



Tuvalu

EXTRADITION ACT

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Tuvalu

EXTRADITION ACT

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Tuvalu

EXTRADITION ACT

AN ACT RELATING TO THE EXTRADITION OF PERSONS TO AND FROM TUVALU¹

Commencement [7th May 2004]²

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Extradition Act.

2 Commencement

This Act shall come into operation on a date to be fixed by the Minister.³

3 Purpose

The purposes of this Act are:

- (a) to codify the law relating to the extradition of persons from Tuvalu; and
- (b) to facilitate the making of requests for extradition by Tuvalu to other countries; and
- (c) to enable Tuvalu to carry out its obligations under extradition treaties.

4 Interpretation

(1) In this Act, unless the context otherwise requires:

“**citizen of Tuvalu**” has the meaning given by the Citizenship Act;

“**comity country**” means a country other than a Commonwealth country, a Pacific Island country or a treaty country;

“**Commonwealth country**” means a country that is specified in Schedule 1;

“**country**” includes:

- (a) a colony, territory or protectorate of a country; and
- (b) a territory for the international relations of which a country is responsible; and
- (c) a ship or aircraft owned by, or registered in, a country;

“**endorsed warrant**” means a warrant that has been issued in a Pacific Island country and endorsed under section 30;

“**extradition country**” means:

- (a) a Commonwealth country; or
- (b) a Pacific Island country; or
- (c) a comity country that is declared by the regulations to be an extradition country; or
- (d) a comity country certified by the Prime Minister to be an extradition country for the purpose of a particular extradition request.

“**extradition offence**” has the meaning given by section 5;

“**extradition request**” means a request in writing by a country for the surrender of a person to the country;

“**extradition treaty**”, in relation to a country, means a treaty:

- (a) to which the country and Tuvalu are parties (whether or not any other country is also a party); and
- (b) that relates wholly or partly to the surrender of persons accused or convicted of offences;

“**foreign escort officer**” means a representative of the country to whom a person is to be surrendered who is authorised by that country to escort the person from Tuvalu to that country;

“**ICPO-Interpol**” means the International Criminal Police Organisation;

“**law of a country**” includes a law in force in any part of the country;

“**magistrate**” means a person appointed as a magistrate under the Magistrates Courts Act;

“**original warrant**” means a warrant issued in a Pacific Island country for the arrest of a person;

“**police officer**” means a member of the Tuvalu Police Force;

“**political offence**”, in relation to a country, means an offence against the law of the country that is of a political character (whether because of the

circumstances in which it is committed or otherwise and whether or not there are competing political parties in the country), but does not include:

- (a) an offence:
 - (i) that is constituted by conduct of a kind referred to in a multilateral treaty to which Tuvalu is a party; and
 - (ii) for which parties have an obligation to extradite or prosecute; or
- (b) the offence of genocide; or
- (c) an offence of:
 - (i) murder, kidnapping or other attack on the person or liberty; or
 - (ii) threatening or attempting to commit, or participating as an accomplice in, murder, kidnapping or other attack on the person or liberty,
of the head of State, head of Government or Minister of the Government of the country or a member of his or her immediate family; or
- (d) any other offence that Tuvalu and the other country have agreed will not be treated as a political offence for the purposes of extradition;

“**prison**” includes a gaol, police cell or other place where a person is ordered under this Act to be detained;

“**provisional arrest warrant**” means:

- (a) where the expression is used in Part 2—a warrant, in accordance with Form 1 in Schedule 4, issued under section 8; or
- (b) where the expression is used in Part 4—a warrant, in accordance with Form 2 in Schedule 4, issued under section 2;

“**requesting country**” means a country that is seeking the surrender of a person from Tuvalu;

“**Pacific Island country**” means a country:

- (a) that is a member of the Pacific Forum; and
- (b) that is specified in Schedule 2;

“**specialty undertaking**” means an undertaking by a requesting country about the treatment of a person whose surrender is sought by the requesting country;

“**surrender offence**” means an offence for which surrender is sought;

“**surrender warrant**” means:

- (a) where the expression is used in Part 2 — a warrant, in accordance with Form 3 in Schedule 4, issued under section 13 or 19; or
- (b) where the expression is used in Part 4—a warrant, in accordance with Form 4 in Schedule 4, issued under section 35 or 36;

“**temporary surrender warrant**” means:

- (a) where the expression is used in Part 2—a warrant, in accordance with Form 5 in Schedule 4, issued under section 21; or
- (b) where the expression is used in Part 4—a warrant, in accordance with Form 6 in Schedule 4, issued under section 39;

“**treaty**” includes a convention, protocol, or agreement between 2 or more countries.

“**treaty country**” means a country:

- (a) with which Tuvalu has an extradition treaty; and
- (b) that is specified in Schedule 3;

“**writing**” includes facsimile, electronic mail and any other means of communication that can be reproduced in printed form.

- (2) A Note is for information only and does not form part of this Act.

5 Extradition offence

- (1) An offence is an extradition offence if:
 - (a) it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more; and
 - (b) the conduct that constitutes the offence, if committed in Tuvalu, would constitute an offence (however described) in Tuvalu for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more.
- (2) In determining whether conduct constitutes an offence, regard may be had to only some of the acts and omissions that make up the conduct.
- (3) In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard shall be had to the level of penalty that can be imposed by any court in the requesting country for the offence.
- (4) An offence may be an extradition offence although:
 - (a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or relating to foreign exchange control; and
 - (b) Tuvalu does not impose a duty, tax, impost or control of that kind.

6 Extradition objection

There is an extradition objection to a request for the surrender of a person if:

- (a) the extradition offence is regarded as a political offence; or
- (b) there are substantial grounds for believing that surrender of the person is sought for the purpose of prosecuting or punishing the person

- because of his or her race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting country; or
- (c) on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, because of his or her race, religion, nationality, political opinions, sex or status; or
 - (d) the offence is an offence under the military law, but not also under the ordinary criminal law, of Tuvalu; or
 - (e) final judgement has been given against the person in Tuvalu, or in a third country, for the offence; or
 - (f) under the law of the requesting country or Tuvalu, the person has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason; or
 - (g) the person has already been acquitted or pardoned in the requesting country or Tuvalu, or punished under the law of that country or Tuvalu, for the offence or another offence constituted by the same conduct as the extradition offence; or
 - (h) the judgment has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have.

PART 2 - EXTRADITION FROM TUVALU—GENERAL PROVISIONS

DIVISION 1—GENERAL

7 Application of Part 2

- (1) This Part sets out the procedure that is to apply to requests for the extradition from Tuvalu to other countries of persons accused or convicted of extradition offences in other countries.
- (2) This Part applies to extradition from Tuvalu to another country as follows:
 - (a) to a Commonwealth country—in accordance with Part 3; and
 - (b) to a treaty country—in accordance with Part 5; and
 - (c) to any other country other than a Pacific Island country—in accordance with Part 6.
- (3) The procedure for extradition to a Pacific Island country is in Part 4.

8 Issue of provisional arrest warrant

- (1) If:

- (a) a country, either directly or through ICPO-Interpol, notifies Tuvalu that:
 - (i) a person wanted for surrender is, or is believed to be, in or on his or her way to Tuvalu; and
 - (ii) the requesting country intends to make a formal request for the extradition of the person; and
- (b) an application is made to a magistrate for a provisional arrest warrant; then the magistrate shall issue the provisional arrest warrant for the person if:
 - (c) the application is supported by the required documents; and
 - (d) the magistrate is satisfied that the offence is an extradition offence; and
 - (e) the magistrate is satisfied that the request is made by an extradition country.
- (2) The required documents are:
 - (a) a copy of the warrant for the arrest of the person issued in the requesting country; and
 - (b) a description of the person sought; and
 - (c) a description of the acts and omissions that constitute the offence; and
 - (d) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
 - (e) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed.

9 Arrest and remand on provisional arrest warrant

- (1) A person arrested under a provisional arrest warrant shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall:
 - (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond—remand the person on bail;until the Prime Minister issues an authority to proceed.
- (3) A magistrate who remands a person on bail:
 - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Tuvalu; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.

- (4) A person shall not be remanded in custody or on bail for a period longer than 42 days.
- (5) As soon as possible after remanding the person, the magistrate shall:
 - (a) tell the Prime Minister:
 - (i) that the magistrate has remanded the person; and
 - (ii) the name of the requesting country; and
 - (iii) the offence for which surrender will be sought; and
 - (b) give a copy of the authority to proceed, the extradition request and the documents on which the issue of the provisional arrest warrant is based to the Prime Minister and the person.
- (6) If the Prime Minister considers that the request for extradition of the person for the offence will not be granted, either because of an extradition objection or because of a matter mentioned in section 16, he or she shall order:
 - (a) the person to be released; or
 - (b) the discharge of the recognisance on which bail was granted.

10 Release from remand

- (1) If:
 - (a) a person continues to be on remand (in custody or on bail) either:
 - (i) 42 days after the day on which the person was arrested; or
 - (ii) if the extradition treaty between Tuvalu and the requesting country provides for another period – for that period after the day on which the person was arrested; and
 - (b) the Prime Minister has not issued an authority to proceed, the person shall be brought before a magistrate.
- (2) The magistrate may remand the person, in custody or on bail, for a further period of not more than 42 days if the magistrate is satisfied that an authority to proceed will be issued within that period.
- (3) If the magistrate is not so satisfied, the magistrate shall order:
 - (a) the release of the person from custody; or
 - (b) the discharge of the recognisances on which bail was granted.

11 Authority to proceed

- (1) If an extradition request is received, the Prime Minister shall:
 - (a) consider the request; and
 - (b) issue an authority to proceed if he or she is satisfied that:

- (i) the offence for which extradition is sought is an extradition offence; and
 - (ii) the requesting country is an extradition country; and
 - (iii) there is nothing in section 19 or any other law that would preclude surrender of the person; and
- (c) give the authority to proceed to a magistrate; and
 - (d) give a copy of the authority to proceed and the extradition request to the person.
- (2) If an authority to proceed is received by a magistrate in relation to a person who has not been arrested under a provisional arrest warrant, the magistrate shall issue a warrant for the person's arrest.

12 Arrest and remand on authority to proceed

- (1) A person who is arrested under a warrant issued under section 11 shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall:
- (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond—remand the person on bail;
- for the period that is necessary for proceedings under section 13 (dealing with consent to surrender) or 14 (dealing with extradition proceedings), or both, to be conducted.
- (3) A magistrate who remands a person on bail:
- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Tuvalu; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.
- (4) If a magistrate remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other magistrate for release on bail during that remand, unless the first magistrate is no longer available.

13 Consent to surrender

- (1) At any time the person may tell a magistrate that the person consents to being surrendered to the requesting country for the extradition offence for which that country seeks his or her surrender.
- (2) If:
- (a) a person consents to being surrendered for the extradition offence; and

- (b) the requesting country has asked that the person also be surrendered for another offence that is not an extradition offence,

the magistrate shall ask the person whether the person also consents to being surrendered for that other offence.

- (3) If:
 - (a) the person informs the magistrate that he or she consents to being surrendered; and
 - (b) the magistrate is satisfied that the consent was given voluntarily;the magistrate shall tell the person that the effect of consenting will be that:
 - (c) the person will be committed to prison without any extradition proceedings to determine whether the person should be surrendered for an extradition offence; and
 - (d) after the Prime Minister issues a surrender warrant, the person will be surrendered to the requesting country.
- (4) If the person again consents to being surrendered, the magistrate shall:
 - (a) by warrant, order that the person be committed to prison; and
 - (b) tell the Prime Minister in writing that the person has been committed to prison and the offence for which the person has consented to be surrendered.
- (5) The Prime Minister may then issue a surrender warrant for the person.

14 Extradition proceedings

If:

- (a) the Prime Minister has issued an authority to proceed for an extradition offence in relation to a person; and
- (b) the person has not consented to surrender for the offence; and
- (c) an application is made to a magistrate by or on behalf of the person or the requesting country for extradition proceedings to be conducted in relation to the person; and
- (d) the magistrate considers that the person and the requesting country have had reasonable time since the person received a copy of the extradition request to prepare for the proceedings,

the magistrate shall conduct proceedings to determine whether the person should be surrendered for the extradition offence for which surrender of the person is sought.

15 Conduct of extradition proceedings

- (1) Extradition proceedings shall be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings to the following matters apply to extradition proceedings:
 - (a) summoning witnesses;
 - (b) remanding defendants;
 - (c) ordering the production of documents;
 - (d) administration of oaths and affirmations;
 - (e) payment of witness expenses;
 - (f) contempt of court, privilege and other matters relating to the administration of courts;
 - (g) the imposition and level of fines for offences.
- (2) In the proceedings, the person is not entitled to bring, and the magistrate is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

16 Determination whether person may be surrendered

- (1) The magistrate shall not order that a person be held in custody for surrender to the requesting country unless the magistrate is satisfied:
 - (a) that the requesting country is an extradition country; and
 - (b) that the surrender offence is an extradition offence; and
 - (c) as to the identity of the person; and
 - (d) that the supporting documents have been produced to the magistrate; and
 - (e) that the supporting documents satisfy the requirements of section 17; and
 - (f) that surrender should not be refused because the person sought has established an extradition objection.
- (2) If the magistrate determines that the person be held in custody for surrender, the magistrate shall:
 - (a) issue a warrant, ordering that the person be committed to prison to await the Prime Minister's decision on surrender; and
 - (b) tell the person that he or she may, within 15 days after the day on which the order is made, seek a review of the order under subsection 18 (1); and
 - (c) record in writing his or her decision and the extradition offence for which the person should be surrendered; and
 - (d) give a copy of the record to the person and the Prime Minister.

- (3) If:
- (a) the magistrate determines that the person be held in custody for surrender for an extradition offence; and
 - (b) the requesting country has asked that the person also be surrendered for another offence that is not an extradition offence:
- the magistrate shall ask the person whether the person also consents to being surrendered for that other offence.
- (4) If the magistrate determines that the person should not be surrendered to the requesting country, the magistrate shall:
- (a) order that the person be released; and
 - (b) tell the Prime Minister in writing of the order and of the magistrate's reasons for determining that the person should not be surrendered.

17 Supporting documents

- (1) In paragraph 16(1)(d), “supporting documents”, in relation to an extradition offence, means:
- (a) as accurate a description as possible of the person sought, together with any other information that may help to establish the identity and nationality of the person; and
 - (b) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
 - (c) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed; and
 - (d) a statement of the acts and omissions that constitute the offence, and details of the time and place the offence was committed; and
 - (e) if the person is accused of the offence — a duly authenticated warrant issued by the requesting country for the arrest of the person for the offence, or a duly authenticated copy of the warrant; and
 - (f) if the person has been convicted of the offence — duly authenticated documents that provide evidence of:
 - (i) the conviction; and
 - (ii) the sentence imposed or intended to be imposed; and
 - (iii) whether the sentence imposed has been carried out; and
 - (iv) whether the sentence is immediately enforceable.
- (2) If:
- (a) a document relevant to the proceedings contains a deficiency; and
 - (b) the magistrate considers the deficiency to be minor,

the magistrate shall adjourn the proceedings for a reasonable period to allow the deficiency to be remedied.

- (3) Any document that is duly authenticated is admissible in the proceedings.
- (4) A document that is sought by or on behalf of the requesting country to be admitted in the proceedings is duly authenticated if:
 - (a) it purports to be signed or certified by a judge, magistrate or officer in or of the requesting country; and
 - (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal:
 - (i) in any case—of the requesting country or of a Minister, Department of State or Department or officer of the Government of that country; or
 - (ii) if the extradition country is a colony, territory or protectorate—of the person administering the Government of that country or of any person administering a Department of the Government of that country.
- (5) Nothing in this section prevents the proof of any matter or the admission of any document in the proceedings in accordance with any other law of Tuvalu.

18 Review of magistrate's decision by High Court

- (1) If a magistrate orders that a person be held until a surrender determination is made or refused, the person may apply to the High Court for a review of the order.
- (2) If a magistrate orders that a person be released, or that the person be surrendered for some offences only, the requesting country may apply to the High Court for a review of the order.
- (3) The application shall be made within 15 days after the day the magistrate makes the order.
- (4) The High Court shall have regard only to the material that was before the magistrate.
- (5) The High Court may, by order, confirm or quash the order of the magistrate and order that the person be held for surrender or released.
- (6) If the High Court orders that the person be held until a surrender determination is made or refused, the Court shall include in its judgment a statement specifying the offence and shall:
 - (a) if the person is not in custody—by warrant commit the person to prison until the Prime Minister has made a decision under section 19; or
 - (b) if the person is in custody—order that the person remain in custody until the Prime Minister has made a decision under section 19.

- (7) If the High Court orders that the person be released, the person shall be released accordingly.

19 Surrender determination by Prime Minister

- (1) If:
- (a) a magistrate has reported to the Prime Minister that a person should be held for surrender; and
 - (b) the period during which an appeal may be lodged has ended and no appeal was lodged or, on appeal, the High Court ordered that the person be held for surrender,

the Prime Minister shall make a final decision whether the person should be surrendered.

- (2) The Prime Minister may refuse to order that the person be surrendered if:
- (a) the requesting country has not given a specialty undertaking and:
 - (i) the requesting country is not a country with which Tuvalu has a bilateral treaty containing a specialty undertaking; or
 - (ii) the law of the requesting country does not contain a provision prohibiting prosecution for an offence other than the one for which the person is surrendered; or
 - (b) the person is a citizen of Tuvalu; or
 - (c) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Tuvalu and the requesting country has not given a sufficient undertaking that the penalty either will not be imposed or, if imposed, will not be carried out; or
 - (d) a prosecution for the offence for which surrender has been ordered is pending against the person in Tuvalu; or
 - (e) the offence for which surrender has been ordered was committed outside the territory of the requesting country and the law of Tuvalu does not provide for jurisdiction over an offence of that kind committed in similar circumstances outside Tuvaluan territory; or
 - (f) the offence for which surrender has been ordered is regarded by Tuvalu as having been committed wholly or partly within Tuvalu; or
 - (g) the person has been sentenced, or would be liable to be tried or sentenced, in the requesting country by an extraordinary or ad hoc court or tribunal; or
 - (h) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
 - (i) having regard to:
 - (i) Tuvalu's national interest, including its interests in effective international co-operation to combat crime; and

- (ii) the severity of the offence;
the Prime Minister is of the view that the person should not be surrendered.
- (3) For the purposes of paragraph (2)(a), the requesting country is taken to have given a speciality undertaking if it undertakes that the person will not, without having the opportunity of leaving the requesting country:
 - (a) be detained or tried for an offence committed before surrender, other than:
 - (i) the surrender offence; or
 - (ii) an offence of which the person could be convicted on proof of the facts constituting the surrender offence, for which the penalty is no greater than the penalty for the surrender offence; or
 - (b) be detained in the requesting country for surrender to a third country for an offence committed before surrender to the requesting country,
unless the Prime Minister consents to the trial or the surrender to the third country.
- (4) Tuvalu shall not refuse to surrender a person because the person may be subjected to torture or cruel, inhuman or degrading treatment or punishment if the requesting country and Tuvalu have ratified:
 - (a) the Convention against Torture and other Cruel, Inhuman and 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
 - (b) the International Covenant on Civil and Political Rights.
- (5) If the Prime Minister decides that the person is to be surrendered to the requesting country, the Prime Minister shall issue a surrender warrant or a temporary surrender warrant for the person.
[NOTE: For temporary surrender warrant, see s.21]
- (6) If the Prime Minister decides that the person is not to be surrendered to the requesting country, the Prime Minister shall in writing order that the person be released.

20 Surrender warrant

- (1) The surrender warrant shall:
 - (a) be in writing, in accordance with Form 3; and
 - (b) state the offences for which the person is to be surrendered; and
 - (c) require any person who has custody of the person to hand the person over to a police officer; and
 - (d) authorise a police officer to:

- (i) transport the person from the place where the police officer takes custody of the person to another place within Tuvalu for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
 - (e) authorise the foreign escort officer to transport the person out of Tuvalu.
- (2) If the person is serving a custodial sentence, or has been admitted to bail, in Tuvalu for an offence committed in Tuvalu, the surrender warrant shall not be executed until:
- (a) the person has been released from custody; or
 - (b) the recognisance has been discharged.

21 Temporary surrender warrant

- (1) The Prime Minister may issue a temporary surrender warrant instead of a surrender warrant if:
- (a) the person is serving a custodial sentence in Tuvalu; and
 - (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and
 - (c) the Prime Minister is satisfied that the requesting country has given an adequate undertaking that:
 - (i) the person will be given a speedy trial in the requesting country; and
 - (ii) the person will be returned to Tuvalu after the trial; and
 - (d) the Prime Minister is satisfied that adequate provision has been made for the travel of the person to the requesting country and for his or her return to Tuvalu.
- (2) The temporary surrender warrant shall:
- (a) be in writing, in accordance with Form 4; and
 - (b) state the offences for which the person is to be surrendered; and
 - (c) require any person who has custody of the person to hand the person over to a police officer; and
 - (d) authorise a police officer to:
 - (i) transport the person from the place where the police officer takes custody of the person to another place within Tuvalu for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and

- (e) authorise the foreign escort officer to transport the person out of Tuvalu.
- (3) If a person who was the subject of a temporary surrender warrant:
- (a) has been returned to Tuvalu after trial and sentence in the requesting country; and
 - (b) has completed his or her custodial sentence in Tuvalu,
- the Prime Minister shall issue a surrender warrant for the surrender of the person to the requesting country, unless the Prime Minister is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the requesting country.
- (4) Any time the person spends in custody in the requesting country as a result of the temporary surrender is taken to be time spent in custody in Tuvalu for the purpose of completing the sentence for which the person was in custody in Tuvalu.
- (5) If:
- (a) time spent in custody in the requesting country is taken into account as mentioned in subsection (3); and
 - (b) because of this, the person's sentence in Tuvalu is concluded,
- the Prime Minister shall tell the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

22 Execution of surrender warrant

- (1) If a person is not surrendered under a surrender warrant within 2 months after:
- (a) the date the surrender warrant was issued; or
 - (b) if the person is serving a custodial sentence, or has been admitted to bail, in Tuvalu—the person has been released from custody or the recognisance has been discharged,
- the person may apply to a magistrate to be released from custody. The person shall tell the Prime Minister in writing of the application.
- (2) If the magistrate is satisfied that:
- (a) the Prime Minister has been told of the application; and
 - (b) there is no reasonable cause for delay in surrendering the person,
- the magistrate shall order that the person be released from custody.
- (3) Without limiting paragraph (2)(b), reasonable cause for delay exists if:
- (a) it would have been a danger to the person's life, or prejudicial to the person's health, to surrender the person; or

- (b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or
- (c) there was delay by a country in responding to a request by the requesting country for permission to transport the person, and all reasonable steps were taken to obtain the permission; or
- (d) because of the remoteness of the requesting country, it would be unreasonable to expect the person to have been surrendered within the period mentioned in subsection (1).

PART 3 - EXTRADITION FROM TUVALU TO COMMONWEALTH COUNTRIES

23 Procedure applying to extradition to Commonwealth countries

The procedures set out in Part 2 apply to the extradition of a person from Tuvalu to a Commonwealth country.

24 Evidentiary requirements for Commonwealth countries

The evidentiary requirements set out in section 26 (the record of the case scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country.

25 The record of the case

- (1) In this section:
 - “**record of the case**”, in relation to a surrender offence, means:
 - (a) a document containing a recital of the evidence acquired to support the request; and
 - (b) an authenticated copy, reproduction or photograph of all exhibits and documentary evidence.
- (2) In addition to any evidentiary requirements in Part 2, a magistrate shall not determine that a person should be surrendered to a requesting country unless a record of the case is produced for the surrender offence.
- (3) The record of the case shall be accompanied by:
 - (a) an affidavit of an officer of the authority that investigated the matter, stating that:
 - (i) the record of the case was prepared by him or her, or under his or her direction; and

- (ii) the evidence in the record of the case has been preserved for use in the person's trial; and
- (b) a certificate of the Prime Minister of the requesting country stating that, in his or her opinion, the record of the case discloses the existence of evidence that is sufficient under the law of the requesting country to justify a prosecution in the requesting country.

26 Commonwealth countries for purpose of Constitution of Tuvalu

Each country listed in Schedule 1 is declared to be a Commonwealth country for the purpose of the definition of "Commonwealth country" in the Constitution of Tuvalu.

PART 4 - EXTRADITION FROM TUVALU TO PACIFIC ISLAND COUNTRIES—BACKING OF WARRANTS PROCEDURE

27 Procedure applying to extradition to Pacific Island countries

This Part sets out the procedure that is to apply to the extradition from Tuvalu to Pacific Island countries of persons accused or convicted of extradition offences in those countries. The procedure is known as "backing of warrants".

28 Provisional arrest warrant

- (1) If:
 - (a) an application is made to a magistrate on behalf of a Pacific Island country for the issue of a warrant for the arrest of a person; and
 - (b) the magistrate is told by affidavit that:
 - (i) an original warrant for the arrest of the person has been issued in the Pacific Island country but the warrant is not available in Tuvalu; and
 - (ii) the person named in the original warrant is, or is suspected of being, in or on his or her way to Tuvalu; and
 - (c) the magistrate is satisfied that it is reasonable in the circumstances to issue a warrant,

the magistrate shall issue a provisional arrest warrant for the arrest of the person.

- (2) The provisional arrest warrant shall be in accordance with Form 2.

29 Arrest and remand on provisional arrest warrant

- (1) A person arrested under a provisional arrest warrant shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall:
 - (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond—remand the person on bail,until the Pacific Island country produces the original warrant on which the provisional arrest warrant was based.
- (3) A magistrate who remands a person on bail:
 - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Tuvalu; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.
- (4) A person shall not be remanded in custody or on bail for a period longer than 28 days.

30 Endorsement of warrant

- (1) If:
 - (a) an application is made to a magistrate on behalf of a Pacific Island country for the endorsement of a warrant issued in the Pacific Island country for the arrest of a person (an "original warrant"); and
 - (b) the magistrate is told by affidavit that the person named in the original warrant is, or is suspected of being, in or on his or her way to Tuvalu,the magistrate shall endorse the original warrant to authorise the arrest of the person under the warrant in Tuvalu.

31 Arrest and remand on endorsed warrant

- (1) A person who is arrested under an endorsed warrant shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall:
 - (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond—remand the person on bail,for the period that is necessary for proceedings under section 35 (dealing with consent to surrender) or 36 (dealing with extradition proceedings), or both, to be conducted.

- (3) A magistrate who remands a person on bail:
 - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Tuvalu; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.
- (4) A person shall not be remanded in custody or on bail for a period longer than 28 days.
- (5) If a magistrate remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other magistrate for release on bail during that remand, unless the first magistrate is no longer available.

32 Release from remand

- (1) If:
 - (a) a person is on remand in custody or on bail 28 days after the day on which the person was arrested on a provisional warrant; and
 - (b) an endorsed warrant for the arrest of the person has not been obtained,the person shall be brought before a magistrate.
- (2) The magistrate shall order:
 - (a) the release of the person from custody; or
 - (b) the discharge of the recognisances on which bail was granted,unless the magistrate is satisfied that the endorsed warrant will be obtained within a particular period that is reasonable in all the circumstances.
- (3) If:
 - (a) a person is on remand in custody or on bail 28 days after the day on which the person was arrested on an endorsed warrant; and
 - (b) no request has been made under section 33 for extradition proceedings to be conducted,the person shall be brought before a magistrate.
- (4) The magistrate shall order:
 - (a) the release of the person from custody; or
 - (b) the discharge of the recognisances on which bail was granted,unless the magistrate is satisfied that a request under section 33 for extradition proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances.

33 Extradition proceedings

If:

- (a) either:
 - (i) a person has been remanded after being arrested under an endorsed warrant; or
 - (ii) a person has been remanded after being arrested under a provisional arrest warrant and the original warrant has since been endorsed; and
- (b) a request is made to a magistrate by or on behalf of the person or the Pacific Island country for extradition proceedings to be conducted in relation to the person,

the magistrate shall conduct proceedings as soon as practicable to determine whether the person should be surrendered to the Pacific Island country.

34 Conduct of extradition proceedings

- (1) A magistrate shall not conduct extradition proceedings unless he or she is satisfied that both the person sought and the Pacific Island country have had reasonable time to prepare for the conduct of the proceedings.
- (2) Extradition proceedings shall be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings in relation to the following matters apply to the extradition proceedings:
 - (a) summoning witnesses;
 - (b) remanding defendants;
 - (c) ordering the production of documents;
 - (d) administration of oaths and affirmations;
 - (e) payment of witness expenses;
 - (f) contempt of court, privilege and other matters relating to the administration of courts;
 - (g) the imposition and level of fines for offences.
- (3) In the proceedings, the person is not entitled to adduce, and the magistrate is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

35 Consent to surrender

- (1) At the proceedings the magistrate shall ask the person if he or she consents to being surrendered.
- (2) If:

- (a) the person tells the magistrate that he or she consents to being surrendered; and
- (b) the magistrate is satisfied that the consent was given voluntarily, the magistrate shall tell the person that he or she will be:
 - (c) committed to prison without further proceedings; and
 - (d) surrendered to the Pacific Island country as soon as practicable.
- (3) If the person again consents to being surrendered, the magistrate shall:
 - (a) by warrant (a “surrender warrant”), order that the person be surrendered to the Pacific Island country; and
 - (b) by warrant, order that the person be committed to prison until the person is surrendered to the Pacific Island country.

36 Determination whether person should be surrendered

- (1) At the proceedings:
 - (a) the person may not bring evidence that the person did not commit the offence; but
 - (b) the person may bring evidence about the matters mentioned in subsection (2).
- (2) The magistrate shall determine that the person should be surrendered unless he or she is satisfied that:
 - (a) the surrender offence is of a trivial nature; or
 - (b) if the offence is one of which the person is accused but not convicted—the accusation was not made in good faith and in the interests of justice; or
 - (c) a lengthy period has elapsed since the offence was committed; or
 - (d) it would be unjust, oppressive or too severe a punishment to surrender the person; or
 - (e) the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Tuvalu.
- (3) If the magistrate determines that the person should be surrendered, the magistrate shall:
 - (a) by warrant (a “surrender warrant”), order that the person be surrendered to the Pacific Island country; and
 - (b) by warrant, order that the person be committed to prison until the person is surrendered to the Pacific Island country; and
 - (c) tell the person that he or she may, within 15 days of the day on which the order is made, seek a review of the order under section 37 (dealing with review of the decision); and

- (d) record in writing his or her decision and the extradition offence for which the person is to be surrendered; and
 - (e) give a copy to the person and to the Prime Minister.
- (4) In spite of subsection (3), if:
- (a) the person is serving a custodial sentence in Tuvalu; and
 - (b) surrender is sought for an offence for which the person is accused but not convicted,
- the magistrate shall not issue a surrender warrant for the person but shall refer the matter to the Prime Minister to be dealt with under section 39 (temporary surrender warrants).
- (5) If the magistrate determines that the person should not be surrendered to the Pacific Island country, the magistrate shall order that the person be released.

37 Review of magistrate's decision

- (1) If a magistrate makes an order for the surrender of a person, the person may apply to the High Court for a review of the order.
- (2) If a magistrate makes an order for the release of a person, the Pacific Island country may apply to the High Court for a review of the order.
- (3) The application shall be made within 15 days after the day on which the magistrate makes the order.
- (4) The High Court shall have regard only to the material that was before the magistrate.
- (5) The High Court may, by order, confirm or quash the order of the magistrate and order that the person be surrendered or released.
- (6) If the High Court orders that the person be surrendered, the Court shall include in its judgment a statement specifying the offence and shall:
 - (a) if the person was remanded on bail—by warrant commit the person to prison until the person is surrendered; or
 - (b) if the person is in custody—order that the person remain in custody until the person is surrendered.
- (7) If the High Court orders that the person be released, the Court shall:
 - (a) if the person is in custody—order that the person be released; or
 - (b) if the person has been remanded on bail—order that the recognisance be discharged.

38 Surrender warrant

- (1) The surrender warrant shall:
 - (a) be in writing, in accordance with Form 5; and:

- (b) require any person who has custody of the person to hand the person over to a police officer; and
 - (c) authorise a police officer to:
 - (i) transport the person from the place where the police officer takes custody of the person to another place within Tuvalu for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
 - (d) authorise the foreign escort officer to transport the person out of Tuvalu.
- (2) If the person is serving a custodial sentence, or has been admitted to bail, in Tuvalu for an offence committed in Tuvalu, the surrender warrant shall not be executed until:
- (a) the person has been released from custody; or
 - (b) the recognisance has been discharged.

39 Temporary surrender warrant

- (1) The Prime Minister may issue a temporary surrender warrant instead of a surrender warrant if:
- (a) the person is serving a custodial sentence in Tuvalu; and
 - (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and
 - (c) the Prime Minister is satisfied that the Pacific Island country has given an adequate undertaking that:
 - (i) the person will be given a speedy trial in the Pacific Island country; and
 - (ii) the person will be returned to Tuvalu after the trial; and
 - (d) the Prime Minister is satisfied that adequate provision has been made for the travel of the person to the Pacific Island country and for his or her return to Tuvalu.
- (2) The temporary surrender warrant shall:
- (a) be in writing, in accordance with Form 6; and
 - (b) state the offences for which the person is to be surrendered; and
 - (c) require any person who has custody of the person to hand the person over to a police officer; and
 - (d) authorise a police officer to:
 - (i) transport the person from the place where the police officer takes custody of the person to another place within Tuvalu for the

- purpose of handing the person over to the custody of a foreign escort officer; and
- (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
 - (e) authorise the foreign escort officer to transport the person out of Tuvalu.
- (3) If a person who was the subject of a temporary surrender warrant:
- (a) has been returned to Tuvalu after trial and sentence in the Pacific Island country; and
 - (b) has completed his or her custodial sentence in Tuvalu,
- the Prime Minister shall issue a surrender warrant for the surrender of the person to the Pacific Island country, unless the Prime Minister is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the Pacific Island country.
- (4) Any time the person spends in custody in the Pacific Island country as a result of the temporary surrender is taken to be time spent in custody in Tuvalu for the purpose of completing the sentence for which the person was in custody in Tuvalu.
- (5) If:
- (a) time spent in custody in the Pacific Island country is taken into account as mentioned in subsection (3); and
 - (b) because of this, the person's sentence in Tuvalu is concluded,
- the Prime Minister shall tell the Pacific Island country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

40 Execution of surrender warrant

- (1) If a person is not surrendered under a surrender warrant within 2 months after:
- (a) the date the surrender warrant was issued; or
 - (b) if the person is serving a custodial sentence, or has been admitted to bail, in Tuvalu—the person has been released from custody or the recognisance has been discharged,
- the person may apply to a magistrate to be released from custody. The person shall tell the Prime Minister in writing of the application.
- (2) If the magistrate is satisfied that:
- (a) the Prime Minister has been told of the application; and
 - (b) there is no reasonable cause for delay in surrendering the person,
- the magistrate shall order that the person be released from custody.

- (3) Without limiting paragraph (2)(b), reasonable cause for delay exists if:
- (a) it would have been a danger to the person’s life, or prejudicial to the person’s health, to surrender the person; or
 - (b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or
 - (c) there was delay by Tuvalu in responding to a request for permission to transport the person, and all reasonable steps were taken to obtain the permission.

PART 5 - EXTRADITION FROM TUVALU TO TREATY COUNTRIES

41 Procedure applying to extradition to treaty countries

The procedures set out in Part 2 apply to the extradition of a person from Tuvalu to a country with which Tuvalu has an extradition treaty.

[NOTE: These countries are listed in Schedule 3.]

42 Part 2 applies subject to treaty

However, Part 2 applies subject to:

- (a) any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between Tuvalu and the treaty country; and
- (b) any modifications to this Act made by the regulations.

[NOTE: Regulations may make any modifications to this Act necessary to give effect to a treaty - see s. 61.]

PART 6 - EXTRADITION FROM TUVALU TO COMITY COUNTRIES

43 Procedure applying to extradition to comity countries

Subject to section 46, the procedures set out in Part 2 apply to the extradition of a person from Tuvalu to a country other than a Commonwealth country, a Pacific Island country or a treaty country.

[NOTE: These other countries are called “comity countries” — see definition in s.4.]

44 When comity country an extradition country

- (1) The Prime Minister may:
 - (a) by regulations, specify a comity country as an extradition country; or
 - (b) if an extradition request is received from a comity country that is not specified in the regulations — certify that the country is an extradition country for the purpose of that extradition request.
- (2) When the Prime Minister certifies that the country is an extradition country, he or she shall also specify the provisions of this Act that are to apply to the extradition request.
- (3) In determining whether a comity country is an extradition country, the Prime Minister shall consider:
 - (a) the public interest of Tuvalu; and
 - (b) the public interest of the requesting country; and
 - (c) the seriousness of the offence for which extradition of the person is sought.

45 Limitation on extradition proceedings

Proceedings may not be commenced on a request from a comity country for the surrender of a person unless:

- (a) the Regulations specify that the country is an extradition country; or
- (b) the Prime Minister has certified that the country is an extradition country in accordance with section 44.

46 Other modifications of Part 2

When the Prime Minister specifies a comity country as an extradition country, he or she may also modify Part 2 in its application to the country under this Part.

PART 7 - GENERAL PROVISIONS RELATING TO SEARCH, SEIZURE AND TRANSIT**47 Search and seizure on arrest without a warrant**

- (1) This section applies to a person arrested:
 - (a) on a warrant issued under this Act; or
 - (b) on an endorsed warrant.

[NOTE: An endorsed warrant is one issued in a Pacific Island country and endorsed under s.30—see definition in s.4.]

- (2) If a police officer who arrests a person under this Act has reasonable grounds for suspecting that property in the vicinity of the person:
- (a) may be material as evidence in proving an offence for which the warrant was issued; or
 - (b) has been acquired by the person as the result of the offence for which the warrant was issued,
- the police officer may seize the property.
- (3) If a police officer:
- (a) arrests a person under this Act; and
 - (b) has reasonable grounds for suspecting that there is on the person, in the clothing that the person is wearing or in or on any property in the vicinity of the person that is under the apparent control of the person, any thing (including a sum of money) that:
 - (i) may be material as evidence in proving any offence in relation to which the warrant was issued or for which surrender of the person is sought; or
 - (ii) has been acquired by the person as a result of that offence,
- the police officer may search the person, the person's clothing or the property and may seize any thing found as a result of the search.
- (4) Subsection (2) does not authorise a police officer to remove, or to require the person to remove, any of the clothing that the person is wearing.
- (5) A person shall not be searched except by a police officer of the same sex.
- (6) A police officer shall retain in safe keeping any property or thing seized pending a direction from the Prime Minister about how the thing is to be dealt with.
- (7) Nothing in this section prevents or restricts the search of a person or of clothing worn by, or of property under the immediate control of, a person after the person is admitted to a prison after having been arrested for an offence.
- (8) The powers conferred by this section are in addition to any other powers conferred by law.

48 Search and seizure warrants

- (1) If a magistrate is informed by affidavit that there are reasonable grounds for suspecting that there may be in a place:
- (a) a thing that may be material as evidence in proving an offence for which a provisional arrest warrant was issued or surrender of a person is sought; or

- (b) a thing that has been acquired by a person as a result of such an offence,

and the affidavit sets out those grounds, the magistrate may issue a warrant authorising a police officer, with such assistance, and by such force, as is necessary and reasonable:

- (c) to seize the thing; or
- (d) to enter the place and seize the thing; or
- (e) to enter the place, search the place for a thing of that kind and seize any thing of that kind found in the place.

- (2) The magistrate shall not issue the warrant unless:

- (a) there has been given to the magistrate by affidavit the further information (if any) that the magistrate requires about the grounds on which the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

- (3) The warrant shall state:

- (a) the purpose for which it is issued, including a reference to the nature of any offence referred to in paragraph (1) (a); and
- (b) whether it authorises entry at any time of the day or night or during specified hours of the day or night; and
- (c) the kind of things that may be seized; and
- (d) that it ceases to have effect on a specified day, not being later than 1 month after the day it is issued.

- (4) If, in the course of searching in accordance with the warrant:

- (a) a police officer finds a thing that he or she believes on reasonable grounds to be connected with the offence, but the thing is not of a kind stated in the warrant; and
- (b) the police officer believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction,

the warrant is taken to authorise the police officer to seize the thing.

- (5) The police officer shall retain in safe keeping a thing seized pending any direction from the Prime Minister about how it is to be dealt with.

- (6) In this section:

“**place**” includes a public place, area of water, premises, vessel, aircraft or vehicle in any part of Tuvalu;

“**thing**” includes a vessel, aircraft or vehicle.

49 Return etc of seized property

- (1) The Prime Minister may direct that any property seized under section 47 or 48 that:
 - (a) may provide evidence of an offence for which surrender has been ordered; or
 - (b) may have been acquired as a result of an offence of that kind,shall be returned to the country that sought the surrender, if a surrender warrant or temporary surrender warrant is issued after extradition proceedings have concluded.
- (2) If no surrender warrant has been issued after extradition proceedings have concluded, the Prime Minister shall direct that the property be returned to the person from whom it was seized, unless the Prime Minister is satisfied that the interests of justice in the requesting country require the property to be returned to the requesting country.

50 Arrest of persons escaping from custody

- (1) A police officer may arrest a person without a warrant if the police officer has reasonable grounds for believing that the person has escaped from custody that was authorised under this Act.
- (2) The person shall be returned to the custody mentioned in subsection (1).
- (3) Escaping from custody as mentioned in subsection (1) does not constitute an offence.

51 Arrest of person released on bail

- (1) A police officer may arrest a person who has been remanded on bail under this Act if the police officer has reasonable grounds for believing that the person has contravened, or is about to contravene, a condition subject to which bail was granted.
- (2) The person shall be brought before a magistrate as soon as practicable.

52 Transit

- (1) The Commissioner of Police shall give permission to a country (the “second country”) to transport through the territory of Tuvalu a person who has been surrendered to the second country by a third country if:
 - (a) the second country asked for transit permission before the person entered Tuvalu; and
 - (b) the second country is:
 - (i) a Commonwealth country, a Pacific Island country or a treaty country; or

- (ii) a country approved by the Prime Minister for the purpose of the request.
- (2) If transit permission is given under subsection (1):
 - (a) a police officer in Tuvalu may assist the foreign escort officer escorting the person; and
 - (b) the person may be held in custody in Tuvalu until the person's journey can continue.
- (3) If it is necessary to hold the person in custody for more than 24 hours, the person shall be brought before a magistrate who may issue a warrant to commit the person to custody.

PART 8 - EXTRADITION TO TUVALU

53 Surrendered persons to be brought into Tuvalu

- (1) A person surrendered to Tuvalu for an offence against a law of Tuvalu of which the person is accused or of which the person has been convicted shall be brought into Tuvalu and delivered to the appropriate authorities to be dealt with according to law.
- (2) In particular, the person may be remanded in custody or on bail until the person can be brought to trial.

54 Treatment of person surrendered to Tuvalu

A person surrendered to Tuvalu shall not:

- (a) be detained or tried in Tuvalu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:
 - (i) an offence for which the person was surrendered; or
 - (ii) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or
 - (iii) another offence for which the surrendering country consents to the person being detained or tried; or
- (b) be detained in Tuvalu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Tuvalu,

unless one of the following circumstances applies:

- (c) the country that surrendered the person to Tuvalu consents to the person being so detained, and tried or surrendered; or

- (d) the person has left, or has had the opportunity of leaving, Tuvalu.

55 Persons temporarily surrendered to Tuvalu

- (1) If a person surrendered to Tuvalu:
- (a) has not completed a custodial sentence in the surrendering country immediately before being surrendered; or
 - (b) is a person whom Tuvalu has undertaken to hold in custody and return to the surrendering country,
- then the person:
- (c) shall, while travelling to and from, and while in, Tuvalu, be kept in the custody that the Prime Minister orders in writing; and
 - (d) may only be tried for an offence for which the person was surrendered; and
 - (e) after the person has been tried—shall be returned to the surrendering country.
- (2) If:
- (a) a person is held in custody only because of an order of the Prime Minister under subsection (1); and
 - (b) the surrendering country notifies Tuvalu that the surrendering country no longer requires the person to be returned,
- the Prime Minister shall order that the person be released from custody.

56 Evidence for purposes of surrender of persons to Tuvalu

- (1) If the Prime Minister intends to seek a person's extradition to Tuvalu, the Prime Minister may, by notice in writing, authorise the taking of evidence for use in any proceedings for the extradition of the person to Tuvalu.
- (2) A magistrate may take the evidence of each witness on oath or affirmation and shall:
- (a) cause the evidence to be reduced to writing and certify as to the taking of the evidence; and
 - (b) cause the evidence and the certificate to be sent to the Prime Minister.
- (3) The person in relation to whom the evidence is being taken is not entitled to be represented while the evidence is being taken.

PART 9 - MISCELLANEOUS

57 Taking of evidence at request of another country

- (1) If another country requests Tuvalu to take evidence for the purpose of criminal proceedings in that country, the Prime Minister may authorise a magistrate to do so.
- (2) The magistrate may take the evidence of each witness on oath or affirmation and shall:
 - (a) cause the evidence to be reduced to writing and certify as to the taking of the evidence; and
 - (b) cause the evidence and the certificate to be sent to the Prime Minister.

58 Prosecution, instead of extradition, of citizens of Tuvalu

- (1) If:
 - (a) a country requests the surrender of a person because of conduct the person engaged in outside Tuvalu; and
 - (b) the Prime Minister refuses to order the surrender of the person because of a circumstance listed in subsection (2); and
 - (c) the person would have committed an offence against a law in force in Tuvalu if the person had engaged in the conduct, or equivalent conduct, in Tuvalu at that time,the person may be prosecuted and punished in Tuvalu for the offence.
- (2) The following are the circumstances for the purpose of paragraph (1)(b):
 - (a) the person is a citizen of Tuvalu; or
 - (b) on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, because of his or her race, religion, nationality, political opinions, sex or status; or
 - (c) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
 - (d) the judgment has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have; or
 - (e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Tuvalu and the requesting country has not given a sufficient undertaking that the penalty either will not be imposed or, if imposed, will not be carried out; or
 - (f) the person has been sentenced, or would be liable to be tried or sentenced, in the requesting country by an extraordinary or ad hoc tribunal.

- (3) For the purpose of the prosecution, the person is taken to have engaged in the conduct in Tuvalu.
- (4) A person shall not be prosecuted unless the Attorney-General:
 - (a) considers that there is sufficient evidence in Tuvalu to justify prosecuting the person for the offence; and
 - (b) orders that the person be prosecuted for the offence.
- (5) A person may be prosecuted whether the person engaged in the conduct before or after the commencement of this Act.
- (6) A person to whom subsection (1) applies may be:
 - (a) arrested for an offence mentioned in paragraph (1)(c); and
 - (b) charged with the offence; and
 - (c) remanded in custody or on bail,although the Solicitor-General has not made an order under subsection (3).

59 Provision of evidence for prosecution by other countries

If—

- (a) another country has refused to order that a person be surrendered to Tuvalu; but
- (b) the country is prepared to prosecute the person for the offence for which Tuvalu sought surrender of the person,

the Prime Minister shall give the other country all available evidence to enable the other country to prosecute the person.

60 Surrender for purposes of trial only

- (1) If:
 - (a) Tuvalu refuses to surrender a person because:
 - (i) the person is a citizen of Tuvalu; or
 - (ii) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
 - (b) a magistrate determines under section 36 that a person should not be surrendered because the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Tuvalu,

and the requesting country asks that the person be surrendered for the purposes of trial only, Tuvalu may surrender the person to the other country for the purpose of being tried in the requesting country for the offence for which extradition is sought if:

- (c) the law of the requesting country permits the transfer of convicted offenders to Tuvalu; and
- (d) Tuvalu is satisfied that if the person is convicted the person will be returned to Tuvalu to serve the sentence imposed; and
- (e) Tuvalu is satisfied that there is no likelihood that the person will be subjected to torture or cruel, inhuman or degrading treatment or punishment.

61 Regulations

- (1) The Minister may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
 - (a) amend the lists of countries in the Schedules, but so that a country appears in only one Schedule; and
 - (b) set out the text of extradition treaties; and
 - (c) make any modifications to this Act that are necessary to give effect to an extradition treaty.
- (3) A reference to a country listed in a Schedule includes a reference to a country listed in the Schedule because of regulations made under paragraph (2)(a).

62 Transitional

- (1) In this section:
 - “**current extradition request**” means an extradition request under the old Act that has not been finalised.
 - “**old Act**” means the Imperial Acts known as the Extradition Acts, 1870 to 1935 as in force in Tuvalu immediately before the commencement of this Act.
- (2) In spite of the fact that the old Act no longer has effect in Tuvalu, a current extradition request that was started before the commencement of this Act is to continue to be dealt with under the old Act.
- (3) However, nothing in this section prevents a country from making a fresh extradition request under this Act in place of a current extradition request.

63 Exclusion of other laws

- (1) This Act replaces all former laws relating to extradition in force in Tuvalu immediately before the commencement of this Act, whether those laws were in force because of legislation of Tuvalu or because of the actions of a former governing power of Tuvalu.

- (2) In particular, the following Acts cease to have effect in Tuvalu:
- (a) the Imperial Acts known as the Extradition Acts, 1870 to 1935; and
 - (b) the Imperial Act known as the Fugitive Offenders Act, 1881; and
 - (c) any other laws relating to extradition of persons to and from Tuvalu that were in force in any part of Tuvalu immediately before the commencement of this Act.
- (3) In spite of subsection (2):
- (a) an Order in Council made under the Extradition Acts, 1870 to 1935 that is expressed to extend to Tuvalu continues in force in Tuvalu by virtue of this subsection; and
 - (b) Tuvalu is taken to have an extradition treaty with a country mentioned in an Order in Council or a successor to that country.
- (4) An extradition treaty:
- (a) to which Tuvalu was a party; or
 - (b) that otherwise bound Tuvalu;
- immediately before the commencement of this Act remains in force and is taken to be an extradition treaty for the purpose of this Act.

SCHEDULES**SCHEDULE 1****COMMONWEALTH COUNTRIES**

(Section 4)

Anguilla	Malaysia
Antigua and Barbuda	Maldives
Australia	Malta
Bahamas	Mauritius
Bangladesh	Montserrat
Barbados	Mozambique
Belize	Namibia
Bermuda	New Zealand
Botswana	Nigeria
British Antarctic Territory	Pakistan
British Indian Ocean Territory	Pitcairn Islands
British Virgin Islands	St Helena and Dependencies
Brunei Darussalam	St Kitts and Nevis
Cameroon	St Lucia
Canada	St Vincent and the Grenadines
Cayman Islands	Seychelles
Cyprus	Sierra Leone
Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia)	Singapore
Dominica	South Georgia and South Sandwich Islands
Falkland Islands	Sri Lanka
The Gambia	South Africa

Ghana	Sri Lanka
Gibraltar	Swaziland
Grenada	Tanzania
Guyana	Trinidad and Tobago
India	Turks and Caicos Islands
Jamaica	Uganda
Kenya	United Kingdom of Great Britain and Northern Ireland
Lesotho	Zambia
Malawi	Zimbabwe

SCHEDULE 2**PACIFIC ISLAND COUNTRIES**

(Section 6)

Cook Islands	Nauru	Solomon Islands
Federated States of Micronesia	Niue	Tonga
Fiji	Palau	Tuvalu
Kiribati	Papua New Guinea	Vanuatu
Marshall Islands		Western Samoa

SCHEDULE 3
TREATY COUNTRIES

(Section 4)

Argentina	Luxemburg
Belgium	Mexico
Bosnia and Herzegovina	Monaco
Chile	Nicaragua
Columbian	Norway
Croatia	Panama
Cuba	Paraguay
Denmark	Peru
Ecuador	Portugal
Federal Republic of Yugoslavia	Rumania
Former Yugoslav Republic of Macedonia	San Marino
France	Slovenia
Greece	Spain
Guatemala	Sweden
Haiti	Switzerland
Hungary	Thailand
Iceland	United States of America
Italy	Uruguay
Liberia	

SCHEDULE 4

FORMS OF WARRANTS

Form 1

PROVISIONAL ARREST WARRANT - GENERAL

(Section 8)

TUVALU**Provisional Arrest Warrant**

TO all police officers:

An application has been made to me on behalf of [*requesting country*] for the issue of a provisional warrant for the arrest of [*name of person*].

I am satisfied, on the basis of the documents produced to me on behalf of [*requesting country*], that:

[*name of person*] is in, or on his or her way to, Tuvalu; and

[*requesting country*] intends to make a formal request for the extradition of [*name of person*]; and

the offence for which the extradition of [*name of person*] is sought is an extradition offence; and

[*requesting country*] is an extradition country.

NOW THEREFORE I, [*name and designation of magistrate*], under section 8 of the Extradition Act, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Tuvalu as soon as practicable to be dealt with according to law.

DATED

Signature and title of Magistrate issuing warrant

Form 2

**PROVISIONAL ARREST WARRANT – EXTRADITION TO PACIFIC ISLAND
COUNTRY**

(Section 28)

TUVALU**Provisional Arrest Warrant**

TO all police officers:

An application has been made to me on behalf of [*Pacific Island country*] for the issue of a provisional warrant for the arrest of [*name of person*].

I am satisfied, on the basis of the documents produced to me on behalf of [*Pacific Island country*], that:

[*name of person*] is in, or on his or her way to, Tuvalu; and

an original warrant for the arrest of [*name of person*] has been issued in [*Pacific Island country*] but the warrant is not available in Tuvalu; and

it is reasonable in the circumstances to issue a warrant for the arrest of [*name of person*].

NOW THEREFORE I, [*name and designation of magistrate*], under section 28 of the Extradition Act, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Tuvalu as soon as practicable to be dealt with according to law.

DATED

Signature and title of Magistrate issuing warrant

Form 3

SURRENDER WARRANT - GENERAL

(Section 20)

TUVALU**Surrender Warrant**

TO all police officers:

I, [*name of Prime Minister*], Prime Minister of Tuvalu, have decided under section 19 of the Extradition Act that [*name of person*] is to be surrendered to [*requesting country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Prime Minister*], under section 19(5) of the Extradition Act:

require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and

authorise you to bring [*name of person*] to [*name of place in Tuvalu*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and

authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and

authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Tuvalu

DATED*Signature of Prime Minister*

Form 4

TEMPORARY SURRENDER WARRANT - GENERAL

(Section 21)

TUVALU**Temporary Surrender Warrant**

TO all police officers:

I, [*name of Prime Minister*], Prime Minister of Tuvalu, have decided under section 19 of the Extradition Act that [*name of person*] is to be surrendered to [*requesting country*] for the offence of [*specify each offence for which the person is to be surrendered*].

[*name of person*]: is serving a custodial sentence in Tuvalu; and has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that:

[*requesting country*] has given an adequate undertaking that [*name of person*] will be given a speedy trial in [*requesting country*] and will be returned to Tuvalu after the trial; and adequate provision has been made for [*name of person*]:to travel to [*requesting country*] and to return to Tuvalu.

NOW THEREFORE I, [*name of Prime Minister*], under section 19(5) of the Extradition Act 2002: require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and

authorise you to bring [*name of person*] to [*name of place in Tuvalu*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and

authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Tuvalu

DATED*Signature of Prime Minister*

Form 5

SURRENDER WARRANT – EXTRADITION TO PACIFIC ISLAND COUNTRY

(Section 36 (3))

TUVALU**Surrender Warrant**

TO all police officers:

I, [*name and title of magistrate*], have decided under section 36 of the Extradition Act that [*name of person*] is to be surrendered to [*Pacific Island country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Magistrate*], under section 36(3) of the Extradition Act:

order that [*name of person*] be surrendered to [*Pacific Island country*]; and

order that [*name of person*] be committed to prison until he/she is surrendered to [*Pacific Island country*]; and

require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and

authorise you to bring [*name of person*] to [*name of place in Tuvalu*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*Pacific Island country*] to escort [*name of person*] to [*Pacific Island country*]; and

authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and

authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Tuvalu

DATED*Signature and title of Magistrate issuing warrant*

Form 6

TEMPORARY SURRENDER WARRANT – EXTRADITION TO PACIFIC ISLAND COUNTRY

(Section 39)

TUVALU**Temporary Surrender Warrant**

TO all police officers:

I, [*name of Prime Minister*], Prime Minister of Tuvalu, have decided under section 39 of the Extradition Act that [*name of person*] is to be temporarily surrendered to [*Pacific Island country*] for the offence of [*specify each offence for which the person is to be surrendered*].

[*name of person*]: is serving a custodial sentence in Tuvalu; and has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that:

[*Pacific Island country*] has given an adequate undertaking that [*name of person*] will be given a speedy trial in [*Pacific Island country*] and will be returned to Tuvalu after the trial; and adequate provision has been made for [*name of person*]:to travel to [*Pacific Island country*] and to return to Tuvalu.

NOW THEREFORE I, [*name of Prime Minister*], under section 39 of the *Extradition Act*: require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and

authorise you to bring [*name of person*] to [*name of place in Tuvalu*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and

authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Tuvalu

DATED*Signature of Prime Minister*

ENDNOTES

¹ Act 4 of 2004

² See LN 5/2004

³ See LN 5/2004