

# Extradition (Republic of Paraguay) Regulations 1998 1998 No. 362

## EXPLANATORY STATEMENT

### STATUTORY RULES 1998 No. 362

Issued by the Authority of the Minister for Justice and Customs

#### *Extradition Act 1988*

#### Extradition (Republic of Paraguay) Regulations 1998

Section 55 of the *Extradition Act 1988* ("the Act") provides that the Governor-General may make regulations prescribing all 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. Paragraph 11 (1)(a) of the Act provides that regulations may apply the Act to a specified extradition country subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to a bilateral extradition treaty between Australia and that country, being a treaty a copy of which is set out in the regulations.

The Extradition (Republic of Paraguay) Regulations ("the Regulations") give effect in Australian domestic law to the Treaty on Extradition between Australia and the Republic of Paraguay, signed at Buenos Aires on 30 December 1997 ("the Treaty"). In accordance with the Government's policy of greater parliamentary involvement in Australia's treaty-making processes, the Treaty was tabled in Parliament, together with a National Interest Analysis (NIA), on 3 March 1998.

On 27 October 1998 the Australian Embassy in Buenos Aires received notification from the Republic of Paraguay, in accordance with Article 16 of the Treaty, that its domestic constitutional requirements for the Treaty's entry into force had been complied with. Australia's requirement for the Treaty's entry into force was the making of these Regulations. The Treaty enters into force 30 days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of the Treaty have been complied with. The Republic of Paraguay will be notified on 30 April 1999 that Australia's requirements for the Treaty's entry into force have been complied with. Thirty days after that date, that is on 30 May 1999, the Treaty will enter into force. Accordingly, 30 May 1999 is also the commencement date of the Regulations.

Extradition between Australia and Paraguay has hitherto been governed by the Treaty between Great Britain and Paraguay for the Extradition of Criminals done at Asuncion on 12 September 1908 ("the inherited Treaty"). The inherited Treaty was initially given effect in Australia by a British Order in Council applying the Extradition Acts, 1870 to 1935 (Imp) in the case of Paraguay (Order in Council 1911 No. 662). Subsequently, the operation of the inherited Treaty in Australian law has been continued by virtue of section 9 of the former *Extradition (Foreign States) Act 1966* and subsection 11 (3) of the *Extradition Act 1988*. On the commencement of these Regulations the Act will cease to apply to Paraguay by virtue of subsection 11 (3). (For the purposes of international law the Treaty provides, in Article 16 paragraph 3, that on its entry into force the inherited Treaty shall cease to be in force between Australia and Paraguay.)

As with all of Australia's extradition treaties, the extradition treaty with the Republic of Paraguay contains all the internationally accepted human rights safeguards which are now a part of modern extradition. Under the Treaty, extradition will not be permitted where the fugitive is sought for or in connection with his or her race, religion, nationality or political opinions or would be tried, sentenced or detained for a political or military law offence. In addition, extradition may be refused where the fugitive could be liable to the death penalty, unless an undertaking is given

by the requesting state that the death penalty will not be imposed or, if imposed, will not be carried out.

Details of the Regulations are as follows:

**Regulation 1** names the Regulations.

**Regulation 2** provides that the Regulations commence on 30 May 1999 which is the date on which it is intended the Treaty will enter into force between Australia and Paraguay.

**Regulation 3** declares Paraguay to be an extradition country.

**Regulation 4** provides that the *Extradition Act 1988* applies to Paraguay subject to the Treaty.

**Schedule 1** sets out the text of the Treaty.