

Extradition (Transnational Organised Crime) Regulations 2004

2004 No. 89

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 89

Issued by the authority of the Minister for Justice and Customs

Extradition Act 1988

Extradition (Transnational Organised Crime) Regulations 2004

Section 55 of the *Extradition Act 1988* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, 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.

Australia is advancing to ratification of the *United Nations Convention Against Transnational Organised Crime* (the Convention) and the *Protocol against the Smuggling of Migrants by Land, Air and Sea* (the Protocol).

The Convention contains obligations for extradition in Article 16. These obligations also apply to the Protocol. This is because Article 1 of the Protocol provides that the Convention's provisions apply *mutatis mutandis* to the Protocol, that is, that the provisions of the Convention apply to the Protocol with any necessary adjustment. This means that the obligation to extend mutual assistance contained in Article 16 of the Convention includes an obligation to extend mutual assistance in connection with the Protocol. All these obligations apply only to other States Parties to the Convention and the Protocol respectively.

The Act makes provision for the extradition of persons from Australia to extradition countries, and facilitates the making of requests for extradition by Australia to other countries. The Act also enables Australia to carry out its obligations under extradition treaties. Extradition from Australia can only take place with an extradition country, or with New Zealand under the special procedures set down in the Act. Section 5 of the Act provides that an 'extradition country' is any country (other than New Zealand) that is declared by the regulations to be an extradition country.

In order to meet the extradition obligations in the Convention and the Protocol, the Regulations declare that current States Parties to the Convention are extradition countries for the purpose of the Act (all countries that are States Parties to the Protocol are also States Parties to the Convention).

Subsection 11(1A) of the Act provides that the regulations may provide that the Act applies in relation to a specified extradition country subject to the limitations, conditions, exceptions or qualifications as are necessary to give effect to a multilateral extradition treaty in relation to the country. Subsection 11(1C) provides that this may be achieved by applying the Act to the country subject to the treaty.

The Regulations apply the Act to the countries listed in Part 1 of Schedule 2 (which are countries that are currently States Parties to the Convention), subject to the Convention. The Regulations apply the Act to the countries listed in Part 2 of Schedule 2 (which are countries that are currently States Parties to the Convention and the Protocol), subject to the Convention and the Protocol. The text of the Convention and the Protocol are included in Schedule 1 to the Regulations.

A State Party to the Protocol must also be a State Party to the Convention, which is why the Regulations are drafted to apply the Act to States Parties to the Convention only subject to the Convention, and to States Parties to the Convention and the Protocol subject to both the Convention and the Protocol.

This enables Australia to make and receive extradition requests to and from a State Party to the Convention for an offence in the Convention. It also enables Australia to make and receive extradition requests to and from a State Party to the Protocol for an offence in the Protocol.

The Government expects that the Convention and the Protocol will enter into force for Australia on 26 June 2004. To ensure Australia's compliance with the extradition obligations in the Convention and the Protocol on that date, the Regulations commence on 25 June 2004. The Act specifies no conditions which need to be met before the power to make the proposed regulations may be exercised.

Details of the Regulations are as follows:

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations commence on 25 June 2004.

Regulation 3 defines the term 'Act' to mean the *Extradition Act 1988*, and also defines the terms 'Convention' and 'Smuggling Protocol':

Regulation 4 declares that all countries, colonies, territories or protectorates listed in Part 1 of Schedule 2 are extradition countries.

Regulation 5 applies to the Act to each extradition country listed in Part 1 of Schedule 2 (which are countries that are currently States Parties to the Convention) subject to the Convention. Regulation 5 also applies the Act to each extradition country listed in Part 2 of Schedule 2 (which are countries that are currently States Parties to the Convention and the Protocol) subject to the Convention and the Protocol.

Schedule 1 sets out the text of the Convention and Protocol.

Schedule 2 sets out the countries to which the Act applies subject to the Convention (the current States Parties to the Convention), and the countries to which the Act applies subject to the Protocol (the current States Parties to the Convention and the Protocol).