

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 80**

Issued by the authority of the Attorney-General

*International Transfer of Prisoners Act 1997*

*International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations 2007 (No. 1)*

Section 58 of the *International Transfer of Prisoners Act 1997* (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.

The Act forms the basis for the International Transfer of Prisoners scheme (the scheme) in Australia. The scheme allows Australians imprisoned overseas to apply to return to Australia to serve the remainder of their sentence in an Australian prison. The scheme also allows foreign nationals who are imprisoned in Australia to apply to serve the balance of their sentence in their home country.

Subsection 8(1) of the Act provides that the regulations may apply the Act to a foreign country and may declare that country to be a transfer country for the purposes of the Act. Subsection 8(2) provides that the regulations may also declare that the Act applies in relation to a foreign country subject to limitations, conditions, exceptions or qualifications referred to in the regulations. Paragraph 8(3)(a) provides that the limitations, conditions, exceptions or qualifications can include those necessary to give effect to a bilateral or multilateral treaty, a copy of which must be set out in the regulations. Section 4 of the Act defines 'treaty' to include a convention, protocol, agreement or arrangement.

The United States of America is declared to be a transfer country by the *International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Regulations 2002* (the Principal Regulations). These Regulations state that the Act applies to the United States of America, subject to the Council of Europe *Convention on the Transfer of Sentenced Persons* (the Convention).

To ensure that prisoners who are sentenced by a military commission of the United States of America have the right to apply for transfer, the Governments of Australia and the United States have entered into a separate Arrangement for the transfer of prisoners and cooperation in the enforcement of sentences. The Arrangement applies to persons sentenced to a term of imprisonment by a United States military commission in the United States Naval Station at Guantanamo Bay, Cuba.

The *International Transfer of Prisoners (Transfer of Sentenced Persons Convention) Amendment Regulations 2007 (No. 1)*, amends the Principal Regulations. It provides that the Act applies to the United States of America subject to the Convention, other than in relation to the transfer to Australia of a person serving a sentence of imprisonment ordered by a

United States military commission. The amending Regulations complement the *International Transfer of Prisoners (Military Commission of the United States of America) Regulations 2007*, which apply the Act to the United States subject to the Arrangement for transfers to Australia of prisoners serving a sentence ordered by a United States military commission.

The Office of Regulation Review has advised that a Regulatory Impact Statement on the amendment of the Principal Regulations is not required.

The Regulations commenced on the day after they were registered in the Federal Register of Legislative Instruments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.