**Extradition (Commonwealth Countries) Act 1973**

**No. 172 of 1973**

**AN ACT**

To amend the *Extradition* (*Commonwealth Countries*) *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* (*Commonwealth Countries*) *Act* 1973.

(2) The *Extradition* (*Commonwealth Countries*) *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* (*Commonwealth Countries*) *Act* 1966-1973.

**Commencement**

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

**Amendment of *Extradition* (*Commonwealth Countries*) *Act* 1968.**

**3.** Section 19 of the *Extradition* (*Commonwealth Countries*) *Act* 1968 is repealed.

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

“Part I—Preliminary (Sections 1-7)”

and substituting the words—

“Part I—Preliminary (Sections 1-6).”.

**Interpretation**

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

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

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

(b) by omitting from sub-section (1) the definition of “extradition crime”;

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

“(1a) An offence against the law of, or of a part of, a declared Commonwealth country is an extradition crime for the purposes of this Act if, and only if—

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

(b) 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—

(i) is described in Schedule 1; or

(ii) 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.”;

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

“(3) Where—

(a) a person has been convicted in his absence of an offence against the law of, or of a part of, a country other than Australia; 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.

“(3a) For the purposes of this Act, an offence against the law of a country other than Australia may be regarded as being an offence of a political character notwithstanding that there are not competing political parties in that country.”;

(*e*) by inserting after sub-section (4) the following sub-section:—

“(4a) 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 declared Commonwealth country 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 31 or item 34 in Schedule 1 and over which the declared Commonwealth country 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 declared Commonwealth country.”; and

(f) 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 country other than Australia shall, unless the contrary intention appears, be deemed to be within the jurisdiction of that country.

“(8) Where an act or omission by a person that took place outside a country other than Australia was an offence against the law of, or of a part of, that country, the offence shall be deemed, for the purposes of this Act, to have been committed within the jursidiction of that country 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, an offence against the law of, or of a part of, a country other than Australia, 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.”.

**Extension of Act to external Territories.**

**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.”.

**Saving of warrants in force under Fugitive Offenders Act, 1881.**

**7.** Section 7 of the Principal Act is repealed.

**Restrictions on power of Attorney- General to authorize apprehension or surrender of fugitive.**

**8.** Section 11 of the Principal Act is amended—

(a) by omitting from sub-section (1) the words “the Attorney-General has” and substituting the words “there are”;

(b) by omitting from sub-section (3) the words “that country has entered into an agreement with, or given an undertaking to, the Commonwealth” and substituting the words “by an agreement in force between Australia and that country, or that country has given an undertaking”; and

(c) by omitting from sub-paragraph (ii) of paragraph (b) of sub-section (3) the words “in respect of which the Attorney-General could issue a warrant (whether under this Act or under the *Extradition* (*Foreign States*) *Act* 1966) for his surrender to that other country and” and substituting the words “described in Schedule 1”.

**Restrictions on surrender of persons to Commonwealth countries.**

**9.** Section 10 of the Principal Act is amended by omitting sub-section (2).

**Proceedings after apprehension of person.**

**10.** Section 15 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.”; and

(c) by omitting from sub-section (4) the words “sub-section (2) of” and substituting the words “sub-sections (2) and (2a) of”.

**Surrender of fugitive to Commonwealth country.**

**11.** Section 17 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 declared Commonwealth country.

“(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 declared Commonwealth country, the Attorney-General decides not to issue such a warrant, the Attorney-General shall, by order in writing, direct that the prisoner be released.”.

**Definition.**

**12.** Section 19 of the Principal Act is amended by omitting the word “Part” and substituting the word “Division”.

**Person surrendered by Commonwealth country for an offence not to be prosecuted for other offences.**

**13.** Section 22 of the Principal Act is amended by inserting in subparagraph (ii) of paragraph (b), after the word “offence”, the words “described in Schedule 1”.

**Proceedings after apprehension of person.**

**14.** Section 26 of the Principal Act is amended by omitting sub-section (9) and substituting the following sub-sections:—

“(9) Any article, including a sum of money, that may be material as evidence in proving the offence the person is alleged to have committed or has committed or that has been acquired by the person as a result of the offence shall, if the Magistrate so directs, be delivered up with the person on his surrender.

“(10) If the person cannot be surrendered by reason of his death or escape from custody, any article referred to in sub-section (9) shall, if the Magistrate so directs, be delivered up to the declared Commonwealth country.”.

**Jurisdiction of Courts.**

**15.** Section 32 of the Principal Act is amended by omitting sub-section (2).

**Overseas documents may be admitted in evidence if duly authenticated.**

**16.** Section 33 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”;

(b) by omitting from sub-section (2) the words “the official seal of a Minister of State in or of that country” and substituting the words “the official or public seal of that country or of a Minister of State, or of aDepartment orofficer of the Government, of that country”; and

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

“(2a) The reference in sub-section (2) to a Minister of State of a declared Commonwealth country shall, in the case of a country that is a colony, territory or protectorate referred to in sub-section (6) of section 4, be read as including a reference to the Governor or other person administering the Government of that country and to any person administering a Department of the Government of that country.”.

**Transit.**

**17.** Before section 33a of the Principal Act the following sections are inserted:—

“33aa. (1) Where—

(a) a person is being transported to a declared Commonwealth country from another country for the purpose of being surrendered to the declared Commonwealth country; and

(b) if the person had been found in Australia, he would have been liable to be surrendered to the declared Commonwealth country in accordance with Part II or, in the case of a person who is being transported to New Zealand, a Magistrate would have been authorized under Part III to make an indorsement on a warrant for his apprehension authorizing the execution of the warrant in Australia,

this section applies in relation to the person.

“(2) Where this section applies in relation to a person-

(a) the person may be transported through Australia in the custody of another person for the purpose of being surrendered to the declared Commonwealth country; and

(b) if an aircraft or ship by which the person 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 10 in Schedule 2, order a person specified in the warrant to hold the first-mentioned person in custody until his transportation is continued.

“(3) Where a person is being held in custody in pursuance of a warrant by a Magistrate under paragraph (b) of sub-section (2) 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.

“(4)In this section, ‘declared Commonwealth country’ includes New Zealand,

**Taking of evidence in respect of criminal matters pending in courts of Commonwealth countries.**

“33ab. (1) Where a request is made by a declared Commonwealth country that evidence be taken in Australia for the purposes of a criminal matter pending in a court or tribunal of that country, the Attorney-General may, by notice in writing, in accordance with Form. II in Schedule 2, authorize a Magistrate to take the evidence.

“(2) Sub-section (1) does not apply in respect of a matter relating to an offence that is, or is by reason of the circumstances in which it is alleged to have been committed, an offence of a political character.

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

(a) take the evidence of each witness appearing before him to give evidence in relation to the matter in like manner as if the witness were giving evidence on a charge against a person for an indictable offence against the law in force in the State or Territory of which he is a Magistrate;

(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.

“(4)The evidence of such a witness may be taken in the presence or absence of the person charged with the offence against the law of, or of

the part of, the declared Commonwealth country and the certificate by the Magistrate that the evidence was taken by him shall state whether the person charged was present or absent when the evidence was taken.

“(5) The laws of each State or Territory with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against a person for an offence against the law of that State or Territory apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section.

“(6) Sub-sections (1), (3). (4) and (5) apply in relation to a request made by New Zealand in like manner as those sub-sections apply in relation to a request made by a declared Commonwealth country.”.

**Taking of evidence for purposes of extradition.**

**18.** Section 33a of the Principal Act is repealed and the following section substituted:—

“33a. (1) Where a warrant has been issued in Australia for the apprehension of a person accused of an extraditable crime as defined by section 19 and that person is, or is suspected of being, in a declared Commonwealth country, or within the jurisdiction of, or of a part of, a declared Commonwealth country the Attorney-General may, by notice in writing in accordance with Form 12 in Schedule 2, authorize a Magistrate to take evidence in Australia for transmission to that country for use in any proceedings in that country 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 35 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 35 of the Principal Act the following section is inserted:—

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

“35a. 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.”.

**First Schedule.**

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

“SCHEDULE 1 Sections 4, 19 and 37

1. Wilful murder; murder.

2.Manslaughter.

3. An offence against the law relating to genocide,

4. An offence against the law relating to abortion.

5. Maliciously or wilfully wounding or inflicting grievous bodily harm.

6. Assault occasioning actual bodily harm.

7. Assault on board a ship or aircraft with intent to destroy life or to cause grievous bodily harm.

8. Rape.

9. Unlawful sexual intercourse with a female,

10**.** Indecent assault.

11. 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.

12.Bigamy.

13. Kidnapping; abduction; false imprisonment; dealing in slaves.

14. Stealing, abandoning, exposing or unlawfully detaining a child.

15. An offence against the law relating to bribery,

16. Perjury; subornation of perjury; obstructing or defeating the course of justice,

17. Arson.

18. An offence relating to counterfeiting.

19. An offence against the law relating to forgery or against the law relating to uttering what is forged.

20. 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.

21. Burglary; housebreaking; any similar offence.

22. Robbery,

23. Blackmail or extortion by means of threats or by abuse of authority.

24. An offence against the law relating to bankruptcy or insolvency,

25. An offence against the Saw relating to companies.

26. Maliciously or wilfully damaging property.

27. An act done with the intention of endangering the safetyof persons travelling on a railway, vehicle, ship or aircraft or of endangering or damaging a railway, vehicle, ship or aircraft.

28. Piracy.

29. An unlawful act against the authority of the master of a ship or the commander of an aircraft.

30. 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.

31. 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).

32. An offence against the law relating to dangerous drugs, narcotics or psychotropic substances.

33. Contravention of a prohibition on the importation or exportation of precious stones, gold or other precious metals.

34. 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* (*Commonwealth Countries*) *Act* 1966” (wherever occurring) and substituting the words “Extradition (Commonwealth Countries) 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 10 Section 33 aa

AUSTRALIA

Extradition (Commonwealth Countries) Act

Warrant to Hold Person in Custody during Transit

To Whereas (in this Warrant referred to as ‘the said prisoner’) is being transported from to for the purpose of his being surrendered to :

This is therefore to authorize and command you in pursuance of section 33aa of the Extradition (Commonwealth Countries) 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 .

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Form 11 Section 33ab

AUSTRALIA

Extradition (Commonwealth Countries) 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 31 of the Extradition (Commonwealth Countries) 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 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 33ab of the Extradition (Commonwealth Countries) Act.

Given under my hand at this day of 19 .

FORM 12 Section 33a

AUSTRALIA

Extradition (Commonwealth Countries) 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 31 of the Extradition (Commonwealth Countries) Act.

*or*

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 19 of the Extradition (Commonwealth Countries) 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 33aof the Extradition (Commonwealth Countries) 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 .

**Minor amendments.**

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

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| --- | --- |
| Provision | Amendments |
| Section 4(1)  | (a) From paragraph (b) ofthe definition of “Magistrate”, omit “of this Act”. (b) From the definition of “overseas warrant” omit “of this Act”. |
| Section 4(4)  | Omit “item 28a or item 30 in the First Schedule to this Act”, substitute “item 30 or item 34 in Schedule 1”. |
| Section 11(1), (2) and (3)  | Omit “of this Act”. |
| Section 12(1)  | (a) Omit “of this Act” (wherever occurring).(b) Omit “the Second Schedule to this Act” (wherever occurring), substitute “Schedule 2”. |
| Section 14(1)(a)  | Omit “of this Act”. |
| Section 14(1)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 14(3)  | Omit “of this Act”. |
| Section 15(3)  | Omit “of this section” |
| Section 15(4) and (6)  | Omit “of this Act” (wherever occurring). |
| Section 15(6)and (7)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 17(2)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 19(a)  | Omit “the First Schedule to this Act”, substitute “Schedule 1”. |
| Section 24(1)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 25(1)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 26(1)  | Omit “of this Act”. |
| Section 26(3)  | Omit “of this section” and “of this Act” |
| Section 26(4)  | Omit “of this Act”. |
| Section 26(5)  | (a) Omit “of this Act” (wherever occurring).(b) Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 26(6)  | Omit “the Second Schedule to this Act”, substitute “Schedule 2”. |
| Section 28(1)(a) and (b)  | Omit “of this Act.”. |
| Section 32(1)  | Omit “of this Act”. |
| Section 36  | 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”. |