



**Tuvalu**

**MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS ACT**

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Tuvalu

# MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

## Arrangement of Sections

### Section

<b>PART 1 - PRELIMINARY</b>	<b>7</b>
1 Short title.....	7
2 Commencement .....	7
3 Objects of Act .....	7
4 Application.....	8
5 Definitions .....	8
6 Act not to limit other provision of assistance .....	10
<b>PART 2 - REQUESTS FOR ASSISTANCE GENERALLY</b>	<b>10</b>
7 Requests by Tuvalu for assistance generally .....	10
8 Request by foreign countries for assistance generally .....	10
9 Assistance may be provided subject to conditions.....	11
10 Refusal of assistance generally .....	11
11 Refusal of assistance - death penalty .....	13
12 Refusal of assistance - Attorney-General's discretion .....	13
<b>PART 3 - ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES</b>	<b>14</b>
13 Requests by Tuvalu for assistance with evidence .....	14
14 Requests by foreign countries for assistance with evidence .....	14
15 Taking evidence .....	15
16 Production.....	15
17 Conduct of proceedings .....	15
18 Exceptions to compulsion.....	16
19 Foreign law immunity certificates .....	16

**PART 4 - ASSISTANCE FOR SEARCH AND SEIZURE 16**

20	Requests by Tuvalu for search and seizure .....	16
21	Requests by foreign countries for search and seizure .....	17
22	Search warrants .....	18
23	Custody of things seized .....	18

**PART 5 - ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS 18****DIVISION 1 - REQUESTS BY TUVALU 18**

24	Requests for removal of certain persons to Tuvalu .....	18
25	Custody of certain persons .....	19
26	Immunities.....	19
27	Status of person prosecuted for offence committed after leaving foreign country.....	20
28	Limitation on use of evidence given by certain persons .....	21
29	Conditions of imprisonment.....	21
30	Release of certain persons on request by foreign country .....	21
31	Arrest of person who has escaped from custody .....	22

**DIVISION 2 - REQUESTS BY FOREIGN COUNTRIES 22**

32	Requests for certain persons to give evidence or assistance in foreign countries .....	22
33	Travel of prisoner or person .....	23
34	Undertakings to be given.....	23
35	Effect of removal to foreign country on prisoner's term of imprisonment.....	24

**PART 6 - CUSTODY OF PERSONS IN TRANSIT 25**

36	Application of Part 6 .....	25
37	Transit .....	25
38	Arrest of person in transit.....	25

**PART 7 - ASSISTANCE REGARDING PROCEEDS OF CRIME 26****DIVISION 1 - REQUESTS BY TUVALU 26**

39	Requests for enforcement of orders.....	26
40	Requests for issue of orders in foreign countries .....	26

**DIVISION 2 - REQUESTS BY FOREIGN COUNTRIES 26**

41	Requests for enforcement of orders.....	26
42	Registration of foreign orders .....	27
43	How a foreign order is registered .....	27
44	Effect of registration.....	27
45	Amendment of foreign orders .....	28
46	Cancellation of registration .....	28

---

47	Requests for search and seizure warrants for tainted property .....	28
48	Requests for restraining orders .....	28
49	Requests for information gathering orders.....	29
<b>PART 8 - REQUESTS BY OR FOR A DEFENDANT</b>		<b>29</b>
<hr/>		
50	Requests by Attorney-General for a defendant.....	29
51	Certificate by Attorney-General if foreign country refuses request made under section 50 .....	30
<b>PART 9 - ADMISSIBILITY OF FOREIGN EVIDENCE</b>		<b>31</b>
<hr/>		
52	Application of Part 9 .....	31
53	Definitions for Part 9 .....	31
54	Requirements for testimony .....	32
55	Form of testimony.....	32
56	Foreign material may be adduced as evidence.....	32
57	Direction to prevent foreign material being adduced.....	33
58	Certificates relating to foreign material .....	33
59	Effect of Part on right to examine witnesses.....	33
60	Operation of other laws.....	34
<b>PART 10 - MISCELLANEOUS</b>		<b>34</b>
<hr/>		
61	Aiding person to escape etc. ....	34
62	Authentication of documents .....	35
63	Restriction on use of information etc.....	35
64	Requests for international assistance not to be disclosed .....	36
65	Regulations .....	36

## Supporting Documents

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<b>ENDNOTES</b>	<b>37</b>
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Tuvalu

# MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

## AN ACT TO MAKE PROVISION FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS<sup>1</sup>

Commencement [7 May 2004]<sup>2</sup>

### PART 1 - PRELIMINARY

#### 1 Short title

This Act is the Mutual Assistance in Criminal Matters Act.

#### 2 Commencement

This Act commences on the date fixed by notice by the Minister.

#### 3 Objects of Act

The objects of this Act are:

- (a) to regulate the provision by Tuvalu of international assistance in criminal matters when a request is made by a foreign country for any of the following:
  - (i) the taking of evidence, or the production of a document or other article, for a proceeding in the foreign country;
  - (ii) the issue of a search warrant and seizure of any thing relevant to a proceeding or investigation in the foreign country;
  - (iii) the forfeiture or confiscation of property for the commission of a serious offence against the law of the foreign country;

- (iv) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of the foreign country; and
- (b) to facilitate Tuvalu providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in Tuvalu to travel to the foreign country:
  - (i) to give evidence in a proceeding; or
  - (ii) to give assistance for an investigation; and
- (c) to facilitate Tuvalu obtaining similar international assistance in criminal matters.

#### 4 Application

This Act applies for all foreign countries.

#### 5 Definitions

In this Act, unless the context otherwise requires:

“**authorised officer**”, for a provision of this Act, means a person, or a person in a class of persons, designated in writing as an authorised person for the provision;

“**Court**” means the High Court of Tuvalu;

“**criminal matter**” includes a matter (whether arising under Tuvalu law or a law of another country) relating to:

- (a) the forfeiture or confiscation of property for an offence; or
- (b) the restraining of dealings in property that may be forfeited or confiscated for an offence;

“**document**” has the same meaning as in the Proceeds of Crime Act;<sup>3</sup>

“**facsimile copy**” means a copy obtained or sent by facsimile transmission;

“**foreign forfeiture order**” means an order, made under the law of a foreign country, for the forfeiture of property because of an offence against the law of that country;

“**foreign law immunity certificate**” means a certificate given, or a declaration made:

- (a) by a foreign country or under a law of a foreign country; and
- (b) stating that, under the law of the foreign country, persons generally or a specified person could or could not, either generally or in specified proceedings or circumstances, be required:

- (i) to answer a specified question; or
- (ii) to produce a specified document or other article;

“**foreign pecuniary penalty order**” means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of the value) of what the person gained from an offence against the law of that country;

“**foreign prisoner**” means a person who is being held in custody pending trial or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign country, but does not include a person who is at large after having escaped from lawful custody;

“**foreign restraining order**” means an order made under the law of a foreign country, about an offence against the law of that country, restraining a particular person, or all persons, from dealing with property;

“**forfeiture order**” has the same meaning as in the Proceeds of Crime Act;

“**pecuniary penalty order**” has the same meaning as in the Proceeds of Crime Act;

“**prison**” includes a gaol, lock-up or other place of detention;

“**prisoner**” means a person who is being held in custody pending trial or sentence, or is under a sentence of imprisonment, for an offence against a law of Tuvalu, but does not include a person who is at large, having escaped from lawful custody;

“**proceedings**” has the same meaning as in the Proceeds of Crime Act;

“**proceeds**” has the same meaning as in the Proceeds of Crime Act;

“**Proceeds of Crime Act**” means the Proceeds of Crime Act 2002;<sup>4</sup>

“**property**” has the same meaning as in the Proceeds of Crime Act;

“**property-tracking document**” has the same meaning as in the Proceeds of Crime Act;

“**requesting country**”, for a request for assistance, means the country that makes the request;

“**restraining order**” has the same meaning as in the Proceeds of Crime Act;

“**serious offence**” has the same meaning as in the Proceeds of Crime Act;

“**tainted property**” has the same meaning as in the Proceeds of Crime Act;

“**trial**”, for an offence in a foreign country, includes a proceeding to determine whether a person should be convicted of the offence;

“**video or internet link**” means a system, including an internet connection, that lets persons assembled in a place see, hear and talk to persons assembled in another place.

## **6 Act not to limit other provision of assistance**

This Act does not limit the provision or obtaining of international assistance in criminal matters other than assistance of a kind that may be provided or obtained under this Act.

# **PART 2 - REQUESTS FOR ASSISTANCE GENERALLY**

## **7 Requests by Tuvalu for assistance generally**

A request for international assistance in a criminal matter that Tuvalu is authorised to make under this Act may be made only by the Attorney-General.

## **8 Request by foreign countries for assistance generally**

- (1) A request under this Act by a foreign country for international assistance in a criminal matter must be made to the Attorney-General or a person authorised by the Attorney-General to receive requests by foreign countries under this Act.
- (2) A request must be in writing and must include the following information:
  - (a) the name of the authority concerned with the criminal matter to which the request relates;
  - (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
  - (c) a description of the purpose of the request and of the nature of the assistance being sought;
  - (d) any information that may assist in giving effect to the request.
- (3) Failure to comply with subsection (2) is not a ground for refusing the request, but the Attorney-General is not obliged to consider the request until the subsection is complied with.
- (4) If a foreign country makes a request to a person authorised under subsection (1), the request is taken, for this Act, to have been made to the Attorney-General.
- (5) If a foreign country makes a request to the Court for international assistance in a criminal matter:
  - (a) the Court must refer the request to the Attorney-General; and
  - (b) the request is then taken, for this Act, to have been made to the Attorney-General.

## 9 Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to any conditions that the Attorney-General determines.

## 10 Refusal of assistance generally

- (1) A request by a foreign country for assistance under this Act must be refused if, in the opinion of the Attorney-General:
  - (a) the request relates to an investigation of, or a proceeding for, a political offence; or
  - (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for a political offence; or
  - (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions; or
  - (d) providing the assistance would prejudice the sovereignty, security or national interest of Tuvalu; or
  - (e) the request relates to an investigation of, or proceeding for, an offence for which the person concerned has been acquitted or pardoned by a competent tribunal or authority in the foreign country or has undergone the punishment provided by the law of that country.
- (2) In this section:

“**political offence**”, for a country, means an offence against the law of the country that is of a political character:

  - (a) because of the circumstances in which it is committed or for any other reason; and
  - (b) whether or not there are competing political parties in the country.
- (3) However, none of the following is a political offence:
  - (a) an offence that is constituted by conduct of a kind referred to in:
    - (i) Article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; or
    - (ii) Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; or
    - (iii) paragraph 1 of Article 2 of the Convention on the Protection and Punishment of Crimes against Internationally Protected Persons, opened for signature at New York on 14 December 1973; or

- (iv) Article III of the Convention on the Prevention and Punishment of the Crime of Genocide, approved by the General Assembly of the United Nations at Paris on 9 December 1948; or
  - (v) Article 1 of the International Convention against the Taking of Hostages, being the convention of that title that was adopted by the General Assembly of the United Nations on 17 December 1979; or
  - (vi) Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, being the convention of that title that was adopted by the General Assembly of the United Nations on 10 December 1984; or
  - (vii) Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988; or
  - (viii) Article 2 of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; or
  - (ix) a prescribed provision of an international instrument;
- (b) an offence:
- (i) constituted by conduct that, by an extradition treaty (other than a bilateral treaty) for the country or any country, is required to be treated as an offence for which a person may be surrendered or tried; and
  - (ii) declared by regulations for this paragraph not to be a political offence for the country or all countries;
- (c) an offence, declared by regulations for this paragraph not to be a political offence for the country, against the head of state or head of government of the country or a member of the family of either of those persons, constituted by:
- (i) murder, kidnapping or other attack on the person or the person's liberty; or
  - (ii) a threat or attempt to commit, or participation as an accomplice in, a murder, kidnapping or other attack on the person or liberty;
- (d) 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:
- (i) committed in circumstances in which such conduct creates a collective danger, whether direct or indirect, to the lives of other persons; and
  - (ii) declared by regulations for this paragraph not to be a political offence for the country.

**11 Refusal of assistance - death penalty**

- (1) A request by a foreign country for assistance under this Act must be refused if:
  - (a) it relates to an investigation of, or a proceeding for, an offence for which the death penalty may be imposed in the foreign country; and
  - (b) the Attorney-General is not of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.
- (2) A request by a foreign country for assistance under this Act may be refused if the Attorney-General is of the opinion that:
  - (a) the provision of the assistance may result in the death penalty being imposed on a person; and
  - (b) after taking into consideration the interests of international cooperation in criminal law enforcement, in the circumstances of the case the request should not be granted.

**12 Refusal of assistance - Attorney-General's discretion**

A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Attorney-General:

- (a) the request relates to the prosecution or punishment of a person for an act or omission that would not have constituted an offence against Tuvalu law if it had occurred in Tuvalu; or
- (b) the request relates to the prosecution or punishment of a person:
  - (i) for an act or omission that occurred, or is alleged to have occurred, outside the foreign country; and
  - (ii) if a similar act or omission occurring outside Tuvalu in similar circumstances would not have constituted an offence against Tuvalu law; or
- (c) the request relates to the prosecution or punishment of a person for an act or omission if the person responsible could no longer be prosecuted because of lapse of time or any other reason if:
  - (i) it had occurred in Tuvalu at the same time; and
  - (ii) it had constituted an offence against Tuvalu law; or
- (d) providing the assistance could prejudice an investigation or proceeding for a criminal matter in Tuvalu; or
- (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Tuvalu); or
- (f) the provision of the assistance would result in manifest unfairness or a denial of human rights; or

- (g) the provision of the assistance would impose an excessive burden on the resources of the Crown; or
- (h) it is appropriate, in all the circumstances of the case, that the assistance requested should not be granted.

## **PART 3 - ASSISTANCE WITH TAKING EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES**

### **13 Requests by Tuvalu for assistance with evidence**

- (1) The Attorney-General may request the appropriate authority of a foreign country to arrange, for a proceeding or investigation in a criminal matter in Tuvalu, for:
  - (a) evidence to be taken in the foreign country under the law of that country; or
  - (b) a document or other article in the foreign country to be produced under the law of that country.
- (2) When making a request under subsection (1), the Attorney-General may also request that an opportunity be given for the person giving the evidence, or producing the document or other article, to be examined or cross-examined, through a video or internet link, from Tuvalu by:
  - (a) a party to the proceeding, or the party's legal representative; or
  - (b) a person being investigated, or the person's legal representative.

### **14 Requests by foreign countries for assistance with evidence**

- (1) If a foreign country asks that evidence be taken in Tuvalu for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise:
  - (a) the taking of the evidence; and
  - (b) the transmission of the evidence to the requesting country.
- (2) If a foreign country asks that a document or other article in Tuvalu be produced for a proceeding or investigation in a criminal matter in the requesting country or another foreign country, the Attorney-General may authorise:
  - (a) the production of the documents or articles; and
  - (b) their transmission to the requesting country.

**15 Taking evidence**

- (1) If the Attorney-General authorises the taking of evidence under section 14, the Court may take, on oath, the evidence of each witness in the matter, and the Court that takes any such evidence must:
  - (a) cause the evidence to be put in writing and certify that the Court took the evidence; and
  - (b) send the evidence and certificate to the Attorney-General.
- (2) The certificate must state whether, when the evidence was taken, any of the following persons were present:
  - (a) the person to whom the proceeding in the requesting country relates or his or her legal representative (if any) ;
  - (b) any other person giving evidence or his or her legal representative (if any) ;
  - (c) a legal representative of the requesting country.

**16 Production**

- (1) If the Attorney-General authorises the production of a document under section 14, the Court:
  - (a) may order the document to be produced to the Court; and
  - (b) if it is produced, must send it, or a copy of it certified by the Court to be a true copy, to the Attorney-General.
- (2) If the Attorney-General authorises the production of an article (other than a document) under section 14, the Court:
  - (a) may order it to be produced to the Court; and
  - (b) if it is produced, must send it to the Attorney-General.

**17 Conduct of proceedings**

- (1) The Court conducting a proceeding under section 15 or 16 may permit any of the following to have legal representation at the proceeding:
  - (a) the person to whom the proceeding in the requesting country relates; and
  - (b) any other person giving evidence or producing a document or other article at the proceeding before the Court; and
  - (c) the requesting country.
- (2) The Court may take evidence or order production of a document or other article in the presence or absence of the person to whom the proceeding in the requesting country relates or of his or her legal representative (if any).

- (3) The Court may, at the request of the requesting country, permit examination or cross-examination, through a video or internet link with the requesting country, of any person giving evidence or producing a document or other article at the proceeding.
- (4) The examination or cross-examination may be conducted by:
  - (a) any person to whom the proceeding in the requesting country relates, or that person's legal representative; or
  - (b) the legal representative of the requesting country.

## **18 Exceptions to compulsion**

- (1) The laws of Tuvalu about:
  - (a) compelling a person to attend before a Judge; and
  - (b) giving evidence, answering questions and producing documents or other articles,on the hearing of a charge against a person for an offence against the law of Tuvalu, apply, as far as they are capable of applying, to the compelling of a person under this Part:
  - (c) to attend before a Judge; and
  - (d) to give evidence, answer questions and produce documents or other articles.
- (2) However, for this section, the person to whom the proceeding in the requesting country relates:
  - (a) is competent, but not compellable, to give evidence; and
  - (b) is not compellable to answer a question or to produce a document or article if the person would not be compellable to do so in the requesting country or other foreign country to which the request relates.

## **19 Foreign law immunity certificates**

A foreign law immunity certificate is admissible in proceedings under section 18 as evidence of the matters stated in the certificate.

# **PART 4 - ASSISTANCE FOR SEARCH AND SEIZURE**

## **20 Requests by Tuvalu for search and seizure**

- (1) This section applies if:

- (a) a proceeding or investigation for a criminal matter involving a serious offence against the law of Tuvalu has commenced; and
  - (b) the Attorney-General believes, on reasonable grounds, that a thing relevant to the proceeding or investigation may be located in a foreign country.
- (2) The Attorney-General may request the appropriate authority of the foreign country to obtain a warrant or other instrument that, under the law of the foreign country, authorises:
- (a) a search for a thing relevant to the proceeding or investigation; and
  - (b) the seizure of the thing or any other thing that is or may be relevant to the proceeding or investigation and is found as a result of the search.
- (3) A thing may be admissible in evidence in the proceeding or used in the investigation, despite having been obtained otherwise than in accordance with the request, if it:
- (a) is relevant to the proceeding or investigation; and
  - (b) has been obtained by the appropriate authority of the foreign country by a process authorised by the law of that country other than the issue (as requested by Tuvalu) of a warrant or other instrument authorising the seizure of the thing.

## **21 Requests by foreign countries for search and seizure**

- (1) The Attorney-General may direct an authorised officer to apply to a magistrate for a search warrant if:
- (a) a proceeding for, or investigation of, a criminal matter involving a serious offence has commenced in a foreign country; and
  - (b) the Attorney-General believes, on reasonable grounds, that a thing relevant to the investigation or proceeding is located in Tuvalu; and
  - (c) the foreign country requests the Attorney-General to arrange for the issue of a search warrant for that thing.
- (2) The authorised officer must apply to a magistrate, or the Registrar of the Court, for the issue of a warrant to search land or premises in the same way as a police officer may apply for the issue of a search warrant under section 101 of the Criminal Procedure Code.<sup>5</sup>
- (3) If an application is made under subsection (2) for a warrant, the magistrate or Registrar may issue a warrant of that kind in the same way, and subject to the same conditions, as he or she could issue a search warrant under section 101 of the Criminal Procedure Code, and, subject to this Division, the warrant may be executed in the same way as if it had been issued under that section.

## **22 Search warrants**

- (1) If an application is made under section 21 for a warrant for a thing relevant to an investigation or proceeding in a foreign country, the magistrate may issue the warrant authorising the authorised officer, with such assistance and by such force as is necessary and reasonable:
  - (a) to enter the land or premises; and
  - (b) to search the land or premises for the thing and to seize it.
- (2) If, in the course of searching under a warrant issued under this section for a thing of a kind specified in the warrant, an authorised officer finds another thing, the warrant is taken to authorise the authorised officer to seize the other thing if the officer believes, on reasonable grounds, the other thing:
  - (a) to be relevant to the proceeding or investigation in the foreign country or to provide evidence about the commission of a criminal offence in Tuvalu; and
  - (b) to be likely to be concealed, lost or destroyed if it is not seized.

## **23 Custody of things seized**

- (1) If an authorised officer seizes a thing under a warrant issued under section 22, the officer must give the thing to the Commissioner of Police.
- (2) If a thing is given to the Commissioner of Police under subsection (1), the Commissioner of Police must tell the Attorney-General that the thing has been received and arrange for the thing to be kept in safe custody.
- (3) The Attorney-General may give to the Commissioner of Police a direction in writing (including a direction that the thing be sent to an authority of a foreign country) about how the thing is to be dealt with.

# **PART 5 - ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS**

## **DIVISION 1 - REQUESTS BY TUVALU**

## **24 Requests for removal of certain persons to Tuvalu**

- (1) The Attorney-General may request a foreign country to authorise the attendance at a hearing, for a proceeding that has commenced in Tuvalu, of a person who is in the foreign country if:
  - (a) the proceeding relates to a criminal matter; and
  - (b) the Attorney-General is of the opinion that the person:
    - (i) is a foreign prisoner; and

- (ii) is capable of giving evidence relevant to the proceeding; and
  - (iii) has consented to being removed to Tuvalu to give evidence in the proceeding.
- (2) The Attorney-General may request a foreign country to authorise the removal of a person who is in the foreign country to Tuvalu to give assistance in an investigation that has commenced in Tuvalu if:
  - (a) the investigation relates to a criminal matter; and
  - (b) the Attorney-General is of the opinion that the person:
    - (i) is a foreign prisoner; and
    - (ii) is capable of giving assistance in the investigation; and
    - (iii) has consented to being removed to Tuvalu to give assistance in the investigation.
- (3) If the Attorney-General makes a request under subsection (1) or (2), the Attorney-General may arrange with an appropriate authority of the foreign country for:
  - (a) the removal of the person to Tuvalu; and
  - (b) the custody of the person while in Tuvalu; and
  - (c) the return of the person to the foreign country; and
  - (d) other relevant matters.

## **25 Custody of certain persons**

- (1) This section applies:
  - (a) to a person who is to be brought to Tuvalu from a foreign country in response to a request under section 24; and
  - (b) if the foreign country requests that the person be kept in custody while he or she is in Tuvalu.
- (2) The person must be kept in such custody as the Attorney-General directs in writing while the person is in Tuvalu, or travelling to or from Tuvalu, under the request.

## **26 Immunities**

- (1) This section applies to a person who is in Tuvalu:
  - (a) because of a request under section 24; or
  - (b) to give evidence in a proceeding, or to give assistance in an investigation, because of a request made by or for the Attorney-General (except a request under section 24) for international assistance in a criminal matter.

- (2) The person must not:
- (a) be detained, prosecuted or punished in Tuvalu for any offence committed, or alleged to have been committed, before he or she left the foreign country in response to the request; or
  - (b) be subjected to any civil suit (to which the person could not be subjected if the person were not in Tuvalu) for an act or omission of the person that occurred, or is alleged to have occurred, before he or she left the foreign country in response to the request; or
  - (c) be required to give evidence in any proceeding in Tuvalu other than any proceeding to which the request relates; or
  - (d) be required, in any proceeding to which the request relates, to answer any question that the person would not be required to answer in a proceeding relating to a criminal matter in the foreign country; or
  - (e) be required, in any proceeding to which the request relates, to produce any document or article that the person would not be required to produce in a proceeding in the foreign country relating to a criminal matter.
- (3) A foreign law immunity certificate is admissible in proceedings as evidence of the matters stated in the certificate.
- (4) Subsection (2) ceases to apply to a person:
- (a) when the person leaves Tuvalu; or
  - (b) if the person has had the opportunity of leaving Tuvalu and has remained in Tuvalu otherwise than:
    - (i) for the purpose to which the request relates; or
    - (ii) to give evidence in a proceeding in Tuvalu certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
    - (iii) to give assistance in an investigation in Tuvalu certified by the Attorney-General, in writing, to be an investigation in which it is desirable that the person give assistance.
- (5) A certificate given by the Attorney-General for subparagraph (4) (b) (ii) or (iii) has effect from the day specified in it (which may be a day before the day on which the certificate is given).

## **27 Status of person prosecuted for offence committed after leaving foreign country**

- (1) This section applies:
- (a) to a person who has come to Tuvalu in response to a request under section 24; and

- (b) during any period when he or she remains in Tuvalu to be tried for a criminal offence against the law of Tuvalu that he or she is alleged to have committed after he or she left the foreign country.
- (2) The person is taken, for this Act, to be in Tuvalu because of the request.
- (3) Without limiting subsection (2) , the person must be kept in such custody as the Attorney-General directs under section 25.

## **28 Limitation on use of evidence given by certain persons**

- (1) This section applies to a person who is in Tuvalu to give evidence in a proceeding or assistance in an investigation:
  - (a) either:
    - (i) because of a request under section 24; or
    - (ii) because of a request (other than a request under that section) made by the Attorney-General for international assistance in a criminal matter; and
  - (b) if the person has given the evidence in the proceeding to which the request related or in a proceeding certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence.
- (2) The evidence must not be admitted or otherwise used in a prosecution of the person for an offence against Tuvalu law, other than for perjury in giving that evidence.
- (3) Anything the person says or does when giving the assistance is not to be admitted or otherwise used in any prosecution of the person for an offence against Tuvalu law.

## **29 Conditions of imprisonment**

For a person who has been committed to prison in Tuvalu under a direction of the Attorney-General under section 25, the laws of Tuvalu about the following matters apply (as far as they are capable of applying):

- (a) the conditions of imprisonment of persons imprisoned for offences against the law of Tuvalu; and
- (b) the treatment of the persons during imprisonment; and
- (c) the transfer of the persons from prison to prison.

## **30 Release of certain persons on request by foreign country**

The Attorney-General must direct that a person be released from custody if:

- (a) the person is being held in custody under a direction of the Attorney-General under section 25; and
- (b) the appropriate authority of the foreign country from which the person has been brought requests the release of the person from custody.

### **31 Arrest of person who has escaped from custody**

- (1) Any police officer may arrest a person without warrant if the officer believes, on reasonable grounds, that the person:
  - (a) has been brought to Tuvalu in response to a request under section 24; and
  - (b) has escaped from lawful custody while in Tuvalu because of the request.
- (2) The police officer must take the person before a magistrate as soon as practicable.
- (3) If the magistrate is satisfied that the person has escaped from lawful custody, the magistrate may issue a warrant authorising any police officer to return the person to lawful custody.

## **DIVISION 2 - REQUESTS BY FOREIGN COUNTRIES**

### **32 Requests for certain persons to give evidence or assistance in foreign countries**

This Division applies if:

- (a) a proceeding or an investigation about a criminal matter has commenced in a foreign country; and
- (b) the foreign country requests the removal of a prisoner who is in Tuvalu (whether or not in custody) to the foreign country to attend at the proceeding or to assist in the investigation; and
- (c) the Attorney-General believes, on reasonable grounds, that the prisoner is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
- (d) the Attorney-General is satisfied that:
  - (i) the prisoner has consented to giving evidence or assistance in the foreign country; and
  - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 34.

**33 Travel of prisoner or person**

- (1) If the prisoner is being held in custody, the Attorney-General may:
  - (a) direct that the prisoner be released from prison to travel to the foreign country to give evidence at the proceeding or assistance in the investigation; and
  - (b) subject to the making or giving of any necessary directions or approvals for the release of the prisoner — arrange for the prisoner to travel to the foreign country in the custody of a police or prison officer appointed by the Attorney-General for the purpose.
- (2) If the prisoner has been released from custody on a parole or other order or licence to be at large, the Attorney-General may:
  - (a) approve the travel of the prisoner to the foreign country to give evidence or assistance and obtain any necessary approvals, authorities, permissions or variations to the order or licence; and
  - (b) subject to obtaining the approvals, authorities, permissions or variations, arrange for the prisoner to travel to the foreign country.
- (3) The Attorney-General may arrange for a person (other than a prisoner) who is in Tuvalu to travel to a foreign country if:
  - (a) a proceeding or an investigation about a criminal matter has commenced in the foreign country; and
  - (b) the foreign country requests that the person travel to the foreign country to give evidence at the proceeding or assistance at the investigation; and
  - (c) the Attorney-General believes, on reasonable grounds, that the person is capable of giving evidence relevant to the proceeding or assistance relevant to the investigation; and
  - (d) the Attorney-General is satisfied that:
    - (i) the person has consented to travel to the foreign country to give evidence or assistance; and
    - (ii) the foreign country has given adequate (whether or not unqualified) undertakings about the matters mentioned in section 34.

**34 Undertakings to be given**

- (1) For subparagraph 32 (d) (ii) and subparagraph 33 (3) (d) (ii), this section sets out the matters about which undertakings are to be given.
- (2) The person will not:
  - (a) be detained, prosecuted or punished for an offence against the law of the foreign country committed, or alleged to have been committed, before the person's departure from Tuvalu; or

- (b) be subjected to civil suit (to which the person could not be subjected if the person were not in the foreign country) for an act or omission of the person that occurred, or is alleged to have occurred, before the person's departure from Tuvalu; or
  - (c) be required to give evidence in a proceeding in the foreign country other than:
    - (i) the proceeding to which the request relates; or
    - (ii) a proceeding for an offence that the person is alleged to have committed after the person's departure from Tuvalu.
- (3) Subsection (2) does not apply if:
- (a) the person has left the foreign country; or
  - (b) the person has had the opportunity of leaving the foreign country and has remained in that country for a purpose other than giving evidence in the proceeding to which the request relates.
- (4) Evidence given by the person in the proceeding to which the request relates will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than for perjury in giving that evidence.
- (5) The person will be returned to Tuvalu under arrangements agreed in writing by the Attorney-General.
- (6) If the person is being held in custody in Tuvalu and the Attorney-General requests the foreign country to make arrangements to keep the person in custody while the person is in the foreign country:
- (a) appropriate arrangements will be made for that purpose; and
  - (b) the person will not be released from custody in the foreign country unless the Attorney-General gives written notice to an appropriate authority of the foreign country that the person is entitled to be released from custody under Tuvalu law; and
  - (c) if the person is released in the foreign country after notice by the Attorney-General under paragraph (b), the foreign country will pay for the person's accommodation and expenses pending the completion of the investigation or proceeding to which the request relates.
- (7) The Attorney-General may require undertakings about any other matters that he or she thinks appropriate.

### **35 Effect of removal to foreign country on prisoner's term of imprisonment**

- (1) This section applies to a prisoner who:
- (a) is serving a term of imprisonment for an offence against a law of Tuvalu; and

- (b) is released from a prison because of a request by a foreign country under section 32.
- (2) The prisoner, while in custody because of the request (including custody outside Tuvalu), is taken to be continuing to serve the term of imprisonment.

## **PART 6 - CUSTODY OF PERSONS IN TRANSIT**

### **36 Application of Part 6**

This Part applies to a person who is to be taken in custody from a foreign country through Tuvalu to another foreign country to give evidence in a proceeding or assistance for an investigation in a criminal matter in the other foreign country.

### **37 Transit**

- (1) The foreign country in whose custody the person is to be taken must give to the Attorney-General written notice at least 14 days (or a lesser time allowed by the Attorney-General) before undertaking the journey.
- (2) The foreign country:
  - (a) may take the person through Tuvalu in the custody of persons mentioned in the notice or directed by the Attorney-General; and
  - (b) must, while in Tuvalu, keep the person in custody under conditions directed in writing by the Attorney-General.
- (3) If the person's journey is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct in writing that the foreign country take the person in custody to the foreign country from which the person was first taken.
- (4) If the foreign country does not comply with a direction under subsection (2) or (3):
  - (a) the Attorney-General may direct authorised officers to carry out the direction; and
  - (b) the cost of carrying out the direction is a debt owed to the Crown.

### **38 Arrest of person in transit**

- (1) A police officer may arrest the person without warrant if the police officer believes, on reasonable grounds, that the person was being kept in custody under a direction under paragraph 37(2)(b) and has escaped from that custody.
- (2) The police officer must take the person before a magistrate as soon as practicable.

- (3) If the magistrate is satisfied that the person has escaped from lawful custody, the magistrate may order any police officer to return the person to lawful custody.

## **PART 7 - ASSISTANCE REGARDING PROCEEDS OF CRIME**

### **DIVISION 1 - REQUESTS BY TUVALU**

#### **39 Requests for enforcement of orders**

- (1) The Attorney-General may request an appropriate authority of a foreign country to make arrangements for the enforcement of:
- (a) a forfeiture order made in Tuvalu against property that is believed to be located in the foreign country; or
  - (b) a pecuniary penalty order made in Tuvalu, if some or all of the property available to satisfy the order is believed to be located in the foreign country; or
  - (c) a restraining order made in Tuvalu against property that is believed to be located in that foreign country.
- (2) The Attorney-General may enter an arrangement with the foreign country to share with the country the property forfeited under the order mentioned in paragraph (1)(a) or paid under the order mentioned in paragraph (1)(b).

#### **40 Requests for issue of orders in foreign countries**

If a proceeding or investigation has commenced in Tuvalu for a serious offence, the Attorney-General may ask an appropriate authority of a foreign country for the issue, in relation to the offence, of an instrument similar in nature to any of the following instruments under the Proceeds of Crime Act:

- (a) a search warrant for tainted property;
- (b) a restraining order;
- (c) a production order for a property-tracking document;
- (d) a search warrant for a property-tracking document.

### **DIVISION 2 - REQUESTS BY FOREIGN COUNTRIES**

#### **41 Requests for enforcement of orders**

- (1) Subsection (2) applies if:
- (a) a foreign country requests the Attorney-General to make arrangements for the enforcement of:

- (i) a foreign forfeiture order against property that is believed to be located in Tuvalu; or
  - (ii) a foreign pecuniary penalty order if some or all of the property available to satisfy the order is believed to be located in Tuvalu; and
- (b) the Attorney-General is satisfied that:
- (i) a person has been convicted of the offence; and
  - (ii) the conviction and the order are not subject to further appeal in the foreign country.
- (2) The Attorney-General may apply for the registration of the order in the Court.
- (3) If a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order against property that is believed to be located in Tuvalu, the Attorney-General may apply for the registration of the order in the Court.

#### **42 Registration of foreign orders**

If the Attorney-General applies to the Court for registration of a foreign order in accordance with an authorisation under section 41, the Court must register the order accordingly.

#### **43 How a foreign order is registered**

- (1) A foreign order or an amendment of a foreign order may be registered in the Court by registering a copy of:
- (a) the appropriate order or amendment sealed by the Court or other authority that made the order or amendment; or
  - (b) the order or amendment authenticated under subsection 62 (2).
- (2) A facsimile copy of a sealed or authenticated copy of an order or an amendment of an order is to be treated as if it were a sealed or authenticated copy.
- (3) However, registration effected by facsimile copy ceases to have effect at the end of 21 days unless a sealed or authenticated copy of the order has been registered by then.

#### **44 Effect of registration**

- (1) A foreign forfeiture order registered in the Court under section 42 has effect, and may be enforced, as if it were a forfeiture order made by the Court under the Proceeds of Crime Act at the time of registration.

- (2) A foreign pecuniary penalty order registered in the Court under section 42 has effect, and may be enforced, as if it were a pecuniary penalty order made by the Court under the Proceeds of Crime Act at the time of registration and requiring the payment to the Crown of the amount payable under the order.
- (3) The Attorney-General may enter an arrangement with a foreign country to share with that country the property or amount forfeited or paid under a foreign forfeiture order or a foreign pecuniary penalty order.
- (4) A foreign restraining order registered in the Court under section 42 has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act at the time of registration.

#### **45 Amendment of foreign orders**

If a foreign order is registered in the Court under section 42:

- (a) a copy of any amendments to the order (whether before or after registration) may be registered in the same way as the order; and
- (b) for this Act and the Proceeds of Crime Act, the amendments do not have effect until they are registered.

#### **46 Cancellation of registration**

- (1) The Attorney-General may apply to the Court for cancellation of the registration of a foreign order.
- (2) If the Attorney-General applies to the Court for cancellation of a registration in accordance with a direction under subsection (1) , the Court must cancel the registration accordingly.

#### **47 Requests for search and seizure warrants for tainted property**

The Attorney-General may direct an authorised officer to apply to a magistrate under the Proceeds of Crime Act for a search warrant for property if:

- (a) a proceeding or investigation has commenced in a foreign country for a serious offence; and
- (b) the Attorney-General believes, on reasonable grounds, that tainted property in relation to the offence is located in Tuvalu; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a search warrant for the property.

#### **48 Requests for restraining orders**

The Attorney-General may apply to the Court under the Proceeds of Crime Act for a restraining order against property in connection with a serious offence if:

- (a) a proceeding has commenced, or the Attorney-General believes, on reasonable grounds, that a proceeding is about to commence, in a foreign country for the offence; and
- (b) the Attorney-General believes on reasonable grounds that property that may be made, or is about to be made, the subject of a foreign restraining order is located in Tuvalu; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a restraining order against the property.

#### **49 Requests for information gathering orders**

- (1) Subsection (2) applies if:
  - (a) a proceeding or investigation has commenced in a foreign country for a serious offence; and
  - (b) the Attorney-General believes on reasonable grounds that a property-tracking document in relation to the offence is located in Tuvalu; and
  - (c) the foreign country requests the Attorney-General to obtain the issue of:
    - (i) an order requiring the documents to be produced or made available for inspection under the law of Tuvalu; or
    - (ii) a search warrant in relation to the offence.
- (2) To obtain the property-tracking document, the Attorney-General may direct an authorised officer to apply to a magistrate under the Proceeds of Crime Act for:
  - (a) a production order; or
  - (b) a search warrant.

## **PART 8 - REQUESTS BY OR FOR A DEFENDANT**

#### **50 Requests by Attorney-General for a defendant**

- (1) Subsection (2) applies if a defendant in a proceeding (the *original proceeding*) in Tuvalu for a criminal matter thinks that it is necessary for the proceeding that:
  - (a) evidence be taken in a foreign country; or
  - (b) a document or other article in a foreign country be produced; or
  - (c) a thing located in a foreign country be seized; or
  - (d) arrangements be made for a person who is in a foreign country to come to Tuvalu to give evidence relevant to the proceeding.

- (2) The defendant may apply to the Court for a certificate that it would be in the interests of justice for the Attorney-General to make an appropriate request to the foreign country under Part 3, 4 or 5 so that:
  - (a) the evidence may be taken; or
  - (b) the document or article may be produced; or
  - (c) the thing may be seized; or
  - (d) the arrangements may be made.
- (3) Before making a decision on the application, the Court must give the following persons an opportunity, to appear before the Court and be heard on the merits of the application:
  - (a) all parties to the original proceeding;
  - (b) the Attorney-General.
- (4) In deciding whether to issue a certificate, the Court must have regard to the interests of justice generally and in particular to the following matters:
  - (a) whether the foreign country is likely to grant such a request by the Attorney-General;
  - (b) the extent to which the material (whether it is evidence, a document, an article or a thing) that the defendant seeks to obtain from the foreign country would not otherwise be available;
  - (c) whether the Court hearing the original proceeding would be likely to admit the material into evidence in the proceeding;
  - (d) the likely probative value of the material, if it were admitted into evidence in the proceeding, for any issue likely to be determined in the proceeding;
  - (e) whether the defendant would be unfairly prejudiced if the material were not available to the Court.
- (5) Subsection (4) does not prevent the Court from having regard to any other relevant matter.
- (6) If the Court issues a certificate:
  - (a) the Court must send a copy of the certificate to the Attorney-General; and
  - (b) the Attorney-General must, in accordance with the certificate, request the foreign country for international assistance.

**51 Certificate by Attorney-General if foreign country refuses request made under section 50**

- (1) If a foreign country refuses a request made under subsection 50(6), the Attorney-General must give a certificate in writing to that effect.

- (2) A certificate under subsection (1) is evidence of the facts stated in it.

## PART 9 - ADMISSIBILITY OF FOREIGN EVIDENCE

### 52 Application of Part 9

This Part applies to:

- (a) a proceeding, before a Tuvalu court, that is:
  - (i) a criminal proceeding for an offence against the law of Tuvalu;  
or
  - (ii) a related civil proceeding; and
- (b) testimony obtained as a result of a request made by or for the Attorney-General to a foreign country for the testimony of a person; and
- (c) any exhibit annexed to the testimony.

### 53 Definitions for Part 9

In this Part:

“**civil proceeding**” means a proceeding other than a criminal proceeding.

“**criminal proceeding**” includes:

- (a) a prosecution for an offence; and
- (b) a proceeding for the committal of a person for trial for an offence; and
- (c) a proceeding for the sentencing of a person convicted of an offence.

“**foreign law**” means a law (whether written or unwritten) of, or in force in, a country other than Tuvalu.

“**foreign material**” means:

- (a) the testimony of a person that:
  - (i) was obtained as a result of a request of a kind mentioned in paragraph 52(b) ; and
  - (ii) complies with section 55; and
- (b) any exhibit annexed to the testimony; and
- (c) any part of the testimony or exhibit.

“**related civil proceedings**”, for a criminal proceeding, means a civil proceeding arising from the same subject matter from which the criminal proceeding arose.

“**Tuvalu court**” means:

- (a) the High Court of Tuvalu; or

- (b) a judge or arbitrator acting under the law of Tuvalu; or
- (c) a person or body authorised by the law of Tuvalu, or by consent of parties, to hear, receive and examine evidence.

#### **54 Requirements for testimony**

- (1) The testimony must be taken before the court of the foreign country:
  - (a) on oath or affirmation; or
  - (b) under such caution or admonition as would be accepted, by courts in the foreign country concerned, for giving testimony in proceedings before those courts.
- (2) The testimony may be taken in closed court.

#### **55 Form of testimony**

- (1) The testimony may be recorded in any of the following ways:
  - (a) in writing;
  - (b) on audio tape;
  - (c) on video tape.
- (2) The testimony need not:
  - (a) be in the form of an affidavit; or
  - (b) constitute a transcript of a proceeding in a foreign court.
- (3) The testimony must be endorsed with, or be accompanied by, a certificate to the effect that:
  - (a) it is an accurate record of the evidence given; and
  - (b) it was taken in the manner required by section 54.
- (4) The certificate must:
  - (a) purport to be signed or certified by a judge, magistrate or court officer of the foreign country to which the request was made; and
  - (b) purport to bear an official or public seal of:
    - (i) the country; or
    - (ii) an authority of the country responsible for matters relating to justice (that is, a Minister of State, a Ministry or Department of Government, or an officer of the Government).

#### **56 Foreign material may be adduced as evidence**

Foreign material may be adduced as evidence in a proceeding to which this Part applies unless:

- (a) at the hearing of the proceeding, it appears to the court's satisfaction that the person who gave the testimony concerned is present in Tuvalu and is able to testify at the hearing; or
- (b) the evidence would not have been admissible if it had been given by the person at the hearing; or
- (c) in the proceeding the court directs, under section 57, that the foreign material must not be adduced as evidence.

### **57 Direction to prevent foreign material being adduced**

- (1) The court may direct that foreign material not be adduced as evidence if it appears to the court's satisfaction that the interests of justice would be better served if the foreign material were not adduced as evidence.
- (2) Without limiting the matters that the court may take into account in deciding whether to give such a direction, it must take into account:
  - (a) the extent to which the foreign material provides evidence that would not otherwise be available; and
  - (b) the probative value of the foreign material for any issue that is likely to be determined in the proceedings; and
  - (c) the extent to which statements contained in the foreign material could, at the time they were made, be challenged by questioning the persons who made them; and
  - (d) whether exclusion of the foreign material would cause undue expense or delay; and
  - (e) whether exclusion of the foreign material would prejudice:
    - (i) the prosecution or defence in criminal proceedings; or
    - (ii) a party to related civil proceedings.

### **58 Certificates relating to foreign material**

- (1) The Attorney-General may certify that specified foreign material was obtained as a result of a request made to a foreign country by or for the Attorney-General.
- (2) It is presumed (unless evidence to the contrary is adduced sufficient to raise reasonable doubt) that the foreign material specified in the certificate was obtained as a result of that request.

### **59 Effect of Part on right to examine witnesses**

- (1) Nothing in this Part limits a right of the defendant in criminal proceedings to which this Part applies to examine, in person or by his or her legal

representative, a witness whose testimony is admitted in evidence in those proceedings.

- (2) If the defendant requests that the person who gave the testimony be present at the hearing in Tuvalu to be cross-examined, the court must warn the defendant that he or she may be ordered to pay any expenses incurred by the Crown in making the person available before the court.
- (3) The court may order the defendant to pay any expenses incurred by the Crown in obtaining the attendance of a person as a witness if:
  - (a) as a result of the request, the person appears before the court as a witness; and
  - (b) it appears to the court that the cross-examination of the person was unnecessary, trivial or irrelevant to the matters in issue in the proceedings.
- (4) A certificate signed by the Attorney-General is evidence of the expenses incurred by the Crown for subsection (3).
- (5) An amount payable by a person to the Crown under an order under subsection (3) is a civil debt due by the person to the Crown.
- (6) An order against a person under subsection (3) may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order is taken to be a judgment debt.

## **60 Operation of other laws**

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under any other law.

## **PART 10 - MISCELLANEOUS**

### **61 Aiding person to escape etc.**

The laws of Tuvalu about aiding a prisoner to escape from custody, rescuing a prisoner from custody, permitting escape and harbouring a prisoner who has escaped from custody apply to a person:

- (a) who is in custody in Tuvalu because of a request to a foreign country by Tuvalu under this Act; or
- (b) to whom Part 6 of the Act applies.

**62 Authentication of documents**

- (1) In a proceeding under this Act or the Proceeds of Crime Act arising directly or indirectly from a request made under this Act, any document that is authenticated is admissible in evidence.
- (2) A document is authenticated for subsection (1) if:
  - (a) it purports to be signed or certified by a judge, magistrate or judicial officer in or of a foreign country; and
  - (b) it purports to be sealed with an official or public seal of the foreign country or of a Minister of State, or of a Department or officer of the Government, of the foreign country.
- (3) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, under any other law.

**63 Restriction on use of information etc.**

- (1) A person must not, without the approval of the Attorney-General, intentionally use requested material for a purpose other than that for which it was requested.
- (2) Requested material is inadmissible in evidence in any proceeding other than the proceeding for which it was obtained unless the Attorney-General approves its use for that other proceeding.
- (3) A person must not intentionally use any information, document, article or thing obtained directly or indirectly by making use of requested material in breach of subsection (1) for a purpose other than that for which the requested material was requested.
- (4) The information, document, article or thing mentioned in subsection (3) is inadmissible in evidence in any proceeding, and may not be used in any investigation, other than that for which the requested material was requested.
- (5) A person who contravenes subsection (1) or (3) is guilty of an offence punishable by:
  - (a) if the person is a natural person — a fine of \$10,000 or imprisonment for 2 years, or both; or
  - (b) if the person is a body corporate — a fine of \$50,000.
- (6) For this section, disclosure of any material is taken to be a use of that material.
- (7) In this section:

“**requested material**” means material (whether it is evidence, a document, an article or a thing) that is sent to Tuvalu by a foreign country:

  - (a) because of a request made by the Attorney-General under this Act; and

- (b) for a proceeding or investigation in a criminal matter;

#### **64 Requests for international assistance not to be disclosed**

- (1) Subsection (2) applies to a person who, because of his or her office or employment, has knowledge of:
  - (a) the contents of a request for international assistance made by a foreign country to Tuvalu under this Act; or
  - (b) the fact that such a request has been made; or
  - (c) the fact that such a request has been granted or refused.
- (2) The person must not intentionally disclose those contents or that fact unless:
  - (a) it is necessary to do so in the performance of his or her duties; or
  - (b) the Attorney-General has given his or her approval to the disclosure of those contents or that fact.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable by:
  - (a) if the person is a natural person — a fine of \$10,000 or imprisonment for 2 years, or both; or
  - (b) if the person is a body corporate — a fine of \$60,000.

#### **65 Regulations**

The Minister may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## ENDNOTES

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<sup>1</sup> Act 1 of 2004

<sup>2</sup> LN 4/2004

<sup>3</sup> Cap. 10.25

<sup>4</sup> Cap. 10.25

<sup>5</sup> Cap. 10.05