

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 30 May 1984)

(THE ATTORNEY-GENERAL, SENATOR GARETH EVANS)

A BILL

FOR

An Act to amend the *Extradition (Foreign States) Act 1966*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 1. (1) This Act may be cited as the *Extradition (Foreign States) Amendment Act 1984*.

 (2) The *Extradition (Foreign States) Act 1966*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

10 **Interpretation**

3. Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “extradition treaty” in sub-section (1) the following definition:

 “ ‘Federal Court’ means the Federal Court of Australia;”;

15 (b) by inserting in sub-section (1A) “(including an offence against such a law relating to taxation, customs duties, foreign exchange control or any other revenue matter)” after “foreign state”; and

(c) by omitting sub-section (3) and substituting the following sub-section:

20 “(3) Where a person has been convicted in his absence of an offence against the law of, or of a part of, a foreign state, whether or not the conviction is a final conviction, then, for the purposes of this Act, the

person shall be deemed not to have been convicted of that offence but shall be deemed to be accused of that offence.”.

4. After section 4 of the Principal Act the following section is inserted:

Variation of Schedule

“4A. Where, after the commencement of this section, a treaty (other than an extradition treaty) to which Australia is a party that— 5

(a) requires parties to the treaty to make unlawful, or to punish, acts or omissions described or specified in the treaty; and

(b) requires each party to the treaty to surrender to another party to the treaty any person accused or convicted of an offence under the law of that other party constituted by such an act or omission, 10

enters into force for Australia, the regulations may provide that the Schedule is to have effect for the purposes of the operation of this Act in relation to a foreign state that is also a party to the treaty, and for which the treaty has entered into force, as if the Schedule were modified, as specified in the regulations, by— 15

(c) altering an item;

(d) adding or omitting an item; or

(e) substituting a new item for an existing item,

and, where the regulations so provide, the Schedule has effect for those purposes, for so long as the treaty remains in force for Australia and that foreign state, as if it were so modified.”. 20

Restrictions on surrender of persons to foreign states

5. Section 13 of the Principal Act is amended—

(a) by omitting sub-section (1); 25

(b) by omitting sub-paragraph (2) (a) (i) and substituting the following sub-paragraph:

“(i) the offence in respect of which he was surrendered or any other offence of which he could be convicted upon proof of the facts on which his surrender was ordered; or”; and 30

(c) by omitting sub-paragraph (2) (b) (i) and substituting the following sub-paragraph:

“(i) an offence of which he could be convicted upon proof of the facts on which his surrender to that state was ordered; or”.

Restriction on power of Attorney-General to authorize the apprehension, or order the surrender, of a fugitive 35

6. Section 14 of the Principal Act is amended by omitting “(2) of section 18” and substituting “18 (2) or (2C)”.

Notice by Attorney-General

7. Section 15 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section: 40

“(2) The Attorney-General shall not give a notice under sub-section (1) in respect of a fugitive whose surrender is requested by a foreign state if the Attorney-General is of the opinion that—

- (a) the fugitive is not liable to be surrendered to the foreign state; or
- (b) the offence to which the requisition for the surrender of the fugitive relates is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character.”.

Proceedings after apprehension of person

8. Section 17 of the Principal Act is amended—

- (a) by inserting after sub-section (2A) the following sub-section:

“(2B) Where, under sub-section (2), a Magistrate remands a person in custody after the person has made an application for bail, the person is not entitled to apply to any other court or person for release on bail.”;

- (b) by inserting after sub-section (5) the following sub-sections:

“(5A) A person brought before a Magistrate under this section may—

- (a) where the person was apprehended under a warrant issued otherwise than in pursuance of an authority by the Attorney-General in a notice under paragraph 15 (1) (a) and where the Magistrate receives a notice under paragraph 15 (1) (b)—after the Magistrate receives the notice by the Attorney-General under paragraph 15 (1) (b); or
- (b) where the person was apprehended under a warrant issued in pursuance of an authority by the Attorney-General in a notice under paragraph 15 (1) (a)—upon being brought before the Magistrate,

inform the Magistrate that he consents to being surrendered to the foreign state that made the requisition for his surrender.

“(5B) Where a person informs a Magistrate that he consents to being surrendered to a foreign state, the Magistrate shall, unless he has reason to believe that the consent was not given voluntarily—

- (a) advise the person that the effect of so consenting will be that—
 - (i) the foreign state requesting his surrender will not be required to produce the warrant or the evidence referred to in sub-section (6);
 - (ii) he will not be entitled to apply for a writ of *habeas corpus* under sub-section 18 (1); and
 - (iii) he is liable to be surrendered to that foreign state forthwith; and
- (b) if, after the person has been advised in accordance with paragraph (a), the person again consents to being

surrendered—commit the person to prison to await the warrant of the Attorney-General for his surrender to that foreign state.

“(5C) Where a Magistrate commits a person to prison in accordance with paragraph (5B) (b), sub-sections (6), (6A) and (6B) do not apply to or in relation to that person.”;

(c) by inserting in paragraph (6) (a) “or a duly authenticated copy of such a warrant” after “warrant”;

(d) by inserting in paragraph (6) (c) “in accordance with sub-section (6A)” after “tendered”;

(e) by inserting after sub-section (6) the following sub-section:

“(6A) For the purposes of paragraph (6) (c), a person is not entitled to tender, and a Magistrate is not entitled to receive, evidence other than evidence to establish any of the following matters:

(a) that the person is not the person named in the foreign warrant;

(b) that the offence in respect of which the surrender of the person is requested by a foreign state is not an extradition crime;

(c) that—

(i) the person is being held in custody in Australia; or

(ii) the person has been admitted to bail in Australia upon recognizances that have not been discharged,

in respect of an offence that is alleged to have been committed in Australia;

(d) that the person is undergoing a sentence for a conviction in Australia;

(e) that the person has been acquitted or pardoned by a competent tribunal in any country, or has undergone the punishment provided by the law of, or of a part of, any country, in respect of the offence in respect of which his surrender is requested or of another offence constituted by the same act or omission as that offence.”; and

(f) by adding at the end of sub-section (8) “and, where a Magistrate commits a person to prison under paragraph (5B) (b), he shall include in the certificate to the Attorney-General a statement that he has advised the person in accordance with paragraph (5B) (a)”.

9. After section 17 of the Principal Act the following section is inserted:

Review of Magistrate's decision

“17A. (1) Where, under sub-section 17 (6), a Magistrate orders that a person be released, a foreign state may apply to the Federal Court, or to the Supreme Court of the State or Territory in which the person was apprehended, for a review of the order, and the court may review the order.

“(2) Where, after a person is released in pursuance of an order under sub-section 17 (6), a foreign state applies under sub-section (1) for a review of

the order, a Magistrate may issue a warrant for the apprehension of the person in accordance with the form prescribed for the purposes of this sub-section.

“(3) A warrant issued under this section may be executed in any State or Territory.

5 “(4) The court to which an application is made for a review of an order that a person be released may, whether the person was not released in pursuance of the order before the application was made or was so released and was apprehended in pursuance of a warrant issued under sub-section (2)—

10 (a) order the release on bail of the person on such terms and conditions as the court thinks fit; or

(b) order that the person be kept in such custody as the court directs in the State or Territory in which the person was last apprehended until the order has been reviewed.

15 “(5) The review of the order shall be by way of rehearing, and evidence in addition to, or in substitution for, the evidence given on the making of the order may be given on or in connection with the review, but the court may receive evidence only in relation to the matters specified in sub-section 17 (6A).

20 “(6) For the purposes of a review under this section, a copy of a public document or of a document filed in a Department, or office of the Commonwealth or of a State or Territory, certified to be a true copy of the document by the person purporting by the certificate to have charge of the document, is admissible as evidence of the facts stated in the copy.

“(7) Upon the review of an order, the Court may confirm or vary the order, or quash the order and substitute a new order in its stead.

25 “(8) The order as confirmed or varied, or the substituted order, shall be executed according to its tenor as if it had been made by the Magistrate.

“(9) An appeal lies to the Full Court of the Federal Court from—

(a) an order confirmed under sub-section (7);

(b) an order as varied under sub-section (7); or

30 (c) an order made under sub-section (7) in substitution for an order quashed under that sub-section.

“(10) In an appeal, the Full Court shall only have regard to the evidence given in the proceedings out of which the appeal arose.”.

Surrender of fugitive to foreign state

35 **10.** Section 18 of the Principal Act is amended—

(a) by omitting from sub-section (1) “apply to a court of competent jurisdiction” and substituting “, within that period of 15 days, apply either to the Federal Court, or to the Supreme Court of the State or Territory in which he is held in custody,”;

40 (b) by inserting after sub-section (1) the following sub-section:

“(1A) The prisoner is not entitled to apply to the Federal Court or the Supreme Court of a State or Territory for a writ of *habeas corpus* after the expiration of the period referred to in sub-section (1).”;

(c) by omitting sub-section (2) and substituting the following sub-sections:

“(2) After—

- (a) the expiration of the period referred to in sub-section (1); or
- (b) if an application for a writ of *habeas corpus* is made by the prisoner within that period and the court to which the application is made, or, where an appeal is brought from the decision of that court to the Full Court of the Federal Court, the Full Court, refuses to order that the prisoner be released—the expiration of the period of 15 days from the date of the decision of the first-mentioned Court or the Full Court of the Federal Court, as the case may be,

whichever is the later, the Attorney-General shall—

- (c) if he is satisfied that the prisoner is liable to be surrendered to the foreign state; and
- (d) unless he is of the opinion that the offence to which the requisition for the surrender of the prisoner relates is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character,

by warrant in accordance with the form prescribed for the purposes of this sub-section or, where the prisoner is held in custody otherwise than at a prison, in accordance with that form with such variations as are necessary to meet the circumstances of the case, order that the prisoner be delivered into the custody of a person specified in the warrant and be conveyed by that person to a place in that foreign state or within the jurisdiction of, or of a part of, that foreign state and there surrendered to some person appointed by that foreign state to receive him.

“(2A) No appeal lies to the Full Court of the Federal Court from a decision of the Federal Court or a Supreme Court in relation to an application for a writ of *habeas corpus* after the expiration of the period of 15 days from the date of the decision of the Federal Court or the Supreme Court in relation to that application.

“(2B) Sub-sections (1), (1A), (2) and (2A) do not apply in relation to a person committed to prison under paragraph 17 (5B) (b).

“(2C) Where a Magistrate—

- (a) pursuant to paragraph 17 (5B) (b), commits a person (in this section referred to as the ‘volunteer prisoner’) to prison; or
- (b) pursuant to sub-section 17 (7), orders that a person (in this section also referred to as the ‘volunteer prisoner’) who could be committed to prison under paragraph 17 (5B) (b) be held in custody,

to wait the warrant of the Attorney-General for his surrender to a foreign state, the Attorney-General shall—

(c) if he is satisfied that the volunteer prisoner is liable to be surrendered to the foreign state; and

(d) unless he is of the opinion that the offence to which the requisition for the surrender of the volunteer prisoner relates is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character,

by warrant in accordance with the form prescribed for the purposes of this sub-section or, where the volunteer prisoner is held in custody otherwise than at a prison, in accordance with that form with such variations as are necessary to meet the circumstances of the case, order that the volunteer prisoner be delivered into the custody of a person specified in the warrant and be conveyed by that person to a place in that foreign state or within the jurisdiction of, or of a part of, that foreign state and there surrendered to some person appointed by that foreign state to receive him.”;

(d) by omitting from sub-section (3) “the last preceding sub-section” and substituting “sub-section (2) or (2C)”;

(e) by adding at the end thereof the following sub-section:

“(8) A reference in sub-section (4), (5), (6) or (7) to a prisoner shall be construed as including a reference to a volunteer prisoner.”.

Discharge of fugitive who is not conveyed out of Australia within 2 months

11. Section 19 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “another court, the date of the decision of the other court” and substituting “the Full Court of the Federal Court, the date of the decision of the Full Court”;

(b) by inserting in sub-section (1) “Federal Court, or the” before “Supreme Court”; and

(c) by omitting sub-sections (2) and (4).

Definition

12. Section 20 of the Principal Act is amended by inserting “(including an offence against such a law relating to taxation, customs duties, foreign exchange control or any other revenue matter)” after “Australia” (last occurring).

Person surrendered by foreign state in respect of an offence not to be prosecuted or detained for other offences

13. Section 23 of the Principal Act is amended—

(a) by omitting sub-paragraph (a) (i) and substituting the following sub-paragraph:

“(i) the offence in respect of which he was surrendered or any other offence of which he could be convicted upon proof of the facts on which his surrender was granted; or”;

- (b) by omitting sub-paragraph (b) (i) and substituting the following sub-paragraph:

“(i) an offence of which he could be convicted upon proof of the facts on which his surrender from the foreign state was granted; or”.

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14. After section 24 of the Principal Act the following section is inserted:

Jurisdiction of Courts

“24A. (1) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Federal Court and the Supreme Court of each Territory, to hear and determine matters arising under sections 17A, 18 and 19.

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“(2) The jurisdiction of a Court for the purposes of this section may be exercised by the Court constituted by a single Judge.”.

15. After section 25 of the Principal Act the following section is inserted:

Evidence of certain matters

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“25A. (1) A certificate by the Attorney-General stating that—

- (a) Australia or another specified country is a party to a specified treaty;
- (b) the treaty entered into force for Australia or that other country, as the case may be, on a specified date; and
- (c) as at the date of the certificate, the treaty remained in force for Australia or that other country,

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is, for the purposes of any proceedings under this Act, *prima facie* evidence of the facts stated in the certificate.”.

Foreign documents may be admitted in evidence if duly authenticated

16. Section 26 of the Principal Act is amended—

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- (a) by inserting in paragraph (1) (d) “or a copy of a foreign warrant” after “warrant”;
- (b) by omitting from paragraph (2) (c) “or” (last occurring); and
- (c) by inserting after paragraph (2) (d) the following word and paragraph:
 - “; or (e) in the case of a document that purports to be a copy of a foreign warrant—

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- (i) the document purports to be certified by a Judge, Magistrate or officer in or of the foreign state in which the document was issued to be a true copy of the original foreign warrant; and

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- (ii) the original foreign warrant purports to be signed by a Judge, Magistrate or officer in or of the foreign state in which the document was issued.”.

Taking of evidence in respect of criminal matters pending in courts of foreign states

17. Section 27 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) The Attorney-General shall not authorize a Magistrate to take evidence under sub-section (1) in respect of a matter relating to an offence unless the act or omission constituting the offence or the equivalent act or omission, or, where the offence is constituted by 2 or more acts or omissions, any of those acts or omissions or any equivalent act or omission, would, if it took place in, or within the jurisdiction of, Australia, constitute an offence against the law in force in Australia or in a part of Australia.”;

(b) by omitting from sub-section (4) “The” and substituting “Subject to sub-section (5), the”; and

(c) by adding at the end thereof the following sub-section:

“(5) For the purposes of this section, the person charged with the offence against the law of, or of a part of, the foreign state is competent but not compellable to give evidence.”.

Taking of evidence for purposes of extradition

18. Section 27A of the Principal Act is amended—

(a) by omitting from sub-section (1) “a Magistrate to take” and substituting “the taking of”; and

(b) by omitting sub-section (2) and substituting the following sub-section:

“(2) Where the Attorney-General authorizes the taking of evidence under sub-section (1), a Magistrate may take the evidence on oath or affirmation of each witness appearing before him to give evidence in relation to the matter, and a Magistrate who takes evidence under this sub-section shall—

(a) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and

(b) cause the writing so certified to be sent to the Attorney-General.”.

Repeal of section 30

19. Section 30 of the Principal Act is repealed.

Repeal of Schedule 2

20. Schedule 2 to the Principal Act is repealed.

Amendments consequential on repeal of Schedule 2 to Principal Act

21. The Principal Act is further amended as set out in Schedule 1.

Formal amendments

22. The Principal Act is further amended as set out in Schedule 2.

Savings

23. A notice or warrant given, issued or served under the Principal Act and in force or effect immediately before the commencement of this section has, after the commencement of this section, the same force or effect it would have had if Schedule 2 to the Principal Act had not been repealed and as if the amendments made to the Principal Act by section 21 of this Act had not been made.

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SCHEDULE 1

Section 21

AMENDMENTS CONSEQUENTIAL UPON REPEAL OF SCHEDULE 2 TO PRINCIPAL ACT

1. The following provisions of the Principal Act are amended by omitting "Schedule 1" and substituting "the Schedule":

Paragraph 4 (1A) (a), sub-sections 4 (5), 4 (5A) and 4 (5B), sub-paragraph 13 (2) (b) (ii), paragraph 20 (a), sub-paragraph 23 (b) (ii).

2. The Principal Act is further amended as set out in the following table:

Provision	Amendment
Paragraph 15 (1) (a)	Omit "Form 1 in Schedule 2", substitute "the form prescribed for the purposes of this paragraph".
Paragraph 15 (1) (b)	Omit "Form 2 in Schedule 2", substitute "the form prescribed for the purposes of this paragraph".
Sub-section 16 (1)	Omit "Form 3 or Form 4, as the case may be, in Schedule 2", substitute "the form prescribed for the purposes of this sub-section".
Sub-section 17 (6)	Omit "Form 5 in Schedule 2", substitute "the form prescribed for the purposes of this sub-section".
Sub-section 17 (7)	Omit "Form 5 in Schedule 2", substitute "the form prescribed for the purposes of sub-section (5)".
Sub-section 18 (2)	(a) Omit "Form 6 in Schedule 2", substitute "the form prescribed for the purposes of this sub-section". (b) Omit "Form" (last occurring), substitute "form".
Paragraph 18A (1) (b)	Omit "Form 7 in Schedule 2", substitute "the form prescribed for the purposes of this paragraph".
Sub-section 27 (1)	Omit "Form 8 in Schedule 2", substitute "the form prescribed for the purposes of this sub-section".
Sub-section 27A (1)	Omit "Form 9 in Schedule 2", substitute "the form prescribed for the purposes of this sub-section".
Schedule 1	(a) Omit "SCHEDULE 1", substitute "SCHEDULE". (b) Omit "Sections 4, 10 and 20", substitute "Sections 4 and 20".

SCHEDULE 2

Section 22

FORMAL AMENDMENTS

Provision	Amendment
Sub-section 4 (1) (paragraph (b) of definition of "Magistrate")	Omit "(1) of section 24", substitute "24 (1)".
Sub-section 4 (1A)	Omit "two", substitute "2".
Sub-section 4 (10)	Omit "(b) of sub-section (9)", substitute "(9) (b)".
Sub-section 6 (1)	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Sub-section 9 (4)	(a) Omit "the last preceding sub-section", substitute "sub-section (3)". (b) Omit "the next succeeding section", substitute "section 10".
Sub-section 10 (2)	Omit "the last preceding sub-section", substitute "sub-section (1)".
Sub-section 10 (3)	Omit "the last two preceding sub-sections", substitute "sub-sections (1) and (2)".
Sub-section 11 (1)	Omit "the next succeeding sub-section", substitute "sub-section (2)".
Section 14	Omit "(1) of the next succeeding section", substitute "15 (1)".
Sub-section 15 (1)	(a) Omit "the next succeeding sub-section", substitute "sub-section (2)". (b) Omit "the next succeeding section" (wherever occurring), substitute "section 16".
Paragraph 16 (1) (a)	Omit "(a) of sub-section (1) of the last preceding section", substitute "15 (1) (a)".
Sub-section 16 (3)	Omit "(a) of sub-section (1) of the last preceding section", substitute "15 (1) (a)".
Sub-section 16 (4)	Omit "the last preceding sub-section", substitute "sub-section (3)".
Paragraph 16 (5) (a)	Omit "the last two preceding sub-sections", substitute "sub-sections (3) and (4)".
Sub-section 17 (1)	Omit "the last preceding section", substitute "section 16".
Sub-section 17 (2)	Omit "seven", substitute "7".
Sub-section 17 (2A)	Omit "seven", substitute "7".
Sub-section 17 (3)	Omit "the last preceding section", substitute "section 16".
Sub-section 17 (4)	(a) Omit "(a) of sub-section (1) of section 15", substitute "15 (1) (a)". (b) Omit "(b) of sub-section (1) of section 15", substitute "15 (1) (b)".
Sub-section 17 (6)	(a) Omit "(a) of sub-section (1) of section 15", substitute "15 (1) (a)". (b) Omit "(b) of that sub-section", substitute "15 (1) (b)".
Sub-section 18 (1)	Omit "fifteen", substitute "15".
Sub-section 18A (2)	Omit "(b) of sub-section (1)", substitute "(1) (b)".
Sub-section 19 (1)	Omit "two", substitute "2".
Section 25	Omit "1903-1966", substitute "1903".
Section 29	Omit "1923-1962", substitute "1923".
Paragraph 31 (b)	Omit "Five hundred dollars", substitute "\$500".

NOTE

1. No. 76, 1966, as amended. For previous amendments, see No. 112, 1968; No. 103, 1972; No. 171, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 21, 1974, No. 10, 1977; No. 155, 1979; No. 70 1980; and No. 96, 1983.

