

Mutual Assistance in Criminal Matters (United States of America) Regulations 1999 1999 No. 150

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 150

Issued by the Authority of the Minister for Justice and Customs

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (United States of America) 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 the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters, signed at Washington on 30 April 1997 ("the Treaty") and a simultaneous Exchange of Notes of treaty status concerning the interpretation of the Treaty. The Treaty, once in force, will bind Australia and the United States in international law to provide each other with the kinds of assistance listed above, and in addition, to provide documents and other records, serve documents, locate and identify persons, execute requests for restitution and provide other forms of mutual assistance in criminal matters which are not prohibited by the laws of the requested state.

In accordance with the Government's policy of greater parliamentary involvement in Australia's treaty-making processes, the Treaty and Exchange of Notes were tabled in Parliament, together with a National Interest Analysis (NIA), on 26 August 1997. The period of fifteen sitting days following tabling elapsed on 20 October 1997 and in its Tenth Report, tabled on that date, the Joint Standing Committee on Treaties supported implementation of the Treaty, allowing the Government to take binding treaty action in relation to the Treaty.

By a diplomatic note dated 7 April 1999 the United States notified Australia, in accordance with Article 20 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 on the date on which the Parties have exchanged written notification that they have complied with their respective requirements for the entry into force of the Treaty. The Exchange of Notes will enter into force at the same time as the Treaty. The United States will be notified on 1 October 1999 that Australia's requirements for the Treaty's entry into force have been complied with and the Treaty and the Exchange of Notes will immediately enter into force. Accordingly, 1 October 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, namely that assistance shall not be granted in relation to political or military offences. Assistance shall also be refused where

grant of a request would prejudice the security or essential interests of the requested state. In addition, the Exchange of Notes confirms that grounds of refusal set out in section 8 of the Act will be regarded as falling within Australia's essential interests. Grounds of refusal under section 8 include cases 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 or 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 1 October 1999, which is the date on which it is planned the Treaty will enter into force.

Regulation 3 provides that the *Mutual Assistance in Criminal Matters Act 1987* applies to United States of America subject to the scheduled Treaty and Exchange of Notes.

Schedule 1 to the Regulations contains the text of the Treaty between the Government of Australia and the Government of the United States of America on Mutual Assistance in Criminal Matters, done at Washington on 30 April 1997.

Schedule 2 contains the text of the Exchange of Notes of 30 April 1997, relating to the Treaty, between the Embassy of Australia in Washington and the Department of State of the United States of America.