

# Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999 1999 No. 50

## EXPLANATORY STATEMENT

### STATUTORY RULES 1999 No. 50

Issued by the Authority of the Minister for Justice and Customs

*Mutual Assistance in Criminal Matters Act 1987*

Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* ("the Act") provides 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. Paragraph 7 (2) (a) of the Act provides that regulations may provide that the Act applies to a specified foreign country subject to any mutual assistance treaty between that country and Australia that is referred to in the regulations.

The Act enables Australia to grant or request the following kinds of international mutual assistance in criminal matters: taking of evidence, search and seizure, arrangements for witnesses to give evidence or assist in investigations and the location, restraint and forfeiture of proceeds of crime.

The Regulations give effect in Australian domestic law to the Treaty between Australia and the Republic of Indonesia on Mutual Legal Assistance in Criminal Matters, signed at Jakarta on 27 October 1995 ("the Treaty"). The Treaty, once in force, will bind Australia and Indonesia in international law to provide each other with the kinds of assistance listed above, and in addition to provide documents and other records, locate and identify persons, serve documents and provide other similar assistance consistent with the objects of the Treaty and not inconsistent with the law of the requested state.

In accordance with the Government's policy of greater parliamentary involvement in Australia's treaty-making processes, the Treaty was tabled in Parliament, together with a National Interest Analysis (NIA), on 21 May 1996. The period of fifteen sitting days following tabling elapsed on 27 June 1996, allowing the Government to take binding treaty action in relation to the Agreement.

By a diplomatic note dated February 1999 Indonesia notified Australia, in accordance with Article 22 of the Treaty, that its domestic requirements for the Treaty's entry into force had been complied with. Australia's requirement for the Treaty's entry into force is the making of the Regulations. The Treaty enters into force 30 days after the date on which the Parties have notified each other that they have complied with their respective requirements for the entry into force of the Treaty. Indonesia will be notified on 17 June 1999 that Australia's requirements for the Treaty's entry into force have been complied with. Thirty days after that date, that is on 17 July 1999, the Agreement will enter into force. Accordingly, 17 July 1999 is also the commencement date of the Regulations.

As in all of Australia's mutual assistance in criminal matters treaties, the obligation to **provide assistance** is qualified by certain internationally accepted safeguards, chief amongst which are that assistance shall not be granted in relation to political or military offences or where a request is made for the purpose of prosecuting or punishing a person on account of his or her race, sex, religion, nationality or political opinions. Assistance shall also be refused where grant of a

request would prejudice the sovereignty, security, national interest or other essential interests of the requested state. In addition, assistance may be refused where a request relates to an offence which carries the death penalty under the law of the requesting state.

Details of the Regulations are as follows:

**Regulation 1** specifies the name of the Regulations.

**Regulation 2** provides for the Regulations to commence on 17 July 1999, which is the date on which it is planned the Agreement will come into force.

**Regulation 3** is a definition provision.

**Regulation 4** provides that the *Mutual Assistance in Criminal Matters Act 1987* applies to Indonesia subject to the scheduled Treaty.

The Schedule to the Regulations contains the text of the Treaty between Australia and the Republic of Indonesia on Mutual Legal Assistance in Criminal Matters, done at Jakarta on 27 October 1995.