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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Honorable Lionel Bowen
M.P., Deputy Prime Minister and Attorney-General)

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CORRIGENDA
TO
EXPLANATORY MEMORANDUM

Page 20

Clause 36 - Requests for Restraining Orders

5th line - delete "or"

6th line - delete "investigation"

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL 1987

GENERAL OUTLINE

This Bill was originally introduced into the Parliament on 22 October 1986. The Bill is now being re-introduced in a substantially amended form.

This Bill provides the legislative basis for Australia to enter into arrangements with other countries whereby it can request and grant assistance in criminal matters. The assistance relates to the investigation and prosecution of crime and proceeds of crime.

At present assistance between Australia and other countries is rendered informally through Interpol and is limited to investigations. Australia can take evidence with the aid of compulsory measures under its extradition legislation but this is done unilaterally and brings about no obligation on the other country to reciprocate.

This Bill will provide legislative authority for Australia to give effect to obligations which it will be undertaking with other countries in the area of mutual assistance. When Australia concludes arrangements with other countries those countries will be obliged under international law to render assistance at the request of Australia.

The Bill will also give effect to the Commonwealth Scheme on Mutual Assistance in Criminal Matters which was agreed to by Commonwealth Law Ministers in Harare, Zimbabwe, on 1 August 1986.

The form in which the Bill is being re-introduced enables the provision, by Australia, of assistance concerning the proceeds of crime. These provisions provide the basis of reciprocity for Australia to request this type of assistance from foreign countries to which the Act is applied.

Division 2 of Part VI of the Bill (Proceeds of Crime) provides the manner in which the Attorney-General may authorize appropriate steps for:

- . application for registration of foreign forfeiture orders, foreign pecuniary penalty orders and foreign restraining orders;
- . application for search and seizure warrants in relation to tainted property;
- . application for interim restraining orders pending registration of a foreign restraining order; and
- . application for certain monitoring and production orders in relation to accounts in financial institutions and property tracking documents respectively.

However, the substantive detail as to the course to be followed by the duly authorized person or agency (police officer or DPP) and as to the effect of any such registration etc, is to be found in specific clauses in the Proceeds of Crime Bill 1987 which deal with such applications made pursuant to authorization under the Mutual Assistance Act.

It should be noted that many of the applicable definitions in the Proceeds of Crime Bill are incorporated in the Mutual Assistance Bill for the purposes of Part VI. Where appropriate these are referred to below in relation to specific clauses in the Act. However at this point in the Explanatory Memorandum it is noted that "Australian forfeiture order", "Australian pecuniary penalty order" and "Australian restraining order" are defined in this Bill to include such orders made under the Proceeds of Crime Act.

FINANCIAL IMPACT STATEMENT

This legislation will not involve significant expenditure in the short term except for expenditure involved in the negotiation of treaties which is already included in the Attorney-General's Department appropriation for this financial year. As mutual assistance treaties and other arrangements come into operation over time there will be expenditure involved in making and carrying out requests for mutual assistance. This expenditure will be shared between the Commonwealth and the States and, so far as the Commonwealth is concerned, will be dealt with as part of the budget process in future financial years.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

Formal

Clause 2 - Commencement

The legislation will come into operation on a date or dates to be fixed by Proclamation.

Clause 3 - Interpretation

This is a definitional clause.

Clause 4 - Act to extend to external Territories

Self-explanatory.

Clause 5 - Object of Act

This clause makes it clear that the object of the Act is to facilitate the provision of and the obtaining by Australia of assistance in relation to the investigation and prosecution of crime. The various possible heads of assistance are listed. It should be noted that not all these heads of assistance require legislative provisions in the substantive parts of the Act [e.g. location and identification of witnesses or suspects]. Those heads of assistance together with the heads of assistance covered under this Bill will be provided for in treaties and other arrangements under the Act.

Clause 6 - Act not to limit other provision of assistance

This clause makes it clear that the Act will not limit mutual assistance provided or obtained by Australia by means other

than those provided for in treaties and other arrangements under the Act [e.g. through Interpol].

Clause 7 - Application of Act

Assistance pursuant to the Act may only be granted if the Act has been applied to a foreign country by regulations (Part II of the Act is the exception).

Sub-clause 2 permits the Act to be applied to foreign countries subject to modifications. Pursuant to paragraph (a), where there is a bilateral mutual assistance treaty, the Act can be applied in such a way as to give effect to that treaty. Where a regulation is made under paragraph (a) to give effect to such a treaty, a regulation cannot be made under paragraph (b) with respect to that treaty. In the absence of such a treaty, the Act can be applied to a foreign country subject to such limitations, conditions, exceptions or qualifications as are provided in the regulations (pursuant to paragraph (b)).

Sub-clause 3 provides that the Act applies in accordance with the regulations made under paragraph 2(a) or 2(b).

Clause 8 - Refusal of assistance

Sub-clause (1) sets out the circumstances in which the Attorney-General is obliged to refuse assistance to a foreign country. Sub-clause (2) sets out the circumstances in which the Attorney-General has a discretion to refuse assistance to a foreign country. This clause is included to ensure that Australian interests are safeguarded and that no injustice or oppression is caused to individuals.

Clause 9 - Assistance may be provided subject to conditions

This clause is intended to permit the provision of assistance subject to conditions which are necessary to protect a national or individual interest. An example of such a condition would be a requirement of confidentiality.

Clause 10 - Requests by Australia

This clause makes it clear that requests by Australia for assistance from foreign countries may be made by the Attorney-General. Requests can in fact be made by the Attorney-General's delegate pursuant to the delegation power in clause 40 of the Bill. A Central Office within the Attorney-General's Department will be established to process and monitor all requests made by and of Australia. The role of the Central Office will be similar to the present role of the Attorney-General's Department in relation to extradition.

The Central Office will liaise with duly appointed State or Territory Liaison Officers in relation to requests made by, or of, Australia which involve the States or Northern Territory. Administrative Arrangements for this purpose will be entered into pursuant to clause 39.

Clause 11 - Request by Foreign Country

This clause provides that requests made to Australia by a foreign country may be made to the Attorney-General or to a person duly authorized by the Attorney-General. The clause sets out the type of information that the the foreign country should provide in this request. However, the clause specifically states that failure to provide such information is not a ground for refusing the request.

PART II - ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

Clause 12 - Requests by Australia

This clause provides that the Attorney-General may make a request to a foreign country to have evidence taken or documents produced for the purposes of a proceeding relating to a criminal matter in Australia.

Clause 13 - Requests by foreign countries

This clause empowers the Attorney-General to authorize an Australian Magistrate to take evidence and have documents and articles produced for the purpose of transmission to a foreign country for the purposes of a proceeding in relation to a criminal matter in that foreign country. ['Criminal proceeding', 'criminal matter' and 'committal proceeding' are all defined in the interpretation clause [clause 3]. A criminal matter includes a criminal breach of revenue and of foreign exchange control matters, proceedings for forfeiture or confiscation of property, a matter relating to imposition and recovery of pecuniary penalties, as well as a matter relating to restraining of dealings in property, freezing of assets, etc to satisfy a pecuniary penalty, in relation to offences.

This type of assistance is currently provided under the Extradition legislation but will be repealed from that legislation by a separate Bill when this Bill is passed and the Act is proclaimed to come into effect.

This clause will also enable the taking of evidence for various types of criminal proceedings in foreign jurisdictions including for example Grand Jury proceedings and proceedings before an Examining Magistrate in a foreign country which has a civil law system.

However this clause will also enable the taking of evidence for foreign jurisdictions for proceedings which are not criminal proceedings as long as the proceedings are in relation to a criminal matter.

This clause is the exception to clause 7 of the Bill (Application of Act) such that this type of assistance may be provided to a foreign country irrespective of whether the Act has been applied to that country by regulations.

Sub-clause (2) sets out the procedures to be followed by a Magistrate in taking the evidence etc.

Sub-clause (3) permits the person to whom the proceeding relates to be present or represented and that fact to be recorded.

Sub-clause (4) enables the Magistrate to permit the following to have legal representation at the hearing before a Magistrate: the person to whom the proceedings in the foreign country relates; any other person giving evidence or producing documents or other articles; and the relevant authority in the foreign country.

Sub-clause (5) refers to the certification by the Magistrate under sub-clause (2) that copies of documents or articles produced to the Magistrate are true copies. Sub-clause 5 requires that this certification, which should accompany the copies when these are sent to the Attorney-General, shall state whether particular persons were present when the evidence was taken or the documents produced.

Sub-clause (6) permits the Magistrate to use the relevant compulsory powers of the jurisdiction in which the evidence etc is being taken to require the attendance of witnesses. This sub-clause also ensures that the witness will have the same protections as a witness in a domestic proceeding.

Sub-clause (7) provides that the person to whom the proceeding relates cannot be compelled to give evidence.

PART III ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

Clause 14 - Requests by Australia for search and seizure

This clause permits the Attorney-General to request a foreign country to search for, and seize, things in that country which

may be relevant to a proceeding or investigation relating to a criminal matter involving a serious offence against Australian law [i.e. an offence carrying twelve months imprisonment or more]. The clause is limited to serious offences since it is not considered appropriate to seek such assistance for minor offences.

Clause 15 - Requests by foreign countries for Search and Seizure

Sub-clause (1) provides for the Attorney-General to authorize a police officer to apply to a Magistrate for issue of a search warrant where a foreign country has so requested (there being reasonable grounds to believe a thing relevant to the investigation or proceeding is located in Australia).

Sub-clause (2) provides that a duly authorised police officer may lay an information on oath before a Magistrate applying for the issue of a warrant where the police officer has reason to believe that a thing is, or will at a specified time be, on a person, in a person's clothing or in a person's immediate control.

Sub-clause (3) provides that a Magistrate may, where such an application has been made, issue a search warrant authorising a police officer with such assistance and by such force as is necessary and reasonable to search the person for, and seize, any thing that the police officer believes on reasonable grounds to be relevant to the foreign criminal proceeding or investigation.

Sub-clause (4) is in similar terms to sub-clause (2) but relates to application for issue of a search warrant in relation to land or premises.

Sub-clause (5) is in similar terms to sub-clause (3) except that it applies to a search warrant which has been issued and authorises the entry upon, and search of, land or premises.

Sub-clause (6) provides that the Magistrate shall not issue a warrant unless such further information as a Magistrate requires has been provided, orally or by affidavit, and the Magistrate is satisfied that there are reasonable grounds for issue of the warrant.

Sub-clause (7) sets out the matters which shall be stated in the warrant.

Sub-clause (8) enables the police officer to seize, in certain circumstances, things, other than a thing of a kind specified in the warrant, which are found in the course of searching under the warrant.

Sub-clause (9) requires a police officer to deliver a thing which is seized pursuant to the warrant, to the Commissioner of the Australian Federal Police and sub-clause (10) requires the Commissioner to arrange for such a thing to be kept for a period of one month pending the Attorney-General's direction as to the manner to which the thing is to be dealt with.

Sub-clause (11) sets out the contents of a notice the police officer must provide upon execution of a warrant issued under this section.

Sub-clauses (12), (13) and (14) set certain restrictions on the execution of a warrant for search of a person whereas sub-clause 15 enables a police officer who is executing a warrant to search a person to also search the person's clothing and property in the person's control.

PART IV - ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE

Division 1 - Requests by Australia

Clause 16 - Requests for removal of certain persons to Australia

Sub-clauses (1) and (2) respectively permit the Attorney-General to request a foreign country to transfer one of its prisoners to Australia to give evidence in a proceeding relating to a criminal matter in Australia (sub-clause 1) and in relation to a investigation in Australia into a criminal matter (sub-clause 2).

Sub-clause (3) provides that the Attorney-General may make arrangements for the removal of the foreign prisoner to Australia, his custody in Australia, return to the foreign country and any other relevant matter.

Clause 17 - Arrangements between Attorney-General and State Ministers in relation to custody of persons

This clause is necessary since foreign prisoners transferred to Australia will need to be kept in custody in State gaols. It is expected that the States and the Northern Territory will be enacting legislation to permit such prisoners to be so kept in custody.

Clause 18 - Custody of certain persons

This clause provides the power for the Attorney-General to give appropriate directions as to the custody of a foreign prisoner while that prisoner is in Australia, or travelling to or from Australia, pursuant to a request under clause 16.

Clause 19 - Immunities

Sub-clause (1) provides that persons brought to Australia, whether or not pursuant to a request under clause 16, shall not be detained, prosecuted or punished, or subject to any civil suit where the offence or acts or omissions respectively occurred prior to the departure of the person from a foreign country and shall not be required to give evidence in any other proceedings in Australia other than those in relation to which a person has consented to give evidence. Without this

protection a witness might not consent to come to Australia to give evidence or assist an investigation.

Sub-clause (2) sets out the time when this protection ceases to apply and also enables the Attorney-General to certify any other proceedings or investigations in Australia in relation to which the person has consented to give evidence or assist investigations.

Clause 20 - Status of person prosecuted for an offence committed after departure from foreign country

Sub-clause (1) provides that, where a person comes to Australia pursuant to a request under clause 16, commits an offence after departure from the foreign country and remains in Australia to be tried for that offence, the person is deemed to be still in Australia pursuant to the original request.

Sub-clause (2) enables the Attorney-General to give directions for the person to be kept in custody.

Clause 21 - Limitation on use of evidence given by certain persons

This clause provides, in effect, that a person who comes to Australia to give evidence shall not have that evidence used against him or her except where the person commits perjury. The clause is considered necessary to facilitate the consent of foreign persons to come to Australia to give evidence.

Clause 22 - Conditions of Imprisonment

This clause applies the relevant laws of the State or Territory where the prisoner is being kept in custody pursuant to a request under clause 16.

Clause 23 - Release of certain persons upon request by foreign country

This clause requires the Attorney-General to direct the release of a foreign prisoner being held in custody in Australia if the foreign country so requests. It is intended to cover the situation where the person's sentence in the foreign country expires while the person is being held in custody in Australia pursuant to a request under clause 16.

Clause 24 - Escaping

Sub-clause (1) provides for an offence of escaping from lawful custody in relation to a person brought to Australia pursuant to a request under clause 16.

Sub-clause (2) provides for the application of certain provisions of the Crimes Act so that persons who aid or assist the escape commit an offence.

Clause 25 - Arrest of person who has escaped from custody

This clause permits the arrest and return to custody of a foreign prisoner who is in Australia pursuant to a request under clause 16 and who escapes from custody in Australia.

Division 2 - Requests by foreign countries

Clause 26 - Requests for giving of evidence at hearings in foreign countries

Sub-clause (1) permits the Attorney-General, in his or her discretion, to direct that a federal prisoner who has consented to give evidence in a foreign country be temporarily released from custody to travel to the foreign country to give evidence.

The clause provides for the appropriate State approvals to be obtained in relation to State prisoners and joint Federal/State prisoners to enable the transfer of such prisoners to the foreign country.

The Attorney-General is also empowered to make arrangements for the travel of the prisoner in custody to the foreign country.

Complementary State legislation will be required to facilitate the transfer of joint Federal/State prisoners and State prisoners.

A prisoner may not be transferred unless the Attorney-General is satisfied that:

- . the prisoner consents; and
- . the foreign country has given adequate undertakings in respect of matters specified in sub-clause (3).

The clause specifically provides that transfer to the foreign country of Federal or joint Federal/State prisoners who have been released from custody on parole or under licence will be subject to the obtaining of any necessary Federal or State approvals, authorities or permissions as the case may be for the prisoner to travel to the foreign country to give evidence.

Sub-clause (2) permits the Attorney-General to make arrangements for the travel of any person [other than a prisoner] to a foreign country to give evidence if

- . the person consents; and
- . adequate undertakings in respect of the matters specified in sub-clause (3) are given.

Sub-clause (3) specifies the nature of the undertakings that the foreign country is to give in relation to a request that a person give evidence in the foreign country. The undertakings include the following:

- . that the person will be immune from civil suit or detention, prosecution or punishment in the foreign country in relation to any acts or omissions or offences against the law of the foreign country committed (or alleged to have been committed) prior to the person's departure from Australia or be required to give evidence in proceedings other than proceedings to which the request relates unless the person has left or has had the opportunity of leaving the foreign country;
- . that evidence given by the person will be inadmissible or otherwise disqualified from use in prosecution of the person other than for perjury;
- . that the person will be returned to Australia according to arrangements agreed with the Attorney-General;
- . that the person will, if a prisoner, be kept in custody in the foreign country and not be released from custody in the foreign country unless the Attorney-General requests;
- . that, if the person was a prisoner who was released in the foreign country at the Attorney-General's request (eg. if the person's Australian sentence expired while in the foreign country), the person's accommodation and other expenses, in the foreign country, pending completion of the foreign proceedings, will be paid by the foreign country; and

- . other matters that the Attorney-General consider appropriate.

Clause 27 - Requests for assistance in relation to investigations in foreign countries

Clause 27 is substantially the same as clause 26 except that it relates to persons requested to travel to a foreign country to assist in a criminal investigation in that country.

Article 28 - Effect of removal to foreign country on prisoner's term of imprisonment

This clause in effect gives a prisoner credit for time spent in custody overseas.

PART V - CUSTODY OF PERSONS IN TRANSIT

Clause 29 - Transit

Sub-clause (1) provides that where:

- . a prisoner is being transported through Australia from one foreign country to another foreign country for the purpose of giving evidence or assisting in an investigation; and
- . at least one of the foreign countries is a country to which the Act applies,

the Attorney-General may direct the person to be held in custody pending continuation of the person's transportation.

Sub-clause (2) permits the Attorney-General to direct that the person being held in custody in Australia pursuant to sub-clause (1) be returned to the original country if the person's transportation is not continued within a reasonable time.

Clause 30 - Escaping

Sub-clause (1) provides for an offence where a person being held in custody pursuant to clause 29 escapes from custody.

Sub-clause (2) provides for the application of certain Crimes Act sections to enable prosecution of persons who assist or aid the person's escape.

Clause 31 - Arrest of person in transit

This clause permits the arrest and return to custody of a person who escapes after the Attorney-General has directed that the person be kept in custody pursuant to clause 29.

PART VI - PROCEEDS OF CRIME

Division 1 - Requests by Australia

Clause 32 - Requests by Australia for enforcement of orders

This clause enables the Attorney-General to request a foreign country, in relation to a serious offence, to enforce

- . an Australian forfeiture order;
- . an Australian pecuniary penalty order;
- . an Australian restraining order;

against property believed to be located in that country.

Clause 33 - Requests for issue of orders in foreign countries

This clause enables the Attorney-General to request the appropriate authorities in a foreign country, where a criminal proceeding or investigation has commenced in Australia in

relation to a serious offence, to issue a warrant or other order similar to certain specified warrants or orders that may be made under the Proceeds of Crime Act.

Division 2 - Requests by foreign countries

Clause 34 - Requests for enforcement of orders

Sub-clause (1) enables the Attorney-General, in his or her discretion, to authorize the DPP to apply for registration of:

- . a foreign forfeiture order, or
- . a foreign pecuniary penalty order.

against property located in Australia where the Attorney-General is satisfied a person has been convicted of an offence according to the law of the foreign country and there is no further appeal available in the foreign country against that conviction or the order which is being sought.

Sub-clause (2) is in similar terms to sub-clause (1) but applies to registration of a foreign restraining order. However the authorization is not dependant upon the Attorney-General being satisfied that a person has been convicted of an offence in the foreign country.

Sub-clause (3) provides that the specified court shall be the Supreme Court of the State or Territory where the property is believed to be located.

Sub-clause (4) provides that where the DPP is authorized to apply for registration of a foreign order the court shall register the order.

Sub-clauses (5), (6) and (7) provide that:

- . a registered foreign forfeiture order;
- . a registered foreign pecuniary penalty order; and
- . a registered foreign restraining order.

shall have effect and be enforced as if they were orders made under the Proceeds of Crime Act at the time of registration.

Sub-clause (8) provides that amendments to the foreign order may be registered in the same manner as the original foreign order is registered but such amendments shall not have any effect under this Act or the Proceeds of Crime Act until so registered.

Sub-clause (9) provides the required form of authentication of the foreign court order when an application is made to register such an order.

Sub-clause (10) provides that a facsimile copy of a sealed or duly authenticated copy of a foreign court order is sufficient for registration for a period of 21 days pending registration of a sealed or duly authenticated copy.

Sub-clause (11) enables the Attorney-General to direct the DPP to apply to a court in which a foreign court order is registered for cancellation of the registration.

Sub-clause (12) enables the Attorney-General to give a direction under sub-clause (11) in relation to a registered order where the foreign order has ceased to have effect in the foreign country or cancellation of registration is appropriate because of other arrangements entered into with that country concerning enforcement of such orders.

Sub-clause (13) requires a court to cancel the registration of a foreign court order where the DPP applies pursuant to a direction of the Attorney-General under sub-clause 11.

Clause 35 - Requests for search and seizure warrants in respect of tainted property

Sub-clause (1) enables the Attorney-General, in his or her discretion, to authorize a police officer to apply to a Magistrate of a specified State or Territory for issue of a search warrant under the Proceeds of Crime Act in relation to tainted property. The Attorney-General must have received such a request from a foreign country in which a criminal proceeding or investigation in respect of a foreign serious offence has commenced and there must be reasonable grounds to believe that tainted property is located in Australia.

Sub-clause (2) provides that the specified State or Territory shall be the State or Territory where the tainted property is believed to be located.

It is noted that sub-clause 3(1) (Interpretation) provides that "tainted property" has the same meaning as under the Proceeds of Crime Act - namely property used in, or in connection with, the commission of the offence or the proceeds of the offence.

Clause 36 - Requests for Restraining Orders

Sub-clause (1) enables the Attorney-General, in his or her discretion, to authorize the DPP to apply to a specified court for a restraining order under the Proceeds of Crime Act against property where such a request is received from a foreign country in which a criminal proceeding or investigation has commenced and there are reasonable grounds to believe that property that may be made the subject of a foreign restraining order is located in Australia.

Sub-clause (2) provides that the specified court shall be the Supreme Court of the State or Territory where the property is believed to be located.

Clause 37 - Request for information gathering orders

Sub-clause (1) enables the Attorney-General to authorize a police officer to apply to a judge of a specified court for issue of a production order or a search warrant under the Proceeds of Crime Act in relation to a property tracking document where a criminal proceeding or investigation in respect of a foreign serious offence has commenced in a foreign country, it is reasonably believed that such a document is located in Australia and the foreign country requests issue of such an order or warrant.

Sub-clause (2) provides that the specified court shall be the Supreme Court of the State or Territory where the document(s) are believed to be located.

"Property tracking document" has the same meaning as under the Proceeds of Crime Act, namely a document relevant to identifying, locating or quantifying property of a person who committed an offence or relevant to identifying etc tainted property in relation to the offence or relevant to identifying or locating any document necessary for transfer of property of a person who committed the offence or transfer of tainted property in relation to the offence.

Sub-clause (3) enables the Attorney-General to authorize a police officer to apply to a judge of a specified Court (State or Territory Supreme Court - sub-clause 4) for issue of a monitoring order under the Proceeds of Crime Act directing the financial institution to give information to the Australian Federal Police about transactions conducted through an account with that institution where the Attorney-General has received such a request from a foreign country. A criminal proceeding or investigation must have commenced in the foreign country in respect of a serious narcotics offence or a money laundering offence (in respect of proceeds of a serious narcotics offence) or an ancillary offence in relation to either such offences. Such information about an account must be

reasonably believed to be relevant to the proceeding or investigation.

It is noted that "serious narcotics offence" has the same meaning as in the Proceeds of Crime Act (see clause 3(1) - Interpretation) namely offences of production, possession, supply, importation or export of a "trafficable quantity" (as defined in the Customs Act or other applicable legislation) of a narcotic substance. The definition extends to conspiracy to commit the main offence, and to aiding, abetting, receiving, assisting, attempting to commit etc the main offence.

However, "Money laundering offence" is specifically defined in clause 3(1) to mean an offence of engaging directly or indirectly in a transaction that involves money, or other property that is the proceeds of a serious narcotics offence or receiving, possessing, concealing, disposing of or bringing into Australia money or other property that is proceeds of the serious narcotics offence.

PART VII - SERVICE OF DOCUMENTS

Clause 38 - Service of Documents

Sub-clause (1) permits the Attorney-General to arrange for the service of foreign criminal process in Australia where he is so requested by a foreign country.

Sub-clause (2) provides that proof of service of an Australian document overseas may be by affidavit of the person who served the document. However this sub-clause also provides that such proof of service should not limit the manner in which overseas service may be proved in Australia.

PART VIII - MISCELLANEOUS

Clause 39 - Arrangements with States

This clause permits the making of arrangements between the Commonwealth and the States (such arrangements shall be published in the Gazette - sub-clause (3)) for the administration of the Act and in particular to permit State Magistrates to perform functions under the Mutual Assistance Act.

Clause 40 - Delegation

This clause permits the Attorney-General to delegate his powers under the Act, apart from the power of delegation itself and powers under clause 8 (grounds for refusal of a request by a foreign country for assistance under the Act), to an officer of the Attorney-General's Department.

Clause 41 - Jurisdiction of Courts

This clause is necessary to permit Magistrates to deal with matters arising under the Act without those matters being removed to the High Court.

Clause 42 - Evidence

This clause is to facilitate proof that Australia and other countries are parties to mutual assistance treaties.

Clause 43 - Authentication of documents

Magistrates and Judges will have to examine foreign documentation in proceedings under this Act and also in proceedings under the Proceeds of Crime Act which arise from a request made under this Act.

Sub-clause (1) provides that such documentation will be admissible in evidence if authenticated in the manner set out.

Sub-clause (2) provides that a document is duly authenticated if signed by a Judicial officer of the foreign country and authenticated by oath of a witness or of a Government official or sealed with an official or public seal of the foreign country or of a Minister of State or Department or of a Government official of the foreign country.

Clause 44 - Regulations

This clause provides for a regulation making power.

