

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 114**

Issued by the authority of the Minister for Justice

*International Transfer of Prisoners Act 1997*

*International Transfer of Prisoners (China) Regulations 2011*

Section 58 of the *International Transfer of Prisoners Act 1997* (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 forms the basis for the International Transfer of Prisoners scheme (the scheme) in Australia. The scheme allows Australians imprisoned overseas to apply to return to Australia to serve the remainder of their sentence in an Australian prison. The scheme also allows foreign nationals who are imprisoned in Australia to apply to serve the balance of their sentence in their home country.

Subsection 8(1) of the Act provides that the regulations may apply the Act to a foreign country and may declare that country to be a transfer country for the purposes of the Act. Subsection 8(2) provides that the regulations may declare that the Act applies in relation to such a foreign country subject to limitations, conditions, exceptions or qualifications referred to in the regulations. Paragraph 8(3)(a) provides that the limitations, conditions, exceptions or qualifications can include those necessary to give effect to a treaty, a copy of which must be set out in the regulations.

The *International Transfer of Prisoners (China) Regulations 2011* (the Regulations) declare that China is a transfer country, and apply the Act to China subject to the *Treaty Between Australia and the People's Republic of China Concerning Transfer of Sentenced Persons* (the Treaty). A copy of the Treaty is set out in Schedule 1 to the Regulations.

The Regulations commence on the day the Treaty enters into force for Australia. In accordance with Article 20 of the Treaty, the two countries must inform each other in writing of the completion of domestic implementation. The Treaty will enter into force thirty days after the date of the latter communication.

Consultation outside the Australian Government was not undertaken for this legislative instrument as it relates to criminal justice and law enforcement matters. The legislative instrument does not have a direct, or substantial indirect, effect on business and does not restrict competition. The Treaty was the subject of a public hearing by the Joint Standing Committee on Treaties, which recommended binding treaty action be taken in Report 117, tabled on 14 June 2011.

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

**Details of the Regulations**

**Details of the *International Transfer of Prisoners (China) Regulations 2011***

**Regulation 1** names the Regulations.

**Regulation 2** provides that the Regulations commence on the day the Treaty will enter into force.

**Regulation 3** repeals the *International Transfer of Prisoners (China) Regulations 2008*

**Regulation 4** defines ‘Act’ to mean the *International Transfer of Prisoners Act 1997* and ‘treaty’ to mean the Treaty between the Government of Australia and the Government of the People’s Republic of China concerning Transfer of Sentenced Persons.

**Regulation 5** declares China to be a transfer country for the purposes of the *International Transfer of Prisoners Act 1997*.

**Regulation 6** provides that the *International Transfer of Prisoners Act 1997* applies to China subject to the Treaty.

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