

NEW ZEALAND: EXTRADITION

Introduction

New Zealand extradition law allows New Zealand to extradite wanted persons to any country, regardless of whether a formal extradition treaty exists or not. New Zealand extradition law is, however, complex and New Zealand judges are strict in ensuring that it is precisely followed.

This means that while New Zealand can, in principle, extradite to any country, the process is complicated and foreign governments should liaise with the New Zealand authorities before filing a request for extradition. Current contact details are included at the end of this paper.

The purpose of this paper is to outline in summary the steps that are required, and the format of documents that make up the request for extradition. Model extradition documents that must be followed are attached.

The Extradition Act 1999

The Extradition Act 1999 and any bilateral treaty in place with a requesting country govern the extradition of persons to and from New Zealand.

The Extradition Act contains three separate regimes that apply different procedures depending on which of the following categories the requesting country falls within:

- Part 3 of the Act, which covers countries with which New Zealand has an extradition treaty, plus Commonwealth countries, plus any other country to which Part 3 has been applied by an Order in Council;
- Part 4 of the Act, which contains a fast track procedure. (Currently this applies to Australia and the UK.)
- Part 5 of the Act allows for ad hoc requests from all other countries.

An extraditable offence

Any request for extradition from New Zealand must relate to an “extraditable offence” which is defined as an offence that:

- Carries a maximum penalty of not less than one year’s imprisonment in the requesting country; and
- Involves conduct that would be regarded as criminal had it occurred in New Zealand, and would have carried a similar penalty.
- Is specified by the extradition treaty, if there is one.

Making a request for extradition under part 3 of the Extradition Act

Any formal request for extradition should be addressed and sent, together with the supporting documents, to the Ministry of Foreign Affairs and Trade in Wellington, New Zealand. The request should be made by:

- A diplomatic or consular representative; or

- A Minister of the requesting country; or
- If there is a treaty or any undertakings between New Zealand and the requesting country, by such other means as are prescribed in the treaty or undertakings.

Documentation

If the person sought is accused of an offence the following documents are required:

- The warrant for arrest (or a copy of the original warrant) issued by a judge or judicial officer of a court of the requesting country. It is preferable in terms of New Zealand evidential requirements to have the warrants issued by a Judge of the requesting country; and
- Written depositions setting out:
 - A. The description of and penalty for the offence (this deposition is usually made by the Prosecutor);
 - B. The conduct that constitutes the offence (this may involve a number of depositions made by different witnesses)

If the person has already been convicted of an offence the following documents are required:

- Evidence of:
 - A. The conviction; and
 - B. The sentence imposed or the intention to impose a sentence (where relevant); and
 - C. The extent to which a sentence imposed has not been carried out (where relevant); and
- Written depositions setting out:
 - A. The description of and penalty for the offence (this deposition is usually made by the Prosecutor);
 - B. The conduct that constitutes the offence (this may involve a number of depositions made by different witnesses)

Depositions
<p>A deposition must be made in one of three ways:</p> <ul style="list-style-type: none"> • On oath; or • By affirmation (if that is permitted under the law of the requesting country): or • Before a court or judicial authority (if, under the law of the requesting country, a person making such a statement falsely before that court or judicial authority would be liable to imprisonment). <p>Detailed advice about the form of depositions acceptable to the New Zealand courts can be obtained from the Ministry of Foreign Affairs and Trade.</p>

Authentication

All supporting documents for an extradition request (i.e. any warrant, deposition, exhibit, official certificate, or judicial document issued, taken, given, received or made outside New Zealand and any copy of such document) must be authenticated.

The main method of authentication involves the documents being:

- Signed or certified by a Judge, Magistrate, or official of the country in which it was issued, taken, given, received, or made; and
- Either:
 - Verified by the oath of a witness or of an official of the Government of the country in which the document was issued, taken, given, received or made; or
 - Sealed with an official or public seal of the requesting country or of a Minister of State or of a Department or official of the Government of that country

If a different procedure is commonly used to authenticate documents in the requesting country, it is suggested that advice first be sought from the New Zealand authorities as to whether a document in that form will be admissible in a New Zealand court.

Evidence

If a deposition contains direct evidence of the conduct of the person whose extradition is sought, the deposition must contain some means of identifying the person. If the witness is able to identify the person by means of a photo, then such photo should be annexed as an exhibit and reference made to this identification in the body of the deposition.

If a witness has received some form of benefit for his or her cooperation, for example, leniency in relation to a sentence they are serving, then the benefit to the witness needs to be referred to in a deposition, for example the deposition of the prosecutor.

Apart from well-defined exceptions, hearsay evidence is inadmissible in New Zealand courts. Requesting countries should therefore ensure that the depositions do not contain hearsay evidence. The New Zealand authorities can provide further information about the extent of the hearsay rule on request and are also willing to review draft documents.

Exempted Countries
Part 3 of the Extradition Act also provides a mechanism by which the requirements to provide evidence establishing a prima facie case in support of the extradition request can be replaced by the simpler “record of the case” procedure.
This allows the request to attach just one consolidated evidential deposition, setting out the facts of the case and outlining the evidence that is available to support those facts. Separate depositions providing that evidence are not required.
This process currently applies to the Czech Rep., the Rep. of Korea, the US and Tonga.

Translation

If any of the original documents are not in English both the original document and a translation into English will need to be provided. The person who made the translations will need to give evidence of translating the documents and of his or her proficiency and experience. The original and translated documents need to be identified by this witness.

Where there is a treaty or any other extradition arrangement between New Zealand and the requesting country, the requesting country must ensure that the supporting documents,

methods of authentication, and translation of documents are in accordance with the requirements of the treaty or arrangement.

Making a request for extradition under part 4 of the Extradition Act

Part Four of the Extradition Act provides a simplified form of extradition that currently applies only to Australia and the United Kingdom but can be extended to other countries by Order in Council if certain conditions are met.

Part Four authorises a New Zealand District Court Judge to endorse an arrest warrant that has been issued by a court or a judge or other person having lawful authority under the law of the requesting country. The effect of such an endorsement is to authorise the execution of the warrant in New Zealand.

Making a request for extradition under part 5 of the Extradition Act

The Extradition Act allows countries with which New Zealand has no formal extradition relationship, and who are not members of the Commonwealth, to make a request for extradition where the offence is an “extradition offence” and where the New Zealand Minister of Justice has given his or her approval that a request may proceed. In giving approval, the Minister must consider a range of issues, including whether the requesting country would be able to extradite a person to New Zealand in similar circumstances; and the seriousness of the offence.

Part Five is also used to apply the Extradition Act where both the requesting country and New Zealand are parties to a relevant multilateral treaty that establishes an extradition relationship for offences covered by that convention e.g. corruption and bribery conventions.

Any such request should be made through diplomatic channels in the same manner and attaching the same documents as set out for requests under part 3 of the Extradition Act above.

Grounds for refusal of a request for extradition

New Zealand cannot extradite someone if:

- The offence for which the surrender is sought is an offence of a political character; or
- There are substantial grounds to believe that the person would be in danger of being subjected to an act of torture in the country requesting extradition.
- It appears that a person may be or has been sentenced to death by the appropriate authority in the extradition country, unless the requesting country gives an undertaking that the person will not be sentenced to death or, if that sentence is or has been imposed, it will not be carried out.
- The surrender of the person, although purportedly in respect of an extradition offence, is actually sought for the purpose of prosecuting or punishing the person on account of his

or her race, ethnic origin, religion, nationality, sex, or other status, or political opinions, or for an offence of a political character; or

- On surrender, 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, ethnic origin, religion, nationality, sex, or other status, or political opinions; or
- The conduct for which the surrender is sought would have constituted an offence under military law only and not an offence under the ordinary criminal law of the extradition country; or
- The person has been acquitted or pardoned by a competent tribunal or authority in the extradition country or New Zealand, or has undergone the punishment provided by the law of that country or New Zealand, in respect of the extradition offence or another offence constituted by the same conduct as constitutes the extradition offence; or
- The person is detained in a hospital as a special patient within the meaning of that term in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Please seek informal advice before making a formal request for extradition

As noted above, New Zealand extradition law is complex and documents that may be acceptable in the requesting state may be rejected by New Zealand judges, delaying the request. It is important, therefore, that countries wishing to request an extradition liaise with the New Zealand Government before finalising any extradition documentation.

The New Zealand Ministry of Foreign Affairs and Trade will make available to any government interested in making a request for extradition from New Zealand information about the procedure that applies to that country under New Zealand extradition law. The New Zealand Ministry of Foreign Affairs and Trade will also supply model documents to assist in the preparation of a request.

In addition New Zealand government lawyers are happy to consider, via email, draft extradition documents in advance of a formal request being made to avoid unnecessary delay caused by the authentication and transmission of final documents that do not meet the requirements of the New Zealand Courts.

Contact Details

Any country that is not familiar with the procedure that applies to them under New Zealand extradition law is strongly urged to seek advice from the New Zealand Ministry Foreign Affairs and Trade either directly or before preparing a formal request for extradition. Please contact:

Extradition Officer
Legal Division
Ministry of Foreign Affairs and Trade
Private Bag 18 901
Wellington
email: lgl@mfat.govt.nz
telephone: +64 4 439 8000