

EXTRADITION ACT 2003

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ACT NO. 4 OF 2003

I assent.

[L.S.]

J. I. ULUIVUDA
President

[21st March, 2003]

AN ACT

TO REGULATE THE EXTRADITION OF PERSONS FROM THE FIJI ISLANDS, TO FACILITATE THE MAKING OF REQUESTS FOR EXTRADITION BY THE FIJI ISLANDS TO OTHER COUNTRIES, TO ENABLE THE FIJI ISLANDS TO CARRY OUT ITS OBLIGATIONS UNDER EXTRADITION TREATIES AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

PART 1—PRELIMINARY

Short title and commencement

1. This Act is cited as the Extradition Act 2003 and comes into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“comity country” means a country other than a Commonwealth country, a Pacific Islands Forum country or a treaty country;

“Commonwealth country” means a country listed in Schedule 1;

“country” includes—

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

(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 Islands Forum country and endorsed under section 30;

“extradition country” means—

(a) a Commonwealth country;

(b) a Pacific Islands Forum country;

(c) a treaty country; or

(d) a comity country that is prescribed or certified under section 45;

“extradition offence” has the meaning given by section 3;

“extradition request” means a written request 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 Fiji 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 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 the Fiji Islands to that country;

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

“Judge” means a judge of the High Court;

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

“magistrate” has the meaning given by the Magistrates’ Courts Act;

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

“police officer” has the meaning given by the Police Act;

“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 the Fiji Islands is a party; and
 - (ii) for which parties have an obligation to extradite or prosecute;
- (b) the offence of genocide;
- (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 the Fiji Islands and the other country have agreed will not be treated as a political offence for the purposes of extradition;

“prison” means a prison established under the Prisons Act and 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 7; or
- (b) where the expression is used in Part 4—a warrant, in accordance with Form 1 in Schedule 4, issued under section 28;

“requesting country” means a country that is seeking the surrender of a person from the Fiji Islands;

“Pacific Islands Forum Country” means a country that is a member country of the Pacific Islands Forum listed 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 warrant” means—

- (a) where the expression is used in Part 2—a warrant, in accordance with Form 2 in Schedule 4, issued under section 12 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 38;

“temporary 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 20; or
- (b) where the expression is used in Part 4—a warrant, in accordance with Form 5 in Schedule 4, issued under section 39;

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

“treaty country” means a country listed in Schedule 3 with which the Fiji Islands has an extradition treaty;

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

Extradition offence

3.—(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 not less than 12 months; and
- (b) the conduct that constitutes the offence, if committed in the Fiji Islands, would constitute an offence in the Fiji Islands for which the maximum penalty is life imprisonment or other term of imprisonment or deprivation of liberty, for a period of not less than 12 months.

(2) In determining whether conduct constitutes an offence, regard may be had to only some of the acts or 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 Fiji Islands does not impose a duty, tax, impost or similar control.

Extradition objection

4. There is an extradition objection to a request for the surrender of a person for an extradition offence if—

- (a) the extradition offence is regarded as a political offence;
- (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;
- (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;
- (d) the offence is an offence under the Republic of Fiji Military Forces Act but also not an offence under the Penal Code or other written laws;
- (e) final judgment has been given against the person in the Fiji Islands, or in the third country, for the offence;
- (f) under the law of the requesting country or the Fiji Islands, the person has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason;
- (g) the person has already been acquitted or pardoned in the requesting country or the Fiji Islands, or punished under the law of that country or the Fiji Islands, 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.

Forms of warrants

5. The arrest warrant, provisional arrest warrant and surrender warrant are set out in Schedule 4.

PART 2 – EXTRADITION FROM THE FIJI ISLANDS– GENERAL PROVISIONS

Purpose of Part 2

6.—(1) The purpose of this Part is to provide for the extradition from the Fiji Islands to other countries of persons accused or convicted of extradition offences in other countries.

(2) This Part applies to extradition from the Fiji Islands to another country as follows—

- (a) to a Commonwealth country – in accordance with Part 3;
- (b) to a treaty country – in accordance with Part 5; and
- (c) to a comity country – in accordance with Part 6.

Issue of provisional arrest warrant

7.—(1) If –

- (a) a country, either directly or through ICPO-Interpol, notifies the Fiji Islands that—
 - (i) a person whose surrender is desired is, or is believed to be, in or on his or her way to the Fiji 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 magistrate for a provisional arrest warrant,

the magistrate must issue the provisional arrest warrant for the person if—

- (c) the application is supported by the required documents;
- (d) the magistrate is satisfied that the offence is an extradition offence; and
- (e) the magistrate is satisfied that an extradition country makes the request.

(2) The required documents are—

- (a) a copy of the warrant for the arrest of the person issued in the requesting country;
- (b) a description of the person sought;
- (c) a description of the acts and omissions that constitute the offence;
- (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.

Arrest and remand on provisional arrest warrant

8.—(1) A person arrested under a provisional arrest warrant must be brought before a magistrate no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter.

- (2) The magistrate must—
 - (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, subject to section 64.

until the Minister issues an authority to proceed.

- (3) A magistrate who remands a person on bail—
 - (a) has the same powers in relation to bonds and reporting conditions as he or she has under Bail Act or any other written law.
 - (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 must 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 must in writing—
 - (a) advise the Director of Public Prosecutions—
 - (i) that the magistrate has remanded the person;
 - (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 Director of Public Prosecutions and the person.
- (6) If the Director of Public Prosecutions considers that the request for extradition of the person for the offence may not be granted, the Director of Public Prosecutions must apply to a magistrate for an order that—
 - (a) the person to be released; or
 - (b) the discharge of the bond on which bail was granted.

Release from remand

- 9.—(1) If—
- (a) a person is on remand (in custody or on bail) either—
 - (i) for 42 days; or
 - (ii) where the extradition treaty between the Fiji Islands and the requesting country provides for another period – that other period,
- after the date when the person was arrested; and

- (b) the Minister has not issued an authority to proceed,
that person must 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 must order—
 - (a) the release of the person from custody; or
 - (b) the discharge of the bond on which bail was granted.

Authority to proceed

10.—(1) If an extradition request is received, the Minister 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;
 - (ii) the requesting country is an extradition country;
 - (iii) there is nothing in section 19 or any other law that would preclude surrender of the person;
 - (iv) there is no other reason why the authority to proceed should not be issued;
- (c) provide the authority to proceed to a magistrate; and
- (d) provide 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 must issue a warrant for the arrest of the person.

Arrest and remand on authority to proceed

11.—(1) A person who is arrested under a warrant issued under section 10(2) must be brought before a magistrate no later than 48 hours after the time of arrest or, if not reasonably possible, as soon as possible thereafter.

- (2) The magistrate must—
 - (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, subject to section 64.

for the period that is necessary for proceedings under section 13 to be conducted.

- (3) A magistrate who remands a person on bail—
 - (a) has the same powers in relation to bond and reporting conditions as he or she has under the Bail Act or any other written law.
 - (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.

Consent to surrender

12.—(1) At any time the person may advise a magistrate that he or she 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 must 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 must inform 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 a Judge issues a surrender warrant, the person will be surrendered to the requesting country.

- (4) If the person again consents to being surrendered, the magistrate must—
 - (a) by warrant, order that the person be committed to prison; and
 - (b) advise a Judge in writing that the person has been committed to prison for the offence for which the person has consented to be surrendered.
- (5) The Judge may then issue a surrender warrant for the person.

*Extradition proceedings***13.** If—

- (a) the Minister has issued an authority to proceed for an extradition offence in relation to a person;
- (b) the person has not consented to surrender for the offence;
- (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 in which to prepare for the proceedings,

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

Conduct of extradition proceedings

14.—(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 accused persons;
- (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 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.

Determination whether person may be surrendered

15.—(1) A magistrate must not order that a person be held in custody until a surrender determination is made or refused unless the magistrate is satisfied—

- (a) that the requesting country is an extradition country;
 - (b) that the offence for which surrender is sought is an extradition offence;
 - (c) as to the identity of the person;
 - (d) that the supporting documents have been produced to the magistrate;
 - (e) that the supporting documents satisfy the requirements of section 16; and
 - (f) that surrender should not be refused because the person sought has established an extradition objection.
- (2) If the magistrate orders that the person be held in custody, the magistrate must—
- (a) issue a warrant, ordering that the person be committed to prison to await the Judge's decision on surrender;
 - (b) inform 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 17;
 - (c) record in writing his or her decision and the extradition offence for which the person should be surrendered; and
 - (d) provide a copy of the record to the person, the Director of Public Prosecutions and the Minister .
- (3) If—
- (a) the magistrate orders that the person 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 magistrate must 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 must—

- (a) order that the person be released; and
- (b) advise the Minister in writing of the order and of the magistrate's reasons for determining that the person should not be surrendered.

Supporting documents

16.—(1) In section 15(1)(d), “supporting documents”, in relation to an extradition offence, means—

- (a) a description as accurate as possible of the person sought, together with any other information that may help to establish the identity and nationality of the person;
 - (b) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence;
 - (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;
 - (d) a statement of the acts and omissions that constitute the offence, and details of the time and place the offence was committed;
 - (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;
 - (ii) the sentence imposed or intended to be imposed;
 - (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 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 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 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 a 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 Fiji Islands.

Review of magistrate's decision

17.—(1) If a magistrate orders that a person be held in custody 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 must be made within 15 days after the day on which the magistrate makes the order.

(4) The High Court must 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 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 a Judge has made a decision under section 18; or
- (b) if the person is in custody – order that the person remain in custody until a Judge has made a decision under section 18.

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

Surrender determination

18.—(1) If —

- (a) a magistrate has reported to a Judge 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 court ordered that the person be held for surrender or 21 days have expired after the date of the order for determination for surrender by the magistrate,

the Judge must make a final decision whether the person should be surrendered.

- (2) A Judge 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 the Fiji Islands 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 the Fiji Islands;
 - (c) the offence for which surrender has been ordered is punishable by death in the requesting country but not in the Fiji Islands and the requesting country has not given sufficient undertaking that the penalty either will not be imposed or, if imposed, will not be carried out;
 - (d) a prosecution for the offence for which surrender has been ordered is pending against the person in the Fiji Islands;
 - (e) the offence for which surrender has been ordered was committed outside the territory of the requesting country and the law of the Fiji Islands does not provide for jurisdiction over an offence of that kind committed in similar circumstances outside its territory;
 - (f) the offence for which surrender has been ordered is regarded by the Fiji Islands as having been committed wholly or partly within the Fiji Islands;
 - (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;
 - (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) the national interest of the Fiji Islands, including its interests in effective international cooperation to combat crime; and
 - (ii) the severity of the offence,

the Judge is of the view that the person should not be surrendered.

(3) For the purposes of subsection (2)(a), the requesting country is taken to have given a specialty 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 offence for which surrender is granted; or
 - (ii) an offence of which the person could be convicted on proof of the facts constituting the offence for which surrender is sought, for which the penalty is no greater than the penalty for the offence for which surrender is sought; 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 Minister, on the advice of the Director of Public Prosecutions, consents to the trial or the surrender to the third country.

(4) A Judge must 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 the Fiji Islands 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 Judge decides that the person is to be surrendered to the requesting country, the Judge must issue a surrender warrant or a temporary surrender warrant for the person.

(6) If the Judge decides that the person is not to be surrendered to the requesting country, the Judge must order that the person be released.

Surrender warrant

19.—(1) The surrender warrant must –

- (a) be in writing;
- (b) state the offences for which the person is to be surrendered;
- (c) require any person who has custody of the person to hand the person over to a police officer;
- (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 Fiji Islands for the purpose of handing the person over to the custody of a foreign escort officer;

- (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 Fiji Islands.

(2) If the person is serving a custodial sentence, or has been admitted to bail in the Fiji Islands for an offence committed in the Fiji Islands, the surrender warrant must not be executed until—

- (a) the person has been released from custody; or
- (b) the bail bond has been discharged.

Temporary surrender warrant

20.—(1) A Judge may issue a temporary surrender warrant instead of a surrender warrant if—

- (a) the person is serving a custodial sentence in the Fiji Islands;
- (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted;
- (c) the Judge 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 Fiji Islands after the trial; and
- (d) the Judge 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 Fiji Islands.

(2) The temporary surrender warrant must—

- (a) be in writing;
- (b) state the offences for which the person is to be surrendered;
- (c) require any person who has custody of the person to hand the person over to a police officer;
- (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 Fiji 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 Fiji Islands.
- (3) If a person who was the subject of a temporary surrender warrant—
- (a) has been returned to the Fiji Islands after trial and sentence in the requesting country; and
 - (b) has completed his or her custodial sentence in the Fiji Islands,

the Judge may issue a surrender warrant for the surrender of the person to the requesting country, unless the Judge 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 Fiji Islands for the purpose of completing the sentence for which the person was in custody in the Fiji 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 Fiji Islands is concluded,

the Minister must inform the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

Execution of surrender warrant

21.—(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 Fiji Islands— the person has been released from custody or the bond has been discharged,

the person may apply to a Judge to be released from custody and the person must serve a copy of the application on the Director of Public Prosecutions and the Minister.

- (2) If the Judge is satisfied that—
- (a) the Director of Public Prosecutions and the Minister have been served with the application; and
 - (b) there is no reasonable cause for delay in surrendering the person,

the Judge 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;
 - (b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport;
 - (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 FIJI ISLANDS TO COMMONWEALTH COUNTRIES

Purpose of Part 3

22. The purpose of this Part is to provide for the extradition from the Fiji Islands to Commonwealth countries of persons accused or convicted of extradition offences in those countries.

Application of Part 2

23. Part 2 applies to the extradition of a person from the Fiji Islands to a Commonwealth country.

Application of different evidentiary requirements

24.—(1) The evidentiary requirements set out in section 25 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 26 apply to all extradition proceedings conducted at the request of a Commonwealth country listed in Part 2 of Schedule 1.

The prima facie evidence scheme

25. In addition to any evidentiary requirements in Part 2, a magistrate must not determine that a person should be surrendered to a requesting country unless the evidence before the magistrate is such that, if the offence for which surrender is sought was committed in the Fiji Islands, there would be sufficient evidence to place the person on trial.

The record of the case scheme

26.—(1) In this section, “record of the case”, for 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 magistrate must not determine that a person should 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, 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 Attorney General or the person holding similar office 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 FIJI ISLANDS TO OTHER PACIFIC ISLANDS FORUM COUNTRIES - BACKING OF WARRANTS PROCEDURE

Purpose of Part 4

27. The purpose of this Part is to provide for the extradition from the Fiji Islands to Pacific Islands Forum countries of persons accused or convicted of extradition offences in those countries, by means of the procedure known as backing of warrants.

Provisional arrest warrant

28. If —

- (a) an application is made to a magistrate on behalf of a Pacific Islands Forum country for the issue of a warrant for the arrest of a person;
- (b) the magistrate is satisfied by affidavit that—
 - (i) an original warrant for the arrest of the person has been issued in the Pacific Islands Forum country but the warrant is not available in the Fiji Islands; and

- (ii) the person named in the original warrant may be in or on his or her way to the Fiji Islands; and
- (c) the magistrate is satisfied that it is reasonable in the circumstances to issue a warrant,

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

Arrest and remand on provisional arrest warrant

29.—(1) A person arrested under a provisional arrest warrant must be brought before a magistrate no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter.

- (2) The magistrate must—
 - (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, subject to section 64.

until the Pacific Islands Forum 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 bond and reporting conditions as the magistrate has under the Bail Act or any other written law; 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 must not be remanded in custody or on bail for a period longer than 28 days.

Endorsement of warrant

- 30.—(1) If—
- (a) an application is made to a magistrate on behalf of a Pacific Islands Forum country for the endorsement of a warrant for the arrest of a person issued in the Pacific Islands Forum country (an "original warrant"); and
 - (b) the magistrate is informed 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 Fiji Islands,

the magistrate must endorse the original warrant to authorise the arrest of the person under the warrant in the Fiji Islands.

Arrest and remand on endorsed warrant

31.—(1) A person who is arrested under an endorsed warrant must be brought before a magistrate no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter.

- (2) The magistrate must—
 (a) remand the person in custody; or
 (b) subject to section 64, remand the person on bail,

for the period that is necessary for proceedings under section 33 or 35 or both, to be conducted.

- (3) A magistrate who remands a person on bail—
 (a) has the same powers in relation to bond and reporting conditions as he or she has under the Bail Act or any other written laws; 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 must 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.

Release from remand

- 32.—(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 magistrate.

- (2) The magistrate must order—
 (a) the release of the person from custody; or
 (b) the discharge of the bond 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 must be brought before a magistrate.

(4) The magistrate must order—

- (a) the release of the person from custody; or
- (b) the discharge of the bond on which bail was granted,

as the case requires, unless the magistrate is satisfied that a request under section 35 for extradition proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances.

Extradition proceedings

33. If—

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

the magistrate must conduct proceedings as soon as practicable to determine whether the person should be surrendered to the Pacific Islands Forum country.

Conduct of extradition proceedings

34.—(1) A magistrate must not conduct extradition proceedings unless the magistrate is satisfied that both the person sought and the Pacific Islands Forum 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 accused persons;
- (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.

Consent to surrender

35.—(1) At the proceedings the magistrate must ask the person if he or she consents to being surrendered.

(2) 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 must inform the person that he or she will be —
- (c) committed to prison without further proceedings; and
- (d) surrendered to a Pacific Islands Forum country as soon as practicable.

(3) If the person again consents to being surrendered, the magistrate must refer the matter to a Judge who must—

- (a) by a surrender warrant, order that the person be surrendered to the Pacific Islands Forum country; and
- (b) by warrant, order that the person be committed to prison until the person is surrendered to the Pacific Islands Forum country.

Determination whether person should be surrendered

36.—(1) At the proceedings the person may not bring evidence that the person did not commit the offence except evidence about the matters mentioned in subsection (2).

(2) The magistrate must determine that the person should be surrendered for an offence unless the magistrate is satisfied that—

- (a) the offence is of a trivial nature;

- (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;
 - (c) a lengthy period has elapsed since the offence was committed;
 - (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 Fiji Islands.
- (3) If the magistrate determines that the person should be surrendered, the magistrate must refer the matter to a Judge who must, after 21 days have expired from the date of the order for determination for surrender by the magistrate—
- (a) by a surrender warrant, order that the person be surrendered to the Pacific Islands Forum country;
 - (b) by warrant, order that the person be committed to prison until the person is surrendered to the Pacific Islands Forum country;
 - (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 Minister.
- (4) Notwithstanding subsection (1), if—
- (a) the person is serving a custodial sentence in the Fiji Islands; and
 - (b) surrender is sought for an offence for which the person is accused but not convicted,

the Judge must not issue a surrender warrant for the person but must issue a warrant under section 39.

- (5) If the Judge determines that the person should not be surrendered to the Pacific Islands Forum country, the Judge must order that the person be released.

Review of magistrate's decision

37.—(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 Islands Forum country may apply to the High Court for a review of the order.

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

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

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

(6) If the Court orders that the person 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 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 bond be discharged.

Surrender warrant

38.—(1) The surrender warrant must—

(a) be in writing;

(b) require any person who has custody of the person to hand the person over to a police officer;

(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 Fiji 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 the Fiji Islands.

(2) If the person is serving a custodial sentence, or has been admitted to bail, in the Fiji Islands for an offence committed in the Fiji Islands, the surrender warrant must not be executed until—

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

(b) the bond has been discharged.

Temporary surrender warrant

39.—(1) A Judge may issue a temporary surrender warrant instead of a surrender warrant if—

- (a) the person is serving a custodial sentence in the Fiji Islands;
 - (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted;
 - (c) the Judge is satisfied that the Pacific Islands Forum country has given an adequate undertaking that—
 - (i) the person will be given a speedy trial in the Pacific Islands Forum country, and
 - (ii) the person will be returned to the Fiji Islands after the trial; and
 - (d) the Judge is satisfied that adequate provision has been made for the travel of the person to the Pacific Islands Forum country and for his or her return to the Fiji Islands.
- (2) The temporary surrender warrant must—
- (a) be in writing;
 - (b) state the offences for which the person is to be surrendered;
 - (c) require any person who has custody of the person to hand the person over to a police officer;
 - (d) authorise a police officer—
 - (i) to transport the person from the place where the police officer takes custody of the person to another place within the Fiji Islands for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) to 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 Fiji Islands.
- (3) If a person who was the subject of a temporary surrender warrant—
- (a) has been returned to the Fiji Islands after trial and sentence in the Pacific Islands Forum country; and
 - (b) has completed his or her sentence in the Fiji Islands,

a Judge must issue a surrender warrant for the surrender of the person to the Pacific Islands Forum country.

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

(5) If—

(a) time spent in custody in the Pacific Islands Forum country is taken into account as mentioned in subsection (3); and

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

the Minister must inform the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

Execution of surrender warrant

40.—(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 Fiji Islands— the person has been released from custody or the bond has been discharged,

the person may apply to a Judge to be released from custody and the person must serve a copy of the application on the Director of Public Prosecutions and the Minister.

(2) If the Judge is satisfied that—

(a) the Director of Public Prosecutions and the Minister have been served with the application; and

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

the Judge 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;

(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 Fiji 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 FIJI ISLANDS TO
TREATY COUNTRIES

Purpose of Part 5

41. The purpose of this Part is to provide for the extradition of persons from the Fiji Islands to countries with which the Fiji Islands has an extradition treaty.

Application of Part 2

42. Part 2 applies to the extradition of a person to a treaty country subject to –
- (a) any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between the Fiji Islands and the treaty country; and
 - (b) any regulations to give effect to an extradition treaty

PART 6 – EXTRADITION FROM THE FIJI ISLANDS TO COMITY COUNTRIES

Purpose of Part 6

43. The purpose of this Part is to provide for extradition from the Fiji Islands to countries other than Commonwealth countries, Pacific Islands Forum countries or treaty countries.

Application of Part 2

44. Subject to this Part, Part 2 applies to the extradition of a person from the Fiji Islands to a comity country.

When comity country is an extradition country

- 45.—(1) The Minister may—
- (a) by regulations, prescribe a comity country is an extradition country; or
 - (b) if an extradition request is received from a comity country that is not prescribed under paragraph (a) – certify that the country is an extradition country for the purpose of that extradition request.
- (2) When the Minister certifies that the country is an extradition country, he or she may also specify the provisions of this Act that are to apply to the extradition request.
- (3) In determining whether a comity country is to be an extradition country, the Minister must consider—
- (a) the public interest of the Fiji Islands;
 - (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.

Limitation on extradition proceedings

46. Proceedings may not be commenced on a request from a comity country for the surrender of a person unless the country has been prescribed or certified as an extradition country under section 47.

Other modifications of Part 2

47. When the Minister prescribes a comity country as an extradition country, the Minister may also modify Part 2 in its application to the country under this Part.

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

Purpose of Part 7

48. The purpose 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.

Search and seizure on arrest without a warrant

49.—(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 (3) 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 magistrate or a Judge, as the case may be, 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 any other written law.

Search and seizure warrants

50.—(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;
- (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 must not issue the warrant unless—
- (a) there has been given to the magistrate by affidavit further information 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 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 or 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 30 days after the date 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, 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 a magistrate or a Judge, as the case may be, 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 Fiji Islands;
 - “thing” includes a vessel, aircraft or vehicle.

Return etc. of seized property

- 51.—(1) The Judge may direct that any property seized under section 49 or 50 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,

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, a magistrate or a Judge, as the case may be, must direct that the property be returned to the person from whom it was seized, unless the magistrate or the Judge is satisfied that the interests of justice in the requesting country require the property to be returned to the requesting country.

Arrest of persons escaping from custody

52.—(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 under any written law.

Arrest of person released on bail

53.—(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 magistrate no later than 48 hours after the time of arrest or, if that is not reasonably possible, as soon as possible thereafter.

Transit

54.—(1) The Minister, after consulting the Minister responsible for Immigration, must give permission to a country (the “second country”) to transport through the territory of the Fiji Islands 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 the Fiji Islands; and

(b) the second country is—

(i) a Commonwealth country, Pacific Islands Forum country or a treaty country; or

(ii) a comity country prescribed or certified under section 45.

(2) If transit permission is given under subsection (1)—

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

(b) the person may be held in custody in the Fiji Islands 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 must be brought before a magistrate who may issue a warrant to commit the person to custody.

PART 8 – EXTRADITION TO THE FIJI ISLANDS

Purpose of Part 8

55. The purpose of this Part is to provide for the extradition of persons to the Fiji Islands.

Surrendered persons to be brought into the Fiji Islands

56.—(1) A person surrendered to the Fiji Islands for an offence against a written law of the Fiji Islands of which the person is accused or of which the person has been convicted must be brought into the Fiji Islands and delivered to the appropriate authorities to be dealt with according to law.

(2) A person surrendered under subsection (1) may be remanded in custody or on bail by a magistrate until the person can be brought to trial.

Treatment of person surrendered to the Fiji Islands

57. A person surrendered to the Fiji Islands must not—

- (a) be detained or tried in the Fiji Islands 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 the Fiji 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 Fiji Islands,

unless one of the following circumstances applies—

- (c) the country that surrendered the person to the Fiji Islands consents to the person being detained, and tried or surrendered; or
- (d) the person has left, or has had the opportunity of leaving the Fiji Islands.

Persons temporarily surrendered to the Fiji Islands

58.—(1) If a person surrendered to the Fiji Islands—

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

- (b) is a person whom the Fiji 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 Fiji Islands, be kept in the custody ordered in writing by the Minister;
- (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 Minister under subsection (1); and
- (b) the surrendering country notifies the Fiji Islands that the surrendering country no longer requires the person to be returned,

the Minister must order that the person be released from custody.

Evidence for purposes of surrender of persons to the Fiji Islands

59.—(1) If the Minister intends to seek a person's extradition to the Fiji Islands, the Minister may, after consulting the Attorney General, authorise in writing the taking of evidence for use in any proceedings for the extradition of the person to the Fiji Islands.

(2) A magistrate 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 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

Taking of evidence at request of another country

60.—(1) If another country requests the Fiji Islands to take evidence for the purpose of criminal proceedings in that country, the Minister may, after consulting the Attorney General, authorise in writing a magistrate to do so.

(2) The magistrate 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 Minister.

Prosecution, instead of extradition, of the Fiji Islands citizens

61.—(1) If—

- (a) a country requests the surrender of a person because of conduct the person engaged in outside the Fiji Islands;
- (b) the Judge 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 under a written law of the Fiji Islands if the person had engaged in the conduct, or equivalent conduct, in the Fiji Islands at that time,

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

(2) The circumstances for the purpose of subsection (1)(b) are—

- (a) the person is a citizen of the Fiji Islands;
- (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;
- (c) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment;
- (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;
- (e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in the Fiji 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; 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 court or tribunal.

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

(4) A person must not be prosecuted unless the Director of Public Prosecutions –

- (a) considers that there is sufficient evidence in the Fiji 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);
- (b) charged with the offence; and
- (c) remanded in custody or on bail,

although the Director of Public Prosecutions has not given consent under subsection (4).

Provision of evidence for prosecution by other countries

62. If —

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

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

Surrender for purposes of trial only

63.—(1) If —

- (a) the Judge refuses to surrender a person because—
 - (i) the person is a citizen of the Fiji 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 magistrate determines under section 36(2) 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 Fiji Islands,

and the requesting country requests that the person be surrendered for the purposes of trial only, a Judge may order the surrender of 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—

- (a) the law of the requesting country permits the transfer of convicted persons to the Fiji Islands;
- (b) the Minister, after consultation with the Attorney-General, is satisfied that if the person is convicted the person will be returned to the Fiji Islands to serve the sentence imposed; and

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

Granting of bail

64. Notwithstanding the Bail Act, bail under this Act must only be granted under exceptional circumstances.

Restrictions on interlocutory applications, etc

65. without prejudice to the provisions of this Act for the right to make other applications, no other application of an interim or interlocutory nature or for any other relief must be made by the person to be extradited except to the High Court within 21 days from the date of the order of a magistrate determining that a person is liable to be surrendered.

Regulations

66. The Minister may make regulations to give effect to the provisions of this Act and in particular—

- (a) to amend Schedules,
- (b) to set out the text of extradition treaties; and
- (c) to give effect to a new extradition treaty.
- (d) to prescribe forms and fees for the purpose of this Act

Repeals and saving

67.—(1) The Extradition Act (Cap. 23) is repealed.

(2) The UK Fugitive Offenders Act 1881 no longer applies to the Fiji Islands.

(3) Notwithstanding subsection (2)—

- (a) an Order in Council made under the Extradition Acts 1870 to 1935 that is expressed to extend to the Fiji Islands continues in force in the Fiji Islands; and
- (b) the Fiji Islands 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 the Fiji Islands was a party; or
- (b) that binds the Fiji Islands,

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

SCHEDULE 1
(Section 24)

COMMONWEALTH COUNTRIES

Part 1 – Countries to which *prima facie* evidence scheme applies

Part 2 – Countries to which the record of the case scheme applies

Anguilla	Malaysia
Antigua and Barbuda	Malawi
Bahamas	Maldives
Bangladesh	Malta
Barbados	Mauritius
Belize	Montserrat
Bermuda	Mozambique
Botswana	Namibia
British Antarctic Territory	Nigeria
British Indian Ocean Territory	Pakistan
British Virgin Islands	Pitcairn Islands
Brunei Darussalam	St Helena and Dependencies
Cameroon	St Kitts and Nevis
Canada	St Lucia
Cayman Islands	St Vincent and the Grenadines
Cyprus	Seychelles
Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia)	Sierra Leone
South Africa	Singapore
Dominica	South Georgia and South Sandwich Islands
Falkland Islands	Sri Lanka
Ghana	Swaziland
Gibraltar	Tanzania
Grenada	The Gambia
Guyana	Trinidad and Tobago
India	Turks and Caicos Islands
Jamaica	Uganda
Kenya	United Kingdom of Great Britain and Northern Ireland
Lesotho	Zambia
	Zimbabwe

SCHEDULE 2
(Section 2)

PACIFIC ISLANDS FORUM COUNTRIES

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

SCHEDULE 3

TREATY COUNTRIES

SCHEDULE 4
(Section 7)

FORMS

Form No. 1 – 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:

- (a) [*name of person*] is in, or on his or her way to the Fiji 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 magistrate*], under section 7 of the Act authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in as soon as practicable to be dealt with according to law.

Dated

*Signature and title of
Magistrate issuing warrant*

Form No. 2 – Surrender Warrant

To all police officers:

I, [*name of Judge*], have decided under section 18 of the 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 Judge*], under section 18 of the Act:

- (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 to [*name of handover place in the Fiji 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

authorise the foreign escort officer to transport [*name of person*] out of the Fiji Islands.

Dated

Signature of Judge

Form No. 3 – Temporary Surrender Warrant

To all police officers:

I, *[name of Judge]*, have decided under section 20 of the 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]:

- (a) is serving a custodial sentence in the Fiji 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 Fiji 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 Fiji Islands.

NOW THEREFORE I, *[name of Judge]*, under section 20 of the Act:

- (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 handover place in the Fiji 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

authorise the foreign escort officer to transport *[name of person]* out of the Fiji Islands.

Dated

Signature of Judge

Form No. 4 – Surrender Warrant – (Pacific Islands Forum Country)

To all police officers:

I, *[name of Judge]*, have decided under section 38 of Act that *[name of person]* is to be surrendered to *[Pacific Islands Forum country]* for the offence of *[specify each offence for which the person is to be surrendered]*.

NOW THEREFORE I, *[name of Judge]*:

- (a) order that *[name of person]* be surrendered to *[Pacific Islands Forum country]*; and
- (b) order that *[name of person]* be committed to prison until he/she is surrendered to *[Pacific Islands Forum 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 handover place in the Fiji Islands]* for the purpose of handing *[name of person]* over to the custody of a person authorised by *[Pacific Islands Forum country]* to escort *[name of person]* to *[Pacific Islands Forum 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 Fiji Islands.

Dated

*Signature of Judge
issuing warrant*

Form No. 5 – Temporary Surrender Warrant – (Pacific Islands Forum Country)

To all police officers:

I, *[name of Judge]*, have decided under section 39 of the Act that *[name of person]* is to be temporarily surrendered to *[Pacific Islands Forum 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 Fiji Islands;
- (b) has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that:

- (a) *[Pacific Islands Forum country]* has given an adequate undertaking that *[name of person]* will be given a speedy trial in *[Pacific Islands Forum country]* and will be returned to the Fiji Islands after the trial; and
- (b) adequate provision has been made for *[name of person]*: to travel to *[Pacific Islands Forum country]* and to return to the Fiji Islands.

NOW THEREFORE I, *[name of Judge]*, under section 39 of the Act:

- (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 handover place in the Fiji 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

authorise the foreign escort officer to transport *[name of person]* out of the Fiji Islands.

Dated

Signature of Judge

Passed by the House of Representatives this 27th day of February 2003.

Passed by the Senate this 18th day of March 2003.