EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1985

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

Short Digest of Bill

Purpose

To amend the Extradition (Foreign States) Act 1966 (the Principal Act) to facilitate the entry into treaties with non-Commonwealth States and to incorporate changes arising from the review of the Extradition (Commonwealth Countries) Act 1966.

Background

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

While extradition between Commonwealth countries is based on reciprocal Acts of Parliament, extradition between Australia and non-Commonwealth countries is based on the existence of an extradition treaty between the countries. Such treaties are incorporated in Australian law by the Extradition (Foreign States) Act 1966. This Act works in the same manner as the Extradition (Commonwealth Countries) Act 1966. (Refer to Bills Digest for Extradition (Commonwealth Countries) Amendment Bill 1985.)

The Bill incorporates changes resulting from the 1983 review of the Extradition (Commonwealth Countries) Act 1966 which are appropriate for extradition from non-Commonwealth countries.[1]

Main Provisions

By clause 2 the Bill will come into operation on a date fixed by proclamation.

Clause 3 amends the definition section (section 4) of the Principal Act to remove the need for specific offences to be included in a schedule in order to be classed as an extraditable offence. An offence will be extraditable if it carries a penalty of death or imprisonment for 12
It also makes it clear that breaches of revenue laws are extraditable offences. Furthermore, 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 5 amends section 13 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 16 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 8 amends section 17 of the Principal Act which is concerned with proceedings after apprehension. Instead of supplying evidence sufficient to justify a trial, the requesting country need only provide the warrant issued in that country, a description of the offence and its penalty and a statement of the acts or omissions alleged of the fugitive. This is necessary to facilitate the signing of treaties with countries whose legal system does not have pre-trial presentation of evidence.

The clause also makes it clear that fugitives cannot present evidence to refute allegations against them. The object of the hearing is to determine whether there are grounds upon which the fugitive could stand trial, not to determine the guilt or innocence of the fugitive.

Clause 9 inserts a new section 17A in the Principal Act which gives the requesting country the right to appeal from a Court's decision. Presently only the fugitive can appeal.

Clause 10 amends section 18 of the Principal Act to limit the time in which the fugitive may apply for a writ of habeas corpus to 15 days.

For further information, if required, contact:

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Reference

1. The review of the 'London Scheme' took place at a meeting of Commonwealth Law Officers in 1983.