

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2006 No. 292**

Issued by the authority of the Minister for Justice and Customs

#### *Mutual Assistance in Criminal Matters Act 1987*

#### *Mutual Assistance in Criminal Matters (Malaysia) Regulations 2006*

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 Regulations give effect in Australian domestic law to the Treaty between the Government of Australia and the Government of Malaysia on Mutual Assistance in Criminal Matters, signed at Putrajaya on 15 November 2005 and an Exchange of Notes between Australia and Malaysia on the Treaty on Mutual Assistance in Criminal Matters, signed at Kuala Lumpur on 7 December 2005 (the Treaty). The Treaty, once in force, will bind Australia and Malaysia 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 assist in investigations, and the restraint, forfeiture and confiscation of proceeds of crime.

The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Treaty in Report 79, tabled on 19 October 2006.

As in all of Australia's mutual assistance in criminal matters treaties, there are internationally accepted safeguards, including that assistance shall not be granted for political offences or purely 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 the grant of a request would prejudice the sovereignty, security, national interest or other essential interests of the requested state.

The Exchange of Notes makes it clear that Australia will provide assistance to Malaysia in accordance with the provisions of subsections 8(1A) and 8(1B) of the Act in cases where the assistance relates to an offence that is punishable by the death penalty.

Subsection 8(1A) provides that where a foreign country requests assistance where a person has been charged with, or convicted of, an offence which carries the death penalty, the Attorney-General must refuse to provide the assistance unless there are special circumstances.

Subsection 8(1B) provides that the Attorney-General may refuse assistance if he believes that the provision of assistance may result in the death penalty being imposed on a person and after taking into consideration the interests of international criminal cooperation, is of the opinion that in the circumstances of the case, the request should not be granted.

The Regulations commence on the day the Treaty comes into force for Australia. The Treaty will come into force thirty 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.

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 Treaty comes into force.

**Regulation 3** defines Act to mean the *Mutual Assistance in Criminal Matters Act 1987*.

**Regulation 4** provides that the *Mutual Assistance in Criminal Matters Act 1987* applies to Malaysia subject to the Treaty and Exchange of Notes.

**Schedule 1** contains the text of the Treaty.

**Schedule 2** contains the text of the Exchange of Notes.