Regulations are therefore consistent with the rights of equality and non-discrimination in Articles 2(1) and 26 of the ICCPR.

The right to privacy

1. Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person’s privacy. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference with privacy not to be ‘unlawful’, it must be provided by law. In order for the interference with privacy to not be ‘arbitrary’, it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable, necessary and proportionate in the particular circumstances.[[25]](#footnote-25)
2. The Extradition Act and the Regulations have the potential to engage the right to privacy. Section 5 of the Extradition Act sets out that an extradition request must be in writing and subsection 19(2) details the supporting documents that must be provided by the extradition country in order for a person to be found eligible for surrender. Further, extradition requests are likely to contain a number of personal details relating to the person sought by the extradition country, including those necessary to establish the identity and nationality of the person sought. The collection, use or disclosure of this personal information may therefore interfere with the right to privacy.
3. However, the Regulations satisfy the requirement that any interference be lawful. They are also non-arbitrary, in that they are reasonable, necessary and proportionate to achieving the legitimate objective to facilitate the apprehension and surrender of individuals for the purposes of criminal prosecution or to serve a prison sentence in another country. The collection, use or disclosure of personal information in these circumstances supports efforts to combat domestic and transnational crime and prevent Australia from becoming a safe haven for persons accused or convicted of serious crimes in other countries. The collection, use or disclosure of personal information is therefore a reasonable and necessary part of Australia’s extradition regime.
4. The Extradition Act includes safeguards to protect the confidentiality of the information shared during the extradition process. Section 54A of the Extradition Act explicitly provides that the collection, use or disclosure of personal information about an individual is taken to be authorised by the Extradition Act for the purposes of the *Privacy Act 1988* if it is reasonably necessary for the purposes of the extradition of individuals to or from Australia, including making or considering whether to make, an extradition request.
5. This safeguard ensures that a person’s information will not be disseminated further than is necessary or for purposes beyond those intended to be achieved under the Extradition Act. Therefore, any limitations under the Extradition Act or the Regulations on the right to privacy in Article 17 of the ICCPR are necessary to achieve the legitimate objective to facilitate the apprehension and surrender of individuals for the purposes of criminal prosecution or serving a sentence, and ultimately combat serious transnational crime. The safeguards in the Extradition Act to ensure confidentiality of personal information render any limitations on the right to privacy proportionate to this overall objective.
6. Therefore, the Extradition Act and the Regulations are consistent with the right to privacy in Article 17 of the ICCPR.

**Conclusion**

1. The Extradition Act and the Regulations are compatible with the human rights and freedoms outlined above. Although the Extradition Act and the Regulations engage with, and may operate to limit, some human rights and freedoms, the protections and safeguards in the Extradition Act ensure that any such limitations are reasonable, necessary and proportionate to achieving the legitimate objective of facilitating the apprehension and surrender of individuals for the purposes of criminal prosecution or to serve a prison sentence in another country, and ultimately combatting serious transnational crime.

1. The full title of the agreement, made at Lake Prespa on 17 June 2018, is the *Final agreement for the settlement of the differences as described in United Nations Security Council resolutions 817 (1993) and 845 (1993), the termination of the Interim Accord of 1995, and the establishment of a strategic partnership between the Parties.*  [↑](#footnote-ref-1)
2. The full title of the agreement, made at Lake Prespa on 17 June 2018, is the *Final agreement for the settlement of the differences as described in United Nations Security Council resolutions 817 (1993) and 845 (1993), the termination of the Interim Accord of 1995, and the establishment of a strategic partnership between the Parties.*  [↑](#footnote-ref-2)
3. *Rivera v Minister for Justice and Customs* (2007) 160 FCR 115, 119 [14] (Emmett J, with whom Conti J agreed). This position has been subsequently affirmed by the Full Court of the Federal Court of Australia: *Snedden v Minister for Justice (Cth) & Anor* (2014) 145 ALD 273, 297 [150] (Middleton and Wigney JJ). [↑](#footnote-ref-3)
4. (2005) 145 FCR 269. [↑](#footnote-ref-4)
5. Ibid, 275. [↑](#footnote-ref-5)
6. Only one potential breach of an undertaking has been reported over the last decade since reporting began. During the 2012-13 reporting period, Australia became aware that a person surrendered to the United Kingdom (UK) in April 2012 had been sentenced for an additional minor offence, when the UK had provided an undertaking that the person would not be detained or tried for an offence other than the offence for which the person was surrendered. The UK brought the matter back before the court and the conviction for the additional offence was set aside in July 2013, before the person has served any part of the sentence for that conviction. [↑](#footnote-ref-6)
7. In his influential commentary, Manfred Nowak notes that the *travaux préparatoires* of Article 9 indicate that the term ‘arbitrarily’ was adopted in place of a list of grounds for which liberty may permissibly be deprived. The categories of permissible detention include those mentioned in Article 5(1) *European Convention on Human Rights* and Article 7 of the *American Convention on Human Rights*. As such, those grounds are not to be considered as ‘arbitrary’ within the meaning of Article 9. Extradition was included in Article 5 of the *European Convention on Human Rights* as a permissible deprivation of liberty. See further: Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary*, ed William A. Schabas (N.P. Engel, 2019), 249. [↑](#footnote-ref-7)
8. See, for example *A v Australia,* Communication No560/1993, Views adopted 30 April 1997, UN Doc CCPR/C/59/D/560/1993, paragraph 9.2. [↑](#footnote-ref-8)
9. *Bakhtiyari v Australia*, Communication No. 1069/2002, Views adopted 29 October 2003, UN Doc CCPR/C/79/D/1069/2002, paragraphs 9.2-9.4. [↑](#footnote-ref-9)
10. *United Mexican States v Cabal* (2001) 209 CLR 165 at 191 [61] (Gleeson CJ, McHugh and Gummow JJ) (‘*Cabal*’). [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Ibid, 191-191 [62] (Gleeson CJ, McHugh and Gummow JJ). [↑](#footnote-ref-12)
13. In addition to the statutory rights to bail under the Extradition Act, the Australian Government recognises that the Federal Court of Australia has the power to grant bail in the context of proceedings for judicial review of an extradition decision under section 39B of the *Judiciary Act 1903*. This power arises by virtue of section 23 of the *Federal Court Act 1976* (as confirmed in *Adamas v The Hon Brendan O’Connor (No 3)* [2012] FCA 365, [16]-[17] (Gilmour J)). Further, the High Court of Australia has the power to grant bail in extradition proceedings as an incident of its appellate jurisdiction granted by section 73 of the Constitution (as confirmed in *Cabal,* 182-183 [44] (Gleeson CJ, McHugh and Gummow JJ)). [↑](#footnote-ref-13)
14. Unreported – *Smiglewski v Republic of Poland*; Unreported – *Lichtanska v The Republic of Poland;* Unreported *– Renshaw v United Kingdom.* [↑](#footnote-ref-14)
15. *Zentai v Republic of Hungary* [2009] FCA 511; *Kalejs v Minister for Justice and Customs and Another* (2001) 111 FCR 442; Unreported – *Cassidy v The United Kingdom*; Unreported – *Renshaw v United Kingdom*. [↑](#footnote-ref-15)
16. Unreported – *Paul Thompson v United States of America*. [↑](#footnote-ref-16)
17. *United States of America v Green* (2009) 257 ALR 252. [↑](#footnote-ref-17)
18. Unreported – *Cassidy v The United Kingdom.* [↑](#footnote-ref-18)
19. *Cabal*, 189-190 [57]-[59] (Gleeson CJ, McHugh and Gummow JJ). [↑](#footnote-ref-19)
20. *Vasiljkovic v Commonwealth of Australia* (2006) 227 CLR 614 at [33]-[34] (Gleeson CJ), [58] (Gummow and Hayne JJ). [↑](#footnote-ref-20)
21. Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, UN HRC, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007), para 17. [↑](#footnote-ref-21)
22. Ibid, para 62. [↑](#footnote-ref-22)
23. See Manfred Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary*, ed William A. Schabas (N.P. Engel, 2019), 362-363; *Griffiths v Australia*, Communication No. 1973/2010, Views adopted 21 October 2012, UN Doc CCPR/C/112/D/1973/2010, paragraph 6.5. [↑](#footnote-ref-23)
24. See section 3(a) of the Extradition Act, and statements in *Vasiljkovic v Commonwealth of Australia* (2006) 227 CLR 614, 629 [33]-[34] (Gleeson CJ). [↑](#footnote-ref-24)
25. UN Human Rights Committee, *CCPR General Comment No. 16: Article 17*, Adopted at the Thirty-second Session of the Human Rights Committee, 8 April 1998, [3]-[4]. [↑](#footnote-ref-25)