



Crimes Administration of Sentences Amendment (Assistance in Foreign Criminal Matters) Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Thursday 28 June 2007.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.55 p.m.], on behalf of the Hon. John Hazistergos: I move:

That this bill be now read a second time.

The Crimes Administration of Sentences Amendment (Assistance in Foreign Criminal Matters) Bill 2007 introduces machinery provisions to complement the Commonwealth Mutual Assistance in Criminal Matters Act 1987, which provides that the Commonwealth Attorney-General may make arrangements for the travel of an offender to a foreign country for the purpose of giving evidence at a proceeding or giving assistance in relation to an investigation relating to a criminal matter. The bill amends the Crimes (Administration of Sentences) Act 1999 by establishing an approval process that allows an offender to travel to a foreign country pursuant to a request made by the Commonwealth Attorney-General under the Commonwealth Act. During his second reading speech on the Mutual Assistance in Criminal Matters Bill on 30 April 1987, Mr Lionel Bowen said:

The bill will provide a legislative basis for Australia to enter into arrangements with other countries whereby it can request and grant assistance in criminal matters. The assistance will relate to both the investigation and prosecution of crime. This Bill represents a significant initiative of this Government in its fight against organised and international crime.

The Commonwealth Act has several objects outlined in section 5, the relevant ones for the purpose of this bill being to regulate the provision by Australia of international assistance in criminal matters when a request is made by a foreign country for any of the following: first, the taking of evidence, or the production of any document or other article for the purposes of a proceeding in a foreign country; second, to facilitate provision by Australia of international assistance in criminal matters when a request is made by a foreign country for the making of arrangements for a person who is in Australia to travel to the foreign country to give evidence in a proceeding or to give assistance in relation to an investigation; and, third, to facilitate the obtaining by Australia of international assistance in criminal matters. I seek the leave of the House to incorporate the remainder of the second reading speech in *Hansard*.

Leave granted.

Division 2 of the Commonwealth Act relates to requests by foreign countries, namely, requests for the giving of evidence at proceedings in foreign countries and requests for assistance in relation to criminal investigations in foreign countries. Under the scheme created by the Commonwealth Act, a foreign country may

request the attendance of a Federal inmate or parolee or a State inmate or parolee who is in Australia, whether or not in custody, if there are reasonable grounds to believe the inmate is capable of giving evidence relevant to a proceeding or assistance in relation to an investigation and the inmate has consented to do so. If the foreign country has given adequate undertakings concerning the inmate or parolee, the Commonwealth Attorney-General may make arrangements for the travel of the inmate or parolee to the foreign country in the custody of a police officer or a prison officer for the requested purpose.

If the offender is a Federal inmate or Federal parolee, the Commonwealth Attorney-General may make the international arrangements and direct the transfer of the offender under the Commonwealth Act without recourse to State legislation. If, however, the offender is a State inmate or parolee, or both a State inmate or parolee and a Federal inmate or parolee, the Commonwealth Act requires that the Commonwealth Attorney-General obtain approval from the relevant State authority for the inmate to be released for the purpose of travelling to the foreign country. To grant such approval requires complementary State-based legislation to be enacted for the "making or giving of any necessary directions or approvals in relation to the release of the prisoner". The explanatory memoranda to the bill that introduced the Commonwealth Act states "complementary State legislation will be required to facilitate the transfer of joint Federal-State prisoners and State prisoners".

The Commonwealth Act refers to "a prisoner who is being held in custody" being "released from prison for the purpose of travelling to the foreign country". Legislative authority for any release from custody of an inmate is required except for the exercise of the prerogative of mercy or release from custody pursuant to a court order, such as, habeas corpus or completion of sentence or release to parole or release under the Bail Act 1978. The person having custody of an inmate is required to maintain that custody in accordance with the order remitting the person to custody or applicable legislation.

This bill will not release an inmate from custody. Whilst he may be physically transferred from the confines of a New South Wales correctional centre for a limited time, he will continue to be in custody for the period of his absence. He will be in the custody of a police officer or correctional officer appointed by the Commonwealth Attorney-General under the Commonwealth Act. On the completion of the arrangement he will be returned to a New South Wales correctional centre, unless his sentence expires in the interim. The bill confers authority on the Commissioner of Corrective Services to grant approval, by order in writing, for an inmate or periodic detainee to travel to a foreign country for the purpose of the Commonwealth Act upon request from the Commonwealth Attorney-General. The bill also confers similar authority on the State Parole Authority in relation to an offender released to parole or subject to a home detention order.

The Commonwealth Act contains provisions relating to undertakings that must be given by a foreign country in relation to offenders transferred under the Act—particularly the making of appropriate arrangements for the keeping of an inmate in custody in the foreign country, an undertaking that an inmate will not be released from custody in the foreign country unless entitled to be released from custody under Australian law, and that the offender will be returned to Australia at the completion of the proceedings or the investigation, as the case may be.

The Commonwealth Act also provides that the foreign country must undertake that the offender will not be detained, prosecuted or punished for any offence alleged to have been committed in that foreign country before their departure from Australia or

be subject to any civil suit in the foreign country that they would not otherwise be subject to outside the foreign country. Most importantly, the arrangement with the Commonwealth Attorney-General under the Commonwealth Act contains the essential requirement that an inmate be returned to pre-existing custody upon return from the foreign country.

I now turn to the detail of the bill. Item [5] of schedule 1 inserts a new section 255A into the Crimes (Administration of Sentences) Act 1999. The proposed section allows the Commissioner of Corrective Services or, in the case of an offender who is on release on parole or is subject to a home detention order, the State Parole Authority to grant approval to a request from the Commonwealth Attorney-General for an offender to be authorised to travel to a foreign country for the purpose of giving evidence in a proceeding or giving assistance in relation to an investigation relating to a criminal matter. The proposed section also provides that an offender who is the subject of such an approval is exempt from the requirements made by or under the principal Act or any other Act that would prevent the offender from travelling to the foreign country—for example, reporting to a probation and parole officer or reporting for community service work. Items [1] to [4] of schedule 1 make consequential amendments. I commend the bill to the House.