

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

EXTRADITION (AMENDMENT) BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the Authority of
the Honorable Lionel Bowen MP
Deputy Prime Minister and Attorney-General)

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OUTLINE

The purpose of the Bill is to make a number of amendments to the Extradition Act 1988 ('the Act'). The need for the amendments has become apparent in light of experience with the Act over the last 12 months. The amendments:

- . clarify the scheme for the making of regulations with respect to multi-lateral treaties, bi-lateral treaties and reciprocal arrangements;
- . provide a scheme for consent surrender to New Zealand similar to that provided for other countries;
- . provide police with a power to arrest, without warrant, a person who does not comply with bail conditions;
- . will permit an Australian magistrate to take evidence outside Australia; and
- . make other minor technical changes to the Act, including correction of typographical errors.

Financial Impact Statement.

This legislation will not involve any additional expenditure.

NOTES ON CLAUSES

Clause 1 -Short title etc

Sub-clause (1) contains the short title of the Bill.

Sub-clause (2) defines the Principal Act to be the Extradition Act 1988.

Clause 2 - Commencement.

The clause provides that the amendments will come into force on the day of Royal Assent.

Clause 3 - Interpretative provisions relating to offences

This clause amends sub-section 10(3) of the Principal Act to correct a typographical error in the existing provision. The section now refers to sub-paragraph 16(2)(a)(i) of the Act. It should refer to sub-paragraph 16(2)(a)(ii) which is the provision dealing with dual criminality.

Clause 4 - Modification of Act in relation to certain countries

This clause amends the provisions of section 11 of the Act which deals with the application of the Act to countries so as to permit Australia to extradite to those countries. As the Act stands it can apply to countries:

- (a) with which Australia has negotiated modern bilateral extradition treaties [paragraph 11(1)(a)];
- (b) with which Great Britain has extradition treaties which extend to Australia by virtue of Orders in Council made under the Imperial Extradition Acts 1870-1930 [sub-clause 11(3)];

(c) with which Australia has non-treaty based arrangements [paragraph 11(1)(b)]; and

(d) with which Australia has limited extradition relations deriving from its status as a party to a multilateral convention containing obligations to extradite [also paragraph 11(1)(b)].

A limitation is that the Act cannot apply to a country by more than one of the means provided in sub-sections (1) and (3). The result is that the law cannot, on its face, reflect the true situation. For example, where a multilateral treaty amends an earlier bilateral treaty (whether modern or inherited) the regulations applying the Act to State Parties cannot list any country to which the Act already applies pursuant to regulations made under paragraph 11(1)(a) or by virtue of the operation of sub-section 11(3). Notwithstanding this fact, the extradition relationship outlined in the bilateral treaty is affected by the multilateral treaty so as to make extradition for the multilateral offence possible pursuant to the bilateral treaty.

The clause inserts a new sub-section (1A) which permits the making of "multilateral regulations" applying the Act to a country to which the Act already applies by virtue of an existing provision.

The clause inserts a new sub-section (1B) designed to ensure that where the Act applies to a country subject to a bilateral treaty (whether modern or inherited) and also subject to a multilateral treaty, both the limitations, conditions, exceptions or qualifications needed to give effect to each treaty condition the application of the Act to that country.

The clause also inserts a new sub-section (1C) which is designed to ensure that the phrase "The Act applies to a country subject to a treaty" means exactly the same as the phrase "the Act applies subject to such limitations, conditions exceptions or qualifications that are necessary to give effect to a treaty". It is designed to facilitate the drafting of concise regulations.

Subclause (2) maintains the existing "multilateral" regulations and deems them to have been made under the new provisions rather than under the previous enabling provision [paragraph 11(1)(b)]. Should any existing "multilateral" regulations have affected the operation of a bilateral treaty, the provision also ensures that such unintended operation is nullified and both bilateral and multilateral obligations are continued to be met. Subclause (3) provides that subclause (2) applies to existing "multilateral" regulations.

Clause 5 - Determination of Eligibility for Surrender

This clause intends that the "purports" standard in subsection 19 (7) of the Act applies notwithstanding any authentication provision to the contrary in an extradition treaty.

Subsection 19 (7) of the Act provides that a document that is sought by, or on behalf of, an extradition country to be admitted in proceedings to determine eligibility for surrender of a person is duly authenticated if it purports to be signed, or certified, by a judge, magistrate or officer in or of the extradition country concerned and it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal. Use of the word "purports" ensures that strict proof of those matters is not required.

Clause 6 - Review of magistrate's orders

The purpose of this clause is to extend the presumption against bail which presently prevents a Magistrate remanding a person on bail "unless there are special circumstances justifying such remand" (subsections 15 (6) and 32 (3)). The presumption is also to apply to the Supreme Courts of the States or Territories, the Federal Court or the High Court in the exercise of the power conferred by subparagraph 21 (6) (f) (iv) to order the release on bail of a person who applies for a review of a Magistrate's order, or who appeals against an order made on that review or at any subsequent level of appeal.

Clause 7 - Consent to surrender

This clause inserts a new section 33A which will permit a person to consent to surrender to New Zealand without that surrender being subject to any of the limitations or delays occasioned by the operation of sections 34 and 35. It is clearly inappropriate that the provisions apply where a person has consented to being surrendered. The section also ensures that a person consenting to surrender to New Zealand must be fully informed of the implications of such consent by the Magistrate before such consent is acted upon.

Clause 8 - Review of magistrate's orders

This clause amends section 35 to the same effect as clause 6 amends section 21.

Clause 9 - Evidence for purposes of surrender of persons to Australia

The purpose of this amendment is firstly to allow an Australian Magistrate to take evidence overseas for use in proceedings in Australia. Secondly, it deletes the word "who" which was incorrectly inserted in the original Act.

Clause 10 - Arrest of person released on bail

This amendment confers on a police officer the power to arrest without warrant a person who refuses or fails to comply with a condition of a recognizance upon which the person was remanded on bail under the Act, or who the police officer believes on reasonable grounds is preparing to contravene such a condition.

