

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 374

Mutual Assistance in Criminal Matters Amendment Regulations 2004 (No. 1)

The *Mutual Assistance in Criminal Matters Act 1987* (the Act) allows Australia to provide assistance in criminal matters in response to requests from foreign countries.

Section 44 of the Act provides in part 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.

Section 15 of the Act provides that the Attorney-General may authorise a police officer to apply to a Magistrate for a search warrant to obtain material sought in a mutual assistance request from a foreign country.

Section 15 of the Act was amended by the *Crimes Legislation Amendment (Telecommunications Offences and other Measures) Act (No.2) 2004* to remove a requirement that a foreign country must expressly request the Attorney-General 'to arrange for the issue of a search warrant'. Under the amended section, the foreign country need only request the Attorney-General 'to arrange for the evidential material to be obtained' without specifying the use of a search warrant.

Regulation 12 of the *Mutual Assistance in Criminal Matters Regulations 1988* (the Principal Regulations) provides that:

An authorisation given by the Attorney-General to a police officer under subsection 15(1) of the Act to apply to a Magistrate for a search warrant may be in accordance with Form 3.

Form 3 is located in the Schedule to the Principal Regulations. At present, Form 3 reflects the requirements of section 15 of the Act prior to its amendment. The proposed Regulations make Form 3 consistent with section 15 of the Act as amended. The proposed amendments:

- remove references to the Attorney-General being satisfied that the foreign country has requested a search warrant to be arranged, and
- substitute a requirement that the foreign country has asked the Attorney-General to obtain evidential material.

The proposed Regulations also correct typographical errors in Form 3.

Details of the proposed Regulations are set out in the [Attachment](#).

The proposed Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations commence on the date of notification in the *Gazette*.

ATTACHMENT**Details of the proposed *Mutual Assistance in Criminal Matters Amendment Regulations 2004 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the regulations is the *Mutual Assistance in Criminal Matters Amendment Regulations 2004 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the date of notification in the *Gazette*.

Regulation 3 – Amendment of *Mutual Assistance in Criminal Matters Regulations 1988*

This regulation provides that the *Mutual Assistance in Criminal Matters Regulations 1988* (the Principal Regulations) are amended as set out in the Schedule.

Schedule 1 – Amendments**Item [1] – Schedule, Form 3, paragraph (b)**

Item 1 corrects a typographical error by removing a forward slash from Form 3, paragraph (b) of the Principal Regulations.

Item [2] – Schedule, Form 3, paragraph (c)

Item 2 removes references in Form 3, paragraph (c) to the Attorney-General being satisfied that the foreign country has requested a search warrant to be arranged and substitutes a requirement that the foreign country has asked the Attorney-General to obtain evidential material.

Item [3] – Schedule, Form 3

Item 3 removes the reference in Form 3 to the search warrant requested by a foreign country and substitutes a reference to evidential material.

Item [4] – Schedule, Form 3

Item 4 amends the date block in Form 3 from “19 ” to “20 ”.