

# Extradition (Canada) Regulations 2004 2004 No. 166

## **EXPLANATORY STATEMENT**

Statutory Rules 2004 No. 166

Issued by the authority of the Minister for Justice and Customs

*Extradition Act 1988*

*Extradition (Commonwealth Countries) Amendment Regulations 2004 (No. 1)*  
*Extradition (Canada) 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.

Section 5 of the Act defines an 'extradition country' to include a country that is declared by the regulations to be an extradition country. Paragraph 11(1)(b) of the Act provides that the regulations may make provision for application of the Act subject to certain limitations, conditions, exceptions or qualifications.

The purpose of the Regulations is to:

- remove Canada from the Schedule to the *Extradition (Commonwealth Countries) Regulations 1998*; and
- re-establish extradition arrangements with Canada under regulations for that specific purpose, enabling Australia to consider extradition requests received from Canada under a new extradition arrangement with Canada.

The Act applies the modern 'no evidence' extradition standard. Under this standard countries are not required to present evidence establishing a *prima facie* case against the person sought.

Australia has been able to consider extradition requests from Canada under the arrangements relating to Commonwealth countries generally. The existing arrangement required the requesting country, in this instance Canada, to present evidence sufficient to establish a *prima facie* case in each extradition request. The Regulations remove the evidentiary requirement for extradition requests from Canada.

Extradition to Canada under the Regulations operates in accordance with the Act, subject to a number of modifications.

For paragraph 19(2)(b) of the Act, a condition operates providing that additional documentation must be provided for the purpose of a magistrate's determination under the Act of whether a person is eligible for extradition to Canada. In such cases, an extradition request needs to be accompanied by a statement of the identity, nationality and physical description of the person whose extradition is sought by Canada.

The operation of paragraph 17(2)(a) of the Act is also modified by the Regulations whereby a person arrested may apply to a magistrate for release after 60 days if a request for his or her extradition has not been received. The standard period under the Act is 45 days. Modification to apply a 60 day period is common and has been included, for example, in extradition agreements with Brazil, Chile, Hungary, Mexico, Paraguay, South Korea, the United States and Venezuela.

The Regulations maintain the modification of "political offence" in relation to Canada, which previously applied to Canada by operation of regulation 4 of the *Extradition (Commonwealth Countries) Regulations 1998*. The modification states that an offence constituted by the actual or attempted taking or endangering of the life of a person shall not be a political offence where it is committed in circumstances that create a direct or indirect collective danger to the lives of other persons. The effect is that the extradition of a person who is accused of a crime of this nature is not barred on the basis that it is a political offence.

Extradition under the Regulations is subject to the various safeguards set out in the Act. For example, extradition would not be permitted where the fugitive was sought for or in connection with her or his race, religion, nationality or political opinions or would be tried, sentenced or detained for a political or military offence. In addition, the Attorney-General would retain a broad discretion to refuse an extradition request by Canada in any particular case.

This action is consistent with the provisions of the Act. Similar 'non-treaty Regulations' currently provide that the Act applies to Denmark, Estonia, Iceland, Japan, Latvia, the Marshall Islands, Thailand, Cambodia, Lebanon and Jordan.

The Regulations include a transitional provision for extradition requests from Canada made prior to the commencement of the Regulations to be considered under the previous arrangements.

The Regulations commenced on the date of their notification in the *Gazette*.