

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 24 August 1989.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Bill Dillon

ABOLITION OF THE DEATH PENALTY

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A BILL INTITLED

An Act to abolish the death penalty, and to amend the Crimes Act 1961, the Armed Forces Discipline Act 1971, the Extradition Act 1965, and the Fugitive Offenders Act 1881 (U.K.)

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Abolition of the Death Penalty Act 1989.

(2) This Act shall come into force on the 28th day after the date on which it receives the Royal assent.

No. 133—2

Price
incl. GST \$2.20

CRIMES

2. Sections to be read with Crimes Act 1961—This section and the next succeeding section shall be read together with and deemed part of the Crimes Act 1961 (in that section referred to as the principal Act).

3. Removal of death penalty for crime of treason— 5

(1) The principal Act is hereby amended—

(a) By repealing sections 14, 15, 16, (74 (1)) 161, 349, and 399 (2);

(b) By repealing the First Schedule and Forms 1 and 2 in the Second Schedule. 10

Struck Out

(2) Section 74 (1) of the principal Act is hereby amended by omitting the words “sentenced to death”, and substituting the words “liable to imprisonment for life”.

New

(2) Section 74 (1) of the principal Act is hereby amended by omitting the word “death”, and substituting the words “imprisonment for life”. 15

(2A) Section 109 (2) of the principal Act is hereby amended by omitting the words “for any crime punishable by death, or”. 20

(2B) Section 115 (a) of the principal Act is hereby amended by omitting the words “to death, or”.

(3) Section 315 (2) of the principal Act is hereby amended by omitting the words “death or” in each case where they occur.

(4) Section 317 (1) of the principal Act is hereby amended by omitting the words “death or”. 25

(5) Section 361B (5) of the principal Act (as inserted by section 2 (1) of the Crimes Amendment Act (No. 2) 1979) is hereby amended by omitting the words “death or”.

ARMED FORCES DISCIPLINE

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4. Sections to be read with Armed Forces Discipline Act 1971—This section and the next succeeding section shall be read together with and deemed part of the Armed Forces Discipline Act 1971 (in that section referred to as the principal Act). 35

5. Removal of death penalty for treachery in the Armed Forces—(1) The principal Act is hereby amended by repealing sections 80 (2), 81, 133 (3), 133 (4), *(and 137 (4))* 137 (4), 142 (2), and 167.

5 (2) Section 23 (1) of the principal Act is hereby amended by omitting the words “be sentenced to death”, and substituting the words “imprisonment for life”.

(3) Section 24 (1) of the principal Act is hereby amended by omitting the words “be sentenced to death”, and substituting
10 the words “imprisonment for life”.

(4) Section 26 of the principal Act is hereby amended by omitting the words “be sentenced to death”, and substituting the words “imprisonment for life”.

Struck Out

15 (5) Section 32 (1) of the principal Act is hereby amended by omitting the words “be sentenced to death”, and substituting the words “imprisonment for life”.

(6) Section 32 (2) of the principal Act (as amended by section 14 (2) of the Armed Forces Discipline Amendment Act 1985) is
20 hereby amended by omitting the words “to death”.

New

(5) The principal Act is hereby further amended by repealing section 32, and substituting the following section:

25 “32. **Mutiny**—Every person subject to this Act commits an offence, and is liable to imprisonment for life, who takes part in any mutiny.”

(6) Section 76 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

30 “(4) Every person who is convicted of an attempt to commit an offence against this Act is liable to the same punishment as if that person had actually committed the offence.”

(7) Section 77 (1) of the principal Act is hereby amended by omitting the words “death or”.

35 (8) Section 118 (3) (c) of the principal Act is hereby amended by omitting the words “to death or”.

(9) Section 139 (1) of the principal Act is hereby amended by omitting the words “by death or”.

(10) The Second Schedule to the principal Act is hereby amended by omitting clause 1 (a).

New

(11) Sections 14 and 31 of the Armed Forces Discipline Amendment Act 1985 are hereby consequentially repealed. 5

EXTRADITION

6. Sections to be read with Extradition Act 1965—This section and the next succeeding section shall be read together with and deemed part of the Extradition Act 1965 (in that section referred to as the principal Act). 10

Struck Out

7. Power to decline extradition to face death penalty—
(1) Section 5 (1) of the Extradition Act 1965 is hereby amended by adding to paragraph (b) the word “; or”, and by adding the following paragraph: 15

“(c) If the Minister is of the opinion that there are substantial grounds for believing that the offender has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which the offender’s surrender is sought.” 20

(2) Section 6 of the Extradition Act 1965 is hereby amended by adding the following subsection:

“(4) If the Minister of Justice is of the opinion that there are substantial grounds for believing that the offender whose surrender is requested has been sentenced to death or is liable to be so sentenced, if the request were granted, by the appropriate authority in the country to which the offender’s surrender is sought, the Minister shall refuse to notify a District Court Judge of the request, and may also at any time order the offender to be discharged from custody.” 25 30

New

7. Power to decline extradition to face death penalty—
(1) The principal Act is hereby amended by inserting, after section 5, the following section:

New

“5A. Without limiting anything in section 5 of this Act, the Minister of Justice may decline to order the surrender of an offender to a foreign country if it appears to the Minister that the offender has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his or her surrender is sought.”

(2) Section 6 of the principal Act is hereby amended by adding the following subsection:

“(4) If it appears to the Minister of Justice that the offender whose surrender is requested has been sentenced to death or would be liable to be so sentenced, if the request were granted, by the appropriate authority in the country to which the offender’s surrender is sought, the Minister may refuse to notify a District Court Judge of the request, and may also at any time order the offender to be discharged from custody.”

FUGITIVE OFFENDERS

8. Sections to be read with Fugitive Offenders Act 1881 (U.K.)—This section and the next succeeding section shall, for the purposes of the law of New Zealand, be read together with and deemed part of the Fugitive Offenders Act 1881 (U.K.) (in that section referred to as the principal Act).

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9. Power to decline extradition to face death penalty in Commonwealth country—Section 29A of the Fugitive Offenders Act 1881 (as inserted by section 7 of the Fugitive Offenders Amendment Act 1976) is hereby amended by adding the following subsections:

“(3) Notwithstanding anything in this Act, a person accused of an offence shall not be returned under Part I of this Act from New Zealand to a Commonwealth country if it appears to the Minister of Justice that there are substantial grounds for believing that the fugitive has been sentenced to death or is liable to be so sentenced by the appropriate authority in the part of the Commonwealth to which the fugitive’s surrender is sought.

“(4) Notwithstanding anything in this Act, a person accused of an offence shall not be returned under Part II of this Act

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from New Zealand to a neighbouring Commonwealth country without the consent of the Minister of Justice if it appears to any court before which the accused is brought, or to any court or Judge on an application for a writ of *habeas corpus*, that there are substantial grounds for believing that the accused has been sentenced to death or is liable to be so sentenced by the appropriate authority in the part of the Commonwealth to which the fugitive's surrender is sought."

New

9. Power to decline extradition to face death penalty in Commonwealth country—Section 29A of the principal Act (as inserted by section 7 of the Fugitive Offenders Amendment Act 1976) is hereby amended by adding the following subsections:

"(3) Without limiting any of the preceding provisions of this section, the Minister of Justice may decline to order the return of a person from New Zealand to another Commonwealth country under Part I of this Act if it appears to the Minister that the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his or her return is sought."

"(4) Notwithstanding anything in this Act, a person accused of an offence shall not be returned under Part II of this Act from New Zealand to another Commonwealth country without the consent of the Minister of Justice if it appears to any court before which the person is brought, or to any court or Judge on an application for a writ of *habeas corpus*, that the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his or her return is sought."