

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 260

Issued by the authority of the Minister for Home Affairs

Extradition Act 1988

Extradition (Macedonia) Regulations 2009

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.

Section 5 of the Act defines an 'extradition country' to include a country that is declared by regulations to be an extradition country. Paragraph 11(1)(b) of the Act provides that regulations may make provision for the application of the Act in relation to a specified extradition country subject to certain limitations, conditions, exceptions or qualifications. Subsection 11(2) states that this reference to limitations, conditions, exceptions or qualifications includes modification to the effect that a number of days greater or lesser than the 45 days referred to in paragraph 17(2)(a) applies for the purposes of that paragraph.

The purpose of the Regulations is to establish clear extradition arrangements with Macedonia to enable Australia to consider extradition requests received from Macedonia. Macedonia is able to grant extradition to Australia in the absence of a treaty.

Before the Regulations were made, Australia's ability to consider extradition requests from Macedonia was unclear. Australia's extradition relationship with the former Socialist Federal Republic of Yugoslavia was governed by a treaty inherited from the United Kingdom. The status of this treaty between Australia and the successor states to the former Yugoslavia, including Macedonia, is unclear both at international and domestic law. Moreover, the treaty only provides for extradition for certain listed offences and would not always provide a basis for extradition for other offences such as drug trafficking or war crimes offences.

Extradition requests from Macedonia under the Regulations are considered in accordance with the Act, subject to the modification of paragraph 17(2)(a) whereby a person arrested may be released by a magistrate after 60 days if a request for his or her extradition has not been received. The standard period under the Act is 45 days. Modification to apply a 60 day period is common and has been included, for example, in regulations applying the Act to Canada, Croatia and Slovenia.

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 any extradition request.

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

Consultation was undertaken with the Department of Foreign Affairs and Trade, who supported the making of the Regulations. Further 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.

Detail of the Regulations is set out in the Attachment.

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

Details of the *Extradition (Macedonia) Regulations 2009*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Extradition (Macedonia) Regulations 2009*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Definition

This regulation defines terms used in the Regulations.

Regulation 4 – Declaration that Macedonia is an extradition country

This regulation declares Macedonia to be an extradition country.

Regulation 5 – Application of Act

This regulation provides that the *Extradition Act 1988* applies to Macedonia subject to the modification of the period nominated in paragraph 17(2)(a) from 45 days to 60 days.