

Extradition (Safety of United Nations and Associated Personnel) Regulations 2000 2000 No. 308

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 308

Issued by the Authority of the Minister for Justice and Customs

Extradition Act 1988

Extradition (Safety of United Nations and Associated Personnel) Regulations 2000

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. An "extradition country" is defined in section 5 of the Act as including a country, colony, territory or protectorate that is declared by the regulations to be an extradition country. Subsection 11 (1A) 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 multilateral extradition treaty in relation to the country.

The Regulations will give effect in Australian domestic law to the extradition provisions of the Convention on the Safety of United Nations and Associated Personnel, opened for signature at New York on 9 December 1994 ("the Convention").

The Convention requires each party to make it an offence to murder, kidnap or commit any other attack upon the person or liberty of any United Nations or associated personnel, to commit a violent attack upon the official premises, private accommodation or means of transport of such persons likely to endanger their lives, to threaten such an attack with a view to compelling a person or body to do or refrain from doing any act, or to attempt or be complicit in any such action. Each party is required to establish its jurisdiction over such conduct when the offence is committed wholly or partly on its territory (including ships or aircraft registered in the country) and also when the alleged offender is a national of the party. In addition, a party is permitted to establish jurisdiction where the alleged offender is a stateless person habitually resident in the party's territory, where the victim is a national of the party and where the offence is committed in order to bring pressure to bear on that party. Article 15 of the Treaty provides for extradition between parties of persons accused of Convention offences.

Australia signed the Convention on 22 December 1995. In accordance with the Government's policy of greater parliamentary involvement in Australia's treaty-making processes, the Convention was tabled in Parliament, together with a National Interest Analysis (NIA), on 7 March 2000. The period of fifteen sitting days following tabling elapsed on 14 April 2000 and, after a public hearing on 13 March 2000, the Joint Standing Committee on Treaties recommended in its Report No. 32 (tabled 15 May 2000) that Australia ratify the Convention. The *Criminal Code Amendment (United Nations and Associated Personnel) Act 2000* ("the Code Amendment Act") has since been enacted to establish the Convention offences in Australian law. The Code Amendment Act has been proclaimed to commence on 1 January 2001 to enable Australia to ratify the Convention.

Under the Regulations Convention offences are deemed to be extradition offences under the Extradition Act in relation to the other parties to the Convention. Extradition for these offences will be subject to the conditions set out in the Act and, where relevant, in bilateral extradition treaties between Australia and those parties. These conditions include all the internationally accepted human rights safeguards which are now a part of modern extradition. For example, 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 will 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 carried out.

Details of the Regulations are as follows:

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations commence simultaneously with the *Criminal Code Amendment (United Nations and Associated Personnel) Act 2000*, which has been proclaimed to commence on 1 January 2001.

Regulation 3 defines terms used in the Regulations.

Regulation 4 declares that a country or other territory listed in Schedule 2 is an extradition country.

Regulation 5 provides that the *Extradition Act 1988* applies to these extradition countries subject to the Convention.

Schedule 1 sets out the text of the Convention.

Schedule 2 lists the parties to the Convention other than Australia.