

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 157

Issued by the authority of the Minister for Home Affairs

Extradition Act 1988

Extradition (Nauru) 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. Subsection 11(2) states that this reference to limitations, conditions, exceptions or qualifications includes modification to the effect that a number of days greater or lesser than the 45 days referred to in paragraph 17(2)(a) applies for the purposes of that paragraph.

The purpose of the Regulations is to streamline the arrangements governing extradition from Australia to Nauru in accordance with the Act. Australia was previously able to consider extradition requests from Nauru under the *Extradition (Commonwealth Countries) Regulations 1998* (the 1998 Regulations). The 1998 Regulations modified the Act by requiring Nauru to present evidence sufficient to establish a prima facie case in each extradition request. The Regulations remove the need for extradition requests from Nauru to include prima facie evidence, and instead enable extradition requests from Nauru to be considered in accordance with the Act. The Act applies the modern ‘no evidence’ extradition standard.

Paragraph 17(2)(a) of the Act sets out a standard period whereby a person arrested pursuant to a provisional arrest warrant may be released by a magistrate if a request for his or her extradition has not been received after 45 days. The Regulations modify this standard period to 60 days for extradition requests received from Nauru. Modification to apply a 60 day period is common and has been included, for example, in regulations applying the Act to Brazil, Canada, Croatia, Hungary, Mexico, Slovenia and the United States.

The Regulations also modify the definition of ‘political offence’ in relation to Nauru, by providing that an offence mentioned in paragraph (d) of the definition of ‘political offence’ in section 5 of the Act is declared not to be a political offence in relation to Nauru. Paragraph (d) provides that 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 to the lives of other persons, shall not be regarded as a political offence where it is declared by regulations not to be a political offence in relation to a country. The effect of the modification is that a person who is accused of a crime of this nature is not barred from extradition on the basis that it is a

political offence. This is consistent with the position as it applied to Nauru under the 1998 Regulations.

Extradition requests made pursuant to the Regulations are subject to the various safeguards set out in the Act. For example, extradition will not be permitted where the person is sought for or in connection with his or her race, religion, nationality or political opinions or is to be tried, sentenced or detained for a political or military offence. Extradition must be refused where the offence for which the person is requested attracts the death penalty, unless an undertaking is given that the death penalty will not be imposed or, if imposed, will not be carried out. Extradition must also be refused where the person could be subjected to torture. In addition, the Attorney-General retains a broad discretion to refuse any extradition request.

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

Consultation was unnecessary for this legislative instrument as this instrument does not substantially alter existing arrangements and has no direct or indirect effect on business.

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 (Nauru) Regulations 2010*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Extradition (Nauru) 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 – Definition

This regulation defines terms used in the Regulations.

Regulation 4 – Declaration that Nauru is an extradition country

This regulation declares Nauru to be an extradition country.

Regulation 5 – Offences that are not political offences

This regulation provides that the *Extradition Act 1988* applies to Nauru 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 Nauru.

Regulation 6 – Application of Act

This regulation provides that the *Extradition Act 1988* applies to Nauru subject to the modification of the period nominated in paragraph 17(2)(a) from 45 days to 60 days.