

Extradition (Foreign States)

No. 76 of 1966

An Act relating to the Extradition of Criminals to and from Foreign States.

[Assented to 29 October 1966]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Extradition (Foreign States) Act 1966*.

Commencement.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–8).

Part II.—Application of Act (Sections 9–11).

Part III.—Extradition to Foreign States (Sections 12–19).

Part IV.—Extradition from Foreign States (Sections 20–23).

Part V.—Miscellaneous (Sections 24–31).

4.—(1.) In this Act, unless the contrary intention appears— Interpretation.

“Australia” includes all the Territories of the Commonwealth not forming part of the Commonwealth, including the Territory of Nauru;

“extradition crime” means an offence against the law of, or of a part of, a foreign state the act or omission constituting which would, if it took place in, or within the jurisdiction of, the part of Australia where the person accused or convicted of the offence is found, constitute an offence against the law in force in that part of Australia that—

(a) is described in the First Schedule to this Act; or

(b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence;

“extradition treaty” means a treaty relating to the surrender of fugitives;

“foreign warrant” means a judicial or other document issued under the law of, or of a part of, a foreign state and authorizing the apprehension of a person;

“fugitive” means a person accused of an extradition crime that is alleged to have been committed, or convicted of an extradition crime that was committed, at a place in a foreign state or within the jurisdiction of, or of a part of, a foreign state;

“Magistrate” means—

(a) a Chief, Stipendiary, Police, Resident or Special Magistrate of a Territory other than the Territory of Nauru;

(b) a Magistrate of the District Court of the Island of Nauru; or

(c) where the Governor-General has made an arrangement with the Governor of a State under section 24 of this Act—a person who holds an office specified in the arrangement;

“prison” includes a gaol, lock-up or other place of detention;

“Territory” means a Territory of the Commonwealth and includes the Territory of Nauru;

“treaty” includes a convention, agreement or arrangement.

(2.) A reference in this Act to a fugitive from a foreign state shall be read as a reference to a fugitive accused of an extradition crime that is alleged to have been committed, or convicted of an extradition crime that was committed, at a place in that state or within the jurisdiction of, or of a part of, that state.

(3.) For the purposes of this Act, a person shall be deemed not to have been convicted of an offence against the law of, or of a part of, a foreign state where the conviction is, under that law, a conviction for contumacy, but a person so convicted for contumacy shall be deemed to be accused of an offence against that law.

(4.) For the purposes of this Act, an offence against the law of a foreign state may be regarded as being an offence of a political character notwithstanding that there are not competing political parties in that state.

(5.) A reference in this Act to the Supreme Court of a Territory shall, in relation to the Territory of Nauru, be read as a reference to the Central Court of the Island of Nauru constituted by the Judge or an Acting Judge of that Court.

(6.) For the purposes of this Act—

- (a) a colony, territory or protectorate of a foreign state;
- (b) a territory for the international relations of which a foreign state is responsible; and
- (c) a ship or aircraft of, or registered in, a foreign state,

shall, unless the contrary intention appears, each be deemed to be within the jurisdiction, and to be part, of that foreign state.

Extension to
external
Territories.

5. This Act extends to every Territory of the Commonwealth not forming part of the Commonwealth, including the Territory of Nauru.

Exclusion of
other laws.

6.—(1.) Subject to the next succeeding sub-section, this Act excludes the operation of—

- (a) the Imperial Acts known as the Extradition Acts, 1870 to 1935; and
- (b) any other laws relating to extradition that were in force in a Territory immediately before the commencement of this Act.

(2.) Nothing in this Act excludes the operation of the Imperial Act known as the Fugitive Offenders Act, 1881.

Repeal of
Extradition
Acts.

7. The *Extradition Act* 1903 and the *Extradition Act* 1933 are repealed.

Saving of
warrants in
force under
Extradition
Acts, 1870 to
1935.

8. Any warrant in force immediately before the commencement of this Act under the Imperial Acts known as the Extradition Acts, 1870 to 1935, as those Acts applied in the Commonwealth or in a Territory of the Commonwealth not forming part of the Commonwealth, in respect of a fugitive from a foreign state in relation to which this Act applies has effect as if it had been issued in accordance with the form prescribed by this Act by a person

having authority under this Act to issue such a warrant, and any proceedings instituted before the commencement of this Act under those Imperial Acts as so applied may be continued and dealt with under this Act.

PART II.—APPLICATION OF ACT.

9.—(1.) Where, immediately before the commencement of this Act—

Application of Act in relation to foreign states to which Extradition Acts, 1870 to 1935 applied.

- (a) under an Order in Council in force under the Imperial Acts known as the Extradition Acts, 1870 to 1935, those Acts applied in the case of a foreign state specified in the Order; and
- (b) those Acts, as they so applied, extended to the Commonwealth,

this Act applies in relation to that state.

(2.) If the operation of the Order was subject to any limitations, conditions, exceptions or qualifications, then, subject to this Part, this Act applies in relation to that state subject to those limitations, conditions, exceptions or qualifications.

(3.) The regulations may provide that this Act ceases to apply in relation to a foreign state specified in the regulations, being a foreign state in relation to which this Act applied by virtue of sub-section (1.) of this section, and, upon the coming into force of a regulation that so provides, this Act ceases to apply in relation to that state.

(4.) The coming into force of a regulation made for the purposes of the last preceding sub-section in relation to a foreign state does not prevent this Act from again applying in relation to that state by virtue of a regulation made for the purposes of the next succeeding section.

10.—(1.) Where, after the commencement of this Act, an extradition treaty (including an extradition treaty that affects or amends an earlier extradition treaty) comes into force between the Commonwealth and a foreign state—

Act may be applied in relation to foreign state by regulation.

- (a) if this Act applies in relation to the foreign state at the time of coming into force of that treaty—the regulations may provide that this Act applies in relation to that state after that time subject to such limitations, conditions, exceptions or qualifications as are necessary or desirable to give effect to that treaty and are specified in the regulations; or
- (b) if this Act does not apply in relation to the foreign state at the time of coming into force of that treaty—the regulations may provide that this Act applies in relation to that state after that time and may also

provide that it so applies subject to such limitations, conditions, exceptions or qualifications as are necessary or desirable to give effect to that treaty and are specified in the regulations.

(2.) The limitations, conditions, exceptions or qualifications referred to in the last preceding sub-section may, in relation to a foreign state, be expressed in the form that this Act applies in relation to that state subject to the extradition treaty referred to in that sub-section.

Effect of regulations applying Act in relation to foreign state.

11.—(1.) Subject to the next succeeding sub-section, where the regulations for the time being in force provide that this Act applies in relation to a foreign state, this Act applies in relation to that state.

(2.) Where the regulations for the time being in force provide that this Act applies in relation to a foreign state subject to any limitations, conditions, exceptions or qualifications, this Act applies in relation to that state subject to those limitations, conditions, exceptions or qualifications.

PART III.—EXTRADITION TO FOREIGN STATES.

Liability of fugitive to be surrendered.

12. Where this Act applies in relation to a foreign state, every fugitive from that state is liable, subject to this Act and to any limitations, conditions, exceptions or qualifications to which the application of this Act in relation to that state is subject, to be apprehended and surrendered to that state as provided by this Act and is so liable whether the offence to which the requisition for the surrender of the fugitive relates is alleged to have been committed, or was committed, before or after the commencement of this Act or before or after the time when this Act commenced to apply in relation to that state.

Restrictions on surrender of persons to foreign states.

13.—(1.) A person is not liable to be surrendered to a foreign state if the offence to which the requisition for his surrender relates is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character.

(2.) A person is not liable to be surrendered to a foreign state unless provision is made by a law of that state, or by a treaty in force between the Commonwealth and that state, by virtue of which the person will not, unless he has been returned, or has had an opportunity of returning, to Australia—

(a) be detained or tried in that foreign state for any offence that is alleged to have been committed, or was committed, before his surrender other than the offence to which the requisition for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that requisition was based; or

(b) be detained in that foreign state for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to that foreign state other than an offence of which he could be convicted upon proof of the facts on which the requisition referred to in the last preceding paragraph was based.

(3.) A person who is held in custody, or has been admitted to bail, in Australia in respect of an offence that is alleged to have been committed in Australia, or is undergoing a sentence for a conviction in Australia, is not liable to be surrendered to a foreign state until he has been discharged from custody, or the recognizances upon which he was admitted to bail have been discharged, as the case may be, whether as a result of his acquittal, on the expiration of his sentence or otherwise.

(4.) A person is not liable to be surrendered to a foreign state in respect of an offence if he has been acquitted or pardoned by a competent tribunal or authority in any country, or has undergone the punishment provided by the law of, or of a part of, any country, in respect of that offence or of another offence constituted by the same act or omission as that offence.

14. The Attorney-General shall not give a notice under sub-section (1.) of the next succeeding section, or issue a warrant under sub-section (2.) of section 18 of this Act, in respect of a fugitive from a foreign state in relation to which section 10 of this Act applies, if the Attorney-General has substantial grounds for believing that—

Restriction on power of Attorney-General to authorize the apprehension, or order the surrender, of a fugitive.

- (a) the requisition for the surrender of the fugitive, although purporting to have been made in respect of an offence for which, but for this section, he would be liable to be surrendered to that state, was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
- (b) if the fugitive is surrendered to that state, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.

15.—(1.) Subject to the next succeeding sub-section, where a requisition for the surrender of a fugitive who is, or is suspected of being, in Australia is made to the Attorney-General by a foreign state, the Attorney-General may, in his discretion—

Notice by Attorney-General.

- (a) if a warrant for the apprehension of the fugitive has not been issued under the next succeeding section—by notice in writing in accordance with Form 1 in the Second Schedule to this Act and directed to a

Magistrate, inform the Magistrate that the requisition has been made and authorize him to issue a warrant for the apprehension of the fugitive; or

- (b) if a warrant for the apprehension of the fugitive has been issued under the next succeeding section and a person has been apprehended under the warrant—by notice in writing in accordance with Form 2 in the Second Schedule to this Act and directed to a Magistrate before whom the person may be brought, inform the Magistrate that the requisition has been made.

(2.) If the Attorney-General is of the opinion that the fugitive is not liable to be surrendered to the foreign state, he shall not give a notice under the last preceding sub-section in respect of the fugitive.

Issue of
warrants.

16.—(1.) Where—

- (a) a Magistrate is authorized by the Attorney-General by a notice under paragraph (a) of sub-section (1.) of the last preceding section to issue a warrant for the apprehension of a fugitive; or
- (b) an application is made as prescribed to a Magistrate for the issue of a warrant for the apprehension of a fugitive who is, or is suspected of being, in Australia, and there is produced to the Magistrate such evidence as would, in his opinion, according to the law in force in the State or Territory of which he is a Magistrate, justify—
- (c) the apprehension of the fugitive by a member of the Police Force of that State or Territory without the issue of a warrant; or
- (d) the issue of a warrant for the apprehension of the fugitive, if the act or omission constituting the extradition crime had taken place in, or within the jurisdiction of, that State or Territory, the Magistrate shall issue a warrant for the apprehension of the fugitive in accordance with Form 3 or Form 4, as the case may be, in the Second Schedule to this Act.

(2.) A warrant issued under this section may be executed in any State or Territory.

(3.) Where a Magistrate issues a warrant under this section without having been authorized by the Attorney-General by a notice under paragraph (a) of sub-section (1.) of the last preceding section to issue the warrant, the Magistrate shall forthwith send to the Attorney-General a report stating that he has issued the warrant and the evidence produced to him on the application for the warrant.

(4.) It is a sufficient compliance with the last preceding sub-section in relation to any evidence consisting of testimony given on oath, or declared or affirmed to be true, by a person if—

(a) where the testimony was given in writing—the Magistrate sends to the Attorney-General a copy of that writing certified by him to be a true copy; or

(b) where the testimony was given orally—

(i) if the testimony has been reduced to writing—the Magistrate sends to the Attorney-General that writing certified by him to be a true record of the testimony; or

(ii) if the testimony has not been reduced to writing—the Magistrate sends to the Attorney-General the notes made by the Magistrate in respect of the testimony and certified by him to be a true summary of the testimony.

(5.) Where the Attorney-General—

(a) receives a report of the issue of a warrant and the evidence as provided by the last two preceding sub-sections; or

(b) otherwise becomes aware of the issue of such a warrant, he may, if he thinks fit, by order in writing, direct that the warrant be cancelled.

(6.) Where a person has been apprehended under a warrant that is so directed to be cancelled—

(a) if the person is held in custody—the person holding him in custody shall, upon receipt of the order, cause him to be released; or

(b) if he has been admitted to bail—the recognizances upon which he was admitted to bail are, by force of this sub-section, discharged.

17.—(1.) A person who is apprehended under a warrant issued in pursuance of the last preceding section shall, unless he is sooner released, be brought as soon as practicable before a Magistrate in the State or Territory in which he is apprehended.

Proceedings
after
apprehension
of person.

(2.) A Magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding seven days at any one time and, where a Magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before that Magistrate or before any other Magistrate.

(3.) In the application of the succeeding sub-sections of this section in relation to a person who has been apprehended under a warrant issued in pursuance of the last preceding section, the

expression "the Magistrate" means the Magistrate before whom the person is brought after he was apprehended or at the expiration of a period for which he has been remanded under this section, as the case may be.

(4.) If the person was apprehended under a warrant issued otherwise than in pursuance of an authority by the Attorney-General in a notice under paragraph (a) of sub-section (1.) of section 15 of this Act, the Magistrate shall remand the person in accordance with sub-section (2.) of this section until the Magistrate receives a notice under paragraph (b) of sub-section (1.) of section 15 of this Act from the Attorney-General informing the Magistrate that a requisition for the surrender of the person has been made to the Attorney-General by a foreign state.

(5.) Where the Magistrate does not receive such a notice within such time as is reasonable having regard to all the circumstances, the Magistrate shall—

- (a) if the person apprehended is held in custody—order that he be released; or
- (b) if he has been admitted to bail—make an order discharging the recognizances upon which he was admitted to bail.

(6.) If the person was apprehended under a warrant issued in pursuance of an authority by the Attorney-General in a notice under paragraph (a) of sub-section (1.) of section 15 of this Act or the Magistrate receives a notice by the Attorney-General under paragraph (b) of that sub-section and—

- (a) there is produced to the Magistrate a duly authenticated foreign warrant in respect of the person issued in the foreign state that made the requisition for the surrender of the person;
- (b) there is produced to the Magistrate—
 - (i) in the case of a person who is accused of an extradition crime—such evidence as would, in the opinion of the Magistrate, according to the law in force in the State or Territory of which he is a Magistrate, justify the committal for trial of the person if the act or omission constituting that crime had taken place in, or within the jurisdiction of, that State or Territory; or
 - (ii) in the case of a person who is alleged to have been convicted of an extradition crime—sufficient evidence to satisfy the Magistrate that the person has been convicted of that crime; and

- (c) the Magistrate is satisfied, after hearing any evidence tendered by the person, that the person is liable to be surrendered to the foreign state that made the requisition for the surrender,

the Magistrate shall, by warrant in accordance with Form 5 in the Second Schedule to this Act, commit the person to prison to await the warrant of the Attorney-General for his surrender but otherwise shall order that the person be released.

(7.) Where the Magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of the person to commit him to prison, he may, in lieu of committing him to prison, by warrant, order that he be held in custody at the place where he is for the time being, or at any other place to which the Magistrate considers that he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be committed to prison or he is surrendered and, in such a case, the warrant shall be in accordance with Form 5 in the Second Schedule to this Act with such variations as are necessary to meet the circumstances of the case.

(8.) Where, in pursuance of this section, a Magistrate commits a person to prison or otherwise orders that he be held in custody, he shall forthwith send to the Attorney-General a certificate to that effect and such report, if any, relating to the proceedings as he thinks fit.

18.—(1.) When, in pursuance of this Act, a Magistrate commits a person (in this section referred to as “ the prisoner ”) to prison, or otherwise orders that he be held in custody, to await the warrant of the Attorney-General for his surrender to a foreign state, the Magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of fifteen days from the date of the committal or order and that, if he asserts that his detention is unlawful, he may apply to a court of competent jurisdiction for a writ of *habeas corpus*.

Surrender
of fugitive to
foreign state.

(2.) After—

- (a) the expiration of the period referred to in the last preceding sub-section; or
- (b) if, within that period, an application for a writ of *habeas corpus* is made by the prisoner and the court to which the application is made or, where an appeal is brought from the decision of that court to another court, the other court does not order that the prisoner be released—the expiration of the period of fifteen days from the date of the decision of the first-mentioned court or the appellate court, as the case may be,

whichever is the later, the Attorney-General may, in his discretion, if he is satisfied that the prisoner is liable to be surrendered to the foreign state, by warrant in accordance with Form 6 in the Second Schedule to this Act or, where the prisoner is held in custody otherwise than at a prison, in accordance with that Form with such variations as are necessary to meet the circumstances of the case, order that the prisoner be delivered into the custody of a person specified in the warrant and be conveyed by that person to a place in the foreign state or within the jurisdiction of, or of a part of, the foreign state and there surrendered to some person appointed by the foreign state to receive him.

(3.) A warrant issued in pursuance of the last preceding subsection may be executed according to its tenor.

(4.) If the prisoner escapes from the custody of the person executing the warrant in or to a State or Territory, he may be retaken in the same manner as a person accused of an offence against the law in force in that State or Territory may be retaken upon an escape from lawful custody.

(5.) Any property in the possession of the prisoner at the time of his apprehension that may be material as evidence in proving the offence to which the requisition for his surrender relates shall, if the Attorney-General so directs, be delivered up with the prisoner on his surrender.

Discharge of
fugitive who is
not conveyed
out of Australia
within two
months.

19.—(1.) Where a person who, in pursuance of this Part, has been committed to prison, or otherwise ordered to be held in custody, is in custody in Australia at the expiration of two months after—

(a) the date of the committal or order; or

(b) if an application for a writ of *habeas corpus* has been made by the person—the date of the decision of the court to which the application was made or, where an appeal has been brought from that decision to another court, the date of the decision of the other court,

whichever is the later, the Supreme Court of the State or Territory in which the person is held in custody, upon application made to it by the person and upon proof that reasonable notice of the intention to make the application has been given to the Attorney-General, shall, unless reasonable cause is shown for the delay, order that the person be released.

(2.) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred upon the Supreme Court of each Territory, to hear and determine applications under this section.

(3.) The jurisdiction with which the Supreme Court of a State is invested by this section is subject to the conditions and restrictions specified in paragraphs (a), (b) and (c) of sub-section (2.) of section 39 of the *Judiciary Act* 1903–1966.

(4.) The jurisdiction of a Court for the purposes of this section may be exercised by the Court constituted by a single Judge.

PART IV.—EXTRADITION FROM FOREIGN STATES.

20. In this Part, “extraditable crime” means an offence (wherever committed) against the law in force in Australia or in a part of Australia, being an offence that—

Definition.

- (a) is described in the First Schedule to this Act; or
- (b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

21. Where a person accused or convicted of an extraditable crime is, or is suspected of being, in a foreign state or within the jurisdiction of, or of a part of, a foreign state, the Attorney-General may make a requisition to that state for the surrender of the person.

Requisition to foreign state for surrender of person to be made by Attorney-General.

22. Where a person accused or convicted of an extraditable crime is surrendered by a foreign state, the person may be brought into Australia and delivered to the proper authorities to be dealt with according to law.

Person surrendered may be brought into Australia.

23. Where a person accused or convicted of an extraditable crime is surrendered by a foreign state, the person shall not, unless he has been returned, or has had an opportunity of returning, to that foreign state—

Person surrendered by foreign state in respect of an offence not to be prosecuted or detained for other offences.

- (a) be detained or tried in Australia for any offence that is alleged to have been committed, or was committed, before his surrender other than the offence to which the requisition for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that requisition was based; or
- (b) be detained in Australia for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to Australia other than an offence of which he could be convicted upon proof of the facts on which the requisition referred to in the last preceding paragraph was based.

PART V.—MISCELLANEOUS.

Arrangements
between
Governor-
General and
Governors
of States.

24.—(1.) The Governor-General may arrange with the Governor of a State for the performance by all or any of the persons who from time to time hold office as Chief, Stipendiary, Police, Resident or Special Magistrates of that State of the functions of a Magistrate under this Act.

(2.) A copy of each arrangement made under this section shall be published in the *Gazette*.

Jurisdiction of
State courts
preserved.

25. A matter arising under an extradition treaty shall, for the purposes of section 38 of the *Judiciary Act* 1903–1966, be deemed not to be a matter arising directly under a treaty.

Foreign
documents may
be admitted in
evidence if duly
authenticated.

26.—(1.) In a proceeding under this Act—

- (a) a document, duly authenticated, that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in a proceeding in a foreign state is admissible as evidence of the matters stated in the testimony;
- (b) a document, duly authenticated, that purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in a proceeding in a foreign state is admissible in evidence;
- (c) a document, duly authenticated, that certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, a foreign state is admissible as evidence of the fact and date of the conviction; and
- (d) a document, duly authenticated, that purports to be a foreign warrant is admissible in evidence.

(2.) A document is duly authenticated for the purpose of being admitted in evidence in a proceeding under this Act if—

- (a) in the case of a document that purports to set out testimony given, declared or affirmed by a person in a proceeding in a foreign state—the document purports to be certified by a Judge, Magistrate or officer in or of that foreign state to be the original document containing or recording that testimony or a true copy of that original document;
- (b) in the case of a document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in a proceeding in a foreign state—the document purports to be certified by a Judge, Magistrate or officer in or of that foreign state to have been, or to be a true copy of a document that has been, so received in evidence;

- (c) in the case of a document that certifies that a person has been convicted in a foreign state of an offence—the document purports to be certified by a Judge, Magistrate or officer in or of that foreign state; or
- (d) in the case of a document that purports to be a foreign warrant—the document purports to be signed by a Judge, Magistrate or officer in or of the foreign state in which the document was issued,

and the document purports to be authenticated by the oath of a witness or to be sealed with the official seal of a Minister of State in or of that foreign state.

(3.) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other law of the Commonwealth or any law of a State or Territory.

27.—(1.) The Attorney-General may, by notice in writing, authorize a Magistrate to take evidence for the purposes of a criminal matter pending in a court or tribunal of a foreign state other than a matter relating to an offence that is, by its nature or by reason of the circumstances in which it is alleged to have been committed, an offence of a political character.

Taking of evidence in respect of criminal matters pending in courts of foreign states.

(2.) Upon receipt of the notice, the Magistrate shall—

- (a) take the evidence of each witness appearing before him to give evidence in relation to the matter in like manner as if the witness were giving evidence on a charge against a person for an indictable offence against the law in force in the State or Territory of which he is a Magistrate;
- (b) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and
- (c) cause the writing so certified to be sent to the Attorney-General.

(3.) The evidence of such a witness may be taken in the presence or absence of the person charged with the offence against the law of, or of the part of, the foreign state and the certificate by the Magistrate that the evidence was taken by him shall state whether the person so charged was present or absent when the evidence was taken.

(4.) The laws of each State or Territory with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against a person for an offence against the law of that State or Territory apply, so far as they are capable of

application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section.

Conditions of imprisonment.

28. The laws of a State or Territory with respect to—

(a) the conditions of imprisonment of persons imprisoned in that State or Territory to await trial for offences against the law of that State or Territory;

(b) the treatment of such persons during imprisonment; and

(c) the transfer of such persons from prison to prison,

apply, so far as they are capable of application, in relation to persons who have been committed to prison in that State or Territory in pursuance of this Act.

Application of Removal of Prisoners (Territories) Act.

29. The *Removal of Prisoners (Territories) Act* 1923–1962 applies, with such modifications and adaptations, if any, as are prescribed, to and in relation to a person who has been committed to prison in pursuance of this Act by a Chief, Stipendiary, Police, Resident or Special Magistrate of a Territory in like manner as it applies to and in relation to a person who has been sentenced to imprisonment in that Territory.

Forms need not be strictly complied with.

30. Strict compliance with the forms in the Second Schedule to this Act is not required and substantial compliance is sufficient.

Regulations.

31. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular—

(a) prescribing the practice and procedure in relation to the performance by Magistrates of functions under this Act, including the remanding of fugitives either in custody or on bail, the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations, the payment of expenses of witnesses and the protection and immunity of Magistrates, of barristers and solicitors appearing before Magistrates and of witnesses; and

(b) prescribing penalties not exceeding a fine of Five hundred dollars for offences against the regulations.



THE SCHEDULES

FIRST SCHEDULE

Sections 4 and 20.

1. Wilful murder; murder.
2. Manslaughter.
3. An offence against the law relating to abortion.
4. Maliciously or wilfully wounding or inflicting grievous bodily harm.
5. A malicious act with intent to injure passengers on a railway.
6. Assault occasioning actual bodily harm.
7. Assaulting a Magistrate, a peace officer or a public officer.
8. Assault on board a ship or aircraft with intent to destroy life or to do grievous bodily harm.
9. Rape.
10. Unlawful sexual intercourse with a female.
11. Indecent assault.
12. Procuring, or trafficking in, women or young persons for immoral purposes.
13. Bigamy.
14. Kidnapping; abduction; false imprisonment; dealing in slaves.
15. Stealing, abandoning, exposing or unlawfully detaining a child.
16. Bribery.
17. Perjury; subornation of perjury; conspiring to defeat the course of justice.
18. Arson.
19. An offence concerning counterfeit currency.
20. An offence against the law relating to forgery.
21. Stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property or credit by false pretences; receiving stolen property; any other offence in respect of property involving fraud.
22. Fraud by an agent, bailee, banker, factor or trustee.
23. Burglary; housebreaking; any similar offence.
24. Robbery.
25. Blackmail or extortion by means of threats or by abuse of authority.
26. An offence against the law relating to bankruptcy or insolvency.
27. An offence against the law relating to companies.
28. Maliciously or wilfully damaging property.
29. An act done with the intention of endangering a vehicle, vessel or aircraft.
30. An offence against the law relating to dangerous drugs or narcotics.
31. Piracy.
32. Revolt against the authority of the master of a ship or the commander of an aircraft.
33. Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence described in a preceding paragraph of this Schedule.

SECOND SCHEDULE

FORM 1

Section 15.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

NOTICE BY ATTORNEY-GENERAL

To _____, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*.

or

To _____, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the Territory of _____ [or a Magistrate of the District Court of the Island of Nauru].

Whereas a requisition has been made to me, the Attorney-General of the Commonwealth, by _____, a foreign state in relation to which the *Extradition (Foreign States) Act 1966* applies, for the surrender of _____ (in this Notice referred to as "the said fugitive"), who is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ and is, or is suspected of being, in Australia or a Territory of the Commonwealth:

Now therefore I, the Attorney-General of the Commonwealth, inform you that the said requisition has been made and authorize you to issue a warrant for the apprehension of the said fugitive provided that the provisions of the *Extradition (Foreign States) Act 1966* relating to the issue of such a warrant have, in your opinion, been complied with.

Given under my hand at _____ this _____ day of _____, 19 _____.

FORM 2

Section 15.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

NOTICE BY ATTORNEY-GENERAL

To _____, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*.

or

To _____, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the Territory of _____ [or a Magistrate of the District Court of the Island of Nauru].

I, the Attorney-General of the Commonwealth, hereby inform you that a requisition has been made to me by _____, a foreign state in relation to which the *Extradition (Foreign States) Act 1966* applies, for the surrender of _____, who is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____.

Given under my hand at _____ this _____ day of _____, 19 _____.

SECOND SCHEDULE—continued

FORM 3

Section 16.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

WARRANT OF APPREHENSION

To all Commonwealth Police Officers and all members of the Police Forces of the States and Territories of the Commonwealth.

Whereas the Attorney-General of the Commonwealth has notified me, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*, that a requisition has been made to him for the surrender of _____ (in this Warrant referred to as "the said fugitive"), who is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ and is, or is suspected of being, in Australia or a Territory of the Commonwealth:

or

Whereas the Attorney-General of the Commonwealth has notified me, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the Territory of _____ [or a Magistrate of the District Court of the Island of Nauru], that a requisition has been made to him for the surrender of _____ (in this Warrant referred to as "the said fugitive"), who is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ and is, or is suspected of being, in Australia or a Territory of the Commonwealth:

This is therefore to authorize and command you forthwith to find the said fugitive in any State or Territory of the Commonwealth and, having found him, to apprehend him and, if he is apprehended in a State, to bring him before any Chief, Stipendiary, Police, Resident or Special Magistrate of that State who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*, or, if he is apprehended in a Territory of the Commonwealth, to bring him before any Chief, Stipendiary, Police, Resident or Special Magistrate of that Territory or, in the case of the Territory of Nauru, before a Magistrate of the District Court of the Island of Nauru, to show cause why he should not be surrendered to _____ in pursuance of the *Extradition (Foreign States) Act 1966*.

Given under my hand at _____ this _____ day of _____, 19 _____.

FORM 4

Section 16.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

WARRANT OF APPREHENSION

To all Commonwealth Police Officers and all members of the Police Forces of the States and Territories of the Commonwealth.

Whereas it has been shown to me, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*, that _____ (in this Warrant referred to as "the said fugitive") is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ and the said fugitive is, or is suspected of being, in Australia or a Territory of the Commonwealth:

or

Whereas it has been shown to me, a Chief [Stipendiary, Police, Resident *or* Special] Magistrate of the Territory of _____ [or a Magistrate of the District Court of the Island of Nauru], that _____ (in this Warrant referred to as "the said fugitive") is accused [or has been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ and the said fugitive is, or is suspected of being, in Australia or a Territory of the Commonwealth:

SECOND SCHEDULE—*continued*FORM 4—*continued*

This is therefore to authorize and command you forthwith to find the said fugitive in any State or Territory of the Commonwealth and, having found him, to apprehend him and, if he is apprehended in a State, to bring him before any Chief, Stipendiary, Police, Resident or Special Magistrate of that State who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*, or, if he is apprehended in a Territory of the Commonwealth, to bring him before any Chief, Stipendiary, Police, Resident or Special Magistrate of that Territory or, in the case of the Territory of Nauru, before a Magistrate of the District Court of the Island of Nauru, to be further dealt with according to law.

Given under my hand at _____ this _____ day of _____, 19 ____ .

FORM 5

Section 17.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

WARRANT OF COMMITMENT

To all Commonwealth Police Officers in the State [or Territory] of _____ and all members of the Police Force of that State [or Territory] and to the Keeper of the Prison at _____ in that State [or Territory].

Whereas on this _____ day of _____, 19____, (in this Warrant referred to as "the said fugitive") has been brought before me, a Chief [Stipendiary, Police, Resident or Special] Magistrate of the State of _____, being a person who holds an office specified in an arrangement made under section 24 of the *Extradition (Foreign States) Act 1966*, to show cause why he should not be surrendered in pursuance of the *Extradition (Foreign States) Act 1966* on the ground of his being accused [or having been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ :

or

Whereas on this _____ day of _____, 19____, (in this Warrant referred to as "the said fugitive") has been brought before me, a Chief [Stipendiary, Police, Resident or Special] Magistrate of the Territory of _____ [or a Magistrate of the District Court of the Island of Nauru], to show cause why he should not be surrendered in pursuance of the *Extradition (Foreign States) Act 1966* on the ground of his being accused [or having been convicted] of the offence of _____ alleged to have been committed [or committed] in [or within the jurisdiction of] _____ :

And whereas no sufficient cause has been shown to me why the said fugitive should not be surrendered in pursuance of the *Extradition (Foreign States) Act 1966* :

This is therefore to authorize and command—

- (a) you, the said police officers, to convey the said fugitive to the prison at _____ in the State [or Territory] of _____ and deliver him there to the Keeper of the said prison together with this warrant; and
- (b) you, the said Keeper, to receive the said fugitive into your custody in the said prison and there safely to keep him until he is delivered therefrom in accordance with law.

Given under my hand at _____ this _____ day of _____, 19 ____ .

SECOND SCHEDULE—*continued*

FORM 6

Section 18.

COMMONWEALTH OF AUSTRALIA

Extradition (Foreign States) Act 1966

WARRANT FOR SURRENDER OF FUGITIVE

To the Keeper of the Prison at _____ and to

Whereas _____ (in this Warrant referred to as "the said fugitive"), who is accused [*or has been convicted*] of the offence of _____ alleged to have been committed [*or committed*] in [*or within the jurisdiction of*] _____ was delivered into the custody of you the said Keeper by warrant dated the day of _____, 19____, in pursuance of the *Extradition (Foreign States) Act 1966* [*or the Removal of Prisoners (Territories) Act 1923-1962*]:

Now therefore I, the Attorney-General of the Commonwealth, in pursuance of the *Extradition (Foreign States) Act 1966*, order—

(a) you, the said Keeper, to deliver the said fugitive into the custody of the said _____; and

(b) you, the said _____, to receive the said fugitive into your custody and to convey him to a place in or within the jurisdiction of _____ and there surrender him to some person appointed to receive him.

Given under my hand at _____ this _____ day of _____, 19____.
