



Extradition Act 1988

No. 4 of 1988

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Extradition Act 1988

No. 4 of 1988

An Act relating to the extradition of persons to and from Australia

[Assented to 9 March 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Extradition Act 1988*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Principal objects of Act

3. The principal objects of this Act are:
 - (a) to codify the law relating to the extradition of persons from Australia to extradition countries and New Zealand and, in particular, to provide for proceedings by which courts may determine whether a

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person is to be, or is eligible to be, extradited, without determining the guilt or innocence of the person of an offence;

- (b) to facilitate the making of requests for extradition by Australia to other countries; and
- (c) to enable Australia to carry out its obligations under extradition treaties.

Exclusion of other laws

4. This Act excludes the operation of:

- (a) the Imperial Acts known as the Extradition Acts, 1870 to 1935;
- (b) the Imperial Act known as the Fugitive Offenders Act, 1881; and
- (c) any other laws relating to extradition of persons to and from Australia that were in force in a Territory immediately before the commencement of this Act.

Interpretation

5. In this Act, unless the contrary intention appears:

“extradition country” means:

- (a) any country (other than New Zealand) that is declared by the regulations to be an extradition country;
- (b) any of the following that is declared by the regulations to be an extradition country:
 - (i) a colony, territory or protectorate of a country;
 - (ii) a territory for the international relations of which a country is responsible; and
- (c) until the regulations provide that this paragraph does not apply in relation to the foreign state, any foreign state to which the former Foreign Extradition Act applied by virtue of section 9 of that Act;

“extradition offence” means:

- (a) in relation to a country other than Australia—an offence against a law of the country:
 - (i) for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; or
 - (ii) if the offence does not carry a penalty under the law of the country—the conduct constituting which is, under an extradition treaty in relation to the country, required to be treated as an offence for which the surrender of persons is permitted by the country and Australia; or
- (b) in relation to Australia or a part of Australia—an offence against a law of Australia, or a law in force in the part of Australia, for which the maximum penalty is death or

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imprisonment, or other deprivation of liberty, for a period of not less than 12 months;

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

“extradition treaty”, in relation to a country, means a treaty to which the country and Australia are parties (whether or not any other country is also a party), being a treaty relating in whole or in part to the surrender of persons accused or convicted of offences;

“Federal Court” means the Federal Court of Australia;

“former Foreign Extradition Act” means the *Extradition (Foreign States) Act 1966* as in force immediately before the commencement of this Act;

“indorsed New Zealand warrant” means a New Zealand warrant that has been indorsed under section 28;

“magistrate” means:

- (a) a magistrate of a Territory other than the Northern Territory or Norfolk Island; or
- (b) a magistrate of a State, the Northern Territory or Norfolk Island, being a magistrate in respect of whom an arrangement is in force under section 46;

“New Zealand warrant” means a warrant that purports to be issued by a court, a judge, a magistrate or an officer of a court, of New Zealand, being a warrant for the arrest of a person accused or convicted of an offence against the law of New Zealand;

“offence” includes an offence against a law relating to taxation, customs duties or other revenue matter or relating to foreign exchange control;

“police officer” means a member or special member of the Australian Federal Police or a member of the police force of a State or Territory;

“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 that is constituted by conduct of a kind referred to in:
 - (i) Article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft, being the convention a copy of the English text of which is set out in the Schedule to the *Crimes (Hijacking of Aircraft) Act 1972*;
 - (ii) Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, being the convention a copy of the English text of

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which is set out in the Schedule to the *Crimes (Protection of Aircraft) Act 1973*;

- (iii) paragraph 1 of Article 2 of the Convention on the Protection and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, being the convention a copy of the English text of which is set out in the Schedule to the *Crimes (Internationally Protected Persons) Act 1976*;
 - (iv) Article III of the Convention on the Prevention and Punishment of the Crime of Genocide, being the convention a copy of the English text of which is set out in the *Genocide Convention Act 1949*;
 - (v) Article 1 of the International Convention against the Taking of Hostages, being the convention of that title that was adopted by the General Assembly of the United Nations on 17 December 1979; or
 - (vi) Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, being the convention of that title that was adopted by the General Assembly of the United Nations on 10 December 1984;
- (b) an offence constituted by conduct that, by an extradition treaty (not being a bilateral treaty) in relation to the country or any country, is required to be treated as an offence for which a person is permitted to be surrendered or tried, being an offence declared by regulations for the purposes of this paragraph not to be a political offence in relation to the country or all countries;
- (c) an offence constituted by:
- (i) the murder, kidnapping or other attack on the person or liberty; or
 - (ii) a threat or attempt to commit, or participation as an accomplice in, a murder, kidnapping or other attack on the person or liberty;
- of the head of state or head of government of the country or a member of the family of either such person, being an offence declared by regulations for the purposes of this paragraph not to be a political offence in relation to the country; or
- (d) an offence constituted by taking or endangering, attempting to take or endanger or participating in the taking or endangering of, the life of a person, being an offence:
- (i) committed in circumstances in which such conduct creates a collective danger, whether direct or indirect, to the lives of other persons; and

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- (ii) declared by regulations for the purposes of this paragraph not to be a political offence in relation to the country;

“prison” includes a gaol, lock-up or other place of detention;

“provisional arrest warrant” means:

- (a) where the expression is used in Part II—a warrant issued under section 12; or
- (b) where the expression is used in Part III—a warrant issued under section 29;

“statutory form”, in relation to a warrant, notice, indorsement, application or certificate, means the form of the warrant, notice, indorsement, application or certificate, as the case may be, set out in the regulations;

“surrender offence”, in relation to a person whom the Attorney-General has determined, under subsection 22 (2), is to be surrendered to an extradition country in relation to an extradition offence or offences, means:

- (a) that offence or each of those offences; and
- (b) any offence of which the Attorney-General has been advised in relation to the person under subsection 20 (2);

“surrender warrant” means:

- (a) where the expression is used in Part II:
 - (i) a warrant issued, or required to be issued, under section 23; or
 - (ii) a warrant issued, or permitted to be issued, under section 25; or
- (b) where the expression is used in Part III:
 - (i) a warrant issued, or required to be issued, under paragraph 34 (1) (c);
 - (ii) a warrant issued, or required to be issued, under subsection 35 (2); or
 - (iii) a warrant issued, or permitted to be issued, under section 37;

“temporary surrender warrant” means:

- (a) where the expression is used in Part II—a warrant issued, or permitted to be issued, under subsection 24 (1); or
- (b) where the expression is used in Part III—a warrant issued, or permitted to be issued, under subsection 36 (1);

“treaty” includes a convention, protocol, agreement or arrangement.

Meaning of “extraditable person”

6. Where:

(a) either:

- (i) a warrant is or warrants are in force for the arrest of a person in relation to an offence or offences against the law

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of a country that the person is accused of having committed either before or after the commencement of this Act; or

(ii) a person has been convicted of an offence or offences against the law of a country either before or after the commencement of this Act and:

(A) there is an intention to impose a sentence on the person as a consequence of the conviction; or

(B) the whole or a part of a sentence imposed on the person as a consequence of the conviction remains to be served;

(b) the offence or any of the offences is an extradition offence in relation to the country; and

(c) the person is believed to be outside the country;

the person is, for the purposes of this Act, an extraditable person in relation to the country.

Meaning of “extradition objection”

7. For the purposes of this Act, there is an extradition objection in relation to an extradition offence for which the surrender of a person is sought by an extradition country if:

(a) the extradition offence is a political offence in relation to the extradition country;

(b) the surrender of the person, in so far as it purports to be sought for the extradition offence, is actually sought for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality or political opinions or for a political offence in relation to the extradition country;

(c) on surrender to the extradition country in respect of the extradition offence, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, religion, nationality or political opinions;

(d) assuming that the conduct constituting the extradition offence, or equivalent conduct, had taken place in Australia at the time at which the extradition request for the surrender of the person was received, that conduct or equivalent conduct would have constituted an offence under the military law, but not also under the ordinary criminal law, of Australia; or

(e) the person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or Australia, or has undergone the punishment provided by the law of that country or Australia, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence.

Certain places etc. to be part of a country

8. (1) For the purposes of the application of this Act in relation to a country (other than Australia):

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

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- (b) a territory for the international relations of which the country is responsible; and
 - (c) a ship or aircraft of, or registered in, the country;
- are, except in the case of a colony, territory or protectorate that is an extradition country, each deemed to be part of the country.

(2) For the purposes of the application of this Act in relation to Australia:

- (a) an external Territory; and
 - (b) a ship or aircraft of, or registered in, Australia;
- are each deemed to be part of Australia.

Law of a country

9. A reference in this Act to a law of a country includes a reference to a law of, or in force in, a part of the country.

Interpretative provisions relating to offences

10. (1) Where a person has been convicted in the person's absence of an offence against the law of an extradition country, whether or not the conviction is a final conviction, then, for the purposes of this Act, the person is deemed not to have been convicted of that offence but is deemed to be accused of that offence.

(2) A reference in this Act to conduct constituting an offence is a reference to the acts or omissions, or both, by virtue of which the offence has, or is alleged to have, been committed.

(3) In determining for the purposes of paragraph 7 (d), subparagraph 16 (2) (a) (i) or paragraph 19 (2) (c) whether, if conduct constituting an extradition offence in relation to an extradition country, or equivalent conduct, had taken place in Australia or in a part of Australia at a particular time, that conduct or equivalent conduct would have constituted an offence of a particular kind in relation to Australia or the part of Australia, the following provisions have effect:

- (a) where the conduct or equivalent conduct consists of 2 or more acts or omissions—regard may be had to all or to only one or some of those acts or omissions;
- (b) any difference between the denomination or categorisation of offences under the law of the country and the law of Australia, or the law in force in the part of Australia, as the case requires, shall be disregarded.

(4) A reference in this Act to an extradition offence for which surrender of a person is sought by an extradition country is, in relation to a time after the Attorney-General has given a notice under subsection 16 (1) in relation to the person, a reference to any extradition offence to which the notice (including the notice as amended) relates.

Modification of Act in relation to certain countries

11. (1) The regulations may:

- (a) state that this Act applies in relation to a specified extradition country subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to a bilateral extradition treaty in relation to the country, being a treaty a copy of which is set out in the regulations; or
- (b) make provision instead to the effect that this Act applies in relation to a specified extradition country subject to other limitations, conditions, exceptions or qualifications.

(2) For the purposes of subsection (1), but without otherwise affecting the generality of that subsection, the reference in paragraphs (1) (a) and (b) to this Act applying subject to limitations, conditions, exceptions or qualifications is deemed to include a reference to this Act applying subject to a modification to the effect that a number of days greater or less than the 45 days referred to in paragraph 17 (2) (a) applies for the purposes of that paragraph.

(3) Until the regulations make provision as mentioned in subsection (1) in relation to an extradition country, being a foreign state to which paragraph (c) of the definition of "extradition country" in section 5 applies, this Act applies in relation to the extradition country subject to any limitations, conditions, exceptions or qualifications to which the former Foreign Extradition Act, in its application in relation to the extradition country as a foreign state, was subject by virtue of section 9 of that Act.

(4) Where, by virtue of subsection (1) or (3), this Act applies in relation to an extradition country subject to a limitation, condition, qualification or exception that, but for this subsection, would have the effect that a person is not eligible for surrender to the extradition country in relation to an extradition offence for the purposes of subsection 19 (2) unless the sufficient evidence test is satisfied, then, that limitation, condition, qualification or exception shall be taken instead to have the effect that the person is not eligible for surrender to that country in relation to that offence for the purposes of subsection 19 (2) unless the *prima facie* evidence test is satisfied.

(5) For the purposes of subsection (4):

- (a) a reference to the sufficient evidence test being satisfied is a reference to the provision of evidence that, if the conduct of the person constituting the extradition offence referred to in that subsection had taken place in a part of Australia, would be sufficient to:
 - (i) justify trial of the person in relation to an offence against a law in force in the part of Australia;
 - (ii) justify committal of the person for trial in relation to such an offence; or
 - (iii) establish a *prima facie* case that the person committed such an offence; and

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- (b) a reference to the *prima facie* evidence test being satisfied is a reference to the provision of evidence that, if the conduct of the person constituting the extradition offence referred to in that subsection had taken place in the part of Australia referred to in paragraph (a) of this subsection, would, if uncontroverted, provide sufficient grounds to put the person on trial, or sufficient grounds for inquiry by a court, in relation to the offence.

(6) For the purpose of determining under subsection 19 (1) whether a person is eligible for surrender in relation to an extradition offence for which surrender of the person is sought by an extradition country, no limitation, condition, qualification or exception otherwise applicable under this section (not including a limitation, condition, qualification or exception having the effect referred to in subsection (4)) has the effect of requiring or permitting a magistrate to be satisfied of any matter other than a matter set out in paragraph 19 (2) (a), (b), (c) or (d).

PART II—EXTRADITION FROM AUSTRALIA TO EXTRADITION COUNTRIES

Provisional arrest warrants

12. (1) Where:

- (a) an application is made, in the statutory form, on behalf of an extradition country to a magistrate for the issue of a warrant for the arrest of a person; and
- (b) the magistrate is satisfied, on the basis of information given by affidavit, that the person is an extraditable person in relation to the extradition country;

the magistrate shall issue a warrant, in the statutory form, for the arrest of the person.

(2) The magistrate shall forthwith send to the Attorney-General a report stating that the magistrate has issued the warrant, together with a copy of the affidavit.

(3) Where:

- (a) the Attorney-General has received the report under subsection (2) or has otherwise become aware of the issue of the warrant;
- (b) the person has not been arrested under the warrant; and
- (c) either:
 - (i) the Attorney-General decides not to issue a notice under subsection 16 (1) in relation to the person; or
 - (ii) the Attorney-General considers for any other reason that the warrant should be cancelled;

the Attorney-General shall, by notice in writing in the statutory form, direct a magistrate to cancel the warrant.

Search and seizure upon arrest

13. (1) Where a police officer:

- (a) arrests a person under a provisional arrest warrant; and
- (b) has reasonable grounds for suspecting that property in the vicinity of the person that is under the apparent control of the person:
 - (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 by the extradition country concerned; or
 - (ii) has been acquired by the person as a result of such an offence;

the police officer may seize that property.

(2) Where a police officer:

- (a) arrests a person under a provisional arrest warrant; and
- (b) has reasonable grounds for suspecting that there is on the person, in the clothing that the person is wearing or in or on any property in the vicinity of the person that is under the apparent control of the person, any thing, including a sum of money:
 - (i) that 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 by the extradition country concerned; or
 - (ii) that has been acquired by the person as a result of such an offence;

the police officer may search that person, that person's clothing or that property, and may seize any thing found as a result of that search.

(3) Subsection (2) does not authorise a police officer to remove, or to require the person to remove, any of the clothing that the person is wearing.

(4) A person shall not be searched under subsection (2) except by a police officer of the same sex.

(5) A police officer may retain any property or thing seized under subsection (1) or (2) pending any direction from the Attorney-General as to the manner in which the thing is to be dealt with.

(6) Nothing in this section shall be taken to prevent or restrict the search of a person or of clothing worn by, or of property under the immediate control of, a person, upon the admission of the person as an inmate of a prison after having been charged with an offence.

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

Search and seizure warrants

14. (1) Where a magistrate is informed by affidavit that there are reasonable grounds for suspecting that there may be in any place any thing:

(a) that may be material as evidence in proving any offence in relation to which a provisional arrest warrant was issued or for which surrender of a person is sought by an extradition country; or

(b) that has been acquired by a person as a result of such an offence; and the affidavit sets out those grounds, the magistrate may issue a warrant, in the statutory form, authorising a police officer named in the warrant, with such assistance, and by such force, as is necessary and reasonable:

(c) to seize the thing;

(d) to enter upon or into the place and to seize the thing; or

(e) to enter upon or into the place, to search the place for any such thing and to seize any such thing found in the place.

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

(a) there has been given to the magistrate by affidavit such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

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

(3) The warrant shall state:

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

(b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;

(c) the kind of things authorised to be seized; and

(d) that it ceases to have effect on a specified day, not being later than 1 month after the day of issue of the warrant.

(4) If, in the course of searching in accordance with the warrant for a thing that may be material as evidence in proving an offence or that has been acquired as a result of an offence, being a thing of a kind stated in the warrant:

(a) a police officer finds any thing that the police officer believes on reasonable grounds to be connected with the offence, although 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 deemed to authorise the police officer to seize the thing.

(5) Where a police officer seizes a thing in accordance with this section, the police officer may retain the thing pending any direction from the Attorney-General as to the manner in which it is to be dealt with.

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(6) In this section:

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

“thing” includes a vessel, aircraft or vehicle.

Remand

15. (1) A person who is arrested under a provisional arrest warrant shall be brought as soon as practicable before a magistrate in the State or Territory in which the person is arrested.

(2) The person shall be remanded by a magistrate in custody, or, subject to subsection (6), on bail, for such period or periods as may be necessary for proceedings under section 18 or 19, or both, to be conducted.

(3) Where 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.

(4) At any time before proceedings under section 18 or 19 commence in relation to a person (in this section called the “transferee”) who is on remand under subsection (2), the Attorney-General may, by warrant in the statutory form:

(a) where the transferee is in custody—direct a magistrate to order the release of the transferee into the custody of a specified police officer and authorise that police officer to take the transferee in custody to appear before a magistrate in a specified State or Territory; or

(b) where the transferee has been granted bail—direct a magistrate to order the discharge of the recognizances on which bail was granted and authorise a specified police officer to take the transferee in custody to appear before a magistrate in a specified State or Territory.

(5) The transferee shall be remanded by a magistrate in the specified State or Territory in custody, or, subject to subsection (6), on bail, for such period or periods as may be necessary for proceedings under section 18 or 19, or both, to be conducted.

(6) A magistrate shall not remand a person on bail under this section unless there are special circumstances justifying such remand.

Notice by Attorney-General

16. (1) Where the Attorney-General receives an extradition request from an extradition country in relation to a person, the Attorney-General may, in his or her discretion, by notice in writing in the statutory form expressed to be directed to any magistrate, state that the request has been received.

(2) The Attorney-General shall not give the notice:

(a) unless the Attorney-General is of the opinion:

(i) that the person is an extraditable person in relation to the extradition country; and

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- (ii) that, if the conduct of the person constituting the extradition offence, or any of the extradition offences, for which surrender of the person is sought, or equivalent conduct, had taken place in Australia at the time at which the extradition request was received, the conduct or the equivalent conduct would have constituted an extradition offence in relation to Australia; or
 - (b) if the Attorney-General is of the opinion that there is an extradition objection in relation to the extradition offence, or all of the extradition offences, for which surrender of the person is sought.
- (3) As soon as practicable after the person is remanded under section 15 or the notice is issued, whichever is the later:
- (a) a copy of the notice; and
 - (b) copies of the documents referred to in paragraph 19 (2) (a) and, if applicable, paragraph 19 (2) (b);
- shall be given to the person.

Release from remand

17. (1) Where a person is on remand under section 15 and:

- (a) the Attorney-General decides not to issue a notice under subsection 16 (1) in relation to the person; or
- (b) the Attorney-General considers for any other reason that the remand should cease;

the Attorney-General shall, by notice in writing in the statutory form, direct a magistrate to order:

- (c) if the person is in custody—the release of the person from custody; or
- (d) if the person has been granted bail—the discharge of the recognizances on which bail was granted.

(2) Where:

- (a) a person is, under section 15, on remand 45 days (or such greater or lesser number of days as may be applicable, by virtue of subsection 11 (2), under the regulations) after the day on which the person was arrested; and
- (b) a notice has not been given under subsection 16 (1) in relation to the person;

the person shall be brought before a magistrate who shall, unless the magistrate is satisfied that such a notice is likely to be given within a particular period that is reasonable in all the circumstances, order the release of the person from custody, or the discharge of the recognizances on which bail was granted to the person, as the case requires.

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(3) Where:

- (a) a magistrate was satisfied under subsection (2) that a notice under subsection 16 (1) was likely to be given in relation to the person within a particular period; and
- (b) the notice is not given within the period;

the person shall be brought before a magistrate who shall order the release of the person from custody, or the discharge of the recognizances on which bail was granted to the person, as the case requires.

Consent to surrender

18. (1) Where:

- (a) a person is on remand under section 15; and
- (b) the Attorney-General has given a notice under subsection 16 (1) in relation to the person;

the person may inform a magistrate that the person consents to being surrendered to the extradition country concerned in relation to the extradition offence, or all of the extradition offences, for which surrender of the person is sought by that country.

(2) Where the person informs the magistrate that he or she so consents, the magistrate shall, unless the magistrate has reason to believe that the consent was not given voluntarily:

- (a) advise the person that the effect of so consenting will be that:
 - (i) the person will be committed to prison without any proceedings being conducted under section 19 to determine whether the person is eligible for surrender in relation to any extradition offence; and
 - (ii) the person will, if the Attorney-General issues a surrender warrant or a temporary surrender warrant, be surrendered to the extradition country; and
- (b) if, after the person has been advised as mentioned in paragraph (a), the person again consents to being surrendered:
 - (i) by warrant in the statutory form, order that the person be committed to prison to await surrender under a surrender warrant or temporary surrender warrant or release pursuant to an order under subsection 22 (5); and
 - (ii) advise the Attorney-General in writing of the offence or the offences in respect of which the person has so consented.

Determination of eligibility for surrender

19. (1) Where:

- (a) a person is on remand under section 15;
- (b) the Attorney-General has given a notice under subsection 16 (1) in relation to the person;
- (c) an application is made to a magistrate by or on behalf of the person or the extradition country concerned for proceedings to be conducted in relation to the person under this section; and

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- (d) the magistrate considers that the person and the extradition country have had reasonable time in which to prepare for the conduct of such proceedings;

the magistrate shall conduct proceedings to determine whether the person is eligible for surrender in relation to the extradition offence or extradition offences for which surrender of the person is sought by the extradition country.

(2) For the purposes of subsection (1), the person is only eligible for surrender in relation to an extradition offence for which surrender of the person is sought by the extradition country if:

- (a) the supporting documents in relation to the offence have been produced to the magistrate;
- (b) where this Act applies in relation to the extradition country subject to any limitations, conditions, exceptions or qualifications that require the production to the magistrate of any other documents—those documents have been produced to the magistrate;
- (c) the magistrate is satisfied that, if the conduct of the person constituting the offence in relation to the extradition country, or equivalent conduct, had taken place in the part of Australia where the proceedings are being conducted and at the time at which the extradition request in relation to the person was received, that conduct or that equivalent conduct would have constituted an extradition offence in relation to that part of Australia; and
- (d) the person does not satisfy the magistrate that there are substantial grounds for believing that there is an extradition objection in relation to the offence.

(3) In paragraph (2) (a), “supporting documents”, in relation to an extradition offence, means:

- (a) if the offence is an offence of which the person is accused—a duly authenticated warrant issued by the extradition country for the arrest of the person for the offence, or a duly authenticated copy of such a warrant;
- (b) if the offence is an offence of which the person has been convicted—such duly authenticated documents as provide evidence of:
 - (i) the conviction;
 - (ii) the sentence imposed or the intention to impose a sentence; and
 - (iii) the extent to which a sentence imposed has not been carried out; and
- (c) in any case:
 - (i) a duly authenticated statement in writing setting out a description of, and the penalty applicable in respect of, the offence; and
 - (ii) a duly authenticated statement in writing setting out the conduct constituting the offence.

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(4) Where, in the proceedings:

- (a) a document or documents containing a deficiency or deficiencies of relevance to the proceedings is or are produced; and**
- (b) the magistrate considers the deficiency or deficiencies to be of a minor nature;**

the magistrate shall adjourn the proceedings for such period as the magistrate considers reasonable to allow the deficiency or deficiencies to be remedied.

(5) In the proceedings, the person to whom the proceedings relate 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 constituting an extradition offence for which the surrender of the person is sought.

(6) Subject to subsection (5), any document that is duly authenticated is admissible in the proceedings.

(7) A document that is sought by or on behalf of an extradition country to be admitted in the proceedings is duly authenticated for the purposes of this section if:

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

(8) Nothing in subsection (6) prevents the proof of any matter or the admission of any document in the proceedings in accordance with any other law of the Commonwealth or any law of a State or Territory.

(9) Where, in the proceedings, the magistrate determines that the person is eligible for surrender to the extradition country in relation to the extradition offence or one or more of the extradition offences, the magistrate shall:

- (a) by warrant in the statutory form, order that the person be committed to prison to await surrender under a surrender warrant or temporary surrender warrant or release pursuant to an order under subsection 22 (5);**
- (b) inform the person that he or she may, within 15 days after the day on which the order in the warrant is made, seek a review of the order under subsection 21 (1); and**
- (c) record in writing the extradition offence or extradition offences in relation to which the magistrate has determined that the person is eligible for surrender and make a copy of the record available to the person and the Attorney-General.**

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(10) Where, in the proceedings, the magistrate determines that the person is not, in relation to any extradition offence, eligible for surrender to the extradition country seeking surrender, the magistrate shall:

- (a) order that the person be released; and
- (b) advise the Attorney-General in writing of the order and of the magistrate's reasons for determining that the person is not eligible for surrender.

Consent to accessory extradition

20. (1) Where:

- (a) either:
 - (i) in proceedings under section 18, a person consents in accordance with that section to being surrendered to an extradition country in relation to an extradition offence or extradition offences; or
 - (ii) in proceedings under subsection 19 (1), a magistrate determines that a person is eligible for surrender to an extradition country in relation to an extradition offence or extradition offences; and
- (b) the extradition country has requested that the person also be surrendered for an offence that is not an extradition offence or offences that are not extradition offences;

the magistrate shall, in those proceedings, ask the person whether he or she consents to being surrendered to the country in respect of the offence or any of the offences referred to in paragraph (b).

(2) Where the person gives his or her consent to being so surrendered, the magistrate shall, unless he or she considers that the consent was not given voluntarily, advise the Attorney-General in writing of the offence or offences in respect of which the person has so consented.

Review of magistrate's orders

21. (1) Where a magistrate of a State or Territory makes an order under subsection 19 (9) or (10) in relation to a person whose surrender is sought by an extradition country:

- (a) in the case of an order under subsection 19 (9)—the person; or
- (b) in the case of an order under subsection 19 (10)—the extradition country;

may, within 15 days after the day on which the magistrate makes the order, apply to the Federal Court, or to the Supreme Court of the State or Territory, for a review of the order.

- (2) The Court may, by order:
 - (a) confirm the order of the magistrate; or
 - (b) quash the order and direct a magistrate to:
 - (i) in the case of an order under subsection 19 (9)—order the release of the person; or

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- (ii) in the case of an order under subsection 19 (10)—order, by warrant in the statutory form, that the person be committed to prison to await surrender under a surrender warrant or temporary surrender warrant or release pursuant to an order under subsection 22 (5).

(3) The person or the extradition country, whether or not the person or country was the applicant for review under subsection (1), may appeal to the Full Court of the Federal Court from the order of the Federal Court or the Supreme Court.

(4) The person or the extradition country is not entitled to appeal to the Full Court more than 15 days after the day on which the order of the Federal Court or the Supreme Court is made.

(5) The High Court shall not grant special leave to appeal against the order of the Full Court made on the appeal referred to in subsection (3) if the application for special leave is made more than 15 days after the day on which the order of the Full Court is made.

(6) Where the person or the extradition country:

- (a) applies under subsection (1) for a review of an order;
- (b) appeals under subsection (3) against an order made on that review;
or
- (c) appeals to the High Court against an order made on that appeal;

the following provisions have effect:

- (d) the court to which the application or appeal is made shall have regard only to the material that was before the magistrate;
- (e) if, because of the order referred to in paragraph (a), (b) or (c), as the case requires, the person has been released—the court to which the application or appeal is made may order the arrest of the person;

(f) if:

- (i) because of the order referred to in paragraph (a), (b) or (c), as the case requires, the person has not been released;
or
- (ii) the person has been arrested under an order made under paragraph (e);

the court to which the application or appeal is made may:

- (iii) order that the person be kept in such custody as the court directs; or
- (iv) order the release on bail of the person on such terms and conditions as the court thinks fit;

until the review has been conducted or the appeal has been heard;

- (g) if the court to which the application or appeal is made determines that the person is eligible for surrender, within the meaning of subsection 19 (2), in relation to an extradition offence or extradition

offences—the court shall include in its judgment on the review or appeal a statement to that effect specifying the offence or offences.

Surrender determination by Attorney-General

22. (1) In this section:

“eligible person” means a person who has been committed to prison:

- (a) by order of a magistrate made under section 18; or
- (b) by order of a magistrate made under subsection 19 (9) or required to be made under subparagraph 21 (2) (b) (ii) (including by virtue of an appeal referred to in section 21), being an order in relation to which no proceedings under section 21 are being conducted or available;

“qualifying extradition offence”, in relation to an eligible person, means any extradition offence:

- (a) if paragraph (a) of the definition of “eligible person” applies—in relation to which the person consented in accordance with section 18; or
- (b) if paragraph (b) of the definition of “eligible person” applies—in relation to which the magistrate referred to in that paragraph or the court that conducted final proceedings under section 21, as the case requires, determined that the person was eligible for surrender within the meaning of subsection 19 (2).

(2) The Attorney-General shall, as soon as is reasonably practicable, having regard to the circumstances, after a person becomes an eligible person, determine whether the person is to be surrendered in relation to a qualifying extradition offence or qualifying extradition offences.

(3) For the purposes of subsection (2), the eligible person is only to be surrendered in relation to a qualifying extradition offence if:

- (a) the Attorney-General is satisfied that there is no extradition objection in relation to the offence;
- (b) the Attorney-General is satisfied that, on surrender to the extradition country, the person will not be subjected to torture;
- (c) where the offence is punishable by a penalty of death—by virtue of an undertaking given by the extradition country to Australia, one of the following is applicable:
 - (i) the person will not be tried for the offence;
 - (ii) if the person is tried for the offence, the death penalty will not be imposed on the person;
 - (iii) if the death penalty is imposed on the person, it will not be carried out;
- (d) the extradition country concerned has given a speciality assurance in relation to the person;

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(e) where, because of section 11, this Act applies in relation to the extradition country subject to a limitation, condition, qualification or exception that has the effect that:

- (i) surrender of the person in relation to the offence shall be refused; or
- (ii) surrender of the person in relation to the offence may be refused;

in certain circumstances—the Attorney-General is satisfied:

- (iii) where subparagraph (i) applies—that the circumstances do not exist; or
- (iv) where subparagraph (ii) applies—either that the circumstances do not exist or that they do exist but that nevertheless surrender of the person in relation to the offence should not be refused; and

(f) the Attorney-General, in his or her discretion, considers that the person should be surrendered in relation to the offence.

(4) For the purposes of paragraph (3) (d), the extradition country shall be taken to have given a speciality assurance in relation to the eligible person if, by virtue of:

- (a) a provision of the law of the country;
- (b) a provision of an extradition treaty in relation to the country; or
- (c) an undertaking given by the country to Australia;

the eligible person, after being surrendered to the country, will not, unless the eligible person has left or had the opportunity of leaving the country:

- (d) be detained or tried in the country for any offence that is alleged to have been committed, or was committed, before the eligible person's surrender other than:
 - (i) any surrender offence;
 - (ii) any offence (being an offence for which the penalty is the same or is a shorter maximum period of imprisonment or other deprivation of liberty) of which the eligible person could be convicted on proof of the conduct constituting any surrender offence;
 - (iii) any extradition offence in relation to the country (not being an offence for which the country sought the surrender of the eligible person in proceedings under section 19) in respect of which the Attorney-General consents to the eligible person being so detained or tried; or
- (e) be detained in the country for the purpose of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before the eligible person's surrender to the first-mentioned country, other than any offence in respect of which the Attorney-General consents to the eligible person being so detained and surrendered.

(5) Where the Attorney-General determines under subsection (2) that the eligible person is not to be surrendered to the extradition country in relation to any qualifying extradition offence, the Attorney-General shall order, in writing, the release of the person.

Surrender warrants

23. Where the Attorney-General determines under subsection 22 (2) that a person is to be surrendered to an extradition country in relation to an extradition offence or extradition offences, the Attorney-General shall, unless the Attorney-General issues a temporary surrender warrant, issue a warrant for the surrender of the person to the extradition country under this section.

Temporary surrender warrants

24. (1) Subject to this section, where:

- (a) the Attorney-General determines under subsection 22 (2) that a person is to be surrendered to an extradition country in relation to an extradition offence or extradition offences;
- (b) the person is serving a sentence or sentences of imprisonment in respect of an offence or offences against a law of Australia;
- (c) any surrender offence in relation to the person is an offence of which the person is accused; and
- (d) the Attorney-General is satisfied that:
 - (i) it is in the interests of the administration of justice that a warrant under this subsection be issued instead of a surrender warrant; and
 - (ii) the extradition country has given adequate undertakings to the Attorney-General in relation to:
 - (A) the trial of the person in the extradition country for any surrender offence of which the person is accused;
 - (B) the return of the person to Australia; and
 - (C) the custody of the person while travelling to and from, and while in, the extradition country;

the Attorney-General may issue a warrant under this subsection.

(2) For the purposes of paragraph (1) (b), the person shall be taken not to be serving a sentence of imprisonment if the person has been released on parole or licence, or has been otherwise conditionally released, for the remainder of the sentence.

(3) Where any offence referred to in paragraph (1) (b) is an offence against the law of a State, the Northern Territory or Norfolk Island, the Attorney-General shall not issue the warrant unless:

- (a) the Attorney-General is satisfied that the law of the State, the Northern Territory or Norfolk Island, as the case may be:

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- (i) would permit the release of the person for the purpose of surrender to the extradition country under such a warrant; and
 - (ii) would, if the person were surrendered to the extradition country under such a warrant, permit the time spent by the person in custody in connection with the warrant (including time spent in custody outside Australia) to be counted towards the sentence or sentences in respect of the offence; and
- (b) consent to the surrender of the person to the extradition country under such a warrant has been given to the Attorney-General by:
- (i) the appropriate Minister of the Crown of the State;
 - (ii) the appropriate Minister of the Northern Territory; or
 - (iii) the Administrator of Norfolk Island;
- as the case requires.

(4) Where, while the person is in the extradition country pursuant to the warrant, the person ceases to be liable to serve the sentence or sentences of imprisonment in Australia, the Attorney-General shall inform the extradition country that the undertakings referred to in subparagraph (1) (d) (ii) are no longer required to be complied with.

(5) Where any offence referred to in paragraph (1) (b) is an offence against a law of the Commonwealth or of a Territory (other than the Northern Territory or Norfolk Island), any time spent by the person in custody in connection with the warrant (including time spent in custody outside Australia) shall be counted as time served towards the sentence or sentences of imprisonment referred to in that paragraph.

Surrender warrants after temporary surrender

25. (1) Where:

- (a) a person is surrendered to an extradition country under a temporary surrender warrant;
 - (b) the person is returned to Australia in pursuance of undertakings referred to in subparagraph 24 (1) (d) (ii); and
 - (c) the extradition country still seeks the surrender of the person;
- subject to subsection (2), the Attorney-General may, in his or her discretion, issue a warrant for the surrender of the person to the extradition country under this subsection.

(2) The Attorney-General shall not issue a surrender warrant under subsection (1) unless:

- (a) by virtue of:
 - (i) a provision of the law of the extradition country;
 - (ii) a provision of an extradition treaty in relation to the extradition country; or
 - (iii) an undertaking given by the extradition country to Australia;

the person, if surrendered to the extradition country, will not, unless the person has left or had the opportunity of leaving the country:

- (iv) be detained or tried in that country for any offence that is alleged to have been committed, or was committed, before the person's surrender under the temporary surrender warrant referred to in paragraph (1) (a), other than any offence to which subparagraph 22 (4) (d) (i), (ii) or (iii) applies; or
 - (v) be detained in the country for the purpose of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before the person's surrender to the first-mentioned country under the temporary surrender warrant, other than any offence in respect of which the Attorney-General consents to the person being so detained and surrendered; and
- (b) where any surrender offence in relation to the person is punishable by a penalty of death—if the person is surrendered in respect of that offence, then, by virtue of an undertaking given by the extradition country to Australia, one of the following is applicable:
- (i) except where there is only one such offence—the person will not be tried for that offence;
 - (ii) if the person is tried for the offence—the death penalty will not be imposed on the person;
 - (iii) if the death penalty is imposed or was imposed while the person was surrendered under the temporary surrender warrant—it will not be carried out.

Form and execution of surrender warrants and temporary surrender warrants

26. (1) A surrender warrant or a temporary surrender warrant in relation to a person (in this subsection called the "eligible person") shall:

- (a) in the case of a surrender warrant—specify all of the surrender offences in relation to the eligible person;
- (b) in the case of a temporary surrender warrant—specify all of the surrender offences of which the eligible person is accused;
- (c) require the person in whose custody the eligible person is being held to release the eligible person into the custody of a police officer;
- (d) authorise the police officer to transport the eligible person in custody, and, if necessary or convenient, to detain the eligible person in custody, for the purpose of enabling the eligible person to be placed in the custody of a specified person (in this subsection called the "foreign escort officer") and transported out of Australia;
- (e) authorise the foreign escort officer to transport the eligible person in custody out of Australia to a place in the extradition country for the purpose of surrendering the eligible person to a person appointed by the extradition country to receive the eligible person; and

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(f) be in writing in the statutory form.

(2) Subject to this section, a surrender warrant or a temporary surrender warrant shall be executed according to its tenor.

(3) Where a surrender warrant is issued in respect of a person:

- (a) who is in custody; or
- (b) to whom bail has been granted;

in respect of an offence that is alleged to have been committed, or of which the person has been convicted, in Australia, the warrant shall not be executed until the person has been released from custody in respect of that offence or any recognizances on which the person has been granted bail in respect of that offence have been discharged, as the case requires.

(4) For the purposes of subsection (3), a person who is serving a sentence of imprisonment shall be taken not to be in custody if the person has been released on parole or licence, or has been otherwise conditionally released, for the remainder of the sentence.

(5) Where:

- (a) a surrender warrant or a temporary surrender warrant is issued in relation to a person;
- (b) the person is in custody in Australia under the warrant, or otherwise under this Act, more than 2 months after the day on which the warrant was first liable to be executed;
- (c) the person applies to the Federal Court or the Supreme Court of the State or Territory in which the person is in custody; and
- (d) reasonable notice of the intention to make the application has been given to the Attorney-General;

the Court shall, subject to subsection (6), order that the person be released from that custody.

(6) Where the Court is satisfied that the person has not been conveyed out of Australia under the warrant within the period of 2 months or since the person last made an application under subsection (5), as the case may be:

- (a) because to do so would have been dangerous to the life or prejudicial to the health of the person; or
- (b) for any other reasonable cause;

the Court shall not order that the person be released from custody.

Delivery of property to extradition country

27. Where:

- (a) property or a thing is seized under section 13 or 14; and
- (b) the property or thing:
 - (i) may be material as evidence in proving any offence referred to in subparagraph 13 (1) (b) (i) or paragraph 14 (1) (a), as

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the case requires, in relation to a person whose surrender is sought by an extradition country; or

(ii) has been acquired as a result of such an offence;

the Attorney-General may, whether or not a surrender warrant or a temporary surrender warrant is issued in respect of the person, direct, by notice in writing, that the property or thing be sent to the extradition country.

PART III — EXTRADITION FROM AUSTRALIA TO NEW ZEALAND

Indorsement of New Zealand warrants

28. Where:

- (a) an application is made, in the statutory form, on behalf of New Zealand to a magistrate for the indorsement of a New Zealand warrant under this subsection; and
- (b) the magistrate is informed by affidavit that the person for whose arrest the warrant is in force is, or is suspected of being, in or on his or her way to Australia;

the magistrate shall make an indorsement on the warrant, in the statutory form, authorising the execution of the warrant in Australia by any police officer.

Provisional arrest warrants

29. Where:

- (a) an application is made, in the statutory form, on behalf of New Zealand to a magistrate for the issue of a warrant in relation to a person under this section;
- (b) the magistrate is informed by affidavit that a New Zealand warrant has been issued in relation to the person;
- (c) no application is before the magistrate under section 28 for the indorsement of such a warrant; and
- (d) the magistrate considers that the issue of a warrant in relation to the person under this section is, having regard to any information that the magistrate considers relevant, justified in all the circumstances;

the magistrate shall issue a warrant, in the statutory form, for the arrest of the person.

Search and seizure upon arrest

30. (1) Where a police officer:

- (a) arrests a person under an indorsed New Zealand warrant or a provisional arrest warrant; and
- (b) has reasonable grounds for suspecting that property in the vicinity of the person that is under the apparent control of the person:

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- (i) may be material as evidence in proving any offence in relation to which the provisional arrest warrant or any indorsed New Zealand warrant in relation to the person was issued; or
- (ii) has been acquired by the person as a result of such an offence;

the police officer may seize that property.

(2) Where a police officer:

- (a) arrests a person under an indorsed New Zealand warrant or a provisional arrest warrant; and
- (b) has reasonable grounds for suspecting that there is on the person, in the clothing that the person is wearing or in or on any property in the vicinity of the person that is under the apparent control of the person, any thing, including a sum of money:
 - (i) that may be material as evidence in proving any offence in relation to which the provisional arrest warrant or any indorsed New Zealand warrant in relation to the person was issued; or
 - (ii) that has been acquired by the person as a result of such an offence;

the police officer may search that person, that person's clothing or that property, and may seize any thing found as a result of that search.

(3) Subsection (2) does not authorise a police officer to remove, or to require the person to remove, any of the clothing that the person is wearing.

(4) A person shall not be searched under subsection (2) except by a police officer of the same sex.

(5) A police officer may retain any property or thing seized under subsection (1) or (2) pending any direction from the Attorney-General as to the manner in which the thing is to be dealt with.

(6) Nothing in this section shall be taken to prevent or restrict the search of a person or of clothing worn by, or of property under the immediate control of, a person, upon the admission of the person as an inmate of a prison after having been charged with an offence.

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

Search and seizure warrants

31. (1) Where a magistrate is informed by affidavit that there are reasonable grounds for suspecting that there may be in any place any thing:

- (a) that may be material as evidence in proving any offence in relation to which an indorsed New Zealand warrant or a provisional arrest warrant was issued; or
- (b) that has been acquired by a person as a result of such an offence;

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

- (c) to seize the thing;
- (d) to enter upon or into the place and to seize the thing; or
- (e) to enter upon or into the place, to search the place for any such thing and to seize any such thing found in the place.

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

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

(3) The warrant shall state:

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

(4) If, in the course of searching in accordance with the warrant for a thing that may be material as evidence in proving an offence or that has been acquired as a result of an offence, being a thing of a kind stated in the warrant:

- (a) a police officer finds any thing that the police officer believes on reasonable grounds to be connected with the offence, although 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 deemed to authorise the police officer to seize the thing.

(5) Where a police officer seizes a thing in accordance with this section, the police officer may retain the thing pending any direction from the Attorney-General as to the manner in which it is to be dealt with.

(6) In this section:

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

“thing” includes a vessel, aircraft or vehicle.

Remand

32. (1) A person who is arrested under an indorsed New Zealand warrant or under a provisional arrest warrant shall be brought as soon as practicable before a magistrate in the State or Territory in which the person is arrested.

(2) The person shall be remanded by a magistrate in custody, or, subject to subsection (3), on bail, for such period or periods as may be necessary for proceedings for the purposes of section 34 to be conducted.

(3) A magistrate shall not remand the person on bail unless there are special circumstances justifying such remand.

(4) Where 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.

Release from remand

33. Where:

- (a) a person has been remanded after being arrested under a provisional arrest warrant;
- (b) an indorsed New Zealand warrant has not been obtained in relation to the person; and
- (c) a magistrate is satisfied that there has been reasonable time for such a warrant to be obtained;

the magistrate shall:

- (d) if the person is held in custody—order that the person be released; or
- (e) if the person has been granted bail—order the discharge of the recognizances on which bail was granted.

Surrender warrants

34. (1) Where:

- (a) either:
 - (i) a person has been remanded after being arrested under an indorsed New Zealand warrant; or
 - (ii) a person has been remanded after being arrested under a provisional arrest warrant and an indorsed New Zealand warrant has been obtained in relation to the person; and
- (b) a request is made to a magistrate by or on behalf of the person or New Zealand for proceedings to be conducted under this section;

the magistrate shall, unless the magistrate makes an order under subsection (2):

- (c) by warrant in accordance with subsection 38 (1), order that the person be surrendered to New Zealand; and

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(d) by warrant in the statutory form, order that, pending the execution of the warrant referred to in paragraph (c), the person be committed to prison.

(2) If the magistrate is satisfied by the person that, because:

(a) the offence in relation to which any indorsed New Zealand warrant in relation to the person was issued is of a trivial nature;

(b) if that offence is an offence of which the person is accused—the accusation was not made in good faith or in the interests of justice; or

(c) a lengthy period has elapsed since that offence was committed or allegedly committed;

or for any other reason, it would be unjust, oppressive or too severe a punishment to surrender the person to New Zealand, the magistrate shall order that the person be released.

(3) The magistrate shall, after making an order in relation to the person under paragraph (1) (c), inform the person that he or she may, within 15 days after the day on which the order is made, seek a review of the order under section 35.

(4) In the proceedings under this section, 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 constituting an offence in relation to which any indorsed New Zealand warrant was issued.

Review of magistrate's orders

35. (1) Where a magistrate of a State or Territory makes an order under section 34 in relation to a person:

(a) in the case of an order under paragraph 34 (1) (c)—the person; or

(b) in the case of an order under subsection 34 (2)—New Zealand;

may, within 15 days after the day on which the magistrate makes the order, apply to the Federal Court, or to the Supreme Court of the State or Territory, for a review of the order.

(2) The Court may, by order:

(a) confirm the order of the magistrate; or

(b) quash the order of the magistrate and direct a magistrate to:

(i) in the case of an order under paragraph 34 (1) (c)—order the release of the person; or

(ii) in the case of an order under subsection 34 (2)—order, by warrant, that the person be surrendered to New Zealand.

(3) The person or New Zealand, whether or not the person or New Zealand was the applicant for review under subsection (1), may appeal to the Full Court of the Federal Court from the order of the Federal Court or the Supreme Court.

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(4) The person or New Zealand is not entitled to appeal to the Full Court more than 15 days after the day on which the order of the Federal Court or the Supreme Court is made.

(5) The High Court shall not grant special leave to appeal against the order of the Full Court made on the appeal referred to in subsection (3) if the application for special leave is made more than 15 days after the day on which the order of the Full Court is made.

(6) Where the person or New Zealand:

(a) applies under subsection (1) for a review of an order;

(b) appeals under subsection (3) against an order made on that review;
or

(c) appeals to the High Court against an order made on that appeal;

the following provisions have effect:

(d) in the case of an application for review—the court to which the application is made shall review the order by way of rehearing, and may have regard to evidence in addition to or in substitution for the evidence that was before the magistrate;

(e) in the case of an appeal—the court to which the appeal is made shall have regard only to the material that was before the court that conducted the review;

(f) if, because of the order referred to in paragraph (a), (b) or (c), as the case requires, the person has been released, the court to which the application or appeal is made may order the arrest of the person;

(g) if:

(i) because of the order referred to in paragraph (a), (b) or (c), as the case requires, the person has not been released;
or

(ii) the person has been arrested under an order made under paragraph (f);

the court to which the application or appeal is made may:

(iii) order that the person be kept in such custody as the court directs; or

(iv) order the release on bail of the person on such terms and conditions as the court thinks fit;

until the review has been conducted or the appeal has been heard.

Temporary surrender warrants

36. (1) Subject to this section, where:

(a) a surrender warrant has been issued in relation to a person under subsection 34 (1) or in compliance with an order of a court under subparagraph 35 (2) (b) (ii) (including on any appeal referred to in section 35);

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- (b) no proceedings are being conducted or available under section 35 in relation to the order set out in the warrant or the order of the court, as the case requires;
- (c) the person is serving a sentence or sentences of imprisonment in relation to an offence or offences against a law of Australia;
- (d) the offence in relation to which any indorsed New Zealand warrant in relation to the person was issued is an offence of which the person is accused; and
- (e) the Attorney-General is satisfied that:
 - (i) it is in the interests of the administration of justice that a warrant under this subsection should be issued; and
 - (ii) New Zealand has given adequate undertakings to the Attorney-General in relation to:
 - (A) the trial of the person in New Zealand for any offence referred to in paragraph (d) of which the person is accused;
 - (B) the return of the person to Australia; and
 - (C) the custody of the person while travelling to and from, and while in, New Zealand;

subject to subsection (4), the Attorney-General may issue a warrant under this subsection.

(2) For the purposes of paragraph (1) (c), the person shall be taken not to be serving a sentence of imprisonment if the person has been released on parole or licence, or has been otherwise conditionally released, for the remainder of the sentence.

(3) Where the Attorney-General issues a warrant under subsection (1), the surrender warrant referred to in paragraph (1) (a) is by force of this subsection cancelled.

(4) Where any offence referred to in paragraph (1) (c) is an offence against the law of a State, the Northern Territory or Norfolk Island, the Attorney-General shall not issue the warrant unless:

- (a) the Attorney-General is satisfied that the law of the State, the Northern Territory or Norfolk Island, as the case may be:
 - (i) would permit the release of the person for the purpose of surrender to New Zealand under such a warrant; and
 - (ii) would, if the person were surrendered to New Zealand under such a warrant, permit the time spent by the person in custody in connection with the warrant (including time spent in custody outside Australia) to be counted towards the sentence or sentences in respect of the offence; and
- (b) consent to the surrender of the person to New Zealand under such a warrant has been given to the Attorney-General by:
 - (i) the appropriate Minister of the Crown of the State;
 - (ii) the appropriate Minister of the Northern Territory; or

(iii) the Administrator of Norfolk Island;
as the case requires.

(5) Where, while the person is in New Zealand pursuant to the warrant, the person ceases to be liable to serve the sentence or sentences of imprisonment in Australia referred to in paragraph (1) (c), the Attorney-General shall inform New Zealand that the undertakings referred to in subparagraph (1) (e) (ii) are no longer required to be complied with.

(6) Where any offence referred to in paragraph (1) (c) is an offence against a law of the Commonwealth or of a Territory (other than the Northern Territory or Norfolk Island), any time spent by the person in custody in connection with the warrant (including time spent in custody outside Australia) shall be counted as time served towards the sentence or sentences of imprisonment referred to in that paragraph.

Surrender warrants after temporary surrender

37. Where:

- (a) a person is surrendered to New Zealand under a temporary surrender warrant;
 - (b) the person is returned to Australia in pursuance of undertakings referred to in subparagraph 36 (1) (e) (ii); and
 - (c) New Zealand still seeks the surrender of the person;
- the Attorney-General may, in his or her discretion, issue a warrant for the surrender of the person to New Zealand under this section.

Form and execution of surrender warrants and temporary surrender warrants

38. (1) A surrender warrant or a temporary surrender warrant in relation to a person (in this subsection called the "eligible person") shall:

- (a) authorise a police officer to take the eligible person into custody, to transport the eligible person in custody and, if necessary or convenient, to detain the eligible person in custody, for the purpose of enabling the eligible person to be placed in the custody of a specified person (in this subsection called the "New Zealand escort officer") and transported out of Australia;
- (b) authorise the New Zealand escort officer to transport the eligible person in custody out of Australia to a place in New Zealand for the purpose of surrendering the eligible person to a person appointed by New Zealand to receive the eligible person; and
- (c) be in writing in the statutory form.

(2) Subject to this section, a surrender warrant or a temporary surrender warrant shall be executed according to its tenor.

(3) A surrender warrant issued under paragraph 34 (1) (c) shall not be executed while any proceedings under section 35 in relation to the order of the magistrate set out in the warrant are being conducted or are available.

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(4) A surrender warrant issued in compliance with an order of a court under subparagraph 35 (2) (b) (ii) shall not be executed while any proceedings under section 35 in relation to the order are being conducted or are available.

(5) Where a surrender warrant is issued in respect of a person:

- (a) who is in custody; or
- (b) to whom bail has been granted;

in respect of an offence that is alleged to have been committed, or of which the person has been convicted, in Australia, the warrant shall not be executed before the person has been released from custody in respect of that offence or any recognizances on which the person has been granted bail in respect of that offence have been discharged, as the case requires.

(6) For the purposes of subsection (5), a person who is serving a sentence of imprisonment shall be taken not to be in custody if the person has been released on parole or licence, or has been otherwise conditionally released, for the remainder of the sentence.

(7) Where:

- (a) a surrender warrant or a temporary surrender warrant is issued in relation to a person;
- (b) the person is in custody in Australia under the warrant, or otherwise under this Act, more than 1 month after the day on which the warrant was first liable to be executed;
- (c) the person applies to the Federal Court or the Supreme Court of the State or Territory in which the person is in custody; and
- (d) reasonable notice of the intention to make the application has been given to the Attorney-General;

the Court shall, subject to subsection (8), order that the person be released from that custody.

(8) Where the Court is satisfied that the person has not been conveyed out of Australia under the warrant within the period of 1 month or since the person last made an application under subsection (7), as the case may be:

- (a) because to do so would have been dangerous to the life or prejudicial to the health of the person; or
- (b) for any other reasonable cause;

the Court shall not order that the person be released from custody.

Delivery of property to New Zealand

39. Where:

- (a) property or a thing is seized under section 30 or 31; and
- (b) the property or thing:
 - (i) may be material as evidence in proving an offence in relation to which an indorsed New Zealand warrant or the provisional arrest warrant referred to in that section was issued; or

(ii) has been acquired as a result of such an offence;
the Attorney-General may, whether or not a surrender warrant or a temporary surrender warrant is issued in respect of the person to whom the warrant referred to in subparagraph (b) (i) relates, direct, by notice in writing, that the property or thing be sent to New Zealand.

PART IV—EXTRADITION TO AUSTRALIA FROM OTHER COUNTRIES

Requests for surrender of persons to Australia

40. A request by Australia for the surrender of a person from a country (other than New Zealand) in relation to an offence against a law of Australia of which the person is accused or of which the person has been convicted shall only be made by or with the authority of the Attorney-General.

Surrendered persons to be brought into Australia

41. Where a person is surrendered to Australia in relation to an offence against a law of Australia of which the person is accused or of which the person has been convicted (whether or not pursuant to a request under section 40), the person shall be brought into Australia and delivered to the appropriate authorities to be dealt with according to law.

Speciality

42. Where an extraditable person in relation to Australia is surrendered to Australia by a country (other than New Zealand), the person shall not, unless he or she has left, or has had the opportunity of leaving, Australia or, in a case where the person was surrendered to Australia for a limited period, has been returned to the country:

- (a) be detained or tried in Australia for any offence that is alleged to have been committed, or was committed, before the surrender of the person, other than:
 - (i) any offence in respect of which the person was surrendered or any other offence (being an offence for which the penalty is the same or is a shorter maximum period of imprisonment or other deprivation of liberty) of which the person could be convicted on proof of the conduct constituting any such offence; or
 - (ii) any other offence in respect of which the country consents to the person being so detained or tried, as the case may be; or
- (b) be detained in Australia for the purposes of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before the surrender of the person to Australia, other than any other offence

in respect of which the country that surrendered the person to Australia consents to the person being so detained and surrendered.

Evidence for purposes of surrender of persons to Australia

43. (1) Where the Attorney-General suspects that a person who is an extraditable person in relation to Australia (whether or not the Attorney-General knows or suspects the person to be in a particular country or has made a request under section 40 or otherwise in relation to the person), the Attorney-General may, by notice in writing in the statutory form, authorise the taking of evidence in Australia for use in any proceedings for the surrender of the person to Australia.

(2) Where the Attorney-General authorises the taking of evidence under subsection (1), a magistrate may take the evidence on oath or affirmation of each witness appearing before the magistrate to give evidence in relation to the matter and the magistrate shall:

- (a)** cause the evidence to be reduced to writing and attach a certificate, in the statutory form, in relation to the taking of the evidence; and
- (b)** cause the writing and the certificate to be sent to the Attorney-General.

(3) At a proceeding in relation to a person before a magistrate under this section, a legal or other representative of the person is not entitled to appear.

Persons temporarily surrendered to Australia

44. (1) Where a person is surrendered by a country to Australia pursuant to an undertaking by the Attorney-General of Australia in relation to:

- (a)** the trial of the person in Australia in respect of a particular offence or offences;
- (b)** the return of the person to the country; and
- (c)** the custody of the person while travelling to and from, and while in, Australia;

the following provisions have effect:

- (d)** the person shall, while travelling to and from, and while in, Australia pursuant to the undertaking, be kept in such custody as the Attorney-General orders in writing;
- (e)** the person shall not be tried in Australia in respect of any offence or offences other than an offence mentioned in paragraph (a);
- (f)** the person shall not, under any law of the Commonwealth, a State or a Territory, be subject to any detention that would prevent the person being returned to the country pursuant to the undertaking.

(2) Where:

- (a)** a person is held in custody in accordance with an order of the Attorney-General under paragraph (1) (d); and

(b) the country that surrendered the person requests the release of the person from custody;
the Attorney-General shall order that the person be released from custody.

PART V—MISCELLANEOUS

Prosecution, instead of extradition, of certain Australian citizens

45. (1) Where:

- (a) a person who is an Australian citizen engages in conduct outside Australia;
- (b) the person subsequently enters, or is brought into, a State or Territory;
- (c) the conduct does not, apart from this subsection, constitute an offence against a law in force in the State or Territory; and
- (d) if, at the time when the person engaged in the conduct outside Australia, the person had engaged in the conduct, or equivalent conduct, in the State or Territory, the person would have committed an offence against a law in force in the State or Territory;

the person commits an offence against this subsection punishable, upon conviction, by the same penalty as would have been applicable if the person had committed the offence referred to in paragraph (d).

(2) Subsection (1) applies in relation to:

- (a) conduct engaged in by a person; and
- (b) the entry by a person, or the bringing of a person, into a State or Territory;

either before or after the commencement of this Act.

(3) Proceedings for the offence shall not take place except with the consent in writing of the Attorney-General.

(4) The Attorney-General shall only give his or her consent under subsection (3) in relation to the offence if:

- (a) an extradition country has sought the surrender of the person in respect of an extradition offence, or offences including an extradition offence, constituted by the conduct referred to in paragraph (1) (a);
- (b) the Attorney-General has determined under section 22 that the person is not to be surrendered to the extradition country; and
- (c) in so far as the Attorney-General made that determination not to surrender in relation to the extradition offence constituted by the conduct referred to in paragraph (1) (a), the Attorney-General did so only because:
 - (i) the person was an Australian citizen when the person engaged in the conduct;
 - (ii) the Attorney-General was satisfied that the extradition country would not, if the person were a national of that

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country who had engaged in the conduct or equivalent conduct in Australia, have surrendered the person to Australia in relation to an offence constituted by the conduct or the equivalent conduct; and

- (iii) the Attorney-General intended to give his or her consent under subsection (3) in respect of an offence constituted by the conduct or equivalent conduct.

(5) Notwithstanding that consent has not been given in relation to proceedings for an offence in accordance with subsection (3):

- (a) a person may be arrested for the offence, and a warrant for the arrest of a person for the offence may be issued and executed;
- (b) a person may be charged with the offence; and
- (c) a person so charged may be remanded in custody or on bail.

Arrangements relating to magistrates

46. (1) The Governor-General may:

- (a) arrange with the Governor of a State for the performance, by all or any of the persons who from time to time hold office as magistrates of that State, of the functions of a magistrate under this Act; or
- (b) arrange with the Administrator of the Northern Territory or of Norfolk Island for the performance, by all or any of the persons who from time to time hold office as magistrates of the Northern Territory or of Norfolk Island, as the case may be, of the functions of a magistrate under this Act.

(2) A copy of each arrangement made under this section shall be published in the *Gazette*.

Execution of certain warrants in any part of Australia

47. A provisional arrest warrant, within the meaning of Part II or III, or an indorsed New Zealand warrant may be executed in any part of Australia.

Transit

48. (1) Where a country (in this section called the "receiving country"), being an extradition country or New Zealand, wishes to transport in custody through Australia a person (in this section called the "transferee") who is being surrendered to the receiving country by another country, then, subject to subsection (2), the following provisions have effect:

- (a) the transferee may be transported in custody through Australia for the purposes of being so surrendered;
- (b) where the aircraft or ship that transports the transferee makes a landing or calls at a place in Australia:
 - (i) the person holding the transferee in custody before the landing or call is made may hold the transferee in custody at the place for a period not exceeding 24 hours;

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- (ii) any police officer may provide such assistance at the place as is reasonable and necessary to facilitate the transporting of the transferee in custody;
- (iii) any magistrate to whom application is made, in the statutory form, by or on behalf of the receiving country shall issue a warrant ordering a person specified in the warrant to hold the transferee in custody for such period or periods as the magistrate considers necessary to facilitate the transporting of the transferee;
- (iv) the Attorney-General may, on application by the receiving country, authorise in writing a magistrate to issue a warrant ordering a person specified in the warrant to hold the transferee in custody for a further specified period in order to facilitate the transporting of the transferee; and
- (v) the Attorney-General may at any time direct any person having custody of the transferee under this paragraph to release the transferee from custody.

(2) The total period or periods of any custody in accordance with subparagraphs (1) (b) (i) and (iii) shall not exceed 96 hours.

Arrest of persons escaping from custody

49. (1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person has escaped from custody authorised by this Act.

(2) A person who has been arrested under subsection (1) shall be returned to the custody referred to in that subsection.

Solicitor-client relationship in relation to communications

50. Where communications take place between officers of the Attorney-General's Department, on behalf of Australia, and officers of an extradition country or New Zealand, on behalf of that country or New Zealand, in relation to any proceedings or contemplated proceedings for the surrender of a person, there shall be taken, for the purposes of this Act and any other Act, to be a relationship of solicitor and client between the officers of Australia and the officers of the extradition country or New Zealand in relation to those communications.

Jurisdiction of courts

51. (1) The jurisdiction of the Supreme Court of a State or Territory in matters arising under section 21 or 35 may be exercised by the Court constituted by a single Judge.

(2) A matter arising under an extradition treaty shall, for the purposes of section 38 of the *Judiciary Act 1903*, be deemed not to be a matter arising directly under a treaty.

Evidence of certain matters

52. A certificate by the Attorney-General stating that:

- (a) Australia or another specified country is a party to a specified treaty;
- (b) the treaty entered into force for Australia or that other country, as the case may be, on a specified date; and
- (c) as at the date of the certificate, the treaty remains in force for Australia or that other country;

is, for the purposes of any proceedings under this Act, *prima facie* evidence of the facts stated in the certificate.

Conditions of imprisonment

53. The laws of a State or Territory with respect to:

- (a) the conditions of imprisonment of persons imprisoned in that State or Territory to await trial for offences against the law of that State or Territory;
- (b) the treatment of such persons during imprisonment; and
- (c) the transfer of such persons from prison to prison;

apply, so far as they are capable of application, in relation to persons who have been committed to prison in that State or Territory under this Act.

Application of certain Acts

54. (1) The *Removal of Prisoners (Territories) Act 1923* applies, with such modifications (if any) as are set out in the regulations, in relation to a person who has been committed to prison under this Act in a Territory (other than the Northern Territory) in like manner as it applies in relation to a person who has been sentenced to imprisonment in that Territory.

(2) The *Removal of Prisoners (Australian Capital Territory) Act 1968* applies, with such modifications (if any) as are set out in the regulations, in relation to a person who has been committed to prison under this Act in the Australian Capital Territory or in the Jervis Bay Territory.

(3) In this section:

“modifications” includes additions, omissions and substitutions.

Regulations

55. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

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

and, in particular, may make regulations prescribing:

- (c) the practice and procedure in relation to the performance by magistrates of functions under this Act, including:
 - (i) the remanding of persons either in custody or on bail;

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- (ii) the summoning of witnesses;
 - (iii) the production of documents;
 - (iv) the taking of evidence on oath or affirmation;
 - (v) the administering of oaths or affirmations;
 - (vi) the payment of expenses of witnesses; and
 - (vii) the protection and immunity of magistrates, of barristers and solicitors appearing before magistrates and of witnesses; and
- (d) prescribing penalties not exceeding a fine of \$2,000 for offences against the regulations.
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*[Minister's second reading speech made in—
House of Representatives on 28 October 1987
Senate on 14 December 1987]*