



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 2 March 1999

EXTRADITION BILL

Proposed Amendments

Hon TONY RYALL, in Committee, to move the following amendments:

Clause 1: To omit subclause (2) (lines 7 and 8 on page 3), and substitute the following subclause:

(2) This Act comes into force on 1 July 1999.

Clause 4 (1) (b): To omit the expression "in section 15, section 38, section 56, and Part 6" (lines 3 and 4 on page 7).

Clause 7: To omit from paragraph (a) the word "requested" (line 4 on page 9), and substitute the word "sought".

To omit from paragraph (d) the word "requested" (line 17 on page 9), and substitute the word "sought".

To insert in paragraph (f), after the expression "2" (line 29 on page 9), the expression "(1)".

Clause 8 (2): To omit the word "requested" (line 31 on page 10), and substitute the word "sought".

Clause 14 (4): To omit the words "within the meaning of that term in section 2" (line 25 on page 13), and substitute the words "for the purposes".

Clause 15 (3): To omit the words "within the meaning of that term in section 2" (line 18 on page 14), and substitute the words "for the purposes".

Clause 19 (2): To insert, after the word "may" (line 22 on page 16), the words " , if the Minister thinks fit,".

Clause 21: To omit from subclause (1) the words "counsel for the" (line 34 on page 17).

To insert in subclause (3), after the word "may" (line 4 on page 18), the words " , if the Minister thinks fit,".

Clause 22: To insert in subclause (3), after the word "Justices" (line 6 on page 19), the words "or one or more Community Magistrates".

To omit from subclause (4) the expression " , (1A), and (1B)" (line 8 on page 19), and substitute the expression "to (3)".

To omit from subclause (5) the expression “46 (2)” (line 12 on page 19), and substitute the expression “46 (5)”.

Clause 25 (5): To omit the words “in any proceedings” (line 7 on page 23).

Clause 26 (3): To omit the word “such” (line 25 on page 24), and substitute the word “any”.

Clause 28 (3) (a): To omit this paragraph (line 4 on page 26), and substitute the following paragraph:

- (a) The person was before the court when he or she consented to surrender for the offence or offences; and

Clause 29 (3) (a): To omit this paragraph (line 18 on page 27), and substitute the following paragraph:

- (a) The person was before the court when he or she consented to surrender for the offence or offences; and

Clause 30: To omit paragraph (b) of subclause (3) (lines 25 and 26 on page 28), and substitute the following paragraph:

- (b) It appears to the Minister that a discretionary restriction on the surrender of the person applies under **section 8**; or

To omit from subclause (3) (ca) the expression “**section 31 (8)**” (line 7 on page 29), and substitute the expression “**section 31A (4)**”.

To omit from subclause (5) (d) (ii) the word “lower” (line 32 on page 29), and substitute the word “lesser”.

To add to subclause (5) (d) (after line 41 on page 29) the following subparagraph:

- (iv) An offence (not being an extradition offence) for which the person has consented to surrender under **section 29**; or

To omit from subclause (6) the word “assurances” (line 11 on page 30), and substitute the word “undertakings”.

Clause 31: To insert in subclause (3) (c) (ii), after the word “determined” (line 23 on page 31), the word “that”.

Clause 31A (1) (a): To omit the words “is alleged to have” (lines 27 and 28 on page 32), and substitute the word “has”.

Clause 34: To omit the expression “**section 31 (6) (b)**” (line 23 on page 35), and substitute the expression “**section 31A (2) (b)**”.

Clause 35 (1) (c): To omit the expression “**section 31 (6) (a) or section 31 (8)**” (lines 27 and 28 on page 36), and substitute the expression “**section 31A (2) (a) or section 31A (4)**”.

Clause 38: To omit paragraph (a) of subclause (2) (lines 22 to 34 on page 38), and substitute the following paragraph:

- (a) The circumstances in which a person may be arrested in the country in relation to—
 - (i) An alleged offence against the law of that country; or
 - (ii) An offence against the law of that country of which the person has been convicted—
(being an offence for which the maximum penalty is imprisonment for not less than 12 months or any more severe penalty) are similar in effect to the

circumstances in which such a person could be arrested in New Zealand if the alleged offence occurred within the jurisdiction of New Zealand or the person had been convicted in New Zealand.

To omit from subclause (2) (c) the word “lower” (line 1 on page 40), and substitute the word “lesser”.

To add (after line 3 on page 41) the following subclause:

(6) An Order in Council made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Clause 41: To omit from subclause (3) the word “Justices” (line 26 on page 43), and substitute the words “one or more Justices or one or more Community Magistrates”.

To omit from subclause (4) the expression “, (1A), and (1B)” (line 28 on page 43), and substitute the expression “to (3)”.

To omit from subclause (5) the expression “46 (2)” (line 31 on page 43), and substitute the expression “46 (5)”.

Clause 44 (3): To omit the word “such” (line 12 on page 47), and substitute the word “any”.

Clause 45 (1) (c): To omit the words “is alleged to have” (lines 37 and 38 on page 48), and substitute the word “has”.

Clause 46 (2): To omit the word “assurances” (line 35 on page 50), and substitute the word “undertakings”.

Clause 47A (1): To omit the words “is alleged to have” (line 7 on page 53), and substitute the word “has”.

Clause 50 (3) (a): To omit this paragraph (line 15 on page 55), and substitute the following paragraph:

(a) The person was before the court when he or she consented to surrender for the offence or offences; and

Clause 51: To omit from subclause (1) (a) the word “requested” (line 9 on page 56), and substitute the word “sought”.

To omit from subclause (2) the expression “subsections (4), (5), and (6), and (7)” (line 33 on page 56), and substitute the expression “subsections (4), (5), (6), and (7)”.

To omit from subclause (3) (b) the word “requested” (line 38 on page 56), and substitute the word “sought”.

To omit from subclause (3) the words “in respect” (lines 1 and 2 on page 57), and substitute the word “because”.

To omit from subclause (3) the word “a” in the last place where it occurs (line 3 on page 57), and substitute the word “the”.

To omit from subclause (4) (b) (i) the word “requested” (line 13 on page 57), and substitute the word “sought”.

To omit from subclause (5) the word “assurances” (line 24 on page 57), and substitute the word “undertakings”.

Clause 52 (3): To omit the word “assurances” (line 17 on page 58), and substitute the word “undertakings”.

Clause 53: To omit the expression “section 47 (5) (b)” (line 36 on page 58), and substitute the expression “section 47A (2) (b)”.

Clause 54 (1) (c): To omit the expression “section 47 (5) (a) or section 47 (7)” (lines 1 and 2 on page 60), and substitute the expression “section 47A (2) (a) or section 47A (4)”.

Clause 56 (3): To omit from paragraph (a) the word “assurances” (line 15 on page 62), and substitute the word “undertakings”.

To omit paragraph (d) (lines 24 to 26 on page 62).

Clause 60: To omit from subclause (1) the word “lower” (line 29 on page 65), and substitute the word “lesser”.

Clause 61 (b): To omit the word “of” the first time it occurs in line 27 on page 66, and substitute the word “after”.

Clause 63: To insert, after the word “form” (line 24 on page 67), the expression “(if any)”.

Clause 63D: To omit the word “requested” (line 19 on page 70), and substitute the word “sought”.

To insert in paragraph (b), after the word “determined” (line 25 on page 70), the word “that”.

Clause 63E (1) (d): To insert, after the word “determination” (line 39 on page 70), the word “that”.

Clause 70 (4): To omit the words “, in any proceedings,” (line 33 on page 75).

Clause 71: To insert, after the expression “section 15” (line 38 on page 75), the expression “or section 38”.

Clause 85 (3) (a): To omit the words “other than by leaving New Zealand” (lines 1 and 2 on page 82).

Clause 86 (5) (a): To omit the words “other than by leaving New Zealand” (lines 3 and 4 on page 83).

Clause 88: To add the following subclause after line 8 on page 84:

(4) This section is subject to **section 62**.

Clause 92: To add to paragraph (da) (after line 38 on page 85) the following subparagraph:

(iv) The circumstances in which the court may appoint an expert witness, the procedure to be followed after the expert witness is appointed, the rights of the parties in relation to the evidence given by the expert witness, and the manner in which the expert witness is to be remunerated:

Clause 98A: To omit from subclause (2) the words “It is declared that” (line 5 on page 89).

To omit from subclause (2) the words “have ceased to” (line 7 on page 89), and substitute the word “cease”.

Clause 99: To omit subclauses (2) and (3) (lines 12 to 16 on page 89).

Clause 100: To insert in subclause (1), after line 19 on page 89, the following paragraph:

(ba) The Extradition Amendment Act 1998:

Schedule 2: To insert, at the beginning of the item relating to the Misuse of Drugs Act 1975 (on page 98), the following item:

By repealing section 10 (6).

To add to the item relating to the Misuse of Drugs Act 1975 (on page 99) the following item:

By omitting from section 35A (1) the expression “Extradition Act 1965 and every Order in Council made under section 3 of that Act or referred to in section 21 of that Act,” and substituting the expression “Extradition Act 1999 and any Order

in Council in force under section 14 or section 93 of that Act.”

By omitting from section 35A (2) the expression “Extradition Act 1965”, and substituting the expression “Extradition Act 1999”.

By repealing section 35A (3), and substituting the following subsection:

“(3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of New Zealand, would not at that time have constituted an offence under New Zealand law.”

By repealing section 35B.

By repealing section 35C, and substituting the following section:

“35C. **Restrictions on surrender of offenders**—(1) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, but subject to subsection (2), no Court in New Zealand may order the surrender, or the detention for the purposes of surrender, of a person to another country in respect of any act or omission that amounts to an offence described in any of sections 6, 9, 10, 12A, 12B, and 12C if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

“(2) If, in any case to which subsection (1) applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in respect of the act or omission, the Attorney-General must advise the Court accordingly, and the Court must proceed with the matter as if the Attorney-General’s certificate had never been given.”

To omit the item on pages 99 to 101 relating to the Crimes (Internationally Protected Persons and Hostages) Act 1980, and substitute the following item:

1980, No. 44—The Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980

By repealing the definition of the term “Fugitive Offenders Act 1881” in section 2.

By repealing section 9.

By repealing section 10, and substituting the following sections:

“10. **Crimes deemed to be included in extradition treaties**—(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 14 or section 93 of that Act,—

“(a) Each crime described in section 3 or section 4 or section 8, including—

“(i) Attempting to commit that crime (where it is not itself constituted by a mere attempt); or

“(ii) Aiding, abetting, inciting, counselling, or procuring any person to commit that crime; or

1980, No. 44—The Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980—
continued

“(iii) Inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed; or

“(iv) Being an accessory after the fact to that crime; and

“(b) Each crime described in section 5 or section 6,—

is, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before 12 December 1985 and for the time being in force between New Zealand and any country that is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

“(2) If under subsection (1) a crime is deemed to be an offence described in an extradition treaty, no person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before 12 December 1985.

“(3) For the purposes of this section, ‘country’ includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty and the 1973 Convention or, as the case may require, the 1979 Convention, extends.

“10A. **Further provision on crimes deemed to be included in extradition treaties**—(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 14 or section 93 of that Act,—

“(a) Each crime described in section 3 or section 4 or section 8, including—

“(i) Attempting to commit that crime (where it is not itself constituted by a mere attempt); or

“(ii) Aiding, abetting, inciting, counselling, or procuring any person to commit that crime; or

“(iii) Inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed; or

“(iv) Being an accessory after the fact to that crime; and

“(b) Each crime described in section 5 or section 6,—

is, if not already described in the treaty, deemed to be an offence described in any extradition treaty concluded before the commencement of the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998 and for the time being in force between New Zealand and any country that is a party to the 1994 Convention.

1980, No. 44—The Crimes
(Internationally Protected
Persons, United Nations
and Associated Personnel,
and Hostages) Act 1980—
continued

“(2) If under subsection (1) a crime is deemed to be an offence described in an extradition treaty, no person may be surrendered for that crime in accordance with the provisions of the Extradition Act 1999 if the alleged act or omission occurred before the commencement of the Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998.

“(3) For the purposes of this section, ‘country’ includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty and the 1994 Convention extends.”

By repealing section 11.

By repealing sections 12 and 13, and substituting the following section:

“12. **Restrictions on surrender—**

(1) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, a Court in New Zealand must not order the surrender, or the detention for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against any of sections 3 to 8 if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

“(2) If, in any case to which subsection (1) applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in respect of the act or omission, the Attorney-General must advise the Court accordingly, and the Court must proceed with the matter as if the Attorney-General’s certificate had never been given.

“(3) Without limiting the grounds on which surrender must or may be refused under the Extradition Act 1999, a person must not be surrendered to another country if it appears that the person’s position may be prejudiced because communication with the person by the appropriate authorities of the country that is entitled in international law to exercise rights of protection in respect to the person cannot be effected.”

To insert in new section 59A (1) of the Criminal Justice Act 1985 (page 102), before the word “surrendered” on the second line, the word “temporarily”.

To omit new section 81A(9) of the Criminal Justice Act 1985 (pages 104 and 105), and substitute the following subsection:

“(9) If—

“(a) A certificate under section 58 of the Extradition Act 1999 is not available at the time the Superintendent receives the warrant of commitment, but is received by the Superintendent at any later date while the offender is still in custody; or

“(b) A further certificate is received in the circumstances described in section 58(5) of the Extradition Act 1999 and a fresh determination is required to be made,—

the Superintendent must determine and enter the time in custody in accordance with subsection (3) when the certificate (or the further certificate) is received.

To omit from the new section 81A(10) of the Criminal Justice Act 1985 (page 105) the word “have”, and substitute the word “has”.

To insert, after the item relating to the Criminal Justice Act 1985 (on page 105), the following item:

1985, No. 160—The Crimes Amendment Act (No. 3) 1985 By repealing so much of the Schedule as relates to the Extradition Act 1965.

To add on page 107 the following items:

1995, No. 49—The Crimes Amendment Act 1995 By repealing section 11.

1998, No. 14—The Misuse of Drugs Amendment Act 1998 By repealing section 9 and so much of Schedule 2 as relates to the Extradition Act 1965.

1998, No. 36—The Crimes (Internationally Protected Persons and Hostages) Amendment Act 1998 By repealing sections 10 and 11.

1998, No. 76—The District Courts Amendment Act 1998 By repealing so much of the Schedule as relates to the Extradition Act 1965.

Schedule 3: To omit this schedule (pages 108 to 110).

EXPLANATORY NOTE

This Supplementary Order Paper proposes a number of mainly technical amendments, drafting changes, and corrections to the Extradition Bill. Amendments of other than a minor nature are:

Clause 1: This amendment changes the commencement date of the Bill from 1 April 1999 to 1 July 1999.

Clause 19: The amendment is to make the language of this clause consistent with that in section 6(3) of the Extradition Act 1965 because the intention is to retain the same approach to the Minister’s discretion as in that Act.

Clause 21: The amendment to *subclause (1)* omits the reference to “counsel” for the applicant. A reference simply to “the applicant” reflects the fact that counsel will not necessarily always be involved in making the application for a provisional arrest warrant.

The amendment to *subclause (3)* is to make the language of this clause consistent with that in section 7 of the Extradition Act 1965 because the intention is to retain the same approach to the Minister’s discretion as in that Act.

Clause 22: The amendment to *subclause (3)* is consequential on the amendment to the Summary Proceedings Act 1957 to provide for Community Magistrates. Neither Justices nor Community Magistrates are permitted to hear extradition proceedings under the Bill.

Clauses 28 and 29: The amendment made to each of these clauses is intended to make it clear that the time that the person must have been before the court is when he or she consented to surrender. The court may perform the function of sending a report to the Minister at a later time when the person may no longer actually be before the court.

Clause 30: The amendment to insert a new *subclause (5) (d) (iv)* makes it clear that an offence for which the person has consented to surrender is one for which the person can be tried after being surrendered.

Clause 38: The new *subclause (2) (a)* is redrafted to more accurately express the policy intent. The relevant focus is the circumstances in which a person can be arrested in the other country for an offence which carries the sort of penalty level that extradition offences carry.

The new *subclause (6)* provides that an Order in Council made under this clause is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Clause 41: The amendments to this clause have the same effect, in relation to *Part 4* proceedings, as the amendments to *clause 22*.

Clause 50: This amendment has the same effect, in relation to *Part 4* proceedings, as the amendments to *clauses 28 and 29*.

Clause 56: The criteria set out in *subclause (3) (d)* is omitted for consistency with the changes recommended to *clauses 19 (2) and 21 (3)* by the select committee.

Clause 92: This amendment allows for the making of regulations in relation to the appointment of expert witnesses by the District Court in extradition proceedings.

Schedule 2: The additional items in *Schedule 2* make amendments to other Acts consequential on the new provisions in this Bill, and consequentially repeal spent provisions.