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**National Interest Analysis [2008] ATNIA 6**

**with attachment on consultation**

**Treaty on Extradition between Australia  
and the State of the United Arab Emirates  
(Hobart, 26 July 2007)**

**[2007] ATNIF 16**

# NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

## SUMMARY PAGE

### **Treaty on Extradition between Australia and the State of the United Arab Emirates (Hobart, 26 July 2007) [2007] ATNIF 16**

#### **Nature and timing of proposed treaty action**

1. The *Treaty on Extradition between Australia and the State of the United Arab Emirates* (the Treaty) was approved by the Federal Executive Council on 30 November 2006, and signed for Australia on 26 July 2007 by the then Minister for Justice and Customs in Hobart. It was tabled on 18 September 2007 but Parliament was dissolved before the end of 15 sitting days.
2. Article 19 of the Treaty provides that the Treaty shall enter into force 30 days after the date on which instruments of ratification are exchanged. Before this can be done for Australia, regulations need to be made under the *Extradition Act 1988* (the Extradition Act) to implement the Treaty.

#### **Overview and national interest summary**

3. Australia needs to ensure that criminals cannot evade justice simply by crossing borders. This requires a responsive, streamlined extradition system that effectively combats domestic and transnational crime while providing appropriate safeguards.
4. Extradition is a process where one country sends a person to another country to face criminal charges or serve a sentence. This process requires a Government to Government request. Whilst it is sometimes possible for extradition to occur without an extradition treaty being in place, a treaty streamlines that process by formalising an extradition relationship. Having a treaty ensures that there are mutual international obligations to consider extradition requests and that the terms on which such requests are to be considered and processed are mutually agreed, while accommodating the extradition procedures of both countries.
5. The purpose of the Treaty is to provide for effective extradition arrangements between Australia and the United Arab Emirates. Australia does not currently have a bilateral extradition relationship with the United Arab Emirates.
6. The Treaty is based on Australia's model extradition treaty and adds to its existing network of modern bilateral extradition treaties. Australia has similar extradition treaties with 35 other countries.
7. The Treaty is compatible with Australia's domestic legislative framework for extradition, as set out in the Extradition Act. The Act sets out a number of mandatory requirements which must be met before Australia can make or accept an extradition request. Those requirements may be supplemented or modified by requirements contained in a multilateral or bilateral treaty.

## **Reasons for Australia to take the proposed treaty action**

8. The United Arab Emirates is an important partner in the Middle East in efforts to combat transnational crime. At present the only countries in the region with which Australia has extradition treaties are Israel and Turkey.

9. The treaty will oblige the United Arab Emirates to consider Australian requests for extradition and grant extradition where the requirements set out in the treaty are met. Whilst Australia can request extradition of any country without a treaty, in the absence of a treaty there are no assurances that the other country will entertain Australia's request.

10. Implementation of the treaty will also enable Australia to receive extradition requests from the United Arab Emirates. Australia cannot currently do this. The Extradition Act only allows Australia to receive extradition requests from countries declared to be an 'extradition country' in regulations. Prior to ratifying the Treaty, regulations will be made under the Extradition Act declaring the United Arab Emirates to be an extradition country, and stating that the Act applies in relation to the United Arab Emirates subject to the Treaty.

11. The treaty adopts the 'no evidence' standard of information for extradition requests. This accords with an international trend towards simplifying extradition matters. The 'no evidence' standard is included in Australia's model extradition treaty and the United Nations model extradition treaty. Australia has over 30 modern bilateral extradition treaties which adopt the 'no evidence' standard. The term 'no evidence' does not mean 'no information'. Rather, it means that the documentation required for extradition does not need to include evidence of the alleged offence.

## **Obligations**

12. The Treaty will provide a modernised framework for Australia and the United Arab Emirates to send and accept extradition requests for persons who are wanted for prosecution, or for the imposition or enforcement of a sentence for an extraditable offence (Article 1).

13. The Treaty provides that an extraditable offence is an offence which, at the time of the request, is punishable under the laws of both countries by imprisonment for a minimum period of one year or by a more severe penalty (Article 3(1)). Where extradition is sought to enforce a sentence of imprisonment for such an offence, extradition shall be granted only if at least six months of imprisonment remain to be served (Article 3(1)).

14. The obligation to extradite is qualified by numerous internationally accepted mandatory and discretionary grounds for refusal which reflect grounds contained in the Extradition Act. Article 4(1) sets out the mandatory grounds of refusal. The Requested State is obliged to refuse an extradition request in any of the following circumstances:

- the Requested State regards the offence for which extradition is sought as a political offence (Article 4(1)(a)) or an offence under military law (Article 4(1)(c));
- there are substantial grounds for believing that the extradition request "has been made for the purpose of prosecuting or punishing a person on account of that person's race, colour, sex, language, religion, nationality, ethnic origin, political

opinion or that the person's position may be prejudiced for any of those reasons" (Article 4(1)(b));

- the person whose extradition is requested would be exposed to 'double jeopardy' as that person, under the laws of the Requested State or another country, has been acquitted, pardoned, or punished for the offence in question (Article 4(1)(d));
- lapse of time has meant that the person whose extradition is requested has become immune from prosecution or punishment under the laws of the Requesting State (Article 4(1)(e));
- the person, on being extradited to the Requesting State, would be liable to be tried or sentenced by an extraordinary court or tribunal (Article 4(1)(f));
- if the offence for which extradition is requested, or any other offence for which the person may be detained or prosecuted under the Treaty, carries the death penalty, and the Requesting State has not made an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out (Article 4(1)(g)); or
- extradition is sought for an offence which carries a punishment that constitutes torture (Article 4(1)(h)).

15. Article 4(2) sets out the discretionary grounds of refusal. Extradition may be refused where:

- the person whose extradition is requested is a national of the Requested State (Article 4(2)(a));
- the offence for which extradition is requested was committed wholly or partially within the jurisdiction of the Requested State (Article 4(2)(b));
- a prosecution in respect of the offence for which extradition is requested is pending in the Requested State against the person whose extradition is sought (Article 4(2)(c));
- the authorities of the Requested State have decided not to prosecute the person for the offence for which extradition is requested (Article 4(2)(d)); or
- the Requested State considers the extradition of the person to be "unjust, oppressive, or incompatible with humanitarian considerations in view of the age, health, or other personal circumstances of the person" (Article 4(2)(e)).

16. Article 5 of the Treaty provides that if the extradition of a person is refused on any of the grounds described in sub-paragraphs 4(1)(f), (g) or (h) (extraordinary court or tribunal, death penalty or torture grounds) or sub-paragraphs 4(2)(a), (b) or (e) (national of Requested State, offence committed in Requested State, or extradition considered unjust or oppressive), the Requesting State may ask the Requested State to prosecute that person in lieu of extradition. If such a request is made and the laws of the Requested State allow it, the Requested State must submit the case to its competent authorities for prosecution.

17. The procedures and supporting documentation that are required in making a request for extradition are prescribed in Article 6. The information and documentation that must be provided in support of an extradition request includes:

- a description of each offence for which extradition is sought (Article 6(2)(e)(i)) including the text of the laws creating each offence and prescribing the penalty (Article 6(2)(e)(iii))
- the acts and omissions which are alleged against the person (Article 6(2)(e)(ii))

- details necessary to establish the identity and nationality of the person (Article 6(2)(e)(v))
- the current location of the person, if known (Article 2(e)(vi))
- where the person is accused of an offence - a warrant for the arrest of that person (Article 2(a)), and
- where the person has been convicted of an offence - documentary evidence of the conviction, the sentence imposed (if this has been done) and any options available to the person to challenge the conviction or sentence (where convicted *in absentia*) (Article 2(b)-(d)).

18. Article 9 of the Treaty provides that in urgent cases a State may request the provisional arrest of the person sought to be extradited before the extradition request is presented. So long as the request is accompanied by the information listed in Article 9(3) (including a statement of the existence of an arrest warrant or conviction against the person sought), the Requested State is obliged to take the necessary steps to secure the arrest of the person (Article 9(4)). Where a provisional arrest is made, the person arrested may be released after 60 days if an extradition request (with all necessary supporting documentation) has not been received by the Requested State.

19. Article 10 deals with the situation where an extradition request is received for the same person from two different countries. It sets out the factors that must be considered by the Requested State in deciding to which country the person is to be extradited, such as the relative seriousness of the offences for which extradition is sought (Article 10(2)).

20. Article 11 sets out the procedure for surrendering the person to the Requesting State once a decision to extradite has been made. For instance, it requires that the Requesting State remove the person from the territory of the Requested State within 30 days (Article 11(3)).

21. Article 12 makes provision for the surrender, upon request, of all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence. Surrender of such property is subject to the law of the Requested State and the rights of third parties.

22. Article 13 allows extradition to be postponed to allow the Requested State to prosecute the person for a different offence, or so that the person may serve a sentence for a different offence. If the person is serving a sentence in the Requested State, the person may be temporarily surrendered to the Requesting State for prosecution and then returned to the Requested State in accordance with mutually agreed conditions.

23. Article 14 prevents the Requesting State from prosecuting or punishing an extradited person for offences other than those for which extradition was granted, unless the Requested State consents to this. This guarantee only applies in relation to offences committed before the person was surrendered, and does not apply if the person fails to leave the Requested State within 30 days of being free to do so or, having left, returns.

24. Article 15 provides that a person who has been extradited under the Treaty must not be re-extradited by the Requesting State to a third country for trial or punishment for any offence that was committed before extradition to the Requesting State without the consent of the Requested State. The consent of the Requested State must also be sought

prior to the surrender of the extradited person to an international tribunal established in accordance with a multilateral international convention which applies to the Requesting State. Those protections do not apply where an extradited person leaves the Requesting State and returns voluntarily, or where the person does not leave the Requesting State within 30 days.

25. Article 17(1) provides that the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for extradition.

### **Implementation**

26. Australia has more than 30 bilateral treaties on extradition with other countries. These treaties have been implemented in Australia by the making of regulations under the Extradition Act. The terms of this Treaty are consistent with the Extradition Act and are consistent with the safeguards and protections which are contained in the Extradition Act. It is proposed that the Treaty will also be implemented by way of regulations made under the Extradition Act.

### **Costs**

27. Article 17 of the Treaty provides that the Requesting State must bear the expenses related to translation of documents and the transportation of persons surrendered. The Requested State is to pay all other expenses incurred in the Requested State in connection with extradition proceedings. The exception to this rule is that, if it becomes apparent that exceptional expenses may be incurred as a result of the extradition request, the countries must consult with a view to deciding how those expenses will be met.

28. In practice, expenses incurred by Australia when making and responding to extradition requests are generally met from the existing budgets of relevant Government agencies, principally the Australian Attorney-General's Department, the Commonwealth Director of Public Prosecutions, the Australian Federal Police and other law enforcement agencies.

## **Regulation Impact Statement**

29. Since the Treaty deals with criminal justice issues, neither the Treaty nor implementing regulations have financial implications for businesses or individuals. Any associated costs are borne by governments and law enforcement agencies.

30. According to the self-assessment guidelines provided by the Office of Best Practice Regulation, the regulatory option has low/no impact and therefore does not require further regulatory analysis.

## **Future treaty action**

31. The Treaty provides that the countries shall consult on the interpretation and implementation of the Treaty (Article 18).

32. The Agreement is silent as to amendment. In the absence of an amendment provision, Article 39 of the Vienna Convention on the Law of Treaties applies to allow amendment by agreement between the Parties.

33. Any amendment to the Agreement would be a treaty action and would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

## **Withdrawal or denunciation**

34. Pursuant to Article 19 of the Treaty either State may terminate the Treaty by written notice at any time. The Treaty will cease to be in force six months following the date on which notice is given. Termination of the Treaty will not affect any requests made before and up to the date of termination. Termination by Australia will be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

## **Contact details**

International Legal Cooperation Section  
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## CONSULTATION

### **Treaty on Extradition between Australia and the State of the United Arab Emirates (Hobart, 26 July 2007)**

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1. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the Treaty was provided to State and Territory representatives for consideration at its meeting on 18 May 2007. No requests for further information or comments on the Treaty with the United Arab Emirates have been received to date.
2. Negotiations with the State of the United Arab Emirates about the Treaty were not in the public domain as Australia follows the international practice that a bilateral treaty remains confidential to the parties until it is signed.