



Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012

No. 7, 2012

**An Act to amend the law relating to extradition and
mutual assistance in criminal matters, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012

No. 7, 2012

**An Act to amend the law relating to extradition and
mutual assistance in criminal matters, and for
related purposes**

[Assented to 20 March 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Extradition and Mutual Assistance in
Criminal Matters Legislation Amendment Act 2012*.

2 Commencement

- (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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	21 March 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, items 1 to 34	At the same time as the provision(s) covered by table item 2.	
4. Schedule 2, item 35	At the same time as the provision(s) covered by table item 2. However, if item 20 of Schedule 1 to the <i>Migration Amendment (Complementary Protection) Act 2011</i> commences before that time, the provision(s) do not commence at all.	
5. Schedule 2, items 36 to 139	At the same time as the provision(s) covered by table item 2.	
6. Schedule 3, items 1 to 49	At the same time as the provision(s) covered by table item 2.	
7. Schedule 3, item 50	At the same time as the provision(s) covered by table item 2.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	However, if item 2 of Schedule 2 to the <i>Cybercrime Legislation Amendment Act 2012</i> has not commenced before that time, the provision(s) do not commence at all.	
8. Schedule 3, items 51 and 52	At the same time as the provision(s) covered by table item 2.	
9. Schedule 3, item 53	At the same time as the provision(s) covered by table item 2. However, if item 2 of Schedule 2 to the <i>Cybercrime Legislation Amendment Act 2012</i> has not commenced before that time, the provision(s) do not commence at all.	
10. Schedule 3, items 54 to 168	At the same time as the provision(s) covered by table item 2.	
11. Schedule 4, item 1	The later of: (a) the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 20 of Schedule 1 to the <i>Migration Amendment (Complementary Protection) Act 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
12. Schedule 4, item 2	At the same time as the provision(s) covered by table item 2. However, if item 2 of Schedule 2 to the <i>Cybercrime Legislation Amendment Act 2012</i> commences before that time, the provision(s) do not commence at all.	
13. Schedule 4, item 3	Immediately after the commencement of item 2 of Schedule 2 to the <i>Cybercrime</i>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Legislation Amendment Act 2012.</i> However, if item 2 of Schedule 2 to the <i>Cybercrime Legislation Amendment Act 2012</i> does not commence, the provision(s) do not commence at all.	
14. Schedule 4, item 4	At the same time as the provision(s) covered by table item 2. However, if item 2 of Schedule 2 to the <i>Cybercrime Legislation Amendment Act 2012</i> commences before that time, the provision(s) do not commence at all.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General amendments relating to extradition and mutual assistance in criminal matters

Part 1—Amendments relating to Federal Magistrates

Extradition Act 1988

1 Section 5

Insert:

Federal Magistrate, other than in section 45A, means a Federal Magistrate in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) are in force.

2 Section 5 (before paragraph (a) of the definition of *magistrate*)

Insert:

(aa) a Federal Magistrate; or

3 Subsection 21(1)

Omit “of a State or Territory”.

4 Subsection 35(1)

Omit “of a State or Territory”.

5 After section 45

Insert:

45A Federal Magistrates—consent to nomination

- (1) A Federal Magistrate may, by writing, consent to be nominated by the Attorney-General under subsection (2).
- (2) The Attorney-General may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a magistrate for the purposes of this Act.

Schedule 1 General amendments relating to extradition and mutual assistance in criminal matters

Part 1 Amendments relating to Federal Magistrates

- (3) A nomination under subsection (2) is not a legislative instrument.

45B Magistrates—personal capacity

- (1) A function or power conferred on a magistrate by this Act is conferred on the magistrate:
- (a) in a personal capacity; and
 - (b) not as a court or a member of a court.
- (2) A magistrate (other than a Federal Magistrate) need not accept a function or power conferred.
- (3) A magistrate has, in relation to the performance or exercise of a function or power conferred on the magistrate by this Act, the same protection and immunity as if he or she were exercising that function or power as, or as a member of, the court of which the magistrate is a member.

6 Subparagraph 55(c)(vii)

Omit “of magistrates,”.

Mutual Assistance in Criminal Matters Act 1987

7 Subsection 3(1)

Insert:

Federal Magistrate, other than in section 38ZC, means a Federal Magistrate in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force.

8 Subsection 3(1) (before paragraph (a) of the definition of *Magistrate*)

Insert:

(aa) except in Division 2 of Part VI—a Federal Magistrate; or

9 At the end of section 38C

Add:

- (8) To avoid doubt, subsections (6) and (7) do not apply if the Magistrate is a Federal Magistrate.
-

10 Before section 39

Insert:

38ZC Federal Magistrates—consent to nomination

- (1) A Federal Magistrate may, by writing, consent to be nominated by the Attorney-General under subsection (2).
- (2) The Attorney-General may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a Magistrate for the purposes of this Act.
- (3) A nomination under subsection (2) is not a legislative instrument.

38ZD Magistrates—personal capacity

- (1) A function or power conferred on a Magistrate by this Act is conferred on the Magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.
- (2) A Magistrate (other than a Federal Magistrate) need not accept a function or power conferred.
- (3) A Magistrate has, in relation to the performance or exercise of a function or power conferred on the Magistrate by this Act, the same protection and immunity as if he or she were exercising that function or power as, or as a member of, the court of which the Magistrate is a member.

11 Paragraph 44(c)

Omit “of Magistrates,”.

Part 2—Amendments relating to information sharing

Extradition Act 1988

12 After section 54

Insert:

54A Collection, use or disclosure of personal information for extradition purposes—the *Privacy Act 1988*

- (1) The collection, use or disclosure of personal information about an individual is taken to be authorised by law for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of the extradition of one or more persons to or from Australia, including making, or considering whether to make, an extradition request.
- (2) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

Migration Act 1958

13 After paragraph 336E(2)(ga)

Insert:

- (gb) is for the purposes of the extradition of persons to or from Australia, including the making of, or the consideration of whether to make, a request for extradition; or
 - (gc) is for the purposes of:
 - (i) the provision, or proposed provision, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, to a foreign country; or
 - (ii) the obtaining, or proposed obtaining, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, from a foreign country; or
-

Mutual Assistance in Criminal Matters Act 1987

14 After section 43C

Insert:

43D Collection, use or disclosure of personal information for international assistance purposes—the *Privacy Act 1988*

- (1) The collection, use or disclosure of personal information about an individual is taken to be authorised by law for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of:
 - (a) the provision, or proposed provision, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, to a foreign country; or
 - (b) the obtaining, or proposed obtaining, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, from a foreign country.
- (2) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

Schedule 2—Amendments relating to extradition

Part 1—Statutory appeal of extradition decisions

Division 1—Amendments

Extradition Act 1988

1 Subsection 21(1)

Omit “, or to the Supreme Court of the State or Territory,”.

2 Subsection 21(2)

Before “Court”, insert “Federal”.

3 Subsections 21(3) and (4)

Omit “or the Supreme Court”.

4 At the end of paragraph 21(6)(a)

Add “or”.

5 Paragraph 26(5)(c)

Omit “or the Supreme Court of the State or Territory in which the person is in custody”.

6 Subsections 26(5) and (6)

Omit “the Court” (wherever occurring), substitute “the Federal Court”.

7 Subsection 35(1)

Omit “, or to the Supreme Court of the State or Territory,”.

8 Subsection 35(2)

Before “Court”, insert “Federal”.

9 Subsections 35(3) and (4)

Omit “or the Supreme Court”.

10 Paragraph 38(7)(c)

Omit “or the Supreme Court of the State or Territory in which the person is in custody”.

11 Subsections 38(7) and (8)

Omit “the Court” (wherever occurring), substitute “the Federal Court”.

12 Subsection 51(1)

Repeal the subsection.

Note: The heading to section 51 is replaced by the heading “**Application of section 38 of the Judiciary Act 1903**”.

13 Subsection 51(2)

Omit “(2)”.

Division 2—Application and transitional provisions

14 Application of amendments made by items 1, 3 and 12

- (1) The amendments made by items 1, 3 and 12 of this Schedule apply in relation to an order made after the commencement of this item under subsection 19(9) or (10) of the *Extradition Act 1988*.
- (2) Section 21 and subsection 51(1) of the *Extradition Act 1988*, as in force immediately before the commencement of this item, continue to apply in relation to an order made before that commencement under subsection 19(9) or (10) of that Act as if those amendments had not happened.

15 Application of amendment made by item 5

- (1) The amendment made by item 5 of this Schedule applies in relation to a surrender warrant or a temporary surrender warrant issued after the commencement of this item under Part II of the *Extradition Act 1988*.
- (2) Section 26 of the *Extradition Act 1988*, as in force immediately before the commencement of this item, continues to apply in relation to a surrender warrant or a temporary surrender warrant issued before that commencement under Part II of that Act as if that amendment had not happened.

16 Application of amendments made by items 7, 9 and 12

- (1) The amendments made by items 7, 9 and 12 of this Schedule apply in relation to an order made after the commencement of this item under section 34 of the *Extradition Act 1988*.
- (2) Section 35 and subsection 51(1) of the *Extradition Act 1988*, as in force immediately before the commencement of this item, continue to apply in relation to an order made before that commencement under section 34 of that Act as if those amendments had not happened.

17 Application of amendment made by item 10

- (1) The amendment made by item 10 of this Schedule applies in relation to a surrender warrant or a temporary surrender warrant issued after the commencement of this item under Part III of the *Extradition Act 1988*.
- (2) Section 38 of the *Extradition Act 1988*, as in force immediately before the commencement of this item, continues to apply in relation to a surrender warrant or a temporary surrender warrant issued after that commencement under Part III of that Act as if that amendment had not happened.

Part 2—Waiver of extradition

Extradition Act 1988

18 Section 5 (definition of *surrender offence*)

Before “22(2)”, insert “15B(2) or”.

19 Section 5 (paragraph (b) of the definition of *surrender offence*)

Before “any”, insert “in the case of a determination under subsection 22(2)—”.

20 Section 5 (at the end of subparagraph (b)(i) of the definition of *surrender warrant*)

Add “or”.

21 Subsection 15(2)

Omit “section 18 or 19, or both,”, substitute “one or more of sections 15A, 18 and 19”.

22 Subsection 15(4)

Omit “section 18”, substitute “section 15A, 18”.

23 Subsection 15(5)

Omit “section 18 or 19, or both,”, substitute “one or more of sections 15A, 18 and 19”.

24 After section 15

Insert:

15A Waiver of extradition

Application of section—before decision has been made as to whether or not to give section 16 notice

- (1) This section applies to a person who is on remand under section 15 at a particular time (the ***waiver time***) if, as at the waiver time, the

Attorney-General has not yet made a decision as to whether or not to give a notice in relation to the person under subsection 16(1) in relation to one or more extradition offences.

Application of section—after section 16 notice given

- (2) This section also applies to a person who is on remand under section 15 at a particular time (the *waiver time*) if:
- (a) before the waiver time, the Attorney-General gave a notice in relation to the person under subsection 16(1) in relation to one or more extradition offences; and
 - (b) as at the waiver time, a magistrate has not done either of the following:
 - (i) advised the Attorney-General under subparagraph 18(2)(b)(ii) that the person has consented to be surrendered in relation to the extradition offence or all of the extradition offences;
 - (ii) determined under subsection 19(1) that the person is eligible for surrender in relation to any of the extradition offences.

Person may inform a magistrate that he or she wishes to waive extradition

- (3) The person may inform a magistrate that he or she wishes to waive extradition in relation to:
- (a) if an extradition request has not been made for the surrender of the person—the extradition offence or all of the extradition offences specified in the extradition arrest warrant to which the remand relates; or
 - (b) if an extradition request has been made for the surrender of the person—the extradition offence or all of the extradition offences for which surrender of the person is sought.

Magistrate must make order etc. if satisfied of matters

- (4) If a magistrate is satisfied of the matters in subsections (5)(a), (c) and (d) in relation to the person, and has informed the person as mentioned in paragraph (5)(b), the magistrate must:
- (a) by warrant in the statutory form, order that the person be committed to prison pending a determination by the

- Attorney-General under subsection 15B(2) that the person be surrendered, or not be surrendered, in relation to the extradition offence or extradition offences mentioned in paragraph (3)(a) or (b), as the case may be; and
- (b) advise the Attorney-General in writing that the person wishes to waive extradition for those offences.
- (5) Before making an order under paragraph (4)(a) in relation to a person, the magistrate:
- (a) must be satisfied that the person voluntarily informed a magistrate under subsection (3); and
 - (b) must inform the person:
 - (i) that, once the order is made, the person cannot apply for the order to be revoked; and
 - (ii) of the consequences of the fact that the extradition country concerned may not have given, and if the order is made will not be required to give, a speciality assurance (of a kind mentioned in subsection 22(4)) in relation to the person; and
 - (iii) that certain requirements in this Act that would otherwise apply in respect of the person will not apply if the order is made (including, but not limited to, requirements relating to extradition objections); and
 - (iv) that, after the order is made, the person will be surrendered to the extradition country concerned if the Attorney-General determines under subsection 15B(2) that the person is to be so surrendered; and
 - (c) having informed the person as mentioned in paragraph (b)— must be satisfied that the person has confirmed that he or she wishes to waive extradition as mentioned in subsection (3); and
 - (d) must be satisfied that the person is legally represented, or was given an adequate opportunity to be legally represented, in the proceedings before the magistrate.

Rules that apply until magistrate decides not to make an order

- (6) After a person informs a magistrate under subsection (3) that the person wishes to waive extradition in relation to an extradition offence or extradition offences, the following rules apply unless

and until a magistrate decides not to make an order under paragraph (4)(a) in relation to the person:

- (a) if a decision as to whether or not to give a notice under subsection 16(1) had not, as at the waiver time, been made in relation to the person in relation to the extradition offence or extradition offences—the Attorney-General must not decide whether or not to give such a notice;
- (b) if, before the waiver time, a notice under subsection 16(1) had been given in relation to the person in relation to the extradition offence or extradition offences:
 - (i) sections 18 and 19 do not apply to the person in relation to the extradition offence or extradition offences; and
 - (ii) any proceedings that were on foot as at the waiver time under section 18 or 19 in relation to the person in relation to the extradition offence or extradition offences are stayed.

Magistrate must advise Attorney-General if not satisfied of matters

- (7) If a magistrate is not satisfied of the matters in paragraphs (5)(a), (c) and (d) in relation to the person, the magistrate must advise the Attorney-General in writing that the magistrate has decided not to make an order under paragraph (4)(a) in relation to the person.

15B Attorney-General must make surrender determination

- (1) This section applies if a magistrate has advised the Attorney-General under paragraph 15A(4)(b) that a person wishes to waive extradition in relation to one or more extradition offences.
- (2) The Attorney-General must, as soon as is reasonably practicable, having regard to all the circumstances, determine whether or not the person is to be surrendered to the extradition country concerned in relation to the extradition offences.
- (3) The Attorney-General may only determine that the person be surrendered to the extradition country concerned if:
 - (a) the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture; and

- (b) the Attorney-General is satisfied that, on surrender to the extradition country, there is no real risk that the death penalty will be carried out upon the person in relation to any offence.
- (4) If the Attorney-General determines that the person is not to be surrendered, the Attorney-General must, by notice in writing in the statutory form, direct a magistrate to order the release of the person from custody.

25 At the end of section 17

Add:

- (4) Subsection (2) does not apply to a person at any time after the person has informed a magistrate under subsection 15A(3) that the person wishes to waive extradition, unless and until a magistrate decides not to make an order under paragraph 15A(4)(a) in relation to the person.
- (5) If:
 - (a) a person informs a magistrate under subsection 15A(3) that the person wishes to waive extradition; and
 - (b) a magistrate decides not to make an order under paragraph 15A(4)(a) in relation to the person;then, for the purposes of applying subsection (2) of this section to the person, the period of days referred to in paragraph (2)(a) of this section is to be calculated exclusive of the period:
 - (c) beginning on the day on which the person informs the magistrate that the person wishes to waive extradition; and
 - (d) ending on the day on which the Attorney-General receives the magistrate's advice under subsection 15A(7) that the magistrate has decided not to make an order under paragraph 15A(4)(a) in relation to the person.

26 Section 23

After "subsection", insert "15B(2) or".

27 Paragraph 24(1)(a)

After "subsection", insert "15B(2) or".

28 Subsection 25(2)

Omit “The”, substitute “If the temporary surrender warrant referred to in paragraph (1)(a) was issued after the Attorney-General determined under subsection 22(2) that the person was to be surrendered, the”.

29 After paragraph 25(2)(a)

Insert:

- (ba) the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture; and

30 At the end of section 25

Add:

- (3) If the temporary surrender warrant referred to in paragraph (1)(a) was issued after the Attorney-General determined under subsection 15B(2) that the person was to be surrendered, the Attorney-General may only issue a surrender warrant under subsection (1) if:
 - (a) the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture; and
 - (b) the Attorney-General is satisfied that, on surrender to the extradition country, there is no real risk that the death penalty will be carried out upon the person in relation to any offence.

31 Paragraph 45(4)(b)

After “section”, insert “15B or”.

32 Application of amendments made by this Part

The amendments made by this Part apply to a person who is remanded under section 15 of the *Extradition Act 1988* on or after the commencement of this item.

Part 3—Other amendments

Division 1—Amendments relating to political offences

Extradition Act 1988

33 Section 5 (paragraphs (a) to (d) of the definition of *political offence*)

Repeal the paragraphs, substitute:

- (a) an offence that involves an act of violence against a person's life or liberty; or
- (b) an offence prescribed by regulations for the purposes of this paragraph to be an extraditable offence in relation to the country or all countries; or
- (c) an offence prescribed by regulations for the purposes of this paragraph not to be a political offence in relation to the country or all countries.

34 At the end of paragraphs 7(a), (b) and (c)

Add "or".

Migration Act 1958

35 Subsection 91T(3)

Omit "paragraph (a), (b), (c) or (d)", substitute "paragraph (a), (b) or (c)".

36 Application of amendments made by this Division

The amendments made by this Division apply in respect of requests made by a foreign country on or after the commencement of this item.

Division 2—Extradition objection on the grounds of sex and sexual orientation

Extradition Act 1988

37 Paragraphs 7(b) and (c)

After “race,” insert “sex, sexual orientation,”.

38 Application of amendment made by item 37

The amendment made by item 37 of this Schedule applies in relation to an extradition request from an extradition country that is made on or after the commencement of this item.

Division 3—Notice of receipt of extradition request

Extradition Act 1988

39 Subsection 10(3)

Omit “, subparagraph 16(2)(a)(ii) or paragraph”, substitute “or”.

40 Subparagraph 12(3)(c)(i)

Omit “issue”, substitute “give”.

41 Subsection 16(2)

Repeal the subsection, substitute:

Person must be extraditable person in relation to extradition country

- (2) The Attorney-General must not give the notice unless the Attorney-General is of the opinion that the person is an extraditable person in relation to the extradition country.

42 Subsection 16(3)

Omit “issued”, substitute “given”.

43 Application of amendments made by this Division

The amendments made by this Division apply in relation to an extradition request from an extradition country that is made on or after the commencement of this item.

Division 4—Consent to accessory extradition

Extradition Act 1988

44 After section 19

Insert:

19A Consent to accessory extradition—extradition offences not specified in subsection 16(1) notice etc.

Scope

- (1) This section applies if:
- (a) a notice under subsection 16(1) has been given in relation to a person in respect of whom an extradition request has been made by an extradition country; and
 - (b) either:
 - (i) in proceedings under section 18, the person consents in accordance with that section to being surrendered to the extradition country in relation to the extradition offence or all of the extradition offences to which the notice relates; or
 - (ii) in proceedings under subsection 19(1), a magistrate determines that the person is eligible for surrender to the extradition country in relation to one or more of the extradition offences to which the notice relates; and
 - (c) the extradition country requested in the extradition request that the person be surrendered for one or more extradition offences (the ***additional extradition offences***) that are not specified in the notice.

Consent to being surrendered in respect of the additional extradition offences

- (2) If the magistrate is satisfied that there is no extradition objection in relation to any of the additional extradition offences, the magistrate

must, in those proceedings, ask the person whether he or she consents to being surrendered to the extradition country in respect of the additional extradition offences.

- (3) Before asking the person whether he or she consents to being surrendered in respect of the additional extradition offences, the magistrate must:
- (a) either:
 - (i) be satisfied that the person is legally represented; or
 - (ii) if the magistrate is not so satisfied—give the person an adequate opportunity to be legally represented; and
 - (b) inform the person that, if the person is surrendered, the person may be tried and sentenced in the extradition country for any additional extradition offence in relation to which the person gives consent; and
 - (c) inform the person that the person may be tried and sentenced in the extradition country even though, had the conduct of the person constituting the additional extradition offences, or equivalent conduct, taken place in Australia at the time the extradition request concerned was received, that conduct may not have constituted an extradition offence in relation to Australia.

Magistrate to advise Attorney-General of consent

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

Note: The heading to section 20 is altered by adding at the end “—offences that are not extradition offences”.

45 Subsection 22(1) (definition of *qualifying extradition offence*)

Repeal the definition, substitute:

qualifying extradition offence, in relation to an eligible person, means the following:

- (a) if paragraph (a) of the definition of *eligible person* applies—any extradition offence in relation to which the person consented in accordance with section 18;
- (b) if paragraph (b) of the definition of *eligible person* applies—any extradition offence in relation to which:
 - (i) the magistrate referred to in that paragraph; or
 - (ii) the court that conducted the final proceedings under section 21;determined that the person was eligible for surrender within the meaning of subsection 19(2);
- (c) in any case—any extradition offence in relation to which the person has consented in accordance with section 19A.

Division 5—Extradition to Australia from other countries

Extradition Act 1988

46 At the end of Part IV

Add:

44A Persons permanently surrendered to Australia

- (1) This section applies if:
 - (a) a person is surrendered by a country to Australia; and
 - (b) before the person is surrendered to Australia, the Attorney-General of Australia gives an undertaking to the country:
 - (i) that life imprisonment will not be imposed on the person; or
 - (ii) specifying the maximum period of imprisonment that may be imposed on the person;in the event that the person is found to have committed a particular offence or offences punishable by Australian law.
- (2) The person must not, under a law of the Commonwealth, a State or Territory, be sentenced to:
 - (a) if subparagraph (1)(b)(i) applies—life imprisonment; or

- (b) if subparagraph (1)(b)(ii) applies—a period of imprisonment that is more than the period specified in the Attorney-General’s undertaking.
- (3) For an offence that is to be prosecuted in a State or Territory, the Attorney-General of Australia must, before giving an undertaking, consult with the Attorney-General of the State or Territory.
- (4) If the undertaking mentioned in subsection (1) is given in writing, the undertaking is not a legislative instrument.
- (5) To avoid doubt, the undertaking mentioned in subsection (1) must not specify a period that is longer than:
 - (a) in the event that the person is found to have committed a particular offence—the maximum period of imprisonment that applies to the offence; or
 - (b) in the event that the person is found to have committed particular offences—the total of each maximum period of imprisonment that applies to each offence.

Division 6—Prosecution instead of extradition

Extradition Act 1988

47 Subsections 45(1), (2) and (3)

Repeal the subsections, substitute:

Offence

- (1) A person commits an offence if:
 - (a) a magistrate in a State or Territory remands the person under section 15; and
 - (b) the person engaged in conduct outside Australia at an earlier time; and
 - (c) the conduct, or equivalent conduct, would have constituted an offence (the *notional Australian offence*) against a law of the Commonwealth, or the State or Territory, if the conduct or equivalent conduct had occurred in the State or Territory at the earlier time.

Note: This subsection creates an offence distinct from the notional Australian offence.

Absolute liability

- (2) Absolute liability applies to paragraphs (1)(a) and (b), and to the circumstance in paragraph (1)(c) that the conduct, or equivalent conduct, referred to in that paragraph would have constituted the notional Australian offence if the conduct or equivalent conduct had occurred in the State or Territory at the earlier time.

Note: Paragraph (3)(a) provides for physical and fault elements etc. to apply in determining whether conduct would have constituted the notional Australian offence.

Determining whether conduct would have constituted notional Australian offence

- (3) In determining whether the conduct, or equivalent conduct, referred to in paragraph (1)(c) would have constituted the notional Australian offence:
- (a) the physical elements and fault elements (however described), if any, that apply in relation to the notional Australian offence have effect; and
 - (b) any defences or special liability provisions (however described) that apply in relation to the notional Australian offence have effect; and
 - (c) any procedures or limitations (however described) that apply in relation to the prosecution of the notional Australian offence have effect; and
 - (d) if the conduct outside Australia consisted of 2 or more acts or omissions, regard may be had to all, some or only one of those acts or omissions.

- (3A) Subsection (3) does not limit the *Judiciary Act 1903*.

Note: Division 1 of Part X, and subsection 79(1), of the *Judiciary Act 1903* apply various State or Territory laws in relation to persons charged with offences against Commonwealth laws.

Penalty for offence

- (3B) The maximum penalty for an offence against subsection (1) is the maximum penalty that applied to the notional Australian offence at the time the conduct referred to in paragraph (1)(b) was engaged in.

Offence is indictable

(3C) An offence against subsection (1) is an indictable offence.

Attorney-General's consent to prosecution of offence

(3D) Proceedings for an offence against subsection (1) must not be commenced without the Attorney-General's written consent.

Note: The heading to section 45 is replaced by the heading "**Prosecution of persons instead of extradition**".

48 Application of item 47

The amendment made by item 47 applies to conduct engaged in outside Australia on or after the commencement of this item.

49 Subsection 45(4)

Omit "subsection (3)", substitute "subsection (3D)".

50 Paragraph 45(4)(a)

Omit "paragraph (1)(a);", substitute "paragraph (1)(b); and".

51 Paragraph 45(4)(b)

Omit "country; and", substitute "country."

52 Paragraph 45(4)(c)

Repeal the paragraph.

53 Application of the amendment made by item 52

The amendment made by item 52 of this Schedule applies in respect of an extradition request made by an extradition country if the request is made on or after the commencement of this item.

54 Subsection 45(5)

Omit "subsection (3)", substitute "subsection (3D)".

Note: The following heading to subsection 45(5) is inserted "*Arresting, charging and remanding person before consent*".

Division 7—Technical amendments relating to notices

Extradition Act 1988

55 After section 16

Insert:

16A Attorney-General may give an amended notice

Scope

- (1) This section applies if the Attorney-General has given a notice (the ***original notice***) under subsection 16(1) in relation to a person.

Attorney-General may give an amended notice

- (2) Subject to subsection (4), the Attorney-General may, in his or her discretion, give an amended notice at any time before:
 - (a) the person has consented in accordance with section 18 to being surrendered to the extradition country concerned in relation to the extradition offence or extradition offences specified in the original notice; or
 - (b) a magistrate has determined in accordance with section 19 that the person is eligible for surrender in relation to the extradition offence or extradition offences specified in the original notice.
- (3) The amended notice must be in writing in the statutory form expressed to be directed to any magistrate.
- (4) The Attorney-General must not give an amended notice under subsection (2) that specifies one or more extradition offences that were not specified in the original notice unless the Attorney-General is satisfied that he or she could give a notice under subsection 16(1) in the same form as the amended notice.
- (5) For the purposes of this Act, a reference to a notice given under subsection 16(1) includes a reference to an amended notice given under subsection (2) of this section.
- (6) An amended notice given under subsection (2) is not a legislative instrument.

Copies of amended notice and documents to be given to the person

- (7) As soon as practicable after the person is remanded under section 15, or an amended notice is given under subsection (2) of this section, whichever is the later:
- (a) a copy of the amended notice; and
 - (b) if the amended notice specifies one or more extradition offences that were not specified in the original notice—the copies of the documents referred to in:
 - (i) paragraph 19(2)(a); and
 - (ii) if applicable—paragraph 19(2)(b);to the extent that those documents relate to those extradition offences;
- must be given to the person.

Revocation in accordance with the Acts Interpretation Act 1901

- (8) This section does not limit the power of the Attorney-General to revoke the original notice in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

56 Paragraph 17(1)(a)

Omit “issue”, substitute “give”.

57 After subsection 18(1)

Insert:

- (1A) If:
- (a) the Attorney-General has given a notice (the *original notice*) under subsection 16(1) in relation to a person; and
 - (b) during proceedings conducted in relation to the person under this section, the Attorney-General gives an amended notice under subsection 16A(2) in relation to the person; and
 - (c) the amended notice specifies one or more extradition offences that were not specified in the original notice; and
 - (d) the magistrate considers it necessary to give the person time to inform the magistrate whether the person consents to being surrendered to the extradition country in relation to any of those extradition offences;

the magistrate may adjourn the proceedings for such period as the magistrate considers reasonable to allow the person to so inform the magistrate.

58 After subsection 19(4)

Insert:

(4A) If:

- (a) the Attorney-General has given a notice (the *original notice*) under subsection 16(1) in relation to a person; and
- (b) during proceedings conducted in relation to the person under this section, the Attorney-General gives an amended notice under subsection 16A(2) in relation to the person; and
- (c) the amended notice specifies one or more extradition offences that were not specified in the original notice; and
- (d) the magistrate considers it necessary to give the person and the extradition country time to prepare for the conduct of proceedings under this section in relation to any of those extradition offences;

the magistrate may adjourn the proceedings for such period as the magistrate considers reasonable to allow the person and the extradition country to prepare for the conduct of those proceedings.

59 Subsection 43(1)

After “statutory form”, insert “expressed to be directed to any magistrate”.

60 After section 46

Insert:

46A Giving notices to magistrates etc.

Scope

- (1) This section applies if:
 - (a) the Attorney-General decides to give a notice under subsection 16(1), 16A(2) or 43(1) directed to a magistrate; or
 - (b) the Attorney-General is required to give a notice under subsection 12(3), 15B(4) or 17(1) directing a magistrate.

Giving the notice to a magistrate

- (2) The notice, or a copy of the notice, may be handed to a magistrate or sent to a magistrate by post, fax, email or other electronic means.

When the notice is taken to be given

- (3) The notice is taken, for the purposes of this Act, to be given:
- (a) if the notice, or a copy of the notice, is handed to a magistrate—when the notice or copy is handed to the magistrate; or
 - (b) if the notice, or a copy of the notice, is sent to a magistrate by post—at the time at which the notice or copy would be delivered in the ordinary course of post; or
 - (c) if the notice, or a copy of the notice, is sent to a magistrate by fax, email or other electronic means—at the time when the notice or copy is sent to the magistrate.

61 Application—section 16A of the *Extradition Act 1988*

Section 16A of the *Extradition Act 1988*, as inserted by this Schedule, applies in relation to a notice given under subsection 16(1) of that Act after the commencement of this item.

62 Application—section 46A of the *Extradition Act 1988*

- (1) Section 46A of the *Extradition Act 1988*, as inserted by this Schedule, applies to a notice under subsection 16(1), 16A(2) or 43(1) of that Act if the Attorney-General decides to give the notice on or after the commencement of this item.
- (2) Section 46A of the *Extradition Act 1988*, as inserted by this Schedule, applies to a notice under subsection 12(3) or 17(1) of that Act if the Attorney-General is required to give the notice on or after the commencement of this item.

Division 8—Amendments relating to remand and bail

Extradition Act 1988

63 Paragraph 17(2)(b)

Repeal the paragraph, substitute:

(b) either:

- (i) the Attorney-General has not received an extradition request from the extradition country concerned in relation to the person; or
- (ii) the Attorney-General has received such a request but a notice has not been given under subsection 16(1) in relation to the person within the period of 5 days after the end of the period of days referred to in paragraph (a);

64 Subsection 17(2)

Omit all the words after “the person” (third occurring), substitute “must be brought before a magistrate”.

65 After subsection 17(2)

Insert:

(2A) The magistrate must order the release of the person from custody, or the discharge of the recognisances on which bail was granted to the person, unless the magistrate is satisfied:

(a) if subparagraph (2)(b)(i) applies:

- (i) that the extradition country concerned has not made an extradition request in relation to the person because of exceptional circumstances; and
- (ii) that the Attorney-General is likely to receive an extradition request from the extradition country concerned in relation to the person within a particular period that is reasonable in the circumstances; and
- (iii) that, after receiving the extradition request, the Attorney-General is likely to make a decision to give, or not to give, a notice under subsection 16(1) in relation to the person within a particular period that is reasonable in the circumstances; or

(b) if subparagraph (2)(b)(ii) applies—that the Attorney-General is likely to make a decision to give, or not to give, a notice under subsection 16(1) within a particular period that is reasonable in the circumstances.

66 Paragraphs 17(3)(a) and (b)

Repeal the paragraphs, substitute:

- (a) a magistrate was satisfied:
 - (i) under subparagraph (2A)(a)(ii) that an extradition request was likely to be received in relation to a person within a particular period; or
 - (ii) under subparagraph (2A)(a)(iii) or paragraph (2A)(b) that a decision was likely to be made to give, or not to give, a notice under subsection 16(1) in relation to a person within a particular period; and
- (b) the request is not received, or the decision is not made, within the period;

67 Subparagraph 18(2)(a)(i)

After “prison”, insert “or, subject to subsection (3), released on bail,”.

68 Paragraph 18(2)(b)

Repeal the paragraph, substitute:

- (b) if, after the person has been advised as mentioned in paragraph (a), the person again consents to being surrendered—order that the person be committed to prison or (subject to subsection (3)) released on bail, to await:
 - (i) surrender under a surrender warrant or temporary surrender warrant; or
 - (ii) release, or the discharge of the recognisances on which bail was granted, under an order under subsection 22(5).

69 At the end of section 18

Add:

- (3) A magistrate must not release a person on bail under this section unless there are special circumstances justifying such release.
- (4) If a magistrate makes an order under paragraph (2)(b), the magistrate must advise the Attorney-General in writing of the offence or the offences in respect of which the person has consented.
- (5) An order committing a person to prison under paragraph (2)(b) must be made by warrant in the statutory form.

70 Paragraph 19(9)(a)

Repeal the paragraph, substitute:

- (a) order that the person be committed to prison or (subject to subsection (9A)) released on bail, to await:
 - (i) surrender under a surrender warrant or temporary surrender warrant; or
 - (ii) release, or the discharge of the recognisances on which bail was granted, under an order under subsection 22(5);

71 Paragraph 19(9)(b)

Omit “in the warrant is made, seek a review of the order”, substitute “under paragraph (a) is made, seek a review of the order”.

72 After subsection 19(9)

Insert:

- (9A) A magistrate must not release a person on bail under paragraph (9)(a) unless there are special circumstances justifying such release.
- (9B) An order committing a person to prison under paragraph (9)(a) must be made by warrant in the statutory form.

73 Paragraph 21(2)(b)

Repeal the paragraph, substitute:

- (b) quash the order.

74 After subsection 21(2)

Insert:

- (2A) If the Federal Court quashes the order, it must:
 - (a) in the case of an order under subsection 19(9)—order the release of the person or the discharge of the recognisances on which bail was granted; or
 - (b) in the case of an order under subsection 19(10)—order that the person be committed to prison or (subject to subsection (2B)) released on bail, to await:
 - (i) surrender under a surrender warrant or temporary surrender warrant; or

(ii) release, or the discharge of the recognisances on which bail was granted, under an order under subsection 22(5).

(2B) The Federal Court must not release a person on bail under paragraph (2A)(b) unless there are special circumstances justifying such release.

(2C) An order committing a person to prison under paragraph (2A)(b) must be made by warrant in the statutory form.

75 Paragraph 21(6)(e)

Repeal the paragraph, substitute:

- (e) if an order for the release of the person (whether or not on bail) has been made under subsection 19(9) or (10), or subsection (2A) of this section—the court to which the application or appeal is made may order both:
- (i) if the person was released on bail—the discharge of the recognisances on which bail was granted; and
 - (ii) the arrest of the person;

76 Subparagraph 21(6)(f)(i)

Repeal the subparagraph, substitute:

- (i) if an order for the release of the person has not been made; or

77 Subparagraph 21(6)(f)(iv)

Omit “on such terms and conditions as the court thinks fit”.

78 Subsection 22(1) (definition of *eligible person*)

After “prison”, insert “or released on bail”.

79 Subsection 22(1) (paragraph (b) of the definition of *eligible person*)

Repeal the paragraph, substitute:

- (b) by order made under subsection 19(9) or 21(2A) (including because of an appeal referred to in section 21), where no proceedings under section 21 are being conducted or are available in relation to the determination under subsection 19(9) to which the order relates.

80 Subsection 22(5)

Omit “the Attorney-General shall order, in writing, the release of the person.”, substitute:

the Attorney-General must, by notice in writing:

- (a) if the person has been committed to prison—direct a magistrate to order the release of the person; or
- (b) if the person has been released on bail—direct a magistrate to order the discharge of the recognisances on which bail was granted.

81 Paragraph 26(1)(c)

Before “require”, insert “if the person has been committed to prison—”.

82 After paragraph 26(1)(c)

Insert:

- (ca) if the person has been released on bail—authorise any police officer to take the person into custody and to take the person before a magistrate or, if a court made the order releasing the person on bail, before that court, for the purposes of the discharge of the recognisances on which bail was granted;

83 Subparagraph 35(6)(g)(iv)

Omit “on such terms and conditions as the court thinks fit”.

84 After section 49A

Insert:

49B Orders for bail to be on terms and conditions court or magistrate thinks fit

A decision under this Act of a court or a magistrate to remand or release a person on bail may be made on such terms and conditions as the court or magistrate thinks fit.

49C Availability of bail during judicial review proceedings relating to certain determinations

- (1) This section applies if:

- (a) the Attorney-General determines under subsection 15B(2) or 22(2) that a person is to be surrendered to an extradition country in relation to one or more extradition offences; and
 - (b) the person applies to a court for judicial review of the determination.
- (2) The court to which the application is made, or any court hearing an appeal in relation to the determination, may, subject to subsection (3), order the release of the person on bail until the application has been determined or the appeal has been heard (as the case requires).
- (3) A court must not release a person on bail under subsection (2) unless there are special circumstances justifying such release.

85 Application

The amendments of subsections 17(2) and (3) of the *Extradition Act 1988* made by this Division apply to a person who is remanded under section 15 of the *Extradition Act 1988* on or after the commencement of this item.

Division 9—Other minor technical amendments

Extradition Act 1988

86 Section 5

Insert:

extraditable person has the meaning given by section 6.

87 Section 5

Insert:

extradition arrest warrant means a warrant issued under section 12.

88 Section 5 (at the end of paragraph (a) of the definition of *extradition country*)

Add “or”.

89 Section 5 (subparagraph (b)(ii) of the definition of extradition country)

Omit “responsible; and”, substitute “responsible; or”.

90 Section 5

Insert:

extradition objection has the meaning given by section 7.

91 Section 5 (definition of provisional arrest warrant)

Repeal the definition, substitute:

provisional arrest warrant means a warrant issued under section 29.

92 Section 5 (before subparagraph (b)(i) of the definition of surrender warrant)

Insert:

(ia) a warrant issued, or required to be issued, under subparagraph 33A(2)(b)(i); or

93 At the end of section 12

Add:

(4) A notice given under subsection (3) is not a legislative instrument.

Note: The heading to section 12 is replaced by the heading “**Extradition arrest warrants**”.

94 Paragraphs 13(1)(a) and (2)(a)

Omit “a provisional arrest warrant”, substitute “an extradition arrest warrant”.

95 At the end of section 13

Add:

(8) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

96 Paragraph 14(1)(a)

Omit “a provisional arrest warrant”, substitute “an extradition arrest warrant”.

97 After subsection 14(5)

Insert:

- (5A) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

98 Subsection 15(1)

Omit “a provisional arrest warrant”, substitute “an extradition arrest warrant”.

99 At the end of section 16

Add:

- (4) A notice given under subsection (1) is not a legislative instrument.

100 At the end of section 17

Add:

- (6) A notice given under subsection (1) is not a legislative instrument.

101 Paragraph 21(6)(d)

Before “the court”, insert “subject to section 21A,”.

102 After section 21

Insert:

21A Admission of evidence etc. on review or appeal

Scope

- (1) This section applies if a person or extradition country:
- (a) applies under subsection 21(1) for a review of an order;
 - (b) appeals under subsection 21(3) against an order made on that review; or
 - (c) appeals to the High Court against an order made on that appeal.

Admission of evidence

- (2) If:

- (a) a party to the relevant proceedings under section 19 was prevented from adducing evidence (the *excluded evidence*) in the proceedings; and
 - (b) the review court considers that the party should have been permitted to adduce the excluded evidence in those proceedings;
- the court may receive:
- (c) the excluded evidence; and
 - (d) further evidence, or submissions, that directly relate to the excluded evidence.

Documents containing deficiencies

- (3) If:
 - (a) a document is:
 - (i) a document to which the review court must have regard under paragraph 21(6)(d); or
 - (ii) a document that is received by the review court under subsection (2) of this section; and
 - (b) the document contains a deficiency of relevance to the review or appeal; and
 - (c) the court considers the deficiency to be of a minor nature;the court must adjourn the proceedings for such period as is necessary to allow the deficiency to be remedied.
- (4) This section does not entitle the person to whom the proceedings relate to adduce, or the court to receive, evidence to contradict an allegation that the person has engaged in conduct constituting an extradition offence for which the surrender of the person is sought.

Definition

- (5) In this section:
review court means the court to which the application or appeal was made.

103 At the end of paragraph 22(3)(a)

Add “and”.

104 Paragraph 22(3)(b)

Repeal the paragraph, substitute:

- (b) the Attorney-General does not have substantial grounds for believing that, if the person were surrendered to the extradition country, the person would be in danger of being subjected to torture; and

105 At the end of paragraphs 22(3)(c) and (d)

Add “and”.

106 At the end of paragraph 22(4)(a)

Add “or”.

107 At the end of subparagraphs 22(4)(d)(i) and (ii)

Add “or”.

108 At the end of section 22

Add:

- (6) If a determination under subsection (2) is made in writing, the determination is not a legislative instrument.
- (7) An order made under subsection (5) is not a legislative instrument.

109 At the end of paragraphs 24(1)(a) and (b)

Add “and”.

110 At the end of subparagraph 24(3)(b)(i)

Add “or”.

111 At the end of section 24

Add:

- (6) If:
 - (a) the Attorney-General informs an extradition country as mentioned in subsection (4); and
 - (b) the Attorney-General does so in writing;
the written instrument is not a legislative instrument.

112 At the end of subparagraph 25(2)(a)(i)

Add “or”.

113 Paragraph 26(1)(c)

Omit “a police officer”, substitute “any police officer”.

114 Paragraph 26(1)(d)

Omit “the police officer to transport the eligible person in custody, and, if necessary or convenient, to detain the eligible person in custody”, substitute “the eligible person to be transported in custody and, if necessary or convenient, detained in custody, by any police officer”.

115 Paragraph 26(1)(d)

Omit “(in this subsection called the *foreign escort officer*)”, substitute “or a person included in a specified class (in this subsection called the *escort officer*)”.

116 Paragraph 26(1)(e)

Omit “foreign”.

117 After subsection 26(1)

Insert:

- (1A) To avoid doubt, subject to this section and subsection 33(3) of the *Acts Interpretation Act 1901*, a surrender warrant or a temporary surrender warrant remains in force until the eligible person is surrendered, at a place in the extradition country, to a person appointed by the extradition country to receive the eligible person.

118 Section 27

Before “Where:”, insert “(1)”.

119 At the end of section 27

Add:

- (2) A notice given under subsection (1) is not a legislative instrument.

120 At the end of section 30

Add:

- (8) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

121 After subsection 31(5)

Insert:

(5A) If a direction under subsection (5) is given in writing, the direction is not a legislative instrument.

122 Subsection 32(2)

Omit “34”, substitute “33A or 34, or both,”.

123 Paragraph 33A(1)(b)

Omit “and”.

124 Paragraph 33A(1)(c)

Repeal the paragraph.

125 Paragraph 38(1)(a)

Omit “a police officer to take the eligible person into custody, to transport the eligible person in custody and, if necessary or convenient, to detain the eligible person in custody”, substitute “the eligible person to be taken into custody, transported in custody and, if necessary or convenient, detained in custody, by any police officer”.

126 Paragraph 38(1)(a)

Omit “(in this subsection called the *New Zealand escort officer*)”, substitute “or a person included in a specified class (in this subsection called the *escort officer*)”.

127 Paragraph 38(1)(b)

Omit “New Zealand” (first occurring).

128 After subsection 38(1)

Insert:

(1A) To avoid doubt, subject to this section and subsection 33(3) of the *Acts Interpretation Act 1901*, a surrender warrant or a temporary surrender remains in force until the eligible person is surrendered, at a place in New Zealand, to a person appointed by New Zealand to receive the eligible person.

129 Section 39

Before “Where:”, insert “(1)”.

130 At the end of section 39

Add:

- (2) A notice given under subsection (1) is not a legislative instrument.

131 At the end of section 43

Add:

- (4) A notice given under subsection (1) is not a legislative instrument.

132 At the end of section 44

Add:

- (3) If the undertaking mentioned in subsection (1) is given in writing, the undertaking is not a legislative instrument.
- (4) An order made under paragraph (1)(d) is not a legislative instrument.
- (5) If an order under subsection (2) is made in writing, the order is not a legislative instrument.

133 At the end of section 45

Add:

Consent is not a legislative instrument

- (6) A consent given under subsection (3D) is not a legislative instrument.

134 Section 47

Omit “A provisional arrest warrant, within the meaning of Part II or III,” substitute “An extradition arrest warrant, a provisional arrest warrant”.

135 At the end of section 48

Add:

- (3) An authorisation given under subparagraph (1)(b)(iv) is not a legislative instrument.

- (4) If a direction under subparagraph (1)(b)(v) is given in writing, the direction is not a legislative instrument.

136 Paragraph 55(d)

Omit “prescribing penalties not exceeding a fine of \$2,000”, substitute “penalties not exceeding a fine of 20 penalty units”.

137 Application—section 21A of the *Extradition Act 1988* etc.

Section 21A of the *Extradition Act 1988*, as inserted by this Schedule, applies in relation to an application for review or appeal referred to in subsection 21A(1) that is made on or after the commencement of this item, whether or not the relevant proceedings under section 19 were instituted before or after that commencement.

138 Application of amendments made by items 122, 123 and 124

The amendments made by items 122, 123 and 124 of this Schedule apply in relation to persons in respect of whom an indorsed New Zealand warrant has been obtained on or after the commencement of this item.

139 Application of amendment made by item 136

The amendment made by item 136 of this Schedule applies to a penalty imposed on or after the commencement of this item, whether or not the relevant proceedings were instituted before, on or after that commencement.

Schedule 3—Amendments relating to providing mutual assistance in criminal matters

Part 1—Grounds of refusal

Mutual Assistance in Criminal Matters Act 1987

1 Paragraph 8(1)(a)

After “relates to the”, insert “investigation,”.

2 Paragraph 8(1)(b)

After “with a view to”, insert “investigating,”.

3 After paragraph 8(1)(b)

Insert:

- (ba) the request relates to a foreign order in relation to an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence; or

4 Paragraph 8(1)(c)

After “for the purpose of”, insert “investigating,”.

5 Paragraph 8(1)(c)

After “sex,”, insert “sexual orientation,”.

6 After paragraph 8(1)(c)

Insert:

- (ca) there are substantial grounds for believing that, if the request was granted, the person would be in danger of being subjected to torture; or

7 Paragraph 8(1)(d)

After “relates to the”, insert “investigation,”.

8 After paragraph 8(1)(d)

Insert:

- (da) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;
 - (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would have constituted an offence under the military law of Australia but not also under the ordinary criminal law of Australia; or

9 Paragraph 8(1)(e)

Omit “Territory; or”, substitute “Territory.”.

10 Paragraph 8(1)(f)

Repeal the paragraph.

11 Subsection 8(1A)

Repeal the subsection, substitute:

- (1A) A request by a foreign country for assistance under this Act must be refused if:
 - (a) the request relates to the investigation, prosecution or punishment of:
 - (i) a person arrested or detained on suspicion of having committed an offence; or
 - (ii) a person charged with, or convicted of, an offence; and
 - (b) the offence is one in respect of which the death penalty may be imposed in the foreign country;unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.

12 Paragraph 8(2)(a)

After “relates to the”, insert “investigation,”.

13 Paragraph 8(2)(a)

After “Australian law”, insert “at the time at which the request was received”.

14 Paragraphs 8(2)(b) and (c)

Repeal the paragraphs, substitute:

- (b) both of the following subparagraphs are satisfied:
 - (i) the request relates to a foreign order in relation to an offence;
 - (ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or

- (c) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where:
 - (i) the person has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or in Australia or another country; or
 - (ii) the person has undergone the punishment provided by the law of the foreign country, or of Australia or another country;

in respect of that offence or of another offence constituted by the same act or omission as that offence; or

15 Application of amendments made by this Part

The amendments made by this Part apply in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before or after that commencement.

Part 2—Video link evidence

Mutual Assistance in Criminal Matters Act 1987

16 Subsection 3(1)

Insert:

tape recording means audio recording, video recording or recording by other electronic means.

17 Before section 12

Insert:

Division 1—Requests by Australia

18 Subparagraphs 12(1)(a)(i) and (ii)

Omit “in accordance with the law of that country”.

19 After paragraph 12(1)(a)

Insert:

(aa) if subparagraph (a)(i) applies—to arrange for a tape recording to be made of the evidence to be taken; and

20 Paragraph 12(1)(b)

After “evidence”, insert “(and if paragraph (aa) applies, the tape recording or a copy of it)”.

21 Subsection 12(3)

Omit “, through a video link, from Australia”, substitute “in person, or through a video link from Australia,”.

22 After section 12

Insert:

Division 2—Requests by foreign countries

23 Subsection 13(1)

Repeal the subsection, substitute:

- (1) This section applies if a foreign country (the *requesting country*) requests:
- (a) any of the following:
 - (i) that evidence be taken in Australia;
 - (ii) that evidence be taken in Australia and a tape recording be made of the evidence taken;
 - (iii) that evidence be taken in Australia for live transmission by means of video link to a courtroom or other place in the requesting country; or
 - (b) that documents or other articles in Australia be produced; for the purposes of a proceeding in relation to a criminal matter in that country or another foreign country (the *foreign proceeding*).
- (1A) The Attorney-General may, by writing in accordance with the approved form, authorise:
- (a) the taking of the evidence and its transmission to the requesting country; or
 - (b) the production of the documents or other articles and their transmission to the requesting country.

24 Saving of existing authorisations

Despite the amendment of subsection 13(1) of the *Mutual Assistance in Criminal Matters Act 1987* made by item 23 of this Schedule, authorisations given by the Attorney-General under that subsection that were in force immediately before the commencement of this item continue in force on and after that commencement as if they had been given by the Attorney-General under subsection 13(1A) of that Act as inserted by item 23 of this Schedule.

25 Subsection 13(2)

Omit all the words before paragraph (b), substitute:

- (2) If the Attorney-General gives an authorisation under subsection (1A):
- (a) in the case of the taking of evidence—a Magistrate may do all or any of the following:

- (i) take evidence on oath or affirmation of the witness appearing before the Magistrate to give evidence in relation to the matter;
- (ii) direct that all or part of the proceeding be conducted in private;
- (iii) require a person to leave the place in Australia where the giving of evidence is taking place or going to take place;
- (iv) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the foreign proceeding;
- (v) subject to subsection 13AB(1), require the production of documents or other articles;
- (vi) take such action as the Magistrate considers appropriate to facilitate the foreign proceeding;
- (vii) perform any other function required by the regulations;
or

26 Paragraph 13(2)(b)

Omit “subsection (6)”, substitute “subsection 13AB(1)”.

27 At the end of subsection 13(2)

Add:

Note 1: Subparagraph (2)(a)(i)—see also subsection (2C).

Note 2: Subparagraphs (2)(a)(ii), (iii) and (iv)—see also subsection (2B).

28 After subsection 13(2)

Insert:

- (2A) However, a Magistrate may not make a ruling about the admissibility of evidence in a foreign proceeding.
- (2B) If a Magistrate is taking evidence for live transmission by means of video link to a courtroom or other place in the requesting country, the Magistrate:
 - (a) may only exercise the powers mentioned in subparagraphs (2)(a)(ii), (iii) and (iv) at the request of the foreign court; and

- (b) may, at the request of the foreign court, assist with the administering by the foreign court of an oath or affirmation; and
 - (c) may administer an oath or affirmation.
- (2C) If a Magistrate takes evidence as mentioned in subparagraph (2)(a)(i) but not for live transmission by means of video link to a courtroom, or other place, in the requesting country, the Magistrate must:
- (a) if the requesting country requests that a tape recording be made of the evidence taken—cause a tape recording to be made of the evidence, certify that the evidence on the tape recording was taken by the Magistrate and cause the tape recording, or a copy of it, to be sent to the Attorney-General; and
 - (b) in any other case—cause the evidence to be put in writing, certify that the evidence was taken by the Magistrate and cause the writing so certified to be sent to the Attorney-General.
- (2D) If, in taking evidence as mentioned in paragraph (2)(a), a Magistrate requires the production of documents or other articles under subparagraph (2)(a)(v), the Magistrate must send the documents, or copies of the documents certified by the Magistrate to be true copies, or the other articles, to the Attorney-General.

29 Subsection 13(4A)

Omit “, through a video link, from the requesting country”, substitute “in person, or through a video link from the requesting country,”.

30 After subsection 13(4A)

Insert:

- (4B) For the purposes of Part III of the *Crimes Act 1914*:
- (a) the proceeding before the Magistrate is a judicial proceeding; and
 - (b) evidence taken from a witness on oath or affirmation is testimony given in a judicial proceeding.

31 Subsections 13(6) to (10)

Repeal the subsections.

32 After section 13

Insert:

13AA Enforcement of orders

- (1) If a Magistrate is conducting a proceeding under subsection 13(2) and makes an order relating to the conduct of the proceeding, the order must be complied with.
- (2) If the Magistrate is a Federal Magistrate, subject to the Rules of Court made under the *Federal Magistrates Act 1999*, the order may be enforced as if the order were an order of the Federal Magistrates Court.
- (3) In any other case, subject to the rules of the court of which the Magistrate is a member, the order may be enforced as if the order were an order of that court.

13AB Commonwealth and State and Territory laws apply in relation to taking evidence and producing documents etc.

- (1) Subject to subsection (2), the following laws apply, so far as they are capable of application, for the purposes of a proceeding under section 13 in a State or Territory:
 - (a) laws of the Commonwealth with respect to the compelling of persons to attend before a Federal Magistrate;
 - (b) laws of the Commonwealth with respect to giving evidence, answering questions and producing documents or other articles before a Federal Magistrate;
 - (c) laws of a State or Territory with respect to the compelling of persons to attend before a Magistrate (other than a Federal Magistrate);
 - (d) laws of that State or Territory with respect to giving evidence, answering questions and producing documents or other articles before a Magistrate (other than a Federal Magistrate).
- (2) For the purposes of section 13:
 - (a) the person to whom the proceeding in the requesting country relates is competent but not compellable to give evidence; and

- (b) a person who is required to give evidence, or produce documents or other articles, for the purposes of a proceeding in relation to a criminal matter in the requesting country or another foreign country, is not compellable to answer a question, or produce a document or article, that the person is not compellable to answer or produce, as the case may be, in the proceeding in that country.
- (3) Paragraph (2)(b) does not apply if its application would be inconsistent with a provision of a mutual assistance treaty between Australia and the requesting country concerned.
- (4) A duly authenticated foreign law immunity certificate is admissible in proceedings under section 13 as prima facie evidence of the matters stated in the certificate.

33 Application of amendments made by this Part

The amendments made by this Part apply:

- (a) if an authorisation has not been given, before the commencement of this item, by the Attorney-General under subsection 13(1) of the *Mutual Assistance in Criminal Matters Act 1987* in relation to a request made by a foreign country—in relation to that request; and
- (b) in relation to a request made by a foreign country on or after the commencement of this item.

Part 3—Telecommunications and surveillance devices

Division 1—Provision of certain lawfully obtained material

Mutual Assistance in Criminal Matters Act 1987

34 Subsection 3(1)

Insert:

interception warrant information has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

35 Subsection 3(1)

Insert:

lawfully accessed information has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

36 Subsection 3(1)

Insert:

lawfully intercepted information has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

37 Subsection 3(1)

Insert:

protected information means information that is protected information within the meaning of paragraph 44(1)(a), (b) or (c) of the *Surveillance Devices Act 2004*.

38 Subsection 3(1)

Insert:

stored communications warrant information has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

39 Subsection 13A(2)

Repeal the subsection, substitute:

- (2) The Attorney-General may only authorise the provision to the requesting country of material specified in column 1 of the following table if the request relates to a serious offence against the laws of that country specified in column 2 of the table:

Offences for which provision of particular material may be authorised		
Item	Column 1	Column 2
1	material that is or includes protected information	a serious offence punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty
2	material that is or includes lawfully accessed information or stored communications warrant information	a serious offence punishable by a maximum penalty of: (a) imprisonment for 3 years or more, imprisonment for life or the death penalty; or (b) a fine of an amount that is at least equivalent to 900 penalty units
3	material that is or includes lawfully intercepted information or interception warrant information	(a) a serious offence punishable by a maximum penalty of imprisonment for 7 years or more, imprisonment for life or the death penalty; or (b) a cartel offence punishable by a maximum penalty of a fine of an amount that is at least equivalent to \$10,000,000

40 Subsection 13A(6) (paragraph (b) of the definition of material lawfully obtained by an enforcement agency in Australia)

Omit “prosecution;”, substitute “prosecution.”.

41 Subsection 13A(6) (definition of *material lawfully obtained by an enforcement agency in Australia*)

Omit all the words after paragraph (b).

Telecommunications (Interception and Access) Act 1979

42 At the end of section 68

Add:

- ; and (l) if the Attorney-General has authorised the provision of the information to a foreign country under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*—to that foreign country, or to the Secretary of the Department for the purpose of providing the information to that foreign country.

43 After section 68

Insert:

68A Communicating information obtained by Secretary

- (1) The Secretary of the Department may, personally, or by a person authorised by him or her, communicate to another person (including a foreign country) lawfully intercepted information or interception warrant information if:
 - (a) the information was communicated to the Secretary under paragraph 68(1) for the purpose of providing the information to a foreign country; and
 - (b) the communication of the information is for purposes connected with providing the information to the foreign country.
- (2) A person to whom lawfully intercepted information or interception warrant information has been communicated under subsection (1) or this subsection may communicate that information to another person (including a foreign country) for purposes connected with providing the information to the foreign country.

44 Paragraph 94(3)(a)

After “Division 2”, insert “(other than section 102B)”.

45 After section 102A

Insert:

102B Report regarding mutual assistance requests

The report must set out the number of occasions on which lawfully intercepted information or interception warrant information was provided to a foreign country under paragraph 68(1) or section 68A in connection with an authorisation under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*.

46 At the end of subsection 139(2)

Add:

; or (e) an authorisation under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987* in respect of the information.

47 Paragraph 159(1)(a)

After “Division 2”, insert “(other than section 163A)”.

48 At the end of Division 2 of Part 3-6 of Chapter 3

Add:

163A Report regarding mutual assistance requests

The report must set out the number of occasions on which lawfully accessed information or stored communications warrant information was provided to a foreign country under subsection 139(1) or section 142 in connection with an authorisation under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*.

49 Application of amendments made by this Division

The amendments made by this Division apply in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before, on or after that commencement.

Division 2—Requests for use of surveillance devices

Mutual Assistance in Criminal Matters Act 1987

50 After Part IIIB

Insert:

Part IIIC—Assistance in relation to use of surveillance devices

15E Requests by Australia for surveillance devices

- (1) This section applies if:
 - (a) an investigation in relation to an offence punishable by a maximum penalty of imprisonment for 3 years or more has commenced in Australia; and
 - (b) the use of a surveillance device (however described) is reasonably necessary for the purpose of obtaining information relevant to:
 - (i) the commission of the offence; or
 - (ii) the identity or location of the offenders.
- (2) Australia may request an appropriate authority of a foreign country:
 - (a) to authorise the use of a surveillance device (however described), in accordance with the law of that country, to obtain the information referred to in paragraph (1)(b); and
 - (b) to arrange for any such information that has been obtained to be sent to Australia.
- (3) Subsection (4) applies if:
 - (a) Australia makes a request under this section; and
 - (b) the foreign country obtains any information referred to in paragraph (1)(b) by means of a process authorised by the law of that country other than the use (as requested by Australia) of a surveillance device.
- (4) The information obtained by the foreign country:

- (a) is not inadmissible in evidence in a proceeding that relates to the investigation; or
 - (b) is not precluded from being used for the purposes of the investigation;
- on the ground alone that it was obtained otherwise than in accordance with the request.

15F Requests by foreign countries for surveillance devices

- (1) The Attorney-General may, in his or her discretion, authorise an eligible law enforcement officer, in writing, to apply for a surveillance device warrant under section 14 of the *Surveillance Devices Act 2004* if the Attorney-General is satisfied that:
 - (a) an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of a foreign country (the **requesting country**) that is punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty has commenced in the requesting country; and
 - (b) the requesting country requests the Attorney-General to arrange for the use of a surveillance device; and
 - (c) the requesting country has given appropriate undertakings in relation to:
 - (i) ensuring that the information obtained as a result of the use of the surveillance device will only be used for the purpose for which it is communicated to the requesting country; and
 - (ii) the destruction of a document or other thing containing information obtained as a result of the use of the surveillance device; and
 - (iii) any other matter the Attorney-General considers appropriate.
- (2) In this section:

eligible law enforcement officer means a person referred to in paragraph (a) or (c) of the definition of **law enforcement officer** set out in subsection 6(1) of the *Surveillance Devices Act 2004*.

Surveillance Devices Act 2004

51 Subsection 6(1)

Insert:

investigative proceeding has the same meaning as in the *Mutual Assistance in Criminal Matters Act 1987*.

52 Subsection 6(1)

Insert:

mutual assistance application means an application for a surveillance device warrant made under a mutual assistance authorisation.

53 Subsection 6(1)

Insert:

mutual assistance authorisation means an authorisation under subsection 15F(1) of the *Mutual Assistance in Criminal Matters Act 1987*.

54 After subsection 14(3)

Insert:

- (3A) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant if he or she:
- (a) is authorised to do so under a mutual assistance authorisation; and
 - (b) suspects on reasonable grounds that the use of a surveillance device is necessary, in the course of the investigation or investigative proceeding to which the authorisation relates, for the purpose of enabling evidence to be obtained of:
 - (i) the commission of the offence to which the authorisation relates; or
 - (ii) the identity or location of the persons suspected of committing the offence.

55 Subsection 14(4)

Omit “(1) or (3)”, substitute “(1), (3) or (3A)”.

56 After paragraph 16(1)(b)

Insert:

- (ba) in the case of a warrant sought in relation to a mutual assistance authorisation—that such an authorisation is in force and that there are reasonable grounds for the suspicion founding the application for the warrant; and

57 Paragraph 16(2)(a)

After “relevant offence”, insert “or a mutual assistance authorisation”.

58 Paragraph 16(2)(e)

Before “the likely”, insert “in the case of a warrant sought in relation to a relevant offence or a recovery order—”.

59 After paragraph 16(2)(e)

Insert:

- (ea) in the case of a warrant sought in relation to a mutual assistance authorisation—the likely evidentiary or intelligence value of any evidence or information sought to be obtained, to the extent that this is possible to determine from information obtained from the foreign country to which the authorisation relates; and

60 After subparagraph 17(1)(b)(iii)

Insert:

- (iiia) if the warrant relates to a mutual assistance authorisation—the offence or offences against the law of a foreign country to which the authorisation relates; and

61 Subsection 20(2)

Omit “or 21(3)(a) and (b)”, substitute “, 21(3)(a) and (b) or 21(3A)(a) and (b)”.

62 After subsection 21(3)

Insert:

(3A) If:

- (a) a surveillance device warrant has been sought by or on behalf of a law enforcement officer as authorised under a mutual assistance authorisation; and
- (b) the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded is satisfied that the use of a surveillance device is no longer required for the purpose of enabling evidence to be obtained of:
 - (i) the commission of the offence against a law of a foreign country to which the authorisation relates; or
 - (ii) the identity or location of the persons suspected of committing the offence;

the chief officer must, in addition to revoking the warrant under section 20, take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued.

63 After paragraph 21(5)(b)

Insert:

- or (c) if the warrant was issued in relation to a mutual assistance authorisation—of enabling evidence to be obtained of:
 - (i) the commission of the offence against a law of a foreign country to which the authorisation relates; or
 - (ii) the identity or location of the persons suspected of committing the offence;

64 Paragraph 45(4)(f)

Repeal the paragraph, substitute:

- (f) the communication of information for the purpose of providing the information to a foreign country, or an appropriate authority of a foreign country, if:
 - (i) the provision of the information has been authorised under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*; or
 - (ii) the information was obtained under, or relates to, a surveillance device warrant issued in relation to a mutual assistance authorisation.

65 After paragraph 50(1)(a)

Insert:

- (aa) the number of mutual assistance applications made by or on behalf of, and the number of warrants issued as a result of such applications to, law enforcement officers of the agency during that year; and

66 After paragraph 50(1)(e)

Insert:

- (ea) the number of mutual assistance applications made by or on behalf of law enforcement officers of the agency that were refused during that year, and the reasons for refusal; and

67 After paragraph 50(1)(i)

Insert:

- (ia) for each offence (the *foreign offence*) against a law of a foreign country in respect of which a warrant was issued as a result of a mutual assistance application made by or on behalf of law enforcement officers of the agency during the year—the offence (if any), under a law of the Commonwealth, or of a State or a Territory, that is of the same nature as, or a substantially similar nature to, the foreign offence; and

68 After subparagraph 53(2)(c)(iii)

Insert:

- (iiia) if the warrant was issued in relation to a mutual assistance authorisation—the offence against the law of the foreign country to which the authorisation relates; and

69 Application of amendments made by this Division

The amendments made by this Division apply in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before or after that commencement.

Part 4—Carrying out forensic procedures at the request of a foreign country etc.

Crimes Act 1914

70 Simplified outline of Part 1D (after the paragraph relating to Division 7)

Insert:

However, certain rules are modified or do not apply if the forensic procedure is carried out in response to a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*) or a request by a foreign law enforcement agency (Division 9A).

71 Subsection 23WA(1)

Insert:

foreign law enforcement agency means:

- (a) a police force (however described) of a foreign country; or
- (b) any other authority or person responsible for the enforcement of the laws of the foreign country.

72 Subsection 23WA(1)

Insert:

foreign serious offence has the same meaning as in the *Mutual Assistance in Criminal Matters Act 1987*.

73 Subsection 23WA(1)

Insert:

forensic evidence means one or more of the following:

- (a) evidence of forensic material, or evidence consisting of forensic material, taken from a suspect or a volunteer by a forensic procedure;

- (b) evidence of any results of the analysis of the forensic material;
- (c) any other evidence obtained as a result of or in connection with the carrying out of the forensic procedure.

74 Subsection 23WA(1) (definition of *investigating constable*)

Repeal the definition, substitute:

investigating constable means:

- (a) in the case of a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*) or a foreign law enforcement agency—the constable in charge of coordinating the response to the request; and
- (b) in any other case—the constable in charge of the investigation of the commission of an offence in relation to which a forensic procedure is carried out or proposed to be carried out.

75 Subsection 23WA(1) (at the end of the definition of *suspect*)

Add:

- ; or (d) a person in respect of whom a forensic procedure has been requested by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*) or a foreign law enforcement agency because the foreign country has:
 - (i) started investigating whether the person has committed an indictable offence; or
 - (ii) started proceedings against the person for an indictable offence.

76 At the end of section 23WA

Add:

Requests by a foreign country and the police force of a foreign country

- (9) The provisions of this Part apply in relation to a forensic procedure carried out because of:
 - (a) a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*); or

(b) a request by a foreign law enforcement agency;
as if a reference to an indictable offence were a reference to a
foreign serious offence.

77 Subparagraph 23WF(2)(b)(i)

After “(h), (i)”, insert “, (ib)”.

78 Subsection 23WI(2)

Repeal the subsection, substitute:

- (2) In determining whether a request is justified in all the
circumstances, the constable must:
- (a) if the forensic procedure has been requested by a foreign law
enforcement agency—balance the public interest in Australia
providing and receiving international assistance in criminal
matters against the public interest in upholding the physical
integrity of the suspect; and
 - (b) in any other case—balance the public interest in obtaining
evidence tending to confirm or disprove that the suspect
committed the offence concerned against the public interest
in upholding the physical integrity of the suspect.

79 After paragraph 23WJ(1)(ia)

Insert:

- (ib) if the suspect is being asked to undergo a forensic procedure
because of a request by a foreign law enforcement agency—
the following:
- (i) the name of the foreign law enforcement agency that has
made the request;
 - (ii) that forensic evidence resulting from the forensic
procedure will be provided to the foreign law
enforcement agency;
 - (iii) that the forensic evidence may be used in proceedings
against the suspect in the foreign country;
 - (iv) that the retention of the forensic evidence will be
governed by the laws of the foreign country;
 - (v) that the retention of the forensic evidence will be subject
to undertakings given by the foreign law enforcement
agency;

(vi) the content of those undertakings;

80 After subsection 23WJ(4)

Insert:

Exception—requests by foreign law enforcement agency

- (4A) Subsections (3) and (4) do not apply if the suspect is being asked to undergo a forensic procedure because of a request by a foreign law enforcement agency.

81 Subsection 23WJ(5)

After “not in custody”, insert “and is not being asked to undergo a forensic procedure because of a request by a foreign law enforcement agency”.

82 At the end of section 23WJ

Add:

Failure to consent to forensic procedure—procedure requested by foreign law enforcement agency

- (6) If the suspect is being asked to undergo a forensic procedure because of a request by a foreign law enforcement agency, the constable must inform the suspect (whether or not the suspect is in custody) that, if the suspect does not consent:
- (a) the foreign country may request that the forensic procedure be carried out; and
 - (b) the Attorney-General may authorise, under the *Mutual Assistance in Criminal Matters Act 1987*, a constable to apply to a magistrate for an order for the carrying out of the forensic procedure.

Note: Under the *Mutual Assistance in Criminal Matters Act 1987*, the Attorney-General may only authorise a constable who is an authorised applicant.

83 Subsection 23WL(2) (note)

Omit “Note”, substitute “Note 1”.

84 At the end of section 23WL

Add:

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 4 Carrying out forensic procedures at the request of a foreign country etc.

Note 2: If a foreign law enforcement agency requests that a forensic procedure be carried out on a suspect, a copy of the tape recording or the written record may also be provided to the foreign law enforcement agency: see subsection 23YQD(2).

85 After subsection 23WM(2)

Insert:

- (2A) This Division does not authorise the carrying out of a forensic procedure on a suspect if the procedure has been requested by:
- (a) a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*); or
 - (b) a foreign law enforcement agency.

86 Section 23WR

Before “A”, insert “(1)”.

87 At the end of section 23WR

Add:

; or (d) the forensic procedure has been requested by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*).

- (2) However, a magistrate is not authorised to order the carrying out of a forensic procedure on a suspect if the procedure has been requested by a foreign law enforcement agency.

88 Paragraph 23WS(a)

Omit “section 23WR”, substitute “subsection 23WR(1)”.

89 After paragraph 23WT(1)(c)

Insert:

- (ca) if the forensic procedure has been requested by a foreign country—the constable has been authorised by the Attorney-General under the *Mutual Assistance in Criminal Matters Act 1987* to make the application for an order under this Part; and

90 Subsection 23WT(2)

Repeal the subsection, substitute:

- (2) In determining whether the carrying out of the forensic procedure is justified in all the circumstances, the magistrate must:
- (a) if the forensic procedure has been requested by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*)—balance the public interest in Australia providing and receiving international assistance in criminal matters against the public interest in upholding the physical integrity of the suspect; and
 - (b) in any other case—balance the public interest in obtaining evidence tending to confirm or disprove that the suspect committed the offence concerned against the public interest in upholding the physical integrity of the suspect.

91 Paragraph 23WU(2)(b)

After “(c)”, insert “, (ca)”.

92 Paragraph 23XA(1)(a)

Omit “section 23WR”, substitute “subsection 23WR(1)”.

93 After paragraph 23XWR(2)(d)

Insert:

- (da) if the volunteer undergoes a forensic procedure because of a request by a foreign law enforcement agency—the following:
 - (i) the name of the foreign law enforcement agency that has made the request;
 - (ii) that forensic evidence resulting from the forensic procedure will be provided to the foreign law enforcement agency;
 - (iii) that the forensic evidence may be used in proceedings in the foreign country;
 - (iv) that the retention of the forensic evidence will be governed by the laws of the foreign country;
 - (v) that the retention of the forensic evidence will be subject to undertakings given by the foreign law enforcement agency;
 - (vi) the content of those undertakings;

94 At the end of section 23XWS

Add:

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 4 Carrying out forensic procedures at the request of a foreign country etc.

Note 1: Division 9 contains provisions about making copies of material (including copies of tapes) available to volunteers.

Note 2: If a foreign law enforcement agency requests that a forensic procedure be carried out on a volunteer, a copy of the tape recording or the written record may also be provided to the foreign law enforcement agency: see subsection 23YQD(2).

95 At the end of subsection 23XWU(1)

Add:

; or (d) in the case of a forensic procedure that has been requested by a foreign country—a constable has been authorised by the Attorney-General under the *Mutual Assistance in Criminal Matters Act 1987* to make the application for an order under this Part.

96 After subsection 23XWU(1)

Insert:

(1A) However, a magistrate is not authorised to order the carrying out of a forensic procedure on a child or incapable person if the procedure has been requested by a foreign law enforcement agency.

97 Subsection 23XWV(2)

Omit “A magistrate”, substitute “Subject to subsection (2A), a magistrate”.

98 After subsection 23XWV(2)

Insert:

(2A) Despite subsection (2), a magistrate may not make an order if:

- (a) the volunteer was asked to undergo a forensic procedure because of a request by a foreign law enforcement agency; and
- (b) the forensic evidence has already been provided to the foreign law enforcement agency.

99 At the end of Division 7 of Part 4D

Add:

Subdivision C—Application

23YBA Division does not apply to a proceeding in a foreign country

To avoid doubt, this Division does not apply in relation to a proceeding in a foreign country in which forensic evidence is provided in response to a request by:

- (a) a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*); or
- (b) a foreign law enforcement agency.

100 Before section 23YC

Insert:

23YBB Application

This Division does not apply to forensic evidence provided in response to a request by:

- (a) a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*); or
- (b) a foreign law enforcement agency.

101 At the end of subsection 23YF(1)

Add:

- Note 1: If a forensic procedure is carried out as a result of a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*), a copy of anything made may also be provided to the foreign country: see subsections 23YQB(2) and (3).
- Note 2: If a forensic procedure is carried out as a result of a request by a foreign law enforcement agency, a copy of anything made may also be provided to the foreign law enforcement agency: see subsections 23YQD(3) and (4).

102 After section 23YK

Insert:

23YKA Application of sections 23YI to 23YK

To avoid doubt, sections 23YI to 23YK do not apply in relation to a proceeding in a foreign country in which forensic evidence is provided in response to a request by:

- (a) a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*); or
- (b) a foreign law enforcement agency.

103 After Division 9 of Part ID

Insert:

Division 9A—Carrying out forensic procedures at the request of a foreign jurisdiction

Subdivision A—Requests by foreign countries

23YQA Application of Subdivision

This Subdivision applies if:

- (a) a request is made by a foreign country that a forensic procedure be carried out on a person; and
- (b) the Attorney-General authorises, under the *Mutual Assistance in Criminal Matters Act 1987*, a constable to apply to a magistrate for the carrying out of the forensic procedure on the person.

Note: Under the *Mutual Assistance in Criminal Matters Act 1987*, the Attorney-General may only authorise a constable who is an authorised applicant.

23YQB Providing forensic evidence resulting from a forensic procedure

- (1) If a forensic procedure is carried out on a person, the forensic evidence resulting from the procedure is to be provided to the foreign country concerned in accordance with a direction given by the Attorney-General under section 28C of the *Mutual Assistance in Criminal Matters Act 1987*.
- (2) If an audio recording, a copy of it, or a copy of a transcript of a tape recording is made available to a person (as required by subsection 23YF(1)), a copy of the audio recording or the transcript, or both, as the case may be, may also be provided to the foreign country concerned, but only in accordance with a direction given by the Attorney-General under section 28C of the *Mutual Assistance in Criminal Matters Act 1987*.

(3) If:

- (a) a video recording or a copy of it is made available to a person (as required by subsection 23YF(1)); or
- (b) both an audio recording and a video recording are made and the person is given an opportunity to view the video recording (as required by subsection 23YF(1));

a copy of the video recording may also be provided to the foreign country concerned, but only in accordance with a direction given by the Attorney-General under section 28C of the *Mutual Assistance in Criminal Matters Act 1987*.

Subdivision B—Requests by a foreign law enforcement agency

23YQC Application of Subdivision

This Subdivision applies if a request is made by a foreign law enforcement agency that a forensic procedure be carried out on:

- (a) a suspect in relation to a foreign serious offence who has given informed consent to the forensic procedure; or
- (b) a volunteer.

23YQD Providing forensic material etc. to a foreign law enforcement agency

- (1) The Commissioner may provide forensic evidence to a foreign law enforcement agency if the Commissioner is satisfied that:
 - (a) the foreign law enforcement agency has given appropriate undertakings in relation to the retention, use and destruction of the forensic evidence; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (2) If forensic evidence is to be provided to the foreign law enforcement agency, a copy of the tape recording or the written record mentioned in section 23WL (suspects) or 23XWS (volunteers) may also be provided to the foreign law enforcement agency.
- (3) If an audio recording, a copy of it, or a copy of a transcript of a tape recording is made available to a suspect or volunteer (as required by subsection 23YF(1)), a copy of the audio recording or

the transcript, or both, as the case may be, may also be provided to the foreign law enforcement agency.

(4) If:

- (a) a video recording or a copy of it is made available to a suspect or volunteer (as required by subsection 23YF(1)); or
- (b) both an audio recording and a video recording are made and the suspect or volunteer is given an opportunity to view the video recording (as required by subsection 23YF(1));

a copy of the video recording may also be provided to the foreign law enforcement agency.

104 Section 23YQA

Renumber as section 23YQE.

105 After subsection 23YUB(1)

Insert:

- (1A) The orders mentioned in subsection (1) do not include an order for the carrying out of a forensic procedure on a person that is made under this Part in response to a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*).

Mutual Assistance in Criminal Matters Act 1987

106 Subsection 3(1)

Insert:

child has the same meaning as in Part ID of the *Crimes Act 1914*.

107 Subsection 3(1)

Insert:

forensic evidence has the same meaning as in Part ID of the *Crimes Act 1914*.

108 Subsection 3(1)

Insert:

forensic material has the same meaning as in Part ID of the *Crimes Act 1914*.

109 Subsection 3(1)

Insert:

forensic procedure has the same meaning as in Part ID of the *Crimes Act 1914*.

110 Subsection 3(1)

Insert:

incapable person has the same meaning as in Part ID of the *Crimes Act 1914*.

111 Subsection 3(1)

Insert:

parent has the same meaning as in the *Crimes Act 1914*.

112 After Part IV

Insert:

Part IVA—Forensic procedures

Division 1—Requests by Australia

28A Requests by Australia for forensic procedures

(1) If:

- (a) a proceeding relating to a criminal matter has commenced in Australia; and
- (b) there are reasonable grounds to believe carrying out a forensic procedure on a person in a foreign country may result in evidence relevant to the proceeding;

Australia may request the foreign country to authorise the carrying out of a forensic procedure on the person for the purpose of giving assistance in connection with the proceeding.

(2) If:

- (a) an investigation relating to a criminal matter has commenced in Australia; and
 - (b) carrying out a forensic procedure on a person in a foreign country may result in evidence relevant to the investigation;
- Australia may request the foreign country to authorise the carrying out of a forensic procedure on the person for the purpose of giving assistance in relation to the investigation.
- (3) To avoid doubt, Australia may request that a forensic procedure be carried out in the foreign country even if, under Australian law, the forensic procedure could not have been carried out by using processes similar to those used in the foreign country.
 - (4) Subsection (5) applies if:
 - (a) Australia makes a request under this section; and
 - (b) the foreign country obtains any thing relevant to the proceeding or investigation by means of a process authorised by the law of that country other than the carrying out (as requested by Australia) of a forensic procedure on a particular person.
 - (5) The thing obtained by the foreign country:
 - (a) is not inadmissible in evidence in the proceeding; or
 - (b) is not precluded from being used for the purposes of the investigation;on the ground alone that it was obtained otherwise than in accordance with the request.

Division 2—Requests by foreign countries

28B Requests by foreign countries for forensic procedures

- (1) If a foreign country requests that a forensic procedure be carried out on a person, the Attorney-General may authorise a constable to apply, in accordance with Part ID of the *Crimes Act 1914*, to a magistrate for an order for the carrying out of the forensic procedure on the person, so long as, if the person is a suspect within the meaning of subsection 23WA(1) of that Act, the constable is an authorised applicant within the meaning of that subsection.

- (2) The Attorney-General must not authorise a constable under subsection (1) unless the Attorney-General is satisfied of the following matters:
- (a) a request has been made by a foreign country that a forensic procedure be carried out on a person;
 - (b) unless the person is a child or an incapable person—the foreign country has:
 - (i) started investigating whether the person has committed a foreign serious offence against its laws; or
 - (ii) started proceedings against the person for a foreign serious offence;
 - (c) the person is, or is believed to be, in Australia;
 - (d) the foreign country has given:
 - (i) appropriate undertakings in relation to the retention, use and destruction of forensic material, or of information obtained from analysis of that forensic material; and
 - (ii) any other undertakings that the Attorney-General considers necessary;
 - (e) unless the person is a child or an incapable person—the person has been given an opportunity to consent to the forensic procedure and has not consented to it;
 - (f) if the person is a child or an incapable person, the matters specified in subsection (3).
- (3) If the person is a child or an incapable person, the Attorney-General must:
- (a) be satisfied that either of the following applies:
 - (i) the consent of the parent or guardian cannot reasonably be obtained or has been withdrawn;
 - (ii) the parent or guardian is a suspect in relation to the foreign serious offence; and
 - (b) believe that, having regard to the best interests of the child or incapable person, it is appropriate to make the authorisation.

28C Providing forensic evidence to foreign countries

- (1) If:
- (a) a foreign country requests that a forensic procedure be carried out on a person; and

- (b) the Attorney-General authorises a constable to make an application of the kind mentioned in subsection 28B(1); and
 - (c) a forensic procedure is carried out on the person;
- the Attorney-General may direct the constable as to how the forensic evidence is to be provided to the foreign country.
- (2) A direction by the Attorney-General under subsection (1) is not a legislative instrument.

113 Application of amendments made by this Part

The amendments made by this Part apply in relation to a request by a foreign country that is under consideration on or after the day on which this Part commences, whether the request was made before, on or after that day.

Part 5—Proceeds of crime

Mutual Assistance in Criminal Matters Act 1987

114 Subsection 3(1)

Insert:

cartel offence means an offence by a corporation involving cartel conduct.

115 Subsection 34(1)

Omit “in a specified court”.

116 Subsection 34(2)

Omit “that is specified in regulations made for the purposes of this subsection”.

117 Subsection 34(2)

Omit “in a specified court”.

118 Paragraphs 34(3)(a) and (b)

Repeal the paragraphs, substitute:

- (a) made in respect of a foreign serious offence for which a person has been convicted or charged; or
- (b) made in respect of the alleged commission of a foreign serious offence (whether or not the identity of the person who committed the offence is known);

119 Subsection 34(3)

Omit “in a specified court”.

120 Subsection 34(4)

Repeal the subsection.

121 Before subsection 34A(1)

Insert:

- (1A) An application to a court for registration of a foreign order in accordance with an authorisation under this Subdivision must be to a court with proceeds jurisdiction.

122 Subsection 34A(1)

After “a court”, insert “with proceeds jurisdiction”.

123 Subsection 34F(1)

Repeal the subsection, substitute:

- (1) If a copy of a sealed or authenticated copy of:
- (a) a foreign order; or
 - (b) an amendment of a foreign order;
- is sent by fax, email or other electronic means, the copy is to be regarded, for the purposes of this Act, as the same as the sealed or authenticated copy.

Note: The heading to section 34F is replaced by the heading “**Copies of foreign orders sent by fax, email or other electronic means**”.

124 Subsection 34F(2)

Omit “faxed”.

125 Subsection 34F(2)

Omit “21”, substitute “45”.

126 Subsection 34J(1)

Omit “(1)”.

127 Subparagraph 34J(1)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) foreign confiscation proceedings have commenced, or there are reasonable grounds to suspect that such proceedings are about to commence, in a foreign country; and

128 Subsection 34J(1)

Omit “to a specified court”.

129 Subsection 34J(2)

Repeal the subsection.

130 Paragraph 34K(3)(b)

Repeal the paragraph.

131 Paragraph 34K(3)(c)

Omit “subparagraph 34J(1)(a)(i)”, substitute “subparagraph 34J(a)(i)”.

132 Paragraph 34K(3)(d)

Omit “subparagraph 34J(1)(a)(ii)”, substitute “subparagraph 34J(a)(ii)”.

133 Subparagraph 34K(3)(d)(i)

Omit “such proceedings”, substitute “foreign confiscation proceedings”.

134 Section 34N

Repeal the section.

135 Saving of existing authorisations

Despite the repeal of section 34N of the *Mutual Assistance in Criminal Matters Act 1987* made by item 134 of this Schedule, authorisations given by the Attorney-General under that section that were in force immediately before the commencement of this item continue in force on and after that commencement as if that repeal had not happened.

136 Subsection 34P(1)

Repeal the subsection, substitute:

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a production order under the Proceeds of Crime Act in relation to the foreign serious offence that is the subject of the request.

137 Paragraph 34P(3)(b)

Repeal the paragraph.

138 Subsection 34Q(2)

Omit “the obtaining of the production order”, substitute “assistance in respect of the foreign serious offence”.

139 Subsection 34R(1)

Omit “The Attorney-General or a senior Departmental officer”, substitute “An officer mentioned in paragraph 213(3)(a), (b) or (c) of the Proceeds of Crime Act”.

140 Transitional provision—notices

- (1) This item applies to a written notice given by the Attorney-General or a senior Departmental officer under subsection 34R(1) of the *Mutual Assistance in Criminal Matters Act 1987* that was in force immediately before the commencement of this item.
- (2) The *Mutual Assistance in Criminal Matters Act 1987* as amended by item 139 of this Schedule has effect, after the commencement of this item, as if the written notice had been given under subsection 34R(1) of the *Mutual Assistance in Criminal Matters Act 1987* as amended by item 139 of this Schedule.

141 Subsection 34R(2)

Omit “Attorney-General or the senior Departmental”.

142 Subsection 34R(3)

Repeal the subsection.

143 Section 34X

Repeal the section.

144 Saving of existing authorisations

Despite the repeal of section 34X of the *Mutual Assistance in Criminal Matters Act 1987* by item 143 of this Schedule, authorisations given by the Attorney-General under that section that were in force immediately before the commencement of this item continue in force on and after that commencement as if that repeal had not happened.

145 Subsection 34Y(1)

Repeal the subsection, substitute:

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a monitoring order under the Proceeds of

Crime Act in relation to the foreign serious offence that is the subject of the request, so long as the foreign serious offence is:

- (a) an offence punishable by imprisonment for 3 or more years that:
 - (i) involves unlawful conduct relating to a narcotic substance; or
 - (ii) is a money laundering offence; or
 - (iii) involves unlawful conduct by a person that causes, or is intended to cause, a benefit to the value of at least \$10,000 for that person or another person; or
 - (iv) involves unlawful conduct by a person that causes, or is intended to cause, a loss to the foreign country in question or another person of at least \$10,000; or
- (b) an offence involving the smuggling of migrants; or
- (c) an offence involving failure to report financial transactions; or
- (d) a cartel offence; or
- (e) an offence involving terrorism; or
- (f) an ancillary offence in respect of an offence referred to in paragraph (a), (b), (c), (d) or (e).

146 Paragraph 34Y(3)(a)

Omit “paragraph 34X(1)(a)”, substitute “paragraph (1)(a), (b), (c), (d), (e) or (f)”.

147 Section 34ZA

Repeal the section.

148 Saving of existing authorisations

Despite the repeal of section 34ZA of the *Mutual Assistance in Criminal Matters Act 1987* by item 147 of this Schedule, authorisations given by the Attorney-General under that section that were in force immediately before the commencement of this item continue in force on and after that commencement as if that repeal had not happened.

149 Subsection 34ZB(1)

Repeal the subsection, substitute:

- (1) If an authorised officer has been authorised under section 34ZG of this Act in relation to a request by a foreign country, the authorised officer may apply for a search warrant under the Proceeds of Crime Act in relation to the foreign serious offence that is the subject of the request.

150 Paragraph 34ZB(3)(b)

Repeal the paragraph.

151 At the end of Division 2 of Part VI

Add:

Subdivision G—Authorisation of authorised officers

34ZG Attorney-General may authorise authorised officers

If:

- (a) a proceeding or investigation relating to a criminal matter involving a foreign serious offence has commenced in a foreign country; and
- (b) the foreign country requests assistance in relation to the proceeding or investigation; and
- (c) such assistance may be obtained under the Proceeds of Crime Act in the form of a production order, search warrant or monitoring order;

then, the Attorney-General may authorise an authorised officer of an enforcement agency to make any applications under that Act that are necessary to respond to the request by the foreign country.

152 Application of amendments made by items 114 to 151

- (1) The amendments made by items 115 to 133 (other than item 125) and items 139 to 142 of this Schedule apply in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before, on or after that commencement.
- (2) The amendment made by item 125 of this Schedule applies in relation to the registration of an order that has effect under Subdivision A of Division 2 of Part VI of the *Mutual Assistance in Criminal Matters Act 1987* on or after the commencement of this item.

- (3) The amendments made by items 114 and 134 to 151 (other than items 139 to 142) of this Schedule apply in respect of an authorisation given on or after the commencement of this item.

Part 6—Other amendments

Mutual Assistance in Criminal Matters Act 1987

153 Subsection 3(1) (definition of *serious offence*)

Repeal the definition, substitute:

serious offence means an offence the maximum penalty for which is:

- (a) death; or
- (b) imprisonment for a period exceeding 12 months; or
- (c) a fine exceeding 300 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Paragraph (c)—see also subsection (1A) of this section.

154 After subsection 3(1)

Insert:

- (1A) In determining, for the purpose of a request by a foreign country, the Australian dollar equivalent of a fine (whether expressed as an amount or by way of penalty units) or pecuniary penalty (however described) that may be imposed on a person for an offence to which the request relates, the fine or penalty is to be translated to Australian currency:
- (a) in relation to a country for which the Australian Tax Office publishes exchange rates—at the daily exchange rate listed on the Australian Tax Office website that applies on the day on which the request is received; and
 - (b) in relation to any other country—at the exchange rate that applies at the time when the request is received.

155 Paragraphs 5(a) and (b)

Repeal the paragraphs, substitute:

- (a) to regulate the provision by Australia of international assistance in criminal matters when a request is made by a foreign country in respect of which powers may be exercised

under this Act (whether or not in conjunction with other Australian laws); and

156 Subsection 15(1)

Omit “(1)”.

157 Subsection 15(1)

Omit all the words after “Magistrate”, substitute “for one or more search warrants in respect of the evidential material”.

158 Paragraph 16(1)(b)

Omit “the Attorney-General is of the opinion that”.

159 Paragraph 16(2)(b)

Omit “the Attorney-General is of the opinion that”.

160 Paragraph 35B(c)

Omit “by the oath of”, substitute “on oath or affirmation by”.

161 Subsection 38B(1)

Omit “subsection 15(1)”, substitute “section 15”.

162 Subsections 38B(2) and (3)

After “oath”, insert “or affirmation”.

163 Subsection 39A(1)

Omit “(*original proceeding*)”.

164 Paragraphs 39A(2)(a) and (3)(c)

Omit “original”.

165 Subsection 43(2)

Repeal the subsection, substitute:

- (2) A document is duly authenticated for the purposes of subsection (1) if it purports to be signed or certified by a Judge, Magistrate or officer in or of a foreign country.

166 Paragraph 44(c)

Omit “oath, the administering of oaths”, substitute “oath or affirmation, the administering of oaths or affirmations”.

167 Paragraph 44(d)

Omit “a fine of \$1,000”, substitute “10 penalty units”.

168 Application of amendments made by items 157 and 165

- (1) The amendment made by item 157 of this Schedule applies in relation to an authorisation given to a police officer by the Attorney-General under section 15 of the *Mutual Assistance in Criminal Matters Act 1987* on or after the commencement of this item.
- (2) The amendment made by item 165 of this Schedule applies in relation to a proceeding of a kind mentioned in subsection 43(1) of the *Mutual Assistance in Criminal Matters Act 1987* that begins on or after commencement of this item.

Schedule 4—Contingent technical amendments

Migration Act 1958

1 Subsection 5(1) (paragraph (b) of the definition of *non-political crime*)

Omit “paragraph (a), (b), (c) or (d)”, substitute “paragraph (a), (b) or (c)”.

Mutual Assistance in Criminal Matters Act 1987

2 Before Part IV

Insert:

Part IIIA—Assistance in relation to use of surveillance devices

15C Requests by Australia for surveillance devices

- (1) This section applies if:
 - (a) an investigation in relation to an offence punishable by a maximum penalty of imprisonment for 3 years or more has commenced in Australia; and
 - (b) the use of a surveillance device (however described) is reasonably necessary for the purpose of obtaining information relevant to:
 - (i) the commission of the offence; or
 - (ii) the identity or location of the offenders.
- (2) Australia may request an appropriate authority of a foreign country:
 - (a) to authorise the use of a surveillance device (however described), in accordance with the law of that country, to obtain the information referred to in paragraph (1)(b); and

- (b) to arrange for any such information that has been obtained to be sent to Australia.
- (3) Subsection (4) applies if:
 - (a) Australia makes a request under this section; and
 - (b) the foreign country obtains any information referred to in paragraph (1)(b) by means of a process authorised by the law of that country other than the use (as requested by Australia) of a surveillance device.
- (4) The information obtained by the foreign country:
 - (a) is not inadmissible in evidence in a proceeding that relates to the investigation; or
 - (b) is not precluded from being used for the purposes of the investigation;on the ground alone that it was obtained otherwise than in accordance with the request.

15CA Requests by foreign countries for surveillance devices

- (1) The Attorney-General may, in his or her discretion, authorise an eligible law enforcement officer, in writing, to apply for a surveillance device warrant under section 14 of the *Surveillance Devices Act 2004* if the Attorney-General is satisfied that:
 - (a) an investigation, or investigative proceeding, relating to a criminal matter involving an offence against the law of a foreign country (the **requesting country**) that is punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty has commenced in the requesting country; and
 - (b) the requesting country requests the Attorney-General to arrange for the use of a surveillance device; and
 - (c) the requesting country has given appropriate undertakings in relation to:
 - (i) ensuring that the information obtained as a result of the use of the surveillance device will only be used for the purpose for which it is communicated to the requesting country; and
 - (ii) the destruction of a document or other thing containing information obtained as a result of the use of the surveillance device; and

(iii) any other matter the Attorney-General considers appropriate.

(2) In this section:

eligible law enforcement officer means a person referred to in paragraph (a) or (c) of the definition of *law enforcement officer* set out in subsection 6(1) of the *Surveillance Devices Act 2004*.

investigative proceeding means a proceeding covered by paragraph (a) or (b) of the definition of *proceeding*.

3 Subsection 15CA(2) (definition of *investigative proceeding*)

Repeal the definition.

Surveillance Devices Act 2004

4 Subsection 6(1)

Insert:

mutual assistance authorisation means an authorisation under subsection 15CA(1) of the *Mutual Assistance in Criminal Matters Act 1987*.

[Minister's second reading speech made in—
House of Representatives on 6 July 2011
Senate on 21 September 2011]

(141/11)
