

## EXPLANATORY STATEMENT

STATUTORY RULES 1988 No. 280

SUBJECT:            EXTRADITION ACT 1988

### EXTRADITION 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 and in particular prescribing the practice and procedure relating to the performance by Magistrates of functions under the Act.

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.

The proposed Extradition Regulations (the Regulations) will replace in substantially the same form the machinery provisions of the existing Extradition (Foreign States) Regulations and the Extradition (Commonwealth Countries) Regulations which will cease to operate when the Extradition (Foreign States) and Extradition (Commonwealth Countries) Act 1966 are repealed upon proclamation of the Extradition Act 1988 and the consequent coming into force of the Extradition (Repeal and Consequential Provisions) Act 1988. It is proposed that these Acts come into force on 1 December 1988 - see Executive Council Minute No 102.

#### The Regulations:

- . empower Magistrates to issue summonses requiring the attendance of witnesses to answer questions and produce documents.
- . provide for certain matters in relation to witnesses eg. duty to attend, arrest for failure to attend, witness fees, power to examine on oath or affirmation, offences by witnesses.
- . create offences in relation to magistrates
- . provide protections and immunities to magistrates, legal practitioners and witnesses
- . govern matters arising from non-compliance with bail conditions including forfeiture of recognizance and issue of a warrant for arrest
- . provide forms for warrants for transport of a person through Australia

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The Regulations where appropriate also prescribe forms in relation to matters required by the Act to be done in statutory form. The details of the proposed Regulations are as follows:

Clauses 1 and 2: are citation and interpretation provisions

Clause 3: provides that a form in the Schedule to the Regulations shall be the statutory form for the purposes of a provision of the Act.

Clause 4: Subclause (1) empowers a Magistrate performing functions under the Act to issue a summons in accordance with Form 1 in the Schedule requiring attendance by a person as a witness to give evidence, answer questions and to produce documents.

Subclause (2) provides for the method of service of a summons.

Clause 5: provides that a person summoned under clause 4 shall attend at the place and time on the date specified until excused or released by the Magistrate.

Clause 6: Subclause (1) provides that a Magistrate may issue a warrant for apprehension of a person summoned under clause 4 who fails to attend as required by clause 5 if the Magistrate is satisfied as to service of the summons and that a reasonable sum for expenses of attendance were paid or tendered to the person. The warrant shall be in accordance with Form 2 in the Schedule.

Subclauses (2), (3) and (4) provide:

- . for the arrest and detention in custody of a person named in the warrant
- . for execution of a warrant in any State or Territory
- . that apprehension of a person does not relieve the person from liability incurred by failure to attend

Clause 7: Subclause (1) entitles a witness to receive payment of such fees and travelling allowances equivalent to those payable to a person attending as a witness attending a court of summary jurisdiction in the State or Territory of appearance or in special circumstances such fees and allowances as the Magistrate directs

Subclauses (2) and (3) provide respectively for deduction of expenses of attendance previously paid and for the person who has requested that the witness be summoned to pay such fees and allowances.

Clause 8: Subclause (1) empowers a Magistrate to administer an oath or affirmation to a witness and to examine a witness on oath or affirmation.

Subclause (2) provides that a person may make an affirmation instead of taking an oath, subclause (3) provides that forms of oaths or affirmations shall be the same as nearly as practicable, as those administered in the Supreme Court of the State or Territory concerned and subclause (4) provides that an affirmation has the same effect as if the person had taken an oath.

Clause 9: provides for the following offences by persons summoned to attend before a Magistrate who, without reasonable excuse:

- . fail to attend as required by the summons after payment or tender of reasonable expenses;
- . refuse to be sworn or to make an affirmation or to answer any question as required by the Magistrate
- . refuse or fail to produce a document or article when required

and prescribes a penalty of \$500 for such offences.

Clause 10: creates certain offences in relation to Magistrates when Magistrates are performing functions under the Act and prescribes a penalty of \$1000 for any of the offences.

Clause 11: provides appropriate protection to the following persons in relation to the performance of functions under the Act:

- . Magistrates
- . barristers and solicitors appearing before a Magistrate
- . a person appearing unrepresented before a Magistrate
- . witnesses summonsed to attend before a Magistrate

Clause 12: Subclause (1) provides that a person who fails to comply with conditions of a recognizance forfeits, if a magistrate so orders, such recognizance.

Subclause (2) provides that a forfeited recognizance may be enforced as a fine in a court of the State or Territory where the recognizance was declared to be forfeit and subclause (3) provides for transmission to the Commonwealth Attorney-General of an amount so recovered.

Clause 13: Subclause (1) provides that a magistrate may issue a warrant in accordance with Form 3 in the Schedule for the arrest of a person who refuses or fails to comply with a condition of a recognizance pursuant to which he or she was admitted to bail in that State or Territory pending determination by a court under section 18 or section 19 of the Act of the person's eligibility to be surrendered to the requesting country.

Subclause (2) allows a magistrate to issue a warrant of apprehension for a person where he or she is satisfied that there are reasonable grounds for believing that the person will not comply with a condition of a recognizance entered into by him.

Subclause (3) provides that section 15 of the Act, concerning remand of a person in custody or on bail, applies where a person has been arrested pursuant to subclause (1) and subclause (4) allows the magistrate to take into account, for example, the fact that the person has already breached a condition of a recognizance when determining how the person ought subsequently be remanded pending the conduct of proceedings.

Subclause (5) provides that arrest of a person pursuant to subclauses (1) and (2) is not wrongful by reason only that the arresting police officer was not in possession of the warrant at the time of the arrest.

Clause 14: provides that a warrant authorising a person to be held in custody in Australia to facilitate the person's transit through Australia for the purpose of extradition to an extradition country may be in accordance with Form 28 in the Schedule and Clause 15 provides where the Attorney-General has authorised a magistrate to issue a warrant to hold the person in custody for a further specified period the warrant may be in accordance with Form 29 in the Schedule.