

# **Vanuatu Extradition Act**

*Commencement: 3 February 2003*

## **REPUBLIC OF VANUATU EXTRADITION ACT NO. 16 OF 2002**

### Arrangement of Sections

#### **PART 1—PRELIMINARY**

- 1 Purpose
- 2 Interpretation
- 3 Extradition offence
- 4 Extradition objection

#### **PART 2—EXTRADITION FROM VANUATU—GENERAL PROVISIONS**

##### **Division 1 - Preliminary matters**

- 5 Purpose of Part 2

##### **Division 2 – Arrest in relation to extradition offences**

- 6 Issue of provisional arrest warrant
- 7 Arrest and remand on provisional arrest warrant
- 8 Release from remand
- 9 Authority to proceed
- 10 Arrest and remand on authority to proceed

##### **Division 3 – Extradition proceedings**

- 11 Consent to surrender
- 12 Extradition proceedings
- 13 Conduct of extradition proceedings
- 14 Determination for surrender
- 15 Supporting documents
- 16 Review of magistrate's decision
- 17 Surrender determination by Attorney General

- 18 Surrender warrant
- 19 Temporary surrender warrant
- 20 Execution of surrender warrant

### **PART 3—EXTRADITION FROM VANUATU TO COMMONWEALTH COUNTRIES**

- 21 Purpose of Part 3
- 22 Application of Part 2
- 23 Application of different evidentiary requirements
- 24 The *prima facie* evidence scheme
- 25 The record of the case scheme

### **PART 4—EXTRADITION FROM VANUATU TO SOUTH PACIFIC COUNTRIES BACKING OF WARRANTS PROCEDURE**

#### **Division 1 – Backing of warrants procedure**

- 26 Purpose of Part 4
- 27 Provisional arrest warrant
- 28 Arrest and remand on provisional arrest warrant
- 29 Endorsement of warrant
- 30 Arrest and remand on endorsed warrant
- 31 Release from remand

#### **Division 2 – Extradition proceedings**

- 32 Extradition proceedings
- 33 Conduct of extradition proceedings
- 34 Consent to surrender
- 35 Determination for surrender
- 36 Review of magistrate's decision
- 37 Surrender warrant
- 38 Temporary surrender warrant
- 39 Execution of surrender warrant

### **PART 5— EXTRADITION FROM VANUATU TO TREATY COUNTRIES**

- 40 Purpose of Part 5
- 41 Application of Part 2

### **PART 6—EXTRADITION FROM VANUATU TO OTHER COUNTRIES**

- 42 Purpose of Part 6
- 43 Application of Part 2
- 44 When comity country an extradition country

45 Limitation on extradition proceedings

46 Other modifications of Part 2

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

47 Purpose of Part 7

48 Search and seizure on arrest without a warrant

49 Search and seizure warrants

50 Return etc of seized property

51 Arrest of persons escaping from custody

52 Arrest of persons released on bail

53 Transit

## **PART 8—EXTRADITION TO VANUATU**

54 Purpose of Part 8

55 Surrendered persons to be brought into Vanuatu

56 Treatment of persons surrendered to Vanuatu

57 Persons temporarily surrendered to Vanuatu

58 Evidence for purposes of surrender of persons to Vanuatu

## **PART 9—MISCELLANEOUS**

59 Taking of evidence at request of another country

60 Prosecution, instead of extradition, of Vanuatu citizens

61 Provision of evidence for prosecution by other countries

62 Surrender for purposes of trial only

63 Regulations

64 Repeal of Extradition Act [CAP 199]

65 Commencement

---

## SCHEDULES

SCHEDULE 1 Commonwealth Countries

SCHEDULE 2 South Pacific Countries

SCHEDULE 3 Treaty Countries

SCHEDULE 4 Forms of warrants

---

### REPUBLIC OF VANUATU

Assent: 31<sup>st</sup> December 2002

Commencement: 3 February 2003

### EXTRADITION ACT NO. 16 OF 2002

An Act relating to extradition, and for related purposes

### PART 1—PRELIMINARY

#### 1 Purpose

The purposes of this Act are to:

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

#### 2 Interpretation

(1) In this Act, unless the contrary intention appears:

**comity country** means a country other than a Commonwealth country, a South Pacific country or a treaty country.

**Commonwealth country** means a country that is specified in Schedule 1.

**country** includes:

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

**endorsed warrant** means a warrant that has been issued in a South Pacific country and endorsed under section 29.

**extradition country** means:

- (a) a Commonwealth country; or
- (b) a South Pacific country; or
- (c) a treaty country; or
- (d) a comity country that is declared by the regulations to be an extradition country; or
- (e) a comity country certified by the Attorney General to be an extradition country for the purpose of a particular extradition request.

**extradition offence** has the meaning given by subsection 3(1).

**extradition request** means a request in writing by a country for the surrender of a person to the country.

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

- (a) to which the country and Vanuatu 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 and who is authorised by that country to escort the person from Vanuatu to that country.

**ICPO-Interpol** means the International Criminal Police Organisation.

**magistrate** means a person who is appointed as a magistrate.

**Minister** means the Minister responsible for this Act.

**original warrant** means a warrant issued in a South Pacific country for the arrest of a person.

**police officer** means a member of the Vanuatu Police Force.

**political offence**, in relation to a country, means an offence against the law of the country that is of a political character (whether because of the circumstances in which it is committed or otherwise and whether or not there are competing political parties in the country), but does not include:

- (a) an offence

- (i) that is constituted by conduct of a kind referred to in a multilateral treaty to which Vanuatu is a party; and
- (ii) for which parties have an obligation to extradite or prosecute; or

(b) the offence of genocide; or

(c) an offence of:

(i) murder, kidnapping or other attack on the person or liberty; or

(ii) threatening or attempting to commit, or participating as an accomplice in, murder, kidnapping or other attack on the person or liberty;

on the head of a 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 Vanuatu and the other country have agreed will not be treated as a political offence for the purposes of extradition.

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

**provisional arrest warrant** means:

(a) where the expression is used in Part 2 - a warrant, in accordance with Form 1 in Schedule 4, issued under section 6.

(b) where the expression is used in Part 4 - a warrant, in accordance with Form 2 in Schedule 4, issued under section 27.

**requesting country** means a country that is seeking the surrender of a person from Vanuatu.

**South Pacific country** means a country:

(a) that is a member of the South Pacific Forum; and

(b) that is specified in Schedule 2.

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

**surrender warrant** means:

(a) where the expression is used in Part 2 - a warrant, in accordance with Form 3 in Schedule 4, issued under section 17; or

(b) where the expression is used in Part 4 - a warrant, in accordance with Form 5 in Schedule 4, issued under section 34.

**temporary surrender warrant** means:

- (a) where the expression is used in Part 2 - a warrant, in accordance with Form 4 in Schedule 4, issued under section 19; or
- (b) where the expression is used in Part 4 - a warrant, in accordance with Form 6 in Schedule 4, issued under section 38.

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

**treaty country** means a country:

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

**writing** includes facsimile, electronic mail and any other means of communication which is able to be reproduced in printed form.

(2) An arrest warrant, a provisional arrest warrant and a surrender warrant must be in the appropriate form in Schedule 4.

### 3 Extradition offence

(1) An offence is an extradition offence if:

- (a) it is an offence against a law of the requesting country for which the maximum penalty is 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 Vanuatu, would constitute an offence in Vanuatu for which the maximum penalty is imprisonment, or other 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 and omissions that make up the conduct.

(3) In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence.

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

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

#### **4 Extradition objection**

An extradition objection may be made in writing by any person to a request for the surrender of a person for an extradition offence if:

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

## **PART 2—EXTRADITION FROM VANUATU – GENERAL PROVISIONS**

### **DIVISION 1 PRELIMINARY MATTERS**

#### **5 Purpose of Part 2**

- (1) The purpose of this Part is to provide for the extradition from Vanuatu to other countries of persons accused or convicted of extradition offences in other countries.
- (2) This Part applies to extradition from Vanuatu to:
  - (a) a Commonwealth country in accordance with Part 3; and
  - (b) a treaty country in accordance with Part 5; and
  - (c) a country other than a South Pacific country in accordance with Part 6.

## **DIVISION 2 ARRESTS IN RELATION TO EXTRADITION OFFENCES**

### **6 Issue of provisional arrest warrant**

(1) A magistrate must issue a provisional arrest warrant for a person if:

(a) a country, either directly or through ICPO-Interpol, notifies Vanuatu that:

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

(ii) the requesting country intends to make a formal request to Vanuatu 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; and

(c) the application is supported by the required documents; and

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

(e) the magistrate is satisfied that the request is made by an extradition country.

(2) The following documents are required for a provisional arrest warrant:

(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;

(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.

### **7 Arrest and remand on provisional arrest warrant**

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

(2) Until the Attorney General issues an authority to proceed, 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.

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

- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Vanuatu; and
- (b) may order that the person's passport and other travel documents be surrendered to him or her until the extradition proceedings in relation to the person are concluded.

(4) Subject to section 8, a person must not be remanded in custody or on bail for a period longer than 42 days.

(5) After remanding the person, the magistrate must:

- (a) inform the Attorney General of the following:
  - (i) that he or she has remanded the person;
  - (ii) the name of the requesting country;
  - (iii) the offence for which surrender is being sought; and
- (b) provide to the Attorney General and the person being remanded a copy of the documents on which the issue of the provisional arrest warrant is based.

## **8 Release from remand**

(1) If:

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

- (i) 42 days after the date on which the person was arrested; or
- (ii) if an extradition treaty between Vanuatu and the requesting country provides for another period – at the end of that period; and

(b) the Attorney General has not issued an authority to proceed;

the 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 satisfied that an authority to proceed will be issued within the remand period referred to in subsection (2), the magistrate must order:

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

## **9 Authority to proceed**

(1) If an extradition request is received by Vanuatu, the Attorney General must do the following:

- (a) consider the request;
- (b) issue an authority to proceed if he or she is satisfied that:
  - (i) the offence for which extradition is sought is an extradition offence; and
  - (ii) the requesting country is an extradition country; and
  - (iii) there is nothing in section 17 or any other law that would preclude surrender of the person; and
  - (iv) there is no other reason why the authority to proceed should not be issued;
- (c) give the authority to proceed to a magistrate;
- (d) provide a copy of the authority to proceed and the extradition request to the person concerned.

(2) If the Attorney General does not issue an authority to proceed, he or she must advise a magistrate of this and the magistrate must order:

- (a) the person to be released; or
- (b) the discharge of the recognisance on which bail was granted.

(3) 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.

## **10 Arrest and remand on authority to proceed**

(1) A person who is arrested under a warrant issued under section 9 must be brought before a magistrate as soon as practicable.

(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; for a period that is necessary for proceedings under this Part to be conducted.

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

- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Vanuatu; and
- (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.

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

## **DIVISION 3 EXTRADITION PROCEEDINGS**

### **11 Consent to surrender**

(1) At any time, a person may tell 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) the person tells the magistrate that he or she consents to being surrendered; and
- (b) the magistrate is satisfied that the consent was given voluntarily;

the magistrate must tell the person of the effect of consenting.

(3) The effect of consenting is:

- (a) the person will be committed to prison without any extradition proceedings to determine whether the person should be surrendered for an extradition offence; and
- (b) after the Attorney General issues a surrender warrant, the person will be surrendered to the requesting country.

(4) If, after being told of the effect of consenting, the person again consents to being surrendered, the magistrate must:

- (a) by warrant, order that the person be committed to prison; and
- (b) inform the Attorney General in writing that the person has been committed to prison and of the offence for which the person has consented to be surrendered.

(5) The Attorney General may under section 17 issue a surrender warrant for the person after being informed under paragraph (4)(b).

(6) 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.

## 12 Extradition proceedings

If:

- (a) the Attorney General has issued an authority to proceed for an extradition offence in relation to a person; and
- (b) the person has not under section 11 consented to surrender for the offence; and
- (c) an application is made to a magistrate by or on behalf of the person or the requesting country for extradition proceedings to be conducted in relation to the person; and
- (d) the magistrate considers that the person and the requesting country have had reasonable time since the person received a copy of the extradition request in which to prepare for the proceedings;

the magistrate must conduct extradition proceedings as soon as practicable to determine whether the person should be surrendered for the extradition offence.

### 13 Conduct of extradition proceedings

(1) Extradition proceedings must be conducted in the same manner as criminal proceedings. The rules that apply in criminal proceedings to the following matters apply to extradition proceedings:

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

(2) During the proceedings, a person is not entitled to adduce evidence, 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.

### 14 Determination for surrender

(1) A magistrate must not determine that a person should be surrendered and order that the person be held in custody until the Attorney General makes a decision under section 17 unless the magistrate is satisfied:

- (a) that the requesting country is an extradition country; and
- (b) that the offence for which surrender is sought is an extradition offence; and
- (c) as to the identity of the person; and
- (d) that the supporting documents have been produced to the magistrate; and
- (e) that the supporting documents satisfy the requirements of section 15; 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 Attorney General's decision on surrender under section 17; and
- (b) tell the person that he or she may, within 15 days after the day on which the order is made, seek a review of the order under subsection 16(1); and
- (c) record in writing his or her decision and the extradition offence for which the person should be surrendered; and
- (d) give a copy of the record to the person and the Attorney General.

(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) inform the Attorney General in writing of the order and of the magistrate's reasons for determining that the person should not be surrendered.

## 15 Supporting documents

(1) In section 14, **supporting documents**, in relation to an extradition offence means:

- (a) a description of the person sought, together with any other information that may help to establish the identity and nationality of the person; and
- (b) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
- (c) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed; and
- (d) a statement of the acts and omissions that constitute the offence, and details of the time and place the offence was committed; and
- (e) if the person is accused of the offence - a warrant issued by the requesting country for the arrest of the person for the offence, or an authenticated copy of the warrant; and
- (f) if a person has been convicted of the offence, documents, or authenticated copies of documents, that provide evidence of the following:
  - (i) the conviction;
  - (ii) the sentence imposed or intended to be imposed;
  - (iii) whether the sentence imposed has been carried out;
  - (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 authenticated if:

- (a) it purports to be signed or certified by a judge, magistrate or other judicial officer in or of the requesting country; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal:
  - (i) of the requesting country or of a Minister, Department of State or Department or officer of the Government of that country; or
  - (ii) of the person administering the Government of that country or of any person administering a Department of the Government of that country if the extradition country is a colony, territory or protectorate.

(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 Vanuatu.

## 16 Review of magistrate's decision

- (1) If a magistrate orders that a person be held in custody until the Attorney General makes a decision under section 17 on surrender, the person may apply to the Supreme 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 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, vary or quash the order of the magistrate and order that the person be held for surrender or be released.
- (6) If the court orders that the person be held in custody until the Attorney General has made a decision under section 17 on surrender, the court must include in its judgment a statement specifying the offence and must:
  - (a) if the person is not in custody, by warrant, commit the person to prison until the Attorney General has made that decision; or
  - (b) if the person is in custody, order that, the person remain in custody until the Attorney General has made a decision under section 17.
- (7) If the Court orders that the person be released, the person must be released accordingly.

## 17 Surrender determination by Attorney General

- (1) If:
  - (a) a magistrate has reported to the Attorney General 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;

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

- (2) The Attorney General may refuse to order that the person be surrendered if:
  - (a) the requesting country has not given a specialty undertaking; or
  - (b) the requesting country is not a country with which Vanuatu has a bilateral treaty containing a specialty undertaking; or
  - (c) 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
  - (d) the person is a citizen of Vanuatu; or

- (e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Vanuatu 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) a prosecution for the offence for which surrender has been ordered is pending against the person in Vanuatu; or
- (g) the offence for which surrender has been ordered was committed outside the territory of the requesting country and the law of Vanuatu does not provide for jurisdiction over an offence of that kind committed in similar circumstances outside its territory; or
- (h) the offence for which surrender has been ordered is regarded by Vanuatu as having been committed wholly or partly within Vanuatu; or
- (i) the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or *ad hoc* court or tribunal; or
- (j) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
- (k) having regard to:
  - (i) the national interest of Vanuatu, including its interests in effective international cooperation to combat crime; and
  - (ii) the severity of the offence;

the Attorney General is of the view that the person should not be surrendered.

(3) For the purposes of paragraph (2)(a), the requesting country is taken to have given a 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 Attorney General consents to the trial or the surrender to the third country.

(4) The Attorney General must not refuse to surrender a person because the person may be subjected to torture or cruel, inhuman or degrading treatment or punishment under paragraph (2)(h) if the requesting country and Vanuatu have ratified:

- (a) the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 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 Attorney General decides that the person is to be surrendered to the requesting country, the Attorney General must issue a surrender warrant or a temporary surrender warrant for the person.

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

## 18 Surrender warrant

(1) The surrender warrant must:

- (a) be in writing; and
- (b) state the offences for which the person is to be surrendered; and
- (c) require any person who has custody of the person to hand the person over to a police officer; and
- (d) authorise a police officer to:

(i) transport the person from the place where the police officer takes custody of the person to another place within Vanuatu 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 Vanuatu.

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

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

## 19 Temporary surrender warrant

(1) The Attorney General may issue a temporary surrender warrant instead of a surrender warrant if:

- (a) the person is serving a custodial sentence in Vanuatu; and
- (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and
- (c) the Attorney General is satisfied that the requesting country has given an adequate undertaking that the person is subject to a trial in the requesting country and the person is returned to Vanuatu; and
- (d) the Attorney General is satisfied that adequate provision has been made for the travel of the person to the requesting country and for his or her return to Vanuatu.

(2) The temporary surrender warrant must:

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

(d) authorise a police officer to:

(i) transport the person from the place where the police officer takes custody of the person to another place within Vanuatu 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 Vanuatu.

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

(a) is in Vanuatu after trial and sentence in the requesting country; and

(b) has completed his or her custodial sentence in Vanuatu;

the Attorney General may issue a surrender warrant for the surrender of the person to the requesting country, unless the Attorney General is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the requesting country.

(4) The time that a 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 Vanuatu for the purpose of completing the sentence, for which the person was in custody in Vanuatu.

(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 Vanuatu is concluded;

the Attorney General must inform the requesting country that the undertakings provided by that country about the trial and return of the person no longer apply.

## **20 Execution of surrender warrant**

(1) If a person is not surrendered under a surrender warrant within 2 months after:

(a) the date the surrender warrant was issued; or

(b) if the person is serving a custodial sentence, or has been admitted to bail, in Vanuatu - the person has been released from custody or the recognisance has been discharged;

the person may apply to a magistrate to be released from custody. The person must inform the Attorney General of the application.

(2) If the magistrate is satisfied that:

(a) the Attorney General is informed of the application; and

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

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

(3) Without limiting paragraph (2)(b), reasonable cause for delay exists if:

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

## **PART 3 EXTRADITION FROM VANUATU TO COMMONWEALTH COUNTRIES**

### **21 Purpose of Part 3**

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

### **22 Application of Part 2**

Part 2 applies to the extradition of a person from Vanuatu to a Commonwealth country.

### **23 Application of different evidentiary requirements**

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

### **24 The *prima facie* evidence scheme**

In addition to any evidentiary requirements in Part 3, 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 Vanuatu, there would be sufficient evidence to place the person on trial.

## 25 The record of the case scheme

(1) In this section:

**record of the case**, in relation to an offence for which surrender is sought, means:

- (a) a document containing a recital of the evidence acquired to support the request; and
  - (b) an authenticated copy, reproduction or photograph of all exhibits and documentary evidence.
- (2) In addition to any evidentiary requirements in Part 3, 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 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 VANUATU TO SOUTH PACIFIC COUNTRIES

### Division 1 Backing of warrants procedure

## 26 Purpose of Part 4

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

## 27 Provisional arrest warrant

A magistrate must issue a provisional warrant for the arrest of a person if:

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

(b) the magistrate is told by affidavit that:

- (i) an original warrant for the arrest of the person has been issued in the South Pacific country but the warrant is not available in Vanuatu; and
- (ii) the person named in the original warrant may be in or on his or her way to Vanuatu; and

(c) the magistrate is satisfied that it is reasonable in the circumstances to issue a warrant.

## **28 Arrest and remand on provisional arrest warrant**

- (1) A person arrested under a provisional arrest warrant must be brought before a magistrate as soon as practicable.
- (2) Unless the South Pacific Country produces the original warrant on which the provisional arrest warrant was based, 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;
- (3) A magistrate who remands a person on bail:
  - (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Vanuatu; 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.

## **29 Endorsement of warrant**

If:

- (a) an application is made to a magistrate on behalf of a South Pacific country for the endorsement of a warrant for the arrest of a person issued in the South Pacific country (an original warrant); and
- (b) the magistrate is told by affidavit that the person named in the original warrant is, or is suspected of being, in or on his or her way to Vanuatu.

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

## **30 Arrest and remand on endorsed warrant**

- (1) A person who is arrested under an endorsed warrant must be brought before a magistrate as soon as practicable.
- (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; for a period that is necessary for proceedings under Division 2 of this Part to be conducted.
- (3) A magistrate who remands a person on bail:

- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Vanuatu; 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.

### **31 Release from remand**

(1) A person must be brought before a magistrate if:

- (a) he or she is on remand in custody or on bail 28 days after the day on which he or she was arrested on a provisional warrant; and
- (b) an endorsed warrant for the arrest of the person has not been obtained.

(2) Unless the magistrate is satisfied that the endorsed warrant will be obtained within a particular period that is reasonable in all the circumstances, the magistrate must order:

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

(3) A person must be brought before a magistrate 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 32 for extradition proceedings to be conducted.

(4) 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, the magistrate must as the case requires order:

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

## **Division 2 Extradition proceedings**

### **32 Extradition proceedings**

A magistrate must conduct extradition proceedings as soon as practicable to determine whether the person should be surrendered to the South Pacific country if:

(a) either:

- (i) the person has been remanded after being arrested under an endorsed warrant; or
- (ii) the person has been remanded after being arrested under a provisional arrest warrant and the original warrant has been endorsed; and

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

### **33 Conduct of extradition proceedings**

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

(2) Extradition proceedings must be conducted in the same manner as criminal proceedings. The rules that apply in criminal proceedings in relation to the following matters apply to extradition proceedings:

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

(3) In the proceedings, the person is not entitled to adduce evidence, 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.

### **34 Consent to surrender**

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

(2) If:

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

the magistrate must tell the person of the effect of consenting.

(3) The effect of consenting is the person will be:

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

(4) If, after being told of the effect of consenting, the person again consents to being surrendered, the magistrate must:

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

### **35 Determination for surrender**

(1) At the proceedings, a person may not bring evidence that the person did not commit the offence.

(2) However, the person may bring evidence about matters mentioned in subsection (3).

(3) A magistrate must determine that the person should be surrendered for an offence unless he or she is satisfied that:

- (a) the offence is of a trivial nature; or
- (b) if the offence is one of which the person is accused but not convicted - the accusation was not made in good faith and in the interests of justice; or
- (c) a lengthy period has elapsed since the offence was committed; or
- (d) it would be unjust, oppressive or too severe a punishment to surrender the person; or
- (e) the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Vanuatu.

(4) If the magistrate determines that the person should be surrendered, the magistrate must:

- (a) by a surrender warrant, order that the person be surrendered to the South Pacific country; and
- (b) by a warrant, order that the person be committed to prison until the person is surrendered to the South Pacific country; and
- (c) inform the person that he or she may, within 15 days of the day on which the order is made, seek a review of the order under section 36; and
- (d) record in writing his or her decision and the extradition offence for which the person is to be surrendered; and
- (e) give a copy to the person and to the Attorney General.

(5) Despite subsection (4), if:

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

the magistrate must not issue a surrender warrant for the person but must refer the matter to the Attorney General to be dealt with under section 38.

(6) If the magistrate determines that the person should not be surrendered to the South Pacific country, the magistrate must order that the person be released.

### 36 Review of magistrate's decision

- (1) If a magistrate makes an order for the surrender of a person, the person may apply to the Supreme Court for a review of the order.
- (2) If a magistrate makes an order for the release of a person, the South Pacific country may apply to the Court for a review of the order.
- (3) The application must be made within 15 days after the day on which the 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 recognisance be discharged.

### 37 Surrender warrant

- (1) The surrender warrant must:
  - (a) be in writing; and
  - (b) require any person who has custody of the person to hand the person over to a police officer; and
  - (c) authorise a police officer to:
    - (i) transport the person from the place where the police officer takes custody of the person to another place within Vanuatu 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 Vanuatu.
- (2) If the person is serving a custodial sentence, or has been admitted to bail, in Vanuatu for an offence committed in Vanuatu, the surrender warrant must not be executed until:

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

### **38 Temporary surrender warrant**

(1) The Attorney General may issue a temporary surrender warrant instead of a surrender warrant if:

- (a) the person is serving a custodial sentence in Vanuatu; and
- (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and
- (c) the Attorney General is satisfied that the South Pacific country has given an adequate undertaking that:

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

- (ii) the person will be returned to Vanuatu after the trial; and

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

(2) The temporary surrender warrant must:

- (a) be in writing; and
- (b) state the offences for which the person is to be surrendered; and
- (c) require any person who has custody of the person to hand the person over to a police officer; and
- (d) authorise a police officer to:

- (i) transport the person from the place where the police officer takes custody of the person to another place within Vanuatu 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 Vanuatu.

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

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

a magistrate must issue a surrender warrant for the surrender of the person to the South Pacific country.

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

(5) If:

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

(b) because of this, the person's sentence in Vanuatu is concluded;

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

### **39 Execution of surrender warrant**

(1) If a person is not surrendered under a surrender warrant within 2 months after:

(a) the date the surrender warrant was issued; or

(b) if the person is serving a custodial sentence, or has been admitted to bail, in Vanuatu - the person has been released from custody or the recognisance has been discharged;

the person may apply to a magistrate to be released from custody. The person must tell the Attorney General of the application.

(2) If the magistrate is satisfied that:

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

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

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

(3) Without limiting paragraph (2)(b), reasonable cause for delay exists if:

(a) it would have been a danger to the person's life, or prejudicial to the person's health, to surrender the person; or

(b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or

(c) there was delay by Vanuatu 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 VANUATU TO TREATY COUNTRIES**

### **40 Purpose of Part 5**

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

#### **41 Application of Part 2**

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 Vanuatu and the treaty country; and
- (b) any modifications to this Act made by the regulations.

### **PART 6—EXTRADITION FROM VANUATU TO COMITY COUNTRIES**

#### **42 Purpose of Part 6**

The purpose of this Part is to provide for extradition from Vanuatu to countries other than Commonwealth countries, South Pacific countries or treaty countries.

#### **43 Application of Part 2**

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

#### **44 When comity country an extradition country**

- (1) The Minister may, after consultation with the Attorney General:
  - (a) by regulation, specify a comity country as an extradition country; or
  - (b) if an extradition request is received from a comity country that is not specified in the regulations, certify that the country is an extradition country for the purpose of that extradition request.
- (2) When the 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 Vanuatu; and
  - (b) if the country is to be certified, the seriousness of the offence for which extradition of the person is sought; and
  - (c) the public interest of the requesting country.

#### **45 Limitation on extradition proceedings**

Proceedings may not be commenced on a request from a comity country for the surrender of a person unless the country has been specified or certified as an extradition country in accordance with section 44.

#### **46 Other modifications of Part 2**

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

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

#### **47 Purpose of Part 7**

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.

#### **48 Search and seizure on arrest under a warrant**

(1) This section applies to a person arrested:

- (a) on a warrant issued under this Act; or
- (b) on an endorsed warrant.

(2) If a police officer who arrests a person under this Act has reasonable grounds for suspecting that property in the vicinity of the person:

- (a) may be material as evidence in proving an offence for which the warrant was issued; or
- (b) has been acquired by the person as the result of the offence for which the warrant was issued;

the police officer may seize the property.

(3) If a police officer:

- (a) arrests a person under this Act; and
- (b) has reasonable grounds for suspecting that there is on the person, in the clothing that the person is wearing or in or on any property in the vicinity of the person that is under the apparent control of the person, anything (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 Attorney General about how the thing is to be dealt with.

(7) Nothing in this section prevents or restricts the search of a person or of clothing worn by, or of property under the immediate control of, a person after the person is admitted to a prison after having been arrested for an offence.

(8) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

#### **49 Search and seizure warrants**

(1) This section applies 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.

(2) The magistrate may issue a warrant authorising a police officer, with such assistance, and by such force, as is necessary and reasonable:

(a) to seize the thing; or

(b) to enter the place and seize the thing; or

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

(3) The magistrate must not issue the warrant unless:

(a) the magistrate has received by affidavit, further information (if any) that the magistrate requires about the grounds on which the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) The warrant must contain the following information:

(a) the purpose for which it is issued, including a reference to the nature of any offence referred to in paragraph (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 1 month after the day it is issued.

(5) 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.

(6) The police officer must retain in safe keeping a thing seized pending any direction from the Attorney General about how it is to be dealt with.

(7) In this section:

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

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

## 50 Return of seized property

(1) The Attorney General may direct that any property seized under section 48 or 49 that:

- (a) may provide evidence of an offence for which surrender has been ordered; or
- (b) may have been acquired as a result of an offence of that kind;

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

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

## 51 Arrest of persons escaping from custody

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

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

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

## **52 Arrest of person released on bail**

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

## **53 Transit**

- (1) The Attorney General must give permission to a country (the second country) to transport through the territory of Vanuatu 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 Vanuatu; and
  - (b) the second country is:
    - (i) a Commonwealth country, a South Pacific country or a treaty country; or
    - (ii) a country approved by the Attorney General for the purpose of the request.
- (2) If transit permission is given under subsection (1):
  - (a) a police officer in Vanuatu may assist the foreign escort officer escorting the person; and
  - (b) the person may be held in custody in Vanuatu 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 VANUATU**

### **54 Purpose of Part 8**

The purpose of this Part is to provide for the extradition of persons to Vanuatu.

### **55 Surrendered persons to be brought into Vanuatu**

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

## **56 Treatment of person surrendered to Vanuatu**

(1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:

- (a) an offence for which the person was surrendered; or
- (b) 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
- (c) another offence for which the surrendering country consents to the person being detained or tried.

(2) A person surrendered to Vanuatu must not be detained in Vanuatu 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 Vanuatu.

(3) Subsection (1) and (2) do not apply if:

- (a) the country that surrendered the person to Vanuatu consents to the person being so detained, and tried or surrendered; or
- (b) the person has left, or has had the opportunity of leaving, Vanuatu.

## **57 Persons temporarily surrendered to Vanuatu**

(1) This section applies to a person if surrendered to Vanuatu:

- (a) has not completed a custodial sentence in the surrendering country immediately before being surrendered; or
- (b) is a person whom Vanuatu has undertaken to hold in custody and return to the surrendering country.

(2) The person:

- (a) must, while travelling to and from, and while in, Vanuatu, be kept in the custody ordered in writing by the Attorney General; and
- (b) may only be tried for an offence for which the person was surrendered; and
- (c) after the person has been tried, must be returned to the surrendering country.

- (3) The Attorney General must order that a person be released from custody if:
- (a) a person is held in custody only because of an order of the Attorney General under subsection (2); and
  - (b) the surrendering country notifies Vanuatu that the surrendering country no longer requires the person to be returned.

### **58 Evidence for purposes of surrender of persons to Vanuatu**

- (1) If the Attorney General intends to seek a person's extradition to Vanuatu, the Attorney General may, by notice in writing, authorise the taking of evidence for use in any proceedings for the extradition of the person to Vanuatu.
- (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 Attorney General.
- (3) The person in relation to whom the evidence is being taken is not entitled to be represented while the evidence is being taken.

## **PART 9—MISCELLANEOUS**

### **59 Taking of evidence at request of another country**

- (1) If another country requests Vanuatu to take evidence for the purpose of criminal proceedings in that country, the Public Prosecutor may authorise 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 Public Prosecutor.

### **60 Prosecution, instead of extradition, of Vanuatu citizens**

- (1) A person may be prosecuted and punished in Vanuatu for an offence if:
- (a) a country requests the surrender of a person because of conduct the person engaged in outside Vanuatu; and
  - (b) the Attorney General refuses to order the surrender of the person because of a circumstance listed in subsection (2); and
  - (c) the person would have committed an offence against a law in force in Vanuatu if the person had engaged in the conduct, or equivalent conduct, in Vanuatu at that time.
- (2) The following are the circumstances for the purpose of paragraph (1)(b):
- (a) the person is a citizen of Vanuatu; or

- (b) on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, because of his or her race, religion, nationality, political opinions, sex or status; or
- (c) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
- (d) the judgment has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have; or
- (e) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Vanuatu 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 Vanuatu.

(4) A person must not be prosecuted unless the Public Prosecutor:

- (a) considers that there is sufficient evidence in Vanuatu 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 paragraph (1)(c); and
- (b) charged with the offence; and
- (c) remanded in custody or on bail;

although the Public Prosecutor has not given consent under subsection (4).

## **61 Provision of evidence for prosecution by other countries**

If:

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

the Public Prosecutor must give the other country all available evidence to enable the other country to prosecute the person

## 62 Surrender for purposes of trial only

(1) This section applies if:

- (a) Vanuatu refuses to surrender a person because:
  - (i) the person is a citizen of Vanuatu; 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 35 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 Vanuatu;

and the requesting country asks that the person be surrendered for the purposes of trial only.

(2) Vanuatu may surrender the person to the requesting country for the purpose of being tried in the requesting country for the offence for which extradition is sought if:

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

## 63 Regulations

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

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

(2) Without limiting subsection (1), the regulations may:

- (a) amend the lists of countries in the Schedules, but so that a country appears in only one Schedule; and
- (b) amend Schedule 1 so as to provide for additional evidentiary regimes for particular countries; and
- (c) set out the text of extradition treaties; and
- (d) make any modifications to this Act that are necessary give effect to an extradition treaty; and
- (e) amend the forms in Schedule 4.

## 64 Repeal of Extradition Act [CAP 199]

The Extradition Act [CAP 199] is repealed.

**65 Commencement**

This Act commences on the day on which it is published in the Gazette.

**SCHEDULES****SCHEDULE 1****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
	Malawi
Antigua and Barbuda	Maldives
Bahamas	Malta
Bangladesh	Mauritius
Barbados	Montserrat
Belize	Mozambique
Bermuda	Namibia
Botswana	
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**

### **SOUTH PACIFIC COUNTRIES**

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

## **SCHEDULE 3**

### **TREATY COUNTRIES**

## **SCHEDULE 4**

Section 2

### **FORMS OF WARRANTS**

## Form 1—Provisional Arrest Warrant—s 6

Vanuatu

*Extradition Act No 16 of 2002 s 6*

## 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, Vanuatu; 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 6 of the Extradition Act No 16 of 2002, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Vanuatu as soon as practicable to be dealt with according to law.

Dated

*Signature and title of**Magistrate issuing warrant*

## Form 2—Provisional Arrest Warrant—s.27

Vanuatu

*Extradition Act No. 16 of 2002, s.27*

## Provisional Arrest Warrant

TO all police officers:

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

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

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

NOW THEREFORE I, [*name and designation of magistrate*], under section 27 of the Extradition Act No 16 of 2002, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Vanuatu as soon as practicable to be dealt with according to law.

Dated

*Signature and title of**Magistrate issuing warrant*

## Form 3—Surrender Warrant—s.17

Vanuatu

*Extradition Act No 16 of 2002, s. 17*

## Surrender Warrant

TO all police officers:

I, [*name of Attorney General*], Attorney General, have decided under section 17 of the Extradition Act No 16 of 2002 that [*name of person*] is to be surrendered to [*requesting country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Attorney General*]:

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

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

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

(d) authorise the foreign escort officer to transport [*name of person*] out of Vanuatu

Dated

*Signature of Attorney General*

## Form 4—Temporary Surrender Warrant—s.19

Vanuatu

***Extradition Act No 16 of 2002, s.19***

## Temporary Surrender Warrant

TO all police officers:

I, [*name of Attorney General*], Attorney General/Minister, have decided under section 19 of the Extradition Act No 16 of 2002 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 Vanuatu; 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 Vanuatu after the trial; and
- (b) adequate provision has been made for [*name of person*]:to travel to [*requesting country*] and to return to Vanuatu.

NOW THEREFORE I, [*name of Attorney General*]:

- (a) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (b) authorise you to bring [*name of person*] to [*name of place in Vanuatu*] 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 Vanuatu

Dated

*Signature of Attorney General*

Form 5—Surrender Warrant—s.34

Vanuatu

***Extradition Act No 16 of 2002, s. 34***

Surrender Warrant

TO all police officers:

I, [*name and title of magistrate*], have decided under section 34 of the Extradition Act No 16 of 2002 that [*name of person*] is to be surrendered to [*South Pacific country*] for the offence of [*specify each offence for which the person is to be surrendered*].

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

- (a) order that [*name of person*] be surrendered to [*South Pacific country*]; and
- (b) order that [*name of person*] be committed to prison until he/she is surrendered to [*South Pacific country*]; and
- (c) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (d) authorise you to bring [*name of person*] to [*name of place in Vanuatu*] for the purpose of handing [*name of person*] over to the custody of a person authorised by [*South Pacific country*] to escort [*name of person*] to [*South Pacific country*]; and
- (e) authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and
- (f) authorise the foreign escort officer to transport [*name of person*] out of Vanuatu

Dated

*Signature and title of*

*Magistrate issuing warrant*

Form 6—Temporary Surrender Warrant—s.38

Vanuatu

*Extradition Act No 16 of 2002, s. 38*

Temporary Surrender Warrant

TO all police officers:

I, [*name of Attorney General*], Attorney General, have decided under section 38 of the Extradition Act No 16 of 2002 that [*name of person*] is to be temporarily surrendered to [*South Pacific country*] for the offence of [*specify each offence for which the person is to be surrendered*].

[*name of person*]:

(a) is serving a custodial sentence in Vanuatu; and

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

I am satisfied that:

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

(b) adequate provision has been made for [*name of person*]:to travel to [*South Pacific country*] and to return to Vanuatu.

NOW THEREFORE I, [*name of Attorney General*]:

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

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

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

(d) authorise foreign escort officer to transport [*name of person*] out of Vanuatu

Dated

*Signature of Attorney General*