

Extradition (Foreign States) Act 1973

No. 171 of 1973

AN ACT

To amend the *Extradition (Foreign States) Act 1966–1972*.

[Assented to 12 December 1973]

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

Short title
and citation.

1. (1) This Act may be cited as the *Extradition (Foreign States) Act 1973*.

(2) The *Extradition (Foreign States) Act 1966–1972** is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Extradition (Foreign States) Act 1966–1973*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Amendment
of
*Extradition
(Foreign
States)
Act 1968*.

3. Section 8 of the *Extradition (Foreign States) Act 1968* is repealed.

* Act No. 76, 1966, as amended by No. 112, 1968; and No. 103, 1972.

4. Section 3 of the Principal Act is amended by omitting the words— Parts.

“ Part I—Preliminary (Sections 1–8).”

and substituting the words—

“ Part I—Preliminary (Sections 1–7).”.

5. Section 4 of the Principal Act is amended—

*Interpreta-
tion.*

(a) by omitting from sub-section (1) the definitions of “ Australia ” and “ extradition crime ” and substituting the following definition:—

“ ‘ Australia ’, when used in a geographical sense, includes all the Territories;”;

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

“ (1A) An offence against the law of, or of a part of, a foreign state is an extradition crime for the purposes of this Act if, and only if, the act or omission constituting the offence or the equivalent act or omission, or, where the offence is constituted by two 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, the part of Australia where the person accused or convicted of the offence is found, constitute an offence against the law in force in that part of Australia that—

(a) is described in Schedule I; or

(b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.”;

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

“ (3) Where—

(a) a person has been convicted in his absence of an offence against the law of, or of a part of, a foreign state; and

(b) the conviction is not 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.”;

(d) by inserting after sub-section (5) the following sub-section:—

“ (5A) On and after the day on which the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (being the Convention referred to in the *Crimes (Protection of Aircraft) Act 1973*) enters into force for Australia,

an offence against a law of, or of a part of, a foreign state that is bound by that Convention, being an offence constituted by an act, including an act taking place in Australia, that is of a kind referred to in item 33 or item 35 in Schedule 1 and over which the foreign state is required by paragraph 1 of Article 5 of that Convention to establish its jurisdiction, shall, for the purposes of this Act, be deemed to be an extradition crime and to have been committed within the jurisdiction of the foreign State.”; and

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

“(7) For the purposes of this Act, the territorial sea of, and the airspace over, a foreign state shall, unless the contrary intention appears, be deemed to be within the jurisdiction of that foreign state.

“(8) Where an act or omission by a person that took place outside a foreign state was an offence against the law of, or of a part of, that state, the offence shall be deemed, for the purposes of this Act, to have been committed within the jurisdiction of that state if a similar act or omission by an Australian citizen that took place outside Australia would be an offence against a law of the Commonwealth.

“(9) For the purposes of this Act—

- (a) an offence against the law of, or of a part of, a foreign state, being an offence against the law relating to genocide; or
- (b) an offence against the law of, or of a part of, a prescribed foreign state, being an offence that is constituted by the taking of the life of the head of state of that foreign state or of a member of his family, by aiding, abetting, counselling or procuring, or being an accessory before or after the fact to, the taking of the life of such a person or by attempting or conspiring to take the life of such a person,

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.

“(10) The following foreign states are prescribed foreign states for the purposes of paragraph (b) of sub-section (9):—

- (a) Ireland, provided that Ireland is a foreign state in relation to which this Act applies; and
- (b) any other foreign state that is declared by the regulations to be a prescribed foreign state for the purposes of that paragraph.”.

6. Section 5 of the Principal Act is repealed and the following section substituted:—

“ 5. This Act extends to all the Territories not forming part of Australia.”.

Extension of Act to external Territories.

7. Section 8 of the Principal Act is repealed.

Saving of warrants in force under Extradition Acts, 1870 to 1935.

8. Section 10 of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (3) the words “ the Commonwealth ” and substituting the word “ Australia ”; and
- (b) by adding at the end of sub-section (2) the words “ or, if that extradition treaty affects or amends an earlier extradition treaty, subject to that earlier extradition treaty as affected or amended by the later extradition treaty ”.

Act may be applied in relation to foreign state by regulation.

9. Section 13 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

Restrictions on surrender of persons to foreign states.

“ (2) A person is not liable to be surrendered to a foreign state unless provision is made by a law of that state, or by a treaty in force between Australia and that state, or that state has given an undertaking, by virtue of which the person will not, unless he has left, or had an opportunity of leaving, that state—

- (a) be detained or tried in that state for any offence that is alleged to have been committed, or was committed, before his surrender other than—

- (i) the offence to which the requisition for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that requisition was based; or

- (ii) any other extradition crime in respect of which the Attorney-General consents to his being so detained or tried, as the case may be; or

- (b) be detained in that state for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to that state other than—

- (i) an offence of which he could be convicted upon proof of the facts on which the requisition referred to in paragraph (a) was based; or

- (ii) any other offence described in Schedule 1 in respect of which the Attorney-General consents to his being so detained.”.

Restriction
of power of
Attorney-
General to
authorize
the appre-
hension, or
order the
surrender, of
a fugitive.

10. Section 14 of the Principal Act is amended by omitting the words " the Attorney-General has " and substituting the words " there are ".

Proceedings
after
apprehension
of person.

11. Section 17 of the Principal Act is amended—

- (a) by omitting from sub-section (2) the words " A Magistrate may " and substituting the words " Subject to sub-section (2A), a Magistrate may ";
- (b) by inserting after sub-section (2) the following sub-section:—
 " (2A) The period for which a person brought before a Magistrate under this section may be remanded by the Magistrate may, if the person consents, be a period exceeding seven days. ";
- (c) by omitting from sub-section (4) the words " sub-section (2) of " and substituting the words " sub-sections (2) and (2A) of "; and
- (d) by inserting in sub-section (5), after the word " circumstances ", the words " including the provisions of any extradition 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 ".

Surrender of
fugitive to
foreign
state.

12. Section 18 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:—

" (5) Any article, including a sum of money, that may be material as evidence in proving the offence to which the requisition for the surrender of the prisoner relates or that has been acquired by the prisoner as a result of the offence shall, if the Attorney-General so directs, be delivered up with the prisoner on his surrender.

" (6) If the prisoner cannot be surrendered by reason of his death or escape from custody, any article referred to in sub-section (5) shall, if the Attorney-General so directs, be delivered up to the foreign state.

" (7) If, at any time after the prisoner has been committed to prison, or otherwise ordered to be held in custody, by a Magistrate to await the warrant of the Attorney-General for his surrender to a foreign state, the Attorney-General decides not to issue such a warrant, the Attorney-General shall, by order in writing, direct that the prisoner be released. "

13. After section 18 of the Principal Act the following section is inserted:—

Transit.

" 18A. (1) Where, in pursuance of an extradition treaty in force between Australia and a foreign state, a person (in this section referred to as the 'prisoner') is to be transported through Australia for the

purpose of his being surrendered by another country to that foreign state—

- (a) the prisoner may be transported through Australia in the custody of another person for the purpose of being so surrendered; and
- (b) if an aircraft or ship by which the prisoner is being transported lands or calls at a place in Australia—a Magistrate may, if he is of the opinion that it is necessary or desirable to do so, by warrant in accordance with Form 7 in Schedule 2, order a person specified in the warrant to hold the prisoner in custody until his transportation is continued.

“(2) Where a person is being held in custody in pursuance of a warrant by a Magistrate under paragraph (b) of sub-section (1) and his transportation is not continued within such time as is reasonable having regard to all the circumstances, the Attorney-General may, if he thinks fit, by order in writing, direct that the person be released.”

14. Section 19 of the Principal Act is amended by omitting sub-section (3).

Discharge of fugitive who is not conveyed out of Australia within two months.

15. Section 23 of the Principal Act is repealed and the following section substituted:—

“23. Where a person accused or convicted of an extraditable crime is surrendered by a foreign state, the person shall not, unless he has left, or has had an opportunity of leaving, Australia—

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

- (a) be detained or tried in Australia for any offence that is alleged to have been committed, or was committed, before his surrender other than—
 - (i) the offence to which the requisition for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that requisition was based; or
 - (ii) any other extraditable crime in respect of which that state consents to his being so detained or tried, as the case may be; or
- (b) be detained in Australia for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to Australia other than—
 - (i) an offence of which he could be convicted upon proof of the facts on which the requisition referred to in paragraph (a) was based; or
 - (ii) any other offence described in Schedule 1 in respect of which the foreign state by which he was surrendered to Australia consents to his being so detained.”

Foreign documents may be admitted in evidence if duly authenticated.

16. Section 26 of the Principal Act is amended—

- (a) by omitting from paragraphs (a) and (b) of sub-section (1), and from paragraphs (a) and (b) of sub-section (2), the words “ in a proceeding ”; and
- (b) by omitting from sub-section (2) the words “ the official seal of a Minister of State in or of that foreign state ” and substituting the words “ the official or public seal of that foreign state or of a Minister of State, or of a Department or officer of the Government, of that foreign state ”.

Taking of evidence in respect of criminal matter pending in courts of foreign states.

17. Section 27 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:—

“(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 section 10 or not) that evidence be taken in Australia for the purposes of a criminal matter pending in a court or tribunal of that foreign state other than a matter 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 notice in writing, in accordance with Form 8 in Schedule 2, authorize a Magistrate to take the evidence.”.

18. Section 27A of the Principal Act is repealed and the following section 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 notice in writing in accordance with Form 9 in Schedule 2, authorize a Magistrate to take evidence in Australia for transmission to that state for use in any proceedings in that state for the surrender of the person to Australia.

“(2) Upon receipt of the notice, the Magistrate shall—

- (a) take the evidence on oath or affirmation of each witness appearing before him to give evidence in relation to the matter;
- (b) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and
- (c) cause the writing so certified to be sent to the Attorney-General.”.

Application of Removal of Prisoners (Territories) Act.

19. Section 29 of the Principal Act is amended by omitting the words “ committed to prison in pursuance of this Act by a Chief, Stipendiary, Police, Resident or Special Magistrate of a Territory ” and substituting the words “ committed to prison in a Territory in pursuance of this Act ”.

20. After section 29 of the Principal Act the following section is inserted:—

Application of Removal of Prisoners (Australian Capital Territory) Act.

“29A. The *Removal of Prisoners (Australian Capital Territory) Act* 1968 applies, with such modifications and adaptations, if any, as are prescribed, to and in relation to a person who has been committed to prison in the Australian Capital Territory, or in the Territory accepted by

the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915*, in pursuance of this Act in like manner as it applies to and in relation to a person who has been sentenced to imprisonment in that Territory.”.

21. The First Schedule to the Principal Act is repealed and the following First
Schedule.
Schedule substituted:—

“ SCHEDULE 1

Sections 4, 10 and 20

1. Wilful murder; murder.
2. Manslaughter.
3. An offence against the law relating to genocide.
4. Aiding or abetting, or counselling or procuring the commission of, suicide.
5. An offence against the law relating to abortion.
6. Maliciously or wilfully wounding or inflicting grievous bodily harm.
7. Assault occasioning actual bodily harm.
8. Assaulting a Magistrate, a police officer or a public officer.
9. Assault on board a ship or aircraft with intent to destroy life or to cause grievous bodily harm.
10. Rape.
11. Unlawful sexual intercourse with a female.
12. Indecent assault.
13. Procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution; any other offence against the law relating to prostitution.
14. Bigamy.
15. Kidnapping; abduction; false imprisonment; dealing in slaves.
16. Stealing, abandoning, exposing or unlawfully detaining a child.
17. An offence against the law relating to bribery.
18. Perjury; subornation of perjury; obstructing or defeating the course of justice.
19. Arson.
20. An offence relating to counterfeiting.
21. An offence against the law relating to forgery or against the law relating to uttering what is forged.
22. Stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property, money, valuable securities or credit by false pretences or other form of deception; receiving stolen property; any other offence involving fraud.
23. Burglary; housebreaking; any similar offence.
24. Robbery.
25. Blackmail or extortion by means of threats or by abuse of authority.
26. An offence against the law relating to bankruptcy or insolvency.
27. An offence against the law relating to companies.
28. Maliciously or wilfully damaging property.
29. An act done with the intention of endangering the safety of persons travelling on a railway, vehicle, ship or aircraft or of endangering or damaging a railway, vehicle, ship or aircraft.
30. Piracy.
31. An unlawful act against the authority of the master of a ship or the commander of an aircraft.
32. The unlawful seizure, or unlawful exercise of control, of a ship or aircraft, by force or threat of force or by any other form of intimidation.
33. An unlawful act of any of the kinds specified in paragraph 1 of Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (being the Convention referred to in the *Crimes (Protection of Aircraft) Act 1973*).
34. An offence against the law relating to dangerous drugs, narcotics or psychotropic substances.
35. Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in a preceding item in this Schedule.”.

Second
Schedule.

22. The Second Schedule to the Principal Act is amended—

- (a) by omitting the words “ *Extradition (Foreign States) Act 1966* ” (wherever occurring) and substituting the words “ *Extradition (Foreign States) Act* ”;
- (b) by omitting the words “ *arrangement made* ” (wherever occurring) and substituting the words “ *arrangement in force* ”;
- (c) by omitting from Form 6 the words “ *Removal of Prisoners (Territories) Act 1923–1962* ” and substituting the words “ *Removal of Prisoners (Territories) Act or the Removal of Prisoners (Australian Capital Territory) Act* ”; and
- (d) by adding at the end thereof the following forms:—

FORM 7

Section 18A

AUSTRALIA

Extradition (Foreign States) Act

WARRANT TO HOLD PERSON IN CUSTODY DURING TRANSIT

To

Whereas, in pursuance of the extradition treaty in force between Australia and _____, a foreign state, _____, (in this Warrant referred to as “the said prisoner”) is being transported through Australia for the purpose of his being surrendered to _____:

This is therefore to authorize and command you, in pursuance of section 18A of the Extradition (Foreign States) Act, to receive the said prisoner into your custody and safely keep him until his transportation is continued.

Given under my hand at _____ this _____ day of _____, 19 _____.

FORM 8

Section 27

AUSTRALIA

Extradition (Foreign States) Act

NOTICE AUTHORIZING TAKING OF EVIDENCE

To

a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement in force under section 24 of the Extradition (Foreign States) Act.

or

To

a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the Territory of _____

Whereas a request has been made to me, the Attorney-General of Australia, by _____ a foreign state, that evidence be taken in Australia for the purposes of _____

Now therefore I, the Attorney-General of Australia, authorize you to take the abovementioned evidence in accordance with section 27 of the Extradition (Foreign States) Act.

Given under my hand at _____ this _____ day of _____, 19 _____.

FORM 9

Section 27A

AUSTRALIA

Extradition (Foreign States) Act

NOTICE AUTHORIZING TAKING OF EVIDENCE

To
a Chief [Stipendiary, Police, Resident or Special] Magistrate of the State of
, being a
person who holds an office specified in an arrangement in force under section 24
of the Extradition (Foreign States) Act.

To
a Chief [Stipendiary, Police, Resident or Special] Magistrate of the Territory
of

I, , the Attorney-General of
Australia, inform you that a warrant has been issued in Australia [or in the Territory
of] for the apprehension of
(in this notice referred to as "the said fugitive"), being a person accused of an
extraditable crime as defined by section 20 of the Extradition (Foreign States) Act,
and that the said fugitive is [or is suspected of being] in [or within the jurisdiction
of, or of a part of] , and I hereby authorize you to take, in
accordance with section 27A of the Extradition (Foreign States) Act, such evidence
in Australia as is produced to you for transmission to
for use in any proceedings in
for the surrender of the said fugitive to Australia.

Given under my hand at this

day of , 19 .

23. The Principal Act is amended as set out in the following table:— Minor amendments.

Provision	Amendment
Section 4 (1)	From paragraph (b) of the definition of "Magistrate", omit "of this Act".
Section 4 (5)	Omit "item 32A or item 33 in the First Schedule to this Act", substitute "item 32 or item 35 in Schedule 1".
Section 9 (3)	Omit "of this section".
Section 14	Omit "of this Act" (wherever occurring).
Section 15 (1) (a) and (b)	Omit "the Second Schedule to this Act", substitute "Schedule 2".
Section 16 (1)	Omit "the Second Schedule to this Act", substitute "Schedule 2".
Section 17 (5)	Omit "of this section".
Section 17 (4)	Omit "of this Act" (wherever occurring).
Section 17 (6)	Omit "of this Act".
Section 17 (6) and (7) ..	Omit "the Second Schedule to this Act", substitute "Schedule 2".
Section 18 (2)	Omit "the Second Schedule to this Act", substitute "Schedule 2".
Section 20 (a)	Omit "the First Schedule to this Act", substitute "Schedule 1".
Section 30	Omit "the Second Schedule to this Act", substitute "Schedule 2".
The Schedules	Omit "THE SCHEDULES".
Second Schedule	(a) Omit "SECOND SCHEDULE", substitute "SCHEDULE 2". (b) Omit "COMMONWEALTH OF AUSTRALIA" (wherever occurring), substitute "AUSTRALIA". (c) Omit "Attorney-General of the Commonwealth" (wherever occurring), substitute "Attorney-General of Australia".