

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

WAR CRIMES AMENDMENT BILL 1998

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice

Senator the Honourable Amanda Vanstone)



General Outline

This Bill repeals section 22 of the *War Crimes Act 1945*. The repeal is required to facilitate extradition proceedings with former Soviet Bloc countries, particularly the Baltic States.

Financial Impact

The amendments will not impact on Government expenditure or revenue in any respect.

NOTES ON ITEMS

Item 1 Short title

The short title of the Act will be the *War Crimes Amendment Act 1998*.

Item 2 Commencement

The Act will commence on Royal Assent.

Item 3 Schedules

The *War Crimes Act 1945* is amended in the manner specified in Schedule 1.

SCHEDULE 1 - AMENDMENT OF THE WAR CRIMES ACT 1945

Item 1 Section 22

The proposed repeal of section 22 removes a significant impediment to extradition of suspected war criminals.

The current provision in effect provides that where a person's extradition is sought for conduct covered by the War Crimes Act no surrender for extradition is possible unless there is a *prima facie* case. Thus, notwithstanding the requirement of a general extradition arrangement, if the offence for which extradition is sought is a 'war crime' then the requesting state must, in addition to satisfying the usual requirements for extradition, provide a *prima facie* case.

The concept of a *prima facie* case in determining sufficiency of evidence is one to which most common law countries are accustomed. However, those countries which operate under a civil code system (e.g., Latvia, Estonia and Lithuania) do not use this test in criminal proceedings, and experience has shown that use of this standard in extradition arrangements with civil code countries is almost impossible in practice. The practical issue is that the laws of evidence in common law systems are such as to make it impossible for a civil code jurisdiction to supply evidence in an admissible form. In essence, because of the fundamental differences between common law and civil code jurisdictions, particularly evidentiary requirements, the practical effect is that it is currently impossible for a civil code jurisdiction to successfully seek the extradition of a suspected war criminal from Australia.

The repeal of section 22 will enable Australia to extradite suspected war criminals from Australia in accordance with whatever general extradition arrangements are in place with the requesting country.