

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 187**

Issued by the authority of the Minister for Justice and Customs

*Extradition Act 1988*

*Extradition (Transnational Organised Crime) Amendment Regulations 2005 (No. 1)*

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.

The purpose of the Regulations is to enable Australia to make and receive extradition requests to and from States Parties to the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Trafficking Protocol), for the offences in the Trafficking Protocol.

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. Extradition from Australia can only take place with a country declared to be an extradition country, or with New Zealand under the special procedures set down in the Act. 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.

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.

On 27 May 2004, following approval by the Executive Council that same day, Australia ratified the *United Nations Convention Against Transnational Organised Crime* (the Convention) and the *Protocol against the Smuggling of Migrants by Land, Air and Sea* (the Smuggling Protocol).

Australia is now progressing ratification of the Trafficking Protocol.

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

The *Extradition (Transnational Organised Crime) Regulations 2004* (the Principal Regulations) declare that current States Parties to the Convention are extradition countries for the purpose of the Act.

There is no requirement to separately declare that States Parties to the Smuggling Protocol and the Trafficking Protocol are extradition countries for the purpose of the Act, as States Parties to both of those Protocols must also be States Parties to the Convention.

A State Party to a Protocol to the Convention must also be a State Party to the Convention. The Principal Regulations therefore apply the Act to States Parties to the Convention subject to the Convention, and to States Parties to the Convention and the Smuggling Protocol subject to both the Convention and the Smuggling Protocol.

The purpose of the Regulations is to amend the Principal Regulations to apply the Act to the countries listed in Part 3 of Schedule 2 (countries that are currently States Parties to the Convention and the Trafficking Protocol), subject to the Convention and the Trafficking Protocol. The text of the Trafficking Protocol is included in Part 3 of Schedule 1 to the Principal Regulations.

The Regulations enable Australia to make and receive extradition requests to and from a State Party to the Convention and the Trafficking Protocol for an offence specified in the Trafficking Protocol.

The Government expects that the Trafficking Protocol will enter into force for Australia on 16 October 2005. To ensure Australia's compliance with the extradition obligations in the Convention and the Trafficking Protocol on that date, the Regulations commence on 14 October 2005.

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

Consultation was unnecessary for this legislative instrument as this instrument is of a minor or machinery nature and does not substantially alter existing arrangements. It has no direct, or substantial indirect effect on business.

Details of the Regulations are as follows:

#### Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Extradition (Transnational Organised Crime) Amendment Regulations 2005 (No. 1)*.

#### Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 14 October 2005.

#### Regulation 3 – Amendment of *Extradition (Transnational Organised Crime) Regulations 2004*

This regulation provides that the *Extradition (Transnational Organised Crime) Regulations 2004* (the Principal Regulations) are amended as set out in Schedule 1.

## Schedule 1 – Amendments

### **Item [1] – Regulation 3**

Regulation 3 sets out the definitions used in the Principal Regulations. This item inserts the defined term ‘Trafficking Protocol’.

### **Item [2] – Subregulation 5(3)**

Regulation 5 sets out the application of the Act. This item inserts subregulation 5(3) to apply the Act to each extradition country listed in Part 3 of Schedule 2 (which are countries that are currently States Parties to the Convention and the Trafficking Protocol) subject to the Convention and the Trafficking Protocol.

### **Item [3] – Schedule 1, heading**

Item [3] substitutes the heading “Convention and Protocols” in the place of the previous heading “Convention and Protocol”.

### **Item [4] – Schedule 1, new Part 3**

Item [4] inserts the text of the Trafficking Protocol into new Part 3 of Schedule 1.

### **Item [5] – Schedule 2, Part 1**

Part 1 of Schedule 2 lists the countries to which the Act applies subject to the Convention (the current States Parties to the Convention). Item [5] inserts the names of countries which have become States Parties to the Convention since the Principal Regulations were made.

### **Item [6] – Schedule 2, Part 1**

Item [6] corrects the reference to Laos in Part 1 of Schedule 2, to reflect the official name of Laos (Lao People’s Democratic Republic).

### **Item [7] – Schedule 2, Part 2**

Part 2 of Schedule 2 sets out the countries to which the Act applies subject to the Smuggling Protocol (the current States Parties to the Convention and the Smuggling Protocol). Item [7] inserts the names of countries which have become States Parties to the Smuggling Protocol, since the Principal Regulations were made.

### **Item [8] – Schedule 2, Part 2**

Item [8] corrects the reference to Laos in Part 2 of Schedule 2, to reflect the official name of Laos (Lao People’s Democratic Republic).

### **Item [9] – Schedule 2, New Part 3**

Item [9] inserts new Part 3 in Schedule 2 which lists the countries to which the Act applies subject to the Convention and the Trafficking Protocol (the current States Parties to the Convention and the Trafficking Protocol).