

Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations 1992 No. 401

EXPLANATORY STATEMENT

Statutory Rules 1992 No. 401

Issued by the Authority of the Minister of State for Justice

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations

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. Paragraph 7(2)(b) of the Act provides that regulations may apply the Act in relation to specified foreign countries subject to limitations, conditions, exceptions, or qualifications other than those necessary to give effect to a bilateral mutual assistance treaty.

The Regulations will ensure that Australia can fulfil its mutual assistance obligations pursuant to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Convention), the text of which is set out in the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*.

Australia's instrument of ratification of the Convention was deposited with the United Nations on 16 November 1992. The Convention will enter into force for Australia on the ninetieth day after the deposit of the instrument of ratification, that is, on Sunday 14 February 1993.

Australia's obligations under the Convention include obligations to afford other parties the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences listed in the Convention.

The Regulations apply the Act to all countries listed in the Schedule. This is necessary because much of the assistance which Australia is able to provide to other countries under the Act can only be provided to countries to which the Act has been applied.

The Schedule does not list every State Party to the Convention. Rather it lists those countries which have ratified the Convention but to which the Act has not already been applied pursuant to paragraph 7(2)(a) of the Act. (That paragraph provides for application of the Act to give effect to bilateral mutual assistance treaties). It is not possible to apply the Act to a particular country under both paragraphs 7(2)(a) and 7(2)(b) of the Act. Australia's obligations under the Convention to those countries which cannot be listed in the proposed Regulations will be satisfied under the existing bilateral arrangements.

Details of the Regulations are as follows.

Regulation 1 is a citation provision.

Regulation 2 provides that the Regulations will commence on the same day as the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*. It is proposed to proclaim that Act to commence on 14 February 1993 so as to coincide with Australia becoming a party to the Convention.

Regulation 3 is an interpretation provision.

Regulation 4 applies the Act to all countries specified in the Schedule subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the Convention.