

# **Extradition (United States of America) Regulations (Amendment) 1992 No. 394**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1992 No. 394**

Issued by the authority of the Attorney-General

#### Extradition Act 1988

#### Extradition (United States of America) Regulations (Amendment)

Section 55 of the Extradition Act 1988 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 11 of the Act provides that regulations may apply the Act to a specified extradition country to give effect to a bilateral extradition treaty between Australia and that country.

An extradition treaty between Australia and the United States of America was signed on 14 May 1974 (the Treaty). The Treaty is given effect by the Extradition (United States of America) Regulations made on 24 November 1988 (the principal regulations). Although the Treaty has worked well, both countries recognised the need to modernise it in the light of international developments in extradition. To this end, a Protocol to the Treaty was signed on 4 September 1990 at Seoul (the Protocol).

The Protocol amends the Treaty and is designed to assist the smooth working of the extradition relationship between Australia and the United States of America. The Protocol has two principal effects on the Treaty. First, it modifies the evidentiary standard so as to simplify the documentation required to accompany an extradition request. Secondly, it removes the specific list of extraditable offences and provides instead for the surrender of persons for offences punishable under the laws of both countries by imprisonment for at least, one year.

The Protocol also contains new provisions on the seizure and surrender of property to assist both countries obtain evidence required for the prosecution of extradited persons.

Article 17 of the Protocol provides that it comes into force on the date on which the Contracting Parties exchange written notification that they have complied with their respective requirements for the entry into force of the Protocol. The United States of America recently advised Australia that it has complied with the requirements under its law to bring the Protocol into effect. Australia's requirement for the entry into force of the Protocol is to make Regulations which amend the principal regulations by applying the Act to the United States of America subject to the Treaty as amended by the Protocol.

The Regulations will amend the principal regulations by applying the Act to the United States of America subject to the Treaty as amended by the Protocol.

Details of the Regulations are as follows:

Regulation 1 provides for the Regulations to commence on 21 December 1992 which is the date the Protocol comes into effect between Australia and the United States of America on the basis that the exchange of the necessary written notification between Australia and the United States of America takes place on the same day in accordance with Article 17 of the Protocol.

Regulation 2 amends the principal regulations as set out in the Regulations.

Regulation 3 omits that part of the principal regulations which refers to the Treaty as being set out in the Schedule to the principal regulations and substitutes instead a provision which amends the Treaty now set out in Schedule 1 by the Protocol set out in Schedule 2 of the Regulations. The effect of this Regulation is to apply the Act to the United States of America subject to the Treaty as amended by the Protocol.

Regulation 4 omits the term "Schedule" in the principal regulations which embodied the Treaty and substitutes that term with "Schedule 1".

Regulation 5 provides for a new Schedule 2, which embodies the Protocol.