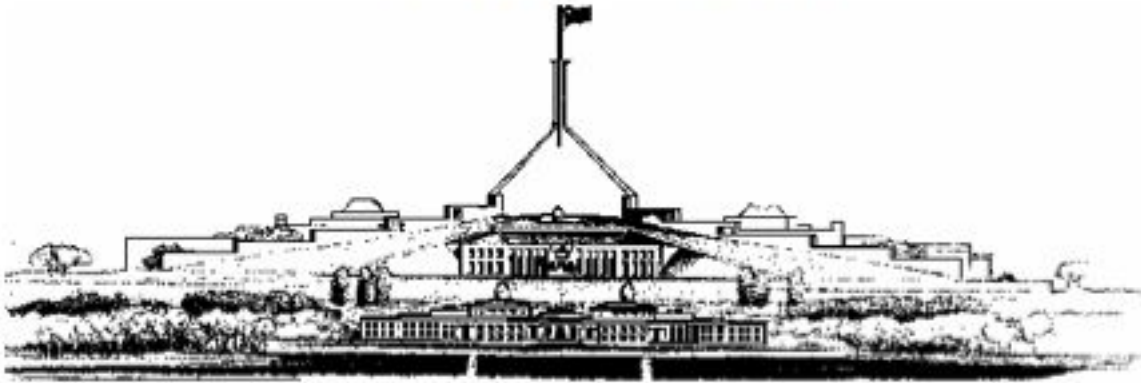




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

WAR CRIMES AMENDMENT BILL 1999

**CUSTOMS (TARIFF CONCESSION
SYSTEM VALIDATIONS) BILL 1999**

Second Reading

SPEECH

Wednesday, 23 June 1999

BY AUTHORITY OF THE SENATE

SPEECH

Date Wednesday, 23 June 1999
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Questioner
Speaker Campbell, Sen Ian

Source Senate
Proof No
Responder
Question No.

Senator IAN CAMPBELL (WA) (9.32 am)—I table the explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

WAR CRIMES AMENDMENT BILL 1999

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.

Effectively, section 22 of the act provides that where a person's extradition from Australia is sought for conduct covered by the act no surrender for extradition is possible unless the requesting country establishes 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 it would be virtually impossible for a civil code jurisdiction to 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. The practical issue is that the laws of evidence in common law systems are such as to make it very difficult for a civil code jurisdiction to supply evidence in an admissible form.

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.

CUSTOMS (TARIFF CONCESSION SYSTEM VALIDATIONS) BILL 1999

This bill is designed to remove any doubt about the validity of certain decisions made by officers of the Australian Customs Service in relation to the tariff concession system.

The tariff concession system allows goods to be imported at a concessional rate of duty essentially in circumstances where there are no local manufacturers of substitutable goods.

In November 1995, the chief executive officer of customs generally delegated his powers and functions in relation to the tariff concession system to certain officers of customs.

In July 1996, the government made changes to the tariff concession system.

Those changes resulted in amendments to the Customs Act, including the introduction of additional powers and functions.

New delegations were not sought for powers that were added to sections of the act which were already the subject of the November 1995 instrument.

It was thought that that instrument was sufficient.

The sufficiency of the delegations for the tariff concession system was questioned in a recent hearing of the Administrative Appeals Tribunal.

In light of this, the chief executive officer signed two instruments on 31 May 1999.

The first revoked all existing delegations for the tariff concession system.

The second issued new delegations covering all the powers and functions in relation to the tariff concession system.

Both instruments took effect on 1 June 1999.

Notwithstanding, it is possible that certain decisions and actions taken in relation to the tariff concession system subsequent to the 1996 changes to the act may not have been the subject of adequate delegations.

This bill aims to remove any doubt about the validity of these decisions and actions, to the extent that they were taken in reliance on a delegation that may not have been sufficient.

Finally, the government has decided that this bill should not apply to certain matters before the Administrative Appeals Tribunal or to certain applications for refunds of customs duty, which had not been decided before 1 June 1999.

Ordered that further consideration of the second reading of these bills be adjourned till the first day of sitting in the spring sittings 1999, in accordance with standing order 111.

Ordered that these bills be listed on the *Notice Paper* as separate orders of the day.