

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 154

Issued by the authority of the Minister for Home Affairs

Extradition Act 1988

Extradition (Commonwealth countries) Regulations 2010

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.

The *Extradition (Commonwealth Countries) Regulations 1998* (the 1998 Regulations) declared each of the countries, colonies, territories and protectorates specified in Schedule 1 to the 1998 Regulations to be an extradition country for the purpose of the Act. The 1998 Regulations applied a ‘prima facie’ evidentiary standard to extradition requests received from countries including the Cook Islands, Kiribati, Nauru, Papua New Guinea, Solomon Islands, Tuvalu and Vanuatu, and a ‘record of the case’ evidentiary requirement for extradition requests received from Tonga and Samoa.

The *Extradition (Commonwealth countries) Regulations 2010* (the Regulations) repeal and replace the 1998 Regulations to remove the Cook Islands, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu from the extradition countries listed in Schedule 1. Extradition arrangements with each of these nine countries have been re-established under separate country-specific regulations. The country-specific regulations enable extradition requests to be considered in accordance with the modern ‘no evidence’ standard in the Act, thereby streamlining extradition arrangements with neighbouring Pacific island countries.

Aside from this change, the Regulations are the same in substance to the 1998 Regulations. Minor technical amendments have been made to the Regulations to reflect modern drafting practice. The changes have no substantive effect. In accordance with section 15AC of the *Acts Interpretation Act 1901*, the changes to style in the Regulations do not affect the meaning of any provision.

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

Consultation outside the Australian Government was not undertaken for this legislative instrument as it does not substantially alter existing arrangements. The legislative

arrangement does not have a direct, or substantial indirect, effect on business and does not restrict competition.

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 (Commonwealth countries) Regulations 2010*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Extradition (Commonwealth countries) Regulations 2010*.

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 – Repeal

This regulation provides that the *Extradition (Commonwealth Countries) Regulations 1998* are repealed.

Regulation 4 – Definition

This regulation defines terms used in the Regulations.

Regulation 5 – Extradition countries

This regulation provides that for the definition of extradition country in section 5 of the Act, each country, colony, territory and protectorate listed in Schedule 1 is an extradition country.

Regulation 6 – Offences that are not political offences

This regulation provides that the *Extradition Act 1988* applies subject to the modification that an offence mentioned in paragraph (d) of the definition of political offence in section 5 of the *Extradition Act 1988* is declared not to be a political offence in relation to a Commonwealth country.

Regulation 7 – definition of extradition offence

This regulation provides that the definition of extradition offence contained in the Act is modified in relation to a Commonwealth country so as to change the reference to 12 months to a reference to 2 years.

Regulation 8 – Modification of Act – condition to produce documents

This regulation provides that certain additional documents must be produced to a magistrate under section 19 of the Act.

Regulation 9 – Modification of Act – when eligible person must not be surrendered

This regulation provides that a person must not be surrendered to a Commonwealth country in relation to a qualifying extradition offence if the Attorney-General is satisfied that it would be unjust or oppressive or too severe a punishment to surrender the person or to surrender the person before the end of a period stated by the Attorney-General. The drafting of this regulation has been updated to reflect modern drafting practice. The regulation has the same meaning as regulation 7 in the 1998 Regulations.

Regulation 10 – Transitional

This regulation is a transitional provision.