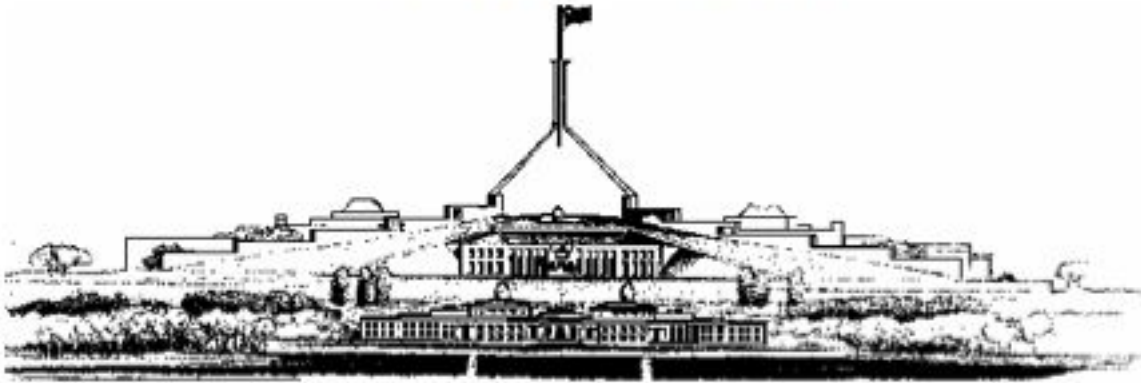




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE
WAR CRIMES AMENDMENT BILL 1998

Second Reading

SPEECH

Wednesday, 24 June 1998

BY AUTHORITY OF THE SENATE

SPEECH

Date Wednesday, 24 June 1998
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Questioner
Speaker Campbell, Sen Ian

Source Senate
Proof No
Responder
Question No.

Senator IAN CAMPBELL (WA) (9.35 am)—I table the explanatory memorandum and move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

This bill repeals section 22 of the War Crimes Act 1945. The act was amended in 1989 prior to the fall of the "iron curtain" to enable trial in Australia with respect of conduct engaged in during World War II in Europe. Although the usual practice would have been to extradite persons accused of such crimes to the country where the crimes occurred, at the time it was considered politically unacceptable to extradite persons to countries behind the so called 'iron curtain'.

The 'iron curtain' has fallen and many of the republics, including Latvia, Estonia and Lithuania are now independent states and have been accepted as members of the Council of Europe. Australia has, in the past, been prepared to enter into extradition arrangements with any country that is a member of the Council.

The Government is actively pursuing the possibility of establishing modern extradition arrangements with many of these newly independent States. However, even if a modern extradition relationship was in place, it would still be impossible for those countries to comply with an extradition request while section 22 of the War Crimes Act remains in force.

Section 22 of the act provides that where a person's extradition is sought for conduct covered by the act no surrender for extradition is possible unless there is a prima facie case. Thus, notwithstanding a modern extradition relationship with these countries, if the offence for which extradition is sought is a 'war crime' then the requesting state must provide a prima facie case. Because of the differences between civil code and common law countries the practical effect is that a civil code jurisdiction could never successfully seek the extradition of a person suspected of a war crime.

The concept of a prima facie case in determining sufficiency of evidence is one to which most common law countries are accustomed. However, those countries which operate under a civil code system (e.g., Latvia, Estonia and Lithuania) do not use this test in criminal proceedings, and experience has shown that use of this standard in extradition arrangements with civil code countries is almost impossible in practice. The practical issue is that the laws of evidence in common law systems are such as to make it impossible for a civil code jurisdiction to supply evidence in an admissible form. In essence, because of the fundamental differences between common law and civil code jurisdictions, particularly

evidentiary requirements, the practical effect is that it is currently impossible for a civil code jurisdiction to successfully seek the extradition of a suspected war criminal from Australia.

The repeal of section 22 will remove the fundamental barrier to Australia's cooperation with the international community in relation to suspected war criminals.

This is not to say that extradition of a suspected war criminal would be automatic. Any request for the extradition of a suspected war criminal would be subject to the general extradition arrangement with the requesting country. Such arrangement must include all the usual safeguards spelt out in the Extradition Act 1988. All that the amendment will do is to remove an additional onerous requirement that relates only to the extradition of war criminals. This Government sees no reason in principle why this practical impediment to the extradition of war criminals should be retained.

The amendment to the act will not have any financial impact

I commend the bill to the Senate.

Ordered that the further consideration of the second reading of this bill be adjourned to the first day of sitting in the Spring sittings 1998 in accordance with standing order 111.