



EXTRADITION BILL 2010

(NO. 3 OF 2010)



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A

BILL

Entitled

AN ACT TO REGULATE THE EXTRADITION OF PERSONS FROM SOLOMON ISLANDS, TO FACILITATE THE MAKING OF REQUESTS FOR EXTRADITION BY SOLOMON ISLANDS TO OTHER COUNTRIES, TO ENABLE SOLOMON ISLANDS TO CARRY OUT ITS OBLIGATIONS UNDER EXTRADITION TREATIES AND TO REPEAL THE EXTRADITION ACT (CAP. 59) AND FOR RELATED MATTERS

ENACTED by the National Parliament of Solomon Islands.

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EXTRADITION BILL 2010

PART 1 – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Extradition Act 2010, and commences on the day appointed by the Minister, by notice in the *Gazette*.

Interpretation

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

“bond” includes recognisance of bail whether with or without surety;

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

“Commonwealth country” means a country listed in Schedule 1, and includes a country not listed in Schedule 1 but later joins the Commonwealth of Nations;

“correctional centre” means a correctional centre established under the Correctional Services Act 2007, and includes a jail, police cell or other place where a person is ordered under this Act to be detained;

“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;

“court” means a magistrate’s court, the High Court or the Court of Appeal;

“endorsed warrant” means a warrant that has been issued in a Forum country and endorsed under section 29;

“extradition arrangement” includes any treaty or agreement relating to the extradition of fugitive offenders made

prior to the 7th day of July 1978, which extends to or is binding on Solomon Islands;

“extradition country” means –

- (a) a Commonwealth country;
- (b) a Forum country;
- (c) a treaty country; or
- (d) a comity country that is prescribed or certified under section 42;

“extradition decision” means the final decision of the Minister authorising the extradition of the person pursuant to this Act;

“extradition offence” has the meaning given by section 4;

“extradition order” means the order of a magistrate made pursuant to section 16 or 35 that a person be held in custody until a final extradition decision is made;

“extradition proceedings” means an extradition proceedings conducted under section 14 or 32 to determine whether a person should be extradited under this Act;

“extradition request” means a written request by a requesting country for the extradition of a person from Solomon Islands to the requesting country or by Solomon Islands requesting the extradition of a person from an extradition country to Solomon Islands;

“extradition treaty”, in relation to a country, means a treaty –

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

“extradition warrant” means –

- (a) where the expression is used in Part 3, a warrant, in accordance with Form 2 in Schedule 3, issued under section 13(5) or 19(5); or
- (b) where the expression is used in Part 5, a warrant, in accordance with Form 4 in Schedule 3, issued under section 34(3)(a) or 35(3)(a);

“Forum country” means a country that is a member country of the Pacific Islands Forum country listed in Schedule 2;

“foreign escort officer” means a representative of the country to whom a person is to be extradited who is authorised by that country to escort the person from Solomon Islands to that country;

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

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

“magistrate” means a principal magistrate;

“original warrant” means a warrant issued in a Forum country for the arrest of a person in relation to an extradition offence;

“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 Solomon 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 Solomon Islands and the other country have agreed will not be treated as a political offence for the purposes of extradition;

“provisional arrest warrant” means, where the expression is used in Part 3 or 5, a warrant issued under section 8 or 27, in accordance with Form 1 in Schedule 3;

“requesting country” means the country making an extradition request;

“specialty undertaking” means an undertaking given by a requesting country pursuant to section 19;

“sworn statement” includes an affidavit;

“temporary extradition warrant” means –

- (a) where the expression is used in Part 3, a warrant, in accordance with Form 3 in Schedule 3, issued under section 21; or
- (b) where the expression is used in Part 5, a warrant, in accordance with Form 5 in Schedule 3, issued under section 38;

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

“treaty country” means a country with which Solomon Islands has an extradition treaty;

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

Objects of the Act

3. The objects of this Act are –

- (a) to provide for the requirements and procedures for making an extradition request;
- (b) to provide for the extradition from Solomon Islands to Commonwealth countries of persons accused or convicted of extradition offences in those countries;
- (c) to provide for the extradition from Solomon Islands to Forum Countries of persons accused or convicted of extradition offences in those countries, by means of the procedure known as backing of warrants;
- (d) to provide for the extradition of persons from Solomon Islands to countries with which Solomon Islands has an extradition treaty;
- (e) to provide for extradition from Solomon Islands to countries other than Commonwealth countries, Forum Countries or treaty countries;
- (f) 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; and
- (g) to provide for the extradition of persons to Solomon Islands.

PART 2 – EXTRADITION OFFENCES AND RESTRICTIONS

Extradition offence

4. (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 for a period of imprisonment of not less than twelve months; and

- (b) the conduct that constitutes the offence, if committed in Solomon Islands, would constitute an offence in Solomon Islands for which the maximum penalty is a term of imprisonment or deprivation of liberty, for a period of not less than twelve 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 shall be had to the level of penalty that can be imposed by any court in the requesting country for the offence.

(4) An offence may be an extradition offence although –

- (a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or relating to foreign exchange control; and
- (b) Solomon Islands does not impose the same kind of duty, tax, impost or similar control.

(5) An offence shall be deemed to include the offence of attempting or conspiring to commit, of assisting, counseling or procuring the commission of, or being accessory before or after the fact to, such offence, and of impeding the apprehension or prosecution of persons accused or found guilty of such offence.

5. A person shall not be extradited under this Act to any extradition country, or be committed to or kept in custody for the purpose of such extradition if it appears to the Minister or a court upon an application made to the Minister or court that –

Restriction on extradition

- (a) the extradition offence is regarded as a political offence;
- (b) there are substantial grounds for believing that extradition 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 extradition, 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 for which extradition is requested is an offence under the military law but the offence is also not an offence under the civilian laws of the requesting country;
- (e) final judgment or order has been given and enforced against the person in Solomon Islands, or in a third country, for the offence for which extradition is requested;
- (f) under the law of the requesting country or Solomon 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 Solomon Islands, or punished under the law of that country or Solomon 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.

PART 3 – EXTRADITION FROM SOLOMON ISLANDS – GENERAL PROVISIONS

Application of
this Part

6. This Part applies to extradition from Solomon Islands to the following countries –

- (a) to a Commonwealth country in accordance with Part 4;
- (b) to a treaty country in accordance with Part 6;

(c) to a comity country in accordance with Part 7.

7. The forms for arrest warrant, provisional arrest warrant and extradition warrant are set out in Schedule 3.

Forms for warrants

8. (1) If—

Issue of
provisional arrest
warrant

(a) a country, either directly or through ICPO-Interpol, notifies the Government of Solomon Islands that—

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

(ii) the requesting country intends to make an extradition request; and

(b) an application on behalf of the requesting country by the Director of Public Prosecutions is made to a magistrate for a provisional arrest warrant,

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

(aa) the application is supported by the required documents;

(bb) the magistrate is satisfied that the offence is an extradition offence; and

(cc) the magistrate is satisfied that an extradition country makes the request for provisional arrest warrant.

(2) The required documents under subsection (1)(aa) are—

(a) a copy of the warrant for the arrest of the person issued in the requesting country;

(b) a description and particulars 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

9. (1) A person arrested under a provisional arrest warrant shall be brought before a magistrate as soon as practicable.

(2) The magistrate shall, until the Minister issues an authority to proceed –

- (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.

(3) A magistrate who remands a person on bail –

- (a) has the same powers in relation to bonds and reporting conditions as the magistrate has under any other written law; and
- (b) may order that the person's passport and other travel documents be surrendered to the magistrate's court until the extradition proceedings in relation to the person are concluded.

(4) A person shall not be remanded in custody or on bail for a period longer than forty-two days.

(5) As soon as possible after remanding the person, the magistrate shall, within seven days of making a remand order

- (a) in writing, advise the Minister –
 - (i) that the person has been remanded;
 - (ii) the name of the requesting country; and

(iii) the offence for which extradition will be sought; and

(b) give a copy of the documents on which the issue of the provisional arrest warrant is based to the Minister, the Director of Public Prosecutions and the person.

(6) If the Minister, on the advice of the Director of Public Prosecutions, considers that the extradition request may not be granted, the Minister shall advise the Director of Public Prosecutions that an application shall be made to a magistrate for an order that –

(a) the person be released; or

(b) the bond on which bail was granted be discharged.

10. (1) If –

Release from
remand

(a) a person is on remand in custody or on bail either –

(i) for forty-two days; or

(ii) where the extradition treaty between Solomon 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 shall be brought before a magistrate.

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

(3) If the magistrate is not satisfied that the authority will be issued, the magistrate shall order –

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

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

Authority to proceed

11. (1) If an extradition request is received, the Minister shall --
- (a) consider the request;
 - (b) issue an authority to proceed if the Minister 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 extradition of the person; and
 - (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 shall issue a warrant for the arrest of the person.

Arrest and remand on authority to proceed

12. (1) A person who is arrested under a warrant issued under section 11(2) shall be brought before a magistrate as soon as practicable.

- (2) The magistrate shall --
- (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond, remand the person on bail,

for the period that is necessary for the extradition proceedings 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 the magistrate has under any other written law; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate's court 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 bail during that remand period, unless the first magistrate is no longer available.

13. (1) The person may, at any time, advise a magistrate that he or she consents to being extradited to the requesting country for the extradition offence for which that country seeks his or her extradition.

Consent to
extradition

- (2) If –
- (a) a person consents to being extradited for the extradition offence; and
 - (b) the requesting country has asked that the person also be extradited for another offence that is not an extradition offence,

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

- (3) If –
- (a) the person informs the magistrate that he or she consents to being extradited; and
 - (b) the magistrate is satisfied that the consent was given voluntarily,

the magistrate shall inform the person that the effect of consenting will be that –

- (aa) the person will be committed to a correctional centre without any extradition proceedings; and
- (bb) after the Minister issues an extradition warrant, the person will be extradited to the requesting country.

(4) If the person again consents to being extradited after being informed under subsection (3), the magistrate shall –

- (a) by warrant, order that the person be committed to a correctional centre; and
- (b) advise the Minister in writing that the person has been committed to a correctional centre for the offence for which the person has consented to be extradited.

(5) The Minister may, after being informed under subsection (4), issue an extradition warrant.

Extradition proceedings

14. The magistrate shall conduct the extradition proceedings, as soon as practicable, 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 the extradition 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.

Conduct of extradition proceedings

15. (1) Extradition proceedings shall be conducted in the same manner as criminal proceedings.

- (2) The following rules that apply in criminal proceedings apply to extradition proceedings –
 - (a) summoning witnesses;

- (b) remanding defendants;
- (c) ordering the production of documents;
- (d) administration of oaths and affirmations;
- (e) payment of witness expenses;
- (f) contempt of court, privilege and other matters relating to the administration of courts;
- (g) the imposition and level of fines for offences.

(3) In the extradition 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.

16. (1) A magistrate shall make an extradition order if the magistrate is satisfied –

Order whether
person should
be extradited

- (a) that the requesting country is an extradition country;
- (b) that the offence for which the extradition 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 17; and
- (f) that extradition should not be refused because the person sought has not established an extradition restriction on one or more of the grounds in section 5.

(2) In addition to any evidentiary requirements in this Part and subject to Part 4, a magistrate shall not make an extradition order that a person be extradited unless the evidence before the magistrate is such that, if the offence for which extradition is sought was committed in Solomon

Islands, there would be sufficient evidence to place the person on trial.

(3) If the magistrate makes an extradition order under subsection (1), the magistrate shall –

- (a) issue a warrant, ordering that the person be committed to a correctional centre to await the issuance of the extradition decision;
- (b) inform the person that he or she may, within fifteen days after the day on which the extradition order is made, seek a review of the order under section 18;
- (c) record in writing his or her decision and the extradition offence for which the person should be extradited; and
- (d) provide a copy of the record to the person, the Director of Public Prosecutions and the Minister.

(4) If –

- (a) an extradition order has been made; and
- (b) the requesting country has asked that the person also be extradited for another offence that is not an extradition offence,

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

(5) If the magistrate determines that the person should not be extradited to the requesting country, the magistrate shall –

- (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 extradited.

17. (1) In section 16(1)(d), "supporting documents", in relation to an extradition offence, means –

Supporting
documents

- (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 of the requesting country 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 served or partly served; and
 - (iv) whether the sentence is immediately enforceable.

- (2) If—
- (a) a document relevant to an extradition proceedings contains a deficiency; and
 - (b) the magistrate considers the deficiency to be minor,

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

(3) Any document that is duly authenticated is admissible in the proceedings.

(4) A document that is sought by or on behalf of the requesting country to be admitted in the proceedings is duly authenticated if—

- (a) it purports to be signed or certified by a judge, magistrate or officer 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 the case of a requesting country, by or on behalf of a Minister or the Head of a Department of the Government of that country; or
 - (ii) if the extradition country is a colony, territory or protectorate, by or on behalf of the person administering the Government of that country or the Head of 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 Solomon Islands.

Review of
extradition
order by High
Court

18. (1) If a magistrate makes an extradition order against a person, the person may apply to the High Court for a review of the extradition order.

(2) If a magistrate orders that a person be released or makes an extradition order that the person be extradited for

some offences only, the requesting country may apply to the High Court for a review of the extradition order, through the Minister in accordance with the prescribed procedures.

(3) The application shall be made within fifteen days from the date of the extradition order.

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

(5) The High Court may, by order, confirm or quash the extradition order of the magistrate and order that the person be held for purposes of him or her being extradited or be released.

(6) If the High Court orders that the person be held until an extradition decision is made or refused, the High Court shall include in its judgment a statement specifying the offence and shall –

- (a) if the person is not in custody, by warrant commit the person to a correctional centre until the Minister has made a decision under section 19; or
- (b) if the person is in custody, order that the person remains in custody until the Minister has made an extradition decision under section 19.

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

19. (1) If –

- (a) a magistrate has made an extradition order and reported to the Minister that a person should be held for extradition; 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 extradition or twenty-one days has expired after the date of the extradition order,

the Minister shall make an extradition decision.

Extradition
decision

(2) If the Minister is of the view that the person should not be extradited, the Minister may refuse to make an extradition decision, if –

- (a) the requesting country has not given a specialty undertaking and –
 - (i) the requesting country is not a country with which Solomon 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 extradited;
- (b) the person is a citizen of Solomon Islands;
- (c) the offence for which extradition has been ordered is punishable by death in the requesting country but not in Solomon 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 extradition has been ordered is pending against the person in Solomon Islands;
- (e) the offence for which extradition has been ordered was committed outside the territory of the requesting country and the law of Solomon Islands does not provide for jurisdiction over an offence of that kind committed in similar circumstances outside Solomon Islands;
- (f) the offence for which extradition has been ordered is regarded by Solomon Islands as having been committed wholly or partly within Solomon 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 Solomon Islands, including its interests in effective international cooperation to combat crime; and
 - (ii) the severity of the offence.

(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 extradition, other than –
 - (i) the offence for which extradition is granted; or
 - (ii) an offence of which the person could be convicted on proof of the facts constituting the offence for which extradition is sought and for which the penalty is no greater than the penalty for the offence for which extradition is sought; or
- (b) be detained in the requesting country for extradition to a third country for an offence committed before extradition to the requesting country,

unless the Minister, on the advice of the Director of Public Prosecutions, consents to the trial or the extradition to the third country.

(4) The Minister shall not refuse to extradite a person because the person may be subjected to torture or cruel,

inhuman or degrading treatment or punishment if the requesting country and Solomon Islands have ratified –

- (a) the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; or
- (b) the International Covenant on Civil and Political Rights.

(5) If the Minister decides that the person is to be extradited to the requesting country, the Minister shall issue an extradition warrant unless the Minister decides that a temporary warrant is to be issued.

(6) If the Minister decides that the person is not to be extradited to the requesting country, the Minister shall order that the person be released.

Requirements for
extradition
warrants

20.

- (1) The extradition warrant shall –
- (a) be in writing;
 - (b) state the offences for which the person is to be extradited;
 - (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 Solomon Islands for the purpose of handing the person over to the custody of a foreign escort officer;
 - (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 Solomon Islands.

(2) If the person is serving a custodial sentence, or has been admitted to bail in Solomon Islands for an offence committed in Solomon Islands, the extradition warrant shall not be executed until –

- (a) the person has been released from custody; or
- (b) the conditions of bail have been met.

21. (1) The Minister may issue a temporary extradition warrant instead of an extradition warrant if –

Temporary
extradition
warrant

- (a) the person is serving a custodial sentence in Solomon Islands;
- (b) extradition is sought for an offence of which the person is accused but of which the person has not been convicted;
- (c) the Minister is satisfied that the requesting country has given an adequate undertaking that –
 - (i) the person will be given a speedy trial in the requesting country; and
 - (ii) the person will be returned to Solomon Islands after the trial; and
- (d) the Minister is satisfied that adequate provision has been made for the travel of the person to the requesting country and for the person's return to Solomon Islands.

(2) The temporary extradition warrant shall comply with the requirements of section 20(1).

(3) If a person who was the subject of a temporary extradition warrant –

- (a) has been returned to Solomon Islands after trial and sentence in the requesting country; and
- (b) has completed his or her custodial sentence in Solomon Islands,

the Minister may issue an extradition warrant for the extradition of the person to the requesting country, unless the Minister is satisfied that it would be unjust or oppressive to extradite 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 extradition warrant is taken to be time spent in custody in Solomon Islands for the purpose of completing the sentence for which the person was in custody in Solomon 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 Solomon Islands is concluded,

the Minister shall inform the requesting country that the undertaking given by that country about the speedy trial and return of the person no longer applies.

Execution of
extradition
warrant

22. (1) If a person is not extradited under an extradition warrant within two months—

(a) after the date the extradition warrant was issued; and

(b) whether or not the person is in custody or on bail;

the person may apply to the High Court for the discharge of the warrant and the person shall serve a copy of the application on the Director of Public Prosecutions and the Minister.

(2) The High Court shall order that the person be released from custody, if the Court 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 extraditing the person.
- (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 extradite 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 third country in responding to a request by the requesting country for permission to transport the person through it, 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 extradited within the period mentioned in subsection (1).

PART 4 – EXTRADITION FROM SOLOMON ISLANDS TO COMMONWEALTH COUNTRIES

23. Subject to this Part, Part 3 applies to the extradition of a person from Solomon Islands to a Commonwealth country.

Application of
Part 3

24. (1) The evidentiary requirements set out in section 25 apply to all extradition proceedings conducted at the request of a Commonwealth country prescribed by regulations for listing under Part 1 of Schedule 1.

Application of
different
evidentiary
requirements

(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.

25. In addition to any evidentiary requirements in this Part, a magistrate shall not make an extradition order that a person be extradited to a commonwealth requesting country listed in Part 1 of Schedule 1 unless the evidence before the magistrate is such that, if the offence for which

Prima facie
evidence
scheme

extradition is sought was committed in Solomon Islands, there would be sufficient evidence to place the person on trial.

Record of the
case scheme

26. (1) In this section, “record of the case”, for an offence for which extradition 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 this Part, a magistrate shall not make an extradition order for a commonwealth requesting country listed in Part 2 of Schedule 1 unless a record of the case is produced for the offence for which extradition is sought.

(3) The record of the case shall be accompanied by –

- (a) a sworn statement of an officer of the authority that investigated the offence, stating that –
 - (i) the record of the case was prepared by or under the direction of the officer; 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 Minister of the commonwealth requesting country stating that, in the Minister’s opinion, the record of the case discloses the existence of evidence that is sufficient under the law of the commonwealth requesting country to justify a prosecution in the requesting country.

**PART 5 – EXTRADITION FROM SOLOMON ISLANDS TO OTHER
FORUM COUNTRIES – BACKING OF WARRANTS PROCEDURE**

27. A magistrate shall issue a provisional warrant for the arrest of a person, if –

Provisional
arrest warrant

- (a) an application is made to the magistrate on behalf of a Forum country for the issue of a warrant for the arrest of the person;
- (b) the magistrate is satisfied by sworn statement that –
 - (i) an original warrant for the arrest of the person has been issued in the Forum country but the warrant is not available in Solomon Islands; and
 - (ii) the person named in the original warrant may be in or on his or her way to Solomon Islands; and
- (c) the magistrate is satisfied that it is reasonable in the circumstances to issue a provisional warrant.

28. (1) A person arrested under a provisional arrest warrant shall be brought before a magistrate as soon as practicable.

Arrest and
remand on
provisional
arrest warrant

- (2) The magistrate shall, until the Forum country produces the original warrant on which the provisional arrest warrant was based –
 - (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.
- (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 any other written law; and
 - (b) may order that the person's passport and other travel documents be surrendered to the magistrate's court until the extradition proceedings in relation to the person are concluded.

(4) A person shall not be remanded in custody or on bail under this section for a period longer than twenty-eight days.

Endorsement of
warrant

29. (1) If –
- (a) an application is made to a magistrate on behalf of a Forum country for the endorsement of an original warrant; and
 - (b) the magistrate is informed by sworn statement that the person named in the original warrant is, or is suspected of being, in or on his or her way to Solomon Islands,

the magistrate shall endorse the original warrant to authorise the arrest of the person in Solomon Islands under the original warrant.

(2) Where the original warrant has been endorsed, any provisional arrest warrant issued shall be deemed to have been cancelled without affecting anything previously under the provisional arrest warrant.

Arrest and
remand on
endorsed warrant

30. (1) A person who is arrested under an endorsed warrant shall be brought before a magistrate as soon as practicable.

- (2) The magistrate shall –
- (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that the person is unlikely to abscond, remand the person on bail,

for the period that is necessary for the extradition proceedings to be conducted, including the processing of consent for extradition under section 34.

(3) Section 28(3) and (4) applies to this section.

(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 bail during that remand, unless the first magistrate is no longer available.

Release from
remand

31. (1) A person shall be brought before a magistrate, if –
- (a) the person is on remand in custody or on bail at the expiry of twenty-eight 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.

(2) The magistrate shall, unless the magistrate is satisfied that the endorsed warrant will be obtained within a particular period that is reasonable in all the circumstances, order --

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

(3) A person shall be brought before a magistrate, if --

- (a) the person is on remand in custody or on bail at the expiry twenty-eight days after the day on which the person was arrested on an endorsed warrant; and
- (b) no request has been made under section 32 for extradition proceedings to be conducted.

(4) The magistrate shall order --

- (a) the release of the person brought under subsection (3) 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 32 for extradition proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances.

32. The magistrate shall conduct the extradition proceedings as soon as practicable, if --

Extradition
proceedings

- (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) an extradition request is made to a magistrate by or on behalf of the person or the Forum country for

extradition proceedings to be conducted in relation to the person.

Conduct of extradition proceedings

33. (1) A magistrate shall not conduct the extradition proceedings unless the magistrate is satisfied that both the person sought and the Forum country have had reasonable time to prepare for the conduct of the proceedings.

(2) The extradition proceedings shall be conducted in the same manner as criminal proceedings.

(3) 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) imposition and level of fines for offences.

(4) In the extradition 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 extradition

34. (1) At the extradition proceedings the magistrate shall ask the person if he or she consents to being extradited.

(2) If –

- (a) the person informs the magistrate that he or she consents to being extradited; and
- (b) the magistrate is satisfied that the consent was given voluntarily,

the magistrate shall inform the person of the effect of consenting that he or she will be –

- (aa) committed to a correctional centre without further proceedings; and
- (bb) extradited to a Forum country as soon as practicable.

(3) If the person again informs the magistrate that he or she consents to being extradited after being informed under subsection (2), the magistrate shall refer the matter to the Minister who shall –

- (a) by an extradition warrant, make an extradition decision that the person be extradited to the Forum country; and
- (b) by warrant, order that the person be committed to a correctional centre until the person is extradited to the Forum country.

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

Order whether
person should
be extradited

(2) The magistrate shall make an extradition order 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 of which he or she has not been 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 extradite the person; or
- (e) the conditions of the correctional centre in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Solomon Islands.

(3) If the magistrate makes an extradition order, the magistrate shall refer the matter to the Minister who shall, after twenty-one days has expired from the date of the extradition order –

- (a) by an extradition warrant, make an extradition decision that the person be extradited to the Forum country;
- (b) by warrant, order that the person be committed to a correctional centre until the person is extradited to the Forum country;
- (c) inform the person of his or her right to review of the extradition order under section 36 within fifteen days;
- (d) record in writing his or her decision and the extradition offence for which the person is to be extradited; and
- (e) give a copy to the person and to the Minister.

(4) Notwithstanding subsection (3), if –

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

the Minister shall not issue an extradition warrant for the person but shall issue a temporary extradition warrant under section 38.

(5) If the Minister determines that the person should not be extradited to the Forum country because of an extradition restriction under section 5, the Minister shall order that the person be released.

Review of
extradition order
by High Court

36. (1) The person who is subject to the extradition order may apply to the High Court under section 18 for a review of the order, subject to necessary modifications of that section for its application to this Part.

(2) The right under section 18(2) applies to a Forum country.

37. The extradition warrant and the temporary extradition warrant shall comply with the requirements of section 20.

38. (1) Notwithstanding the provisions of section 35(3), the Minister may issue a temporary extradition warrant instead of an extradition warrant if –

Temporary
extradition warrant

- (a) the person is serving a custodial sentence in Solomon Islands;
- (b) extradition is sought for an offence of which the person is accused but of which the person has not been convicted;
- (c) the Minister is satisfied that the Forum country has given an adequate undertaking that –
 - (i) the person will be given a speedy trial in the Forum country, and
 - (ii) the person will be returned to Solomon Islands after the trial; and
- (d) the Minister is satisfied that adequate provision has been made for the travel of the person to the Forum country and for his or her return to Solomon Islands.

(2) If a person who was the subject of a temporary extradition warrant –

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

the Minister shall issue an extradition warrant under section 35(3) for the extradition of the person to the Forum country.

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

(4) The Minister shall inform the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply, if –

- (a) time spent in custody in the Forum country is taken into account as mentioned in subsection (3); and
- (b) because of this, the person's sentence in Solomon Islands is concluded.

Execution of
extradition
warrant

39. (1) If a person is not extradited under an extradition warrant within two months after –

- (a) the date the extradition warrant was issued; or
- (b) if the person is serving a custodial sentence, or has been admitted to bail in Solomon Islands, the person has been released from custody or the bond has been discharged,

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

(2) If the High Court 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 extraditing the person,

the High Court shall 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 extradite 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 Solomon Islands in responding to a request for permission to transport the person, and all reasonable steps were taken to obtain the permission.

PART 6 – EXTRADITION FROM SOLOMON ISLANDS TO TREATY COUNTRIES

40. (1) Subject to this Part, Part 3 applies to the extradition of a person to a treaty country subject to –

Application of
Part 3

- (a) any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between Solomon Islands and the treaty country; and
- (b) any regulations to give effect to an extradition treaty.

(2) The Minister may, by order in the *Gazette*, publish a list of the names of treaty countries.

PART 7 – EXTRADITION FROM SOLOMON ISLANDS TO COMITY COUNTRIES

41. Subject to this Part, Part 3 applies to the extradition of a person from Solomon Islands to a comity country.

Application of
Part 3

42. (1) The Minister may –

- (a) by regulations, prescribe a comity country as 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.

When comity
country is an
extradition
country

(2) When the Minister certifies that the comity 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 shall consider –

- (a) the public interest of Solomon 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

43. Proceedings may not be commenced on a request from a comity country for the extradition of a person unless the country has been prescribed or certified as an extradition country under section 42.

Other modifications of Part 3

44. When the Minister prescribes or certifies a comity country as an extradition country, the Minister may also modify Part 3 in its application to the country under this Part.

PART 8 – GENERAL PROVISIONS RELATING TO SEARCH, SEIZURE AND ARREST

Search and seizure on arrest without a warrant

45. (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, a 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 extradition 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 shall not be searched except by a police officer of the same sex.

(6) A police officer shall retain in safe keeping any property or thing seized pending a direction from the magistrate or a Judge, as the case may be, about how the property or 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 correctional centre 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 on a police officer under any other written law.

Search and seizure warrant 46. (1) If a magistrate is informed by sworn statement 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 extradition 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 sworn statement 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 –

- (aa) to seize the thing;
- (bb) to enter the place and seize the thing; or
- (cc) to enter the place, search the place for a thing of that kind and seize a thing of that kind found in the place.

- (2) The magistrate shall not issue the warrant unless –
 - (a) there has been given to the magistrate by sworn statement 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 shall state –
 - (a) the purpose for which it is issued, including a reference to the nature of the offence referred to in subsection (1);
 - (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 thirty 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 the officer 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 shall 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 any public place, area of water, premises, vessel, aircraft or vehicle;

“thing” includes a vessel, aircraft or vehicle.

47. (1) A Judge or magistrate may direct that any property seized under section 45 or 46 that --

Return of seized
property

(a) may provide evidence of an offence for which an extradition order has been made; or

(b) may have been acquired as a result of an offence of that kind,

be returned to the country that sought the extradition if an extradition warrant or temporary extradition warrant is issued after extradition proceedings have concluded.

(2) If no extradition warrant has been issued after extradition proceedings have concluded, a Judge or magistrate, as the case may be, shall direct that the property be returned to the person from whom it was seized, unless the

Judge or magistrate 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

48. (1) A police officer may arrest a person without a warrant if the police officer has reasonable grounds for believing that the person has escaped from custody that was authorised under this Act.

(2) The person shall be returned to the custody mentioned in subsection (1).

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

Arrest of persons
released on bail

49. (1) A police officer may arrest a person who has been released 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 arrested under subsection (1) shall be brought before a magistrate as soon as practicable.

Transit
permission

50. (1) The Minister shall, after consulting the Minister responsible for Immigration, give permission to a country (the "second country") to transport through Solomon Islands a person who has been extradited to the second country by a third country if –

- (a) the second country asked for transit permission before the person entered Solomon Islands; and
- (b) the second country is an extradition country.

(2) Where permission for transit is given under subsection (1) –

- (a) a police officer in Solomon Islands may assist the foreign escort officer escorting the person; and
- (b) the person may be held in custody in Solomon Islands until the person's journey can continue.

(3) If it is necessary to hold the person in custody for more than twenty-four hours, the person shall be brought before a magistrate who may issue a warrant to commit the person to custody.

PART 9 - EXTRADITION TO SOLOMON ISLANDS

51. (1) Where a person accused or convicted of an offence in Solomon Islands, whether committed before or after the commencement of this Act, is in or is suspected of being in any extradition country or within the jurisdiction of, or a part of an extradition country, the Minister may make an extradition request to that extradition country.

Extradited
persons to be
brought in to
Solomon Islands

(2) The Minister shall forward the extradition request to that extradition country with such documents as are required under the laws of that extradition country or as required to be provided under the extradition treaty between that country and Solomon Islands to enable that country to commence extradition proceedings against the person.

(3) A person extradited to Solomon Islands for an offence against a written law of Solomon Islands of which the person is accused or of which the person has been convicted shall be brought into Solomon Islands and delivered to the appropriate authorities to be dealt with according to law.

(4) A person extradited under this section may be remanded in custody or on bail by a magistrate until the person can be brought to trial.

52. A person extradited to Solomon Islands shall not --

Treatment of
persons
extradited to
Solomon Islands

- (a) be detained or tried in Solomon Islands for any other offence that is alleged to have been committed, or was committed, before the person was extradited, other than --
- (i) an offence for which the person was extradited;
 - (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 extraditing country consents to the person being detained or tried; or

- (b) be detained in Solomon Islands for extradition 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 extradited to Solomon Islands,

unless one of the following circumstances applies –

- (aa) the country that extradited the person to Solomon Islands consents to the person being detained and tried or extradited;
- (bb) the person has had the opportunity of leaving Solomon Islands.

Persons temporarily extradited to Solomon Islands

53. (1) If a person extradited to Solomon Islands –

- (a) has not completed a custodial sentence in the extraditing country immediately before being extradited; or
- (b) is a person whom Solomon Islands has undertaken to hold in custody and return to the extradition country,

the person –

- (aa) shall, while travelling to and from, and while in Solomon Islands, be kept in the custody ordered in writing by the Minister;
- (bb) may only be tried for an offence for which the person was extradited; and
- (cc) after the person has been tried, shall be returned to the extraditing country.

(2) If –

- (a) a person is held in custody only because of an order of the Minister under subsection (1)(aa); and
- (b) the extraditing country notifies Solomon Islands that the extraditing country no longer requires the person to be returned,

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

54. (1) If the Minister intends to seek a person's extradition to Solomon Islands, the Minister may, after consulting the Director of Public Prosecutions, authorise in writing the taking of evidence under subsection (2) for use in any extradition proceedings for the extradition of the person to Solomon Islands.

(2) A magistrate may take the evidence of each witness on oath and shall –

- (a) cause the evidence to be recorded in 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 10 – MISCELLANEOUS

55. (1) If an extradition country requests Solomon Islands to take evidence for the purpose of criminal proceedings in that country, the Minister may, after consulting the Director of Public Prosecutions, authorise in writing a magistrate to do so.

(2) The magistrate may take the evidence of each witness on oath or affirmation and shall –

- (a) cause the evidence to be recorded in writing and certify as to the taking of the evidence; and
- (b) cause the evidence and the certificate to be sent to the Minister.

56. (1) If –

- (a) a country requests the extradition of a person because of conduct the person engaged in outside Solomon Islands;
- (b) the magistrate or Judge refuses to order the extradition 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 Solomon Islands if the person had engaged in the conduct, or equivalent conduct, in Solomon Islands at that time,

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

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

- (a) the person is a citizen of Solomon Islands;
- (b) on being extradited, 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 opinion, 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 extradition has been ordered is punishable by death in the requesting country but not in Solomon 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 shall be taken to have engaged in the conduct in Solomon Islands.

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

- (a) considers that there is sufficient evidence in Solomon 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) Subject to subsection (4), 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.

57. If –

- (a) an extradition country has refused to order that a person be extradited to Solomon Islands; but
- (b) the country is prepared to prosecute the person for the offence for which Solomon Islands sought extradition of the person,

Provision of evidence for prosecution by other countries

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

58. If –

- (a) Solomon Islands refuses to extradite a person because –
 - (i) the person is a citizen of Solomon Islands; or
 - (ii) the person has been subjected in the requesting country to torture or

Extradition for purposes of trial only

cruel, inhuman or degrading treatment or punishment; or

- (b) a magistrate orders under section 35(2)(c) that a person should not be extradited because the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Solomon Islands,

and the requesting country makes an extradition request for the purposes of trial only, a magistrate or Judge may order the extradition 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 –

- (aa) the law of the requesting country permits the transfer of convicted persons to Solomon Islands;
- (bb) Solomon Islands is satisfied that if the person is convicted the person will be returned to Solomon Islands to serve the sentence imposed; and
- (cc) Solomon Islands 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

59. Notwithstanding any law allowing of the granting of bail, bail under this Act shall only be granted under special circumstances.

Restrictions on interlocutory applications, etc

60. 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 shall be made by the person to be extradited except to the High Court within twenty-one days from the date of the extradition order.

Regulations and applications

61. (1) 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;
- (c) to give effect to a new extradition treaty; and
- (d) to prescribe other forms and fees for the purpose of this Act.

(2) Where a request for extradition or other application is made by an extradition country under this Act, the Director of Public Prosecutions shall be responsible for making the application in court.

63. (1) The Extradition Act (Cap. 59) is repealed.

(2) An extradition treaty –

- (a) to which Solomon Islands was a party; or
- (b) that bound Solomon 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.

(3) Subject to the provisions of this Act, any subsidiary legislation made under the repealed Extradition Act (Cap. 59) shall continue in force until replaced by any subsidiary legislation made under this Act.

Repealing
saving

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	Palau	Vanuatu
Kiribati	Papua New Guinea	
Marshall Islands	Solomon Islands	

SCHEDULE 3
(Section 7)

WARRANT 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/her* way to Solomon 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 8/section 27*] 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 this _____ day _____ of 2....

*Signature and title of
Magistrate issuing warrant*

Form No. 2 – Extradition Warrant

To all police officers:

I, [*name of Minister*], [*upon the advice of a magistrate pursuant to section 13(4) or have decided under section 19*] of the Act that [*name of person*] is to be extradited to [*requesting country*] for the offence of [*specify each offence for which the person is to be extradited*].

- (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 Solomon Islands]* for the purpose of handling *[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 Solomon Islands.

Dated this day of

2....

Signature of Minister

Form No. 4 – Extradition Warrant – (Forum Country)

To all police officers:

I, *[name of the Minister]*, have decided under section *[34(3) or 35(3)]* of Act that *[name of person]* is to be extradited to *[Forum country]* for the offence of *[specify each offence for which the person is to be extradited]*.

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

- (a) order that *[name of person]* be extradited to *[Forum country]*; and
- (b) order that *[name of person]* be committed to a correctional centre until *he/she* is extradited to *[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 Solomon Islands]* for the purpose of handing *[name of person]* over to the custody of a person authorised by *[Forum country]* to escort *[name of person]* to *[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 Solomon Islands.

Dated this day of

2....

Signature of Minister

Form No. 5 – Temporary Extradition Warrant – Forum Countries**To all police officers:**

I, [*name of Minister*], have decided under section 38(1) that [*name of person*] is to be temporarily extradited to [*Forum country*] for the offence of [*specify each offence for which the person is to be extradited*].

[*name of person*]:

- (a) is serving a custodial sentence in Solomon Islands; and
- (b) has not been convicted of the offence(s) for which *his/her* extradition is sought.

I am satisfied that:

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

NOW THEREFORE I, [*name of Minister*], under section 38(1):

- (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 Solomon Islands*] for the purpose of handling [*name of person*] over to the custody of a person authorised by [*Forum country*] to escort [*name of person*] to [*Forum 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 Solomon Islands.

Dated this day of 2....

Signature of Minister

EXTRADITION BILL 2010**OBJECTS AND REASONS**

1. The purpose of the Bill is to modernise and improve the efficiency and effectiveness of the extradition system. The Bill repeals the current Extradition Act and replaces it with a system which allows for greater co-operation between Pacific Islands Forum members on evidentiary and procedural aspects of extradition. The Bill provides a simplified and effective procedure for extradition with different processes which reflect our level of faith in the criminal justice systems of the participating nations.
2. The Bill is based largely on the model regional legislation that has been carefully developed and successfully implemented by many of our neighbouring countries. Adaptations have been made to suit local conditions and to reflect the structure and roles of the various agencies within our existing justice system.
3. The Bill contains a core framework for extradition which is then modified to suit four different categories of extradition partners. The simplest extradition system applies to Pacific Island Forum countries with whom Solomon Islands shares so many similarities and such close physical proximity. The second system applies to Commonwealth countries with which Solomon Islands legal and political system shares many commonalities. The third system applies to treaty countries with which we have entered a formal treaty relationship. The fourth, and most rigorous system, applies to countries with which we have not entered a formal relationship but who wish to make an extradition request.
4. The increasing rigours of the systems reflect the degree of confidence and trust in the legal system of the requesting country. These are safeguards designed to ensure that adequate protection is provided to an individual being forcibly returned to another country to stand trial.
5. The Bill also contains provisions relating to the extradition of persons to the Solomon Islands. It sets out the procedures for making the request and contains machinery provisions for holding and transporting the person.

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MINISTER FOR JUSTICE AND LEGAL AFFAIRS

EXPLANATORY MEMORANDUM

Clause 1 – provides for the short title and commencement. It will come into force on a date to be appointed by the Minister by notice in the *Gazette*.

Clause 2 – provides for the definition of terms.

Clause 3 – sets out the objects.

Clause 4 – defines the “extradition offence”. It provides for what offences are in principle extraditable. An extraditable offence shall be therefore offences, which are punishable under the law of the requested country and the requesting country. The penalty has been fixed at minimum period of 12 months imprisonment.

Clause 5 – provides for restrictions to extradition such as political offences or prosecution of the ground of race, religion, nationality, political opinions, sex or status, or for political offence, etc.

Clause 6 – sets out the general application of Part 3. Part 3 deals generally with the procedures to be followed when a request is made to Solomon Islands for the extradition of a person to the requesting country. It applies to Commonwealth Countries, a treaty country or a comity country.

Clause 7 – sets out the forms for the warrants for the purpose of the Act.

Clause 8 – empowers a magistrate to issue a provisional arrest warrant upon application by the requesting country.

Clause 9 – provides that if the person is arrested on the provisional arrest warrant, the person will be brought before the magistrate who is obligated to remand the person in custody or on bail until the Minister issues the authority to proceed.

Clause 10 – Allows a person on remand for 42 days without an authority to proceed from the Minister to be brought before a magistrate who may further extend the period for up to 42 days or release the person with or without bail conditions.

Clause 11 – sets out the procedures and factors to be taken when issuing authority to proceed. If the person has not been arrested, the magistrate may issue a warrant of arrest.

Clause 12 – sets out the procedures by a magistrate in dealing with the person arrested under clause 11(2).

Clause 13 – provides procedures where the person sought to be extradited consents to the request for extradition.

Clause 14 – deals with extradition proceedings by a magistrate.

Clause 15 – provides for the conduct or procedures for extradition proceedings.

Clause 16 – sets out the matters to taken into account by a magistrate when determining whether the person should be extradited.

Clause 17 – defines “supporting documents”.

Clause 18 – provides for review to the High Court by a person who is held in custody pending extradition decision.

Clause 19 – provides for a final extradition decision by the Minister whether the person should be extradited to the requesting country. The Minister is empowered to decide whether or not the person be extradited, in which case the Minister will issue a extradition warrant or a temporary extradition warrant.

Clause 20 – sets out the contents of extradition warrants.

Clause 21 – sets out the circumstances in which a temporary extradition warrant is issued by the Minister.

Clause 22 – provides for the procedures where the person subject to a extradition warrant is not extradited after two months.

Clause 23 – links Part 4 to Part 3 (General Provisions).

Clause 24 – sets out the 2 different categories of Commonwealth countries where evidentiary requirements under clause 25 or 26 apply.

Clause 25 – provides for *prima facie* evidence scheme for person to be extradited to Commonwealth countries prescribed for listing in Part 1 of Schedule 1.

Clause 26 – provides for record of case scheme for person to be extradited to Commonwealth countries listed in Part 2 of Schedule 1.

Clause 27 – empowers a magistrate to issue provisional arrest warrant on application by a Pacific country.

Clause 28 – Provides for the procedure by a magistrate for dealing with a person arrested under a provisional warrant issued under clause 27.

Clause 29 – empowers a magistrate to endorse on an original warrant of arrest issued in a Pacific country, the arrest in Solomon Islands of the person named in the warrant.

Clause 30 – sets out the procedure for dealing with a person arrested under clause 29. The magistrate may order the person to be on remand in custody or on bail.

Clause 31 – provides for the procedures for dealing with a person who has been in remand for more than 28 days.

Clause 32 – sets out the procedures and obligations to carry out extradition proceedings for persons to be extradited to a Forum country.

Clause 33 – Provides for the procedures and matters for consideration for extradition proceedings.

Clause 34 – deals with the situation and procedures where a person consents to be extradited.

Clause 35 – deals with the matters to be taken into account by a magistrate when determining whether or not the person should be extradited.

Clause 36 – provides for review of a magistrate's order for extradition.

Clause 37 – sets out the contents of extradition warrants.

Clause 38 – provides for issuance of temporary extradition warrants.

Clause 39 – deals with the situation where the person is not extradited within 2 months. The person has the right to apply to the High Court to be released from custody.

Clause 40 – makes Part 3 (General Provisions) apply to Part 6 subject to the extradition treaty between a country and Solomon Islands.

Clause 41 – makes Part 3 (General Provisions) apply to Part 7.

Clause 42 – empowers the Minister to list comity countries by regulations or certify a country not listed by regulation to be a comity country in an individual case.

Clause 43 – provides limitation for proceedings under Part 7.

Clause 44 – empowers the Minister to modify Part 3 by regulations.

Clause 45 – Empowers police officers to seize materials that may be evidence while effecting warrants.

Clause 46 – empowers the magistrate to issue warrant for search and seizure for the purpose of the Act.

Clause 47 – empowers a magistrate or Judge to direct the return of things seized to the requesting country.

Clause 48 – empowers police officers to arrest persons escaping from custody.

Clause 49 – empowers police officers to arrest person granted bail for breaching bail conditions.

Clause 50 – provides for the transit of extradited person through Solomon Islands.

Clause 51 – provides that persons extradited to Solomon Islands to be brought to Solomon Islands.

Clause 52 – sets out the procedures for treating persons extradited to Solomon Islands.

Clause 53 – deals with persons temporarily extradited to Solomon Islands.

Clause 54 – provides for dealing with evidence when a person is extradited to Solomon Islands.

Clause 55 – deals with request by country for taking of evidence in Solomon Islands.

Clause 56 – provides situation where the person subject to a request, which has been refused to be, prosecuted in Solomon Islands.

Clause 57 – provides that if request by Solomon Islands is refused in another country and the country is prepared to prosecute the person, then the Minister is obliged to provide that country with evidence that may be used for the prosecution of the person.

Clause 58 – provides for the extradition of citizens for the purpose of trial only but the person to be returned to serve sentence in Solomon Islands.

Clause 59 – provides that bail for fugitives under this Act shall be granted in special circumstances only.

Clause 60 – restricts a fugitive from circumventing the extradition scheme by challenging procedural decisions made by the Minister and the magistrate. A fugitive will be given opportunity to challenge those decisions only if a magistrate has made a decision that the matter be referred to the High Court for decision for extradition. The fugitive will be given 21 days to

challenge decisions or seek other relief. But relief that may be expressed under the proposed Act is not affected.

Clause 61 – empowers the Minister to make regulations.

Clause 62 – deals with repeals and saving.

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MINISTER FOR JUSTICE AND LEGAL AFFAIRS

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