

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 375

Issued by the Authority of the Minister for Justice and Customs

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Greece) Regulations 2004

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* (“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 7(2)(a) of the Act states 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 *Mutual Assistance in Criminal Matters (Greece) Regulations 2004* (“the Regulations”) give effect in Australian domestic law to the Treaty between Australia and the Hellenic Republic on Mutual Assistance in Criminal Matters, signed at Athens on 4 July 2002 (“the Treaty”). The Treaty, once in force, will bind Australia and Greece in international law to provide each other with mutual assistance in criminal matters including search and seizure, service of documents, taking of evidence, arranging for witnesses to give evidence or to assist in investigations, and the restraint, forfeiture and confiscation of proceeds of crime.

The Joint Standing Committee on Treaties recommended ratification of the Treaty in Report 48, tabled on 21 October 2002.

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. By a diplomatic note dated 15 November 2004, Greece 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. Australia will notify Greece on 17 December 2004 that Australia has complied with the requirements for the Treaty's entry into force. Thirty days after that date, on 16 January 2005, the Treaty will enter into force. Accordingly, 16 January 2005 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 16 January 2005, which is the date the Treaty will enter into force.

Regulation 3 defines Greece to mean the Hellenic Republic

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

Schedule 1 sets out the text of the Treaty.