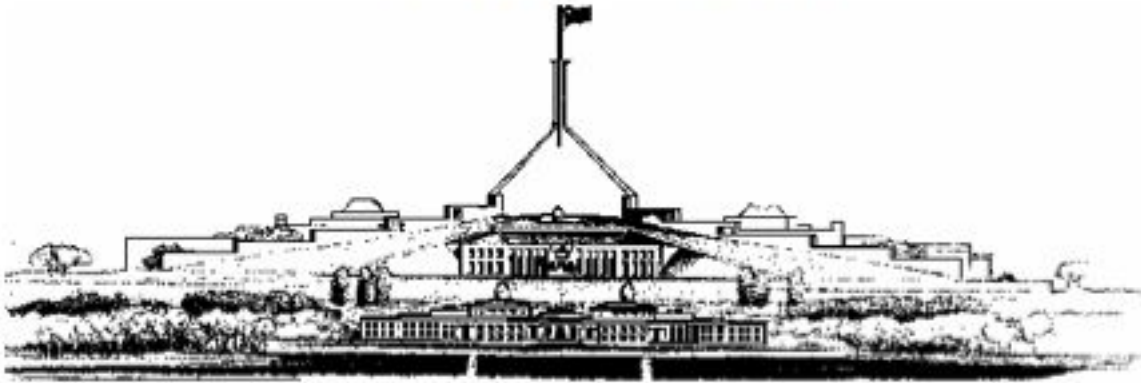




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

WAR CRIMES AMENDMENT BILL 1999

Second Reading

SPEECH

Thursday, 9 December 1999

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Thursday, 9 December 1999
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Questioner
Speaker Georgiou, Petro, MP

Source House
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Responder
Question No.

Mr GEORGIOU (Kooyong) (11.09 am)—The War Crimes Amendment Bill 1999 provides for the repeal of section 22 of the War Crimes Act. The effect of the repeal of the legislation will be to facilitate extradition proceedings of suspected World War II war criminals residing in Australia to countries with civil legal codes and, in particular, to former Soviet bloc countries. The bill will bring the evidentiary requirements for the extradition of suspected war criminals into line with those of other criminal offences in Australia, subject to the Extradition Act 1988.

Section 22 of the War Crimes Act was originally introduced in response to concerns over judicial processes in the former Warsaw Pact countries. Prior to the collapse of the Soviet Union and the end of the Cold War, there were concerns that individuals who faced extradition to countries in the Eastern bloc would not be subjected to the same judicial standards that could be expected in the West. As a result, an additional requirement to establish a prima facie case in the Australian courts prior to successful extradition of alleged war criminals was introduced. While the prima facie requirement was in response to concerns about Soviet bloc countries, it also had the effect of applying to all civil law jurisdictions. A prima facie case is a feature of the judicial system in common law countries and ensures that, at a relatively early stage of proceedings, there is sufficient evidence to establish grounds for a preliminary case against the accused. However, it is not commonly employed in civil law countries and, because of the significant differences in the evidentiary procedures of the two codes, it has been almost impossible in practice for countries with civil codes to extradite suspected war criminals from Australia.

With the end of the Cold War and the breakup of the Soviet empire, judicial processes have considerably improved in what was once the Eastern bloc. The Baltic states of Latvia, Lithuania and Estonia, as well as Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia, and Russia, have all reformed their legal systems, and their criminal and civil justice systems have met requirements for admission into the Council of Europe.

Australia has, in the past, been prepared to establish extradition arrangements with any country that is a member of the Council of Europe, such as France and Germany. The rationale then for demanding that a higher threshold of guilt be established prior to extradition of suspected war criminals to the Eastern bloc is no longer evident.

Section 22, however, continues to create impediments in establishing extradition arrangements with civil law countries that may have cause to request the extradition of suspected war criminals from the Second World War residing in Australia. The repeal of this provision for extra evidentiary requirements for war criminals prior to extradition will also bring Australia into line with war crime extradition procedures in Europe. Neither Britain nor Western European countries retain additional evidentiary requirements in respect of the extradition of war criminals. As has been referred to, the rights of individuals in Australia facing extradition continue to be safeguarded by the Extradition Act under which the Attorney-General also retains a residual discretion to decline the surrender of a person to a foreign jurisdiction.

The effect then of the legislation will be to remove a significant impediment to the extradition of suspected Nazi war criminals. It is a further attempt to reduce the possibility that Australia should be used as a haven for war criminals or individuals who are suspected of having committed crimes against humanity and are sought by other jurisdictions.

The issue of suspected war criminals residing in our country has received considerable prominence in Australian public debate in the whole period since the Second World War. Indeed, as early as 1947, allegations were made in Australian newspapers that former Nazis and Nazi collaborators had managed to enter Australia.

From the 1950s to the 1970s, law enforcement authorities received a number of reports about individuals suspected of involvement in war crimes during World War II. There were also a number of extradition requests from communist countries. None of these requests were acceded to.

According to the final report of the Special Investigations Unit of the Attorney-General's Department, the US also failed to receive significant assistance from Australia in response to their requests in the course of the eighties. Throughout the 1980s, the Office of Special Investigation of the US Justice Department made a number of requests for assistance with suspected war criminals residing in Australia who were potential witnesses to investigations in the United States.

In 1986, ABC Radio broadcast a series of programs called *Nazis in Australia*. The series, by journalist Mark Aarons, contained a number of documented serious allegations about suspected Nazi war criminals who had come to Australia since the Second World War. Following Mr Aarons's revelations, the Australian government appointed Mr Andrew Menzies to conduct a review of allegations relating to the presence of Nazi war criminals in Australia. Mr Menzies found that it was more likely than not that a significant number of persons who committed serious war crimes did enter Australia and that appropriate further action needed to be taken.

As a result of the Menzies finding, the government amended the War Crimes Act to enable war crimes to be dealt with in Australian courts. An investigative unit, to be known as the Special Investigations Unit or SIU, of the Attorney-General's Department was established under the direction of Mr Robert Greenwood QC. The SIU operated from 1987 to 1992. During that period it conducted 841 investigations into suspected war criminals residing in Australia. Of the 841 investigations, 819 were suspended due to a number of factors, including that the suspects were found to have been deceased, living abroad or unfit to stand trial. In other cases, investigators were unable to substantiate the allegations, there was insufficient evidence and in some cases the accused had been previously convicted abroad.

There were, however, four cases that were referred to the Commonwealth Director of Public Prosecutions. Three of these cases went to trial. Two were unsuccessful, a third was abandoned on medical grounds and, in 1992, the SIU was closed down by the Labor government before charges could be laid against the fourth suspect. In 1995, Robert Greenwood, the former director of the SIU, launched a strong attack on the then government, accusing it of actively frustrating and undermining the operation of the SIU.

It is interesting that the then Labor finance minister, Peter Walsh, in his autobiography, *Confessions of a failed finance minister*, said that, as finance minister, he tried to prevent the establishment of the SIU and hoped that 'the crazy exercise would be terminated'. It is instructive that Mr Walsh made this additional claim:

Whatever moral force the argument for the War Crimes bill had, was somewhat diluted by the contemporary behaviour of the Israeli Army in Gaza and the West Bank . . .

One would hope that former Senator Walsh's views did not play a role in the previous government's decision to close down the SIU.

It did become apparent, however, from the three trials that were conducted, that it is very difficult to successfully prosecute in Australia individuals who are alleged to have committed crimes against humanity in other countries, particularly when those crimes occurred some time ago.

Australia is not the only country to face the challenge of bringing to justice suspected war criminals who have migrated to their country. Both Canada and the US have been confronted with numerous cases of suspected war criminals in their jurisdiction. They have responded to those cases with a variety of measures, including revocation of citizenship and deportation of more than 50 individuals found to have been engaged in crimes against humanity.

In Australia, there is still public concern over suspected war criminals residing here. The most prominent of those persons is a Mr Konrad Kalejs. Mr Kalejs immigrated to Australia in 1950 and gained citizenship in 1957. He travelled to the US soon afterwards and became a successful property developer. In 1984, he was arrested in the US, and deportation proceedings were commenced against him. He is accused by the US Justice Department of having been a senior officer in the Latvian auxiliary security police, a pro-Nazi unit that killed tens of thousands of people during World War II.

In 1994, the US Federal Court of Appeals determined that Mr Kalejs should be deported to Australia. According to the judge, Mr Kalejs was:

. . . a key officer in a unit that killed tens of thousands of innocents. Kalejs and his unit had two other duties besides killing Jews in the Riga ghetto . . . The unit joined the German SS in so-called anti-partisan activity, which was little more than a cover for arresting and murdering civilians.

In 1994, Mr Kalejs was deported to Australia. In 1995, he left Australia for Canada where he was arrested, declared persona non grata, and, in June 1995, returned to Australia.

In September 1995, Kalejs was again arrested at Toronto airport after making a second trip there, and he was detained by authorities until his immigration hearing. On 18 August 1997, a Canadian immigration tribunal ordered Mr Kalejs deported back to Australia and found that he had been 'an accomplice to the acts of murder, forcible confinement, enslavement and torture.' The tribunal found that Mr Kalejs had 'violated the laws of war and committed war crimes, or crimes against humanity.' The Canadian tribunal also found that Mr Kalejs 'was a party to the offences of murder and kidnapping.'

Mr Kalejs was deported back to Australia. The office of the minister for justice has advised that the DPP concluded that the evidence available here is insufficient to launch a successful criminal prosecution against Konrad Kalejs.

In November 1997, Latvia made a mutual assistance request to Australia for documents concerning genocide and war crimes involving Mr Kalejs. I am advised by the minister's office that, following a comprehensive review of relevant departmental files, a considerable amount of documentation on Mr Kalejs was provided to the Latvian authorities in response to their request for assistance. Australia also has had discussions with Latvia and Lithuania with a view to establishing extradition arrangements with those countries.

It is important to note that this legislation is not in response to any one case or individual; rather, it is designed to regularise our extradition arrangements in respect of accused World War II criminals who may be seeking sanctuary in Australia. As the minister has said, this move sends out a strong message internationally that Australia is not, and will not be, a haven for suspected World War II war criminals.

The challenge for our society is to find a way in which we can work with the international community to ensure that principles of justice apply to those involved in crimes against humanity who may seek a safe haven or refuge in Australia. It is a tragic reality of the second half of this century that crimes against humanity, atrocities, war crimes and attempted genocide did not end with the end of the Second World War. Indeed, if we look at Rwanda, Cambodia, the attempted extermination of people in Iraq, and more recently in East Timor, it is apparent that such acts of carnage have not abated as the 20th century draws to a close.

The moral imperative from the extermination of more than six million Jews during World War II was to never forget but, as time draws on, the memory of the international community does drift.

There are some who argue that many of those who were engaged in war crimes during World War II are now old men, that time has moved on and that we should forget the past. There are those who argue that it is too difficult and too costly to bring to justice men who have committed crimes many years ago. Indeed, there are some who even argue that we should not concern ourselves with crimes committed in a foreign land.

But the rule of law is not some fashionable policy from which we can pick and choose. If a man lives in our midst who is responsible for the deaths of one or 30,000 civilians, do we not have a responsibility to see him brought to justice? Can there really be time lines on mass murder? Can we seriously evoke a forgive and forget response to those who have committed crimes against humanity?

Dr Colin Rubenstein, the executive director of the Australia/Israel and Jewish Affairs Council, argues:

. . . neither the passage of time nor vagaries of location should become pretexts for inaction in the pursuit of justice.

If individuals who reside in this country have committed crimes against humanity in other countries, then we should take every measure possible to assist in bringing those individuals to justice. As Mark Baker, the Melbourne University history academic, has written:

A passport is not a confessional box where one secures absolution from guilt.

In the period following World War II, inadequate vetting procedures created favourable circumstances for suspected war criminals to seek sanctuary in Australia. If a crime can be graduated, it is hard to envision a more heinous crime than that committed by individuals who have been complicit in genocide, the deliberate effort to destroy a national, racial or ethnic population. Future generations will not judge us well if we do not take every

measure possible to bring to justice those who have committed crimes against humanity. This bill is an important part of that process. I commend the bill to the Main Committee.