

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 200

Issued by the authority of the Minister for Home Affairs

Mutual Assistance in Criminal Matters Act 1987

Mutual Assistance in Criminal Matters (Thailand) Regulations 2008

The *Mutual Assistance in Criminal Matters Act 1987* (the Act) allows Australia to provide and obtain international assistance in criminal matters.

Section 44 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary and 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 (Thailand) Regulations 2008* (the Regulations) give effect in Australian domestic law to the *Treaty between Australia and the Kingdom of Thailand on Mutual Assistance in Criminal Matters* signed at Kuala Lumpur on 27 July 2006 (the Treaty). The Treaty, once in force, will bind Australia and Thailand under 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 assistance with the location, restraint and forfeiture of instruments and proceeds of crime.

The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Treaty in Report 87, tabled on 16 August 2007.

There are internationally accepted safeguards in the Treaty, including that assistance will not be granted where a request relates to a political offence or 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, in the opinion of the country receiving the request, prejudice its sovereignty or security, or where the request relates to an offence for which the person has already been acquitted, or has served the sentence imposed.

The Treaty also provides for discretionary grounds of refusal of a request for mutual legal assistance. Assistance under the Treaty may be refused if the request relates to acts or omissions which would not constitute an offence under the laws of the requested country or could no longer be prosecuted in the requested country because of lapse of time. A request for assistance may also be refused if the provision of assistance could prejudice the safety of any person, impose an excessive burden on the resources of the requested country, or

prejudice an investigation proceeding in that country. The country receiving the request also has a discretion to refuse assistance if the request relates to an offence punishable by the death penalty unless the requesting country gives sufficient assurances that the death penalty will not be pronounced or if pronounced will not be carried out.

The Regulations commence the day the Treaty enters into force for Australia. Under the terms of the Treaty, the Parties are to inform each other by diplomatic note when all necessary steps have been taken under their respective laws for entry into force of the Treaty. The Treaty enters into force 30 days after the date of the later diplomatic note.

Consultation was unnecessary 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 substantial indirect effect on business. The Treaty implemented by the Regulations was tabled in Parliament for 15 joint sitting days and was the subject of a public hearing by the Joint Standing Committee on Treaties. The Committee recommended binding treaty action be taken in relation to the Treaty in Report 87, tabled on 16 August 2007.

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

Details of the Regulations are set out in the Attachment.

ATTACHMENT

Details of the *Mutual Assistance in Criminal Matters (Thailand) Regulations 2008*

Regulation 1 specifies the name of 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 the Thailand subject to the Treaty.

Schedule 1 contains the text of the Treaty.