

EXPLANATORY STATEMENT

STATUTORY RULES 1988 NO. 293

SUBJECT: EXTRADITION ACT 1988

"BILATERAL TREATY" 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)(a) provides that regulations may apply the Act to a specified extradition country to give effect to a bilateral extradition treaty.

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.

Each set of Regulations follows the same form and will apply the Act to the following countries subject, in each case, to the relevant extradition treaty:

Republic of Austria
Kingdom of Belgium
Republic of Finland
State of Israel
Republic of Italy
Grand Duchy of Luxembourg
Kingdom of the Netherlands
Norway
Republic of Portugal
Kingdom of Spain
Sweden
United States of America

The proposed Regulations will replace regulations made under the Extradition (Foreign States) Act 1966 ('EFS Act') and differ only in that the Act is applied to the country concerned subject only to the bilateral treaty. The EFS Act will be repealed by the Extradition (Repeal and Consequential Provisions) Act 1988 ('ERC Act'). The ERC Act will come into operation on the same day as the Extradition Act 1988 comes into the operation. References in the previous regulations to multilateral conventions dealing, inter alia, with extradition

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are not included in these regulations because each of the treaties given domestic legal effect to by these regulations will, of its own force, permit extradition for multilateral convention offences and will therefore ensure that Australia's obligations under the multilateral conventions, qua the listed countries, are capable of being fulfilled.

Details of the proposed Regulations in each case are as follows.

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

Clause 3 will declare, in each case, the relevant country to be an extradition country for the purposes of the Act.

Clause 4 will apply the Act in each case to the relevant country subject to the terms and conditions of bilateral treaties between Australia and each relevant country. In each case the relevant treaty is reproduced as a Schedule to the Regulations.