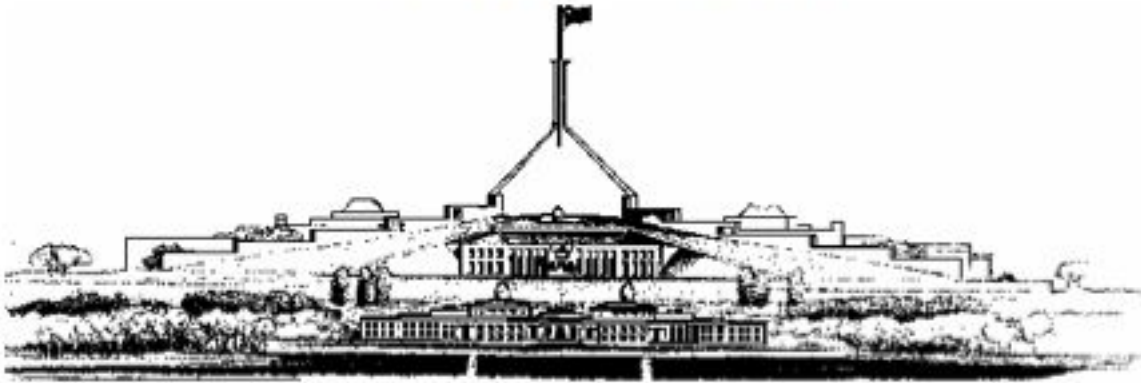




COMMONWEALTH OF AUSTRALIA

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
Page 13386
Questioner
Speaker Stone, Sharman, MP

Source House
Proof No
Responder
Question No.

Dr STONE (Murray) (10.52 am)—I move:

That the bill be now read a second time.

The War Crimes Amendment Bill 1999 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 to 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, it was considered at the time to be politically unacceptable to extradite persons to countries behind the then so-called Iron Curtain. Some years ago the Iron Curtain fell, fortunately, 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 were 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 in our country. 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 the extradition 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 is determining sufficiency of evidence, and it is one to which most common law countries are accustomed. However, those countries which operate under a civil code system—for example, 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 requests 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 House and I present the explanatory memorandum to this bill to this committee.