

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 12

Issued by the authority of the Minister for Home Affairs

Extradition Act 1988

Extradition (Hong Kong) Regulations 2008

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.

Paragraph 11(1)(a) of the Act provides that regulations may apply the Act to a specified extradition country subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to a bilateral extradition treaty between Australia and that country, being a treaty a copy of which is set out in the regulations.

An Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong (the Agreement) was signed on 15 November 1993. The Agreement is given domestic legal effect by the Extradition (Hong Kong) Regulations (the Principal Regulations), made on 28 May 1997. The *Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of The People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993* (the Protocol), signed on 19 March 2007, seeks to modernise and provide for more effective extradition arrangements between Australia and Hong Kong.

The Regulations replace the Principal Regulations by applying the Act to Hong Kong, subject to the Agreement as amended by the Protocol.

The Protocol amends the Agreement in two ways. First, it changes the standard for extradition requests from Hong Kong to Australia from a 'prima facie' to a 'no evidence' standard. A request for extradition from Hong Kong would need to include statements about the offence for which extradition is sought (including applicable penalties) and about the acts and omissions which are alleged to constitute the offence. However, the provision of evidence in relation to the offence would no longer be required. This amendment will reduce the time and resources required to process standard extradition requests from Hong Kong to Australia. Second, the Protocol obliges both countries to provide the other with reasons in the event of a partial or full refusal to grant an extradition request.

The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Protocol in Report 87, tabled on 16 August 2007.

The Regulations commenced on the day the Protocol entered into force for Australia. In accordance with Article 5 of the Protocol, the Protocol enters into force for Australia thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Protocol have been complied with.

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

Details of the Regulations are set out in the Attachment.

Details of the *Extradition (Hong Kong) Regulations 2008*

Regulation 1 names the Regulations.

Regulation 2 provides that the Regulations commence on the date the Protocol comes into force.

Regulation 3 repeals the *Extradition (Hong Kong) Regulations*.

Regulation 4 defines Act to mean the *Extradition Act 1988*.

Regulation 5 declares the Hong Kong Special Administrative Region of the People's Republic of China as an extradition country.

Regulation 6 provides that the *Extradition Act 1988* applies to the Hong Kong Special Administrative Region of the People's Republic of China subject to the Agreement and the Protocol.

Schedule 1 contains the text of the Agreement.

Schedule 2 contains the text of the Protocol.