

L.N. 212 of 2007**FUGITIVE OFFENDERS (AUSTRALIA) (AMENDMENT)
ORDER 2007**

(Made by the Chief Executive in Council under section 3 of the
Fugitive Offenders Ordinance (Cap. 503))

1. Commencement

This Order shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Section substituted

Section 2 of the Fugitive Offenders (Australia) Order (Cap. 503 sub. leg. C) is repealed and the following substituted—

**“2. Procedures in Ordinance to apply between
Hong Kong and Australia**

In relation to the arrangements for the surrender of fugitive offenders the terms of which are recited in Schedules 1 and 2, it is directed that the procedures in the Ordinance shall apply as between Hong Kong and Australia subject to the limitations, restrictions, exceptions and qualifications contained in the terms of the arrangements.”.

3. Schedule amended

The Schedule is amended by repealing “SCHEDULE” and substituting “SCHEDULE 1”.

4. Schedule 2 added

The following is added—

“SCHEDULE 2

[s. 2]

PROTOCOL BETWEEN THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE
PEOPLE’S REPUBLIC OF CHINA AND THE
GOVERNMENT OF AUSTRALIA AMENDING THE
AGREEMENT FOR THE SURRENDER OF ACCUSED AND
CONVICTED PERSONS,
DONE AT HONG KONG ON 15 NOVEMBER 1993

The Government of the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong Special Administrative Region”) having been authorised by the Central People’s Government of the People’s Republic of China to conclude this Protocol with the Government of Australia, and the Government of Australia (hereinafter referred to as “the Parties”).

Recalling the Agreement between the Government of Hong Kong and the Government of Australia for the surrender of accused and convicted persons, done at Hong Kong on 15 November 1993 (hereinafter referred to as “the Agreement”),

Recognizing that the People’s Republic of China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997 and in accordance with its constitution has on that date established the Hong Kong Special Administrative Region of the People’s Republic of China,

Noting that the Government of the People’s Republic of China has confirmed the continued application of the Agreement to the Hong Kong Special Administrative Region and its recognition as an agreement entered into between the Government of the Hong Kong Special Administrative Region under the authorisation of the Government of the People’s Republic of China and the Government of Australia,

Desiring to amend the Agreement,

Have agreed as follows:

Article 1

This Protocol amends the Agreement and the Agreement and this Protocol shall be read and interpreted together as one single instrument.

Article 2

Article 5 of the Agreement shall be removed.

Article 3

The text of Article 9(3) of the Agreement shall be replaced by the following:

“If the request relates to an accused person it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party. In the case of requests to Hong Kong, the request shall also be accompanied by such evidence as, according to the law of Hong Kong, would justify committal for trial if the offence had been committed within the jurisdiction of Hong Kong.”

Article 4

The text of Article 16(1) of the Agreement shall be replaced by the following:

“The requested Party shall, as soon as a decision on the request for surrender has been made, communicate that decision to the requesting Party. Reasons shall be given for any complete or partial refusal of the request.”

Article 5

(1) This Protocol shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Protocol have been complied with.

(2) This Protocol shall remain in force so long as the Agreement remains in force.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments have signed this Protocol.

DONE in duplicate at Hong Kong this nineteenth day of March, two thousand and seven in the Chinese and English languages, each text being equally authentic.”

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
6 November 2007

Explanatory Note

This Order amends the Fugitive Offenders (Australia) Order (Cap. 503 sub. leg. C) (“the principal Order”), in order to implement in Hong Kong the protocol entered into by the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of Australia and signed in Hong Kong on 19 March 2007 (“the Protocol”). The Protocol amends the agreement signed in Hong Kong on 15 November 1993, as set out in the existing Schedule to the principal Order. Section 4 of the Order adds a new Schedule to the principal Order in order to set out the terms of the Protocol.