EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1984

Date Introduced: 30 May 1984
House: Senate
Presented by: Senator the Hon. G.J. Evans, Q.C., Attorney-General

Purpose

Following discussion among Commonwealth law Ministers in 1983 resulting in amendments to the Extradition (Commonwealth Countries) Act 1966, to make similar amendments to Australian extradition legislation in respect of foreign countries.

Background

Australia's extradition legislation, enacted in 1966, distinguishes between Commonwealth countries and foreign states.

Consistency of extradition treatment among Commonwealth countries was preserved when Australia in 1966, following repeal of the relevant Imperial Act, participated in discussions of Commonwealth Law Ministers which resulted in the "London scheme".

From 1966 Australia continued treaties with some 40 foreign countries which had originally been concluded by Britain. Australia also continued the basic principle of the earlier Imperial Act, the Extradition Act 1870, that extradition should only be granted to foreign countries where a treaty with that country was in existence. Amendments in 1974 enabled the Principal Act to apply to certain countries providing reciprocating treatment, even where no treaty had actually been concluded.

Australian legislation regulating extradition to and from Commonwealth countries is to be amended to implement certain changes agreed by Commonwealth Law Ministers in London in 1983 [see Bills Digest for Extradition (Commonwealth Countries) Amendment Bill 1984]. Conformity of extradition treatment for foreign countries is achieved by corresponding changes to the Extradition (Foreign States) Act 1966 set out in this Bill.
Main Provisions

The Bill is to commence on a date fixed by Proclamation.

Clause 8(b) amends section 17 of the Extradition (Foreign States) Act 1966 to permit a simplified extradition procedure whereby the accused person may voluntarily consent to extradition. Clause 8 also amends the usual extradition procedure so that production of a copy of a foreign warrant is sufficient evidence, and limits the evidence which may be adduced so that the extradition proceedings do not become a trial of the fugitive on the real issue of the offence for which extradition is sought. Clause 8(a) prevents any bail application being made to another court or person once bail has been refused.

Clause 3 amends the interpretation section (section 4) of the Act to specify that a conviction in absentia of the fugitive whose extradition from Australia is sought will be treated as an accusation only. The clause also includes offences against taxation, customs duties, foreign exchange control or other revenue laws as extraditable crimes.

Provisions relating to the taking of evidence in Australia for use in proceedings for offences against the law of a foreign state are varied to prevent such evidence being taken where the offence would not be an offence if done in Australia, and to make the accused person in Australia a competent but not a compellable witness (clause 17). Clause 18 amends section 27A for authorisations permitting the taking of evidence in Australia by a Magistrate for the purpose of extradition from Australia to be not specific to any particular Magistrate.

A new section 25A facilitates proof of certain matters in court proceedings by allowing as prima facie evidence the Attorney-General's certificate stating the parties to, or existence of, a treaty. A new section 4A permits the regulations to effectively vary the list of extraditable crimes as set out in the Schedule (clause 4).

Determinations that extradition should not be permitted because the offence is of a political character are to be made by the Attorney-General through amendments to section 15 set out in clause 7. This decision is currently a matter for the Court hearing the proceedings. An executive, rather than a judicial, determination is considered appropriate.

The Bill introduces a right of review of a decision at first instance that extradition be refused. New section
17A, added by clause 9, permits application by a foreign state to the Federal Court or to the Supreme Court of the State or Territory in which the person was apprehended. The review may be followed by an appeal to the Full Court of the Federal Court. New evidence falling within the terms of subsection 17(6A), may be adduced at the review but no further evidence may be admitted on appeal. New section 24A, added by clause 14, invests the Federal Court and Supreme Courts with the necessary jurisdiction. Jurisdiction is also conferred pursuant to clause 10 of the Bill, which introduces a limited period of 15 days following apprehension in which an application for a writ of habeas corpus may be made, with a further 15 days following the decision for appeal to the Full Court of the Federal Court. This change will avoid such applications being made when actual transfer of the fugitive is imminent.

Clause 13 amends section 23 relating to application in Australia of the speciality rule. The rule states that a person extradited to Australia should not, unless he has in the meantime left or been given the opportunity to leave Australia, be tried for any other offence than that to which the extradition request related. The amendment changes the provision in a minor way to reflect the offence for which extradition was actually obtained rather than requested. Trial by consent of the person extradited remains an exception to the requirement.

Clause 5 extends the change to the requirement in section 13 that Australia not grant extradition to any country not implementing the speciality rule.

The Bill repeals Schedule 2. It is proposed that forms will henceforth be prescribed in regulations. Consequent minor amendments are set out in the Schedule to the Bill.

For further information, if required, contact:

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Law & Government Group
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