

EXPLANATORY STATEMENT

STATUTORY RULES 1988 NO. 281

SUBJECT: EXTRADITION ACT 1988

EXTRADITION (COMMONWEALTH COUNTRIES) REGULATIONS

Section 55 of the Extradition Act 1988 ('the Act') provides that the Governor-General may make regulations, not inconsistent with the Act, 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. Subparagraph 11(1)(b) provides that the Regulations may make provision to the effect that the Act applies in relation to a specified extradition country subject to other limitations, conditions, exceptions or qualifications.

Section 4 of the Acts Interpretation Act 1901 provides that where an Act confers power to make an instrument of a legislative character then, unless the contrary intention appears, the power may be exercised before the Act concerned comes into operation. Executive Council Minute no. 102 recommends that 1 December 1988 be fixed as the day upon which the Act comes into operation. The proposed regulations will take effect, pursuant to subsection 4(2) of the Acts Interpretation Act, on the same day as the Act comes into operation.

Details of the Regulations are set out below.

Clauses 1 and 2 will provide for the citation of the Regulations and definitions for the Regulations.

Clause 3 will provide that each of the countries, colonies, territories and protectorates specified in the Schedule to the Regulations is declared to be an extradition country for the purposes of the Act.

The Schedule to the Regulations lists all the countries which were declared to be Commonwealth Countries under the Extradition (Commonwealth Countries) Regulations made under the Extradition (Commonwealth Countries) Act 1966 with the exception of Fiji. Fiji can not be included in the Schedule because it is no longer a Commonwealth country. The question of separate regulations applying the Act to Fiji is under consideration.

In addition to the countries listed in the Schedule to the prior Regulations the Schedule to these Regulations also includes all British Dependencies. This course has been adopted because it is the practice of the United Kingdom to prescribe Australia in respect of each dependent territory and U.K. authorities advised that it is appropriate that Australia separately designate each dependency.

Clause 4, in reliance upon the definition of "political offence" contained in section 5 of the Act, will provide that the taking, or endangering, attempting to take or endanger or participating in the taking or endangering of the life of a person being an offence committed in circumstances in which such conduct creates a collective danger to the lives of other persons shall not be regarded as a political offence in relation to declared Commonwealth Countries.

Clause 5 will provide that the definition of "extradition offence" contained in the Act is modified in relation to each declared Commonwealth Country so as to change the reference to 12 months to a reference to 2 years.

Clause 6 will introduce in relation to each declared Commonwealth Country the requirement that the sufficient evidence test defined in section 11 of the Act be satisfied before extradition can be granted to such country.

Clause 7 will permit the Attorney-General to refuse to surrender a person to a declared Commonwealth Country in any case where he or she is satisfied that it would be unjust or oppressive or too severe a punishment to surrender the person.