

COOK ISLANDS

EXTRADITION ACT 2003

ANALYSIS

PART 1 **PRELIMINARY**

1. Short title and commencement
2. Objects of Act
3. Exclusion of other laws
4. Definitions
5. Extradition offence
6. Forms of warrants

PART 2 **EXTRADITION FROM THE COOK ISLANDS** **- GENERAL PROVISIONS**

7. Object of Part 2
8. Issue of provisional arrest warrant
9. Arrest and remand on provisional arrest warrant
10. Release from remand
11. Authority to proceed
12. Arrest and remand on authority to proceed
13. Consent to surrender
14. Extradition proceedings
15. Conduct of extradition proceedings
16. Determination for surrender
17. Supporting documents
18. Review of decision
19. Surrender determination by Attorney-General
20. Form of surrender warrant
21. Temporary surrender warrant
22. Execution of surrender warrant

PART 3 **EXTRADITION FROM THE COOK ISLANDS** **TO COMMONWEALTH COUNTRIES**

23. Object of Part 3
24. Application of Part 2
25. Application of different evidentiary requirements
26. The *prima facie* evidence scheme
27. The record of case scheme

PART 4
EXTRADITION FROM THE COOK ISLANDS
TO SOUTH PACIFIC COUNTRIES –
BACKING OF WARRANTS PROCEDURE

- 28. Object of Part 4
- 29. Provisional arrest warrant
- 30. Arrest and remand on provisional arrest warrant
- 31. Endorsement of warrant
- 32. Arrest and remand on endorsed warrant
- 33. Release from remand
- 34. Extradition proceedings
- 35. Conduct of extradition proceedings
- 36. Consent to surrender
- 37. Determination as to whether person may be surrendered
- 38. Review of decision
- 39. Surrender warrant
- 40. Temporary surrender warrant
- 41. Execution of surrender warrant

PART 5
EXTRADITION FROM THE COOK ISLANDS
TO TREATY COUNTRIES

- 42. Object of Part 5
- 43. Application of Part 2

PART 6
EXTRADITION FROM COOK ISLANDS TO
COMITY COUNTRIES

- 44. Object of Part 6
- 45. Application of Part 2
- 46. When comity country becomes an extradition country
- 47. Limitation on extradition proceedings
- 48. Other modifications of Part 2

PART 7
GENERAL PROVISIONS
RELATING TO SEARCH, SEIZURE AND TRANSIT

- 49. Object of Part 7
- 50. Search and seizure on arrest without warrant
- 51. Search and seizure warrants
- 52. Return, etc. of seized property

53. Arrest of persons escaping from custody
54. Arrest of persons released on bail
55. Transit

PART 8
EXTRADITION TO COOK ISLANDS

56. Object of Part 8
57. Surrendered persons must be brought into the Cook Islands
58. Treatment of person surrendered to the Cook Islands
59. Persons temporarily surrendered to the Cook Islands
60. Evidence for purpose of surrender of persons to the Cook Islands

PART 9
MISCELLANEOUS

61. Taking of evidence at request of another country
62. Prosecution in the Cook Islands instead of extradition
63. Provision of evidence for prosecution by other countries
64. Surrender for purposes of trial only
65. Regulations
66. Repeals

SCHEDULES

- Schedule 1 - Commonwealth Countries
- Schedule 2 - South Pacific Countries
- Schedule 3 - Treaty Countries
- Schedule 4 - Forms of warrants

2003, No. 8

An Act relating to the extradition of persons to and from the Cook Islands

(7 May 2003)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

1. Short title and commencement - This Act may be cited as the Extradition Act 2003.

(2) This Act comes into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Objects of Act - The objects of this Act are to -

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

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

(2) In particular, this Act excludes the operation of -

- (a) the New Zealand Extradition Act 1965 as applied to Cook Islands pursuant to section 349A of the Cook Islands Act 1915; and
- (b) any other laws relating to extradition of persons to and from the Cook Islands that were in force in the Cook Islands immediately before the commencement of this Act.

(3) Despite subsection (2),-

- (a) an Order in Council made under the -
 - (i) Imperial Extradition Acts, 1870 to 1935;
 - (ii) Imperial Fugitive Offenders Act 1881;
 - (iii) Imperial Indian Extradition Act 1903; and
 - (iv) New Zealand Extradition Act 1965 as applied to the Cook Islands pursuant to section 349A of the Cook Islands Act 1915,

that is expressed to extend to the Cook Islands, continues in force in the Cook Islands by virtue of this subsection; and

- (b) the Cook Islands is taken to have extradition treaty with a country mentioned in an Order in Council or a successor to that country.

(4) An extradition treaty -

(a) to which the Cook Islands was a party; or

(b) that otherwise bound the Cook Islands,

immediately before the commencement of this Act, remains in force and is taken to be an extradition treaty for the purposes of this Act.

4. Definitions - (1) In this Act, unless the context otherwise requires -

"Attorney-General" means the Minister responsible for the Crown Law Office;

"comity country" means a country other than a Commonwealth country, a South Pacific country or a treaty country;

"Commonwealth country" means a country that is specified in Schedule 1;

"country" includes -

(a) a State or province or other part of a country;

(b) a colony, territory or protectorate of a country;

(c) a territory for the international relations of which a country is responsible; and

(d) a ship or aircraft owned by, or registered in, a country;

"Court" means the High Court of the Cook Islands and its appellate courts;

"endorsed warrant" means a warrant that has been issued in a South Pacific country and endorsed under section 31;

"extradition country" means -

(a) a Commonwealth country; or

(b) a South Pacific country; or

(c) a treaty country; or

(d) a comity country that is declared by regulations made under this Act to be an extradition country; or

(e) A comity country certified by the Attorney - General 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 the Cook Islands 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 of convicted of offences;

"foreign escort officer" means a representative of the country to whom a person must be surrendered and who is authorised by that country to escort the person from the Cook Islands to that country;

"ICPO-Interpol" means the International Criminal Police Organisation;

"Judge" means a Judge of the Court;

"Justice" means a Justice of the Peace for the Cook Islands appointed under Article 62 of the Constitution of the Cook Islands;

"national of the Cook Islands" means a Cook Islander or permanent resident as defined in section 2 of the Entry, Residence and Departure Act 1971-72;

"original warrant" means a warrant issued in a South Pacific country for the arrest of a person;

"police officer" means a member of the Police of the Cook Islands;

"prison" includes a jail, lock-up or other place of detention;

"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 29;

"regulations" means regulations made under section 65;

"requesting country" means a country that is seeking the surrender of a person from the Cook Islands;

"South Pacific Country" means a country that is -

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

"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(5) or 19(4); or
- (b) where the expression is used in Part 4, a warrant, in accordance with Form 5 in Schedule 4 issued under section 36(3) or 37(3);

"temporary surrender warrant" means,-

- (a) where the expression is used in Part 2, a warrant, in accordance with Form 4 in Schedule 4, issued under section 19(4) or 21; or
- (b) where the expression is used in Part 4, a warrant in accordance with Form 6 in Schedule 4, issued under section 40;

"treaty" includes a convention, protocol or agreement between two or more countries;

"treaty country" means a country -

- (a) with which the Cook Islands 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.

(5) Extradition offence - (1) An offence is an extradition offence if-

- (a) it is an offence against a law of the requesting country punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000; and
- (b) the conduct that constitutes the offence, if committed in the Cook Islands, would constitute an offence (however described) in the Cook Islands punishable by death or imprisonment for not less than 12 months or the imposition of a fine of more than \$5,000.

(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 must 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) the Cook Islands does not impose a duty, tax, impost or control of that kind.

6. Forms of warrants - A provisional arrest warrant, a surrender warrant and a temporary surrender warrant must be in the appropriate Form in Schedule 4.

PART 2
EXTRADITION FROM THE COOK ISLANDS
GENERAL PROVISIONS

7. Object of Part 2 - (1) The object of this Part is to provide for the extradition from the Cook Islands to other countries of persons accused or convicted of extradition offences in other countries.

(2) This Part applies to extradition from the Cook Islands 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 South Pacific country-in accordance with Part 6.

8. Issue of provisional arrest warrant - (1) If -

(a) a country, either directly or through ICPO-Interpol, notifies the Cook Islands that -

(i) a person whose surrender is desired is, or is believed to be, in or on his or her way to the Cook Islands; and

(ii) the requesting country intends to make a formal request for the extradition of the person; and

(b) an application on behalf of the requesting country is made to a Judge or Justice for a provisional arrest warrant,

the Judge or Justice must issue the provisional arrest warrant for the person if-

(c) the application is supported by the required documents mentioned in subsection (2); and

(d) the Judge or Justice is satisfied that the offence is an extradition offence; and

(e) the Judge or Justice 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 may be imposed.

9. Arrest and remand on provisional arrest warrant - (1) A person arrested under a provisional arrest warrant must be brought before a Judge or Justice as soon as practicable.

(2) The Judge or Justice must -

(a) remand the person in custody; or

(b) if the Judge or Justice is satisfied that the person is unlikely to abscond, remand the person on bail,

until the Attorney-General issues an authority to proceed under section 11.

(3) A Judge or Justice 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 the Cook Islands; and

(b) may order that the person's passport and other travel documents be surrendered to the Court until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period of longer than 42 days or if the extradition treaty between the Cook Islands and the requesting country provides for another period, for that period.

(5) As soon as possible after remanding the person, the Judge or Justice must-

(a) advise the Attorney-General -

(i) that the person has been remanded; 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 documents on which the issue of the provisional arrest warrant is based to the Attorney-General and to the person.

(6) If the Attorney-General considers that the request for extradition of the person for the offence will not be granted, he or she must order -

(a) the person to be released; or

(b) the discharge of the recognisance on which bail was granted.

10. Release from remand - (1) A person must be brought before a Judge or Justice if-

(a) that person is on remand under section 9 and has been on remand-

(i) for 42 days; or

(ii) if the extradition treaty between the Cook Islands and the requesting country provides for another period, that period after the day when the person was arrested; and

(b) the Attorney-General has not issued an authority to proceed under section 11.

(2) The Judge or Justice may remand the person, in custody or on bail, for a further period of not more than 42 days if the Judge or Justice is satisfied that an authority to proceed will be issued within that period.

(3) If the Judge or Justice is not satisfied under subsection (2), the Judge or Justice must order -

(a) the release of person from custody; or

(b) the discharge of the recognisances on which the bail was granted.

11. Authority to proceed - (1) If an extradition request is received, the Attorney-General must -

(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
 - (iv) there is no other reason why the authority to proceed may not be issued; and
- (c) give the authority to proceed to a Judge or Justice; 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 Judge or Justice in relation to a person who has not been arrested under a provisional arrest warrant, the Judge or Justice must issue a warrant for the arrest of the person.

(3) If an authority to proceed is received by a Judge or Justice in relation to a person remanded under section 9(2), the person must continue to be so remanded for the period that is necessary for proceedings under section 13 (dealing with consent to surrender) or section 14 (dealing with extradition proceedings) or both, to be conducted.

12. Arrest and remand on authority to proceed - (1) A person who is arrested under a warrant issued under section 11(2) must be brought before a Judge or Justice as soon as practicable.

(2) The Judge or Justice must-

- (a) remand the person in custody; or
- (b) if the Judge or Justice 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 section 14 (dealing with extradition proceedings), or both, to be conducted.

(3) A Judge or Justice 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 the Cook Islands; and
- (b) may order that the person's passport and other travel documents be surrendered to the Court until the extradition proceedings in relation to the person are concluded.

(4) If a Judge or Justice remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other judge or Justice for release on bail during that remand, unless the first Judge or Justice is no longer available.

13. Consent to surrender - (1) At any time, the person remanded may advise the Judge or Justice 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 Judge or Justice must ask the person whether the person also consents to being surrendered for that other offence.

(3) If -

(a) the person informs the Judge or Justice that he or she consents to being surrendered; and

(b) the Judge or Justice is satisfied that the consent was given voluntarily,

the Judge or Justice must advise 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 may be surrendered for an extradition offence; and

(d) after the Attorney-General issues a surrender warrant, the person will be surrendered to the requesting country.

(4) If the person again consents to being surrendered, the Judge or Justice must-

(a) issue a warrant ordering that the person be committed to prison; and

(b) advise the Attorney-General, in writing, that the person has been committed to prison and the offence for which the person has consented to be surrendered.

(5) The Attorney-General may then issue a surrender warrant for the person.

14. Extradition proceedings- If-

(a) the Attorney-General 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 Judge or Justice 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 Judge or Justice considers that the person and the requesting country have had reasonable time since the person received a copy of the extradition request in which to prepare for the proceedings,

the Judge or Justice must conduct proceedings to determine whether the person may be surrendered for the extradition offence for which surrender of the person is sought.

15. Conduct of extradition proceedings - (1) Extradition proceedings must 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) administering oaths and affirmations;
- (e) paying 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 adduce, and the Judge or Justice 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 for surrender - (1) The Judge or Justice must not order that a person be held in custody until a surrender determination is made or refused, unless the Judge or Justice is satisfied-

- (a) that the requesting country is an extradition country; and
- (b) that the offence for which surrender is sought is an extradition offence; and
- (c) as to the identity of the person; and

(d) that the supporting documents have been produced to the Judge or Justice; and

(e) that the supporting documents satisfy the requirements of section 17.

(2) If the Judge or Justice orders that the person be held in custody, the Judge or Justice must -

(a) issue a warrant ordering that the person be committed to prison to await the Attorney-General's decision on surrender; and

(b) advise 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 section 18; and

(c) record, in writing, his or her decision and the extradition offence for which the person may be surrendered; and

(d) give a copy of the record to the person and to the Attorney-General.

(3) If -

(a) the Judge or Justice orders that the person must be held in custody; and

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

the Judge or Justice must ask the person whether the person also consents to being surrendered for that other offence.

(4) If the Judge or Justice determines that the person may not be surrendered to the requesting country, the Judge or Justice must-

(a) order that the person be released; and

(b) advise the Attorney-General, in writing, of the order and of his or her reasons for determining that the person may not be surrendered.

17. Supporting documents - (1) In section 16 (1)(d) and (e), "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 may 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 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, documents, or duly authenticated copies of 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 Judge or Justice considers the deficiency to be minor, the Judge or Justice must 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 judicial 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 the Cook Islands.

18. Review of decision - (1) If a Judge or Justice orders that a person must be held until a surrender determination is made or refused, the person may apply to the Court for a review of the order.

(2) If a Judge or Justice orders that a person must be released, or that the person must be surrendered for some offences only, the requesting country may apply to the Court for a review of the order.

(3) The application must be made within 15 days after the day on which the Judge or Justice makes the order.

(4) The Court must have regard only to the material that was before the Judge or Justice.

(5) The Court may, by order, confirm or quash the order of the Judge or Justice and order that the person be held for surrender or released.

(6) If the Court orders that the person be held in custody until a surrender determination is made or refused, the Court must include in its judgment a statement specifying the offence and must -

(a) if the person is not in custody, by warrant commit the person to prison until the Attorney-General has made a decision under section 19; or

(b) if the person is in custody, order that the person remain in custody until the Attorney-General has made a decision under section 19.

(7) If the Court orders that the person must be released the person must be released accordingly.

19. Surrender determination by Attorney-General - (1) If -

(a) a Judge or Justice has reported to the Attorney-General that a person may be held for a person may 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 court ordered that the person be held for surrender,

the Attorney-General must, within such time as may be prescribed, make a final decision as to whether the person must be surrendered.

(2) The Attorney-General may refuse to or surrendered if -

(d) it appears to the Attorney-General in relation to the offence, or each of the offences, in respect of which the person's surrender is sought that-

(i) by reason of its trivial nature; or

(ii) by reason of the passage of time since the person is alleged to have committed the offence or to have become unlawfully at large, as the case may be; or

(iii) because the accusation against the person is not made in good faith in the interests of justice,

it would, having regard to all the circumstances, be unjust or oppressive to return that person;

(b) the person is accused or convicted of an offence not punishable by death in the Cook Islands but that person could be or has been sentenced to death for that offence in the country which made the request for the return.

(3) The Attorney-General must not refuse to surrender a person because the person may be subjected, in the requesting country, to torture or cruel, inhumane or degrading treatment or punishment if the requesting country and the Cook Islands have ratified -

(a) the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, being the convention of that title that was adopted by the General Assembly of the United Nations on the 10 December 1984; or

(b) the International Covenant on Civil and Political Rights.

(4) If the Attorney-General decides that the person must be surrendered to the requesting country, the Attorney-General must issue a surrender warrant or a temporary surrender warrant for the person.

(5) If the Attorney-General decides that the person must not be surrendered to the requesting country, the Attorney-General must, in writing, order that the person be released.

(20). Form of surrender warrant- (1) The surrender warrant must-

(a) be in writing; and

(b) state the offences for which the person must 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 the Cook Islands 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 officer; and

(e) authorise the foreign escort officer to transport the person out of the Cook Islands.

(2) If the person -

(a) is serving a custodial sentence; or

(b) has been admitted to bail in the Cook Islands for an offence committed in the Cook Islands; or

(c) is liable to be detained in prison because of a custodial sentence imposed for an offence committed in the Cook Islands,

the surrender warrant must not be executed until -

(d) the person has been released from custody; or

(e) the recognisance has been discharged; or

(f) the person ceases to be liable to be detained.

21. Temporary surrender warrant - (1) The Attorney-General may issue temporary surrender warrant in Form 4 of Schedule 4, instead of a surrender warrant if-

(a) the person is serving a custodial sentence in the Cook Islands; and

(b) surrender is sought for an offence of which the person accused but of which the person has not been convicted; and

(c) the Attorney-General 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 the Cook Islands after the trial; and

(d) the Attorney-General 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 the Cook Islands.

(2) The temporary surrender warrant must-

(a) be in writing; 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 the Cook Islands 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 the Cook Islands.

(3) If a person who was the subject of a temporary surrender warrant-

(a) has been returned to the Cook Islands after trial and sentence in the requesting country; and

(b) has completed his or her custodial sentence in the Cook Islands,

the Attorney-General may issue a surrender warrant for the surrender of the person to the requesting country, unless the Attorney-General 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 warrant is taken to be time spent in custody in the Cook Islands for the purpose of completing the sentence for which the person was in custody in the Cook Islands.

(5) If-

(a) time spent in custody in the requesting country is taken into account as mentioned in subsection (4); and

(b) because of this, the person's sentence in the Cook Islands is concluded,

the Attorney-General must advise 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 the Cook Islands, or is liable to be detained in prison because of a custodial sentence imposed for

an offence committed in Cook Islands- the person has been released from custody; or the recognisance has been discharged; or the person ceases to be liable to be detained,

the person may apply to a Judge or Justice to be released from custody authorised under the surrender warrant. The person must advise the Attorney-General of the application.

(2) If the Judge or Justice is satisfied that -

(a) the Attorney-General has been advised of the application; and

(b) there is no reasonable cause for delay in surrendering the person,

the Judge or Justice must 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 THE COOK ISLANDS** **TO COMMONWEALTH COUNTRIES**

23. Object of Part 3 - The object of this Part is to provide for the extradition from the Cook Islands to Commonwealth countries of persons accused or convicted of extradition offences in those countries.

24. Application of Part 2 - Part 2 applies to the extradition of a person from the Cook Islands to a Commonwealth country.

25. Application of different evidentiary requirements - (1) The evidentiary requirements set out in section 26 (the prima facie evidence scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country listed in Part 1 of Schedule 1.

(2) The evidentiary requirements set out in section 27 (the record of the case scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country listed in Part 2 of Schedule 1.

26. The prima facie evidence scheme - In addition to any evidentiary requirements in Part 2, a Judge or Justice must not determine that a person may be surrendered to a requesting country unless the evidence before the Court is such that, if the offence for which surrender is sought was committed in the Cook Islands, there would be sufficient evidence to place the person on trial.

27. The record of the case scheme - (1) In this section "record of the case", in relation to an offence for which surrender is sought, 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 Judge or Justice must not determine that a person may be surrendered to a requesting country unless a record of the case is produced for the offence for which surrender is sought.

(3) The record of the case must be accompanied by-

(a) an affidavit of an officer of the authority that investigated the matter, or of the prosecutor, as the case may be, 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 principal law officer 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.

PART 4
EXTRADITION FROM THE COOK ISLANDS
TO SOUTH PACIFIC COUNTRIES - BACKING OF WARRANTS PROCEDURE

28. Object of Part 4 - The object of this Part is to provide for the extraction from the Cook Islands to South Pacific countries of persons accused or convicted of extraction offences in those countries by means of the procedure known as "backing of warrants".

29. Provisional arrest warrant - If -

(a) an application is made to a Judge or Justice on behalf of the South Pacific country for the issue of a warrant for the arrest of a person; and

(b) the Judge or Justice is advised by affidavit of an officer of the authority that investigated the matter, that:

(i) an original warrant for the arrest of the person has been issued in the South Pacific country, but the warrant is not available in the Cook Islands; and

(ii) the person named in the original warrant may be in or on his or her way to the Cook Islands; and

(c) the Judge or Justice is satisfied that it is reasonable in the circumstances to issue a warrant,

the Judge or Justice must issue a provisional warrant for the arrest of the person in Form 2 of Schedule 4.

30. Arrest and remand on provisional arrest warrant - (1) A person arrested under a provisional arrest warrant must be brought before a Judge or Justice as soon as practicable.

(2) The Judge or Justice must -

(a) remand the person in custody; or

(b) if the Judge or Justice is satisfied that the person is unlikely to abscond, remand the person on bail,

for the period that is necessary for proceedings under section 34 (dealing with extradition proceedings) or 36 (dealing with consent to surrender), or both, to be conducted.

(3) A Judge or Justice 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 the Cook Islands; and

(b) may order that the person's passport and other travel documents be surrendered to the Court until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period longer than 28 days.

31. Endorsement of warrant - If -

(a) an application is made to a Judge or Justice on behalf of a South Pacific country for the endorsement of a warrant or the arrest of a person issued in the South Pacific country (an "original warrant") and the original warrant is produced to the Judge or Justice; and

(b) the Judge or Justice is advised by affidavit that the person named in the original warrant is, or is suspected of being, in or on his or her way to the Cook Islands,

the Judge or Justice must endorse the original warrant in the prescribed form, to authorise the arrest of the person under the warrant in the Cook Islands.

32. Arrest and remand on endorsed warrant - (1) A person who is arrested under an endorsed warrant must be brought before a Judge or Justice as soon as practicable.

(2) The Judge or Justice must-

(a) remand the person in custody; or

(b) if the Judge or Justice is satisfied that the person is unlikely to abscond, remand the person on bail,

for the period that is necessary for proceedings under section 34 (dealing with extradition proceedings) or 36 (dealing with consent to surrender), or both, to be conducted.

(3) A Judge or Justice 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 the Cook Islands; and

(b) may order that the person's passport and other travel documents be surrendered to the court until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period longer than 28 days.

(5) If a Judge or Justice remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other Judge or Justice for release on bail during that remand, unless the first Judge or Justice is no longer available.

33. 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 must be brought before a Judge or Justice.

(2) The Judge or Justice must order -

(a) the release of the person from custody; or

(b) the discharge of the recognisances on which bail was granted,

as the case requires, unless the Judge or Justice 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 34 for extradition proceedings to be conducted,

the person must be brought before a Judge or Justice.

(4) The Judge or Justice must order-

(a) the release of the person from custody; or

(b) the discharge of the recognisances on which bail was granted,

as the case requires, unless the Judge or Justice is satisfied that a request under section 34 for extradition proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances.

34. 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 provisional arrest warrant and the original warrant has been endorsed; and

(b) a request is made to a Judge or Justice by or on behalf of the person or the South Pacific country for extradition proceedings to be conducted in relation to the person;

the Judge or Justice must conduct proceedings as soon as practicable to determine whether the person may be surrendered to the South Pacific country.

35. Conduct of extradition proceedings - (1) A Judge or Justice must not conduct extradition proceedings unless he or she is satisfied that both the person sought and the South Pacific country have had reasonable time to prepare for the conduct of the proceedings.

(2) Extradition proceedings must 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) administering oaths and affirmations;
- (e) paying 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 Judge or Justice 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.

36. Consent to surrender - (1) At the proceedings, the Judge or Justice must ask the person if he or she consents to being surrendered.

(2) If -

- (a) the person advises the Judge or Justice that he or she consents to being surrendered; and
- (b) the Judge or Justice is satisfied that the consent was given voluntarily,

the Judge or Justice must advise the person that he or she will be-

- (c) committed to prison without further proceedings; and
- (d) surrendered to the South Pacific country as soon as practicable.

(3) If the person again consents to being surrendered, the Judge or Justice must issue a warrant ordering -

- (a) that the person be surrendered to the South Pacific country; and
- (b) that the person be committed to prison until the person is surrendered to the South Pacific country.

37. Determination as to whether person may be surrendered - (1) At the extradition 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 Judge or Justice must not make a determination that the person be surrendered for an offence if the Judge or Justice is satisfied that-

- (a) the 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 the Cook Islands.

(3) If the Judge or Justice determines that the person must be surrendered, the Judge or Justice must -

- (a) issue a warrant ordering -
 - (i) that the person be surrendered to the South Pacific country; and
 - (ii) that the person be committed to prison until the person is surrendered to the South Pacific country; and
- (b) advise 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 38 (dealing with review of the decision); and
- (c) record in writing, his or her decision and the extradition offence for which the person is to be surrendered; and
- (d) give a copy to the person and to the Attorney-General.

(4) Despite subsection (3), if -

- (a) the person is serving a custodial sentence in the Cook Islands; and
- (b) surrender is sought for an offence for which the person is accused but not convicted,

the Judge or Justice must not issue a surrender warrant for the person but, must refer the matter to the Attorney-General to be dealt with under section 40 (temporary surrender warrant).

(5) If the Judge or Justice determines that the person should not be surrendered to the South Pacific country, the Judge or Justice must order that the person be released.

38. Review of decision - (1) If a Judge or Justice makes an order for the surrender of a person, the person may apply to the Court for a review of the order.

(2) If a Judge or Justice makes an order for the release of a person, the South Pacific country may apply to the Court for a review of the order.

(3) The application must be made within 15 days after the day on which the Judge or Justice makes the order.

(4) The Court must have regard only to the material that was before the Judge or Justice.

(5) The Court may, by order, confirm or quash the order of the Judge or Justice and order that the person be surrendered or released.

(6) If the Court orders that the person must be surrendered, the Court must include in its judgment a statement specifying the offence and must -

(a) if the person is not in custody, 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 Court orders that the person must be released, the Court must -

(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.

39. Surrender warrant - (1) The surrender warrant must -

(a) be in writing; 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 the Cook Islands 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 Cook Islands.

(2) if the person is -

(a) serving a custodial sentence; or

(b) has been admitted to bail in the Cook Islands for an offence committed in the Cook Islands; or

(c) is liable to be detained in prison because of a custodial sentence imposed for an offence committed in the Cook Islands,

the surrender warrant must not be executed until -

(d) the person has been released from custody; or

(e) the recognisance has been discharged; or

(f) the person ceases to be liable to be detained.

40. Temporary surrender warrant - (1) The such time as may be prescribed, issue a temporary surrender warrant if -

(a) the person is serving a custodial sentence in the Cook Islands; 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 Attorney-General is satisfied that the South Pacific country has given an adequate undertaking that:

(i) the person will be given a speedy trial in the South Pacific country; and

(ii) the person will be returned to the Cook Islands after the trial; and

(d) the Attorney-General is satisfied that adequate provision has been made for the travel of the person to the South Pacific country and for his or her return to the Cook Islands.

(2) The temporary surrender warrant must -

- (a) be in writing; 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 the Cook Islands 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 the Cook Islands.

(3) If a person who was the subject of a temporary surrender warrant -

- (a) has been returned to the Cook Islands after trial sentence in the South Pacific country; and
- (b) has completed his or her sentence in the Cook Islands,

a Judge or Justice must issue a surrender warrant for the surrender of the person to the South Pacific country.

(4) Any time the person spends in custody in the South Pacific country is taken to be time spent in custody in the Cook Islands for the purpose of completing the sentence for which the person was in custody in the Cook Islands.

(5) If -

- (a) time spent in custody in the South Pacific country is taken into account as mentioned in subsection (4); and
- (b) because of this, the person's sentence in the Cook Islands is concluded,

the Attorney-General must advise the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

41. 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 the Cook Islands, or is liable to be detained in prison because of a custodial sentence imposed for an offence committed in the Cook Islands - the person has been released from custody, or the recognisance has been discharged, or the person ceases to be liable to be detained,

the person may apply to a Judge or Justice to be released from custody authorised under the surrender warrant. The person must advise the Attorney-General of the application.

(2) If the Judge or Justice is satisfied that -

(a) the Attorney-General has been advised of the application; and

(b) there is no reasonable cause for delay in surrendering the person,

the Judge or Justice must order that the person be released from custody.

(3) Without limiting subsection (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 the Cook Islands 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 THE** **COOK ISLANDS TO TREATY COUNTRIES**

42. Object of Part 5 - The object of this Part is to provide for the extradition of persons from the Cook Islands to countries with which the Cook Islands has an extradition treaty.

43. Application of Part 2 - Part 2 applies to the extradition of a person to a treaty country subject to any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between the Cook Islands and the treaty country and the provisions of this Act.

PART 6 **EXTRADITION FROM THE** **COOK ISLANDS TO COMITY COUNTRIES**

44. Object of Part 6 - The object of this Part is to provide for extradition from the Cook Islands to comity countries.

45. Application of Part 2 - Subject to this Part, Part 2 applies to the extradition of a person from the Cook Islands to a comity country.

46. When comity country becomes an extradition country - (1) The Queen's Representative may, by Order in Executive Council made on the recommendation of the Attorney-General, specify a comity country as an extradition country.

(2) If an extradition request is received from a comity country that is not specified as an extradition country by Order in Executive Council, the Attorney-General may certify that the country is an extradition country for the purpose of that extradition request.

(3) When the Attorney-General certifies that a country is an extradition on country, he or she may also specify the provisions of this Act that apply to the extradition request.

(4) In recommending whether a comity country is to be an extradition country, the Attorney-General must consider -

(a) the public interest of the Cook Islands; and

(b) if the country is to be certified, the seriousness of the offence for which extradition of the person is sought; and

(c) the public interest of the requesting country.

47. Limitation on extradition proceedings - Proceedings may not be commenced on a request from a comity country for the surrender of a person unless the country has been specified or certified as an extradition country in accordance with section 46.

48. Other modifications of Part 2 - When a comity country is specified as an extradition country under section 46(1), the Order in Executive Council may modify Part 2 in its application to the country under this Part.

PART 7 **GENERAL PROVISIONS RELATING** **TO SEARCH, SEIZURE AND TRANSIT**

49. Object of Part 7 - The object of this Part is to provide for the search of persons and seizure of property, the arrest of certain persons, and the transit of extradited persons through third countries.

50. Search and seizure on arrest without warrant - (1) This section applies to a person arrested -

(a) on a warrant issued under this Act; or

(b) on an endorsed warrant.

(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 must not be searched except by a police officer of the same sex.

(6) A police officer must retain in safe keeping any property or thing seized pending a direction from the Attorney-General 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, and not in derogation of, any other powers conferred by law.

51. Search and seizure warrants - (1) If a Judge or Justice 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 Judge or Justice may issue a warrant authorising a police officer, with any assistance, and by any force, that 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 Judge or Justice must not issue the warrant unless -

(a) there has been given to the Judge or Justice by affidavit the further information (if any) that the Judge or Justice requires about the grounds on which the warrant is being sought; and

(b) the Judge or Justice is satisfied that there are reasonable grounds for issuing the warrant.

(3) The warrant must state -

(a) the purpose for which it is issued, including a reference to the nature of any offence referred to in subsection (1)(a);

(b) whether it authorises entry at any time of the day or night during specified hours of the day or night;

(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 must retain in safe keeping a thing seized pending any direction from the Attorney-General 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 the Cook Islands;

"thing" includes a vessel, aircraft or vehicle.

52. Return, etc. of seized property - (1) The Attorney-General may direct that any property seized under section 50 or 51 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,

must be returned to the country that sought the surrender if a surrender warrant or temporary surrender warrant is issued after extradition proceedings have been concluded.

(2) If no surrender warrant has been issued after extradition proceedings have concluded, the Attorney-General must direct that the property be returned to the person from whom it was seized, unless the Attorney-General is satisfied that the interests of justice in the requesting country require the property to be returned to the requesting country.

53. 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 must be returned to the custody mentioned in subsection (1).

(3) Escaping from custody as mentioned in subsection (1) does not constitute an offence.

54. Arrest of persons 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 must be brought before a Judge or Justice as soon as practicable.

55. Transit - (1) The Principal Immigration Officer of the Cook Islands must give permission to a country (the "second country") to transport through the territory of the Cook Islands a person who has been surrendered to the second country by a third country if -

(a) the second country asked the Minister of Immigration for transit permission before the person entered the Cook Islands; and

(b) the second country is-

(i) a Commonwealth country, South Pacific country or a treaty country; or

(ii) a country approved by the Attorney-General for the purpose of the request.

(2) If transit permission is given under subsection (1):-

(a) a police officer in the Cook Islands may assist the foreign escort officer escorting the person; and

(b) the person may be held in custody in the Cook Islands until person's journey can continue.

(3) If it is necessary to hold the person in custody for more than 24 hours, the person must be brought before a Judge or Justice who may issue a warrant to commit the person to custody.

PART 8 **EXTRADITION TO THE COOK ISLANDS**

56. Object of Part 8 - The object of this Part is to provide for the extradition of persons to the Cook Islands.

57. Surrendered persons must be brought into the Cook Islands - (1) A person surrendered to the Cook Islands for an offence against a law of the Cook Islands of which the person is accused or of which the person has been convicted must be brought into the Cook Islands 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.

58. Treatment of person surrendered to the Cook Islands - A person surrendered to the Cook Islands must not -

(a) be detained or tried in the Cook Islands for an offence that is alleged to have been committed, or was committed, before the person was surrendered to the Cook Islands, 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 the Cook Islands 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 the Cook Islands,

unless one of the following circumstances applies -

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

(d) the person has left, or has had the opportunity of leaving, the Cook Islands.

59. Persons temporarily surrendered to the Cook Islands - (1) If a person surrendered to the Cook Islands -

(a) has not completed a custodial sentence in the surrendering country immediately before being surrendered; or

(b) is a person whom the Cook Islands has undertaken to hold in custody and return to the surrendering country,

the person -

(c) must, while travelling to and from, and while in, the Cook Islands, be kept in the custody ordered, in writing, by the Attorney-General; and

(d) may only be tried for an offence for which the person was surrendered; and

(e) after the person has been tried, must be returned to the surrendering country.

(2) If -

(a) a person is held in custody only because of an order of the Attorney-General under subsection (1); and

(b) the surrendering country notifies the Cook Islands that the surrendering country no longer requires the person to be returned,

the Attorney-General must order that the person be released from custody.

60. Evidence for purposes of surrender of persons to the Cook Islands- (1) If the Attorney-General intends to seek a person's extradition to the Cook Islands, the Attorney-General may, by notice in writing, authorise the taking of evidence for use in any proceedings for the extradition of the person to the Cook Islands.

(2) A Judge or Justice may take the evidence of each witness on oath or affirmation and must-

(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 Attorney-General.

(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**

61. Taking of evidence at request of another country- (1) If another country requests the Cook Islands to take evidence for the purpose of criminal proceedings in that country, the Attorney-General may authorise a Judge or Justice to do so.

(2) The Judge or Justice may take the evidence of each witness on oath or affirmation and must -

(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 Attorney-General.

62 Prosecution in the Cook Islands instead of extradition - (1) If-

(a) a country requests the surrender of a person because of conduct the person engaged in outside the Cook Islands; and

(b) the Attorney-General 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 the Cook Islands if the person had engaged in the conduct, or equivalent conduct, in the Cook Islands at that time,

the person may be prosecuted and punished in the Cook Islands for the offence.

(2) The following are the circumstances for the purpose of paragraph (1)(b)-

(a) the person is a national of the Cook Islands

(b) on surrender, the person may be prejudice at his or her trial, or punished, detained or restricted in his or her personal liability, because of his or her race, religion, nationality, political opinions, sex or status;

(c) the person has been subjected in the requesting country to torture or cruel, inhuman, or degrading treatment or punishment;

(d) the judgement 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;

(e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in the Cook Islands 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;

(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* court or tribunal.

(3) For the purpose of the prosecution, the person must be taken to have engaged in the conduct in the Cook Islands.

(4) A person must not be prosecuted unless the Attorney-General or other appropriate body, e.g. the Solicitor-General, -

(a) considers that there is sufficient evidence in the Cook Islands to justify prosecuting the person for the offence; and

(b) consents to the person being 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 subsection (1)(c); and

(b) charged with the offence; and

(c) remanded in custody or on bail,

although the Attorney-General has not given consent under subsection (4).

63. Provision of evidence for prosecution by other countries- If-

(a) another country has refused to order that a person be surrendered to the Cook Islands; but

(b) the country is prepared to prosecute the person for the offence for which the Cook Islands sought surrender of the person,

the Attorney-General of the Cook Islands must give the other country all available evidence to enable the other country to prosecute the person.

64. Surrender for purposes of trial only - (1) If -

(a) the Cook Islands refuses to surrender a person because:

(i) the person is a national of the Cook Islands; or

(ii) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or

(b) a Judge or Justice determines under section 37(2)(e) 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 the Cook Islands; and

(c) the requesting country asks that the person be surrendered for the purposes of trial only,

the Cook Islands may surrender the person to the requesting country for the purpose of being tried in the requesting country for the offence for which extradition is sought if the circumstances in subsection (2) exist.

(2) The circumstances referred to in subsection (1) are-

(a) that the law of the requesting country permits the transfer of convicted offenders to the Cook Islands; and

(b) that the Cook Islands is satisfied that, if the person is convicted, the person will be returned to the Cook Islands to serve the sentence imposed; and

(c) that the Cook Islands is satisfied that there is no likelihood that the person will be subjected to torture or cruel, inhuman or degrading treatment or punishment.

65. Regulations - (1) The Queen's Representative may, from time to time by Order in Executive Council, make regulations 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; and

(c) set out the text of extradition treaties.

66. Repeal - The following legislation is repealed -

- (a) the Fugitive Offenders Act 1969; and
- (b) Part 8 of the Cook Islands Act 1915.

This Act shall be administered by the Ministry of Police.

SCHEDULE 1

Section 4

Commonwealth Countries

Part 1

Countries to which *prima facie* evidence scheme applies

Bahamas
Bangladesh
Barbados
Botswana
Canada
Cyprus
Dominica
The Gambia
Ghana
Grenada
Guyana
India
Jamaica
Kenya
Lesotho
Malawi
Malaysia
Malta
Mauritius
Nigeria
St Lucia
St Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Sri Lanka
Swaziland

Tanzania
Trinidad and Tobago
Uganda
United Kingdom
Zambia
Zimbabwe

Part 2

Countries to which the record of the case scheme applies

Anguila
Antigua and Barbuda
Belize
Bermuda
British Antarctic Territory
British Indian Ocean Territory
British Virgin Islands
Brunei Darussalam
Cameroon
Cayman Islands
Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia)
Falkland Islands
Gibraltar
Maldives
Montserrat
Mozambique
Namibia
Northern Ireland
Pakistan
Pitcairn Islands
St Helena and Dependencies
St Kitts and Nevis
St Vincent and the Grenadines
Seychelles
South Africa
South Georgia and South Sandwich Islands
Turks and Caicos Islands

SCHEDULE 2

Section 4

SOUTH PACIFIC COUNTRIES

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

SCHEDULE 3

TREATY COUNTRIES

Albania
Argentina
Australia
Austria
Belgium
Bolivia
Brazil
British Solomon Islands
Chile
Colombia
Cuba
Czechoslovakia
Ecuador
Estonia
Fiji
Finland
France
German Colonies
Germany
Gilbert and Ellice Islands Colony
Guatemala
Hungary
Iceland

India
Iraq
Italy
Latvia
Liberia
Lithuania
Luxembourg
Mexico
Monaco
Nauru
Netherlands
New Guinea
New Zealand
Nicaragua
Norfolk Island
Panama
Papua
Paraguay
Peru
Poland
Portugal
Romania
Salvador
Samoa
San Marino
Serbia
Siam
Spain
Sweden
Switzerland
Tonga
Tunisia
United States
Uruguay

SCHEDULE 4

Forms of Warrants

(Section 8)
Form 1

THE COOK ISLANDS
PROVISIONAL ARREST WARRANT

Extradition Act 2003, section 8

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-

- (a) [*name of person*] is in, or on his or her way to, the Cook Islands; and
- (b) [*requesting country*] intends to make a formal request for the extradition of [*name of person*]; and
- (c) the offence for which the extradition of [*name of person*] is sought is an extradition offence; and
- (d) [*requesting country*] is an extradition country.

NOW THEREFORE I, [*name and designation of Judge or Justice*], pursuant to section 8 of the *Extradition Act 2003*, authorise and request you to arrest [*name of person*] and bring him/her before a Judge or Justice of the Peace in the Cook Islands as soon as practicable to be dealt with according to law.

DATED this day of 20...

Signature and title of Judge/Justice issuing warrant

(Section 29)
Form 2

THE COOK ISLANDS
PROVISIONAL ARREST WARRANT

Extradition Act 2003, section 29

TO ALL POLICE OFFICERS:

AN APPLICATION has been made to me on behalf of [*South Pacific 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 [*South Pacific country*], that-

- (a) [*name of person*] is in, or on his or her way to, the Cook Islands; and
- (b) an original warrant for the arrest of [*name of person*] has been issued in [*South Pacific country*] but the warrant is not available in the Cook Islands; and
- (c) it is reasonable in the circumstances to issue a warrant for the arrest of [*name of person*].

NOW THEREFORE I, [*name and designation of Judge or Justice*], pursuant to section 29 of the *Extradition Act 2003*, authorise and request you to arrest [*name of person*] and bring him/her before a Judge or Justice of the Peace in the Cook Islands as soon as practicable to be dealt with according to law.

DATED this day of 20...

Signature and title of Judge or Justice issuing warrant

[Section 13(5) or section 19(4)]
Form 3

THE COOK ISLANDS
SURRENDER WARRANT

Extradition Act 2003, [Section 13(5) or section 19(4)]

TO ALL POLICE OFFICERS:

I, [**NAME OF ATTORNEY-GENERAL**], Attorney-General, have decided pursuant to section [13(5) or 19(4)] of the Extradition Act 2003, 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 Attorney-General*], pursuant to section [13(5) or 19(4)] of the Extradition Act 2003:

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

(b) authorise you to bring [name of person] to [name of place in the Cook Islands] for the purpose of handing [name of person] over to the custody of a person authorised by [requesting country] to escort [name of person] to [requesting country]; and

(c) 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

(d) authorise the foreign escort officer to transport [name of person] out of the Cook Islands:

DATED this day of 20....

Signature of Attorney-General

[Section 19(4) or 21]
Form 4

THE COOK ISLANDS
TEMPORARY SURRENDER WARRANT

Extradition Act 2003, [Section 19(4) or 21]

TO ALL POLICE OFFICERS:

I, [NAME OF ATTORNEY-GENERAL], Attorney-General, have decided pursuant to [section 19(4) or 21] of the *Extradition Act 2003*, 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]-

(a) is serving a custodial sentence in the Cook Islands; and

(b) has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that-

(a) [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 the Cook Islands after the trial; and

(b) adequate provision has been made for [name of person] to travel to [requesting country] and to return to the Cook Islands.

NOW THEREFORE I, [*name of Attorney-General*], pursuant to [*section 19(5) or 21*] of the Extradition Act 2003:

- (a) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (b) authorise you to bring [*name of person*] to [*name of place in the Cook Islands*] for the purpose of handing [*name of person*] over to the custody of a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and
- (c) 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
- (d) authorise the foreign escort officer to transport [*name of person*] out of the Cook Islands.

DATED this day of 20....

Signature of Attorney-General

[Section 36(3) or 37(3)]
Form 5

THE COOK ISLANDS
SURRENDER WARRANT

Extradition Act 2003, section 36(3) or 37(3)

TO ALL POLICE OFFICERS:

I, [NAME AND TITLE OF JUDGE OR JUSTICE] have decided pursuant to [*section 36(3) or 37(3)*] of the Extradition Act 2003, that [*name of person*] is to be surrendered to [*South Pacific country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Judge or Justice*]-

- (a) order that [*name of person*] be surrendered to [*South Pacific country*]; and
- (b) order that [*name of person*] be committed to prison until he/she is surrendered to [*South Pacific country*]; and

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

(d) authorise you to bring [name of person] to [name of place in the Cook Islands] for the purpose of handing [name of person] over to the custody of a person authorised by [South Pacific country] to escort [name of person] to [South Pacific country]; and

(e) 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

(f) authorise the foreign escort officer to transport [name of person] out of the Cook Islands.

DATED this day of20....

Signature and title of Judge or Justice issuing warrant

(Section 40)
Form 6

THE COOK ISLANDS
TEMPORARY SURRENDER WARRANT

Extradition Act 2003, section 40

TO ALL POLICE OFFICERS:

I, [**NAME OF ATTORNEY-GENERAL**], Attorney-General, have decided pursuant to section 40 of the Extradition Act 2003, that [name of person] is to be temporarily surrendered to [South Pacific country] for the offence of [specify each offence for which the person is to be surrendered].

[name of person]-

(a) is serving a custodial sentence in the Cook Islands; and

(b) has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that-

(a) [South Pacific country] has given an adequate undertaking that [name of person] will be given a speedy trial in [South Pacific country] and will be returned to the Cook Islands after the trial; and

(b) adequate provision has been made for [name of person] to travel to [South Pacific country] and to return to the Cook Islands.

NOW THEREFORE I, [name of Attorney-General], pursuant to section 40 of the Extradition Act 2003:

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

(b) authorise you to bring [name of person] to [name of place in the Cook Islands] for the purpose of handing [name of person] to escort to the custody of a person authorised by [requesting country] to escort [name of person] to [requesting country]; and

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

(d) authorise the foreign escort officer to transport [name of person] out of the Cook Islands.

DATED this day of 20....

Signature of Attorney-General
