

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 48

Issued by the authority of the Minister for Justice and Customs

International Transfer of Prisoners Act 1997

International Transfer of Prisoners (Hong Kong) Regulations 2006

Section 58 of the *International Transfer of Prisoners Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or as necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act forms the basis for the International Transfer of Prisoners scheme (the scheme) in Australia. The scheme allows Australians imprisoned overseas to apply to return to Australia to serve the remainder of their sentence in an Australian prison. The arrangements also allow foreign nationals who are imprisoned in Australia to apply to serve the balance of their sentence in their home country.

Section 8 of the Act provides, in part, that the regulations may apply the Act to a foreign country and may declare that country to be a transfer country for the purposes of the Act. The regulations may also declare that the Act applies in relation to such a foreign country subject to limitations, conditions, exceptions or qualifications referred to in the regulations. Paragraph 8(3)(a) provides that these may include limitations, conditions, exceptions and qualifications to give effect to a bilateral treaty, a copy of which should be set out in the regulations.

The *International Transfer of Prisoner (Hong Kong) Regulations 2006* (the Regulations) declare that Hong Kong is a transfer country, and applies the Act to Hong Kong subject to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Australia concerning the Transfer of Sentenced Persons, done at Hong Kong on 25 November 2005 (the Agreement). A copy of the Agreement is set out in Schedule 1 to the Regulations.

The Regulations commence on the day the Agreement comes into force for Australia. The Agreement will come into force for Australia thirty days after the date on which the Parties have notified each other in writing that their respective requirements for entry into force of the Agreement have been complied with.

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

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations commence on the day the Agreement comes into force for Australia.

Regulation 3 defines terms used in the Regulations.

Regulation 4 declares that Hong Kong is a transfer country.

Regulation 5 provides for the application of the Act to Hong Kong.

Schedule 1 contains the text of the Agreement.