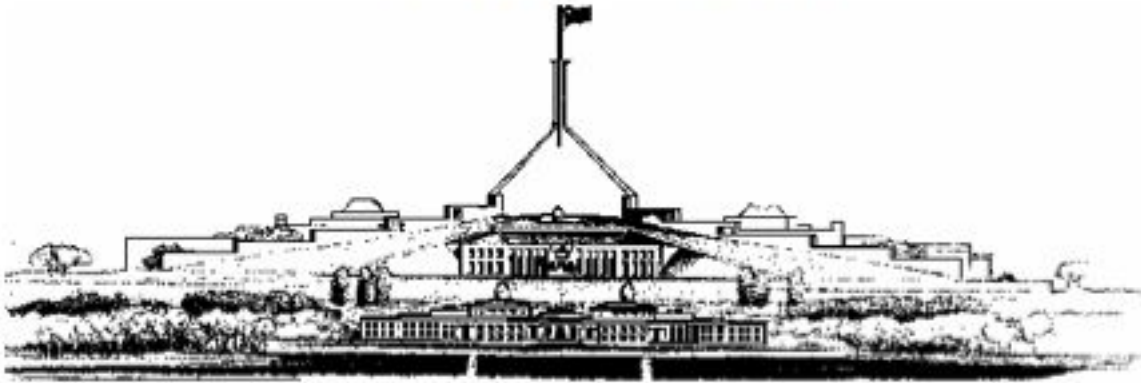




COMMONWEALTH OF AUSTRALIA

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 Stone, Sharman, MP

Source House
Proof No
Responder
Question No.

Dr STONE (Murray) (12.11 pm)—in reply—I thank all members who have contributed to this debate. It was pleasing to hear that members of the opposition support the very important amendments contained in the War Crimes Amendment Bill 1999. In particular, I was pleased to see the support from the opposition shadow minister for justice and customs, the member for Denison.

The member for Calwell, Dr Theophanous, raised a number of important issues. For example, he talked long and hard about the amendments contained in the bill being about 10 years overdue. It is indeed a shame that the previous government did not listen to the member for Calwell, who was part of that government. No doubt he called for those sorts of amendments in his time but the then government did not listen or respond. The good news is that this government has acted very promptly indeed, so we have before us today this bill which repeals section 22. This bill was introduced in 1998 but it lapsed when parliament was prorogued and it has been reintroduced very promptly following the re-election of the government. On that front, I should think that the member for Calwell is somewhat better pleased with the performance of this government in relation to the matter.

The member for Calwell was also very concerned in that he felt there had never been in this country any investigation of potential bureaucratic cover-up in relation to alleged war criminals slipping through the net immediately after the Second World War, and since, coming into this country. He alleged that perhaps there was some bureaucratic cover-up at that time and there had never been any concern from any government of the day to check allegations which I presume have been made over a number of years.

Under Prime Minister Robert Menzies there was an independent inquiry which looked at whether or not there was any incompetence or deliberate cover-up in terms of people coming to this country who were potential or alleged war criminals. I refer the member to Parliamentary Paper No. 90/1987, which will give him access to the findings of that inquiry. I will read briefly from paragraph (3) of the section headed 'Findings':

While Australian officers in Europe endeavoured to prevent the acceptance for migration to Australia of persons responsible for war crimes, and these endeavours must have prevented many war criminals from entering Australia, there were serious limitations, particularly in early years, in numbers and geographical spread of staff available to do the necessary checking and equally serious gaps in the data against which Australian security officers would have made their checks, particularly in relation to non-Germans. These limitations and gaps would have made possible the entry of persons responsible for war crimes although the number of persons so admitted would have been a minute proportion of the enormous number of persons who migrated to Australia in the post-war years.

Paragraph (4) refers to chapter 7 of the report in the following terms:

. . . no person admitted into Australia under arrangements with U.K. or U.S. intelligence agencies, to the knowledge of Australian authorities, appears to have been the object of charges or allegations as to commission of war crimes although there is a possibility that, particularly before 1956, former employees of such agencies may have entered Australia without the knowledge of Australian authorities.

Certainly, the Liberal government of the day tried very hard to sort out if there were problems deliberately perpetrated when it came to letting people into this country who should not be here.

The member for Melbourne Ports was most concerned about the US current affairs program *20/20*, which screened last week. It suggested that it is quite an easy thing to live in Australia as a war criminal. The member for Melbourne Ports was quite rightly concerned about Australia's reputation if that sort of thing were true, and he seemed to think that that in fact was the case. That television program was followed up last week by the *7.30 Report*.

Of course, the member for Melbourne Ports, like the US *20/20* producers and Australia's own *7.30 Report* producers, failed to stress the fact that we have very different systems in place when it comes to how we go about

prosecuting alleged war criminals. For example, the US uses the Immigration Nationality Act 1952, which allows for the deportation of any alien who was simply associated with the Nazi government or any area occupied by the forces of that government with any established Nazi assistance. There is no need to prove a suspect has any personal involvement in any war crime. The proceedings are civil. So the association has to be proved only on the balance of probabilities. As well, if the suspect concealed wartime activities when applying for a US visa and that concealment was found to be a wilful and material misrepresentation, then that is also additional grounds for deportation.

On the other hand, Australia must, under the War Crimes Act 1945, prove the actual commission of a war crime within the meaning of the act or an ancillary offence such as aiding and abetting beyond a reasonable doubt, and it is subject to rigorous criminal, evidentiary and procedural requirements. The suspects have the same rights in Australia under the law as any other Australian suspected of committing a serious crime. So the Australia government of the day—and I think most of us would agree it would continue—was concerned that the fairness of the Australian criminal justice system should not be perverted for the sake of easy popular convictions based on inadequate evidence.

Deportation was not an easy option under Australian law. Until 1998, there was a limit of 10 years before the commission of an offence of giving false information in applying for Australian citizenship after which a person would no longer be liable for deportation for that offence. In 1998, our government removed that time limit, but the effect of the amendment was prospective only. Therefore, people who have already received the benefit of the time limit cannot be deported now under the amended provision. I hope that the member for Melbourne Ports understands that we have different systems. It is easy to say that the US has many points and Australia zero, but that is comparing apples and pears. Let me reiterate that the War Crimes Amendment Bill 1999 deals with very serious issues of a long time ago, but time has not indeed dimmed any Australian's sense of justice when it comes to prosecuting and assisting with prosecutions of those alleged of war crimes.

Section 22 imposes a specific requirement for the content of extradition requests to Australia with respect to conduct which would be covered by the act—in other words, certain crimes committed in Europe during World War II. Currently such requests must be accompanied by the presentation of evidence which establishes a prima facie case that the person has committed the alleged war crime. The main justification for the repeal of section 22 is that it is no longer appropriate to include this onerous requirement for war crime extraditions, particularly following the emergence of newly independent states in Europe from behind the Iron Curtain.

In principle, Australia is interested in establishing modern extradition arrangements with these countries which have now been accepted as members of the Council of Europe. So the enactment of this bill, together with the completion of these new modern extradition arrangements, will increase significantly our ability to cooperate with other countries which seek our assistance in bringing alleged World War II criminals to trial. I think all Australians would be with us today in agreeing that this is a very important amendment. I commend the bill to the House.

Question resolved in the affirmative.

Bill read a second time.

Mr DEPUTY SPEAKER (Mr Nehl)—If no member wishes to consider the bill in detail, I will put the report question forthwith. The question is that this bill be reported to the House without amendment.

Question resolved in the affirmative.