

No. 49414

**Australia
and
India**

Extradition Treaty between Australia and the Republic of India. Canberra, 23 June 2008

Entry into force: *20 January 2011, in accordance with article 20*

Authentic texts: *English and Hindi*

Registration with the Secretariat of the United Nations: *Australia, 6 March 2012*

**Australie
et
Inde**

Traité d'extradition entre l'Australie et la République de l'Inde. Canberra, 23 juin 2008

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Enregistrement auprès du Secrétariat des Nations Unies : *Australie, 6 mars 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

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

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

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

HAVE AGREED as follows:

**ARTICLE 1
OBLIGATION TO EXTRADITE**

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for trial, or the imposition or enforcement of a sentence, in the Requesting State for an extraditable offence.

**ARTICLE 2
EXTRADITABLE OFFENCES**

1. For the purposes of this Treaty, extraditable offences are offences, however described, which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.

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

request for extradition, have constituted an offence against the law in force in that State.

ARTICLE 3 COMPOSITE OFFENCES

Extradition shall also be available in accordance with this Treaty for an extraditable offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the Requesting State.

ARTICLE 4 GROUNDS OF REFUSAL

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

2. Extradition may be refused if the offence of which it is requested is an offence of a political character. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
 - a. an offence in respect of which the Contracting States have an obligation to extradite or submit the case to their competent authorities for prosecution, under a multilateral/international treaty or convention to which both Contracting States are parties;
 - b. an offence in respect of the taking or attempted taking of the life of a Head of State, Head of Government, or a member of that person's family;
 - c. murder, culpable homicide or manslaughter;
 - d. an offence, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property;
 - e. any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character; or
 - f. conspiracy or attempt to commit, or participation in, or abetment of, any of the foregoing offences.
3. Extradition may be refused in any of the following circumstances:
 - a. if the person has been tried and finally dealt with in respect of the offence for which extradition is sought;
 - b. if the Requested State has substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - c. if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the Requesting State by an extraordinary or ad hoc court or tribunal;