

FUGITIVE OFFENDERS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Fugitive Offenders Act 1881 (U.K.), which forms part of the law of New Zealand.

Part I of that Act provides for the arrest in any part of "Her Majesty's dominions" of a person who is accused of committing in any other part any offence to which Part I applies and his return for trial in the country where the offence is alleged to have been committed.

Part II of that Act provides a simplified procedure for use in groups of "British possessions" to which, by reason of their contiguity or otherwise, that Part is applied by Order in Council made in the United Kingdom. Under that provision, an Order in Council made in 1925 applies Part II to a group comprising New Zealand, Australia, and certain Pacific territories.

On the return of writs of habeas corpus, a Judge of the Supreme Court recently decided (in a case not yet reported) that in view of the constitutional changes in the status of countries of the Commonwealth that have occurred since the Act was passed, New Zealand is no longer one of "Her Majesty's dominions" or a "British possession", and that the Act is now inoperative to enable persons accused of offences in another Commonwealth country to be arrested in New Zealand and returned to that other country for trial.

The Fugitive Offenders Act 1881 (U.K.) has been repealed by the Fugitive Offenders Act 1967 (U.K.) as respects the United Kingdom, but the 1881 Act remains part of the law of New Zealand. The arrest of offenders in New Zealand and their return to another Commonwealth country is therefore still governed by the 1881 Act.

The main purpose of this Bill is to amend the 1881 Act in order to ensure that it can continue to be used for the purpose of enabling persons charged with offences in another Commonwealth country to be arrested in New Zealand and returned for trial in that other country. In addition, *clause 6* amends provisions of the 1881 Act relating to the admissibility of evidence in proceedings under that Act.

Clause 1 relates to the Short Title.

Clause 2 provides that the Act will be read as part of the 1881 Act. *Subclause (2)* provides that the Acts Interpretation Act 1924 is to apply to the 1881 Act.

Clause 3 defines the terms "the Commonwealth", "part of the Commonwealth", and "Commonwealth country" for the purposes of the amendments to the 1881 Act made by this Bill.

Clause 4 provides that the 1881 Act and the Order in Council declaring a group for the purposes of Part II which includes New Zealand are and always have been in force in New Zealand as part of the law of New Zealand.

Clause 5 amends the 1881 Act and the Order in Council referred to, in their application to New Zealand, in the manner set out in the clause and in the Schedule, to give effect to the main purpose of this Bill, as set out in this explanatory note.

Clause 6 amends, in its application to New Zealand, section 29 of the 1881 Act, which relates to the admissibility as evidence in proceedings under that Act of depositions and other documents and the manner in which they are to be authenticated for this purpose.

On the return of writs of habeas corpus, a Judge of the Supreme Court recently decided (in another case not yet reported), *inter alia*, that, notwithstanding that the definition of "deposition" in section 39 of the 1881 Act includes affidavits, affirmations, and statements made on oath, a deposition was not admissible in proceedings in New Zealand for the extradition of a fugitive to the United Kingdom unless it was taken in accordance with the formalities with which depositions are required to be taken in the United Kingdom.

This clause amends section 29 to enable a magistrate, for the purpose of obtaining the return to New Zealand from any other Commonwealth country of a person charged with an offence, to take depositions and accept in evidence statements made on oath (including affidavits).

This clause further amends section 29 to enable statements on oath (including affirmations) made before a magistrate or in proceedings in a Commonwealth country outside New Zealand (which, as mentioned above, are "depositions" for the purposes of the 1881 Act) to be admitted in evidence in proceedings in New Zealand for the return of a fugitive to that Commonwealth country, whether or not they are taken or made in accordance with the formalities with which depositions are required to be taken in that other country.

Clause 7 provides that certain provisions of the 1881 Act that are no longer applicable shall cease to be in force in New Zealand.

Clause 8 validates warrants issued or endorsed or executed and orders made under the 1881 Act before the passing of the Bill, and provides that proceedings instituted under the 1881 Act before the passing of the Bill may be continued under that Act as amended by the Bill.

This validation will not affect the rights of the parties under the decisions of the Supreme Court referred to earlier in this note.

Hon. Mr Thomson

FUGITIVE OFFENDERS AMENDMENT

ANALYSIS

Title	4. Fugitive Offenders Act 1881 (U.K.) to be in force in New Zealand
1. Short Title	5. Amendments of principal Act
2. Act to be read with Fugitive Offenders Act 1881 (U.K.)	6. Evidence
3. Interpretation	7. Repeals
	8. Validation Schedule

A BILL INTITULED

An Act to amend the Fugitive Offenders Act 1881 of the United Kingdom Parliament in its application to New Zealand as part of the law of New Zealand

5 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Fugitive Offenders Amendment Act 1976.

10 **2. Act to be read with Fugitive Offenders Act 1881 (U.K.)**—(1) This Act shall, for the purposes of the law of New Zealand, be read together with and deemed part of the Fugitive Offenders Act 1881 of the United Kingdom Parliament* (hereinafter referred to as the principal Act).

*44 & 45 Vict. c. 69

(2) It is hereby declared that the Acts Interpretation Act 1924, as far as it is applicable and with the necessary modifications, shall apply with respect to the principal Act as if it were an Act of the General Assembly of New Zealand.

3. Interpretation—For the purposes of the principal Act, as amended by this Act in its application to New Zealand as part of the law of New Zealand,— 5

“The Commonwealth” means the Commonwealth of Nations:

“Part of the Commonwealth” or “Commonwealth country” means a country that is a member of the Commonwealth; and includes any territory for whose international relations a country that is a member of the Commonwealth is responsible; and also includes the Republic of Ireland as if that country were a member of the Commonwealth. 10
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4. Fugitive Offenders Act 1881 (U.K.) to be in force in New Zealand—For the avoidance of doubt, it is hereby declared that—

- (a) The principal Act is and always has been in force in New Zealand as part of the law of New Zealand: 20
- (b) The Order in Council made by His Majesty pursuant to the principal Act on the 12th day of October 1925 applying Part II thereof to New Zealand, and published in the *Gazette* on the 14th day of January 1926 at page 77, is and always has been in force in New Zealand as part of the law of New Zealand. 25

5. Amendments of principal Act—In the application to New Zealand as part of the law of New Zealand of the principal Act and the Order in Council referred to in section 4 (b) of this Act— 30

- (a) Every reference therein to Her Majesty’s dominions shall be read as if it were a reference to the Commonwealth; and
- (b) Every reference therein to a British possession (including a reference to a possession) shall read as if it were a reference to a Commonwealth country; and 35
- (c) The principal Act shall have effect as amended in the manner specified in the Schedule to this Act.

6. Evidence—In the application of the principal Act to New Zealand as part of the law of New Zealand, section 29 shall have effect as amended— 40

- (a) By omitting the first paragraph, and substituting the following paragraph:

5 “For the purpose of obtaining the return to New Zealand from any other Commonwealth country of a person accused of an offence, a magistrate may (in the absence of that person) take depositions and accept in evidence statements made on oath (including affidavits).”:

- 10 (b) By omitting from the second paragraph the words “Depositions (whether taken in the absence of the fugitive or otherwise)”, and substituting the words “Depositions taken and statements (including affidavits) made on oath before a magistrate or in
15 any proceedings in a Commonwealth country outside New Zealand (whether taken or made in the absence of the fugitive or otherwise)”:

- 20 (c) By inserting in the third paragraph, after the words “such depositions”, the words “statements (including affidavits)”:

- 25 (d) By omitting from the fourth paragraph the words “Warrants and depositions”, and substituting the words “Warrants, depositions, and statements (including affidavits) made on oath before a magistrate or in any proceedings”.

7. Repeals—Sections 11, 20, 21, 23, 25, 27, 32, 36, and 38 of the principal Act shall cease to have effect as part of the law of New Zealand.

8. Validation—Every warrant issued or endorsed or
30 executed in New Zealand under the principal Act before the passing of this Act and every order made in New Zealand under the principal Act before the passing of this Act which would have been validly issued or endorsed or executed or
35 made if this Act had been in force when it was issued or endorsed or executed or made is hereby declared to be and always to have been validly issued or endorsed or executed or made, and any proceedings instituted under the principal Act before the passing of this Act may be continued and dealt with under the principal Act as amended by this Act:

40 Provided that nothing in this section shall affect the rights of the parties under any order made in any Court or by any Judge before the passing of this Act in proceedings on an application for habeas corpus.

Section 5 (c)

SCHEDULE

AMENDMENTS OF PRINCIPAL ACT IN ITS APPLICATION TO NEW ZEALAND

Section of Principal Act Amended	Amendment
Section 3	By omitting the words "and (3) In a British possession the governor of that possession".
Section 4	By omitting from the second paragraph all words after the words "to a Secretary of State", and substituting the words "and, if he is in some other part of the Commonwealth, to the Minister of Justice or Attorney-General of that part, and the Secretary of State or Minister of Justice or Attorney-General may, if he thinks fit, discharge the person apprehended under that warrant".
Section 5	By omitting from the second paragraph the words "and if in a British possession to the governor of that possession", and substituting the words "and if in some other part of the Commonwealth to the Minister of Justice or Attorney-General of that part".
Section 6	By omitting the words "(2) if the fugitive is so committed in a British possession the governor of that possession", and substituting the words "(2) if the fugitive is so committed in some other part of the Commonwealth, the Minister of Justice or Attorney-General of that part". By omitting all words from and including the words "the governor or other chief officer of any prison".
Section 7	By omitting the words "a British possession, to the governor of the possession", and substituting the words "some other part of the Commonwealth, to the Minister of Justice or Attorney-General of that part".
Section 8	By omitting the words "a British possession the governor of that possession", and substituting the words "some other part of the Commonwealth the Minister of Justice or Attorney-General of that part".
Section 9	By omitting from the first paragraph the words "with hard labour", and also the words "and for the purposes of this section rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour".

SCHEDULE—*continued*

AMENDMENTS OF PRINCIPAL ACT IN ITS APPLICATION TO NEW ZEALAND—
continued

Section of Principal Act Amended	Amendment
Section 18	By omitting the word “governor”, and substituting the words “Minister of Justice or Attorney-General”.
Section 29	By omitting from the fourth paragraph all words after the words “the oath of some witness”, and substituting the words “or if they purport to be signed by or sealed with the official seal of the Minister of Justice or some other Minister or the Attorney-General, or with the official seal of a Ministry or Department of State, of the Commonwealth country in which the same are issued, taken, or made”.
	By inserting in the last paragraph, before the word “seal”, the words “signature or”.
Section 33	By omitting from the proviso the words “a British possession the governor of such possession”, and substituting the words “some other part of the Commonwealth, the Minister of Justice or Attorney-General of that part”.
Section 35	By omitting the words “a British possession the governor of that possession”, and substituting the words “any other part of the Commonwealth the Minister of Justice or Attorney-General of that part”.
Section 39	By repealing the definitions of the terms “British possession”, “legislature”, “governor”, “offence punishable by indictment”, and “deposition”.
	By repealing the definition of the term “superior court”, and substituting the following definition:
	“Superior court’, in relation to a Commonwealth country, means any court that has jurisdiction to try an accused person on indictment; and includes any other court recognised in that country as a superior court.”