

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

[CONSEQUENTIAL AMENDEMENTS] BILL 1987

EXPLANATORY MEMORANDUM

(This memorandum takes account of amendments made
by the House of Representatives to the Bill as introduced)

(Circulated by the Authority of the Minister representing
the Attorney-General)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

[CONSEQUENTIAL AMENDMENTS] BILL 1987

GENERAL OUTLINE

This legislation amends various Commonwealth Acts as a consequence of provisions in the Mutual Assistance in Criminal Matters Bill 1987. The amendments -

- (a) enable the Director of Public Prosecutions to appear and grant indemnities in proceedings under the Mutual Assistance in Criminal Matters Act 1987.
- (b) repeal provisions in the Australian extradition legislation in relation to the taking of evidence for the purposes of criminal proceedings overseas since the substance of those provisions are now included in the Mutual Assistance in Criminal Matters Bill 1987.
- (c) make provision for the entry into Australia and departure of persons who are non-citizens whose presence is required for purposes connected with the Mutual Assistance in Criminal Matters Act 1987.

FINANCIAL IMPACT STATEMENT

There is no financial impact from this Bill as far as the Commonwealth is concerned. The financial impact of the Mutual Assistance in Criminal Matters Bill 1987 is addressed in the explanatory memorandum for that Bill.

NOTES ON CLAUSES

Clause 1 - Short Title

Formal

Clause 2 - Commencement

This commencement provision provides that the amendments to other Commonwealth legislation provided for in this Bill shall come into operation by proclamation. The amendments may be proclaimed to come into operation at different times.

Clause 3 - Amendment of Acts

This clause provides that the amendments to Commonwealth legislation provided for in this Bill are detailed in the Schedule.

SCHEDULE - AMENDMENT OF ACTS

Australia Citizenship Act 1948

New Sub-Section 5A(5)

This amendment provides in effect that a person who is in Australia for purposes connected with the Mutual Assistance in Criminal Matters Act 1987 shall not be taken to be a permanent resident of Australia whilst in Australia for those purposes unless an entry permit [other than a temporary entry permit] has been granted to the person. The provision is necessary to prevent such persons applying for citizenship on the basis of their residence in Australia for purposes connected with the Mutual Assistance in Criminal Matters Act 1987.

New Sub-Section 13(9A)

This sub-section provides that the same class of persons that are referred to in sub-section 5A(5) cannot apply for citizenship pursuant to sub-section 13(9) of the Australian Citizenship Act 1948. Sub-section 13(9) gives the Minister a discretion to grant citizenship to certain young persons and persons who are the spouse, widow or widower of an Australian citizen.

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

Paragraph 6(1)K

The purpose of this amendment is to enable the Director of Public Prosecutions to appear in proceedings under the Mutual Assistance in Criminal Matters Act 1987.

Sub-Section 9(6)

The purpose of this amendment is to enable the Director of Public Prosecutions to grant indemnities to persons who are to give evidence for the purpose of proceedings under the Mutual Assistance in Criminal Matters Act 1987.

EXTRADITION (COMMONWEALTH COUNTRIES) ACT 1966

Section 33AB

This section which provides for the taking of evidence for use in criminal proceedings overseas is repealed because the substance of the provision is now incorporated in the Mutual Assistance in Criminal Matters Act.

EXTRADITION (FOREIGN STATES) ACT 1966

Section 27

This section which provides for the taking of evidence for use in criminal proceedings overseas is repealed because the substance of the provision is now incorporated in the Mutual Assistance in Criminal Matters Act.

MIGRATION ACT 1958

Definition of 'entry permit' - This definition is now extended to include entry permits issued under the new section 6B.

Definition of 'statutory visitor' - This definition provides that non-citizens who have travelled to Australia for purposes connected with the Mutual Assistance in Criminal Matters Act 1987 shall be 'statutory visitors'.

Definition of 'visa' - This definition extends the existing definition of 'visa' to cover visas issued under the new section 11AB.

New Section 6B - Conditions on which entry permits may be granted to statutory visitors after entry into Australia

The effect of this new provision is that a statutory visitor

- (a) does not become a prohibited non-citizen because he or she does not hold an entry permit when he or she enters Australia as such visitors are not subject to the standards entry permit requirement contained in section 6; and

(b) may only obtain an entry permit [being either a temporary entry permit or a permanent entry permit] after entry into Australia if he or she has been granted territorial asylum or has been determined to have the status of a refugee. The usual provisions relating to the grant of entry permits will not apply to statutory visitors.

New Section 11AB - Visas for Statutory Visitors

This new section provides for the grant of visas to non-citizens for their travel to Australia for purposes connected with the Mutual Assistance in Criminal Matters Act 1987. The section only applies to persons whose presence has been certified to be required for the purposes of that Act. Such certificates are issued by the Secretary to the Attorney-General's Department or an officer of that Department authorized by him or her. When the person travels to Australia by virtue of the visa he or she becomes a statutory visitor. Sub-Section 11AB(3) applies the relevant machinery provisions of section 11A in relation to visas granted under section 11AB. Sub-section 11AB(4) provides that the certificate may be cancelled if the person's presence is no longer required. Sub-section 11AB(5) provides for notice of a prospective cancellation to be given to the person and the Secretary to the Department of Immigration and Ethnic Affairs. The principal purpose of this notice is to enable the person to make arrangements to leave Australia before the certificate is cancelled and the new section 18A becomes operative.

New Section 18A - Non-Citizens Whose Certificates are Cancelled

The purpose of this provision is to ensure the departure of statutory visitors when the reasons for which they came to Australia (ie. purposes connected with the Mutual Assistance in Criminal Matters Act 1987) no longer exist.

Sub-section (1) provides that when a certificate is cancelled under sub-section 11AB(4) (after reasonable notice has been provided pursuant to sub-section 11AB(5) and a statutory visitor remains in Australia, that person shall become a prohibited non-citizen and deemed to be the subject of a deportation order.

It is expected that, in most cases, the time at which a statutory visitor should leave Australia will be determined after consultation with the visitor, and the certificate would only be cancelled while the visitor remained in Australia if he or she did not leave by the time agreed.

Sub-section (2) makes it clear that the Minister has no discretion to revoke a deemed order of deportation referred to in sub-section (1).

Sub-sections (3) and (4) are evidentiary provisions relevant to any proceeding involving s.18A.

Sub-section (3) facilitates proof [by way of a certificate being prima facie evidence] that a statutory visitor is not or was not an Australian citizen or the holder of an entry permit.

Sub-section (4) facilitates proof that certificates under sub-section (3) have been duly given.

New Sub-Section 31B(2A)

This sub-section makes it an offence for a statutory visitor to work in Australia unless he or she has become an Australian citizen or the holder of a valid entry permit.

Sub-Section 31B(4)

This amendment is consequential upon the inclusion of the new sub-section 31B(2A).

Sub-Section 31B(5)

These amendments facilitate proof that a person has not become an Australian citizen or the holder of a valid entry permit for the purpose of proceedings for an offence under the new sub-section 31B(2A).

Clause 4 - Transitional

This clause provides that requests received for the taking of evidence in Australia before the repeal of the sections in the Australian extradition legislation shall be processed pursuant to those sections.