



# Extradition (Foreign States) Amendment Act 1985

No. 18 of 1985

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# Extradition (Foreign States) Amendment Act 1985

No. 18 of 1985

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

[Assented to 7 May 1985]

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

### Short title, &c.

1. (1) This Act may be cited as the *Extradition (Foreign States) Amendment Act 1985*.

(2) The *Extradition (Foreign States) Act 1966*<sup>1</sup> 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.

### 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;”;

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(b) by omitting “Chief, Stipendiary, Police, Resident or Special Magistrate” from paragraphs (a) and (b) of the definition of “Magistrate” in sub-section (1) and substituting “Magistrate, or as a Chief, Stipendiary, Police, Resident or Special Magistrate,”;

(c) by omitting sub-section (1A) and substituting the following sub-section:

“(1A) An offence against the law of, or of a part of, a foreign state (including an offence against such a law relating to taxation, customs duties, foreign exchange control or any other revenue matter) for which a requisition for the surrender of a person has been made to the Attorney-General is an extradition crime for the purposes of this Act if, but only if—

(a) the maximum penalty for the offence is death or imprisonment for not less than 12 months; and

(b) an act or omission by the person which is, in or in connection with the requisition for the surrender of the person, alleged to have taken place or of which evidence is produced in connection with the requisition for the surrender of the person, or any equivalent act or omission, would, if it took place, at the time when the requisition was made, in, or within the jurisdiction of, the part of Australia where the person is found, constitute an offence against the law in force in that part of Australia.”;

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

“(3) Where a person has been convicted in the absence of the person 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.”;

(e) by omitting from sub-section (5) “that is of a kind referred to in item 32 or item 35 in Schedule 1 and”;

(f) by omitting from sub-section (5A) “that is of a kind referred to in item 33 or item 35 in Schedule 1 and”;

(g) by omitting from sub-section (5B) “that is of a kind referred to in item 33A or item 35 in Schedule 1 and”;

(h) by omitting sub-sections (9) and (10) and substituting the following sub-section:

“(9) For the purposes of this Act, an offence against the law of, or of a part of, a foreign state, being an offence against the law relating to genocide, shall not be taken to be an offence that 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.”.

**Application of Act in relation to foreign states to which Extradition Acts 1870 to 1935 apply**

**4. Section 9 of the Principal Act is amended—**

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

“(1A) It is declared, for the avoidance of doubt, that this Act applies by virtue of sub-section (1) in relation to each of the foreign states specified in the Schedule.

“(1B) If, after the commencement of this sub-section, an extradition treaty comes into force between Australia and a foreign state specified in the Schedule, this Act has effect as if the reference in the Schedule to that foreign state were omitted.”; and

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

“(2A) For the purposes of sub-section (2), the provisions of the Orders in Council referred to in sub-section (1) shall be deemed to be the provisions set out in Volume IX of the Statutory Rules and Orders and Statutory Instruments of the United Kingdom revised to December 31, 1948.”.

**Restrictions on surrender of persons to foreign states**

**5. Section 13 of the Principal Act is amended—**

(a) by adding at the end of sub-section (1) “or if the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character”;

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

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

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

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

**6. Section 15 of the Principal Act is repealed and the following section is substituted:**

**Notice by Attorney-General**

“15. (1) Subject to sub-section (2), where a requisition for the surrender of a fugitive who is, or is suspected of being, in or on the way to Australia is made to the Attorney-General by a foreign state, the Attorney-General may, in his or her discretion—

(a) if a warrant for the apprehension of the fugitive has not been issued under section 16—by notice in writing in accordance with the form

prescribed for the purposes of this paragraph, state that the requisition has been made and authorize the issuing by any Magistrate of a warrant for the apprehension of the fugitive; or

- (b) if a warrant for the apprehension of the fugitive has been issued under section 16 and a person has been apprehended under the warrant—by notice in writing in accordance with the form prescribed for the purposes of this paragraph and directed to any Magistrate before whom the person may be brought, inform the Magistrate that the requisition has been made.

“(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 or that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.”

#### **Issue of warrants**

7. Section 16 of the Principal Act is amended by omitting from sub-section (1) all the words and paragraphs after paragraph (b) and substituting “and the Magistrate is informed, by information on oath or affirmation, that a warrant for the apprehension of the fugitive has been issued in a foreign state and is in force, the Magistrate shall issue a warrant for the apprehension of the fugitive in accordance with the appropriate form prescribed for the purposes of this sub-section.”

8. After section 16 of the Principal Act the following sections are inserted:

#### **Searches after apprehension**

“16A. (1) A Police Officer who apprehends a person pursuant to a warrant issued under section 16 may search the person or the clothing that the person is wearing, and any property under the control of the person, if the Police Officer has reasonable grounds for suspecting that there is concealed, on, or in the clothing of, the person or in that property, any article, including a sum of money—

- (a) that may be material as evidence in proving an offence to which the requisition for the surrender of the person relates; or
- (b) that has been acquired by the person as a result of such an offence.

“(2) Sub-section (1) does not authorize a Police Officer to remove, or to require the person to remove, any of the clothing that the person is wearing.

“(3) A Police Officer may seize any article found as a result of a search in accordance with sub-section (1) and may retain any article so seized pending

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any direction from the Attorney-General as to the manner in which the article is to be dealt with.

“(4) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

“(5) In this section, ‘Police Officer’ means a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory.

**Search warrants**

“16B. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel, aircraft or vehicle, any article, including a sum of money, that may be material as evidence in proving an offence to which the requisition for the surrender of a person relates or that has been acquired by a person as a result of such an offence, and the information sets out those grounds, the Magistrate may issue a search warrant in accordance with the appropriate form prescribed for the purposes of this sub-section authorizing a Police Officer named in the warrant, with such assistance as the Police Officer thinks necessary, and if necessary by force—

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
- (b) to search the land, premises, vessel, aircraft or vehicle for any such article; and
- (c) to seize any such article found upon the land or upon or in the premises, vessel, aircraft or vehicle.

“(2) A Magistrate shall not issue a warrant under sub-section (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

“(3) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which the entry and search are authorized;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of articles authorized to be seized; and
- (d) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

“(4) If, in the course of searching in accordance with a warrant issued under this section, for an article, including a sum of money, that may be material as evidence in proving an offence or has been acquired as a result of an

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offence, being an article of a kind specified in the warrant, a Police Officer finds any article, including a sum of money, that the Police Officer believes on reasonable grounds to be connected with the offence, although not of a kind specified in the warrant, and the Police Officer believes on reasonable grounds that it is necessary to seize that article in order to prevent its concealment, loss or destruction, the warrant shall be deemed to authorize the Police Officer to seize that article.

“(5) Where a Police Officer seizes an article found as a result of a search in accordance with this section, the Police Officer may retain the article pending any direction from the Attorney-General as to the manner in which the article is to be dealt with.

“(6) In this section, ‘Police Officer’ has the same meaning as in section 16A.”.

**Proceedings after apprehension of person**

9. 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 omitting sub-section (5) and substituting the following sub-sections:

“(5) Where the Magistrate does not receive such a notice within—

(a) in a case to which paragraph (b) does not apply—45 days after the day on which the person was apprehended; or

(b) if a treaty in force between Australia and the foreign state in which, or within the jurisdiction of which or of a part of which, the person is alleged to have committed, or has committed, an extradition crime specifies a different period after the apprehension of the person as the period by which a requisition for the surrender of the person must be made—that period,

or within such further period as the Magistrate considers reasonable having regard to all the circumstances, the Magistrate shall—

(c) if the person apprehended is held in custody—order that the person be released; or

(d) if the person has been admitted to bail—make an order discharging the recognizances upon which the person was admitted to bail.

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

(a) where the person was apprehended under a warrant issued otherwise than pursuant to an authority by the Attorney-General in a notice under paragraph 15 (1) (a) and



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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 pursuant to an authority by the Attorney-General in a notice under paragraph 15 (1) (a)—upon being brought before the Magistrate,

inform the Magistrate that the person consents to being surrendered to the foreign state that made the requisition for the surrender of the person.

“(5B) Where a person informs a Magistrate that the person consents to being surrendered to a foreign state, the Magistrate shall, unless the Magistrate 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 the surrender of the person will not be required to produce the documents referred to in sub-section (6);
  - (ii) the person will not be entitled to apply for a writ of *habeas corpus* under sub-section 18 (1); and
  - (iii) the person 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 the surrender of the person to that foreign state.

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

- (c) by omitting paragraphs (6) (a), (b) and (c) and substituting the following paragraphs:

- “(a) there is produced to the Magistrate—
- (i) in the case of a person who is accused of an extradition crime—
    - (A) a duly authenticated foreign warrant in respect of the person issued in the foreign state that made the requisition for the surrender of the person or a duly authenticated copy of such a warrant;
    - (B) a duly authenticated statement in writing setting out a description of each offence for which the surrender of the person is requested and the penalty applicable to each such offence; and

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(C) a duly authenticated statement in writing setting out all the acts or omissions in respect of which the surrender of the person is requested; or

(ii) in the case of a person who is alleged to have been convicted of an extradition crime—such duly authenticated documents as provide evidence of the conviction, of the sentence imposed on the person or of the intention to impose a sentence on the person and of the extent to which a sentence imposed on the person has not been carried out,

and, if the application of this Act to the foreign state that made the requisition for the surrender of the person is subject to any limitations, conditions, exceptions or qualifications, any other documents required by those limitations, conditions, exceptions or qualifications to be produced; and

“(b) the Magistrate is satisfied, after taking into account any evidence properly adduced by the person, that the person is liable to be surrendered to the foreign state that made the requisition for the surrender,”;

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

“(6A) A person referred to in paragraph (6) (b) is not entitled to adduce, and a Magistrate is not entitled to receive, evidence to controvert an allegation that the person has committed an act or omission in respect of which the surrender of the person is requested.”; and

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

**10.** 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 pursuant to 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.

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“(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 pursuant to the order before the application was made or was so released but was apprehended pursuant to a warrant issued under sub-section (2)—

- (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.

“(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 person whose surrender is requested is not entitled to adduce, and the Court is not entitled to receive, evidence to controvert an allegation that the person has committed an act or omission in respect of which the surrender of the person is requested.

“(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 make a new order in substitution for the order so quashed.

“(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
- (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 have regard only to the evidence given in the proceedings out of which the appeal arose.

“(11) Except as provided by sub-section (9), an appeal does not lie from an order referred to in that sub-section.”.

**Surrender of fugitive to foreign state**

**11.** 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 the person is held in custody,”;
- (b) by omitting sub-section (2) and substituting the following sub-sections:

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“(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).

“(1B) An appeal lies to the Full Court of the Federal Court from an order made on an application by the prisoner for a writ of *habeas corpus* if the appeal is instituted within 15 days after the date of the decision of the Federal Court or the Supreme Court in relation to that application.

“(1C) Except as provided by sub-section (1B), an appeal does not lie from an order referred to in that sub-section.

“(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 day 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 may—

- (c) if satisfied that the prisoner is liable to be surrendered to the foreign state; and
- (d) unless 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 or that the requisition for his surrender has in fact been made with a view to try or punish him for 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 the prisoner.

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

“(2B) 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

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be committed to prison under paragraph 17 (5B) (b) be held in custody,

to wait the warrant of the Attorney-General for the surrender of the volunteer prisoner to a foreign state, the Attorney-General may—

- (c) if satisfied that the volunteer prisoner is liable to be surrendered to the foreign state; and
- (d) unless 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 or that the requisition for his surrender has in fact been made with a view to try or punish him for 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 the volunteer prisoner.”;

- (c) by omitting from sub-section (3) “the last preceding sub-section” and substituting “sub-section (2) or (2B)”;
- (d) by omitting from sub-section (5) “with the prisoner on his surrender” and substituting “to the foreign state”; and
- (e) by adding at the end 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**

**12.** 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).

**13.** Section 20 of the Principal Act is repealed and the following section is substituted:

**Interpretation**

“20. In this Part, ‘extraditable crime’ means an offence (wherever committed) against the law in force in Australia or in a part of Australia (including an offence against such a law relating to taxation, customs duties,

foreign exchange control or any other revenue matter) for which the maximum penalty is death or imprisonment for not less than 12 months.”.

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

**14.** 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 the person was surrendered or any other offence of which the person could be convicted upon proof of the facts on which the surrender of the person was granted; or”; and

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

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

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

**Jurisdiction of Courts**

“24A. The jurisdiction of the Supreme Court of a State or Territory in matters arising under section 17A, 18 or 19 may be exercised by the Court constituted by a single Judge.”.

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

**Evidence of certain matters**

“25A. 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,

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

**Documents may be admitted in evidence if duly authenticated**

**17.** Section 26 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) In a proceeding under this Act, any document that is duly authenticated is admissible in evidence.

“(2) A document is duly authenticated for the purposes of sub-section (1) if—

(a) it purports to be signed or certified by a Judge, Magistrate or officer in or of a foreign state; and

- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of the foreign state or of a Minister of State, or of a Department or officer of the Government, of the foreign state.”.

### **Taking of evidence in respect of criminal proceedings in foreign states**

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

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Where a request is made by a foreign state (whether this Act applies in relation to that foreign state by virtue of section 9 or 10 or not) that evidence be taken in Australia for the purposes of a criminal proceeding in a court or tribunal of that foreign state other than a proceeding relating to an offence that is, or that is by reason of the circumstances in which it is alleged to have been committed, an offence of a political character, the Attorney-General may, by writing in accordance with the form prescribed for the purposes of this sub-section, authorize the taking of the evidence.

“(1A) The reference in sub-section (1) to a criminal proceeding shall be construed as a reference to the trial of a person for an offence or to a proceeding to determine whether to place a person who is accused of an offence on trial for that offence.

“(1B) The Attorney-General shall not authorize the taking of evidence under sub-section (1) in relation to an offence unless an act or omission by the person that is, in or in connection with the request for the taking of the evidence, alleged to have taken place, or any equivalent act or omission, would, if it took place, at the time when the request was made, in, or within the jurisdiction of, Australia, constitute an offence against the law in force in Australia or in a part of Australia.

“(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 the Magistrate 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 the Magistrate; and
  - (b) cause the writing so certified to be sent to the Attorney-General.”;
- (b) by omitting from sub-section (4) “The” and substituting “Subject to sub-section (5), the”;
  - (c) by adding at the end 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.”.

**19.** Section 27A of the Principal Act is repealed and the following section is substituted:

**Taking of evidence for purposes of extradition**

“27A. (1) Where a warrant has been issued in Australia for the apprehension of a person accused of an extraditable crime as defined by section 20 and that person is, or is suspected of being, in a foreign state or within the jurisdiction of, or of a part of, a foreign state, the Attorney-General may, by writing in accordance with the form prescribed for the purposes of this sub-section, authorize the taking of evidence in Australia for transmission to that foreign state for use in any proceedings in that foreign state for the surrender of the person to Australia.

“(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 the Magistrate 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 the Magistrate; and
- (b) cause the writing so certified to be sent to the Attorney-General.

“(3) At a proceeding before a Magistrate pursuant to this section, the accused person is not entitled to appear, either in person or by a legal or other representative.”.

**Repeal of section 30**

**20.** Section 30 of the Principal Act is repealed.

**Schedules to Principal Act**

**21.** The Schedules to the Principal Act are repealed and the Schedule set out in Schedule 1 to this Act is substituted.

**Formal and consequential 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 immediately before the commencement of this section has, after the commencement of this section, the same effect as it would have had if Schedule 2 to the Principal Act had not been repealed and the amendments made to the Principal Act by this Act in consequence of the repeal of that Schedule had not been made.



**SCHEDULE 1**

Section 21

**SCHEDULE TO BE INSERTED IN PRINCIPAL ACT**

**THE SCHEDULE**

Sub-section 9 (1A)

People's Socialist Republic of Albania	Republic of Guatemala	Republic of Panama
Republic of Argentina	Republic of Haiti	Republic of Paraguay
Kingdom of Belgium	Hungarian People's Republic	Republic of Peru
Republic of Bolivia	Republic of Iceland	Polish People's Republic
Republic of Chile	Spanish State	Portugese Republic
Republic of Colombia	Republic of Iraq	Socialist Republic of Rumania
Republic of Cuba	Republic of Liberia	Republic of San Marino
Czechoslovak Socialist Republic	Grand Duchy of Luxembourg	Swiss Confederation
Republic of Ecuador	United Mexican States	Kingdom of Thailand
Republic of El Salvador	Principality of Monaco	Oriental Republic of Uruguay
Republic of Finland	Kingdom of Netherlands	Socialist Federal Republic of Yugoslavia
French Republic	Republic of Nicaragua	
Hellenic Republic	Kingdom of Norway	

**SCHEDULE 2**

Section 22

**FORMAL AND CONSEQUENTIAL AMENDMENTS**

Provision	Amendment
Sub-section 4 (1) (paragraph (b) of definition of "Magistrate")	Omit "(1) of section 24", substitute "24 (1)".
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)".
Sub-paragraph 13 (2) (b) (ii)	Omit "described in Schedule 1".
Section 14	(a) Omit "(1) of the next succeeding section", substitute "15 (1)". (b) Omit "(2) of section 18", substitute "18 (2) or (2B)".
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)".

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**SCHEDULE 2—continued**

Provision	Amendment
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)”. (c) 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 (6)”.
Sub-section 18 (1)	Omit “fifteen”, substitute “15”.
Paragraph 18A (1) (b)	Omit “Form 7 in Schedule 2”, substitute “the form prescribed for the purposes of this paragraph”.
Sub-section 18A (2)	Omit “(b) of sub-section (1)”, substitute “(1) (b)”.
Sub-section 19 (1)	Omit “two”, substitute “2”.
Sub-paragraph 23 (b) (ii)	Omit “described in Schedule 1”.
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.

*[Minister's second reading speech made in—  
House of Representatives on 20 March 1985  
Senate on 16 April 1985]*