

1987

THE PARLIAMENT OF THE COMMONWEALTH

HOUSE OF REPRESENTATIVES

EXTRADITION (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen  
M.P. Deputy Prime Minister and Attorney-General)



## OUTLINE

The Extradition (Repeal and Consequential Provisions) Bill 1987 has three major purposes. It repeals the current laws on extradition, it contains transitional provisions setting out which law governs extradition proceedings which span the operational terms of the repealed and the new acts and it amends other acts consequential upon the enactment of new extradition legislation.

## NOTES ON CLAUSES

### Clause 1 - Short Title

This clause contains the short title.

### Clause 2 - Commencement

Sub-clause (1) provides generally that the Act comes into operation on the day on which the Extradition Act 1987 comes into operation.

Sub-clause (2) provides in effect that amendments to the Migrations Act 1958 made by this Bill do not come into operation until both the Extradition Act 1987 and the Mutual Assistance in Criminal Matters (Consequential Amendments) Act 1987 are operational.

Sub-clause (3) provides in effect that amendments to the Telecommunications (Interception) Amendment Act 1979 made by this Bill do not come into operation until both the Extradition Act 1987 and the Telecommunications (Interception) Amendment Act 1987 are operational.

Clause 3 - Interpretation

This clause is interpretive. The substantive definition contained in this clause relates to a 'former Act person'. This definition is particularly relevant to the operation of clauses 6 and 7 of the Bill.

A 'former Act person' is a person whose surrender was requested by a country to which either the Extradition (Foreign States) Act 1966 or the Extradition (Commonwealth Countries) Act 1966 applied in circumstances where:

- (a) a requisition for surrender was received prior to the time at which this Act comes into force or where a New Zealand warrant had been endorsed before that time; and
- (b) before the commencement of this Act proceedings to determine whether the person was liable to be surrendered had commenced before a magistrate, and
- (c) had this Act and the Extradition Act 1987 not be enacted the former Acts would have had some further application in relation to the surrender or possible surrender of the person sought.

or alternatively

- (d) a person was surrendered to Australia before the commencement of this Act or a person was transitting Australia pursuant to a former Act.

Clause 4 - Repeal of Acts

This clause provides that the Extradition (Foreign States) and Extradition (Commonwealth Countries) Acts 1966 are repealed.

Clause 5 - Schedule

This clause provides that the Acts set out in the Schedule are amended as provided in the Schedule.

Clause 6 - Continued Application of Former Acts in Certain Circumstances

This clause provides that the Extradition (Foreign States) Act 1966 and the Extradition (Commonwealth Countries) Act 1966 continue to apply in certain cases. It ensures that once an extradition request had come substantively before a magistrate for determination the request will be determined to finality under the relevant former Act.

Sub-clause (1) provides that where a person whose surrender from Australia has been sought is a 'former Act person' then the relevant former Act continues to apply in relation to his or her surrender or possible surrender.

Sub-clause (2) provides that the former Acts apply to any person:

- (a) who is in transit in custody through Australia pursuant to an authority granted under a former Act;
- (b) who has entered Australia pursuant to the authority of a former Act; or
- (c) for whose benefit a former Act provided that the rule of speciality applied.

Sub-clause (3) provides that the former Acts continue to govern the taking of evidence for the purpose of an extradition request where proceedings to take such evidence had commenced prior to the commencement of this Act and the Extradition Act 1987.

Sub-clause (4) provides that the relevant former Act governs the disposal of property seized under the former Act where the

Attorney-General had given, under that Act, a direction relating to the disposal of the property.

Clause 7 - Continued Application of Amended Acts in Certain Cases

This clause preserves the operation of certain Acts amended by this Act as though the amendments contained in the Schedule to this Act had not been made.

Sub-clause (1) preserves the right of any fugitive or country affected by a decision taken under a former Act, before this Act and the Extradition Act 1987 come into force, to seek review of that decision under the Administrative Decisions (Judicial Review) Act 1977 and has the effect of preserving subsequent rights of appeal in relation to such decisions. Decisions taken after this Act and the Extradition Act 1987 have come into operation are decisions included in Schedule 1 to the Administrative Decisions (Judicial Review) Act 1977 whether those decisions are taken under the Extradition Act 1987 or under the former Extradition Acts insofar as those Acts have a continued operation.

Sub-clauses (2) and (3) deal with other Acts which contain references to the former Acts and provides that where those former Acts have continued operation the Acts amended in the Schedule to this Act are to be read as though this Act and the Extradition Act 1987 had not be enacted, that is as though those Acts still referred to the former Acts.

Clause 8 - Application of Extradition Act 1987 to certain former Act instruments

This clause provides that

... where a warrant for the arrest of a person has issued under the former extradition legislation before the commencement time of the Extradition Act 1987; and/or

a requisition for extradition has been made before that commencement time; and

the Extradition Act applies to the country concerned after that commencement time; and

the person is not a former Act person (ie, in effect, a person in respect of whom proceedings before the Magistrates have not commenced pursuant to the former extradition legislation)

the warrant and/or the requisition and any notice issued by the Attorney-General under the former extradition legislation and any search warrant and any remand shall be taken to have been in force or have been made pursuant to the Extradition Act 1987 as soon as that Act commences operation.

Sub-clause (1) deals with instruments etc under the former Commonwealth Extradition Act insofar as it applies to country other than New Zealand.

Sub-clause (2) deals with instruments etc under the former Foreign Extradition Act.

Sub-clause (3) deals with instruments etc under the former Commonwealth Extradition Act insofar as it applies to New Zealand.

Sub-clause (4) preserves certificates issued by the Attorney-General to the effect that treaties are in force or countries are parties to such treaties.

#### SCHEDULE - Amendments of Acts

Clause 5 provides for amendments Acts specified in the Schedule.

With the following exceptions the Acts are amended by substituting a reference to the Extradition Act 1987 for references to the former extradition Acts.

- (a) The amendment to the Administrative Decisions (Judicial Review) Act is to the effect that decisions under the Extradition Act 1987 are not be to subject to review under the Administrative Decisions (Judicial Review) Act. The reason for this amendment is that
- . Superimposing ADJR review on the comprehensive review and appeal system set out in the Extradition Bill 1987 (see clauses 21 and 40) is an unnecessary duplication.
  - . the existence of multiple review procedures would prevent Australia informing a requesting country with certainty that a fugitive has exhausted his review and appeal rights.
  - . many of the decisions in the Extradition Bill 1987 are preliminary in the sense that they occur before the proceedings to determine eligibility to surrender are commenced (for instance that issue of a notice by the Attorney-General that a request for extradition has been received). It is clearly undesirable that there be the possibility of review at every procedural stage in the handling of an extradition request.
  - . availability of review of the Attorney-General's final discretion to surrender has no counterpart in the laws of any country. That decision can only act in the fugitives favour since it cannot overturn a magistrate's finding (or a higher court's finding on review or appeal) that a person is not eligible to be surrendered.
  - . the cost to Australia of extending the proposed comprehensive review and appeal rights cannot be justified. On each occasion where fugitives have resorted to ADJR remedies they have concurrently sought review under the existing rights of review



contained in the current legislation. The result has been prolonged remand in custody and substantial other costs being incurred.

- (b) the amendment to the Migration Act simply facilitates the entry into Australia and subsequent departure of persons who are required in Australia for purposes connected with the Extradition Bill 1987.
- (c) The amendment to paragraph 5(d) of the Telecommunications (Interception) Act 1979 is consequential upon the fact that the Extradition Bill 1987 permits the taking of evidence for extradition proceedings in New Zealand (the previous extradition legislation did not). Accordingly, the amendment to paragraph 5(c) covers the New Zealand situation.













