



REPUBLIC OF NAURU

## Extradition Act 1973

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**As in force from 15 April 2011**

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This compilation comprises Act No. 5 of 1973 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 19 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

**Extradition Act 1973**

An Act to provide for the return from Nauru to other countries of persons accused or convicted of offences in those countries; to regulate the treatment of persons accused or convicted of offences in Nauru who are returned from such countries; and for purposes connected with the matters aforesaid

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**PART I – PRELIMINARY**

**1 Short title**

This Act may be cited as the *Extradition Act 1973*.

**2 Interpretation**

(1) In this Act, unless the context otherwise requires:

***‘application for habeas corpus’*** means an application to the Supreme Court for a writ of *habeas corpus ad subjiciendum*;

***‘country’*** includes any territory;

***‘dealt with’*** means tried or returned or surrendered to any country or detained with a view to trial or with a view to such return or surrender;

***‘designated country’*** has the meaning assigned by section 4 of this Act;

***‘foreign country’*** means a country other than Nauru, whether or not such country is one of the territories for the time being forming the Commonwealth;

***‘imprisonment’*** includes detention of any description;

***‘race’*** includes tribe.

- (2) For the purposes of this Act a person convicted of an offence in his absence shall be treated as a person accused of that offence.
- (3) Any order made by the Cabinet under this Act may contain such transitional or other incidental and supplementary provisions as may appear to the Cabinet to be necessary or expedient.
- (4) Any power to make an order under this Act includes power to revoke or vary such an order by a subsequent order.
- (5) For the purposes of this Act, every ship and aircraft of a foreign country shall, when on the high seas or in flight, as the case may be, outside Nauru be deemed to be within the jurisdiction of, and to be part of, that foreign country.

## **PART II – RETURN OF OFFENDERS TO FOREIGN COUNTRIES**

### **3 Persons liable to be returned**

- (1) Subject to the provisions of this Act, a person found in Nauru who is accused of a relevant offence in any foreign country being a country designated for the purposes of this Act under subsection (1) of section 4 of this Act or who is alleged to be unlawfully at large after conviction of such an offence in any such country, may be arrested and returned to that country as provided by this Act.
- (2) Save as is from time to time provided by any written law relating to the control of the entry into, or the residence in, Nauru of persons who are not Nauruans or to the expulsion from Nauru of undesirable persons, no person shall be arrested in Nauru and returned to any foreign country otherwise than in accordance with the provisions of this Act:

Provided that nothing in this Act shall render unlawful the arrest of any person, not being a Nauruan citizen, on a ship of a foreign country within the territorial waters of Nauru for an offence committed on that ship and his removal from Nauru on that ship otherwise than in accordance with the provisions of this Act, if such arrest and removal are otherwise lawful.

**4 Designated countries**

- (1) The Cabinet may by an order published in the Gazette designate for the purposes of this Act any foreign country; and any foreign country so designated is in this Act referred to as a designated country.
- (2) The Cabinet may by an order published in the Gazette direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, any designated country subject to such exceptions, adaptations or modifications as may be specified in the order.
- (3) For the purposes of any order under subsection (1) of this section, any territory for the external relations of which any foreign country is responsible may be treated as part of that foreign country or, if the Government of that country so requests, as a separate foreign country.
- (4) No order shall be made under this section in respect of any foreign country unless that foreign country has made, or has agreed to make, substantially similar provision for the arrest in that country and the return to Nauru of persons who are accused of relevant offences in Nauru or who are alleged to be unlawfully at large after conviction of such an offence:

Provided that, notwithstanding that the provision made, or agreed to be made, by any foreign country for the return of offenders to Nauru does not relate to all the relevant offences prescribed in the Schedule to this Act, an order may be made in respect of that country if such provision relates to some of those offences and the Cabinet considers it reasonable in all the circumstances to make the order and, where any such order is made, it may provide that this Part of this Act is to apply to the return of offenders to that country as though one or more of the offences prescribed in the said Schedule, to be specified in the order, were not so prescribed.

**5 Relevant offences**

- (1) For the purposes of this Act an offence of which a person is accused or has been convicted in a designated country is a relevant offence if:
  - (a) it is an offence which, however described in that law, falls within any of the descriptions set out in the Schedule to this Act and is punishable under that law with imprison-

ment for a term of twelve months or any greater punishment; and

- (b) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Nauru if it took place within Nauru or, in the case of an extra-territorial offence, in corresponding circumstances outside Nauru.
- (2) In determining for the purposes of this section whether an offence against the law of a designated country falls within a description set out in the said Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.
  - (3) The descriptions set out in the said Schedule include in each case offences of attempting or conspiring to commit, of assisting, counselling or procuring the commission of, or being accessory before or after the fact to, the offences therein described, and of impeding the apprehension or prosecution of persons guilty of those offences.
  - (4) References in this section to the law of any country include references to the law of any part of that country.

## **6 General restrictions on return**

- (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the District Court in the committal proceedings or to the Supreme Court on an application for *habeas corpus* or for review of the order of committal:
  - (a) that the offence of which that person is accused or was convicted is an offence of a political character;
  - (b) that the request for his return, though purporting to be made on account of a relevant offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
  - (c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

- (2) A person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears as aforesaid that if charged with that offence in Nauru he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Nauru, be dealt with in that country for or in respect of any offence committed before his return under this Act other than:
  - (a) the offence in respect of which his return under this Act is requested;
  - (b) any lesser offence proved by the facts proved before the District Court in the committal proceedings; or
  - (c) any other offence being a relevant offence in respect of which the Minister may consent to his being so dealt with.
- (4) Any such arrangement as is mentioned in the last preceding subsection may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

## **7 Authority to proceed**

- (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with thereunder except in pursuance of an order of the Minister, in this Act referred to as an authority to proceed, issued in pursuance of a request made to the Minister by or on behalf of the Government of the designated country in which the person to be returned is accused or was convicted.
- (2) There shall be furnished with any request made for the purposes of this section on behalf of any country:
  - (a) in the case of a person accused of an offence – a warrant for his arrest issued in that country; and

- (b) in the case of a person unlawfully at large after conviction of an offence – a certificate of the conviction and sentence in that country, and a statement of the amount if any of that sentence which has been served;

together in each case with particulars of the person whose return is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 8 of this Act.

- (3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with provisions of this Act.

## **8 Arrest for purposes of committal**

- (1) A warrant for the arrest of a person accused of a relevant offence, or alleged to be unlawfully at large after conviction of such an offence, in a designated country may be issued:
  - (a) on the receipt of an authority to proceed, by the resident magistrate; or
  - (b) without such an authority, by the resident magistrate on information that the said person is or is believed to be in or on his way to Nauru;

and any warrant issued by virtue of paragraph (b) above is in this Act referred to as a provisional warrant.

- (2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the resident magistrate, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within Nauru.
- (3) Where a provisional warrant is issued under this section, the resident magistrate shall forthwith give notice to the Minister and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.



- (4) A warrant of arrest issued under this section may be executed in any part of Nauru by any person to whom it is directed or by any police officer.
- (5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property or any other offence in respect of property, the resident magistrate shall have the like power to issue a warrant to search for the property as if the offence had been committed in Nauru.

## **9 Proceedings for committal**

- (1) A person arrested in pursuance of a warrant under section 8 of this Act shall, unless previously discharged under subsection (3) of that section, be brought as soon as practicable before the District Court.
- (2) For the purposes of proceedings under this section the District Court shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as it has in committal proceedings under the *Criminal Procedure Act 1972*.
- (3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the District Court may fix a reasonable period, of which the Court shall give notice to the Minister, after which he will be discharged from custody unless such an authority has been received.
- (4) Where an authority to proceed has been issued in respect of the person arrested and the District Court is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the offence to which the authority relates is a relevant offence and is further satisfied:
  - (a) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed in Nauru; or
  - (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large;

the Court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his return thereunder; but if the Court is not so satisfied or if the committal

of that person is so prohibited, the Court shall discharge him from custody.

**10 Application for *habeas corpus*, etc.**

- (1) Where a person is committed to custody under section 9, the Court shall inform him in ordinary language of his right to make an application for *habeas corpus* and shall forthwith give notice of the committal to the Minister.
- (2) A person committed to custody under section 9 shall not be returned under this Act:
  - (a) in any case, until the expiration of the period of fifteen days beginning with the day on which the order of his committal is made;
  - (b) if an application for *habeas corpus* is made in his case, so long as proceedings on that application are pending.
- (3) On any such application the Supreme Court may, without prejudice to any other jurisdiction of the Court, order the person committed to be discharged from custody if it appears to the Court that:
  - (a) by reason of the trivial nature of the offence of which he is accused or was convicted;
  - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
  - (c) because the accusation against him is not made in good faith in the interests of justice;

it would, having regard to all the circumstances, be unjust or oppressive to return him.
- (4) On any such application the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or under the last preceding subsection.
- (5) For the purposes of this section proceedings on an application for *habeas corpus* shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if

the appeal is not brought or the application made within that time.

**11 Order for return to requesting country**

- (1) Where a person is committed under section 9 to await his return and is not discharged by order of the Supreme Court under section 10, the Minister may by warrant order him to be returned to the foreign country by which the request for his return was made unless the return of that person is prohibited, or prohibited for the time being, by section 6 or this section, or the Minister decides under this section to make no such order in his case.
- (2) An order shall not be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in Nauru:
  - (a) in the case of a person serving such a sentence – until the sentence has been served; or
  - (b) in the case of a person charged with an offence – until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment, not being a suspended sentence, until the sentence has been served.
- (3) The Minister shall not make an order under this section in the case of any person if it appears to the Minister, on the grounds mentioned in subsection (3) of section 10, that it would be unjust or oppressive to return that person.
- (4) The Minister may decide to make no order under this section in the case of a person accused or convicted of a relevant offence not punishable with death in Nauru if that person could be or has been sentenced to death for that offence in the foreign country by which the request for his return is made.
- (5) The Minister may decide to make no order under this section for the return of a person committed in consequence of a request made on behalf of any foreign country if another request for his return under this Act has been made on behalf of another country and it appears to the Minister, having regard to all the circumstances of the case and in particular:
  - (a) the relative seriousness of the offences in question;
  - (b) the date on which each such request was made; and

- (c) the nationality or citizenship of the person concerned and his ordinary residence;

that preference should be given to the other request.

- (6) Notice of the issue of a warrant under this section shall forthwith be given to the person to be returned thereunder.

## **12 Discharge in case of delay in returning**

- (1) If any person committed to await his return is in custody in Nauru under this Act after the expiration of the following period, that is to say:

- (a) in any case – the period of two months beginning with the first day on which, having regard to subsection (2) of section 10 of this Act, he could have been returned; or
- (b) where a warrant for his return has been issued under section 11 of this Act – the period of one month beginning with the day on which that warrant was issued;

he may apply to the Supreme Court for his discharge.

- (2) If upon any such application the Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his return has been issued under the said section 11, quash that warrant.

## **13 Evidence**

- (1) In any proceedings under this Act, including proceedings on an application for *habeas corpus* in respect of a person in custody thereunder:
  - (a) a document, duly authenticated, which purports to set out evidence given on oath in a designated country shall be admissible as evidence of the matters stated therein;
  - (b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country shall be admissible in evidence; and
  - (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document

of an offence against the law of, or of a part of, any such country shall be admissible as evidence of the fact and date of the conviction.

- (2) A document shall be deemed to be duly authenticated for the purposes of this section:
- (a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge, magistrate or officer in or of the country in question to be the original document containing or recording that evidence or a true copy of such a document;
  - (b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;
  - (c) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid;

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister of the designated country, as the case may be.

- (3) In this section '***oath***' includes affirmation or declaration; and nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.
- (4) Where any document which is admissible as evidence under subsection (1) is not in the English language, the provisions of subsection (4) of section 73 of the *Courts Act 1972* shall apply, as though such document were an affidavit.

## **14 Custody**

- (1) Any person remanded or committed to custody under section 9 shall be committed to the Nauru Prison.
- (2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in any place in Nauru in like manner as a person escaping from custody under a warrant for his arrest issued in Nauru in respect of an offence committed therein.

- (3) A warrant under section 11 of this Act for the return of any person to any foreign country shall be sufficient authority for all persons to whom it is directed and all police officers to receive that person, keep him in custody and convey him into the jurisdiction of that country.

**15 Form of warrants and orders**

- (1) Any warrant or order to be issued or made by the Minister under any of the preceding provisions of this Act shall be given under the hand of the Minister.
- (2) The Minister may make regulations prescribing the form of any warrant or order to be issued or made under the preceding provisions of this Act.

**PART III – TREATMENT OF PERSONS RETURNED FROM FOREIGN COUNTRIES**

**16 Restriction upon proceedings for other offences**

- (1) This section applies to any person accused or convicted of an offence under the law of Nauru who is returned to Nauru from any designated country under any law of that country corresponding with this Act.
- (2) A person to whom this section applies shall not, during the period described in the next following subsection, be dealt with in Nauru for or in respect of any offence committed before he was returned to Nauru other than:
- (a) the offence in respect of which he was returned;
  - (b) any lesser offence proved by the facts proved for the purposes of securing his return; or
  - (c) any other offence in respect of which the Government of the country from which he was returned may consent to his being dealt with.
- (3) The period referred to in the last preceding subsection in relation to a person to whom this section applies is the period beginning with the day of his arrival in Nauru on his return as mentioned in subsection (1) and ending forty-five days after the first subsequent day on which he has the opportunity to leave Nauru.

**17 Restoration of persons acquitted or not tried**

- (1) This section applies to any person accused of an offence under the law of Nauru who is returned to Nauru as mentioned in subsection (1) of section 16 of this Act.
- (2) If in the case of a person to whom this section applies, either:
  - (a) proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in Nauru on being returned; or
  - (b) on his trial for that offence, he is acquitted;

he shall forthwith be restored by the Minister to the country from which he has returned to Nauru.

## **PART IV – MISCELLANEOUS**

**18 Power of foreign countries to obtain evidence in Nauru**

The testimony of an witness may be obtained in Nauru in relation to any criminal matter pending in any court or tribunal in a foreign country in like manner as it may be obtained in relation to any civil matter under section 47 of the *Civil Procedure Act 1972* and the provisions of that section shall apply to the obtaining of such testimony:

Provided that such testimony shall not be obtained in Nauru in the case of any criminal matter of a political character or relating to an alleged offence under the fiscal laws of a foreign country.

**19 Repeal and transitional provisions**

- (1) The *Extradition Ordinance 1957* is hereby repealed.
- (2) The repeal effected by subsection (1) of this section shall not affect the operation of the *Extradition Ordinance 1957* in any case where before the date on which this Act comes into force a warrant issued under the Acts applied to Nauru by the Ordinance has been executed in Nauru.
- (3) Without prejudice to subsection (2) of this section, this Act applies to offences committed before as well as after the passing of this Act.

**SCHEDULE – DESCRIPTION OF RELEVANT OFFENCES**

Section 5

- 1 Murder of any degree
- 2 Genocide
- 3 Manslaughter or culpable homicide
- 4 An offence against the law relating to abortion
- 5 Maliciously or wilfully wounding or inflicting grievous bodily harm
- 6 Assault occasioning actual bodily harm
- 7 Rape
- 8 Unlawful sexual intercourse with a female
- 9 Indecent assault
- 10 Procuring, or trafficking in, women or young persons for immoral purposes
- 11 Bigamy
- 12 Kidnapping, abduction or false imprisonment, or dealing in slaves
- 13 Stealing, abandoning, exposing or unlawfully detaining a child
- 14 Bribery
- 15 Perjury or subornation of perjury or conspiring to defeat the course of justice
- 16 Arson or fire-raising
- 17 An offence concerning counterfeit currency
- 18 An offence against the law relating to forgery
- 19 Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud



- 20 Burglary, housebreaking or any similar offence
- 21 Robbery
- 22 Blackmail or extortion by means of threats or by abuse of authority
- 23 An offence against bankruptcy law or corporation law
- 24 Malicious or wilful damage to property
- 25 An act done with the intention of endangering a vehicle, vessel or aircraft
- 26 An offence against the law relating to dangerous drugs or narcotics
- 27 Piracy
- 28 Revolt against the authority of the master of a ship or the commander of an aircraft
- 29 Hi-jacking aircraft
- 30 Money laundering
- 31 An offence under the Counter Terrorism and Transnational Organised Crime Act 2004

## Notes for Extradition Act 1973

### Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Extradition of Fugitive Offenders Act 1973</i>	1973/05	31.05.1973	31.05.1973
<i>Anti Money Laundering Act 2003</i>	2003/02	27.03.2003	27.03.2003
<i>Anti Money Laundering Act 2004</i>	2004/11	06.09.2004	06.09.2004
<i>Counter Terrorism and Transnational Organised Crime Act 2004 (as amended by the Counter Terrorism and Transnational Organised Crime (Amendment) Act 2008)</i>	2004/14; 2008/12	03.11.2004; 26.11.2008	26.11.2008*
<i>Anti Money Laundering Act 2008</i>	2008/13	26.11.2008	26.11.2008
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

\* Commencement of amendment of this Act.

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted  
om. = omitted    os. = omitted and substituted

Provision affected	How affected
Section 1	Rs. by Act 2011/08.
Section 2	Am. by Act 2011/08.
Section 3	Subs. (2) am. by Act 2011/08.
Section 4	Subs. (3) (formerly subs. (4)) renumbered by Act 2011/08. Subs. (4) (formerly subs. (5)) renumbered by Act 2011/08.
Section 7	Subs. (2) am. by Act 2011/08.
Section 8	Subs. (1) am. by Act 2011/08.
Section 11	Subs. (2) am. by Act 2011/08.
Section 12	Subs. (1) am. by Act 2011/08.
Section 13	Subs. (1) am. by Act 2011/08.
Schedule	Am. by Act 2003/02, Act 2004/11, Act 2004/14 (as am. by Act 2008/12), Act 2008/13, Act 2011/08.