

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 267

Issued by the authority of the Minister for Home Affairs

Extradition Act 1988

Extradition (Transnational Organised Crime) Amendment Regulations 2009 (No. 1)

Section 55 of the *Extradition Act 1988* (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.

The Act makes provision for the extradition of persons from Australia to extradition countries and to New Zealand, and facilitates the making of requests for extradition by Australia to other countries. Extradition from Australia can only take place to an extradition country, or to New Zealand, under the special procedures set down in the Act. Section 5 of the Act provides that an ‘extradition country’ is any country (other than New Zealand) that is declared by the regulations to be an extradition country.

Subsection 11(1A) of the Act provides that the regulations may provide that the Act applies in relation to a specified extradition country subject to the limitations, conditions, exceptions or qualifications as are necessary to give effect to a multilateral extradition treaty in relation to the country. Subsection 11(1C) provides that this may be achieved by applying the Act to the country subject to the treaty.

Australia is party to the *United Nations Convention against Transnational Organized Crime 2000* (the Convention) and its supplementary Protocols; the *Protocol against the Smuggling of Migrants by Land, Sea and Air* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Protocols). The *Extradition (Transnational Organised Crime) Regulations 2004* (the Principal Regulations) declared countries listed in Schedule 2 of the Principal Regulations to be ‘extradition countries’ for the purposes of the Act. The countries listed in Schedule 2 were those countries that were a party to the Convention or the Protocols at the time the Principal Regulations were last updated in 2005. The Schedule did not include a number of countries that had become a party to the Convention or the Protocols since 2005.

The *Extradition (Transnational Organised Crime) Amendment Regulations 2009 (No. 1)* (the Regulations) repeal the list of countries in Schedule 2 of the Principal Regulations, and declare that a country, or a colony, territory or protectorate of a country, for which the Convention or the Protocols are in force is an ‘extradition country’ for the purposes of section 5 of the Act and that the Act applies subject to the Convention for those countries that are a party to the Convention. Similarly, the Regulations provide that the Act applies subject to the Protocols for those countries that are a party to the Protocols. By providing that any country that is a party to the Convention or the Protocols at any given time will be an ‘extradition country’ for the purposes of the Act, these amendments will ensure Australia is able to meet its international obligations under the Convention and the Protocols.

The Regulations simplify the administrative arrangements so that the regulations do not have to be amended each time a new country becomes a party to the Convention or the Protocols.

The Regulations include a note referring the reader to the United Nations website which contains a current list of countries for which the Convention and the Protocols is in force.

The approach of referring in regulations to foreign countries that are party to a Convention without listing those countries has been adopted in other regulations. Subsection 13(3) of the *Legislative Instruments Act 2003* allows things to be declared in regulations by referring to a class of things.

Extradition under the Regulations operates in accordance with the Act, subject to the applicable Convention or Protocols. The Act applies the modern ‘no evidence’ standard for documentation provided in support of any extradition request. In accordance with this evidentiary standard, countries are not required to provide evidence sufficient to establish a *prima facie* case that the person committed the offence.

Extradition requests made pursuant to the Regulations are subject to the various safeguards set out in the Act. For example, extradition will not be permitted where the person is sought for or in connection with his or her race, religion, nationality or political opinions or is to be tried, sentenced or detained for a political or military offence. Extradition must be refused where the offence for which the person is requested attracts the death penalty, unless an undertaking is given that the death penalty will not be imposed or, if imposed, will not be carried out. Extradition must also be refused where the person could be subjected to torture. In addition, the Attorney-General retains a broad discretion to refuse an extradition request by a country.

Consultation was unnecessary for this legislative instrument as this instrument does not substantially alter existing arrangements and has no direct or indirect effect on business.

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

The Regulations commenced on the day after they were registered with the Federal Register of Legislative Instruments.