

Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations (Amendment) 1998 No. 26

EXPLANATORY STATEMENT

STATUTORY RULES 1998 No. 26

Issued by the Authority of the Minister for Justice

Mutual Assistance in Criminal Matters Act 1987

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

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* ("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. Paragraph 7 (2) (b) of the Act provides that regulations may provide that the Act applies to a foreign country subject to any multilateral mutual assistance treaty (being a treaty to which that country is a party) that is referred to in the regulations.

The Act enables Australia to grant or request the following kinds of international mutual assistance in criminal matters: taking of evidence, search and seizure, arrangements for witnesses to give evidence or assist in investigations and the restraint, forfeiture and confiscation of proceeds of crime.

The Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations ("the Convention Regulations") ensure that Australia can fulfil its mutual assistance in criminal matters obligations under the 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 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 Convention Regulations provide that the Act applies subject to the Convention to all the countries listed in the Schedule. The countries listed are those which were Parties to the Convention when the Convention Regulations were made but which did not have a bilateral mutual assistance in criminal matters treaty with Australia.

The purpose of the Mutual Assistance in Criminal Matters (Traffic in Narcotic Drugs and Psychotropic Substances) Regulations (Amendment) ("the Regulations") is to ensure that Australia can fulfil its mutual assistance in criminal matters obligations under the Convention in relation to countries which have become Parties since the Convention Regulations were made and which become Parties in future. The Convention Regulations, as amended by the Regulations, provide that the Act applies to a Party subject to the Convention. This has ambulatory effect, covering countries which were Parties when the Regulations were made and additional countries as they become Parties. This type of provision, covering all Parties without specifying any by name, has been made possible by changes to section 7 of the Act which were introduced by the *Mutual Assistance in Criminal Matters Legislation Amendment Act 1996*.

By way of background, the Convention permits effect to be given to the human rights safeguards provided in the grounds for refusal set out in section 8 of the Act and in the bilateral mutual assistance in criminal matters treaties which Australia has with some other Parties. With respect

to the bilateral treaties, Article 7 of the Convention, which deals with mutual assistance in criminal matters, permits the provisions of such a treaty to apply to requests made under Article 7 by a party to that treaty. In the case of Parties with which Australia does not have a bilateral treaty, paragraphs 8 to 19 of Article 7 apply. These provide that a request for assistance "shall be executed in accordance with the domestic law of the requested Party" (paragraph 12), and that a request may be refused if, among other things, "the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests" or "It would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted" (paragraph 15).

Accordingly, Australia cannot be required to provide assistance under the Convention where a request is made for the purpose of prosecuting or punishing a person on account of his or her race, sex, religion, nationality or political opinions or where a request relates to a political or military law offence. In addition, assistance will, except in special circumstances, be refused where a request relates to the prosecution or punishment of a person charged with an offence in respect of which the death penalty may be imposed and may be refused in any other case where the provision of assistance may result in the death penalty being imposed on a person.

Details of the Regulations are as follows:

Regulation 1 provides that the Regulations commence upon gazettal.

Regulation 2 provides that the Convention Regulations are amended as follows.

Regulation 3 amends regulation 3 of the Convention Regulations by inserting a definition of "Party".

Regulation 4 replaces regulation 4 of the Convention Regulations with a new regulation which provides that the Act applies to a Party subject to the Convention.

Regulation 5 provides that the Schedule to the Convention Regulations (which lists the countries to which the Act applies subject to the Convention) is omitted.