

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 150

Issued by the Authority of the Minister for Justice and Customs

Crimes (Overseas) Act 1964

Crimes (Overseas) (Declared Foreign Countries) Amendment Regulations 2007 (No. 2)

Section 9 of the *Crimes (Overseas) Act 1964* (the Act) provides that the Governor-General may make regulations prescribing 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.

The Act extends the criminal law of the Jervis Bay Territory extraterritorially over various groups of Australians working in foreign countries. This is consistent with the application of criminal laws extraterritorially (for example the *Crimes at Sea Act 2000*).

Under subsection 3A(5) of the Act, one of the situations in which the Act applies to a person who does an act in a foreign country is if:

- the person is an Australian;
- the person is undertaking a task or project or performing a function on behalf of the Commonwealth; and
- that foreign country has been declared by regulations to be a declared foreign country for the purposes of the Act.

Paragraph 3C(1)(a) of the Act states that the regulations may provide that a foreign country is a declared foreign country for the purposes of the Act. Subsection 3C(3) provides that the regulations must specify the day on which the foreign country is to start being a declared foreign country, and the day on which the foreign country is to cease being a declared foreign country for the purposes of the Act.

The *Crimes (Overseas) (Declared Foreign Countries) Regulations 2003* (the Principal Regulations) prescribe countries for the purposes of section 3C of the Act. Currently, Iraq, the Solomon Islands, Papua New Guinea and the Hashemite Kingdom of Jordan (Jordan) are 'declared foreign countries' under the Act. The Principal Regulations specified that Iraq was declared a foreign country until 1 July 2007.

The *Crimes (Overseas) (Declared Foreign Countries) Amendment Regulations 2007 (No. 2)* (the Regulations) extend the existing period in the Principal Regulations so that Iraq continues to be a 'declared foreign country' until 1 July 2009.

Subsection 3C(4) of the Act provides that before regulations are made for the purposes of subsection 3C(1), the Minister, after consulting the Minister for Foreign Affairs, must be satisfied that it is appropriate to do so having regard to the following:

- whether the Act would apply to Australians in the foreign country even if the regulation were not made;
- the nature of the activities engaged in by Australians in the foreign country;
- the period during which those activities are to be engaged in;
- the number of Australians likely to be engaged in those activities;
- the circumstance in which Australians engaged in activities in the foreign country are subject to, or immune from, the foreign country's criminal laws; and
- any other relevant matter.

The Minister was satisfied that it was appropriate to make the Regulations having regard to these factors. The Minister for Foreign Affairs supported the making of the Regulations.

Details of the Regulations are set out in the Attachment.

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

The Regulations will commence on 30 June 2007 after registration on FRLI.

Consultation was not necessary for this legislative instrument as this instrument is of a minor or machinery nature and does not substantially alter existing arrangements. It has no direct or indirect effect on business.

ATTACHMENT

Details of the *Crimes (Overseas) (Declared Foreign Countries) Amendment Regulations 2007 (No. 2)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the proposed Regulations is the *Crimes (Overseas) (Declared Foreign Countries) Amendment Regulations 2007 (No. 2)*.

Regulation 2 – Commencement

This regulation provides that the proposed Regulations will commence on 30 June 2007.

Regulation 3 – Amendment of *Crimes (Overseas) (Declared Foreign Countries) Regulations 2003*

This regulation provides that the *Crimes (Overseas) (Declared Foreign Countries) Regulations 2003* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendment

Item [1] – Paragraph 4(2)(b)

Paragraph 4(2)(b) of the Principal Regulations provided that Iraq was declared a foreign country for the purposes of the *Crimes (Overseas) Act 1964* from 1 July 2003 until 1 July 2007. This item extends the period for which Iraq is taken to be a declared foreign country until 1 July 2009.