





# **Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018**

**No. 34, 2018**

**An Act to amend legislation relating to the criminal  
law, law enforcement and background checking,  
and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# **Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018**

**No. 34, 2018**

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**An Act to amend legislation relating to the criminal  
law, law enforcement and background checking,  
and for other purposes**

*[Assented to 22 May 2018]*

The Parliament of Australia enacts:

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*No. 34, 2018      Crimes Legislation Amendment (International Crime Cooperation and  
Other Measures) Act 2018      1*

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## 1 Short title

This Act is the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018*.

## 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     |
| Provisions  | Commencement  | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.   | 22 May 2018  |
| 2. Schedule 1   | A single day to be fixed by Proclamation.<br>However, if the provisions 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, Part 1   | The day after this Act receives the Royal Assent.   | 23 May 2018  |
| 4. Schedule 2, Part 2   | A single day to be fixed by Proclamation.<br>However, if the provisions 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. |              |
| 5. Schedule 2, Part 3   | The day after this Act receives the Royal Assent.   | 23 May 2018  |
| 6. Schedule 3   | The day after this Act receives the Royal Assent.   | 23 May 2018  |
| 7. Schedule 4   | A single day to be fixed by Proclamation.   |              |

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| <b>Commencement information</b> |   |                     |
|---------------------------------|---|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>   | <b>Column 3</b>     |
| <b>Provisions</b>               | <b>Commencement</b>   | <b>Date/Details</b> |
|                                 | However, if the provisions 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.  |                     |
| 8. Schedules 5 to 7             | The day after this Act receives the Royal Assent.   | 23 May 2018         |
| 9. Schedule 8, Part 1           | A single day to be fixed by Proclamation.<br>However, if the provisions 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. |                     |
| 10. Schedule 8, Part 2          | The day after this Act receives the Royal Assent.   | 23 May 2018         |
| 11. Schedules 9 to 11           | The day after this Act receives the Royal Assent.   | 23 May 2018         |

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 Schedules

Legislation 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—Assistance to international courts and tribunals

### Part 1—Lawfully obtained material

#### *International Criminal Court Act 2002*

##### 1 Section 4

Insert:

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

*law enforcement agency* has the same meaning as in the *Surveillance Devices Act 2004*.

*law enforcement officer* has the same meaning as in the *Surveillance Devices Act 2004*.

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

*lawfully obtained in Australia* has a meaning affected by subsection 69A(3).

##### 2 After Division 5 of Part 4

Insert:

#### **Division 5A—Providing law enforcement agency material**

##### **69A Authorising provision of material obtained by law enforcement agencies**

- (1) The Attorney-General may authorise, in writing, the provision of material to the ICC if:
  - (a) the ICC has requested the material; and
  - (b) the Attorney-General is satisfied that:
    - (i) the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

- (ii) if the material is or includes lawfully intercepted information or interception warrant information—the investigation is into, or the proceeding relates to, an offence punishable by a maximum penalty of imprisonment for 7 years or more, or imprisonment for life; and
  - (iii) the material was lawfully obtained in Australia by, and is lawfully in the possession of, a law enforcement agency.
- (2) The authorisation may:
- (a) specify the uses to which the material can be put by the ICC; and
  - (b) include a direction to a law enforcement officer of the law enforcement agency about how the material is to be provided to the ICC.
- (3) Material ***lawfully obtained in Australia*** includes:
- (a) material obtained from individuals or entities by consent; and
  - (b) material obtained by warrant, or the exercise of a coercive power by a court, in Australia for the purposes of a domestic investigation or prosecution.

## ***International War Crimes Tribunals Act 1995***

### **3 Section 4**

Insert:

***law enforcement agency*** has the same meaning as in the *Surveillance Devices Act 2004*.

***law enforcement officer*** has the same meaning as in the *Surveillance Devices Act 2004*.

***lawfully obtained in Australia*** has a meaning affected by subsection 25A(3).

### **4 Before Division 1 of Part 4**

Insert:

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## Division 1AA—Providing law enforcement agency material

### 25A Authorising provision of material obtained by law enforcement agencies

- (1) The Attorney-General may authorise, in writing, the provision of material to a Tribunal if:
  - (a) the Tribunal has requested the material; and
  - (b) the Attorney-General is satisfied that:
    - (i) the request relates to a proceeding before, or an investigation conducted by, the Tribunal; and
    - (ii) the material was lawfully obtained in Australia by, and is lawfully in the possession of, a law enforcement agency.
- (2) The authorisation may:
  - (a) specify the uses to which the material can be put by the Tribunal; and
  - (b) include a direction to a law enforcement officer of the law enforcement agency about how the material is to be provided to the Tribunal.
- (3) Material *lawfully obtained in Australia* includes:
  - (a) material obtained from individuals or entities by consent; and
  - (b) material obtained by warrant, or the exercise of a coercive power by a court, in Australia for the purposes of a domestic investigation or prosecution.

## *Surveillance Devices Act 2004*

### 5 Subsection 6(1)

Insert:

*International Criminal Court* has the same meaning as *ICC* in the *International Criminal Court Act 2002*.

*War Crimes Tribunal* has the same meaning as *Tribunal* in the *International War Crimes Tribunals Act 1995*.

## **6 At the end of subsection 45(4)**

Add:

- (h) the communication of information for the purpose of providing it to the International Criminal Court, if this has been authorised under section 69A of the *International Criminal Court Act 2002*; or
- (i) the communication of information for the purpose of providing it to a War Crimes Tribunal, if this has been authorised under section 25A of the *International War Crimes Tribunals Act 1995*.

Note: These paragraphs will be added after those substituted for paragraph 45(4)(f) of the *Surveillance Devices Act 2004* (see Part 6 of this Schedule).

## ***Telecommunications (Interception and Access) Act 1979***

### **7 Subsection 5(1)**

Insert:

***International Criminal Court*** has the same meaning as ***ICC*** in the *International Criminal Court Act 2002*.

***War Crimes Tribunal*** has the same meaning as ***Tribunal*** in the *International War Crimes Tribunals Act 1995*.

### **8 After paragraph 68(l)**

Insert:

- (la) if the Attorney-General has authorised the provision of the information to the International Criminal Court under section 69A of the *International Criminal Court Act 2002*—to:
  - (i) that Court; or
  - (ii) the Secretary of the Department for the purpose of providing the information to that Court; and
- (lb) if the Attorney-General has authorised the provision of the information to a War Crimes Tribunal under section 25A of the *International War Crimes Tribunals Act 1995*—to:
  - (i) that Tribunal; or

- (ii) the Secretary of the Department for the purpose of providing the information to that Tribunal; and

## **9 Section 68A**

Repeal the section, substitute:

### **68A Communicating information obtained by the Secretary**

- (1) This section applies to information communicated to the Secretary of the Department as described in an item of the following table:

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| <b>Information to which this section applies</b> |   |  |
|--|---|--|
| <b>Item</b>                                      | <b>Information communicated under this provision:</b> | <b>For the purpose of providing it to this entity:</b> |
| 1  | paragraph 68(l)                                       | the foreign country concerned                          |
| 2  | paragraph 68(la)                                      | the International Criminal Court                       |
| 3  | paragraph 68(lb)                                      | the War Crimes Tribunal concerned                      |

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- (2) Each of the following:
- (a) the Secretary of the Department;
  - (b) a person authorised by the Secretary;
  - (c) a person or other entity to whom the information has been communicated under this subsection;
- may communicate the information to another person or entity for purposes connected with providing the information to the entity mentioned in that table item.

## **10 Section 102B**

Repeal the section, substitute:

### **102B Report regarding international requests**

The report must set out the number of occasions on which lawfully intercepted information or interception warrant information was communicated to any of the following:

- (a) a foreign country under paragraph 68(l) or section 68A;
- (b) the International Criminal Court under paragraph 68(la) or section 68A;

- (c) a War Crimes Tribunal under paragraph 68(lb) or section 68A.

## **11 Application and transitional provisions**

- (1) The amendments made by this Part apply in relation to a request made to the Attorney-General by the ICC, a Tribunal or a foreign country:
- (a) on or after the commencement of this item; or
  - (b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request.
- (2) The amendments so apply:
- (a) whether the material requested was lawfully obtained in Australia before, on or after that commencement; and
  - (b) whether conduct, a crime or an offence to which the request relates occurred before, on or after that commencement.
- (3) An authorisation that:
- (a) was made, before the commencement of this item, under subsection 68A(1) of the *Telecommunications (Interception and Access) Act 1979* as in force before that commencement; and
  - (b) was in force immediately before that commencement;
- continues in force (and may be dealt with) after that commencement as if it had been made under subsection 68A(2) of that Act as amended by this Part.

## Part 2—Producing documents or other articles

### *International Criminal Court Act 2002*

#### **12 Subsection 66(2)**

Omit “the magistrate must”, substitute “a magistrate must”.

#### **13 Subsection 66(2)**

Omit “to the magistrate”, substitute “to that magistrate”.

#### **14 Subsection 66(3)**

Omit “the magistrate may”, substitute “a magistrate may”.

#### **15 Subsection 66(3)**

Omit “the magistrate to”, substitute “that magistrate to”.

#### **16 Application of amendments**

The amendments of the *International Criminal Court Act 2002* made by this Part apply in relation to the following:

- (a) a requirement to produce documents or other articles that is made on or after the commencement of this item;
- (b) a requirement to produce documents or other articles that is made before the commencement of this item if:
  - (i) the documents or other articles had not been produced immediately before the commencement of this item; or
  - (ii) the documents or other articles were produced before the commencement of this item but, immediately before that commencement, the documents (or copies of the documents) or other articles had not been sent to the Attorney-General as required by subsection 66(2) or (3) of that Act.

### *International War Crimes Tribunals Act 1995*

#### **17 Subsection 28(2)**

Omit “the magistrate must”, substitute “a magistrate must”.

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**18 Subsection 28(2)**

Omit “to the magistrate”, substitute “to that magistrate”.

**19 Subsection 28(3)**

Omit “the magistrate may”, substitute “a magistrate may”.

**20 Subsection 28(3)**

Omit “the magistrate to”, substitute “that magistrate to”.

**21 Application of amendments**

The amendments of the *International War Crimes Tribunals Act 1995* made by this Part apply in relation to the following:

- (a) a requirement to produce documents or other articles that is made on or after the commencement of this item;
- (b) a requirement to produce documents or other articles that is made before the commencement of this item if:
  - (i) the documents or other articles had not been produced immediately before the commencement of this item; or
  - (ii) the documents or other articles were produced before the commencement of this item but, immediately before that commencement, the documents (or copies of the documents) or other articles had not been sent to the Attorney-General as required by subsection 28(2) or (3) of that Act.

## Part 3—Covert access to stored communications

### *International Criminal Court Act 2002*

#### 22 Section 4

Insert:

*carrier* has the same meaning as in the *Telecommunications (Interception and Access) Act 1979* (other than Part 5-4 or 5-4A of that Act).

#### 23 Section 4 (paragraph (b) of the definition of *police officer*)

Omit “police force of a State or Territory”, substitute “police force or police service of a State”.

#### 24 Section 4

Insert:

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

#### 25 After Division 11 of Part 4

Insert:

### Division 11A—Stored communications

#### 78A Authorising application for a stored communications warrant

The Attorney-General may authorise, in writing, the Australian Federal Police, or the police force or police service of a State, to apply for a stored communications warrant under section 110 of the *Telecommunications (Interception and Access) Act 1979* if:

- (a) the Attorney-General is satisfied that:
  - (i) an investigation is being conducted by the Prosecutor or a proceeding is before the ICC; and
  - (ii) there are reasonable grounds to believe that stored communications relevant to the investigation or proceeding are held by a carrier; and

- (b) the ICC has requested the Attorney-General to arrange for access to the stored communications.

Note: Information obtained under the warrant may only be communicated to the ICC on certain conditions: see subsection 142A(1) of the *Telecommunications (Interception and Access) Act 1979*.

## ***International War Crimes Tribunals Act 1995***

### **26 Section 4**

Insert:

*carrier* has the same meaning as in the *Telecommunications (Interception and Access) Act 1979* (other than Part 5-4 or 5-4A of that Act).

### **27 Section 4 (paragraph (b) of the definition of *police officer*)**

Omit “police force of a State or Territory”, substitute “police force or police service of a State”.

### **28 Section 4**

Insert:

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

### **29 After Division 2 of Part 4**

Insert:

## **Division 2A—Stored communications**

### **34A Authorising application for a stored communications warrant**

The Attorney-General may authorise, in writing, the Australian Federal Police or the police force or police service of a State to apply for a stored communications warrant under section 110 of the *Telecommunications (Interception and Access) Act 1979* if:

- (a) the Attorney-General is satisfied that:
- (i) a proceeding is before, or an investigation is being conducted by, a Tribunal; and

- (ii) there are reasonable grounds to believe that stored communications relevant to the proceeding or investigation are held by a carrier; and
- (b) the Tribunal has requested the Attorney-General to arrange for access to the stored communications.

Note: Information obtained under the warrant may only be communicated to the Tribunal on certain conditions: see subsection 142A(1) of the *Telecommunications (Interception and Access) Act 1979*.

## ***Telecommunications (Interception and Access) Act 1979***

### **30 Subsection 5(1)**

Insert:

***access request*** has the meaning given by subsection 107P(1).

***crime within the jurisdiction of the ICC*** has the same meaning as in the *International Criminal Court Act 2002*.

***international assistance application*** means an application for a stored communications warrant made as a result of:

- (a) an authorisation under section 15B of the *Mutual Assistance in Criminal Matters Act 1987*; or
- (b) an authorisation under section 78A of the *International Criminal Court Act 2002*; or
- (c) an authorisation under section 34A of the *International War Crimes Tribunals Act 1995*.

***international offence*** has the meaning given by subsection 162(3).

### **31 Subsection 5(1) (definition of *mutual assistance application*)**

Repeal the definition.

### **32 Subsection 5(1)**

Insert:

***serious foreign contravention*** means:

- (a) a contravention of a law of a foreign country that is punishable by a maximum penalty of:

- (i) imprisonment for 3 years or more, imprisonment for life or the death penalty; or
- (ii) a fine of an amount that is at least equivalent to 900 penalty units; or
- (b) a crime within the jurisdiction of the ICC; or
- (c) a War Crimes Tribunal offence.

*War Crimes Tribunal offence* has the same meaning as *Tribunal offence* in the *International War Crimes Tribunals Act 1995*.

### **33 Section 5EA**

Repeal the section.

### **34 Section 107G**

After “contravention of certain foreign laws”, insert “or to certain international offences”.

### **35 Section 107G**

After “foreign country”, insert “, the International Criminal Court or a War Crimes Tribunal”.

### **36 Section 107P**

Repeal the section, substitute:

#### **107P Condition for giving a foreign preservation notice**

- (1) An entity mentioned in the following table may request the Australian Federal Police to arrange for the preservation of stored communications that:
  - (a) relate to a specified person or specified telecommunications service; and
  - (b) are held by a carrier; and
  - (c) are relevant to an investigation, investigative proceeding, or proceeding relating to a serious foreign contravention;if the entity intends to make a request (an *access request*) under a provision mentioned in the table to the Attorney-General to arrange for access to those stored communications.

**Schedule 1** Assistance to international courts and tribunals

**Part 3** Covert access to stored communications

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**Requesting access to stored communications**

| <b>Item</b> | <b>This entity:</b>              | <b>May make an access request under:</b>                                      |
|-------------|----------------------------------|---|
| 1           | a foreign country                | paragraph 15B(d) of the <i>Mutual Assistance in Criminal Matters Act 1987</i> |
| 2           | the International Criminal Court | paragraph 78A(b) of the <i>International Criminal Court Act 2002</i>          |
| 3           | a War Crimes Tribunal            | paragraph 34A(b) of the <i>International War Crimes Tribunals Act 1995</i>    |

- (2) The request by the entity to the Australian Federal Police must:
- (a) be in writing; and
  - (b) name the entity or the entity's authority concerned with the serious foreign contravention; and
  - (c) specify the serious foreign contravention that is the subject of the investigation, investigative proceeding or proceeding; and
  - (d) specify information identifying the stored communications to be preserved and the relationship between those communications and the serious foreign contravention; and
  - (e) specify any information the entity has that identifies the carrier that holds the stored communications; and
  - (f) if the stored communications relate to a specified person—specify any information the entity has that identifies the telecommunications service to which the stored communications relate; and
  - (g) specify the reasons why the stored communications need to be preserved; and
  - (h) specify that the entity intends to make an access request for the stored communications.

**37 Subparagraph 107Q(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) if a stored communications warrant authorising access to the stored communications covered by the notice is issued as a result of the access request—when the warrant ceases to be in force.

**38 Paragraph 107R(1)(a)**

Repeal the paragraph, substitute:

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- (a) an entity requests under section 107P the Australian Federal Police to arrange for the preservation of stored communications that are held by a carrier; and

**39 Paragraph 107R(1)(c)**

Repeal the paragraph, substitute:

- (c) during the period of 180 days starting on the day the carrier was given the notice, the entity did not make an access request to the Attorney-General to arrange for access to those communications;

**40 Paragraph 107R(2)(a)**

Repeal the paragraph, substitute:

- (a) an entity requests under section 107P the Australian Federal Police to arrange for the preservation of stored communications that are held by a carrier; and

**41 Paragraph 107R(2)(c)**

Repeal the paragraph, substitute:

- (c) the entity makes an access request to the Attorney-General to arrange for access to those communications; and

**42 Paragraph 107R(2)(d)**

Omit “request”, substitute “access request”.

**43 Paragraph 107R(3)(a)**

Repeal the paragraph, substitute:

- (a) an entity requests under section 107P the Australian Federal Police to arrange for the preservation of stored communications that are held by a carrier; and

**44 Paragraph 107R(3)(c)**

Omit “foreign country”, substitute “entity”.

**45 Paragraph 116(1)(d)**

Repeal the paragraph, substitute:

- (d) information that would be likely to be obtained by accessing those stored communications under a stored communications warrant would be likely to assist in connection with:
  - (i) unless subparagraph (ii) applies—the investigation by the agency of a serious contravention in which the person is involved (including as a victim of the serious contravention); or
  - (ii) for an international assistance application—the investigation, investigative proceeding, or proceeding by the entity to which the application relates, of a serious foreign contravention to which the application relates and in which the person is involved (including as a victim of the serious foreign contravention); and

**46 Subsection 116(2)**

Omit “In the case of an application other than a mutual assistance application”, substitute “For an application other than an international assistance application”.

**47 Subsection 116(2A)**

Omit “In the case of a mutual assistance application”, substitute “For an international assistance application”.

**48 Paragraph 116(2A)(c)**

Repeal the paragraph, substitute:

- (c) how much the information referred to in subparagraph (1)(d)(ii) would be likely to assist in connection with the investigation, investigative proceeding, or proceeding, to the extent that this is possible to determine from information obtained from the entity to which the application relates.

**49 Subsection 139(2)**

Omit “a mutual assistance application”, substitute “an international assistance application”.

**50 Paragraph 139(2)(e)**

Repeal the paragraph, substitute:

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- (e) an authorisation under any of the following provisions in respect of the information:
  - (i) subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*;
  - (ii) section 69A of the *International Criminal Court Act 2002*;
  - (iii) section 25A of the *International War Crimes Tribunals Act 1995*.

#### **51 Subsection 139(4A)**

Repeal the subsection, substitute:

- (4A) In the case of information obtained by the agency through the execution of a warrant issued as a result of an international assistance application, the purposes are purposes connected with:
  - (a) providing the information to the entity to which the application relates, or to an appropriate authority of that entity; or
  - (b) the keeping of records by the agency under Part 3-5.

#### **52 Section 142A**

Repeal the section, substitute:

#### **142A Communicating information obtained as a result of an international assistance application**

- (1) If information is obtained through the execution of a warrant issued as a result of an international assistance application, a person may only communicate the information to the entity to which the application relates on the following conditions:
  - (a) that the information will only be used for the purposes for which the entity requested the information;
  - (b) that any document or other thing containing the information will be destroyed when it is no longer required for those purposes;
  - (c) any other condition determined, in writing, by the Attorney-General.

(2) Subsection (1) has effect despite subsection 139(4A) and section 142.

(3) A determination under paragraph (1)(c) is not a legislative instrument.

**53 Paragraph 151(1)(g)**

Omit “mutual assistance, being a request to which a mutual assistance application”, substitute “international assistance, being a request to which an international assistance application”.

**54 Paragraph 162(1)(c)**

Omit “mutual assistance applications”, substitute “international assistance applications”.

**55 Paragraph 162(1)(d)**

Repeal the paragraph, substitute:

(d) for each international offence for the agency—the offence (if any), under a law of the Commonwealth, a State or a Territory, that is of the same, or a substantially similar, nature to the international offence.

**56 Paragraph 162(2)(ba)**

Omit “mutual assistance applications”, substitute “international assistance applications”.

**57 Paragraph 162(2)(e)**

Repeal the paragraph, substitute:

(e) for each international offence for each enforcement agency—the offence (if any), under a law of the Commonwealth, a State or a Territory, that is of the same, or a substantially similar, nature to the international offence.

**58 At the end of section 162**

Add:

- (3) An *international offence*, for an enforcement agency, is:
- (a) an offence against a law of a foreign country; or
  - (b) a crime within the jurisdiction of the ICC; or
-

(c) a War Crimes Tribunal offence;  
in respect of which a stored communications warrant was issued as  
a result of an international assistance application made by the  
agency during the year.

## **59 Section 163A**

Repeal the section, substitute:

### **163A Report regarding international requests**

The report must set out the number of occasions on which lawfully  
accessed information or stored communications warrant  
information was communicated under subsection 139(1) or  
section 142 to any of the following:

- (a) a foreign country;
- (b) the International Criminal Court;
- (c) a War Crimes Tribunal;

for a purpose connected with an authorisation referred to in  
paragraph 139(2)(e).

## **60 Application and transitional provisions**

- (1) The amendments made by this Part apply in relation to a request made  
to the Attorney-General by the ICC, a Tribunal or a foreign country:
  - (a) on or after the commencement of this item; or
  - (b) before the commencement of this item, if, immediately  
before that commencement, the Attorney-General had yet to  
make a decision on the request.
- (2) The amendments made by this Part apply in relation to a request made  
to the Australian Federal Police by the ICC, a Tribunal or a foreign  
country:
  - (a) on or after the commencement of this item; and
  - (b) under section 107P of the *Telecommunications (Interception  
and Access) Act 1979* (as inserted by this Part).
- (3) The amendments so apply as a result of subitem (1) or (2):
  - (a) whether the stored communications to which the request  
relates became stored communications before, on or after that  
commencement; and

- (b) whether conduct, a crime or an offence to which the request relates occurred before, on or after that commencement.
- (4) If:
- (a) a foreign country makes a request to which subitem (1) applies (the *access request*); and
  - (b) before the commencement of this item, the foreign country made a request (the *preservation request*) under section 107P of the *Telecommunications (Interception and Access) Act 1979* because the foreign country intended to make the access request;
- the preservation request continues in existence (and may be dealt with) after that commencement as if it had been made under that section as amended by this Part.
- (5) A determination that:
- (a) was made, before the commencement of this item, under paragraph 142A(1)(c) of the *Telecommunications (Interception and Access) Act 1979* (as in force before that commencement); and
  - (b) was in force immediately before that commencement;
- continues in force (and may be dealt with) after that commencement as if it had been made under that paragraph as amended by this Part.

## **Part 4—Historical telecommunications data**

### ***Telecommunications (Interception and Access) Act 1979***

#### **61 Subsection 5(1) (at the end of the definition of *foreign law enforcement agency*)**

Add:

- ; or (c) any other authority or person responsible to the International Criminal Court for investigating or prosecuting a crime within the jurisdiction of the ICC; or
- (d) any other authority or person responsible to a War Crimes Tribunal for investigating or prosecuting a War Crimes Tribunal offence.

#### **62 Section 180A (heading)**

Repeal the heading, substitute:

#### **180A Authorisations for access to existing information or documents—enforcing foreign or international laws**

#### **63 Subsection 180A(3)**

Repeal the subsection, substitute:

- (3) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is reasonably necessary for:
  - (a) the enforcement of the criminal law of a foreign country; or
  - (b) an investigation or prosecution of a crime within the jurisdiction of the ICC; or
  - (c) an investigation or prosecution of a War Crimes Tribunal offence.

#### **64 Subsection 180A(5)**

Repeal the subsection, substitute:

- (5) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is appropriate in all the circumstances and that the disclosure is reasonably necessary for:

- (a) the enforcement of the criminal law of a foreign country; or
- (b) an investigation or prosecution of a crime within the jurisdiction of the ICC; or
- (c) an investigation or prosecution of a War Crimes Tribunal offence.

**65 Section 180C (heading)**

Repeal the heading, substitute:

**180C Authorisations to disclose information or documents—  
enforcing foreign or international laws**

**66 Subsection 180C(2)**

Repeal the subsection, substitute:

- (2) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is appropriate in all the circumstances and that the disclosure is reasonably necessary for:
  - (a) the enforcement of the criminal law of a foreign country; or
  - (b) an investigation or prosecution of a crime within the jurisdiction of the ICC; or
  - (c) an investigation or prosecution of a War Crimes Tribunal offence.

**67 Subdivision C of Division 4A of Part 4-1 (heading)**

Repeal the heading, substitute:

**Subdivision C—Conditions of disclosure to foreign law  
enforcement agencies**

**68 Section 180E (heading)**

Repeal the heading, substitute:

**180E Disclosing information etc. to foreign countries or foreign law enforcement agencies**

**69 Subsection 180E(1)**

After “foreign country” (wherever occurring), insert “or foreign law enforcement agency”.

**70 Application of amendments**

The amendments made by this Part apply in relation to a disclosure of information or documents on or after the commencement of this item:

- (a) whether the information or documents were acquired before, on or after that commencement; and
- (b) whether conduct, a crime or an offence to which the disclosure relates occurred before, on or after that commencement.

## Part 5—Prospective telecommunications data

### *International Criminal Court Act 2002*

#### 71 Section 4

Insert:

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

*telecommunications system* has the same meaning as in the  
*Telecommunications (Interception and Access) Act 1979*.

#### 72 Before Division 12 of Part 4

Insert:

### Division 11B—Prospective telecommunications data

#### 78B Authorising an authorisation for the disclosure of prospective telecommunications data

- (1) The Attorney-General may authorise, in writing, the making of an authorisation under section 180B of the *Telecommunications (Interception and Access) Act 1979* for the disclosure of information or documents if:
  - (a) the ICC has requested the Attorney-General to arrange for the disclosure of the information or documents; and
  - (b) the information or documents come into existence during a period specified by the ICC, and which started on or after the day the request was made; and
  - (c) the Attorney-General is satisfied that:
    - (i) an investigation is being conducted by the Prosecutor or a proceeding is before the ICC; and
    - (ii) the information or documents relate to the fact of a communication passing over a telecommunications system during that period.

Note: The information or documents will not be disclosed unless they are reasonably necessary for the investigation or proceeding (see subsection 180B(3) of that Act).

- (2) To avoid doubt, information or documents do not relate to the fact of a communication passing over a telecommunications system to the extent that the information is, or the documents contain, the contents or substance of a communication.

## ***International War Crimes Tribunals Act 1995***

### **73 Section 4**

Insert:

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

***telecommunications system*** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

### **74 Before Division 3 of Part 4**

Insert:

## **Division 2B—Prospective telecommunications data**

### **34B Authorising an authorisation for the disclosure of prospective telecommunications data**

- (1) The Attorney-General may authorise, in writing, the making of an authorisation under section 180B of the *Telecommunications (Interception and Access) Act 1979* for the disclosure of information or documents if:
- (a) a Tribunal has requested the Attorney-General to arrange for the disclosure of the information or documents; and
  - (b) the information or documents come into existence during a period specified by the Tribunal, and which started on or after the day the request was made; and
  - (c) the Attorney-General is satisfied that:
    - (i) a proceeding is before, or an investigation is being conducted by, the Tribunal; and

- (ii) the information or documents relate to the fact of a communication passing over a telecommunications system during a period specified in the Tribunal's request.

Note: The information or documents will not be disclosed unless they are reasonably necessary for the investigation or proceeding (see subsection 180B(3) of that Act).

- (2) To avoid doubt, information or documents do not relate to the fact of a communication passing over a telecommunications system to the extent that the information is, or the documents contain, the contents or substance of a communication.

### ***Telecommunications (Interception and Access) Act 1979***

#### **75 Section 180B (heading)**

Repeal the heading, substitute:

#### **180B Authorisations for access to prospective information or documents—enforcing international laws**

#### **76 Subsection 180B(3)**

Repeal the subsection, substitute:

- (3) The authorised officer must not make the authorisation unless:
  - (a) the Attorney-General has authorised the making of the authorisation under a provision mentioned in an item of the following table; and
  - (b) the authorised officer is satisfied that:
    - (i) the disclosure is reasonably necessary for an investigation or proceeding referred to in that table item; and
    - (ii) the disclosure is appropriate in all the circumstances.

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#### **Authorising access to prospective information or documents**

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| <b>Item</b> | <b>For Attorney-General authorisations under:</b> | <b>the investigation or proceeding is:</b> |
|-------------|---|--|
| 1           | section 15D of the <i>Mutual</i>                  | an investigation or proceeding relating    |

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**Authorising access to prospective information or documents**

| <b>Item</b> | <b>For Attorney-General authorisations under:</b>                     | <b>the investigation or proceeding is:</b>   |
|-------------|---|--|
|             | <i>Assistance in Criminal Matters Act 1987</i>                        | to an offence against the law of a foreign country that:<br>(a) is punishable by imprisonment for 3 years or more, imprisonment for life or the death penalty; or<br>(b) involves an act or omission that, if it had occurred in Australia, would be a serious offence |
| 2           | section 78B of the <i>International Criminal Court Act 2002</i>       | an investigation or proceeding relating to a crime within the jurisdiction of the ICC  |
| 3           | section 34B of the <i>International War Crimes Tribunals Act 1995</i> | an investigation or proceeding relating to a War Crimes Tribunal offence   |

**77 Paragraph 180B(6)(a)**

Repeal the paragraph, substitute:

- (a) reasonably necessary for an investigation or proceeding of a kind referred to in the relevant table item in subsection (3); and

**78 Paragraph 180B(8)(a)**

Repeal the paragraph, substitute:

- (a) reasonably necessary for an investigation or proceeding of a kind referred to in the relevant table item in subsection (3); and

**79 Application of amendments**

The amendments made by this Part apply in relation to a request made to the Attorney-General by the ICC, a Tribunal or a foreign country:

- (a) on or after the commencement of this item; or
- (b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request;

**Schedule 1** Assistance to international courts and tribunals  
**Part 5** Prospective telecommunications data

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whether conduct, a crime or an offence to which the request relates occurred before, on or after that commencement.

## **Part 6—Use of surveillance devices**

### ***International Criminal Court Act 2002***

#### **80 Section 4**

Insert:

*eligible law enforcement officer* has the meaning given by subsection 79A(2).

#### **81 After Division 12 of Part 4**

Insert:

### **Division 12A—Requests for surveillance devices**

#### **79A Authorising applications for surveillance device warrants**

- (1) The Attorney-General may authorise, in writing, an eligible law enforcement officer to apply for a surveillance device warrant under section 14 of the *Surveillance Devices Act 2004* if:
  - (a) the ICC has requested the Attorney-General to arrange for the use of a surveillance device; and
  - (b) the Attorney-General is satisfied that an investigation is being conducted by the Prosecutor, or a proceeding is before the ICC; and
  - (c) the Attorney-General is satisfied that the ICC has given appropriate undertakings for:
    - (i) ensuring that the information obtained as a result of the use of the device will only be used for the purpose for which it is communicated to the ICC; and
    - (ii) the destruction of a document or other thing containing information obtained as a result of the use of the device; and
    - (iii) any other matter the Attorney-General considers appropriate.

Note: The eligible law enforcement officer can only apply for the warrant if he or she reasonably suspects that the use of the device is necessary

for the investigation or proceeding (see subsection 14(3A) of the *Surveillance Devices Act 2004*).

- (2) An *eligible law enforcement officer* is a person mentioned in column 3 of table item 5 in subsection 6A(6), or column 3 of table item 5 in subsection 6A(7), of the *Surveillance Devices Act 2004*.

## ***International War Crimes Tribunals Act 1995***

### **82 Section 4**

Insert:

*eligible law enforcement officer* has the meaning given by subsection 32A(2).

### **83 After Division 1 of Part 4**

Insert:

## **Division 1A—Requests for surveillance devices**

### **32A Authorising applications for surveillance device warrants**

- (1) The Attorney-General may authorise, in writing, an eligible law enforcement officer to apply for a surveillance device warrant under section 14 of the *Surveillance Devices Act 2004* if:
- (a) a Tribunal has requested the Attorney-General to arrange for the use of a surveillance device; and
  - (b) the Attorney-General is satisfied that a proceeding is before, or an investigation is being conducted by, the Tribunal; and
  - (c) the Attorney-General is satisfied that the Tribunal has given appropriate undertakings for:
    - (i) ensuring that the information obtained as a result of the use of the device will only be used for the purpose for which it is communicated to the Tribunal; and
    - (ii) the destruction of a document or other thing containing information obtained as a result of the use of the device; and
    - (iii) any other matter the Attorney-General considers appropriate.

Note: The eligible law enforcement officer can only apply for the warrant if he or she reasonably suspects that the use of the device is necessary for the investigation or proceeding (see subsection 14(3A) of the *Surveillance Devices Act 2004*).

- (2) An **eligible law enforcement officer** is a person mentioned in column 3 of table item 5 in subsection 6A(6), or column 3 of table item 5 in subsection 6A(7), of the *Surveillance Devices Act 2004*.

## ***Surveillance Devices Act 2004***

### **84 Subsection 6(1)**

Insert:

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

***international assistance authorisation*** means:

- (a) an authorisation under subsection 15CA(1) of the *Mutual Assistance in Criminal Matters Act 1987*; or
- (b) an authorisation under subsection 79A(1) of the *International Criminal Court Act 2002*; or
- (c) an authorisation under subsection 32A(1) of the *International War Crimes Tribunals Act 1995*.

### **85 Subsection 6(1)**

Repeal the following definitions:

- (a) definition of ***mutual assistance application***;
- (b) definition of ***mutual assistance authorisation***.

### **86 Subsection 6(1)**

Insert:

***offence*** has a meaning affected by subsection (5).

### **87 At the end of section 6**

Add:

- (5) To avoid doubt, a reference in this Act to an offence in relation to:

- (a) an international assistance authorisation that is an authorisation under subsection 79A(1) of the *International Criminal Court Act 2002*; or
- (b) an international assistance application that is related to such an authorisation;

is a reference to a crime within the jurisdiction of the ICC (within the meaning of that Act).

### **88 Subsection 14(3A)**

Repeal the subsection, substitute:

#### *Warrants sought for international assistance investigations*

- (3A) A law enforcement officer (or a 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 an international assistance authorisation; and
  - (b) suspects on reasonable grounds that the use of a surveillance device is necessary, in the course of the investigation, proceeding or investigative proceeding to which the authorisation relates, for the purpose of enabling evidence to be obtained of:
    - (i) the commission of an offence to which the authorisation relates; or
    - (ii) the identity or location of the persons suspected of committing the offence.

### **89 Paragraphs 16(1)(ba) and (2)(a)**

Omit “a mutual assistance authorisation”, substitute “an international assistance authorisation”.

### **90 Paragraph 16(2)(ea)**

Repeal the paragraph, substitute:

- (ea) in the case of a warrant sought in relation to an international 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 international entity to which the authorisation relates; and
-

**91 Subparagraph 17(1)(b)(iiia)**

Repeal the subparagraph, substitute:

- (iiia) if the warrant relates to an international assistance authorisation—each offence to which the authorisation relates; and

**92 Paragraph 21(3A)(a)**

Omit “a mutual assistance authorisation”, substitute “an international assistance authorisation”.

**93 Subparagraph 21(3A)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the commission of any offence to which the authorisation relates; or

**94 Paragraph 21(5)(c)**

Repeal the paragraph, substitute:

- (c) if the warrant was issued in relation to an international assistance authorisation—of enabling evidence to be obtained of:
  - (i) the commission of any offence to which the authorisation relates; or
  - (ii) the identity or location of the persons suspected of committing the offence;

**95 Paragraph 45(4)(f)**

Repeal the paragraph, substitute:

- (f) the communication of information for the purpose of providing it to one of the following entities (or to an appropriate authority of that entity):
  - (i) a foreign country;
  - (ii) the International Criminal Court;
  - (iii) a War Crimes Tribunal;if the information was obtained under, or relates to, a surveillance device warrant issued in relation to an international assistance authorisation requested by that entity;  
or

- (g) the communication of information for the purpose of providing it to a foreign country, or an appropriate authority of a foreign country, if this has been authorised under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*; or

#### **96 Subsection 45(6)**

After “Paragraphs (4)(f)”, insert “and (g)”.

#### **97 Paragraphs 50(1)(aa) and (ea)**

Omit “mutual assistance applications”, substitute “international assistance applications”.

#### **98 Paragraph 50(1)(ia)**

Repeal the paragraph, substitute:

- (ia) for each of the following offences:
  - (i) an offence against a law of a foreign country;
  - (ii) a crime within the jurisdiction of the ICC (within the meaning of the *International Criminal Court Act 2002*);
  - (iii) a Tribunal offence (within the meaning of the *International War Crimes Tribunals Act 1995*);in respect of which a warrant was issued as a result of an international 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, a State or a Territory, that is of the same, or a substantially similar, nature; and

#### **99 Subparagraph 53(2)(c)(iiia)**

Repeal the subparagraph, substitute:

- (iiia) if the warrant was issued in relation to an international assistance authorisation—each offence to which the authorisation relates; and

#### **100 Application of amendments**

The amendments made by this Part apply in relation to a request made to the Attorney-General by the ICC, a Tribunal or a foreign country:

- (a) on or after the commencement of this item; or
-

(b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request;  
whether conduct, a crime or an offence to which the request relates occurred before, on or after that commencement.

## Part 7—Forensic procedures

### *Crimes Act 1914*

#### 101 Part ID (simplified outline)

Omit “(as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*)”, substitute “or an international tribunal.”.

#### 102 Subsection 23WA(1)

Insert:

***authorising provision***, in relation to a request by a foreign country or international tribunal, means whichever of the following provisions that refers to the request:

- (a) section 28B of the *Mutual Assistance in Criminal Matters Act 1987*;
- (b) section 76A of the *International Criminal Court Act 2002*;
- (c) section 32B of the *International War Crimes Tribunals Act 1995*.

***crime within the jurisdiction of the ICC*** has the same meaning as in the *International Criminal Court Act 2002*.

#### 103 Subsection 23WA(1) (at the end of the definition of ***foreign law enforcement agency***)

Add:

- ; or (c) any other authority or person responsible to the ICC for investigating or prosecuting a crime within the jurisdiction of the ICC; or
- (d) any other authority or person responsible to a War Crimes Tribunal for investigating or prosecuting a War Crimes Tribunal offence.

#### 104 Subsection 23WA(1) (definition of ***foreign serious offence***)

Repeal the definition, substitute:

***foreign serious offence*** means:

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- (a) a foreign serious offence (within the meaning of the *Mutual Assistance in Criminal Matters Act 1987*); or
- (b) a crime within the jurisdiction of the ICC; or
- (c) a War Crimes Tribunal offence.

#### **105 Subsection 23WA(1)**

Insert:

*ICC* has the same meaning as in the *International Criminal Court Act 2002*.

*international tribunal* means:

- (a) the ICC; or
- (b) a War Crimes Tribunal.

#### **106 Subsection 23WA(1) (paragraph (a) of the definition of *investigating constable*)**

Omit “(as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*)”, substitute “, an international tribunal”.

#### **107 Subsection 23WA(1)**

Insert:

*request*, by a foreign country, international tribunal or foreign law enforcement agency, means:

- (a) in the case of a foreign country—a request, referred to in section 28B of the *Mutual Assistance in Criminal Matters Act 1987*, by the country; or
- (b) in the case of an international tribunal:
  - (i) a request referred to in section 76A of the *International Criminal Court Act 2002*, if the tribunal is the ICC; or
  - (ii) a request referred to in section 32B of the *International War Crimes Tribunals Act 1995*, if the tribunal is a War Crimes Tribunal; or
- (c) in the case of a foreign law enforcement agency—a request, to which Subdivision B of Division 9A applies, by the agency.

**108 Subsection 23WA(1) (paragraph (d) of the definition of suspect)**

Repeal the paragraph, substitute:

- (d) a person for whom a forensic procedure has been requested by a foreign country, international tribunal or a foreign law enforcement agency because that country, tribunal or agency has:
  - (i) started investigating whether the person has committed an indictable offence; or
  - (ii) started proceedings against the person for an indictable offence.

**109 Subsection 23WA(1)**

Insert:

*War Crimes Tribunal* has the same meaning as *Tribunal* in the *International War Crimes Tribunals Act 1995*.

*War Crimes Tribunal offence* has the same meaning as *Tribunal offence* in the *International War Crimes Tribunals Act 1995*.

**110 Subsection 23WA(9)**

Repeal the subsection, substitute:

*Requests by a foreign country, international tribunal or foreign law enforcement agency*

- (9) The provisions of this Part apply in relation to a forensic procedure carried out because of a request by a foreign country, international tribunal or foreign law enforcement agency, as if a reference to an indictable offence were a reference to a foreign serious offence.

**111 Paragraph 23WJ(1)(ib)**

After “a foreign law enforcement agency”, insert “(other than an agency responsible to an international tribunal)”.

**112 After paragraph 23WJ(1)(ib)**

Insert:

- (ic) if the suspect is being asked to undergo a forensic procedure because of a request by a foreign law enforcement agency responsible to an international tribunal—the following:
  - (i) the name of the international tribunal for which the request was made;
  - (ii) that forensic evidence resulting from the forensic procedure will be provided to the agency;
  - (iii) that the forensic evidence may be used in proceedings against the suspect in the international tribunal;
  - (iv) that the retention of the forensic evidence will be governed by the rules of the international tribunal;
  - (v) that the retention of the forensic evidence will be subject to undertakings given by the agency;
  - (vi) the content of those undertakings;

**113 Subsection 23WJ(6)**

Repeal the subsection, substitute:

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

- (6) The constable must inform the suspect (whether or not the suspect is in custody) that if:
  - (a) the suspect is being asked to undergo a forensic procedure because of a request by a foreign law enforcement agency; and
  - (b) the suspect does not consent;the Attorney-General may be requested to authorise (under an authorising provision) an authorised applicant to apply to a magistrate for an order for the carrying out of the forensic procedure.

**114 Paragraph 23WM(2A)(a)**

Repeal the paragraph, substitute:

- (a) a foreign country or international tribunal; or

**115 Paragraph 23WR(1)(d)**

Repeal the paragraph, substitute:

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- (d) the forensic procedure has been requested by a foreign country or an international tribunal.

**116 Paragraph 23WT(1)(ca)**

Repeal the paragraph, substitute:

- (ca) if the forensic procedure has been requested by a foreign country or an international tribunal—a constable has been authorised by the Attorney-General, under the authorising provision relating to the request, to apply for an order under this Part; and

**117 Paragraph 23WT(2)(a)**

Repeal the paragraph, substitute:

- (a) if the forensic procedure has been requested by a foreign country or an international tribunal—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

**118 Paragraph 23XWR(2)(da)**

After “a foreign law enforcement agency”, insert “(other than an agency responsible to an international tribunal)”.

**119 After paragraph 23XWR(2)(da)**

Insert:

- (db) if the volunteer undergoes a forensic procedure because of a request by a foreign law enforcement agency responsible to an international tribunal—the following:
  - (i) the name of the international tribunal for which the request was made;
  - (ii) that forensic evidence resulting from the forensic procedure will be provided to the agency;
  - (iii) that the forensic evidence may be used in proceedings in the international tribunal;
  - (iv) that the retention of the forensic evidence will be governed by the rules of the international tribunal;
  - (v) that the retention of the forensic evidence will be subject to undertakings given by the agency;

(vi) the content of those undertakings;

#### **120 Paragraph 23XWU(1)(d)**

Repeal the paragraph, substitute:

- (d) in the case of a forensic procedure requested by a foreign country or an international tribunal—a constable has been authorised by the Attorney-General, under the authorising provision relating to the request, to apply for an order under this Part.

#### **121 Section 23YBA**

Repeal the section, substitute:

#### **23YBA Division does not apply to a proceeding in a foreign country or an international tribunal**

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

- (a) a foreign country; or
- (b) an international tribunal; or
- (c) a foreign law enforcement agency.

#### **122 Section 23YBB**

Repeal the section, substitute:

#### **23YBB Application**

This Division does not apply to forensic evidence provided in response to a request by a foreign country, an international tribunal or a foreign law enforcement agency.

#### **123 Subsection 23YDAC(1) (after paragraph (aa) of the definition of *crime scene index*)**

Insert:

- (ab) at any place outside Australia where:
  - (i) a crime within the jurisdiction of the ICC; or
  - (ii) a War Crimes Tribunal offence;

was, or is reasonably suspected of having been, committed;  
or

**124 Paragraph 23YDAE(2)(da)**

Repeal the paragraph, substitute:

- (da) the purpose of assisting a foreign country or international tribunal to decide whether to make a request;

**125 Paragraph 23YDAE(2)(e)**

After “*Mutual Assistance in Criminal Matters Act 1987*”, insert “, the *International Criminal Court Act 2002*, the *International War Crimes Tribunals Act 1995*”.

**126 Subsection 23YF(1) (note 1)**

Repeal the note, substitute:

- Note 1: If a forensic procedure is carried out as a result of a request by a foreign country or an international tribunal, a copy of anything made may also be provided to that country or tribunal: see section 23YQB.

**127 Section 23YKA**

Repeal the section, substitute:

**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 or international tribunal in which forensic evidence is provided in response to a request by:

- (a) a foreign country; or  
(b) an international tribunal; or  
(c) a foreign law enforcement agency.

**128 Paragraph 23YO(2)(da)**

Repeal the paragraph, substitute:

- (da) the purposes of assisting a foreign country or international tribunal to decide whether to make a request;

**129 Paragraph 23YO(2)(e)**

After “*Mutual Assistance in Criminal Matters Act 1987*”, insert “, the *International Criminal Court Act 2002*, the *International War Crimes Tribunals Act 1995*”.

**130 Paragraph 23YO(3)(d)**

After “*Mutual Assistance in Criminal Matters Act 1987*”, insert “, the *International Criminal Court Act 2002*, the *International War Crimes Tribunals Act 1995*”.

**131 Division 9A of Part ID (heading)**

Repeal the heading, substitute:

**Division 9A—Carrying out forensic procedures at the request of a foreign country or international tribunal**

**132 Subdivision A of Division 9A of Part ID**

Repeal the Subdivision, substitute:

**Subdivision A—Requests by foreign countries or international tribunals**

**23YQA Application of Subdivision**

This Subdivision applies if:

- (a) a request is made by a foreign country or an international tribunal (the *requesting entity*) for a forensic procedure to be carried out on a person; and
- (b) the Attorney-General authorises, under the authorising provision relating to the request, an authorised applicant to apply to a magistrate for the carrying out of the forensic procedure on the person.

**23YQB Providing evidence and material resulting from the forensic procedure**

- (1) Any forensic evidence resulting from the forensic procedure must be provided to the requesting entity in accordance with a direction described in subsection (3).
- (2) Material (or a copy) relating to the request that was made available to, or viewed by, a person under subsection 23YF(1) (about recordings) may only be provided to the requesting entity in accordance with a direction described in subsection (3).
- (3) The direction is one given by the Attorney-General under the following provision:
  - (a) section 28C of the *Mutual Assistance in Criminal Matters Act 1987*, if the request was made by a foreign country;
  - (b) section 76B of the *International Criminal Court Act 2002*, if the request was made by the ICC;
  - (c) section 32C of the *International War Crimes Tribunals Act 1995*, if the request was made by a War Crimes Tribunal.
- (4) This section does not limit the directions that can be given under that provision.

**133 At the end of section 23YQC**

Add:

- Note: This includes a request by an authority or person responsible to an international tribunal for investigating or prosecuting a crime or an offence within the jurisdiction of the tribunal.

**134 Subsection 23YUB(1A)**

Repeal the subsection, substitute:

- (1A) The orders mentioned in subsection (1) do not include an order made in response to a request by a foreign country or international tribunal.

## ***International Criminal Court Act 2002***

### **135 Section 4**

Insert:

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

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

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

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

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

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

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

### **136 After Division 10 of Part 4**

Insert:

## **Division 10A—Forensic procedures**

### **76A Authorising application for carrying out of forensic procedures**

- (1) The Attorney-General may authorise, in writing, a constable to apply under Part ID of the *Crimes Act 1914* for an order for the carrying out of a forensic procedure on a person if:
  - (a) the ICC has requested the procedure to be carried out on the person; and
  - (b) the Attorney-General is satisfied:
    - (i) that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
    - (ii) that the person is, or is believed to be, in Australia; and

- (iii) that the ICC has given appropriate undertakings about the retention, use and destruction of forensic material, or of information obtained from analysing that material; and
  - (iv) that the ICC has given any other undertakings that the Attorney-General considers necessary; and
  - (v) unless subsection (2) applies—that the person has been given an opportunity to consent to the forensic procedure and has not consented to it; and
  - (vi) if subsection (2) applies—of the matters in that subsection; and
- (c) in the case of the person being a suspect, the constable is an authorised applicant.
- (2) If the person is a child or an incapable person, the matters are:
- (a) that either:
    - (i) the consent of a parent or guardian of the person cannot reasonably be obtained or has been withdrawn; or
    - (ii) a parent or guardian of the person is a suspect in relation to a crime or an offence to which the investigation or proceeding relates; and
  - (b) that, having regard to the best interests of the person, it is appropriate to make the authorisation.
- (3) In this section:

**authorised applicant** has the same meaning as in subsection 23WA(1) of the *Crimes Act 1914*.

**suspect** has the same meaning as in subsection 23WA(1) of the *Crimes Act 1914*.

## **76B Providing forensic evidence to the ICC**

- (1) The Attorney-General may direct a constable about how forensic evidence is to be provided to the ICC if:
- (a) the Attorney-General gave an authorisation to the constable under subsection 76A(1); and
  - (b) the forensic evidence resulted from the authorisation.

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

## ***International War Crimes Tribunals Act 1995***

### **137 Section 4**

Insert:

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

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

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

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

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

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

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

### **138 Before Division 2 of Part 4**

Insert:

## **Division 1B—Forensic procedures**

### **32B Authorising application for carrying out of forensic procedures**

- (1) The Attorney-General may authorise, in writing, a constable to apply under Part ID of the *Crimes Act 1914* for an order for the carrying out of a forensic procedure on a person if:
- (a) a Tribunal has requested the procedure to be carried out on the person; and
  - (b) the Attorney-General is satisfied:
    - (i) that the request relates to a proceeding before, or an investigation conducted by, the Tribunal; and
    - (ii) that the person is, or is believed to be, in Australia; and

- (iii) that the Tribunal has given appropriate undertakings about the retention, use and destruction of forensic material, or of information obtained from analysing that material; and
  - (iv) that the Tribunal has given any other undertakings that the Attorney-General considers necessary; and
  - (v) unless subsection (2) applies—that the person has been given an opportunity to consent to the forensic procedure and has not consented to it; and
  - (vi) if subsection (2) applies—of the matters in that subsection; and
- (c) in the case of the person being a suspect, the constable is an authorised applicant.
- (2) If the person is a child or an incapable person, the matters are:
- (a) that either:
    - (i) the consent of a parent or guardian of the person cannot reasonably be obtained or has been withdrawn; or
    - (ii) a parent or guardian of the person is a suspect in relation to an offence to which the investigation or proceeding relates; and
  - (b) that, having regard to the best interests of the person, it is appropriate to make the authorisation.
- (3) In this section:

**authorised applicant** has the same meaning as in subsection 23WA(1) of the *Crimes Act 1914*.

**suspect** has the same meaning as in subsection 23WA(1) of the *Crimes Act 1914*.

### **32C Providing forensic evidence to the Tribunal**

- (1) The Attorney-General may direct a constable about how forensic evidence is to be provided to a Tribunal if:
- (a) the Attorney-General gave an authorisation to the constable under subsection 32B(1); and
  - (b) the forensic evidence resulted from the authorisation.

(2) A direction under subsection (1) is not a legislative instrument.

### **139 Application of amendments**

The amendments made by this Part apply in relation to a request made to the Attorney-General by the ICC, a Tribunal, a foreign country or a foreign law enforcement agency:

- (a) on or after the commencement of this item; or
- (b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request;

whether conduct, a crime or an offence to which the request relates occurred before, on or after that commencement.

## Part 8—Proceeds of crime

### Division 1—Amendments relating to the ICC

#### *International Criminal Court Act 2002*

##### 140 Section 4

Insert:

*benefit* has the same meaning as in the Proceeds of Crime Act.

##### 141 Section 4 (definition of *evidential material*)

Repeal the definition, substitute:

*evidential material* means:

- (a) in Subdivision F of Division 14 of Part 4—evidence relating to:
  - (i) property in relation to which a forfeiture order has been or could be made; or
  - (ii) property in relation to which a restraining order has been or could be made for the purposes of section 82; or
  - (iii) property of a person in relation to whom a pecuniary penalty order may be enforced as described in section 159; or
  - (iv) proceeds of a crime within the jurisdiction of the ICC; or
  - (v) benefits derived from the commission of a crime within the jurisdiction of the ICC; or
- (b) otherwise—a thing relevant to a crime within the jurisdiction of the ICC, including such a thing in electronic form.

##### 142 Section 4 (definition of *monitoring order*)

Repeal the definition.

##### 143 Section 4

Insert:

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*person assisting* has the same meaning as in the Proceeds of Crime Act.

*POCA search warrant* means a search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a crime within the jurisdiction of the ICC.

*proceeds request* has the meaning given by section 81.

#### **144 Section 4**

Repeal the following definitions:

- (a) definition of *production order*;
- (b) definition of *property tracking document*.

#### **145 Section 4**

Insert:

*responsible enforcement agency head* means the head of the enforcement agency whose authorised officer is responsible for executing a POCA search warrant.

#### **146 Section 4**

Insert:

*senior police officer* has the meaning given by subsection 88(3).

#### **147 Paragraph 81(a)**

After “a request”, insert “(a *proceeds request*)”.

#### **148 At the end of Subdivision A of Division 14 of Part 4**

Add:

#### **81A Authorising applications under the Proceeds of Crime Act**

The Attorney-General may authorise, in writing, an authorised officer of an enforcement agency to make such applications under the Proceeds of Crime Act as are necessary to respond to the proceeds request if the Attorney-General is satisfied that the proceeds request:

- (a) relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
- (b) is for assistance that can be obtained from one or more production orders, monitoring orders or search warrants under the Proceeds of Crime Act.

Note: See Subdivision B for proceeds requests that involve the making of a restraining order.

**149 Subsection 82(1)**

Omit “request from the ICC referred to in section 81”, substitute “proceeds request”.

**150 Subsection 82(1)**

Omit “to a specified court”.

**151 Subsection 82(2)**

Repeal the subsection.

**152 Paragraph 82(5)(a)**

Omit “within the jurisdiction of the ICC”, substitute “that is the subject of the proceeds request”.

**153 Paragraph 82(5)(b)**

Repeal the paragraph.

**154 Paragraph 82(5)(e)**

Omit “20, 29, 44 and 45”, substitute “20A, 29, 29A and 44 to 45A”.

**155 Section 85**

Repeal the section.

**156 Subsection 86(1)**

Repeal the subsection, substitute:

- (1) An authorised officer may apply for a production order under the Proceeds of Crime Act in respect of the crime that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 81A.

**157 Paragraph 86(3)(a)**

Omit “within the jurisdiction of the ICC”, substitute “that is the subject of the proceeds request”.

**158 Paragraphs 86(3)(b) and (c)**

Repeal the paragraphs, substitute:

(b) subparagraphs 202(5)(a)(ii) and (c)(ii), paragraph 202(5)(e) and subsection 205(1) of that Act were omitted.

**159 Subsection 88(1)**

Omit “The Attorney-General or a senior Departmental officer”, substitute “A senior police officer”.

**160 Subsection 88(2)**

Omit “Attorney-General or the senior Departmental officer”, substitute “senior police officer”.

**161 Subsection 88(3)**

Repeal the subsection, substitute:

(3) A *senior police officer* is a person covered by paragraph 213(3)(a), (b) or (c) of the Proceeds of Crime Act.

**162 Subsection 90(2)**

Before “employee”, insert “officer”.

**163 Section 93**

Before “A person”, insert “(1)”.

**164 Section 93 (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

**165 Section 93 (note)**

Repeal the note.

**166 At the end of section 93**

Add:

- (2) Subsection (1) does not apply if:
- (a) the person fails to comply with the notice only because the person does not provide information or a document within the period specified in the notice; and
  - (b) the person took all reasonable steps to provide the information or document within that period; and
  - (c) the person provides the information or document as soon as practicable after the end of that period.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

**167 Section 94**

Repeal the section.

**168 Subsection 95(1)**

Repeal the subsection, substitute:

- (1) An authorised officer may apply for a monitoring order under the Proceeds of Crime Act in respect of the crime that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 81A.

**169 Paragraph 95(3)(a)**

Omit “a crime within the jurisdiction of the ICC”, substitute “the crime that is the subject of the proceeds request”.

**170 Subdivision F of Division 14 of Part 4 (heading)**

Repeal the heading, substitute:

## **Subdivision F—Search warrants relating to proceeds of crime and evidential material**

### **171 Section 97**

Repeal the section.

### **172 Subsection 98(1)**

Repeal the subsection, substitute:

- (1) An authorised officer may apply for a search warrant under the Proceeds of Crime Act in respect of the crime that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 81A.

### **173 Subsection 98(2)**

Before “search”, insert “POCA”.

### **174 Subsection 98(3)**

Repeal the subsection, substitute:

- (3) It applies as if:
  - (a) a reference in that Part to tainted property were a reference to proceeds of the crime that is the subject of the proceeds request; and
  - (b) a reference in that Part to evidential material were a reference to evidential material as defined in section 4 of this Act for the purposes of this Subdivision; and
  - (c) the words “or section 100, 101 or 102 of the *International Criminal Court Act 2002*” were inserted after “this Act” in paragraph 254(1)(a) of the Proceeds of Crime Act; and
  - (d) paragraphs 227(1)(a), (b), (h) and (ha) and 228(1)(d) and (da) and sections 256 to 262 of the Proceeds of Crime Act were omitted.

Note: Sections 99 and 99A of this Act also apply in relation to a POCA search warrant. Sections 100 to 102 of this Act also apply in relation to property or things seized under such a warrant.

### **175 Section 99**

Repeal the section, substitute:

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## **99 Contents of POCA search warrants**

A POCA search warrant in relation to a crime within the jurisdiction of the ICC must state that the warrant authorises the seizure of property or a thing found by an authorised officer, or a person assisting in relation to the warrant, in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:
  - (i) is proceeds of the crime that are not of a kind specified in the warrant; or
  - (ii) is evidential material relating to the crime that is not of a kind specified in the warrant; or
  - (iii) is proceeds of, or evidential material relating to, another crime within the jurisdiction of the ICC in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a proceeding in the ICC in respect of the crime within the jurisdiction of the ICC; or
  - (v) will afford evidence as to the commission of an offence against an Australian law; and
- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 98(3)(d), the POCA search warrant must also state the matters set out in section 227 of the Proceeds of Crime Act.

## **99A Seizure of certain property or things found in the course of search**

A POCA search warrant in relation to a crime within the jurisdiction of the ICC authorises an authorised officer, or a person assisting in relation to the warrant, to seize property or a thing found by the authorised officer or person assisting in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:
  - (i) is proceeds of the crime that are not of a kind specified in the warrant; or

- (ii) is evidential material relating to the crime that is not of a kind specified in the warrant; or
  - (iii) is proceeds of, or evidential material relating to, another crime within the jurisdiction of the ICC in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a proceeding in the ICC in respect of the crime within the jurisdiction of the ICC; or
  - (v) will afford evidence as to the commission of an offence against an Australian law; and
- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 98(3)(d), the POCA search warrant also authorises the things set out in section 228 of the Proceeds of Crime Act.

### **176 Subsection 100(1)**

Omit “(other than a property-tracking document) that has been seized under a search warrant issued under Part 3-5 of the Proceeds of Crime Act”, substitute “that has been seized under a POCA search warrant”.

### **177 Subsection 100(2)**

Before “warrant”, insert “POCA search”.

### **178 Subsections 100(3) and (4)**

Omit “head of the authorised officer’s enforcement agency”, substitute “responsible enforcement agency head”.

### **179 Subsection 100(5)**

Repeal the subsection, substitute:

- (5) This section does not apply to property that has been seized under a POCA search warrant because:
- (a) it is evidential material; or
  - (b) it is property of a kind referred to in subparagraph 99A(a)(iv) or (v).

### **180 Section 101 (heading)**

Repeal the heading, substitute:

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## **101 Dealing with certain seized property**

### **181 Subsection 101(1)**

Repeal the subsection, substitute:

- (1) Property must be dealt with in accordance with this section if:
- (a) it has been seized under a POCA search warrant in relation to a crime within the jurisdiction of the ICC; and
  - (b) it is not:
    - (i) evidential material; or
    - (ii) property of a kind referred to in subparagraph 99A(a)(iv) or (v).

### **182 Paragraph 101(2)(a)**

After “property has”, insert “not”.

### **183 Paragraph 101(2)(b)**

Omit “under Subdivision B”, substitute “as described in Subdivision B”.

### **184 Subsection 101(2)**

Omit “head of the enforcement agency whose authorised officer seized the property”, substitute “responsible enforcement agency head”.

### **185 Subsection 101(3)**

Omit “under Subdivision B in respect of the property in relation to the crime within the jurisdiction of the ICC, the head of the enforcement agency whose authorised officer seized the property”, substitute “as described in Subdivision B in respect of the property in relation to the crime within the jurisdiction of the ICC, the responsible enforcement agency head”.

### **186 Subsection 101(5)**

Omit “head of the enforcement agency whose authorised officer seized the property, a restraining order has been made under Subdivision B”, substitute “responsible enforcement agency head, a restraining order has been made as described in Subdivision B”.

**187 Subsection 101(5)**

Omit “head of the enforcement agency” (second and third occurring), substitute “responsible enforcement agency head”.

**188 Subsection 101(6)**

Repeal the subsection, substitute:

- (6) If the court is satisfied that the responsible enforcement agency head requires the property to be retained to give effect to the proceeds request, the court may make an order that the responsible enforcement agency head may retain the property for so long as the property is so required.

**189 Subsection 101(7)**

Omit “head of the enforcement agency whose authorised officer seized it”, substitute “responsible enforcement agency head”.

**190 Subsection 101(7)**

Omit “head of the enforcement agency” (second occurring), substitute “responsible enforcement agency head”.

**191 Section 102**

Repeal the section, substitute:

**102 Dealing with evidential material and certain property or things seized under POCA search warrants**

- (1) This section applies if:
- (a) property or a thing (the *seized item*) is seized under a POCA search warrant in relation to a crime within the jurisdiction of the ICC; and
  - (b) the seized item is:
    - (i) evidential material; or
    - (ii) property or a thing of a kind referred to in subparagraph 99A(a)(iv); and
  - (c) the seized item is seized by a person (the *seizing officer*) who is:
    - (i) an authorised officer; or

- (ii) a person assisting in relation to the warrant.
- (2) The seizing officer may retain the seized item for a period not exceeding 1 month pending a written direction from the Attorney-General as to how to deal with the seized item.
- (3) Without limiting the directions that may be given under subsection (2), the Attorney-General may direct the seizing officer to send the seized item to the ICC.

**192 Subsection 153(3)**

Repeal the subsection, substitute:

- (3) Subject to subsection 154(3), if a copy of an authenticated copy of an order is faxed, emailed or sent by other electronic means, it is taken for the purposes of subsection (2) of this section to be the same as the authenticated copy.

**193 Subsection 154(3)**

Repeal the subsection, substitute:

- (3) A registration effected by a court registering a copy of an authenticated copy ceases to have effect after 45 days unless the authenticated copy has been filed by then in that court.

**194 Subsection 155(2)**

Omit “in a court specified in the notice”.

**195 Subsection 155(3)**

Repeal the subsection.

**196 Before subsection 156(1)**

Insert:

- (1A) An application for the registration of an order in accordance with an authorisation under subsection 155(2) must be to a court with proceeds jurisdiction.

### **197 Subsection 156(1)**

Omit “applies to a court for registration of an order in accordance with an authorisation under section 155”, substitute “so applies to a court with proceeds jurisdiction”.

### **198 Subsections 156(5) and (6)**

Repeal the subsections, substitute:

- (5) A copy sent by fax, email or other electronic means of an authenticated copy of an order is taken for the purposes of subsection (4) to be the same as the authenticated copy.
- (6) However, a registration effected by a court registering a copy of an authenticated copy ceases to have effect after 45 days unless the authenticated copy has been filed by then in that court.

### **199 Application and transitional provisions—general**

- (1) The amendments made by this Division, to the extent that they do not relate to search warrants, apply in relation to a proceeds request made by the ICC to the Attorney-General:
  - (a) on or after the commencement of this item; or
  - (b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request.
- (2) The amendments so apply:
  - (a) whether property or a thing to which the proceeds request relates was acquired before, on or after that commencement; and
  - (b) whether conduct or a crime to which the proceeds request relates occurred before, on or after that commencement.
- (3) However, subsection 93(2) of the *International Criminal Court Act 2002*, as inserted by this Division, applies in relation to a notice given on or after the commencement of this item.

### **200 Application and transitional provisions—search warrants**

- (1) The amendments made by this Division, to the extent that they relate to search warrants, apply in relation to an authorisation given by the
-

Attorney-General under section 81A of the *International Criminal Court Act 2002* on or after the commencement of this item:

- (a) whether property or a thing to which the authorisation relates was acquired before, on or after that commencement; and
  - (b) whether conduct or a crime to which the authorisation relates occurred before, on or after that commencement.
- (2) The amendments made by this Division, to the extent that they relate to search warrants, apply in relation to an application made under Part 3-5 of the Proceeds of Crime Act on or after the commencement of this item:
- (a) whether property or a thing to which the application relates was acquired before, on or after that commencement; and
  - (b) whether conduct or a crime to which the application relates occurred before, on or after that commencement; and
  - (c) whether the authorisation by the Attorney-General relating to the application was given under the *International Criminal Court Act 2002* before, on or after that commencement.
- (3) The amendments made by this Division, to the extent that they relate to search warrants, apply in relation to a POCA search warrant issued on or after the commencement of this item:
- (a) whether property or a thing to which the warrant relates was acquired before, on or after that commencement; and
  - (b) whether conduct or a crime to which the warrant relates occurred before, on or after that commencement; and
  - (c) whether the application for the warrant was made before, on or after that commencement; and
  - (d) whether the authorisation by the Attorney-General relating to the application for the warrant was given under the *International Criminal Court Act 2002* before, on or after that commencement.
- (4) An authorisation by the Attorney-General referred to in paragraph (2)(c) or (3)(d) that:
- (a) was given, before the commencement of this item, under subsection 97(1) of the *International Criminal Court Act 2002* as in force before that commencement; and
  - (b) was in force immediately before that commencement;

continues in force (and may be dealt with) after that commencement as if it had been given by the Attorney-General under section 81A of that Act as amended by this Division.

- (5) A direction that:
- (a) was made under section 102 of the *International Criminal Court Act 2002* before the commencement of this item; and
  - (b) was in force immediately before that commencement;
- continues in force (and may be dealt with) after that commencement as if it had been made under that section as amended by this Division.

## **Division 2—Amendments relating to Tribunals**

### ***International War Crimes Tribunals Act 1995***

#### **201 Section 4**

Insert:

***account*** has the same meaning as in the *Proceeds of Crime Act 2002*.

***agent*** has the same meaning as in the *Proceeds of Crime Act 2002*.

***authorised officer*** has the same meaning as in the *Proceeds of Crime Act 2002*.

***defendant*** has the meaning given by section 40AA.

***enforcement agency*** has the same meaning as in the *Proceeds of Crime Act 2002*.

#### **202 Section 4 (definition of *evidential material*)**

Repeal the definition, substitute:

***evidential material*** means:

- (a) in Subdivision F of Division 6 of Part 4—evidence relating to:
  - (i) property in relation to which a forfeiture order has been or could be made; or

- (ii) property in relation to which a restraining order has been or could be made for the purposes of section 40AC; or
  - (iii) proceeds of a Tribunal offence; or
- (b) otherwise—a thing relevant to a Tribunal offence, including such a thing in electronic form.

## 203 Section 4

Insert:

**financial institution** has the same meaning as in the *Proceeds of Crime Act 2002*.

**interest**, in relation to property, has the same meaning as in the *Proceeds of Crime Act 2002*.

**officer**, in relation to a financial institution, has the same meaning as in the *Proceeds of Crime Act 2002*.

**person assisting** has the same meaning as in the *Proceeds of Crime Act 2002*.

**POCA search warrant** means a search warrant issued under Part 3-5 of the *Proceeds of Crime Act 2002* in relation to a Tribunal offence.

**proceeds** of a Tribunal offence means proceeds (within the meaning of the *Proceeds of Crime Act 2002*) of such an offence.

**proceeds jurisdiction** has the same meaning as in the *Proceeds of Crime Act 2002*.

**proceeds request** has the meaning given by section 40AA.

**related Tribunal offence**: a Tribunal offence is related to another Tribunal offence if the physical elements of the 2 offences are substantially the same acts or omissions.

**responsible enforcement agency head** means the head of the enforcement agency whose authorised officer is responsible for executing a POCA search warrant.

*restraining order* means a restraining order under section 17 of the *Proceeds of Crime Act 2002*.

*senior police officer* has the meaning given by subsection 40AH(3).

## **204 At the end of Part 4**

Add:

## **Division 6—Identification, tracing, and freezing or seizure, of proceeds of Tribunal offences**

### **Subdivision A—Preliminary**

#### **40AA Application of Division**

This Division applies if:

- (a) a Tribunal makes a request (a *proceeds request*) to the Attorney-General for the identification, tracing, and freezing or seizure, of the proceeds of a Tribunal offence; and
- (b) the Attorney-General is satisfied that a person (the *defendant*):
  - (i) has been, or is about to be, charged with the Tribunal offence before the Tribunal; or
  - (ii) has been convicted by the Tribunal of the Tribunal offence.

#### **40AB Authorising applications under the *Proceeds of Crime Act 2002***

The Attorney-General may authorise, in writing, an authorised officer of an enforcement agency to make such applications under the *Proceeds of Crime Act 2002* as are necessary to respond to the proceeds request if the Attorney-General is satisfied that the proceeds request:

- (a) relates to a proceeding before, or an investigation conducted by, the Tribunal; and

- (b) is for assistance that can be obtained from one or more production orders, monitoring orders or search warrants under the *Proceeds of Crime Act 2002*.

Note: See Subdivision B for proceeds requests that involve the making of a restraining order.

## **Subdivision B—Restraining orders**

### **40AC Applying for and making restraining orders**

- (1) If the proceeds request involves the making of a restraining order, the Attorney-General may authorise a proceeds of crime authority to apply for a restraining order against the property concerned.
- (2) If so authorised, a proceeds of crime authority may apply for such a restraining order against that property in respect of the Tribunal offence.
- (3) Part 2-1 of the *Proceeds of Crime Act 2002* applies to the application, and to any restraining order made as a result.
- (4) That Part applies as if:
  - (a) references in that Part to an indictable offence were references to the Tribunal offence that is the subject of the proceeds request; and
  - (b) references in that Part to a person charged with an indictable offence were references to a person against whom a criminal proceeding in respect of a Tribunal offence has commenced in the Tribunal; and
  - (c) references in that Part to it being proposed to charge a person with an indictable offence were references to it being reasonably suspected that criminal proceedings are about to commence against the person in the Tribunal in respect of a Tribunal offence; and
  - (d) paragraphs 17(1)(e) and (f), subsections 17(3) and (4) and sections 18 to 20A, 29, 29A and 44 to 45A of that Act were omitted.

### **40AD Excluding property from restraining orders**

If:

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- (a) a court makes a restraining order under Part 2-1 of the *Proceeds of Crime Act 2002* against property in respect of the Tribunal offence; and
  - (b) a person having an interest in the property applies to the court under Division 3 of Part 2-1 of that Act for an order varying the restraining order to exclude the person's interest from the restraining order;
- the court must grant the application if the court is satisfied that:
- (c) in a case where the applicant is not the defendant:
    - (i) the applicant was not, in any way, involved in the commission of the Tribunal offence; and
    - (ii) if the applicant acquired the interest at the time of or after the commission, or alleged commission, of the Tribunal offence—the property was not proceeds of the Tribunal offence; or
  - (d) in any case—it is in the public interest to do so having regard to any financial hardship or other consequence of the interest remaining subject to the order.

#### **40AE When restraining order ceases to be in force**

- (1) If, at the end of the period of 1 month after the making of a restraining order in reliance on the proposed charging of a person with a Tribunal offence, the person has not been charged with the Tribunal offence or a related Tribunal offence, the order ceases to be in force at the end of that period.
- (2) If:
  - (a) a restraining order is made in reliance on a person's conviction of a Tribunal offence or the charging of a person with such an offence; or
  - (b) a restraining order is made in reliance on the proposed charging of a person with a Tribunal offence and the person is, within 1 month after the making of the order, charged with the Tribunal offence or a related Tribunal offence;the following provisions have effect:
  - (c) if the charge is withdrawn and the person is not charged with a related Tribunal offence within 28 days after the day the

- charge is withdrawn, the restraining order ceases to be in force at the end of that period;
- (d) if the person is acquitted of the charge and the person is not charged with a related Tribunal offence within 28 days after the day the acquittal occurs, the restraining order ceases to be in force at the end of that period;
  - (e) if some or all of the property subject to the restraining order is forfeited under Part 6, the restraining order, to the extent to which it relates to that property, ceases to be in force when that property is forfeited;
  - (f) the restraining order ceases to be in force if and when it is revoked.

### **Subdivision C—Production orders relating to Tribunal offences**

#### **40AF Applying for and making production orders**

- (1) An authorised officer may apply for a production order under the *Proceeds of Crime Act 2002* in respect of the Tribunal offence that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 40AB.
- (2) Part 3-2 of the *Proceeds of Crime Act 2002* applies to the application, and to any production order made as a result.
- (3) That Part applies as if:
  - (a) references in that Part to an indictable offence or to a serious offence were references to the Tribunal offence that is the subject of the proceeds request; and
  - (b) subparagraphs 202(5)(a)(ii) and (c)(ii), paragraph 202(5)(e) and subsection 205(1) of that Act were omitted.

#### **40AG Retaining produced documents**

- (1) An authorised officer who takes possession of a document under a production order made in respect of a Tribunal offence may retain the document pending a written direction from the Attorney-General as to how to deal with the document.
- (2) Directions from the Attorney-General may include a direction that the document be sent to the Tribunal.

## **Subdivision D—Notices to financial institutions**

### **40AH Giving notices to financial institutions**

- (1) A senior police officer may give a written notice to a financial institution requiring the institution to provide to an authorised officer any information or documents relevant to any one or more of the following:
  - (a) determining whether an account is held by a specified person with the financial institution;
  - (b) determining whether a particular person is a signatory to an account;
  - (c) if a person holds an account with the institution, the current balance of the account;
  - (d) details of transactions on such an account over a specified period of up to 6 months;
  - (e) details of any related accounts (including names of those who hold those accounts);
  - (f) a transaction conducted by the financial institution on behalf of a specified person.
- (2) The senior police officer must not issue the notice unless he or she reasonably believes that giving the notice is required:
  - (a) to determine whether to take any action under this Division, or under the *Proceeds of Crime Act 2002* in connection with the operation of this Division; or
  - (b) in relation to proceedings under this Division, or under the *Proceeds of Crime Act 2002* in connection with the operation of this Division.
- (3) A **senior police officer** is a person covered by paragraph 213(3)(a), (b) or (c) of the *Proceeds of Crime Act 2002*.

### **40AI Contents of notices to financial institutions**

The notice must:

- (a) state that the officer giving the notice believes that the notice is required:

- (i) to determine whether to take any action under this Division, or under the *Proceeds of Crime Act 2002* in connection with the operation of this Division; or
- (ii) in relation to proceedings under this Division, or under the *Proceeds of Crime Act 2002* in connection with the operation of this Division;  
(as the case requires); and
- (b) specify the name of the financial institution; and
- (c) specify the kind of information or documents required to be provided; and
- (d) specify the form and manner in which that information or those documents are to be provided; and
- (e) state that the information or documents must be provided within 14 days after the day the notice is received; and
- (f) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 40AL (disclosing existence or nature of a notice); and
- (g) set out the effect of section 40AM (failing to comply with a notice).

#### **40AJ Protection from suits etc. for those complying with notices**

- (1) No action, suit or proceeding lies against:
  - (a) a financial institution; or
  - (b) an officer, employee or agent of the institution acting in the course of that person's employment or agency;in relation to any action taken by the institution or person under a notice under section 40AH or in the mistaken belief that action was required under the notice.
- (2) A financial institution which, or an officer, employee or agent of a financial institution who, provides information under a notice under section 40AH is taken, for the purposes of Part 10.2 of the *Criminal Code* (offences relating to money laundering), not to have been in possession of that information at any time.

#### **40AK Making false statements in applications**

A person commits an offence if:

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- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the statement:
  - (i) is false or misleading; or
  - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, a notice under section 40AH.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

#### **40AL Disclosing existence or nature of notice**

A person commits an offence if:

- (a) the person is given a notice under section 40AH; and
- (b) the notice states that information about the notice must not be disclosed; and
- (c) the person discloses the existence or nature of the notice.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### **40AM Failing to comply with a notice**

- (1) A person commits an offence if:
  - (a) the person is given a notice under section 40AH; and
  - (b) the person fails to comply with the notice.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

- (2) Subsection (1) does not apply if:
  - (a) the person fails to comply with the notice only because the person does not provide information or a document within the period specified in the notice; and
  - (b) the person took all reasonable steps to provide the information or document within that period; and
  - (c) the person provides the information or document as soon as practicable after the end of that period.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

### **Subdivision E—Monitoring orders relating to Tribunal offences**

#### **40AN Applying for and making monitoring orders**

- (1) An authorised officer may apply for a monitoring order under the *Proceeds of Crime Act 2002* in respect of the Tribunal offence that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 40AB.
- (2) Part 3-4 of the *Proceeds of Crime Act 2002* applies to the application, and to any monitoring order made as a result.
- (3) That Part applies as if:
  - (a) references in that Part to a serious offence were references to the Tribunal offence that is the subject of the proceeds request; and
  - (b) disclosing the existence or the operation of the order for the purpose of complying with a person's obligations under section 40AO of this Act were a purpose specified in subsection 223(4) of the *Proceeds of Crime Act 2002*.

#### **40AO Passing on information given under monitoring orders**

If an enforcement agency is given information under a monitoring order made in relation to the Tribunal offence, the enforcement agency must, as soon as practicable after receiving the information, pass the information on to:

- (a) the Attorney-General; or
- (b) an APS employee who is in the Department and who is specified by the Attorney-General by written notice to the enforcement agency.

## **Subdivision F—Search warrants relating to proceeds of crime and evidential material**

### **40AP Applying for and issuing search warrants**

- (1) An authorised officer may apply for a search warrant under the *Proceeds of Crime Act 2002* in respect of the Tribunal offence that is the subject of the proceeds request, if authorised to do so by the Attorney-General under section 40AB.
- (2) Part 3-5 of the *Proceeds of Crime Act 2002* applies to the application, and to any POCA search warrant issued as a result.
- (3) That Part applies as if:
  - (a) a reference in that Part to tainted property were a reference to proceeds of the Tribunal offence that is the subject of the proceeds request; and
  - (b) a reference in that Part to evidential material were a reference to evidential material as defined in section 4 of this Act for the purposes of this Subdivision; and
  - (c) the words “or section 40AS, 40AT or 40AU of the *International War Crimes Tribunals Act 1995*” were inserted after “this Act” in paragraph 254(1)(a) of the *Proceeds of Crime Act 2002*; and
  - (d) paragraphs 227(1)(a), (b), (h) and (ha) and 228(1)(d) and (da) and sections 256 to 262 of the *Proceeds of Crime Act 2002* were omitted.

Note: Sections 40AQ and 40AR of this Act also apply in relation to a POCA search warrant. Sections 40AS to 40AU of this Act also apply in relation to property or things seized under such a warrant.

### **40AQ Contents of POCA search warrants**

A POCA search warrant in relation to a Tribunal offence must state that the warrant authorises the seizure of property or a thing found by an authorised officer, or a person assisting in relation to the warrant, in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:

- (i) is proceeds of the Tribunal offence that are not of a kind specified in the warrant; or
  - (ii) is evidential material relating to the Tribunal offence that is not of a kind specified in the warrant; or
  - (iii) is proceeds of, or evidential material relating to, another Tribunal offence in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a proceeding in the Tribunal in respect of the Tribunal offence; or
  - (v) will afford evidence as to the commission of an offence against an Australian law; and
- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 40AP(3)(d), the POCA search warrant must also state the matters set out in section 227 of the *Proceeds of Crime Act 2002*.

#### **40AR Seizure of certain property or things found in the course of search**

A POCA search warrant in relation to a Tribunal offence authorises an authorised officer, or a person assisting in relation to the warrant, to seize property or a thing found by the authorised officer or person assisting in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:
  - (i) is proceeds of the Tribunal offence that are not of a kind specified in the warrant; or
  - (ii) is evidential material relating to the Tribunal offence that is not of a kind specified in the warrant; or
  - (iii) is proceeds of, or evidential material relating to, another Tribunal offence in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a proceeding in the Tribunal in respect of the Tribunal offence; or
  - (v) will afford evidence as to the commission of an offence against an Australian law; and

- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 40AP(3)(d), the POCA search warrant also authorises the things set out in section 228 of the *Proceeds of Crime Act 2002*.

#### **40AS Return of seized property to third parties**

- (1) A person who claims an interest in property that has been seized under a POCA search warrant in relation to a Tribunal offence may apply to a court for an order that the property be returned to the person.
- (2) The court must be a court of the State or Territory in which the POCA search warrant was issued that has proceeds jurisdiction.
- (3) The court must order the responsible enforcement agency head to return the property to the applicant if the court is satisfied that:
  - (a) the applicant is entitled to possession of the property; and
  - (b) the property is not proceeds of the relevant Tribunal offence; and
  - (c) the person who is believed or alleged to have committed the relevant Tribunal offence has no interest in the property.
- (4) If the court makes such an order, the responsible enforcement agency head must arrange for the property to be returned to the applicant.
- (5) This section does not apply to property that has been seized under a POCA search warrant because:
  - (a) it is evidential material; or
  - (b) it is property of a kind referred to in subparagraph 40AR(a)(iv) or (v).

#### **40AT Dealing with certain seized property**

- (1) Property must be dealt with in accordance with this section if:
  - (a) it has been seized under a POCA search warrant in relation to a Tribunal offence; and
  - (b) it is not:

- (i) evidential material; or
- (ii) property of a kind referred to in subparagraph 40AR(a)(iv) or (v).

*General rule—property to be returned after 30 days*

- (2) If, at the end of the period of 30 days after the day the property was seized:
- (a) a forfeiture order in relation to the property has not been registered in a court under Part 6; and
  - (b) a restraining order has not been made as described in Subdivision B in respect of the property in relation to the Tribunal offence;
- the responsible enforcement agency head must, unless subsection (3), (5) or (7) applies, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

*Effect of restraining orders being registered or obtained*

- (3) If, before the end of that period, a restraining order is made as described in Subdivision B in respect of the property in relation to the Tribunal offence, the responsible enforcement agency head:
- (a) if there is in force, at the end of that period, a direction by a court that the Official Trustee take custody and control of the property—must arrange for the property to be given to the Official Trustee in accordance with the direction; or
  - (b) if there is in force at the end of that period an order under subsection (6) in relation to the property—must arrange for the property to be retained until it is dealt with in accordance with another provision of this Act or the *Proceeds of Crime Act 2002*.
- (4) If the property is subject to a direction of a kind referred to in paragraph (3)(a), the *Proceeds of Crime Act 2002* applies to the property as if it were controlled property within the meaning of that Act.

*Retaining property despite restraining orders*

- (5) If, at a time when the property is in the possession of the responsible enforcement agency head, a restraining order has been made as described in Subdivision B in respect of the property in relation to the Tribunal offence, the responsible enforcement agency head may apply:
- (a) to the court in which the restraining order was registered; or
  - (b) to the court by which the restraining order was made;
- for an order that the responsible enforcement agency head retain possession of the property.
- (6) If the court is satisfied that the responsible enforcement agency head requires the property to be retained to give effect to the proceeds request, the court may make an order that the responsible enforcement agency head may retain the property for so long as the property is so required.

*Effect of forfeiture orders by the Tribunal being registered or obtained*

- (7) If, while the property is in the possession of the responsible enforcement agency head, a forfeiture order in respect of the property is registered in a court under Part 6, the responsible enforcement agency head must deal with the property as required by the forfeiture order.

**40AU Dealing with evidential material and certain property or things seized under POCA search warrants**

- (1) This section applies if:
- (a) property or a thing (the *seized item*) is seized under a POCA search warrant in relation to a Tribunal offence; and
  - (b) the seized item is:
    - (i) evidential material; or
    - (ii) property or a thing of a kind referred to in subparagraph 40AR(a)(iv); and
  - (c) the seized item is seized by a person (the *seizing officer*) who is:
    - (i) an authorised officer; or

- (ii) a person assisting in relation to the warrant.
- (2) The seizing officer may retain the seized item for a period not exceeding 1 month pending a written direction from the Attorney-General as to how to deal with the seized item.
- (3) Without limiting the directions that may be given under subsection (2), the Attorney-General may direct the seizing officer to send the seized item to the Tribunal.

**205 Subsection 44(1)**

Omit “in a specified court”.

**206 Subsection 44(2)**

Repeal the subsection.

**207 Before subsection 45(1)**

Insert:

- (1AA) An application for the registration of an order in accordance with an authorisation under subsection 44(1) must be to a court with proceeds jurisdiction.

**208 Subsection 45(1)**

Omit “applies to a court for registration of an order in accordance with an authorisation under this Part”, substitute “so applies to a court with proceeds jurisdiction”.

**209 Subsection 45(3)**

Repeal the subsection, substitute:

- (3) Subject to subsection 46(2), if a copy of a sealed copy of an order is faxed, emailed or sent by other electronic means, it is taken for the purposes of subsection (2) of this section to be the same as the sealed copy.

**210 Subsection 46(2)**

Repeal the subsection, substitute:

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- (2) A registration effected by a court registering a copy of a sealed copy ceases to have effect after 45 days unless the sealed copy has been filed by then in that court.

**211 Paragraph 46A(1)(a)**

Omit “(within the meaning of the *Proceeds of Crime Act 2002*)”.

**212 Application of amendments**

- (1) The amendments made by this Division apply in relation to a proceeds request made by a Tribunal to the Attorney-General:
- (a) on or after the commencement of this item; or
  - (b) before the commencement of this item, if, immediately before that commencement, the Attorney-General had yet to make a decision on the request.
- (2) The amendments so apply:
- (a) whether property or a thing to which the proceeds request relates was acquired before, on or after that commencement; and
  - (b) whether conduct or an offence to which the proceeds request relates occurred before, on or after that commencement.

## **Part 9—Obligations of carriage service providers etc. to provide assistance, and recovery of costs for providing assistance**

### *Telecommunications Act 1997*

#### **213 After paragraph 313(3)(ca)**

Insert:

- (cb) assisting the investigation and prosecution of:
  - (i) crimes within the jurisdiction of the ICC (within the meaning of the *International Criminal Court Act 2002*); and
  - (ii) Tribunal offences (within the meaning of the *International War Crimes Tribunals Act 1995*);

#### **214 After paragraph 313(4)(ca)**

Insert:

- (cb) assisting the investigation and prosecution of:
  - (i) crimes within the jurisdiction of the ICC (within the meaning of the *International Criminal Court Act 2002*); and
  - (ii) Tribunal offences (within the meaning of the *International War Crimes Tribunals Act 1995*);

#### **215 Application of amendments**

The amendments made by this Part apply in relation to giving help on or after the commencement of this item, whether conduct, a crime or an offence to which the help relates occurred before, on or after that commencement.

## **Schedule 2—Amendments relating to mutual assistance in criminal matters**

### **Part 1—Search warrants**

#### *Mutual Assistance in Criminal Matters Act 1987*

##### **1 Subsection 3(1)**

Insert:

*benefit* has the same meaning as in the Proceeds of Crime Act.

##### **2 Subsection 3(1) (definition of *evidential material*)**

Repeal the definition, substitute:

*evidential material* means:

- (a) in Subdivision F of Division 2 of Part VI—evidence relating to:
  - (i) property in relation to which a foreign forfeiture order or foreign restraining order has been or could be made; or
  - or
  - (ii) property of a person in relation to whom a foreign pecuniary penalty order has been or could be made; or
  - (iii) tainted property; or
  - (iv) benefits derived from the commission of a foreign serious offence; or
- (b) otherwise—a thing relevant to a proceeding or investigation, including such a thing in electronic form.

##### **3 Subsection 3(1)**

Insert:

*person assisting* has the same meaning as in the Proceeds of Crime Act.

*POCA search warrant* means a search warrant issued under Part 3-5 of the Proceeds of Crime Act in relation to a foreign serious offence.

#### 4 Subsection 3(1) (definition of *property-tracking document*)

Repeal the definition.

#### 5 Subsection 3(1)

Insert:

*responsible enforcement agency head* means the head of the enforcement agency whose authorised officer is responsible for executing a POCA search warrant.

*tainted property* means:

- (a) proceeds of a foreign serious offence; or
- (b) an instrument of a foreign serious offence.

#### 6 Subsection 34ZB(2)

Before “search”, insert “POCA”.

#### 7 Subsection 34ZB(3)

Repeal the subsection, substitute:

- (3) However, Part 3-5 of the Proceeds of Crime Act applies as if:
  - (a) a reference in that Part to tainted property were a reference to tainted property within the meaning of this Act; and
  - (b) a reference in that Part to evidential material were a reference to evidential material as defined in subsection 3(1) of this Act for the purposes of this Subdivision; and
  - (c) the words “or section 34ZD, 34ZE or 34ZF of the Mutual Assistance Act” were inserted after “this Act” in paragraph 254(1)(a) of the Proceeds of Crime Act; and
  - (d) paragraphs 227(1)(a), (b), (h) and (ha) and 228(1)(d) and (da) and sections 256 to 262 of the Proceeds of Crime Act were omitted.

Note: Sections 34ZC and 34ZCA of this Act also apply in relation to a POCA search warrant. Sections 34ZD to 34ZF of this Act also apply in relation to property or things seized under such a warrant.

#### 8 Section 34ZC

Repeal the section, substitute:

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### **34ZC Contents of POCA search warrants**

A POCA search warrant in relation to a foreign serious offence must state that the warrant authorises the seizure of property or a thing found by an authorised officer, or a person assisting in relation to the warrant, in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:
  - (i) is tainted property of the foreign serious offence that is not of a kind specified in the warrant; or
  - (ii) is evidential material relating to the foreign serious offence that is not of a kind specified in the warrant; or
  - (iii) is tainted property of, or evidential material relating to, another foreign serious offence in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a criminal proceeding in respect of the foreign serious offence in the foreign country that requested the assistance referred to in section 34ZG in relation to that offence; or
  - (v) will afford evidence as to the commission of an Australian criminal offence; and
- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 34ZB(3)(d), the POCA search warrant must also state the matters set out in section 227 of the Proceeds of Crimes Act.

### **34ZCA Seizure of certain property or things found in the course of search**

A POCA search warrant in relation to a foreign serious offence authorises an authorised officer, or a person assisting in relation to the warrant, to seize property or a thing found by the authorised officer or person assisting in the course of the search if the authorised officer or person assisting believes on reasonable grounds that:

- (a) the property or thing:
  - (i) is tainted property of the foreign serious offence that is not of a kind specified in the warrant; or

- (ii) is evidential material relating to the foreign serious offence that is not of a kind specified in the warrant; or
  - (iii) is tainted property of, or evidential material relating to, another foreign serious offence in relation to which a POCA search warrant is in force; or
  - (iv) is relevant to a criminal proceeding in respect of the foreign serious offence in the foreign country that requested the assistance referred to in section 34ZG in relation to that offence; or
  - (v) will afford evidence as to the commission of an Australian criminal offence; and
- (b) the seizure of the property or thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Note: Subject to paragraph 34ZB(3)(d), the POCA search warrant also authorises the things set out in section 228 of the Proceeds of Crimes Act.

**9 Subsection 34ZD(1)**

Omit “(other than a property-tracking document) that has been seized under a search warrant issued under Part 3-5 of the Proceeds of Crime Act”, substitute “that has been seized under a POCA search warrant”.

**10 Subsection 34ZD(2)**

Before “warrant”, insert “POCA search”.

**11 Subsection 34ZD(3)**

Omit “head of the authorised officer’s enforcement agency”, substitute “responsible enforcement agency head”.

**12 Paragraph 34ZD(3)(b)**

Omit “proceeds or an instrument”, substitute “tainted property”.

**13 Subsection 34ZD(4)**

Omit “head of the authorised officer’s enforcement agency”, substitute “responsible enforcement agency head”.

#### **14 Subsection 34ZD(5)**

Repeal the subsection, substitute:

- (5) This section does not apply to property that has been seized under a POCA search warrant because:
- (a) it is evidential material; or
  - (b) it is property of a kind referred to in subparagraph 34ZCA(a)(iv) or (v).

#### **15 Section 34ZE (heading)**

Repeal the heading, substitute:

#### **34ZE Dealing with certain seized property**

#### **16 Subsection 34ZE(1)**

Repeal the subsection, substitute:

- (1) Property must be dealt with in accordance with this section if:
- (a) it has been seized under a POCA search warrant in relation to a foreign serious offence; and
  - (b) it is not:
    - (i) evidential material; or
    - (ii) property of a kind referred to in subparagraph 34ZCA(a)(iv) or (v).

#### **17 Subsections 34ZE(2), (3) and (5)**

Omit “head of the enforcement agency whose authorised officer seized the property”, substitute “responsible enforcement agency head”.

#### **18 Subsection 34ZE(5)**

Omit “head of the enforcement agency” (second and third occurring), substitute “responsible enforcement agency head”.

#### **19 Subsection 34ZE(6)**

Omit “head of the enforcement agency” (wherever occurring), substitute “responsible enforcement agency head”.

**20 Subsection 34ZE(7)**

Omit “head of the enforcement agency whose authorised officer seized it”, substitute “responsible enforcement agency head”.

**21 Subsection 34ZE(7)**

Omit “head of the enforcement agency must”, substitute “responsible enforcement agency head must”.

**22 Section 34ZF**

Repeal the section, substitute:

**34ZF Dealing with evidential material and certain property or things seized under POCA search warrants**

- (1) This section applies if:
  - (a) property or a thing (the *seized item*) is seized under a POCA search warrant in relation to a foreign serious offence; and
  - (b) the seized item is:
    - (i) evidential material; or
    - (ii) property or a thing of a kind referred to in subparagraph 34ZCA(a)(iv); and
  - (c) the seized item is seized by a person (the *seizing officer*) who is:
    - (i) an authorised officer; or
    - (ii) a person assisting in relation to the warrant.
- (2) The seizing officer may retain the seized item for a period not exceeding 1 month pending a written direction from the Attorney-General as to how to deal with the seized item.
- (3) Without limiting the directions that may be given under subsection (2), the Attorney-General may direct the seizing officer to send the seized item to an authority of the foreign country that requested the assistance referred to in section 34ZG in relation to the foreign serious offence.

## **23 Application provisions**

- (1) The amendments of the *Mutual Assistance in Criminal Matters Act 1987* (the **MACM Act**) made by this Part apply in relation to an application made under Part 3-5 of the Proceeds of Crime Act on or after the commencement of this item:
  - (a) whether property or a thing to which the application relates was acquired before, on or after that commencement; and
  - (b) whether the conduct to which the application relates occurred before, on or after that commencement; and
  - (c) whether the authorisation relating to the application was given under section 34ZG of the MACM Act before, on or after that commencement.
  
- (2) The amendments of the *Mutual Assistance in Criminal Matters Act 1987* (the **MACM Act**) made by this Part apply in relation to a POCA search warrant issued on or after the commencement of this item:
  - (a) whether property or a thing to which the warrant relates was acquired before, on or after that commencement; and
  - (b) whether the conduct to which the warrant relates occurred before, on or after that commencement; and
  - (c) whether the application for the warrant was made before, on or after that commencement; and
  - (d) whether the authorisation relating to the application for the warrant was given under section 34ZG of the MACM Act before, on or after that commencement.

## Part 2—Production of documents or other articles

### *Mutual Assistance in Criminal Matters Act 1987*

#### **24 Paragraph 13(2)(b)**

Omit “the Magistrate or Judge shall”, substitute “a Magistrate or eligible Federal Circuit Court Judge must”.

#### **25 Paragraph 13(2)(b)**

Omit “by the Magistrate”, substitute “by that Magistrate”.

#### **26 Subsection 13(2D)**

Omit “the Magistrate or Judge must”, substitute “a Magistrate or eligible Federal Circuit Court Judge must”.

#### **27 Subsection 13(2D)**

Omit “by the Magistrate”, substitute “by that Magistrate”.

#### **28 Application provision**

The amendments of the *Mutual Assistance in Criminal Matters Act 1987* made by this Part apply in relation to the following:

- (a) a requirement to produce documents or other articles that is made on or after the commencement of this item;
- (b) a requirement to produce documents or other articles that is made before the commencement of this item if:
  - (i) the documents or other articles had not been produced immediately before the commencement of this item; or
  - (ii) the documents or other articles were produced before the commencement of this item but, immediately before that commencement, the documents (or copies of the documents) or other articles had not been sent to the Attorney-General as required by paragraph 13(2)(b) or subsection 13(2D) of that Act.

## **Part 3—Other amendments**

### ***Mutual Assistance in Criminal Matters Act 1987***

#### **29 Subsection 3(1) (definition of *carrier*)**

Repeal the definition, substitute:

*carrier* has the same meaning as in the *Telecommunications (Interception and Access) Act 1979* (other than Part 5-4 or 5-4A of that Act).

#### **30 Subsection 3(1) (paragraph (a) of the definition of *foreign forfeiture order*)**

After “foreign country”, insert “by a court or other judicial authority”.

#### **31 Subsection 3(1) (paragraph (b) of the definition of *foreign forfeiture order*)**

Omit “made under the law of a foreign country”, substitute “direction, notice, decree or other decision (however described), made under the law of a foreign country by a court or other judicial authority”.

#### **32 Subsection 3(1) (definition of *foreign pecuniary penalty order*)**

After “foreign country”, insert “by a court or other judicial authority”.

#### **33 Subsection 3(1) (paragraph (a) of the definition of *foreign restraining order*)**

After “foreign country”, insert “(whether or not by a court)”.

#### **34 After subsection 3(1)**

Insert:

(1AA) A reference to an order in the definitions of *foreign forfeiture order*, *foreign pecuniary penalty order* and *foreign restraining order* in subsection (1) includes a reference to a declaration, direction, notice, decree or other decision (however described).

**35 Paragraph 34P(3)(c)**

Omit “and (iii) and (c)(ii) and (iii)”, substitute “and (c)(ii)”.

**36 Section 34W**

Before “A person”, insert “(1)”.

**37 Section 34W (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

**38 Section 34W (note)**

Repeal the note.

**39 At the end of section 34W**

Add:

(2) Subsection (1) does not apply if:

- (a) the person fails to comply with the notice only because the person does not provide information or a document within the period specified in the notice; and
- (b) the person took all reasonable steps to provide the information or document within that period; and
- (c) the person provides the information or document as soon as practicable after the end of that period.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* also create offences for providing false or misleading information or documents.

**40 Application provisions**

- (1) The amendments of the *Mutual Assistance in Criminal Matters Act 1987* made by items 30 to 34 of this Part apply in relation to a foreign forfeiture order, foreign pecuniary penalty order or foreign restraining order made before, on or after the commencement of this item.

- (2) Subsection 34W(2) of the *Mutual Assistance in Criminal Matters Act 1987*, as inserted by this Part, applies in relation to a notice given on or after the commencement of this item.

## Schedule 3—Amendment of the Extradition Act 1988

### *Extradition Act 1988*

#### **1 After subsection 26(2)**

Insert:

- (2A) If a person is brought before a magistrate, eligible Federal Circuit Court Judge or court as referred to in paragraph (1)(ca), the magistrate, Judge or court must order:
- (a) the discharge of the recognisances on which bail was granted; and
  - (b) that the person be committed to prison to await surrender under the warrant.

#### **2 At the end of section 35**

Add:

- (7) If:
- (a) the Federal Court makes an order under subsection (2) that the person be surrendered to New Zealand or confirming an order under paragraph 34(1)(c); or
  - (b) on appeal, the Full Court or the High Court makes an order that the person be surrendered to New Zealand or confirming such an order;
- the Federal Court, the Full Court or the High Court (as the case may be) must order that the person be committed to prison pending the execution of the surrender warrant.

#### **3 Application of amendments**

- (1) The amendment of section 26 of the *Extradition Act 1988* made by this Schedule applies in relation to surrender warrants issued after the commencement of this item.
- (2) The amendment of section 35 of the *Extradition Act 1988* made by this Schedule applies in relation to an order referred to in

paragraph 35(7)(a) or (b) made after the commencement of this item.

## **Schedule 4—Amendments relating to foreign evidence**

### ***Foreign Evidence Act 1994***

#### **1 Paragraphs 20(2)(a) and (b)**

Omit “that State”, substitute “a State”.

#### **2 At the end of subsection 20(2)**

Add:

- ; or (d) a proceeding under a law of a Territory (other than the Australian Capital Territory or the Northern Territory) that is prescribed by the regulations as a law that corresponds to a proceeds of crime law.

#### **3 Section 26**

Repeal the section, substitute:

#### **26 Evidentiary certificates relating to requests made to foreign countries**

- (1) The Attorney-General may issue a written certificate signed by the Attorney-General certifying that specified documents or things were obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.
- (2) In any proceeding to which this Part applies, a certificate under subsection (1) is prima facie evidence of the matters stated in the certificate.

#### **4 After section 27A**

Insert:

#### **27AA Evidentiary certificates relating to requests made to foreign countries**

- (1) The Attorney-General may issue a written certificate signed by the Attorney-General certifying that specified documents or things
-

were obtained as a result of a request made to a foreign country by or on behalf of the Attorney-General.

- (2) In any terrorism-related proceeding, a certificate under subsection (1) is prima facie evidence of the matters stated in the certificate.

## **5 Section 35**

Repeal the section, substitute:

### **35 Evidentiary certificates relating to requests made to foreign business authorities**

- (1) The Chairperson of ASIC may issue a written certificate signed by the Chairperson of ASIC certifying that specified documents or things were obtained as a result of a request made to a foreign business authority by ASIC.
- (2) The Deputy Chairperson of ASIC may issue a written certificate signed by the Deputy Chairperson of ASIC certifying that specified documents or things were obtained as a result of a request made to a foreign business authority by ASIC.
- (3) In any proceeding to which this Part applies, a certificate under subsection (1) or (2) is prima facie evidence of the matters stated in the certificate.

## **6 Application provision**

The amendments of the *Foreign Evidence Act 1994* made by items 1 and 2 of this Schedule apply in relation to a proceeding that commences before, on or after the commencement of this item.

## Schedule 5—Protecting vulnerable persons

### *Crimes Act 1914*

#### **1 Section 15YR (heading)**

Repeal the heading, substitute:

#### **15YR Publication identifying child witnesses, child complainants or vulnerable adult complainants**

#### **2 Subparagraph 15YR(1)(c)(i)**

After “child witness”, insert “, child complainant”.

#### **3 At the end of paragraph 15YR(1A)(a)**

Add “or child complainant”.

#### **4 Application of amendments**

The amendments of the *Crimes Act 1914* made by this Schedule apply in relation to proceedings instituted after the commencement of this item (whether the proceedings are for offences committed, or alleged to have been committed, before or after the commencement of this item).

### *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*

#### **5 Item 93 of Schedule 2**

Before “The”, insert “(1)”.

#### **6 At the end of item 93 of Schedule 2**

Add:

- (2) The amendments made by Part 1 of this Schedule also apply in relation to proceedings instituted after the commencement of Schedule 5 to the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018* (whether the proceedings are for offences
-

committed, or alleged to have been committed, before or after the commencement of this Schedule).

## Schedule 6—Slavery-like offences and relevant evidence

### Part 1—Slavery-like offences

#### *Crimes Act 1914*

##### 1 Paragraph 15Y(1)(c)

Omit “slavery-like conditions”, substitute “slavery-like offences”.

##### 2 Paragraph 15Y(1)(caa)

Omit “and debt bondage”.

##### 3 Paragraph 15Y(2)(a)

Omit “slavery-like conditions”, substitute “slavery-like offences”.

##### 4 Paragraph 15Y(2)(b)

Omit “and debt bondage”.

#### *Criminal Code Act 1995*

##### 5 Division 270 of the *Criminal Code* (heading)

Repeal the heading, substitute:

### Division 270—Slavery and slavery-like offences

##### 6 Section 270.1A of the *Criminal Code*

Insert:

*debt bondage* is the condition of a person (the *first person*) if:

- (a) the condition arises from a pledge:
  - (i) by the first person of the personal services of the first person; or
  - (ii) by another person of the personal services of the first person, and the first person is under the other person’s control; or

- (iii) by the first person of the personal services of another person who is under the first person's control; and
- (b) the pledge is made as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given) by the person making the pledge; and
- (c) any of the following apply:
  - (i) the debt owed or claimed to be owed is manifestly excessive;
  - (ii) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt;
  - (iii) the length and nature of those services are not respectively limited and defined.

**7 Section 270.1A of the *Criminal Code* (at the end of the definition of *slavery-like offence*)**

Add:

; (e) section 270.7C (debt bondage).

**8 Subdivision C of Division 270 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

**Subdivision C—Slavery-like offences**

**9 After section 270.7B of the *Criminal Code***

Insert:

**270.7C Offence of debt bondage**

A person commits an offence of debt bondage if:

- (a) the person engages in conduct that causes another person to enter into debt bondage; and
- (b) the person intends to cause the other person to enter into debt bondage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—  
imprisonment for 7 years; or
- (b) in any other case—imprisonment for 4 years.

**10 Division 271 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

**Division 271—Trafficking in persons**

**11 Section 271.1A of the *Criminal Code* (note)**

Omit “forced labour and forced marriage. Subdivision C of this Division deals with debt bondage”, substitute “forced labour, forced marriage and debt bondage”.

**12 Subdivision C of Division 271 of the *Criminal Code***

Repeal the Subdivision.

**13 Section 271.10 of the *Criminal Code***

Omit “271.7F, 271.7G, 271.8 or 271.9”, substitute “271.7F or 271.7G”.

**14 Paragraph 271.11A(1)(b) of the *Criminal Code***

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

**15 Paragraph 271.11A(1)(c) of the *Criminal Code***

Repeal the paragraph.

**16 Paragraph 279.1(a) of the *Criminal Code***

Omit “slavery-like conditions”, substitute “slavery-like offences”.

**17 Paragraph 279.1(b) of the *Criminal Code***

Omit “and debt bondage”.

**18 Dictionary in the *Criminal Code***

Insert:

*confiscate*, in relation to a person’s travel or identity document, has the same meaning as in Division 271 (see section 271.1).

**19 Dictionary in the *Criminal Code* (definition of *debt bondage*)**

Repeal the definition, substitute:

*debt bondage* has the same meaning as in Division 270 (see section 270.1A).

***Telecommunications (Interception and Access) Act 1979***

**20 Subparagraph 5D(3A)(a)(ii)**

Omit “270.8 (slavery or slavery-like conditions)”, substitute “270.7C (slavery or slavery-like offences)”.

**21 At the end of subparagraph 5D(3A)(a)(v)**

Add “or”.

**22 Subparagraph 5D(3A)(a)(vi)**

Repeal the subparagraph.

## Part 2—Relevant evidence

### *Criminal Code Act 1995*

#### **23 Subsection 270.10(1) of the *Criminal Code***

Omit all the words after “determining”, substitute:

whether, in relation to a person (the *alleged victim*) against whom the offence is alleged to have been committed:

- (a) in the case of an offence against this Subdivision—the alleged victim has been coerced, threatened or deceived; or
- (b) in the case of an offence against section 270.5—the alleged victim was significantly deprived of personal freedom; or
- (c) in the case of an offence against section 270.7B—the alleged victim was incapable of understanding the nature and effect of a marriage ceremony; or
- (d) in the case of an offence against section 270.7C—another person has caused the alleged victim to enter into debt bondage.

#### **24 Paragraphs 270.10(2)(a) and (b) of the *Criminal Code***

Omit “the alleged victim and the alleged offender”, substitute “the alleged victim, the alleged offender or a family member of the alleged victim or alleged offender, and any other person”.

#### **25 At the end of subparagraph 270.10(2)(c)(iii) of the *Criminal Code***

Add “or any other person”.

#### **26 At the end of section 270.10 of the *Criminal Code***

Add:

- (4) In this section:

*family member* of a person means:

- (a) the person’s spouse or de facto partner; or
- (b) a parent, step-parent or grandparent of the person; or

- (c) a child, step-child or grandchild of the person; or
  - (d) a brother, sister, step-brother or step-sister of the person; or
  - (e) a guardian or carer of the person.
- (5) For the purposes of this section, the family members of a person are taken to include the following (without limitation):
- (a) a de facto partner of the person;
  - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in the Dictionary;
  - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

**27 Paragraph 271.11A(1)(a) of the *Criminal Code***

Omit "or BB".

**28 Paragraphs 271.11A(2)(a) and (b) of the *Criminal Code***

Omit "the alleged victim and the alleged offender", substitute "the alleged victim, the alleged offender or a family member of the alleged victim or alleged offender, and any other person".

**29 At the end of subparagraph 271.11A(2)(c)(iii) of the *Criminal Code***

Add "or any other person".

**30 At the end of section 271.11A of the *Criminal Code***

Add:

- (5) In this section:

*family member* of a person means:

- (a) the person's spouse or de facto partner; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, step-child or grandchild of the person; or
- (d) a brother, sister, step-brother or step-sister of the person; or
- (e) a guardian or carer of the person.

- (6) For the purposes of this section, the family members of a person are taken to include the following (without limitation):
- (a) a de facto partner of the person;
  - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in the Dictionary;
  - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

## **Part 3—Application and transitional provisions**

### **31 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply in relation to conduct engaged in on or after the commencement of this item.
- (2) The amendments made by Part 2 of this Schedule apply in relation to proceedings for offences instituted after the commencement of this item (whether the proceedings are for offences committed, or alleged to have been committed, before or after the commencement of this item).

### **32 Transitional—serious offences**

Paragraph 5D(3A)(a) of the *Telecommunications (Interception and Access) Act 1979* has effect after the commencement of this item (in addition to its effect as amended by this Act) as if it also contained a reference to the following provisions of the *Criminal Code*, as in force immediately before the commencement of this item:

- (a) section 271.8;
- (b) section 271.9.

## **Schedule 7—Amendment of the War Crimes Act 1945**

### ***War Crimes Act 1945***

#### **1 Section 21**

Repeal the section, substitute:

#### **21 Reporting**

- (1) If either or both of the following is started or carried on at any time during a financial year:
  - (a) an investigation of a suspected offence against this Act;
  - (b) a proceeding for an alleged offence against this Act;the Attorney-General must, as soon as practicable after the end of the financial year, cause a report about the operation of this Act during the year to be prepared.
- (2) The report must include the following information:
  - (a) the number of suspected offences against this Act under investigation during the year;
  - (b) the number of proceedings for alleged offences against this Act started or carried on during the year;
  - (c) the resources available during the year for the purposes of investigating such suspected offences and carrying on such proceedings;
  - (d) the anticipated timetable for finalising:
    - (i) investigations of such suspected offences; and
    - (ii) such proceedings.
- (3) The Attorney-General must cause a copy of the report to be laid before each House of the Parliament within 15 sittings days of that House after the report is prepared.

## **2 Application of amendments**

Section 21 of the *War Crimes Act 1945*, as substituted by this Schedule, applies in relation to the financial year starting on 1 July 2016 and each later financial year.

## Schedule 8—Amendment of the Australian Federal Police Act 1979

### Part 1—Drug testing

#### *Australian Federal Police Act 1979*

##### **1 Subsection 40LA(4)**

Omit “if the screening test subject is an AFP employee or a special member”.

##### **2 Section 40M (heading)**

Repeal the heading, substitute:

**40M Prescribed persons may require AFP appointees to undergo alcohol screening tests, alcohol breath tests or prohibited drug tests etc.**

##### **3 Subsection 40M(1)**

Omit “AFP employee, or a special member,”, substitute “AFP appointee”.

##### **4 Paragraph 40M(2)(a)**

Omit “AFP employee or a special member”, substitute “AFP appointee”.

##### **5 Subsection 40M(3)**

Omit “AFP employee or a special member”, substitute “AFP appointee”.

##### **6 Subsection 40N(1)**

Omit “AFP employee or special member”, substitute “AFP appointee”.

##### **7 Subsection 40N(1) (note)**

Omit “the employee or special member”, substitute “the AFP appointee”.

**8 Subsection 40N(2)**

Omit “a member or a special member”, substitute “an AFP appointee”.

**9 Subsection 40N(2)**

Omit “the member or special member” (wherever occurring), substitute “the AFP appointee”.

**10 Subsection 40N(3)**

Omit “AFP employee or special member”, substitute “AFP appointee”.

**11 Subsection 40N(4)**

Omit “AFP employee or a special member”, substitute “AFP appointee”.

**12 Subsection 40N(4)**

Omit “the employee or special member”, substitute “the AFP appointee”.

**13 Subsection 40N(5)**

Omit “AFP employee or a special member”, substitute “AFP appointee”.

**14 Section 40P**

Before “For”, insert “(1)”.

**15 At the end of section 40P**

Add:

- (2) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of section 40LA, 40M or 40N may make provision in relation to a matter by applying, adopting or incorporating any matter contained in a standard published by, or on behalf of, Standards Australia or published jointly by, or on behalf of, Standards Australia and Standards New Zealand:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

- (3) If the regulations make provision in relation to a matter by applying, adopting or incorporating a matter contained in a standard as referred to in subsection (2), the Commissioner must ensure that the text of the matter applied, adopted or incorporated is readily available, free of charge, to each AFP appointee.
- (4) Subsection (3) does not apply if the text cannot be made so available without infringing copyright.

**16 Paragraph 40Q(a)**

Omit “AFP employee or a special member”, substitute “AFP appointee”.

**17 Section 40Q**

Omit “employee, special member or AFP appointee” (first occurring), substitute “AFP appointee”.

**18 Paragraph 40Q(d)**

Omit “to terminate the employment of the employee or the AFP appointee or to terminate the appointment of the special member or the AFP appointee”, substitute “to terminate the employment or appointment of the AFP appointee”.

**19 Paragraph 40Q(f)**

Omit “employee, special member or AFP appointee”, substitute “AFP appointee”.

## **Part 2—Other amendments**

### ***Australian Federal Police Act 1979***

#### **20 Subsections 30A(6) and (7)**

Repeal the subsections, substitute:

- (6) If one or more notices under subsection (2) have been given to the AFP employee in relation to the notice of resignation, the Commissioner may, by written notice to the AFP employee, substitute a day as the day on which his or her resignation is to take effect.
- (7) The Commissioner may give a maximum of 2 notices under subsection (6) to the AFP employee in relation to the notice of resignation.
- (8) To be effective, the first notice given under subsection (6) in relation to the notice of resignation must:
  - (a) specify a day no later than 30 days after the day specified in the most recent notice given under subsection (2) in relation to the notice of resignation; and
  - (b) be given to the AFP employee before the day specified in the most recent notice given under subsection (2) in relation to the notice of resignation.
- (9) To be effective, any second notice given under subsection (6) in relation to the notice of resignation must:
  - (a) specify a day no later than 30 days after the day specified in the first notice given under subsection (6) in relation to the notice of resignation; and
  - (b) be given to the AFP employee before the day specified in the first notice given under subsection (6) in relation to the notice of resignation.

Note: The effect of subsections (2) to (9) is that the latest day that may be specified in a notice given under this section is the day 150 days after the day specified in the notice of resignation.

- (10) On or before the day specified in the most recent notice given under this section in relation to the notice of resignation, the Commissioner must:
- (a) accept the AFP employee's notice of resignation; or
  - (b) terminate the AFP employee's employment under section 28.
- (11) If the Commissioner accepts the notice of resignation under paragraph (10)(a), the AFP employee's resignation takes effect on the day on which the Commissioner communicates acceptance of the resignation to the employee.
- (12) The Commissioner must:
- (a) cause a review of the operation of this section to be undertaken as soon as practicable after the fifth anniversary of the commencement of this subsection; and
  - (b) give the Minister a report of the review.

## **21 Application of amendment**

The amendment made by this Part applies in relation to notices of resignation given after the commencement of this item.

## **Schedule 9—Amendment of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006**

### **Part 1—Reports about physical currency**

#### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

##### **1 After subsection 53(8) (before the notes)**

Insert:

- (9) If a report under this section in respect of the movement of physical currency out of Australia is to be given electronically, the report must be given to the AUSTRAC CEO using an electronic system prescribed by the AML/CTF Rules.

##### **2 After paragraph 54(1)(a)**

Insert:

- (aa) if the movement of the physical currency is to be effected by a person taking the physical currency out of Australia with the person, and the report is to be given using an electronic system referred to in subsection 53(9)—within the period prescribed by the AML/CTF Rules (which must end at or before the time worked out under subsection (3)); or

##### **3 Paragraph 54(1)(b)**

After “with the person”, insert “, and paragraph (aa) does not apply”.

##### **4 Subsection 54(3)**

Omit “paragraph (1)(b)”, substitute “paragraphs (1)(aa) and (b)”.

##### **5 Application of amendments**

The amendments made by this Part apply in relation to a movement of physical currency out of Australia after the commencement of this Schedule.

## **Part 2—The Australian Charities and Not-for-profits Commission**

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

#### **6 Section 5 (after paragraph (ge) of the definition of *designated agency*)**

Insert:

(gf) the Australian Charities and Not-for-profits Commission; or

#### **7 Application of amendment**

- (1) The amendment of section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part applies in relation to disclosures of, and access to, information after this item commences, whether the information was obtained before, on or after that commencement.
- (2) For the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, if information is disclosed in accordance with a provision of that Act to an official of the Australian Charities and Not-for-profits Commission before this item commences, the information is taken to have been disclosed to an official of a designated agency.

## **Schedule 10—Amendment of the Australian Crime Commission Act 2002**

### *Australian Crime Commission Act 2002*

#### **1 After subsection 4(1)**

Insert:

- (1A) For all purposes, if an expression defined in subsection (1) contains “ACC”, the expression when used as so defined may also be referred to by replacing “ACC” with any name or acronym specified under subsection 7(1A).

Example: Expressions to which this subsection applies, including the following, may be used in a document by replacing “ACC” with any name or acronym by which the ACC may also be known:

- (a) ACC information;
- (b) ACC operation/investigation;
- (c) member of the staff of the ACC.

- (1B) Subsection (1A) does not limit subsection 7(1A).

#### **2 Subsection 7(1A)**

Omit “a name”, substitute “one or more names or acronyms”.

#### **3 At the end of subsection 7(1A)**

Add:

Note: See also subsections 4(1A) and (1B), 7B(1A) and 37(5).

#### **4 After subsection 7B(1)**

Insert:

- (1A) The Board of the ACC may also refer to itself, and be referred to, by replacing “ACC” with any name or acronym specified under subsection 7(1A).

#### **5 At the end of section 37**

Add:

- (5) The Chief Executive Officer of the ACC may also refer to himself or herself, and be referred to, by replacing “ACC” with any name or acronym specified under subsection 7(1A).

## **Schedule 11—Amendment of the AusCheck Act 2007**

### *AusCheck Act 2007*

#### **1 Subsection 4(1)**

Insert:

*major national event* has the meaning given by section 5A.

#### **2 After section 5**

Insert:

#### **5A Declaration of major national events**

- (1) The Minister may, by legislative instrument, declare that a specified event is a *major national event* for the purposes of this Act.
- (2) The Minister must not make a declaration under subsection (1) in relation to an event unless the Minister is satisfied that it is in the national interest that the Commonwealth be involved in the conduct and coordination of background checks in connection with the accreditation of individuals in relation to the event.
- (3) In considering whether to make a declaration under subsection (1) in relation to an event, the Minister may have regard to:
  - (a) the significance of the event; and
  - (b) the need (if any) to coordinate security arrangements in relation to the event with one or more States or Territories or one or more foreign governments; and
  - (c) any risk assessment relating to the event; and
  - (d) the potential impact of any security incident relating to the event on Australia's reputation; and
  - (e) the anticipated attendees at the event; and
  - (f) any other matter the Minister considers relevant.

### 3 At the end of subsection 8(1)

Add:

- ; or (d) the check is of an individual in connection with the accreditation of the individual in relation to a major national event.

### 4 After subsection 8(2)

Insert:

*Background checks in connection with major national events*

(2A) If paragraph (1)(d) applies, the background check must be conducted:

- (a) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
- (b) for purposes involving, or for purposes related to, the collection and transmission of information by a communication using a postal, telegraphic, telephonic or other like service; or
- (c) in, or for purposes related to, a Territory; or
- (d) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (e) in the course of, or for purposes related to, trade or commerce with other countries, and among the States; or
- (f) in relation to a person who is an employee of, an office holder in, or otherwise connected with, a corporation to which paragraph 51(xx) of the Constitution applies, where the results of the check are relevant to:
  - (i) the relationship between the person and the corporation; or
  - (ii) the protection of the corporation; or
  - (iii) the activities of the corporation; or
- (g) for purposes related to external affairs; or
- (h) for purposes related to the background checking of, or the protection of, aliens; or
- (i) for purposes related to:

- (i) Australia's national security; or
- (ii) the defence of Australia; or
- (iii) a national emergency; or
- (iv) the prevention of conduct to which Part 5.3 or 5.5 of the *Criminal Code* applies; or
- (j) by way of the provision of a service, for a purpose of the Commonwealth, to:
  - (i) the Commonwealth; or
  - (ii) an authority of the Commonwealth; or
- (k) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

## **5 At the end of section 8**

Add:

### *Definitions*

- (5) A term used in subsection (2A) and the Constitution has the same meaning in that subsection as it has in the Constitution.

## **6 After section 10**

Insert:

### **10AA Matters covered by the AusCheck scheme—background checks in connection with major national events**

- (1) The AusCheck scheme may, for the purposes of paragraph 8(1)(d), make provision for and in relation to any of the following:
  - (a) the giving to the Secretary of information, relating to an individual in respect of whom a background check is conducted, that is directly necessary for the purpose of conducting the background check;
  - (b) the criteria against which a background check is to be assessed;
  - (c) the decision or decisions that may be made as a result of a background check;
  - (d) the form of advice to be given to an individual in respect of whom a background check is conducted;

- (e) the form of advice to be given to other persons about the outcome of a background check.
  - (2) The matters referred to in subsection (1) may relate to:
    - (a) all background checks to be conducted for the purposes of paragraph 8(1)(d); or
    - (b) a specified class of background checks.
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*[Minister's second reading speech made in—  
House of Representatives on 23 November 2016  
Senate on 13 February 2018]*

(178/16)

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