

Mutual Assistance in Criminal Matters Regulations (Amendment) 1997 No. 3

EXPLANATORY STATEMENT

Statutory Rules 1997 No. 3

Issued by the Authority of the Attorney-General and Minister for Justice

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters Regulations (Amendment)

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* (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 and in particular prescribing the practice and procedure in relation to the performance by Magistrates of functions under the Act.

The effect of section 4 of the *Acts Interpretation Act 1901* is that the power expressed in an Act to make regulations may be exercised before the Act comes into operation as if it had come into operation and that any regulations so made may take effect from the time when the Act concerned comes into operation.

The regulations are consequential upon the proclamation of Schedules 1, 2 and 3 of the *Mutual Assistance in Criminal Matters Legislation Amendment Act 1996* (MA Amendment Act) on 1 March 1997.

Separate Executive Council Minutes will be submitted in relation to the proclamation and to other instruments which are consequential upon the proclamation. Those relate to:

- * Commencement of Schedules 1, 2 and 3 of the MA Amendment Act
- * Mutual Assistance in Criminal Matters (United Kingdom) Regulations
- * *Mutual Assistance in Criminal Matters Act 1987*
- * Regulations (Repeal) Magistrate Arrangements between the Commonwealth and Norfolk Island.

The purpose of the regulations is to amend the Mutual Assistance in Criminal Matters Regulations (Statutory Rules 1988 No. 126) (MACM Regulations). The amendments are consequential upon the commencement of the items in Schedule 1 to the MA Amendment Act which amends the Act.

The regulations repeal the MACM Regulations and prescribed forms in relation to service of criminal process in Australia on behalf of foreign countries because the section in the Act providing for service in Australia of such process is repealed by item 93 of Schedule 1 of the MA Amendment Act. Other consequential amendments to the MACM Regulations include changes to the content of forms prescribed by the relevant MACM Regulations. The opportunity is also being taken to make some technical amendments to existing MACM Regulation 3 (Power of Magistrate to send for witnesses and documents) to correct deficiencies in the MACM Regulations which have become apparent in the course of experience gained in the execution of mutual assistance requests received from foreign countries. In addition the opportunity is being en to repeal prescribed Forms 4, 5 and 6 in the Schedule to the MACM Regulations (Application for Search

Warrant (Person), Application for Search Warrant (Premises), Search Warrant) because use of "non-prescribed" forms (which will be available electronically to investigators and prosecutors) is inherently more flexible since the forms can be more expeditiously updated.

Details of the Regulations are as follows:

Regulation 1 is a commencement regulation.

Regulation 2 provides that the regulations amend the MACM Regulations.'

Regulation 3 provides for repeal and replacement of subregulation 3(1) and insertion of new subregulations 3(3) and 3(4).

Regulations 4, 5, 6, 7 and 8 all make similar technical amendments to MACM regulations 4, 6, 8, 9 and 10 respectively.

Regulations 9 and 10 omit MACM Regulations 13 and 14 which prescribe Forms 4, 5 and 6 in the Schedule to the MACM Regulations.

Regulation 11 repeals MACM Regulation 18 consequential upon the repeal by Schedule 1 of the MA Amendment Act of the service of documents provisions in the Act.

Regulation 12 makes technical amendments to various Form in the Schedule to the MACM Regulations and repeals some other Forms in the Schedule.