



# **International War Crimes Tribunals Act 1995**

**Act No. 18 of 1995 as amended**

This compilation was prepared on 31 March 2006  
taking into account amendments up to Act No. 9 of 2006

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act to provide for the Commonwealth to help the International War Crimes Tribunals perform their functions, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *International War Crimes Tribunals Act 1995*.

### **2 Commencement** [see Note 1]

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) If a provision of this Act does not commence under subsection (2) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 The objects of this Act**

The objects of this Act are to enable the Commonwealth to co-operate with a Tribunal in the investigation and prosecution of persons accused of committing Tribunal offences, and, in particular:

- (a) to enable the Tribunal to make requests for assistance (see Part 2); and
- (b) to provide for persons accused of Tribunal offences to be surrendered to the Tribunal (see Part 3); and
- (c) to provide the Tribunal with other forms of assistance in the investigation and prosecution of Tribunal offences (see Part 4); and
- (d) to enable the Tribunal to sit in Australia (see Part 5); and
- (e) to enable forfeiture orders of the Tribunal to be enforced (see Part 6).

#### 4 Definitions

In this Act, unless the contrary intention appears:

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian law*** means a law of the Commonwealth, a State or a Territory.

***evidential material*** means a thing relevant to a Tribunal offence, including such a thing in electronic form.

***executing officer***, in relation to a warrant, means:

- (a) the police officer named in the warrant, by the magistrate who issued the warrant, as being responsible for executing the warrant; or
- (b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer so named; or
- (c) another police officer whose name has been written in the warrant by the police officer last named in the warrant.

***fax***, in relation to a document, means a copy of a document obtained or sent by facsimile transmission.

***federal prisoner*** means a person who:

- (a) is being held in custody pending:
  - (i) trial for; or
  - (ii) a committal hearing or a summary hearing in relation to; or
  - (iii) sentencing for;

an offence against a law of the Commonwealth or of a Territory; or

- (b) is under a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory, or is otherwise subject to detention under a law of the Commonwealth or of a Territory;

but does not include a person who is at large after having escaped from lawful custody.

***forfeiture order*** means:



- (a) an order made by a Tribunal, under the Statute of the Tribunal or under rules adopted under the Statute of the Tribunal, for forfeiture of property in respect of a Tribunal offence; or
- (b) a declaration made by a Tribunal, under the Statute of the Tribunal or under the rules adopted under the Statute of the Tribunal, evidencing forfeiture of property under that Statute or those rules.

***Former Yugoslavia Tribunal:***

- (a) means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations, a copy of the English text of which is set out in Schedule 1; and
- (b) includes any of the organs referred to in Article 11 of the Statute of the Tribunal.

***frisk search*** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

***law***, in relation to the Commonwealth, a State or a Territory, means a law (whether written or unwritten) of the Commonwealth, that State or that Territory, and includes a law (whether written or unwritten) in force in the Commonwealth, that State or that Territory or in any part of the Commonwealth, that State or that Territory.

***magistrate*** means:

- (a) a magistrate of a Territory; or
- (b) a magistrate of a State in respect of whom an arrangement under section 82 is in force.

Note: The Australian Capital Territory, the Northern Territory and Norfolk Island are treated as States under this Act—see section 5.

***offence***, in relation to an Australian law, includes an offence against a law relating to taxation, customs duty or other revenue matters or relating to foreign exchange control.

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***officer assisting***, in relation to a warrant, means:

- (a) a person who is a police officer and who is assisting in executing the warrant; or
- (b) a person who is not a police officer and who has been authorised by the relevant executing officer to assist in executing the warrant.

***ordinary search*** means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

***police officer*** means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory.

***police station*** includes:

- (a) a police station of a State or Territory; and
- (b) a building occupied by the Australian Federal Police.

***premises*** includes a place and a conveyance.

***prisoner*** means a federal prisoner or a State prisoner.

***property*** means real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property.

***recently used conveyance***, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

***Rwanda Tribunal***:

- (a) means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 955

- (1994) of the Security Council of the United Nations, a copy of the English text of which is set out in Schedule 3; and
- (b) includes any of the organs referred to in Article 10 of the Statute of the Tribunal.

***search warrant*** means a warrant issued under section 47.

***seizable item*** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

***State prisoner*** means a person who:

- (a) is being held in custody pending:
- (i) trial for; or
  - (ii) a committal hearing or a summary hearing in relation to; or
  - (iii) sentencing for;
- an offence against a law of a State; or
- (b) is under a sentence of imprisonment for an offence against a law of a State, or is otherwise subject to detention under a law of a State;

but does not include a person who is at large after having escaped from lawful custody.

***Statute of the Tribunal*** means:

- (a) in the case of the Former Yugoslavia Tribunal—the Statute of the Tribunal (a copy of the English text of which is set out in Schedule 2) adopted by Resolution 827 (1993) of the Security Council of the United Nations (a copy of the English text of which is set out in Schedule 1); and
- (b) in the case of the Rwanda Tribunal—the Statute of the Tribunal (a copy of the English text of which is set out in Schedule 4) adopted by Resolution 955 (1994) of the Security Council of the United Nations (a copy of the English text of which is set out in Schedule 3).

***statutory form***, in relation to a warrant or notice, means the form of the warrant or notice, as the case may be, set out in the regulations.

***strip search*** means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove all of his or her garments; and

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- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

*surrender warrant* means a warrant issued under section 18.

*Tribunal* means:

- (a) the Former Yugoslavia Tribunal; or
- (b) the Rwanda Tribunal.

*Tribunal offence* means:

- (a) an offence for which the Former Yugoslavia Tribunal has the power to prosecute persons under Article 2, 3, 4 or 5 of the Statute of the Tribunal; or
- (b) an offence for which the Rwanda Tribunal has the power to prosecute persons under Article 2, 3 or 4 of the Statute of the Tribunal.

*warrant premises* means premises in relation to which a search warrant is in force.

## 5 Some Territories to be regarded as States

For the purposes of this Act (other than section 6), the Australian Capital Territory, the Northern Territory and Norfolk Island are to be regarded as States, and are not to be regarded as Territories.

## 6 External Territories

This Act extends to each external Territory.

### 6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 2—Requests by a Tribunal for assistance**

### **7 Tribunal may request assistance**

- (1) A request by a Tribunal, for assistance that it needs to perform its functions in respect of an investigation or prosecution it is conducting or proposes to conduct, is to be made to the Attorney-General, or a person authorised by the Attorney-General.
- (2) Without limiting subsection (1), the request may be for assistance of one or more of the following types:
  - (a) arresting and surrendering to the Tribunal a person in relation to whom the Tribunal has issued an arrest warrant;
  - (b) executing a request for search and seizure;
  - (c) obtaining evidence, a document or other article;
  - (d) providing a document or other record;
  - (e) locating and identifying a witness or suspect;
  - (f) arranging for a person to give evidence or assist an investigation;
  - (g) causing the forfeiture of property or the proceeds of crime;
  - (h) serving documents;
  - (i) arranging for the Tribunal to sit in Australia.
- (3) If a request by a Tribunal is made to, or received by, a person authorised under subsection (1), the request is taken for the purposes of this Act to have been made to, or received by, the Attorney-General.

### **8 Form of requests**

- (1) The request must be in writing and must indicate:
  - (a) who may be, is to be or has been charged with a Tribunal offence as a result of the investigation or prosecution in respect of which the request is made; and
  - (b) the nature of any such charge; and
  - (c) the intended time and place of any hearing of any such charge.
- (2) The request must also indicate:

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- (a) the nature of the investigation or prosecution in respect of which the request is made; and
  - (b) the International Convention or other legal basis on which the Tribunal relies for conducting the investigation or prosecution; and
  - (c) the nature of the assistance sought; and
  - (d) the procedure (if any) that the Tribunal wants the Attorney-General to follow in complying with the request, including the form in which material must be given to the Tribunal; and
  - (e) the period within which the Tribunal wants the request complied with; and
  - (f) any confidentiality requirements that the Tribunal wants observed; and
  - (g) any other matters that might assist in complying with the request.
- (3) Failure to comply with subsection (2) does not invalidate a request.

## **Part 3—Surrender of persons to a Tribunal**

### **Division 1—Arrest of persons**

#### **9 Notice by Attorney-General**

- (1) If:
  - (a) the Attorney-General receives from a Tribunal a request for surrender of a person; and
  - (b) the request is in accordance with subsection 8(1); and
  - (c) the request is accompanied by an arrest warrant in relation to the person that was issued by the Tribunal, or by a copy of that warrant authenticated by the Tribunal;the Attorney-General must, by notice in writing in the statutory form expressed to be directed to any magistrate, state that the request has been received.
- (2) A copy of the arrest warrant that was issued by the Tribunal must be attached to the notice.

#### **10 Issue of warrants**

- (1) A magistrate must issue a warrant, in the statutory form, for a person's arrest if an application is made, in the statutory form, on behalf of the Tribunal, for issue of a warrant pursuant to the notice.
- (2) A magistrate must issue a warrant, in the statutory form, for a person's arrest if:
  - (a) an application is made, in the statutory form, on behalf of a Tribunal, for issue of a warrant otherwise than pursuant to such a notice; and
  - (b) the application is accompanied by a copy of an arrest warrant for the person that was issued by the Tribunal; and
  - (c) the application contains a statement to the effect that, because of circumstances of urgency, it is necessary to issue a warrant before receiving a notice from the Attorney-General under section 9.

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- (3) The magistrate must without delay send to the Attorney-General a report stating whether the magistrate has issued the warrant. Note: Division 4 of Part 7 deals with matters relating to arrest.

**11 Cancellation of warrants**

The Attorney-General must, by written notice in the statutory form, direct a magistrate to cancel a warrant if the person has not been arrested under the warrant and:

- (a) the Attorney-General is satisfied that a request from a Tribunal that would oblige the Attorney-General to issue a notice under section 9 in relation to the person will not be received; or
- (b) the Attorney-General considers for any other reason that the warrant should be cancelled.

**12 Remand**

- (1) A person who is arrested under a warrant must, as soon as practicable:
- (a) be given a written notice that:
    - (i) specifies the Tribunal offence in respect of which the warrant was issued; and
    - (ii) describes the conduct that is alleged to constitute that offence; and
  - (b) be brought before a magistrate in the State or Territory in which the person is arrested.
- (2) If a magistrate is satisfied that the person:
- (a) is the person specified in the warrant; and
  - (b) is also the person specified in the arrest warrant that was issued by the Tribunal;
- the magistrate must remand the person in custody or on bail for such period or periods as may be necessary to enable the Attorney-General to make a surrender determination and (if appropriate) to enable a magistrate to remand the person under section 20.
- (3) The magistrate must remand the person in custody unless there are special circumstances justifying remand on bail.



- (4) If a person is remanded in custody after the person has made an application for bail, the person cannot, during that remand, make another application for bail unless there is evidence of a change of circumstances that might justify bail being granted.

### **13 Release from remand on the Attorney-General's direction**

The Attorney-General must, by notice in writing in the statutory form, direct a magistrate to order the release from custody of a person remanded under this Division, or the discharge of the recognisances on which bail was granted to the person, as the case requires, if:

- (a) the Attorney-General is satisfied that a request from a Tribunal that would oblige the Attorney-General to issue a notice under section 9 in relation to the person will not be received; or
- (b) the Attorney-General considers for any other reason that the remand should cease.

### **14 Release from remand after certain periods**

- (1) A person must be brought before a magistrate if:
  - (a) the person was arrested under a warrant issued under subsection 10(2); and
  - (b) the person is, under this Division, on remand 14 days after the day on which the person was arrested; and
  - (c) a notice has not been given under section 9 in relation to the person.
- (2) 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, the magistrate must:
  - (a) order the release of the person from custody; or
  - (b) order the discharge of the recognisances on which bail was granted to the person; as the case requires.
- (3) If:
  - (a) a magistrate was satisfied under subsection (2) that such a notice was likely to be given in relation to the person within a particular period; and
  - (b) the notice is not given within the period;

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the person must be brought before a magistrate.

- (4) The magistrate must:
- (a) order the release of the person from custody; or
  - (b) order the discharge of the recognisances on which bail was granted to the person;
- as the case requires.

**15 Application for search warrants**

- (1) If:
- (a) a person is arrested under a warrant issued under section 10; and
  - (b) a police officer has reasonable grounds for suspecting that evidential material relating to a Tribunal offence in respect of which the warrant was issued is, or within the applicable period referred to in subsection (3) of this section will be, at any premises;

the police officer may, by an information on oath that sets out the grounds for that suspicion, apply for a search warrant in relation to the premises to search for that material.

- (2) If:
- (a) a person is arrested under a warrant issued under section 10; and
  - (b) a police officer has reasonable grounds for suspecting that evidential material relating to a Tribunal offence in respect of which the warrant was issued is, or within the applicable period referred to in subsection (3) of this section will be, in a person's possession;

the police officer may, by an information on oath that sets out the grounds for that suspicion, apply for a search warrant in relation to that person to search for that material.

- (3) For the purposes of this section, the applicable period is:
- (a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 52-48 hours; or
  - (b) otherwise—72 hours.

Note: Part 7 deals with search warrants.

## **Division 2—Surrender of persons**

### **16 Surrender determination by Attorney-General**

- (1) The Attorney-General must determine whether a person remanded under Division 1 is to be surrendered to the Tribunal that sought the arrest of the person under that Division.
- (2) Unless the Attorney-General is satisfied that there are special circumstances, he or she must determine that the person is to be surrendered to the Tribunal.
- (3) In considering whether there are special circumstances, the Attorney-General must:
  - (a) give the person a reasonable opportunity to provide to the Attorney-General documents intended to show that there are special circumstances; and
  - (b) consider any documents so provided.
- (4) The determination must be made as soon as reasonably practicable, having regard to the circumstances, after the person is remanded under Division 1.

### **17 Release from remand on refusal to surrender the person**

If the Attorney-General has determined not to surrender the person to the Tribunal, the Attorney-General must, by notice in writing in the statutory form, direct a magistrate to order:

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

### **18 Surrender warrants**

- (1) Subject to section 19, if the Attorney-General determines that the person is to be surrendered to the Tribunal, the Attorney-General must issue a warrant for the surrender of the person to the Tribunal.
- (2) The surrender warrant must be in writing in the statutory form.

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**19 Persons imprisoned under Australian law**

- (1) The Attorney-General must not issue a surrender warrant if:
  - (a) the person is serving a sentence of imprisonment in respect of an offence against an Australian law, or is otherwise subject to detention under an Australian law; and
  - (b) the Tribunal has been required to give adequate undertakings to the Attorney-General relating to:
    - (i) the person's return to Australia to serve the remainder of the sentence or other detention once the person is no longer required to be detained by, or on the order of, the Tribunal; and
    - (ii) the person's custody while travelling, and while in other countries, for the Tribunal's purposes; and
  - (c) the Attorney-General is not satisfied that the Tribunal has given adequate undertakings relating to those matters.
- (2) For the purposes of this section, the person is not taken to be serving a sentence of imprisonment, or to be otherwise subject to detention, if he or she has been released on parole or licence, or has been otherwise conditionally released, for the remainder of the sentence or period of detention.

**20 Detention following surrender warrants**

- (1) If the Attorney-General issues the surrender warrant, the person must be brought as soon as practicable before a magistrate in the State or Territory in which the person is on remand.
- (2) A magistrate must remand the person in custody for such period or periods as may be necessary to enable the warrant to be executed.

**21 Content of surrender warrants**

- (1) A surrender warrant in relation to the person (the *eligible person*) must:
  - (a) require the person in whose custody the eligible person is being held to release the eligible person into the custody of a police officer; and
  - (b) 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:

- (i) to be placed in the custody of a specified person who is an officer of the Tribunal or other person authorised by the Tribunal; and
  - (ii) to be transported to a place specified by the Tribunal; and
  - (c) authorise the specified person to transport the eligible person in custody to a place specified by the Tribunal for the purpose of surrendering the eligible person to a person appointed by the Tribunal to receive the person.
- (2) A place referred to in paragraph (1)(b) or (c) may be a place in or outside Australia.

## **22 Execution of surrender warrants**

Subject to this Division, a surrender warrant must be executed according to its tenor.

## **23 Release from remand**

- (1) If:
- (a) a surrender warrant has been issued in relation to a person; and
  - (b) the person is in custody in Australia under the warrant, or otherwise under this Act, more than 21 days after the day on which the warrant was first liable to be executed; and
  - (c) the person applies to the Federal Court of Australia or the Supreme Court of the State or Territory in which the person is in custody; and
  - (d) reasonable notice of the intention to apply has been given to the Attorney-General;
- the Court must, subject to subsection (2), order that the person be released from that custody.
- (2) However, if the Court is satisfied that the surrender warrant has not been executed within the period of 21 days, or since the person last made an application under subsection (1), as the case may be:
- (a) because to do so would have endangered the person's life, or would have prejudiced the person's health; or

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- (b) for any other reasonable cause; the Court must not order that the person be released from custody.

**24 Effect of surrender to Tribunal on person's terms of imprisonment**

- (1) If, at the time a person was surrendered to a Tribunal under this Part in connection with a Tribunal offence, the person was serving a sentence of imprisonment in respect of an offence against a law of the Commonwealth or of a Territory, or was otherwise subject to detention under a law of the Commonwealth or of a Territory:
- (a) any time spent by the person in custody in connection with the surrender warrant; and
  - (b) subject to subsection (2), any time spent by the person in custody in connection with detention by, or on the order of, the Tribunal in respect of the Tribunal offence;
- is to be counted as time served towards the sentence of imprisonment or period of detention.
- (2) If the person is convicted of the Tribunal offence, time spent by the person in custody serving a sentence of imprisonment imposed by the Tribunal for the Tribunal offence is not to be counted as time towards the sentence of imprisonment or period of detention referred to in subsection (1).
- (3) A reference in this section to time spent in custody includes a reference to time spent in custody outside Australia.

**25 Expiry of Australian sentences while under Tribunal detention**

If:

- (a) at the time a person was surrendered to a Tribunal under this Part, the person was serving a sentence of imprisonment in respect of an offence against an Australian law, or was otherwise subject to detention under an Australian law; and
  - (b) each such sentence of imprisonment that the person was serving, or each such period of detention to which the person was subject, at that time expires while the person is being detained by, or on the order of, the Tribunal;
- the Attorney-General must without delay inform the Tribunal of the expiry and, if the Tribunal was required to give undertakings as

referred to in section 19, that the undertakings are no longer required to be complied with.

**Part 4** Other forms of assistance to a Tribunal

**Division 1** Taking evidence etc.

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**Part 4—Other forms of assistance to a Tribunal**

Note: Additional forms of assistance outside the scope of this Act may also be made available to the Tribunals—see section 84.

**Division 1—Taking evidence etc.**

**26 Attorney-General may authorise taking of evidence etc.**

- (1) This section applies if a Tribunal makes a request to the Attorney-General that:
  - (a) evidence be taken in Australia; or
  - (b) documents or other articles in Australia be produced; for the purposes of a proceeding before, or an investigation conducted by, the Tribunal.
- (2) Subject to subsection (3), the Attorney-General may comply with the request by authorising, by written notice in the statutory form:
  - (a) the taking of evidence or production of documents or other articles; and
  - (b) transmission of evidence, documents or other articles to the Tribunal.
- (3) The Attorney-General must not comply with the request if, in his or her opinion:
  - (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.

**27 Taking of evidence**

- (1) If the Attorney-General authorises taking of evidence, a magistrate may take the evidence on oath from each witness appearing before the magistrate to give evidence in relation to the matter.
- (2) A magistrate who takes any such evidence must:
  - (a) cause the evidence to be put in writing; and
  - (b) certify that the evidence was taken by the magistrate; and
  - (c) cause the writing so certified to be sent to the Attorney-General.



## **28 Producing documents or other articles**

- (1) If the Attorney-General authorises production of documents or other articles, a magistrate may require production of the documents or other articles.
- (2) Subject to subsection (3), if the documents or other articles are produced, the magistrate must send them to the Attorney-General together with a written statement certifying that they were produced to the magistrate.
- (3) In the case of documents, the magistrate may send to the Attorney-General copies of the documents certified by the magistrate to be true copies.

## **29 Legal representation**

- (1) The evidence of a witness may be taken under section 27 in the presence or absence of:
  - (a) the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates; or
  - (b) his or her legal representative (if any).
- (2) The magistrate conducting a proceeding under either section 27 or 28, or both, may permit:
  - (a) the person to whom the proceeding before, or investigation conducted by, the Tribunal relates; and
  - (b) any other person giving evidence or producing documents or other articles at the proceeding before the magistrate; and
  - (c) the Tribunal;to have legal representation at the proceeding before the magistrate.
- (3) If the Tribunal so requests, the Magistrate conducting a proceeding under section 27 or 28 (or both) may permit examination or cross-examination of a person giving evidence or producing a document or other article at the proceeding, by:
  - (a) the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates; or
  - (b) that person's legal representative; or
  - (c) the Tribunal's legal representative;through a video link.

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(4) In this section:

*video link* means a video and sound system that enables persons assembled in the Tribunal's premises (or premises nominated by the Tribunal) to see, hear and talk to persons assembled in a place in another country.

**30 Form of certificates**

A certificate by a magistrate under subsection 27(2) or 28(2) must state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons were present:

- (a) the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates, or his or her legal representative (if any);
- (b) any other person giving evidence or producing documents or other articles, or his or her legal representative (if any).

**31 Compellability of persons to attend etc.**

(1) Subject to subsections (2) and (3), the laws of each State or Territory with respect to compelling persons:

- (a) to attend before a magistrate; and
- (b) to give evidence, answer questions, and produce documents or other articles;

on the hearing of a charge against a person for an offence against the law of that State or Territory apply, so far as they are capable of application, with respect to so compelling persons for the purposes of this Division.

(2) For the purposes of this Division, the person to whom the proceeding before, or the investigation conducted by, the Tribunal relates, is competent but not compellable to give evidence.

(3) If:

- (a) a person is required to give evidence, or produce documents or other articles, for the purposes of a proceeding before, or an investigation conducted by, a Tribunal; and
- (b) the person is not compellable to answer a particular question, or to produce a particular document or article, for the purposes of that proceeding or investigation;

the person is not compellable to answer the question, or produce the document or article, for the purposes of this Division.

### **32 Tribunal immunity certificates**

- (1) An authenticated Tribunal immunity certificate is admissible in proceedings under this Division as prima facie evidence of matters stated in the certificate.
- (2) In this section:

*Tribunal immunity certificate* means a certificate or declaration that:

- (a) is given or made by a Tribunal under the Statute of the Tribunal or under the rules adopted under the Statute of the Tribunal; and
- (b) specifies or declares that, under the Statute of the Tribunal or under the rules adopted under the Statute of the Tribunal, persons generally or a specified person could or could not:
  - (i) either generally or in specified proceedings; and
  - (ii) either generally or in specified circumstances;

be required to answer a specified question or to produce a specified document.

## **Division 2—Search and seizure**

### **33 Attorney-General may authorise applications for search warrants**

- (1) Subject to subsection (2), if:
  - (a) a Tribunal makes a request to the Attorney-General compliance with which may involve the issue of a search warrant in relation to evidential material; and
  - (b) there are reasonable grounds to believe that the material is in Australia;the Attorney-General may, in writing, authorise a police officer to apply to a magistrate of the State or Territory in which that material is believed to be located for the search warrant.
- (2) The Attorney-General must not comply with the request if, in his or her opinion:
  - (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.

### **34 Applications for search warrants**

- (1) If:
  - (a) a police officer is authorised under section 33 to apply for a search warrant; and
  - (b) the police officer has reasonable grounds for suspecting that the evidential material is, or within the applicable period referred to in subsection (3) of this section will be, at any premises;the police officer may, by an information on oath setting out the grounds for that suspicion, apply for a search warrant in relation to the premises to search for that material.
- (2) If:
  - (a) a police officer is authorised under section 33 to apply for a search warrant; and
  - (b) the police officer has reasonable grounds for suspecting that the evidential material is, or within the applicable period

referred to in subsection (3) of this section will be, in a person's possession;  
the police officer may, by an information on oath setting out the grounds for that suspicion, apply for a search warrant in relation to that person to search for that material.

- (3) For the purposes of this section, the applicable period is:
- (a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 52-48 hours; or
  - (b) otherwise-72 hours.

Note: Part 7 deals with search warrants.

### **Division 3—Giving evidence at hearings, or assisting in investigations, in foreign countries**

#### **35 Persons giving evidence or assisting (other than prisoners)**

- (1) Subject to subsection (2), the Attorney-General may make arrangements for the travel to a foreign country of a person who is in Australia if:
  - (a) a Tribunal makes a request to the Attorney-General for the attendance of the person:
    - (i) at a hearing in the foreign country in connection with a proceeding before the Tribunal; or
    - (ii) in the foreign country to assist an investigation being conducted by the Tribunal; and
  - (b) the person is not a prisoner; and
  - (c) there are reasonable grounds to believe that the person can give evidence relevant to the proceeding or assist the investigation; and
  - (d) the Attorney-General is satisfied that the person has consented to giving evidence or assisting in the foreign country; and
  - (e) the Attorney-General is satisfied that the Tribunal has given, to the extent (if any) required by the Attorney-General, an adequate (whether or not unqualified) undertaking that the person will be returned to Australia in accordance with arrangements agreed to by the Attorney-General.
- (2) The Attorney-General must not comply with the request if, in his or her opinion:
  - (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.

#### **36 Prisoners giving evidence or assisting**

- (1) This section applies if:
    - (a) a Tribunal makes a request to the Attorney-General for the attendance of a person:
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- (i) at a hearing in a foreign country in connection with a proceeding before the Tribunal; or
  - (ii) in a foreign country to assist an investigation being conducted by the Tribunal; and
  - (b) the person is a federal prisoner, or a State prisoner, who is in Australia (whether or not in custody); and
  - (c) there are reasonable grounds to believe that the prisoner can give evidence relevant to the proceeding or assist the investigation; and
  - (d) the Attorney-General is satisfied that the prisoner has consented to giving evidence or assisting in the foreign country; and
  - (e) the Attorney-General is satisfied that the Tribunal has given, to the extent (if any) required by the Attorney-General, adequate (whether or not unqualified) undertakings in respect of the matters referred to in section 37.
- (2) Subject to subsection (4), if the prisoner is being held in custody, the Attorney-General may:
- (a) if the prisoner is a federal prisoner and is not also a State prisoner-direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceeding or to assist the investigation; and
  - (b) if the prisoner is a federal prisoner and also a State prisoner-direct, subject to the obtaining of any approvals required to be obtained from an authority of the relevant State, that the prisoner be released from prison for the purpose of such travel; and
  - (c) in any case-subject to the making or giving of any necessary directions or approvals relevant to release of the prisoner, make arrangements for such travel in the custody of a police officer, or prison officer, appointed by the Attorney-General for the purpose.
- (3) Subject to subsection (4), if the prisoner, having been released from custody on parole, is not being held in custody, the Attorney-General may:
- (a) if the prisoner is a federal prisoner and is not also a State prisoner:

**Part 4** Other forms of assistance to a Tribunal

**Division 3** Giving evidence at hearings, or assisting in investigations, in foreign countries

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- (i) approve the travel of the prisoner to the foreign country to give evidence at the proceeding or to assist the investigation; and
    - (ii) obtain such parole decisions as may be required; and
  - (b) if the prisoner is a federal prisoner and also a State prisoner-subject to the obtaining of any parole decisions required to be obtained from an authority of the relevant State:
    - (i) approve the travel of the prisoner to the foreign country to give evidence at the proceeding or to assist the investigation; and
    - (ii) obtain such parole decisions under a law of the Commonwealth or of a Territory as may be required; and
  - (c) in any case-subject to the obtaining of any necessary parole decisions, make arrangements for the travel of the prisoner to the foreign country.
- (4) The Attorney-General must not comply with the request if, in his or her opinion:
- (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.
- (5) In this section:

*parole* includes any order or licence to be at large.

*parole decision* means any approval, authority or permission relating to parole, and includes any variation of parole.

**37 Undertakings relating to prisoners**

- (1) A Tribunal is to give, to the extent (if any) required by the Attorney-General, an undertaking, in relation to any prisoner who is to give evidence in a foreign country pursuant to a request by the Tribunal, that the prisoner will be returned to Australia in accordance with arrangements agreed to by the Attorney-General.
- (2) If the prisoner is being held in custody in Australia and the Attorney-General requests the Tribunal to make arrangements for keeping the prisoner in custody while he or she is in the foreign



country, the Tribunal is also to give, to the extent (if any) required by the Attorney-General, the following undertakings:

- (a) that appropriate arrangements will be made for that purpose;
- (b) that the prisoner will not be released from custody in the foreign country unless the Attorney-General notifies the Tribunal that the prisoner is entitled to be released from custody under Australian law;
- (c) if the prisoner is so released-that his or her accommodation and expenses will be paid for by the Tribunal until the Tribunal decides that the person is no longer required to give evidence in the proceeding, or to assist the investigation, to which the request relates.

### **38 Effect of removal to foreign country on prisoners' terms of imprisonment**

A person who is serving a sentence of imprisonment for an offence against a law of the Commonwealth or of a Territory, or is otherwise subject to detention under a law of the Commonwealth or of a Territory, is taken to continue to serve that sentence of imprisonment, or to continue to be subject to that detention, at any time during which the person:

- (a) is released from a prison pursuant to a request by a Tribunal under section 36; and
- (b) is in custody in connection with the request (including custody outside Australia).

## **Division 4—Custody of persons in transit**

### **39 Transit**

- (1) If a person is to be transported in custody from a foreign country through Australia to another foreign country for the purpose of:
  - (a) giving evidence in a proceeding before a Tribunal; or
  - (b) giving assistance in relation to an investigation being conducted by a Tribunal; or
  - (c) being surrendered to a Tribunal;the person may be transported through Australia in the custody of another person.
- (2) If an aircraft or ship by which the person is being transported lands or calls at a place in Australia, the person must be kept in such custody as the Attorney-General directs in writing until his or her transportation is continued.
- (3) If:
  - (a) a person is being held in custody pursuant to a direction under subsection (2); and
  - (b) the person's transportation is not, in the Attorney-General's opinion, continued within a reasonable time;the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

## **Division 5—Service of process**

### **40 Service of process**

- (1) Subject to subsection (2), if a Tribunal requests the Attorney-General to arrange for service in Australia of a process relating to a proceeding before, or an investigation conducted by, the Tribunal, the Attorney-General may arrange for service of the process.
- (2) The Attorney-General must not comply with the request if, in his or her opinion:
  - (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.

## **Part 5—Sittings of a Tribunal in Australia**

### **41 Tribunal sittings in Australia**

- (1) A Tribunal may sit in Australia for the purpose of performing its functions.
- (2) Without limiting subsection (1), a Tribunal may sit in Australia for the purpose of:
  - (a) taking evidence; or
  - (b) conducting or continuing a proceeding before the Tribunal; or
  - (c) giving judgment in a proceeding before the Tribunal.

### **42 Tribunal's powers while sitting in Australia**

- (1) While a Tribunal is sitting in Australia, it may exercise such powers as are prescribed by the regulations in respect of the Tribunal.
- (2) Regulations made for the purposes of subsection (1) must implement agreements between the Commonwealth and the Tribunal about the powers that the Tribunal may exercise while sitting in Australia.
- (3) Despite section 49A of the Acts Interpretation Act 1901, regulations made for the purposes of subsection (1) may apply, adopt or incorporate, with or without modification, the rules of procedure and evidence, as in force at a particular time or as in force from time to time, adopted under:
  - (a) in the case of the Former Yugoslavia Tribunal—Article 15 of the Statute of the Tribunal; or
  - (b) in the case of the Rwanda Tribunal—Article 14 of the Statute of the Tribunal.

### **43 Contravention of Tribunal orders etc.**

A person must not:

- (a) intentionally contravene an order that a Tribunal makes while sitting in Australia; or
-

- (b) otherwise intentionally hinder a Tribunal in performing its functions while sitting in Australia.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

## **Part 6—Forfeiture of proceeds of Tribunal offences**

### **44 Requests for enforcement of forfeiture orders**

- (1) Subject to subsection (3), if:
  - (a) a Tribunal requests the Attorney-General to make arrangements for the enforcement of a forfeiture order made in relation to property that is believed to be in Australia; and
  - (b) the Attorney-General is satisfied that a person has been convicted by the Tribunal of the Tribunal offence to which the order relates; and
  - (c) the Attorney-General is satisfied that the conviction and the order are not subject to further appeal in the Tribunal;  
the Attorney-General may, in writing, authorise the Director of Public Prosecutions to apply for the registration of the order in a specified court.
- (2) The court specified must be the Supreme Court of a State or Territory in which the property, or some of the property, is believed to be located.
- (3) The Attorney-General must not comply with the request if, in his or her opinion:
  - (a) complying with the request would prejudice Australia's sovereignty, security or national interest; or
  - (b) there are special circumstances justifying non-compliance.

### **45 Registration of order**

- (1) If the Director of Public Prosecutions applies to a court for registration of an order in accordance with an authorisation under this Part, the court must register the order and must direct the Director of Public Prosecutions:
  - (a) to give notice of the registration, in the manner and within the time the court considers appropriate, to specified persons (other than a person convicted of an offence in respect of which the order was made) the court has reason to believe may have an interest in the property; or

- (b) to publish notice of the registration in the manner and within the time the court considers appropriate.
- (2) An order must be registered in a court by the registration, under the rules of the court, of a copy of the appropriate order sealed by the Tribunal.
- (3) Subject to subsection 46(2), a fax of a sealed copy of an order is, for the purposes of subsection (2) of this section, taken to be the same as the sealed copy.

#### **46 Effect of order**

- (1) A forfeiture order registered in a court has effect, and may be enforced, as if it were a forfeiture order made by the court under the *Proceeds of Crime Act 2002* at the time of registration.
- (1A) In particular, section 68 of the *Proceeds of Crime Act 2002* applies in relation to the forfeiture order as if:
  - (a) the reference in subparagraph 68(1)(b)(i) of that Act to the Director of Public Prosecutions having applied for the order were a reference to the Director of Public Prosecutions having applied for registration of the order under section 45 of this Act; and
  - (b) subparagraph 68(1)(b)(ii) of that Act were repealed.
- (2) A registration effected by registering a fax of a sealed copy ceases to have effect after 21 days unless the sealed copy has been registered by then.
- (3) Subject to section 46A, property that is subject to an order registered under this Part may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing for the purposes of this subsection.
- (4) Sections 69 to 71, Divisions 5 to 7 of Part 2-2, Part 4-2 and sections 322 and 323 of the *Proceeds of Crime Act 2002* do not apply in relation to an order registered under this Part.

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**46A Effect on third parties of registration of forfeiture orders**

*Applications by third parties*

- (1) If a court registers under section 45 a forfeiture order against property, a person who:
- (a) claims an interest (within the meaning of the *Proceeds of Crime Act 2002*) in the property; and
  - (b) was not convicted of an offence in respect of which the order was made;
- may apply to the court for an order under subsection (2).

*Orders by the court*

- (2) If, on an application for an order under this subsection, the court is satisfied that:
- (a) the applicant was not, in any way, involved in the commission of an offence in respect of which the forfeiture order was made; and
  - (b) if the applicant acquired the interest in the property at the time of or after the commission of such an offence—the property was neither:
    - (i) proceeds (within the meaning of the *Proceeds of Crime Act 2002*) of such an offence; nor
    - (ii) an instrument (within the meaning of that Act) of such an offence;
- the court must make an order:
- (c) declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest in the property; and
  - (d) either:
    - (i) directing the Commonwealth to transfer the interest to the applicant; or
    - (ii) declaring that there is payable by the Commonwealth to the applicant an amount equal to the value declared under paragraph (c).



*Certain people need leave to apply*

- (3) A person who was given notice of, or appeared at, the hearing held in connection with the making of the forfeiture order is not entitled to apply under subsection (1) unless the court gives leave.
- (4) The court may give leave if satisfied that there are special grounds for doing so.
- (5) Without limiting subsection (4), the court may grant a person leave if the court is satisfied that:
  - (a) the person, for a good reason, did not attend the hearing referred to in subsection (3) although the person had notice of the hearing; or
  - (b) particular evidence that the person proposes to adduce in connection with the proposed application under subsection (1) was not available to the person at the time of the hearing referred to in subsection (3).

*Period for applying*

- (6) Unless the court gives leave, an application under subsection (1) is to be made before the end of 6 weeks beginning on the day when the forfeiture order is registered in the court.
- (7) The court may give leave to apply outside that period if the court is satisfied that the person's failure to apply within that period was not due to any neglect on the person's part.

*Procedural matters*

- (8) A person who applies under subsection (1) must give to the Director of Public Prosecutions and the Attorney-General notice, as prescribed, of the application.
- (9) The Director of Public Prosecutions is to be a party to proceedings on an application under subsection (1). The Attorney-General may intervene in the proceedings.

## **Part 7—Search, seizure and powers of arrest**

### **Division 1—Search warrants**

#### **47 When search warrants can be issued**

- (1) A magistrate may issue a warrant to search premises if:
  - (a) an application has been made to the magistrate under subsection 15(1) or 34(1); and
  - (b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the applicable period referred to in subsection (3) of this section will be, any evidential material at the premises.
- (2) A magistrate may issue a warrant authorising an ordinary search or a frisk search of a person if:
  - (a) an application has been made to the magistrate under subsection 15(2) or 34(2); and
  - (b) the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the person has, or within the applicable period referred to in subsection (3) of this section will have, any evidential material in his or her possession.
- (3) For the purposes of subsections (1) and (2), the applicable period is:
  - (a) if the application for the warrant is made by telephone, telex, fax or other electronic means, as provided by section 52—48 hours; or
  - (b) otherwise—72 hours.
- (4) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state that suspicion, and the grounds for that suspicion, in the information.
- (5) If the person applying for the warrant is a member or special member of the Australian Federal Police and has, at any time previously, applied for a warrant relating to the same person or premises, the person must state particulars of those applications and their outcome in the information.

- (6) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises or a person in the Jervis Bay Territory.
- (7) A magistrate in a State or internal Territory may:
  - (a) issue a warrant in relation to premises or a person in that State or Territory; or
  - (b) issue a warrant in relation to premises or a person in an external Territory; or
  - (c) issue a warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
  - (d) issue a warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.

#### **48 Content of warrants**

- (1) If a magistrate issues a search warrant, the magistrate is to state in the warrant:
  - (a) the purpose for which it is issued, including the Tribunal offence to which the application for the warrant relates; and
  - (b) a description of the premises to which the warrant relates or the name or description of the person to whom it relates; and
  - (c) the kinds of evidential material that are to be searched for under the warrant; and
  - (d) the name of the police officer who, unless he or she inserts the name of another police officer in the warrant, is to be responsible for executing the warrant; and
  - (e) the period for which the warrant remains in force, which must not be more than:
    - (i) if the warrant is issued on an application by telephone, telex, fax or other electronic means as provided by section 52—48 hours; or
    - (ii) otherwise—7 days; and
  - (f) whether the warrant may be executed at any time or only during particular hours.
- (2) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.

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- (3) The magistrate is also to state, in a warrant in relation to premises:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) a thing relevant to an indictable offence against an Australian law;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing a Tribunal offence or an indictable offence against an Australian law; and
  - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (4) The magistrate is also to state, in a warrant in relation to a person:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, in the possession of the person or in or on a recently used conveyance, being a thing that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) a thing relevant to an indictable offence against an Australian law;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing a Tribunal offence or an indictable offence against an Australian law; and
  - (b) the kind of search of a person that the warrant authorises.

#### **49 The things authorised by a search warrant in relation to premises**

- (1) A warrant in force in relation to premises authorises the executing officer or an officer assisting:
  - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
  - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
  - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
  - (d) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) things relevant to an indictable offence against an Australian law;if the executing officer or an officer assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing a Tribunal offence or an indictable offence against an Australian law; and
  - (e) to seize other things found at the premises in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be seizable items; and
  - (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an officer assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.

#### **50 The things authorised by a search warrant in relation to a person**

- (1) A warrant in force in relation to a person authorises the executing officer or an officer assisting:
  - (a) to:
    - (i) search the person as specified in the warrant; and

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- (ii) search things found in the possession of the person; and
  - (iii) search any recently used conveyance;  
for things of the kind specified in the warrant; and
  - (b) to:
    - (i) seize things of that kind; and
    - (ii) record fingerprints from things; and
    - (iii) take forensic samples from things;  
found in the course of the search; and
  - (c) to seize other things found in the possession of the person or in or on the conveyance in the course of the search that the executing officer or an officer assisting believes on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) things relevant to an indictable offence against an Australian law;if the executing officer or a police officer assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing a Tribunal offence or an indictable offence against an Australian law; and
  - (d) to seize other things found in the course of the search that the executing officer or a police officer assisting believes on reasonable grounds to be seizable items.
- (2) If the warrant states that it may be executed only during particular hours, it must not be executed outside those hours.
- (3) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

**51 Restrictions on personal searches**

A warrant cannot authorise a strip search or a search of a person's body cavities.

**52 Warrants may be issued by telephone etc.**

- (1) A police officer may apply to a magistrate for a warrant by telephone, telex, fax or other electronic means:
    - (a) in an urgent case; or
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- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate requires, is satisfied that:
  - (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the magistrate may complete and sign the same form of warrant that would be issued under section 47.

### **53 Formalities relating to warrants issued by telephone etc.**

- (1) If the magistrate decides to issue the warrant under section 52, the magistrate is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (2) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (3) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the magistrate:
  - (a) the form of warrant completed by the applicant; and
  - (b) if the information referred to in subsection 52(3) was not sworn—that information duly sworn.

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- (4) The magistrate is to attach to the documents provided under subsection (3) the form of warrant completed by the magistrate.
- (5) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under section 52 was duly authorised; and
  - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.



## **Division 2—Provisions relating to execution of search warrants**

### **54 Availability of assistance and use of force in executing a warrant**

In executing a search warrant:

- (a) the executing officer may obtain such assistance; and
- (b) the executing officer, or a person who is a police officer and who is assisting in executing the warrant, may use such force against persons and things; and
- (c) a person who is not a police officer and who has been authorised to assist in executing the warrant may use such force against things; as is necessary and reasonable in the circumstances.

### **55 Copy of warrant to be shown to occupier etc.**

- (1) If a search warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the executing officer or an officer assisting must make available to that person a copy of the warrant.
- (2) If a search warrant in relation to a person is being executed, the executing officer or an officer assisting must make available to that person a copy of the warrant.
- (3) If a person is searched under a search warrant in relation to premises, the executing officer or an officer assisting must show the person a copy of the warrant.
- (4) The executing officer must identify himself or herself to the person at the premises or the person being searched.
- (5) The copy of the warrant referred to in subsections (1), (2) and (3) need not include the signature of the magistrate who issued it or the seal of the relevant court.

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**56 Specific powers available to officers executing warrants**

- (1) In executing a search warrant in relation to premises, the executing officer or an officer assisting may:
  - (a) for a purpose incidental to execution of the warrant; or
  - (b) if the occupier of the warrant premises consents in writing; take photographs (including video recordings) of the premises or of things at the premises.
- (2) In executing a search warrant in relation to premises, the executing officer and the police officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the warrant premises:
  - (a) for not more than one hour; or
  - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
  - (a) the execution of a search warrant is stopped by an order of a court; and
  - (b) the order is later revoked or reversed on appeal; and
  - (c) the warrant is still in force;the execution of the warrant may be completed.

**57 Use of equipment to examine or process things**

- (1) The executing officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether the things may be seized under the warrant.
- (2) If:
  - (a) it is not practicable to examine or process the things at the warrant premises; or
  - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether the things may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
  - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or an officer assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it may be seized under the warrant if the executing officer or police officer assisting believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or thing.

### **58 Use of electronic equipment at premises**

- (1) The executing officer or an officer assisting may operate electronic equipment at the warrant premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the executing officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
  - (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in a documentary form-operate the facilities to put the material in that form and seize the documents so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device:
    - (i) that is brought to the premises; or
    - (ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

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operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

- (3) Equipment may be seized under paragraph (2)(a) only if:
- (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
  - (b) possession by the occupier of the equipment could constitute an offence against an Australian law.
- (4) If the executing officer or an officer assisting believes on reasonable grounds that:
- (a) evidential material may be accessible by operating electronic equipment at the warrant premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
- (a) for up to 24 hours; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.
- (7) If the executing officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.
- (8) The executing officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

- (9) Division 1 applies, with such modifications as are necessary, to issuing an extension.

### **59 Compensation for damage to electronic equipment**

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 57 or 58; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the warrant premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

### **60 Copies of seized things to be provided**

- (1) Subject to subsection (2), if an executing officer or officer assisting seizes, under a warrant in relation to premises:
- (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied; the executing officer or officer assisting must, if requested to do so by the occupier of the warrant premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
- (a) the thing was seized under paragraph 58(2)(b) or (c); or

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- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against an Australian law.

**61 Occupier entitled to be present during search**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**62 Receipts for things seized under warrant**

- (1) If a thing is seized under a warrant or moved under subsection 57(2), the executing officer or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or removed, they may be covered in the one receipt.

## **Division 3—Stopping and searching conveyances**

### **63 Searches without warrant in emergency situations**

- (1) This section applies if a police officer suspects, on reasonable grounds, that:
  - (a) evidential material is in or on a conveyance; and
  - (b) it is necessary to exercise a power under subsection (2) in order to prevent the material from being concealed, lost or destroyed; and
  - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) The police officer may:
  - (a) stop and detain the conveyance; and
  - (b) search the conveyance, and any container in or on the conveyance, for the material; and
  - (c) seize the material if he or she finds it there.
- (3) If, in the course of searching for the material, the police officer finds other evidential material or a thing relevant to an offence against an Australian law, the police officer may seize that material or thing if he or she suspects, on reasonable grounds, that:
  - (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
  - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) The police officer must exercise his or her powers subject to section 64.

### **64 How a police officer exercises a power under section 63**

When a police officer exercises a power under section 63 in relation to a conveyance, he or she:

- (a) may use such assistance as is necessary; and
- (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and

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- (c) must not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless:
  - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
  - (ii) it is not possible to give that person such an opportunity.



## **Division 4—Arrest and related matters**

### **65 Power to enter premises to arrest person**

- (1) Subject to subsection (2), if:
  - (a) a police officer has, under this Act or pursuant to a warrant issued under this Act, power to arrest a person; and
  - (b) the police officer believes on reasonable grounds that the person is on any premises; the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.
- (2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 p.m. on a day and ending at 6 a.m. on the following day unless the police officer believes on reasonable grounds that:
  - (a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or
  - (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidential material.
- (3) In subsection (2):

*dwelling house* includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

### **66 Use of force in making arrest**

- (1) A person must not, in the course of arresting another person under this Act or pursuant to a warrant issued under this Act, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.
- (2) Without limiting the operation of subsection (1), a police officer must not, in the course of arresting a person under this Act or pursuant to a warrant issued under this Act:

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- (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the police officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the police officer); or
- (b) if the person is attempting to escape arrest by fleeing-do such a thing unless:
  - (i) the police officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the police officer); and
  - (ii) the person has, if practicable, been called on to surrender and the police officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

**67 Persons to be informed of grounds of arrest**

- (1) A person who arrests another person under this Act or pursuant to a warrant issued under this Act must inform the other person, at the time of the arrest, of the Tribunal offence in respect of which, or, if the other person is arrested under section 78 or 79, the reason for which, the other person is being arrested.
- (2) It is sufficient if the other person is informed of the substance of the offence or reason, and it is not necessary that this be done in language of a precise or technical nature.
- (3) Subsection (1) does not apply to the arrest of the other person if:
  - (a) the other person should, in the circumstances, know the substance of the Tribunal offence in respect of which, or the reason for which, he or she is being arrested; or
  - (b) the other person's actions make it impracticable for the person making the arrest to inform the other person of the Tribunal offence in respect of which, or the reason for which, he or she is being arrested.

**68 Power to conduct a frisk search of an arrested person**

A police officer who arrests a person under this Act or pursuant to a warrant issued under this Act, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that it is

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prudent to do so in order to ascertain whether the person is carrying any seizable items:

- (a) conduct a frisk search of the person at or soon after the time of arrest; and
- (b) seize any seizable items found as a result of the search.

#### **69 Power to conduct an ordinary search of an arrested person**

A police officer who arrests a person under this Act or pursuant to a warrant issued under this Act, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that the person is carrying:

- (a) evidential material relating to the Tribunal offence to which the person's custody relates; or
- (b) a seizable item;

conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

#### **70 Power to conduct search of arrested person's premises**

A police officer who arrests a person at premises under this Act or pursuant to a warrant issued under this Act, or who is present at such an arrest, may seize things in plain view at those premises that the police officer believes on reasonable grounds to be:

- (a) evidential material relating to the Tribunal offence to which the person's custody relates; or
- (b) seizable items.

#### **71 Power to conduct an ordinary search or strip search**

- (1) If a person who has been arrested under this Act or pursuant to a warrant issued under this Act is brought to a police station, a police officer may:
  - (a) if an ordinary search of the person has not been conducted—conduct an ordinary search of the person; or
  - (b) subject to this section, conduct a strip search of the person.
- (2) A strip search may be conducted if:
  - (a) a police officer suspects on reasonable grounds that:

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- (i) the person has in his or her possession evidential material relating to the Tribunal offence to which the person's custody relates; or
  - (ii) the person has in his or her possession a seizable item; or
  - (iii) a visual inspection of the person's body will provide evidence of the person's involvement in that offence; and
- (b) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that thing or to discover that evidence; and
- (c) a police officer of the rank of superintendent or higher has approved the conduct of the search.
- (3) Subject to section 72, a strip search may also be conducted if the person consents in writing.
- (4) Subject to section 72, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.
- (5) The approval may be obtained by telephone, telex, fax or other electronic means.
- (6) A police officer who gives or refuses to give an approval for the purposes of paragraph (2)(c) must make a record of the decision and of the reasons for the decision.
- (7) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (2).
- (8) Any item of a kind referred to in subparagraph (2)(a)(i) or (ii) that is found during a strip search may be seized.

**72 Rules for conduct of strip search**

- (1) A strip search:
- (a) must be conducted in a private area; and
  - (b) must be conducted by a police officer who is of the same sex as the person being searched; and
  - (c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and

- (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
  - (e) must not be conducted on a person who is under 10; and
  - (f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs:
    - (i) may only be conducted if a court orders that it be conducted; and
    - (ii) must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; and
  - (g) must not involve a search of a person's body cavities; and
  - (h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the Tribunal offence to which the person's custody relates; and
    - (i) must not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the Tribunal offence to which the person's custody relates.
- (2) In deciding whether to make an order referred to in paragraph (1)(f), the court must have regard to:
- (a) the seriousness of the Tribunal offence to which the person's custody relates; and
  - (b) the age or any disability of the person; and
  - (c) such other matters as the court thinks fit.
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.

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- (4) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (5) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

## **Division 5—General**

### **73 Conduct of ordinary searches and frisk searches**

- (1) An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.
- (2) An officer assisting who is not a police officer must not take part in an ordinary search or a frisk search of a person under this Part.

### **74 Announcement before entry**

- (1) A police officer must, before any person enters premises under a warrant or to arrest a person:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  - (a) the safety of a person (including the police officer); or
  - (b) that the effective execution of the warrant or the arrest is not frustrated.

### **75 Offence for making false statements in warrants**

A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

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**76 Offences relating to telephone warrants**

A person must not:

- (a) state in a document that purports to be a form of warrant under section 52 the name of a magistrate unless that magistrate issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that:
  - (i) the person knows has not been approved by a magistrate under that section; or
  - (ii) the person knows to depart in a material particular from the terms authorised by a magistrate under that section; or
- (d) send to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

**77 Retention of things seized**

- (1) If a police officer seizes a thing under this Part, he or she must deliver it into the custody and control of the Commissioner of Police of the Australian Federal Police.
- (2) Subject to subsection (5), the Commissioner must:
  - (a) inform the Attorney-General that the thing has been so delivered; and
  - (b) retain the thing pending the Attorney-General's direction under subsection (3) about how to deal with the thing; and
  - (c) comply with any such direction that the Attorney-General gives.
- (3) The Attorney-General may, by written notice, give the Commissioner a direction about how to deal with the thing.



- (4) Without limiting the directions that may be given, a direction may require the Commissioner to send the thing to a Tribunal.
- (5) The Attorney-General must direct the Commissioner to return the thing if:
  - (a) the reason for its seizure no longer exists; or
  - (b) it is decided that the thing is not to be used in evidence by a Tribunal or in respect of criminal proceedings in Australia; unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

## **Part 8—Miscellaneous**

### **78 Arrest of persons escaping from custody**

- (1) A 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) The police officer must, as soon as practicable, take the person before a magistrate.
- (3) If the magistrate is satisfied that the person has escaped from custody authorised by this Act, the magistrate may issue a warrant authorising any police officer to return the person to the custody referred to in subsection (1).

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

- (1) A police officer may, without warrant, arrest a person who has been released on bail under this Act if the police officer has reasonable grounds for believing that the person has contravened, or is about to contravene, a term or condition of a recognisance on which bail was granted to the person.
- (2) A person arrested under subsection (1) must, as soon as practicable, be brought before the court by which the person was admitted to bail.

### **80 Aiding persons to escape etc.**

Sections 46, 47A, 47C and 48 of the *Crimes Act 1914* (other than paragraphs 46(ab) and 47A(d) of that Act) apply as if:

- (a) references in those sections to custody in respect of any offence against a law of the Commonwealth were references to custody while in Australia pursuant to this Act; and
- (b) references in those sections to arrest in respect of any offence against a law of the Commonwealth were references to arrest pursuant to this Act.

**81 Legal assistance**

- (1) A person who:
  - (a) has instituted, or proposes to institute, a proceeding before a magistrate or a court under this Act or in respect of detention under this Act; or
  - (b) is, or will be, a party to such a proceeding; or
  - (c) is, or will be, giving evidence or producing documents or other articles at such a proceeding;may apply to the Attorney-General for assistance under this section in respect of the proceeding.
- (2) If the Attorney-General is satisfied that:
  - (a) it would involve hardship to the person to refuse the application; and
  - (b) in all the circumstances, it is reasonable that the application be granted;the Attorney-General may authorise provision by the Commonwealth to the person of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.
- (3) The assistance may be granted unconditionally or subject to such conditions as the Attorney-General determines.

**82 Arrangements with States**

- (1) The Governor-General may make arrangements with the Governor of a State with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by all or any of the persons who from time to time hold office as magistrates of that State.
- (2) The Governor-General may arrange with the Governor of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.
- (3) A copy of each instrument by which an arrangement under subsection (1) or (2) is made, varied or revoked is to be published in the *Gazette*.
- (4) For the purposes of the application of this section in relation to the Australian Capital Territory, references in this section to the

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Governor of a State are taken to be references to the Chief Minister of the Australian Capital Territory.

- (5) For the purposes of the application of this section in relation to the Northern Territory, references in this section to the Governor of a State are taken to be references to the Administrator of the Northern Territory.
- (6) For the purposes of the application of this section in relation to Norfolk Island, references in this section to the Governor of a State are taken to be references to the Administrator of Norfolk Island.

**83 Delegation**

The Attorney-General may delegate to an officer of the Attorney-General's Department all or any of his or her powers under this Act, other than:

- (a) his or her powers under Part 3; or
- (b) the power to decide under subsection 26(3), 33(2), 35(2), 36(4), 40(2) or 44(3) not to comply with a request by a Tribunal.

**84 Act not to limit other provision of assistance**

This Act does not prevent provision of assistance to a Tribunal otherwise than under this Act.

**85 Regulations**

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

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

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## **Schedule 1—Resolution 827 (1993)**

Section 4

Adopted by the Security Council at its 3217th meeting, on 25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of “ethnic cleansing”, including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Reaffirming in this regard its decision in resolution 808 (1993) that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

## **Schedule 2—Statute of the former Yugoslavia Tribunal**

### Section 4

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as “the International Tribunal”) shall function in accordance with the provisions of the present Statute.

#### Article 1

##### Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

#### Article 2

##### Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.



Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;

- (e) complicity in genocide.

#### Article 5

##### Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecution on political, racial and religious grounds;
- (i) other inhuman acts.

#### Article 6

##### Personal jurisdiction

The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

#### Article 7

##### Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about

to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

#### Article 8

##### Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

#### Article 9

##### Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

#### Article 10

##### Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:

- (a) the act for which he or she was tried was characterized as an ordinary crime; or

- (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

#### Article 11

##### Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor, and
- (c) A Registry, servicing both the Chambers and the Prosecutor.

#### Article 12

##### Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

#### Article 13

##### Qualifications and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and

non-member States maintaining permanent observer missions at United Nations Headquarters;

- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eleven judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

#### Article 14

##### Officers and member of the Chambers

- 1. The judges of the International Tribunal shall elect a President.
- 2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.
- 3. After consultation with the judges of the International Tribunal, the President shall assign the judges to the Appeals Chamber and to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

4. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chamber as a whole.

Article 15

Rules of procedure and evidence

The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

Article 16

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 17

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

#### Article 18

##### Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

#### Article 19

##### Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

3. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or

transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.

2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) to be tried without undue delay;



- (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
- (g) not to be compelled to testify against himself or to confess guilt.

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

#### Article 25

##### Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) an error on a question of law invalidating the decision; or
- (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

#### Article 26

##### Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

#### Article 27

##### Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

#### Article 28

##### Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the

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State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 29

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
  - (a) the identification and location of persons;
  - (b) the taking of testimony and the production of evidence;
  - (c) the service of documents;
  - (d) the arrest or detention of persons;
  - (e) the surrender or the transfer of the accused to the International Tribunal.

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.
2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention referred to in paragraph 1 of this article.
4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33

Working languages

The working languages of the International Tribunal shall be English and French.

Article 34

Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly.

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## **Schedule 3—Resolution 955 (1994)**

Section 4

Adopted by the Security Council at its 3453rd meeting on 8 November 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of

information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in Rwanda,

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where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. Decides to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. Decides to remain actively seized of the matter.

## Schedule 4—Statute of the Rwanda Tribunal

### Section 4

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as “the International Tribunal for Rwanda”) shall function in accordance with the provisions of the present Statute.

#### Article 1

##### Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

#### Article 2

##### Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:



- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva  
Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;

- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

- (a) The act for which he or she was tried was characterized as an ordinary crime; or
- (b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as “the International Tribunal for the Former Yugoslavia”) shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with the prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

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The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.
4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.



4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;
- (g) Not to be compelled to testify against himself or herself or to confess guilt.

#### Article 21

##### Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

#### Article 22

##### Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be

accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) An error on a question of law invalidating the decision; or
- (b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

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2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

#### Article 30

##### Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

#### Article 31

##### Working languages

The working languages of the International Tribunal shall be English and French.

#### Article 32

##### Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

**Table of Acts****Notes to the *International War Crimes Tribunals Act 1995*****Note 1**

The *International War Crimes Tribunals Act 1995* as shown in this compilation comprises Act No. 18, 1995 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

| Act  | Number and year | Date of Assent | Date of commencement   | Application, saving or transitional provisions |
|--|-----------------|----------------|--|--|
| <i>International War Crimes Tribunals Act 1995</i>                                       | 18, 1995        | 29 Mar 1995    | Ss. 1 and 2: Royal Assent<br>Remainder: 28 Aug 1995 ( <i>see</i> <i>Gazette</i> 1995, No. S323)        |  |
| <i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>     | 24, 2001        | 6 Apr 2001     | S. 4(1), (2) and Schedule 33: (a)  | S. 4(1) and (2)                                |
| <i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i> | 86, 2002        | 11 Oct 2002    | Ss. 1–3: Royal Assent<br>Remainder: 1 Jan 2003 ( <i>see</i> s. 2(1) and <i>Gazette</i> 2002, No. GN44) | Sch. 2 (item 5)                                |
| <i>Crimes Legislation Enhancement Act 2003</i>   | 41, 2003        | 3 June 2003    | Schedule 2 (items 8, 9, 12, 13): Royal Assent  | Sch. 2 (item 13)                               |
| <i>Statute Law Revision Act 2006</i>   | 9, 2006         | 23 Mar 2006    | Schedule 1 (item 16): (b)  | —  |

**Act Notes**

- (a) The *International War Crimes Tribunals Act 1995* was amended by Schedule 33 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (b) Subsection 2(1) (item 10) of the *Statute Law Revision Act 2006* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <b>Commencement information</b> |  |                     |
|---------------------------------|--|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>             | <b>Commencement</b>  | <b>Date/Details</b> |
| 10. Schedule 1, item 16         | Immediately after the commencement of section 51 of the <i>International War Crimes Tribunals Act 1995</i> . | 28 August 1995      |

**Table of Amendments****Table of Amendments**

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

| Provision affected | How affected     |
|--------------------|------------------|
| <b>Part 1</b>      |                  |
| S. 4 .....         | am. No. 41, 2003 |
| S. 6A .....        | ad. No. 24, 2001 |
| <b>Part 4</b>      |                  |
| <b>Division 1</b>  |                  |
| S. 29 .....        | am. No. 41, 2003 |
| <b>Part 5</b>      |                  |
| S. 43 .....        | am. No. 24, 2001 |
| <b>Part 6</b>      |                  |
| S. 46 .....        | am. No. 86, 2002 |
| S. 46A .....       | ad. No. 86, 2002 |
| <b>Part 7</b>      |                  |
| <b>Division 1</b>  |                  |
| S. 51 .....        | am. No. 9, 2006  |
| <b>Part 8</b>      |                  |
| S. 80 .....        | am. No. 41, 2003 |

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* (No. 86, 2002)

**Schedule 2**

**5 Continued application of certain regulations made under the *Proceeds of Crime Act 1987***

If:

- (a) immediately after the commencement of this Schedule, regulations for the purposes of subsection 46A(8) of the *International War Crimes Tribunals Act 1995* are not in force; and
- (b) immediately before that commencement, regulations for the purposes of subsection 23A(10) of the *Proceeds of Crime Act 1987* were in force;



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**Table A**

subsection 46A(8) of the *International War Crimes Tribunals Act 1995* has effect, until regulations for the purposes of that subsection come into force, as if the regulations referred to in paragraph (b) were regulations for the purposes of that subsection.

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*Crimes Legislation Enhancement Act 2003* (No. 41, 2003)

**Schedule 2**

**13 Application**

The amendment made by item 12 applies in relation to the escape of a person after the commencement of this item, whether or not the person was in custody from before that commencement or was arrested before that commencement.