Date Introduced: 20 March 1985
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Deputy Prime Minister and Attorney-General

Short Digest of Bill

Purpose

To amend the Extradition (Commonwealth Countries) Act 1966 (the Principal Act), to incorporate changes agreed to by Commonwealth Law Ministers in 1983.

Background

The Bill was introduced in the Senate on 30 May 1984 but lapsed following the dissolution of Parliament in October 1984.

A system to regulate extradition between countries of the Commonwealth was agreed to by Commonwealth Law Ministers in 1966. It is known as the London Scheme. The Scheme was incorporated in Australian law by the Extradition (Commonwealth Countries) Act, in 1966. The Scheme is based on reciprocal Acts passed in other Commonwealth countries and, greatly simplified, works as follows:[1] upon receipt of a request for extradition from a 'declared' Commonwealth country, the Attorney-General may request that a warrant for apprehension be issued if the fugitive has been charged or convicted of an extraditable offence as described in the Act. The fugitive, after apprehension, is brought before the Courts which determine whether the pre-conditions for extradition have been met, the sufficiency of the evidence and if there is some reason why extradition should not proceed. If the Court is satisfied that extradition should proceed, the matter is returned to the Attorney-General for consideration before a warrant of extradition is issued.

Main Provisions

By clause 2 the Bill will come into effect on a day fixed by proclamation.
Clause 3 amends section 4 of Principal Act, to clarify the definition of extraditable offence by expressly including breaches of revenue laws. It further amends the definition to make it clear that the offence for which extradition is sought must be an offence against the law of both countries at the time when the request for extradition is made.

Clause 4 inserts a new section 4A into the Principal Act to enable offences to be added or omitted to the Schedule of extraditable offences by regulation rather than amendment.

Clause 5 extends section 8 of the Principal Act to allow the Secretary of the Department of Foreign Affairs to nominate a country as a 'declared' Commonwealth country by notice published in the Gazette. The notice will cease to have effect after 3 months, if not revoked sooner.

Clause 6 amends section 10 of the Principal Act to remove the Courts' power to refuse extradition on the grounds that the offence was of a political character. Only the Attorney-General may refuse extradition on this ground.

Clause 7 amends section 11 of the Principal Act to extend the grounds upon which the Attorney-General may decline to issue a warrant for apprehension or extradition. At present, the Attorney-General may decline to issue the warrant if he is satisfied that the offence was of a political character or that extradition would be unjust or oppressive due to the trivial nature of the offence, the request not being made in good faith or the time lapsed since the offence was alleged to have been committed. The amendment will allow the Attorney-General to decline to issue a warrant if he is also satisfied that it would be unjust or oppressive 'for any other reason'.

Clause 9 amends section 14 of the Principal Act to no longer require evidence justifying the issue of a warrant of arrest. Proof of the existence of a warrant in the country requesting extradition will suffice.

Clause 10 amends section 15 of the Principal Act which deals with proceedings after apprehension. The most significant change is that it is made clear that fugitives cannot introduce evidence to refute allegations against them. The object of the hearing is to determine whether there are grounds upon which the fugitive can stand trial, not to determine the guilt or innocence of the fugitive.

Clause 11 inserts a new section 16 to extend the Courts' power to release, in the same manner as clause 7
extends that of the Attorney-General. The new section 16A will grant to the requesting country the right to appeal from the Court's decision. Presently only the fugitive can appeal.

Clause 12 amends section 17 of the Principal Act to limit the time in which a fugitive may apply for a writ of habeas corpus to 15 days.

For further information, if required, contact:

29 March 1985

Law & Government Group
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Reference

For more detail see 'Extradition of Fugitive Offenders' by Philip Opas, 42 Australian Law Journal, p.87.