

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 210

Issued by the authority of the Minister for Justice

Extradition Act 1988 (Cth)

Mutual Assistance in Criminal Matters Act 1987 (Cth)

Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)

Extradition and mutual assistance are key international crime cooperation tools. Extradition is the process by which one country sends a person to another country to face criminal charges or serve a sentence. The *Extradition Act 1988* (the Extradition Act) provides the legislative basis for extradition in Australia. Mutual assistance is the formal Government to Government process countries use to assist one another in the investigation and prosecution of criminal offences. Mutual assistance can also be used to locate and recover the proceeds of crime. The *Mutual Assistance in Criminal Matters Act 1987* (the MA Act) provides the legislative basis for mutual assistance in Australia.

Section 55 of the Extradition Act and section 44 of the MA Act provide that the Governor-General may make regulations, not inconsistent with the respective Acts, prescribing all matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* (the Amendment Act) amends the Extradition Act, the MA Act and related Acts to ensure Australia is able to cooperate effectively with other countries in combating serious crimes. The Amendment Act makes a number of changes to Australia's extradition and mutual assistance laws to streamline the current processes and enhance the tools available to Australian authorities to assist other countries to fight crime, while still maintaining appropriate safeguards.

The *Extradition Regulations 1988* (the Extradition Regulations) and the *Mutual Assistance in Criminal Matters Regulations 1988* (the MA Regulations) provide mechanisms necessary for the practical operation of the Extradition Act and the MA Act respectively, such as giving magistrates the power to issue summonses, warrants of arrest and order the release of a person from custody. The Extradition Regulations and the MA Regulations also prescribe forms in relation to matters required by the respective Acts to be done in a particular way. The Extradition Regulations and the MA Regulations are in need of amendments to take account of amendments to the Extradition Act and the MA Act.

The *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)* (the Regulation) amends the Extradition Regulations, the MA Regulations and related Regulations to reflect the amendments to the Extradition Act and the MA Act. The Regulation will:

- amend the Extradition Regulations to prescribe offences that are considered to be extraditable offences, or not to be political offences, for the purpose of paragraphs (b) and (c) of the amended 'political offence' definition in section 5 of the Extradition Act;

- make a number of technical amendments to the extradition and mutual assistance forms used by case officers in Australia to take account of a number of amendments to the Extradition Act and MA Act, and
- repeal declarations in a number of country-specific extradition Regulations to the now outdated ‘political offence’ definition in section 5 of the Extradition Act.

Extradition Regulations 1988 – political offence definition

The Extradition Act provides that generally a person cannot be extradited from Australia for a political offence. Political offence is defined in the Extradition Act as an offence against the law of the foreign country that is of a political character. The definition, prior to amendment by the Amendment Act, also contained a number of exceptions to the political offence definition to implement Australia’s obligations under a number of bilateral and multilateral treaties. Under these treaties, Australia has an obligation not to consider certain offences, such as terrorism offences, as political offences.

However, these exceptions are contained both in the definition in the Extradition Act and in a number of different country-specific extradition regulations. To streamline the definition of ‘political offence’, the definition in section 5 of the Extradition Act was amended by the Amendment Act to expressly exclude the following from the political offence definition:

- an offence that involves an act of violence against a person’s life or liberty
- an offence prescribed by regulations for the purposes of paragraph (b) to be an extraditable offence, and
- an offence prescribed by regulations for the purposes of paragraph (c) not to be a political offence.

This new definition will enable all the exceptions to the definition to be set out in the Extradition Regulations, rather than the Extradition Act. This will ensure the extradition regime can be kept up-to-date with Australia’s international obligations without requiring frequent amendments to the Extradition Act.

New section 2B of the Extradition Regulations (to be inserted by Schedule 1) will implement Australia’s international obligations by clearly stating in one place all offences required to be extraditable offences and all offences required to not be political offences.

Country specific extradition regulations

The Extradition Act provides that Australia can only extradite a person to a country that is an ‘extradition country’ for the purpose of the Extradition Act. ‘Extradition country’ is defined in section 5 of the Extradition Act as a country prescribed by regulations. There are a number of country specific regulations that prescribe a particular country to be an ‘extradition country’ for the purpose of the Extradition Act in order to implement a bilateral extradition relationship with that country.

The Regulation repeals references in these country specific regulations to the political offence definition. These definitions will now be contained in the Extradition Regulations (as outlined above) to ensure that all references to the political offence definition are contained in the same place.

Extradition Regulations 1988 –Forms

The Regulation makes a number of amendments to the forms in the Extradition Regulations to ensure they align with the Extradition Act, as amended by the Amendment Act.

Mutual Assistance in Criminal Matters Regulations 1988 – Forms

The Regulation removes Forms 3, 7, 8, 9, 10 and 11 from the Mutual Assistance Regulations. This amendment has been made as these forms gave effect to sections of the MA Act that have previously been repealed.

Details of the Regulation are set out in the Attachment.

Consultation outside the Australian Government was not undertaken for this legislative instrument as it relates to criminal justice and law enforcement matters. However, this Regulation implements a number of the amendments made by the Amendment Act which was developed with extensive public consultation. The Amendment Act was also subject to parliamentary scrutiny by the House Standing Committee on Social Policy and Legal Affairs and the Senate Standing Committee for the Scrutiny of Bills.

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

The Regulation commenced on the commencement of item 33 of Schedule 2 to the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* on 20 September 2012.

Details of the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for the Regulation to commence on the commencement of item 33 of Schedule 2 to the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* on 20 September 2012.

Section 3 – Amendment of Extradition Regulations 1988

This section provides that the *Extradition Regulations 1988* are amended as set out in Schedule 1.

Section 4 – Amendment of Mutual Assistance in Criminal Matters Regulations 1988

This section provides that the *Mutual Assistance in Criminal Matters Regulations 1988* are amended as set out in Schedule 2.

Sections 5-21 – Amendment of country-specific extradition regulations

This section provides that a number of country-specific extradition regulations are amended as set out in Schedules 3-19.

Schedule 1 – Amendments of Extradition Regulations 1988

Item [1] – Regulation 2

This item would remove ‘(1)’ from regulation 2. This change has been made as there are no other subregulations in regulation 2 and therefore the number ‘(1)’ is not necessary.

Item [2] – After regulation 2A

Item [1] inserts a new regulation 2B into the *Extradition Regulations 1988* (Extradition Regulations).

‘Political offence’ is defined in section 5 of the *Extradition Act 1988* (Extradition Act) as an offence against the law of the foreign country that is of a political character (whether because of the circumstances in which it is committed or otherwise and whether or not there are competing political parties in the country).

The definition of ‘political offence’ in the Extradition Act, prior to amendment by the Amendment Act, contained a number of exclusions. These exclusions implement Australia’s obligations under a number of specified international conventions. Under these conventions, Australia has an obligation not to consider certain offences, such as terrorism offences, as political offences for the purposes of extradition.

To streamline the definition of ‘political offence’, the definition in section 5 of the Extradition Act was amended by the Amendment Act to expressly exclude the following from the political offence definition:

- an offence that involves an act of violence against a person’s life or liberty;
- an offence prescribed by regulations for the purposes of paragraph (b) to be an extraditable offence, and
- an offence prescribed by regulations for the purposes of paragraph (c) not to be a political offence.

The Regulation amends the Extradition Regulations to prescribe offences that are considered to be extraditable offences, or not to be political offences for the purpose of paragraphs (b) and (c) respectively of the amended ‘political offence’ definition in section 5 of the Extradition Act.

By moving this list to the Extradition Regulations, this amendment ensures that Australia’s extradition law can be kept up-to-date with Australia’s international obligations without requiring frequent amendments to the Extradition Act.

The list of offences to be inserted into the Extradition Regulations by regulation 2B replicates the list previously contained in the Extradition Act, with the addition of offences constituted by conduct of a kind referred to in the following international conventions to which Australia is a party:

- *the Convention on the Physical Protection of Nuclear Material 1980;*
- *the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988;*
- *the International Convention for the Suppression of Acts of Nuclear Terrorism 2005, and*
- *the United Nations Convention against Corruption 2003.*

As a State Party to these Conventions, Australia has an obligation under international law to recognise offences to which these conventions relate and to facilitate the extradition of persons wanted for the purposes of prosecution or to serve a sentence in relation to these offences.

The offences constituted by conduct of a kind referred to in sub-regulations 2B(3) and (4) were previously contained in country-specific extradition regulations. These offences are now contained in the Extradition Regulations rather than country-specific extradition regulations.

Subregulation 2B(1)

There are a range of international conventions that Australia is a party to, where States Parties have an obligation to recognise certain offences as ‘extraditable offences’. New subregulation 2B(1) implements these obligations in relation to all countries Australia has extradition dealings with for the purposes of paragraph (b) of the ‘political offence’ definition in section 5 of the Extradition Act.

Under subregulation 2B(1), offences constituted by conduct of a kind contained in the following international conventions are ‘extraditable offences’ in relation to all countries:

- *the Convention for the Suppression of Unlawful Seizure of Aircraft;*
- *the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;*
- *the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;*

- *the International Convention against the Taking of Hostages;*
- *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
- *the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;*
- *the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, and*
- *the Convention on the Physical Protection of Nuclear Material.*

This ensures that Australia is not prevented from extraditing a person who engages in conduct of a kind referred to in the above conventions to any country solely on the basis that the conduct falls within the definition of ‘political offence’. In doing this Australia is able to uphold its international obligations detailed in the above Conventions.

Subregulation 2B(2)

There are a range of international conventions that Australia is a party to, where States Parties have an obligation to recognise that certain offences are not ‘political offences’. New subregulation 2B(2) implements these obligations in relation to all countries Australia has extradition dealings with for the purposes of paragraph (c) of the political offence definition in section 5 of the Extradition Act.

Under subregulation 2B(2) offences constituted by conduct of a kind contained in the following conventions are not ‘political offences’ in relation to all countries:

- *the International Convention for the Suppression of the Financing of Terrorism;*
- *the Convention on the Prevention and Punishment of the Crime of Genocide;*
- *the International Convention for the Suppression of Terrorist Bombings;*
- *the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;*
- *the International Convention for the Suppression of Acts of Nuclear Terrorism, and*
- *the United Nations Convention against Corruption.*

This ensures that Australia is not prevented from extraditing a person who engages in conduct of a kind referred to in the above conventions to any country solely on the basis that the conduct falls within the definition of ‘political offence’. In doing this Australia is able to uphold its international obligations detailed in the above Conventions.

Subregulations 2B(3) and (4)

Subregulation 2B(3) states that for the purpose of paragraph (c) of the ‘political offence’ definition in the Extradition Act, an offence is not considered to be a political offence in relation to the countries listed in subregulation 2B(4) if the offence is constituted by ‘taking or endangering,

attempting to take or endanger, or participating in the taking or endangering of, the life of a person, and the offence is committed in circumstances in which the conduct creates a collective danger, whether direct or indirect to the lives of other persons’.

Subregulation 2B(4) sets out the list of countries to which the definition in subregulation 2B(3) applies. The relevant countries are:

- a) each country mentioned in Schedule 1 to the *Extradition (Commonwealth countries) Regulations 2010*
- b) Canada
- c) Cook Islands
- d) Denmark
- e) Iceland
- f) Japan
- g) Kiribati
- h) Nauru
- i) Papua New Guinea
- j) Republic of Estonia
- k) Republic of the Marshall Islands
- l) Samoa
- m) Solomon Islands
- n) Tonga
- o) Tuvalu
- p) United Kingdom
- q) Vanuatu

The exclusion of conduct of a kind referred to in subregulation 2B(3) was previously contained in the definition of ‘political offence’ in the Extradition Act and was applied to a particular country through country specific extradition regulations. Sub-regulation 2B(3) is a technical amendment and ensures that all exclusions previously contained in country-specific extradition regulations to political offences are contained in the Extradition Regulations.

Subregulation 2B(5)

Subregulation 2B(5) sets out that for the purpose of paragraph (c) of the ‘political offence’ definition in the Extradition Act, an offence is not a political offence in relation to the Republic of Estonia, if the offence is constituted by:

- a) the murder, kidnapping or attack;
- b) a threat or attempt, to commit a murder, kidnapping, or other attack; or
- c) participation as an accomplice in a murder, kidnapping, or other attack on the person or liberty of the head of state of the Republic Estonia, or the head of government of the Republic of Estonia, or a family member of the head of state or government of the Republic of Estonia.

This definition was previously contained in the Extradition Act and applied to Australia’s bilateral extradition relationship with the Republic of Estonia through the *Extradition (Republic of Estonia) Regulations 1999*. Removing the definition from the *Extradition (Republic of Estonia) Regulations 1999* and moving it to the Extradition Regulations, ensures that all exclusions in the definition of ‘political offence’ at section 5 of the Extradition Act are contained in the same Regulation.

Item [3] – Schedule, form 2, paragraphs (a) and (b)

Form 2 is the form used by a magistrate to issue a warrant of arrest where a witness has failed to attend a hearing after being summoned by the magistrate to do so.

This item inserts a reference to ‘Federal Magistrate’ in paragraph (a) into form 2. This is to reflect the amendment to the Extradition Act that allows nominated Federal Magistrates to issue a warrant of arrest. This item also changes the date in paragraph (b) of form 2 from ‘19...’ to ‘(date)..’ to reflect the current year date.

Item [4] - Schedule, form 4, heading

Form 4 is the form used to apply to a magistrate under subsection 12(1) of the Extradition Act for an extradition arrest warrant on behalf of an extradition country.

This item changes the name of form 4 from ‘Application for provisional arrest warrant’ to ‘Application for extradition arrest warrant’ to be consistent with the amendment to the terminology in section 12 of the Extradition Act.

Item [5] – Schedule, form 7, paragraph (a)

Form 7 is the form used by a magistrate to issue a search and seizure warrant under section 14 of the Extradition Act.

This item changes the reference to ‘provisional arrest warrant’ to ‘extradition arrest warrant’ to be consistent with the amendment to the terminology in section 14 of the Extradition Act.

Item [6] – Schedule, form 8, paragraph (b)

Form 8 is the form used by the Attorney-General under subsection 15(4) of the Extradition Act, to issue a warrant to direct a magistrate to order the release of a transferee into the custody of a police officer and authorise the police officer to take the transferee into custody to appear before a magistrate.

This item inserts a reference to new section 15A regarding waiver of extradition into form 8. This ensures that the Attorney-General can also issue a transfer warrant of this nature in proceedings where a person has chosen to waive extradition under section 15A of the Extradition Act.

Item [7] – Schedule, after form 8

This item creates two new forms.

Form 8A

This new form is for a magistrate to issue a warrant to commit a person to prison to await surrender to an extradition country where the person has chosen to waive extradition under subsection 15A(4) of the Extradition Act. A magistrate would only be able to issue such a warrant if he or she has informed the person of certain matters and is satisfied of the requirements contained in new section 15A of the Extradition Act. New section 15A of the Extradition Act enables a person, once arrested following an extradition request or a provisional arrest request, to immediately elect to remove him or herself from the extradition process and be surrendered to the extradition country.

Form 8B

New sections 15A and 15B of the Extradition Act establish a new process whereby a person, once arrested following an extradition request or a provisional arrest request, may immediately elect to remove him or herself from the extradition process and be surrendered to the extradition country.

This new form is for the Attorney-General to issue a notice directing a magistrate to release a person from custody where that person has chosen to waive extradition and the Attorney-General has determined not to surrender the person under subsection 15B(4) of the Extradition Act.

Item [8] – Schedule, after form 9

New section 16A of the Extradition Act enables the Attorney-General to amend a notice to a magistrate stating that a formal extradition request has been received at any time before a magistrate determines the person eligible for surrender under section 19 of the Extradition Act, or the person consents to surrender under section 18 of the Extradition Act.

This item creates a new form 9A. This new form is the form that would be used by the Attorney-General to issue an amended notice of receipt of an extradition request under subsection 16A(1) of the Extradition Act.

Item [9] – Schedule, form 11

Form 11 is the form used by a magistrate to issue a warrant under subsection 18(2) of the Extradition Act to authorise a police officer to commit a person to prison to await surrender to an extradition country.

This section removes the requirement of specifying in the warrant which state or territory a police officer is from as section 5 of the Extradition Act defines the term ‘police officer’ as a member or special member of the Australian Federal Police or a member of the police force of a State or Territory and does not require the relevant state or territory to be specified in the warrant.

Item [10] – Schedule, form 12

Form 12 is the form used by a magistrate to issue a warrant under subsection 19(9) of the Extradition Act to authorise a police officer to commit a person to prison to await surrender or release, as the case may be, in accordance with the Attorney-General’s surrender determination.

This item removes the requirement of specifying in the warrant which state or territory a police officer is from as section 5 of the Extradition Act defines the term ‘police officer’ as a member or special member of the Australian Federal Police or a member of the police force of a State or Territory and does not require the relevant state or territory to be specified in the warrant.

Item [11] – Schedule, after form 12

Subsection 19(10) of the Extradition Act allows a magistrate, following a determination that a person is not eligible for surrender, to order that the person be released from custody. Section 21 of the Extradition Act allows the extradition country to apply to the Federal Court for a review of the magistrate’s determination that the person is not eligible for surrender. Paragraph 21(2)(b) of the Extradition Act provides that the Federal Court is able to overturn the order of the magistrate. Paragraph 21(2A)(b) of the Extradition Act states that if the Federal Court quashes an order made under subsection 19(10) of the Extradition Act, it must order that the person be committed to prison

or released on bail if there are special circumstances justifying the release of the person on bail, to await surrender or release, as the case may be, in accordance with the Attorney-General's surrender determination.

This item inserts new form 12A. This is the form that would be used by a Federal Court Judge to make an order to commit a person to prison to await surrender or release to an extradition country, as the case may be, in accordance with the Attorney-General's surrender determination. Form 12A sets out the following requirements that a Federal Court Judge must be satisfied of before making an order under paragraph 21(2A)(b) of the Extradition Act:

- a) that a magistrate has made an determination that the person is not eligible for surrender
- b) the magistrate has made an order under subsection 19(10) of the Extradition Act that the person be released
- c) the order of the magistrate has been reviewed by the Federal Court under section 21, and
- d) the Federal Court has made an order under paragraph 21(2)(b) to quash that order of the magistrate.

Item [12] – Schedule, form 13

Form 13 is the form used by the Attorney-General to issue a surrender warrant under section 23 of the Extradition Act.

This item removes 'AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).' and replaces it with 'AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).' in form 13. This amendment serves two purposes consistent with the amendment to the terminology in the Extradition Act:

- i. it reflects that the escort officer does not need to be from the foreign country, and
- ii. it allows the class or classes of persons who may be escort officers to be described, rather than naming the particular escort officer.

Item [13] – Schedule, form 13

Form 13 is the form used by the Attorney-General to issue a surrender warrant under section 23 of the Extradition Act.

This item inserts a reference to the new subsection 15B(2) into form 13 for the Attorney-General to issue a surrender warrant where the person has chosen to waive extradition and the Attorney-General has determined they are to be surrendered to an extradition country.

Items [14] and [15] – Schedule, form 13, paragraphs (a) and (b)

Form 13 is the form used by the Attorney-General to issue a surrender warrant under section 23 of the Extradition Act.

These items removes the reference to 'a police' in paragraph (a) and 'that police in paragraph (b) of form 13 and replace them with 'any police'. These changes would bring into effect the amendment to subsection 26(1)(c) of the Extradition Act that allows a person to be released into the custody of any police officer rather than a specified police officer. As such, it is not necessary to name the particular police officer in the warrant.

Item [16] – Schedule, form 14

Form 14 is the form used by the Attorney-General to issue a temporary surrender warrant under section 24 of the Extradition Act.

This item removes ‘AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).’ and replaces it with ‘AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).’ in form 14. This amendment serves two purposes in line with the amendment to the terminology in the Extradition Act:

- i. it reflects that the escort officer does not need to be from the foreign country, and
- ii. it allows the class or classes of persons who may be escort officers to be described, rather than naming the particular escort officer.

Item [17] – Schedule, form 14, paragraph (a)

Form 14 is the form used by the Attorney-General to issue a temporary surrender warrant under section 24 of the Extradition Act.

This item inserts a reference to the new subsection 15B(2) into form 14 in order for the Attorney-General to issue a temporary surrender warrant where a person has chosen to waive extradition and the Attorney-General has determined they are to be surrendered to an extradition country.

Items [18] and [19] – Schedule, form 14, paragraphs (d) and (e)

Form 14 is the form used by the Attorney-General to issue a temporary surrender warrant under section 24 of the Extradition Act.

These items remove the reference to ‘a police’ in paragraph (d) and ‘that police’ in paragraph (e) of form 14 and replace it with ‘any police’. This change brings into effect the amendment to paragraph 26(1)(c) of the Extradition Act that allows a person to be released into the custody of any police officer rather than a specified police officer.

Item [20] – Schedule, form 15

Form 15 is the form used by the Attorney-General to issue a surrender warrant under section 25 of the Extradition Act.

This item removes ‘AND to (*insert name of foreign escort officer*) (in this warrant called the *escort*).’ and replaces it with ‘AND to (*insert name of escort officer or describe class or classes of persons who may be escort officers*) (in this warrant called the *escort*).’ in form 15. This amendment serves two purposes in line with the amendment to the terminology in the Extradition Act:

- i. it reflects that the escort officer does not need to be from the foreign country, and
- ii. it allows the class or classes of persons who may be escort officers to be described, rather than naming the particular escort officer.

Items [21] and [22] – Schedule, form 15, paragraphs (d) and (e)

Form 15 is the form used by the Attorney-General to issue a surrender warrant under section 25 of the Extradition Act.

These items remove the reference to ‘a police’ in paragraph (d) and ‘that police’ in paragraph (e) of form 15 and replace it with ‘any police’. This change brings into effect the amendment to paragraph 26(1)(c) of the Extradition Act that allows a person to be released into the custody of any police officer rather than a specified police officer.

Item [23] – Schedule, form 23

Form 23 is the form used by the Attorney-General to issue a surrender warrant under section 36 of the Extradition Act.

This item removes ‘*New Zealand escort officer*’ and replaces it with ‘*escort officer or describe class or classes of persons who may be escort officers*’ in form 23. This amendment serves two purposes in line with the amendment to the terminology in the Extradition Act:

- i. it reflects that the escort officer does not need to be from the foreign country, and
- ii. it allows the class or classes of persons who may be escort officers to be described, rather than naming the particular escort officer.

Item [24] – Schedule, form 26

Form 26 is the form used by a magistrate where the Attorney-General has authorised the taking of evidence for use in any proceedings for the surrender of the person to Australia under subsection 43(1) of the Extradition Act. Subsection 43(2) of the Extradition Act provides that a magistrate shall cause the evidence taken in these proceedings to be reduced to writing and produce a certificate in relation to the taking of the evidence.

This item omits the reference to ‘namely (*identify proceedings*),’ in form 26 as this reference is not required by the Extradition Act.

Item [25] – Further amendments

This item changes the date in Extradition forms 1, 2, 5, 8, 11, 12, 16, 17, 18, 19, 21, 22, 24, 25, 26, 28 and 29 from ‘Dated 19...’ to ‘Dated..’. This item also changes the date in forms 7 and 20 from ‘Issued on 19 .’ to ‘Dated..’ and forms 20A and 20B from ‘Dated .’ to ‘Dated’. These changes have been made to reflect the current year date.

Schedule 2 – Amendments of *Mutual Assistance in Criminal Matters Regulations 1988*

Item [1] – Regulations 12 to 18

This item removes regulations 12 to 18 in the MA Regulations.

Regulation 12 is the regulation that states that the authorisation given by the Attorney-General to a police officer under subsection 15(1) of the Act to apply to a Magistrate for a search warrant should be done in accordance with form 3 of the MA Regulations. Item 5 of this Regulation repeals form 3 as there is no requirement in the MA Act that this form be contained in regulations. As such, this item repeals regulation 12.

Regulations 15-17 are to be repealed as they are now out of date following previous amendments to the MA Act.

The MA Act previously required a country to be specified in regulations in order to enforce a foreign non-conviction based order (an order for the restraint and recovery of unlawfully acquired property without first requiring a criminal conviction), or to seek a temporary non-conviction based order on behalf of another country. The MA Act has been amended to enable Australia to enforce non-conviction based orders from all countries, and seek temporary non-conviction based restraining orders on behalf of any country without having to list them in regulations. Regulation 18 lists the countries that Australia could enforce non-conviction based orders on behalf of. However, as this is no longer required under the MA Act, this regulation is being repealed.

Item [2] – Schedule, form 1

Form 1 is the form used by a magistrate to issue a summons under the MA Act for a number of reasons including requiring a person to attend as a witness or produce documents.

This item removes the term ‘SummonsIn the Matter of proceedings relating to’ and replace with ‘In the Matter of proceedings relating to’. This change has been made as the word ‘summons’ is unnecessary and this will make the form clearer without the typographical error.

Item [3] – Schedule, form 1

Form 1 is the form used by a magistrate to issue a summons under the MA Act for a number of reasons including requiring a person to attend as a witness or produce documents.

This item changes the date in Form 1 from ‘Dated 19...’ to ‘Dated..’ to reflect the current year date.

Item [4] – Schedule, form 2, paragraphs (a) and (b)

Form 2 is the form used by a magistrate to issue a warrant of apprehension under section 39 of the MA Act.

This item inserts a reference to Federal Magistrate in paragraph (a) to reflect the amendment to the MA Act that allows nominated Federal Magistrates to issue a warrant of apprehension. This item would also change the date in paragraphs (a) and (b) of Form 2 from ‘19 .’ and replace with ‘(date)’ to reflect the current year date.

Item [5] – Forms 3 and 7 to 11

This item repeals forms 3, 7, 8, 9, 10 and 11 in the *Mutual Assistance in Criminal Matters Regulations 1988*. This reflects amendments made to the *Mutual Assistance in Criminal Matters Act 1987* which have resulted in these forms being no longer necessary.

Schedules 3-19 - Amendment of country-specific Regulations concerning extradition

There are a number of country-specific Regulations that declare an ‘offence constituted by taking or endangering, attempting to take or endanger or participating in the taking or endangering of, the life of a person, being an offence committed in circumstances in which such conduct creates a collective danger, whether direct or indirect, to the lives of other persons’ is not a ‘political offence’.

Schedules 3-19 remove this regulation from the relevant country-specific extradition Regulations as this definition has now been moved to the *Extradition Regulations 1988* at regulation 2B. This change is to ensure all regulations relating to political offences are contained in the Extradition Regulations.

Schedules 3-19 remove the following regulations:

- Regulation 5 of the *Extradition (Canada) Regulations 2004*;
- Regulation 6 of the *Extradition (Commonwealth countries) Regulations 2010*;
- Regulation 5 of the *Extradition (Cook Islands) Regulations 2010*;
- Regulation 4 of the *Extradition (Denmark) Regulations*;
- Regulation 4 of the *Extradition (Iceland) Regulations*;
- Regulation 4 of the *Extradition (Japan) Regulations*;
- Regulation 5 of the *Extradition (Kiribati) Regulations 2010*;
- Regulation 5 of the *Extradition (Nauru) Regulations 2010*;
- Regulation 5 of the *Extradition (Papua New Guinea) Regulations 2010*;
- Regulation 5 of the *Extradition (Republic of Estonia) Regulations 1999*;
- Regulation 4 of the *Extradition (Republic of the Marshall Islands) Regulations*;
- Regulation 5 of the *Extradition (Samoa) Regulations 2010*;
- Regulation 5 of the *Extradition (Solomon Islands) Regulations 2010*;
- Regulation 5 of the *Extradition (Tonga) Regulations 2010*;
- Regulation 5 of the *Extradition (Tuvalu) Regulations 2010*;
- Regulation 5 of the *Extradition (United Kingdom) Regulations 2004*, and
- Regulation 5 of the *Extradition (Vanuatu) Regulations 2010*.

Schedules 6, 7, 8 and 13 also amend relevant country specific extradition regulations that do not have the year date when the Regulations were made in the title. This item would insert the relevant year date so that the titles of the regulations would be as follows:

- the *Extradition (Denmark) Regulations 1988*;
- the *Extradition (Iceland) Regulations 1988*;
- the *Extradition (Japan) Regulations 1988*, and
- the *Extradition (Republic of the Marshall Islands) Regulations 1993*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

2. Extradition and mutual assistance are key international crime cooperation tools. Extradition is the process by which one country sends a person to another country to face criminal charges or serve a sentence. The *Extradition Act 1988* (Extradition Act) provides the legislative basis for extradition in Australia. Mutual assistance is the formal Government to Government process countries use to assist one another in the investigation and prosecution of criminal offences. The *Mutual Assistance in Criminal Matters Act 1987* (MA Act) provides the legislative basis for mutual assistance in Australia. The Extradition Act and MA Act sets out a number of requirements that must be met before Australia can make or receive extradition and mutual assistance requests respectively, which may be supplemented by requirements in bilateral or multilateral treaties.

3. The *Extradition Regulations 1988* (Extradition Regulations) and the *Mutual Assistance in Criminal Matters Regulations 1988* (MA Regulations) provide mechanisms necessary for the practical operation of the Extradition Act and the MA Act respectively, such as giving magistrates the power to issue summonses, warrants of arrest and order the forfeiture of recognizance. The *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Regulation 2012 (No. 1)* (the Regulation) would amend the Extradition Regulations and the MA Regulations and related Regulations to reflect recent amendments in the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* (the Amendment Act).

Definition of Political Offence

4. The Extradition Act provides that a person cannot be extradited from Australia for a 'political offence'. 'Political offence' is defined in section 5 of the Extradition Act as an offence against the law of the foreign country that is of a political character. The definition in the Extradition Act, prior to amendment by the Amendment Act, also contained a number of exceptions to the political offence definition. There are also a number of exceptions in a number of different Regulations. These exceptions in the Extradition Act and the regulations implement Australia's obligations under a number of bilateral and multilateral treaties. Under these treaties, Australia has an obligation not to consider certain offences, such as terrorism offences, as 'political offences'.

5. To streamline the definition of 'political offence', the definition in section 5 of the Extradition Act was amended by the Amendment Act to expressly exclude the following from the political offence definition:

- an offence that involves an act of violence against a person's life or liberty
- an offence prescribed by regulations to be an extraditable offence, and
- an offence prescribed by regulations not to be a political offence.

6. The Regulation will amend the Extradition Regulations to prescribe offences that are considered to be extraditable offences, or not to be political offences for the purpose of paragraphs 5(b) and (c) respectively, of the amended 'political offence' definition in the Extradition Act.

Other Amendments

7. The Regulation will also make a number of minor amendments, as follows:
- make a number of technical amendments to the extradition and mutual assistance forms to take account of amendments to the Extradition Act and MA Act, and
 - repeal references in a number of country-specific extradition regulations to the ‘political offence’ definition in the Extradition Act, as these will now be contained in the Extradition Regulations.

Human rights implications

8. This Legislative Instrument does not engage any of the applicable rights or freedoms.
9. The Regulation makes a number of technical amendments that do not substantially change the way Australia currently undertakes extradition and mutual assistance.
10. The new definition of ‘political offence’ in the Extradition Act will enable all the exclusions in the definition to be set out in the Extradition Regulations, rather than the Extradition Act and country-specific extradition regulations. This will ensure the extradition regime can be kept up-to-date with Australia’s international obligations without requiring frequent amendments to the Extradition Act and country-specific extradition regulations.
11. The list of exclusions inserted into the Extradition Regulations by this Regulation replicates the list previously contained in the Extradition Act, with the addition of offences constituted by conduct of a kind referred to in the following conventions that Australia is a party to:
- *The Convention on the Physical Protection of Nuclear Material 1980*
 - *The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*
 - *The International Convention for the Suppression of Acts of Nuclear Terrorism 2005*, and
 - *The United Nations Convention against Corruption 2003*.
12. The offences contained in these conventions are of a serious nature and are of an international concern. As a State Party to these conventions, Australia has an obligation to facilitate international crime cooperation, including the extradition of persons who are wanted to face prosecution or serve a sentence in another State Party to these conventions. One way in which Australia implements this obligation is by ensuring that an offence that falls within these conventions is not considered to be a ‘political offence’ under Australia’s extradition law.
13. The Regulation also makes a number of technical amendments to the Extradition Regulations and MA Regulations, including changes to the forms and repeals references to the ‘political offence’ definition previously contained in the Extradition Act. As such, the Regulation does not alter any of the safeguards that are already contained in Australia’s extradition and mutual assistance regime.

Conclusion

14. This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Jason Clare

Minister for Home Affairs and Justice