



Extradition (Repeal and Consequential Provisions) Act 1988

No. 5 of 1988

An Act to repeal or amend certain laws in consequence of the enactment of the *Extradition Act 1988*, and for related purposes

[Assented to 9 March 1988]

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

Short title

1. This Act may be cited as the *Extradition (Repeal and Consequential Provisions) Act 1988*.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which the *Extradition Act 1988* comes into operation.

(2) This Act, in so far as it provides for the amendment of the *Migration Act 1958* as set out in the Schedule, shall come into operation:

(a) when the *Extradition Act 1988* comes into operation; or

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- (b) immediately after the amendments of the *Migration Act 1958* made by the *Mutual Assistance in Criminal Matters (Consequential Amendments) Act 1987* come into operation;

whichever is the later.

(3) This Act, in so far as it provides for the amendment of the *Telecommunications (Interception) Act 1979* as set out in the Schedule, shall come into operation:

- (a) when the *Extradition Act 1988* comes into operation; or
(b) immediately after section 6 of the *Telecommunications (Interception) Amendment Act 1987* comes into operation;

whichever is the later.

Interpretation

3. In this Act:

“commencement time” means the time at which the *Extradition Act 1988* came into operation;

“declared Commonwealth country” means a declared Commonwealth country for the purposes of the former Commonwealth Extradition Act immediately before the commencement time;

“foreign state” means a foreign state to which the former Foreign Extradition Act applied immediately before the commencement time;

“former Act person” means:

- (a) a person in relation to whom the following conditions are satisfied:
- (i) before the commencement time, the person consented in accordance with subsection 15 (5B) of the former Commonwealth Extradition Act or proceedings had commenced in relation to the person for the purposes of subsection 15 (6) of that Act; and
 - (ii) if this Act and the *Extradition Act 1988* had not come into operation, the former Commonwealth Extradition Act would have had some further application in relation to the surrender, or possible surrender, of the person as a result of the consent or proceedings;
- (b) a person in relation to whom the following conditions are satisfied:
- (i) before the commencement time, the person consented in accordance with subsection 17 (5B) of the former Foreign Extradition Act or proceedings had commenced in relation to the person for the purposes of subsection 17 (6) of that Act; and

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- (ii) if this Act and the *Extradition Act 1988* had not come into operation, the former Foreign Extradition Act would have had some further application in relation to the surrender, or possible surrender, of the person as a result of the consent or proceedings;
- (c) a person in relation to whom the following conditions are satisfied:
 - (i) before the commencement time, proceedings commenced in relation to the person for the purposes of subsection 26 (5) of the former Commonwealth Extradition Act; and
 - (ii) if this Act and the *Extradition Act 1988* had not come into operation, the former Commonwealth Extradition Act would have had some further application in relation to the surrender, or possible surrender, of the person as a result of the proceedings; or
- (d) a person to whom section 21, 22 or 33AA of the former Commonwealth Extradition Act or section 18B, 22 or 23 of the former Foreign Extradition Act applied immediately before the commencement time;

“former Commonwealth Extradition Act” means the *Extradition (Commonwealth Countries) Act 1966* as in force immediately before the commencement time;

“former Foreign Extradition Act” means the *Extradition (Foreign States) Act 1966* as in force immediately before the commencement time.

Repeal of Acts

4. The *Extradition (Commonwealth Countries) Act 1966* and the *Extradition (Foreign States) Act 1966* are repealed.

Schedule

5. The Acts specified in the Schedule are amended as set out in the Schedule.

Continued application of former Acts in certain cases

6. (1) Where a person is a former Act person because paragraph (a), (b), or (c) of the definition of “former Act person” in section 3 applies, the former Commonwealth Extradition Act or the former Foreign Extradition Act, as the case requires, applies, or continues to apply, in relation to the surrender or possible surrender of the person as a result of the consent or proceedings referred to in that paragraph as if this Act and the *Extradition Act 1988* had not come into operation.

(2) Where a person is a former Act person because paragraph (d) of the definition of “former Act person” in section 3 applies, the provisions of

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the former Commonwealth Extradition Act or the former Foreign Extradition Act, as the case requires, referred to in that paragraph continue to apply in relation to the person as if this Act and the *Extradition Act 1988* had not come into operation.

(3) Where any proceedings under section 33A of the former Commonwealth Extradition Act or section 27A of the former Foreign Extradition Act had not concluded before the commencement time, that section continues to apply in relation to those proceedings as if this Act and the *Extradition Act 1988* had not come into operation.

(4) Any direction of the Attorney-General under the former Commonwealth Extradition Act or the former Foreign Extradition Act in relation to any article seized under that Act has effect as if this Act and the *Extradition Act 1988* had not come into operation.

Continued application of amended Acts in certain cases

7. (1) For the purposes of the *Administrative Decisions (Judicial Review) Act 1977*:

- (a) any decision under the former Commonwealth Extradition Act or the former Foreign Extradition Act in its application under subsection 6 (1) or (2) shall be taken to be a decision included in a class set out in Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* and not to be a decision included in a class set out in Schedule 2 to that Act; and
- (b) that Act continues to apply in relation to decisions under the former Commonwealth Extradition Act and the former Foreign Extradition Act made before the commencement time as if this Act and the *Extradition Act 1988* had not come into operation.

(2) Where any proceedings commence or are continued under the former Commonwealth Extradition Act or the former Foreign Extradition Act in its application under subsection 6 (1), (2) or (3), the following provisions apply, or continue to apply, in relation to those proceedings as if this Act and the *Extradition Act 1988* had not come into operation:

- (a) section 15 of the *Civil Aviation (Offenders on International Aircraft) Act 1970*;
- (b) section 18 of the *Crimes (Hijacking of Aircraft) Act 1972*;
- (c) section 15 of the *Crimes (Protection of Aircraft) Act 1973*;
- (d) section 6 and subsection 9 (6) of the *Director of Public Prosecutions Act 1983*;
- (e) sections 5B and 6L of the *Telecommunications (Interception) Act 1979*.

(3) Where any proceedings for the extradition of a person from New Zealand to Australia had not concluded before the commencement time, sections 5B and 6L of the *Telecommunications (Interception) Act 1979*

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apply, or continue to apply, in relation to those proceedings as if this Act and the *Extradition Act 1988* had not come into operation.

Application of *Extradition Act 1988* to certain former Act instruments etc.

8. (1) Where:

- (a) either or both of the following conditions is or are satisfied in relation to a person:
 - (i) a warrant for the apprehension of the person was issued before the commencement time under subsection 14 (1) of the former Commonwealth Extradition Act;
 - (ii) a requisition was made before the commencement time to the Attorney-General for the surrender of the person under that Act;
- (b) the declared Commonwealth country referred to in that subsection or that made the requisition, as the case may be, is, immediately after the commencement time, an extradition country within the meaning of the *Extradition Act 1988*; and
- (c) the person is not a former Act person;

then, for the purposes of the application of the *Extradition Act 1988* in relation to the person:

- (d) if the warrant referred to in subparagraph (a) (i) was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under subsection 12 (1) of the *Extradition Act 1988*;
- (e) if the requisition referred to in subparagraph (a) (ii) was current immediately before the commencement time—the requisition shall be taken to be an extradition request current under the *Extradition Act 1988* immediately after the commencement time;
- (f) if any notice was issued in relation to the person in accordance with paragraph 12 (1) (a) or (b) of the former Commonwealth Extradition Act before the commencement time and had not been revoked before that time—the notice shall be taken to have been issued under subsection 16 (1) of the *Extradition Act 1988*;
- (g) if any warrant issued under section 14B of the former Commonwealth Extradition Act in relation to an offence to which a requisition for the surrender of the person related was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under section 14 of the *Extradition Act 1988*; and
- (h) if the person was on remand immediately before the commencement time under subsection 15 (2) of the former Commonwealth Extradition Act—the person shall be taken to be on remand immediately after the commencement time under subsection 15 (2) of the *Extradition Act 1988*.

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(2) Where:

- (a) either or both of the following conditions is or are satisfied in relation to a person:
- (i) a warrant for the apprehension of the person was issued before the commencement time under subsection 16 (1) of the former Foreign Extradition Act;
 - (ii) a requisition was made before the commencement time to the Attorney-General for the surrender of the person under that Act;
- (b) the foreign State referred to in that subsection or that made the requisition, as the case may be, is, immediately after the commencement time, an extradition country within the meaning of the *Extradition Act 1988*; and
- (c) the person is not a former Act person;

then, for the purposes of the application of the *Extradition Act 1988* in relation to the person:

- (d) if the warrant referred to in subparagraph (a) (i) was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under subsection 12 (1) of the *Extradition Act 1988*;
- (e) if the requisition referred to in subparagraph (a) (ii) was current immediately before the commencement time—the requisition shall be taken to be an extradition request current under the *Extradition Act 1988* immediately after the commencement time;
- (f) if any notice was issued in relation to the person in accordance with paragraph 15 (1) (a) or (b) of the former Foreign Extradition Act before the commencement time and had not been revoked before that time—the notice shall be taken to have been issued under subsection 16 (1) of the *Extradition Act 1988*;
- (g) if any warrant issued under section 16B of the former Foreign Extradition Act in relation to an offence to which a requisition for the surrender of the person related was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under section 14 of the *Extradition Act 1988*; and
- (h) if the person was on remand immediately before the commencement time under subsection 17 (2) of the former Foreign Extradition Act—the person shall be taken to be on remand immediately after the commencement time under subsection 15 (2) of the *Extradition Act 1988*.

(3) Where:

- (a) either or both of the following conditions is or are satisfied in relation to a person:

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- (i) a warrant for the apprehension of the person was indorsed before the commencement time under section 24 of the former Commonwealth Extradition Act;
 - (ii) a warrant for the apprehension of the person was issued before the commencement time under section 25 of that Act; and
- (b) the person is not a former Act person;
- then, for the purposes of the application of the *Extradition Act 1988* in relation to the person:

- (c) if the warrant referred to in subparagraph (a) (i) was in force immediately before the commencement time—the warrant shall be taken to have been indorsed under subsection 28 (1) of that Act;
- (d) if the warrant referred to in subparagraph (a) (ii) was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under section 29 of that Act;
- (e) if any warrant issued under section 25B of the former Commonwealth Extradition Act in relation to the person was in force immediately before the commencement time—the warrant shall be taken to be in force immediately after the commencement time under section 31 of the *Extradition Act 1988*; and
- (f) if the person was on remand immediately before the commencement time under subsection 26 (2) of the former Commonwealth Extradition Act—the person shall be taken to be on remand immediately after the commencement time under subsection 32 (2) of the *Extradition Act 1988*.

(4) Any certificate issued by the Attorney-General under section 32A of the former Commonwealth Extradition Act or section 25A of the former Foreign Extradition Act has effect for the purposes of any proceedings under the *Extradition Act 1988* as if the certificate were issued under section 52 of the last-mentioned Act.

SCHEDULE

Section 5

AMENDMENTS OF ACTS

Administrative Decisions (Judicial Review) Act 1977

Schedule 1:

Add at the end the following paragraph:

“(r) decisions under the *Extradition Act 1988*.”.

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SCHEDULE—continued

Paragraph (c) of Schedule 2:

Omit “*Extradition (Commonwealth Countries) Act 1966*” and “*Extradition (Foreign States) Act 1966*”.

Civil Aviation (Offenders on International Aircraft) Act 1970

Paragraphs 15 (1) (c) and (d):

Omit the paragraphs, substitute the following word and paragraph:
“or (c) the *Extradition Act 1988*.”.

Crimes (Hijacking of Aircraft) Act 1972

Paragraphs 18 (1) (c) and (d):

Omit the paragraphs, substitute the following word and paragraph:
“or (c) under the *Extradition Act 1988*.”.

Crimes (Protection of Aircraft) Act 1973

Paragraphs 15 (1) (c) and (d):

Omit the paragraphs, substitute the following word and paragraph:
“or (c) under the *Extradition Act 1988*.”.

Director of Public Prosecutions Act 1983

Paragraph 6 (1) (k):

Omit “*Extradition (Commonwealth Countries) Act 1966* or the *Extradition (Foreign States) Act 1966*”, substitute “*Extradition Act 1988*”.

Subsection 9 (6):

Omit “*Extradition (Commonwealth Countries) Act 1966* or the *Extradition (Foreign States) Act 1966*”, substitute “*Extradition Act 1988*”.

Migration Act 1958

Subsection 11AB (1):

Before “*Mutual Assistance in Criminal Matters Act 1987*”, insert “*Extradition Act 1988* or the”.

Telecommunications (Interception) Act 1979

Paragraph 5B (c):

Omit “section 33A of the *Extradition (Commonwealth Countries) Act 1966* or section 27A of the *Extradition (Foreign States) Act 1966*”, substitute “section 43 of the *Extradition Act 1988*”.

Paragraph 5B (d):

Omit “New Zealand to Australia, or from”.

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*[Minister's second reading speech made in—
House of Representatives on 28 October 1987
Senate on 14 December 1987]*