

# **Extradition (Commonwealth Countries) Regulations (Amendment) 1996 No. 227**

## EXPLANATORY STATEMENT

Statutory Rules 1996 No. 227

Issued by the Authority of the Attorney-General and Minister for Justice

*Extradition Act 1988*

Extradition (Commonwealth Countries) Regulations (Amendment)

Section 55 of the *Extradition Act 1988* (the Act) provides that the Governor-General may make regulations 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. Paragraph 11 (1)(b) of the Act provides that regulations may apply the Act to a specified extradition country subject to other limitations, conditions, exceptions, or qualifications.

The Regulations amend the Extradition (Commonwealth Countries) Regulations [Statutory Rules 1988 No. 281] ("the existing Regulations"). The existing Regulations give effect to Australia's participation in the Scheme for the Extradition of Fugitive Criminals between Commonwealth Countries ("the London Scheme"). The London Scheme enables Commonwealth countries to extradite fugitive criminals to each other upon the presentation of prima facie case evidence and in the absence of an extradition treaty. The existing Regulations reflect this in that they apply the Act to Commonwealth countries on a non-treaty basis and require Commonwealth countries seeking extradition to provide prima facie case evidence to Australia.

In 1990 Commonwealth Law Ministers decided to modify the prima facie case requirement in the London Scheme due to the evidential difficulties in extradition cases arising out of the prima facie case requirement. At the 1990 Commonwealth Law Ministers meeting, Ministers agreed that an alternative to the prima facie case requirement could be implemented by any two Commonwealth countries if they so desired. This alternative to the prima facie case requirement is called the "record of the case" which is essentially a recital of the evidence in support of extradition. This recital must be presented together with an affidavit of the investigating officer, a certificate of the Attorney-General of the country making the extradition request and a statement containing particulars of the identity, nationality and, to the extent possible, the whereabouts of the person sought to be extradited.

The Regulations give effect to the "record of the case" alternative by establishing a new Part 2 to the Schedule in the existing Regulations. Extradition requests from Commonwealth countries listed in Part 2 will need to be accompanied by the record of the case documents. For any country which may be included in Part 2, the "record of the case" documents will replace the prima facie evidence requirement that currently exists for all Commonwealth countries. Extradition requests from countries which remain in Part 1 will continue to be subject to the prima facie evidence requirement.

Tonga and Western Samoa are in the process of amending their extradition laws to give effect to the "record of the case" alternative. The Regulations move Tonga and Western Samoa into Part 2 of the Schedule. Other Commonwealth countries which decide in the future to allow extradition on a "record of the case" basis may be added to Part 2 of the Schedule to the existing Regulations.

The country formerly known as "St Christopher and Nevis" has altered its name to "St Kitts and Nevis". This change of name is effected by the Regulations. "St Christopher and Nevis" is removed from the existing Regulations and "St Kitts and Nevis" is inserted instead.

Details of the Regulations are as follows:

Regulation 1 provides for the existing Regulations to be amended.

Regulation 2 is an interpretation provision.

Regulation 3 modifies the Act in relation to the documents which are required to be produced to a court in support of an application for the extradition of a person. It will require that countries listed in proposed Part 1 of the Schedule produce prima facie case evidence when seeking extradition of a person, whilst requiring countries listed in proposed Part 2 of the Schedule to produce the "record of the case" documents when seeking extradition.

Regulation 4 amends the Schedule to the existing Regulations by dividing it into Part 1 and Part 2. It omits "St Christopher and Nevis" and inserts "St Kitts and Nevis" after "St Helena Dependencies" in Part 1. It also removes Tonga and Western Samoa from Part 1 and inserts them in Part 2.